

0001

1

BEFORE THE WASHINGTON

2

UTILITIES AND TRANSPORTATION COMMISSION

3

---

In The Matter of the petition of	)	UT-033044
Qwest Corporation's Petition to	)	Volume I
initiate a Mass-Market Switching	)	Pages 1-52
and Dedicated Transport Case	)	
Pursuant to the Triennial Review	)	
Order.	)	

---

7

8

A prehearing conference in the

9

above-entitled matter was held at 1:34 p.m. on

10

Monday, October 13, 2003, at 1300 South Evergreen

11

Park Drive, Southwest, Olympia, Washington, before

12

Administrative Law Judge ANN RENDAHL.

13

14

The parties present were as follows:

15

QWEST CORPORATION, by Lisa Anderl and Adam Sherr, Attorneys at Law, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191, and Chuck Steese, Attorney at Law, Steese & Evans, 6400 Fiddlers Green Circle, Suite 1820, Denver, Colorado 80111.

18

COMMISSION STAFF, by Jonathan Thompson, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

20

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

21

VERIZON, by Timothy J. O'Connell, Attorney at Law, Stoel Rives, L.L.P., 600 University Street, Suite 3600, Seattle, Washington, 98101 (via teleconference bridge.)

23

24

Barbara L. Nelson, CCR

25

Court Reporter

1 COVAD COMMUNICATIONS COMPANY and  
2 NORTHWEST COMPETITIVE COMMUNICATIONS COALITION, by  
3 Brooks Harlow, Attorney at Law, Miller Nash, 4400 Two  
4 Union Square, 601 Union Street, Seattle, Washington,  
5 98101.

6 COVAD COMMUNICATIONS COMPANY, by Karen  
7 S. Frame, Senior Counsel, 7901 Lawry Boulevard,  
8 Denver, Colorado 80230 (via teleconference bridge.)

9 MCI and WEBTEC, by Lisa Rackner,  
10 Attorney at Law, Ater Wynne, L.L.P., 222 S.W.  
11 Columbia, Suite 1800, Portland, Oregon 97201.

12 AT&T COMMUNICATIONS OF THE PACIFIC  
13 NORTHWEST, TCG SEATTLE, and TCG OREGON, by Rebecca  
14 DeCook, Attorney at Law, 1875 Lawrence Street, Suite  
15 1575, Denver, Colorado 80202.

16 ADVANCED TELCOM, INC., ESCHELON  
17 TELECOM, INC., GLOBAL CROSSING LOCAL SERVICES, INC.,  
18 INTEGRA TELECOM, INC., McLEOD LOCAL SERVICES, INC.,  
19 PACWEST TELECOM, INC., TIME WARNER TELECOMMUNICATIONS  
20 OF WASHINGTON, INC., and XO WASHINGTON, INC., by  
21 Gregory J. Kopta, Davis, Wright, Tremaine, 2600  
22 Century Square, 1501 Fourth Avenue, Seattle,  
23 Washington, 98101.

24 SPRINT, by William E. Hendricks, III,  
25 Attorney at Law, 902 Wasco Street, Hood River, Oregon  
97031 (via teleconference bridge.)

DEPARTMENT OF DEFENSE and ALL OTHER  
FEDERAL EXECUTIVE AGENCIES, by Stephen S. Melnikoff,  
General Attorney, Regulatory Law Office, U.S. Army  
Litigation Center, 901 N. Stuart Street, Suite 700,  
Arlington, Virginia 22207-1837 (via teleconference  
bridge.)

17  
18  
19  
20  
21  
22  
23  
24  
25

0003

1           JUDGE RENDAHL: Okay. We'll be on the  
2 record. Good afternoon. I'm Ann Rendahl, the  
3 Administrative Law Judge presiding over this matter.  
4 We're here before the Washington Utilities and  
5 Transportation Commission on Monday, October 13th,  
6 2003, for a prehearing conference in two dockets.

7           The first is Docket Number UT-033025, In The  
8 Matter of the Implementation of the Federal  
9 Communications Commission's Triennial Review Order,  
10 and in Docket Number UT-033044, which is In The  
11 Matter of the Petition of Qwest Corporation to  
12 Initiate a Mass-market, that's hyphenated, Switching  
13 and Dedicated Transport Case Pursuant to the  
14 Triennial Review Order. That docket was created this  
15 morning in response to a petition filed by Qwest on  
16 Friday.

17           By notice dated September 30th, the  
18 Commission set a filing deadline of October 10th for  
19 any person to file a petition requesting the  
20 Commission to review the FCC's impairment findings  
21 concerning enterprise loops, direct transport and  
22 mass-market switching and, at the same notice the  
23 Commission scheduled this prehearing conference to  
24 address such a petition.

25           Qwest filed a petition on Friday requesting

0004

1 review of the FCC's findings concerning direct  
2 transport and mass-market switching, and by notice  
3 dated October 8th, the Commission cancelled the  
4 prehearing scheduled for last week, October 9th, that  
5 was intended to address discovery and protective  
6 order issues, and the Commission deferred discussion  
7 of those issues until today's prehearing conference.

8           So first we're going to address the issues  
9 in Docket UT-033044, take appearances, petitions to  
10 intervene, address scheduling and other issues  
11 associated with that specific docket, and then we  
12 will turn to the issue of the form of the protective  
13 order to be entered in the proceeding and the form  
14 and process of discovery for the proceeding.

15           So before we go any further, let's take  
16 appearances for the parties. And we'll start with  
17 Qwest and Commission Staff, Public Counsel. Then  
18 we'll go around the table and the conference bridge  
19 for appearances/petitions to intervene. All of you  
20 have appeared before the Commission before, but I'll  
21 remind you we need the full information in this  
22 initial prehearing for the new docket so we can  
23 create another Appendix A for everybody, and a lot of  
24 that information will be the same as what you've  
25 given in the past.

0005

1           What is new for, in some ways, is I'd like  
2 to know who should receive a paper copy and who  
3 should receive a fax copy, if that's the same person  
4 or a different person, and I'll need everyone's  
5 e-mail, including those who just wish to receive a  
6 courtesy e-mail from the Commission. This is to  
7 simplify the amount of paper that goes out of the  
8 Commission, and the amount we can send out by e-mail  
9 is great. Okay. So we'll start with Qwest.

10           MS. ANDERL: Thank you, Your Honor. Lisa  
11 Anderl, representing Qwest. My business address is  
12 1600 7th Avenue, Room 3206, Seattle, Washington,  
13 98191. Phone, 206-345-1574; fax, 206-343-4040;  
14 e-mail is lisa.anderl@qwest.com.

15           I'll also enter an appearance for Adam Sherr  
16 in my office. His telephone is 206-398-2507; his fax  
17 is the same as mine, and his e-mail is  
18 adam.sherr@qwest.com.

19           Further, we do have another outside counsel  
20 who I would like to have included on the e-mail,  
21 that's going to be in addition to Mr. Steese, who  
22 will enter his own appearance. That is Ted Smith.  
23 His e-mail is tsmith@stoel.com. And we'll provide  
24 the rest of the contact information for him either  
25 via letter or the next time there's a need for

0006

1 appearances, if that's all right with you, Your  
2 Honor.

3 JUDGE RENDAHL: That's just fine. So he's  
4 just for e-mail service only?

5 MS. ANDERL: Right. And I should receive or  
6 my office should receive the fax and the paper, and  
7 everybody else should receive, including me, should  
8 receive e-mails.

9 JUDGE RENDAHL: Right. I'll clarify now  
10 that anyone who's receiving paper and fax service  
11 will receive an e-mail. Everyone will receive an  
12 e-mail. I just -- there's a subset of folks that  
13 will receive paper and fax service. Mr. Steese.

14 MR. STEESE: Yes, Chuck Steese, also on  
15 behalf of Qwest. I'm with the firm of Steese and  
16 Evans. Our address is 6400 South Fiddlers Green  
17 Circle, Suite 1820, Denver, Colorado, 80111. My  
18 telephone number is 720-200-0677. A correction to  
19 the fax from last time. Two numbers were transposed.  
20 The fax number is 720-200-0679. Then e-mail is  
21 csteese@s-elaw.com.

22 JUDGE RENDAHL: Thank you, Mr. Steese. For  
23 Commission Staff.

24 MR. THOMPSON: Jonathan Thompson, Assistant  
25 Attorney General, representing Staff. My address is

0007

1 1400 South Evergreen Park Drive, S.W., and it's also  
2 P.O. Box 40128, and it's in Olympia, Washington,  
3 98504. My telephone number is 360-664-1225; fax is  
4 360-586-5522; and my e-mail is jthompso@wutc.wa.gov.

5 JUDGE RENDAHL: Thank you. For Public  
6 Counsel.

7 MR. FFITCH: For Public Counsel, Simon  
8 ffitich, Assistant Attorney General, Public Counsel  
9 Office, 900 Fourth Avenue, Suite 2000, Seattle,  
10 Washington, 98164. Phone is 206-389-2055; fax,  
11 206-389-2058; e-mail is simonf@atg.wa.gov.

12 JUDGE RENDAHL: Thank you, Mr. ffitich. Now,  
13 starting with Mr. Kopta, we'll go around the table.

14 MR. KOPTA: Thank you, Your Honor. Gregory  
15 J. Kopta, of the Law Firm Davis Wright Tremaine, LLP,  
16 2600 Century Square, 1501 Fourth Avenue, Seattle,  
17 Washington, 98101-1688. Telephone, 206-628-7692;  
18 fax, 206-628-7699; e-mail gregkopta@dwt.com.

19 I'm appearing here for the following  
20 parties: Advanced TelCom, Inc., Eschelon Telecom,  
21 Inc., Global Crossing Local Services, Inc.; Integra  
22 Telecom, Inc., McLeod Local Services, Inc.; PacWest  
23 Telecom, Inc., Time Warner Telecom of Washington,  
24 L.L.C., and XO Washington, Inc.

25 With respect to service, I would be the one

0008

1 receiving paper and fax. And with respect to the  
2 e-mail list, they are the same as the contacts and  
3 e-mails provided in Attachment A to the prehearing  
4 conference order in Docket Number UT-033025, with the  
5 addition of Victor Allums, for Advanced TelCom, Inc.  
6 His e-mail address is vic.allums@ge.com. And I can  
7 provide some additional contact information for him  
8 and for other parties, if necessary, via letter after  
9 this prehearing conference.

10 JUDGE RENDAHL: Thank you. Now, in the  
11 UT-033025 docket, Mr. Trincherro had entered an  
12 appearance for many of these same parties. Are you  
13 substituting now for Mr. Trincherro?

14 MR. KOPTA: Yes, I am.

15 JUDGE RENDAHL: Okay. So we should take Mr.  
16 Trincherro off of the list for 33025?

17 MR. KOPTA: Yes, please.

18 JUDGE RENDAHL: Okay. Thank you. Okay.  
19 Mr. Harlow.

20 MR. HARLOW: Thank you, Your Honor. Brooks  
21 Harlow, with the firm of Miller Nash, LLP. My  
22 address is 4400 Two Union Square, 601 Union Street,  
23 Seattle, Washington, 98101. My telephone is  
24 206-622-8484; my fax is 206-622-7485; my e-mail  
25 address is brooks.harlow@millernash.com. We are



0009

1 appearing today for Covad Communications Company and  
2 for the Northwest Competitive Communications  
3 Coalition, abbreviated NWCCC.

4 Starting first with Covad, Covad's in-house  
5 counsel, who is on the bridge line this afternoon, is  
6 Karen, spelled K-a-r-e-n, S. Frame. She is senior  
7 counsel with an address of 7901 Lawry Boulevard,  
8 Denver, Colorado, 80230. Telephone, 720-208-1069;  
9 fax number is 720-208-3350, and e-mail address  
10 kframe@covad.com.

11 Ms. Frame and I should receive the mail and  
12 fax copies on behalf of Covad. And in addition, we  
13 request a courtesy e-mail to Charles Watkins, who  
14 goes by Gene, and his e-mail address is  
15 gwatkins@covad.com.

16 In addition, on behalf of both Covad and the  
17 NWCCC, we'd request courtesy e-mail to David Rice of  
18 our office. His e-mail is david.rice@millernash.com.  
19 On behalf of the NWCCC, the internal address is  
20 Andrew Isar, Miller Isar, Inc., 7901 Skansie,  
21 S-k-a-n-s-i-e, Avenue, Suite 240, Gig Harbor,  
22 Washington, 98335. Telephone is 253-851-6700; fax is  
23 253-851-6474; e-mail is aisar@millerisar.com. I  
24 think that covers the courtesy e-mails. If not, I'll  
25 let you know.

0010

1                   JUDGE RENDAHL: Okay. And just to clarify,  
2 both you and Ms. Frame, for Covad, need a paper and a  
3 fax copy?

4                   MR. HARLOW: Yes, Your Honor.

5                   JUDGE RENDAHL: Okay.

6                   MR. HARLOW: We'd appreciate that.

7                   JUDGE RENDAHL: That's no problem. Just  
8 wanted to clarify.

9                   MR. HARLOW: And both Mr. Isar and I need a  
10 paper copy, although I don't need to receive two  
11 paper copies on behalf of both clients.

12                   JUDGE RENDAHL: You won't. When this goes  
13 down to the Records Center, they will condense names  
14 for purposes of service.

15                   MR. HARLOW: Yes. I just -- for some of the  
16 parties' sake, who might not be familiar with our  
17 practice.

18                   JUDGE RENDAHL: And Ms. Rackner.

19                   MS. RACKNER: Thank you, Your Honor. I'm  
20 Lisa Rackner, with --

21                   JUDGE RENDAHL: You'll need to speak into  
22 the mike.

23                   MS. RACKNER: Is that better?

24                   JUDGE RENDAHL: Yeah, that's much better.  
25 Thank you.

0011

1 MS. RACKNER: Lisa Rackner, with the Law  
2 Firm of Ater Wynne, LLP. My address is 222 Southwest  
3 Columbia, Suite 1800, Portland, Oregon, 97201. My  
4 phone is 503-226-8693; my fax number is 503-226-0079;  
5 and my e-mail address is lfr@aterwynne.com. I'm here  
6 on behalf of MCI and also for WeBTEC.

7 With respect to MCI, Michel Singer Nelson  
8 will also be appearing. She should receive paper and  
9 fax, as should I, for MCI. Ms. Singer Nelson's  
10 contact information is 707 17th Street, Suite 4200,  
11 Denver, Colorado, 80202. Her phone is 303-390-6106;  
12 her fax number is 303-390-6333; and her address is  
13 michel.singer\_nelson@mci.com.

14 With respect to WeBTEC, Art Butler is also  
15 making an appearance. Mr. Butler's address is Two  
16 Union Square, 601 Union Street, Seattle, Washington,  
17 98101. I apologize, I don't have his phone and fax  
18 with me today.

19 MR. HARLOW: I can get that for you.

20 MS. RACKNER: Okay. Meanwhile, his e-mail  
21 is aab@aterwynne.com.

22 JUDGE RENDAHL: Okay. Let me clarify your  
23 telephone number. If you'd repeat it again for me.

24 MS. RACKNER: 503-226-8693.

25 JUDGE RENDAHL: Thank you.

0012

1 MS. RACKNER: Thank you. And I'm going to  
2 -- let's see. Okay. Art Butler's phone number is  
3 206-623-4711; his fax is 206-467-8406.

4 JUDGE RENDAHL: Thank you. And both you and  
5 Mr. Butler should receive paper and fax service?

6 MS. RACKNER: No. With respect to WebTEC,  
7 no, I'll -- e-mail is fine for me.

8 JUDGE RENDAHL: But as to MCI, both you and  
9 Ms. Singer Nelson need to receive paper and fax  
10 service?

11 MS. RACKNER: Yes, that's correct.

12 JUDGE RENDAHL: Okay, as well as e-mail.

13 MS. RACKNER: Well, I mean --

14 JUDGE RENDAHL: I mean, you'd get e-mail --  
15 everyone will get e-mail anyway.

16 MS. RACKNER: Well, I don't know if you have  
17 a provision in the rule. I mean, if I'm getting  
18 paper, an e-mail and fax is probably superfluous, so  
19 --

20 JUDGE RENDAHL: Well, sometimes if there's a  
21 rush, we will send out a fax instead of U.S. Mail.  
22 So you won't receive mail, fax, and e-mail on  
23 everything that goes out, so --

24 MS. RACKNER: Oh, okay. Thank you.

25 JUDGE RENDAHL: That would be superfluous.

0013

1 Ms. DeCook.

2 MS. DeCOOK: Thank you, Your Honor. Rebecca  
3 DeCook, on behalf of AT&T Communications of the  
4 Pacific Northwest, Inc., TCG Seattle, and TCG Oregon.  
5 My business address is 1875 Lawrence Street, Denver  
6 Colorado, 80202, Suite 1575. My phone number is  
7 303-298-6357; fax number 303-298-6301; e-mail address  
8 decook@att.com, and I should be the one getting paper  
9 and fax.

10 Other e-mail recipients would be Kathy  
11 Brightwell. Her e-mail address is  
12 brightwell@att.com. Mary Taylor, her e-mail address  
13 is marymtaylor@att.com. And Adam Walczak, and his  
14 e-mail address is awalczak@att.com.

15 JUDGE RENDAHL: Thank you. Okay. On the  
16 bridge line, we'll begin with Mr. Hendricks.

17 MR. HENDRICKS: Tre Hendricks, on behalf of  
18 Sprint Communications Company, LLP. My address is  
19 902 Wasco Street, Hood River, Oregon, 97031. My  
20 telephone number is 541-387-9439; fax number is  
21 541-387-9753; and my e-mail address is  
22 tre.e.hendricks.iii@mail.sprint.com.

23 JUDGE RENDAHL: Thank you. And is there  
24 anyone who needs to receive e-mail service?

25 MR. HENDRICKS: Not at this time.

0014

1 JUDGE RENDAHL: Okay. And you would be  
2 receiving paper and fax --

3 MR. HENDRICKS: Yes.

4 JUDGE RENDAHL: -- service? Okay. Mr.  
5 O'Connell.

6 MR. O'CONNELL: Good afternoon, Your Honor.  
7 Timothy J. O'Connell, Law Firm of Stoel Rives, LLP,  
8 600 Union Street -- excuse me, that's University  
9 Street.

10 JUDGE RENDAHL: I'm sorry?

11 MR. O'CONNELL: It's University Street.

12 JUDGE RENDAHL: Ah, thank you.

13 MR. O'CONNELL: I noticed that same error is  
14 in the Exhibit A --

15 JUDGE RENDAHL: We will fix it.

16 MR. O'CONNELL: -- in the 033025 docket.  
17 600 University Street, Suite 3600, Seattle, 98101.  
18 Telephone is 206-386-7562; fax is 206-386-7500; and  
19 e-mail is tjoconnell@stoel.com. Also --

20 JUDGE RENDAHL: Mr. O'Connell, can you speak  
21 up just a bit?

22 MR. O'CONNELL: I'm trying here, Your Honor.  
23 I'm getting over a bit of the flu, so I apologize.

24 JUDGE RENDAHL: Okay. Understand.

25 MR. O'CONNELL: Did you get the e-mail

0015

1 address?

2 JUDGE RENDAHL: I've gotten everything, but  
3 I think it might be easier for the court reporter now  
4 that you've spoken up.

5 MR. O'CONNELL: All right, I'll try. Also,  
6 please, e-mail service for Joan M. Gage for Verizon.  
7 Her e-mail address is joan.gage@verizon.com. And  
8 kimberly.a.douglass@verizon.com

9 JUDGE RENDAHL: Thank you. In the UT-033025  
10 docket, we also had e-mail service for Ms. Fisher and  
11 Mr. Potter. Do you wish to include them, as well?

12 MR. O'CONNELL: I don't believe that will be  
13 necessary.

14 JUDGE RENDAHL: Okay. Thank you. Ms.  
15 Frame, Mr. Harlow's given your appearance.

16 MS. FRAME: Yes.

17 JUDGE RENDAHL: Is there anything you wish  
18 to add?

19 MS. FRAME: No, Your Honor. That's fine.  
20 He did a great job.

21 JUDGE RENDAHL: Yes, he did. Mr. Melnikoff.

22 MR. MELNIKOFF: Good afternoon. I'm Stephen  
23 S. Melnikoff. My address is General Attorney,  
24 Regulatory Law Office, U.S. Army Litigation Center,  
25 901 North Stuart, S-t-u-a-r-t, Street, Suite 700,

0016

1 Arlington, Virginia, 22207-1837. I represent the  
2 consumer interests of the Department of Defense and  
3 all other federal executive agencies.

4 The appearance and the e-mail addresses will  
5 be the same as we had in Docket 033025. My phone  
6 number is 703-696-1643; my fax number is  
7 703-696-2960; my e-mail address is  
8 stephen.melnikoff@hqda.army.mail. I notice on  
9 Appendix A to 033025 docket, there's an extra @  
10 inserted between the four letters and Army. It  
11 should be a dot.

12 JUDGE RENDAHL: Thank you.

13 MR. MELNIKOFF: I would request paper and  
14 fax service, as well as e-mail. And for e-mail only  
15 would be Robert W. Spangler, S-p-a-n-g-l-e-r, and his  
16 e-mail address is rspangler@snavely-king.com.

17 JUDGE RENDAHL: Thank you.

18 MR. MELNIKOFF: Thank you.

19 JUDGE RENDAHL: Is there anyone else on the  
20 bridge line who's appeared since we started this  
21 prehearing? Okay. Well, I think we've made it  
22 through the appearances. Thank you very much.  
23 Hopefully the next time we won't have to go through  
24 this tedious detail, but I appreciate the  
25 information.



0017

1           Because, in part, we are beginning a new  
2 docket in this prehearing and it was initiated by  
3 Qwest, in the past we haven't really done petitions  
4 for intervention because it was a  
5 Commission-initiated docket. And so I guess I will  
6 open the floor to anyone who wishes to make a  
7 petition to move to intervene in this proceeding.  
8 Mr. Kopta.

9           MR. KOPTA: Yes, thank you, Your Honor. I  
10 would petition to intervene on behalf of all of the  
11 clients that I represent here today. While normally  
12 I would have submitted written petitions to  
13 intervene, I think, under the time intervals, I'm  
14 relying on the ability to make an oral petition at  
15 this prehearing conference.

16           All of the clients that I represent provide  
17 local exchange competition in the state of Washington  
18 in competition with Qwest, and all of them have a  
19 strong interest in the outcome of this proceeding,  
20 since it addresses the extent to which unbundled  
21 switching and, on certain routes, transport will  
22 continue to be available at TELRIC-based rates, and  
23 therefore, they have a strong interest in this  
24 proceeding.

25           And I represent that they will not broaden

0018

1 the issues in this proceeding and will provide  
2 information and participation that will benefit all  
3 parties and the Commission in developing the  
4 appropriate record to make the determination that the  
5 FCC has delegated to this Commission to make.

6 JUDGE RENDAHL: Thank you. Ms. Anderl, Mr.  
7 Steese, is there any objection to petitions to  
8 intervene by Mr. Kopta's clients?

9 MS. ANDERL: No, there's not, Your Honor,  
10 and in fact, if it would speed the proceedings along,  
11 or even if it wouldn't, we're willing to stipulate  
12 that all parties who have made an appearance so far  
13 to date in this proceeding are appropriate parties,  
14 and we would not object to the participation of any  
15 of them.

16 JUDGE RENDAHL: Okay. So are we  
17 stipulating, essentially, is everyone in agreement in  
18 this room and on the conference bridge that  
19 essentially any party that appears today is making a  
20 verbal petition to intervene today, and there's no  
21 objection to those petitions?

22 MS. ANDERL: That's correct for Qwest, Your  
23 Honor.

24 MR. KOPTA: Correct, from our perspective.

25 MR. HARLOW: Yes, Your Honor.

0019

1 MS. DeCOOK: Same for AT&T.

2 MS. RACKNER: And for WeBTEC and MCI.

3 MR. O'CONNELL: Your Honor, this is Tim  
4 O'Connell, for Verizon. We are participating here,  
5 frankly, to monitor Qwest's petition only. We do not  
6 seek party status.

7 JUDGE RENDAHL: All right. So you are an  
8 interested party, interested person?

9 MR. O'CONNELL: Yes, please.

10 JUDGE RENDAHL: Okay. Commission Staff.

11 MR. THOMPSON: And Staff has no objection to  
12 that.

13 MR. HENDRICKS: Sprint Communications, also,  
14 no objection, and seeks status as an intervenor.

15 JUDGE RENDAHL: So you do seek party status?  
16 You cut off at the end, Mr. Hendricks.

17 MR. HENDRICKS: I'm sorry. I said Sprint  
18 has no objection and also seeks status as an  
19 intervenor.

20 JUDGE RENDAHL: Thank you. Okay. Well, the  
21 next thing we need to do is talk about Qwest's  
22 petition and how we're going to handle it. So I'm  
23 proposing we go off the record for the moment and  
24 talk about scoping and scheduling, and we'll put it  
25 back on the record, unless parties have an objection

0020

1 to that. Okay. So we'll be off the record.

2 (Discussion off the record.)

3 (Recess taken.)

4 JUDGE RENDAHL: Let's be back on the record.

5 After significant discussion, we have talked about  
6 the issues, scoping issues for the Qwest proceeding  
7 33044. In particular, talking about the mass-market  
8 case identified four high-level issues that need to  
9 be dealt with, that is, defining the market,  
10 identifying the proper number of lines, DSO line  
11 cut-off, determining an appropriate hot cut process  
12 for Qwest, and conducting the trigger analysis and  
13 the potential deployment analysis on mass-market  
14 switching.

15 On the transport case, there are fewer  
16 issues, although quite a bit, quite a number of  
17 issues still remaining, but those are primarily the  
18 trigger issues under transport.

19 How we are going to do that, and after a  
20 great amount of discussion, the Commission will issue  
21 a set of bench requests to the parties in this case,  
22 as well as nonparty CLECs, on the 21st -- or by the  
23 21st of October, with responses due on November the  
24 17th. While they are bench requests, those responses  
25 also need to be -- or at least we need to discuss

0021

1 this further later as to aggregation, et cetera.  
2 There's some discussion as to whether this is just  
3 filed with the Commission or filed with all the  
4 parties. So we'll talk about that after we finish  
5 with this scheduling.

6 A subset of that is there will be a set of  
7 bench requests that will address the batch cut  
8 issues. Those responses will be due on November the  
9 3rd. There's a simultaneous filing date on November  
10 the 7th for parties to identify issues based on the  
11 bench requests for the discussion of batch cut  
12 migration, a batch cut migration process for Qwest,  
13 and any proposed processes that the parties may have,  
14 Qwest and other parties.

15 We will have a workshop here at the  
16 Commission beginning Wednesday morning, November the  
17 12th. We will recess in the afternoon or convene  
18 elsewhere in the building in the afternoon because of  
19 the open meeting, and continue on the 13th and the  
20 14th.

21 The next deadline in this -- that we've  
22 talked about is a first round of -- well, Qwest will  
23 file its formal case on December 19th. Any other  
24 party is also open to file an initial case on  
25 December 19th, but all parties must discuss the issue

0022

1 of market definition and DSO cutoff.

2 Round two filing date is on January 30th.

3 That will involve response to any market definition  
4 or DSO cutoff issues in round one and any trigger  
5 case that was filed, trigger or potential deployment  
6 case that was filed in round one.

7 Understanding that that responsive -- that  
8 response, if a party didn't file an initial case, may  
9 involve new information, we have reserved a third  
10 round, which will be due at the Commission on  
11 February the 20th, but that is not a of-right  
12 rebuttal round. Parties must establish good cause  
13 and, in my prehearing conference order, I will  
14 identify a date for parties to make a motion for  
15 making such a rebuttal filing.

16 On the 23rd of February, parties will have  
17 to file their list of exhibits, witnesses, cross  
18 exhibits, et cetera, for the prehearing conference on  
19 Tuesday, February the 24th. Hearings will be the  
20 week of March 1st and the week of March 15th, and  
21 post-hearing briefs, simultaneous round of briefs  
22 will be due on April 15th, to allow the Commission to  
23 get an order out by June 30th, I believe is the date.

24 Have I captured all of the discussion on the  
25 substantive dates and times? There was a great

0023

1 amount of discussion that we had that was not  
2 captured, but any further -- any comments based on  
3 that?

4 MR. HARLOW: Well, you know, we didn't talk  
5 about the possibility of two rounds of briefing,  
6 which we usually do, and there's usually a good  
7 reason for it.

8 JUDGE RENDAHL: So if we have the first  
9 round on April 15th and the second round -- well, no  
10 later than the 30th, any thoughts? Okay. So we'll  
11 do April 30th for second round.

12 Okay. So I think there's our schedule.  
13 We'll be off the record now until 20 after 4:00, and  
14 then we're going to come back and talk about the  
15 draft protective order that was over there, you guys  
16 have copies now, and also further discussion of  
17 discovery issues, particularly who gets it all and  
18 how we compile it. Okay. We'll be off the record  
19 till 4:20.

20 (Recess taken.)

21 JUDGE RENDAHL: Let's be on the record. We  
22 are back on the record after a brief break. We're  
23 now going to turn to discussion of discovery.

24 MS. ANDERL: Your Honor, I don't think your  
25 mike is on.

0024

1                   JUDGE RENDAHL:  It's not.  Can you hear me  
2  now?

3                   MR. O'CONNELL:  Yes, we can hear you now.

4                   JUDGE RENDAHL:  Great.  We're back after a  
5  short break, and we're now going to turn to  
6  discussion of discovery issues and protective order.  
7  Because we were just recently talking about discovery  
8  issues, let's talk about that first.  And we'll keep  
9  this discussion on the record, because I think I'm  
10 going to want to go back and listen to it later, or  
11 read it.

12                   I think the biggest issue has to do with the  
13 bench request responses.  And in prior proceedings,  
14 the Commission has asked Staff to aggregate that data  
15 and distribute it.  So I'd like to know from the  
16 parties their thoughts on that.  Do we need to -- has  
17 it been helpful -- are there reasons in this case why  
18 we shouldn't be doing that?  Just kind of lay it out  
19 there.  Any takers?

20                   MS. ANDERL:  Sure, Your Honor.  This is Lisa  
21 Anderl, for Qwest.  In the prior cases, I think that  
22 the aggregation was done because -- well, at least in  
23 the most recent case, because the information was  
24 requested by motion of Staff to the Commission asking  
25 that the Commission require the CLECs to produce the



0025

1 data, and the Staff wished to use it in its direct  
2 case.

3           Because of concerns about confidentiality,  
4 it was agreed amongst the parties that Staff and  
5 Public Counsel would see the disaggregated data, but  
6 no other parties would. That was satisfactory for us  
7 for purposes of that case, but would not be  
8 satisfactory for us for purposes of this case, simply  
9 because the analysis that we need to do to examine  
10 this raw data to make determinations about market is  
11 going to be dependent upon our being to see the  
12 disaggregated granular data.

13           It would not really serve our purposes or  
14 the purposes of the proceeding to allow a party to  
15 overlay its judgment on terms of how the data ought  
16 to be aggregated before anybody else gets to see it.

17           And so we think that, with the protective  
18 order in place, parties -- and understanding that  
19 responding CLECs who are not parties might wish to  
20 nevertheless designate their responses as highly  
21 confidential pursuant to the protective order, we  
22 think that would satisfy any party's concerns about  
23 confidentiality, and that no other restrictions  
24 should be put on the dissemination of the data.

25           JUDGE RENDAHL: Comments, Ms. DeCook.

0026

1           MS. DeCOOK: Your Honor, it was AT&T's view  
2 that this case is a little different from competitive  
3 classification cases in that there would need to be  
4 some pretty highly-confidential, sensitive  
5 information that -- and most of it would be highly  
6 confidential, sensitive information that you'd need  
7 to have and the other parties would need to have  
8 simply to make their case. And that's kind of why we  
9 designed the protective order and negotiated it with  
10 Qwest and MCI in the way we did.

11           Having said that, though, there are also  
12 questions in Qwest's discovery now, which I think we  
13 would take the position that if we were forced to  
14 disclose, I'm talking about business plans, future  
15 business plans, forecasts, that kind of information,  
16 that we would want to have a different treatment for,  
17 because we think that is -- that even is more  
18 competitively sensitive, and we wouldn't want that in  
19 any competitors's hands.

20           Whether that's -- I don't know how you  
21 aggregate that, number one. I don't know how you  
22 mask that, number two, but that is an issue, if we're  
23 forced to disclose it, that we would want to bring  
24 before the Commission for resolution.

25           There also might be some revenue data, for

0027

1 example, that we think needs to be masked. But we  
2 decided to deal with that on a case-by-case basis  
3 when we had an actual request and where we were  
4 required to produce something that rose to that  
5 level, rather than trying to build it into the  
6 protective order.

7 We hope it will be a small category of  
8 documentation and not overwhelm the record, but that  
9 was sort of our thought process in coming up with the  
10 protective order that we did.

11 JUDGE RENDAHL: Ms. Rackner.

12 MS. RACKNER: MCI's in agreement with AT&T.

13 JUDGE RENDAHL: Mr. Harlow.

14 MR. HARLOW: Thank you. I can appreciate  
15 Qwest and the other parties' need or desire for  
16 highly confidential data from nonparties, but I think  
17 you've got some real jurisdictional and statutory  
18 problems with nonparties in responding -- and I don't  
19 have the statute in front of me, unfortunately, or  
20 available to me, but my recollection is that the  
21 non-parties receiving a general order can designate  
22 their responses as commercially sensitive by the  
23 provisions of the Public Records Act, and that then  
24 the Commission or the parties would have to jump  
25 through those hoops in order to obtain disclosure of

0028

1 that, and the Commission doesn't really have  
2 jurisdiction over nonparties to bring that data in to  
3 this docket.

4           So at best, you're introducing a lot of  
5 potential delay if parties take advantage of the  
6 ability to designate their documents under the Public  
7 Records Act, and at worst you may never get it in  
8 here, because you may end up going to court over that  
9 data. So I see some real problems with the direct  
10 access that Qwest is seeking.

11           JUDGE RENDAHL: Mr. Kopta.

12           MR. KOPTA: Thank you, Your Honor. This is  
13 a very difficult subject, and it was when it's come  
14 up in every other proceeding. I think one of the  
15 ways that we got around it in the past was to have a  
16 third party aggregate the information so that no  
17 competitor got to see highly-sensitive information  
18 from another or multiple other competitors.

19           It seems like we're not going to be able to  
20 dodge that issue here, because it seems as though the  
21 parties, or at least Qwest, and perhaps some others,  
22 believe that it's necessary to see disaggregated data  
23 without the benefit of having it being aggregated and  
24 thereby masked to a certain extent.

25           And I know that -- I share Ms. DeCook's

0029

1 concern that there's maybe even a finer gradation in  
2 highly confidential information as to, you know, what  
3 -- gee, we could live with this as being seen by  
4 other parties as highly confidential, and what I  
5 think people would have a very difficult time with  
6 providing to anyone who is in the position of a  
7 competitor, because, as much as we try, we are  
8 lawyers that are limited by our ability to write  
9 language and enforce language and, you know, we don't  
10 know what's going to happen with that information,  
11 and we have justifiably concerned clients that, even  
12 with all of these protections, that things happen and  
13 that people get information that they shouldn't.

14           As I say, we can do our best to try and  
15 prevent that, but this is people's business, you  
16 know. These are people making a lot of money, or  
17 maybe not so much money. There's a lot at stake  
18 here. And it's, at least from a CLEC perspective,  
19 there are a lot of -- there are wolves at the door,  
20 and some of this information is going to help those  
21 wolves.

22           And so I think that we need to be mindful of  
23 that, and to keep at a bare minimum the amount of  
24 highly-confidential information that needs to be  
25 provided, and for the Commission to do all that it

0030

1 can to try and mask, aggregate, do what's necessary  
2 to minimize the extent to which individual company  
3 data is given to other companies.

4 I can't be any more specific than that,  
5 because we don't know what kind of information's  
6 going to be requested in a bench request and how much  
7 other parties are going to follow up and ask for  
8 information that's even more detailed and even more  
9 sensitive.

10 But we would simply ask that, to the extent  
11 possible, that highly confidential information be  
12 disclosed, at a bare minimum, to every party.

13 JUDGE RENDAHL: So you're asking that the  
14 highly confidential information is disclosed to every  
15 party.

16 MR. KOPTA: Well, to the extent that it's  
17 disclosed to any party, then it needs to be disclosed  
18 to all parties. To the extent that the Commission  
19 can aggregate it -- and you know, I'm thinking in  
20 terms of, for example, to the extent that a  
21 transport, where you have your transport is highly  
22 confidential, I'm not sure you need to know that  
23 Company X has transport from Point A to Point B, and  
24 so does Company Y, and the identity of the people  
25 that have these specific transport routes. It seems

0031

1 to me that you could say Company A, Company B and  
2 Company C have transport routes across -- have built  
3 their own transport across those routes without  
4 necessarily identifying which company it is.

5 That's just an example that comes, you know,  
6 right off the top of my head, that there are  
7 circumstances in which it seems like perhaps an  
8 aggregation would be sufficient. And that's just an  
9 example of a way of minimizing the extent to which  
10 highly-confidential information of individual  
11 companies needs to be disclosed to other companies.

12 I'm just saying that my clients have two  
13 concerns. Number one, to minimize the extent of  
14 confidential -- highly-confidential information that  
15 they need to disclose, and also -- and this is  
16 something we'll I'm sure discuss later -- that every  
17 party needs to have equal access to whatever  
18 information is disclosed to all parties, as opposed  
19 to aggregated by whether it's Commission Staff or  
20 Public Counsel or the Commission Staff. I mean, the  
21 advisory section of the Commission, as opposed to the  
22 advocacy section of the Commission.

23 MS. RACKNER: Your Honor, perhaps it would  
24 be helpful to distinguish between a true aggregation,  
25 the quantitative information and methods by which we

0032

1 could mask the identities of CLECs, because I haven't  
2 heard anyone here say that they believe that it is  
3 relevant to know the identities of specific CLECs who  
4 are offering services in particular areas. And it  
5 seems to me that there is no reason why the names of  
6 any respondents to the surveys need to be made  
7 public.

8           What I would suggest is we give them  
9 identities one through however many there are. Now,  
10 that isn't to say that it won't be fairly simple to  
11 figure out the identities of certain CLECs who are  
12 operating in particular areas, but it would afford  
13 some modicum of additional protection to the  
14 information.

15           On the other hand, aggregating information,  
16 I think -- I guess I would have to hear about what  
17 particular information was proposed to be aggregated,  
18 how, but I would suggest that, given the granularity  
19 of the inquiry that the Commission is about to  
20 undertake, that there'd be very few methods of  
21 aggregation that wouldn't deprive the parties of  
22 information that they need to have.

23           JUDGE RENDAHL: Mr. Thompson.

24           MR. THOMPSON: Well, I would just agree that  
25 that's my sense as well. I mean, in the competitive



0033

1 classification cases, generally we were dealing with,  
2 you know, line counts by wire center, and it's just  
3 -- I just think it calls for a more granular inquiry.

4 JUDGE RENDAHL: In this case?

5 MR. THOMPSON: In this case.

6 JUDGE RENDAHL: And do you have any comments  
7 on Mr. Harlow and Mr. Kopta's suggestions?

8 MR. THOMPSON: Well, it seems to me sensible  
9 to maybe start with what's been proposed, but then,  
10 in the event that a particular data request crosses  
11 some -- that line, that we address it at that point  
12 and figure, you know, if there is some way that  
13 everybody's happy with, that we could do some kind of  
14 masking or aggregation that everybody be involved in  
15 the process of figuring how to do that, rather than  
16 just Staff sort of proposing something that people  
17 might not be -- might not allow them to use the  
18 information to, you know, advance whatever case they  
19 want to make.

20 JUDGE RENDAHL: I'm going to take comments  
21 from the bridge line and then come back to Qwest.  
22 Anyone on the bridge wish to weigh in here?

23 MR. MELNIKOFF: This is Steve Melnikoff. In  
24 the prior case, the competitive classification, we at  
25 least found that to be excluded from access to that

0034

1 material, even though we were not competitors, put us  
2 really at a disadvantage, and we would not like to  
3 see that here. And I think that Mr. Thompson's  
4 suggestion would be worth following up on, depending  
5 whether we need to or not, once we see the lay of the  
6 land.

7 JUDGE RENDAHL: Anyone else on the bridge  
8 line? Mr. Steese, and then Ms. DeCook.

9 MR. STEESE: When we look at the industry  
10 that we're in, one of the unique aspects of it and  
11 difficult aspects of it is we're competitors and  
12 wholesale providers at the same time, we being Qwest.  
13 And when you look at this situation, the Triennial  
14 Review Order puts square in front of us the absolute  
15 necessity of getting information that everyone around  
16 the table, Qwest included, would recognize as highly  
17 confidential. But at the same time, we need to  
18 assess, on a company-by-company basis, their  
19 deployment and plans.

20 And aggregating deprives Qwest of the very  
21 evidence it needs to put forward detail at a level  
22 required, potentially, even to make its case on  
23 mass-market switching. What can a competitor do,  
24 what kind of margins do they have, how do they  
25 achieve those margins, to whom can they serve, and to

0035

1 whom are they planning to serve, which is one of the  
2 very elements of the test.

3           And so when you look at this particular case  
4 and the standards the FCC has set, by definition, we  
5 need to know who the competitors are. If we get  
6 company one through 30, how are we to serve  
7 additional discovery? If we get company one through  
8 30, how are we to know if we need to subpoena a  
9 person to come to testify, to put evidence on the  
10 record, and to go into greater detail.

11           And when you look at cases around the  
12 country, when you have cases between competitors, and  
13 there are cases every day between competitors, albeit  
14 not in the same kind of context, but there are, and  
15 what do they require. Those cases require a  
16 protective order and they require that if you are to  
17 see a company's highly-confidential equivalent  
18 material, that the protective order says  
19 specifically, Parties, meaning individuals involved  
20 in competitive decision-making, cannot see that  
21 material, and that is exactly why AT&T and Qwest have  
22 worked out the very language we have in this  
23 protective order, to make sure that, at the get-go,  
24 the kinds of people that can see this are going to be  
25 disclosed and it's going to be people that cannot

0036

1 take advantage of this in a competitive context going  
2 forward, outside lawyers, outside consultants, inside  
3 lawyers, and two experts, at most, internal for any  
4 one person. That's it. That's the limit.

5           And so highly-confidential material isn't  
6 going to go to everyone in the company. It's not  
7 going to go to anyone that's involved in sales or  
8 marketing, it's not going to go to people who can  
9 take advantage in a competitive context. It's people  
10 that can use it in this docket to put forward  
11 evidence and information so the Commission can make a  
12 decision.

13           And that's exactly how cases are run in an  
14 antitrust context, in a patent context, in a  
15 copyright context across the country. And so when  
16 you look here, we just cannot deprive Qwest of the  
17 information it needs to put forward a case. And the  
18 same of the CLECs. You have to look at the evidence  
19 in a disaggregated format in this case. That is  
20 exactly what the TRO says.

21           So as much as I understand the concern being  
22 expressed, this case just doesn't allow for that, and  
23 to have Qwest and the Commission and the CLECs put  
24 forward the evidence that's required. So we very  
25 strongly think that highly-confidential material

0037

1 needs to be provided, not only to Qwest, I agree with  
2 Mr. Kopta completely, to all parties in the case, and  
3 treated in the -- with the utmost of respect that it  
4 deserves, and to only go to a very limited number of  
5 people.

6 JUDGE RENDAHL: Any other thoughts? Ms.  
7 DeCook.

8 MS. DeCOOK: I think you heard from Mr.  
9 Steese the balance that we were trying to strike in  
10 drafting the proposal that we did. And I think  
11 you've also heard that there are a number of concerns  
12 with different types of data, but we really -- you  
13 can't deal with that in the abstract.

14 You really have to -- I mean, I think it's  
15 incumbent upon the CLEC, if they have a particular  
16 type of data -- like for us, it would be marketing  
17 plans, as an example, future marketing plans. I know  
18 that there's one person that Qwest wants to have  
19 access to highly-confidential information. I believe  
20 that person also sits on product teams. I don't  
21 think that person should be allowed to see AT&T's  
22 future business plans, or any other CLEC's future  
23 business plans, for that matter.

24 We may need separate, distinct protections,  
25 depending upon a specific class of data. I agree

0038

1 with Mr. Steese that this is not a case, for the most  
2 part, that you can mask data or aggregate data.  
3 There may be a unique type of data that you can do  
4 that to, but you can't deal with that in the  
5 abstract.

6           So I would suggest that if there is a  
7 particular type of data that a CLEC feels isn't  
8 addressed properly by the current protective order,  
9 then they have to come in and bring that before you  
10 and the Commission and explain why it falls into a  
11 unique class.

12           We all have these concerns, but there is a  
13 balancing that has to be done in order to litigate  
14 this case. And hopefully we struck the appropriate  
15 balance for the lion's share of the information.

16           JUDGE RENDAHL: Okay. Well, this is a good  
17 segue into the protective order discussion, but I  
18 think what I -- it's getting late, but in terms of  
19 discovery, the Commission is invoking the discovery  
20 rule. The Commission will be issuing bench requests,  
21 and the parties are -- may, you know, use the  
22 discovery rule and all of the discovery methods in  
23 the discovery rule to proceed in this case.

24           Discovery is going to be the biggest issue in  
25 this case and that's going to be the biggest source

0039

1 of conflict in this case, so it is incumbent on all  
2 parties to bring disputes to me immediately after  
3 having discussed with one another the issue. Instead  
4 of just having an issue and calling me up and saying,  
5 I have an issue, I want you to discuss it with each  
6 other before you bring it to me, but I do want to  
7 know immediately so that we can resolve it and move  
8 on.

9           Some of that is set forth in the draft that  
10 you all sent to me, as well as the draft that I have  
11 circulated to all of you in the protective order in  
12 terms of highly-confidential data, but there are  
13 processes in the Commission's rules for resolving  
14 discovery disputes, and I just want to encourage  
15 everyone to avoid delay by bringing disputes to me  
16 for resolution as quickly as possible.

17           So let's talk about the protective order.  
18 Do all of you have a copy of what I circulated? What  
19 I attempted to do in this draft, after trying to  
20 modify the draft you all sent to me, I just gave up  
21 and started with ours and inserted. So what this is  
22 this is the Commission's standard protective order.  
23 Single underline is a combination of my edits and  
24 what the parties proposed.

25           If you'd look on page -- I guess if you

0040

1 start -- because both drafts, both the Commission's  
2 standard order and the draft that was submitted  
3 included a lot of very much the same information.  
4 Some of it was phrased differently in MCI, Qwest's  
5 and AT&T's proposed draft.

6           The most significant changes had to do with  
7 -- if you look at paragraph seven of the draft I gave  
8 you, the purpose of access and use, and I inserted  
9 the parties' language on that point having to do with  
10 persons having access shall not use any confidential  
11 information to design, develop, provide or market --  
12 sorry, Barbara -- any product, service or business  
13 strategy that would compete with any product or  
14 service of the party asserting confidentiality.

15           Similarly, in paragraph eight, I attempted  
16 to modify the Commission's draft to reflect some of  
17 the changes that seem to be in the parties' proposed  
18 draft, including consultants and advisers, not just  
19 experts, and addressing the fact that employees of  
20 parties can receive data except if they're engaged in  
21 the sale of marketing.

22           So I don't know if you all have had a chance  
23 to really read through this. The other really  
24 significant change had to do with the highly  
25 confidential information section. Traditionally, the



0041

1 Commission has an appendix that's attached to the  
2 protective order. I tried to make this cleaner by  
3 making it a distinct section in the protective order,  
4 and the biggest change has to do with -- I took the  
5 language from the most recent competitive  
6 classification protective order for the highly  
7 confidential information, deleted it, and inserted  
8 other information from the draft.

9 Paragraph 15, I took out the Commission's  
10 language, added in some of the parties' proposal, and  
11 included in the highlighted section my own language  
12 that tried to -- seemed to pull it all together. Any  
13 thoughts, comments on this as a starting point?

14 MR. HARLOW: Your Honor.

15 JUDGE RENDAHL: Mr. Harlow.

16 MR. HARLOW: Thank you. I don't think we  
17 have a problem with this with regard to parties, but  
18 again, paragraph 11, as well as 12, and maybe some  
19 others, seem to contemplate that nonparties will be  
20 involved in the discovery process, and by discovery,  
21 I mean formally under Rule 480. And I think that's  
22 going to be a real issue, or I know there are  
23 companies that have chosen not to proceed in this,  
24 because they didn't want to submit themselves to the  
25 discovery process. The people who did decide to

0042

1 become parties, most of them considered the burden  
2 and risks of discovery and have made that election.  
3 So I see a problem there.

4           And again, I come back to, and I think we  
5 kind of -- we either moved away from it or maybe  
6 people were, in the last discussion, were just  
7 intending to encompass everything in that.

8           But, again, I think if you turn over, which  
9 this protective order seems to contemplate, if you  
10 turn over responses to the order, I'm not sure what  
11 we're calling that, but that would be the order  
12 directed to nonparties to produce information, and I  
13 think if those parties have followed the procedures  
14 of the Public Records Act, then I think you're really  
15 contemplating violating the Public Records Act.  
16 Again, I wish I had it in front of me, but I didn't  
17 bring it with me today.

18           I think, at the very least, that such order  
19 should disclose to the nonparties that there is the  
20 intention to turn over the information to the parties  
21 in this docket and provide some notice and maybe some  
22 opportunity to participate in the process in this  
23 docket to those nonparties. And even then, I'm not  
24 sure you solve the Public Records Act problem.

25           JUDGE RENDAHL: I'll take a look at that.

0043

1 Any other?

2 MS. ANDERL: Your Honor, I don't think there  
3 is a Public Records Act problem, and I don't have the  
4 statute in front of me, but under 80.04.095, that  
5 only kicks in if someone makes a request for  
6 Commission records under the Public Records  
7 Disclosure Act, which is I think 42.17 RCW, and  
8 that's not what's going to happen here.

9 You know, the disclosure by the Commission  
10 of information asserted by a nonparty CLEC to be  
11 confidential under 80.04.095 would not be a  
12 disclosure publicly and it would not be in response  
13 to a public records request. It would be retaining  
14 the confidential nature of the information under the  
15 protective order, and so I don't think you get to  
16 that issue.

17 I do think Mr. Harlow's right in one thing  
18 he said, though, that you probably do have to tell  
19 the nonparty CLECs that this is going to be turned  
20 over. It's not going to be, you know, just held in  
21 --

22 JUDGE RENDAHL: By the Commission in its  
23 locked case, right.

24 MS. ANDERL: Yeah, in secret, exactly. And  
25 you know, so -- and I do think that that pretty much

0044

1 cures any concerns that there would be if the CLEC  
2 provides the information. I think they've waived any  
3 claim that they might have against having the  
4 Commission disclose it under the protective order.

5 MR. THOMPSON: Your Honor, I haven't -- Mr.  
6 Harlow's argument kind of catches me by surprise, and  
7 I have to admit I would -- my initial reaction is to  
8 agree with Ms. Anderl, but not having looked closely  
9 at the issue, I would just note that the Commission  
10 also has subpoena power, and in the event that, you  
11 know, it looks like there's a problem with -- as Mr.  
12 Harlow has identified, I think it's probably pretty  
13 clear that the statute poses no limitation to what we  
14 can obtain through the subpoena power.

15 JUDGE RENDAHL: Okay. Any -- Mr. Kopta.

16 MR. KOPTA: This is a slightly different  
17 issue, so I'm not sure whether there was any more  
18 discussion about nonparties, but at least with  
19 respect to parties, we have a concern, and this was  
20 something that I'd hinted at in some comments  
21 earlier, in that the way that this is drafted, using  
22 the language from the agreement that AT&T, MCI and  
23 Qwest have proposed, is that it effectively  
24 forecloses anyone inside smaller companies from  
25 getting access to either confidential or highly

0045

1 confidential information.

2           These folks often have little or no  
3 regulatory, quote, unquote, employees. They're all  
4 involved in the sale and marketing and provisioning  
5 of telecommunications service. That's what they do.  
6 And so I think there's a real concern that many of my  
7 clients, if not most of them, would not be able to  
8 have access to information that's confidential or  
9 highly confidential.

10           That having been said, I know the issue has  
11 been raised in other places, and I spoke with Ms.  
12 DeCook at one of the breaks and I think that we can  
13 certainly try and work around that and maybe come up  
14 with some language with Qwest and some of the other  
15 parties that might hopefully address this particular  
16 issue.

17           I know that there is a provision in the  
18 protective order that the TRIP sent out that deals  
19 with small companies and almost puts it on more of an  
20 individual case basis. You can designate someone,  
21 explain what they do, and then parties can decide  
22 whether that's going to be a problem or would work  
23 out, whether that person can have access to  
24 confidential or highly-confidential information. And  
25 something along those lines might be something that

0046

1 we can work out here.

2 I just alert you to it so that you know that  
3 this is an issue. And as I say, I'm certainly  
4 willing to discuss it with other parties to see if  
5 there's something that we can work out that would  
6 make everybody if not comfortable, at least, you  
7 know, not so uncomfortable that they can't live with  
8 it.

9 JUDGE RENDAHL: Okay. I know I sprung this  
10 on you today, and my apologies, but I wanted to try  
11 to get something together so we can get a protective  
12 order out as quickly as possible that will work for  
13 the parties.

14 Aside from the issue of small company access  
15 and the public records issue, which I would like to  
16 look into, are there other major concerns or minor --  
17 any concerns with the draft that I have sent out that  
18 you have to express today or is it something you'd  
19 like to make comments to the Commission on, you know,  
20 reserve a time to file comments so that we can get  
21 this -- get a protective order filed as soon as  
22 possible? Ms. Anderl.

23 MS. ANDERL: We'd like a short amount of  
24 time to take a look at this document, compare it to  
25 the template that we negotiated with AT&T, and I

0047

1 think -- did you e-mail it to me, Your Honor?

2 JUDGE RENDAHL: I did not e-mail it to  
3 anyone, other than the folks on the bridge line, but  
4 I'm happy to circulate it this afternoon to everyone  
5 on the external list.

6 MS. ANDERL: If we could do that, we could  
7 get a Word copy to the folks who've been working on  
8 the issue regionwide.

9 JUDGE RENDAHL: Right.

10 MS. ANDERL: And I'm sure we could get you  
11 an answer by tomorrow or Wednesday, at the latest.

12 JUDGE RENDAHL: I'm thinking Wednesday, if  
13 you all can send to me your comments. Again, you can  
14 file them electronically, but please back them up  
15 with hard copy the next day. But if I get your  
16 electronic responses by Wednesday, then I could try  
17 to get an order out by Friday.

18 And to the extent you all can discuss  
19 amongst yourselves if there are issues, particularly  
20 Mr. Kopta's suggestion of bringing in the TRIP  
21 language concerning small companies, and in the  
22 meantime I'll look into the public records issues,  
23 and anyone who wishes to weigh in on that issue,  
24 please do, any other issues that you see in the  
25 protective order that we need to address.

0048

1           In terms of the aggregation issue, I think  
2 we're dealing with a different animal here than in  
3 most cases. In some situations, in some other cases,  
4 we've been able to mask data or aggregate it, but in  
5 order for all parties to conduct the appropriate  
6 discovery and identify the state of the world out  
7 there, what the FCC has given us requires a large  
8 amount of highly-confidential information to be  
9 disclosed.

10           And so I commend the parties in their  
11 efforts to deal with this and give something to me  
12 that I could work with, and I know it's of concern  
13 and will be of concern to a great many companies when  
14 they receive the bench requests, so it's -- this is  
15 not an easy task, and I appreciate your efforts and  
16 see if we can refine them more and get a protective  
17 order entered by Friday so that when the bench  
18 request does go out, you all are able to deal with  
19 it.

20           Is there anything else on bench requests or  
21 protective order we need to deal with? Discovery.  
22 Mr. Steese.

23           MR. STEESE: One issue on discovery that we  
24 really talked about last time generically, but not  
25 today, and that is we set a time frame for responses



0049

1 to bench requests. What will the time frame be for  
2 responding to intercompany discovery? Last time we  
3 talked about five business days.

4 JUDGE RENDAHL: I was thinking in context at  
5 that point of the 90-day case. I wasn't thinking  
6 beyond that, although let's talk about it. The  
7 Commission, I think in terms of data requests, I  
8 believe it's 10 calendar days.

9 MS. ANDERL: Business.

10 JUDGE RENDAHL: I'm sorry, 10 business days.  
11 Somehow I seem to have difficulty with that  
12 distinction. Ten business days. But again, we've  
13 got some tight turnaround here. So you know, I open  
14 it up to all of you for what your realistic abilities  
15 are to respond to data requests. I mean, that's what  
16 we're talking about. This is a large amount of data.  
17 You know, we could set some times here, but they may  
18 be highly unrealistic, and I'd rather not have to  
19 deal with repeated requests for extensions and, you  
20 know, objections by parties that they can't get it  
21 done in time. I'd like to set some realistic goals,  
22 you know, set something that's realistic.

23 Ms. DeCook, you looked like you were going  
24 to say something.

25 MS. DeCOOK: Yeah, you know, some of the

0050

1 participants in this case, like MCI and AT&T, are  
2 going to be doing this across the country all at the  
3 same time. So if we establish a fairly short  
4 turnaround, we will be, and realistically we're not  
5 going to be able to respond. And if I look at, you  
6 know, just Qwest's proposed discovery as an example,  
7 I'm not even sure we could respond to it in 20 days,  
8 but I think that's probably a realistic time frame to  
9 set given the schedule that we've established.

10 JUDGE RENDAHL: Well, let's look at that  
11 schedule again. Let's be off the record for a  
12 moment.

13 (Discussion off the record.)

14 JUDGE RENDAHL: Let's be back on the record.  
15 While we were off the record, we refined the  
16 turnaround time and objection times for parties'  
17 discovery via data request.

18 Parties will have 14 business days to  
19 respond to data requests propounded by another party,  
20 but must identify and let the other party know within  
21 10 business days if they are objecting to the data  
22 request. That will give the Commission sufficient  
23 time to have a discovery conference and address the  
24 issue.

25 Also, while we were off the record, the

0051

1 issue came up as to bench requests concerning batch  
2 cut processes, and Mr. O'Connell raised the question  
3 as to whether that also concerned Verizon. And while  
4 we were off the record, I explained that the batch  
5 cut bench requests will not be addressed to Verizon,  
6 but there may be other bench requests that need to be  
7 addressed to Verizon simply for purposes of gathering  
8 data on the state of competition in Washington and  
9 addressing the issues that we're faced with.

10 MR. O'CONNELL: Your Honor, if I may?

11 JUDGE RENDAHL: Yes, please go ahead, Mr.  
12 O'Connell.

13 MR. O'CONNELL: Thank you. When you say the  
14 state of the competition in Washington, my assumption  
15 would be that, in this Docket 033044, we are  
16 addressing -- that area's covered by Qwest's  
17 petition?

18 JUDGE RENDAHL: Yes, Qwest's service  
19 territory, given that that's what they have  
20 characterized for the switching case and the various  
21 transport routes they've identified in their  
22 petition.

23 MR. O'CONNELL: Thank you.

24 JUDGE RENDAHL: Okay. With that  
25 clarification, is there anything else? Hearing

0052

1 nothing, we are finally done today, and we'll be off

2 the record. Thank you.

3 MS. ANDERL: Thank you, Your Honor.

4 MR. KOPTA: Thank you.

5 MR. O'CONNELL: Thank you, Your Honor.

6 JUDGE RENDAHL: You're welcome.

7 (Proceedings adjourned at 5:12 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25