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1 JUDGE CLARK: Good afternoon. It's
2 approximately 1:30 p.m., May 3rd, 2007, in the
3 Commission's hearing room in Olympia, Washington.
4 This is the time and the place set for a pre-hearing
5 conference in the matter of the petition for
6 arbitration of an interconnection agreement between
7 Qwest Corporation and Eschelon Telecom, Incorporated,
8 Pursuant to 47 U.S.C. Section 252(b).

9 Patricia Clark, Administrative Law Judge for
10 the Commission, presiding. The docket number in this
11 proceeding is Docket UT-063061. This matter came
12 before the Commission on petition by Qwest for
13 arbitration of an interconnection agreement pursuant
14 to 47 U.S.C. Section 252(b) of the Telecommunications
15 Act of 1996.

16 The pre-hearing conference in this matter
17 was scheduled by Order Number Nine in this
18 proceeding, served on January 12, 2007.

19 At this time, I'd like to take appearances
20 on behalf of the parties. First, I would like the
21 record to reflect that all parties are appearing
22 telephonically for this afternoon's pre-hearing
23 conference, and in order for the court reporter to
24 get an accurate transcript, it is necessary for you
25 to state your name before you speak. The first

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1 appearance I'd like entered is on behalf of Qwest.

2 MS. ANDERL: Your Honor, thank you. Lisa
3 Anderl, representing Qwest Corporation.

4 JUDGE CLARK: Thank you, Ms. Anderl. And I
5 would like to note that we're having a little bit of
6 difficulty hearing you, so if you could speak just a
7 little louder, that would be helpful.

8 MS. ANDERL: I will.

9 JUDGE CLARK: Thank you. That's perfect.
10 And Mr. Topp, are you also entering an appearance
11 this afternoon?

12 MR. TOPP: Yes, also for Qwest, Jason Topp,
13 T-o-p-p.

14 JUDGE CLARK: Thank you. And appearing on
15 behalf of Eschelon?

16 MR. MERZ: Good afternoon, Your Honor. Greg
17 Merz, M-e-r-z, appearing for Eschelon.

18 JUDGE CLARK: Thank you. As the parties
19 know, I pre-distributed the draft exhibit list in
20 this proceeding with exhibit numbers that I had
21 designated for those documents. In the event you
22 have any corrections or additions to that list, I'd
23 appreciate it if you could bring them to my attention
24 this afternoon.

25 I do have one preliminary matter, and that

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1 is that on April 27th, 2007, Qwest filed a petition
2 for forbearance in the Seattle Metropolitan
3 Statistical Area. And the parties should know that I
4 issued two bench requests earlier today. I requested
5 an unredacted copy of the Seattle MSA petition and I
6 also requested a copy of the Omaha petition, because
7 it is repeatedly referenced in the Seattle MSA
8 petition.

9 According to the redacted version of that
10 petition, quote, Qwest seeks forbearance from
11 significant burdensome regulation, particularly loop
12 and transport unbundling, end quote.

13 So the first thing I'm interested in is a
14 statement from the parties regarding the impact that
15 they believe that petition will have on the issues
16 that are present in this arbitration. Mr. Topp or
17 Ms. Anderl.

18 MR. TOPP: Yes, this is Jason Topp. From
19 Qwest's perspective, that petition will be pending at
20 the FCC. Until that petition has been acted upon by
21 the FCC, I don't think that it makes sense to
22 anticipate what the outcome will be. And therefore,
23 what I would anticipate is that we would move forward
24 and incorporate the result of that forbearance
25 petition pursuant to either the order from the FCC or

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1 the change of law provisions in the contract when
2 that came out.

3 MS. ANDERL: And this is Lisa Anderl.

4 JUDGE CLARK: Ms. Anderl, you're going to
5 have to speak up, please.

6 MS. ANDERL: Okay. Is that better?

7 JUDGE CLARK: Yes. Thank you.

8 MS. ANDERL: Okay. Lisa Anderl. I would
9 just note that the timeline of -- the statutory
10 timeline for the FCC to act is 12 months after
11 filing, and the FCC is then allowed to give itself a
12 three-month extension to that 12, making a total of
13 15 months. I think it's been ours and other
14 carriers' experience that the FCC does take that full
15 15 months to rule.

16 JUDGE CLARK: All Right. Well, I am a
17 little bit interested in pursuing that topic with you
18 for just a moment, but let me backtrack to my initial
19 question. Assuming arguendo that the FCC granted the
20 relief requested by Qwest, how would that impact the
21 issues in this arbitration?

22 MS. ANDERL: I think the only thing to say
23 is what Mr. Topp just said, is to the extent that the
24 petition was granted, if the FCC ordered certain
25 provisions to be self-executing, they would be;

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1 otherwise, the parties would have to incorporate any
2 rights that Qwest got to no longer provide certain
3 elements, those would have to be incorporated into
4 the ICA that results from this docket in an amendment
5 pursuant to the change of law provision.

6 JUDGE CLARK: Right, and I understand that,
7 but what I'm asking, perhaps inartfully, is wouldn't
8 the -- if the FCC were to grant all the relief
9 requested by Qwest in the petition for forbearance,
10 would it preempt any decision that the Commission
11 might make in this arbitration?

12 MR. TOPP: This is Jason Topp. Potentially,
13 it may impact obligations under the interconnection
14 agreement for the Seattle area. And to guess as to
15 how that specifically would impact the agreement and
16 the obligations underneath it, I think that's a
17 little bit difficult to guess, but certainly it would
18 be our hope that some of the obligations under the
19 agreement would no longer apply.

20 JUDGE CLARK: All right. Do you have any
21 idea how many of those or which of the issues that
22 are present for this arbitration would be impacted?

23 MR. TOPP: I do not. It's not really an
24 issue that I'm focused on. I think we've looked at
25 this arbitration more from the perspective of, you

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1 know, like any potential FCC action that -- that you
2 deal with that when you cross that point in the road.

3 JUDGE CLARK: All right. Well, I understand
4 that the Omaha petition was granted by the FCC, and
5 that that matter was appealed, and that the court has
6 recently upheld the FCC in that regard; is that
7 correct?

8 MR. TOPP: That is my understanding.

9 JUDGE CLARK: All right. Thank you. Ms.
10 Anderl or Mr. Topp, do you know when the Omaha
11 petition was filed with the FCC?

12 MS. ANDERL: I do not. This is Lisa Anderl.
13 We can certainly find out. My understanding is it
14 was pending for quite a long time.

15 JUDGE CLARK: Right, that was my next
16 question. Are you aware that the FCC recently
17 allowed some Verizon petitions and GCI petitions for
18 forbearance to go into effect by force of law and,
19 that is, did not take the full 12 months, plus the
20 extended three months they are authorized to take in
21 order to, in effect, de jure rule on those petitions
22 for forbearance?

23 MS. ANDERL: Your Honor, I'm not aware
24 either way.

25 JUDGE CLARK: Mr. Topp.

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1 MR. TOPP: I am not, either, unfortunately.

2 JUDGE CLARK: All right. Mr. Merz, I'm
3 really not trying to ignore you, and I'm also
4 interested in Eschelon's position regarding what you
5 believe the impact of the petition for forbearance in
6 the Seattle MSA would be on the issues in this
7 proceeding?

8 MR. MERZ: Well, I will confess -- this is
9 Greg Merz, Your Honor, and I will confess that I'm
10 familiar with that petition only in the very most
11 general sense. I think I do share Mr. Topp's view to
12 the extent that what he's saying is it's extremely
13 difficult to predict how that petition might impact
14 this case unless and until the FCC has ruled on it.

15 And so I just -- again, I apologize, Your
16 Honor, but I don't know that I can be more definitive
17 than that at this point.

18 JUDGE CLARK: All right. So do the parties
19 believe that there is any benefit that I could derive
20 from having the parties brief this particular issue
21 for me?

22 MS. ANDERL: You know, Your Honor -- this is
23 Lisa Anderl. I think it's probably very obvious to
24 you that none of us shares very intimate knowledge of
25 this petition and how it interrelates with any open

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1 issues that may be pending in this arbitration. I
2 think the best thing might be to ask us to go back
3 and confer on that very threshold issue and then
4 answer your question about whether there would be any
5 benefit to briefing.

6 JUDGE CLARK: All right. That seems
7 reasonable. And how soon can you report back to me?

8 MS. ANDERL: I can't consult with Mr. Topp
9 offline on this, so I'll just do it publicly.

10 JUDGE CLARK: Obviously.

11 MS. ANDERL: I'll just do it publicly.

12 Would the opening day of the hearing be soon enough?

13 JUDGE CLARK: Well, at this juncture, I'm
14 seriously considering continuing the hearing until I
15 have some briefing on this matter. I'm thinking at
16 this juncture that it might be very helpful to the
17 record to know exactly which issues would be impacted
18 and the extent to that impact, should the FCC grant
19 the relief requested by Qwest.

20 And I'm also, you know, trying to get some
21 feel for how long the FCC might take to render that
22 decision. And I understand that, maybe with the
23 first petition for forbearance filed by Qwest
24 regarding the Omaha MSA, that the FCC might have
25 taken a longer period of time than it might be likely

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1 to take in this particular instance.

2 So that's kind of where I'm thinking, and
3 I'm certainly very interested in getting input from
4 the parties regarding a continuance to allow the
5 parties to brief this particular issue. I was
6 envisioning simultaneous briefing on this particular
7 issue, and I'm interested in your input on that
8 particular topic.

9 MS. ANDERL: Well, and Jason, correct me if
10 I'm wrong here.

11 MR. TOPP: Sure.

12 MS. ANDERL: I think that Qwest would like
13 to go ahead with the arbitration, and so we would be
14 not super supportive of a continuance, especially
15 since we've delayed this, you know, in Washington at
16 least once already, albeit with our own agreement.

17 And so, you know, maybe the thing to do
18 would be to have the internal conference that you
19 wanted me to give you some sense of the magnitude of
20 the impact of the forbearance petition on any open
21 issues in this docket and report back to you
22 tomorrow.

23 JUDGE CLARK: I think that's reasonable.
24 Mr. Merz.

25 MR. MERZ: We can certainly report back to

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1 you tomorrow about what our -- I think I can have
2 more informed views, anyway, but I'm certain it will
3 be our position that we do want to go forward with
4 the arbitration, but we can certainly discuss it
5 tomorrow.

6 JUDGE CLARK: Okay. That's entirely
7 reasonable. I don't think it's necessary for us to
8 reconvene another pre-hearing conference tomorrow in
9 order to get the parties' opinion on that. I would
10 appreciate it if you could report back to me no later
11 than 10:00 Washington time. Is that going to create
12 a burden for anyone to do?

13 MR. TOPP: We should be able to do that on
14 Qwest's end.

15 JUDGE CLARK: Mr. Topp? Was that you, Mr.
16 Topp?

17 MR. TOPP: Yes, I apologize.

18 JUDGE CLARK: That's okay. I just want to
19 make sure I'm getting this. Mr. Merz.

20 MR. MERZ: Yes, that would be fine.

21 JUDGE CLARK: All right. Okay. Well, then,
22 I anticipate hearing, via e-mail is fine, if the
23 parties wish to initiate a conference call to me,
24 that's also fine, just to get some input on that
25 particular issue.

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1 In the event that we do proceed to hearing,
2 are there any other preliminary matters that we
3 should address? I'm not hearing anything.

4 MS. ANDERL: No, not from Qwest's end, Your
5 Honor, unless you intend to change the Washington
6 practice of not having witnesses give opening
7 statements, because we told our witnesses no opening
8 statements.

9 JUDGE CLARK: No, no, it wasn't my intent to
10 change that.

11 MS. ANDERL: All right. Then nothing else.

12 JUDGE CLARK: Okay. Then the only other
13 matter that I have -- Mr. Merz, is there anything of
14 a preliminary matter?

15 MR. MERZ: No, Your Honor.

16 JUDGE CLARK: Well, then, the only other
17 matter that we have is consideration of the draft
18 exhibit list that I circulated to the parties. Of
19 course, to my horror, I've already found one error,
20 and it happens to be in the very first exhibit, where
21 the designation given by the party, i.e., Qwest,
22 should be RA-1T, rather than KA-1T. And having made
23 an error in the very first exhibit, I'm abhorrent to
24 hear how many others the parties found.

25 MR. TOPP: From Qwest's end, we did not find

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1 other errors in the exhibits, so --

2 JUDGE CLARK: All right. Mr. --

3 MR. MERZ: Your Honor, this is -- I'm sorry,
4 I didn't mean to cut you off.

5 JUDGE CLARK: No, that's all right. It's
6 very difficult when we're on the phone to know when
7 someone's about to commence speaking. Please.

8 MR. MERZ: Yes, this is Greg Merz. And the
9 only -- well, there are two -- one possible error and
10 one issue. With respect to Exhibit 149.

11 JUDGE CLARK: All right. Give me just a
12 minute to get there.

13 MR. MERZ: Sure.

14 JUDGE CLARK: I do have this available
15 electronically, so that I can go ahead and make
16 whatever revisions are necessary, but it takes me a
17 little more time to get to that particular exhibit.
18 It's really slow today. Sorry, I haven't fallen
19 asleep here.

20 All right. Finally we're at 149, which I
21 have listed for Mr. Denny, a compliance filing in
22 Docket UT-043045. Is that the exhibit?

23 MR. MERZ: Yes, that's the exhibit I'm
24 talking about.

25 JUDGE CLARK: All right. Thank you, Mr.

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1 Merz. Please go ahead.

2 MR. MERZ: I would change the description,
3 actually, because I think the description is not
4 accurate.

5 JUDGE CLARK: Okay. Please. Go slowly and
6 let me know how you would like this exhibit renamed,
7 please.

8 MR. MERZ: Sure. Comparison of Washington
9 SGAT.

10 JUDGE CLARK: Just a second. Comparison of
11 --

12 MR. MERZ: Washington SGAT --

13 JUDGE CLARK: Washington SGAT.

14 MR. MERZ: With Covad.

15 JUDGE CLARK: C-o-v-a-d.

16 MR. MERZ: ICA payment and deposit
17 provisions.

18 JUDGE CLARK: ICA payment and deposit
19 provisions.

20 MR. MERZ: Yes.

21 JUDGE CLARK: And that's the complete title?

22 MR. MERZ: Yes.

23 JUDGE CLARK: All right. That doesn't alter
24 anything else; correct? It doesn't alter the
25 pagination or the designation of that?

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1 MR. MERZ: No, no other changes.

2 JUDGE CLARK: Okay. Cool. I've made that
3 modification. Are there any others, Mr. Merz?

4 MR. MERZ: Then, as to -- you have an
5 Exhibit 148, which we have named DD-17.

6 JUDGE CLARK: Yes.

7 MR. MERZ: There is a later updated version
8 of DD-17, and the exhibit itself is a chronology of
9 information regarding CFA changes, and the updated
10 exhibit is the first exhibit in Mr. Denny's
11 surrebuttal testimony. And I didn't know if you
12 wanted to have that exhibit replace the one that was
13 in his rebuttal testimony that you have as 148, or
14 whether it would be more appropriately a new exhibit
15 number that would come after Exhibit 152 on the list
16 that you have here.

17 JUDGE CLARK: I can do it either way.
18 Ordinarily, when I get a document that's an update, I
19 note on the exhibit list that it is an updated
20 version of that document, but I'm certainly happy to
21 put this in here any way you wish. I would presume,
22 if we follow the course you're suggesting, that you
23 would prefer to have me delete Exhibit DD-17 and then
24 add another exhibit at some juncture after Mr.
25 Denny's surrebuttal?

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1 MR. MERZ: Yes, that's what I think would be
2 my preference. Because it's the first exhibit to Mr.
3 Denny's surrebuttal, I would make the updated version
4 of DD-17 153, and then renumber all the others
5 accordingly.

6 JUDGE CLARK: I don't like the renumber the
7 others accordingly part of that.

8 MR. MERZ: Okay. All right.

9 JUDGE CLARK: I'm just kidding. It was a
10 bad joke. Okay. Just a second. Let me go down
11 here. So you'd like that to be 153; correct?

12 MR. MERZ: Correct.

13 JUDGE CLARK: All right. And the title that
14 was given that particular exhibit, is that
15 acceptable?

16 MR. MERZ: Yes, and I would just add a note,
17 updated, I think.

18 JUDGE CLARK: It does have updated on my
19 version.

20 MR. MERZ: Okay.

21 JUDGE CLARK: It says, CFA change chronology
22 for limit of one, updated, 34 pages, DD-17.

23 MR. MERZ: Oh, I see. I missed that. Yes,
24 I would keep that title.

25 JUDGE CLARK: Okay. All right. Then I will

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1 be preparing a revised exhibit list that will delete
2 that particular document and renumber. And I'm not
3 going to renumber the documents starting with 148.
4 I'll just indicate that that was withdrawn.

5 MR. MERZ: Okay.

6 JUDGE CLARK: Okay.

7 MR. MERZ: Yep.

8 JUDGE CLARK: Do you have any other
9 modifications, Mr. Merz?

10 MR. MERZ: No changes to what you already
11 have done, but an issue that Mr. Topp and I had
12 discussed earlier on was that we now have hearing
13 transcripts for our hearing in Arizona, as well as
14 Colorado, and Mr. Topp and I had agreed that those
15 would be offered as joint exhibits.

16 JUDGE CLARK: All right. And do you have a
17 witness to sponsor those exhibits?

18 MR. TOPP: We do not, and I'm a little
19 unsure as to process as to how we have those put in,
20 but we thought that that would probably be useful
21 information that everyone could use.

22 JUDGE CLARK: Okay. Is this -- are these
23 documents that you would intend to use for the
24 purpose of cross-examination during the course of the
25 arbitration?

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1 MR. MERZ: This is Greg Merz, and I think
2 that's unlikely. Actually, our intention had been to
3 use them primarily for citation as part of the
4 post-hearing briefing.

5 JUDGE CLARK: As part of the briefing, okay.
6 Well, the Commission is not a huge fan of having
7 documents come in that are not sponsored by a witness
8 and not subject to cross-examination. However, given
9 the nature of this document, where we do have
10 individuals who already were subject to
11 cross-examination, albeit in different proceedings,
12 it seems to me that that might be a reasonable time
13 to make an exception to the Commission's sort of new
14 policy in that regard. I would suggest, then, that
15 perhaps those -- do Counsel have any idea when those
16 documents could be presented?

17 MR. MERZ: They could probably reasonably be
18 offered either at the beginning or the end of the
19 hearing.

20 JUDGE CLARK: All right. Then what I'm
21 going to do is create a new category on the exhibit
22 list for something, for lack of a better title, as
23 joint exhibits. And if you can tomorrow, during our
24 conference call or e-mail exchange, I'm going to
25 start with Exhibit Number 177 -- just a second here,

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1 177 for the first portion of the transcripts that you
2 want to use and, you know, make it the Arizona
3 proceeding or the other proceeding, whatever order in
4 which you'd like me to mark and take those, and if
5 you can get me the number of pages and a title for
6 those exhibits tomorrow, I can go ahead and put it on
7 the draft exhibit list and then you can provide the
8 actual exhibits at the onset of the hearing.

9 MR. MERZ: Terrific.

10 JUDGE CLARK: All right. And I believe you
11 said there were two of those?

12 MR. TOPP: Yeah, there was the Arizona
13 transcript and the Colorado transcript.

14 JUDGE CLARK: Okay. So I'm going to
15 designate those 177 and 178, and I'm assuming the
16 parties will tell me tomorrow which order you'd like
17 those in.

18 MR. TOPP: Yeah, and there's actually two
19 volumes in each state, so I'd recommend you do the --

20 JUDGE CLARK: We need to know who's
21 speaking.

22 MR. TOPP: Oh, I'm sorry. Jason Topp.

23 JUDGE CLARK: All right, Mr. Topp. Go
24 ahead.

25 MR. TOPP: The Arizona transcript as

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1 Exhibits 177 and 178, and the Colorado transcript as
2 179 and 180, and follow up with the additional
3 information.

4 JUDGE CLARK: All right. That would be
5 great. All right. Then we have four new exhibits
6 that I will entitle joint exhibits.

7 MR. TOPP: Great.

8 JUDGE CLARK: All right. Are the parties
9 able to agree to the admission of any or all of the
10 exhibits that have -- oh, I'm sorry, are there any
11 other changes, corrections, or addition?

12 MR. MERZ: This is Greg Merz, Your Honor. I
13 don't have anything further.

14 JUDGE CLARK: Mr. Topp.

15 MR. TOPP: None from me, either.

16 JUDGE CLARK: Ms. Anderl?

17 MR. TOPP: She sent me a message. She had
18 to step away because of another meeting.

19 JUDGE CLARK: I understand. That was
20 probably the -- when someone leaves the line, that's
21 when we hear the --

22 MS. ANDERL: I'm sorry, Your Honor. This is
23 Lisa Anderl. I had it on mute and was not able to
24 access the mute button quickly enough.

25 JUDGE CLARK: This is okay. Do you have any

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1 other changes, corrections, or deletions to the draft
2 exhibit list?

3 MS. ANDERL: I do not, and because I'm in a
4 noisy environment right now, I'm going to go back on
5 mute.

6 JUDGE CLARK: All right. The next question
7 that I was posing is whether the parties have
8 objection to the admission of any or all of the draft
9 exhibits?

10 MR. TOPP: This is Jason Topp, on behalf of
11 Qwest. We're happy to stipulate to the admission of
12 all of the -- all of the exhibits that Eschelon has
13 put forth, and my understanding is that Eschelon is
14 doing the same, with the caveat of the
15 cross-examination exhibits, we'd like to reserve the
16 right to object based on the questioning that takes
17 place at the hearing, but we don't have any
18 objection, sitting here right now, to the
19 cross-examination exhibits.

20 JUDGE CLARK: Mr. Merz.

21 MR. MERZ: Your Honor, this is Greg Merz,
22 and we don't have any objection to any of the
23 exhibits that Qwest has proposed.

24 JUDGE CLARK: All right. Then I will, in
25 the draft exhibit list, I will also indicate that all

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1 exhibits were offered and admitted. With respect to
2 the reservation of your objection, Mr. Topp, it is my
3 practice to conduct the hearing something similar to
4 a trial, and that is if you want to use a document as
5 an exhibit, you have to lay the appropriate
6 foundation and move its admission before I permit any
7 inquiry on that particular document.

8 MR. TOPP: Okay.

9 JUDGE CLARK: That doesn't preclude you, of
10 course, from objecting to the line of inquiry as --
11 on any grounds you so choose, and that certainly does
12 not preclude you from moving to strike a specific
13 portion of questions and answers, but regrettably, if
14 I don't follow that practice, we may find ourselves
15 in a situation where extensive testimony is elicited
16 before there's a motion to strike or to eliminate the
17 testimony, and then we not only have the pre-filed
18 documents to go through, but the nightmare of the
19 transcript to deal with, as well, and that's why I've
20 adopted that practice.

21 MR. TOPP: Okay.

22 JUDGE CLARK: Okay. Then I'm going to
23 revise the exhibit list in accordance with what the
24 parties have informed me this afternoon. I will not
25 send a draft exhibit list to you until tomorrow,

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1 after I've had an opportunity to name the additional
2 four exhibits that the parties intend to submit.

3 Are there any other preliminary matters that
4 we need to address this afternoon?

5 MR. MERZ: Your Honor, this is Greg Merz.
6 There is one other issue.

7 JUDGE CLARK: Yes.

8 MR. MERZ: Some of the issues that are
9 disputed issues in the arbitration relate to what
10 I'll call wire center issues, that there's some
11 discussion about those both in the testimony we've
12 submitted, as well as the disputed issues list.

13 We have agreed with Qwest that, because
14 neither party really submitted very much in the way
15 of substantive testimony on those issues because we
16 were awaiting some decisions in some of the pending
17 dockets on those issues, and since we've not
18 submitted much in the way of testimony on those
19 issues, we would provide another round of testimony
20 related specifically to the wire center issues, and
21 we had in mind that there'd be two subsequent rounds
22 of testimony that would be provided, and then the
23 issues could then be determined without the need for
24 additional hearing, if Your Honor was agreeable to
25 that process.

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1 JUDGE CLARK: Well, without having seen any
2 of this, of course it's difficult to agree to that.
3 I'm certainly amenable, if the parties feel the need
4 to file supplemental testimony on that particular
5 issue, that's certainly not a problem, and I think --
6 and if you foresee the need for not one round, but
7 two, I certainly don't foresee a problem with that,
8 either.

9 I would feel more comfortable if we, in
10 conjunction with establishing deadlines for that
11 testimony, also established a hearing date in the
12 event any questions do arise regarding that
13 particular topic. And I'd like to just sort of have
14 that on the calendar. If it becomes unnecessary to
15 use it, we can certainly vacate that hearing time,
16 but the Commission's calendar is quite burdened, and
17 so I'd feel very badly if we needed that time and
18 didn't have it set up somewhere in the schedule.

19 MR. MERZ: I'm sure, Your Honor -- this is
20 Greg Merz. That makes sense. One point that I did
21 want to make sure was clear is that -- and we've kind
22 of dealt with this a little bit in some of the other
23 cases that are pending. I think it's both parties'
24 anticipation that the wire center piece of the case
25 would be dealt with as part of this arbitration and

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1 the parties would be making a single compliance
2 filing of a complete contract, rather than a contract
3 and subsequent amendment.

4 JUDGE CLARK: Well, that would certainly be
5 my understanding, as well. It just sounds to me like
6 we would be bifurcating a little piece of the
7 testimony itself and perhaps bifurcating a little
8 portion of the hearing, if necessary, but they would
9 all be rolled into one decision regarding an ICA and
10 one compliance filing in the form of an ICA. Is that
11 your understanding, Mr. Topp?

12 MR. TOPP: Yes, it is.

13 JUDGE CLARK: All right. Did the parties
14 have a date in mind about preparing additional
15 testimony on the limited issue of wire centers?

16 MR. MERZ: Your Honor, this is Greg Merz.
17 The parties would propose May 31st for the first
18 round of testimony and --

19 JUDGE CLARK: And that would be
20 simultaneous; correct?

21 MR. MERZ: Yes, Your Honor.

22 JUDGE CLARK: Okay. May 31st, and the
23 second?

24 MR. MERZ: June 28th.

25 JUDGE CLARK: June 28th. All right. And

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1 then I would imagine if any hearing is necessary on
2 that, that it would be quite limited, and I would
3 propose that we set aside a day if we need one. Are
4 the parties amenable to July 19th? Well, you could
5 have any time in the week of July the 16th.

6 MR. MERZ: Your Honor, this is Greg Merz.
7 If that is an issue that we could also deal with
8 tomorrow, just because I know I'm going to have to
9 consult with my witness on his availability, as well.

10 JUDGE CLARK: That's not a problem. We can
11 do that, as well. I see no problem with the filing
12 deadlines that you've proposed. And so what I was
13 trying to do is just come up with a hearing date
14 approximately two weeks after the last filing
15 deadline should a hearing become necessary on that
16 issue.

17 MR. MERZ: Okay.

18 JUDGE CLARK: Okay.

19 MR. MERZ: Yep.

20 JUDGE CLARK: All right. Anything further?

21 MR. TOPP: One additional issue for the
22 hearing that I --

23 JUDGE CLARK: Mr. Topp, is that you?

24 MR. TOPP: Yes, I apologize. This is Jason
25 Topp. One additional issue that I'd like to raise is

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1 that John Devaney and I will be representing Qwest at
2 the hearing, so -- along with Ms. Anderl. There may
3 be occasions, because of the way that we have
4 prepared for this case -- we've divided up the issues
5 between the two of us, and in certain instances,
6 Eschelon witnesses will cover issues that I prepared
7 for and Mr. Devaney has prepared for. And the way we
8 have handled that in other states is that I would
9 handle cross-examination of Eschelon's witnesses on
10 my issues and Mr. Devaney would handle
11 cross-examination on his issues, and I wanted to make
12 sure that that was okay from the Court's perspective.

13 JUDGE CLARK: Well, ordinarily that's not
14 something that I do permit, but without objection
15 from Mr. Merz, I will permit it.

16 MR. MERZ: Your Honor, this is Greg Merz.
17 We do not object.

18 JUDGE CLARK: All right. Then I will permit
19 that, but it is important for you to segregate the
20 issues, because I'm not going to permit more than one
21 attorney to represent Qwest at any given time in the
22 arbitration.

23 MR. TOPP: Yeah, and we will certainly do
24 that.

25 JUDGE CLARK: All right. Are there any

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1 other preliminary matters we should address in this
2 afternoon's conference?

3 MR. MERZ: This is Greg Merz, Your Honor.
4 Nothing further from our perspective.

5 JUDGE CLARK: Mr. Topp?

6 MR. TOPP: Nothing from our perspective
7 either.

8 JUDGE CLARK: All right. Then I look
9 forward to hearing from the parties tomorrow morning,
10 either via e-mail or conference call, no later than
11 10:00 a.m., and we'll discuss the issue of briefing,
12 we'll discuss the issue of an appropriate hearing
13 date to reserve, should one become necessary, and
14 perhaps a more full response to the impact of the
15 petition for forbearance. Are there other matters
16 that the -- oh, and the titles and pagination of the
17 additional four exhibits the parties would like to be
18 presented in the record.

19 Are there other matters that I'm missing?

20 MR. MERZ: Your Honor, Greg Merz. Just one
21 question of clarification. You had mentioned, among
22 the issues to be talked about tomorrow, one of those
23 was the issues of briefing. Are you referring to
24 briefing on this forbearance?

25 JUDGE CLARK: Yes, I'm referring to the

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1 issue of briefing on forbearance.

2 MR. MERZ: Okay. What you'd like to hear
3 from us is when we can provide briefs or --

4 JUDGE CLARK: No, the first thing I'm
5 interested in hearing about is your opinion -- my
6 understanding is you need to confer off record and
7 that -- about whether or not it would benefit the
8 record to have that particular briefing, and if so,
9 when, and how to do that in conjunction with the
10 proceeding we have scheduled.

11 MR. MERZ: Okay. Thank you for the
12 clarification, Your Honor.

13 JUDGE CLARK: No problem, no problem.
14 Anything further? All right. It doesn't sound like
15 we have anything in addition, so I look forward to
16 hearing from the parties tomorrow.

17 MR. TOPP: Thank you.

18 MR. MERZ: Thank you.

19 JUDGE CLARK: Thank you, we're adjourned.

20 MS. ANDERL: Thank you, Your Honor.

21 JUDGE CLARK: Thank you, Ms. Anderl.

22 (Proceedings adjourned at 2:08 p.m.)

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