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1 PUBLIC COUNSEL, by Simon ffitch,  
2 Assistant Attorney General, 900 Fourth Avenue, Suite  
3 2000, Seattle, Washington, 98164.

4 COVAD COMMUNICATIONS COMPANY, by Karen  
5 Frame, Attorney at Law, 7901 Lowry Boulevard, Denver,  
6 Colorado 80230 (via teleconference bridge).

7 CITIZENS UTILITY ALLIANCE, by John  
8 O'Rourke, Program Coordinator, 212 W. Second Avenue,  
9 Spokane, Washington 99201 (via teleconference  
10 bridge.)

11 MCI, (appearing as interested party),  
12 By Michel Singer Nelson, Attorney at Law, 707 17th  
13 Street, Suite 4200, Denver, Colorado 80202 (via  
14 teleconference bridge.)

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1           JUDGE WALLIS: Let's be on the record,  
2 please. This conference will please come to order.  
3 This is a pre-hearing conference in the matter of  
4 Commission Docket Number UT-991358, which is brought  
5 on in this instance by a petition by Qwest to  
6 terminate or modify the service quality performance  
7 program that the Commission established in the Ninth  
8 Supplemental Order in this docket authorizing a  
9 merger.

10           This conference is being held in Olympia,  
11 Washington, on March 10, 2004, before Administrative  
12 Law Judge C. Robert Wallis. Let's begin with  
13 appearances, please, and begin with the petitioner.

14           MS. ANDERL: Thank you. Lisa Anderl,  
15 representing Qwest. My business address is -- Your  
16 Honor, do you need the full appearance?

17           JUDGE WALLIS: Yes, for the record, please.

18           MS. ANDERL: Business address is 1600  
19 Seventh Avenue, Room 3206, Seattle, Washington,  
20 98191. My phone is 206-345-1574. My fax is  
21 206-343-4040, and my e-mail is lisa.anderl@qwest.com.  
22 Also appearing for Qwest in this matter will be Adam  
23 Sherr, another attorney in our office. His business  
24 address is the same as mine. His phone number is  
25 206-398-2507, and his e-mail is adam.sherr@qwest.com.

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1 JUDGE WALLIS: Thank you. For Commission  
2 Staff.

3 MR. SWANSON: Yes, for Commission Staff,  
4 this is Chris Swanson, Assistant Attorney General,  
5 and my business address is 1400 South Evergreen Park  
6 Drive, S.W., P.O. Box 40128, Olympia, Washington,  
7 98504-0128. My phone number is 360-664-1220; my fax  
8 number is 360-586-5522; and my e-mail address is  
9 chriss3@atg.wa.gov.

10 JUDGE WALLIS: Public Counsel.

11 MR. FFITCH: Simon ffitch, Assistant  
12 Attorney General, Public Counsel, Washington Attorney  
13 General's Office, 900 Fourth Avenue, Suite 2000,  
14 Seattle, Washington, 98164. Phone, 206-389-2055;  
15 fax, 206-389-2058; e-mail address is  
16 simonf@atg.wa.gov.

17 JUDGE WALLIS: Thank you. Is there anyone  
18 else in the hearing room that desires to participate  
19 as a party? Let the record show that there's no  
20 response. Let's move to the bridge line. Mr.  
21 O'Rourke. Mr. O'Rourke, are you on the line?

22 MR. O'ROURKE: Yes.

23 JUDGE WALLIS: Do you intend to participate  
24 as a party in this matter?

25 MR. O'ROURKE: Yes, Your Honor. There was a

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1 long beep in my ear, so I missed anything you may  
2 have said.

3 JUDGE WALLIS: Ah, I'm sorry.

4 MR. O'ROURKE: John O'Rourke, Program  
5 Coordinator, Citizens Utility Alliance of Washington,  
6 212 West Second Avenue, Spokane, Washington, 99201.  
7 Phone number, 509-744-3370, extension 247; fax,  
8 509-744-3374; e-mail is orourke@snapwa.org.

9 JUDGE WALLIS: And you are petitioning to  
10 intervene today; is that correct?

11 MR. O'ROURKE: Yes, Your Honor.

12 JUDGE WALLIS: On behalf of the Citizens  
13 Utility of Washington?

14 MR. O'ROURKE: Citizens Utility Alliance of  
15 Washington.

16 JUDGE WALLIS: Citizens Utility Alliance,  
17 thank you. For Covad?

18 MS. FRAME: Yes, Your Honor. This is Karen,  
19 K-a-r-e-n, Frame, F-r-a-m-e, and I'm Senior Counsel  
20 at Covad Communications Company. The address is 7901  
21 Lowry Boulevard, L-o-w-r-y Boulevard, in Denver,  
22 Colorado, 80230. My telephone number is  
23 720-208-1069, and my facsimile is 720-208-3350, and  
24 e-mail is just kframe@covad.com.

25 JUDGE WALLIS: Ms. Frame, are you -- is your

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1 client already a party to this proceeding?

2 MS. FRAME: Yes, we are, Your Honor.

3 JUDGE WALLIS: Thank you. Is there anyone  
4 else on the bridge line that desires to enter an  
5 appearance this morning?

6 MS. SINGER NELSON: Your Honor, Michel  
7 Singer Nelson, on behalf of MCI. I would like to  
8 enter an appearance.

9 JUDGE WALLIS: Very well. Please do so.

10 MS. SINGER NELSON: It's Michel,  
11 M-i-c-h-e-l, Singer Nelson, my address is 707 17th  
12 Street, Suite 4200, Denver, Colorado, 80202. My  
13 phone number is 303-390-6106; my fax is 303-390-6333;  
14 and my e-mail address is  
15 michel.singer\_nelson@mci.com, and MCI would just like  
16 to enter an appearance as an interested party in this  
17 proceeding and not as an intervenor.

18 JUDGE WALLIS: Very well. Thank you.

19 MS. SINGER NELSON: Thank you.

20 JUDGE WALLIS: Is there anyone else on the  
21 bridge line that desires to participate in this  
22 proceeding as a party? Let the record show that  
23 there's no response. Let's move to our --

24 MR. PREGULMAN: Your Honor, excuse me. We  
25 also want to be listed as an interested party. Is

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1 that all right?

2 JUDGE WALLIS: Could you come forward,  
3 please?

4 MR. PREGULMAN: Sure. I'm sorry for not  
5 making that clear sooner. My name is Robert  
6 Pregulman. I'm with the Washington Public Interest  
7 Research Group. We would like to be listed as an  
8 interested party, please.

9 JUDGE WALLIS: Very well. If you will  
10 provide that information to our Records Center. You  
11 need not make an oral appearance at this time.

12 MR. PREGULMAN: Will do. Thank you.

13 JUDGE WALLIS: Thank you. All right. We do  
14 have a petition to intervene from Mr. O'Rourke on  
15 behalf of the Citizens Utility Alliance of  
16 Washington. Is there any objection to that  
17 intervention?

18 MS. ANDERL: Yes, Your Honor. Qwest objects  
19 to the intervention.

20 JUDGE WALLIS: What's the basis for your  
21 objection?

22 MS. ANDERL: The basis is that we do not  
23 believe that the petition states a sufficient reason  
24 for intervention. There is no showing why the  
25 Alliance's participation would be in the public

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1 interest or would further the Commission's  
2 consideration of these issues. Additionally, and  
3 primarily, it appears as though the Alliance's  
4 interests are aligned with, if not exactly  
5 duplicative, of those of Public Counsel, and we think  
6 that participation by two parties with identical  
7 interests, that is, those of residential consumers,  
8 will burden the record unnecessarily and not be in  
9 the public interest. We therefore are opposed to the  
10 intervention.

11 JUDGE WALLIS: Thank you. Does anyone else  
12 wish to be heard?

13 MR. FFITCH: Your Honor, Simon ffitich, for  
14 Public Counsel. Public Counsel would support the  
15 petition to intervene by CUA. I would disagree with  
16 the assertion that -- the implied assertion that when  
17 Public Counsel is in a case, that other consumer  
18 groups should not be allowed to intervene. And I  
19 think that there's really no precedent for that in  
20 Commission proceedings. Over the past many years,  
21 multiple consumer groups with some overlapping  
22 interests have been allowed to participate in  
23 Commission proceedings.

24 I think that the way that the Commission has  
25 dealt with, you know, potential overlaps of interest



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1 is through management of the proceedings to avoid  
2 duplicative filings, unnecessarily burdening the  
3 record, asking parties to work together where their  
4 interests are aligned, rather than excluding people  
5 from important public proceedings.

6 JUDGE WALLIS: Very well. Does anyone else  
7 in the hearing room wish to be heard? Does anyone on  
8 the bridge line wish to be heard?

9 MR. O'ROURKE: Well, Your Honor, this is  
10 John O'Rourke. We are a membership-based  
11 organization, we are private, non-profit, we have  
12 over 2,200 members statewide from at least 120  
13 different Washington cities. Hundreds of our members  
14 are Qwest residential customers. Approximately 2,000  
15 of our members are low income. They were enrolled as  
16 a result of a grant that enabled low income people to  
17 waive their membership fee.

18 And so we think that we have a unique  
19 position in this case, because we do get direct  
20 feedback from our members, we do have extensive  
21 experience working especially with low income and  
22 vulnerable populations. I have -- we do not plan on  
23 being duplicative in any manner or any manner holding  
24 up the proceedings or making it more burdensome than  
25 it already is. So I have to think we bring a

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1 specific perspective to the case that no other  
2 organization does, and I'd like you to grant our  
3 petition.

4 JUDGE WALLIS: Thank you, Mr. O'Rourke. Do  
5 I take it from your comments that you are willing to  
6 work with parties with whose interests your group is  
7 aligned to avoid duplication?

8 MR. O'ROURKE: Yes, Your Honor. That's  
9 correct.

10 JUDGE WALLIS: Very well. I'm going to deny  
11 the objection to the intervention and rule that the  
12 Citizens Utility Alliance of Washington does have  
13 status as an intervenor in this docket. Is there  
14 anything further related to intervention? Very well.  
15 Let's proceed.

16 In a brief preliminary discussion this  
17 morning, parties identified several matters to take  
18 up, some of them in the nature of housekeeping.  
19 Let's begin with the question from Qwest as to  
20 whether this matter should proceed under the original  
21 docket or whether a new docket number should be  
22 assigned.

23 Ms. Anderl, I believe that was your inquiry,  
24 if not suggestion, and I wonder if you would indicate  
25 why you think a new docket number might be

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1 preferable.

2 MS. ANDERL: Yes. Your Honor, it was mostly  
3 a matter of administrative convenience, because this  
4 proceeding is quite different from the nature of the  
5 underlying application, which was the 1999 docket for  
6 approval of a merger application. It seems as though  
7 this is kind of a self-contained issue, the petition  
8 to terminate certain service quality requirements,  
9 and in terms of a service list and other things, it  
10 seemed as though it might make it easier to manage.  
11 Otherwise, there's no reason to do it.

12 JUDGE WALLIS: Very well. Let's call for  
13 comments from others. Anyone in the hearing room  
14 wish to comment on that?

15 MR. FFITCH: Yes, Your Honor, Public  
16 Counsel.

17 JUDGE WALLIS: Mr. ffitich.

18 MR. FFITCH: Your Honor, I think there's  
19 certainly a couple of ways to look at this from an  
20 administrative perspective. However, we come down on  
21 the side of handling this petition within the merger  
22 docket. The issues that are raised here are squarely  
23 within the merger settlement agreement and have to do  
24 with agreements and obligations under the merger  
25 settlement agreement.

1           We think that it makes sense to keep this  
2 petition within the merger docket. We think that  
3 there are administrative arguments on both sides, but  
4 we think that the administrative issues that I think  
5 I've heard Ms. Anderl address can be dealt with by,  
6 you know, by clear notice to parties and so on, and  
7 in effect creating a discrete subproceeding within  
8 this docket without having to drag in all of the, if  
9 you will, perhaps broader notice requirements and so  
10 on, once this notice -- the service list is  
11 clarified, so it can proceed in a discrete fashion,  
12 but still within the docket.

13           I'm concerned, if we go to a separate  
14 docket, that we move away from the record that we  
15 have in the merger proceeding that's available to us.  
16 We have had filings on service quality during the  
17 life of the service quality agreement performance  
18 program from the company that had been made within  
19 the docket.

20           So for those reasons, I think it just makes  
21 sense to stay in the merger proceeding. From the  
22 perspective of the outside public, too, this  
23 proceeding really is about whether a merger  
24 obligation continues or not, and if you're from the  
25 outside coming in to the Commission's records, for

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1 example, and trying to figure out what's going on  
2 with those merger obligations and that merger  
3 settlement agreement, you'd probably expect to find  
4 it within the docket, the original merger docket.  
5 And for that reason, I think it's also sort of  
6 administratively sensible to keep it here.

7 JUDGE WALLIS: Does any party on the bridge  
8 line wish to be heard?

9 MR. O'ROURKE: Yes, Your Honor. This is  
10 John O'Rourke. From the standpoint of our  
11 membership, it will be easier for them and for other  
12 Washington consumers to track this case if it remains  
13 in the current docket. That's all I have.

14 JUDGE WALLIS: Does anyone else wish to be  
15 heard? Very well. Ms. Anderl, I think that  
16 suggestion could have advantages from an  
17 administrative standpoint, but, on the other hand, I  
18 think that, for clarity, to avoid questions that  
19 might arise from changing a docket number from the  
20 filing that has begun this portion of this docket,  
21 and from the standpoint that, once we get a service  
22 list for this portion of the docket established,  
23 there will be no need to involve parties who have not  
24 appeared and are not interested.

25 So I think on balance that the better plan

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1 would be to proceed in Docket UT-991358. Question of  
2 correction of the service list. Mr. ffitich, was that  
3 your --

4 MR. SWANSON: Your Honor, I brought that up,  
5 Chris Swanson, for Commission Staff.

6 JUDGE WALLIS: Mr. Swanson, excuse me.

7 MR. SWANSON: It sounds like the issue might  
8 be moot at this point if we have a new service list  
9 and the parties have been dealt with, intervened in  
10 or are parties to the proceeding already, so the  
11 issue may be gone at this point.

12 JUDGE WALLIS: May I inquire as to what  
13 corrections you believed might be necessary?

14 MR. SWANSON: My understanding, and I don't  
15 know the specifics, but my understanding is that many  
16 of the names and addresses and individual  
17 representatives on the prior service list may be  
18 incorrect at this point or outdated. I don't know  
19 the specifics, but Commission Staff would be happy to  
20 file something with its specific concerns if that  
21 would be helpful to Your Honor.

22 JUDGE WALLIS: Very well. Because this  
23 matter was filed in a preexisting docket, because  
24 there have been changes over time since this matter  
25 was initially resolved, some of the companies who

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1 were shown as parties may have merged, their  
2 representation may have changed. I think it would be  
3 a good idea to have that update so that we can be  
4 assured that every party to that docket has the  
5 opportunity to participate.

6 I will note that paragraph eight of the  
7 pre-hearing conference notice says that any party who  
8 fails to attend or participate in this pre-hearing  
9 conference may be held in default and, I think as a  
10 practical matter, whether we enter a formal order of  
11 default for those parties to establish a final list,  
12 giving parties who may not have received notice the  
13 opportunity to participate by a later notice, I think  
14 that will clarify our list and I think that's a good  
15 way to proceed.

16 So if Staff would do that and provide a copy  
17 to the Commission and to all of the parties who  
18 entered an appearance this morning, we would  
19 appreciate that. What time frame would be  
20 appropriate for doing that?

21 MR. SWANSON: Perhaps one week.

22 JUDGE WALLIS: Very well. Staff, then, will  
23 file that no later than close of business on March  
24 17th.

25 MS. ANDERL: Your Honor, kind of along those

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1 same lines, may we ask for clarification, then, in  
2 the -- when you issue a pre-hearing conference order  
3 as to who needs to be served in this docket? Because  
4 I'm certain that there will be parties from the prior  
5 phases, such as AT&T, who, you know, maybe we still  
6 have their correct information, but they did not  
7 appear here today. When we get around to filing  
8 things like testimony and whatever we might do in  
9 this docket, do we need to copy some of those  
10 individuals or not for purposes of this phase of the  
11 proceeding? That would clarify things for us and be  
12 very helpful to know that.

13 JUDGE WALLIS: Very well. Let me state my  
14 understanding of the appropriate way to proceed, and  
15 then parties can respond to it this morning. I  
16 believe that once this conference is closed, that the  
17 only parties who require service are those who have  
18 entered an appearance this morning.

19 With the caveat that understanding some of  
20 the contact information may be outdated in this  
21 docket, we will send a supplemental notice to parties  
22 whose information was incorrect and offer them the  
23 opportunity to participate, and any of those parties  
24 who do so would also be on the service list. Is that  
25 consistent with everyone's understanding of the



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1 pertinent law?

2 MR. SWANSON: Yes, for Commission Staff.

3 MR. FFITCH: That sounds acceptable, Your  
4 Honor.

5 MS. ANDERL: That's good with us. Thanks.

6 JUDGE WALLIS: Very well. Is there any  
7 comment from the bridge line? Let the record show  
8 that there is not. So we will memorialize that in  
9 the pre-hearing conference order, as well. Kind of  
10 our own Who's On First routine.

11 Mr. ffitich, you did have a question about  
12 customer notice; is that correct?

13 MR. FFITCH: That's correct, Your Honor.  
14 Your Honor, Public Counsel would like to move at this  
15 pre-hearing conference for an order requiring Qwest  
16 to provide notice to each of its customers by means  
17 of a bill stuffer of the petition to terminate the  
18 service quality performance program and of any  
19 opportunity that customers have to make comment to  
20 the Commission on the proceeding, and in addition of  
21 a public hearing. We haven't gotten to that part of  
22 the proceeding yet, but of any public hearings where  
23 they would have an opportunity to appear, to either  
24 attend or to specifically comment on the proceeding.

25 The reasons for this I can address, I hope

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1 briefly, the reason for the motion. There's a bit of  
2 a history background to the request, Your Honor. As  
3 you may be aware, under the merger settlement  
4 agreement service quality performance program, Qwest  
5 is required to and has provided annual reports to its  
6 customers of its performance under the service  
7 quality performance program. This provides detailed  
8 information about their performance under each of the  
9 separate measures and advises the customers of  
10 whether or not penalties or payments were payable.  
11 I'm holding one of these in my hand right now. These  
12 are provided to each customer in -- I believe with a  
13 billing, as an insert in a billing.

14           As this is prepared, the company consults  
15 with Staff and Public Counsel regarding the format of  
16 the report. In the most recent discussions regarding  
17 the format of the report, Public Counsel and I  
18 believe also Staff requested that the company advise  
19 customers in the service quality report that they  
20 were filing a petition to terminate the program.

21           The upshot of the discussion at that time  
22 was -- at least our initial understanding was that  
23 the Company agreed to provide a notice, but did not  
24 wish to include a statement to that effect in this  
25 annual report, but to provide that later in a bill

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1 insert.

2           The reason for that, as I understand it, was  
3 that, at the time of the early discussions, in the  
4 preparation of the annual report insert, the Company  
5 had not yet filed a petition, had not yet made a  
6 final decision to file the petition, and so did not  
7 wish to put that language in the notice prematurely.

8           There have been a number of conversations  
9 since then with the Company regarding the notice, and  
10 it is our sense that the Company has backed away from  
11 any understanding that notice would be provided to  
12 the customers. So I cannot state to you that the  
13 Company has made a categorical commitment to do that.

14           Statements were made to us during the  
15 course of these discussions that notice would be  
16 provided by means of a bill stuffer once the petition  
17 was filed. However, as I indicated, the Company has  
18 not -- I don't think it's fair to the Company to say  
19 that they have really maintained that as a formal  
20 commitment. That's become a matter of discussion.  
21 However -- well, I guess I'll put a period there and  
22 say that's the background, Your Honor.

23           Given that background, we are requesting  
24 that the Commission direct the Company to provide  
25 notice to its customers of the petition to terminate.

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1 We believe it's directly related to the annual report  
2 to the customers that's required under the merger  
3 notice -- or the merger settlement agreement. We  
4 think it's intrinsic to the -- intrinsic to the  
5 annual report obligation that customers be -- in the  
6 course of being provided information, an update on  
7 the status of the service quality program, that an  
8 intrinsic part of that is that they would be advised  
9 if the program is going to be subject to termination  
10 and have an opportunity to comment on that.

11 We also think that, as an independent  
12 ground, the Commission has inherent statutory  
13 authority to order the company to provide notice to  
14 its customers of major changes in company programs.  
15 So that's the basis of our motion, Your Honor.

16 JUDGE WALLIS: Very well. Can you tell me  
17 what the time frame is for the next annual report to  
18 the customers?

19 MR. FFITCH: Your Honor, the next annual  
20 report, and Ms. Anderl can certainly correct me if  
21 I'm wrong, but it would be due in early 2005, if the  
22 program were continued, if this petition were denied.

23 JUDGE WALLIS: Very well. So we're too late  
24 to have it included in the current year's report?

25 MR. FFITCH: That's correct, Your Honor.

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1 JUDGE WALLIS: Very well.

2 MR. FFITCH: One thing I neglected to  
3 mention is that one of our concerns is that the  
4 report that did go out advises customers that the  
5 program, the service quality program may continue  
6 through December 31st, 2005, so that we thought that  
7 that was somewhat misleading to customers. Although  
8 it uses the term may, admittedly, we thought it was  
9 somewhat misleading to customers as all of us knew  
10 that termination was going to be an issue. And for  
11 the notice that's gone out to be silent as to  
12 termination we felt could be remedied by a subsequent  
13 notice which we had at one time thought the Company  
14 was willing to do.

15 JUDGE WALLIS: Very well. Before we turn to  
16 Ms. Anderl, let me ask if anyone wishes to speak in  
17 favor of Mr. ffitch's request?

18 MR. SWANSON: Yes, Chris Swanson, for  
19 Commission Staff. Commission Staff just wants to  
20 indicate their support of Public Counsel's motion for  
21 the reasons that Public Counsel indicated.

22 JUDGE WALLIS: Thank you. Any others on the  
23 bridge line?

24 MR. O'ROURKE: Yes, John O'Rourke, for the  
25 Citizens Utility Alliance. We support Public

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1 Counsel's motion.

2 JUDGE WALLIS: Very well. Ms. Anderl, what  
3 is the company's response?

4 MS. ANDERL: Well, Your Honor, there have  
5 been quite a bit of information set forth by Public  
6 Counsel. Let me see if I can respond. Qwest does  
7 not believe that customer notice is necessary, either  
8 under any statutory or rule provision or under the  
9 service quality performance plan or the merger  
10 settlement agreement. So there was no notice  
11 requirement, nor do we believe is there any  
12 reasonable expectation for customers that they would  
13 get a notice on this.

14 The service quality performance plan, by its  
15 own terms, is one that can be petitioned to be ended  
16 as of the end of December 2003. That's what we've  
17 done. There's no requirement that that petition be  
18 accompanied by notice to the customers. The service  
19 quality performance program will end by its own terms  
20 at the end of December of 2005. There's no --  
21 necessarily no notice contemplated with the end of  
22 the program if it ends by its own terms.

23 This is not a change to any tariff  
24 provisions whereby notice would be required. It's  
25 not a change to any rates, you know, any other rates,

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1 tariff or price listed, where notice would be  
2 required. And we simply don't -- do not think that  
3 notice to all customers is a wise use of resources  
4 under the circumstances. It's simply not the type of  
5 case, aside from the participation of Public Counsel  
6 and the Citizens Utility Alliance, that we think will  
7 generate the level of consumer interest or consumer  
8 impact that would warrant a notice.

9           With regard to Public Counsel's allegation  
10 that we had originally promised a notice, but then it  
11 was unclear what we were planning on doing now, there  
12 were a number of communications between Qwest and  
13 Public Counsel and Staff, and at one point an e-mail  
14 was sent out by a Qwest representative indicating we  
15 thought that perhaps there might not be any problem  
16 with doing a notice.

17           That representative was I think under the  
18 misapprehension that notice was going to be required  
19 under some rule provision, such as for a tariff  
20 change. However, that misapprehension was clarified  
21 immediately and an e-mail was sent to all the  
22 interested persons in this discussion the same day,  
23 saying, No, no, we're not going to do a notice. So I  
24 don't think it's been unclear what our position is  
25 and I don't think that anybody's been misled, but we

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1 do not think at this point that a notice is either  
2 necessary or helpful for consumers or for the  
3 Commission's consideration of the issues in this  
4 docket.

5 JUDGE WALLIS: Do you think that the  
6 Commission lacks discretion to direct the company to  
7 provide the notice that Public Counsel has requested?

8 MS. ANDERL: I do not.

9 JUDGE WALLIS: Very well. Is there any  
10 response, Mr. ffitch?

11 MR. FFITCH: Your Honor, I'd just like to  
12 briefly respond to the Company's suggestion that this  
13 is not a matter of high customer interest. Qwest's  
14 service quality has, for approximately a decade, been  
15 a matter of high public interest in this state,  
16 probably second only, if that, to the matter of  
17 rates, but Qwest customer service continues to be a  
18 hot button issue for customers, as indicated by the  
19 immediate receipt, I understand, by the Commission's  
20 Public Affairs Office of letters from customers  
21 expressing concern in response to newspaper coverage  
22 of this proceeding. I think it is a matter of high  
23 public interest to customers and they would  
24 appreciate the opportunity to comment on this  
25 proceeding.



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1           JUDGE WALLIS: Very well. We'll take the  
2 request under advisement and rule on it in the  
3 pre-hearing conference order. Let me ask if the  
4 parties believe that there's any need for a  
5 protective order in this docket?

6           MS. ANDERL: Potentially, Your Honor.

7           MR. FFITCH: Your Honor, I would agree, and  
8 elaborate a little bit. We were going to suggest  
9 that the discovery rule be invoked or re-invoked,  
10 since we're within the merger docket. I believe we  
11 have a protective order in place. We could probably  
12 just agree to continue to proceed under that  
13 protective order. I haven't conferred with the  
14 Company about that, but that might be a convenient  
15 way to go. I think we'd be comfortable with, you  
16 know, continuing to live under the existing  
17 protective order.

18           MS. ANDERL: I can't remember the terms of  
19 the order. I know there was a provision in there for  
20 highly confidential data to be distributed. I don't  
21 know if the terms as of four, maybe even five years  
22 ago are ones that are current, in accordance with the  
23 Commission's practices today. I think that if there  
24 is a protective order in place, that's fine. If  
25 somebody wants to petition to modify it, perhaps we

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1 ought to take that up at that time, but I have no  
2 objection to proceeding under the existing protective  
3 order.

4 JUDGE WALLIS: Does anyone else wish to  
5 comment? Let the record show that there's no  
6 response. I agree with the parties that, in light of  
7 the potential need for a protective order, it may be  
8 preferable to have an order in place. I think that  
9 the order previously entered in this docket will be  
10 sufficient, that the parties may petition for a  
11 change in terms if that's appropriate.

12 I'd like to add that I believe the  
13 Commission may, on its own motion, modify any of the  
14 terms, if necessary, to accord with the existing  
15 rules and practices that the Commission has adopted  
16 in recent orders. So with those caveats, let's  
17 proceed on the basis that there is a protective order  
18 in effect, subject to modification, and if it turns  
19 out that the parties do not need to avail themselves  
20 of the benefits of such an order, then there is no  
21 harm.

22 Very well. Let's move on to discovery. Do  
23 parties perceive any need for discovery in the  
24 docket?

25 MR. SWANSON: Chris Swanson, for Commission

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1 Staff. Commission Staff would request that the  
2 discovery rule be invoked and that Staff and parties  
3 be able to seek discovery as necessary. Staff  
4 believes that there may be information from Qwest  
5 that it may need in order to determine the  
6 effectiveness of the program and, for that reason,  
7 would ask that the rule be invoked.

8 MR. FFITCH: Your Honor, pardon me. Public  
9 Counsel would agree. We would just add that, and we  
10 haven't gotten to scheduling yet, but we may -- I  
11 think our view is that we may wish to adopt a  
12 relatively expedited schedule for the overall  
13 proceeding. And in that case, we would probably be  
14 suggesting a reduction in the turnaround time, a  
15 moderate reduction, perhaps from the 10 business days  
16 to seven business days, depending on what kind of  
17 schedule we adopt.

18 JUDGE WALLIS: Mr. Swanson, Mr. ffitch, do  
19 you have a feel for the kind of information you might  
20 be seeking under a discovery order? What I'm trying  
21 to do is just get a feel for what that information is  
22 and the need for it and the potential schedule for  
23 responses.

24 MR. SWANSON: Chris Swanson, for Commission  
25 Staff. My understanding is that at some point it may

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1 be necessary to determine the effectiveness of the  
2 activities that Qwest has engaged in under this  
3 particular program, as opposed to its other  
4 activities, to determine how effective this program  
5 and the activities under this program are. So it  
6 would be that type of information Commission Staff  
7 would be seeking.

8 JUDGE WALLIS: Very well.

9 MR. FFITCH: Your Honor, we're not  
10 anticipating that necessarily we would have  
11 voluminous discovery. It would be focused on factual  
12 information that's in the petition, just wanting to  
13 get additional background or additional factual  
14 material related to those statements. And again, I'm  
15 not sure how voluminous it would be, but we think  
16 that, just in the interest of administrative  
17 efficiency, having the discovery rule in place, if we  
18 have some questions to ask, we can use the discovery  
19 procedures to ask them.

20 JUDGE WALLIS: Does anyone --

21 MS. ANDERL: No objection.

22 JUDGE WALLIS: Very well. Does anyone on  
23 the bridge line wish to be heard?

24 MR. O'ROURKE: Citizens Utility Alliance  
25 doesn't anticipate needing any discovery beyond what

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1 Staff and Public Counsel will ask for.

2 JUDGE WALLIS: Very well. Again,  
3 recognizing that the parties may not need to avail  
4 themselves of discovery, as contemplated in our  
5 discovery order, we will enter such an order for this  
6 phase of the proceeding so that, should the need  
7 arise, the process would be expedited, and a minimum  
8 of procedural uncertainty will be in place to effect  
9 the process.

10 Are there any parties who contemplate filing  
11 dispositive motions? Let the record show that there  
12 is no response.

13 The next matter that I have on my outline is  
14 to talk about the schedule. We've already touched on  
15 that. My suggestion would be to go off the record  
16 and engage in an informal discussion and then return  
17 to the record for a statement of the results of the  
18 informal discussion. Is that acceptable to the  
19 parties?

20 MS. ANDERL: Yes.

21 JUDGE WALLIS: Is there any objection? Let  
22 the record show that there is no objection. So we  
23 are off the record.

24 (Discussion off the record.)

25 JUDGE WALLIS: All right. Let's be back on

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1 the record, please. We have engaged in a rather  
2 extended procedural and scheduling discussion, and  
3 find that we have two alternative possibilities for  
4 the conduct of this hearing.

5 Commission Staff has proposed, and the other  
6 parties either support or can live with an approach  
7 that does not involve the submission of formal  
8 pre-filed testimony and evidence. The concept that  
9 Staff is supporting would provide for the submission  
10 of an answer to the petition supported by factual  
11 information and memoranda, as required, to which the  
12 Company would respond, and then the scheduling of a  
13 hearing that would allow a limited number of parties,  
14 that is, a limited number of persons to take the  
15 stand and offer live testimony in support of the  
16 submission largely in the nature of responses to what  
17 functionally would be cross-examination about the  
18 parties' submissions.

19 Mr. Swanson, have I correctly characterized  
20 the concept as we now understand it?

21 MR. SWANSON: Yes, I believe so, Your Honor.  
22 I did want to clarify. So in terms of the number of  
23 witnesses, did we come to an agreement on that or is  
24 that left open?

25 JUDGE WALLIS: I don't believe that there

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1 was agreement on it, other than I heard the Company  
2 say, I believe, that they believed, based on what  
3 they now know, that three witnesses would be adequate  
4 to support the information they presently contemplate  
5 submitting. Is that right, Ms. Anderl?

6 MS. ANDERL: Yes, Your Honor.

7 JUDGE WALLIS: If that schedule is adopted  
8 by the Commission, then we would look to the filing  
9 of the Staff, Public Counsel and Intervenor  
10 submissions on April 14th, the filing of Company  
11 answering positions and materials on May 19th, and a  
12 hearing during the week of June 7th. It's  
13 contemplated, I believe, that the hearing would last  
14 two days, is that correct, or should we say no more  
15 than two days?

16 MS. ANDERL: That's correct, Your Honor.

17 JUDGE WALLIS: Very well. And Public  
18 Counsel has requested that a public hearing be held  
19 during -- well, let me stop there. Public Counsel  
20 has requested that a public hearing be held. That  
21 is, a hearing at which members of the public may  
22 present testimony to the Commission; is that correct?

23 MR. FFITCH: That's correct, Your Honor, and  
24 we would request that that preferably be held in the  
25 Seattle metropolitan area, understanding that the

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1 Commission retains the discretion to determine the  
2 actual location, due to the concentration of Qwest  
3 customers.

4 JUDGE WALLIS: And what schedule would you  
5 propose for that? Do you think it would be  
6 appropriate to schedule that on one of those two  
7 days?

8 MR. FFITCH: If it's held in Olympia, Your  
9 Honor, yes, in the evening after the hearing  
10 schedule, the evidentiary hearing.

11 JUDGE WALLIS: And if it's held in Seattle?

12 MR. FFITCH: Your Honor, we'd propose that  
13 it be held within the same week that the -- either  
14 immediately before or after the hearings if it's able  
15 to schedule a facility.

16 JUDGE WALLIS: Very well. We also discussed  
17 the possibility of a more traditional process in  
18 which the Company would file testimony and exhibits  
19 in support of its petition. The Company -- the  
20 Commission Staff and Public Counsel and Intervenors  
21 file responsive testimony, and then the Company has  
22 the opportunities to submit rebuttal, and then a  
23 hearing would be held.

24 If that is the case, then we were looking at  
25 the possibility of the Company filing on either April



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1 9th or 23rd, the Commission Staff and Public Counsel  
2 and Intervenor testimony approximately a like period  
3 following that, which would put it into approximately  
4 the last week in May, rebuttal would be likely during  
5 the second or third week in June, and I think we  
6 would be looking at a hearing during the week of June  
7 28th.

8 MR. FFITCH: Your Honor, if I may just  
9 interject, we had also requested a seven-day  
10 discovery turnaround in the event that the -- seven  
11 business day discovery turnaround in the event that  
12 the first schedule is adopted.

13 JUDGE WALLIS: Very well. And recognizing  
14 that it's difficult to anticipate everything that  
15 might be asked on discovery, the Company's indicated  
16 that it would do its best to comply with that and  
17 feels that it could comply with that schedule, except  
18 in circumstances that it does not now anticipate  
19 which could arise; is that right, Ms. Anderl?

20 MS. ANDERL: Your Honor, I think, more  
21 precisely, I would -- I'd rather be on the record as  
22 saying that, even under the best of circumstances, a  
23 10-day turnaround is sometimes difficult. We will,  
24 however, of course respond to any requests that we  
25 can respond to within seven business days and we will

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1 timely advise the parties of our inability to respond  
2 at the deadline if that arises.

3 JUDGE WALLIS: Very well. Let me see. Is  
4 there anything else that the parties wish to comment  
5 on at this time? Is there anything that I have  
6 omitted from our discussions? Let the record show  
7 that there's no response. We will conclude this  
8 pre-hearing conference and we'll be entering a  
9 pre-hearing conference order that will address the  
10 matters that have been discussed.

11 The Commission will also be entering an  
12 order on discovery with the terms as described, and  
13 we'll do that forthwith.

14 We will be proceeding under the original  
15 protective order unless or until a party or the  
16 Commission sees the need to modify that order. Is  
17 there anything further? Let the record show that  
18 there's no response and this matter is adjourned.

19 (Proceedings adjourned at 12:23 p.m.)

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