

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

3)
 4 In The Matter of the Application of)Docket UT-991358
 5 U S WEST, INC., and QWEST)Volume XIX
 6 COMMUNICATIONS INTERNATIONAL, INC.,)Pages 1857-1890
 7)
 8 For an Order Disclaiming)
 9 Jurisdiction, or in the Alternative,))
 10 Approving the U S WEST, INC. - QWEST))
 11 COMMUNICATIONS INTERNATIONAL, INC.))
 12 Merger.))

9

10 A pre-hearing conference in the
 11 above-entitled matter was held at 2:35 p.m. on
 12 Wednesday, April 7, 2004, at 1300 South Evergreen
 13 Park Drive, Southwest, Olympia, Washington, before
 14 Administrative Law Judge C. ROBERT WALLIS.

15

16 The parties present were as follows:

17 QWEST CORPORATION, by Lisa Anderl,
 18 Attorney at Law, 1600 Seventh Avenue, Room 3206,
 19 Seattle, Washington 98191 (via teleconference
 20 bridge.)
 21 COMMISSION STAFF, by Christopher
 22 Swanson, Assistant Attorney General, 1400 S.
 23 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
 24 Washington, 98504-1028.
 25 PUBLIC COUNSEL, by Simon ffitch,
 Assistant Attorney General, 900 Fourth Avenue, Suite
 2000, Seattle, Washington, 98164 (via teleconference
 bridge.)
 24 Barbara L. Nelson, CCR
 25 Court Reporter

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1 COVAD COMMUNICATIONS COMPANY, by Karen
2 S. Frame, Attorney at Law, 7901 Lowry Boulevard,
3 Denver, Colorado 80230 (via teleconference bridge).
4 CITIZENS UTILITY ALLIANCE, by Don
5 Andre, 212 W. Second Avenue, Spokane, Washington
6 99201 (via teleconference bridge.)

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1 JUDGE WALLIS: Let's be on the record,
2 please. This is a pre-hearing conference in the
3 matter of Commission Docket Number UT-991358. It's
4 being held before Administrative Law Judge C. Robert
5 Wallis on April 7, year 2004, in Olympia, Washington.
6 We have one party present in the hearing room and
7 others on the bridge line. I'd like parties to state
8 their appearance, and you need not give us all of the
9 contact information unless we do not yet have that of
10 record. Because Staff is present in the hearing
11 room, let's start with Commission Staff.

12 MR. SWANSON: Thank you, Judge. Chris
13 Swanson, Assistant Attorney General, for Commission
14 Staff.

15 JUDGE WALLIS: Next let's move to the bridge
16 line. For Qwest Corporation?

17 MS. ANDERL: Thank you, Your Honor. Lisa
18 Anderl, on behalf of Qwest.

19 JUDGE WALLIS: For Covad Communications
20 Company?

21 MS. FRAME: Yes, Your Honor, Karen Frame, on
22 behalf of Covad Communications Company.

23 JUDGE WALLIS: For Citizens Utility Alliance
24 of Washington?

25 MR. ANDRE: Yes, Your Honor. Don Andre, on

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1 behalf of John O'Rourke and the Citizens Utility
2 Alliance.

3 JUDGE WALLIS: Would it be sufficient for
4 you and Mr. O'Rourke if communications were addressed
5 to him with the information he earlier provided to
6 us?

7 MR. ANDRE: Yes.

8 JUDGE WALLIS: For Public Counsel?

9 MR. FFITCH: Simon ffitch, Assistant
10 Attorney General.

11 JUDGE WALLIS: Thank you, Mr. ffitch. We
12 have distributed a brief outline and asked whether
13 there are matters in addition. There is a procedural
14 question that Covad has raised, and we will address
15 that.

16 As, I think, our initial matter -- we have
17 confirmed our agenda. Covad noted that the appendix
18 listing parties who would be defaulted contained the
19 name of Covad Communications Company. That is in
20 error, and Covad is not being defaulted. And in the
21 subsequent order on default, that error will be
22 corrected. So we made that statement for the record
23 and will confirm it in the follow-up pre-hearing
24 order.

25 The protective order, is it working for

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1 parties or are there any requests for modification of
2 the order?

3 MS. ANDERL: Your Honor, this is Qwest. We
4 don't see any need for modification.

5 JUDGE WALLIS: Any other party have
6 concerns? Very well.

7 MR. FFITCH: Public Counsel, Your Honor,
8 does not have any concerns at this time.

9 JUDGE WALLIS: Thank you, Mr. ffitich.
10 Discovery, is that working to parties' satisfaction?

11 MR. SWANSON: Chris Swanson, for Commission
12 Staff. Commission Staff is satisfied with the
13 discovery process.

14 MS. ANDERL: Your Honor, Mr. Andre and I
15 were not able to talk before the pre-hearing today.
16 The CUA has two data requests outstanding to us, and
17 we were in discussions about one of them, and I
18 simply didn't have time to call him back to kind of
19 finalize the discussions prior to the convening of
20 today's pre-hearing conference, but I will state that
21 we will be answering CUA's Request Number One and
22 objecting to CUA's Request Number Two, just so that
23 he is apprised of that. And I believe our response
24 will go out on that today or tomorrow.

25 JUDGE WALLIS: Very well, thank you. Mr.

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1 Andre.

2 MR. ANDRE: Yes, John O'Rourke's the lead on
3 this, but we will respond to that formal objection.

4 JUDGE WALLIS: Very well. Is there anything
5 else regarding discovery? All right. Witness
6 identification and presentation. The process for
7 presenting evidentiary witnesses at the hearing was a
8 matter of discussion at the prior pre-hearing
9 conference and was addressed in the order, in
10 particular, the opportunity for parties to present
11 witnesses on behalf of the public in the evidentiary
12 phase, as opposed to a general open invitation
13 hearing.

14 I would like to hear especially what Public
15 Counsel and the Alliance have to say about that, and
16 how you would be intending to pursue that. Mr.
17 ffitch.

18 MR. FFITCH: Your Honor, Simon ffitch, for
19 Public Counsel. We're interested in pursuing that,
20 number one. Number two, we have a number of -- a
21 couple of, I guess, procedural questions about how it
22 would work that we were, you know, hoping we could
23 discuss today. And those questions have to do with
24 how many witnesses we would -- how many public
25 witnesses we would be able to offer in addition to

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1 the pre-set number, I think which is three for each
2 party.

3 JUDGE WALLIS: Yes.

4 MR. FFITCH: And whether -- next question
5 would be whether they would be tendered at the time
6 of the evidentiary hearing, which was my
7 understanding, but the order is not specific on that,
8 so I want to I guess get confirmation that that was
9 the expectation of the Commission.

10 JUDGE WALLIS: Our contemplation is that,
11 yes, that would be an element of the evidentiary
12 hearing, although, subject to discussion of parties,
13 there may be some flexibility in how the process is
14 accomplished.

15 MR. FFITCH: The last question we had was
16 whether they would be subject to cross-examination.
17 That was kind of our list of questions. I think,
18 just in general, we are interested in pursuing this.
19 We are trying to identify -- you know, we're still in
20 the early stages of identifying potential folks and
21 thinking through, you know, what kind of useful
22 testimony could be presented.

23 And we have -- I think we've just started
24 talking to CUA, kind of batting ideas around about
25 the approach, but I think we would like to pursue it

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1 and I think have the option of either presenting two
2 or three public comment type witnesses on behalf of
3 Public Counsel and -- with the assumption being that
4 CUA would be able to offer an equal number, too, and
5 that would be in addition to our one substantive
6 witness on the petition.

7 JUDGE WALLIS: Do others wish to be heard on
8 that? Mr. Andre, do you want to comment first?

9 MR. ANDRE: Yes, Your Honor. We look
10 forward to working with Public Counsel on public
11 witnesses for this, and the questions he's presented
12 so far are ours, as well.

13 I would have one additional question, and
14 that is if it might be possible for public witnesses
15 to testify over the phone, since the meeting will be
16 in Olympia and travel may be an issue.

17 JUDGE WALLIS: Very well. I'm going to
18 suggest that all parties have an opportunity to
19 comment on the questions that were raised, but first,
20 does Public Counsel have a plan at this point to
21 offer more than three witnesses total?

22 MR. FFITCH: Well, at most, we would offer
23 four, which would be one -- our one substantive
24 witness, and we anticipate that would be Mary Kimmel
25 of our office, and then up to three members of the

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1 public.

2 You know, we haven't, as I say, it's early
3 stages yet. We haven't identified specific people
4 yet to testify, but there are a large number of
5 commenters, and WashPIRG is also interested in this
6 docket, as the pre-hearing conference order
7 indicates. So we think there's probably, you know,
8 plenty of people who would be willing to testify,
9 would be interested in testifying, and given the fact
10 that we're compromising here between having no
11 hearing whatever and there's been several hundred
12 public commenters, it seems like having maybe, you
13 know, for example, three for Public Counsel and three
14 for CUA seems like a reasonable approach, in our
15 view.

16 JUDGE WALLIS: Mr. Ffitch, does -- or Mr.
17 Andre, either of you, does CUA plan to present a
18 technical witness?

19 MR. ANDRE: No, Your Honor, we don't. This
20 is Don Andre, with the Alliance.

21 JUDGE WALLIS: Thank you. Any further on
22 behalf of Public Counsel or CUA?

23 MR. FFITCH: Yes, just on the
24 cross-examination question, Your Honor, I think
25 historically the witnesses who have been tendered at

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1 the public comment hearings have been sworn, and at
2 least in theory may have been subject to
3 cross-examination. As a matter of practice, they
4 have not been cross-examined by, you know, by any
5 party and, you know, for various reasons. I think
6 one of them being that you want to encourage people
7 to just come forward and testify without sort of a
8 fear factor, if you will, that might come into play.

9 But in any event, I just wanted to get some
10 sense of, you know, if we're going to be talking to
11 people about testifying, we'd want to be able to tell
12 them what to expect. So I guess I would -- my
13 preference would be -- if push came to shove, my
14 preference would be that we have an understanding
15 that the current practice of not cross-examining
16 public witnesses would be continued, but, you know,
17 that's -- I'm happy to talk about that a bit more.

18 JUDGE WALLIS: Very well. Let's move to Ms.
19 Anderl.

20 MS. ANDERL: Thank you, Your Honor. We have
21 quite a number of, I guess, questions and concerns
22 about the manner in which the public -- questions and
23 concerns about the manner in which public input is
24 going to be handled in this docket.

25 Typically, members of the public are invited

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1 to attend a public hearing, and all those who appear
2 and want to testify are permitted to do so. In this
3 case, what Public Counsel and CUA are proposing is
4 that they be permitted to hand-pick certain witnesses
5 out of all of those who would express an interest or
6 desire to comment publicly. And my concern is that,
7 although there may be members of the public who would
8 be willing to comment favorably on this matter, i.e.,
9 favorably to Qwest, those witnesses may not be
10 selected to be presented as public witnesses.

11 So we have real concerns about that process
12 and question whether that might not be able to be
13 remedied by allowing other parties to also offer up
14 public witnesses, including Qwest, to the extent that
15 we have been contacted by customers who do not
16 disfavor our proposal. So that's kind of point
17 number one.

18 Point number two is, I guess, the question
19 Mr. ffitich raised about cross-examination. And I'm
20 not clear on why he would not want witnesses to be
21 cross-examined. I guess I would not be willing at
22 this point to waive the right to cross-examine
23 witnesses unless -- I mean, if their testimony were
24 offered as substantive testimony upon which Public
25 Counsel wants the Commission to make findings and

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1 base conclusions. If, however, the testimony is,
2 quote, unquote, illustrative, to demonstrate or
3 illustrate the public sentiment about the petition,
4 but not testimony upon which Public Counsel hopes
5 findings or conclusions to be based, then I believe
6 we could possibly agree not to cross-examine without
7 prejudice to our case.

8 And then I guess the third issue or question
9 that I had about public witnesses is whether those
10 witnesses would be identified in advance and any
11 testimony or any comments that they would be
12 sponsoring would be pre-filed on the schedule as
13 established by the Commission previously.

14 In other words, when Public Counsel files
15 comments on April 14th, will some of -- some aspect
16 of those comments be attributable to a public
17 witness, or will we all literally be hearing that
18 public testimony for the first time on June 7th or
19 8th. So those are the issues we would like to
20 discuss about public input today.

21 JUDGE WALLIS: Very well. For Covad? Any
22 thoughts, Ms. Frame?

23 MS. FRAME: Your Honor, we have no
24 additional commentary.

25 JUDGE WALLIS: Thank you. For Commission

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1 Staff?

2 MR. SWANSON: Thank you, Your Honor.
3 Commission Staff is generally in agreement with
4 Public Counsel's position in terms of public
5 witnesses in this proceeding.

6 MR. FFITCH: Your Honor, this is Simon
7 ffitch, for Public Counsel. With your leave, I can
8 respond briefly to Qwest's issues.

9 JUDGE WALLIS: Please proceed.

10 MR. FFITCH: I guess, within the constraints
11 of time, we don't have any objection to Qwest or
12 another party being allowed to call a public witness.

13 With regard to -- with regard to
14 cross-examination, I think, at least the way I've
15 envisioned this so far is that these -- the public
16 witnesses that we're calling really are going to be
17 testifying in the same manner that they would be if a
18 full-scale public comment hearing were held.

19 In general, they're being -- you know, we're
20 being given opportunity to at least have a few
21 representative voices expressing general sentiments
22 and probably talking about their own particular
23 personal experience in the way that persons testify
24 at the comment hearing. And to that extent, I
25 suppose you could characterize it as illustrative,

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1 and I wouldn't anticipate that we would be building
2 our substantive case on the specific basis of an
3 individual customer's experience, so that their
4 testimony would not be pre-filed, except to the
5 extent that they may have already submitted a letter
6 or an e-mail to the Commission, and that there really
7 wouldn't be a need to cross-examine them as a fact
8 witness for Public Counsel that's specifically
9 forming a substantive basis for our position in the
10 case. So I think those -- those are the points I
11 wanted to make in response.

12 JUDGE WALLIS: Very well.

13 MR. FFITCH: I don't have an objection, per
14 se, to -- I mean, I'm not asking for a bar to
15 cross-examination, but more in a sense of what's
16 anticipated here so we can properly prepare the
17 witnesses. I do think -- again, Ms. Anderl inquires
18 what our concern is. You know, there's an
19 intimidation factor. The public is not used to these
20 kinds of proceedings, and particularly in an
21 evidentiary hearing, which is going to have even more
22 trappings of a judicial proceeding, you know, quote,
23 tend to be put off or intimidated by the feeling that
24 they're going to be subjected to intensive
25 cross-examination by a hostile attorney. And I think

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1 that goes contrary to the intent of this, which is
2 just to allow some representative members of the
3 public, hundreds of whom have commented here, to come
4 in and speak their piece and not be sort of, you
5 know, intimidated from doing that.

6 But, you know, it may be that the Bench
7 might have questions or counsel might have one or two
8 questions for them that occur on the spot. You know,
9 I'm not going to stand up and say, You can't ask any
10 questions, but I do think that if we can have an
11 understanding that we don't expect there to be
12 cross-examination of these witnesses, that would be
13 preferable.

14 JUDGE WALLIS: Very well. I'm certain that
15 none of the counsel appearing in this docket are
16 really hostile. And I would like to share my concept
17 when I proposed this in the pre-hearing order as a
18 middle ground between total denial and an unlimited
19 grant of public hearing, and that was that the
20 persons representing ratepayer interests could
21 include in their evidentiary presentation, that is,
22 in their statements in this proceeding, an indication
23 of how the decision would affect the public and what
24 public sentiment was regarding that effect, so that
25 their presentation of public witnesses would be

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1 somewhat analogous to the presentation of technical
2 witnesses, in that it would be a part of Public
3 Counsel's and the Alliance's direct case, Commission
4 Staff, if Staff wished to do that, and that the
5 evidence would be presented in the same way in this
6 proceeding, not by prefiled testimony, but by topic;
7 that, given the ability to select the witnesses to
8 appear, the parties would have the opportunity to
9 avoid duplication, would have the opportunity to
10 present information that is relevant to the
11 proceeding, and that the record and Commission's
12 decision would be supported by the use of this
13 process.

14 Now, that was my vision, and that does not
15 necessarily mean that other views are inappropriate
16 or should not here be adopted.

17 In light of those comments, I'd like to go
18 back first to Mr. ffitch and then to Ms. Anderl for
19 your thoughts.

20 MR. FFITCH: Well, Your Honor, it does occur
21 to me that we have received, the Commission has
22 received a large amount of public comment here, so
23 that one thing we could do in our direct case is
24 summarize that, as we have done in past cases. We
25 often do it in brief after the hearing. We could do

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1 that.

2 And then the people that would testify at
3 the hearing would essentially be -- there would I
4 think be an effort to try to have them be
5 representative of the general areas that were raised
6 in the comments.

7 It's difficult, sitting here right now
8 today, to be sure about how we would build that into
9 our overall direct filing, because the case is -- you
10 know, it's not about whether to establish these
11 measures in the first instance. We have a program in
12 place. We have very specific data about how it's
13 working, and we have some policy questions about
14 whether or not to continue it.

15 So you know, it's a little different than,
16 for example, the '95 rate case where we had public
17 testimony establishing the, to some extent, the
18 existence and level of service quality problems and
19 the -- and then, you know, in that case, there were
20 some remedies developed. So I'm not exactly sure how
21 we would use the public testimony in this case in the
22 direct. You know, we'd have to think about that
23 some. I mean, obviously there's an awful lot of
24 opposition to termination. But going beyond that to
25 specific issues about the service quality index

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1 itself and the performance program, I'm not sure how
2 we build that into our direct. But, anyway, that's
3 my reaction at this point.

4 JUDGE WALLIS: Ms. Anderl.

5 MS. ANDERL: Well, Your Honor, I guess we
6 perhaps pictured it the way you did, in terms of
7 expecting public input to be presented in the August
8 or April 14th filing, if that's what I -- if I
9 understood that correctly, so -- and I think that
10 would be the appropriate way to do it. I think we've
11 expressed our concerns about what Public Counsel has
12 proposed, and I really haven't heard anything that
13 would address those concerns.

14 MR. FFITCH: If I just may respond quickly,
15 have it be clear for the record. This was not a
16 Public Counsel proposal. It's an innovative
17 proposal, and we're happy to work with it. But we
18 had proposed a traditional type of public comment
19 hearing, with one of them to be held in Seattle. As
20 a practical matter, for us to identify specific
21 witnesses who would be willing to testify and somehow
22 build their testimony into the filing next week,
23 that's not possible.

24 JUDGE WALLIS: Yes, because this is, shall
25 we say, innovative, my sympathies are with Public

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1 Counsel in that regard, and I believe that we might
2 consider a later filing date for a position based on
3 public testimony. Ms. Anderl, would you be amenable
4 to that process?

5 MS. ANDERL: That would seem to address some
6 of the concerns that we raised, yes.

7 JUDGE WALLIS: In terms of
8 cross-examination, I believe that because the
9 witnesses would be in perhaps a middle ground between
10 simply indicating sentiment, or let's say could be,
11 that some questioning would be allowed, but I would
12 expect counsel to be courteous and to be especially
13 concerned and careful of the manner in which any
14 questions are put to the public witnesses. Would
15 that be acceptable?

16 MS. ANDERL: Your Honor, that makes sense
17 from our perspective.

18 JUDGE WALLIS: Mr. ffitch.

19 MR. FFITCH: That's acceptable, Your Honor.
20 I guess I would encourage counsel to, as they have in
21 the past, to not -- you know, to limit any
22 cross-examination unless it's, you know, clearly
23 necessary, but that sounds acceptable.

24 JUDGE WALLIS: Very well. I'm sorry, I
25 stepped on someone.

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1 MR. ANDRE: I'm sorry, Your Honor. This is
2 Don Andre.

3 JUDGE WALLIS: Mr. Andre.

4 MR. ANDRE: Could I make a short comment on
5 cross-examination?

6 JUDGE WALLIS: Please do, yes.

7 MR. ANDRE: The public participation in this
8 case is important to the Alliance not only to inform
9 the case, but also to engage the public and to
10 further their realizations that they may participate
11 in these kinds of proceedings and that, in fact,
12 these proceedings take place. So I appreciate Public
13 Counsel's clarification of cross-examination, and I
14 think your guidance in that area is good, and I
15 appreciate that.

16 JUDGE WALLIS: Thank you, Mr. Andre. We
17 talked about a number of witnesses. Would a total of
18 four witnesses per party be acceptable, including no
19 more than three technical witnesses?

20 MS. ANDERL: Well, Your Honor, this is Lisa
21 Anderl, for Qwest. It seems as though Public
22 Counsel's and CUA's interests are identical in this
23 case, in which case it would seem appropriate that
24 they would be limited to a total of four all
25 together. That would limit us to probably our three

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1 technical witnesses, plus one public witness, whereas
2 they would be permitted to have one technical witness
3 and three public witnesses because of the way they're
4 structuring their case. That would be something we
5 could accept. Otherwise, if each party is allowed to
6 have three public witnesses, as well as, you know, one
7 or more technical witnesses, we would request leave
8 to have the three technical witnesses we need, if
9 necessary, as well as two to three public witnesses.

10 JUDGE WALLIS: Mr. ffitch, Mr. Andre, Mr.
11 Swanson, any response?

12 MR. ANDRE: Yes, Your Honor, this is Don
13 Andre. The 13th Order stated that the Alliance is a
14 separate entity and has a different purpose in the
15 constituency, and therefore our intervention was
16 allowed and --

17 JUDGE WALLIS: Mr. Andre, I'm sorry to
18 interrupt you, but I'm having trouble hearing you.

19 MR. ANDRE: Okay. Would you like me to
20 start over?

21 JUDGE WALLIS: Did the reporter catch --
22 yes. You need not start over, but please hold the
23 microphone close and keep your voice up.

24 MR. ANDRE: Okay. Sorry about that.

25 JUDGE WALLIS: Much better. Thank you.

1 MR. ANDRE: Okay. Let me regain my train of
2 thought. We have agreed and look forward to
3 coordinating with Public Counsel so we don't
4 complicate this proceeding, but do believe we have --
5 we're different, we're a different party, we have a
6 different constituency and mission.

7 MR. FFITCH: Your Honor, for Public Counsel,
8 briefly. I guess I know that we've advocated for,
9 you know, an efficient, expeditious proceeding and
10 try to keep things down to a one-day hearing with
11 limited number of witnesses. I think we can still do
12 that. Typically, public witnesses do not take as
13 much time as experts. However, given, again, this is
14 a compromise between a public hearing where you might
15 get a large number or a relatively large number of
16 witnesses, starting to whittle away at our numbers
17 here so that we're, you know, having sort of a tiny
18 number of public witnesses it becomes, you know,
19 perhaps -- at some point you get down to a number
20 where you might as well not bother doing it.

21 So I guess I still think, you know, the
22 proposal of three per party would be preferable, and
23 perhaps, you know, we could go to -- if the Bench is
24 concerned about total numbers, we could go to two per
25 party, but I don't -- I would object to having our

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1 numbers combined with those of the CUA.

2 JUDGE WALLIS: Mr. Swanson, do you have a
3 view?

4 MR. SWANSON: Commission Staff is, I think
5 -- I think concerned about, of course, making sure
6 there's public participation here and believes that
7 CUA and Public Counsel indeed should be able to offer
8 a number of witnesses so that they can represent
9 their constituents in this proceeding and so that the
10 record is adequately fleshed out in terms of public
11 view on this issue.

12 JUDGE WALLIS: Very well. I think those
13 goals are admirable. The order indicated that we
14 expect that the public witnesses would offer
15 testimony that is relevant and that is
16 non-duplicative, and to the extent that that takes
17 two or three witnesses on behalf of each of the
18 parties, given their coordination and cooperation, we
19 think that's appropriate.

20 However, we also think it's appropriate that
21 Qwest have the opportunity to respond with public
22 sentiment and with relevant and non-duplicative
23 testimony. As parties noted, we do not expect the
24 testimony to be lengthy, as in the same manner as
25 technical testimony, and believe that two witnesses,

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1 public witnesses on behalf of Qwest would be
2 appropriate, subject to a review of the substance of
3 the parties' statements and the number of witnesses
4 that they indicate they would have appearing. Would
5 that be acceptable to Qwest?

6 MS. ANDERL: Yes, Your Honor. Thank you.

7 JUDGE WALLIS: Very well. Any further
8 questions, comments, or concerns about this topic?
9 When do the Alliance and Public Counsel believe that
10 you would be in a position to file your statement
11 regarding public sentiment and public perspectives
12 and concerns?

13 MR. FFITCH: Two weeks before the hearing,
14 perhaps.

15 JUDGE WALLIS: Would that be sufficient time
16 for other parties to prepare?

17 MS. ANDERL: Well, Your Honor, we -- Qwest's
18 reply comments are due on May 19th, and if Public
19 Counsel were to file its statements two weeks before
20 the hearing, that would mean a filing on May 24th,
21 five days after Qwest's reply comments, and it would
22 really probably press Qwest's ability to do
23 something, you know, in legitimate responsive mode,
24 so we'd ask for those comments to come in sooner than
25 that.

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1 JUDGE WALLIS: Would May 5th work for you?

2 MS. ANDERL: That would be fine.

3 JUDGE WALLIS: That would provide Mr. Andre
4 and Mr. ffitch three weeks from the time of filing
5 answering statements for preparing those statements
6 and identifying witnesses. Is that something that
7 you could accomplish?

8 MR. FFITCH: Simon ffitch, Your Honor. Yes,
9 we would make every effort to be able to meet that
10 deadline. This is a new process for us, but there
11 are a number of potential folks out there who have
12 filed comments, and we could make every effort to
13 identify them and file a statement by May 5th.

14 JUDGE WALLIS: Very well. It is a new
15 process for all of us, so we're learning as we go
16 along. Mr. Andre.

17 MR. ANDRE: Yes, your Honor, we can follow
18 that time line. I'm speaking here for John O'Rourke,
19 committing to this, but it does seem like a
20 reasonable amount of time, in addition to the people
21 that have filed comments (inaudible).

22 JUDGE WALLIS: Mr. Andre, you're fading.

23 MR. ANDRE: In addition to the folks that
24 have filed comments, we also have members and others
25 that we can contact about this. So we can work with

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1 that time line.

2 JUDGE WALLIS: Very well. And then Qwest
3 would include its public aspects in its filing on May
4 19th?

5 MS. ANDERL: Yes, Your Honor.

6 JUDGE WALLIS: Very well.

7 MR. FFITCH: I have a further question, Your
8 Honor. Simon ffitch. If -- two further questions.
9 One is if a witness that we identify has filed a
10 letter or e-mail with the Commission, may we simply
11 submit that with the person's name as the statement?
12 It's a way of asking what the Bench would like to see
13 for a statement from the witness here. I guess I'm
14 anticipating a summary of what they would expect to
15 say on the witness stand, and if they've already
16 submitted a letter or an e-mail, perhaps that would
17 be -- that would suffice. But I guess I'm asking for
18 some guidance on what the statement should say.

19 JUDGE WALLIS: I would like to put it back
20 on counsel and indicate that I believe you have the
21 opportunity to organize your case, your cases,
22 plural, in a way that you think best presents the
23 positions and interests of your clients. And if you
24 believe that presenting that information in that
25 manner is optimal for your positions and your

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1 interests and your clients, then I would have no
2 objection to your doing that. Is there any other
3 thought on that issue? I hear nothing further.

4 MR. FFITCH: The other question I had, Your
5 Honor, was the same as Mr. Andre. We at some point
6 would like a ruling on whether the witnesses can
7 testify over the phone.

8 JUDGE WALLIS: I am amenable to that, given
9 the broad service territory of Qwest and the desire
10 to have relevant and material evidence from members
11 of the public. What is Qwest's view on that?

12 MS. ANDERL: Qwest will present its
13 witnesses in person. I don't object to members of
14 the public testifying over the telephone.

15 JUDGE WALLIS: Any other parties? Let the
16 record show that there's no response. All right.

17 The names of the witnesses will be provided
18 at the time of filing, which would be May 5th for
19 Public Counsel and May 19th for the company.
20 Recognizing that these are members of the public, if
21 it does become necessary for personal reasons of the
22 witnesses to change the identity of witnesses, I
23 would expect counsel to let us know, but would expect
24 that, after hearing comments from all the parties,
25 that we would be relatively flexible in that manner.

1 I would like parties to consider setting
2 aside some time for the receipt of public testimony
3 and would encourage parties to talk with one another
4 about what an optimal time for that would be.
5 Whether parties wish to schedule that testimony in
6 conjunction with your technical evidence or whether
7 you wish to set aside some separate time for that
8 purpose, we'd like to hear your views on that, but we
9 need not I think address that at this point. When it
10 comes time to set some schedules, then we can consult
11 further. Perhaps if you file a written request, then
12 we can hear views of all parties and have things set
13 at the appropriate time. Would that work for
14 parties?

15 MS. ANDERL: Yes, Your Honor.

16 MR. FFITCH: Yes, Your Honor.

17 JUDGE WALLIS: Okay. Is there anything
18 further regarding witness identification and
19 presentation? All right.

20 Let's move on to hearing schedule. As I
21 indicated earlier, the Commissioners had not planned
22 to hear this personally. However, in looking at the
23 schedule, if the parties wished to present oral
24 argument to the Commissioners, they are available on
25 the day that is set for oral argument in the

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1 pre-hearing order. And if parties then were to waive
2 an initial order, the Commissioners would have the
3 benefit of all of the testimony, a complete record,
4 albeit in written form, and would personally hear all
5 of your arguments. And given the consistent desire,
6 I believe, for a relatively early decision in this
7 matter, parties might wish to consider a waiver of an
8 initial order in order to reach that early decision.

9 Are parties willing to respond to whether
10 they would be willing to waive an initial order
11 today, or would you like time to think about it and
12 consult with your clients?

13 MS. ANDERL: Your Honor, for Qwest, I'd like
14 to time to consult with my client, but I know that I
15 could give you a response no later than tomorrow.

16 JUDGE WALLIS: Other parties?

17 MR. SWANSON: Chris Swanson, for Commission
18 Staff. I agree. I believe Commission Staff could
19 give you a response tomorrow.

20 JUDGE WALLIS: Public Counsel?

21 MR. FFITCH: we can respond in that time
22 frame, Your Honor. I don't anticipate that we would
23 have a problem with waiving, but we'd like to discuss
24 it.

25 JUDGE WALLIS: Certainly. Mr. Andre?

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1 MR. ANDRE: Yes, we could respond by
2 tomorrow, Your Honor.

3 JUDGE WALLIS: And Ms. Frame?

4 MS. FRAME: Yes, Your Honor. Actually, as I
5 think I had mentioned in our first -- I probably
6 should bring this up at this point. In our first
7 call, we were trying to determine if we were just
8 going to be an interested party in this or really an
9 actively participating party, and where -- I'm
10 primarily, on behalf of Covad, just listening in to
11 the proceedings.

12 JUDGE WALLIS: Very well. Do you wish to
13 state for the record that you would have no
14 objections to proceeding to a Commission order and
15 you would waive an initial order?

16 MS. FRAME: That's correct.

17 JUDGE WALLIS: Very well.

18 MS. FRAME: Thank you.

19 JUDGE WALLIS: All right. If the remaining
20 parties would respond to the Commission's secretary
21 in this docket tomorrow, fax and e-mail submission
22 will be acceptable, with copies to each other, that
23 would answer that question. Do parties -- is there
24 anything further on that issue?

25 All right. Let's move on. Do parties see a

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1 need for further pre-hearing conferences?

2 MS. ANDERL: Your Honor, I know that --
3 well, if Commissioners are not going to preside at
4 the hearing, then -- and the anticipated volume of
5 cross-examination exhibits is not large, then I would
6 anticipate that we could handle cross-examination
7 exhibits during the hearing, as we had some years
8 ago, where they're simply offered, marked and
9 admitted throughout the course of the hearing, as
10 opposed to identifying them all in advance.

11 That would be the only other reason that I
12 would think we would need another pre-hearing
13 conference would be for that administrative type
14 process a day or so before the hearing.

15 MR. FFITCH: Your Honor, Public Counsel
16 would suggest that the final pre-hearing conference
17 has become so useful that, while we could make it
18 abbreviated and perhaps do it by phone, I think it
19 would probably help us conduct the hearing in one day
20 more efficiently if we had a preliminary discussion
21 of witness order and that sort of thing a day or --
22 you know, within a few days before the actual
23 hearing.

24 MS. ANDERL: And we don't object to that. I
25 know that the Commission's main hearing room is

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1 booked for the two weeks prior to June 7th with the
2 cost docket, but certainly there are other rooms
3 available or, as Mr. ffitich suggested, we could do it
4 by telephone.

5 JUDGE WALLIS: Very well. I would like to
6 suggest that we block in a pre-hearing conference for
7 the morning of -- let's make it the afternoon of June
8 3rd, at 1:30 p.m. And in conjunction with that,
9 would it be possible for parties to either file or
10 identify your cross-examination exhibits no later
11 than the close of business on June the 1st, Tuesday,
12 June 1st? If there are very few exhibits, that would
13 give us one indication. If there are a number, that
14 would give us another, and it would help us to
15 determine whether the conference on the 3rd is
16 necessary or whether we could proceed directly to
17 hearing. Will that work for parties?

18 MS. ANDERL: Yes, Your Honor. I would just
19 point out that the 13th Supplemental Order
20 established the date for the final submissions and
21 documents for use on cross-examination as June 2nd,
22 and so that is a date that has already been
23 established, but if Your Honor wants to move that
24 back to June 1st, I think that would be manageable
25 for us, as well.

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1 JUDGE WALLIS: Other parties?

2 MR. FFITCH: We concur, Your Honor. The 2nd
3 is slightly preferable, because Monday is the
4 Memorial Day holiday, but we would be -- perhaps we
5 could work with a midday deadline on the 2nd, but
6 we're amenable to the Bench's preference here.

7 JUDGE WALLIS: Let's say that the documents
8 themselves need not be provided until the 2nd, but if
9 parties could provide us with a list of the documents
10 to give us a feeling for scope and identify them on
11 the 1st, then that would help us with planning. Will
12 that work for parties?

13 MR. SWANSON: That's fine for Commission
14 Staff.

15 MR. FFITCH: And then, on the 2nd, we are
16 required to provide a set to the Bench and opposing
17 parties?

18 JUDGE WALLIS: Yes. All right. Is there
19 anything further on that topic? Very well. Is there
20 anything further to come before the Commission?

21 All right. I want to thank you all for
22 joining us today, and we look forward to continuing
23 the planning for this. It's going to be an
24 interesting process, the opportunity to try some new
25 -- at least new to the Commission approaches, and

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1 we're looking forward to the hearing in June. Thank
2 you all, and this conference is adjourned.

3 MR. FFITCH: Thank you, Your Honor.

4 MS. ANDERL: Thank you, Your Honor.

5 MS. FRAME: Thank you, Your Honor.

6 (Proceedings adjourned at 3:26 p.m.)

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