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1       BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2                                       COMMISSION

3   In the Matter of the                       )  
4   Petition of                                       )  
5   QWEST CORPORATION                       )   DOCKET NO. UT-033044  
6   To Initiate a Mass-Market               )   Volume No. II  
7   Switching and Dedicated               )   Pages 53 - 87  
8   Transport Case Pursuant to               )  
9   the Triennial Review Order.            )  
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9               A prehearing conference in the above matter  
10 was held on November 24, 2003, at 9:33 a.m., at 1300  
11 South Evergreen Park Drive Southwest, Olympia,  
12 Washington, before Administrative Law Judge ANN E.  
13 RENDAHL.

14

15               The parties were present as follows:  
16               COVAD COMMUNICATIONS COMPANY, NORTHWEST  
17 COMPETITIVE COMMUNICATIONS COALITION, by DAVID L. RICE  
18 and BROOKS E. HARLOW (via bridge line), Attorneys at  
19 Law, Miller Nash, 601 Union Street, Suite 4400,  
20 Seattle, Washington 98101; telephone, (206) 622-8484.

19               QWEST CORPORATION, by LISA A. ANDERL (via  
20 bridge line), Corporate Counsel, 1600 Seventh Avenue,  
21 Suite 3206, Seattle, Washington 98191; telephone (206)  
22 345-1574.

21               WASHINGTON UTILITIES AND TRANSPORTATION  
22 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney  
23 General, 1400 South Evergreen Park Drive Southwest,  
24 Post Office Box 40128, Olympia, Washington 98504;  
25 telephone, (360) 664-1225.

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25       Kathryn T. Wilson, CCR  
      Court Reporter

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1 THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION, by GREGORY J. TRAUTMAN, Assistant Attorney  
3 General, 1400 South Evergreen Park Drive Southwest,  
Post Office Box 40128, Olympia, Washington 98504;  
4 telephone, (360) 664-1187.

5 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,  
6 INC.; TCG SEATTLE, INC.; TCG OREGON, INC., by REBECCA  
7 B. DECOOK (via bridge line), Senior Attorney, 1875  
8 Lawrence Street, Room 1575, Denver, Colorado 80202;  
9 telephone, (303) 298-6357.

10 XO COMMUNICATIONS, INC.; ADVANCED TELCOM  
11 GROUP, INC.; PACWEST TELECOM, INC.; TIME WARNER TELECOM  
12 OF WASHINGTON, LLP; INTEGRA TELECOM, INC.; MCLEOD LOCAL  
13 SERVICES, INC.; GLOBAL CROSSING LOCAL SERVICES, INC.;  
14 ESCHELON TELECOM, INC., by GREGORY J. KOPTA (via bridge  
15 line), Attorney at Law, Davis Wright Tremaine, 1501  
16 Fourth Avenue, Suite 2600, Seattle, Washington 98101;  
17 telephone, (206) 628-7692.

18 PUBLIC COUNSEL, by SIMON J. FFITCH (via  
19 bridge line), Assistant Attorney General, 900 Fourth  
20 Avenue, Suite 2000, Seattle, Washington 98164;  
21 telephone, (206) 464-7744.

22 WEBTEC; MCI, INC., by ARTHUR A. BUTLER (via  
23 bridge line), Attorney at Law, Ater Wynne, 601 Union  
24 Street, Suite 5450, Seattle, Washington 98101;  
25 telephone, (206) 623-4711.

DEPARTMENT OF DEFENSE, AND ALL OTHER FEDERAL  
EXECUTIVE AGENCIES, by STEPHEN S. MELNIKOFF (via bridge  
line), General Attorney, Regulatory Law Office, United  
States Army Litigation Center, 901 North Stuart Street,  
Suite 700, Arlington, Virginia 22203-1837; telephone,  
(703) 696-1643.

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1 P R O C E E D I N G S

2 JUDGE RENDAHL: Good morning. I'm Ann  
3 Rendahl, the administrative law judge presiding over  
4 this matter. We are here today before the Washington  
5 Utilities and Transportation Commission on Monday,  
6 November the 24th, 2003, for a prehearing conference in  
7 Docket No. UT-033044, captioned, In the Matter of the  
8 Petition of Qwest Corporation to Initiate a Mass-Market  
9 Switching and Direct Transport Case Pursuant to the  
10 Triennial Review Order.

11 By the very short notice sent out to all  
12 parties by e-mail on Friday, November 21st, 2003, I'm  
13 convening this prehearing conference to discuss the  
14 decision in Order No. 5, an order denying joint CLEC's  
15 motion and establishing a process for masking of CLEC  
16 identities in highly confidential information as well  
17 as a notice of prehearing conference. That order was  
18 circulated to parties also on Friday by e-mail and has  
19 been served on all parties by regular mail.

20 So again, I want to apologize for the short  
21 notice for the conference this morning, but I'm trying  
22 to keep the case on track, and given the holiday  
23 schedule this week and the filing day today, it was  
24 imperative to have this conference. I also want to  
25 graciously thank Mr. Kopta for arranging the

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1 teleconference bridge line this morning.

2           Before we go any farther, I want to take  
3 appearances from the parties. If you've already stated  
4 a full appearance in the docket, please just state your  
5 name and the party you represent. If you haven't made  
6 an appearance in the docket, I will need the full  
7 information, which is your full name, the party you  
8 represent, your full address, telephone number, fax  
9 number, and e-mail. So I'm going to begin with Qwest  
10 first. Ms. Anderl, do you wish to take that?

11           MS. ANDERL: Lisa Anderl on behalf of Qwest,  
12 and if I might just say -- I don't know if I'm the only  
13 one this is happening to, but in the last minute or so,  
14 you have cut out a little bit. I don't know if it has  
15 to do with the position of the microphone or what.

16           MR. THOMPSON: Maybe it's because  
17 Mr. Trautman hit the mute button, which mutes the  
18 entire system.

19           JUDGE RENDAHL: So what did you miss?

20           MS. ANDERL: Nothing. I think I got it all  
21 out of context. I just wanted you to be aware of it.

22           JUDGE RENDAHL: Thank you, Mr. Thompson, for  
23 clarifying that. Nobody press the mute button, please,  
24 in this room. Thank you, Ms. Anderl, and I'll also  
25 note Elizabeth Weber is here in the room for Qwest.

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1 Commission staff?

2 MR. THOMPSON: Jonathan Thompson and Greg  
3 Trautman on behalf of Commission staff.

4 JUDGE RENDAHL: And Mr. Trautman, since this  
5 is your first appearance in this case -- is it?

6 MR. TRAUTMAN: I thought I might have made  
7 another appearance, but I can give you the full  
8 information.

9 JUDGE RENDAHL: That would be great.

10 MR. TRAUTMAN: Gregory J. Trautman, assistant  
11 attorney general for Commission staff. My address is  
12 1400 South Evergreen Park Drive Southwest, Olympia,  
13 Washington, Post Office Box 40128. My phone number is  
14 (360) 664-1187. Fax number is (360) 586-5522, and  
15 e-mail is jtrautma@wutc.wa.gov.

16 JUDGE RENDAHL: Thank you. Public Counsel?

17 MR. FFITCH: Simon ffitich, assistant attorney  
18 general for public counsel.

19 JUDGE RENDAHL: Thank you, and I'm going to  
20 go down the list of intervenors alphabetically, so I'll  
21 call out the company and you can give your appearance,  
22 except maybe Mr. Kopta, if you would go ahead and give  
23 the appearance for your companies, that might speed  
24 things up.

25 MR. KOPTA: This is Gregory J. Kopta of the

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1 law firm Davis Wright Tremaine, LLP, on behalf of  
2 Advanced Telecom, Eschelon, Integra, Global Crossing,  
3 McLeod USA, Pac West, XO, and Time Warner Telecom.

4 JUDGE RENDAHL: Thank you very much. For  
5 Allegiance Telecom, is anyone on the phone for  
6 Allegiance? AT&T?

7 MS. DECOOK: Rebecca DeCook on behalf of  
8 AT&T.

9 JUDGE RENDAHL: Thank you. Covad?

10 MR. RICE: David Rice appearing on behalf of  
11 Covad.

12 JUDGE RENDAHL: Thank you. Mr. Harlow, are  
13 you still there?

14 MR. HARLOW: I am.

15 JUDGE RENDAHL: For the Department of  
16 Defense?

17 MR. MELNIKOFF: Stephen Melnikoff for the  
18 Department of Defense and all other Federal Executive  
19 Agencies.

20 JUDGE RENDAHL: Thank you. For WorldCom,  
21 MCI?

22 MR. BUTLER: Arthur A. Butler appearing for  
23 MCI and WeBTEC.

24 JUDGE RENDAHL: Thank you. For the Northwest  
25 Competitive Communications Coalition?

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1           MR. RICE: This is David Rice again. I'm  
2 also appearing on behalf of the Coalition.

3           JUDGE RENDAHL: Thank you. For Sprint? For  
4 Verizon? I think that's everybody. Mr. Sprague and  
5 Mr. Terriot, are you also attorneys or just simply  
6 listening in on behalf of the company?

7           MR. TERRIOT: The later. Mr. Kopta  
8 represents us.

9           JUDGE RENDAHL: I understood that. I just  
10 wanted to clarify my list. First, I wanted to explain  
11 the order. The Commission is concerned about the  
12 release of the highly confidential CLEC data. On the  
13 other hand, masking the data and having the Commission  
14 process the information as a clearing house appeared to  
15 be a process that would significantly bog down the case  
16 and create serious problems in discovery among the  
17 parties and implicate, have problems with attorney  
18 client privilege if you all are trying to communicate  
19 with one another and you can't reveal who your client  
20 is because that information is highly confidential.

21           So in order to make this case workable in  
22 terms of the discovery and delay, the Commission has  
23 decided that masking of the CLEC information, the  
24 highly confidential CLEC information is important to  
25 do, and therefore, the Commission is ordering that.

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1     However, the codes will be made available to those  
2     attorneys who have signed the Exhibit C to the  
3     protective order to allow counsel to communicate  
4     effectively with other counsel, to conduct discovery on  
5     behalf of their clients, and also this will relieve  
6     some of the problems that the Commission has in trying  
7     to conduct an open hearing. It will allow us to be  
8     able to refer to different companies by a code name as  
9     opposed to the company name. So that's the reasoning  
10    behind the denial of the motion as proposed by the  
11    joint CLEC's and the system we are going to use.

12             In the order, I had asked people to call me  
13    to get the code name. After the order was out, I  
14    realized that's not the most confidential way to  
15    distribute the code, so if you are a party seeking a  
16    code, if you would please e-mail me and then I will  
17    distribute the code by e-mail to your client company or  
18    to you. I am keeping track of those who have signed  
19    the Exhibit C, and so I will be strictly watching that  
20    in terms of who gets access both to the code and the  
21    highly confidential information. Again, the code will  
22    not be available to experts who signed an Exhibit C.

23             Another issue that was addressed in the order  
24    had to do with the availability of the confidential and  
25    highly confidential responses from the nonparty CLEC's,



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1 those folks that will be responding to Order No. 3 and  
2 Order No. 4. That order required the companies to send  
3 that information directly to the Commission. The  
4 Commission has been, in the records center they have  
5 been posting that to the Commission's Web Site as  
6 indicated in the order, so that information is  
7 available on the Web Site to see who has filed  
8 information. If you seek clarification of that, you  
9 can call me, and if you need information, if you need  
10 copies of the confidential and highly confidential  
11 information, you can request that either through me or  
12 through the records center, but I'm going to be  
13 advising them, they will also have a list of who signed  
14 Exhibit B and Exhibit C, and that information will be  
15 limited to those folks appropriately who signed the  
16 Exhibit A, B, and C.

17 I will be out of the office tomorrow and  
18 Wednesday. So in terms of assigning codes, I will also  
19 be instructing my assistants, Kippy Walker and Margaret  
20 Kaech. They will have the list and be able to assign  
21 codes to those who need it; although, the information  
22 is due today, but they will be available to do that by  
23 e-mail as well. I've instructed them not to give out  
24 any codes over the phone.

25 That is it on my list of explanation and

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1 guidelines. Are there any questions any party has  
2 about the order or how we administer the order?

3 MS. ANDERL: Yes, Your honor, I have a couple  
4 of questions. First of all, our highly confidential  
5 responses that have already been submitted then have  
6 information for a number of CLEC's in it, so should we  
7 just e-mail you and ask for codes for all of the CLEC's  
8 that we are going to provide data about? Because we  
9 are required through the Bench request to provide some  
10 information that is highly confidential to the CLEC's.

11 JUDGE RENDAHL: I understand that, and I  
12 think what I will do is since Ms. Weber is here in the  
13 room, I will give it to her, and she has signed an  
14 Exhibit C. It's attorneys and paralegals and legal  
15 assistants, understandably, since they will be using  
16 this data. I will provide Ms. Weber with a list of the  
17 codes so that you can resubmit the information with  
18 that code name.

19 MS. ANDERL: Perfect. May we have until  
20 tomorrow or Wednesday to do that?

21 JUDGE RENDAHL: Yes. You will have an  
22 extension to do that.

23 MS. ANDERL: The other question I have, I  
24 think at this point it's unclear whether an outside  
25 expert would have a need to know a company's identity

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1 for specific purposes to rebut particular allegations  
2 or whatever that a company might make that we believe  
3 might be contrary to what that company's own data shows  
4 or something like that. I would guess that that would  
5 just be an issue that we could bring up for  
6 modification to this Order No. 5 down the road or an  
7 exception to it if it does become an issue.

8 JUDGE RENDAHL: At this point, I didn't  
9 include any option to request specific data because it  
10 seems once you open that hole, everybody is going to  
11 jump in, and so I can understand there may need to be  
12 down the line, but the reason why the attorneys have  
13 access to the code and not the experts is to avoid the  
14 possibility that that information may be distributed  
15 inappropriately.

16 In terms of outside experts, at this point,  
17 I'm going to retain the limitation to attorneys and  
18 paralegals and legal assistants. If data submitted by  
19 a company is inconsistent with what you have in your  
20 records, I will suggest that you first communicate with  
21 the attorney for that party since you will know who  
22 that party is. If it's a nonparty CLEC, then you might  
23 want to raise the issue with the Commission.

24 MS. ANDERL: Thank you. Would you mind  
25 saying again, just because it's not entirely clear to

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1 me, whether there is confidential or highly  
2 confidential information that's been submitted by  
3 nonparty CLEC's that we would need to take additional  
4 steps to get from you?

5 JUDGE RENDAHL: At this point, the Commission  
6 has received responses, whether they contain  
7 confidential information or not. Some of them, I think  
8 of few of them do, and I need to go ahead and pull that  
9 and have them reassign a number to it. I think I've  
10 received about 20 responses so far in response to Order  
11 No. 3 and Order No. 4. Most of them it does not apply,  
12 so so far, there has not been too much substantial  
13 that's come in.

14 If you seek the confidential and highly  
15 confidential responses though, you need to either send  
16 someone down to the Commission who has signed Exhibit C  
17 or request it through me, and we will send it to  
18 someone who has signed the Exhibit C.

19 MR. FFITCH: Your Honor, Simon ffitch.

20 JUDGE RENDAHL: Yes, Mr. ffitch?

21 MR. FFITCH: You cut out when you said, "So  
22 far there has not been..." You were describing the  
23 responses from the nonparty CLEC's. Could you just  
24 repeat what you've received, and you characterized it  
25 in a way that you cut out right when you were

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1 characterizing it.

2 JUDGE RENDAHL: I'll try it given. Can you  
3 hear me now?

4 MR. FFITCH: Yes.

5 JUDGE RENDAHL: We've received about 20  
6 responses to Order No. 3, Order No. 4, the nonparty  
7 CLEC's. By far, the bulk of those are responses  
8 saying, our services -- we don't have any facilities,  
9 doesn't apply. There are a few who have filed  
10 responses that are confidential. What is posted on the  
11 Web Site are all the nonconfidential responses. We are  
12 not posting confidential information. If you are  
13 needing the confidential information, you need to  
14 either request it through me or the records center or  
15 send someone down here who has signed an Exhibit C who  
16 has access to the data, and we will provide a copy.

17 MR. HARLOW: Your Honor, this is Brooks  
18 Harlow. I wonder if I could just walk through the  
19 mechanics briefly with regard to nonparty responses;  
20 although, your answers may apply to party responses as  
21 well, and I take it that because of the handling that  
22 potentially, a nonparty responding if they had public,  
23 confidential, and highly confidential information would  
24 need to split their filing up into three parts, a white  
25 paper, yellow paper, and pink paper.

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1 JUDGE RENDAHL: Or light blue.

2 MR. HARLOW: Whatever. I like the hot pink.

3 JUDGE RENDAHL: I know that, but I've just  
4 about copied the masking codes on hot pink and realized  
5 I wasn't complying with my own protective order.

6 MR. HARLOW: Doesn't it say distinguished  
7 different colored paper? Does it say light blue?

8 JUDGE RENDAHL: Yes. Not that we will send  
9 it back if it comes in hot pink. I think we all  
10 understand what hot pink means, but I think it does say  
11 light blue.

12 MR. HARLOW: We can buy new paper, and the  
13 confidential and highly confidential should be sealed  
14 in envelopes.

15 JUDGE RENDAHL: Correct.

16 MR. HARLOW: And I take it what's in there  
17 will globally replace the name of the respondent with  
18 the code on the paper itself.

19 JUDGE RENDAHL: Correct.

20 MR. HARLOW: What about the envelopes?  
21 Should they contain only the code, or should they  
22 contain the name of the respondent?

23 JUDGE RENDAHL: You might just say,  
24 confidential information from the code company on  
25 behalf of so and so. In terms of posting that, what

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1 comes in, I'm asking the records center to post it on  
2 behalf of the code name, not the company that files it.

3 It's complicated on our end too, and it was  
4 even more complicated to try to be the clearing house,  
5 so this is going to be complicated, but any  
6 confidential information we will try to post by the  
7 code name, so if you need to file it separately, so  
8 your cover letter says, here's the public information  
9 for company name, here's the highly confidential --  
10 public information and confidential information for  
11 company name, and highly confidential information for  
12 code blah, blah.

13 MR. HARLOW: I guess the cover letter could  
14 become public and that could associate the code with  
15 the name.

16 JUDGE RENDAHL: So you might want to file  
17 separate cover letters.

18 MR. HARLOW: Do we use the same messenger?

19 JUDGE RENDAHL: At some point we have to be  
20 realistic here. I'll leave those mechanics up to you,  
21 but if you choose to file it with a separate cover  
22 letter that indicates only the code and the company,  
23 that's fine.

24 MR. HARLOW: Your answer did raise a  
25 question. You talked about posting of the confidential

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1 information, and I understood that only the public  
2 information would be posted.

3 JUDGE RENDAHL: It won't be attached. There  
4 will be a line item just in terms of the record center  
5 keeping track of the docketing list. It won't have a  
6 link to the document, but it will indicate that  
7 information was filed. That way, you all will be able  
8 to see what's been filed. It will have the code name,  
9 but you will be able to see what's been filed. We need  
10 to keep track of that for our purposes. So to the  
11 extent that confidential information was filed on  
12 behalf of company X-2, that will be on the docketing  
13 list.

14 MR. HARLOW: Thank you for the  
15 clarifications, Your Honor.

16 MR. KOPTA: I'm wondering not only to address  
17 some of the logistics that Mr. Harlow was discussing  
18 but also the possibility that someone could define the  
19 code by looking at how responses were labeled as either  
20 publicly available, confidential, or highly  
21 confidential. I'm wondering whether at least in  
22 response to the Bench requests that are due today, the  
23 non hot-cut Bench requests, whether we could designate  
24 all of those highly confidential even if there may be  
25 something in response that is not -- the response



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1 itself is not highly confidential, but because that may  
2 be the only company that provides that particular piece  
3 of information as public, then one could define that as  
4 you look at the highly confidential responses, even if  
5 you don't know the name of the company, that you would  
6 know in combination with how a company responded to the  
7 other requests what that company's identity was.

8 JUDGE RENDAHL: I'm inclined to say no. Any  
9 other person wishing to weigh in on this?

10 MR. FFITCH: I understand the concern here on  
11 the part of the CLEC's for confidentiality, but  
12 essentially, I think there has to be a concern about  
13 overdesignation just for administrative convenience.  
14 There is an underlying state law here that we have  
15 public proceedings and public records, and the orders  
16 themselves, the protective orders talk about keeping  
17 the designations very narrow, as narrow as possible.

18 MS. ANDERL: This is Lisa Anderl. It does  
19 seem to me that it's important to keep as little of  
20 this truly highly confidential as possible since now  
21 access to that information, in terms of we don't  
22 identify it by a company, it's severely restricted.

23 JUDGE RENDAHL: Another option is to just  
24 file it all under the company name saying, you know, X  
25 company filed public, confidential, and highly

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1 confidential information, so you know a company has  
2 filed highly confidential information, but whoever is  
3 going to have access to that highly confidential  
4 information will only have the code except for the  
5 attorneys who have the company name.

6           There is different ways to do this, and I  
7 think it depends on what your comfort level is here.  
8 I'm not going to mandate one way or the other, but if  
9 information is filed with the Commission under a cover  
10 letter saying it's highly confidential and it lists  
11 only lists the code name of the company, then the  
12 records center will post it having received highly  
13 confidential information from code name.

14           If you choose to file it with your company  
15 name and just say your company filed highly  
16 confidential information, then it will say as posted  
17 that it was filed on behalf of the company name, but  
18 whoever needs access to it, they are going to get the  
19 information from the Commission not saying this is from  
20 X company, so the experts won't know who it's from but  
21 the attorneys will.

22           There is many ways to make this work, and I  
23 think it depends on what the comfort level of your  
24 client is when you are filing the information with the  
25 Commission and with other parties, because the Bench

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1 request responses aren't just coming to the Commission.  
2 They are being sent to other parties.

3 MS. DECOOK: This is Becky DeCook. I have a  
4 question about that. On the Bench requests for the  
5 highly confidential masked information, how will that  
6 get -- are we to serve another with that?

7 JUDGE RENDAHL: Yes.

8 MS. DECOOK: Is there some list of who signed  
9 an Exhibit C?

10 JUDGE RENDAHL: I have a list, yes.

11 MS. DECOOK: Can that be sent out by e-mail?

12 JUDGE RENDAHL: Yes.

13 MS. DECOOK: The second issue I need to raise  
14 is that given our particular business, I don't think we  
15 will be able to produce data today in masked form,  
16 because if the intent of masking is to avoid  
17 identifying who the CLEC is, we will need to engineer,  
18 somehow pull our data together in a way that doesn't  
19 obviously identify who we are so that masking has some  
20 purpose, and that will take time.

21 JUDGE RENDAHL: What are you envisioning?

22 MS. DECOOK: In terms of time?

23 JUDGE RENDAHL: No. In terms of other  
24 masking. What I have put together is a list of company  
25 names and a masking number. What other types of

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1     masking are you talking about?

2                   MS. DECOOK:   That's the masking I'm  
3     envisioning.  However, we have a number of different  
4     product groups who provide us information, and if we  
5     produce it in the form they provide to us, it will  
6     clearly identify that it's AT&T data.

7                   JUDGE RENDAHL:  So it's a matter of going  
8     through what's been provided by the various product  
9     groups --

10                  MS. DECOOK:  Exactly, and disguising it now.  
11     Not destroying the essence of the data but disguising  
12     in a way so it's not obvious who is producing the data.

13                  MS. ANDERL:  Your Honor, I've been thinking  
14     about this, and at this point, I don't oppose the  
15     requirement to mask things.  I think to the extent that  
16     Qwest is providing a lot of information for multiple  
17     CLEC's, either the masking makes a lot of sense, but I  
18     don't know if something comes in from Ms. DeCook, I  
19     don't know how anybody masks that.  She can call her  
20     company banana or she can call her company XYZ 7, but  
21     she only represents one company.

22                  MR. HARLOW:  Your Honor, this kind of gets  
23     back to my question, which in my own mind I had decided  
24     that I would probably do one letter that lists the name  
25     of the company and then says, confidential and highly

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1 confidential responses are also enclosed without naming  
2 the code, and that then presumably, the Commission will  
3 separate those other two envelopes out, the  
4 confidential and highly confidential, and they will  
5 never be connected up again except by the access code  
6 which is, of course, restricted.

7           Is that a correct assumption as to how things  
8 will be handled? So unless somebody is physically  
9 there watching the messenger hand it in, happens to see  
10 my cover letter and the code on the two other  
11 envelopes, they won't connect them up.

12           JUDGE RENDAHL: My understanding of how  
13 records center keeps this information is they pull the  
14 highly confidential information out and the  
15 confidential information out and store those in  
16 separate files. However, they do keep the cover letter  
17 that was attached to it for reference, so if somebody  
18 is trying to find something that was filed on X date by  
19 a certain person, then they can locate it.

20           So, for example, if I needed to go back and  
21 get a copy of the highly confidential information based  
22 on what's on the docket list that was filed by, you  
23 know, either by the company name or the code name,  
24 that's how they would locate it in their files, but  
25 that letter would also be in the highly confidential

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1 file, so if somebody comes in and wants to get the  
2 highly confidential attachment, I would have to make  
3 provisions with records to not provide the cover letter  
4 that went along with it.

5 MR. HARLOW: I guess if the cover letter  
6 didn't have any codes in it, what would anybody find  
7 out when they access that?

8 JUDGE RENDAHL: If the cover letter has the  
9 company name, then if they have the cover letter and  
10 the highly confidential attachment, then they have the  
11 name of the company.

12 MR. HARLOW: You are saying they would  
13 duplicate the cover letter and put it not only with the  
14 public but also make a copy and stick it with the  
15 confidential and highly confidential as well?

16 JUDGE RENDAHL: Yes. So maybe what we can do  
17 is have them redact that information so they can block  
18 it out. There is ways to do it, but it's for their  
19 tracking purposes. How do they know when it was filed  
20 and what it relates to if somebody is trying to find a  
21 copy of it?

22 MR. HARLOW: Maybe we need to prepare the  
23 extra letter or letters then and stick them in the  
24 envelopes.

25 JUDGE RENDAHL: Right. I'm going to be

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1 meeting with the records center folks and going through  
2 issues that they have, so that's another reason for  
3 this call is to highlight issues for me that I need to  
4 work with the records center on to make sure that the  
5 company name is not revealed. So for posting purposes  
6 of highly confidential information and for filing, it  
7 may be appropriate to file a separate cover letter  
8 that indicates the code name.

9 MR. HARLOW: Thank you. I've changed my mind  
10 as to how to do it, and I will be doing the extra  
11 letters.

12 MS. DECOOK: Your Honor, wouldn't that by  
13 virtue of who's the signatory disclose who the company  
14 is though?

15 JUDGE RENDAHL: Again, this is information  
16 that if we can stamp the cover letter itself "highly  
17 confidential" when it comes into the Commission, I  
18 instruct the records center to block out any  
19 identifying information, to take a black highlighter  
20 and block it out when it's attached. It will still  
21 have a date stamp on it for reference of them finding  
22 the information for someone who needs it. Block out  
23 the signatory, you know. If you file it under the code  
24 name. There is ways to do it. This is part of the  
25 calculus that went into whether to grant the motion or

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1 not. The mechanics of trying to do this and keep all  
2 the information highly confidential is extraordinary  
3 difficult.

4 MS. DECOOK: I don't disagree. I think the  
5 only place where you really need to use the code and a  
6 highly confidential letter would be on the AT&T data.

7 JUDGE RENDAHL: Right. It's not for  
8 confidential and it's not for public data.

9 MS. DECOOK: If the highly confidential  
10 letter is treated as highly confidential as well, then  
11 the only people that could see it would be the lawyers  
12 and paralegals, etcetera.

13 JUDGE RENDAHL: Correct. For posting  
14 purposes, it would just be on behalf of the code name  
15 and would not have the filing person, because  
16 frequently what the Commission does is, letter on  
17 behalf of Qwest from Lisa Anderl, but what we could do  
18 is just, highly confidential information filed upon  
19 behalf of code name, period, and the date.

20 MS. DECOOK: When you post it with a date,  
21 will that not reveal the company that's filing the  
22 agency data?

23 JUDGE RENDAHL: No, because the date is  
24 tomorrow, and I expect other information will be  
25 trickling in over the next couple of days, and there



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1 are limits.

2 MS. DECOOK: I know. It wasn't my idea.

3 MR. RICE: Your Honor, I'm curious for  
4 nonparties who have already filed highly confidential  
5 data, should they refile using the code?

6 JUDGE RENDAHL: I'm going to be contacting  
7 those companies, and after this prehearing, I'm going  
8 to be asking the Commission to pull that information  
9 for me. To the extent any company did file  
10 confidential or highly confidential information, again,  
11 that information is not posted, so it's not available  
12 to anyone yet.

13 MR. RICE: Thank you.

14 JUDGE RENDAHL: But yes, if you have clients  
15 who are nonparty CLEC's and they have filed  
16 information, you should talk to them as well. I think  
17 there is only two or three, to my knowledge, and I'm  
18 going to work on that right away.

19 MR. RICE: Thank you.

20 JUDGE RENDAHL: If anything is filed that I  
21 think needs to be refiled by that company, I will do  
22 that. So there is a fair amount of coordination that  
23 needs to happen between me and the records center to  
24 make this work effectively.

25 MR. KOPTA: Your Honor, I understand from the

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1 comments made earlier that Qwest will need some time to  
2 revise its responses to include these codes and that  
3 AT&T will as well, and we would ask that, because I  
4 have eight clients that we need to do all of this to,  
5 it may take a little extra time as well, so if we might  
6 have until tomorrow to file all of our responses, that  
7 would help us out a great deal.

8 JUDGE RENDAHL: Is tomorrow fine, or do  
9 people need until Wednesday?

10 MS. ANDERL: Wednesday, Your Honor.

11 JUDGE RENDAHL: Why don't we say Wednesday is  
12 the electronic filing date with physical filing -- that  
13 would make the mailing date on Monday because the  
14 Commission will not be open Thursday and Friday, and  
15 everyone needs to file on the same day, which would  
16 avoid the issue of the date that Ms. DeCook raised. So  
17 if you are prepared to file now, you might want to hold  
18 off.

19 MR. THOMPSON: It creates a strong incentive  
20 to file on Wednesday.

21 JUDGE RENDAHL: The records center is just  
22 going to love me for this, but luckily, it's all the  
23 electronic that comes in on Wednesday and not the  
24 paper.

25 Okay. So what we are going to do is I'll

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1 send out a notice today extending the filing deadline  
2 further until Wednesday, and you can either file by  
3 mail on Wednesday if you are so organized or delivery,  
4 or you can do electronic mail, and you will need to  
5 file earlier than three p.m. to allow -- in fact, I'm  
6 going to make it noon on Wednesday just so that the  
7 records center doesn't absolutely string me up.

8 So I'll send out a notice for filing by noon  
9 on Wednesday. Electronic mail is acceptable with  
10 filing. Follow-up mail filing on Monday, December 1st.

11 MR. BUTLER: Your Honor, this is a filing  
12 only with the Commission, or copies to be delivered to  
13 other parties?

14 JUDGE RENDAHL: If you are responding to the  
15 Bench request, copies need to go to other parties. So  
16 if you are concerned about the highly confidential  
17 information, remember, if it's addressed to an attorney  
18 who has signed Exhibit C, they are going to know the  
19 code anyway. It's the internal distribution to those  
20 who don't have access that you all need to worry about  
21 how you handle that internally.

22 MR. FFITCH: So you will provide that  
23 Exhibit C list to the parties who are going to be  
24 making the Wednesday filing so that will help them know  
25 who they can serve.

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1           JUDGE RENDAHL: No. It's the service list  
2 generally. You all have the service list in this case.  
3 I'm going to be sending out by e-mail a list I have.  
4 I'm compiled a list of the A's, the B's, and the C's.  
5 So I will send that out so you know who signed an  
6 Exhibit C, and I think Mr. Trautman intends to file one  
7 today so I might just go ahead and add him to the list.

8           MR. MELNIKOFF: I will be filing a C list  
9 today or tomorrow, and I would do it electronically as  
10 well as hard copy.

11           JUDGE RENDAHL: Thank you. So I should add  
12 you as well?

13           MR. MELNIKOFF: Yes.

14           JUDGE RENDAHL: If you do it as soon as  
15 possible, I will add you to the list.

16           MS. DECOOK: With the code list, we got our  
17 own codes, but how do lawyers that have signed  
18 Exhibit C get the code list, by contacting you?

19           JUDGE RENDAHL: I will mail it out. I'm not  
20 going to e-mail it. I don't want an electronic version  
21 of this floating around. I know who is on the list,  
22 and I will mail it out. If you want to designate one  
23 attorney for each company, I'm happy to do that.

24           MS. ANDERL: Your Honor, Ms. Weber will be  
25 able to pick ours up and bring it back to us, but

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1 again, for some people, receiving it by mail might be a  
2 problem.

3 JUDGE RENDAHL: This is not your own code.  
4 This is the code for the other parties.

5 MS. ANDERL: Okay.

6 JUDGE RENDAHL: This is the identifying code,  
7 so I don't see why mail is an issue.

8 MS. ANDERL: Because people will get their  
9 own codes by contacting you directly.

10 JUDGE RENDAHL: Correct, by e-mail.

11 MS. ANDERL: And we'll get out list of codes  
12 to apply to CLEC's because Ms. Weber can pick it up?

13 JUDGE RENDAHL: Yes, and she will have it.

14 So in terms of Exhibit C right now, Mr. Kopta has  
15 signed one for Advanced Telecom, Global Crossing,  
16 Integra, McLeod, Pac West, Time Warner, and XO. For  
17 AT&T, I only have Becky DeCook. For Commission staff,  
18 I have John Thompson and Greg Trautman. Mr. Thompson,  
19 you might want to think about your secretarial staff.  
20 I'm just listing attorneys. I've listed everyone on  
21 here, but I'm just listing attorneys and support staff.

22 For Covad, Mr. Harlow, Mr. Rice, Karen Frame,  
23 Megan Doberneck, and Lynn Hankins is the paralegal.  
24 For Eschelon, also Mr. Kopta, Mr. Oxley, Mr. Ahlers,  
25 Karen Clauson. Ms. Olson and Tobe Goldberg and Kim

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1 Wagner are all legal assistants or paralegals. Ray  
2 Smith has also signed one, but he's an expert.

3 For MCI, Michel Singer Nelson, Lisa Rackner,  
4 Sarah Wallace. Also Mark Stacy and Tim Gates, but they  
5 are outside experts. Now, Mr. Butler, should you be on  
6 here as well?

7 MR. BUTLER: Yes.

8 JUDGE RENDAHL: I will check and make sure I  
9 have one for you.

10 MR. FFITCH: You have nothing for Public  
11 Counsel?

12 JUDGE RENDAHL: Not yet.

13 MR. FFITCH: All right. We will tend to that  
14 today.

15 JUDGE RENDAHL: Thank you.

16 MR. BUTLER: Do you have me for WebTEC?

17 JUDGE RENDAHL: I do have you for WebTEC.

18 And then for the Northwest Competitive Communications  
19 Coalition, I have Mr. Harlow and Mr. Rice. For Qwest,  
20 Ms. Anderl, Adam Sherr, Mr. Steese, Ms. Weber. Now,  
21 Ms. Anderl, you will have to help me out here.  
22 Mr. Fitzsimmons?

23 MS. ANDERL: He's an expert.

24 JUDGE RENDAHL: John Holzwarth?

25 MS. ANDERL: Expert.

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1 JUDGE RENDAHL: Eric Schiff?

2 MS. ANDERL: Expert.

3 JUDGE RENDAHL: Ted Smith?

4 MS. ANDERL: Attorney.

5 JUDGE RENDAHL: That's what I thought.

6 Mr. Dethlefs?

7 MS. ANDERL: Attorney.

8 JUDGE RENDAHL: And Ms. Marcus? So she's an  
9 expert.

10 MS. WEBER: Yes.

11 JUDGE RENDAHL: And then for WebTEC, I have  
12 you, Mr. Butler, Lisa Rackner, also Susan Arrelano,  
13 Jill Davenport, and Sarah Wallace. Are all of you  
14 attorneys or support staff?

15 MR. BUTLER: Yes.

16 JUDGE RENDAHL: So I do need one from  
17 Mr. Trautman, Mr. Melnikoff, and one from you,  
18 Mr. ffitch, and I will check, Mr. Butler, as to whether  
19 you signed one for MCI. I can check right now. Let's  
20 be off the record for a moment.

21 (Discussion off the record.)

22 JUDGE RENDAHL: While we were off the record,  
23 I determined that Mr. Butler had not -- he had  
24 submitted Exhibit C for WebTEC but not for MCI. He  
25 intends to do that. Ms. DeCook will submit an Exhibit

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1 C for Mr. Walczak or other support staff as needed.  
2 And although it appears the protective order, Order No.  
3 2 in this proceeding, may not have specified Public  
4 Counsel to submit an Exhibit C, he has agreed to do so  
5 to make things cleaner and more clear to all who are  
6 handling this information.

7           So I'm going to recap. I will send out a  
8 notice today extending the filing deadline until  
9 Wednesday at noon for responses to Bench requests.  
10 Mr. Trautman, Mr. Melnikoff, Mr. ffitch, and Mr. Butler  
11 and Ms. DeCook for support staff will be submitting  
12 additional Exhibit C's electronically today. I will  
13 send out a list of those who have signed the  
14 confidentiality agreements A, B, and C so you will all  
15 have it. If there are corrections you need to make,  
16 please let me know and submit the appropriate exhibits.

17           The suggestion I think is very important is  
18 if you are filing highly confidential information  
19 either to the Commission or to other parties that you  
20 designate the highly confidential information by the  
21 code name, and remember to submit the information to  
22 other parties, to attorneys who have signed Exhibit C  
23 to avoid inadvertent disclosure, and I think that takes  
24 care of it all.

25           MR. KOPTA: One additional point that just



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1 occurred to me. On the highly confidential responses  
2 to the Bench request, because the Commission had asked  
3 for the name of the person and phone number of the  
4 person providing the response, and that may be  
5 information that would allow someone to identify the  
6 company, may we leave that information off with the  
7 understanding that the Commission would contact counsel  
8 for that company and could obtain that information?

9 JUDGE RENDAHL: Good point, and yes, you may;  
10 although, that information should be provided -- for  
11 purposes of if we have someone on the stand and we need  
12 to know who submitted the information, I'm trying to  
13 think --

14 MS. DECOOK: Wouldn't that be highly  
15 confidential as well?

16 JUDGE RENDAHL: Yes, that would be highly  
17 confidential, but I think in terms of experts  
18 identifying who the company is, I think that's the  
19 appropriate issue. Let's be off the record for a  
20 moment.

21 (Discussion off the record.)

22 JUDGE RENDAHL: To recap, notice will go out  
23 today extending the deadline to Wednesday at noon for  
24 filing Bench request responses. I will circulate by  
25 e-mail the list of those who signed confidentiality

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1 agreements, and Mr. Trautman, Mr. Melnikoff,  
2 Mr. ffitch, Mr. Butler, and AT&T for support staff will  
3 file additional Exhibit C's today. Please circulate  
4 that to other parties so they have that information.

5 I will be coordinating with records center to  
6 insure that we keep the highly confidential information  
7 posted appropriately and kept and distributed  
8 accordingly. Is there anything else I need to add to  
9 that recap for purposes of putting in a notice and an  
10 order?

11 MR. KOPTA: The redaction of the name and the  
12 telephone number of the preparer of the highly  
13 confidential responses.

14 JUDGE RENDAHL: Thank you, Mr. Kopta. In  
15 terms of responses of Bench requests that include  
16 highly confidential information, parties may redact the  
17 name and the telephone number of the preparer of the  
18 Bench request to avoid disclosure of the identity of  
19 the company. Anything further?

20 Again, I thank you very much for  
21 participating this morning and helping us to work  
22 through the details of this process. If other  
23 questions come up as you are working through it, I will  
24 not be in the office tomorrow and Wednesday, but I will  
25 be listening to my messages and responding, and

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1 Ms. Walker and Ms. Kaech also have my home and cell  
2 number, so if it's a crisis, they can reach me.

3           Again, you can contact Ms. Kaech and  
4 Ms. Walker if you don't receive your code today, which  
5 you should e-mail me today for your code, and I think  
6 that's it. The court reporter needs to know if anyone  
7 wishes to have a copy of the transcript of today's  
8 proceeding.

9           Thank you very much. We will be off the  
10 record, and have a happy Thanksgiving everyone.

11           (Prehearing concluded at 10:30 a.m.)

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