BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

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In the Matter of the              )
Petition of                       )  DOCKET NO. UT-030614
                                  )
QWEST CORPORATION                 )  Volume V
                                  )  Pages 656 to 947
For Competitive Classification    )
of Basic Business Exchange        )
Telecommunications Services.      )
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A hearing in the above matter was held on September 18, 2003, from 9:30 a.m to 8:00 p.m., at 1300 South Evergreen Park Drive Southwest, Room 206, Olympia, Washington, before Administrative Law Judge THEODORA MACE and Chairwoman MARILYN SHOWALTER and Commissioner PATRICK J. OSHIE.

The parties were present as follows:

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P R O C E E D I N G S

JUDGE MACE: Let's be on the record in Docket Number UT-030614, Qwest Competitive Classification case. Before we go ahead with Ms. Baldwin, I wanted to briefly touch on the scheduling issue again. Has Qwest had an opportunity to firm up whether or not they will be able to waive the statutory deadline?

MS. ANDERL: Yes, Your Honor, we have. Assuming that we need and hold hearings on October 20th, 21st sort of time frame and figure out an appropriate briefing schedule, it seems to me that if we were to waive the statutory deadline until December 4th, that might be about the right amount of time to keep the rest of the schedule evened up, and we would be willing to do that.

JUDGE MACE: Thank you. I understand that the actual commissioners' availability is October 21st and perhaps part of the 22nd; is that correct?

CHAIRWOMAN SHOWALTER: Right.

JUDGE MACE: So we would be in hearing again on the 21st, and I understand that everybody would be available for that, for those two days or day and a half.

MS. ANDERL: And our thinking on that was right now the briefs are due on October 6th, and I think a Commission order is due on November 6th or 7th, and if we were to have briefs now due on either October 31st or something along those lines, that would still give the Commissioners over four weeks with the briefs to write final order, and so it preserves that time period.

CHAIRWOMAN SHOWALTER: Are you just thinking of one round of briefs or two rounds?

MS. ANDERL: We had built into the schedule just one round of briefs, Your Honor, no reply, because of the time constraints.

JUDGE MACE: Well, perhaps we can address briefing yet once again before we finish today, and the parties can take time to digest the October 31st proposed briefing date, and we can firm that up before we leave.

CHAIRWOMAN SHOWALTER: And I think just one more thing to be thinking about if it makes sense, does it make sense, I'm not sure, to have some early round of brief either before or just after this October 21st date, which we aren't certain is going to happen, and then maybe a kind of a post 21st or followup to the hearing time. I'm just not certain, but what we hope, at least if we keep working today, is the bulk of the evidence will be in by today. Now if we spill over our witnesses, if we don't finish with everything else today, I think it's a different story, so just keep it in mind.

MS. ANDERL: Right, and thanks, and I think we do need to kind of take the pulse at 5:00 tonight.

JUDGE MACE: So that's the second item I had was just to briefly discuss scheduling today, and we need to see how things go.

The third item just briefly is I understood from Integra, Ms. Johnson, that Deborah Harwood and Rick Finnigan would be here today representing Integra. Are they present in the hearing room?

It appears not, I just wanted to mention that for the record.

And so then let's turn to the cross-examination of Ms. Baldwin, who is the first witness scheduled for today.

Would you please stand and raise your right hand.

(Witness Susan Baldwin sworn in.)

JUDGE MACE: Please be seated.

Mr. ffitch.

MR. FFITCH: Thank you, Your Honor.

Whereupon,

SUSAN BALDWIN,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

D I R E C T   E X A M I N A T I O N

BY MR. FFITCH:

Q. Good morning, Ms. Baldwin.

A. Good morning.

MR. FFITCH: First I have a housekeeping matter, Your Honor. Exhibit 406C designated for Ms. Baldwin is actually not confidential, so that can simply be relabeled as Exhibit 406.

JUDGE MACE: Very well, thank you.

BY MR. FFITCH:

Q. Ms. Baldwin, could you state your name for the record, please.

A. Susan Baldwin.

Q. And did you prepare direct testimony on behalf of Public Counsel in this docket?

A. Yes, I did.

Q. And do you have that before you marked for identification as Exhibits 401T through 421?

A. Yes, I do.

Q. And did you also prepare rebuttal testimony?

A. Yes.

Q. And do you have that before you marked as Exhibits 422 through 428?

A. Yes, I do.

Q. Do you have any corrections to your direct testimony?

A. Yes, I do. On page 40 of Exhibit 401, lines 5 and 6, first on line 5, where I refer to columns in the plural and column in the singular, it should say rows and row. Similarly on line 6 where I refer to column, it should say row.

Q. Are there any other corrections to your direct testimony or exhibits?

A. No.

Q. Do you have any corrections to your rebuttal testimony?

A. I have corrections to the exhibits.

Q. And which exhibits are corrected?

A. I have one correction that affects three exhibits. I will mention the three exhibits, and then I will identify the correction. The three exhibits are Exhibit 424C.

JUDGE MACE: Is that also your SMB-23C?

THE WITNESS: Yes, it is, Your Honor.

A. 425C, and 427C. Turning back to 424C, the correction that I make in all the exhibits is to include carrier D's special access lines, which are clearly shown in the first two tables in Exhibit 424C.

JUDGE MACE: I'm sorry, can I ask you to repeat that.

THE WITNESS: Yes.

A. In Exhibit 424C I have incorporated explicitly carrier D's special access lines in the first two of three tables that appear in this exhibit. This category and this quantity did not appear in my original exhibit.

Turning next to 425C, column D is a new column that includes the same carrier D special access loops. If you look at page 2 of 2, the total indeed is the same as the number we just saw on the previous exhibit.

Turning finally to 427C at the bottom of the page, the third row from the bottom, special access (D), again the same number is included in this exhibit. It was not included in the original exhibit.

BY MR. FFITCH:

Q. Now, Ms. Baldwin, these revised exhibits are dated in the upper right-hand corner September 17th, 2003, correct?

A. Yes.

Q. And did these three revised exhibits supersede the corrections that were dated September 15th?
A. Yes, they do.
MR. FFITCH: And, Your Honor, I will just note for the record that these revised exhibits were pre-distributed yesterday to the Bench and the parties.
BY MR. FFITCH:
Q. Do you have any other corrections, Ms. Baldwin, to your rebuttal testimony or exhibits?
A. No, I do not.
Q. And are any of your testimony or exhibits based on a review of the raw CLEC data in this proceeding?
A. No, they are not.
Q. Were these exhibits prepared by you or under your direct supervision and control?
A. Yes, they were.
Q. And are they true and correct to the best of your knowledge?
A. Yes, they are.
Q. And if I asked you these questions today, would your answers be the same?
A. Yes.
MR. FFITCH: Your Honor, Public Counsel

offers Exhibits 401 through 428.

JUDGE MACE: Is there any objection to the admission of those proposed exhibits?

MR. SHERR: No objection.

JUDGE MACE: Okay, I will receive those into evidence.

MR. FFITCH: Thank you, Your Honor.

CHAIRWOMAN SHOWALTER: Can you just wait a minute while we change our exhibits.

JUDGE MACE: There is a place at the counsel table, I noticed that Integra counsel has arrived at this point, and if you want, you could take the place between Ms. Friesen and Mr. Sherr.

MR. FINNIGAN: At this point, I have no questions for this witness, so if you don't mind, I will stay here.

JUDGE MACE: Would you introduce yourself for the record though.

MR. FINNIGAN: Sorry, Rick Finnigan appearing on behalf of Integra.

JUDGE MACE: Thank you.

MR. FFITCH: May I proceed, Your Honor?

JUDGE MACE: Go ahead.

MR. FFITCH: Thank you.

Ms. Baldwin is now available for cross. Just one preliminary comment. As I think we have just seen, the great majority of Ms. Baldwin's exhibits are designated confidential and contain information that comes from either Staff or Qwest sources so designated, and it may be that, depending on the direction of the cross-examination, it may be that it just goes more smoothly if she is able to freely refer to those exhibits and discuss in detail what's contained in them. I'm not saying -- I'm not requesting that the hearing room be cleared right now, I'm just making an observation, that may be the most efficient way, you know, to proceed with cross if it starts to go in that direction.

JUDGE MACE: Well, let's see what happens. Perhaps counsel will tailor their cross-examination to accommodate the confidentiality.

Mr. Sherr.

MR. SHERR: Yes, thank you.

C R O S S - E X A M I N A T I O N

BY MR. SHERR:

Q. Good morning, Ms. Baldwin.

A. Good morning.

Q. I'm Adam Sherr for Qwest. One theme in your testimony is that the entire state is not the

appropriate geographical market for the Commission to consider; is that correct?
A. Yes, it is.
Q. In your testimony, did you identify what would be the appropriate geographical market?
A. My understanding is that the burden is on Qwest to do its homework and identify appropriate markets. Having said that, I did go to some level of effort to look at competitive activity both at the wire center and the exchange level separately for small businesses, larger businesses, by product, PBX and Centrex, to the extent that the data permitted.
Q. Okay, well, I'm not asking you about the granular analysis you did of numbers. I'm asking you more on a thematic level, because I believe you, as you just confirmed, you made a thematic statement, a more general statement that the entire state is not the appropriate geographical market; is that correct?
A. Yes, it is.
Q. Okay. So anywhere in your testimony, direct or rebuttal, did you make an affirmative statement as to what the Commission should consider to be the appropriate geographical market?
A. I provided many suggestions along those lines, pointing out my specific concerns for various

segments of the market as defined by Qwest.

Q. Could you point me to where you defined for the Commission what the appropriate geographical market should be?

A. As I indicated, I provided suggestions that would enable a more thorough discussion and analysis of the market. I did not specifically recommend either specific product markets or specific exchange markets. However, it's clear from my testimony that I have demonstrated that markets -- that the level of competition varies significantly among exchanges and among customer classes.

Q. You're testifying today as an expert witness; is that correct?

A. Yes, I am.

Q. An as Public Counsels's expert witness, what do you consider to be the appropriate geographical market for the Commission to consider in this case?

A. I don't think it's a bad beginning where they started, where the Commission started with 000883. Clearly when we look at the data in the numerous exhibits that I have included with my direct and rebuttal testimony, competition does vary by exchange. I think it's a tough question. Again, I do believe that the burden is on Qwest to come forward with a well considered plausible petition, and so I did not before today seek to do Qwest's homework. You're asking me here today to come up with a market definition, which is a very serious exercise. And if I am required to answer that question, then I would say an exchange is certainly a good beginning.

I have identified my concerns about the small businesses that make up a very large percentage of the business line customers, have three or fewer lines. Is three the right number? Not necessarily. I use three because Qwest reports to the FCC, for reporting purposes it draws the distinction between businesses that have three or four -- three or fewer lines or four or more. So that's how the data came to me, that's how I display it. This Commission very well may decide that ten or fewer is an appropriate distinction. The point is that a distinction needs to be made, somebody needs to make it, and I provided a lot of information and guidance on that point.

Q. I perceived at least a lot of the comments you just made to be regarding the product market and not necessarily about the geographical market. Again, I'm focusing on the geographical market. Is it should the Commission consider this on an exchange basis, a wire center basis, a statewide basis, or something else? And so once again, do you have a specific response as to, to inform the Commission as to what market they should look at or what geography they should look at in order to consider the data?

MR. FFITCH: Your Honor, I believe these questions, this question has been asked and answered at least once.

JUDGE MACE: I'm not certain that it has. I think the witness has talked about a number of factors, but she hasn't been very specific about a geographic market.

A. That's a very good question, and certainly not the state. The competitive opportunities for someone in Walla Walla is very different from the competitive opportunities for someone in Seattle. I can't move a dial tone from Seattle to Walla Walla. So clearly not the state, clearly not the geographic areas that Qwest used to display data.

Exchange or wire center is the next key question, and I think related to that question is how this Commission would like to proceed in exercising its granular analysis for the purposes of the impairment proceeding. It would certainly be logical to come up with market definitions that at least consciously recognize that in not too many more months we'll all be here again to look at the impairment proceeding, to look at a granular analysis. The FCC has deferred to the states, recognizing their expertise, their familiarity with the specific areas.

As I sit here today, I recommend that either the wire center or the exchange be used, and I think it would be premature for any of us here today to make that distinction. I think for the purposes of this proceeding there's sufficient information to demonstrate that the petition before us should be denied. The next step that will come before the Commission is to define the market for the impairment proceeding purpose. We'll have yet more data and the opportunity with great deliberation to make that important decision.

BY MR. SHERR:

Q. Isn't it true that Qwest has provided the data, its data in this case, both on a wire center and exchange basis?

A. Yes.

Q. And Staff has provided at least some of its data on a granular basis as well?

A. Yes.

Q. Does Public Counsel contend that if something smaller than the state is the appropriate geographical market that Qwest must file a separate petition for each

such smaller market?
A. No.
Q. If you could look at your rebuttal testimony, which is Exhibit 422, page 3, and I'm looking at lines 6 through 8. Are you there?
A. Yes, I am.
Q. In that testimony, you drew a comparison between Spokane and Castlerock; is that correct?
A. Yes.
Q. And I believe you pointed out to the Commission that fewer providers serve Castlerock than Spokane; is that correct?
A. Yes, it is.
Q. Could you please look at Exhibit 469.
A. I'm there.
Q. And I will represent to you that this document is an excerpt from the Qwest directory for the area including Castlerock. Do you see on the first page of that exhibit Castlerock is listed?
A. Yes, I do.
Q. Do you recall that Mr. Reynolds attached a similar excerpt from an Eastern Washington directory?
A. Yes.
Q. Beginning on the third page of that exhibit, in the upper left-hand corner, you may see the page

number 18.
A. Yes.
Q. Do you see on that page that there are a number of telephone carriers listed?
A. I see Qwest and AT&T.
Q. Okay. And as you continue to go through that exhibit, do you see other carriers as well?
A. Yes, I note one says installations, yes, I do.
Q. Okay. Just to save time, let me just read through this list very quickly.
CHAIRWOMAN SHOWALTER: Not too quickly.
MR. SHERR: Okay.
BY MR. SHERR:
Q. Besides Qwest, for the area covered by this telephone directory, the following carriers are listed; is that correct: AT&T, skipping CenturyTel, Commsouth.
JUDGE MACE: And Comm is C-O-M-M.
Q. Electric Lightwave, I will skip Kalama, McLeod USA, PSI, Teligent, TelWest, UNICOM, and Z-Tel.
A. I see those.
Q. Do you see those? And I skipped CenturyTel and Kalama, because those both indicate that they offer service to a more limited area not including Castlerock; is that correct?

A. I will take your word for it.

Q. Well, if you look on the page marked 20 where Kalama Telephone is listed?

A. Yes.

Q. Do you see where it says including Kalama?

A. Yes.

Q. Do you read that as I do as a limitation on where that telephone company serves?

A. It's a reasonable reading.

Q. Okay. So at least by looking at these pages of the QwestDex Yellow Pages or directory, does it appear to you that those carriers that I listed are offering to serve customers in Castlerock?

A. How actively they're serving, it doesn't give me any indication of that, but it shows that they're listed in the White Pages and presumably are available to offer service.

Q. Thank you.

Is it your belief that small businesses more typically purchase basic business service than they do PBX or Centrex service?

A. And as you're using the word small business, how are you defining it?

Q. Well, apply your own definition.

A. Well, my own definition is almost a totology, but within the limitations of the data, if a customer location has three or fewer lines, I'm referring to that as a small business here. And if we were to look at Department of Labor statistics, I honestly don't recall what the definition of a small business is.

Q. Okay. But you use the term small business throughout your testimony; is that correct?

A. Yes, I do.

Q. Okay. Well, under whatever definition you had in mind when you wrote that, am I correct that you believe that small businesses more often purchase basic business service than they do PBX or Centrex service?

A. I haven't done a survey of that. I do believe that there are many small businesses that rely on business line service rather than PBX.

Q. Could you please look at your rebuttal testimony, excuse me, your direct testimony, which is Exhibit 401, page 40, and the sentence that starts on line 7, could you please read that sentence, please.

A. (Reading.)

Although the focus of my testimony concerns the impact of Qwest's petition on small businesses, i.e., those that likely subscribe to business line service, much of my analysis pertains to the other products as well (e.g., the disparate levels of competitive entry in exchanges throughout the state).

Q. When you said there that small businesses, i.e., those that likely subscribe to business line service, when you said business line service, did you mean basic business service?

A. Yes, I did.

Q. As opposed to Centrex or PBX?

A. Yes, you're right.

Q. Do you agree with Qwest that the appropriate -- that it is appropriate for this Commission to consider basic business line service, PBX, and Centrex as a single product market?

A. No, I don't think the three products should be grouped together.

Q. Have you disaggregated the data to determine CLECs' and Qwest's relative market share for basic business line service, PBX, and Centrex?

A. I can, if you give me a moment, I can find an exhibit that sheds light on that information.

If you turn to confidential Exhibit 412, 412C, I will refer to this without referring to numbers.

Q. Exhibit 412C has three tables on it, which table are you referring to?

A. It's the first, and as I'm looking at this, there's an additional table that -- so that I can be responsive to your question, can you -- you've asked -- let me make sure I understood it. You're asking if I have looked at the three different products and whether I have looked at CLEC entry into those three different products; is that correct?
Q. Let me restate the question for you.
Have you disaggregated the data that's in this case to determine the CLECs' and Qwest's relative market share for basic business line service, PBX service, and Centrex service?
A. I think I provided a lot of data that would allow that analysis, and there is a table where I have taken those steps and done those calculations. Let me turn to 424C to the third table. In this case --
CHAIRWOMAN SHOWALTER: Can you wait until we get there.
THE WITNESS: Yes, excuse me, Chairwoman.
CHAIRWOMAN SHOWALTER: Just are the titles of the tables confidential?
MR. SHERR: (Shaking head.)
CHAIRWOMAN SHOWALTER: I think I know what the third table is, but it would be easier for the record if we read the title of the table in.

MR. SHERR: No, the titles are not confidential.

A. The table that I'm looking at in Exhibit 424C is entitled CLEC owned loops by product compared with Qwest retail loops by product. And to put this in context, there's two major sources of data. The Qwest wholesale data is not broken out by product type. The CLEC owned loop data that Staff provided is broken out by product type, and for that reason, I'm able to look at CLEC entry into these three products.

There's several caveats I'm sure the Commission is aware of as we look at the data. The PBX trunk data was provided by Staff in five very general geographic areas, so it's the product. You need to always keep in mind to overlay the geographic market, so where there's activity in one place, there may not be activity in another.

And we have also heard yesterday and the day before that I can't sit here today and tell you that all those lines that are in the -- under the column entitled August 10th PBX trunks are actually competing with Qwest analog services.

But with those caveats, those limitations of the data, that is an example where -- of where I have separately examined CLEC versus Qwest entry -- provision of services in the different product markets.

BY MR. SHERR:

Q. So that third table on Exhibit 424, that only includes CLEC owned business line, PBX trunks, and Centrex; is that correct?

A. That's correct. Would you like me to talk about wholesale?

Q. Yes, where do you provide -- well, let me just ask you this. In any one place do you offer a combination of the CLEC owned and the wholesale totals for business line, PBX, and Centrex service?

A. All grouped together?

Q. And compared to Qwest's.

A. As a segment, the business line market I do look at in my HHI analyses.

Q. Okay, well, let me try to expedite these things. If you could please look at Exhibit 470, which was marked as a cross exhibit.

A. I'm there.

Q. This is an illustrative exhibit I will represent to you compiled from your Exhibit 424, as revised yesterday, and Mr. Wilson's Exhibits 204 and 205.

A. Do I need those in front of me?

Q. I think it would be helpful if you had them in front of you?

A. Okay. So 424C I was just looking at, so I will keep that available. And then could you tell me Mr. Wilson's exhibits I should have in front of me?

Q. 204 and 205.

A. I don't have Mr. Wilson's exhibits with me.

MR. FFITCH: Can you provide those to the witness?

MR. SHERR: One moment, please.

Counsel, do you have, if I can ask if counsel can provide his witness a copy of those exhibits? I have a revised copy of Exhibit 205, but I'm not sure I have an extra copy of revised 204.

JUDGE MACE: Would Staff happen to have an extra copy of the exhibits for Mr. Wilson?

MR. FFITCH: I have only my own copy of Mr. Wilson's testimony. I would like to be able to follow your cross-examination, so if someone else can assist here, that would be great, otherwise I can.

MR. THOMPSON: Is it 204 that's lacking? That was never revised.

MR. BUTLER: What was the number?

MR. FFITCH: 204.

Thanks, Art.

THE WITNESS: Thank you.

BY MR. SHERR:

Q. Do you have Exhibit 470 in front of you still?

A. 470, yes.

Q. Okay. Would you accept subject to check that the disaggregation of the combined overall market share found by Mr. Wilson shows CLECs possess 37% of the basic business line market and 16% of the combined Centrex and PBX market?

MR. FFITCH: Your Honor --

A. This sounds like a calculation that maybe I should do on break. Would you like to show me the numerator and the denominator? You're telling me to accept -- I'm interrupting my own counsel, excuse me.

MR. FFITCH: I was just going to suggest, Your Honor, that this is a composite illustrative exhibit created by Qwest.

JUDGE MACE: Which one are you referring to?

MR. FFITCH: I believe 470, and it draws from a number of different exhibits, and it might be helpful to the witness and to I think the Bench to have the Qwest counsel walk through what's contained in this exhibit, a bit of a road map. I don't know if Ms. Baldwin would then need any additional time to review it.

JUDGE MACE: I think it would be helpful if you walk us through what you have come up with.

MR. SHERR: We would be happy to.

BY MR. SHERR:

Q. Ms. Baldwin, do you see on Exhibit 470 the Qwest line column has an asterisk indicating that the data in that column comes from your exhibit, which is 424?

A. Yes.

CHAIRWOMAN SHOWALTER: Just to be -- it actually says Qwest retail lines.

MR. SHERR: Oh, thank you.

BY MR. SHERR:

Q. And the column that says wholesale and CLEC lines has two asterisks, and it states below that that comes from Wilson Exhibits TLW-C4 and TLW-C5.

A. And I apologize, I was looking at the wrong exhibit. I see now where you're referring, yes.

Q. I can quickly, as your counsel suggested, show you where these numbers come from.

A. That's okay, I understand. I was looking at the wrong exhibit.

Q. Okay.

A. Now I'm looking at the right exhibit.

Q. Well, going back to my question then, would you accept subject to check that the disaggregation of the combined overall CLEC market share found by Mr. Wilson shows that CLECs possess 37% of the basic business exchange line market and 16% of the combined PBX and Centrex market?

A. I will accept that Mr. Wilson found those percentages, yes.

JUDGE MACE: I guess I would like to know a little bit more about where on Exhibits 204 and 205 those numbers came from.

MR. SHERR: Fair game. Let me -- the first number in the wholesale and CLEC lines column, if you look at Exhibit 205.

JUDGE MACE: Yes.

MR. SHERR: That number comes from cell E as in Edward 5.

JUDGE MACE: E5 or 45?

MR. SHERR: 45, sorry.

JUDGE MACE: All right, I see it.

MR. SHERR: And if you look at the second number under the wholesale and CLEC lines column and you look at Exhibit 204, page 3.

JUDGE MACE: 204, page 3.

MR. SHERR: That number comes from cell D as in David 19. And the third number in that column, the lotto number, comes from Exhibit 204, page 4, cell C as in Charlie 12. And the bottom below the table is a numerical calculation I will represent to you.

JUDGE MACE: All right, thank you.

CHAIRWOMAN SHOWALTER: Would you mind just continuing on, the next column over says percent wholesale and CLEC with some percentages. What is that calculation there?

MR. SHERR: That calculation is if you add the lines for the Qwest retail -- the Qwest retail lines for basic exchange lines, the first number in the first column, and you add the wholesale and CLEC lines for basic exchange line service, that's the denominator. And if you divide that by the number for wholesale and CLEC lines, that is that percentage. Is that clear?

CHAIRWOMAN SHOWALTER: Yes, it is. If we're going to have this illustrative exhibit, I'm sure that the witness can make sense of it probably right now, but it might be more useful if these columns were labeled, you know, across the top and the rows were labeled, and then there's a little, you know, column D equals column B plus C divided by column C or whatever it is so that it's transparent what has occurred.

MR. SHERR: Thank you, Your Honor. Your Honor, would you like me to revise this? I would be happy to do that.

CHAIRWOMAN SHOWALTER: I think it would be helpful myself, but I think the witness probably understands what calculations have been done.

THE WITNESS: I have been living and breathing the numbers, so I do, but I am entirely sympathetic, and I think it is helpful with these numbers to have the source.

JUDGE MACE: Perhaps you could provide later in the day a revision that is a little bit more transparent.

MR. SHERR: I can attempt to do that.

CHAIRWOMAN SHOWALTER: Including where you went through where each figure in the wholesale and CLEC lines comes from, each of those was a separate figure instead of just lumping it in and making us find it later.

MR. SHERR: Okay.

CHAIRWOMAN SHOWALTER: I think we understand right now, but when you go back to look at these things, it makes it much easier to quickly cross reference.

MR. SHERR: I understand, I will include the page number and the cell number.

MR. FFITCH: And, Your Honor, I think, I'm not sure where we will be with Ms. Baldwin by that time, if she will still be on the stand, we reserve the right to review that illustrative exhibit and object to it if necessary at that time. This has been offered so far subject to check and accepted so far subject to check, and while Ms. Baldwin is familiar with the documents, you know, she will need an opportunity I believe to check on calculations.

THE WITNESS: And, Your Honor, I don't believe there's an outstanding question to me, but may I restate what I said a few moments ago in answer to --

JUDGE MACE: Go ahead.

THE WITNESS: Which is I concur that this represents, subject to check, that this represents percentages based on the data that Mr. Wilson provided. I'm not commenting specifically on the data in that response.

MR. SHERR: May I proceed, Your Honor?

JUDGE MACE: Yes.

BY MR. SHERR:

Q. Is it Public Counsel's position in this case that if an ILEC faces competition from providers relying on UNEs that that competition can not be considered effective competition?

A. As I indicated in my testimony, I believe that where CLECs rely on UNEs to serve customers that

that is one of the pieces of evidence that's relevant in this proceeding. I believe it should be given the weight that it's due depending on whether it's resale, UNE-P, UNE loop, special access, or CLEC owned.

Q. So then you wouldn't categorically state that the Commission should not consider UNE based competition?

A. I think it's useful evidence of where we're beginning to see competition emerging and beginning -- and it's useful evidence to distinguish in which markets we're beginning to see competition.

Q. I would like to ask you a few questions about HHI. Let's look at the HHI analysis you performed. Your most current HHI analysis can be found at Exhibit 425; is that correct?

CHAIRWOMAN SHOWALTER: I'm sorry, what was that reference?

MR. SHERR: Exhibit 425.

A. That's correct.

BY MR. SHERR:

Q. And that replaces the HHI analysis you did at Exhibit 405, which was an attachment to your direct testimony?

A. That's correct.

Q. And you used the same methodology for both

Exhibit 405 and 425; is that correct?
A. That's correct.
Q. And that methodology is explained at Exhibit 425, page 3?
A. Yes, it is.
Q. And you said that's the same methodology as you used for Exhibit 405. Is one difference that now you have added in carrier D special access lines?
A. Yes, that's correct.
Q. Looking at Exhibit 425 --
A. And I would add a second difference is that the -- let's make sure that the CLEC owned business loops are identical as we go back to 405. The -- I should point out that column A, CLEC owned business loops, shows a statewide total in 405C that is different from the statewide total in 425C, and that is because in the first go around I was relying on Staff's August 6th aggregated report. Staff's numbers changed, and Staff subsequently provided another report on August 10th, so my HHI analysis in my rebuttal testimony relies on the more recent data, which Staff represents to be more accurate.
Q. Looking back to Exhibit 425, you applied a 50% factor to CLEC owned loops because of your concern that digital services might be included in Staff's

totals; is that correct?
A. Yes, that is.
Q. And that adjustment is shown in column B as in boy?
A. Yes, it is.
Q. Just to be clear, application of that factor reduces in this case by half the number of CLEC owned loops being considered; is that correct?
A. Yes, I did not make any such adjustment in carrier D, which may mean that special access loops may well include lines that compete with Qwest digital products, which of course would work in the other direction.
Q. And the 50% reduction that you applied lowers the overall CLEC total and market share; is that correct?
A. Yes. Even if you were to have -- even if you were to take that assumption away, even if you were to put the most favorable to Qwest spin on the data and say yes, these really are all analog, and I believe there's lots of doubt about that, but if you did, the HHI numbers would all still be extremely high.
Q. So your answer is yes?
A. Yes.
CHAIRWOMAN SHOWALTER: I'm sorry, can you

just repeat one more time the difference between column A and column B.

THE WITNESS: Yes.

CHAIRWOMAN SHOWALTER: Exhibit 425.

THE WITNESS: Yes, Madam Chairwoman. Column A is the data straight from Staff's aggregated report from one of Mr. Wilson's exhibits.

CHAIRWOMAN SHOWALTER: The August 10th or the August 6th?

THE WITNESS: The August 10th, so it's the most recent data. And if you look at the total, you will notice that it corresponds with the total that we were looking at. Actually, you don't see it in the most recent. There's other places that it shows up, I believe in Mr. Wilson's exhibits as well, so it is taking the data straight from Mr. Wilson's exhibits. Because of my concern about whether CLECs inadvertently may have included lines that compete with Qwest digital products, in column B I halved the lines that are in column A.

CHAIRWOMAN SHOWALTER: So column B is just a mathematical operation on column A?

THE WITNESS: Absolutely.

CHAIRWOMAN SHOWALTER: So it's just 50% of column A?

THE WITNESS: That's right.
CHAIRWOMAN SHOWALTER: All right.
THE WITNESS: No mystery.
BY MR. SHERR:
Q. And just as that 50% factor lowers the CLEC total of market share, it increases the Qwest market share; is that correct?
A. Yes, that's the effect.
Q. And it increases the HHI result for the particular exchange; is that correct?
A. Yes. And again, I would caution because we have now added carrier D, I don't make any adjustment, I take all of the large number of carrier D special access reported loops. If you look at the bottom of that column, you see a rather large number. That was provided in one of Mr. Wilson's exhibits. I include it, but again based on the discussions over the last few days, we don't know whether those are all being used for analog products or digital products. I did not make any adjustment to those numbers, however.
Q. Assume for me the Commission finds that Staff's CLEC owned loop totals already excluded digital services. In that scenario, would your 50% factor be inappropriate?
A. Yes, if those are all truly analog. And I

would point out that you will still find for the vast majority of the exchanges that Qwest serves that the HHI is above 5,000. It's extremely concentrated markets.

Q. And in that case, the HHI results would show less concentration in every exchange?

A. Less, but still over 5,000 for most exchanges.

Q. Take a look at your rebuttal testimony, or excuse me, your direct testimony, Exhibit 401, page 19. Actually, before we do that, why don't we look at page 21 of that same exhibit.

A. I'm there.

Q. You give an illustration there on line 7 of how HHI is calculated.

A. Yes.

Q. And that I understand it is that you take the market share of every competitor, you square those numbers, and then add them together; is that correct?

A. Yes.

Q. Is that the standard way to calculate HHI?

A. I believe it is.

Q. Is it the only way to calculate HHI?

A. I honestly -- this is the standard way that I have seen used.

Q. Okay. Is that how you calculated it in the exhibit we were just looking at?

A. Let's go back to the exhibit.

CHAIRWOMAN SHOWALTER: Is this 425?

THE WITNESS: Yes.

A. The standard way to calculate the HHI is to identify the percentage market share that each CLEC owns and to square it. In 425C, I did a slight variation on that, and the variation makes the market appear less concentrated than it is, and let me explain.

Qwest provided wholesale data by CLEC. The CLEC owned loops, the only source of information for that is, of course, the Staff aggregated report. Those are not reported by CLEC. Because when competitors have negligible market shares, how you distribute them, what I did is to assume that the CLEC market share viewed in its entirety, whether it's 10% or 15%, that those loops were distributed evenly among the number of CLECs serving each exchange. So in some exchanges there might be 2 CLECs, in some there might be 20, it varies enormously around the state. I divided the lines.

If there's a different -- with -- as I explained in my direct testimony, if you -- by making that assumption, it doesn't make a huge difference. If anything, it makes the HHI result lower than it would be. If you take nine squared and one squared, that is higher than if you take five squared and five squared. Using that as my analogy, I did the five squared plus five squared rather than the nine squared plus one squared. Which is more accurate? Of course the nine squared plus one squared.

And if you look at my exhibit, you will see that the nine and one might be more indicative of how the market share really splits out among the CLECs. There are a few CLECs with some market share, most of them well under 1%, negligible, many fringe competitors. But I did the five square plus five square because in my oversimplified example, I took my ten lines, put five with one CLEC and five with another, added them up to 25. If you said to me, wouldn't it be more accurate if you knew that one was 9 and one was 1 to do 9 times 9, maybe 1 and 1 times 1, that's 82, I would say you're right, but I have ended up with a lower number, so I'm conservative in the sense of toward Qwest's end.

CHAIRWOMAN SHOWALTER: So is a qualitative way of saying this that in a given exchange, if there are three CLECs, you assumed that each had an equal share?

THE WITNESS: Yes, thank you, that's what I'm saying.

CHAIRWOMAN SHOWALTER: Thank you.

BY MR. SHERR:

Q. So once you allocated lines to the number of CLECs as you just described, then the mechanical application of the HHI formula that you did is the same as we discussed before, isn't it?

A. That's correct.

Q. Now if you could look back to page 19 of Exhibit 401, particularly -- are you on that page?

A. Almost.

Okay, I'm there.

Q. Particularly lines 21 to 22.

A. Yes.

Q. There you indicate that an HHI above 1,800 is highly concentrated.

A. Yes.

Q. Is that correct?

A. Yes.

JUDGE MACE: I'm sorry, where are you, counsel?

MR. SHERR: Page 19 of Exhibit 401.

JUDGE MACE: Thank you.

MR. SHERR: Sure, and that's lines 21 to 22.

BY MR. SHERR:

Q. Is it your position that this Commission should find that there -- should not find -- let me start over.

Is it your position that this Commission should not find that there's effective competition unless and until it finds that the market is not highly concentrated using HHI as its guidepost?

A. No, I think that the HHI is an extremely valuable tool. I am not sitting here today and suggesting that the Commission use 1,800. I believe that you may have used 5,000 in your last case. That may be guidance to you as well. I am definitely suggesting that you rely extensively on the HHI analysis and that when you do that you realize that a lot of the market share is resulting from CLECs' use of Qwest facilities.

Q. So finding an effective competition might be appropriate even if the HHI indicates a high market concentration?

A. If by high market concentration you mean 1,801, 1,802, et cetera, yes.

Q. Do you have in mind a maximum HHI result above which the Commission should deny a finding of effective competition?

A. I believe that there's many factors that the Commission should take into account as it has done in the past and that this deserves the most weight. As I sit here today, do I have a specific number? Again, I feel like the burden is on Qwest to come forward with a reasonable petition, and it hasn't, and the numbers don't reasonably -- don't even begin to come to the 5,000 level for the vast majority of the exchanges. So for the exercise of reviewing the merits of this petition, we don't really need to go any further.

If the Commission is interested in coming up and defining a specific HHI, I would then expand my testimony to give that serious thought.

Q. But you don't have a hard and fast level?

A. Certainly I wouldn't go below the 5,000 that the Commission used as a guidepost in its 000883 proceeding. And again, let me reiterate, not at a statewide basis because averages mask important distinctions across products and exchanges. That's within the relevant market. To do it on too aggregated a basis is meaningless.

Q. Let me ask you to look at some of the exhibits to your testimony. Please look at Exhibit 408, and you should also have Exhibit 82 available.

MR. SHERR: Counsel, do you have --

JUDGE MACE: Whose exhibit was 82?

MR. SHERR: That was Mr. Teitzel's exhibit, and we will provide the witness a copy if she doesn't

have that.
THE WITNESS: I may, I'm just looking at my crib sheet to figure out what 82 is. I know them better by Mr. Teitzel's -- oh, thank you very much, excuse me, I have it.
JUDGE MACE: Just a moment.
All right.
BY MR. SHERR:
Q. In Exhibit 408, you summarize the percentage of Qwest retail disconnects between July of 2002 and June of 2003 that you interpret as being attributable to the economy; is that correct?
A. Yes.
Q. Looking at Exhibit 408, would you agree with me that Qwest endures disconnects for all of those reasons listed there in good economic times as well as bad economic times?
A. Likely not to the same magnitude.
Q. But nonpayment is listed there as a reason attributable to the economy. Do you believe that Qwest endures disconnects for nonpayment in good economic times?
A. I think the categories are the same. I think what changes are the numbers.
Q. So it's really the delta, the difference

between what these numbers would look like in bad economic times and in good economic times?

A. What do you mean by it's, what's the question?

Q. I'm trying to clarify your answer. I asked if these categories are the same in good economic times and bad economic times. Let me try that again.

Would Qwest endure disconnects for all of these reasons in good economic times?

A. Most likely. There's always some business that's having a hard time regardless of the economy.

Q. And so attributing all of these disconnects in this exhibit might be an overstatement that all of these disconnects are attributable to the economic downturn; is that correct?

A. Yes, I agree. That's a good point.

Q. In the data underlying this exhibit is described in your note, in your table it says source, and it refers to a Qwest data request response, and that is the same data request response that is Exhibit 82 in this case; is that correct?

A. Yes.

Q. Do you have that with you?

A. Yes, I do.

Q. Do you see on the second page of that exhibit which is at the upper right-hand corner it says confidential attachment A?

A. Yes.

Q. Do you see a number of categories as you look down the first column that start with the word competition?

A. Yes.

Q. Would you accept subject to check that between July of 2002 and June of 2003 more customers disconnecting Qwest's services reported that they were doing so for reasons related to competition than for reasons related to the economy as you have defined it?

A. Oh, absolutely. I'm simply responding to a comment made by a Qwest witness that the bulk of the erosion, I believe those were the witness's words, the bulk of the erosion in Qwest's business lines had to do with competition, and in my mind, bulk is more than half.

And furthermore, I would note that under product migration, as we learned yesterday, it does not include changeovers. So there's a lot of lines that are getting disconnected, but they're moving over to let's say a private line, and that would not show up in this exhibit as I understand it.

Q. If you could move on to Exhibits 414 and 415, which are attachments to your direct testimony.

A. I'm there.

Q. These exhibits display the same information, do they not, just ordered in a different way?

A. Yes.

Q. And these exhibits display market share for Qwest in particular exchanges throughout the state; is that correct?

A. Yes, they do.

Q. And just to be clear, those market share totals that you have included here do not reflect CLEC competition via CLEC owned loops; is that correct?

A. That's correct.

Q. And they don't include CLEC totals relating to the carrier D special access that you now included in some of your rebuttal exhibits; is that correct?

A. That's correct.

Q. And would you expect -- you would expect, wouldn't you, that if those two categories of lines were added that Qwest's market share would decline in the vast majority if not all of these exchanges?

A. Not the vast majority. I don't believe that there's going to be huge changes in the very small exchanges. If you look at the numerous exchanges with relatively few access lines, I don't think we have huge changes in Qwest's market share, but of course it will change.

Q. We can move on to Exhibit 416, please. There you list the Washington exchanges lacking any UNE loops; is that correct?

A. Yes. Again this is based on Qwest provided data.

Q. And as you look at all the way down the first page and part of the second page, you see a number of exchanges listed lacking any unbundled loops; is that correct?

A. Yes.

Q. Would you accept subject to check that the total number of access lines served by the exchanges you identify as having no UNE loops amount to only about 15% of the statewide access total?

A. A monopoly is a monopoly. If there's five customers, those five customers care --

Q. Okay, let's --

A. -- whether there's competition. So it's certainly my hope that this Commission isn't ignoring 15% of the customers because 85% may have some competition.

MR. SHERR: Your Honor, I would ask if you would please instruct the witness to answer yes or no first and then to explain.

JUDGE MACE: Our practice here at the Commission is to ask the witness a question and then get a yes or no answer to the extent that's possible, and then if there's an explanation, go ahead with that.

THE WITNESS: I apologize, I will seek to do that.

CHAIRWOMAN SHOWALTER: Can you repeat the question that you asked.

MR. SHERR: You bet.

BY MR. SHERR:

Q. Ms. Baldwin, would you accept subject to check that the total number of access lines served by the exchanges you identify as having no unbundled loops amount to only about 15% of the statewide access line total?

A. Yes, I will accept that subject to check.

Q. And just to be clear, all of the data you need to do that calculation is included in your exhibit?

A. Yes.

Q. And that's before you add the statewide total of CLEC owned loops and carrier D special access, isn't it?

A. Yes, it is. And again, I think it's important to look at the relevant market and does a consumer have a choice, whether they live in Shelton or whether they live in Seattle.

Q. And you're aware, aren't you, that every one of those exchanges you have identified as having no unbundled loops except Elk is served by UNE-P resale or CLEC owned facilities?

A. According to the Staff information, that's correct. And even based on wholesale, that's true in most of the exchanges. Again, the critical question is, what is the market share of Qwest in each of those exchanges. Regardless of what's theoretically available, what practically has happened.

Q. On the first page of Exhibit 416, do you see the total number of access lines listed for Elk in the second column?

A. Yes.

Q. Would you accept subject to check that the total access lines for Elk, Washington constitute less than .03% of the total access lines statewide?

A. Yes.

Q. If we can go back to your direct testimony, Exhibit 401, page 16. At lines 19 to 22, you warn that if granted competitive classification, Qwest might lower its rates or improve service quality in an attempt to drive away new competitors. Is that an accurate paraphrase?

A. Yes.

Q. Is it your testimony that lowering prices or improving service quality to attract customers is inconsistent with the public interest?

A. No, but I think it's very important to understand that when CLECs are thinking about whether to put their limited capital into a given market, they need to be aware of whether the incumbent will then drive them out, and especially where they're deploying significant resources. Because the price that they are competing against is high and it looks like a good place to compete, they come in, and then it would be entirely possible for Qwest to subsequently lower the prices to such an extent that the business plans upon which the CLECs had originally relied no longer made sense.

Q. You're familiar with the statute RCW 80.36.330; is that correct?

A. By context I would think you may be talking about legislation that -- that statute that has to do with covering cost.

Q. Let me be more clear. RCW 80.36.330 is the competitive classification statute.

A. Yes.

Q. You have read that statute?

A. Yes.

Q. Doesn't that statute take care of the problem you just described by imposing a price floor and by empowering the Commission to reclassify as noncompetitive Qwest's services if the public interest so requires?

MR. FFITCH: Your Honor, I'm going to -- I don't know if this is an objection, but I believe if the Qwest counsel is inquiring about the statute, about specific provisions in the statute, he should at least provide a copy of that to the witness.

JUDGE MACE: Would you do that, Mr. Sherr, please.

MR. FFITCH: I would also make the traditional objection that it appears that Mr. Sherr is asking for a legal conclusion.

JUDGE MACE: I think this witness holds herself out as an expert, and she can tell us about her understanding of the statute if she can.

THE WITNESS: Also while you're looking for it, I want to be clear. I think you had two questions in there, that there's a provision in the statute that would prevent below cost pricing, and there's also a provision that allows for the reclassification. Am I correct that there were two parts in your question?

MR. SHERR: Right, I am asking if those two provisions --

THE WITNESS: And whether that would provide ample protection for the CLEC. I'm putting words in your mouth, let's take it from the top, give me a new question.

JUDGE MACE: Mr. Sherr, why don't you break your question apart and refer the witness to the specific provision.

BY MR. SHERR:

Q. Do you have the statute in front of you now?

A. Yes, I do.

Q. Could you look at RCW 80.36.330(3)?

A. Which begins, prices or rates charged?

Q. That's correct.

A. Yes, I'm there.

Q. And does that create a price floor for competitively classified services?

A. Yes, it does.

Q. Okay. And can you look to subsection 7 of that same statute.

A. I'm there.

Q. And does that provide that the Commission may reclassify as any -- I'm sorry, that the Commission may reclassify any competitive telecommunications service if reclassification would protect the public interest?

A. Yes.

Q. In combination, don't those two protections under the statute guard against the predatory pricing concerns you just explained?

A. They provide regulatory safeguards, but it doesn't do anything about the real life business incentives that face CLECs who are trying to decide whether to enter a market. And if the price signal that the CLECs see is Qwest's existing price and they build a business case based on that, if they were wise, they would also say, well, I better do a sensitivity analysis and put in a number for what if Qwest goes down to the price floor, then suddenly it may not look so profitable to make the effort to serve a market. So the CLEC may just pass that rural market right by and say, not economically attractive, why brother to go in there.

So absolutely there's protections against predatory pricing, but there's no protection for the small consumer who gets passed by because the CLECs say, not worth deploying the effort, the marketing people, the personnel, the facilities to serve this market, we'll have a handful of customers, if I multiply the price times demand and look at my revenues and my expenses, it doesn't cover it. So there's protection against predatory pricing, there's no resolution of the financial incentive issue that I address in this testimony.

Q. Isn't a company's plan to lower prices and/or improve service quality to attract customers a natural and healthy aspect of competition?

A. Absolutely, but that's not the point that I'm making in this part of my testimony.

Q. As an expert with 25 years of experience, much of which has been spent representing commissions and other public and consumer agencies, wouldn't you in fact say that the goal of encouraging competition is to encourage companies to lower prices and improve service quality?

A. That's again not the point of the passage to which you refer me. The point of the passage to which you have referred me is whether CLECs would find it financially appealing and attractive to compete with Qwest. Of course the goal of competition is lower prices and higher service quality, that's apple pie. The question is, is there competition in the relevant market.

Q. Let me move on in your direct testimony to page 42, specifically line 7, you state:

Until consumers are actually choosing

carriers other than Qwest in a quantity to constrain Qwest's behavior in the market, the market can not be considered effectively competitive.

Did I read that correctly?

A. Yes.

Q. To what market share must Qwest drop before it will have met your test?

A. We're not there now, and one place that this Commission could look is AT&T at one point in time was dominant, and it became classified as nondominant by the FCC. And in reviewing the extensive record before it, the FCC commented on a couple of -- many things, and two perhaps of interest here. One is that AT&T's market share, and it looked at market share both in revenues and in minutes of use, was approximately 60%, and the commission, the FCC said also the -- AT&T does not control any bottleneck facilities. And in light of those two important pieces of information before it, the FCC considered AT&T nondominant.

We're not close to 60% here. We're not -- we're really not close in many exchanges, and Qwest does control bottleneck facilities. So I don't have the number for you, but I would say that we are so far from there that we don't need to come up with a number yet.

Q. So no hard and fast number?

A. In my mind, it would have to at least get as low as 60%.

Q. If you could move to page 46 of your direct testimony, beginning on line 18 and spilling over to the next page at line 2.

JUDGE MACE: What page again, counsel?

MR. SHERR: Page 46 to 47.

JUDGE MACE: Thank you.

BY MR. SHERR:

Q. There you discuss Qwest's strategy of packaging and bundling local and long distance services; is that correct?

A. Yes, it is.

Q. Is there anything unusual about a telephone company bundling services?

A. No. What's unique here is that Qwest has a unusually huge relationship with most of the customers in its territory, a preexisting relationship, and that's what differentiates Qwest from all the many other carriers who also are packaging and bundling services.

Q. Is there anything inherently anticompetitive about bundling long distance and local services?

A. No, but it's certainly helpful to understand what's going on there in order to assess the local market structure today.

Q. We can move to your rebuttal testimony, which is Exhibit 422, line, excuse me, page 17.

(Discussion on the Bench.)

JUDGE MACE: We're just contemplating when would be the appropriate time to break.

MR. SHERR: I'm certainly going to a new subject. I don't have much more.

CHAIRWOMAN SHOWALTER: Is this a new subject now?

MR. SHERR: Yes, it is.

CHAIRWOMAN SHOWALTER: Why don't we repeat the question after the break.

(Recess taken.)

MR. SHERR: May I continue, Your Honor?

JUDGE MACE: Yes, please.

MR. SHERR: Thank you.

BY MR. SHERR:

Q. If you could please look to Exhibit 422, which is your rebuttal testimony, page 17, I'm looking at lines 3 to 6. There you discuss -- are you there?

A. Yes, I am.

Q. There you discuss that Qwest's wholesale data is inflated because it includes lines CLECs use for internal administrative purposes.

A. Yes.

Q. Do you know how many administrative lines were found to be included in Qwest's data?

A. I believe that Qwest may have included that information in a cross exhibit.

Q. Why don't we look at that, it's Cross Exhibit 471.

A. I'm there.

Q. If you look at the second page, do you see a number there associated with grand total?

A. Yes.

Q. Will you accept subject to check that that represents the total number of administrative lines found to be included in Qwest's data by Staff?

A. Yes.

Q. Going back to your rebuttal testimony, Exhibit 422, page 17, the same page.

A. Yes.

Q. I'm looking at lines 13 to 14, and there you discuss that CLECs that rely on Qwest wholesale services incur additional transaction costs associated with monitoring their relationship with Qwest; is that correct?

A. Yes.

Q. Have you quantified that additional

transaction cost in your testimony or exhibits?
A. No. But because there's not a number associated with it doesn't mean it doesn't exist.
Q. Okay. And as you sit here today, can you cite to me any data that quantifies the additional transaction costs you discuss in your testimony?
A. I would think CLECs would be in the best position to document the costs associated with monitoring Qwest's behavior.
Q. Yet you testified about it?
A. Yes, as an economist, absolutely. This is a cost of doing business when one competitor relies on another competitor for essential facilities.
Q. Would you agree with me that Qwest incurs transaction costs in monitoring its relationships with CLECs who purchase wholesale services from it?
A. Yes, but in terms of affecting the viability of a business, it's the CLECs' livelihood that depends upon Qwest's provision of service, not the other way around.
Q. Doesn't Qwest's viability as a business depend on the costs that it incurs in serving the customers, wholesale or retail?
A. Oh, absolutely, I meant in terms of its relationship with a customer. Because the CLEC depends

upon Qwest for an essential element, that in turn affects the CLEC's relationship with its customer. If I turn it around, Qwest's relationship with its retail customer is not affected by Qwest's relationship with its wholesale customer. Qwest's relationship with its wholesale customer is very convenient for Qwest, because Qwest is the monopoly provider of those wholesale services.

Q. Would you agree with me that facilities based CLECs incur costs monitoring their own facilities?

A. Yes.

Q. And that wholesale based CLECs don't directly incur those costs?

A. Let's be more specific. Wholesale CLECs, facilities based CLECs have costs of monitoring their business, of running their business, yes. Do they have a cost of monitoring the transaction between their supplier, no, because they are the supplier. So that component of the cost disappears for wholesale based, for a facilities based provider.

Q. And I'm asking you about something different, which is the costs that a facility based CLEC incurs monitoring their own facilities. Let me start again.

Would you agree with me that facilities based CLECs incur costs monitoring their own facilities?

A. Yes. They're not the transaction costs to which I was referring in the testimony that you pointed me to, but of course.

Q. And wholesale based CLECs who rely on Qwest's underlying facilities don't directly incur those same types of costs, do they?

A. In the abstract there may. Carriers confront different costs.

Q. Was that no?

A. I didn't give you a yes, no, I apologize.

Q. Would you like me to ask you the question again?

A. Sure.

Q. Would you agree with me that wholesale based CLECs don't directly incur those same costs?

JUDGE MACE: And those same costs are what?

MR. SHERR: Are the costs that facility based CLECs incur monitoring their own facilities.

JUDGE MACE: When you say monitoring their own facilities, what do you have in mind?

MR. SHERR: I'm trying to mirror what Ms. Baldwin said in her testimony, so whatever frame of reference she had for her testimony is what I'm --

JUDGE MACE: I see what you're saying, on line 14, the monitoring the relationship with Qwest.

MR. SHERR: That's right.

A. Okay, I think I'm having a -- I'm being vague in my answer because I'm trying to understand the question. The specific cost, the transaction cost that I discuss here has to do with monitoring the relationship between two different businesses, not only two different businesses, but two competing businesses.

When you ask me about if facilities based carriers have monitoring costs, well, they run their operation. By definition, they don't have analogous costs, because they don't depend upon another carrier for the facilities that they're providing on their own. So they're not -- they don't have that cost, and that's I think where I started to get vague. Because there isn't, by definition, a wholesale -- a facilities based carrier doesn't have transaction costs of the type that a wholesale carrier does have.

BY MR. SHERR:

Q. Thank you, you have answered my question.

If you could look at page 18 of that same rebuttal testimony from lines 8, excuse me, lines 8 to 17 you discuss vertical features; is that correct?

A. Yes.

Q. Would you agree with me that when Qwest loses a business customer's access line to a CLEC that Qwest also loses the feature revenues?

A. Yes.

Q. Could you look at Exhibit 436, please. It's a cross exhibit. Are you there?

A. Yes, I am.

Q. This is a data request response from Public Counsel to Qwest; is that correct?

A. Yes, it is.

Q. And that Qwest -- that data request requested Public Counsel to provide any and all economic literature on which you rely in the determination to consider both wholesale and retail markets in reaching conclusions about Qwest's market share in the retail business market.

A. Qwest's market power, yes.

Q. Thank you.

A. In the retail business market, yes.

Q. Thank you for that correction. The answer is voluminous, I want to look at the second paragraph of your response. The first sentence, could you read that first sentence for me.

A. Yes.

One economic article in addressing the significance of control over interconnection states, for example,

that the regulation of wholesale
interconnection has therefore emerged as
the paramount tool of regulation and is
likely to remain so into the reasonably
foreseeable future.

Q. Thank you. Is it your belief that Qwest is seeking deregulation of wholesale services in this case?

A. No, it is not.

Q. Is it your belief that Qwest is seeking relaxation of any forms of wholesale regulation in this case?

A. No, but I think it would be a mistake to ignore the important role that Qwest's supply of wholesale services has in the competitive makeup of the local market.

MR. SHERR: Your Honor, that's all the cross-examination I have. There are several cross exhibits that I would like to move for the admission of.

JUDGE MACE: Go ahead.

MR. SHERR: And I have talked, I have conferred with Mr. ffitch, and I believe we have stipulation as to the bulk of these, and I will read those to you slowly. That is Exhibit 436, 439, 440, 442, 443, 446, 449, 452, 453, 455 through 459, 461, 462, and that's all that we had reached a stipulation on.

MR. FFITCH: That's correct, no objection.

JUDGE MACE: So if there's no objection to those particular exhibits, then I will admit them at this time.

MR. SHERR: And the remaining exhibits I would move for admission of are Exhibits 469, 470 and 471.

JUDGE MACE: Just a moment, would you repeat those for me, please.

MR. SHERR: Sure, it's 469, 470, and 471.

JUDGE MACE: And are there objections to those proposed exhibits?

MR. FFITCH: Your Honor, 469, if I may just have a moment to make sure I'm referring to the right exhibits, that was 469, 470 and 471?

JUDGE MACE: Correct.

MR. FFITCH: No objection to 471. Exhibit 470 is going to be, as I understand it, resubmitted by Qwest in a different form per the Chairwoman's suggestions, and it is also subject to check. So I'm not sure if you want to offer that now, if Mr. Sherr wishes to offer that now, Your Honor, or if we admit this and then replace it with a new 470. I'm not sure.

JUDGE MACE: Well, it seems like the main thing that was requested is that it be made more transparent, that is that it tracked back to the references in other exhibits, so I don't know that it would be much different from this except for those tracking back additions, and it seems like we could admit it subject to the revision being submitted.

MR. FFITCH: With those conditions then, we have no objection, and it is subject to check.

JUDGE MACE: So how about -- well, there's also 469, did you address that?

MR. FFITCH: I was just going to do so.

JUDGE MACE: Go ahead.

MR. FFITCH: We have some concerns about this, perhaps the best way is to address it on redirect. I guess ultimately we don't have an objection, we'll address our concerns with the exhibit on redirect, Your Honor.

JUDGE MACE: Thank you.

So then Qwest has asked to have marked several other exhibits, and is it my understanding then you're not offering those at this time.

MR. SHERR: That's correct, Your Honor.

JUDGE MACE: Very well, then I am going to admit proposed 436, 439, 440, 442, 443, 446, 449, 452, 453, 455, 456, 457, 458, 459, 461, 462, 469, 470 and 471, and with the understanding that 470 will be revised and is subject to check.

MR. SHERR: Thank you, Your Honor, Exhibits 470 and 471 are confidential.

JUDGE MACE: Yes, thank you.

MR. SHERR: Thank you.

JUDGE MACE: And does that complete your cross-examination?

MR. SHERR: It does, thank you.

JUDGE MACE: Then the next to cross examine this witness would be Staff according to my order.

MR. THOMPSON: Thank you.

C R O S S - E X A M I N A T I O N

BY MR. THOMPSON:

Q. Good morning, Ms. Baldwin. My name is Jonathon Thompson, I represent the Commission Staff.

A. Good morning.

Q. I want to start by directing you to your Exhibit 401T, your direct testimony, and if you could please turn to page 9.

A. I'm there.

Q. Okay. And I'm specifically looking at starting at line 5 you're discussing the Commission's order in the most recent Qwest competitive classification case for business services, correct?

A. Yes.

Q. Okay. And you say, further, the Commission recognized that:

With a skewed distribution of lines across customers, competitors could easily achieve an overall 40% market share of lines share in exchange even if it had few or no small customers.

Did you review the order in that case in preparing your testimony?

A. Yes, I did.

Q. Would you agree with me that the Commission in that case looked not only at market concentration figures, but also at an analysis of market structure?

A. Yes.

Q. Okay. And the Commission's concern as represented in this quote is that given the structural analysis, they were concerned that just a sheer line count might skewer the fact that small customers were not being served, right?

A. That's my understanding of the Commission's reasoning in its order.

Q. Okay. And wasn't that concern largely because of the structural, market structure analysis that found lingering problems with the methods that were available to CLECs at that time to reach customers served over individual lines?

MR. FFITCH: Your Honor, I'm going to --

A. Let me check the --

MR. FFITCH: Excuse me, I'm going to object at this time. Mr. Thompson is asking the witness to speculate about what the Commission's concern was reflected in the order, and his description of the concern is rather involved. I think it might be more helpful if he can point the witness to specific passages in a copy, or if he wants to ask about passages of the Commission order that convey the Commission's concern, that might be more helpful.

JUDGE MACE: I think, Mr. Thompson, that would be beneficial. Do you have a copy of that order by any chance?

MR. THOMPSON: Well, I do, but frankly I'm not --

JUDGE MACE: I was wondering if the witness would have a copy of that order.

THE WITNESS: No, I don't, Your Honor.

JUDGE MACE: Mr. ffitch, do you have a copy that you could provide the witness?

MR. FFITCH: Yes, Your Honor.

MR. THOMPSON: Mainly I'm going off of just the witness's quote from a portion of the order. I guess it might be helpful if --

JUDGE MACE: Well, it's true, but it might be helpful for her to have the order to review if she can get it.

MR. THOMPSON: Fair enough.

THE WITNESS: Excuse me, is there a question that I should be responding to? I have lost track here, I understand the general context.

JUDGE MACE: Why don't we wait, and Mr. Thompson can phrase a question.

MR. FFITCH: Perhaps I could just state that the record should reflect that I have just handed Ms. Baldwin a copy of the Seventh Supplemental Order in Docket Number UT-000883.

JUDGE MACE: Thank you.

BY MR. THOMPSON:

Q. Well, based on your own footnote in your testimony there, I gather that that quote is from Paragraph 68, which at least on my copy is page 20 of the order.

A. I'm on page 18, and I'm also at Paragraph 68.

Q. Oh, okay, we must have different pagination, but -- well, let me back up and repeat my question.

The Commission's concern with regard to the possibility that customers served over individual lines were not reflected in line totals had to do with a market structure analysis, did it not?

A. The point of my including this passage here in my testimony is to illustrate that a concern the Commission expressed before is extremely on point and valid here where one CLEC serving one large business in a small exchange can skew the results, and one could say, oh, my goodness, Qwest's market share has dropped way down. But if that's one large business and there's 30 small businesses left out in the cold, you will have a skewed result. And, in fact, most of the data we have been looking at is on a line basis. So my intent here was simply to identify a concern the Commission raised before that I hope they keep in mind in this proceeding. I think it's more important than ever.

Q. Wouldn't you agree that some of the market structural conditions have changed since the Commission entered its order in that case with regard -- and specifically with regard to a CLEC's ability to reach customers using UNE-P, for example?

A. That may be, but that's again taking my testimony out of context. The context of my testimony here is to urge caution when looking at data. And yes, of course things have evolved in the last couple of years, but this concern doesn't go away.

Q. Well, but the Commission's analysis was informed, was it not, by analysis of structural considerations such as ease of entry by CLECs, wasn't it?

A. My recollection of reading the order is that the Commission was informed by the many factors that are set forth in the statute. One of the ways that the statute suggests that the Commission consider whether a significant captive customer base remains is market power, market share. And, of course, throughout my testimony I continued to believe that that is the most reliable indicator of how much market power Qwest has. Again in this proceeding, all of the same criteria apply.

I believe one of the questions for the Commission will be to decide how much weight to give to these different indicators. I think that market share is not the only one, but I think it's a very valuable indicator. To the extent that one can define the market properly to the extent that one has access to the relevant data, that to me is an important indicator.

Q. Could I have you turn, please, to Paragraph 76 of the Commission's order in UT-000883.

A. I'm there.

Q. Do you see where it says:

We deny the petition with respect to the remaining five exchanges. Staff's review of the market structure with respect to the remaining five exchanges revealed that the mechanisms for competitors to obtain network access and for customers to switch to those competitors are not proven.

Would you agree with me that that's, well, that that indicates that the Commission was concerned not only with overall market concentration figures, but also with considerations of ease of entry?

A. Yes, you have not read the next two sentences, however, that stress the importance, well, they say consequently, but the Commission considers how many customers have actually switched to a competitive provider. That to me is extremely important. That evidence suggests and the sentence continues and it discusses market concentration again. Those are the elements of the order that I think are germane to this proceeding. And yes, to answer your question, the mechanisms are evolving, things have changed.

Q. Would you agree with me that one of the things that's changed is that Qwest has met the requirements to demonstrate that it provides nondiscriminatory access to network elements?

A. Qwest has met its 271 obligations, and therefore as viewed by this Commission and as viewed by the FCC has opened up its market to competition. That, however, does not mean that competition has arrived in every part of the state and for every customer.

Q. Okay, you provided an answer to a question that I didn't ask.

A. I apologize.

Q. And Qwest is under a performance assurance plan, is it not, to prevent backsliding as well?

A. Yes, it is.

Q. And isn't it true that nonrecurring charges for UNE-P have been substantially reduced in the interim?

A. I will accept that subject to check. I would add that it's my understanding that both recurring and nonrecurring loop costs are under active investigation by this Commission, so it's premature to discuss recurring and nonrecurring loop costs, I believe.

Q. Were you here when Mr. Reynolds was testifying on Tuesday?

A. Yes, I was.

Q. And did you hear him testify that UNE-P really took off as a CLEC market entry strategy in the early part of 2001?

A. I recall that exchange, yes.

Q. Do you agree with that statement?

A. I haven't recently looked at the data, but I will certainly accept that subject to check, that UNE-P has become an important mode of competition for CLECs, which is being threatened by court action in appeals.

Q. Let me have you take a look just on that same page in your testimony, 401T, page 9, at line 10, and the question is, did the Commission comment on the role of resale in the local market, again talking about that same order. And your answer is, yes, the Commission stated that resale does not constrain prices. My question is that when the Commission said resale doesn't constrain prices, that was in reference to pure resale as opposed to leasing of unbundled network elements, right?

A. My understanding is it was referring to total service resale and not to UNE-P. To the extent that UNE-P was not being actively used when the Commission rendered this decision, it presumably didn't have the opportunity to consider the effectiveness of UNE-P based competition on constraining Qwest's market power.

Q. Well, and the trouble with resale, total

service resale, as a price constraining means of competition is that when Qwest raises its retail rate, the wholesale rate rises in lock step with it, right?
A. That's correct.
Q. And that problem doesn't exist with UNE-P, right?
A. That's right, UNE-P has different issues.
Q. The UNE-P rate stays where it is regardless of what Qwest does with its retail prices?
A. That's correct, yes.
Q. And would you agree that the importance of resale as a market entry vehicle has declined since the availability of UNE-P?
A. Yes, I would. I would point out I don't -- looking at the two sources of data on resale in this docket, we have an approximate figure in the neighborhood of 7,000 to 8,000 loops being provided over resale according to Qwest's records, and Staff's report comes up with a number that's closer to, well, it may or may not be proprietary, but that is significantly more than that. And I -- the way that I have viewed the data, that Qwest presumably knows the lines that are being used for resale, and so that's the number that I have relied on.
Q. Okay. Could I have you please turn to page

13 of your testimony, same Exhibit, 401T, and the part I want to draw your attention to is at line 13 where it says, the presence of numerous competitors in Seattle is meaningless to a business consumer in Walla Walla. I think you said that in response to one of Mr. Sherr's questions earlier today, right?

A. Very possibly.

Q. Okay. Just to help me understand this, I want to kind of ask you a hypothetical question about -- to just kind of flesh out what you mean by this. For a carrier that has statewide authority, a CLEC that has statewide authority to offer local exchange service and that is using a unbundled network element platform strategy, are there barriers to serving customers in Walla Walla that are different from the barriers that exist for serving customers in Seattle?

A. Yes, economies of scale. The number of customers that one might be able to convince to shift from Qwest to a CLEC is substantially smaller than in Seattle. So where a business is recovering fixed costs over a pool of customers to enter a particular market, the carrier reasonably considers what the potential demand will be for the services that the competitor is seeking to market. So yes, I would say the entry barriers are different.

Q. What additional costs does that carrier have to incur to go in and obtain a customer in Walla Walla?

A. A marketing presence, human resources.

Q. The hiring of additional personnel, is that what you're suggesting?

A. Absolutely. Does somebody come and knock on the door if somebody in Walla Walla, is somebody seeking out the -- actively seeking customers in Walla Walla. I think if you look at the numbers that are in Mr. Teitzel's exhibit that show you how many competitors there are, how many competitors are buying UNE-P resale and UNE loop, if you look at his exhibits, you will see that indeed in Castlerock there may be, proprietary number, extremely low, versus in Seattle, proprietary number, extremely high. So I think that the evidence speaks for itself. What is actually happening, not what theoretically could happen.

Q. Do sales people -- well, isn't it possible that existing sales people that are, you know, recruiting new customers in Seattle could make calls to -- throughout the state to promote the CLEC's product?

A. I think you're asking me about my understanding of how CLECs go about marketing their activities, and I suspect there's a wide range of ways ranging from information, based on my own experience, what gets sent to me, which is actually very little I would point out, I realize I'm not in Washington, but I think that that's one mode. Another mode is telephone, another mode is door to door. And so you may want to ask that question to a CLEC in terms of how they go about attracting Walla Walla.

What I'm saying is look at the evidence, look at Mr. Teitzel's exhibit, and tell me how many CLECs are buying UNE-P in Castlerock and how many customers are buying UNE-P based services. That's your most reliable indicator of whether there's competition. You're asking about ease of entry. We can all -- we can talk all day about what the different costs might be, but at the end of the day, the best evidence of whether it's easy to enter, and ease has also got to do with financial attractiveness, is whether somebody has entered and whether carriers have signed on.

Q. Would you agree with me that the unbundled network element loop rate or just the UNE prices in general may be a significant difference between the serving the Seattle market with UNE-P versus the Walla Walla market?

A. Let me make sure I understood you correctly. Are you saying UNE loop or UNE-P, that the UNE-P, that the rate --

Q. Well, the unbundled network element --
A. The element -- excuse me.
Q. -- prices.
A. Absolutely, and I think this is very much a concern I have in this proceeding and one of the reasons this petition is premature. Those UNE costs, those rates, are under investigation right now, and how can one compare and evaluate a price squeeze and this very question that Staff -- that you're posing to me without knowing what those rates will be.
Q. There's presently evidence of competitors serving in even the highest cost zone, wouldn't you agree?
A. Yes, and I come back to the skewed concerns, that one big business that justified that entry or was it a lot of small businesses, and I would speculate that it's the former.
Q. Well, isn't it apparent from the data compiled by Staff that there really is no geographic area, with the possible exception of Elk, that CLECs are not contesting?
MR. FFITCH: Is Staff counsel referring to a particular exhibit or exhibits?
Q. I think there's been a good deal of discussion about this already and that --

A. You may be referring to Mr. Wilson's Exhibits 4 and 5.

Q. Precisely.

A. In 4 where he -- actually, if you think about 4 --

JUDGE MACE: I think those are actually marked 204 and 205.

THE WITNESS: I apologize, I'm sorry, I should know those, 204 and 205.

JUDGE MACE: Go ahead.

A. Yes, thinking about the Staff aggregated data, for example, for the PBX market, you may recall that Staff provided data on a very aggregated basis for five areas in the state, not on an exchange specific basis. So interestingly for the PBX market, to protect proprietary information, Staff could not provide the data at an exchange level. Staff bumped it up a huge level up to five areas, so I really can't tell you about PBX trunks in Walla Walla versus Seattle.

Staff does provide data on an exchange specific basis for most of the exchanges for business lines, there's eight groupings where there's very small wire centers. And again, I would look at the data and say that the level of entry, the level of competition varies among the exchanges.

BY MR. THOMPSON:

Q. You also have, of course, the Qwest wholesale data, which is broken down on an exchange level, right?

A. Yes, and we looked at some of my exhibits earlier, and you will notice that in the vast majority of Qwest exchanges, no competitor is using UNE loop. To me that's indicative of where we are in our evolution towards a competitive market.

Q. Could I have you turn, please, to page 35 of your testimony, and in particular at lines 17 and 18 it says, for example, the composition of local markets with exchanges with fewer than 1,000 lines merits particular scrutiny. My question is just what evidence do you rely on to conclude that that's the case?

A. Okay, let's -- let me define by that that's the case. Oh, that they merit particular scrutiny?

Q. That they merit particular scrutiny.

A. Okay, let's look at Exhibit 411C. What I have been trying to do throughout my testimony and exhibits is something that I believe neither Qwest nor Staff did. Staff and Qwest provided data, but they didn't take a step back and look at it and see how different segments of the market are affected differently by this petition.

My concern is that customers in rural areas, customers in small exchanges, customers that may need one line, two lines, or three lines, that they're the most vulnerable. If this petition were approved, Qwest could come in and say, hm, I think we'll deaverage retail rates. They seem the most vulnerable to what could potentially be a dramatic change in policy and rate structure. If this petition were approved, my understanding is that Qwest would have the authority unilaterally with minimal notice to dramatically change rates, to raise rates for some and lower rates for others. Qwest has the opportunity to lower rates now, ten days notice, it hasn't done so. So presumably it wants to raise rates. That's my concern. That's the context.

Now the evidence here is I'm simply saying what information do we have about what the FCC calls the mass market. The FCC defines the mass market as residential consumers and businesses with fewer than -- three or fewer lines per location. Based on that definition, Public Counsel asked Qwest for data to try to get a better handle on where these customers are and how many there are. And they -- in fact, small businesses are the vast majority of business line customers are -- the vast majority of billing telephone numbers for business line service are associated with locations with three or fewer customers, so they're an important part of this petition.

Q. Ms. Baldwin.

A. Yes.

Q. I can't recall what my question was, but I really wasn't looking for you to give your entire theory of the small business market in response to this question. Really I think what you're saying is you see a posity of evidence for this market that you have defined, which is three or fewer lines, or which you borrow from the FCC I gather.

A. My posity of evidence?

Q. That there is specifically competition for that market as you define it.

A. I don't believe that either Qwest or Staff has demonstrated that there's robust competition for that market, that's correct.

Q. Okay, but what I'm asking you is you make an affirmative statement that says, the composition of local markets with exchanges with fewer than 1,000 lines merits particular scrutiny, and that seems to me --

A. That is correct that --

Q. -- that there's a difference between just saying there's no evidence of it and then your saying that there's a reason to conclude that --

A. I understand your question, let me try again. This page does need to be viewed in conjunction with other exhibits. Exhibit 411C, if you go there and you look on the far right side, you're going to see where there's a preponderance of what I'm defining here as small business customers. Particularly if you look at exchanges with 1,000 or fewer lines, you see a very high preponderance, not in all cases, but many.

That in and of itself, does that show you anything? No, of course not. Then you need to go to the other exhibits here and find out, and I think in many instances you will, that there is minimal erosion of Qwest's market share, and so this --

Q. Well, let's do that.

A. Okay.

Q. I think, well, I think I can probably refer to the name of the wire center and then just not say the number.

JUDGE MACE: You're in 411C?

MR. SHERR: I'm in 411, looking at Exhibit 411.

BY MR. THOMPSON:

Q. Do you see Newman Lake?

A. Yes, I do.

Q. Okay. And would you agree with me that that has a particularly high -- would that be an example of what you're talking about, a wire center that has a particularly high percentage of customers with three or fewer lines?

A. Yes.

Q. Where might I go to look at what the --

A. Let's look at --

Q. -- market total is?

A. Excuse me for interrupting.

JUDGE MACE: It's helpful if you let counsel finish --

THE WITNESS: I apologize.

JUDGE MACE: -- his question.

BY MR. THOMPSON:

Q. My question is where might we go to determine what the level of competition is there?

A. We could go to Exhibits 414C and 415C. We were looking at these earlier today. It's the same information. 414C ranks the exchanges by the number of access lines.

Q. And just for clarification, does this include -- this is based on Qwest's wholesale data?

A. Yes.

Q. Okay.

A. And 415C, to continue, the same information ranked by the percent served by Qwest retail. Neither is alphabetical, so I need to find Newman Lake. On the 415C, I find it in the left column, the fourth from the bottom. And then if I go under the column entitled Qwest market share, I believe that validates the point that I am making.

Q. Okay. So in other words, that there is, you would agree, not an insignificant CLEC market share there?

A. Well, do the math on the total lines and the defined market, and then think about what that is, and maybe that's one business, or no, probably not one, but it's not many.

Q. But you're speculating, aren't you? I mean that could be a number of small businesses?

A. Yes.

MR. THOMPSON: It's about noon, and this is a good place for me to break.

JUDGE MACE: How much more cross do you think you have of this witness?

MR. THOMPSON: I would say another 45 minutes.

JUDGE MACE: Just bearing in mind that Staff indicated they had 60 minutes of cross for the witness initially.

MR. THOMPSON: Actually, I think that was an error. I think we had indicated 90 minutes or 2 hours rather, excuse me.

JUDGE MACE: Okay.

And do Mr. Melnikoff and Mr. Butler have cross of the witness as well, the same amount that you indicated in your --

MR. MELNIKOFF: Your Honor, I no longer have cross-examination of this witness.

JUDGE MACE: Thank you, that's helpful.

All right, 1:30.

CHAIRWOMAN SHOWALTER: Do you want to try for a little earlier, see if can start earlier.

JUDGE MACE: Fine with me if the commissioners are able --

CHAIRWOMAN SHOWALTER: Aim for 1:00, I just can't promise, but.

JUDGE MACE: We resume at 1:00, is that --

CHAIRWOMAN SHOWALTER: And people, I know that it's hard to get out and back in one hour for lunch, so let's just get there as close as we can. When we're all here, we'll start.

(Luncheon recess taken at 12:00 p.m.)

A F T E R N O O N   S E S S I O N

(1:15 p.m.)

JUDGE MACE: Mr. Thompson, why don't you go ahead.

C R O S S - E X A M I N A T I O N

BY MR. THOMPSON:

Q. Good afternoon, Ms. Baldwin.

A. Good afternoon.

Q. Could you please go to page 59 of your direct testimony, actually 58 at the bottom, it's line 19. And you state there:

If local competition were as vigorous as Qwest apparently would like the Commission to believe, the market would not sustain a "significant margin" between the wholesale costs and the retail revenues. Of course, at the other extreme, a price squeeze would be anticompetitive, but Qwest by its own admission apparently prices at the supracompetitive end of the pricing Spectrum.

This statement is with regard or is referring

to Qwest's testimony regarding its break-even analysis; is that right?
A. Yes, it is.
Q. Which is now set out in Mr. Reynolds' Exhibit 6?
A. Yes.
Q. Is that right?
A. Yes.
Q. Okay. Did you hear Mr. Reynolds' assertion in his testimony that what Qwest wants is the ability to be freed from statewide average rates?
A. That's my understanding of his testimony, yes.
Q. And if Qwest were granted competitive classification and it came forward with a proposal to lower its rates in the lower cost zones, wouldn't that be a positive development from a consumer standpoint?
A. For those consumers, absolutely. My concern would be any other consumers who might get pulled into the pricing changes.
Q. Would those consumers -- you mean the consumers who -- well, explain what you mean by that, please.
A. My understanding of your question, if Qwest by virtue of having been granted the petition came --

decided to lower some rates, which they can do now, but if they did it after the petition, that's a good thing for the consumers who are benefiting from the -- who see those lower rates. The concern that I raise is what if Qwest raises rates for some other consumers.

Q. Well, let me ask you this. Is it your position, you had an exchange with Mr. Sherr I think in regard to this issue, and I just want to get a clarification of that. Is if your position that if it is indeed true that Qwest's prices are at the supracompetitive end of the spectrum that the Commission should require Qwest to continue charging at that end of the spectrum because it's good for competition?

A. No, that is not my testimony.

Q. Please turn to page 61 in your testimony, direct testimony. At line 3, you are discussing the ongoing costing proceeding, correct? And you say:

The outcome of the pending investigation of local loop costs directly affects the relationship between wholesale and retail rates and thus directly affects the prospects for local competition.

Assuming the Commission were to authorize an increase in loop rates in some or all zones, wouldn't it be possible for these new rates to serve as the basis for setting the cost floor that's referred to in the competitive classification statute?

A. Yes.

Q. I want to go back to page 27 in your testimony. At lines 9 and 10 there you indicate that Qwest likely dominates close to 100% of small business customers, and I want to explore this assertion with you a little bit. You define small business customers as those that buy fewer than four lines, right?

A. Yes, I do.

Q. Okay. And you had this discussion with Mr. Sherr, but isn't it true that of the services covered by this petition, the service that small businesses by that definition purchase is basic business service as opposed to PBX or Centrex?

A. Yes, and the related vertical features as well, which are presently subject to traditional regulation.

Q. Okay. Then isn't -- why isn't -- isn't the evidence of CLEC market share for basic business service then evidence of competition for small business customers?

A. I'm not aware of either Qwest or Staff segmenting the business line market separately for those customers that order three or fewer lines from those with four or more if we're using the three, four line as the distinction.

Q. So was your answer -- well, my question was, isn't the evidence of competition in that basic business market evidence of competition for small business customers?

A. Not necessarily, precisely because we haven't seen a breakout other than the breakouts that I have done based on data that Qwest provided to Public Counsel where I could look at the composition of the Qwest retail market. I can break it out and have and show that the vast -- that there is a high majority of customers, of customers and lines that order three or fewer, but I don't believe either Qwest or Staff have looked at the CLEC erosion separately by small and large.

Q. Okay. Do you have before you a copy of the DOJ FTC guidelines that's been marked for identification I guess as Exhibit 224.

A. I don't believe I have Exhibit 224 here. I have my cross exhibits. That number sounds lower.

MR. THOMPSON: My I approach the witness, Your Honor?

JUDGE MACE: Yes, you may.

BY MR. THOMPSON:

Q. Could I have you turn to page 4 of that document.

A. I'm there.

Q. Okay. And this is under the section market definition, measurement and concentration. You actually quote from this portion of this document, don't you, in your testimony?

A. Yes, I do.

Q. Okay. And that's a section I believe from the third paragraph there where it talks about defining the relevant market.

A. Yes.

Q. Okay. Just the fourth paragraph down, the first sentence is:

> Absent price discrimination, a relevant market is described by a product or group of products in a geographic area.

Do you see that?

A. Yes, I do.

Q. In other words, in the ordinary case, a market is going to be defined by a product and by a geographic area unless -- how would one find discrimination, what does that mean?

A. Price discrimination typically means charging different rates for different customers. Airlines certainly do price discrimination.

Q. Okay. What might you look for in this particular market that's the subject of this petition?

A. The particular geographic and product market.

Q. And let's think about, is it really possible to think about the product of basic business service?

A. I believe you're asking me whether one can reasonably look at the business line product, and I would say that's absolutely an improvement over the way the product market has been represented in the petition, which is lumping together business line, PBX, and Centrex, so that's a step in the right direction. Are you then picking up on the small business issue and saying how would I distinguish within --

Q. Precisely.

JUDGE MACE: Please make sure that you don't talk over each other so that the reporter can record what you're saying.

Q. Am I right that there's a presumption here that a product, a single product, represents a single market in a particular geography unless you find there's a reason to break it down further by a type of customer?

A. Yes, and certainly the FCC has found it appropriate in several of its decisions to distinguish between the very small business which the, for economic reasons, the FCC has found to be more akin to the residential customer. And that's why mass market customers and mass market lines as reported by Qwest to the FCC, and other ILECs, corresponds to the three or fewer. So clearly the FCC has -- considers the economics and has said as much of serving this market different from serving larger markets. As I sit here today, can I tell you three is the right number? As I indicated earlier, maybe it should be four, maybe it should be five. You're asking -- I believe this is what you're getting at, how do you decide where to draw that line.

Q. Well, how about let me ask the follow up questions and then -- could I have you -- well, let me just ask you the general question.

Are you aware of any discrimination presently as against or can you offer any evidence of present discrimination against the small business market as you define it by CLECs or by Qwest?

A. If by discrimination you mean passing over, this is again my reading of FCC orders and my understanding of how competitors decide to expend their limited financial resources. If you can go after a customer with 30 lines, it's more likely to generate a higher revenue stream than a customer with 3 lines, so it's common sense and economics and business case thinking that makes me believe that it's highly likely that CLECs in that sense pass over or discriminate, don't serve small businesses.

And the second, I would point you to an exhibit, a public exhibit, which is further evidence that CLECs pass over, disproportionally serve larger businesses. I can point to two pieces of evidence, two exhibits. One, the public one, has been marked as Exhibit 410, and this is based on public FCC data. And what it demonstrates is that by a substantial amount, the percentage of lines that ILECs serve is made up of mass market, and a far smaller percentage of lines that CLECs serve are mass market. That's -- and again, remember mass market includes businesses with three or fewer. The second piece of evidence --

Q. Wait a minute.
A. Okay.
Q. Just if I can interrupt you.
A. Okay.
Q. Is this just a graphic representation of the information that's in the FCC survey?
A. Absolutely.
Q. Okay, go ahead.
A. And then the second would be turning to one

of the exhibits in my rebuttal testimony. This is Exhibit 426C, the title is not proprietary, there are minimal readily available alternatives for small businesses. Here using the data in another one of my exhibits and data provided by Staff, I computed the average number of lines per customer, or per location is how the Staff aggregated report provides the data. If you look at those two numbers and compare CLEC and Qwest, you will see that the average size of the location served by the CLEC is almost four times or is more than four times as high as the number of lines served by Qwest. This is not surprising. Again it comes back to the financial viability and the financial attractiveness. Where do CLECs go first? To the higher revenue streams.

Q. Let me ask you a question about the first, about 410. And rather than looking at your exhibit, I want to go to I guess the source document for that, which has been marked for identification as Exhibit 429.

A. Okay, I'm there.

Q. Now maybe you should just explain for us since this is a document you cited in your testimony what this document is.

A. Every half year the FCC collects data from incumbent local exchange carriers and from those new entrants who serve more than 10,000 lines. The report takes the data, aggregates it, and presents it in different tables that provide information about such things as CLECs' modes of entry, trends over time, state specific numbers.

Q. Would you agree with me that the data has certain limitations because of, well, for example, the fact that CLECs that have fewer than 10,000 lines in a state are not required to report?

A. Yes, and those are likely to be the fringe competitors. In one of my early exhibits in my direct testimony, I show that spread among the market share, and there's a lot of competitors with very, very minuscule market share, and those would not be included in this exhibit, in this FCC document.

Q. And can I also have you turn to page 17 in this document. This indicates, this table indicates the number of carriers that actually reported data for this survey, correct?

A. That's correct.

Q. And going down to Washington, the number of CLECs that reported was 11, right?

A. Yes, and I think it's helpful to look at Exhibit 402C in conjunction with that, and that explains the 11. Because to have the context in terms of discussing the limitations of the data, which I believe is the question you have posed to me, how limited is it, of course state specific is better. But if you look at 402C, which takes an urban area in Washington state, and I have a --

Q. I'm sorry, I'm going to have to -- I'm not sure that this is really responsive to my question.

A. Okay, I apologize, it was the carriers with fewer than 10,000, I thought we were talking about those. But to answer your question, 7 is fewer than the number of CLECs that we know are operating in the state of Washington.

CHAIRWOMAN SHOWALTER: Ms. Baldwin, I will say your answers in my view are going well beyond answering the question asked. We do allow leeway, but to point out, you know, additional subjects that might bear on the answer is a little bit different than just giving an answer.

THE WITNESS: I apologize, Madam Chairwoman, I will try to stay more focused.

BY MR. THOMPSON:

Q. Ms. Baldwin, could you please take a look at page 16 of this document.

A. Yes, I'm there.

Q. This is the source, is it not, of the

information that went into your Exhibit 410?
A. Yes, it is.
Q. Okay. And so going down to Washington, the point here I guess is that of all lines served by reporting CLECs in Washington, 46% of those lines serve the mass market, right?
A. That's correct.
Q. How do you square that with your assertion that Qwest likely dominates close to 100% of small business customers? Doesn't the mass market include residential and small business in this report?
A. It does include residential and small business. I don't understand the contradiction you're asking me to address.
Q. Well, isn't the evidence here that at least of the reporting CLECs, almost half of their lines in service in the state of Washington are serving mass market customers?
A. That's correct.
Q. Okay. I guess your point is that a larger proportion, 80% of Qwest's lines, serve the mass market, but that certainly doesn't strike me -- I mean why should I take that as evidence that CLECs ignore completely the small business market, which appears to be your contention?

A. I'm not saying they ignore it completely, but I'm saying that they are the more vulnerable and are likely being pursued less aggressively by CLECs.

Q. And that's based on not specific evidence, but a general notion of how the market works, I guess?

A. I did refer you to 426C, which I believe is responsive to this question, which is specific evidence.

Q. Okay, well, let's take a look at that. Oh, I'm sorry, I guess I have it in front of me. In other words, the fact that the average number of lines demanded by a CLEC customer I guess is a higher figure than the Qwest average?

A. That's correct.

Q. That's a pretty gross measure, isn't it? I mean it certainly -- there's no indication of, for example -- well, I will just leave it at that.

Could you please take a look at -- do you have Mr. Reynolds' testimony and exhibits before you by chance?

A. Yes, I do.

Q. Okay. Could I have you please look at his what I believe is in the record as Exhibit 4. It's the table that shows the summary of the price offerings for the various services by CLEC and Qwest.

A. In the upper right-hand corner of Exhibit

MSR-4?

Q. Yes.

A. Comparison?

Q. Comparison of Qwest basic business exchange services to CLEC business exchange services.

A. Yes, I'm there.

Q. Did you have an opportunity to review the price lists of the CLECs listed here?

A. When I originally looked at Qwest's petition, yes.

Q. Okay. And this is really -- I'm really going back to the question of discrimination that we discussed earlier. Do you find evidence in the prices charged by CLECs for basic business service, which I guess would be that top row, of discrimination against the small business market as you define it?

MR. FFITCH: Your Honor, I'm going to ask for a clarification as we get back to this question of price discrimination. There's no testimony in this case from any witness about price discrimination. My understanding is that price discrimination is actually a term of art, although I'm not an economist, a term of art in economics and in antitrust law, and I'm not sure of the sense in which Mr. Thompson is using the term here. I think it might be helpful in focusing the question.

CHAIRWOMAN SHOWALTER: I was just going to add in, I was listening carefully when Ms. Baldwin was asked what her definition of price discrimination is, and I believe you said charging different prices to different customers. I was going to jump in there but I didn't get a chance to say, do you mean for the same service. So I'm not sure that we have a common understanding right now as to what this term means, and as long as we all know I guess what the questioner means by the term and that's the same understanding that the witness has, I think we can --

MR. THOMPSON: Let me back up a little bit.

CHAIRWOMAN SHOWALTER: -- proceed, but I'm not sure we do.

MR. THOMPSON: Let me back up a little bit.

BY MR. THOMPSON:

Q. Ms. Baldwin, in your testimony, you did refer to the DOJ merger guideline definition or discussion of how to define a market, correct?

A. Yes, I did.

Q. And I was following up on the notion that, which I think I had your agreement to, that ordinarily you would define a market by a product in a geographic area, right?

A. That's correct.

Q. But that in some cases you might focus in more narrowly even on a particular group of customers. But in order to do so, you would need to have evidence of discrimination; is that fair?

MR. FFITCH: I'm going to object and ask the counsel to direct Ms. Baldwin to the place in her testimony where she testifies about price discrimination.

JUDGE MACE: Mr. Thompson.

MR. THOMPSON: Well, she does not refer to price discrimination. However, she does refer to the DOJ merger guidelines definition of a market, and the definition of a market includes a discussion of price discrimination, of discrimination, pardon me.

JUDGE MACE: I will let the witness answer if she can.

A. It may be helpful to turn back to where this conversation started, Exhibit 229. And on the top of page 5, this helps with the definition of discrimination in the exchange that we're having.

In contrast, where a hypothetical monopolist likely would discriminate in prices charged to different groups of buyers, distinguished for example by

their uses or locations, the agency may
delineate different relevant markets
corresponding --

JUDGE MACE: I'm sorry, was your reference? I thought you said 229 and I'm not finding a 229 in the record.

THE WITNESS: Oh, maybe it's 224.

MR. THOMPSON: It is 224.

THE WITNESS: I'm sorry.

JUDGE MACE: You're referring to the merger guidelines?

THE WITNESS: Yes, I am.

JUDGE MACE: And what page are you on?

THE WITNESS: Let me start again, page 5.

JUDGE MACE: Okay, and where on page 5?

THE WITNESS: The first full paragraph.

JUDGE MACE: Go ahead.

A. States:

In contrast, where a hypothetical
monopolist likely would discriminate in
prices charged to different groups of
buyers distinguished for example by
their uses or locations, the agency may
delineate different relevant markets
corresponding to each such buyer group.

Competition for sales to each such group may be affected differently by a particular merger, and markets are delineated by evaluating the demand response of each such buyer group. A relevant market of this kind is described by a collection of products for sale to a given group of buyers.

I believe you may have been asking me with reference to this comparison of Qwest's basic business exchange services whether I see any evidence of price discrimination based on the size of the customer; is that correct?

BY MR. THOMPSON:

Q. That's correct.

A. No, I don't. I would be concerned about price discrimination after the petition were approved to the extent that Qwest would be allowed to do ICB based pricing and charge different rates for larger business line customers than smaller ones. And since Qwest is the market leader as it were and sets the umbrella price, this row of service offerings by competitors could change accordingly.

CHAIRWOMAN SHOWALTER: This row meaning?

THE WITNESS: I apologize. This row, we were looking at Mr. Reynolds' Exhibit MS-4, service offering a particular product, flat, measured rate, basic, and stand by business line service, Centrex lines, and foreign exchange, the business line product, and the exhibit includes the prices of services offered in competition with Qwest.

CHAIRWOMAN SHOWALTER: That's Exhibit 4.

BY MR. THOMPSON:

Q. So I gather your hypothesis is that if Qwest were to raise its prices for the market segment that you put out, that you suggest, that CLECs would see that price increase and raise their prices as well?

A. There certainly is a, on the carriers' side, there's a one -- where there's not active competition, prices tend to go to a customers's willingness to pay, which is why vertical services are priced so high. There's not competition there for them, so they're priced way above cost. In this case, if there's a market -- if there's customers that are not being actively sought and customers don't have a lot of choice, it's conceivable. I honestly don't know what they would do.

Q. Okay. But isn't -- wouldn't Qwest in deciding whether to discriminate against the small business segment post competitive classification, wouldn't it have to consider the fact that there are CLECs that at least based on their price lists purport to offer basic business line service at essentially the same rate for whether you buy one line or ten lines, wouldn't they have to take that into account in their pricing?

A. Yes, and I would also take a step back and just say, the individual line product market also as a whole, even if Qwest didn't decide to segment between small and large individual line businesses, the entire business line product is vulnerable to rate increases. And there I think the geographic deaveraging is of more concern to me than the size of the customer. That is, given permission to price as it chooses for the entire business line, whether it's small or large, Qwest could raise rates in some parts of the state and lower them in others. And do I think, to stay focused on your question, that CLECs would follow that, very possibly.

Q. In other words, that they wouldn't cheat, so to speak, that they wouldn't try to undercut Qwest substantially and grab a greater market share?

A. Well, a lot will depend presumably on the outcome of the UNE loop proceeding, and since that's a critical cost component, particularly of CLECs that are serving small customers that depend on UNE-P, what they will do is hard to predict at this point.

Q. But as we discussed earlier, whatever rates come out of that proceeding would serve as a -- could serve as a cost floor in determining what Qwest's retail prices ought to be, right?

A. Yes.

Q. I want to just shift gears slightly and ask you to please take a look at what's been marked for identification as Exhibit 431.

A. I'm there.

Q. And as you can see, this is a news story off of an Internet site describing, I will just read a couple portions of it, dated September 8th, 2003. The headline is AT&T touts local success.

AT&T says it now serves one million small business local phone lines with it's all in one rate plan. The carrier attributes its success to the FCC's continued support of its unbundled network element platform, UNE-P, rule.

And then a bit further down it says:

AT&T's all in one service allows small businesses to bundle their local and long distance voice service for a flat rate on one bill. Again the carrier says that the service is primarily supported using UNE-P.

Are you familiar with this particular offering by AT&T?

A. Generally, yes.

Q. Do you know, by the way, approximately what AT&T's, oh, piece of the CLEC market share is nationally?

A. No, I don't.

Q. Okay. And wouldn't you agree with me though that this offering that's described in this article is one that is apparently aimed at some definition of small business?

A. It does refer to small business, yes.

Q. Do you happen to know what definition AT&T may be using in this case?

A. In a subsequent exhibit, Number 432, the closest we get to a definition is small and medium business, and the definition they provide is between 1 and 15 voice lines.

Q. Right, without distinction, between say one to three and above?

A. That's right.

Q. Okay. By the way, does this offering, this AT&T offering, this bundled offering, it appears pretty similar to the Qwest offering that was discussed yesterday with Mr. Teitzel I think it was. Would you agree?

A. Generally speaking in terms of marketing to customers the benefits of one stop shopping of a packaged telecommunications service, in that sense, yes.

Q. Does AT&T attempt to tie up customers with term contracts as I think what somebody characterized what Qwest does?

A. Are you referring to a specific paragraph --

Q. No.

A. -- you would like to point me to?

Q. No, I'm just asking if you know the answer to that.

A. No, I don't know whether they offer term discounts with penalties for terminating the contract early.

Q. Okay. Could you please look at Exhibit 433 now, what's been marked as 433. Are you there?

A. I'm there, yes.

Q. Okay. And this is from the MCI Web site, again making reference to small and medium business, and just below the heading there, it says, MCI business complete, unlimited calls, one price, there's a paragraph there that says:

Get unlimited local and long distance
calling and popular calling features
plus unlimited high speed Internet for
one price from one company.

Are you familiar with MCI's offerings that are described here?

A. Generally speaking, yes.

Q. Does MCI price discriminate against the, in this offering, against business customers, small business customers as you define them?

A. No, it appears they do not.

Q. Could I have you please go to page 24 of your testimony.

CHAIRWOMAN SHOWALTER: Which?

Q. Sorry, direct testimony, 401T, and there at line 7 it says, you say:

As I explain in my exhibit, because the
data that Staff reports for CLEC owned
lines likely include digital lines, I
applied an adjustment factor to the
numbers that Staff reported to
approximate the number of CLEC owned
lines excluding digital lines.

I think you discussed this also with Mr. Sherr with regard to the particular exhibits, right?

A. Yes, that's correct.
Q. And this is something, I believe you have made this assumption throughout, that Staff's data includes some undetermined amount of digital lines, right?
A. Throughout, it's actually limited to one of the HHI analyses in my rebuttal testimony and to one of my HHI analyses in my direct testimony, but all of the other exhibits where I include CLEC owned lines I do not make this adjustment factor.
Q. You don't make the adjustment factor, but I believe you make a comparison that includes Qwest's digital line share as well?
A. You may be referring to Exhibit 424C.
Q. Yes, I believe that's the case. Have I characterized that accurately?
A. Not precisely.
Q. Okay.
A. The first two tables bound the problem, as it were, given the ambiguity over the classification of lines as competing with Qwest's digital services or analog services, the uncertainty about whether special access owned lines and CLEC owned lines and unloaded loops are being used for analog or digital purposes. In my mind, the rational thing to do is to bound the

problem, so the first table uses for Qwest retail a number that Mr. Teitzel provided of 615,000. Those aren't the lines at stake in this petition, it's higher.

JUDGE MACE: I just want to caution you this is a confidential exhibit.

THE WITNESS: The 615 is not confidential. I appreciate the reminder, that's a good point. I'm looking at yellow paper.

A. The 615,000 is in Mr. Teitzel's direct public testimony. And another number I'm about to mention similarly is in Qwest's direct testimony, and that's 520,635, that is Qwest's retail lines, and as Qwest represents them they are all analog. So by computing market shares using these two different numbers, I tried to get my arms around this problem.

As I have sat here over the last few days, I think it's a little bit murkier than this would suggest given the uncertainty about special access lines and how they're configured. I do not, however, apply any 50% adjustment factor.

You will see the CLEC owned loops, yesterday Mr. Wilson on an unsealed record referred to 66,000, he made a slight adjustment, so I will feel free to refer to that as well. So there's between 65,000 and 66,000 CLEC owned loops here that I do not adjust anywhere on this page. The special access loops, which is confidential, that may be significantly too high if carriers are using those for digital purposes.

So I think I've actually been too cautious at this point now given the uncertainty about whether it's actually even possible to tell whether CLECs use special access lines to compete with Qwest digital products or their analog products.

Q. Well, did you hear Mr. Wilson's testimony last night that he was in contact with the CLECs and made efforts to make sure that there was no digital, there were no digital lines included in that, in his line count data?

A. Yes, I was, and I believe that he did make a good faith effort to do that. Is it possible --

Q. Well, let me just ask you this.

A. Okay.

Q. If the Commission has concluded that that is correct and that those all represent analog lines, do you supply here a basis for them to -- for the Commission to get a count based on that presumption?

A. Absolutely, it's right here as clear as can be.

Q. Okay. Well, I'm trying to stick to my one hour estimate. I'm just going to ask you about one matter in your rebuttal testimony, if you could go to that document, please, and it is Exhibit 422. If you could please go to page 21, and you're discussing around line 5 on that page, you're asserting that the cellular network had trouble handling traffic volumes as a result of the power outage on the East Coast.

A. Yes.

Q. Would you agree with me that a PBX and key systems --

JUDGE MACE: I'm sorry, which systems?

Q. -- key systems require an independent power source in order to work?

A. Yes, I would.

Q. Okay. So it's possible that a business that relied on one of those pieces of technology and didn't have a backup generator, for example, could be without phone service in the event of a power outage?

A. That seems possible.

Q. Okay. Oh, just one last matter actually, on the exhibit we were just -- of yours that we were just discussing a moment ago, which is 424.

A. Yes.

Q. You provided both August 10 and August 6 Staff data in different columns here.

A. Yes, I have.

Q. Right, but you understand that Staff has disavowed the accuracy of the August 6th data and tried to clean up errors that were in that and that the August 10th data represents Staff's most accurate information, right?

A. And understanding that, I would recommend that the Commission rely on the data that corresponds with the August 10th data.

MR. THOMPSON: Okay, thank you, I have no further questions. Thank you, Ms. Baldwin.

JUDGE MACE: And do you offer the Staff cross exhibits?

MR. THOMPSON: Yeah, I do want to move the admission of --

JUDGE MACE: I show them as 429 through 433.

MR. THOMPSON: That is correct. I didn't use 430, but with Public Counsel's permission, I would like to offer that one as well.

JUDGE MACE: Is there any objection to the admission of those proposed exhibits?

MR. FFITCH: No objection.

JUDGE MACE: I will admit them.

Then I understand --

MR. BUTLER: What were the exhibits.

MR. THOMPSON: They were 429 through --

JUDGE MACE: 433.

MR. THOMPSON: -- 433.

Oh, and I apologize, actually I should also offer the merger guidelines which were 224, which had not been previously --

JUDGE MACE: Any objection to the admission of that exhibit?

MR. FFITCH: No objection.

JUDGE MACE: No objection, I will admit that exhibit.

I understood from our prior discussions that Mr. Melnikoff had no cross-examination for this witness, so I will turn now to Mr. Butler.

C R O S S - E X A M I N A T I O N

BY MR. BUTLER:

Q. First, Ms. Baldwin, you were asked a couple questions about the Commission's prior competitive classification docket, UT-000883. Do you understand that the relevant market defined by the Commission as being appropriate in that case included the provision of both analog and digital services provided over DS1 or higher capacity loops and certain exchanges?

A. Yes, and my understanding is in part based on the hearings of the last few days where I believe Qwest witnesses made that clear.

Q. Now you in your analysis of market share and calculations of HHI indexes by exchange have not included digital services; is that correct?

A. Largely correct. The exhibit we were just referring to by using as a representation of Qwest retail lines 615,000, which is a public number, rather than approximately 520,000, I tried to include at least some of the digital lines that Qwest might now be providing, but I don't believe it's by any means all of them.

Q. Have you done an analysis on a product by product basis of what digital services or substitutes for the products covered by the Qwest petition?

A. No, I have not done that.

Q. Let me direct your attention to Exhibit 224, the horizontal merger guidelines, specifically to page 4. I think this was discussed in your testimony, Exhibit 401 at pages 10 through 11. Do you see on the third paragraph the sentence that reads:

> A market is defined as a product or group of products and a geographic area in which it is produced or sold such that a hypothetical profit maximizing firm not subject to price regulation

that was the only present and future producer or seller of those products in that area likely would impose at least a small but significant and non-transitory increase in price, assuming the terms and sale of all other product are held constant. A relevant market is a group of products in a geographic area that is no bigger than necessary to satisfy this test.

A. I see that.

Q. Do you understand that that would require an examination on a product by product specific basis of the substitutes that a customer would turn to in the event of a small but non transitory increase in price?

A. Yes, I do.

Q. To your knowledge, have you or any other witnesses in this case conducted such a product by product analysis in the definition of a market?

MR. SHERR: Your Honor, I'm going to object to these questions. I don't believe this is cross-examination. This seems an awful lot like redirect. I haven't heard Mr. Butler explore any areas of Ms. Baldwin's testimony that are adverse to his client's interest.

JUDGE MACE: Mr. Butler.

MR. BUTLER: Ms. Baldwin is representing small -- testimony on behalf of small business customers. My clients are large enterprise customers. She has not addressed her testimony to their interests. She has taken positions both in the analysis that she has presented and in the argument with which we disagree. I think I am entitled on cross-examination to explore what she has done and what she hasn't done that address the interests of my clients.

CHAIRWOMAN SHOWALTER: But what part of her testimony is adverse to your interest or are you contesting or challenging?

MR. BUTLER: I am challenging the market share analyses that she has presented, the HHI analyses that she has presented, the definition of the market that she has used in presenting those analyses.

MR. SHERR: May I respond?

JUDGE MACE: Yes, go ahead.

MR. SHERR: But I am presuming that what Mr. Butler objects to is that the HHI analysis isn't -- doesn't result in a number that's high enough and that the market share for Qwest may not be high enough. Those are, you know, he may disagree with her methodology, and he had an opportunity to provide a witness, but that's still supportive of the outcome he's seeking in this case. So if he's trying to elicit information to improve his clients' opportunity to win this case and further support his position, then I think it's inappropriate, it's friendly cross.

MR. BUTLER: Your Honor, unless I misunderstand what has happened for these last three days, I believe that the cross-examination questions asked by every counsel at this table is designed to elicit answers that will help their respective positions in this case. Of course I hope to elicit answers that are helpful to me and not elicit answers that are harmful. That really isn't the test of whether I should be entitled to cross-examination here.

I mean I think I have a statutory right to cross-examine witnesses and evidence that are presented in a case in which I have an important interest. She does not represent the interests of my clients, and her position does not reflect the position that we are going to take in this case. And I have not expressed an opinion about whether I think the HHI analyses are too high or too low. The position that I take is the HHI analyses that have been presented in this case are not reliable and are not reflective of a proper analyses and do not reflect the market that actually exists in the real world, and I think I'm entitled to explore that.

JUDGE MACE: I think Mr. Thompson looked like he was going to add something.

MR. THOMPSON: Well, I would just add that I think that the objection to friendly cross is that it essentially circumvents the process of pre-filing testimony and allowing the other parties an opportunity to prepare cross-examination of that. It's essentially eliciting direct testimony from a witness that is not adverse and prejudices the other parties who are adverse because they don't get a chance to cross-examination on that testimony.

CHAIRWOMAN SHOWALTER: Anyone else?

(Discussion on the Bench.)

JUDGE MACE: Mr. Butler, we're going to allow you to proceed with your questions, but I want to caution you that we are concerned about the prospect of friendly cross and about your bringing in new issues into the proceeding at this point when it's not appropriate, particularly in view of the fact that you haven't sponsored a witness. I don't see -- you have some cross exhibits, I'm not sure if you had cross exhibits of this witness, but we want to make sure that you confine your questioning purely to the interests you represent and also where you differ from what this witness is proposing. We want to make sure that you narrowly confine your questions. We don't want friendly cross.

MR. BUTLER: I will certainly try to do that. I'm only here to represent the interests of my clients and explore implications of the Qwest petition for the services that they buy.

BY MR. BUTLER:

Q. Ms. Baldwin, along that specific line, there is a product that is included in Qwest's petition called direct inward dialing service, DID service. In your opinion, are all of the other business service products that are included within the market definition that you use substitutes for DID?

A. I am not aware of any other service or feature that is encompassed in Qwest's petition that can substitute for direct inward dialing.

Q. But would it be fair to say then that direct inward dialing is in a separate product market than the other services that are included within this petition?

A. Yes, I think that would be fair to say, and the way I will assess that is if the prices for any of the other features or services were raised, could a customer -- well, if the prices for DID were raised, could a customer go to any of the other CLEC services operated by Qwest or any other CLEC, and there isn't any other product other than DID that provides direct inward dialing that I'm aware of.

Q. And you have not presented any evidence as part of your testimony that would define either the market shares or HHI applicable to direct inward dialing; is that correct?

A. That's correct.

Q. Is there any evidence in this proceeding that you are aware of that would indicate whether customers of DID service face barriers to use of competitive providers that might not exist for other products?

A. In response to a data request prepared by Public Counsel, and I could take a moment to find the exhibit number, I will refer to it generally, and then if we want to, I will look for that exhibit number, Qwest indicated that if numbers are not working and a customer would like to move from Qwest to another carrier, the customer loses access to the unassigned nonworking numbers in the block of DID. This is a barrier to businesses contemplating moving from Qwest. I addressed this in my testimony. Again, I could find the page number if that's helpful. And there was also further discussion of this, I was present, and in my view, both as I have said in my written testimony and I understand it as I sit here today, that is a barrier to customers migrating from Qwest to other carriers.

CHAIRWOMAN SHOWALTER: Mr. Butler, she is repeating precisely testimony in her rebuttal testimony. Which I had marked for some questions. So again, are you adverse to that position, are you about to ask some questions that are adverse to that position?

MR. BUTLER: No, it is my position that there are significant barriers for DID customers.

CHAIRWOMAN SHOWALTER: I just heard the witness say yes, there are barriers, that is the fact that there are -- that the customer only pays for working numbers, not nonworking numbers, and so that's a barrier.

MR. BUTLER: But in her testimony, she has presented analyses of market share, HHI analyses presumably of market power that is addressed to a market that is much broader that includes products that are not substitutes for that, and she has not addressed the specific problems faced by a DID customer that requires access to an entire block, and who may be forced to give up its existing numbers if it wants to move to a competitive carrier and retain access to a block. That's the purpose of my question.

CHAIRWOMAN SHOWALTER: Okay, so that's the preliminary question and you have yet to get to the contested area; is that correct?

MR. BUTLER: Well, the contested area is that wasn't in her testimony, and I have just brought out the fact that the presentation that she has presented, along with everybody else, haven't addressed this reality in the marketplace.

CHAIRWOMAN SHOWALTER: Well, keep going.

BY MR. BUTLER:

Q. You have included in some of your analyses reference to the fact that some CLECs provide services using special access facilities; is that correct?

A. Yes, I have.

Q. Would you agree that according to the horizontal merger guidelines that the proper definition of market power is the ability of a seller to sustain prices above the competitive level?

A. Profitably, to do so profitably, yes.

Q. Were you in the hearing room when I asked questions of a Qwest witness regarding the prices charged for special access versus the prices for unbundled DS1 loops?

A. I was physically here. I can't promise that I was giving it full attention to be able to recall the dialogue right now.

Q. Let me just ask you, if the price for a DS1 unbundled loop, the recurring monthly price, were $68.86, but that the tariff price charged by Qwest for the equivalent functionality of a DS1 level channel termination were $150 per month, in your opinion would a CLEC relying upon special access be able to constrain Qwest's prices to a competitive level?

A. I hesitate to do this, but would you mind repeating the question, slowing down with the numbers.

Q. The TELRIC based UNE price for a DS1 loop is $68.86 per month. The special access tariff price for the same facility is $150 per month. If a CLEC is required to use special access to provision services over a DS1 loop, would that carrier be capable of constraining Qwest's prices to the competitive level, the TELRIC price level?

A. When you refer to the Qwest level, you're referring to the TELRIC, the cost or to the Qwest tariff rate that was over $100? I'm sorry.

Q. If the CLEC faces an underlying cost of $150, but if the level of the TELRIC cost for that same element is $68.86, would the carrier relying upon the element that pays $150 be capable of constraining Qwest's prices to the level of the TELRIC cost of $68?

A. Well, it sounds like there's a huge

disconnect between the price and the cost as you're representing it, and if TELRIC is our best estimate of the marginal cost, we've got a price that way exceeds it, so on its face I would say no.

Q. You were asked some questions about the ability of Qwest to reduce prices to meet competition, and the competitive classification statute, RCW 80.36.330 includes a requirement that Qwest prices be above cost; is that correct?

A. Yes, that's correct.

Q. Do you know what the definition of cost is that applies?

A. I would assume it's -- I believe there's some language in the statute if you would like me to read from the statute.

Q. If you have it.

A. I don't any more, would you like to read it and --

Q. Yes.

> Prices or rates charged for competitive telecommunications services shall cover their costs.

A. I do recall asking some questions of Qwest on this issue. I don't off the top of my head recall the responses that Qwest gave. I assume that these are costs that are subject to Commission review, and so whether it's TELRIC or some share of overhead I don't know.

Q. Let me ask you that in order to avoid a price squeeze against a CLEC, would the Qwest prices have to cover both the TELRIC cost which the CLEC would have to pay plus some additional amount that would represent the cost that the CLEC would incur for marketing, overhead, contribution to its profit?

A. It would, from the Qwest perspective, it would -- Qwest would need to -- the CLEC would need to cover its additional margin above the TELRIC cost, yes.

Q. If the Commission were to grant Qwest's petition and problems should develop in the near future with regard to the availability of UNEs or the prices that would have to be paid for UNEs and then rely upon CLECs or customers to file a complaint in order to provide discipline to Qwest's subsequent pricing behavior, wouldn't that have the effect of shifting the burden to the CLECs and the end user customers?

A. Absolutely, and I think I have -- I hope I have been clear throughout my testimony. I think the risk to consumers of approving this petition, whether they be small consumers or big consumers, the risk to consumers of approving the petition far outweigh any harm done to Qwest by not approving it, and that the costs you described are among them. And once the cat's out of the bag, once the services have been classified prematurely as competitive, it's much harder to then go back to this point in time, and the burden does then shift from Qwest, who bears the burden in this proceeding, to consumers and competitors.

Q. Finally, the analysis that you have presented here, am I correct that it focuses on mass market customers and perhaps small and medium sized customers, but you have not specifically analyzed the availability of competitive alternatives for large enterprise customers?

A. That's a slight mischaracterization. I certainly include data about PBX trunks, and I have a major concern that the CLEC owned data is presented at a geographically aggregated level so one can't really tell how much competition is happening in the relevant geographic market. Some of the general theoretical concerns I raise affect all products. So if you want to point to specific parts of my testimony, of course I focus on the small business, I'm here today on behalf of Public Counsel. But no matter whether you define the customer as 3 lines, 5 lines, 15 lines, however many lines, there's overarching concerns that I raise throughout my testimony that effects all consumers.

Q. Would you agree that different CLECs follow different business plans, target different types of customers?

A. Yes.

Q. Have you provided any analysis about services offered by CLECs that specifically target large enterprise customers?

A. No.

MR. BUTLER: Thank you, that's all I have.

JUDGE MACE: Commissioners.

CHAIRWOMAN SHOWALTER: Thank you.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. I think my -- the order of my questions will probably be fairly disjointed, and in some instances I can't remember exactly why I'm asking them, but it seemed relevant at the time. With regard to the definition of a market, do you believe that analog services should or can be considered a market but that the analysis that has going along with it just isn't appropriate, or do you think it is not its own market for competitive classification purposes?

A. Most of the time when I was analyzing Qwest's petition and all of the data in this proceeding, I have taken the list of services at their face value. These are services for which Qwest is seeking competitive classification, has Qwest made its case? And through that window, I without specifically validating it accepted those services as the only ones for me. I didn't think of casting the net wider other than to understand differences, for example between 520,000 and 615,000.

As time went on, it became clear to me that the market's a little bit murkier than at first blush. That is customers do -- the distinction between analog and digital, both from the consumer perspective which is how you define the market, whether they view them as substitutes, that's how you would define the product market, and the way that the data is compiled, gathered, and reported, can one actually, is it possible, even with the best of efforts by Qwest and the best of efforts by Staff, is it really possible to take that large carrier D special access number and really believe are those really analog. So in that sense from a practical data limitation, I'm not 100% confident. I don't dispute that Staff made their best effort, but it sounds as if there's times Staff may just not have access to the -- CLECs may not report it accurately, and

Qwest may not know for an unloaded loop. So that's on the data side.

Back on the economic perspective on the product market, it sounds to me as if Qwest may have drawn an artificial distinction, and it's interesting that in the previous proceeding they did not, the analog and digital were together. And it's not entirely clear for me from Qwest's testimony whether they did that because of data limitations, that they couldn't disentangle the relevant digital lines, or whether it was because they thought it was a specific product market. So that's kind of a long winded response to your question.

Q. Well, in other words, as a theoretical matter, if Qwest put before us analog services only but did demonstrate that those analog services are, in fact, subject to competitive, to effective competition from whatever sources you deem relevant, you would agree, wouldn't you, that then we should grant the petition? In other words, isn't the issue, is there effective competition as opposed to is this the correct market? It has to be correct enough that you can measure the competition against it; isn't that right?

A. Absolutely, it's got to be sufficiently well defined that you've got the right numbers in the numerator and the right numbers in the denominator to the extent that one is relying on market share. So if we've got CLEC digital lines in the numerator but we don't have Qwest digital lines in the denominator, it's misleading, and I think that concern has been pretty clearly expressed. And so that I think it does cast doubt. I think it means that it's when we see Qwest market share numbers, they're probably over -- understated.

Q. All right. I will caution you just to try to keep your answers to the point mostly because my train of thought can't hold anything very long.

To give an absurd example, if Qwest had a 10% share of analog services and everything else had gone digital in the meantime, but all Qwest wanted to declare competitive was its analog services, we might grant that if it, in fact, was demonstrated that the effective competition came from all over digital services. Again, I'm getting back to isn't the issue what is effective competition for the category requested?

A. If, for the analog market, if -- in your hypothetical, are we putting in --

Q. Whatever proof you want on effective competition.

A. I would only be putting in analog lines in that instance. If my market is analog and my pool is analog lines and Qwest has 10% of that, then yes, that's pretty strong evidence that Qwest no longer has market power.

Q. Well, I was imagining in my mind maybe the reason, maybe every -- maybe like black and white television and color television, maybe for some reason this little 10% group couldn't switch, I don't know. Wouldn't you go through the exercise of is there effective competition to this category of services applied for without getting too hung up in a sense on what is the market, what isn't the market; isn't the question what is effective competition to the category applied for?

A. I may have misunderstood the 10%. The way I was reading the 10% was there's let's say 100 analog lines, and that 10% of them -- that consumers demand 100 analog lines, and Qwest supplies 10 of them, and the other 90 analog lines CLECs supply. But maybe what you were saying is that 10% of all lines are analog, I think I misunderstood, just like 10% were black and white TV.

Q. Right.

A. When I was growing up, it was probably much higher, I had black and white then. Okay, so I understand better now. So 10% of business exchange access lines let's suppose are analog, and the rest are digital. And then does Qwest control 100% of those analog lines? I would be concerned, it's sort of like the people who didn't get touch tone right away, do you make them buy touch tone? Some people didn't want to buy touch tone.

Q. Well, as with black and white TVs, you can still buy a black and white TV today for your bathroom or somewhere, some little thing. But if you were looking at is there effective competition to that group, you could say, well, these are black and white TVs. But wouldn't you be looking at what is the effective competition. In that case I would argue probably color is effective competition or something at some price.

What I think I'm trying to get at is, do you start with the definition of a market and you have to get there and then define what the competition is, or do you start with the application, whatever it is in front of us, and then look at what the effective competition may be. I'm not even getting into the debate over what that is or isn't.

A. I think in this case it's important to know whether the black and white and color TVs are in the same market, and today's analogy might be a high definition TV and regular TV.

Q. Right.

A. As long as there's a sizable population of people who want an ordinary television, a plain old television service, they can not reasonably substitute the high definition, because it costs much more, just the way somebody who needs two individual lines can't substitute a PBX trunk, it's not a reasonable substitute. But that's not directly on point, because you asked me about the digital part.

Again, I think I would just be consistent. That's my main recommendation. If there's a perception that customers view analog and digital PBX somewhat interchangeably, let's make sure we've got all the lines in the calculations. If we really believe that we can segregate analog lines and they're not substitutes, let's make sure that we've gotten all the digital out of the equation. And finally, how do we decide, it should be based on a consumer perspective.

Q. Okay. And another point, you listed several services, and they were resale, UNE-P, UNE loop, special access, and owned facilities, and I thought you were probably listing in ascending order relevant factors for us to consider with resale being less weighty than owned facilities; was I right?

A. That's a good question. My memory is getting shorter, so let me go through again. Resale, yes, I think is the least effective. UNE-P, the second least effective. UNE loop.

Q. UNE loop I believe you said next.

A. Special access is in there somewhere, because special access, as best I understand it, can be considered on a relevant to UNE loop in that the competitor is still relying on Qwest facilities, which makes the competitor less effective at diminishing Qwest's market power, and then facilities based where the CLEC is least dependent.

Q. All right. And with respect to special access, I think I'm not clear why it's been segmented out and discussed specially in your testimony and in your new exhibits. Can you first for the record say what is special access and then why you think it's significant as at least for analytical purposes to separate it out.

A. That's a good question, and I didn't mean to create a big mystery there. Special access traditionally is used by interexchange carriers to complete traffic at the two local ends of a channel. When I was first working in telecommunications, switched access was used for originating and terminating the toll call, and special access the private line. As recognized by the FCC and by the Commission Order Number 6 requesting data, CLECs are also using special access in configuring them to provide basic local exchange service to their customers.

I frankly hadn't focused on that much. I know that I have been trying very hard and I think I have finally succeeded in reconciling numbers that I find in the record with numbers represented by Staff. And the reason that it shows as a special row is the way that my numbers reconcile with Staff's, I saw the difference in what Qwest represents for resale and Staff, what Qwest represents for UNE-P and what Staff does, what Qwest represents for UNE loop and what Staff does. It was there that there was a large discrepancy.

That is, based on Qwest provided data, and I don't believe that that number per se is proprietary, but there was a number either in the 40 thousands or 50 thousands of UNE loops that Qwest said, you know, this is on our records, we sell these UNE loops, they should know, they sell them. Staff's numbers are a proprietary number higher, a significant number higher. So I scratched my head, and at first, my first position was, well, Qwest should know what they sell, and they should know what they sell better than anybody because they have a financial incentive appropriately to billing correct, properly, and I couldn't figure out why there would be such a huge discrepancy.

And then finally my eyes made its way down to the around row 136 of Mr. Wilson's third exhibit, and I apologize, Your Honor, I don't know the exhibit number off the top of my head, and I saw carrier D, blank number of special access lines, and it was not insignificant. My theory is that those are sprinkled throughout the Staff numbers, not -- I mean I don't know that they are. I believe that they're incorporated somewhere. In order to make the numbers add up, they must be. But I thought, that's an interesting form of competition, and does anybody really know whether that's all analog or not. Shucks, isn't it too bad we don't have (stricken - confidential) on the stand, then we could ask them, are these really truly being used for analog purposes.

(Stricken - confidential): I'm going to object here for just a minute. I believe that this is confidential information that you're --

THE WITNESS: Oh, I so apologize, I have been so good. This has got to be sealed. I really apologize.

CHAIRWOMAN SHOWALTER: I really want you to keep your answers much shorter.

THE WITNESS: Okay.

BY CHAIRWOMAN SHOWALTER:

Q. I mean the answer in this question I think would have been, from what I gather, that you segmented out special access first in order to make sense of the numbers and a discrepancy that appeared to exist between Qwest data and Mr. Wilson. So first, it's just to make the numbers add up, and then I guess second, is there also a reason to focus on that segment for analytical purposes. Is it, in your view, is it a separate consideration for us when thinking about competitive classification to either treat that -- treat special access lines differently or to remove them from certain calculations? Is it, in a qualitative sense, is it a meaningful difference?

THE WITNESS: First, I apologize for revealing proprietary information. Can we, it's out, can we get it sealed in the record?

CHAIRWOMAN SHOWALTER: It should be struck.

THE WITNESS: Did it get struck? Everything was fine except for reference to a carrier name. I do truly apologize.

JUDGE MACE: I will instruct the reporter to strike the name of the carrier that was mentioned.

A. So yes, Madam Chairwoman, it did actually start with making numbers reconcile, and then I think it also raises an important question as to are special access lines competing with Qwest digital services or Qwest analog services. To be conservative, I have included them in my calculation.

BY CHAIRWOMAN SHOWALTER:

Q. And you have included them as digital or as analog or different ways different times?

A. Consistently as analog.

Q. Okay.

A. Which had the effect of understating Qwest's market share.

Q. Did you hear Mr. Shooshan yesterday?

A. Yes, I did.

Q. And he gave a synopsis of the merger guideline standards. Do you agree with his general approach, not his conclusions under it, but the three step approach?

A. I don't know that I could recreate his three step approach. I think when he started to get to the mitigating factor, I have an entirely 180 degree different view on how that plays in to how one views HHI, so that the relevance of HHI I believe I may differ from him.

Q. I think what he said is step one is defining the relevant market, and that includes both defining the product and the geographical scope. Step two is a measurement of market power in which HHI is significant. And step three is an analysis of given that whatever level of market power, are there significant alternatives for consumers. So as that's described, do you agree with that general sequence of steps?

A. The first two I think are the important ones. Defining the market, I agree entirely, measuring the level of market concentration. My recollection is he then went on to say the fact that Qwest is obliged to unbundle its network somehow mitigates against --

Q. That was his content. I don't want --

A. Okay.

Q. I just want in terms of just the steps, do you agree with going through those steps?

A. The third step it seems is -- seems to me is other factors such as ease of entry and barriers, other barriers to competition and so on, yes.

Q. Okay. Then you spoke of the danger of Qwest or in theory of a dominant provider from driving out the competition, and you didn't say it, it seemed to me implicit that what you meant was the dominant provider would have the ability to lower prices, thereby driving out the competition, at which point presumably at some later point they would raise the prices again having driven out the competition.

A. Yes.

Q. Is that the dynamic that you were worried about?

A. That's the worry. I'm not worried about low prices, I'm worried about the high prices that follow.

Q. So for us, doesn't it come down to a judgment as to whether that would, in fact, happen based on the evidence. Should Qwest lower its prices somewhere, CLECs might not be able to compete, in which case they would go away. On the other hand, if they chose to compete and could compete, that might be more robust competition. Do you agree with that so far?

A. Yes, I do, on a lower end of Qwest's prices, yes.

Q. Right. And doesn't it make a difference in our evaluation of that dynamic whether CLECs are, in fact, present in a particular let's say exchange and whether they are currently marketing and furthermore whether they have actually invested in equipment?

A. Yes, that's the supply elasticity part, and I do think that that is relevant. I give more weight to market share, but absolutely, supply elasticity is a well recognized factor to consider in whether a carrier can exercise market power.

Q. So on your ascending scale, the more of those elements we find let's say in an exchange and the more they are weighted toward the top end rather than the low end, would you say the more likely it is that a CLEC would stay around and compete?

A. I believe that it ultimately comes back to a business case for the CLEC, and without being privy to their business cases, my best evidence is whether they have actually succeeded in attracting a customer and are serving them. Otherwise, I would need to look at their business case plans and see how vulnerable they are to price changes in terms of profitability.

Q. Okay. Do you agree that the underlying real cost for Qwest and likely CLECs will vary from urban regions where the underlying costs are lower to rural areas where underlying costs are higher?

A. Yes.

Q. So if the market really were competitive and were -- and all the competitors were free to compete, absent universal service funds, wouldn't you expect to see higher prices in the high cost areas?

A. Depends upon the -- from an economic perspective, yes. From a political perspective and from a public policy perspective of what's the goal, perhaps not.

Q. I'm strictly talking about economics, and my question was absent universal service funds, wouldn't you expect a competitive world to produce higher prices in rural/high cost areas and lower prices in the other areas?

A. Yes, I would.

Q. So going to the prospect of Qwest raising its prices, we have both concerns, they might lower them and drive the customers out, excuse me, competitors out, but they might raise them because they had market power. Now in the higher cost areas, do you agree for business services that the gap between the wholesale price and Qwest's current retail business prices is either small or negative?

A. That seems likely.

Q. So it's a given, isn't it, that Qwest can not charge less than their TELRIC zone 5 price, or, well, I'm mixing concepts there, but that there is a floor that is going to be higher in the high cost areas beneath which Qwest can't charge?

A. Correct, I concur.

Q. So what is, in the high cost areas, what is the concern? What would happen, are you worried about Qwest lowering its prices or raising its prices?

A. I'm concerned in the high cost areas, which I think are least likely to attract customers.

Q. You mean competitors?

A. Yes, I meant to say, thank you, competitors. I'm concerned that a very important policy decision would be turned over to Qwest. That would be that of geographic deaveraging of a basic business line. And in my view, that's such an important policy decision that it's not something that should be turned over unilaterally, to Qwest to make unilaterally, but rather should stay under the regulatory oversight of this Commission, not only because of the significant potential implications for consumers, but also to -- of concerns of cross subsidy, that where there is -- where there are fewer competitive alternatives, there are more opportunities for cross subsidizing across the state across product lines.

Q. Well, you posited that there are fewer competitive alternatives.

A. Yes.

Q. Does the data bear that out?

A. Yes, it does. If we look, for example, at the exhibits attached to Qwest's petition which are included in Mr. Teitzel's exhibit, it definitely bears it out, that in the smaller exchanges there's less competition, and some of the exhibits in my testimony also bear that out.

Q. But your previous answer it seems to me was a policy answer, not an economic answer, that even if there is effective competition as defined by the statute, we should exercise our discretion under the statute for policy reasons. At least that's what I heard.

A. If Liberty Lake has got robust competition where Qwest has got a negligible market share and it's pretty evenly distributed among CLECs, is that kind of the hypothetical we're working with, a small exchange with pretty evenly distributed market share among carriers, and would I then be opposed to Qwest raising its -- I'm sorry, I'm losing the hypothetical.

Q. Well, it's just that what I understood you to say in your prior answer was that for policy reasons we should not classify Qwest services as competitive in high cost areas. But whether you did or didn't, let me just -- let's just stick to the economics.

A. Okay.

Q. If it's shown in high cost exchanges that there exists effective competition, and maybe you have one definition and some of the other parties have a different definition, should we competitively classify even though there may not be universal service funding mechanisms to competitively drive all the prices down to what they are in the urban areas?

A. From an economic perspective, the -- one of the critical cost components underlying the hypothetical are the TELRIC prices that competitors face, and they're in flux so -- and also UNE-P is being challenged by ILECs in court. To the extent that that competition depends upon prices and availability that are presently in flux, it's premature to consider the, in this hypothetical, any competition that may exist as being sustainable, and I would posit that we're very far from the hypothetical.

Q. Okay. Shifting to a different issue, and that is the geographical unit that's meaningful, you have said statewide is it appropriate and that the exchange level or the wire center level may be appropriate, so let's just focus on the exchange level for a minute. If it is shown that in each exchange there is effective competition, then is there any difference between granting competitive classification in each exchange versus the whole state?

A. No, of course not.

Q. All right. So getting now to what you think we should be looking at, and let's just keep at the exchange level, I think you have a test of is it at least three CLECs present; was that your testimony?

A. No, I don't -- I don't believe it is.

Q. All right, I'm sorry, it wasn't yours.

All right, can you turn to Exhibit 210, no, I'm sorry, I meant to find -- just a minute, I'm sorry, I mean it's your rebuttal testimony, but I can't find it myself.

A. That would be Exhibit 422RT.

Q. No, I apologize, 401, your direct testimony, page 40, and in lines 12 to 21 you talk about this issue of DID and the problem of the nonportability of nonworking numbers. I think non-used numbers might be a better way to put it, but I guess it's referred to as nonworking numbers. How is such a service ever going to be competitive if the test is that a customer has some working numbers out of a big block but does not have the nonworking numbers, if the customer can't take those nonworking numbers with it, would you say that is never going to be a competitive service?

A. Well, I prefer to look for the creative industry based solution. The industry comes up with numbering guidelines with regulators' assistance, and I frankly don't recall why Qwest couldn't simply say, yes, customer, all the numbers that have been set aside for

you sequentially, you can take them with you. I have been involved in numbering guideline policy at the national level, and I know there's concerns with them not having many blocks of unused numbers sitting around because of conserving numbers, using them efficiently. But setting that aside, that concern aside, it seems a more logical solution would be for Qwest to free up those numbers and allow the -- let them go with the customer if it benefits the customer, the customer benefits from being able to change providers.
Q. Even though the customer isn't paying for those numbers, but perhaps they could pay a small fee for the right to transfer them?
A. That's what I mean, there must be some creative solution to that barrier to migration by the customer from one carrier to another.
Q. Well, let me put it this way, if Qwest agreed, if it's able to agree, I'm not sure who is in charge of those numbers, Qwest or the numbering counsel, but if there were agreement that a DID customer could take that block of 10,000 or at least not have to pay an unreasonable price for it, then in your view is this service competitive?
A. That removes a barrier, but it doesn't make the product competitive. To decide that the product is

competitive, one would need to look at market share data, and I frankly didn't look at market share data on direct inward dialing.

Q. So there would have to be availability of someone else at least?

A. Exactly.

Q. To provide that service?

A. That's correct.

Q. Okay. Can you turn to page 423, I mean Exhibit 423. In your top two charts here, you provided what you said were the outer bounds of a particular issue.

A. I apologize, I think I'm on the wrong exhibit.

Q. No, I am. 424, I'm sorry, Exhibit 424.

A. Thank you.

Q. Now you have in your top two tables you compare figures first including Qwest digital lines and second excluding Qwest digital lines; is that correct?

A. Based on the information that I had at the time, that's correct. Based on this week's hearings, the Qwest retail lines purportedly including digital, may not include all of those that are relevant.

Q. All right. But comparing the information that is in the charts, in the top chart there is a percentage. I don't know if that's confidential or not, so, but in the far right column under Qwest retail, there is a percentage.

A. Yes, I see it.

Q. And in the second table or chart, there's a comparable percentage under the row Qwest retail. Do you see those two percentages?

A. Yes, I do.

Q. I'm wondering, do you think the difference in those percentages is significant for our purposes here?

A. I think with either number given that it's --

Q. My question is the difference.

A. Oh, sorry, I apologize. No, I don't.

Q. Thank you. Then turning to the next Exhibit 425C, this is where column D is 50% of column A?

A. Yes.

Q. And I understand why you did it, you were concerned about the potential inclusion of digital lines, but I do not understand why you chose 50%, so why did you choose 50%?

A. To be transparently arbitrary, I honestly did not know. And I would add more, but I suppose I shouldn't.

Q. That's good enough.

And then can you turn to Exhibit 416.

A. Yes, I'm there.

Q. This was a page where Elk came up, and I'm just wondering, if there were exchanges or wire centers, this is an exchange, if there were exchanges where we find there is not effective competition, but let's posit that the exchange is surrounded by exchanges for which there is effective competition, would it be sufficient to say that Qwest could not charge different prices in that let's say Elk exchange from what it is charging in surrounding exchanges despite the lack of competitors say? It would be I guess a form of regulation dependent on other competitive exchanges.

A. If the Commission is confident that the surrounding communities are sufficiently competitive to result in a correct pricing signal and Elk was linked to that, that seems appropriate. It would -- Elk would be, by default, end up with a competitively appropriate price, so yes.

CHAIRWOMAN SHOWALTER: I think those are all my questions, thank you.

JUDGE MACE: Commissioner Oshie.

E X A M I N A T I O N

BY COMMISSIONER OSHIE:

Q. Ms. Baldwin, would you turn to your Exhibit 411C.

A. Yes, I'm there.

Q. Now would you define, and if you have already I'm sorry to have to ask you this again, but would you define what you mean by a captive customer?

A. The word captive comes to us through the -- through the statute. And as I interpret the statute, it would be we're looking for instances where services are offered to a substantial, a significant number of captive customers. It's customers who do not have -- have not elected alternative -- an alternative provider, a provider alternative to Qwest. I interpret -- I use -- what I'm saying is I use market share as my indicator of captive. If they weren't captive, they would have moved on to another carrier, and that that's the best evidence of captivity.

Q. That they have not elected to move to another carrier?

A. Yes. And I say that meaning that either because a carrier has not determined that either their product or their geographic area is sufficiently profitable to enter, so there's not a realistic way for

them to do that, that there's --
Q. Is another way of saying that, the customer has no choice, I mean or is that just my interpretation of what a captive customer may be?
A. The word captive certainly conjures up someone who is not able to choose someone else, and the way I interpret it is there is not either through customer inertia, which leads to furthering Qwest's market power, or lack of real presence by a competitor actively seeking out a customer, the customer is captive, so.
Q. What do you mean by real presence? Is it, by real presence, is it one CLEC doing business and holding itself out as a competitor to Qwest in any given exchange? I will start from that very basic beginning.
A. No, I don't think one CLEC would suffice.
Q. And I would imagine that it just -- it would -- the number of CLECs to -- for a customer to realize effective competition in an exchange would depend upon the size of the exchange?
A. Yes, and the viability of the CLECs. I think that we have seen in this proceeding that CLECs' market shares are really quite small, most of them. And in taking into consideration whether customers are captive, one of the elements would be again it would go back to

market share erosion. The CLECs may be there, but if they have small print that says where facilities exist and they don't have facilities, then are they really available.

Q. Do you think a CLEC with a very small percentage of customers in any exchange is going to be a price setter in that exchange?

A. No, I don't.

Q. And the alternative then as to the price setter would then be the dominant provider?

A. I believe so, yes.

Q. And what percentage of customers do you think a CLEC would have to have in any exchange before it becomes a price setter in that exchange? Is there some percentage that we can attach to it, or does it have a little bit more of a feel to it than being able to quantify it?

A. In my mind, the way that I would look at it is looking at all of the evidence available what collectively by all the CLECs that are present how much inroad would you need to make into Qwest's market share to begin to think about Qwest no longer being the dominant provider.

Q. Of course, the CLECs aren't going to be operating in concert, are they, or would you expect them to?

A. No, of course not.

Q. And they will be competing with one another?

A. Yes.

Q. So is it foreseeable or is it plausible that one CLEC would become the price setter for the other CLECs if they each have a very small percentage of the exchange market?

A. I think the price setter would continue to be Qwest in that scenario that you have described.

Q. And so if that were the case, you would expect that if prices go up that the CLECs would follow with higher prices if Qwest raises its price, let's be clear?

A. It would depend in part on the marketing and business strategies of the CLECs. Depending on the relationship of their actual costs of serving the customers and the new prices and the old Qwest prices, it's conceivable that there would be a profitable in between where they would project out the revenues and perhaps take an average of the old Qwest price and the new Qwest price as a way to attract customers and maximize revenues.

Q. Let's go back to 411. Is it your testimony that all the exchanges in Exhibit 411 reflect captive customers of Qwest?

A. It's my testimony that the business line market is not competitive, and therefore all of the wire centers that are included in 411C should not be classified as competitive.

Q. Well, let's take, for example, an easy one would be Tacoma Fawcett on page 2. Qwest percentage, a Qwest total of the exchange lines in the exhibit are 6%.

A. This is probably one of the more confusing exhibits that I presented. I'm concerned that it may be being misread. What this is factually is the first column is in Tacoma Fawcett there's a certain number of Qwest lines and how many of those lines are to locations with three or fewer customers. So it tells you about the composition of the market. Oh, okay, but it doesn't tell you about the CLEC inroads in there, the ones --

Q. So for purposes of businesses of less than four lines, then the exhibit reflects your opinion that of those wire centers that are listed, those customers within the wire center are captive customers of Qwest?

A. Because I believe that the entire business line product is not competitive, then by definition all of these lines in my view are not competitive, all of the wire centers. I believe the entire product market to not be competitive. The purpose of this exhibit is to show one indicator of where what I believe to be the most vulnerable businesses are located.

Q. Let's go to Exhibit 414, and perhaps the question would be or your answer would be the same as to the exchanges as they're listed here, but does this exhibit capture all Qwest customers within the exchange and its market share as opposed to 411, which only captured those with fewer than four lines, and all product lines, just so I understand it?

A. Yes.

Q. And I'm assuming that you would consider all of the exchanges listed on 414C, the customers within those exchanges as being captive customers of Qwest?

A. Yes, I would.

Q. Now is there some cutoff point within which you would not believe that Qwest would -- that the customers would not be a captive, not be captive of Qwest, in other words if there's 50% of the market held by CLECs or 40% or 30% or 55%?

A. I did not come up with such a number for the purposes of my testimony. I think we're so far from being close to a reasonable number, I don't think it's necessary to. And also I would underscore that the market share erosion that we do see in the exhibit that you're referring to is vulnerable in the sense that

CLECs are depending upon Qwest in order to compete with Qwest, and so that also needs to be taken into consideration whenever looking at market share data, HHI, market concentration data, and so on.

Q. Let's go to your testimony, and I'm not going to refer to any page, but your testimony regarding the Herfindahl Hirschmann Index.

A. Yes.

Q. And how much weight should we give, well, one, how much weight should we give the, I probably know the answer to the first question, which is how much weight should we give your analysis of the HHI, but also -- but really the question is, how much weight do we give HHI in making our decision in this case?

A. If you define the market properly and you've got the data that's relevant to the market, then I would give it quite a bit of weight. That's a very standard economic tool, and the DOJ has told us that a market with an HHI above 1,800 is highly concentrated. Even the 5,000 number that we were talking about earlier that came out of a Commission, my understanding of a Commission Order, that's characteristic of a duopoly, that's not a competitive market.

I think again, if you've got good data and a good market definition, it's extremely valuable, because everything else is speculation. It's your best guess. It's informed, but ultimately market share shows you whether competition is working. What if -- even if everybody is making their best effort to have competition happen, it's just not happening. That's what I think the -- I urge the Commission to consider, and that's the HHI is a useful tool.

Q. If I do believe you heard Mr. I think it was Shooshan yesterday discuss his opinion that if given, you know, Qwest's position in the wholesale market, that mitigates at least to some extent the findings of an HHI analysis. Now do you hold that opinion as well?

A. No, I -- he -- Mr. Shooshan would have us -- you believe that it's this huge albatross around Qwest's neck. I view it just the opposite. The fact that the HHI is -- the market concentration has gone down a little bit, it's still extremely concentrated, is in large part due to these numbers that we're looking at. For example, in 415C, the fact that CLECs depend on Qwest in order to compete with Qwest is not a mitigating factor. It's a factor that works on the other side that should raise concerns, and so I disagree with Mr. Shooshan.

Q. Because the CLECs are dependent upon Qwest for their entry into the wholesale market if they aren't facilities based?

A. If they're not facilities based, they depend on Qwest wholesale facilities in order to compete.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. Doesn't it cut both ways? Because yes, they may be dependent if they don't have facilities based, but they also have a right to buy from Qwest, doesn't that distinguish this situation from others? That is they have a right to buy wholesale, that there are prices that are set, there have been findings that there's an open market, most dominant providers aren't in -- don't have those obligations outside telecommunications?

A. CLECs have a right to buy, and Qwest has a right to sell. They get money, they're not giving away the wholesale facilities, so every wholesale loop that they sell is revenue that they derive. And I know there's many debates about how TELRIC is priced, but it is priced at cost, so they're not losing money, they're getting revenue from every unit they sell.

It's very different from a loop that's provided over a CLEC's own facility, which is really taking revenues away from Qwest. That's market share erosion. This is just money going from one department of Qwest to another department of Qwest. And it is a unique situation in the telecommunications industry, but I think it works exactly the opposite way of how Mr. Shooshan is seeking to characterize it.

E X A M I N A T I O N

BY COMMISSIONER OSHIE:

Q.   Would it work in the opposite way, or would it just be neutral? In other words, because Qwest is forced to sell, they're put in the same place as any other provider of a good or a commodity that they want to sell. In other words, that other provider, they want to sell, they want a buyer. Qwest may not want to sell, but it's required to sell, so. But the bottom line is that they're selling.

A.   When they lose one of their customers to a CLEC and the CLEC turns around and buys back elements from Qwest, they're not losing the entire revenue stream. So if you think of it that way, I don't think it's neutral.

Plus what we're really talking about is using HHI or the Lerner Index, the relationship to marginal cost and price using those as tools to assess market power, and I understand that there's regulatory safeguards in place, but the way that a CLEC interacts with its end user is directly affected by the quality of the service that Qwest provides to that wholesale provider. That's not neutral, and that's something that the FCC identifies specifically in its TRO.

It said whether it's fair or not, if somehow there is a problem with installing a customer's line, who does the customer blame, not Qwest, but the upstart CLEC that's trying to make it, that's trying to get brand recognition, whether it's intentional or not intentional. That CLEC depends upon the quality of Qwest service, wholesale service, to develop its new relationship with a new customer. Qwest inherits the vast percentage of customers. The CLEC is so dependent, so vulnerable, it's not neutral, it's another critical factor.

Q. Does market concentration equate to market power, or are there factors that if you take market concentration plus A and B equal market power?

A. There are other factors absolutely, and Madam Chairwoman and I were talking earlier and talking about things that go to elasticity of supply if -- and that goes to the question that if Qwest sought to exercise its market power, let service quality deteriorate, raise prices, I'm not saying that it would do that, but that would be a way to excise market power, could somebody else come in with sufficient capacity and resources to counteract that market power.

And again, I raise the spectrum of a CLEC goes, says, oh, we'll come in, we'll serve those customers, we will be great, we will do great service quality, we will have lower prices, and they just get going, and they hire a staff, and then Qwest says, oh, now it's time to drive out the competitor. So Qwest says, okay, we will be great on service quality, and we'll lower our prices to drive out the competitors, so Qwest -- there are other factors, but they are not in my mind as strong a tool. It's part of the entire criteria that the statute requires you to look at and that makes sense to look at from an economic perspective.

But if you haven't gotten to diminished market concentration, the rest is not -- you can look at it, but if you can't find that Qwest's market share has diminished substantially, I don't see how one can consider any of the services competitive.

COMMISSIONER OSHIE: Thank you, I don't have any other questions.

CHAIRWOMAN SHOWALTER: I just have one more, then let's take a break, I forgot to ask a question.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. Exhibit 429, no, yes, Exhibit 429, page 16.

A. I'm sorry, which is Exhibit 429?

JUDGE MACE: It's the merger guide, no, it's local telephone competition. 429 is a Staff cross exhibit.

THE WITNESS: Thank you, I think I have it right here, and I was looking at it before, yes.

BY CHAIRWOMAN SHOWALTER:

Q. Mr. Thompson was asking you about it.

A. 429, yes, thank you, I'm there.

Q. This is the chart that shows the percentage of lines provided to residential and small business customers divided by ILECs, by CLECs, and by state.

A. Yes.

Q. Page 16, and the chart does not show absolute numbers, and it doesn't show Qwest territory versus others, but focusing on the state of Washington where it says 46% of the CLECs' lines are to residential and small business customers, is that how I am to read this chart?

A. Yes, for example as compared with nationwide where it's 58%.

Q. Okay. Now it doesn't distinguish between residential and small business, but given Qwest's retail rates for business versus residential compared to underlying costs, would you not expect it to be easier for CLECs to compete for business lines versus -- rather than residential lines?

A. I haven't looked at the economics in Washington. If you have a lot of cable facilities deployed, cable tends to go by residential customers and not business. They're better positioned to serve households than businesses.

Q. Does this include cable?

A. It would include cable to the extent that, for example, AT&T provides telephone service over a cable line, and that's an important mode of entry in the residential market. That doesn't -- is not so prevalent in the business market simply because it follows the track, the patterns of the cable network architecture.

Q. So are you saying you have no opinion as to whether a CLEC lines to residential and small business customers in the state of Washington are majority business versus residential or any other particular allocation?

A. Well, the absolute quantity of residential lines would be substantially more than business just because there's so many more residential lines in any given state than businesses. Everybody needs a home, but not everybody has a separate business location. So that if we're trying to figure out how many of these are to homes versus businesses, I don't think we have the data. But between cable network architecture following homes, not businesses, and on an absolute value, there's just a much larger pile of residential customers than small business. I honestly can't tell you how this breaks out.

CHAIRWOMAN SHOWALTER: All right, thank you.

JUDGE MACE: 15 minute recess.

(Recess taken.)

(Discussion off the record.)

JUDGE MACE: Let me indicate for the record that we have had a discussion of scheduling, and we are going to schedule another date of hearing on October 1st, and on that date Mr. Cowan, Mr. Stacy, and Mr. Gates will appear. Tonight we're going to finish Ms. Baldwin, go to Mr. Slater, and then Mr. Williamson, and then my understanding is Mr. Wilson will be cross examined on the 21st.

CHAIRWOMAN SHOWALTER: Well, that's the one little question that we -- that would mean we're necessarily going that long. There possibly would be a way for Public Counsel to determine that we could proceed with Mr. Wilson on the 1st, and if that were to be the case, we would try to do it all right then, and he would come out. So why don't we at least leave Mr. Wilson a little bit loose.

MR. FFITCH: He could be Mr. October one way or the other.

CHAIRWOMAN SHOWALTER: Right.

JUDGE MACE: All right, thanks.

Then let's go back to cross-examination of Ms. Baldwin.

MR. SHERR: Your Honor, may I interrupt, excuse me, one other housekeeping matter.

JUDGE MACE: Yes.

MR. SHERR: Earlier during my cross-examination, Chairwoman Showalter asked Qwest to revise its Exhibit 470, and there was some discussion of that being done today. The question is, would that be -- would it be acceptable if that was submitted to the Commission next week?

CHAIRWOMAN SHOWALTER: That's fine.

MR. SHERR: Thank you.

JUDGE MACE: And now, Mr. ffitch, do you have redirect?

MR. FFITCH: Very, very brief, Your Honor.

R E D I R E C T   E X A M I N A T I O N

BY MR. FFITCH:

Q. I hope I'm going to be able to articulately frame this question, Ms. Baldwin. You were asked a series of questions about market definition about a hypothetical TV market, and the question essentially was, and that also related to the analog and the digital market definition, correct; do you recall those from Chairwoman Showalter?

A. Yes, I do.

Q. And the question was asked in general if the Commission should accept the market as defined by the applicant and focus primarily or exclusively on the effective competition under the statute. Can you state what your opinion is about what the analysis should be of a application that is brought in to the Commission for competitive classification?

A. The threshold question is, has the applicant provided a relevant market, has the applicant defined the geographic and the product market correctly, and only at that point can one move forward to assess the presence or absence of effective competition.

MR. FFITCH: Thank you, Your Honor, I think that concludes my redirect.

JUDGE MACE: Mr. Thompson.

MR. THOMPSON: I have no questions.

JUDGE MACE: Mr. Melnikoff.

MR. MELNIKOFF: No questions, Your Honor.

JUDGE MACE: And Mr. Butler.

MR. BUTLER: No.

MR. SHERR: Your Honor, Qwest has some questions.

JUDGE MACE: I'm sorry, did I not -- I'm sorry if I missed you, yes.

MR. SHERR: That's okay.

CHAIRWOMAN SHOWALTER: One follow-up before your redirect in response to the last question.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. If Qwest comes in with a subset of what would be a proper market, that is something narrower than but not broader than what would be a proper market, is it still appropriate for us to consider a subset of an appropriate market?

A. Well, by defining the appropriate market, I mean identifying the relevant product substitutes.

Q. Was that a yes or a no?

A. If it's so narrow as to exclude relevant substitutes, then it's not the appropriate market to begin with nor the appropriate petition to examine.

CHAIRWOMAN SHOWALTER: Thank you.

JUDGE MACE: I'm sorry, Mr. Sherr.

MR. SHERR: Thank you, no, that's fine.

R E C R O S S - E X A M I N A T I O N

BY MR. SHERR:

Q. Ms. Baldwin, during your cross-examination from other parties, I believe at least a couple of times you made mention of the fact that Qwest's wholesale rates are in flux. Do you recall that?

A. Yes, I do.

Q. And would you agree that Qwest currently has in place prices for its wholesale services that have been approved and ordered by the Commission?

A. Yes.

Q. Is it your testimony that whenever a cost docket for unbundled network elements is being conducted that Qwest should be prohibited from petitioning for competitive classification?

A. No, simply when there's a regulatory time frame within the foreseeable time horizon that's a known regulatory event with a known time frame that that be taken into account in deciding about the timing of the evaluation of Qwest's petition.

Q. In response to a question from Mr. Butler and a question from the Chairwoman, I believe you were asked if it was your understanding that the relevant market at issue in the last competitive classification case, the UT-000883, included both digital and analog services. Do you recall that question?

A. Yes, I do.

Q. And I believe you answered the question as yes?

A. Yes.

Q. Isn't it true that in that proceeding the services Qwest petitioned for are the exact same services that we -- that Qwest has petitioned for in this case?

A. It may be the distinction is provided over DS1. That may have been where the ambiguity comes in, if the DS1, if they're digitally provided or provided via analog.

Q. Do you understand that the petition that Qwest filed in that case was exactly, in terms of the services that Qwest was seeking competitive classification for, is the same as it is in this case?

A. Yes, I do.

Q. Responding to the Chairwoman's questions, I believe you mentioned that there may be errors in

Staff's testimony with regard to whether all digital data has been excluded; do you recall that?

A. Yes.

Q. And that's despite the fact that Staff was instructed to and has represented that it has instructed CLECs to exclude digital data?

A. Yes, I think the opportunity for misreporting and/or ambiguity does exist.

Q. If for some reason the CLEC did not honor Staff's request and actually provided digital data, wouldn't this have increased the CLEC market share?

A. Yes.

Q. If that's so, what motivation would CLECs have had to include digital data?

A. Oh, I don't believe it was a motivational issue. I think this is, based on the discussions we had yesterday and the day before at length in the hearings, I think there's understandable differing opinions and interpretations of analog versus digital. So I don't think it was incentive based, I think it was just a communication that would have -- or miscommunication that could have caused the misreporting.

MR. SHERR: If I can just have one moment.

Your Honor, I have no further questions.

JUDGE MACE: I'm sorry?

MR. SHERR: I have no further questions.
JUDGE MACE: Then I believe that completes the cross-examination of this witness. Thank you, Ms. Baldwin, you're excused.
THE WITNESS: Thank you, Your Honor.
JUDGE MACE: And our next witness would be Mr. Slater.
(Witness Dudley R. Slater sworn in.)
JUDGE MACE: Please be seated.

Whereupon,
DUDLEY R. SLATER,
having been first duly sworn, was called as a witness herein and was examined and testified as follows:

D I R E C T E X A M I N A T I O N
BY MR. FINNIGAN:
Q. Mr. Slater, would you please state your name, spell your last name for the record, and give us your business address.
A. My name is Dudley Slater, Slater is spelled S-L-A-T-E-R, and my business address is 19545 Northwest Von Neumann Drive, Neumann is N-E-U-M-A-N-N, and that's in Beaverton, Oregon 97006.
Q. What is your position with Integra Telecom?

A. Founder and Chief Executive Officer.
Q. Mr. Slater, do you have before you your pre-filed direct testimony, which has been marked Exhibit 751T?
A. Yes, I do, although none of my exhibits are marked with any numbers, but I do have that testimony in front of me.
Q. Was that testimony prepared by you or under your supervision or direction?
A. Yes, it was.
Q. Do you have any corrections to make to the testimony?
A. I have three corrections that I would like to make to my pre-filed testimony. They're all fairly minor in nature.
Q. Please proceed.
A. On page 3, line 21, we omitted to give the full address of our Bellevue office. That address is 2125 - 112th Avenue Northeast, Suite 6, Bellevue, Washington 98004.
On page number 6, line 12, I would like to change the word healthy to growing competitive market.
And on page 7, line 15, I would like to change the word technically to practically.
Q. With those changes, if you were asked the

questions contained in Exhibit 751T today, would your answers be the same?

A. Yes.

MR. FINNIGAN: Mr. Slater is available for cross-examination, and we will offer Exhibit 751T.

JUDGE MACE: Is there any objection to the admission of Exhibit 751T?

MS. ANDERL: No.

JUDGE MACE: I will admit it.

And I believe Qwest is the only party that is signed up to cross examine Mr. Slater. Go ahead.

MS. ANDERL: Thank you, Your Honor.

C R O S S - E X A M I N A T I O N

BY MS. ANDERL:

Q. Good afternoon, Mr. Slater.

A. Hello.

Q. I'm Lisa Anderl, an attorney with Qwest, I have a few questions for you today. Now as the founder and CEO of Integra, would it be correct that you do not report to anyone other than the board of directors in terms of a reporting hierarchy at Integra?

A. That's correct.

Q. Okay. And all of the other employees of Integra report to you either directly or indirectly?

A. Yes, they do.
Q. Who is the President of Integra?
A. The President of Integra is James H. Huesgen.
Q. Can you spell that last name, please.
A. H-U-E-S-G-E-N, Huesgen.
Q. You have stated in your testimony that Integra's primary target customer is the small business owner with as few as two to three employees to as many as several hundred employees. Do you recall that testimony?
A. Not specifically, but that's a true statement.
Q. All right. Do you compete for business customers who have only one to two access lines?
A. We do.
Q. Do you do so in the state of Washington?
A. Yes, we do.
Q. Mr. Slater, in your preparation for your testimony here today, did you read any prior Commission decisions regarding competitive classification of any of Qwest's services?
A. No, I have not.
Q. For a small business customer with two to three employees, Mr. Slater, what type of business services would that type of customer typically purchase?

A. It varies, but typically it's a mix of voice and data services generally on a DS0 level platform, and data is often provided over a DSL and occasionally over a fractional T1 platform.

JUDGE MACE: I'm sorry, I didn't hear the last part of your answer. It's important for you to project all the way through your answer.

THE WITNESS: Oh, is that right?

JUDGE MACE: Yes.

THE WITNESS: I thought my voice projected pretty well, but I will work on that, thank you.

JUDGE MACE: Just the last, what was the last phrase of your answer?

THE WITNESS: I was saying the data portion of the services can be alternatively over a DSL circuit or a fractional T1 circuit.

CHAIRWOMAN SHOWALTER: I think also before you continue, slow down just a bit.

THE WITNESS: I have never done this before, so I'm a little nervous.

CHAIRWOMAN SHOWALTER: It's both the court reporter and our ears.

THE WITNESS: Okay, stop me if I fail to heed that.

MS. ANDERL: And don't use me as a model, Mr. Slater, because I'm told to slow down as well.

BY MS. ANDERL:

Q. Now do you understand the difference between Qwest's retail business services and Qwest's wholesale unbundled network element offerings?

A. I'm not an economist by training. I feel, however, I do have a general business understanding of the significance of the distinctions.

Q. Okay. And do you understand that Qwest is not asking in this proceeding for competitive classification for any of its wholesale unbundled network element offerings?

A. Yes, I do.

Q. Okay. Mr. Slater, have you ever participated in a cost docket in Washington?

A. No, I have not directly.

Q. Do you know if Integra has participated in any of the Washington cost dockets?

A. Offhand I do not know.

Q. Did you or Integra participate to the best of your knowledge in Qwest's Washington 271 proceeding?

A. When you use the word participate, I assume you mean as a party with standing in the proceeding.

Q. I do.

A. I don't know to be honest with you. We certainly followed it fairly closely.

Q. Mr. Slater, since you spelled Mr. Huesgen's name for me and I now know how to pronounce it, I keep wanting to call you Mr. Huesgen, so I apologize if I do that.

Could you please turn to the document that was distributed and marked as Exhibit 753 as a cross-examination exhibit. It's a two page document, and it has, as do all of the exhibits, a page from the Integra Web site as the first page, and the second page is the one that has two bar charts on it, and it's actually the second page that I'm wanting to look at.

A. So I'm looking for two bar charts?

Q. Two bar charts on a single page, yes, like this.

A. I've only got about 15 pages, so it won't take too long.

JUDGE MACE: I will show you this.

THE WITNESS: I just got it.

JUGE MACE: Okay.

THE WITNESS: Thank you.

BY MS. ANDERL:

Q. That's a two page document, if you could pull that out, Mr. Slater. Do you recognize the first page as a printout from one of the screens of an Integra Web site?

A. Yes, I do.

Q. And do you recognize the second page?

A. Yes, I do.

Q. Can you describe for us what that is?

A. We prepare a number of these types of documents. They're generally prepared for the purpose of providing an overview of Integra Telecom.

Q. For your investors?

A. We respond to a number of parties. It's often the case that we provide these for prospective customers that are interested in learning about Integra Telecom.

Q. In the middle column that's entitled a national model of success, the second paragraph states that in 2002 Integra completed building its network, which included the installation and operation of its own switches. Is that an accurate statement?

A. Yes, it is.

Q. The next statement says, this model limits our exposure to regulatory changes. Is that also accurate?

A. It's so general that I can not call it accurate. What we were referring to here is there has been a fair amount of national commotion I would say, particularly in the process of attracting and securing customers around the risks related to UNE-P, and that's specifically what we're attempting to address in this paragraph.

Q. And the third sentence in that paragraph more specifically addresses the UNE-P issue. Is it correct that Integra did not at the time of this statement anticipate any significant risks to your business due to changes in the industry regarding the continued availability of resale or UNE-P?

A. Yes, that is a true statement. I would like to explain that the reason for that is that we do describe ourselves as a switch based competitor or facilities based competitor. What that means is we have made substantial investment in not only switching infrastructure but also transport infrastructure out to collocation points. From the collocation point where we also own assets, we rely upon the last mile, which we provision through the incumbent exchange carrier on a UNE basis.

Q. I believe you stated in your public testimony that you own a 5ESS switch located in Kent; is that right?

A. Yes, we do.

Q. Is that your only Washington switch?

A. Yes, that is our only Washington switch.

Q. Does that switch function as a local switch or a tandem switch or both?

A. It -- I'm not a switching expert.

Q. Do you understand the general concepts of local switching --

A. Yes, I do.

Q. -- and tandem switching?

A. Yes, I do, and we use it principally as a local switch.

Q. Does it have a tandem functionality?

A. It does to the extent that we program call routing to direct our long distance traffic to the various long distance carriers, which would be substantially equivalent to a tandem functionality.

Q. What geographic area can be served by Integra's switch?

A. I don't know the answer to that question from a switching perspective. From a practical perspective, our geographic service area is limited by where we're collocated.

Q. So if you were collocated in every central office, every Qwest central office in the state of Washington, could your switch serve every central office or could your switch serve the entire geographic

territory that is Qwest's serving area in Washington?
A. I would not be comfortable collocating in the four corners of Washington and serving it from a single switch in Kent, no.
Q. Why not?
A. Mostly for economic reasons, although I suspect there's technical limitations.
Q. If you were collocated in every central office in Western Washington, using the Cascades as a dividing line, would your switch be capable of serving all of Western Washington?
A. I honestly don't know.
Q. Now Integra has existing business customers in Washington; is that right?
A. Yes, we do.
Q. And you serve them all through -- how do you serve those customers?
A. Our existing customers in Washington we serve substantially off the platform I described where we put them onto our switch, we put them onto our transport network, and we concentrate the traffic at central offices where we're collocated both in the Qwest and the Verizon territory, and then we rely upon in substantially all instances the unbundled network element loop to get to the customer premise.

Q. So you lease, well, what's been referred to as UNE-L loop or unbundled loops from Qwest in Washington?

A. That's right.

Q. Okay. I don't want you to reveal any, you know, proprietary or confidential Integra business information or plans, I'm sure you're sensitive to that, but let me just ask you this, and if you can answer, please go ahead. Do you rely in any way for serving any customers on UNE-P in Washington in Qwest territory?

A. We have a small partial reliance upon UNE-P, and that derives principally from customer applications where we have made the determination to service a customer that's principally located in our footprint area where we have a collocation presence, but they have portions of their customers' locations that are not entirely within our network footprint area, in which case we will use UNE-P to access those multilocation facilities.

Q. So you're able to serve customers using UNE-P without collocating in the central office that serves that customer?

A. That's correct.

Q. What about resale, do you use resale in any way?

A. In the state of Washington it's minimal. I assume your question is limited to the state of Washington.

Q. They all are until we get to ones that aren't, and I will be clear about that.

What business considerations drive the decision to offer customer service through total service resale as opposed to UNE-P or UNE-L?

A. There's really two considerations from Integra's perspective, and they are service, which is a strategic consideration, and cost, which is, you know, clearly an economic consideration.

From a strategic perspective, Integra has made the determination that we are going to differentiate ourselves and we are going to compete in the marketplace based upon service, and we believe very strongly that in order for us to look a customer in the eye and truly compete on service, we need to own substantially all of the electronics, which really is what governs the quality of service and manages the traffic. And for that reason, to compete on service from a strategic differentiation standpoint, we made the decision to invest in our own network, which is a long way of saying we don't use resale because we believe that it's fundamentally still Qwest providing the service but someone else's brand is on it. That's the strategic consideration.

The economic consideration is based upon the current rate structure in the state of Washington, it's our determination that we can generate higher operating margins by investing in our own switching and transport network and relying upon leasing loops on a UNE basis from the incumbent carrier.

Q. But I had understood you to say that you had a very small resale presence, and I was just wondering for those customers that you do serve that way, what are the business reasons that drive that?

A. In the state of Washington, I'm not aware that we have any.

Q. Okay.

A. I guess because I can't tell you with absolute certainty that we don't have one, I chose the words very small.

Q. Okay.

A. I'm not aware that we have any resale customers, true resale customers.

Q. Fair enough.

Take a look at Cross Exhibit 752, and that is a 12 page document. I believe your pages should be numbered in the lower right-hand corner. It's one that's in landscape format instead of portrait, and it starts with a Web page that says our services.

MR. FINNIGAN: It might be helpful that the lower right-hand corner bears the date September 11, 2003.

A. I believe I have this one.

Q. Okay, great. Now are you familiar with Integra's Web site?

A. Yes, I am.

Q. I thought it was a fair question. Is this the Web site describing Integra service offerings that a customer would or potential customer would see no matter where they were physically located when they logged on to the Web site?

A. Yes, technically you can access this Web site from any Internet connection.

Q. And a person who logs onto the Internet in Spokane would see the same Web site that a person who logged on in Vancouver or Bellingham would see?

A. That's correct. We do, if you drill down into our Web site, because we have a strong presence in each local market, offer portions of the site that are unique to each geographic market area, but the answer to your question is yes.

Q. Can you turn to page 3, please. It describes there under Integra's voice services services such as basic business lines; do you see that?

A. Yes, I do.

Q. And it says that Integra Telecom's network offers local calling services delivered via standard analog lines. Do you see that?

A. Yes, I do.

Q. Is that accurate?

A. It would be inaccurate to view that as a statement of the only form of delivery that we offer.

Q. But as far as it goes?

A. It is accurate that we do offer analog line services.

Q. Why does Integra identify that the line is an analog line?

A. At the risk of embarrassing myself, I can't really tell you why we chose that particular phrase.

Q. Skip down to the description for T1 services, and do you see there on the third line that it says Integra offers reliable digital T1 access services?

A. Yes, I do.

Q. And you have identified that specifically as a digital service; is that correct?

A. That is how it reads.

Q. As you sit here today, can you describe generally why Integra felt it important to describe for its potential customers the fact that it offers both analog and digital services?

A. Certainly, I would be happy to. We, for the most part where it makes economic sense, attempt to provide a comprehensive solution to all of our target customers. And in order to do that, we have made the determination that we need to provide a broad offering of services that would include both analog and digital services. However, I will say that it gets back to an earlier question you asked about geographic proximity, there are a number of reasons why we would choose not to offer services in certain geographic areas, including areas where we have network presence.

Q. Can you describe what type of customer might be interested in the basic business lines, or is there a specific customer group that would be interested in the basic business lines?

A. Typically when we refer to basic business lines, we're describing what we call a DS0 service, which is generally going to be analog in nature at least to the point that it plugs in to the prospective customer's equipment. And those customers are going to range across broad industries, they're going to vary in size, but generally the DS0 solution is a solution that's utilized by the smallest of business customers that don't have the more complex equipment that you would use high bandwidth services in.

Q. Can you turn to page 5 of that same document. In the first paragraph, it discusses there that Integra's business lines could be used as trunking for your phone system, and then in parentheses it says analog key system or PBX. Do you see that?

A. Yes, I do.

Q. Would that, if a basic business line were being used for that service then as a trunk for a key system or a PBX, would that correctly be described as an analog PBX trunk?

A. I would not draw that conclusion, no.

Q. Okay. The basic business lines were described on page 3 as offering analog services; is that right?

A. I think that was the way you phrased the question. I would caution you that this is really intended to be more of a marketing document than a technical dissertation on the nature of our network and services.

Q. Well, and really that's the spirit in which I'm asking these questions.

A. Okay.

Q. Do you know if Integra offers analog PBX trunks?
A. I don't know. I can tell you it's my perspective as the CEO that there's a fairly limited market for that kind of a service based upon today's environment.
Q. What about analog key systems, is there a market for those?
A. Yes, there's a very substantial market for those.
Q. And do those compete for customers who would like PBX functionality but on a smaller scale than would be served by a traditional PBX?
A. I have difficulty answering that question, it's very broad in nature. I think the spirit I hear you asking it in though, I would say yes.
Q. And then on page 7 if you turn to the heading under T1 or digital T1 access services, the first paragraph in that description, marketing description, also references PBXs, is that right, in the last sentence?
A. Thank you. Yes, it does reference PBXs.
Q. And so would you expect that if a business were to choose your digital T1 access service as a PBX trunk, it would be provisioned as a digital PBX trunk?

A. It would only be provisioned if the customer was located in an area where we chose to provide that service, and I will point out that we do not provide that service in areas where we don't have the footprint. And I would also like to point out that we have chosen to pull back on our willingness to provide those services in the areas where Qwest already has competitive classification for T1 and higher services.

Q. Is that due to any market behavior on Qwest's part after it received competitive classification for those services?

A. That's a good and fair question, and I would respond by saying the way we look at this issue of competitive classification, I assign equal weighting to the potential behavior that Qwest might choose to operate under as well as the actual behavior. And what I chose to do in my capacity as CEO is when Qwest was provided competitive classification or competitive classification for T1 and higher services in the three exchanges of Seattle Main, Seattle Elliott, and Bellevue Glencourt, we have intentionally pulled back on our willingness to service those types of customers, and we have dedicated our competitive and sales resources into other portions of the market.

The reason we have chosen to do that, even though you might ask me in a moment or point out to me that Qwest has, and I'm not saying Qwest has or has not done this, but if I were -- if it was brought to my attention that Qwest has not exercised people have used the term price squeezes in that instance, I would say that's irrelevant. And the reason I feel it's irrelevant is because the business risks have changed in that market area, and we, this company, has made a very substantial investment to compete in this state, and I can not afford to face the risks. The potential change in environment to me is just as any actual change in environment.

Q. When did you make the decision to pull back?

A. We, as is customary within Integra Telecom, often make these types of decisions as a course of extensive debate, discussion among people that have responsibilities in these areas, and I would say it was made over the course of a period of time, and it was after the competitive classification was awarded.

Q. Are you aware that the competitive classification order was granted almost three years ago in the docket to which you're referring?

A. I am not specifically aware of the date, but yes, I do recall that it was several years ago.

Q. When did Integra enter the market?

A. Integra entered the market in March of 2000.

Q. Has Integra pulled back in Vancouver?

MR. FINNIGAN: Does counsel have a specific rate center within Vancouver in mind?

Q. Are you aware of the wire center designations for Qwest in the Vancouver area?

A. On a general level, yes, I am.

Q. Are you aware that there is a wire center Vancouver Orchards and another one designated as Vancouver Oxford?

A. Yes, I am.

Q. Have you pulled, to the extent that Integra does business in that footprint, have you pulled back?

A. I am not aware that Qwest has been provided competitive classification in T1 and higher level services in those exchanges. I will tell you that if my memory is serving me well that portions of those exchanges are in higher priced zones, and yes, we have a disincentive to compete where the retail pricing has not changed but the wholesale pricing has increased as a result of zone treatment, and in that instance, yes, we have pulled back.

Q. What geographic areas in the state have you not pulled back from?

A. I would answer that in a general -- excuse me.

MR. FINNIGAN: And please you make your own judgment about that, but to the extent this talks about your business plans and contains confidential information about what you may or may not do in the future, I don't know if you want to treat your answer as confidential or not, but just --

JUDGE MACE: Perhaps you could answer in a general way, and then if we need more that might delve into confidential material, we can adjust our practice accordingly here.

THE WITNESS: Sure.

A. The question as I understand it is what portions of the state have we not pulled back?

Q. Yes.

A. And are you asking the question with regard to all services or certain specific services, because I have talked to you about the high capacity T1 and higher where competitive classification has been offered.

Q. With regard to those same services.

A. The high capacity?

Q. Yes.

A. Excuse me while I think for just a second. I am -- obviously didn't bring with me intimate knowledge of every single exchange area, which is really the information required to answer your question, but at a general level following the guidance offered, I would say that where competitive classification has not been provided to Qwest, we on a general level have not pulled back.

Q. Well, Mr. Slater, that's I'm afraid not going to be good enough unless you can tell me where competitive classification has and hasn't been granted to Qwest; do you know that?

A. I know that competitive classification has been granted in Seattle Elliott, Seattle Main, and Bellevue Glencourt.

Q. Yes. Are you aware of whether -- well, let's see. Have you pulled back for any service in the Kent area?

CHAIRWOMAN SHOWALTER: Can I just interject. You have used this term pull back many times, I don't know what you mean by pull back. I don't know if it means you no longer market or you don't invest. Can you just give us some notion of what you mean when you did or didn't pull back.

THE WITNESS: Sure, and I apologize for speaking in less than clear terms. Generally when I say we pulled back, we commit capital and spend resources on two areas, it's our human organization and our network infrastructure. And for the most part in this discussion, because I have been focusing on Seattle Main, Seattle Elliott, and Bellevue Glencourt, I am referring to not dedicating sales and marketing resource as aggressively into those areas. We did choose to collocate in those areas, we made that network determination before the competitive classification determination was reached. And so when I say pull back, in that instance of those three exchanges I'm talking about sales and marketing.

You will have to repeat your question, I'm sorry.

BY MS. ANDERL:

Q. So to the extent that pulled back means doing less marketing efforts than you had previously, have you pulled back in Kent?

A. No.

Q. Have you pulled back in Auburn?

A. I need to -- I'm a little uncomfortable with the question, because I'm not sure I understand now that I have defined what pull back means how you view that, and I also want to take a moment to explain how I run my organization and say that I have general management who I have, you know, basically given the responsibility and accountability to make the decisions on an exchange by exchange, market by market basis in terms of where we dedicate resources. So with that caveat, I will say no.

Q. What about in Renton?

A. No.

Q. What about in the other Seattle wire centers other than Main and Elliott?

A. No.

Q. Are you -- do you have a marketing presence in Spokane?

A. I would define a marketing presence as where we consciously commit resources and invest capital specifically to target that market, and on that definition, no, we don't.

Q. Do you serve customers in Spokane?

A. No, we don't.

Q. What about Tacoma, do you expend marketing dollars and efforts in the Tacoma market?

A. Yes, we do.

Q. And have you pulled back as you have defined that term in that area?

A. No, we haven't.

Q. And then we have talked about Vancouver, and I believe your answer was that you had pulled back in Vancouver?

MR. FINNIGAN: And you're talking about the two Vancouver wire centers that you identified?

Q. Orchards and Oxford.

A. Yes, but to be clear, in that application, the Vancouver wire centers, when I referred to the word pulled back I was not referring to T1 or higher capacity services. I was referring more to the effect of the higher zone pricing on the UNEs and the effect that has on our margins relative to retail pricing. And we have pulled back on the sales and marketing resources dedicated to those exchanges, but it should be clear that that would be for more than just the T1 services, so we're kind of mixing things up here a little bit. I don't know if you intended that.

Q. And do you attribute the pull back in Vancouver then to both the zone pricing and to the competitive classification?

A. No, I was just referring to zone pricing.

Q. So to the extent that there has been any pull back in Vancouver, it's not attributable to any granting of competitive classification for Qwest services?

A. That is how I am answering your question, although I would like to expand by saying that, and I guess this is the role of a witness versus a cross examiner, I feel an effort to be entrapped here on my specific knowledge of which exchanges have competitive classifications and which don't. And I would say that in my opinion that's not what this is about, and that's not what my testimony is about. My testimony attempts to bring out the practical realities of risk in developing a competitive marketplace.

Q. Can you take a look at your testimony at page 6, please, Exhibit 751. At lines 2 through 7, you talk about the relationship between Qwest's wholesale and Qwest's retail rates. Do you see that?

A. Yes, I do.

Q. And you have indicated that you believe that a grant of this petition would sever and break apart that relationship; is that right?

A. Yes, I do.

Q. Have you reviewed for purposes of your testimony here today or for any other purpose the Washington statute that governs the granting of competitive classification in a case such as this?

A. You're asking me what the basis of my testimony was?

Q. No, I'm asking you if you're familiar with the statutory framework within which the Commission grants a competitive classification petition such as this.

A. Prior to founding Integra Telecom, I worked in the local exchange industry for about nine years, and I would respond by saying I believe I have a general understanding of the statutory requirements both at the federal and state level for establishing rates.

Q. If the Washington statutes governing this petition preserved the relationship between Qwest wholesale and retail rates, would that address your concern that you expressed in your testimony here?

A. No, it really would not address my concern, because in that example where somebody might show me some regulations that give me confidence that it wouldn't -- that were Qwest to exercise its monopoly advantages by owning all of the local loops in the areas where Qwest serves, that I would have a remedy available to me in the form of initiating a proceeding, prosecuting a proceeding, and presumably being victorious in enforcing rules against Qwest. I have very little comfort in that for two reasons.

One is in my judgment as the Chief Executive Officer, the horse is already out of the barn. In my opinion the market moves much faster than, with all due respect, the regulatory process would. And secondly, as I stated earlier, my assessment of the issues around here both relate to perceived risks as well as actual actions taken by Qwest, and I would make the determination to de-emphasize my willingness to compete in the areas where Qwest has competitive classifications regardless of what actions Qwest took, so.

And the reason I have to do that from a practical standpoint is I found that in running a startup company that relies upon private equity investors and banks, and they are very sensitive to the risks related to this industry and the markets in which I compete, and I have to be responsive to those sensitivities and those risks. And I don't believe the regulatory remedy that you're describing as potentially available adequately addresses those risks.

Q. Are you aware of whether Qwest's retail services are required to cover their costs even if they are competitively classified?

A. I'm sorry, could you say that again?

Q. Are you aware of whether Qwest's retail services are required to cover their costs even if they are competitively classified?

A. I did read the portion of the statutes that described the requirements that are necessary to satisfy for a competitive classification, and I did read in that statute and I think it came out in some testimony that I heard earlier today that Qwest does have an obligation to cover its costs.

Q. A couple more questions about the exhibits. I missed one on Exhibit 752, which is the longer of the exhibits that describes Integra service offerings. Can you turn back to that one and look at page 7. There's a paragraph that's right above the word features in bold, the word features is in bold, and there's a paragraph right above there. I don't know, Mr. Slater, if you were in the room during the discussion earlier today about DID or direct inward dialing, were you?

A. I was in the room, yeah.

Q. Does Integra offer DID capability?

A. Yes, we do offer DID capability.

Q. Now let's look at the last cross exhibit that I had marked for you, Exhibit 754. These exhibits all have the unfortunate coincidence of looking a lot alike on the cover since they're all from the Internet. This one the cover sheet says, you are invited to experience the Integra difference.

A. I have it.

Q. Okay. And as you walk through the Web pages, the pages that I'm really looking at are the last two pages, 6 and 7, and it's an article from the Minneapolis Star Tribune entitled, Integra is a Different Kind of Qwest Competitor. Do you see that?

A. I do.

Q. Are you familiar with that article?

A. I am familiar with that article.

Q. That was posted on the Integra Web site for a while, wasn't it?

A. I believe it will still be there for quite a while. We're proud of that article.

Q. And the gentleman quoted in paragraph four, Mr. Huesgen, is the same Mr. Huesgen you identified earlier as the President of the company who works for you?

A. That's correct.

Q. Okay. Now in the fifth article or fifth paragraph of that article, is it correct that at least in Minnesota the Integra business model has been to build most of its own network rather than to lease components of Qwest's network?

A. Give me a second to read that.

Q. Sure.

A. (Reading.)

I'm not sure I remember your question exactly, but it is correct to say that we build most. I think the key word there is most.

Q. Take a look at the eighth paragraph, which starts, Integra believes the latter and put its money where its beliefs are. Can you go ahead and read the next sentence there for us so we're all on the same page, and then tell me if that's correct.

A. (Reading.)

Yes, what that's referring to, and I think there's an important distinction that is a little bit subtle in the way it's written, but what that is referring to is that we, much as the discussion you led me through a moment ago, we have very intentionally chosen not to rely upon the UNE-P platform.

Q. You're relying on leased UNE loops from Qwest in Minnesota?

A. That's right, although I would point out that we do own a local exchange carrier in Minnesota where we do own our own loops.

Q. Okay. And is the number of customers you serve through your own loops there proprietary?

A. I don't mind sharing it. We serve just over 20,000 customers through our local exchange company, regulated local exchange company.

And I will say we much prefer working with the Washington Commission than the Minnesota Commission.

Q. At page 7 of your testimony, you discuss the pending open cost docket here, or at least you allude to it when you state --

JUDGE MACE: Page 7 of the testimony, right?

MS. ANDERL: Page 7, yes, of the testimony.

BY MS. ANDERL:

Q. That the ability of the competitive entrant to raise capital is impaired during the time when Qwest's UNE rates continue to be revised and with open dockets thereby creating uncertainty with regard to the underlying cost structure for CLECs. Would it be -- what would be your recommendation to the -- well, let me back up.

Are you aware that this Commission has had one or more cost proceedings ongoing since 1997 for a UNE rate?

A. Since 1997?

Q. Yes.

A. Yes, I am.

Q. Okay. What would be your recommendation to the Commission with regard to how to handle wholesale costing and pricing proceedings in order to alleviate the uncertainty you complain of here?

A. That's really a terrific question, what would be my recommendation? At the risk of sounding glib, and I don't mean to sound facetious, but, you know, clearly the challenge from my perspective is there's a lot of cooks in the kitchen, and I think the issues between the federal level and the state level are very complex and quite challenging, and, you know, I think it would be good for all players to bring certainty to the cost structure in our environment as quickly as possible. From a practical standpoint, I think the most effective way to do that is through NARUC.

MS. ANDERL: Thank you, Mr. Slater, I have no further questions.

JUDGE MACE: Do the Commissioners have any questions?

MS. ANDERL: Oh, I would like to move the admission of Exhibits 752, 753, and 754.

MR. FINNIGAN: No objection.

JUDGE MACE: I'm sorry, Mr. Levin, did you have cross-examination for this witness? I didn't think you had, but.

MR. LEVIN: No, I have not.

JUDGE MACE: With regard to the three cross exhibits, 752 through 754, is there any objection to the admission of those exhibits?

MR. FINNIGAN: No objection.

JUDGE MACE: I will admit them.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. Well, reading the news article, I see that you are doing business in Minnesota, Oregon, Washington, Utah, and North Dakota, I believe those are all Qwest states, are they not?

A. Yes, that's right.

Q. Is that fact any reason why you are doing business in those states?

A. It is a contributing reason why we have chosen those states. The industry, as I'm sure everybody appreciates, is very complex, and the process of successfully provisioning loops and transferring customer services from the Qwest network to our network or from any network to our network is one that requires a very high degree of cooperation and understanding among companies. And by interfacing with as few of -- as few local exchange companies as possible, we believe it allows us to be more efficient as an organization, and that was part of our assessment.

The second reason why we have chosen these areas that is really a little bit more coincidental that Qwest happens to serve them, and that is our target market is the small and medium size business consumer, and most of the Qwest states, this is a bit of a generalization, but certainly the five states that we compete in, the predominance of the business access lines terminate at our target customer, and that's not true if you go to the Eastern Seaboard or some of the bigger California or Texas cities. So our target market happens to be the largest portion of the market in those states as well as the fact that we like interfacing with a single local exchange carrier for efficiency and practical purposes.

Q. All right. Within the state of Washington, can you describe your marketing footprint, whether you have pulled back or not, just where you at least advertise your services?

A. Sure. We are collocated in 13 Qwest and Verizon exchanges that are predominantly Qwest exchanges, and those principally include exchanges in the larger metropolitan areas of, you know, Greater Seattle, Bellevue, the West Valley, and then up north, and then in Southwest Washington.

Q. And I don't want you to reveal anything that you determine to be confidential, and we can -- if I ask you something that is confidential, we could have the answer submitted in a confidential way. But what percent of your customers have three or fewer lines?

A. I don't mind --

Q. In the state of Washington.
A. I don't mind answering that question if -- I don't have an exact percentage with me. If you can indulge relying upon my estimations based upon my knowledge of the business. You said three or fewer lines?
Q. Mm-hm.
A. Within the state of Washington, my estimate is it's probably in the range of 10% to 20% of our business.
Q. And if that were to be five or fewer lines, what would the answer be, and then ten or fewer lines? And I'm not looking for something really precise, I just want to get a sense of proportion.
A. I can tell you that our average customer is six lines, and that's across all five states. But if you look at our customer distribution, and it's a bell curve with two camel humps on it, and one is centered around the DS0 product, and one is centered around the T1 product. And when I say one, I mean each of the camel humps. And so that's really how you have to look at it. But on average on a composite basis, it's six lines.
Q. Well, of the DS0 hump, what is the top of that hump in terms of number of lines?

A. In terms of the average, again, I don't have the specific information, but it's going to be around four, maybe five lines.
Q. All right. And if you exclude T1 lines from this question, then what percent of your customers have three or fewer lines? Maybe one way to put this would be of your DS0 customers.
A. Sure, I understand.
Q. What percent would be three or fewer lines?
A. It would be closer to 20% to 30%.
Q. And then you said that you do offer DID service; is that correct?
A. Yes, it is.
Q. If you presented yourself to a promising customer offering DID service and the customer said, I'm sorry, I can't go with you because I've got my phone numbers, I know they are portable, but the rest of the 10,000 block of numbers is not, and I want to keep the option of adding them on, how would you tackle that problem?
A. It's a great question. It gets into, you know, highly technical areas that I'm not entirely comfortable addressing.
I will tell you that there's a couple alternatives that come to mind. One is the way DID

services work. If the customer is willing to do this, and this is only going to be in a limited number of instances, we, of course, have our own numbering blocks, and we would be able to offer our own numbering blocks to that customer. Unfortunately, that's a limited number of circumstances where that is a viable option.

In the other case, you know, generally what we have to rely upon is that we can transfer all of the numbers that at that point in time are active and in use, and to the extent they require additional numbers, we would have to provide them an option that may not include giving them their first choice.

Q. Is there the possibility of activating, of the prospective customer activating a bunch of numbers for a short period of time with the old carrier and then porting them over to the new?

A. You know, I really don't know.

Q. All right. Last question. You said that in exchanges where you know that there is a competitive classification, in some of those exchanges you have pulled back. If the Commission were to grant Qwest's petition, all of the exchanges would be competitively classified, therefore, within the state of Washington anyway, you would not have a comparative advantage in the non-classified exchanges. What would that mean, would you just pull back all together from the state of Washington, or would you proceed with your business plan?

A. In my testimony I used the words a grave mistake on the part of the Commission if that were to be granted, and I have not completely thought through, because in my own judgment it would be a great surprise to me if, in fact, that were the outcome. And my character and earnestry is such that I tend to manage the problems I have rather than the problems I might have. And so I have not thought through your question in great detail.

I can tell you that at a, you know, intuitive level, we would de-emphasize our interest in the state of Washington. That de-emphasis would have to be measured against the fact that we have invested $40 Million to establish a presence here in Washington, and I certainly am not eager to walk away from that. But by the same token, I would make a business determination on how I really do feel about the risks that I would perceive to have substantially increased as a result of that determination. And it certainly would go in the direction of us de-emphasizing our willingness to compete in Washington.

CHAIRWOMAN SHOWALTER: Thanks.

JUDGE MACE: Commissioner Oshie.

E X A M I N A T I O N

BY COMMISSIONER OSHIE:

Q. Mr. Slater, you do not serve in Spokane, and I assume you do not have a presence in the city of Yakima or the area surrounding Yakima as well or perhaps -- do you serve in any Eastern Washington city or area?

A. We don't, and I would like to explain that we have an interest in serving portions of Eastern Washington. By way of making that point, I can tell you we provide services in places like McMinnville, Oregon, Baxter and Brainerd Minnesota, which are communities that are substantially smaller in terms of their economic attractiveness to both Spokane and Yakima. So I do see an economic model for providing services in those areas. Frankly, the reason we're not in those areas is the capital markets collapsed before we had the opportunity to establish a presence in those portions of Washington.

Q. Do you see greater business risk in serving the areas in Eastern Washington?

A. Do I see --

Q. There is greater risk in establishing a presence in Yakima, for instance, than you found in the

City of Seattle?

A. I don't necessarily see greater business risk. I do see a substantially different economic model in those communities. Our industry is, whether we like it or not, is very much the economics are driven by density. I have heard that come out quite a bit today, and I'm sure you're well aware of that. And in choosing where to, you know, initiate our services in the state of Washington, we did choose to go to the larger metropolitan market areas.

Things have evolved, however, in a way that I see -- I see very compelling reasons to open up services in those communities, and I will tell you we have looked at it, we are actively considering initiating services in those areas. What's more attractive to me is they're not as competitive. I think the markets would truly benefit from a credible and serious additional competitor in those areas. And technology has evolved from a switching perspective where the economics have changed since we initiated our services in the state of Washington.

What is less attractive about those markets is to the extent they're in higher priced zones relative to UNEs and there's, you know, more of a preponderance towards statewide pricing on a retail basis, there's lower margins available to me in those communities, so that's an issue that has to be reconciled.

Q. If you were using, well, perhaps you do use a business model that at least has some, you know, some application of the UNE-P and of resale, so I guess what I'm getting at is that if you wanted to enter Yakima, for example, you're certainly capable of doing that, the products are available for you to have a presence in the market, but there's a reason why you're not there, and is it because your business plan emphasizes the acquisition and utilization of your own facilities?

A. Yes, we have -- we have competitors that you may have heard from or may get in front of you and tell you about all the merits of their business models that rely upon, and these are not Qwest by the way, but rely upon UNE-P types of services, and we have chosen not to go that route for the two reasons I mentioned. One is economic reasons, and the other is strategic reasons.

It's very important how you differentiate yourself in this marketplace, and the prospect of convincing a customer to switch from a 100 year old incumbent to a new carrier, particularly during the economic turmoil that our industry has gone through, is substantial, and we feel that we need to be very clear on our differentiation, our basis for differentiation.

And because it is on service, we feel we need to own substantial portions of our network so that we can provide that high quality service.

And I guess the bias I'm expressing is I don't -- I'm not trying to offend Qwest, but I believe by owning our own switching and transport network, I believe our services are a higher quality than they would be if we were to simply resell or rebrand someone else's network, regardless of whether it's Qwest or anyone else. We have control over it.

Q. If you were going to provide service in Eastern Washington, would you differentiate in your focus between the Spokane, Yakima with other smaller cities, Wenatchee, Waterville, Walla Walla, Clarkston?

A. By differentiate in our focus, do you mean from a marketing perspective --

Q. Yes.

A. -- or from a build out perspective?

Q. Well, I guess it would be from a build out perspective and a marketing perspective.

A. Yes to both. We would typically go through a business case assessment of each market that would include, you know, competitive network issues as well as economic issues that I have discussed. And then to the extent we justified building network and a presence into those communities, we would tailor our products and our marketing message around the customers in those communities.

As evidence of that point, we do have different product and pricing strategies together with different messages that we advertise and communicate with that are uniquely tailored to the Puget Sound area relative to other markets we compete in.

Q. Would it be fair to say that at least your company would focus on the most dense population areas within Eastern Washington, and then if there was an interest in other areas, it would move out into the other areas after a period of time?

A. In today's current economic environment, yes, that's a fair statement.

And excuse me, if I can just add to that, there's a very, further, a very real limitation, and that is that based upon our network model, which requires a collocation investment in each end office, together with a sales force that has to be local to those prospective customers, there is a size of a market below which I simply will not go regardless of the environment because there's just -- there's not enough market there for me to recover the investment I'm making in the people, the office, and the collocation presence.

Q. Are you comfortable expressing what that size may be?

A. I would be comfortable sharing that with the Commission. That does get into an area that I'm a little sensitive about from a competitive perspective.

COMMISSIONER OSHIE: I would like to see that, Judge Mace, how would you like to handle that?

JUDGE MACE: Well, we could make it a confidential Bench Request, but if it's confidential that means that it would go to parties who have signed the confidentiality agreement, not just the Commission, not just the commissioners.

CHAIRWOMAN SHOWALTER: And then we have another category called highly confidential.

MR. FINNIGAN: Yes, Your Honor, that's what we would request, that it be a highly confidential exhibit.

CHAIRWOMAN SHOWALTER: That's distributed only to Staff and probably Public Counsel.

THE WITNESS: I would be comfortable with that.

JUDGE MACE: Then we'll make that Bench Request Number 2, Highly Confidential.

Sorry, Commissioner Oshie, is there a size of community below which you would not make an investment in telecommunications equipment?

COMMISSIONER OSHIE: I think that would be, that's a fine way to express that.

THE WITNESS: I heard the question to be not only equipment, but human infrastructure as well.

COMMISSIONER OSHIE: Yes, exactly, thanks.

BY COMMISSIONER OSHIE:

Q. Just to follow up, Mr. Slater, with an area that I guess I'm interested in, and that's the acquisition of customers. Now is that a significant cost to your company to acquire a new customer?

A. Yes, it's a very substantial cost.

Q. And would that be a heavily weighted factor in deciding whether to enter any market?

A. Absolutely.

COMMISSIONER OSHIE: Thank you.

CHAIRWOMAN SHOWALTER: I forgot to ask one follow-up question.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. If DID customers were able to bring as many nonworking lines as they have working lines, would that open up your market as a competitor to provide DID services significantly?

A. I would say no, it really wouldn't open it up significantly. It certainly would be meaningful, but I wouldn't call it significant.

Q. And why is that?

A. I think the profile of the customer that might feel limited from this narrow element is quite variable, and I guess I'm not comfortable saying that, you know, twice as many is the right number or three times as many. It certainly would be a meaningful help and improvement. And to be honest with you, I don't feel completely grounded technically in exactly what the limitations are, so I'm a little uncomfortable with the whole question around this DID issue, which is viewed as an impediment to competition.

CHAIRWOMAN SHOWALTER: Thanks.

JUDGE MACE: Redirect.

MR. FINNIGAN: Thank you.

R E D I R E C T E X A M I N A T I O N

BY MR. FINNIGAN:

Q. Just a few questions, Mr. Slater. At the start of his questioning, Commissioner Oshie asked you about the acquisition and construction of Integra's own facilities, and what do you mean by the term your own facilities?

A. I answered that question with my mind focused on our historical investment, which is really the switching and transport infrastructure. I would say that we have initiated the process of building our own end user loops in certain areas. We have not initiated that practice in Washington. And I do believe that in time our company will be making investments in end user loops as we accumulate sufficient market density to justify that investment.

Q. Are there any assumptions that you make about the regulatory environment in making the decision to build your own local loops?

A. It's been such a narrow part of our business to this point that I can't definitively say that that's been part of the consideration. I would say at a general level, absolutely.

Q. On Exhibit 754, the Minneapolis Star Tribune newspaper article, do you have that in mind?

A. Yes, I do.

Q. You were asked some questions about your network in Minneapolis, or excuse me, in Minnesota, and in part you responded that you had 20,000 loops, something in excess of 20,000 loops. Are those loops in the Scott-Rice Telephone Company?

A. Yes, they are, that's the regulated local exchange company I was referring to.

Q. And just to be clear what you mean by regulated, is the Scott-Rice Telephone Company classified as an incumbent telephone company or a competitive telephone company?

A. It's classified as an incumbent telephone company.

Q. On the first page of that article, you were asked questions by Ms. Anderl about building your own local telephone network, and just so we're clear, what is meant by building, well, the exact words are building most of its, meaning Integra's, own local telephone network?

A. What I mean and what's specifically referred to in that article and what I meant in my response was that we invest in the switching infrastructure, the transport infrastructure, and by transport I mean between end offices where we're collocated, and the infrastructure at the physical collocation.

Q. Does that term include the last mile?

A. No, it does not include the last mile.

Q. In response to an earlier question from Ms. Anderl discussing digital services versus analog services, you responded that there were many reasons why you choose not to offer services in an area even where you might have a market presence. What are those reasons?

A. In my response, I think I said even where we have a network presence.

Q. I'm sorry, network presence.

A. In other words, we made the network investment, and I've got incentives to capture market share to recover that network investment. And in spite of those incentives, where we have chosen not to sell or market as aggressively generally relate to competitive reasons. And specifically I was alluding to the decisions we have made with regard to the Seattle Main, Seattle Elliott, and Bellevue Glencourt exchanges where Qwest has been given competitive classification of T1 and higher level services.

And by the way, on that point I have done my own analysis, and I am comfortable sharing our penetration rates in those exchanges relative to our penetration rates where Qwest has not been given the competitive classification as evidence of my statement.

Q. What are those penetration rates?

A. In the exchanges --

MS. ANDERL: Well, I guess I will object. I think that's outside of the scope of any cross that I had asked and that the witness is simply volunteering additional direct testimony.

JUDGE MACE: Sustained.

MR. FINNIGAN: The objection was sustained before I get a chance --

JUDGE MACE: What was your response then?

MR. FINNIGAN: I know it's late in the day, but.

There were a whole series of questions, in fact, most of Ms. Anderl's questions were related to what areas that Integra had pulled back in and what were the reasons for that, for that decision. And I was doing a follow-up question to that line of questioning by Ms. Anderl, and the witness has indicated that he has some information that would be responsive to an understanding of Integra's reason. So I would offer that it is responsive to the cross-examination.

CHAIRWOMAN SHOWALTER: Well, I'm not sure, what are we -- if the witness said he pulled back in those exchanges and then it shows a different penetration rate, what are we supposed to make of that, what is cause, what is effect?

MR. FINNIGAN: It would show -- it would verify the subjective statement with objective numbers.

CHAIRWOMAN SHOWALTER: That he pulled back?

MR. FINNIGAN: Right.

CHAIRWOMAN SHOWALTER: Why would that be cross?

MR. FINNIGAN: It was I mean there was also -- there were a long series of questions by Ms. Anderl as to what markets he pulled back in, Integra pulled back in, and why they had pulled back in those markets. And I was just simply following up for clarification on that question, on that line, excuse me, not that question but that line of questions.

MS. ANDERL: Your Honor, we wouldn't expect to challenge the witness's assertion that he had, in fact, pulled back in certain markets or that he hadn't in other markets, and so I'm not sure that additional objective verification of that representation needs to be made.

JUDGE MACE: Sustain the objection.

COMMISSIONER OSHIE: Well, isn't this information already in the record? At least if Integra had responded to the raw data survey that was submitted by Staff, at least there would be some information in the record as to their presence in certain exchanges. I'm assuming that to be true.

MR. FINNIGAN: Well, I certainly believe they responded to the data request, but whether or not you could do the calculations on their relative penetration rates in different exchanges, I don't know, because I'm not, quite frankly, I'm not familiar enough with the data to know whether that's possible or not.

CHAIRWOMAN SHOWALTER: I honestly think that it would not tell us anything, because the witness said he pulled back, it really puts a number to the statement that's already made, it doesn't qualify, and that's what cross is there to do, to restore or qualify a statement that was made. It doesn't -- excuse me, redirect.

JUDGE MACE: Well, I sustained the objection, so.

MR. FINNIGAN: Since it was sustained before I started, I guess I didn't lose anything.

CHAIRWOMAN SHOWALTER: And we do have the information already in the record.

MR. FINNIGAN: Right.

BY MR. FINNIGAN:

Q. You had a discussion with Ms. Anderl about the use of your one existing switch to serve the entire state of Washington, and you stated that it was mostly for economic reasons that you did not want to use one switch. Could you tell us what those economic reasons are?

A. Yeah, I would be happy to. It's principally the cost of transport. It would make very little sense in my opinion to build a collocation presence in the, you know, Northeastern corner of Washington and back all the traffic including local exchange traffic to Kent, Washington. That simply would not do.

MR. FINNIGAN: That completes my redirect.

JUDGE MACE: Anything from Qwest?

MS. ANDERL: One follow-up.

R E C R O S S - E X A M I N A T I O N

BY MS. ANDERL:

Q. With regard to the transport network that you have represented Integra is building itself or self provisioning, is that over facilities that Integra has actually constructed or over via leased capacity from another wholesale provider?

A. It's both.

MS. ANDERL: Okay, thank you.

JUDGE MACE: Thank you very much, you're excused.

We indicated that we were going to come back at 6:30, maybe we should make it 6:40 to give ourselves at least an hour for dinner. I wanted to suggest that when we come back to cross examine Mr. Williamson that we begin with ATG since it seems like you need to finish your cross with him if possible.

MR. LEVIN: Yes, thank you.

JUDGE MACE: All right, then we're adjourned until 20 to 7:00.

(Dinner recess taken at 5:40 p.m.)

E V E N I N G   S E S S I O N

(6:50 p.m.)

(Witness ROBERT T. WILLIAMSON sworn in.)

JUDGE MACE: I've already sworn the witness in, and I believe we have to have the witness presented by Staff first, Ms. Watson.

Whereupon,

ROBERT T. WILLIAMSON,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

D I R E C T   E X A M I N A T I O N

BY MS. WATSON:

Q. Good evening, would you please state your name for the record, spelling your last name.

A. Robert T. Williamson, W-I-L-L-I-A-M-S-O-N.

Q. And who is your employer?

A. The Washington Utilities and Transportation

Commission.

Q. What is your business address?

A. 1300 South Evergreen Park Drive Southwest, Post Office Box 47250, Olympia, Washington.

Q. What is your position with the Commission?

A. Utility engineer on Staff.

Q. Are you testifying on behalf of Commission Staff in this proceeding?

A. Yes, I am.

Q. Is Exhibit Number 301T your pre-filed direct testimony in this case?

A. Yes, it is.

Q. Was Exhibit 301T prepared by you or under your direction?

A. Yes, it was.

Q. Do you have any changes to Exhibit 301T?

A. Yes, I do.

Q. And what is that change or are those changes?

A. On page 10, line 12, where it says, first in the state of Washington most, change most to some.

JUDGE MACE: Hold on just a moment so we can make the change.

All right, go ahead.

A. And then on line 14, the end of that sentence where it says, for all telephone numbers served by a

PBX, cross that all out.

JUDGE MACE: I'm sorry, cross what out?

THE WITNESS: Cross all of it out, for all telephone numbers served by a PBX, but leave the footnote.

JUDGE MACE: The footnote stays?

THE WITNESS: The footnote stays.

MR. LEVIN: Wait, can you do that again.

THE WITNESS: Sure. On line 14 where it says, for all telephone numbers served by a PBX, cross that out. Do you want me to read the sentence then after the changes?

JUDGE MACE: No, as long as we know also that the footnote remains.

THE WITNESS: The footnote remains.

BY MS. WATSON:

Q. Do you have any other changes to this exhibit?

A. No, I don't.

Q. If I asked you the questions contained in your pre-filed testimony, would your answers be the same with that change?

A. Yes, they would be.

Q. And are your answers true and correct to the best of your knowledge?

A. Yes, they are.

MS. WATSON: At this time I would like to move Exhibit 301T into the record.

JUDGE MACE: Is there any objection to the admission of that exhibit?

Hearing no objection, I will admit that exhibit.

MS. WATSON: And it looks like Mr. Williamson is ready for cross-examination.

JUDGE MACE: Mr. Levin.

MR. LEVIN: Thank you.

C R O S S - E X A M I N A T I O N

BY MR. LEVIN:

Q. Mr. Williamson, would you please turn to page 6 of your direct testimony that you were just introducing. At line 11 to 12 there's a question there, and if I were to change the word CLECs to the word Qwest in that question so that it read, can digital services supplied by Qwest over digital capable loops be used as substitutes for basic business exchange service, would your answer still be yes?

A. I'm not sure, and that's why I'm taking a little time. In line 13, if what you're getting at is T1, ISDN, BRI, and xDSL --

Q. Well, you say I mean right -- your beginning of your answer to that question is yes, and I'm asking you, if I change the word CLECs to the word Qwest, would your answer still be yes, or would it change to no?

A. It would be yes.

Q. And that's because the services provided by the CLECs from a technology standpoint aren't any different than the services provided by Qwest?

A. That's correct.

Q. So Qwest's own digital services can also be used as substitutes for Qwest's business basic exchange services?

A. I believe that's true.

Q. And all of the statements you make in this answer about the capabilities of the CLECs' digital services apply as well to Qwest digital services?

A. Yes.

Q. It's true, is it not, that the market for all of these services is the voice services market for business, isn't it?

A. I believe that's true.

Q. And that's really the market we're talking about in this docket?

A. I'm not sure that I'm really the right one to ask that to, because I'm just looking at it from a technical point of view.

Q. From a technical point of view though, we're talking about the voice services market --

A. Yes.

Q. -- whether provided over analog or digital facilities?

A. It is the voice market.

Q. So if we then look at page 7, lines 3 to 5 where you say that because of the substitution opportunities Qwest is missing or understating competitors' market share in business, basic business exchange services by excluding unbundled loops typically associated with digital services, you are only considering the competitors' digital services and not Qwest as part of the market when you say that; isn't that right?

A. I did based on my experience working for a CLEC. The way that we served, when I worked for TCG, the way that we served a number of customers that we couldn't bill to was to lease a digital facility from Qwest or Verizon and then attach that to our switch and serve the customer over a T1, so 24 DS0 circuits. So I had that in mind when I answered this question.

Q. But as we were saying a minute ago, with that TCG service, you're providing a voice service over a digital facility, whether it's a leased facility or it's owned by the CLEC?

A. Provided analog voice service over digital facilities, true.

Q. All voice services are analog ultimately, aren't they?

A. At some end, yes.

Q. True?

A. At the telephone at least.

Q. I mean the difference between a digital service and an analog service when we're talking about voice is really a question of where it's converted to digits as opposed to an analog wave?

A. That's true, but the difference between a digital service that we're talking about or an analog service is not quite the same. It is where it's changed, but analog service is delivered to the customer's equipment as an analog service, not as a digital service.

Q. And both Qwest and the CLECs, that is the facilities based CLECs, typically have the ability to deliver voice service either as an analog circuit or as a digital circuit to the customer premises?

A. That's true.

Q. Now in your testimony, you have a discussion that I think begins on page 4 where you talk about -- you're trying to explain the difference between, the basic difference between analog and digital. And in the course of that discussion, you get into a discussion of the removal of bridged taps and load coils in order to provide digital services, and that's basically how you get a loop ready to provide digital services, isn't it?

A. Yeah.

Q. And it's true that depending on the digital service, there are many digital services that can be provided over the old copper twisted pairs?

A. Yes, if it's healthy copper.

Q. Yeah. And but you still have to get the bridged taps and the load coils off in order for that not to have noise and interference on that circuit?

A. That's true.

Q. And those statements are true for both Qwest and CLEC digital voice services, that you have to do the same thing to get the loop ready for their digital service?

A. That's true.

Q. And that's not an extraordinary process, it happens every day at Qwest, doesn't it, either for its own services or a CLEC's?

A. They do it every day. I only hesitate with extraordinary, if you're a splicer in the rain doing it, but you're right, that is done every day for both companies, CLECs as well as ILECs.

Q. So the things about a circuit that are really good for analog voice turn out not to be so good when you get to do digital voice?

A. That's true.

Q. Is it your understanding that Qwest in the authority that it got in the previous classification docket UT-000883, that the authority that it got was for both analog and digital services provided over DS1s?

A. DS1 or above.

JUDGE MACE: I'm sorry, I'm not understanding your answers, if you could speak a little more slowly and clearly, thank you.

A. It's my understanding yes, that it's DS1 and above.

Q. In both analog and digital?

A. Yes. Well, let me think about that a second. I wasn't here for that, so I'm not as familiar. It was my belief that it was digital services at DS1 and above, so that would include digital service such as BRI, BRS service, ISDN service, digital transport service, but I don't believe it included analog carried over DS1.

Q. And we could check that I assume by looking at Qwest tariffs and price lists to see what they filed that the Staff would have approved?

A. Yes.

Q. Let's talk for a bit about voice over IP. First of all, VoIP stands for voice over Internet protocol?

A. Yes, it does.

Q. Isn't that right? And Internet protocol is a mode of digital transmission, is it not?

A. Yes, it is.

Q. And in this mode, the data, which can be voice or just regular data service, is divided up into data packets, and those packets are disassembled as they travel and reassembled when they get to their destination?

A. That's true.

Q. And that's basically a software function that depends on the information that's programmed into what's called the packet header?

A. That's true.

Q. And when it's used for voice, it's called voice over IP?

A. Yes.

Q. And the voice over, the Internet protocol itself was developed in the context of ARPANET when the

Internet was getting started?

A. Yes, it was.

JUDGE MACE: I'm sorry, what was it that you called it?

MR. LEVIN: ARPANET.

BY MR. LEVIN:

Q. When they -- basically it was a Defense Department project to get the Internet started?

A. That's true. And then it was used for colleges, universities.

Q. The idea was to have a network that was survivable even no matter what happened, if there were a bombing or a catastrophe or a war and part of the network went down, the data would continue to route over other nodes?

A. That's true also.

Q. Now there are several other digital methods used for transmission of voice, aren't there?

A. Yes, there are.

Q. For example, time division multiplexing?

A. Right.

Q. Asynchronous transmission mode or ATM?

A. Yes, that's true.

JUDGE MACE: Try to wait for the end of his question.

THE WITNESS: Sorry.

JUDGE MACE: That way she can get what everybody is saying.

BY MR. LEVIN:

Q. In fact, in ATM, the data is also divided up, and instead they don't call it package, they call it cells, but it's reassembled when received?

A. That's true.

Q. And there's a difference which is very important to software programmers but isn't real essential to our understanding of the difference between ATM and voice over IP, is it?

A. I'm sorry, rephrase the question.

Q. In other words, the difference between cells and packets isn't all that significant to folks who are trying to understand the way the phone network works?

A. That's true. It's very interesting to an engineer, but that's true.

Q. I'm glad we don't have to go any further than that, because I have just reached the depths of my own knowledge.

And ISDN itself also relies on a packet data technology standard called X25, does it not?

A. Well, it is a little more than that. The D channel also signals, it's a signaling channel as well a data channel, it uses Q931 protocol for signaling. And in the two B channels, if they're not set up for data, is truly a circuit switched type of call. It can also do X25, which is a much older type of packet.

Q. Packet in one form or another has been around for a while?

A. Yes, it has.

Q. So to sum it up, Internet protocol is a newer form of digital data transmission, which like the others, can carry voice?

A. That's true.

Q. And when it's used for voice, it's called voice over IP?

A. That's true.

Q. Now you mentioned in your testimony that there are several carriers who are using voice over or using IP technology to carry voice?

A. Yes, I did.

Q. And some of them are using IP to carry voice over virtual private networks?

A. That's true.

Q. Please look at Exhibit 313. We excerpted this from a book that was published and copywrited in 1995, as you can see on page 3, and the technology is somewhat dated.

A. Yes, it is.
Q. Pre Act?
A. Yes, it is.
Q. Really pre full deployment of ATM and certainly pre voice over IP?
A. And like me, I was a young man with gray hair in 1995, and things have changed a lot.
Q. But despite the fact that it's now more than eight years old, the page we have reproduced here has a discussion of the virtual private network, so there were virtual private networks back then well before voice over IP?
A. That's true.
Q. And looking at this excerpt, this is from a book that, of course, is written in a way where it's trying to explain things through a hypothetical telephone network, so we're being taken here through a hypothetical telephone network; isn't that right?
A. Yes.
Q. And it's based on real technology but kind of typical considerations that a network manager might make in planning a voice and data network?
A. In 1995, yes.
Q. In 1995. And this says, looking down three, well, the second paragraph, it says:

Realizing that interoffice phone calls were costing the company tens of thousands of dollars, XYZ, which is the company they have made up here, analyzed its calling patterns and determined that creating a VPN, which is a virtual private network, was justifiable. The costs to set up and maintain the VPN were far less than the long distance charges being incurred, and the VPN provided greater functionality, particularly when it came to the computer network.

That's kind of the typical consideration in planning, especially at the enterprise level, a corporate network?

A. Particularly in 1995. It's changed a little today.

Q. And in this hypothetical, the third paragraph they used T1 circuits, which were partitioned into voice, video, and data segments. So you could also, it was possible as of then to also have a single network that carried voice, video, and data?

A. And that would be the biggest difference I believe from today, because partitioning it would be losing a lot of the good reasons for having VPN. Today it would be more likely to have one large IP pipe and not partition the voice and data away from each other but take advantage of both of them together.

Q. So what the IP pipe, as you call it, does is to provide a much more efficient mode of doing the same thing that the VPN did --

A. Yes.

Q. -- in this example in 1995?

A. I'm sorry, yes.

Q. Now if you look at the last paragraph of that section, it says, long distance rates quoted by phone companies, the phone companies, AT&T, Sprint, MCI, et cetera, are typically mileage based, and it explains, then it goes on to explain how you can use the VPN to avoid the -- some or all of the toll charges, long distance charges you otherwise pay. Is that your understanding?

A. That's what it says.

MS. WATSON: I'm going to interject an objection here. It seems like we're getting pretty far off the scope of Mr. Williamson's testimony. I realize that it's somewhat tied to the VoIP issue, but it's pretty far off the scope of what Mr. Williamson discussed in his testimony.

JUDGE MACE: Mr. Levin, can you connect this up to Mr. Williamson's testimony?

MR. LEVIN: Absolutely, and I will explain exactly why I'm asking these questions. Mr. Williamson has suggested that voice over IP as used on corporate networks is a substitute for the services in this docket, and what I am demonstrating, and I think I have already pretty much demonstrated, is that it is a substitute for toll services when it's over corporate networks, not a substitute for local service.

JUDGE MACE: Well, I think I'm going to let him go ahead at this point.

CHAIRWOMAN SHOWALTER: I think that's fine. The only thing I would add though is it isn't necessary for you to read everything that's in front of us. You can have him read that sentence or all of us can, and then ask him a question about it, just to speed things up.

JUDGE MACE: And not only that, as you have said, you probably already made your point.

MR. LEVIN: Yeah, I'm done with this exhibit. I'm not quite done with voice over IP.

BY MR. LEVIN:

Q. Now IP can also ride on T1s?

A. Yes.

Q. And those T1s may be leased by an enterprise customer, that is a large corporation or government entity, they may be leased from Qwest in areas where Qwest has service?

A. They may be, or they may be leased from the largest providers of IP protocol pipes, which would be most of the companies here, MCI, AT&T, Sprint, and Qwest also.

Q. And they provide T1 service as well?

A. They provide an IP pipe over a number of different means, T1 being one.

Q. They also provide ATM?

A. That's true.

Q. And that's part of the service that they have provided for quite some time as part, in fact, the origins of MCI were providing that kind of service, weren't they?

A. MCI started -- MCI started that way, but WorldCom bought UUNET, which was the largest provider, so that's now part of MCI.

Q. The heavy use of voice over IP in fact right now is in corporate virtual private networks, isn't it?

A. I don't know that I can agree with that. There are heavy users of IP in corporate networks. Or let me add, did you say voice over IP or just IP?

Q. No, I said IP, but I'm talking about voice over IP.

A. Okay. I'm not sure I can characterize it that way. You are correct that there are a lot of large companies that are using voice over IP internally. But in the last year to two years, there's been a large influx of small business and residential customers that are also beginning to use voice over IP.

Q. Okay, I'm not talking about companies like Vonage and Packet8, which run service over the Internet. I'm talking about companies which use voice over IP for virtual private networks at the enterprise level.

A. Most people don't have virtual private network at their small business, so you're correct.

Q. Okay. The other option for the use of voice over IP is the other one that you have mentioned in your testimony, and those are the companies like Vonage and Packet8, those companies?

A. Yes.

Q. And those are companies that typically transmit some or most of their service over the public Internet?

A. That's true. Although part of the path that they take may be over their own private network. The customer accesses Vonage or Packet8 over the Internet,

but then Packet8 or Vonage may carry that long distance over their internal IP network.
Q. To the extent that the data runs over the Internet, there is a security issue, isn't there, that is the public Internet?
A. Yes, but that's another place that virtual private networks changed drastically from 1995. There are a number of security issues that have to be dealt with now on a VPN.
Q. But it's a lot easier to manage on a VPN where you have control of the network than it is on the public Internet where you can be bouncing to nodes all over the country that you have no control over?
A. To a degree I would agree with that to get to the company that you're going to use, the Vonage or the Packet8 or an AT&T or an MCI. After you get off the Internet, then the problem is less since you're on a private network, yeah.
Q. Now customers who buy service from a company like Vonage or Packet8 may not be able to keep their telephone numbers when they go over to those companies; is that right?
A. My understanding is that Vonage and Packet8 both use CLECs to gain numbers for their customers, and as such, the same rules apply for number portability for

them as do any other companies.

Q. Doesn't it say on the Vonage Web site, you may not be able to keep your number?

A. The same as if you go to -- if you move and go to a CLEC and want to keep your number. I mean the same rules apply. You have to stay in the same rate center to be able to keep your number.

Q. Have you looked into whether if a customer leaves Vonage they can take their number with them if they get a number from Vonage?

A. My understanding is the same rules apply, because it's a CLEC who has the number and not truly Vonage.

Q. Vonage customers are not entitled to automatic directory listing, are they?

A. I don't believe so.

Q. Now please look at Exhibit 314, and this is a page from a Vonage Web site, and it's a quick installation guide for the ATA. Now when you sign up for Vonage, no installer shows up, right?

A. That's true.

Q. Package comes in the mail?

A. That's true.

Q. And you install it yourself?

A. Yes.

Q. And all of the problems that are mentioned here are things that may come up that you have to deal with without any help except maybe telephone support?
A. I suppose that's true.
Q. And if there's a problem, you service it yourself too, right?
A. I believe that's true, although I believe that's true if you go buy your own telephone and connect it to a CLEC line or a Qwest line also.
Q. Well, but if the problem is in the line, you can have the CLEC come out?
A. But if it's in the line from the demark, then you have to fix it yourself.
Q. Right, but we're talking about something now that's hooked up to the Internet, right?
A. Yes.
Q. On a high speed connection?
A. Yes. I have one at home.
Q. And if the equipment you get from Vonage, this ATA malfunctions and you have disconnected your regular telephone service, you're out of service?
A. That's probably true.
Q. That's not too likely to be attractive to business, is it?
A. I'm sorry, but I believe it's the same as if

I go buy a phone from somewhere else and the phone goes dead and that's the only one I have, then you have to go buy another phone or you have to find a replacement. It's true, but it's true in both cases.

Q. You need a high speed connection to the Internet to use a Vonage type service?

A. Yes, you do.

Q. And if your connection is DSL, you still need to keep your phone line?

A. That's true.

Q. So you remain a wireline customer?

A. That's true.

Q. But you save some long distance charges?

A. Well, I think you save more than that depending on the service. If all you have is one telephone and that's all you require, then this may or may not be as good for you. But if you're a customer who has a small office and maybe two or three lines, you may find that keeping your wireline as one line, a Vonage line as another, and a cell phone as a third is a great boon for you.

Q. Please turn to page 10 in your testimony starting at line 12, that area where you made those changes.

A. Yes, I'm there.

Q. Yes. You are obviously aware that rules in the state of Washington require some PBX operators to update 911 records?
A. That's very true.
Q. And they're required to do that through a service called ALI or PSALI; is that right?
A. Yes.
Q. And that means they have to subscribe to those services from the phone company?
A. The phone company normally does that for them, but yes.
Q. And what that does is it provides the location identification for the phone set in the event there's an emergency so they don't just get office complex, they get office complex, building D, floor C, office 2.
A. That's correct, and a call back number as well.
Q. Are you also aware that Washington has statutes that require schools, for example, make it unlawful for schools to install service that does not include automatic line identification?
A. Yes, I believe that's the WAC that's on my note attached, it's 118-68-050, paragraph 2.
Q. Please turn to Exhibit 315, and turn to page

3. Now this is -- I gave you, when we identified the document, we gave you the place on the Vonage Web site where you could find this.

A. I did.

Q. And this is, in fact, their small business terms of service agreement?

A. Yes, it is, the words are all the same.

Q. At 2.1 they've got a paragraph here that talks about the non-availability of traditional 911 or E911 dialing service.

A. That's true.

Q. And I think all caps, does not support traditional 911 or E911 access to emergency services. Do you see that?

A. Yes.

Q. So you don't have E911 if you subscribe to Vonage?

A. You don't have E911 as you would with a wireline phone, but you do have access to public service answering points if you follow their instructions through here.

Q. But it's not automatic line identification?

A. No.

Q. It's self line identification?

A. The way it works is they explain it in the

FCC Docket 94102 is that if you follow the instructions here, you build in your address of your living quarters, and then Vonage with a contract through --

Q. Intrado?

A. Intrado, thank you, that just left me, who is the largest provider of 911 database service, searches your address, finds the correct answering point, and then when your call, when you dial 911, it dials the administrative line at the public service answering point. So it does bypass the data base that brings up the address and a call back number, but you do get a 911 operator.

Q. Right, but what you get is you get something that looks a lot more like the old 911 --

A. Very much.

Q. -- than E911.

A. Very true.

Q. And so I'm not asking you legally, but as a matter of policy, it looks like there might be a problem using the Vonage service in any place where state law and rule requires automatic line identification.

A. I would say that that is a large concern for commissions like ours, and the difference may be if we or the FCC decides that this is a telecommunications service. At the moment, they do not register with us, so they're not a telecommunications service.

Q. But the onus of the Washington laws and rules also fall on folks who purchase telephone service and provide it to others like in schools or office complexes, shared tenant situations?

A. If they purchase telecommunications service and provide it to others, then that's true.

Q. And they can only purchase service that includes automatic line identification?

A. If it's telecommunications in this state, that's true.

Q. Well, okay, I mean the statutes say what the statutes say. But if they substituted Vonage service through their PBX for the service that they now got, they lose E911?

A. They lose, yes, they lose E911. Before April of, I'm sorry, before April of this year, Vonage had no 911 service at all, so it was a relatively new service that they're trying to work on with Intrado. And I think there is more interest in 911 now because there are more people who are buying Vonage, and that's why the pressure is on regulatory agencies as well as 911 to look at Vonage and decide whether it's telecommunications or not.

Q. But right now they're experimenting with 911 and don't have E911?

A. That's true, they're working with Intrado to try and come up with an E911 service.

Q. Even their 911 service has just been introduced in the last few months?

A. Since April of this year.

Q. Now you have read through this agreement, I won't take you through every piece of it, but that subject of their not having 911 and wanting to be released from any liability for that seems to comes up again and again and again, doesn't it?

A. Yes, it does.

Q. They seem worried about it?

A. I'm sure they see it as a liability.

Q. Now even their 911 service if there's a power outage doesn't come back up automatically, does it?

A. Could you point me to where that says that?

Q. Let me see if I can find it.

A. Oh, I found it without you.

Q. Thank you.

A. It's Paragraph 2.3.1.

Q. So if there's a power failure, you have to reconfigure your E911 service?

A. It says:

A power failure or disruption may

require the customer to reset or
reconfigure equipment prior to utilizing
the service or 911 dialing.

The way I read that is you have to get your service back before you can dial 911, not that you have to redo your 911.

May require the customer to reset or
reconfigure equipment prior to utilizing
the service.

Q. And at 2.4 when you plug in your Vonage phone, you don't have 911 service at all unless you activate it?

A. That's true, and to activate it you have to put your address in.

Q. And if you make a mistake in designating your address, they don't have any way to check on it?

A. I would say that's probably true.

Q. I mean 2.5 says if you make a mistake, it's on you.

A. I'm sure they don't know where you live.

Q. And if you change your phone number, 2.6 says you got to reactivate it again or you don't have 911; is that right?

A. That would make sense since it's a new telephone number.

Q. But it comes automatically from the phone company?

A. There's a lot of work that goes on behind it, but yes, it does come automatically to the customer.

Q. 2.9 warns customers that if there's network congestion, their 911 may go slower than what they're used to on the public switch network. Is that right?

A. That's true, and they explained that also in their comments to the FCC on the same docket.

Q. And at 2.10 they mention that automatic number identification may not be available with their service.

A. To the PSAP, to the public service answering point.

JUDGE MACE: Mr. Levin, I don't want to interrupt the flow of your cross-examination, but I just want to point out, to the extent this document comes into the record, you can cite it in your brief. And I'm not sure it's of much value to the record for you necessarily to go through every single one of these paragraphs with Mr. Williamson and just have him identify the paragraph essentially.

MR. LEVIN: I'm just about done. I might have one more question. Thank you.

BY MR. LEVIN:

Q. In your experience, businesses are concerned with reliability and continuity of service, aren't they, in their telecommunications service?

A. I would say that's true.

Q. They tend to rely on it pretty much as a lifeline, or it may be the primary route that business comes to them?

A. That's true.

Q. And have you observed that under 4.4 Vonage reserves the right to terminate at any time for no reason at all, terminate service, first sentence?

A. It goes on to give reasons, but the first sentence says that they can disconnect it.

Q. At any time at its sole discretion?

A. That's what the sentence reads.

Q. Please turn to Exhibit 302. In this exhibit, we gave you a definition that we found at a -- do you have that? I'm sorry.

A. I'm almost there. Must be getting late. I'm sorry, I don't have a 302, or I mismarked my pages. Oh, I'm sorry, I found it. I had it marked incorrectly.

Q. And this is we gave you a definition that came from a Web dictionary.

A. Yes.

Q. And you agreed with the description, and you made a change, you said, to the LEC or CLEC, a physical line connecting to the LEC or CLEC. What's the significance of that change?

A. Well, my understanding what the -- or I didn't understand the first paragraph. What the service is is to allow a PBX owner to have telephone numbers for every set within the PBX but only have to connect a much smaller number of connections to a LEC or a CLEC. They may have 100 employees working inside the PBX with 100 telephone lines but only have to connect to 10 trunks to a LEC or a CLEC. I didn't read the last sentence to read that way in that first paragraph.

Q. I see. And, in fact, a typical planning ratio is ten to one, isn't it?

A. Yes, it is, that's the rule of thumb.

Q. Kind of the standard. So for every ten phone stations, you have one phone line?

A. Normally, depending on the type of business, but you're right, that is the rule of thumb.

Q. And DID service is technology neutral, that is it's available both for analog and digital PBX?

A. That's true.

Q. And then on -- turn to please Exhibit 303. That was our data request 1-004.

A. I'm there.

Q. Do you have that? And you disagreed with -- this is a definition of Internet telephony that we got from the same Web encyclopedia source, and you disagreed with it because you said it -- basically it was dated.

A. That's true.

Q. Somewhat. And you say that there's some improvement in voice quality. Is that right?

A. That's true.

Q. But otherwise that you don't have a problem with the definition?

A. That's true. It was a little more detailed than that, but that's true. In fact, there are a lot of really cool engineering things in the rest of that that enhance voice.

Q. It's a work in progress though still, isn't it?

A. I wouldn't say that it's totally mature, but it does no longer have the earlier pimples and blemishes of the early days.

Q. Now we had attached to our discovery request a paper by a Dr. Hall, and I think that has become an exhibit of Mr. Gates.

A. I believe that's true.

Q. And that is the subject of Exhibit 304. And again your response here -- and what Dr. Hall was doing

I guess was testing for voice quality, trying to come up with measures of voice quality for voice over IP?

A. He was really trying to find a way to be able to measure voice quality. That really was the subject of his paper, not so much testing voice quality, but to find a way to test voice quality.

Q. And you basically -- your only kind of disagreement with what we said in that question is that you think again that it's somewhat dated and that some advances have been made?

A. I would say there are larger advances than the way you have stated. But yes, voice quality is much better, and if you quote the Goldman Sachs report, they say if it's engineered correctly and uses the new software that it's close or virtually the same as toll grade voice. And that also is found in the European telecommunication standard institute's test, the NC test in France in 2002, so it was a little newer test.

Q. Now if somebody places a call on a voice over IP telephone that uses the Internet, and I don't have a -- and is calling me, and I don't have a voice over Internet phone, that call has to terminate to the public switch network for them to reach me; isn't that right?

A. Yes, it does.

Q. And if I want to call them, that call has to originate over the public switch network to reach them if I don't have a voice over IP?

A. I'm sorry, I thought you said if you originated the call.

Q. Well, at first the call was terminated to me, and I don't have an IP phone, so it goes over the -- it terminates over the network.

A. That's correct.

Q. Public network. And then turning it around, I still don't have an IP phone, and I want to call somebody who's got a Vonage number, and that goes out over the regular public switch network, doesn't it?

A. Yes, it does.

Q. Exhibit 309, we asked you to admit the DID trunks serving PBXs are digital services, and you replied that they're most likely digital services but can be provided as an analog service. Is that right?

A. That's true, that's what I said.

Q. So most PBX trunks out there then are, in fact, digital these days?

A. Yes, I would say most are.

Q. If I wanted to buy an analog PBX at this point, I probably would have to look an eBay, wouldn't I?

A. I think you're probably right.

Q. Exhibit 310, and we asked you to admit that DS0 equivalent voice channels created using time division multiplexing and post code modulation provided over channelized T1 or T3 facilities are digital services.

CHAIRWOMAN SHOWALTER: Can you slow down.

MR. LEVIN: I'm sorry.

BY MR. LEVIN:

Q. That was framing the question, and you replied, and I didn't understand your reply here, you said that those are indeed digital services, but the voice services carried over them may be analog. What do you mean by that?

A. What I mean is that if I want to buy analog service from a CLEC or a LEC and there are not enough facilities to get the analog service to me, the LEC of whichever variety may put that on a digital service, convert it to digital, and then reconvert it to analog to deliver it to me. And we have talked about that a number of times today. It's very standard in today's world to do.

Q. Okay. So in other words, what you're saying is, for example, if you had a digital loop carrier and you had fiber up to the digital loop carrier and then you had copper on the other side to the customer's premises, in order to put it on the copper and make it go to my analog phone, it would have to be converted at that point?

A. That's true, or to deliver service to a business in a multistory building, you could deliver 24 DS0 analog services to that building over a T1.

Q. And that's where the business still has, for example, an analog PBX?

A. Analog set or a key system or a PBX. More likely it would be an analog set or a key system.

Q. And with regard to Exhibit 311 then, I didn't, again, I didn't understand your response, and it was for the same reason; is that right?

A. Yes, it was, and you will find 312 is the same, I believe.

Q. Okay.

A. I basically just wanted to make sure that we differentiated between the transport and the service itself.

Q. I guess one point that could be drawn from this is that DS1s are flexible and can be used to deliver analog or digital services?

A. That's true.

Q. And what you deliver over that may perform the same functionality for the customer, you're just tailoring it to the equipment that they happen to have?

A. That's true.

MR. LEVIN: Thank you. At this time, let me see what exhibits we used here, we would move the admission of Exhibit 302, 303, 304, 305, 306, no, I'm sorry, not 306, 306 and 307 we are not moving. 309, 310 --

JUDGE MACE: And so you're not moving 308 either?

MR. LEVIN: No.

JUDGE MACE: Okay, thank you.

MR. LEVIN: 310, 311, 312, 313, 314, and 315.

JUDGE MACE: Is there any objection to the admission of those proposed exhibits?

MS. WATSON: No objection.

JUDGE MACE: I will admit those exhibits.

Let's see here, Ms. Friesen.

MS. FRIESEN: I have no cross at this point, thank you.

JUDGE MACE: And I haven't called on you, Ms. Singer Nelson, because you indicated you would not be crossing this witness.

MS. SINGER NELSON: That's right, Your Honor.

JUDGE MACE: All right.

Public Counsel, I don't have you down for any cross for this witness.

MR. FFITCH: That's correct, Your Honor, no cross.

JUDGE MACE: And Mr. Melnikoff.

MR. MELNIKOFF: I just have a couple of questions.

JUDGE MACE: Go ahead.

MR. MELNIKOFF: Or one compound question.

CHAIRWOMAN SHOWALTER: Use the microphone.

C R O S S - E X A M I N A T I O N

BY MR. MELNIKOFF:

Q. Good evening, Mr. Williamson.

A. Good evening.

Q. I'm Steve Melnikoff representing Department of Defense and Federal Executive Agencies. Is it true that VoIP services introduced problems or at least issues to be considered that need to be considered by the customer in terms of security? I think you touched a little on this with Mr. Levin.

A. Where it's on the public Internet, there is always a concern for security.

Q. Interoperability?

A. Interoperability with other telephone services, or I'm not sure --

Q. Other telephone services, other equipment that the customer may have.

A. Particularly if you were going to a large customer that's going to do a VPN, there may be concerns on the type of routers that they're using or servers, that's true.

Q. And maybe interoperability with other networks such as a DSN defense, what is it, defense --

A. DISA and DISN?

Q. Yes.

A. Yes.

JUDGE MACE: I don't know what you're talking about. One of you is going to need to tell us what you're talking about.

THE WITNESS: Defense Information Switch Agency is the agency that the government, the military anyway, gets their telephone service through. And DISN is D-I-S-N, defense Information Switch Network.

JUDGE MACE: Thank you.

BY MR. MELNIKOFF:

Q. So that would be, VoIP would be a -- would raise interoperability issues, concerns for large customers like DOD and Federal Executive Agencies?

A. I'm aware, I'm sorry, I'm aware that at Fort Huachuca, Arizona there has been interoperability testing that has begun with VoIP, and I believe that the DISA is concerned with all the issues you spoke of. Although, excuse me, I know the Navy has installed IP PBXs in a number of places, which has not made everybody happy in the Navy, but they do exist, and they're in service today.

Q. And as you were suggesting, there is a concern within the hierarchy of the government over the installations of those VoIP networks, VoIP equipment; is that correct?

A. Anywhere on the DOD there is concern with all communications, and I got that firsthand in Hawaii, so it is very painful. Yes, it's very true, they are very concerned with all communications equipment, and particularly with anything that may be touched by the Internet, the public Internet, or may be monitored, you know, and they're just not sure of the quality of that for DOD.

Q. And I take it your statement also that you just made, that concern also includes wireless systems?

A. It did when I was involved with it.

JUDGE MACE: It did?

THE WITNESS: Yes, it did, sorry.

JUDGE MACE: Thank you.

BY MR. MELNIKOFF:

Q. So we touched about security, we touched about interoperability, what about survivability?

A. I'm sure that's a concern, although I'm sure this is public knowledge so I can mention it, the government, the Army, Navy, Air Force, Marines has used IP for a long time even on the battleground for communications, secured and unsecured, so they're very aware of how IP works over radio as well as over wire.

Q. IP?

A. IP itself.

Q. What about quality of the transmission, is that a concern that's raised by --

A. For this particular service or in general?

Q. For VoIP.

A. I haven't been firsthand involved with the testing, so I could only guess that that would be.

Q. And from your background with AT&T upgrading DOD's equipment on Hawaii, was that the HITS system?

A. Yes, it was.

Q. That's H-I-T-S.

MS. FRIESEN: Could I interject just an admonition here to be careful not to go too closely into things that might be confidential.

MR. MELNIKOFF: I can appreciate your concern.

MS. FRIESEN: Thank you.

MR. MELNIKOFF: I have the same concerns.

MS. FRIESEN: Thank you.

CHAIRWOMAN SHOWALTER: And also any time you use initials, if they're not in common use, please tell us what they are.

BY MR. MELNIKOFF:

Q. Mr. Williamson, will you tell us what HITS, H-I-T-S, stands for?

A. Hawaii Information Transfer System.

Q. Is it your experience that the federal government is highly interested in those four categories, security, interoperability, survivability, and quality of service, almost some would say to an obsession?

A. Yes, I would agree with that.

Q. Would it surprise you that there are severe limitations and even restrictions on the use of VoIP and wireless services for communications in the federal government as a substitute for local exchange, business local exchange service?

A. I would not be surprised until interoperability testing was completed at places like Fort Huachuca, which it has not, so I'm sure there would be a concern in DOD. Now in the Department of Commerce they have converted about a quarter of their phones to VoIP, 10,000 to 40,000, but it's not DOD.

MR. MELNIKOFF: Thank you, I have no further questions.

JUDGE MACE: Mr. Butler.

MR. BUTLER: No questions.

JUDGE MACE: Commissioners.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. Well, I find this technical discussion interesting, because I think that you are providing the vantage point of the technology. But from the point of view of the consumer, at least that's the vantage point I want you to think about, but in this discussion so far, it seems that, you know, one posture is to say or to imply, unless you've got an apple and an apple, they are not competitive with each other. I'm not saying that's what anyone said here, there was just evidence gathered, but one posture is that unless two products are really equivalent, they aren't the same and therefore can't really compete with each other.

On the other hand, the whole point of competition is differentiation and different markets and that -- and things that are not quite apples and apples, the more we have of them, the more we might say there actually is competition going on. But the irony perhaps is the more differentiation you have, the less each product can be compared against each other.

Isn't it the case that it really is all a matter of degree. That is, if you have let's take a true apple and an apple. One landline owned by an ILEC and another one fully owned by a CLEC with a plain old telephone at the end of it. Now would you agree that those two are very comparable from a consumer's point of view?

A. Yes, I would agree.

Q. All right. Now if you change the paradigm just slightly, or maybe not so slightly, supposing instead you have a plain old telephone on the one hand and someone has a wireless phone on the other; they are not absolute equivalents; would you agree?

A. I would agree, but they could compliment themselves or compliment each other, the strength of the one making up for the weakness of another, of the other.

Q. But there is a substantial overlap, isn't there? For example, I do have right with me a cell phone. I could pick it up and use it right here.

A. I hope it's not turned on.

Q. It's always on, but it's on silent.

A. Okay.

Q. So where the phone is getting a good signal, the cell phone is getting a good signal and a good sound, from my point of view, if I don't care about security, then it's the same as a landline for a particular purpose; is that correct?

A. That's true.

Q. Now if I were at a location where the cell phone got a bad signal, it would not be a very good substitute for an office line, correct?

A. That's true also.

Q. On the other hand, there are many places where my cell phone has a good signal, but my landline is stuck in my office. So to that extent, on that score, the cell phone offers many possibilities and therefore is very competitive with my landline, correct?

A. That's true.

Q. Now going to voice over Internet protocol, I take it there are some types of customers who would not find it appealing for various reasons that you have outlined such as security; is that correct?

A. That's also correct.

Q. On the other hand, if that is not your concern, if that is not the customer's concern, it could be quite attractive. And on this score, do we have --

do you have knowledge of you say Vonage, that's the French way, I don't know if it's Vonage or Vonage, but do you have knowledge of growth rates, the growth rate of Vonage in this state?

A. Sadly I don't. I have some knowledge of growth rate throughout the United States.

Q. For that company?

A. For that company.

Q. Is that confidential information?

A. I don't believe so. It was in a press release, and I believe it's in this book someplace, and I can find it for you in a minute.

Q. Well, if you know it off the top of your head, go ahead.

A. This is an estimate. I believe it's somewhere around 50,000 lines since April I believe of this year. They don't have service in every state, so it's difficult to gage how many lines per state or our state, but I would say that I also have heard that the state of Washington is on the top of the list for connection to Internet for population, which means we have a pretty high tech group of people living here, and those would be what I would expect the early adopters of voice over IP, but I have no proof of that.

Q. And you would not know or you don't know if that's residential or business, or do you?

A. I don't know. I believe the press article quoted high growth in business. If you would like, I will find the article, and you can use it here.

Q. All right, if it's not in our records.

A. It's not.

CHAIRWOMAN SHOWALTER: All right, then let's ask for a Bench request for that information.

JUDGE MACE: Bench Request Number 3 and that's the article about?

THE WITNESS: Vonage or Vonage sounds a little better.

A. And maybe of interest to your question or what I think your question is leading to, Mr. Shooshan who was here testifying for Qwest I think it was yesterday but it seemed like a long time ago, whenever it was, has two Vonage lines at his house and one cell phone, and he works part time from his house. That's his home office. And he has landlines in his Maryland office. So he's a perfect type of early adopter of that kind of service.

BY CHAIRWOMAN SHOWALTER:

Q. And if you have voice over Internet, you must either have cable or a phone line; is that correct?

A. That's correct, a DSL over a phone line or a cable modem.

Q. So if it's the DSL line, you could and probably have to pay for a voice part of that line?

A. That's true, that's my understanding of the rule.

Q. And if you have voice over Internet, can you be using your computer for all your normal purposes and still either simultaneously or off and on use the voice over Internet for your voice calls?

A. Yes, you can.

Q. So in effect, isn't voice over Internet protocol on a DSL line like having two phone lines?

A. That's true, and one that you can make very cheap long distance calls on or have a telephone number from some other location, a New York telephone number, at your location.

CHAIRWOMAN SHOWALTER: Okay, thank you.

JUDGE MACE: Commissioner Oshie.

COMMISSIONER OSHIE: No questions.

JUDGE MACE: Redirect.

MS. WATSON: I have no redirect, Your Honor.

JUDGE MACE: Thank you, you're excused.

(Discussion on the Bench.)

JUDGE MACE: We're going to finish up now. I think our next session will be October 1st, but there are a couple of items I want to take care of before you all leave the room.

One is the matter of Exhibit 83, which was this Iowa Utility Board order that we asked that you have presented to us. I have marked it Exhibit 83, and is there any objection to the admission of that as an exhibit?

I'm going to admit it as an exhibit.

Also there was a question about providing, the time for providing record requisitions. Have you talked with the parties at all about a reasonable time frame for that?

MS. ANDERL: No, I haven't had a chance to do that, Your Honor. I think, we checked our notes today though, I think we have them all written down, we don't need to wait for the transcript, so I would recommend, you know, that ten days seems to be a reasonable amount of time. Now that lands on a Sunday, so I would ask for --

JUDGE MACE: And do you know what that date is?

MS. ANDERL: Well, ten days from today is the 28th. Monday the 29th is the -- there's the ROC in Seattle, and I will be at that all -- so if the 30th were okay for parties, we could certainly provide our responses by then.

JUDGE MACE: Is that a problem? Does anyone have any objection to that?

All right, then Qwest will provide those record requisition responses on or before September 30th.

MS. ANDERL: Sure, if they're ready sooner, we'll provide them.

JUDGE MACE: Is there anything else we need to address before we adjourn?

CHAIRWOMAN SHOWALTER: The only thing I want to discuss a little bit is on the 1st we will have Gates, Stacy, and Cowan; is that correct? And from the looks of it, it would be very difficult to do anything other than that. And the only thing I want to inject here is that -- oh, no, that -- the 1st, let's see, that's only a single day that we have in any event. It's the other day that there's -- okay, then it's very unlikely it seems to me we will finish on that day.

MR. MELNIKOFF: Chairwoman, when you originally or when Judge Mace originally voiced it, it was October 1st and 2nd, I don't know if --

JUDGE MACE: If I said that, it was because I had down on a little slip of paper those two dates, but I think October 1st is the only date we --

MR. MELNIKOFF: Okay.

CHAIRWOMAN SHOWALTER: Well, I guess the only thing I'm going to get at at all is if Public Counsel determines that it's not necessary to wait as long as the 21st for Mr. Wilson, then have a discussion to see if the 2nd is available or not. Just, in other words, rather than settle this minute that we're going that long, if you can advise at some point in time before too long, we might do some different kind of scheduling. But if it goes to that day, it goes to that day, because I think Qwest has indicated it would accommodate that day.

MS. ANDERL: Yes, certainly, if necessary, but, you know, if we can clear things off our plates earlier, then I think that's better for everyone not to have things extend out unnecessarily.

COMMISSIONER OSHIE: That would be fine, but if we have to go on the 2nd, I would like to know just as soon as possible, because there will be many people set in motion for this meeting on the 2nd, and if it doesn't happen, then I need to let them know so that they don't make their plans and then have me call on the 1st and say, sorry, but we're going to run over on the 2nd, I won't be there, so that's my only request.

CHAIRWOMAN SHOWALTER: Well, then in that

case, why don't we just say it's going to be the 21st.
I think it's just going to be easier.

JUDGE MACE: All right, thank you very much, we will be back on the record on October 1st.

(Hearing adjourned at 8:00 p.m.)