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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In re Application of US WEST,) Docket No. UT-991358
5 INC., and QWEST COMMUNICATIONS) Volume I
6 INTERNATIONAL, INC. for an) Pages 1-59
7 Order Disclaiming Jurisdiction,)
8 or in the Alternative,)
9 Approving the US WEST, INC. -)
10 QWEST COMMUNICATIONS)
11 INTERNATIONAL, INC. Merger.)
12 _____)

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10 A hearing in the above matter was
11 held on September 23, 1999, at 1:38 p.m., at 1300
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge DENNIS MOSS,
14 Chairwoman MARILYN SHOWALTER and Commissioner WILLIAM
15 R. GILLIS.

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17 The parties were present as
18 follows:

19 AT&T, by Dan Waggoner, Attorney at
20 Law, Davis, Wright, Tremaine, 1501 Fifth Avenue,
21 Suite 2600, Seattle, Washington 98101. (Via
22 conference bridge.)

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

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24 THE COMMISSION, by Sally G.
25 Johnston, Assistant Attorney General, 1400 S.
Evergreen Park Drive S.W., P.O. Box 40128, Olympia,
Washington 98504-0128.

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1 PUBLIC COUNSEL, by Simon ffitich,
Attorney at Law, 900 Fourth Avenue, #2000, Seattle,
2 Washington 98164.

3 NEXTLINK WASHINGTON, INC.,
ADVANCED TELCOM GROUP, NORTHPOINT COMMUNICATIONS, and
4 MCLEOD USA, by Gregory J. Kopta, 2600 Century Square,
1501 Fourth Avenue, Seattle, Washington 98101-1688.

5 RHYTHMS LINKS, INC., by Angela Wu,
6 Attorney at Law, Ater Wynne, Two Union Square, 601
Union Street, Suite 5450, Seattle, Washington 98101.

7 COVAD COMMUNICATIONS COMPANY and
8 NORTHWEST PAY PHONE ASSOCIATION, by Brooks E. Harlow,
Attorney at Law, 4400 Two Union Square, 601 Union
9 Street, Seattle, Washington 98101.

10 COVAD COMMUNICATIONS COMPANY, by
Clay Deanhardt, Attorney at Law, 2330 Central
11 Expressway, Santa Clara, California 95050.

12 SBC INTERNATIONAL, INC., by Arthur
A. Butler, Attorney at Law, Ater Wynne, Two Union
13 Square, Suite 5450, 601 Union Street, Seattle,
Washington 98101.

14 QWEST, by Gina Spade, Attorney at
15 Law, Hogan & Hartson, 555 13th Street N.W.,
Washington, D.C. 20004.

16 WASHINGTON INDEPENDENT TELEPHONE
17 ASSOCIATION, by Richard A. Finnigan, Attorney at Law,
2405 S. Evergreen Park Drive, S.W., Suite B-3,
18 Olympia, Washington 98502 (Via conference bridge.)

19 LEVEL THREE COMMUNICATIONS, INC.,
by Robert Nichols, Attorney at Law, 2060 Broadway,
20 Suite 200, Boulder, Colorado 80302 (Via conference
bridge.)

21 PENSION EQUITY COUNCIL, by Gary
22 White, 5004 Barkle Road, N.E., Tacoma, Washington
98422.

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1 JUDGE MOSS: Good morning, or afternoon, it
2 is, everyone. My name is Dennis Moss. I'm an
3 Administrative Law Judge for the Washington Utilities
4 and Transportation Commission. On the bench today
5 the Commission is sitting. We have Chairwoman
6 Marilyn Showalter and Commissioner Bill Gillis
7 sitting along with me on the bench.

8 This is our prehearing conference, our
9 kickoff, if you will, in the proceeding captioned In
10 re application of US West, Inc. and Qwest
11 Communications International, Inc., for an order
12 disclaiming jurisdiction, or in the alternative,
13 approving the merger. Our docket number is
14 UT-991358.

15 We are convened in the Commission's offices
16 in Olympia, Washington, and we have several parties
17 participating by teleconference bridge, and we will
18 take appearances momentarily. Our basic agenda today
19 is -- we'll start with the appearances momentarily.
20 We have a number of petitions to intervene. I was
21 receiving those as late as mid-morning this morning
22 and haven't done a final count. I think there are
23 about 14 of those. We'll take those up and hear any
24 argument that there may be in connection with those.
25 I'll tell you now that we're going to take those

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1 under advisement.

2 We'll take up any motions that parties wish
3 to raise today as preliminary motions and determine
4 those or take them under advisement as we deem
5 appropriate.

6 Following that, we will have a brief
7 discussion of the issues. And in that sense, what
8 we'll do is we'll have the intervenors, we'll ask the
9 various participants, Public Counsel, Staff, to make
10 a brief statement of the issues that they identify as
11 being part of the case or that they identify they
12 believe should be part of the case, and we'll of
13 course give the applicants an opportunity to speak to
14 that, as well.

15 And then we'll take up a process and
16 procedural schedule. I believe that we'll probably
17 take a brief recess after the discussion of the
18 issues. The Commissioners may decide to retire from
19 the bench at that point and we'll have an off the
20 record discussion regarding process and procedural
21 schedule and then go back on the record to establish
22 that. And then we'll take up any other business that
23 comes to someone's mind and hopefully be out of here
24 at a reasonable hour.

25 So having said all that, let us turn to the

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1 matter of appearances. I ask, since this is our
2 first prehearing conference, that you give your name,
3 state whom you represent, your business address, your
4 telephone, your facsimile number, and your e-mail
5 address, if you use that means of communication. And
6 we'll begin with the Applicant, and let's start with
7 US West.

8 MS. ANDERL: Thank you, Your Honor. Lisa
9 Anderl, representing US West Communications, Inc. My
10 address is 1600 Seventh Avenue, Room 3206, Seattle,
11 Washington 98191. My business telephone is
12 206-345-1574. Fax number is 206-343-4040. And
13 e-mail is landerl@uswest.com, all lower case.

14 JUDGE MOSS: Thank you. Ms. Spade.

15 MS. SPADE: Thank you, Your Honor. My name
16 is Gina Spade. I'm representing Qwest. My business
17 address is Hogan & Hartson, H-a-r-t-s-o-n, 555 13th
18 Street N.W., Washington, D.C., 20004. My business
19 telephone is 202-637-3657. My fax is 202-637-5910.
20 And my e-mail address is gspade@hhlaw.com.

21 JUDGE MOSS: Okay. Thank you, Ms. Spade.
22 Now, I'm going to call on the intervenors as to whom
23 I have petitions, and I notice that several of the
24 intervenors' petitions included multiple
25 representatives. It is the Commission's practice to

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1 identify one primary contact for purposes of service,
2 and so I'm going to ask that that individual make
3 their appearance first, and then, if other
4 representatives wish to make appearances for that
5 party, they certainly may do so for the record.

6 So I'd like to begin with AT&T, and ask who
7 will be the primary representative or contact for
8 that intervenor, assuming the petition is granted?

9 MR. WAGGONER: That would be Dan Waggoner,
10 at the law firm of Davis, Wright, Tremaine, 1501
11 Fourth Avenue, Suite 2600, Seattle, Washington 98101.
12 Phone is 206-628-7707. Fax is 206-628-7699. And
13 e-mail is danwaggoner@dwt.com.

14 JUDGE MOSS: Thank you. And I believe Mr.
15 Gayman is also present for AT&T. Or Mr. Gayman,
16 you're not counsel, are you? Okay. Thank you. Is
17 Ms. Tribby present?

18 MR. WAGGONER: I don't believe so.

19 JUDGE MOSS: Okay, thank you. Will she be
20 participating at all? She's on the motion.

21 MR. WAGGONER: She may be participating in
22 the hearing, but I'll be the primary contact.

23 JUDGE MOSS: Okay. Thank you, Mr.
24 Waggoner. Telecommunications Resellers Association,
25 do we have anyone present? Rhythms Links, Inc., do

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1 we have anyone present? Thank you.

2 MS. WU: I'm Angela Wu, with the law firm
3 Ater Wynne, and I represent Rhythms Links, Inc. My
4 address is Two Union Square, Suite 5450, 601 Union
5 Street, Seattle, Washington, 98101. My phone number
6 is area code 206-623-4711. My fax is area code
7 206-467-8406. And my e-mail address is
8 awu@aterwynne.com.

9 JUDGE MOSS: Thank you. Advanced TelCom
10 Group, Inc.

11 MR. KOPTA: Gregory Kopta, of the law firm
12 Davis, Wright, Tremaine, 2600 Century Square, 1501
13 Fourth Avenue, Seattle, Washington, 98101. Telephone
14 is 206-628-7692. Fax is 206-628-7699. E-mail
15 address is gregkopta@dwt.com.

16 JUDGE MOSS: And Mr. Kopta, I have you down
17 also for Nextlink Washington, Inc. and NorthPoint
18 Communications, Inc.; is that correct?

19 MR. KOPTA: That is correct, Your Honor.
20 And also I'm here on behalf of Mark Trincherro, of our
21 Portland office, for McLeod USA Telecommunications
22 Services, Inc., but he will be the main contact for
23 McLeod.

24 JUDGE MOSS: I'm sorry, what was his last
25 name?

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1 MR. KOPTA: Trincherro, T-r-i-n-c-h-e-r-o.
2 JUDGE MOSS: So for purposes of service,
3 his name should remain on for McLeod
4 Telecommunications Services, Inc.?

5 MR. KOPTA: That's correct, and at the
6 Portland address for our office, which is 1300 S.W.
7 Fifth Avenue, Suite 2300, Portland, Oregon, 97201.
8 His voice number is 503-778-5318. Fax is
9 503-778-5299. E-mail address is
10 marktrincherro@dwt.com.

11 JUDGE MOSS: Okay, thank you. Do we have
12 someone present for the Pension Equity Council?

13 MR. WHITE: Gary White, Gary M. White,
14 5004 Barkle Road, N.E., Tacoma, Washington, 98422.
15 My telephone number is 253-952-4612. My fax number
16 is 253-952-4600. E-mail is garyw39@aol.com. And we
17 have two others that will be spokespersons, and that
18 is Richard Smythe and Elden Graham.

19 JUDGE MOSS: I have in my record here that
20 you are the secretary and treasurer of the Pension
21 Equity Council?

22 MR. WHITE: Yes, sir.

23 JUDGE MOSS: And will you be the primary
24 representative for the Pension Equity Council,
25 assuming they gain status as an intervenor?

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1 MR. WHITE: Yes. But I will not be the
2 primary spokesperson. That will be Mr. Smythe and
3 Mr. Graham.

4 JUDGE MOSS: But you would be the person
5 for purpose of receiving service?

6 MR. WHITE: Contacts, yes, sir.

7 JUDGE MOSS: All right. Washington
8 Independent Telephone Association. Mr. Finnigan, are
9 you still with us?

10 MR. FINNIGAN: Yes, I am. Richard
11 Finnigan, 2405 Evergreen Park Drive, S.W., Suite B-3,
12 Olympia 98502. Telephone number is 360-956-7001.
13 Fax number is 360-753-6862. And e-mail is
14 rickfinn@yelmtel.com.

15 JUDGE MOSS: Thank you. And do we have a
16 representative present for Covad Communications
17 Company?

18 MR. HARLOW: Good afternoon, Your Honor and
19 Commissioners. Brooks Harlow, Attorney for Covad
20 Communications. And Covad has asked that I be the
21 primary representative for service purposes. Sitting
22 to my right is Clay Deanhardt, in-house counsel for
23 Covad. He would like to speak for Covad today, even
24 though I'll be the primary contact for service. My
25 address, for service purposes, is 601 Union Street,

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1 Suite 4400, Seattle, Washington, 98101-2352.
2 Telephone is 206-622-8484. Facsimile is
3 206-622-7485. And my e-mail address is
4 harlow@millernash.com. Thank you.

5 JUDGE MOSS: Okay. And your firm is
6 Miller, Nash, Weiner, Hager and Karlsen, LLP?

7 MR. HARLOW: Close enough.

8 JUDGE MOSS: I must have mispronounced
9 something there somewhere. All right, very good.
10 Northwest Pay Phone Association is also your client
11 in this case?

12 MR. HARLOW: Yes, Your Honor.

13 JUDGE MOSS: As is Metronet Services
14 Corporation?

15 MR. HARLOW: Yes. Of course, the same
16 service information.

17 JUDGE MOSS: Okay, all right. That brings
18 us, then, to Level Three Communications, Inc.

19 MR. NICHOLS: Yes, my name is Robert
20 Nichols, appearing on behalf of Level Three
21 Communications. (Inaudible) -- Boulder, Colorado,
22 80302. Phone is 303-442-4300. Fax is 303-443-6764.
23 E-mail is rwnichols@mcimail.com.

24 JUDGE MOSS: Okay. I was able to hear that
25 and follow it and I have it written down here and I'm

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1 going to repeat some of that into the record, so that
2 the court reporter can get it all, but I want to ask
3 the parties who are participating by teleconference
4 or make them aware that the bridge line is rather
5 soft sometimes, and so you do need to speak up a
6 little bit and directly into the mouthpiece, and that
7 helps us here usually. So let's do try to do that.

8 And I'll just repeat. It's Robert Nichols,
9 N-i-c-h-o-l-s, Nichols and Associates, 2060 Broadway,
10 Suite 200. That's Boulder, Colorado, 80302. Phone,
11 303-442-4300. Fax, 303-443-6764. And e-mail is
12 rwnichols@mcimail.com.

13 SBC International, Inc.

14 MR. BUTLER: Arthur A. Butler, law firm of
15 Ater Wynne, LLP, for SBC International, Inc. My
16 address is 601 Union Street, Suite 5450, Seattle,
17 Washington, 98101-2327. Phone, 206-623-4711. Fax,
18 206-467-8406. E-mail aab@aterwynne.com.

19 JUDGE MOSS: Are there any other parties
20 who would be intervenors in this case whose
21 appearance I have not called for? Seeing no
22 indication in the room and hearing nothing on the
23 telecommunications link, I think we will turn to
24 Public Counsel.

25 MR. FFITCH: Thank you, Your Honor. Simon

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1 ffitich, Assistant Attorney General, Public Counsel
2 Section, Washington Attorney General, 900 Fourth
3 Avenue, Suite 2000, Seattle, 98164. Phone number is
4 206-389-2055. Fax is 206-389-2058. E-mail is
5 simonf@atg.wa.gov.

6 JUDGE MOSS: Thank you, Mr. ffitich. For
7 Staff.

8 MS. JOHNSTON: Sally G. Johnston, Assistant
9 Attorney General, appearing on behalf of Commission
10 Staff. My business address is 1400 South Evergreen
11 Park Drive, S.W., Olympia, Washington, 98504. My
12 telephone number is area code 360-664-1193. My fax
13 number is same area code, 360-586-5522. And my
14 e-mail address is sjohnsto@wutc.wa.gov.

15 JUDGE MOSS: Thank you. I believe that
16 completes the taking of appearances, bringing us to
17 our next order of business, which is the petitions to
18 intervene. I'm going to simply go through those in
19 the order I received them and ask, with respect to
20 each one, whether there's any objection. If there is
21 no objection, then we won't hear anything orally on
22 that and we'll simply take the written petition under
23 advisement. If there is any objection, then we will
24 hear first from the petitioning party and then give
25 the opponent, any opponents, an opportunity to say

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1 their piece. So let's start with AT&T. Mr.
2 Waggoner.

3 MR. WAGGONER: Yes.

4 JUDGE MOSS: Okay. Is there any objection
5 to the proposed intervention by AT&T?

6 MS. ANDERL: Yes, Your Honor. US West
7 objects.

8 MS. SPADE: Your Honor, Qwest objects, as
9 well.

10 JUDGE MOSS: Qwest objects as well. Well,
11 let's hear the basis for the objections first, and
12 then have the petitioner respond. That would be a
13 more orderly way to proceed. So go ahead.

14 MS. ANDERL: Thank you, Your Honor. And
15 maybe we can shorten the process a bit by stating up
16 front that, to the extent that I've had an
17 opportunity to review the written petitions, I don't
18 believe that any of the intervenors states a
19 substantial interest in the proceeding. And we will
20 be objecting to those interventions on that basis.

21 Certainly some of them have a general
22 interest, not arising to any substantial or
23 particular interest in this proceeding. From the
24 issues that they raise and discuss, it appears as
25 though they wish to discuss issues that are not

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1 pertinent to the merger and that will not be impacted
2 by the merger, such as US West's obligation to
3 provide wholesale or retail services, either under
4 state law or the Federal Telecommunications Act.
5 Those issues are best addressed in other forums and
6 not appropriately raised here.

7 I believe that the parties will both burden
8 the record and broaden the issues by attempting to
9 raise and debate those issues in this context, and we
10 are therefore opposed to those interventions.

11 JUDGE MOSS: Okay. That would apply with
12 equal force to all of the interventions or some of
13 the interventions or --

14 MS. ANDERL: To the extent that -- well,
15 some of them don't address wholesale issues or some
16 of them don't address retail issues, so to the extent
17 that those issues are raised, yes. And again, to the
18 extent that I've had an opportunity to review them, I
19 think the Pension Equity Council is a little bit
20 differently situated, but we can talk about that
21 separately.

22 JUDGE MOSS: All right. Well, then, what
23 we'll consider, then, is we'll consider the remarks
24 you have made in connection with all of the
25 petitions, unless you stop us on an individual one

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1 and tell us that there is some other particularized
2 argument that you would wish to make in opposition.

3 What is the basis for Qwest's opposition?
4 And of course, you may proceed individually with
5 respect to each petition or more globally, as Ms.
6 Anderl has chosen to do.

7 MS. SPADE: Thank you, Your Honor. We
8 would echo what US West has said with respect to the
9 petitioners. Furthermore, to the extent that some of
10 the petitioners raise allegations regarding changes
11 that they feel may happen post-merger, we would just
12 like to say that those issues are not -- are
13 speculative at this point and are not ripe for
14 discussion in this proceeding. And again, we would
15 like to have those comments apply to all of the
16 petitioners.

17 JUDGE MOSS: Okay. Well, I will give you
18 each an opportunity to state any particularized
19 objections as we go through the list, but let's go
20 back to Mr. Waggoner, then, and ask for his response
21 to these objections that have been raised by US West
22 and Qwest. Mr. Waggoner.

23 MR. WAGGONER: Certainly, Your Honor. Just
24 generally speaking, what I will address, I think,
25 will also help frame some of the issues that I think

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1 you suggested you'd like to hear about at some point
2 in time. So if it sounds like I'm going on a little
3 bit, I think it may, in fact, be efficient, because I
4 will also address some of these issues that you'd
5 like to hear about.

6 The basic facts are that AT&T
7 Communications of the Pacific Northwest is one of US
8 West's largest existing customers, purchases millions
9 of dollars a year in services, both under access
10 tariffs and interconnection agreements, and it
11 certainly has a very strong interest in both how US
12 West is currently run and how it will be run in the
13 future.

14 At the same time, it is also a direct
15 competitor to US West in a number of markets and
16 attempted competitor in others, and at the same time,
17 it's also a direct competitor of Qwest. So that's a
18 very strong interest in how the combined US Qwest --
19 excuse me, US West-Qwest entity will be competing in
20 these various markets against AT&T.

21 Now, with particular application to this
22 proceeding, I think there are three general
23 categories of issues as to which AT&T has a strong
24 interest and believes that this Commission may wish
25 to address in this proceeding.

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1 The first is, of course, the level of
2 charges under both tariffs and contracts that are
3 charged to AT&T and other similarly-situated
4 carriers. The question will be is that going to
5 change, what will happen with those agreements,
6 tariffs, and charges as a result of the merger, and
7 should the Commission grant any particular relief as
8 part of its consideration of the merger in those
9 areas.

10 I don't wish that to sound as if it's
11 limited only to price issues. There are other issues
12 under interconnection contracts, other than merely
13 price, and we, as a party to those kinds of
14 contracts, have a strong interest in how those
15 contracts will be handled as a result of the merger
16 following the merger.

17 The second set of issues -- and this, I
18 think, goes particularly to some of Ms. Anderl's
19 comments. There are a number of competitive issues
20 that are raised directly by their application as to
21 which we have a strong interest, we can provide
22 important information. But those would relate to the
23 future relationship between US West and Qwest.

24 The claims are made that there is no change
25 in how US West will develop. The claims are made

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1 that there will be divestitures that will occur by
2 Qwest; the claims are made that there will be some
3 kind of future relationship between those companies.
4 We believe all of those issues we have strong
5 interest in and have a lot to say about.

6 Finally, we think there will be other
7 issues that just generally fall into the category of
8 the Telecommunications Act, the Federal
9 Telecommunications Act and state law issues as to US
10 West's current and ongoing compliance with those two
11 statutory schemes.

12 So that's generally our interest. It's
13 both as a very large customer and also a competitor
14 of both of the petitioning parties.

15 MR. HARLOW: Your Honor?

16 JUDGE MOSS: Yes, sir.

17 MR. HARLOW: Unless the bench is already
18 prepared to grant the motion over the applicants'
19 objections, it basically strikes me that since the
20 objections are pretty much general and pretty much
21 applicable to all of the parties who seek
22 intervention, it might be appropriate and efficient
23 that all the parties seeking intervention argue at
24 least as to the general objections and then reserve
25 any specific objections for later.

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1 JUDGE MOSS: Yeah, I think we might
2 collapse our process here a little bit, as Mr.
3 Waggoner has suggested in his comments, by
4 identifying more specifically the issues, and we may
5 be able to shorten our proceeding this afternoon a
6 little bit in that fashion. So I think we will
7 continue in the same vein in which we have started
8 and ask, as we reach each company or group of
9 companies with a common representative, that we hear
10 those points now in connection with this whole
11 question of intervention.

12 As I mentioned at the outset, the
13 Commission has decided to take these petitions under
14 advisement and will not be ruling from the bench with
15 respect to them. So we will proceed in that fashion.
16 And again, at the end, we will have an opportunity
17 for particularized points to be discussed. So let's
18 proceed in that fashion.

19 The next petition on my list is the
20 Telecommunications Resellers Association. And you'll
21 forgive me. We didn't have anyone present for them.
22 Is there still no one present for that party, or that
23 would-be party, I should say? Okay, fine. Let's
24 move on to Ms. Wu, for Rhythms Links.

25 MS. WU: Rhythms Links basically has a

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1 similar position to AT&T, in that it is a direct
2 competitor to US West as a provider of DSL services.
3 In addition, it is heavily reliant on US West for the
4 ability to provide its services and, with the change
5 of a US West-Qwest merger, that would be a change in
6 the party that they were dealing with, and therefore,
7 would have a very strong interest in this proceeding
8 and the impact it would have on them in any future
9 dealings. Thank you.

10 JUDGE MOSS: And I take it there are no
11 particularized objections, or are there?

12 MS. ANDERL: Your Honor, I understood that
13 we would be allowed a response to each of the
14 statements, and if I could just hold my comments to
15 that.

16 JUDGE MOSS: That works.

17 MS. ANDERL: There's nothing in particular
18 that I will spring on Ms. Wu at the end, no.

19 JUDGE MOSS: The springing objection. All
20 right. Mr. Kopta, your turn.

21 MR. KOPTA: Thank you, Your Honor. In the
22 interest of time, we largely concur in the comments
23 that have been made by Mr. Waggoner and Ms. Wu. We
24 would also add that there are more particularized
25 issues, including the availability of alternative

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1 facilities to those that US West currently has. With
2 this merger, one of the issues is the extent to which
3 competitive alternatives or various access to
4 customers will be reduced by the combination of these
5 two companies.

6 Another issue that's a more particularized
7 issue of those that Mr. Waggoner discussed is funding
8 of local exchange facilities that are needed by
9 competitive carriers and the application. Both US
10 West and Qwest tout this merger as beneficial for
11 bringing advanced services and more broadly deploying
12 such services in the state of Washington.

13 It's certainly been my client's experience
14 that there is a deficit of facilities for basic local
15 exchange service, and are concerned that the merger
16 will result in further problems with obtaining access
17 to US West's network.

18 JUDGE MOSS: And are you speaking now on
19 behalf of all three of your clients?

20 MR. KOPTA: Yes, Your Honor.

21 JUDGE MOSS: Okay. The comments would
22 apply with equal force?

23 MR. KOPTA: Yes, sir.

24 JUDGE MOSS: And let me ask you, Mr. Kopta,
25 in keeping with your multiple representations, are

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1 each of your clients both competitors and customers
2 of US West?

3 MR. KOPTA: Yes, Your Honor.

4 JUDGE MOSS: Which brings us to the Pension
5 Equity Council. Mr. White.

6 MR. WHITE: Yes, I'm going to call on Mr.
7 Smythe to speak for the organization.

8 JUDGE MOSS: All right. Come on up here,
9 Mr. Smythe, where we can have a microphone for you.
10 And I'll ask you to identify yourself, spell your
11 last name for the record, and state in what capacity
12 you represent the Pension Equity Council.

13 MR. SMYTHE: Thank you, Your Honor. My
14 name is Richard Smythe, S-m-y-t-h-e, and I represent
15 the PEC Council as a regulatory adviser, although
16 I've never been one before. I drew the short straw.

17 The purpose for our intervention here is
18 clearly stated and simply stated in our application
19 for intervention. And what we're concerned about is
20 that we have sought from US West for a number of
21 years now assurance from them that, in the event of
22 such a merger or other actions that could take place,
23 we want, in writing, irrevocable language that says
24 that the pension funds belong to pensioners. That's
25 what we've been asking for and we've come before this

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1 body in the hopes that we could get help in that
2 regard.

3 JUDGE MOSS: All right. Thank you very
4 much. Why don't you stay with us for a minute.
5 There may be some further repartee that requires your
6 participation.

7 Mr. Finnigan, are you with us?

8 MR. FINNIGAN: Yes, I am.

9 JUDGE MOSS: Please proceed.

10 MR. FINNIGAN: In terms of my remarks, I do
11 want to be on the record to note that the Washington
12 Independent Telephone Association supports US West's
13 position that the Commission lacks jurisdiction over
14 this transaction. However, if the Commission does
15 choose to exercise jurisdiction, we do ask to be
16 allowed to intervene as a party.

17 Many of the companies serve areas of the
18 state where the US West transport and access network
19 is the means by which interexchange carriers provide
20 their services to customers within those territories,
21 and under the Scottish Power do no harm standard, we
22 think we would be entitled to participate to
23 determine whether US West can carry its burden to
24 show that this merger will do no harm.

25 JUDGE MOSS: Okay. Thank you, Mr.

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1 Finnigan. Let's see now. I believe I'm getting --
2 Mr. Kopta, you were also McLeod USA, so your
3 comments would apply with equal force, and your
4 response would be the same, that they are also -- are
5 they the petitioner who has not yet been authorized
6 in Washington state, or am I confusing your client
7 with somebody else? There was one, at least, who had
8 applied but had not yet been granted authority.

9 MR. KOPTA: It is pending before the
10 Commission at the moment, yes, that's correct.

11 JUDGE MOSS: Okay.

12 MR. KOPTA: But in other respects, in all
13 other respects, the answers to the earlier questions
14 you posed with respect to my other clients would be
15 the same.

16 JUDGE MOSS: Right. As I look at the
17 petition, I see the statement of substantial interest
18 is as a competitor and a potential customer, so --
19 okay. Thank you.

20 Okay. Mr. Harlow, Covad.

21 MR. HARLOW: That would be Mr. Deanhardt,
22 Covad.

23 JUDGE MOSS: I'm sorry.

24 MR. DEANHARDT: Thank you, Your Honor.
25 Clay Deanhardt, representing Covad. That's

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1 D-e-a-n-h-a-r-d-t. Echoing the comments of Mr.
2 Waggoner, we are also a large customer of US West
3 and, therefore, have a substantial interest in how
4 the combined US West-Qwest entity will be run if the
5 merger were to be completed.

6 In addition, we are also a customer of
7 Qwest, and also, although it's not in our written
8 petition, are in a unique situation, because Qwest is
9 currently required to, under contract, to resell our
10 services in the state of Washington, among other
11 states, and their merger with US West will raise a
12 number of issues about what will happen to those
13 customers, what will happen to that obligation, and
14 whether or not there's going to be a reduction in
15 competitive advanced services by reason -- in the
16 state of Washington, by reason of the Qwest-US West
17 merger.

18 In addition, echoing Mr. Waggoner, we
19 believe there are a number of competitive issues that
20 go beyond the simple issues of being a customer. We
21 are also a competitor of US West, and some of those
22 competitive issues that I can identify at Your
23 Honor's suggestion are issues such as whether there
24 should be structural separation of the wholesale and
25 retail divisions of the combined US West-Qwest

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1 entity; issues such as how to redress some of the
2 potential competitive harm that may be caused by the
3 US West-Qwest merger, which is going to be a
4 tongue-tier that's going to get us all once or twice;
5 whether some of the competitive harm that may be
6 caused by that merger can be ameliorated through
7 pro-competitive issues, such as line sharing, issues
8 that deal with OSS, also issues having to do with the
9 infrastructure or lack of facilities and
10 infrastructure in Washington that are available for
11 competitive CLECs, such as Covad, to use; and also
12 whether the US West-Qwest merged entity, how they
13 will perform -- how it will perform in response under
14 interconnection agreements in the provision of the
15 wholesale UNE elements that are necessary for CLECs
16 to operate in the state of Washington, and frankly,
17 how our relationship with Qwest that exists now will
18 be affected in that area by the fact that they will
19 now be a merged entity with US West.

20 JUDGE MOSS: Okay. Mr. Deanhardt, thank
21 you. And Mr. Harlow, you get a second bite at the
22 apple on behalf of Northwest Pay Phone Association
23 and Metronet Services Corporation, and you may speak
24 individually or collectively, as you choose.

25 MR. HARLOW: I will speak collectively, in

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1 the interest of efficiency. Actually, there's a
2 little different situation for Metronet and for
3 members of the Northwest Pay Phone Association. Let
4 me just take the gloves off a little bit here.

5 Mr. Finnigan talked about the do no harm
6 standard supposedly of the Scottish Power case. That
7 was mentioned in the application, as well. I haven't
8 taken a close look at that order, but I would hope we
9 would apply or at least consider applying a little
10 different standard to a company such as US West, that
11 has a demonstrated track record of problems in
12 provisioning its competitors for the monopoly
13 elements they need to buy.

14 When I say take the gloves off, let me just
15 tell you there's not a week that goes by where I
16 don't get a call from a pay phone company or from
17 Metronet or, in some cases, clients that aren't
18 seeking to intervene in this proceeding telling me
19 about the problems they're having with US West, in
20 they're not getting provisioning of access lines or
21 collocation or whatever it might happen to be.

22 This Commission has taken notice and has
23 done a number of dockets over the last decade, since
24 the prior merger that this Commission approved
25 involving US West, which is the one that created US

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1 West.

2 I will say, in US West's behalf, that there
3 have been improvements in service quality, but we are
4 still facing a number of problems in the trenches
5 every day. And I certainly will urge the Commission
6 to take a little broader standard than do no harm to
7 the public interest. But even if that is the
8 standard applied, when you create a much larger
9 entity, a much more powerful entity with broader
10 interests, you are definitely in a position where you
11 could create harm to competition, which ultimately
12 harms public interest.

13 And then, finally, I want to remind the
14 Commission the standard for intervention, it's a
15 little broader than has been discussed so far by the
16 other commenters. Metronet and Northwest Pay Phone
17 Association have argued that they have a substantial
18 interest, and I think we've demonstrated that, but
19 the other standard, which is equally applicable to
20 interventions, provides that, quote, if the
21 participation of the petitioner is in the public
22 interest.

23 As companies that are in the trenches --
24 and both my clients both compete with, as well as
25 purchase from US West. As people who have experience

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1 in the trenches and have experienced problems that
2 hopefully can be and should be resolved as a part of
3 this process, clearly the participation of
4 intervenors such as my clients would be in the public
5 interest, if not something that they have a
6 substantial interest in. Thank you.

7 JUDGE MOSS: Thank you, Mr. Harlow.

8 MR. FINNIGAN: Your Honor, if I might.

9 JUDGE MOSS: Who's speaking, please?

10 MR. FINNIGAN: This is Rick Finnigan. If I
11 might, I need to drop off the call to attend my prior
12 commitment, but I will try to rejoin the conference
13 as soon as possible.

14 JUDGE MOSS: Okay. Thank you, Mr.
15 Finnigan.

16 MR. FINNIGAN: Thank you.

17 JUDGE MOSS: And this brings us to Level
18 Three Communications. Mr. Nichols, are you still
19 with us?

20 MR. NICHOLS: Yes, this is Robert Nichols
21 again. Can you hear me better now?

22 JUDGE MOSS: Yes, thank you.

23 MR. NICHOLS: In the interest of being more
24 efficient with my comments, I will also build on
25 those of Mr. Waggoner. Level Three Communications is

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1 also both a competitor and a supplier and a purchaser
2 of goods and services from US West and Qwest. Our
3 areas of interest, of substantial interest, perhaps
4 fall more in the second and third statement of sets
5 of issues by Mr. Waggoner, the competitive areas and
6 compliance with state and federal laws.

7 I would add only kind of one brief set of
8 additional description. Level Three is very actively
9 involved in what's generally described as advanced
10 communications services, as is US West and Qwest
11 separately. It is clear that, going forward, the
12 relationship between those two companies will be of
13 great importance to Level Three's business in almost
14 every way.

15 With regard to the third category of
16 issues, compliance with federal and state laws, I
17 would also add our interest in assuring compliance
18 with orders of the WUTC. There are issues with
19 regard to that compliance that I believe the
20 Commission will want to hear about in order to take
21 care of appropriate conditions as they are necessary.

22 Those, in addition to our petition in
23 written form, are our grounds for seeking admission
24 as an intervenor.

25 JUDGE MOSS: Thank you, Mr. Nichols. And

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1 Mr. Butler, for SBC National.

2 MR. BUTLER: Yes, in the interest of
3 efficiency, SBC National, as a new entrant, shares
4 the interest with a number of other parties here, as
5 both a customer and a competitor -- potential
6 customer and potential competitor of US West and the
7 merged entity, and it has a substantial interest from
8 that perspective in the merger and in the impact of
9 any conditions that may be imposed on the proposed
10 merger, as it affects not just CLECs in general, but
11 SBC National in particular.

12 JUDGE MOSS: Okay. Thank you. Now, I
13 believe that I've given all of the intervenor
14 representatives an opportunity to speak. Inasmuch as
15 under the circumstances we have collapsed two of our
16 agenda items into one, that is to say, the petitions
17 to intervene along with statements of what the
18 parties see to be issues, it would be appropriate, I
19 think, to go ahead and hear from Public Counsel and
20 Staff at this time with respect to any position they
21 have on the motions to intervene and, of course, more
22 broadly, the issues that they perceive to be in the
23 case, following up on what we've heard so far.

24 And then I will want to give an
25 opportunity, although I'm sure they feel free to jump

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1 in at any time anyway, but I want to have an
2 opportunity for the bench to inquire, if it has any
3 inquiry, with respect to what's been said so far.

4 We'll give the applicants an opportunity
5 then to speak and, of course, then we'll give the
6 bench another opportunity perhaps, if that's
7 indicated. So let's go ahead at this point, then,
8 with Mr. ffitich.

9 MR. FFITCH: Thank you, Your Honor. Good
10 afternoon. Good afternoon, Madam Chairwoman and
11 Commissioner Gillis. On the issues raised by the
12 petitions to intervene, Public Counsel does not
13 oppose any of the petitions to intervene. And in
14 particular, we support the petitions filed by
15 competitors. As you'll hear in a moment, we agree
16 that the issues which have been stated by a number of
17 their representatives are significant issues in the
18 case, and we therefore believe it's particularly
19 important to have their participation on those issues
20 with regard to the competitive impact of the merger.

21 Turning to the issues, number one on our
22 list is service quality. There's been an allusion
23 already to service quality problems with regard to
24 wholesale service provided to competitors. I think
25 it's no secret that the service quality provided by

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1 US West to residential and small business customers
2 throughout its service territory is significantly
3 less than desirable, as evidenced by major
4 enforcement actions brought by various commissions
5 throughout the region, as evidenced by concerns
6 raised by this particular Commission in the UT-950200
7 rate case, as evidenced by more recent statistical
8 information showing that there is a persistent and
9 troubling problem level of noncompliance on service
10 quality issues.

11 So from our point of view, the big question
12 -- speaking on behalf of residential and small
13 business customers, the big question to be asked
14 about this merger is what is going -- what about this
15 merger is going to fix that problem. Or, put another
16 way, what's going to be the impact of this merger on
17 those service quality problems.

18 The second area of concern on the issues is
19 the impact of this merger on the investment in
20 Washington state. And I'll acknowledge that there's
21 some overlap between a number of these issues. If
22 you look at the character of the two companies
23 involved, I think there is reason for concern about
24 the interest of the surviving company, the Qwest
25 company, in provision of basic telephone service.

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1 Certainly, the advertised benefits of this
2 merger have very little to do with preserving and
3 maintaining and improving basic telephone service
4 throughout local service territories in any of the
5 affected states. They have more to do with targeting
6 specific business markets and specific types of
7 service in those markets. Much of the advertising or
8 much of the PR in favor of the merger so far has to
9 do with targeting of 25 specific markets, for
10 example.

11 And so I think one of the issues to be
12 addressed is whether the impact of this is going to
13 be neglect or abandonment of other less attractive
14 parts of the US West network. This relates both to
15 service quality, it relates to universal service
16 issues, and it relates to the deployment of advanced
17 services on the retail level.

18 The third area of concern for us is the
19 sharing of the benefits of synergies that result from
20 this merger. The indications from the announcements
21 of the joint applicants so far is that there will be
22 synergies, depending on what you read, something in
23 the neighborhood of one to two billion dollars
24 regionwide. We think that it is imperative that
25 regulators take a look at what is the appropriate

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1 share of those savings that goes to ratepayers.

2 In addition, there's a question of whether
3 there are appropriate allocations of new revenues
4 that might be generated post-merger to ratepayers.

5 The fourth area is competitive issues.

6 Those have essentially been addressed, I think,
7 already by the competitors, and I would just concur
8 that we think those are important, too. From the
9 point of view of the retail customer, is this merger
10 going to actually get us closer to retail competition
11 of any kind and, particularly from our point of view,
12 retail competition for residential customers and for
13 small business customers. And what can we do to make
14 sure that this merger gets there or, if it's not
15 going to get there, then maybe this merger shouldn't
16 happen.

17 There's also the kind of related area of
18 271 issues. US West cannot offer right now
19 out-of-region long distance and interLATA long
20 distance. Qwest is doing that. There have been some
21 assurances given in the press and elsewhere about how
22 that problem will be fixed, but I think that's still
23 an issue on the table that needs to be addressed,
24 along with other Telecom Act issues, as Mr. Waggoner
25 mentioned.

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1 And then, maybe sort of a catch-all area is
2 the -- teeing off of the Scottish Power order, just
3 taking a look at the technical management and
4 financial capability of Qwest to enter into this
5 partnership. They have not historically been a local
6 exchange provider. They're a relatively new, in
7 effect, startup company with a relatively narrow type
8 of service offering. What's the comfort level of
9 Washington state with having that company acquire, if
10 you will, the largest local exchange company in the
11 state. Are they going to be able to deal with those
12 kinds of new problems that they -- and new kinds of
13 operational responsibilities that they haven't had
14 before. So that's our issues list.

15 JUDGE MOSS: Thank you very much, Mr.
16 ffitch. For Staff, Ms. Johnston.

17 MS. JOHNSTON: Thank you, Your Honor. With
18 regard to the petitions for intervention, Staff
19 opposes just one, and that is that of the Pension
20 Equity Council. It's questionable whether or not the
21 Commission even has the authority to condition merger
22 approval on an irrevocable guarantee that pension
23 trust fund assets not be used for any other purpose.

24 It may ultimately be that the Pension
25 Equity Council may have a cause of action, but I

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1 don't believe that this is the proper forum for it.
2 In my experience, the Commission historically has not
3 injected itself into what could be characterized as
4 labor disputes or company-employee disputes.

5 So for those reasons, Commission Staff
6 would oppose intervention of the Pension Equity
7 Council. Commission Staff does not oppose any of the
8 other petitions.

9 Before I proceed to discuss Commission
10 Staff's issues, I would like to make a record
11 concerning the public interest standard. There's
12 been a reference here today that the public interest
13 standard is that set forth in the PacifiCorp/
14 Scottish Power order as the no harm standard. And I
15 just want to point out that the Scottish Power order
16 does not say that the standard is no harm for every
17 merger today and in the future. What it does say is
18 that what is in the public interest varies with the
19 form of the transaction and attending circumstances.

20 And in this case, definitely an argument
21 can be made that we have merging companies which will
22 give rise to operating efficiencies. And in that
23 case, an argument could be made that the standard
24 should be that there should be positive benefits
25 flowing from the merger itself.

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1 With regard to the issues, Commission Staff
2 largely concurs in the recitation by Mr. ffitch. I'd
3 just like to give a brief overview of some others
4 that we see as needing to be addressed in the merger
5 proceeding.

6 One would be financial impacts. For
7 example, what impacts on US West's cost of capital,
8 capital structure and access to financial markets
9 will occur as a result of the merger? Will the
10 merged company experience increased financial risks?
11 How will those risks be measured?

12 A second category would be costs and
13 benefits from the merger. How will the merger affect
14 rates now and in the future? What specific benefits
15 will Washington state ratepayers receive from the
16 merger? What merger savings will occur? How will
17 those savings be allocated to ratepayers? Will
18 customers see any benefits of lower rates? What is
19 the relevant time frame for passing on any benefits,
20 if, in fact, they exist?

21 Service quality. How will the merger
22 change US West C's capital investment plans in the
23 state of Washington? How will the merged company's
24 stated intention to invest in 25 states outside of US
25 West C's region affect US West C's ability to serve

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1 Washington state customers? Will the merger improve
2 or make worse the quality of service for customers in
3 Washington state? Will the merged company make
4 investments in high-cost areas in Washington? How
5 will carrier-to-carrier service quality be affected
6 by the merger?

7 Finally, there's the category of
8 competitive issues. Will the merger result in
9 increased competition in Washington? How will Qwest
10 divest itself of interLATA services? The merger
11 application contains statements that will happen, but
12 we don't know how that will happen. Those are just a
13 few of the issues. I don't want to belabor the point
14 now, but there are many issues that will need to be
15 resolved, not the least of which is the
16 jurisdictional question. Thank you.

17 JUDGE MOSS: Thank you. I think, at this
18 time, I'd like to pause, at least, and give the bench
19 an opportunity to address any questions it may have
20 to the intervenors or Public Counsel or Staff and
21 then we'll take those. And if there are none, we'll
22 go ahead and move on to the final statements.

23 CHAIRWOMAN SHOWALTER: I don't have any.

24 JUDGE MOSS: Okay, fine. We'll go ahead
25 and hear from -- why don't we start with US West.

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1 MS. ANDERL: Thank you, Your Honor.
2 Responding briefly to the particular points raised by
3 each of the petitioners, AT&T raised three general
4 categories of issues, which they felt they had an
5 interest in and which they believed to be
6 appropriately explored in this proceeding, and we
7 simply disagree that these are issues which are
8 appropriately examined in the context of the merger
9 proceeding.

10 First and foremost, I think we need to
11 remember, as US West and Qwest have stated clearly in
12 their application and reiterate in the jurisdictional
13 memorandum that we've submitted today, this is not a
14 transaction that affects the regulated entities of
15 either of these parent companies at this point.

16 US West Communications today will be US
17 West Communications after the merger. There are no
18 transfers of utility property, franchises or
19 licenses. There's no contemplated name change.
20 There are no contemplated tariff changes. There's
21 simply nothing that is going to happen that is going
22 to make US West Communications look different to this
23 Commission or look differently as a party to an
24 interconnection agreement or as a regulated company
25 subject to incumbent-type obligations under the

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1 Telecom Act or obligations under state law.

2 And so I think while the concerns that
3 these parties raise sound very serious and very
4 scary, if you contemplated that there were going to
5 be some change to the regulated entity, I think we
6 need to step back and remember that there's not going
7 to be a change to the regulated entity.

8 Mr. Waggoner would like to address the
9 level of charges under US West's tariffs and
10 contracts, maybe under Qwest's price lists and
11 contracts, as well, I don't know. The testimony that
12 we have already submitted in this docket indicates
13 that no price changes are contemplated. Will there
14 be price changes in the future? Almost certainly.
15 Can we address those in a speculative manner, prior
16 to someone actually teeing up a proposed price
17 change? No, I don't think so. So I don't think that
18 that's appropriately an issue to be raised or
19 addressed in the merger.

20 Competitive issues is the second group of
21 issues that Mr. Waggoner would like to address, and I
22 strongly disagree that those are appropriately raised
23 here. This Commission is quite familiar with
24 competitors bringing actions against US West and
25 other telecommunications companies, complaining that

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1 US West has not served them properly, either as a
2 wholesale customer or in some other way.

3 There's currently pending before the
4 Commission a complaint by AT&T. AT&T's allegations
5 there are that US West's provisioning of special
6 access and switched access is inadequate and
7 discriminatory. I believe that the Commission can
8 address those issues in that context and does not
9 need to address them by broadening the issues of the
10 merger proceeding to address an issue that is really
11 between US West Communications, Inc. and AT&T of the
12 Pacific Northwest in that docket and is not an issue
13 that has anything to do with the merger of parent
14 companies of the regulated subsidiaries.

15 Finally, Mr. Waggoner identifies a third
16 category, a catch-all category of other issues,
17 Telecom Act and state law issues. I think I've
18 generally addressed those in my remarks and pointed
19 out that we don't believe that this merger is going
20 to affect the regulated companies' obligations as an
21 incumbent under the Telecom Act or its obligations
22 under state law, and we simply don't see how
23 exploration of those issues in kind of a hypothetical
24 way in the merger proceeding could benefit anybody
25 who has limited resources in other dockets, which

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1 they need to address over the next year.

2 I don't believe Rhythms raised any new
3 issues, although I think both Rhythms and Covad
4 expressed concerns about, you know, how are they
5 going to deal with this new merged entity; how is
6 that merged entity going to change perhaps its
7 relationship with them under the interconnection
8 agreements. I think Rhythms' mentioned something
9 about a change in parties that they're going to be
10 dealing with. If that is what they believe, then
11 they misread the application and the merger
12 agreement, because there is not such a change in
13 parties.

14 Let me just -- since this is kind of in the
15 order they presented themselves, let me just kind of
16 go off the competitor issue and address the Pension
17 Equity Council. We find ourselves in accord with
18 Staff there, that this is not an issue appropriately
19 addressed before the Commission.

20 This is not to say that the people who have
21 pension rights don't have interests in that pension
22 fund, but it's certainly not an interest that can be
23 protected or that is appropriately litigated before
24 this Commission.

25 I believe that the pensioners, retirees and

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1 employees do have certain rights in their pension
2 funds. We believe that the company has given and
3 continues to give assurances that it will comply with
4 the law in that regard, and we don't think that this
5 is something that's going to be fruitful to explore
6 before the Washington Commission.

7 If I just could review my notes. I'm not
8 sure that any of the other potential intervenors
9 raised any issues outside of the ones I've just
10 responded to, so with regard to the petitions to
11 intervene, we continue to oppose them for the reasons
12 stated. Unless there are questions, that concludes
13 my remarks on that issue.

14 CHAIRWOMAN SHOWALTER: I have a question.
15 I think you've argued against intervention by these
16 parties mostly on the grounds that you think that
17 their interests are outside what you perceive to be
18 the correct scope of our review.

19 Can you summarize what is within the scope
20 of our review? And I don't mean the standard of
21 review; I mean, substantively, what should we be
22 looking at?

23 MS. ANDERL: Well, it's because we don't
24 believe there's jurisdiction in the first place.

25 CHAIRWOMAN SHOWALTER: Well, if you can get

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1 over that hurdle. Assuming, hypothetically, that we
2 have jurisdiction and assuming we are applying some
3 kind of public interest standard, then to what are we
4 applying that standard in terms of reviewing this
5 merger?

6 MS. ANDERL: Well, I think that to the
7 extent that some of the issues that were raised by
8 Staff and Public Counsel might be applicable at the
9 regulated utility level, as opposed to the parent
10 company level, such as identification of synergies
11 and benefits and whether or not it's appropriate for
12 any of those, if they can be identified with
13 particularity, to be flowed, in whole or in part, to
14 the ratepayers. I believe that those may be
15 legitimate areas for inquiry in the merger.

16 CHAIRWOMAN SHOWALTER: What about financial
17 fitness or managerial capabilities?

18 MS. ANDERL: You know, again, if there were
19 a question of any sort of a transfer of ownership at
20 the regulated utility level, yes, but I don't believe
21 that there's ever been an inquiry as to whether or
22 not US West, Inc., as the owner of US West
23 Communications, meets the standard of technical or
24 financial capability for owning the shares of US West
25 Communications, as opposed to the actual management

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1 of US West Communications itself. I don't know that
2 that is an appropriate inquiry.

3 CHAIRWOMAN SHOWALTER: Thanks.

4 JUDGE MOSS: If I may follow up on that
5 last point, it does strike me there's something in
6 the application about the merger having an impact on
7 the bond rating, for example. Is that something you
8 would -- US West's bond rating. Is that something
9 you would consider to be a legitimate area of
10 inquiry?

11 MS. ANDERL: Us West Communications?

12 JUDGE MOSS: I believe that's what it says.
13 I believe it said there's a credit watch with
14 negative implications, if memory serves.

15 MS. ANDERL: You know, certainly to the
16 extent that the Commission is ever faced with a great
17 impact flowing from a changed cost of capital, the
18 Commission has jurisdiction to consider that for the
19 regulated utility. Whether the Commission wished to
20 do that now or in the context of a rate case I think
21 would probably be in the discretion of the
22 Commission.

23 JUDGE MOSS: Okay. But there are
24 unquestionably some financial impacts with connection
25 with the merger that impact directly on the entity

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1 doing business in Washington state? You would
2 acknowledge that much?

3 MS. ANDERL: There are some.

4 JUDGE MOSS: Yes, okay. Thank you. Did
5 you have anything further with respect to the more
6 particularized issues, comments made by Public
7 Counsel or Staff, or shall we move on to Ms. Spade?

8 MS. ANDERL: Just generally, I believe that
9 some of the issues raised by Public Counsel and Staff
10 also really seek to broaden the scope of the
11 proceedings beyond that which the Commission should
12 be looking at. I don't believe this is a service
13 quality investigation. It's not to say the
14 Commission doesn't have an interest in assuring that
15 service quality does not deteriorate as a direct
16 result of the merger, but to the extent that Public
17 Counsel is suggesting that it is appropriate to use
18 the merger proceeding as a service quality
19 investigation, I think that's inappropriate. I don't
20 know whether that is what he's suggesting or not.

21 JUDGE MOSS: Okay. Thank you. Ms. Spade.

22 MS. SPADE: In the interest of time, I
23 think I'd just like to echo Ms. Anderl's comments on
24 behalf of US West, with two points, I think,
25 specifically of emphasis.

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1 One is that, to the extent the intervenors,
2 potential intervenors raise issues that are
3 competitive issues or service quality issues, we
4 believe those belong in other dockets in the -- for
5 example, the AT&T docket that they've started --
6 initiated there, or in other dockets to specifically
7 address those issues, and that they don't belong in
8 this proceeding.

9 And secondly, I just wanted to emphasize
10 that, as we have stated in our application, that the
11 contractual relationships that have been addressed or
12 the issue about contractual relationships that have
13 been raised here, that they will not change
14 post-merger. As Ms. Anderl has stated, the regulated
15 entities will remain the same, and therefore, the
16 contractual relationships those entities have with
17 the other parties will remain the same, as well.

18 I think that's it, as far as the issues
19 raised by the intervenors.

20 JUDGE MOSS: And when you refer to
21 contractual relationships, you're talking about
22 interconnection agreements?

23 MS. SPADE: Right, interconnection
24 agreements or other service agreements that Qwest may
25 have with the parties. I believe that Mr. Deanhardt

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1 raised an issue about Qwest's contract with Covad.
2 So those agreements would remain intact, as well.

3 JUDGE MOSS: Did you all have any other
4 questions?

5 COMMISSIONER GILLIS: No.

6 CHAIRWOMAN SHOWALTER: No.

7 JUDGE MOSS: It doesn't appear we have any
8 other questions from the bench. I believe that we've
9 given everybody an opportunity to speak both to the
10 petitions to intervene and to the issues.

11 MR. SMYTHE: Your Honor.

12 JUDGE MOSS: Yes, sir.

13 MR. SMYTHE: may I respond to Staff's
14 comments about Pension Equity Counsel?

15 JUDGE MOSS: Well, since your motion is
16 opposed by Staff, I should give the petitioner the
17 last word. Go ahead.

18 MR. SMYTHE: All right. Thank you. I just
19 want to make sure that everyone has it clear as to
20 why we're here. We're talking about, in the state of
21 Washington, approximately 15,000 individuals that
22 have a stake in this issue. There are 7,000, a
23 little under 7,000 retirees, and there are another
24 7,500 that are employees that are involved in this
25 that we represent. They are all concerned about

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1 their future pensions.

2 Contrary to what was stated over here, we
3 have not any assurance whatsoever in print, anywhere,
4 as to what our future is regarding pensions. And
5 yet, we're talking about a fund that was established
6 by this body in the state of Washington and other
7 similar bodies in other states. In fact, there are
8 nine interventions that have been filed right now in
9 nine other states, the same kind of intervention that
10 we're progressing with.

11 And we believe that if we're given an
12 opportunity to participate in this, that we can make
13 our case. Over the years, since 1993, all
14 documented, about that thick, correspondence,
15 meetings and otherwise, we have had no agreement from
16 US West senior management that they would protect
17 pensioners and their pension fund. There is nothing
18 in writing that guarantees that those funds are going
19 to be used for pension purposes, even though they
20 were collected for pension purposes by these bodies
21 from ratepayers.

22 Now, our concern is that you have a little
23 over a \$5 billion surplus, and a total that amounts
24 to about \$14 billion in a pension fund. And that
25 money is the responsibility of this Commission,

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1 because they raised that money, plus earnings, of
2 course, on it, from ratepayers. And we believe that
3 we can make this case as you progress through this,
4 and we're asking simply to get guarantees from the
5 company that the funds were raised for certain
6 purposes and they will be used for those purposes.
7 That's our only objective.

8 Otherwise, we have no objection to the
9 merger, and they know it, because we've submitted
10 this, our requirements for approval, as far as this
11 guarantee information has already been submitted to
12 Trujillo and the others, so --

13 JUDGE MOSS: Thank you, Mr. Smythe. All
14 right.

15 Aside from our discussion of process and
16 procedural schedule, one other matter of business we
17 have today is the prehearing notice called for a
18 memorandum on the subject of jurisdiction to be filed
19 and distributed today. Has that been previously
20 filed and served upon the parties, or are we going to
21 do that here?

22 MS. ANDERL: I believe we've distributed a
23 copy to each of the persons at counsel table. I
24 believe we've also given an original and 19 to the
25 Records Center. We have extras for the bench.

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1 JUDGE MOSS: You have courtesy copies for
2 the bench? That would be helpful if you'd hand those
3 up. One of the dates we'll establish will be a date
4 for responses to the memorandum. Now, I don't think
5 we need to get into any discussion of this today, but
6 I just wanted to be sure that we did conclude that
7 piece of business, as well. And we'll go off the
8 record for just a minute.

9 (Discussion off the record.)

10 JUDGE MOSS: I want to go back on the
11 record briefly, so that the record will reflect that
12 we are going to now move to our discussion of process
13 and procedural schedule, and the Commissioners have
14 retired from the bench. We'll go off the record for
15 much of this discussion and then come back on for
16 purposes of memorializing the schedule that we do
17 ultimately determine. So let's go off the record now
18 and proceed with that discussion.

19 (Discussion off the record.)

20 JUDGE MOSS: We are back on the record and
21 have had some rather extended discussion,
22 conversation, what have you, regarding process and
23 the procedural schedule. We have worked
24 cooperatively together to some dates that seemed
25 workable for everyone's schedule, and I'm going to

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1 recite those dates now.

2 On November the 1st, parties who wish to do
3 so will file responses to the applicants' memoranda
4 concerning the subject of jurisdiction. On November
5 the 22nd, intervenors, Staff and Public Counsel will
6 file their prefiled testimony and exhibits. On
7 December 13th, the applicants will file their
8 rebuttal testimony. We are blocking out for the
9 evidentiary hearing the dates January 18 through 25,
10 2000.

11 And as to public hearings, Mr. ffitch, for
12 Public Counsel, has agreed to follow up with our
13 public affairs and with me and so forth, and we'll
14 coordinate some appropriate dates. We're looking at
15 the time frame during the couple of weeks after the
16 evidentiary hearing, so basically we're talking about
17 the 27th through the 4th sort of time frame for that,
18 and we'll work cooperatively on that with the
19 parties, other parties, as well, in due course.

20 We have also discussed a means of
21 expediting our process, and I want to mention those
22 means on the record, and probably these will be
23 mentioned, as well, in the prehearing order. We have
24 agreed that seven days, seven business days' response
25 time is workable for discovery, and that's what we

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1 will require.

2 We have also agreed to the helpful
3 suggestion -- I can't recall who made it -- that we
4 have exchange of discovery, to the extent
5 technologically feasible, by electronic means. And
6 that is to say, e-mail with attachments and that sort
7 of thing. We seem to have gotten past the days when
8 people's e-mail would say, Do not use attachments, so
9 I think it works pretty well now. So we'll have
10 that.

11 We also discussed, and I want to encourage
12 the cooperation of the parties in establishing a list
13 of contact persons that is somewhat broader than the
14 official service list in the case to expedite
15 discovery, and that might include paralegal
16 assistants or other assistants.

17 And I believe we were going to have a
18 change in terms of the service, the official service
19 list for Covad, so why don't we go ahead and document
20 that for the record now.

21 MR. DEANHARDT: Yes, Your Honor, thank you.
22 Instead of Brooks Harlow at the Miller Nash Law Firm,
23 the official service person for Covad will be myself,
24 Clay Deanhardt, D-e-a-n-h-a-r-d-t, Senior Counsel
25 with Covad. My address is 2330 Central Expressway,

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1 Santa Clara, California, 95050. My phone number is
2 area code 408-844-7579. My fax number is area code
3 408-844-75011 And my e-mail is cdeanhar@covad.com.
4 Thank you.

5 JUDGE MOSS: Thank you. I don't believe I
6 mentioned March 10th as the tentative date for
7 briefs, so let me do that now. I will, however,
8 comment in that connection that, depending on where
9 we stand at the time of the evidentiary hearings and
10 public hearings, we may adjust that date. I think
11 it's appropriate to reconsider the post-hearing
12 process once we know better where we stand, so that
13 is a tentative date. I will include it in the
14 prehearing order, nevertheless.

15 Do we need to set any other dates? Have I
16 left anything out? Now, I have jumped ahead here a
17 bit. I had mentioned earlier off the record that we
18 needed to take up the question of whether the
19 discovery rule would be invoked. I think that is a
20 forgone conclusion that it will be, seeing a little
21 bit of nodding in the affirmative. I'll just go
22 ahead and say that the Commission invokes the
23 Discovery Rule 480-09-480 in the context of this
24 proceeding, and discovery should proceed apace.

25 Does anyone see the need for a protective

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1 order in this proceeding?

2 MS. ANDERL: Yes, Your Honor.

3 JUDGE MOSS: I don't imagine there's any
4 objection to that proposal. Seeing and hearing no
5 objection, seeing some head nodding, we will issue
6 the standard protective order in this case, such as
7 the Commission has been using in the last year, year
8 and a half. You're all familiar with that. Should
9 the need become evident for some higher level of
10 protection for certain ultra-sensitive documents,
11 then you all bring that to my attention, and we have
12 in the past adopted means to deal with that kind of
13 thing.

14 I do encourage you to avoid it. It creates
15 a lot of administrative headaches if we have to do
16 that, but I also understand the need for protecting
17 confidentiality, and we'll do it if necessary. And
18 in that connection, too, my experience here and
19 generally over 20 years has been that people tend to
20 sometimes to get a little carried away with what
21 needs to be protected, and I encourage you to think
22 carefully about whether something -- you really need
23 to assert protection, because that is one thing that
24 can unnecessarily slow things down. So do consider
25 that carefully, consider the Commission's rules on

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1 that subject, and perhaps we can avoid some
2 unnecessary controversies.

3 All right. That basically concludes, I
4 think, what we need to talk about in terms of process
5 and the procedural schedule. I do have a few more
6 remarks, and then I'll open the opportunity for you
7 all to raise to me things I may have missed or that
8 you wish to bring to my attention.

9 On filings in this case, I have checked
10 with the Records Center. The Commission requires the
11 original and 14 copies for its internal distribution.
12 Please remember all filings must be made through the
13 Commission's secretary, either by mail to the
14 Secretary, Washington Utilities and Transportation
15 Commission, P.O. Box 47250, 1300 South Evergreen Park
16 Drive S.W., Olympia, Washington, 98504-7250, and
17 please use both the P.O. Box and the street address,
18 as that expedites delivery through the state's mail
19 system. You may, of course, use other means of
20 delivery to the Commission's physical address, as
21 I've just given it.

22 The Commission requires that filings of
23 substance, that is to say testimony, briefs, motions,
24 answers to motions, include an electronic copy on a
25 three and a half-inch diskette or by means of

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1 electronic transmission as an e-mail attachment. In
2 either case, the document should be in WordPerfect
3 5.0 or later format. And I feel almost futile in
4 saying that, since everybody seems to be going to
5 Word these days, and you all will do it despite what
6 I say, so you can also send it in a recent Word
7 format and we can handle it. If you can put it in
8 WordPerfect, great, but that is still the
9 Commission's preferred format.

10 Service on all parties must be simultaneous
11 with filing. Ordinarily, the Commission does not
12 accept filings by facsimile, so please don't rely on
13 that means of service or filing, rather, without
14 prior permission, which may be granted on request in
15 extraordinary circumstances. And we do have
16 emergencies come up, tight time frames and so forth,
17 and I try to be accommodating and cooperative in
18 working with the parties on that sort of thing.

19 Is there anyone who wishes to raise any
20 other business for us to consider today? The
21 Commission will enter a prehearing conference order
22 and protective order next week. The prehearing order
23 will include requirements for witness lists, exhibit
24 lists and the exchange of cross-examination exhibits
25 shortly before the evidentiary hearings. I usually

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1 allow three business days for that process to be
2 concluded, and also require you to give me the
3 witnesses in the order of appearance.

4 The order will remind the parties that the
5 Commission encourages stipulations, both as to facts
6 and as to issues that can be resolved by means of the
7 settlement process or other means of alternative
8 dispute resolution. And the Commission, of course,
9 has a number of procedural rules that address those
10 points, including WAC 480-09-470, 09-466, and 09-465,
11 so any of you who are unfamiliar with that, and I
12 don't think anyone here is, take a look at those.

13 The Commission should be kept advised of
14 any progress you make with respect to settlement
15 issues in the case, and of course, I encourage you to
16 be inclusive in settlement discussions. I think that
17 does promote things in the long run.

18 If there's nothing else anyone wishes to
19 raise, and it does not appear there is, I wish to
20 thank you all for participating today and look
21 forward to working with you through the course of the
22 proceedings.

23 (Proceedings adjourned at 4:07 p.m.)

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