

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3   In the Matter of the                    )  
4   Petition of                                )   DOCKET NO. UT-030614  
5    )  
6   QWEST CORPORATION                        )   Volume VII  
7    )   Pages 1263 to 1448  
8   For Competitive Classification        )  
9   of Basic Business Exchange            )  
10   Telecommunications Services.         )  
11   \_\_\_\_\_)

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9                   PORTIONS DESIGNATED CONFIDENTIAL  
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12                   A hearing in the above matter was held on  
13   October 21, 2003, from 9:35 a.m to 5:05 p.m., at 1300  
14   South Evergreen Park Drive Southwest, Room 206, Olympia,  
15   Washington, before Administrative Law Judge THEODORA  
16   MACE and Chairwoman MARILYN SHOWALTER and Commissioner  
17   PATRICK J. OSHIE and Commissioner RICHARD HEMSTAD.

18                   The parties were present as follows:

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1 PROCEEDINGS

2 JUDGE MACE: Let's be on the record in Docket  
3 Number UT-030614. This is the Petition of Qwest  
4 Corporation for Competitive Classification of Basic  
5 Business Exchange Telecommunications Services. Today is  
6 October 21st, 2003, and we are convened in the  
7 Commission's, the hearing room of the Washington  
8 Utilities and Transportation Commission at the  
9 Commission's offices in Olympia. The purpose of the  
10 hearing today is to hear cross-examination of the  
11 remaining witness scheduled for cross-examination,  
12 Mr. Thomas Wilson, a member of the Commission Staff. I  
13 have with me here on the Bench presiding Chairwoman  
14 Marilyn Showalter, Commissioners Richard Hemstad and  
15 Patrick Oshie.

16 Let's be off the record.

17 (Discussion off the record.)

18 JUDGE MACE: I would like to have the  
19 parties, the counsel give their appearances now briefly.  
20 We can start with the Petitioner.

21 MS. ANDERL: Lisa Anderl representing Qwest.

22 MR. SHERR: Good morning, Adam Sherr for  
23 Qwest.

24 MR. BUTLER: Arthur A. Butler for WeBTEC.

25 MR. MELNIKOFF: Stephen Melnikoff for the

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1 Department of Defense and all other Federal Executive  
2 Agencies.

3 MS. FRIESEN: Letty Friesen for AT&T and its  
4 TCG affiliates.

5 MS. SINGER NELSON: Michel Singer Nelson on  
6 behalf of WorldCom now known as MCI.

7 MR. FFITCH: Simon ffitch for Public Counsel.

8 MS. WATSON: Lisa Watson on behalf of Staff.

9 MR. THOMPSON: Jonathon Thompson for Staff.

10 JUDGE MACE: Is there anyone at this point on  
11 the conference bridge who seeks to enter an appearance?

12 I hear no response.

13 Let me just preliminarily indicate that I  
14 received on the Bench this morning copies of  
15 confidential Exhibit TLW-13C of Thomas L. Wilson and  
16 have marked that Exhibit Number 225C.

17 I also want to remind the parties that we did  
18 not admit any of Mr. Wilson's exhibits at the earlier  
19 session. That ruling was reserved until  
20 cross-examination was complete.

21 Before we went on the record I indicated that  
22 the order of cross I have noted is ATG, MCI, AT&T,  
23 Public Counsel, Department of Defense, and WeBTEC.  
24 ATG's cross has already been completed, so it's MCI's  
25 turn.

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1 MS. SINGER NELSON: Thank you, Your Honor.

2

3 Whereupon,

4 THOMAS L. WILSON,

5 having been previously duly sworn, was called as a

6 witness herein and was examined and testified as

7 follows:

8

9 C R O S S - E X A M I N A T I O N

10 BY MS. SINGER NELSON:

11 Q. Good morning, Mr. Wilson. I guess what I  
12 would like to start out with first is to see if you have  
13 a list or if you can recount for us all of the revisions  
14 that you have made to your testimony in this proceeding.  
15 Just briefly list like in a bullet point form the  
16 changes that you have made to your testimony.

17 A. Yes, I can make an attempt at that. I  
18 revised my direct testimony once. The first time to  
19 adjust for having misunderstood the Qwest data where I  
20 had mistakenly double counted the Qwest numbers of PBX  
21 and Centrex lines, and so I adjusted my calculations in  
22 that regard, which affected generally the market share  
23 figures I have provided in my testimony, for example at  
24 page 14. And I would call them concurring edits beyond  
25 that into testimony and exhibits as was required to make

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1 that correction everywhere.

2           As I recall, I also have corrected my  
3 testimony to reflect revisions submitted by CLECs to  
4 their response data provided in response to the  
5 Commission's Order Number 6 in this case. There were  
6 recent revisions which I noted in my affidavit filed I  
7 think late last week from several carriers, and those  
8 revisions were reflected in my affidavit.

9           And today I would like to also offer some  
10 additional revisions reflecting receipt of revised data  
11 from an additional respondent to Order Number 6 that I  
12 got on Monday.

13           I think that may total my revisions, but if I  
14 have missed one, from my memory I have offered all of  
15 the revisions except for the ones due to the late data  
16 on Monday, I have made them all on the record and  
17 counsel has provided errata sheets.

18       Q.     Thank you. Let's turn to Exhibit 201T, which  
19 is your direct testimony, and I would like to direct  
20 your attention to page 5. At lines 14 through 16 on  
21 this page, you state:

22           The test for economic success is of  
23           course subject to the individual firm's  
24           ability to compete, demand, and policy  
25           conditions, among many other factors.



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1 Do you see that?

2 A. Yes.

3 Q. If Qwest is granted competitive  
4 classification, it could set prices in a way that could  
5 prevent the economic success of its competitors that  
6 provide services through UNE-P; wouldn't you agree?

7 A. I have a hard time agreeing with that,  
8 because I really don't understand what you mean by set  
9 prices. I guess could you be more specific, how would  
10 they do that?

11 Q. Well, did you say you had a hard time  
12 agreeing or disagreeing first?

13 A. I have a hard time agreeing.

14 Q. Okay. And then you just want me to explain  
15 what I mean by set prices?

16 A. Yes, it seems like I would have to describe a  
17 hypothetical situation, and I prefer that you would, if  
18 you don't mind.

19 Q. All right. In your rebuttal testimony you  
20 recommend that the Commission set the price floor at  
21 TELRIC, so let's say the hypothetical is that Qwest sets  
22 the price floor at TELRIC.

23 A. And the question is, would that allow Qwest  
24 to drive a competitor out of business?

25 Q. Yes.

1272

1           A.     That's possible. TELRIC is intended to  
2 represent what it would cost to provide those services,  
3 and I suppose that if Qwest were to price at that level,  
4 a competitor would have to match that price perhaps  
5 and/or build their own at a similar cost. We're  
6 assuming that they can't be much cheaper at building it  
7 themselves. The only thing left for the competitor then  
8 would be to search for some sort of a value added  
9 service that the customer might be willing to pay more  
10 for than the Qwest price and allow the competitor to  
11 earn some amount of return on their investment.

12          Q.     When you recommend that the Commission set  
13 the price floor at TELRIC, specifically what do you have  
14 in mind?

15          A.     What I had in mind was the statutory  
16 provisions in 80, RCW 80.36.330 prohibiting cross  
17 subsidy, and I believe that the Staff would find that  
18 the current TELRIC based prices for unbundled network  
19 elements might serve as an adequate price floor for  
20 policing Qwest price list behavior in the future if the  
21 petition were approved.

22          Q.     How would the Commission do that? Would the  
23 Commission then -- which unbundled network elements  
24 would the Commission use to set the TELRIC rate for  
25 these business services at issue in this docket?

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1           A.     I haven't really provided testimony about  
2     that, and Staff isn't putting forth a case on that  
3     subject specifically. We would assume that that would  
4     be possibly something dealt with in another matter, but  
5     for purposes of quick checking, we think that we would  
6     be able to go to the unbundled network element tariff  
7     and find the elements necessary for a given product and  
8     see if the product were priced above that amount at the  
9     sum of those elements.

10          Q.     TELRIC would not include sunk costs; isn't  
11     that right?

12          A.     I think that's correct, yes. It's meant to  
13     be an estimate of long run forward looking costs, and  
14     really sunk costs are in the past.

15          Q.     In your recommendation to the Commission to  
16     set the price floor at TELRIC, do you recommend that the  
17     Commission also include nonrecurring costs in its price  
18     floor?

19          A.     I don't have a recommendation on behalf of  
20     Staff in that regard. We would assume that that might  
21     be something that would come up if there were an issue.

22          Q.     So you don't know?

23          A.     I don't know.

24          Q.     Does TELRIC include costs for marketing and  
25     sales?

1274

1 A. I don't remember.

2 Q. Let's turn to page 10 of your direct  
3 testimony, the same exhibit. From lines 10 through 19  
4 you appear to describe what Staff did in developing its  
5 recommendation in the proceeding; is that right?

6 A. Yes, as I wrote the testimony filed on --  
7 this testimony filed on August 13th, that describes our  
8 efforts to that time.

9 Q. Did Staff review the best evidence available  
10 about how easy or difficult it is for competitors to use  
11 Qwest's network to offer competitive retail services to  
12 business customers?

13 A. Generally speaking, yes.

14 Q. What was that specifically?

15 A. Well, we for one thing considered the  
16 performance that Qwest has been showing so far in its  
17 interconnection efforts. They file reports showing  
18 their service quality in the wholesale market, and we  
19 looked at that to see if, in fact, according to those  
20 measures Qwest was providing parity service and found  
21 that it appeared that they are providing parity service,  
22 indicating to us that it's quite easy to expect a CLEC  
23 to be able to utilize those interconnection procedures  
24 and get parity service.

25 Q. Anything else?

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1           A.     Other than my experience that I applied in  
2 looking at the evidence in the case and considering what  
3 to write in my testimony, which involved working to  
4 review registration applications by hundreds of  
5 competitive companies over the years where I have  
6 studied how they enter and applied that knowledge as  
7 well to my review of the service quality performance  
8 reports. I think that's a fair summary at least.

9           Q.     Did Staff ask the competitive companies about  
10 their business plans to ascertain whether they were  
11 actively contesting all segments of the business market?

12          A.     No, we did not ask for CLEC business plans.  
13 We did review information about their operations around  
14 the state in Qwest territory as much as possible really  
15 looking at their responses to the Commission's Order  
16 Number 6.

17          Q.     What did Staff do to test whether CLECs were  
18 providing competitive services for all segments of the  
19 business market, small, medium, and large?

20          A.     Well, what I did was I, in June when I began  
21 really reviewing the company's petition and exhibits  
22 that were filed initially, actually in May I think it  
23 was and into July, I began for one thing I called many  
24 of the carriers that were listed in the Qwest petition  
25 as competitors where -- it's the exhibit where Qwest

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1 lists some 30 competitors and provides a description of  
2 the products and prices that the competitors offer. And  
3 so I called for several pages of that, of those  
4 companies listed and asked them if they would provide  
5 business, local business service, one line, in Elk. And  
6 that was because at that time Qwest data showed that  
7 there weren't any CLEC wholesale lines being purchased  
8 in the exchange of Elk. And so in that process I found  
9 out a little bit about which companies were actually  
10 offering service in a place like that.

11 I did not ask them about PBX or Centrex  
12 service. I consider the basic business exchange segment  
13 of the market to be the small to medium sized customer  
14 and the PBX and Centrex customers the larger sized  
15 customers in this relevant market. And so I think that  
16 kind of describes some of the work that I did to find  
17 out what CLECs were actually doing.

18 Q. Did anyone in Staff act as if they were a  
19 potential business customer and contact the competitors'  
20 offices, business offices, to inquire about their  
21 services?

22 A. Not to the best of my knowledge. I always  
23 identified myself as a Commission Staff member. When I  
24 contacted the CLECs, I contacted them via the  
25 information on their Web sites where I got a telephone

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1 number, or I got their telephone number off of their  
2 currently on file price lists here at the Commission.  
3 And I just said that I was a Commission Staffer and I  
4 wanted to know if they offered service in that place,  
5 local business service. Nobody else did any calling  
6 that I know about.

7 Oh, and also I did review several carriers'  
8 Web sites to find out if they offered service in Elk,  
9 again my test case for whether competition might come to  
10 a place like that. And, for example, I visited your  
11 client's Web site, and after finding a phone number for  
12 a business in Elk, Elk Burger, off of the Qwest Dex  
13 Yellow Pages on their Web site, I entered the Elk Burger  
14 phone number on the MCI Web site to find out if basic  
15 business service was available and found out it was. I  
16 checked a couple of other carriers also. Not everybody  
17 has such a nice facility where you can enter a phone  
18 number and pose as a customer and find out if service  
19 would be made available, but in that sense I guess I did  
20 pose as a customer by entering that business's phone  
21 number.

22 Q. Did you attempt to determine whether business  
23 services that were offered were either analog or digital  
24 services in particular locations?

25 A. No.

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1 Q. And where in your testimony or in your  
2 exhibits could the Commission go if the Commissioners  
3 wanted to get some information about the analysis you  
4 did on different segments of the business markets. For  
5 instance, if the Commission wants to see what your  
6 analysis was relating to the small business market,  
7 where would the Commission go?

8 A. I'm not sure I understand your question. I  
9 have tried to relate all of the conclusions I could in  
10 my testimony and exhibits.

11 Q. Is there a -- are there places in your  
12 testimony, in your written testimony and in your  
13 exhibits, that contain the analysis that you did on that  
14 issue?

15 A. Do you mean did I describe what I just  
16 described now in the testimony, no. But my testimony  
17 does attempt to provide the Commission with information  
18 about the various markets, segments that are in this  
19 relevant market in Staff's analysis. I'm not sure I  
20 understand your question, ma'am.

21 Q. I was just trying to determine if there were  
22 any references in your testimony on the analysis that  
23 you did relating to the different business markets or  
24 whether your analysis, your testimony and your exhibits,  
25 really went more to the business markets as a whole?



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1           A.     Right, yes, there are numerous places in my  
2 testimony where that happens, for example on page 14 of  
3 Exhibit 201. I would also point to Exhibits 204 and  
4 205, which are data that Exhibit 204 breaks down into  
5 the basic business, PBX, and Centrex market segments  
6 also. And furthermore, by scanning that data as  
7 carefully as possible, a person can derive some limited  
8 inferences about the various markets in Exhibit 205 from  
9 a geographic standpoint as well as by a standpoint of  
10 what kinds of product from -- wholesale products from  
11 Qwest or facilities based competition is occurring and  
12 being used.

13          Q.     Will you --

14          A.     So those are examples of where I have done  
15 that I think.

16          Q.     Will you turn to page 12 of your testimony,  
17 please, your direct.

18          A.     Yes.

19          Q.     And this is where you talk about the  
20 questionnaire that went out to the CLEC community here  
21 in Washington. The questionnaire went out on  
22 approximately June 30th, 2003; isn't that right?

23          A.     I will accept that subject to check.

24          Q.     And it went to all 200 registered CLECs in  
25 Washington?

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1           A.     The questionnaire was sent out by the request  
2 of the -- I assume the judge, who probably issued a  
3 service list that was supposed to be sent to.  If I  
4 helped with that, I don't recall.  But the service list  
5 that I got from our records center that shows to whom  
6 the questionnaire Order Number 6 was sent included in my  
7 opinion what looked like all local exchange companies  
8 registered by the Commission.  That information comes  
9 from a list on our -- on the Commission Web site on the  
10 telecom page where there's a list of local exchange  
11 carriers.  And so I think that it was that list, and it  
12 may have included some interested parties as well.  But  
13 yes, it was intended to -- my reading of that list is  
14 that it was intended to go to all local exchange  
15 companies.

16           Q.     And that was, on page 10 of your direct  
17 testimony you just reference a 200 number, that's really  
18 all my point, it went to over 200 CLECs?

19           A.     Yes, that's what I said.

20           Q.     Responses were due July 18th, 2003; do you  
21 recall that?

22           A.     Yes.

23           Q.     Did you --

24           A.     Approximately, but I think that that date  
25 moved to July 31 as it was extended.

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1 Q. And that was on their independent  
2 information, right, as opposed to verifying Qwest's  
3 data?

4 A. I don't recall which date applied to the  
5 verification requirement. I think that was -- I don't  
6 know the date the verifications were due, but I'm keying  
7 off of my vivid recollection of waiting until Friday,  
8 July 31st I think it was to get all of the CLEC data  
9 responses so that I could begin the task of aggregating  
10 and collecting that information so that I could send it  
11 out to the parties' witnesses so they could begin to  
12 analyze it too.

13 Q. Did you receive communications from CLECs  
14 asking questions about the data request?

15 A. Yes.

16 Q. Did you receive E-mails?

17 A. Yes.

18 Q. How many E-mails would you say that you  
19 received about this?

20 A. A lot, perhaps as many as 100.

21 Q. Did you read all of those E-mails?

22 A. I try to read all of the correspondence that  
23 I'm required to read, yes, ma'am.

24 Q. Did you respond to each of those E-mails?

25 A. When a response was due, yes.

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1 Q. How about phone calls, did you receive any  
2 phone calls from CLECs asking questions about the  
3 request?

4 A. Yes.

5 Q. About the questionnaire?

6 A. Yes.

7 Could I just add something to my previous  
8 answer, please, about responding?

9 Q. Sure.

10 A. There were some E-mails I received which did  
11 -- that I got questions from a couple of CLECs saying,  
12 we only provide residential service, do we have to fill  
13 out the report, and I will honestly confess that in the  
14 haste of getting the job done, I may not have responded  
15 to people saying, yes, you don't have to file this.  
16 Because a lot of times I felt they were going to assume  
17 they didn't have to unless they got an answer from me.  
18 And so it's possible out of one or two I might not have  
19 responded. When it was sort of like they needed a  
20 negative response, that I didn't feel it inhibited the  
21 work in the case by doing that.

22 Q. What other kinds of questions did you get?

23 A. One of the common ones was about whether --  
24 what special access meant. The question that asked for  
25 total number of lines including via or via special

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1 access confused several of the respondents. Typically  
2 the Staff people who were working on the responses at  
3 the companies were not always super experienced or  
4 familiar in my opinion with their company's operations.  
5 They were bookkeepers or sometimes apparently perhaps  
6 regulatory staff/vice president/engineer at a small  
7 company, and they didn't always have a lot of  
8 familiarity with filling out Commission data requests.  
9 And so things like what does special access mean, do you  
10 need residential lines, things like that came up a lot  
11 when they asked about it. They didn't ask me, should we  
12 file analog or digital lines, because there was no clue  
13 to them to ask such a question. I brought that up  
14 usually when I was in discussions with them, like I  
15 described in my affidavit and elsewhere.

16 Q. So did you receive phone calls as well asking  
17 for clarification?

18 A. I think I said yes, I'm sorry, yes.

19 Q. And how many would you say that you received?

20 A. I have no idea. It was a fair number, in  
21 between I'm guessing 30 to 100.

22 Q. Did you speak to all those people, or were  
23 many of them voice mails left for you?

24 A. It was a lot of voice mail and a lot of me  
25 responding in voice mail or in E-mail. But again I

1    tried to respond to everyone's queries as they tried to  
2    answer the Commission's request.

3           Q.     And were the types of questions that were  
4    asked to you over the phone the same types of questions  
5    that you had through E-mails?

6           A.     Generally, yes.  I don't have a phone log, I  
7    don't have a record of -- I do have most of those  
8    E-mails saved on my computer, but I think you're asking  
9    me to remember quite a few transactions with a lot of  
10   specificity, and I am trying to tell the truth.

11          Q.     And it was over a pretty short period of time  
12   too; wouldn't you agree?

13          A.     Well, from the time that the data request was  
14   sent, I started getting queries almost immediately  
15   because it was also posted on the Web site, and there's  
16   a number of regulatory people who check the Web site  
17   every day, so the queries started coming in almost  
18   immediately, and they have continued with clarifications  
19   through Monday.

20          Q.     And some, it sounds like some of the answers  
21   from the CLECs arrived after the July 31st deadline?

22          A.     Yes.

23          Q.     Did you have a cutoff date for responses that  
24   you included in your analysis set forth in your direct  
25   testimony?  And your direct testimony is dated August

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1 13th if that helps.

2 A. There were a -- yes, there were a couple of  
3 cutoff dates. First of all, as the staffer working on  
4 this, the contact person listed, I really felt that it  
5 was not within my authority at all to receive or grant  
6 requests for extension, and I considered July 31st to be  
7 the deadline, because that was what I thought was  
8 required by the Commission. I think that there was a  
9 response that came in after that, and it was permitted,  
10 and I made corrections to my calculations to reflect all  
11 of the late responses that affected the analysis and  
12 have described them all so far.

13 Q. So you used, for your testimony you used the  
14 July 31st cutoff date except for the one response that  
15 came in after that that you have stated that you have  
16 included?

17 A. If my memory serves me correctly, yes, I  
18 think so.

19 Q. And you were preparing aggregated charts with  
20 all the data that was supposed to have been received by  
21 July 31st; isn't that right?

22 A. That's right. Would you like me to describe  
23 that process or effort?

24 Q. No. I guess the aggregated charts were  
25 supposed to be sent out to the CLEC community or the

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1 parties in this proceeding by a certain deadline; wasn't  
2 that right?

3 A. I think there may have been a deadline. The  
4 data was due July 31st. At 05:00 on Friday, July 31st,  
5 I began to work on it, and I worked on it Saturday,  
6 Sunday, until August 3rd I think it was or some such  
7 day. I sent out an aggregated report to the parties  
8 then. And after I discussed that report with Public  
9 Counsel and Qwest, I found that there were some serious  
10 errors with it and indicated I was going to redo it as  
11 fast as I could, and I got that done somewhere around  
12 August 10 I think and sent it back out to everyone, and  
13 that's the information which then I was able to use and  
14 turn around and quickly write my testimony and file it  
15 by the 13th.

16 Q. So would you accept subject to check that you  
17 sent out the data initially to the other parties on  
18 August 6th?

19 A. Could you tell me what day of the week that  
20 was?

21 Q. It's a Wednesday.

22 A. I will accept that subject to check.

23 Q. And you sent that via E-mail, didn't you?

24 A. Yes.

25 Q. Do you recall that within your E-mail you



1287

1 state that there's one company that responded with a  
2 bunch of data about their DSL, ISDN, et cetera, and that  
3 you were working to mask it and share it for information  
4 purposes tomorrow even though it was all digital  
5 services?

6 A. I will accept that subject to check. It  
7 sounds like you're reading my E-mail.

8 Q. I am. Do you remember what you meant by  
9 that, that you were working to mask it and share it for  
10 information purposes even though it was all digital  
11 services?

12 A. What I meant by that was that I really tried  
13 very hard to be as transparent as possible so that --  
14 for a couple of reasons. First of all, I intended to  
15 rely on the same aggregated report, which is Exhibit  
16 204, and I wanted to be on the same footing as all of  
17 the other witnesses in the case. I didn't want to be  
18 able to have to defend using the highly confidential  
19 data with any specificity. So I really tried hard to  
20 use the same thing that they used.

21 Q. Did you include the digital services that you  
22 refer to in this E-mail in your aggregation?

23 A. No. The reason that I mentioned it was again  
24 to promote as much transparency as possible. I didn't  
25 want people to say, well, they didn't get our data or

1288

1 they didn't treat it correctly. I wanted to note that  
2 when there was digital data made available, that I knew  
3 not to use it, but that it had been received. So I was  
4 really only providing a little bit of information to  
5 everybody, which was that digital line data had been  
6 received, and it was a bunch.

7 Q. Did you share that with the other carriers or  
8 the other parties like you say in your E-mail that  
9 you're going to?

10 A. I don't recall whether I did or not. I don't  
11 think I did provide the information, because I think I  
12 might have concluded that it was dangerous in terms of  
13 possibly divulging confidential information to -- I  
14 tried to avoid speaking about a single carrier as much  
15 as possible. But I don't remember whether I sent that  
16 out or not, ma'am.

17 Q. Then you say that you had a phone call with  
18 Public Counsel and WeBTEC about the initial aggregation  
19 and that you noticed numerous errors and that you were  
20 correcting that data, and so you sent the corrected  
21 version out about August 10th, and it looks like that  
22 was a Sunday, August 10th.

23 A. Right.

24 Q. Can you describe the numerous errors that  
25 were contained in the first aggregation?

1           A.     Sure, I can take a kind of a -- provide you a  
2     general description of the types of errors that that  
3     discussion illuminated for me. For example, the data  
4     was very difficult to work with because not all carriers  
5     provided data in response exactly the same way. By that  
6     I mean they didn't all have the ability apparently to  
7     provide the data by wire center. Some carriers provided  
8     data by exchange rather than by wire center, or they may  
9     have even provided it in other forms such as by lumping  
10    it into municipalities and also by total state. And so  
11    in an effort to represent all of the data as accurately  
12    as possible, there to this day remain some apparent  
13    mathematical inconsistencies in for example pages 1 and  
14    2 of Exhibit 204.

15                 The difficulties arise when I try to sum up  
16    for a given company their report of line counts in a  
17    wire center and I try to sum up their line counts where  
18    they provided us with resale lines, UNE-P lines, UNE  
19    loop lines, and owned lines. That should add up to the  
20    total number of lines for that wire center. Well, it  
21    does for one carrier, but when I took the many responses  
22    I had where I didn't have as much specificity  
23    everywhere, sometimes it was difficult for me even to  
24    make sure that all of the sums were correct. I wound up  
25    concluding that I think that on Exhibit 204 the exchange

1290

1 level totals shown are accurate, but it's difficult  
2 sometimes to add from right to left on that spreadsheet,  
3 and sometimes it's difficult to add wire centers into  
4 exchanges and get the same numbers as appear.

5           The exchange -- all of the numbers are what  
6 they are, but in sorting through all of that process,  
7 which hopefully I haven't completely confused everyone,  
8 of all my work there that Sunday, but all of it put  
9 together, I had made quite a few errors in rolling  
10 things up, and Public Counsel's witness had looked at it  
11 and said, you know, this doesn't add up, that doesn't  
12 add up. And I said, you know, you're right, I'm going  
13 to redo this. I also found where I had inadvertently  
14 included some lines that I shouldn't have, and I took  
15 those out. I also found where I was able to, again with  
16 some of their help, figure out, hey, some of these lines  
17 are more appropriately counted in the PBX or the Centrex  
18 analysis, and I can break them out, so I did. And that  
19 just changed the look of the aggregated report quite a  
20 lot, but it did make it more accurate.

21           Q.     You cleaned up the basic business information  
22 as well as the PBX and Centrex information; isn't that  
23 right?

24           A.     Yes.

25           Q.     Because there were errors in all three of

1291

1 those categories?

2 A. Yes. Oftentimes it was just absolutely  
3 necessary because I had to move the lines from one  
4 category to another. So really yes, the entire amount  
5 of data was redone by August 10th.

6 Q. And then on August 11th you sent out  
7 additional comments to the parties in the proceeding to  
8 explain some of the other changes that you made; isn't  
9 that right?

10 A. That's possible, and on the 13th then I tried  
11 to incorporate all of the notes regarding the  
12 calculations and the aggregation and the data. I tried  
13 to recapitulate those in Exhibit now 203.

14 Q. And you describe this whole process at one  
15 point as data frenzy; do you recall that?

16 A. I don't recall that phrase. I was probably  
17 in a data frenzy, yeah. There was a very short amount  
18 of time, and that allowed me only to go through quite a  
19 lot of data, thousands and thousands of data points, and  
20 aggregate them and report them out accurately. I wasn't  
21 able to do any additional analysis at all besides just  
22 summing it up and protecting confidentiality.

23 Q. And you performed an HHI analysis with the  
24 original data received prior to August 13th; isn't that  
25 right?

1292

1           A.     Yes, that's correct, we -- the HHI analysis  
2 is performed based upon the Qwest wholesale data.

3           Q.     Have you performed an HHI analysis since  
4 then?

5           A.     No.

6           Q.     And then Order Number 8, which has had a lot  
7 of attention in the last couple weeks, after that order  
8 came out, and the date it came out was July 22nd, did  
9 you send all 200 CLECs a revised list of questions  
10 clarifying that you only wanted information on analog  
11 services?

12          A.     Could you please -- I don't know what Order  
13 Number 8 is.

14          Q.     Oh, okay, I've got a copy of it. Order  
15 Number 8 was one of the orders that the Commission  
16 issued in response to petitions for clarification by  
17 some of the parties on the protective agreement, and  
18 then there was a section that addressed the questions  
19 that went out to the CLECs, but I will give you a copy  
20 of it.

21                   MS. SINGER NELSON: May I approach, Your  
22 Honor?

23                   JUDGE MACE: Yes, you may.

24                   MS. SINGER NELSON: I do have extra copies if  
25 anyone else wants a copy of the order. I'm not going to

1293

1 spend a whole lot of time on it.

2 JUDGE MACE: Go ahead.

3 A. Would you mind asking me the question about  
4 Order 8 again, please, now.

5 BY MS. SINGER NELSON:

6 Q. Sure, and I would direct your attention to  
7 page 7 and 8 on the Order.

8 A. Okay.

9 Q. Okay, so after Order Number 8 came out, and I  
10 think the front of the page shows that it was July 22nd,  
11 my question is, did you send all 200 CLECs a revised  
12 list of questions clarifying that you only wanted  
13 information on analog services?

14 A. No.

15 Q. Did you call all 200 CLECs?

16 A. No.

17 Q. But you have stated in your affidavit that  
18 you filed either the end of last week, I think it was  
19 the end of last week, that you did call several CLECs?

20 A. I would stand by what I said in my affidavit,  
21 yes, ma'am.

22 Q. How did you define analog and digital in  
23 those conversations?

24 A. I didn't define it.

25 Q. And you kept no notes of those conversations?

1294

1 A. No.

2 Q. Did any carriers express a concern that they  
3 couldn't break it down by analog and digital?

4 A. Yes.

5 Q. So did you decide then to delete those lines  
6 from your analysis or to keep them in?

7 A. I kept them in.

8 Q. Do you have a copy of your affidavit?

9 A. No.

10 Q. I don't have that many questions relating to  
11 it, but I do have a couple. On page 1 of your  
12 affidavit, you state:

13 I did not contact any respondents  
14 represented as parties in this case to  
15 confirm the analog or digital nature of  
16 the reported lines. I assumed that  
17 being parties, such CLEC respondents  
18 would act according to the advice of  
19 their counsel and report correctly.

20 Do you recall that?

21 A. Yes.

22 Q. After you received the corrected data from  
23 the parties, did you do anything to insure that the  
24 non-party CLEC data is accurate?

25 A. As I recall, the corrected data you're



1295

1 talking about -- from the parties here?

2 Q. Yes.

3 A. That just came in last week?

4 Q. Yes.

5 A. No, I haven't contacted anyone amongst the

6 CLEC respondents since before August 13th.

7 Q. Let's go to page 15 of your testimony.

8 A. I'm there.

9 Q. Specifically I'm looking at lines 3 through

10 6. You state that:

11 While Qwest has limited the petition to  
12 analog services, competitors offer a  
13 plethora of analog or a plethora of  
14 analog and digital services in direct  
15 competition.

16 Do you see that?

17 A. Yes.

18 Q. Qwest provides digital services in direct  
19 competition with the CLECs; isn't that right?

20 A. Yes, although I haven't studied digital lines  
21 or digital competition very much. It's not part of this  
22 case.

23 Q. Is it reasonable to assume that some of  
24 Qwest's business customers switched, have switched from  
25 Qwest analog services to Qwest digital services?

1296

1 A. That's possible, yes.

2 Q. Have you asked Qwest that question in this  
3 docket?

4 A. No.

5 Q. Do you think it's relevant to consider?

6 A. It's my understanding that this docket is  
7 limited to analog.

8 Q. Your testimony continues to discuss  
9 competitive alternatives like wireless and voice over  
10 IP; isn't that right?

11 A. Yes.

12 Q. Qwest wireless services compete with Qwest  
13 analog services, business services; wouldn't you agree?

14 A. I would agree that those are in part or whole  
15 possibly good substitutes that customers are picking.

16 Q. Did you ask Qwest the question of whether any  
17 of their business analog customers switched from their  
18 business analog services to their wireless services?

19 A. No. I think that that topic was explored  
20 somewhat in the cross-examination of some of the earlier  
21 witnesses however.

22 Q. But you didn't ask that in your analysis?

23 A. No.

24 Q. Do you think Qwest voice over IP services  
25 compete with Qwest business analog services?

1297

1           A.     I don't know if they offer that.  I would  
2     tend to consider calling a Qwest service competing with  
3     another Qwest service as a little backwards and  
4     confusing, they're one company.  But no.

5           Q.     Did you ask, in your analysis of this case or  
6     your investigation of Qwest's petition, did you ask  
7     Qwest whether it provides voice over IP services here in  
8     Washington to its business customers?

9           A.     No.

10          Q.     Do you think that's relevant to consider?

11          A.     Staff believes that the relevant thing to  
12     consider for purposes of this case is the wireline data  
13     that's been provided.  We think that VoIP and wireless  
14     are often competitive substitutes for the services  
15     involved in this case, but we're not saying that that's  
16     the primary basis for our conclusions.  We think that  
17     those are new things that are on the horizon that are  
18     being made available today.  We don't know how much of  
19     it is being used.  But it's certainly worth knowing and  
20     us saying that those are very important future  
21     considerations perhaps, and even maybe today.

22          Q.     And do you think it's more important that  
23     providers other than Qwest provide voice over IP than  
24     Qwest providing voice over IP?

25          A.     I don't know what you mean by more important.

1298

1 Q. To this analysis, to the question the  
2 Commission has in front of it, you testified that you  
3 did not ask Qwest --

4 A. Oh.

5 Q. -- about their voice over IP services, yet  
6 you go on in your testimony about how the Commission  
7 should consider the fact that other people, other  
8 carriers are providing voice over IP services in the  
9 state of Washington.

10 A. I think I understand now, and no, I'm not  
11 trying to imply that the Commission shouldn't consider  
12 alternatives provided by any, any provider.

13 Q. Let's turn to your Exhibit 203C.

14 A. I'm there.

15 Q. I'm looking specifically at revised 1 of 2.

16 A. Yes.

17 Q. Your note at line 5 through 7 on that sheet  
18 talks about how the multiwire center exchanges don't  
19 appear to sum up to exchange level correctly; do you see  
20 that?

21 A. Yes, I think I was talking about that a  
22 moment ago in describing my cleanup efforts.

23 Q. And this, you do not show the numbers on your  
24 spreadsheet; isn't that right? You don't show the  
25 numbers that you used to calculate the totals column?

1299

1           A.     For example in Exhibit 204, column E on page  
2 1 of 4.

3           Q.     Yes.

4           A.     I do not provide the underlying figures. I  
5 aggregated the data to complete that cell from all the  
6 respondents.

7           Q.     Do you show a formula on your spreadsheet  
8 that someone who is not able to see the individual CLEC  
9 data could follow to verify that you did those  
10 calculations correctly?

11          A.     They could not do that because I have  
12 aggregated many carriers' data, which is highly  
13 confidential, and I don't believe that there would be in  
14 many instances that ability for a single carrier to  
15 verify. I did in Exhibit 203C provide information about  
16 which carriers' data I used. For example, at line 62 of  
17 Exhibit 203C, I describe -- I list the carriers' data  
18 for which was included, and there are additional notes  
19 continuing down through Exhibit 203C, so that a  
20 respondent who knew their code name could do that.

21          Q.     Do the numbers in the total lines column,  
22 well, let's see, if I were going to try to see if your  
23 math was correct on the spreadsheet, would I be able to  
24 add columns F through I and come up with the totals in  
25 column E?

1300

1           A.     No, and that's because not all carriers broke  
2 out their line counts by resale, UNE-P, UNE loop, or  
3 owned facilities. Some of them just gave us total lines  
4 including via special access, and so that data is  
5 included in column E, but you can't add up F through I  
6 to get that number.

7                   JUDGE MACE: We need to take a recess at this  
8 point. We will resume at 11:00.

9                   (Recess taken.)

10                  JUDGE MACE: Ms. Singer-Nelson.

11                  MS. SINGER NELSON: Thank you.

12 BY MS. SINGER NELSON:

13           Q.     Mr. Wilson, I'm still on Exhibit 203C.

14           A.     Could you say again, please.

15           Q.     203C, revised 1 of 2, the exhibit that we  
16 were looking at right before the break. I just want to  
17 direct your attention to lines 69 through 71 where you  
18 state:

19                   Some of the carriers have verified the  
20 Qwest wholesale data, and so the newly  
21 verified data is shown here. Therefore,  
22 it is recommended that the analyst  
23 remove the wholesale data from the Qwest  
24 data set to avoid a double count for the  
25 following carriers because the lines are

1301

1 shown in the aggregation report.

2 Do you see that?

3 A. Yes.

4 Q. If the CLEC number that was reported was less  
5 than what Qwest had included for that CLEC, did you go  
6 with the CLEC numbers or Qwest numbers?

7 A. I didn't check to see if the CLEC number was  
8 less or more. I used the CLEC number if they had  
9 verified it, primarily when they had indicated that, for  
10 example as described in my affidavit, a carrier said  
11 they couldn't verify the Qwest data, they said they were  
12 actually rolling on the floor laughing when they saw it  
13 at first, because they thought that their major  
14 competitor didn't have a clue what they were doing. As  
15 it turned out after I asked them, well, are you looking  
16 at analog or digital, like I asked everybody when I  
17 talked to them about this, they said, oh, well, we'll go  
18 through it, and then they were able to come pretty close  
19 when they figured both analog and digital. And when I  
20 used the verified data, it was because it was analog and  
21 had excluded the digital. Oftentimes therefore the CLEC  
22 number was less.

23 Q. Okay. So when you came -- when it came down  
24 to the data that you used in your analysis here, and it  
25 sounds like what you tried to use was the CLEC verified

1302

1 analog data; is that right?

2 A. Yes, because that represented a more -- a  
3 revised figure, if you will, that was more accurate to  
4 -- and pertinent to this case.

5 Q. And you said that they were pretty close, so  
6 the Qwest number and the CLEC number sometimes were  
7 different?

8 A. Yes, sometimes they were different, sometimes  
9 there was a large difference, for example if it was  
10 explained by excluding digital lines.

11 Q. Right, I want to focus just however though on  
12 the analog lines.

13 A. Okay.

14 Q. So I want to get to the numbers that you  
15 actually used in your analysis and are reflected in your  
16 spreadsheets.

17 A. Okay.

18 Q. Are you there?

19 A. Yes. And you asked about my pretty close  
20 statement?

21 Q. Yes.

22 A. That's when you added analog and digital  
23 together from the CLEC standpoint, it would come pretty  
24 close to what Qwest had reported in their wholesale data  
25 when you add them together. And that was because, as I



1303

1 have said several times I hope, oftentimes Qwest doesn't  
2 know what the CLEC does with the line depending on what  
3 kind of a line it is. Like if it's a UNE loop, Qwest  
4 doesn't necessarily know if there has been more  
5 technology put on it to render it into an analog or  
6 digital line. And so the Qwest wholesale data might  
7 sometimes reflect a digital line or two if they didn't  
8 know about it, and if that mistake were apparent to me,  
9 I used the CLEC verified analog only.

10 Q. Did you, I guess I'm kind of confused by your  
11 answer, but what I wanted to find out was whether you --  
12 whether sometimes in your analysis you went with the  
13 Qwest data because it was higher than what the CLECs  
14 have reported. Did you just -- I guess if you can  
15 answer that question that would be good.

16 A. I can do that, and I thought I did earlier.  
17 I didn't look to see if it was higher or lower. I was  
18 basing my conclusions to use the verified data on  
19 whether it was verified and accurate or not. If I were  
20 looking to see if it were higher or lower, I think  
21 you're implying that I was looking for data that suited  
22 my case, and I didn't do that.

23 Q. Oh, I wasn't implying anything, I just wanted  
24 to get an understanding of what you did when you saw  
25 that the Qwest data was different than what the CLECs

1304

1 had reported, that's all I wanted to understand.

2                   So it sounds like you did not assume that the  
3 Qwest data was correct, but instead you assumed that the  
4 CLEC verified data was correct if there were  
5 differences; is that right?

6           A.     If the verification seemed to be accurate,  
7 yes.

8           Q.     I don't know what you mean.

9           A.     As I said earlier, some of the respondents in  
10 my opinion appeared to be inexperienced lay people to  
11 shorten it up, and they verified stuff and oftentimes  
12 said, we don't know for sure if it's accurate, but we  
13 verified it. When I had any reason to think that there  
14 was doubt about something, I would explore it and use it  
15 or not use it accordingly. But I didn't say that I  
16 thought that the remaining Qwest wholesale data was  
17 accurate or inaccurate. I will say now that I have  
18 assumed it's accurate unless I got some reason to think  
19 otherwise.

20           Q.     And it sounds like if there was an  
21 inexperienced person responding to your questions from  
22 the CLEC, you assumed that what they were saying was not  
23 accurate if it varied from Qwest?

24           A.     No, I guess I wouldn't really say that.

25           Q.     Then what would you say? That's what I

1305

1 thought you just said, and so I must --

2 A. Could you ask me a question.

3 Q. Is it true that if the CLEC verified data and  
4 the Qwest data differed, when you spoke with a CLEC  
5 representative that you believed to be inexperienced  
6 that you assumed that the CLEC data was inaccurate and  
7 you went with the Qwest data instead as being more  
8 accurate?

9 A. I would do the best I could to double check  
10 if I thought there was any inexperience, and if there  
11 was something that led me to think that inexperience had  
12 caused an error and that I knew better because of  
13 evidence, I would use it. But I can't really think of  
14 any exact instance where that occurred. You're asking  
15 me what my philosophy was in reviewing the data and how  
16 I -- the criteria I used in accepting or not accepting  
17 or clarifying, and I'm trying to explain that  
18 philosophy. And if you ask me what I did, I tried to  
19 answer the best of my memory.

20 Q. Let's turn to Exhibit 205C.

21 A. I'm there.

22 Q. Is it true that you hard coded the numbers  
23 and did not show the formulas in this power point  
24 spreadsheet?

25 A. I don't know. It may be in some cells and

1306

1 not in others. That is because I was very worried about  
2 the errors carrying through. I used dozens of  
3 spreadsheets from dozens of carriers. I added them into  
4 a single spreadsheet eventually. There are  
5 circumstances when you're working with Excel and you  
6 import data from one place to another that if you don't  
7 lock the data, the formulas go forward with the data.  
8 And so sometimes I had to lock the cells in my  
9 aggregated report, Exhibit 205C, so that I wouldn't have  
10 that problem occur and cause an error.

11 Q. All right. In this exhibit, if I were to  
12 attempt to verify your calculations to make sure that  
13 they were correct, would I be able to do that based on  
14 what you provided to the parties in this case?

15 A. That's been my intent, yes, ma'am.

16 Q. Let's look at column I, lines via owned loop.

17 A. All right.

18 Q. When I did the addition of that column, it  
19 did not equal the 38,088 that's reflected there. Is  
20 that surprising to you?

21 A. Yes.

22 Q. In fact, the numbers added up to 37,107,  
23 which was the number that was in your original Exhibit  
24 TLW-C5.

25 A. That could be because one CLEC or several

1307

1 CLECs may have filed state CLEC total data only.

2 Q. Could you please explain?

3 A. If one CLEC filed state CLEC total only and  
4 did not break it out by exchange or wire center, I  
5 couldn't have possibly put it in the column of figures  
6 above the total number, so I just put it in the total.

7 Q. All right. So it is possible that the  
8 numbers that are in column I don't add up to the 38,088  
9 because there were -- there was at least one carrier who  
10 provided information on a state total basis?

11 A. Yes, that's possible.

12 Q. Wouldn't it make a difference if the state  
13 total lines, in your analysis, wouldn't it make a  
14 difference if the state CLEC total lines that you were  
15 just referring to were in Seattle versus Elk?

16 A. Yes, in this instance it's going to be about  
17 1,000 lines, and I know they're not in Elk.

18 Q. And you don't know where they are otherwise,  
19 do you?

20 A. No.

21 Q. Then if you would, again columns F, G, H, and  
22 I are different types of lines. It looks like those  
23 columns added up go to the total in column E; is that  
24 correct, total lines?

25 A. Yes, although the same type of a phenomenon

1308

1 we identified with 204 in trying to add from right to  
2 left may apply here.

3 Q. So it's not true necessarily that columns F  
4 through I added together will total the total lines  
5 reflected in column E; isn't that right?

6 A. That's correct, because some carriers didn't  
7 provide that level of detail. But they did give the  
8 total, so the totals are correct moving down column E.

9 Q. Now when you go to the bottom, lines 43  
10 through 45 of this chart; do you see that?

11 A. Yes.

12 Q. How did you calculate the percentages  
13 reflected in row 44?

14 A. I'm not sure. I would have to go back to my  
15 work to find out.

16 Q. Did you mean the percentages to reflect,  
17 let's say column F is lines via resale, did you mean the  
18 percentages to reflect the number of lines via resale of  
19 the total lines?

20 A. Well, if they added up to 100%, I would  
21 assume so, but I don't think they do.

22 Q. So do you sitting here --

23 A. What I was trying to do at that time was  
24 offer an explanation of what percent of lines are owned,  
25 what percent are resale, what percent of CLEC lines are

1309

1 UNE-P, and I think I provided better estimates of those  
2 percentages elsewhere in my testimony.

3 Q. So are you saying that the percentages  
4 reflected in Exhibit 205C are incorrect?

5 A. They might not reflect any meaningful  
6 information.

7 Q. Why do you say that?

8 A. Well, I can't tell you how I calculated them  
9 right now, and I don't recall whether I used those  
10 numbers or not. They might just be garbage cells that  
11 are laying there, I don't know. Sometimes when I'm  
12 working on a worksheet I accidentally leave stuff laying  
13 there that doesn't mean anything. But frankly I would  
14 have to go to my Excel document and review this to see  
15 exactly what those percentages are. If you want to  
16 know, however, what I think the percent of UNE, UNE-P,  
17 UNE loop, resale, or facilities based lines are in the  
18 state, I think I've got that elsewhere in my testimony  
19 more accurately.

20 Q. We don't need to go through that right now, I  
21 want to focus on TLW-C5 if we could. I'm almost done  
22 with my cross-examination.

23 Looking on line 47 --

24 CHAIRWOMAN SHOWALTER: What exhibit is this?

25 MS. SINGER NELSON: It's the same exhibit

1310

1 that we have been on, 205C.

2 BY MS. SINGER NELSON:

3 Q. You say:

4 Note, this chart includes CLEC data plus

5 Qwest data minus any double counts.

6 How did you eliminate the double counts?

7 A. As described in 203C.

8 Q. 205C?

9 A. As described --

10 Q. Oh.

11 A. -- in my notes in 203C.

12 Q. And that's referring to your note from lines

13 69 through 71?

14 A. Right, we were just looking at that, right.

15 Q. Thank you. I just have one more area of

16 cross-examination, and then I'm done.

17 Would you please refer to the Commission's  
18 decision in Docket Number UT-000883 that I have given to  
19 you, and I have many copies of it if the Commissioners  
20 would like to follow along and the parties.

21 Mr. Wilson, are you ready?

22 A. Yes.

23 Q. Okay. Now you have argued that the analog  
24 business services market is a separate market from the  
25 digital business services market; isn't that right?



1311

1           A.     No, I have provided evidence on that market,  
2 but I haven't really -- I don't make that distinction  
3 necessarily. This is a distinction Qwest has made in  
4 their petition.

5           Q.     So your analysis of this case is based on the  
6 distinction that Qwest has made in its petition; isn't  
7 that right?

8           A.     And the orders the Commission has issued,  
9 yes.

10          Q.     In this proceeding?

11          A.     Yes.

12          Q.     In Case Number UT-000883, Qwest applied for  
13 competitive classification of businesses services in 31  
14 specified wire centers in Washington; isn't that right?

15          A.     That's my understanding, yes.

16          Q.     And the petition included basic business  
17 local exchange service, Centrex service, PBX trunks, and  
18 basic business features?

19          A.     I accept that's what the order says.

20          Q.     It's in Paragraph 3 in the order.

21                     Isn't it true that Staff recommended that  
22 competitive classification be granted to Qwest in 23 of  
23 the 31 wire centers?

24          A.     I don't know, I didn't work on that case. If  
25 you could point me to the order or something.

1312

1 Q. It's in Paragraph 23 of the order.

2 A. All right, I will accept that.

3 Q. And in that petition, Qwest had defined the  
4 relevant market as business services; is that your  
5 understanding?

6 A. Yes.

7 Q. Did you review this order in your preparation  
8 for preparing testimony in this case and analyzing  
9 Qwest's petition?

10 A. Yes. I don't have it memorized.

11 Q. I understand.

12 In that docket, Staff said that each of the  
13 three types of services involved could be a substitute  
14 for the other two, at least in some circumstances; isn't  
15 that right, do you recall?

16 A. I will accept that, yes.

17 Q. And the Staff recommended that the Commission  
18 define the relevant product market as being all business  
19 services; do you recall that?

20 MR. THOMPSON: I'm going to state an  
21 objection, maybe if Ms. Singer Nelson could refer the  
22 witness to a particular portion of the order.

23 MS. SINGER NELSON: Sure.

24 JUDGE MACE: Do you have the order before  
25 you, Mr. Wilson?

1313

1 THE WITNESS: Yes, ma'am.

2 BY MS. SINGER NELSON:

3 Q. It would be Paragraph 34 of the order.

4 A. I've got that before me. What was your  
5 question, ma'am?

6 Q. That Staff recommended the Commission define  
7 the relevant product market as being all business  
8 services?

9 A. Yes, I see that, but imposed the following  
10 conditions, uh-huh.

11 Q. (Reading.)

12 Alternatively the Staff recommended that  
13 the relevant product market be defined  
14 as only those services offered to large  
15 business customers served by DS1 or  
16 larger circuits.

17 Do you recall that? It's at Paragraph 35.

18 A. That's consistent with my recollection, yes.

19 Q. And the Commission adopted the alternative  
20 Staff proposal in its order?

21 A. I think so, yes.

22 Q. Nowhere in the Commission's order was any  
23 distinction made between analog business services and  
24 digital business services; isn't that right?

25 A. I think that's correct. That's why the

1314

1 company's price lists filed in compliance with the order  
2 include both analog and digital products.

3 Q. That was going to be my next point. If you  
4 would turn to the tariff that I handed out, could you  
5 identify that for the record, please, the sections of  
6 the tariff pages that I handed out.

7 A. You handed me from WNU 40, first revised  
8 sheet 1 canceling original sheet 1 and first revised  
9 sheet 2 canceling original sheet 2.

10 Q. Are those Qwest compliance tariffs, or is  
11 that Qwest's compliance tariff following the  
12 Commission's order in Docket UT-000883?

13 A. I will accept that subject to check, but I  
14 thought there was more pages. Maybe I'm wrong.

15 Q. I would direct your attention to -- first of  
16 all, does Staff review compliance tariffs to ensure that  
17 they are consistent with Commission orders?

18 A. I think so.

19 Q. I would direct your attention to Paragraph 6  
20 starting service descriptions.

21 A. Yes, I'm there.

22 Q. And within that paragraph, it's true that the  
23 service descriptions, terms, conditions, rates, and  
24 charges for business customers served over DS1 or larger  
25 circuit are addressed in this tariff, and they include

1315

1 the services that are listed after that sentence in that  
2 paragraph?

3 A. It says that it includes those services over  
4 a DS1, and it lists several services, but actually I had  
5 the impression that also a customer could buy basic  
6 business exchange service.

7 MR. SHERR: Your Honor, I'm sorry to  
8 interrupt, this is Adam Sherr for Qwest, I don't think  
9 Qwest got a copy of this document. Was that handed out  
10 today?

11 MS. SINGER NELSON: Yes.

12 MR. SHERR: We didn't receive a copy.

13 MS. SINGER NELSON: Oh, here's another copy.

14 A. So what I'm saying is that it appears the way  
15 this is written that the services provided over a DS1 or  
16 larger circuit including the following services, but it  
17 doesn't appear to be an exhaustive list.

18 BY MS. SINGER NELSON:

19 Q. Okay. And there is no distinction in this  
20 tariff for Qwest business analog services?

21 A. You mean like there isn't anything that says,  
22 okay, these services are business analog services only  
23 or something like that?

24 Q. Right.

25 A. Or they call it an analog service?

1316

1 Q. Well, when Qwest filed the compliance tariff  
2 consistent with the Commission's order, it included both  
3 changes to its analog business services and its digital  
4 business services?

5 A. Yes, ma'am, that's correct.

6 Q. Okay, thank you.

7 MS. SINGER NELSON: Thank you, Mr. Wilson, I  
8 have nothing further.

9 JUDGE MACE: Ms. Friesen.

10 MS. FRIESEN: Thank you, Your Honor.

11

12 C R O S S - E X A M I N A T I O N

13 BY MS. FRIESEN:

14 Q. Good morning, Mr. Wilson.

15 A. Good morning, ma'am.

16 Q. In your testimony when you use the term  
17 relevant market, you would agree with me that the  
18 relevant market contains a geographic and product  
19 component, wouldn't you?

20 A. Yes.

21 Q. Now in your direct testimony, which I believe  
22 has been marked as Exhibit 201T, and I direct your  
23 attention to page 14, line 13.

24 A. I'm there.

25 Q. You state, you basically identify or attempt

1317

1 to define geographic market, and I believe you say the  
2 relevant market is Qwest's statewide service territory  
3 defined at the exchange level, correct?

4 A. Yes, that's what I said. Could I explain  
5 what that means, defined at the exchange level, because  
6 I don't want to be confusing?

7 Q. Let me explain my confusion to that, and yes,  
8 then I would like an explanation. I don't know what the  
9 geographic market is based on that definition. Is it  
10 the exchange, or is it the entire territory?

11 A. What I was trying perhaps inartfully to say  
12 was that Qwest has on file with the Commission exchange  
13 area maps describing the boundaries of their local  
14 exchange areas in Washington, and that the relevant  
15 market for purposes of this case geographically is the  
16 areas subsumed by all of those boundaries of exchange  
17 maps, so it would be the Qwest service territory.

18 Q. So the Qwest service territory in its  
19 entirety?

20 A. Right.

21 Q. You're not asking the Commission then to  
22 examine the factors contained in the statute on  
23 effective competition within each of the exchanges,  
24 rather you're asking the Commission to look at the  
25 factors across the entire territory, correct?

1318

1           A.     Well, pretty close.  What we're saying is  
2     that we think that the analysis at the exchange level  
3     supports a statewide finding.

4           Q.     But you're not --

5           A.     So we looked at it at the wire center level,  
6     the exchange level, and at the statewide service  
7     territory level and recommend that the Commission  
8     consider for purposes of making a decision that the  
9     Commission grant the petition statewide throughout the  
10    service territory and not exchange by exchange.

11          Q.     So if I understand your response, you're  
12    suggesting that you took the five or so factors that are  
13    contained in the statute, you applied them to each of  
14    the individual exchanges, and you're representing to the  
15    Commission now that somewhere in your testimony that  
16    application is contained, and they therefore should rely  
17    on that application to conclude that the entire  
18    territory meets the definition, correct?

19          A.     I think that's fine to say, yes.

20          Q.     Okay.  And so in your testimony, your direct  
21    testimony at page 25 where you're discussing the five  
22    zones, you don't need to -- you don't mean to imply that  
23    those zones somehow are a part of the definition you use  
24    for the geographic relevant market, correct?

25          A.     No, I didn't mean that at all.  What I meant



1319

1 there was that, as you can see from my exhibit  
2 containing the HHI analyses, particularly Exhibit 208  
3 where -- and 209, which are pretty long, I was trying to  
4 provide some summary data there and chose as a easy way  
5 to provide summary of HHI by geographic region or some  
6 subpart of all of Qwest's territory. And the analyst  
7 who did this worked for me at my direction, had done  
8 this breakout by zone for us before she left, and so I  
9 reported that as a good concise way of summarizing some  
10 of the HHI information contained in its entirety in 208  
11 and 209.

12 Q. Okay, thank you. Let's turn now to the  
13 product market, and if you flip back in your direct  
14 testimony to page 14 starting at line 16, the sentence  
15 that begins with the word it.

16 A. Okay.

17 CHAIRWOMAN SHOWALTER: Hold on one minute. I  
18 think we have a revised page, and the it is on our old  
19 struck through page, so we just have to hold on and find  
20 the corresponding line. I wonder if we struck through  
21 too much. I guess we would -- let's call this old page  
22 14, original page 14.

23 Q. On original page 14, it says, it is the  
24 so-called market for, and it goes on to page 15. Now I  
25 believe here you're attempting to define the product

1320

1 market, and what I'm particularly interested in is that  
2 part that begins with the it, it is the so-called, and  
3 it says:

4           It is the so-called market for last mile  
5           services to small, medium, and large  
6           sized business customers providing basic  
7           connectivity to the public network for  
8           switched voice grade communications.

9           Do you see that?

10          A.     Yes.

11          Q.     First, how are you defining the basic  
12 business services when you say that? What are you using  
13 as a definition?

14          A.     The description of basic business service in  
15 Qwest's petition and tariff.

16          Q.     So the basic business service description  
17 would be referred to as Exhibit 2, which is attached to  
18 Mr. Reynolds' direct testimony; is that correct?

19          A.     Yes.

20          Q.     Yes, okay. When you looked at each of the  
21 exchanges, did you take the basic business services  
22 described by Mr. Reynolds and examine their availability  
23 within each of the exchanges as offered by CLECs?

24          A.     I took the information collected from the  
25 data request.

1321

1 Q. What data request?

2 A. Order Number 6, sorry.

3 Q. When you --

4 A. Excuse me, and also the descriptions of  
5 services that were filed or available.

6 Q. Okay. So if the CLEC services that were  
7 described in response to Order Number 6 don't quite  
8 match these descriptions here --

9 CHAIRWOMAN SHOWALTER: Where is here?

10 Q. On Exhibit 2, which is Mr. Reynolds' list of  
11 services, I'm not sure how you could do a comparison  
12 between what Qwest is asking for relief based upon what  
13 you got in response to Order Number 6, so can you  
14 explain to me how you made those comparisons?

15 A. Well, when Order 6 was released, it also  
16 referenced a spreadsheet that was kept on the Web site.  
17 And if you look at the spreadsheet, the first tab  
18 described the tariff description of the Qwest services,  
19 and so the CLECs had that available when they responded.  
20 And as far as how did we compare, we really looked at  
21 functional equivalents or comparability in terms of  
22 application by the end user.

23 Q. And when you considered functional  
24 equivalents, let's take an example of basic flat  
25 service, what are functional equivalents in that

1322

1 example?

2 A. Basic business service offered by a CLEC, and  
3 they call it a variety of product names.

4 Q. Is that one voice line; what does that mean?

5 A. Yes, that's one voice line, for example one  
6 simple business line or voice line.

7 Q. Let's try one more example. If you look at  
8 the foreign exchange service, what there did you compare  
9 as a functional --

10 CHAIRWOMAN SHOWALTER: Could you speak up a  
11 little bit.

12 Q. Examining the or referencing Exhibit 2,  
13 foreign exchange service as described by Qwest is one of  
14 the basic services, what would the CLEC functional  
15 equivalent be of that?

16 A. A foreign exchange service, whatever they  
17 call it. But perhaps I can help by explaining that I  
18 didn't go down that list and check to see that a CLEC in  
19 every wire center offered each one of those by that name  
20 or anything like that. I looked for functional  
21 equivalent. Basically if a CLEC was offering lines and  
22 they reported them pursuant to the description they were  
23 given, then it's my opinion that customers and providers  
24 are pretty quick at coming up with the functional  
25 application. So it just looked like they were

1323

1 competitive items to me. I didn't go through them one  
2 by one.

3 Q. Okay. I would like to direct your attention  
4 to page 27, line 15, your direct testimony.

5 A. Say the line number again, please, ma'am,

6 Q. 15.

7 A. Thank you, I'm there.

8 Q. And here you're talking about sort of the  
9 current theoretical construct, and are you asking the  
10 Commission to apply the current theory to this  
11 proceeding?

12 A. Yes, I think that as much as possible the  
13 Commission within the boundaries of the statutory  
14 guidelines should consider the -- a broad and flexible  
15 analysis of the market.

16 Q. Okay. I would like to understand the current  
17 theory as you describe it. You say:

18 It indicates that non-traditional  
19 crossindustry technologically neutral  
20 analysis based on functionality of the  
21 relevant market may be appropriate.

22 Are you seeing that --

23 A. Yes.

24 Q. -- phrase there?

25 A. That was my attempt at synthesizing a very

1324

1 elegant paper by Longstaff.

2 Q. Okay, let's just see if we can put some  
3 definition behind some of these phrases. And I  
4 understand it's based on a bigger work. When you say  
5 non-traditional, what do you mean?

6 A. By that what I'm thinking of, for example, is  
7 this Commission has for the past 100 years regulated  
8 wireline services. By statute the Commission doesn't  
9 regulate radio common carriers unless they have a  
10 geographic monopoly. The Commission at this time I  
11 don't think has yet issued any assertion that it  
12 regulates VoIP. I understand that that could be an  
13 issue in the future. But by non-traditional I'm  
14 referring to essentially non-wireline types of  
15 activities where customers and users in the market and  
16 providers in the market and policies in the market are  
17 permitting people to substitute other things besides  
18 just looking at the wireline competition.

19 Q. Okay.

20 A. And so I'm encouraging the Commission to  
21 consider all of those functional substitutes that impact  
22 Qwest's ability to maintain prices.

23 Q. Okay. And when you say cross industry, I  
24 assume that you're saying look at things other than the  
25 telephone companies; is that correct?

1325

1           A.     Well, I'm referring still to communications  
2     in the local exchange market and the business market,  
3     and so I'm not referring to other odd industries.  But  
4     yeah, I'm thinking of, for example the FCC has an  
5     inquiry into services, telephone services provided over  
6     power lines.  There's a lot of competition in our state  
7     at the wholesale level by public utility districts, and  
8     so what I'm talking about is things that are in other  
9     segments of industry that the Commission doesn't have  
10    direct oversight.

11          Q.     Okay, and we don't really have any evidence  
12    in this record about power utilities and what they're  
13    providing; isn't that correct?

14          A.     That's right, I'm sorry for introducing a new  
15    phenomenon to the discussion.

16          Q.     Okay.  How about technology neutral analysis,  
17    how does the Commission go about a technology neutral  
18    analysis?

19          A.     Well, for example, it could consider both  
20    basic business service provided over a two wire copper  
21    loop, or it could consider basic business service  
22    provided over a Wi Fi connection using VoIP.

23          Q.     Should it consider basic business service  
24    offered over digital loop?

25                   CHAIRWOMAN SHOWALTER:  Ms. Friesen, can you

1326

1 project your voice into the microphone and not drop at  
2 the end.

3 Q. Let me repeat that question for you just in  
4 case you didn't hear.

5 Are you suggesting the Commission should  
6 consider the same service you just discussed over a  
7 digital loop?

8 A. That would be difficult for the Commission to  
9 do here, because there isn't adequate analysis and data  
10 in the record on digital. So no, I wouldn't. But I  
11 would say that the Commission can not put blinders on  
12 and assume that when a CLEC sells a service to a former,  
13 you know, they win a customer from Qwest, and maybe the  
14 CLEC is selling them an upgrade to digital, I think it's  
15 a mistake to assume that Qwest's ability to maintain  
16 prices in the relevant market, in this case the analog  
17 basic business market is not affected, it is affected.

18 Q. Okay. Now the last part of this current  
19 theory as you have described it talks about the  
20 functionality of the relevant market. Given that we  
21 have defined the relevant market to have a geographic  
22 component and a product component, what do you mean by  
23 functionality of the relevant market?

24 A. I'm a simple country boy, so what I'm  
25 thinking of there is can people place a phone call to



1327

1 each other, and so it's really that simple. From the  
2 end user's perspective, the application they want to do  
3 is the functionality, and they want to talk to each  
4 other. They want to call each other up and talk to  
5 each other.

6 Q. Okay.

7 A. From one person to any person.

8 Q. Okay. And so just by way of example then,  
9 the question would be, if VoIP is the substitute or the  
10 alternative you're asking the Commission to look at, if  
11 it's functioning in the relevant market, the customer  
12 may make a phone call from one VoIP customer to another  
13 customer; is that correct? Am I understanding --

14 A. If it's functioning right, yeah.

15 Q. Okay. Do you happen to know off the top of  
16 your head if Qwest provides any of the Internet backbone  
17 or essential facilities to the VoIP carriers that you  
18 have considered as alternatives?

19 A. I'm sorry, I don't.

20 Q. Now I would like to direct your attention to  
21 page 5 of your direct testimony, roughly line 3.

22 A. I'm there.

23 Q. I believe the sentence at line 3 begins:

24 Firms considering entry into

25 telecommunications markets need to be

1328

1           able to rely on business propositions  
2           being legal, technically feasible, and  
3           eventually economically successful.

4           Do you see that?

5         A.     Yes, I do.

6         Q.     What do you mean by eventually?

7         A.     Well, I learned this three part market entry  
8     test from Bob Atkinson, who was Vice President of TCG,  
9     one of AT&T's subsidiaries, and he was a veteran of the  
10    local competition's development in New York state.  And  
11    he came out here and talked to us when TCG entered the  
12    market, and he described to us the three tests that he  
13    had to pass with his board before he got money to spend  
14    in Seattle.  It had to be legal, it had to be  
15    technically possible, and it had to be economically a  
16    going concern eventually.  And by that I mean that when  
17    CLECs entered -- when CLECs start up, they frequently in  
18    my experience project losses for a period of time before  
19    they begin to break even.  And so they hang on, and they  
20    fight as long as they can, and maybe they succeed and  
21    stay afloat.  And so that's what I mean by eventually.  
22    It is a difficult competitive marketplace.

23         Q.     It is, I would agree.  And do you think that  
24    Mr. Atkinson meant years?

25         A.     Well, when he said that to me, it was about

1329

1 1993 or '94, and at that time the view was that in about  
2 three years a CLEC would begin to break even. We didn't  
3 see that happen, and I don't know what the break even  
4 period is now for a new entrant. But I would assume it  
5 may very well be years, because there's a lot of startup  
6 sunk costs depending on the operation. Sometimes they  
7 can enter with a minimal amount of investment also, and  
8 that often means that their margins aren't as big, so it  
9 can mean years.

10 Q. And so based on what you heard from  
11 Mr. Atkinson, I guess I'm assuming that you interpret  
12 this to mean that firms would examine whether the profit  
13 margins, the customer price sensitivity would be what  
14 they need it to be in order to serve in this case in the  
15 analog market?

16 A. Right.

17 Q. Is that correct?

18 A. Right, there would be a lot of analysis on  
19 the business plan.

20 Q. And they probably consider whether the  
21 customer base they could acquire initially would warrant  
22 the necessary investment of equipment and personnel  
23 necessary to serve that customer base, correct?

24 A. They usually make assumptions like that, yes.

25 Q. Yeah. What about the stability and

1330

1 reliability of the supply inputs they need? For  
2 example, UNEs, if they're going to rely on some form of  
3 UNE competition, they would look at that and see if that  
4 was a -- if there was a ready supply, wouldn't they?

5 A. Yes, absolutely. CLECs have often reported  
6 that they look at each state, and they try to figure out  
7 where it would be a good idea to operate and invest.  
8 And one of the things they do talk about is regulatory  
9 climate, and I'm proud to say that's why Washington  
10 state has very vibrant local exchange competition today.

11 Q. And they're going to look at the cost of  
12 those UNEs as well, the cost of the inputs; is that  
13 correct?

14 A. I would kind of like to call it the price of  
15 the input if I could.

16 Q. Okay.

17 A. It's pretty much the same thing.

18 Q. Okay.

19 A. But yes.

20 Q. All right. I would like to direct your  
21 attention now to page 23, line 5, of your direct  
22 testimony.

23 A. I'm there.

24 Q. The sentence begins, entry is very easy for  
25 carriers. Do you see that?

1331

1 A. Yes.

2 Q. Then you go on to describe some requirements.

3 JUDGE MACE: I'm sorry, which line?

4 MS. FRIESEN: I believe it's line 5, and in  
5 particular I would like to start with the sentence that  
6 says, entry is very easy for carriers.

7 MR. BUTLER: It's my line 11.

8 MS. FRIESEN: Okay, line 11, 12.

9 JUDGE MACE: I have 11 and 12 too.

10 All right, thank you, apparently it's a  
11 revised sheet.

12 MS. FRIESEN: Oh, I'm on the original, I'm  
13 sorry.

14 THE WITNESS: It was revised.

15 COMMISSIONER OSHIE: What page are we on?

16 JUDGE MACE: Well, the revised sheet shows  
17 it's page 23, 11 and 12. Entry is very easy for  
18 carriers appears on line 11.

19 Okay, go ahead.

20 BY MS. FRIESEN:

21 Q. Then you talk about what the requirements can  
22 be as little as, for example having an interconnection  
23 agreement and I guess ramping up to do resale. Now when  
24 you're discussing this with the Commission, your  
25 expectation is not that they depend on this as, these

1332

1 requirements that you have identified, as the only  
2 requirements necessary to the CLEC to enter the market;  
3 isn't that correct?

4 A. By these requirements, you're referring to  
5 the legal, economic, and technical test?

6 Q. (Reading.)  
7 Having satisfied the regulatory  
8 registration requirements.

9 A. Oh, oh.

10 Q. (Reading.)  
11 And the adoption of an ICA or resale  
12 agreement.

13 Do you see those?

14 A. I'm sorry, I'm understanding the reference to  
15 requirements, but could you ask the question again,  
16 please?

17 Q. Sure. You're suggesting to the Commission  
18 that entry into the market by a CLEC is easy, and it can  
19 mean as little as two requirements, registration and an  
20 interconnection agreement, correct?

21 A. Yes.

22 Q. It's true, is it not, that that really isn't  
23 all there is to it, doesn't the CLEC have to have  
24 personnel in place to handle customers?

25 A. I think that a very streamlined operation is

1333

1 quite possible to be competitive.

2 Q. Does a CLEC have to have personnel to serve  
3 customers?

4 A. At least one.

5 Q. Okay. Does a CLEC have to have any kind of  
6 infrastructure to handle sending orders to Qwest?

7 A. A PC, a phone.

8 Q. Yeah.

9 A. Maybe a fax machine, common basic business  
10 equipment, but acquiring that hasn't apparently stopped  
11 lots of businesses from getting into operation.

12 Q. Okay, so there's some infrastructure there  
13 you would agree that the CLEC has to have in place in  
14 order to serve customers and to enter the market,  
15 correct?

16 A. Maybe even less than starting a maid service  
17 or a landscaping, I don't know.

18 Q. Have you ever seen a local service request;  
19 do you know what that is?

20 A. I have an idea of what it is, and I have seen  
21 some, yes.

22 Q. Those are the OBF forms essentially that  
23 CLECs have to fill out to order service, isn't it, from  
24 Qwest?

25 JUDGE MACE: What do you mean by OBF?

1334

1 THE WITNESS: Ordering and billing form.

2 JUDGE MACE: Thank you.

3 A. Yes.

4 BY MS. FRIESEN:

5 Q. Those are standard forms that the industry  
6 uses, correct?

7 A. There's lots of standard forms, yes, and it  
8 is a complicated business, but I have met lay people who  
9 have handled it.

10 Q. And they have to learn how to handle it,  
11 don't they?

12 A. Absolutely.

13 Q. So the CLEC might need some of those folks in  
14 place to send orders, correct?

15 A. Yes. A lot of times it's people that used to  
16 work at the incumbent, so their learning curve is very  
17 short.

18 Q. And when it's not, their learning curve could  
19 be much steeper; would you agree?

20 A. It's possible, depends on the talent of the  
21 person.

22 Q. Have you seen the instruction booklet from  
23 OBF to fill out an LSR?

24 A. No.

25 Q. Okay. Would it surprise you to note that it



1335

1 might be 300 some pages?

2 A. It wouldn't surprise me, no.

3 Q. On page 17, line 10, of your direct  
4 testimony.

5 A. I'm there.

6 Q. You concede that:  
7 It's worth noting that the  
8 telecommunications industry is very  
9 dynamic and unpredictable, complicating  
10 policy choices.

11 Do you see that sentence?

12 A. Yes.

13 Q. In addition to complicating policy choices,  
14 might it complicate entry choices for the CLEC?

15 A. Yes.

16 Q. Might it make entry strategies for the CLEC  
17 more expensive in terms of trying to acquire capital?

18 A. The fact that things are complicated?

19 Q. The fact that things are volatile and  
20 unpredictable.

21 A. Oh, it could add expense, yes.

22 Q. Might it make it impossible to acquire  
23 capital in some cases?

24 A. That's possible. Giraffes can fly.

25 Q. Giraffes can fly, really?

1336

1           A.     That's an old saying from Staff when we're  
2 asked if it's possible.

3           Q.     Qwest today has the ability to lower its  
4 rates for any of the basic business services that it's  
5 listed in Mr. Reynolds' Exhibit Number 2; isn't that  
6 correct?

7           A.     Yes.

8           Q.     And do you recall Qwest ever coming in and  
9 asking to lower any of those services in recent memory,  
10 let's say the last couple of years?

11          A.     Not off the top of my head.

12          Q.     Do you think you would ever oppose Qwest in a  
13 request to lower its rates for basic business retail  
14 services?

15          A.     Well, there's a number of criteria that would  
16 be applied. First of all, are we looking at a  
17 competitively classified service or a tariffed service?

18          Q.     A tariffed service.

19          A.     If it were fully regulated, it's possible  
20 that we might say that it was discriminatory or  
21 predatory or below cost.

22          Q.     Okay.

23          A.     And so it's possible that we might have  
24 concerns about a price reduction.

25          Q.     Have you examined any of Qwest's price

1337

1 reductions outside the scope of the analog services they  
2 seek here today to determine whether they're predatory,  
3 priced below cost?

4 A. No.

5 Q. In your rebuttal testimony, you're kind of  
6 suggesting, and let me give you a reference, a page  
7 reference, page 110.

8 JUDGE MACE: Exhibit 210.

9 MS. FRIESEN: Thank you.

10 A. I'm there.

11 BY MS. FRIESEN:

12 Q. I would suggest that you're kind of saying  
13 that the CLEC community is all whipped up over nothing.  
14 In other words, all Qwest will be obtaining here is the  
15 ability to reduce its rates in a flexible manner, and we  
16 should really worry about nothing; isn't that correct?

17 A. Well, first of all, I would attempt to  
18 describe the CLECs' concerns as concerns that are  
19 important and should be weighed carefully. I don't  
20 think that they're whipped up over nothing, but I do  
21 think that, as I have explained, the primary thing that  
22 Qwest gets is pricing flexibility from approval of this  
23 petition and that many of the concerns expressed by  
24 other witnesses appear to me to be without merit.  
25 Because the Commission already regulates the price

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1 floor, it's set that price floor with the TELRIC prices,  
2 the Commission regulates wholesale service quality, and  
3 much of the remainder of the Commission's regulatory  
4 oversight remains in place in statute and rule. There  
5 is not a lot of waiver of current policy requirements  
6 other than pricing flexibility.

7 JUDGE MACE: Ms. Friesen, I note that it's  
8 noon, it's our usual time to break for lunch, I wondered  
9 where you are in your cross-examination, how much you  
10 have left.

11 MS. FRIESEN: I would suggest we break for  
12 lunch.

13 JUDGE MACE: We'll resume at 1:30.

14 (Luncheon recess taken at 12:00 p.m.)

15

16 A F T E R N O O N S E S S I O N

17 (1:30 p.m.)

18 JUDGE MACE: Let's be back on the record.

19 Ms. Friesen.

20 MS. FRIESEN: Thank you, Your Honor.

21 C R O S S - E X A M I N A T I O N

22 BY MS. FRIESEN:

23 Q. Mr. Wilson, when last we spoke we were  
24 looking at your rebuttal testimony, and so I would like  
25 you to take a look at rebuttal testimony page 2, and

1339

1 just the reference that I'm referring to is on line 3  
2 wherein you say, although illegal discrimination and  
3 undue preferences statutes would no longer apply. That  
4 would be in the context of the Commission granting  
5 Qwest's petition, correct?

6 A. Yes, that's right, and that would be the  
7 statutes in Title 80 RCW. It's my understanding that  
8 normal antitrust provisions in the law would still  
9 apply.

10 Q. Okay, thank you. Now if the Commission does  
11 allow Qwest the pricing flexibility it seeks, it could  
12 increase its rates for Business Custom Choice, which is  
13 one of the businesses on the list of Mr. Reynolds, in  
14 exchanges where it faces little competition it could  
15 increase those rates and subsequently decrease the rates  
16 for the same service in an exchange where it faced  
17 greater competition; isn't that correct?

18 A. Yes.

19 Q. And, in fact, it could drop the retail rate  
20 for Business Custom Choice down to under your theory the  
21 TELRIC rate level and increase it to recover what it  
22 lost in one exchange in another exchange, couldn't it?

23 A. That could be an effort that it would  
24 undertake, yes.

25 Q. Now you did mention that other laws wouldn't

1340

1 be waived necessarily, antitrust laws for example, and I  
2 believe you suggest to the Commission that effective  
3 competition coupled with the consumer protection laws  
4 should be sufficient to protect at least consumers in  
5 this state if Qwest's petition is granted, correct?

6 A. Yes.

7 Q. Now can you reference any particular section  
8 of the consumer protection laws; do you have anything in  
9 mind?

10 A. Yes. It's my understanding 80.36.170 and 180  
11 would be waived, prohibitions on discrimination  
12 basically. And there are provisions in the law as I  
13 understand it that otherwise antitrust law protect  
14 against discrimination, and so that would be an example.

15 Q. And so if the consumer protection laws in  
16 this state prohibit pricing below cost, for example,  
17 they would apply then in this case to Qwest; is that  
18 correct?

19 A. If there were such laws, yes. Actually, I  
20 was thinking more like the Sherman Act, the Clayton Act,  
21 and other federal antitrust laws.

22 Q. What about the state consumer protection  
23 laws?

24 A. I'm not very familiar with those.

25 Q. Are you aware that those are based on uniform

1341

1 laws that are adopted in different states throughout the  
2 country?

3 A. I'm not aware of that.

4 Q. Given that you're not particularly aware of  
5 the state consumer protection laws, do you anticipate  
6 that they might apply if they exist?

7 A. Yes, if those would take the place of, for  
8 example, RCW 80.36.170 or 180.

9 Q. Okay. And if the state consumer protection  
10 laws require an injury before they can be enforced, that  
11 would mean that the CLEC community would suffer the harm  
12 before anyone could act under those laws; would that be  
13 correct?

14 MR. THOMPSON: I'm going to object to this as  
15 just calling for too much speculation. I think  
16 Mr. Wilson has already indicated he's not familiar with  
17 the state laws at issue.

18 JUDGE MACE: Ms. Friesen.

19 MS. FRIESEN: I have asked for a hypothetical  
20 based on what the state laws are. I'm not asking that  
21 he know the subject matter of the state laws per se but  
22 rather assume a hypothetical. If it were to be true,  
23 does he agree with the conclusion.

24 CHAIRWOMAN SHOWALTER: Your hypothetical was  
25 law, not facts. You're hypothesizing a law.

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1 MS. FRIESEN: I understand.

2 JUDGE MACE: All right, sustained.

3 BY MS. FRIESEN:

4 Q. Mr. Wilson, in Mr. Reynolds' direct  
5 testimony, and I believe you're familiar with that  
6 testimony, are you not?

7 A. Fairly so. It's been a little bit of time,  
8 but I have tried to keep everything in my head, yes,  
9 ma'am.

10 Q. You don't have it memorized; is that fair?

11 A. Right.

12 Q. Mr. Reynolds suggests in his testimony that  
13 in discussions with Staff Qwest has committed that it  
14 would not abandon services in exchange areas it  
15 currently serves for the services listed in the  
16 petition. And I believe if you look at Mr. Reynolds'  
17 testimony, and I'm sorry, I said it was direct, it's  
18 actually rebuttal at page 8, line 5.

19 CHAIRWOMAN SHOWALTER: Do we have an exhibit  
20 number?

21 JUDGE MACE: Mr. Reynolds?

22 MS. FRIESEN: Mr. Reynolds.

23 JUDGE MACE: His direct is 1-T, his rebuttal  
24 is 7.

25 MS. FRIESEN: That would be 7 then at page 8,



1343

1 line 5.

2 JUDGE MACE: Did you say it was direct, I'm  
3 sorry?

4 MS. FRIESEN: Rebuttal, I'm sorry.

5 JUDGE MACE: And the page?

6 MS. FRIESEN: Page 8, line 5.

7 JUDGE MACE: Thank you.

8 BY MS. FRIESEN:

9 Q. Do you see that, Mr. Wilson?

10 A. Yes, I am at that point in the record, yes.

11 Q. Okay. And I believe in your own testimony  
12 you have conceded that Qwest has agreed to this  
13 condition called not abandoned or no abandonment,  
14 whatever they have agreed to. Do you agree? You're  
15 aware of the condition they have accepted?

16 A. Yes, Staff is aware of that, and Staff would  
17 not object to that proposal.

18 Q. In addition to not objecting, are you  
19 proposing that it become a condition to the grant of  
20 this petition?

21 A. Staff isn't recommending any conditions, but  
22 we're recommending that if the Commission would like to  
23 accept the condition that Qwest is willing to place on  
24 itself, we wouldn't object.

25 Q. Okay. And when Qwest suggested it won't

1344

1 abandon service, I need to understand what your  
2 understanding of that is. It doesn't mean that they  
3 won't sell their facilities, does it?

4 A. It's my understanding that what Qwest is  
5 willing to commit to is that it would not affect their  
6 ability to grandfather or sell, that's right.

7 Q. Okay. So if they sell their facilities, then  
8 they would no longer, Qwest would no longer be providing  
9 service in the particular exchange, would it?

10 A. That's right, unless they were operating as a  
11 CLEC perhaps.

12 Q. Okay. I believe that they're willing to  
13 accept this condition until November 7, 2009; is that  
14 correct?

15 A. Yes, that's my understanding also.

16 Q. And why that date; what's magic about that  
17 date?

18 A. I don't know.

19 Q. Is that a date that they offered to you?

20 A. Yes.

21 Q. Okay. And did you have any other discussions  
22 with Qwest in relation to potential conditions that they  
23 might accept in exchange for a grant of this petition?

24 A. Yes.

25 Q. And what were the other conditions that they

1345

1 said they would be willing to consider or accept?

2 A. I don't recall that they had ever said they  
3 would accept the conditions that were discussed.

4 Q. What conditions did you discuss with them?

5 MR. THOMPSON: I'm going to object to this as  
6 calling for privileged settlement discussions.

7 MS. FRIESEN: Well, first off, privilege  
8 doesn't apply in the case because privilege is usually  
9 something that happens between an attorney and a client.  
10 Now I am not attempting to extract settlement  
11 negotiations. I'm merely attempting to understand what  
12 conditions, if any, Staff considered, talked to Qwest  
13 about, and were rejected. So in the -- to the extent  
14 that some of them may have come up in settlement  
15 discussions, I'm unaware of that. I don't want to know  
16 about the settlement discussions. I merely want to know  
17 about the potential for conditions that were offered or  
18 discussed and either rejected or accepted. That's all I  
19 want to know.

20 CHAIRWOMAN SHOWALTER: Why is that relevant?

21 MS. FRIESEN: Because it's AT&T's position in  
22 this proceeding that to the extent the Commission is  
23 willing to grant Qwest's request that some conditions  
24 might be appropriate, and I'm trying to figure out  
25 whether Staff has considered certain conditions as

1346

1 appropriate or inappropriate and for what reason.

2 CHAIRWOMAN SHOWALTER: Can't you just ask  
3 about conditions or features that you're interested in  
4 and ask directly the substance without having the  
5 witness talk about what he talked about with other  
6 parties?

7 MS. FRIESEN: I would like to know if Staff  
8 itself considered any conditions apart from what AT&T  
9 might have suggested. I certainly can talk to him about  
10 what AT&T has suggested, but I would like to know if  
11 they considered anything else.

12 MR. SHERR: Your Honor, may I be heard?

13 JUDGE MACE: Mr. Sherr.

14 MR. SHERR: Thank you. Adam Sherr for Qwest.  
15 I was about to -- I was reaching for the microphone as  
16 well. I don't -- to the extent that AT&T wants to ask  
17 about other conditions that Staff considered, that seems  
18 fine. But to the extent there's some nexus between what  
19 Qwest might have proposed or discussions with Qwest,  
20 that's where I believe it crosses the line. Because any  
21 discussion of conditions would by definition be a  
22 discussion regarding settlement.

23 JUDGE MACE: Well --

24 MS. FRIESEN: That's fine, I will withdraw  
25 the question, I will ask him proactively about us.

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1 JUDGE MACE: Very well.

2 MS. FRIESEN: Thank you for that suggestion.

3 BY MS. FRIESEN:

4 Q. Mr. Wilson, did you consider price floors  
5 perhaps as a condition of granting the petition?

6 A. Yes.

7 Q. And did you suggest in keeping with what's in  
8 your testimony that TELRIC would be the appropriate  
9 price floor that Qwest might agree to?

10 A. Yes, that's a well known measure that's  
11 readily available for use.

12 Q. And I believe you, when discussing the TELRIC  
13 price floor with Ms. Singer Nelson, you suggested that  
14 you hadn't gotten to the stage where you, for example,  
15 would take a basic business service, figure out what  
16 elements you have to buy, and compute a floor, correct?

17 A. Well, I tried carefully to preserve Staff's  
18 ability to argue that case when it's placed square in  
19 front of it in a docket to come forward later. I don't  
20 think that that's what we have done here. But I think  
21 it is fair to say that you can do that pretty quickly.  
22 There's a couple of examples in the record. For  
23 example, the break even analysis that Mr. Reynolds did I  
24 thought was pretty good. That was an example of  
25 including a bunch of elements to see if the price was

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1 above the cost was a piece of that analysis.

2 Q. How would you handle that kind of analysis in  
3 a bundled offer? And by bundled offer I mean an offer  
4 that includes more than just the basic business service  
5 but also would include long distance and other services  
6 of that type?

7 A. I don't know. I think Staff would probably  
8 develop a strategy for that analysis when it was put in  
9 front of it.

10 Q. If Qwest's retail offering for basic  
11 business, for example, included a promotion that allowed  
12 it to waive installation fees or something of that  
13 nature, and that took the rate down below the TELRIC  
14 price floor, would Qwest's pricing flexibility allow it  
15 to do that in this proceeding if granted?

16 A. Waiving nonrecurring charges --

17 Q. Right.

18 A. -- would take it below the price floor?

19 Q. Right.

20 A. It sounds like that would be an issue that  
21 would have to be addressed and of great concern perhaps.  
22 If there was indications of below cost pricing, that  
23 would be addressed.

24 Q. So have you contemplated that the price floor  
25 is absolute at TELRIC and that any promotional offerings

1349

1 couldn't take it below that TELRIC floor; is that what  
2 you're suggesting?

3 A. I hadn't really contemplated that. I think  
4 that when those instances arise, we tend to take them on  
5 a case-by-case basis.

6 Q. And I guess is your answer the same for  
7 win-back offerings? Do you understand what win-back is?

8 A. If you would like to tell me what it is, it  
9 would be helpful.

10 Q. Win-back is a colloquial term that the  
11 industry uses when it loses a customer and then attempts  
12 to offer the customer an incentive to return to its  
13 service. So, for example, Qwest may offer a period of  
14 free service, waive certain fees, and then try and tie  
15 the customer into a term contract or a term agreement in  
16 order to continue to waive those fees.

17 If the price floor is at TELRIC, would a  
18 promotion that took it below TELRIC be something that  
19 you would be concerned about, or not a promotion, excuse  
20 me, a win-back?

21 A. I don't know. One thing that would be  
22 considered would be the estimate, for example, of how  
23 long the company might expect the customer to purchase  
24 the win-back service. And sometimes I have seen  
25 analyses that show that there might be an up-front price

1350

1 break to the customer, which if the full service plan  
2 wasn't completed, the customer might have paid less than  
3 cost, and that's a concern. But typically I have seen  
4 examples where that gets mitigated when you see data  
5 that shows and the nature of the agreement that shows,  
6 for example, that the customer agreed to be won back if  
7 they got a certain price, but they had to sign a  
8 contract for a length of time. So we would look at the  
9 duration of the service period, the whole three years or  
10 five years, for example, and see if over time it would  
11 cover its cost, and I have seen that kind of an analysis  
12 done.

13 Q. Okay.

14 A. That's why I'm having a hard time agreeing  
15 with you flat out.

16 Q. Okay. As you sit there today, do you have  
17 any idea how Staff might monitor that kind of a  
18 situation? That is to say, if Qwest has in its tariffs  
19 the right to offer these win-back programs or it has  
20 promotional offerings in its tariffs on file today, is  
21 there a way that Staff anticipates monitoring the  
22 application of those promotions or win-back offerings to  
23 the products that Qwest receives flexibility on if the  
24 Commission grants this petition?

25 A. Yes, there's a couple of procedures that I



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1 think would be in place. It would all be subject to  
2 Commission order and statute and rule provisions that  
3 exist.

4           And you have been asking me about competitive  
5 win-back, special promotions and offers. I'm a little  
6 bit leery about answering without having the chance to  
7 look at the Washington Administrative Code and the  
8 RCW's, because if this is a price listed service, there  
9 are some provisions that allow promotions and to take  
10 effect quickly, et cetera, that drives the nature of the  
11 Staff review.

12           But generally speaking, the rates would be  
13 filed, the TELRIC rates are known, so there's always the  
14 opportunity to check for a price below that floor based  
15 on what's in the record and well known. Frankly I think  
16 that another very good way that the Commission will be  
17 able to find out if there is a problem with predatory or  
18 below cost pricing would be by complaint, or some other  
19 carrier would figure it out possibly more quickly than  
20 Staff even, because it would be very sensitive to them,  
21 but.

22           Q.     But the Commission wouldn't have authority  
23 over the predatory pricing practices of Qwest any longer  
24 if these services are released. As I understand it  
25 given your testimony, that then goes to either consumer

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1 protection laws under the federal law or perhaps if the  
2 state consumer protection laws applies, which I  
3 understand you're not familiar with, then it goes to the  
4 AG's office; isn't that correct?

5 A. Well, I guess I need to be more careful. I  
6 did throw predatory pricing or below cost pricing in  
7 before, but actually I think RCW 80.36.330 prohibits  
8 below cost pricing anyway, so that would be a very good  
9 safeguard also that was put in place by the legislature.

10 Q. Okay. Let's talk about other potential  
11 conditions. Did you consider the existence of the SGAT,  
12 the Qwest performance assurance plan or PAP, to be  
13 conditions precedent to Qwest receiving pricing  
14 flexibility for a period of time? That is, if Qwest  
15 wants to withdraw its SGAT, I suppose it could, couldn't  
16 it?

17 A. I would defer to a legal opinion, but it  
18 seems like it could.

19 Q. Is having the SGAT in place and the  
20 performance assurance plan in place, did you consider  
21 those to be conditions that might be important?

22 A. Well, actually, in the previous Docket  
23 UT-000883, my boss, Dr. Blackmon, talked about the need  
24 at that time for framework, structural framework, to be  
25 in place to ensure that type of -- that interconnection

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1 is fair and done at parity. And he said then, and I  
2 think he was right, that it was too early then because  
3 those frameworks weren't in place. Today they are in  
4 place, so I think it is fair to say that basically  
5 that's a condition that has existed now, and I have  
6 referred to it in my testimony as evidence to show that  
7 competitors can make reasonably available alternative  
8 services.

9 Q. And Dr. Blackmon in that previous case that  
10 you have mentioned talked about these, the existence of,  
11 for example, the SGAT and the PAP, and other things that  
12 were coming out of the 271 proceeding to be critical, of  
13 critical importance as a condition in fact in that case;  
14 isn't that correct?

15 A. Yeah, and now they have been met, so here we  
16 are.

17 Q. And now they have been met, and if Qwest can  
18 pull back on those, if Qwest can, for example, take its  
19 SGAT out, because it's got interconnection agreements,  
20 right, in the state already, if it takes its SGAT away,  
21 it would still have pricing flexibility; isn't that  
22 correct?

23 A. Sure, and it would be subject to the Telecom  
24 Act required to negotiate in good faith under Section  
25 251 and 252, requiring interconnection, and so forth

1354

1     anyhow.

2           Q.     Right.

3           A.     Right.

4           Q.     And the existence of these things then really  
5     is not particularly relevant to its ongoing pricing  
6     flexibility then in your mind, it doesn't need to be a  
7     condition, correct?

8           A.     I think that if that framework were taken  
9     away that it would be a matter of concern.

10           JUDGE MACE:  Ms. Friesen, I just wanted to  
11     check in with you about your cross-examination simply  
12     because my list from a prior time shows that you  
13     estimated 25 minutes, and I know you're beyond that now,  
14     I just wondered how much more we can expect.

15           MS. FRIESEN:  I am, Your Honor, I only have a  
16     very little bit more.

17     BY MS. FRIESEN:

18           Q.     One last condition I'm wondering about is we  
19     talked about the stability of inputs.  Is the continued  
20     existence of the UNE-P product of importance to you such  
21     that it might be considered as a condition?

22           A.     That is one which I have set aside for the  
23     Commission to consider in the Triennial Review Order.  
24     As things stand today, UNE-P is offered, and the  
25     evidence in the case tells me that it's an effectively

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1 competitive product, so I really haven't gotten into  
2 that.

3           When you talk to me about conditions, I want  
4 to reiterate Staff does not recommend any conditions,  
5 and we recommend blanket approval. Whenever we have  
6 talked about those, I always said that that was subject  
7 to we won't talk about these settlements after we leave,  
8 and I would like all of the people that I have told that  
9 to that I have tried hard to keep that promise.

10       Q.     And I understand, I'm not trying to breach  
11 your settlement discussion agreements. I'm trying to  
12 talk to you about the conditions that AT&T was concerned  
13 with in its testimony.

14       A.     Right.

15       Q.     I would like now, I passed out a couple of  
16 things that I would like to talk that to you about, and  
17 this is the way that Staff investigated the data and  
18 then relooked at the data once it got the restated CLEC  
19 numbers. I passed out AT&T's criteria regarding its  
20 restated responses to Staff as one piece of paper, and  
21 the other is a page from the transcript when last you  
22 were on and being cross examined by Mr. Levin. Do you  
23 have both of those before you?

24       A.     Yes, I didn't realize there was a transcript  
25 sheet, I'm looking at it for the first time.

1356

1 MS. FRIESEN: Your Honor, if I could have  
2 these marked for identification if you don't mind.

3 JUDGE MACE: Just a moment, we're trying to  
4 locate our copies.

5 These will be marked -- well, hm, I guess a  
6 question I have about marking AT&T's criteria regarding  
7 its restated response, that was a filing that was made  
8 with the Commission, and the transcript is part of the  
9 transcript.

10 MS. FRIESEN: That's true, I just thought for  
11 ease of reference it might make the record clearer, but  
12 if you --

13 JUDGE MACE: All right, I will have them,  
14 they will be marked. The transcript will be 226, and  
15 the document entitled AT&T's criteria regarding its  
16 restated response to Staff's information requests in  
17 Order Number 6 will be 227.

18 MS. FRIESEN: Thank you, Your Honor.

19 BY MS. FRIESEN:

20 Q. Mr. Wilson, have you seen Exhibit 227 before,  
21 that is the AT&T criteria?

22 A. I got it on Monday afternoon and, which I  
23 guess was yesterday, and I have not read it real  
24 carefully yet.

25 Q. Okay.

1357

1 A. But I have scanned it.

2 Q. The criteria I believe was served last  
3 Friday.

4 A. I got it yesterday.

5 Q. Okay. In any event, AT&T tried to describe  
6 in its criteria what it did in the first instance when  
7 it provided data to Staff. And what AT&T describes here  
8 is that it provided to Staff all its services brought  
9 down to the DS0 equivalent level such that it could try  
10 and assist Staff in giving Staff the information it  
11 needed, because AT&T didn't have a definition of analog  
12 and didn't really know what definition you were  
13 employing. Without revealing confidential data, is it  
14 your understanding that AT&T produced information at DS0  
15 equivalents with a list of the services that AT&T  
16 provides in this state?

17 A. Yes.

18 Q. Do you recall that, yeah.

19 And then if you take a look at Exhibit 226,  
20 and I have highlighted here for you the pages with the  
21 line reference that I would like you to look at, page  
22 616 and page 617 starting at line 19. There Mr. Levin  
23 was asking you, how did you discern digital services if  
24 CLECs provided you analog and digital services. And I  
25 believe you responded that you confirmed that some CLECs

1358

1 gave you digital services in addition to analog and that  
2 you looked at sort of the title of the service. If it  
3 said digital, you pulled it out; is that correct?

4 A. Yes, that was one of the things I did.

5 Q. Okay. So if AT&T provided you with  
6 information on something called ADL or AT&T Digital  
7 Link, did you pull all those lines out, or did you  
8 include those?

9 A. I have to look at the AT&T response.

10 Q. And to be clear for the record, we're talking  
11 about AT&T's original response.

12 A. Yes, AT&T made a lot of revisions, so we're  
13 talking about AT&T's original response, which I didn't  
14 -- I wasn't able to rely on in filing my testimony.

15 Q. So the answer to my question then is that you  
16 did not include any lines for AT&T Digital Link in your  
17 initial calculations; is that correct?

18 MR. THOMPSON: Maybe if the witness could  
19 just take a moment to take some time to review his  
20 notes.

21 A. I included data AT&T provided in its Exhibit  
22 A of the July 22, and I also included additional data I  
23 guess that they supplied later on. But what I included  
24 was their UNE loop and UNE-P data presented to me by  
25 municipality, and it didn't say if it was ADL or not.



1359

1 The other thing I included was noted in my exhibits and  
2 corrections that I added a figure shown in my Exhibit  
3 203C from line 138. And that's basically all I included  
4 from AT&T.

5 Q. You're suggesting that AT&T provided data by  
6 municipality. Did AT&T provide data by municipality or  
7 NPA NXX?

8 A. Both.

9 Q. Okay. And so you didn't include any of the  
10 NPA NXX, AT&T Digital Link information; is that right?

11 A. I thought that I did when I referred to the  
12 Exhibit 203 citation.

13 Q. Oh, okay, thank you.

14 A. Which is the sum of what I thought was the  
15 NPA NXX data.

16 JUDGE MACE: Can you tell us what this NPA  
17 NXX means, one of you?

18 Q. Do you know what an NPA is?

19 A. It means area code and prefix.

20 MS. FRIESEN: It's by telephone number.

21 JUDGE MACE: Thank you.

22 MS. FRIESEN: They're assigned to switches.

23 A. So when I got revisions from AT&T that I  
24 haven't been able to introduce yet on Monday, I think I  
25 pulled those back out again from the figure on Exhibit

1360

1 203.

2 BY MS. FRIESEN:

3 Q. Okay, let's stick to the original response of  
4 AT&T for a little while if we could.

5 A. All right.

6 Q. And we'll get to the revised stuff.

7 A. All right.

8 Q. You said that you did use the UNE-P and the  
9 UNE loop numbers, correct?

10 A. Right, for municipalities in Qwest territory.

11 Q. Okay. And I think you mentioned to  
12 Ms. Singer Nelson that where those numbers may have  
13 included digital lines, for example in UNE loop, you  
14 just kept those in, you weren't taking out digital  
15 lines, correct?

16 A. I did in AT&T's case if I was told they were  
17 digital.

18 Q. If you weren't told they were digital, in  
19 fact if AT&T couldn't tell you if they were digital or  
20 analog, you kept them in, correct?

21 A. If it was the UNE loop and UNE-P data in  
22 Exhibit A to your original response.

23 Q. Mm-hm.

24 A. Or if it was the data reflected in Exhibit  
25 203C that I referenced, it's on page 2.

1361

1 Q. How about both, why don't you tell me what  
2 you did with the first exhibit.

3 CHAIRWOMAN SHOWALTER: Excuse me, on the last  
4 answer you said if it was, and I think the then would be  
5 something you previously said or the question asked, but  
6 I didn't understand your prior answer. If something,  
7 then what?

8 THE WITNESS: Could we have it read back?

9 CHAIRWOMAN SHOWALTER: The question maybe,  
10 maybe the question will make the answer more clear.

11 JUDGE MACE: If you were going to go back to,  
12 if you would reask the question so that it divided those  
13 two items up, if I'm computing correctly.

14 MS. FRIESEN: Okay.

15 BY MS. FRIESEN:

16 Q. Let's refer back to your exhibit, I think you  
17 said it was Exhibit 203C?

18 A. Yes.

19 Q. With respect to 203C, if AT&T was unable to  
20 distinguish in its UNE loop services between analog and  
21 digital loop, what did you do?

22 A. The only place I was -- I wasn't aware AT&T  
23 couldn't distinguish, but -- so I guess your question  
24 doesn't apply. I didn't find out AT&T had a mistake  
25 until they filed their revision, which I saw yesterday.

1362

1 Q. Okay, so the answer then you just included,  
2 included all the loops; is that correct?

3 MR. THOMPSON: I'm going to object, because I  
4 think he just said that he didn't understand the premise  
5 of the question to be true. And I think the premise is  
6 that I think you're still assuming that there was a  
7 issue presented to Mr. Wilson that the company didn't  
8 know whether the loops were digital or analog, if I'm  
9 understanding correctly, but I think that he has stated  
10 that he didn't know that to be an issue.

11 MS. FRIESEN: All I'm trying to confirm is  
12 that he counted all of AT&T's UNE loops.

13 CHAIRWOMAN SHOWALTER: Can't you ask the  
14 question, did he include all of the loops that AT&T  
15 submitted, without needing to ask him the question or  
16 include in the question that AT&T did or didn't  
17 understand that there was a distinction of digital and  
18 analog?

19 MS. FRIESEN: I will do that, sure.

20 BY MS. FRIESEN:

21 Q. Mr. Wilson, did you use all of AT&T's UNE  
22 loops in your initial calculation?

23 A. I used all of the UNE loops that they  
24 described by municipality in Exhibit A to their July  
25 22nd highly confidential response.

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1           A.     Because it was my understanding those were  
2 digital lines as reflected by AT&T's revision received  
3 yesterday.

4           Q.     And AT&T didn't give you the calculation of  
5 5/6, you came up with that on your own?

6           A.     Well, that's a figure off the top of my head  
7 without revealing the actual number.

8           Q.     Okay, and the actual number that you did use  
9 was a number that you came up with, not one that AT&T  
10 supplied you; is that correct?

11          A.     They supplied me a number. They supplied me  
12 a revision. I took the difference, and I took that  
13 difference out.

14          Q.     Okay.

15          A.     Because that was digital lines I was told by  
16 AT&T.

17          Q.     You're suggesting that AT&T supplied you a  
18 number of special access digital lines, correct?

19          A.     Well, the numbers on Exhibit 203, page 2, are  
20 the numbers that I understand got revised.

21          Q.     Which line, I'm not seeing where you are?

22          A.     138 is the special access lines.

23          Q.     And so assuming some of those are AT&T's,  
24 you're saying that that number represents analog lines  
25 that you counted?

1365

1           A.     I'm saying that that number represents  
2 numbers of lines AT&T reported back in August.

3           Q.     Um --

4           A.     And I listed them here, and I included some  
5 of them in my market share estimates, for example at  
6 page 14 of my direct.

7           Q.     Mm-hm.

8           A.     And AT&T it was my understanding with their  
9 revision subtracted out the digital lines, because now  
10 they say those are digital and they don't belong. So I  
11 took them out too, and that's reflected in the new  
12 numbers in Exhibit 225.

13          Q.     Oh, okay, I understand what you're saying.

14                   Did you make any other adjustments with the  
15 AT&T data, without going into what that data might --  
16 those data numbers might be, wherein AT&T explained that  
17 it could not distinguish between analog and digital  
18 services?

19          A.     You're referring to the explanation received  
20 Friday or Monday?

21          Q.     Right.

22          A.     No.

23          Q.     Okay. I'm looking now at I think what's been  
24 marked for identification, although maybe not  
25 introduced, Exhibit 225.

1366

1           A.     Just let me reassemble my highly confidential  
2 bundle here and stash it away.  It's been well used.

3           Q.     It has.

4           A.     All right, I'm there, thank you.

5           Q.     If you would just take a look at that basic  
6 business number line count.

7           A.     Yes, ma'am.

8           Q.     I note that the number has changed from what  
9 it originally was.

10          A.     That's correct.

11          Q.     Can you give me an indication, without saying  
12 what AT&T's data is precisely, if you made any  
13 adjustment to that number using the corrections that  
14 AT&T gave to you on Monday?

15                   JUDGE MACE:  Which number are you talking  
16 about now?

17                   MS. FRIESEN:  I'm looking at the revision to  
18 page 14, what is otherwise the chart on Mr. Wilson's  
19 page 14 of his testimony, Exhibit 201.

20                   JUDGE MACE:  You're talking about Exhibit  
21 201?

22                   MS. FRIESEN:  Well, no, hold on, it's Exhibit  
23 225.

24                   CHAIRWOMAN SHOWALTER:  Use a row and column  
25 number or --



1367

1 MS. FRIESEN: I'm looking at basic business,  
2 which is the very first line on page 1 of 1 of Exhibit  
3 225, and that is a confidential number.

4 JUDGE MACE: And that's under CLECs, is that  
5 the number you're looking at?

6 MS. FRIESEN: Yes, the CLEC data of October  
7 20th, and I'm asking Mr. Wilson if he was able to, in  
8 light of the fact that he got AT&T's revised information  
9 on Monday I believe he said, deduct the lines that he  
10 felt were appropriate to be deducted from that basic  
11 business number.

12 A. Exhibit 225 reflects the result of my having  
13 done that. Exhibit 225, basic business, the line count  
14 for CLECs reflects my having subtracted the digital  
15 lines that AT&T has clarified as digital recently. That  
16 number also reflects the revisions submitted by several  
17 other parties recently.

18 BY MS. FRIESEN:

19 Q. I understand, and --

20 A. And were you looking for the magnitude or  
21 something like that?

22 Q. No, I'm not asking you to provide a number.  
23 I'm going to ask that you confirm that that number  
24 doesn't include any ADL product that would be an AT&T  
25 Digital Link product; is that correct?

1368

1 A. That's been my attempt.

2 Q. And it includes any adjustment to special  
3 access that you made; is that correct?

4 A. Yes.

5 Q. Okay. And it includes any adjustment that  
6 you made for UNE-L; is that correct?

7 A. I don't think I got any adjustments for  
8 UNE-L.

9 Q. Okay. So that includes all the UNE-L loops  
10 that you originally received?

11 A. I believe so, yes, for the municipalities in  
12 Qwest territory.

13 Q. Okay.

14 A. I didn't count the ones that I was provided  
15 in Verizon and other operating companies' territories  
16 after I checked the maps.

17 MS. FRIESEN: That's all the questions I  
18 have, Mr. Wilson, thank you very much.

19 I do have one issue that we probably want to  
20 deal with. In discussing special access, I think there  
21 may be an inadvertent revelation of whose lines those  
22 might or might not be, so I'm wondering if we could  
23 examine the record later and have that reference  
24 stricken.

25 JUDGE MACE: Which reference are you talking

1369

1 about?

2 MS. FRIESEN: When we were discussing special  
3 access lines, and I believe the way I couched the  
4 question and the answer I got back I'm afraid revealed  
5 who it was.

6 JUDGE MACE: Are you talking about when he  
7 referred to his Exhibit 203C, line 138?

8 MS. FRIESEN: Yes, 133 through 138. Just the  
9 carrier reference I would like stricken from the record,  
10 the carrier name.

11 JUDGE MACE: Mr. Sherr.

12 MR. SHERR: I just want to know, I don't know  
13 that the carrier reference was spoken aloud. I mean  
14 obviously it's in Exhibit 203, but that's confidential.

15 MS. FRIESEN: The name was spoken.

16 JUDGE MACE: Well, I think the way he couched  
17 it was he indicated that basically it was a certain  
18 carrier.

19 MS. FRIESEN: I think that's what I asked.

20 JUDGE MACE: But, Mr. Wilson, is that correct  
21 when -- well --

22 CHAIRWOMAN SHOWALTER: Rather than aggravate  
23 this problem --

24 JUDGE MACE: Exactly.

25 MS. FRIESEN: Your Honor --

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1 (Discussion on the Bench.)

2 JUDGE MACE: Why don't we take a look at the  
3 record, the transcript when it comes through, and then  
4 if you want to make some correction, we can do it at  
5 that point.

6 MS. FRIESEN: Thank you very much.

7 Thank you, Mr. Wilson.

8 Oh, one other thing, I would like to --

9 JUDGE MACE: Did you have any cross exhibits  
10 for this witness?

11 MS. FRIESEN: Well, the two that we had  
12 marked for discussion, which would be 226 and 227, I  
13 would like to move for the admission of those just so  
14 the record is clear on what they are. I realize they're  
15 already a part of the record.

16 JUDGE MACE: Any objection to the admission  
17 of those exhibits?

18 Hearing no objection, I will admit those  
19 exhibits.

20 MS. SINGER NELSON: Your Honor, during my  
21 cross-examination or at the end of my cross-examination  
22 I failed to move for admission the cross exhibits that I  
23 had identified, specifically the Staff responses to MCI  
24 data requests.

25 JUDGE MACE: I had marked as a cross exhibit

1371

1 for MCI Exhibit 213.

2 MS. SINGER NELSON: Yes, I would like to move  
3 for the admission of Exhibit 213.

4 JUDGE MACE: Is there any objection to the  
5 admission of proposed 213?

6 No objection, I will admit it.

7 MS. SINGER NELSON: Thank you.

8 MR. SHERR: Your Honor, while we're here,  
9 this is Adam Sherr of Qwest, while we're here,  
10 Ms. Singer Nelson handed out a document that was  
11 discussed as well which I think she referred to as a  
12 part of the Qwest price lists, which is actually I  
13 believe a part of the Qwest tariff, and I think that  
14 needs to be marked as well so that it's in the record.

15 MS. SINGER NELSON: That's fine.

16 JUDGE MACE: I will mark that as Exhibit 228.

17 MS. SINGER NELSON: I would move for its  
18 admission, Your Honor.

19 JUDGE MACE: Any objection?

20 I will admit that.

21 Then you're done with your cross-examination?

22 MS. FRIESEN: I am, thank you.

23 JUDGE MACE: Let's turn next to Public  
24 Counsel.

25 MR. FFITCH: Your Honor.

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1 JUDGE MACE: Yes.

2 MR. FFITCH: Thank you, if you wanted to take  
3 a five minute break so I could get my papers organized,  
4 I wouldn't object, I wouldn't have a problem with that.  
5 I can start, it just might take me a minute or two to  
6 just spread my papers out here.

7 JUDGE MACE: All right, we'll take ten  
8 minutes at this point.

9 MR. FFITCH: Thank you.

10 (Recess taken.)

11 JUDGE MACE: Public Counsel cross examines  
12 next. I just wanted to point out to the commissioners  
13 that Public Counsel distributed a couple of excerpts  
14 from the Triennial Review for reference during his  
15 cross-examination.

16 MR. FFITCH: Thank you, Your Honor.

17 JUDGE MACE: And you should each have a copy  
18 of it.

19 MR. FFITCH: I do have one other document  
20 that's being copied right now which will also be passed  
21 out again for the assistance of the witness and the  
22 Bench, and I apologize for that, but that will be  
23 coming.

24

25 C R O S S - E X A M I N A T I O N

1373

1 BY MR. FFITCH:

2 Q. The first area though, we'll look at your  
3 testimony, Mr. Wilson. Good afternoon, we have met,  
4 Simon ffitch for Public Counsel, and I would like to ask  
5 you to turn to Exhibit 201, which is your direct  
6 testimony, and I'm looking at pages 4 and 5. If I can  
7 just find the line reference, I apologize, I thought I  
8 had the numbers.

9 I apologize, I should have directed you to  
10 your rebuttal testimony, Mr. Wilson, and I'm looking at  
11 the bottom of page 4 and the top of page 5. And there  
12 you state that:

13 It is unlikely that Qwest is able to  
14 exercise market power for basic business  
15 service, PBX, or Centrex either inside  
16 or outside of its current operating  
17 territory in Washington.

18 Isn't that correct?

19 A. Yes.

20 Q. Do you mean that they have market power, that  
21 Qwest has market power but is unlikely to exercise it?

22 A. No, I mean they don't have market power.

23 Q. It's your position that Qwest has no market  
24 power in any exchange in the state of Washington in its  
25 service territory; is that correct?

1374

1           A.     Yes, and by market power I mean the ability  
2 to raise price above the competitive level and keep it  
3 there without sustaining losses.

4           Q.     I'm going to ask you to turn to your Exhibit  
5 9C, that's an exhibit to your direct testimony.

6                    JUDGE MACE:  It's 209C.

7           A.     All right.

8                    MR. FFITCH:  I'm going to open up my exhibit  
9 list, Your Honor, and try to keep those exhibit  
10 references accurate.

11 BY MR. FFITCH:

12           Q.     And Exhibit 9C, let's just first of all see  
13 what we have here.  If we look at page 1 of the exhibit,  
14 for that first exchange we see that you have, and this  
15 is confidential material as a reminder, I'm not going to  
16 be asking you to actually state numbers or any of the  
17 other information that's shown here, but you have two  
18 right-hand columns, one is for market share, percent of  
19 market share, and the other is HHI, correct?

20           A.     Yes.

21           Q.     And for each one of the exchanges in this  
22 exhibit you show those two factors, correct?

23           A.     Yes.

24           Q.     Now let's take a look at -- let's go to page  
25 2 of the exhibit, and I think I can actually use the



1375

1 names of the exchanges without -- those are not  
2 confidential I don't think as long as we don't -- well,  
3 let's do it this way, let's not even use those. I will  
4 just count down the page so that we don't stumble into  
5 confidential material on the record here, but the second  
6 exchange on the page; do see that one?

7 A. Yes, sir.

8 Q. Okay. If we look at their market share, the  
9 Qwest market share there and the HHI level, is it your  
10 position that Qwest does not have market power in that  
11 exchange?

12 A. Yes.

13 Q. Now that exchange is one where the Commission  
14 has already granted competitive classification; isn't  
15 that correct?

16 A. First --

17 Q. If you would like to, I'm sorry, if you would  
18 like to refer to the order in the 883 docket for  
19 reference, you can do that.

20 A. I was just going to clarify that that  
21 exchange is one in which I think that in UT-000883 the  
22 Commission did grant competitive classification for  
23 basic business, PBX, and Centrex services provided over  
24 DS1 facilities.

25 Q. Okay. But this particular exchange that

1376

1 we're looking at is one that was competitively  
2 classified by the Commission in that case?

3 A. Yes.

4 Q. And just to clarify, as you started to do I  
5 think, this exhibit looks at what services? This  
6 particular exhibit just looks at basic business service;  
7 is that correct?

8 A. This exhibit looks at the services, basically  
9 basic business services, and it's using data provided by  
10 Qwest in their petition, and it's also found at Exhibit  
11 55.

12 Q. Okay. Now let's go to page 4 of this  
13 exhibit, and let's look at the third named exchange on  
14 that page. This is Exhibit 4 of again Exhibit 209,  
15 excuse me, page 4 of Exhibit 209, the third exchange  
16 listed on that page. Do you have that?

17 A. Yes.

18 Q. And is it your testimony that Qwest does not  
19 have market power in this exchange or is unlikely to  
20 exercise market power in this exchange?

21 A. Yes, it is, and I would like to note that  
22 again Exhibit 209 relies on Qwest wholesale data only.  
23 It does not include the responses from Order Number 6,  
24 and there were additional amounts of competition shown  
25 therefore.

1377

1 Q. Okay.

2 A. Once we looked at all of the CLECs and all of  
3 their activities, so I'm answering knowing that.

4 Q. So have you prepared an exhibit comparable to  
5 Exhibit 209C with that additional information in it?

6 A. No, only the Qwest data on wholesale data  
7 provided at the wire center level by CLEC lent itself  
8 adequately to an HHI analysis in our opinion. The CLEC  
9 response data to Order Number 6 was not sufficiently  
10 consistent or clean, if you will, to enable that type of  
11 an analysis, and also it would have been very time  
12 consuming. We got this analysis done on the wholesale  
13 data, which was available with the original filing, and  
14 we got that done in June or July. And after that time  
15 when we got the CLEC data in late July into August, we  
16 had to file testimony and so forth, and we didn't do a  
17 new HHI analysis then with the new data.

18 Q. Okay.

19 A. And also that was because we had concluded  
20 that the HHI analysis by itself was not sufficient to  
21 alter our opinion. We had other factors that we have  
22 looked at and testified to. And then lastly the reason  
23 we didn't do it again with the new data was because that  
24 would have only added more CLEC lines to the equations,  
25 and it possibly might have resulted in slightly more

1378

1 competition appearing in the analysis, so we figured  
2 where's the harm if we don't do it again.

3 Q. Can you point to any exchange in this exhibit  
4 that does not indicate according to the HHI analysis a  
5 highly concentrated market share for Qwest?

6 A. Generally speaking, no.

7 Q. Are you suggesting that the Commission -- are  
8 you withdrawing this exhibit from the consideration by  
9 this Commission in making its decision in this case?

10 A. No.

11 MR. FFITCH: Your Honor, I apologize for the  
12 slightly disjointed approach here. I inadvertently did  
13 not bring with me a document I was going to use for  
14 cross, and it's being copied now, so I'm skipping ahead  
15 to something else where I don't need that document.  
16 Kind of like when you open your box of documents from  
17 the office and something isn't there that you thought  
18 was going to be there, so I apologize.

19 BY MR. FFITCH:

20 Q. Let's take this opportunity while I'm waiting  
21 for that document to look at the excerpts from the  
22 Triennial Review Order, Mr. Wilson. You are aware of  
23 the FCC's recently issued Triennial Review Order, are  
24 you not?

25 A. Yes, I am.

1379

1 Q. I have provided you with a copy of Paragraphs  
2 123 to 129 of that order, which is the section entitled  
3 customer class distinctions. Let's take a look at  
4 Paragraph 123 first, if you wouldn't mind. And in that  
5 section of the order, the FCC found that it made sense  
6 to identify three different segments of the business  
7 market in telecommunications, correct?

8 A. I don't know, I haven't read it.

9 Q. Okay, well, would you --

10 A. I read a summary that came out before the  
11 order, and I have heard talk in the hallway.

12 Q. Would you accept subject to check that in  
13 that paragraph the FCC identifies the mass market  
14 segment, the small to medium enterprise segment, and the  
15 large enterprise segment? If you want to take a moment  
16 to read that, you can do that.

17 A. I will accept it subject to check.

18 MR. THOMPSON: Maybe if Mr. ffitch wants to  
19 make argument on brief from what the TRO says, I think  
20 that would be -- I mean I think he's free to do that,  
21 but if Mr. Wilson hasn't read it, then it seems like  
22 there's no foundation to ask him questions about it.

23 JUDGE MACE: I think certainly we would have  
24 to give Mr. Wilson a little bit of time to review the  
25 document if you're going to ask him some questions about

1380

1 it.

2           What I wanted to suggest, number one, was  
3 that we actually mark these excerpts as proposed  
4 exhibits, and then if you need additional time while  
5 you're waiting for this other document to come, we could  
6 take up the issue of exhibits that need to be marked or  
7 need to be admitted. I know it makes your presentation  
8 disjointed, but it might be a way to use our time more  
9 productively.

10           MR. FFITCH: I have a couple of other areas  
11 too, so hopefully we can bridge to the arrival of the  
12 document.

13           JUDGE MACE: All right. What I would like to  
14 do then is mark these documents as 229 and 230. 229  
15 would be what starts with page 84. It says A Customer  
16 Class Distinctions on the top. And then 230 would be  
17 the document that starts with page 314 and has on the  
18 top of the page small letter i in parens, Defining the  
19 Market.

20 BY MR. FFITCH:

21 Q. So it's your testimony, Mr. Wilson, that you  
22 have not reviewed any part of the Triennial Review Order  
23 as part of your work on this docket?

24 A. That's correct.

25 Q. Were you aware that the FCC Triennial Review

1381

1 Order addressed the definition of the telecommunications  
2 market in Washington state?

3 A. No.

4 Q. Turning to another area, in Order Number 6  
5 the Commission asked CLECs to report how many locations  
6 within an exchange they provided service to; isn't that  
7 correct?

8 A. Yes, I think actually if they had the  
9 information by wire center level, that was requested  
10 also.

11 Q. And it's the case, is it not, that seven of  
12 the companies that reported did not provide that  
13 locational data, correct?

14 A. I think that's about correct, yes.

15 Q. And would you agree that those companies  
16 represent approximately one third of the total CLEC  
17 access lines that you counted as you aggregated those  
18 responses?

19 A. Would I accept that?

20 Q. Yes.

21 A. Yes. I did not do any analysis of particular  
22 companies in the CLEC data response. There was no time.  
23 All I did was the analysis reflected in my testimony.

24 Q. And did you follow up with the companies that  
25 did not provide the locational information to get their

1382

1 location information?

2 A. No. This is why I have recommended that when  
3 someone wants to analyze location data, like the Public  
4 Counsel witness did, they rely on the Qwest wholesale  
5 data.

6 Q. If you have the location information, you can  
7 calculate the lines per location, can you not?

8 A. Not in my opinion because -- well, you can  
9 for one company if you have one company's discreet data,  
10 but what I have provided is aggregated data for the  
11 whole CLEC market, so no, you can't do that.

12 Q. All right, let me clarify my question. It  
13 was intended to be focused on one company.

14 A. Okay.

15 Q. If you have the location information for one  
16 company, you can calculate the lines per location, can  
17 you not?

18 A. You can calculate an average, but you can not  
19 calculate the lines per location. You can make an  
20 assumption.

21 Q. All right.

22 A. About the average for that exchange.

23 Q. Okay.

24 A. So there might be locations with lots of  
25 lines, and there might be locations with very few lines



1383

1 per location, and you can calculate an average.

2 Q. All right. And that average lines per  
3 location can give you some indication of the customer  
4 size given your qualification that we're dealing with an  
5 average here; isn't that correct?

6 A. Yes, given all of those qualifications, but  
7 in my opinion that's not very reliable information.

8 Q. And it can also give you some indication of  
9 the number of customers that are being served in that  
10 exchange, correct?

11 A. Yes, it can. There's also information that  
12 you can look at without having to do the mathematics  
13 that can tend to cloud the information. There are  
14 discreet data points in the exhibits like in Exhibit 55  
15 where you can get very discreet pieces of data that  
16 don't require any averaging, and you can get a real true  
17 picture that way of what actually is.

18 Q. But you have testified that you did not  
19 perform that analysis with -- an analysis of the  
20 location information with the CLEC data, correct?

21 A. Yes, that's right, I did not perform any  
22 analysis in terms of creating average calculations or  
23 anything like that, but I did look at the data. I call  
24 it eyeballing the data is very important for an analyst  
25 to do is just to look at it and see if it makes sense

1384

1 and think about it without doing any math to it, and I  
2 did do that. Like I say, you can find discreet data  
3 points in the data like in Exhibit 55 for that type of  
4 information.

5           What I did was I was looking for places where  
6 I saw evidence that a CLEC was providing a small number  
7 of lines to a single customer at a single location,  
8 preferably in rural insular or non-urban dominated  
9 exchanges or wire centers, figuring that that was where  
10 you were going to see the least likelihood of  
11 competition. And if it were there, that would be very  
12 meaningful to me, and I did find that for example in  
13 Exhibit 55 and also in the CLEC data.

14       Q.     So it's fair to say though that that's sort  
15 of an anecdotal analysis, isn't it?

16       A.     Exhibit 55 is a hard data, and I can point to  
17 a couple of cells if you would like.

18       Q.     You haven't performed a comprehensive  
19 analysis of the exchanges in this case to look at the  
20 locational data, have you?

21       A.     I didn't do any math to it, no.

22       Q.     I would like to turn to another area,  
23 Mr. Wilson. Turning to your Exhibit 4, that's 4C which  
24 is Exhibit 204C, and this is also a confidential  
25 exhibit.

1385

1 A. I'm there.

2 Q. And I would like to ask you to turn to page  
3 3, and this is the page that addresses PBX data. Can  
4 you just summarize without disclosing confidential  
5 information what that page shows?

6 A. Sure. All of the pages in Exhibit 204C  
7 represent my aggregation of the CLEC data responses.  
8 This does not include the Qwest wholesale data. You  
9 have to go to Exhibit 205 to get a picture of both Qwest  
10 wholesale plus CLEC data without double counts. Page 3  
11 of 4 of Exhibit 204C is a summary or aggregation of the  
12 data collected from the CLECs via Order Number 6. It is  
13 where they have indicated in their responses that they  
14 were providing line counts of PBX lines, and it shows  
15 their responses to Order Number 6 for PBX.

16 Q. Okay. And on this exhibit you provide  
17 exchange specific data for only ten of Qwest's  
18 exchanges, correct?

19 A. Yes, I had to roll up some of the exchanges  
20 or aggregate them to protect confidentiality of the  
21 CLECs. Staff determined that if there was an exchange  
22 or wire center with less than three CLECs operating,  
23 that disclosure of the information about that exchange  
24 at the exchange level might allow one of the three to do  
25 some math to figure out what the other two were doing,

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1 and it was just we were afraid that three CLECs just  
2 wasn't enough data to adequately protect. So we did,  
3 whenever there was less than three in an exchange, we  
4 added the exchanges together, and I did that in an  
5 arbitrary fashion, which is hopefully pretty  
6 transparent.

7 CHAIRWOMAN SHOWALTER: Mr. Wilson, was it  
8 less than three or three or less?

9 THE WITNESS: Excuse me, three or less.

10 BY MR. FFITCH:

11 Q. Now in other words, you rolled these up  
12 because of competitive sensitivity for exchanges where  
13 there just wasn't that much activity, correct?

14 A. There may have been a lot of activity in  
15 terms of lines, but there may have been just a few  
16 CLECs. If there were three CLECs or less, we thought  
17 that wasn't enough numbers of CLECs to protect the data,  
18 but we still thought that it was pretty competitive.

19 Q. All right. And what's the total number of  
20 Qwest exchanges here that we're talking about? You have  
21 provided exchange specific data for only ten, that's ten  
22 out of how many?

23 A. I'm sorry, Mr. ffitich, maybe I didn't  
24 understand your question. I provided information for  
25 all of the Qwest exchanges.

1387

1 Q. But not on an exchange specific basis?

2 A. Right, right, I don't know how many there are  
3 all together.

4 Q. Would you accept subject to check there are  
5 at least 68?

6 A. Yes.

7 Q. Can you explain the categories at lines 14  
8 through 18 shown on this exhibit?

9 A. They're alphabetical.

10 Q. And what do those represent?

11 A. Exchanges that begin with the letter A like  
12 Aberdeen went in the A through C group.

13 Q. All right.

14 A. Or Chehalis or Centralia. And so D through H  
15 are exchanges like Des Moines, et cetera.

16 Q. So there's no relationship between those  
17 exchanges other than where they fall in the alphabet,  
18 right?

19 A. That's right, I thought that was a pretty  
20 good way of masking and aggregating. And I would like  
21 to note that I was not surprised to see fewer, you know,  
22 we didn't have to do this much roll up on basic  
23 business. It was in the PBX and Centrex market where we  
24 found that there were often three or less CLECs in the  
25 exchange, and that doesn't surprise me at all being

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1 pretty familiar with Washington state and having  
2 traveled to the other side of the mountains as well as  
3 traveled on this side to know that there are lots of  
4 towns in our state that are so small there's not a  
5 business big enough to buy a PBX or a Centrex system.  
6 So there are lots of exchanges where there is zero  
7 competition for PBX and Centrex.

8 Q. So within each -- let's just take --

9 A. There's just no PBX or Centrex customers.

10 Q. Let's take line 14, that grouping, A through  
11 C, that represents a group of exchanges with those  
12 alphabetical names, right?

13 A. Yes, except for like Auburn and Bellevue and  
14 -- that are shown up above.

15 Q. All right. And perhaps you have just  
16 answered the question I was about to ask, which is,  
17 within that group there are exchanges with zero PBX, am  
18 I interpreting this grouping correctly, zero CLECs  
19 providing PBX service?

20 A. I have to turn to my workpapers to figure  
21 that out.

22 Q. Right.

23 A. Yes, there are some exchanges where there  
24 were zero CLECs.

25 Q. All right, so --

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1                   CHAIRWOMAN SHOWALTER: All right, just a  
2 minute, I thought your question was whether in some  
3 exchanges there were zero PBX, or did you say CLEC?

4                   MR. FFITCH: Well, I will just ask the  
5 question again.

6 BY MR. FFITCH:

7           Q.       Within the grouping A to C, are there  
8 exchanges where there is no PBX service provided by a  
9 CLEC?

10          A.       Yes.

11          Q.       Thank you.

12                   And so what that, in column C on this exhibit  
13 which says one to three, what that means is that within  
14 the group of exchanges, the entire group of exchanges,  
15 there may perhaps only be one CLEC providing PBX in one  
16 exchange hypothetically?

17          A.       Without being able to see the underlying  
18 data, yes, that's a correct assumption. You could make  
19 that inference.

20          Q.       Now and you have also testified just to  
21 clarify again that in group A through C at least, and  
22 we'll get to the others in a minute, there are exchanges  
23 where there is no PBX service provided by the CLECs, by  
24 a CLEC. In other words there's an exchange where the  
25 number is zero.

1390

1           A.     That's right, and I would like to also  
2 clarify that Qwest provided just statewide figures, so I  
3 don't know if that's also the case that there's just  
4 flat out no PBX customer in that exchange for any  
5 company.

6           Q.     I see. But you don't know whether that's the  
7 case?

8           A.     I strongly suspect it is having traveled  
9 around the state and worked on telecommunications issues  
10 around the state for some time. There are towns where  
11 they don't have PBX's, Starbuck for example in the  
12 Dayton exchange.

13          Q.     Now if we go to --

14                   JUDGE MACE: Starbuck being the name of a  
15 town?

16                   THE WITNESS: That's the name of a  
17 crossroads.

18                   JUDGE MACE: Thank you.

19                   THE WITNESS: They call it a town.

20 BY MR. FFITCH:

21          Q.     If we go to the next entry, line 15, D  
22 through H, are there also exchanges in that grouping  
23 where there's no CLEC providing PBX?

24          A.     Well, when I answered you earlier, I was  
25 speaking A through Z.



1391

1 Q. A through Z did you say?

2 A. Yeah.

3 Q. Actually, your exhibit is --

4 A. You wanted to go A through C, and there were  
5 some in A through C. Now we're in D through H, and yes,  
6 there are some exchanges where there are zero PBX CLEC  
7 customers.

8 Q. And on line 16 --

9 A. Like Elk for example.

10 Q. All right. And on line 16, exchanges L  
11 through P, are there exchanges where there are no,  
12 there's no CLEC PBX activity?

13 A. Maybe to really share information about this  
14 what we should do is every single exchange instead of  
15 just some of them and ask me to say a few, because  
16 that's implying then that that applies to all of them,  
17 and I don't think that's fair. There's a lot of  
18 distribution, variance between those groups.

19 Q. I'm just asking you --

20 A. I can answer to you that yes, there are some  
21 that don't have any PBX customers for CLECs in that  
22 group also and in the next one probably.

23 Q. I'm going to ask you about the next two just  
24 to complete the list. Is your answer the same for line  
25 17 and line 18, those groupings?

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1           A.     Normally I ask for a couple of days for  
2     answering these kinds of questions where I have to do  
3     analysis, because it is complicated, and you expect the  
4     truth.

5                     The next two, in P through R?

6           Q.     P through R, yes.

7           A.     No.

8           Q.     Can you explain what you mean by no?

9           A.     The answer to your question, you asked if  
10    there were any PBX CLEC customers in the group P through  
11    R that -- where -- any exchanges where there were no  
12    competitors for PBX, and the answer is no, there aren't  
13    any exchanges where there -- the answer is zero.

14          Q.     All right, then let's take a look at the last  
15    one, line 18.

16          A.     Now we're in S through Y.

17          Q.     S through Y, same question.

18          A.     There's lots of them in Seattle, and I have  
19    no exchanges with a zero in the S through Y grouping.

20          Q.     All right.

21          A.     Actually, in the D through H it was one, and  
22    in A through C it was one.

23          Q.     So would it be more accurate if column C was  
24    to read zero through three rather than one through  
25    three?

1393

1           A.     No, because as I just said, at line 18 and 17  
2     that wouldn't be true.

3           Q.     All right, I accept the correction. My  
4     question was directed to lines 14 through 16.

5           A.     For those it could be zero through three,  
6     yes, sir, for PBX, but I don't know that that indicates  
7     other than a zero market share for anybody in that  
8     exchange. I seriously doubt if Qwest is selling PBX  
9     lines there either.

10                    Because we were talking about Elk and --

11           Q.     Mr. Wilson, there's no outstanding question.

12                    MR. FFITCH: Your Honor, the witness is  
13     volunteering --

14                    THE WITNESS: Just trying to explain my  
15     answer.

16                    MR. FFITCH: -- and continuing to testify  
17     without a question being tendered.

18                    JUDGE MACE: Wait for the next question.

19                    MR. FFITCH: I had also --

20                    JUDGE MACE: Hold on for just a moment. I  
21     think, Mr. ffitich, those might be the documents you're  
22     waiting for.

23                    MR. FFITCH: Oh, thank you.

24     BY MR. FFITCH:

25           Q.     Just one more area before we get into this

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1 line of questioning, and that's with regard to the  
2 agreement with Qwest that was inquired into by  
3 Ms. Friesen. This is with regard to the conditions,  
4 potential conditions upon a grant of the application.  
5 Is there a written agreement between Staff and the  
6 company with respect to that condition?

7 A. No, we didn't reach an agreement, we said  
8 that we wouldn't oppose it.

9 Q. I'm not -- this is not -- this next question  
10 is not tendered to you -- it's tendered to you as a lay  
11 person and not as an attorney. It's the case, is it  
12 not, that there is no provision in the competitive  
13 classification statute for granting petitions subject to  
14 conditions?

15 MR. THOMPSON: I think it actually does call  
16 for a legal conclusion.

17 JUDGE MACE: Mr. ffitch.

18 MR. FFITCH: All right, I will move on, Your  
19 Honor, thank you.

20 Perhaps this is a good time to move into the  
21 line of questioning that's connected with this document,  
22 which I will pass out.

23 And does the witness have one?

24 THE WITNESS: Yes.

25 MR. FFITCH: Okay, before we get into this, I

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1 will note for everyone's benefit that there is a  
2 confidential page in this document, and it's not a page  
3 that I'm going to be using in this examination. I  
4 wanted to provide a complete copy of this document.  
5 There may be parties here who did not sign the  
6 protective order in that other proceeding, so I just  
7 wanted to address that before I went ahead with the  
8 examination. What we could do is simply remove that  
9 page. This is really just for the assistance of the  
10 parties and the Bench and Mr. Wilson in following my  
11 questioning, and I don't need to refer to the  
12 confidential page. I don't need to offer this as an  
13 exhibit as such. We will be asking the Commission to  
14 take notice of it and allow parties to refer to it in  
15 their briefing.

16 JUDGE MACE: And this information would still  
17 be confidential in the sense of today?

18 MR. FFITCH: Actually, I don't know. This  
19 was designated by Staff in that case as a confidential  
20 page. Actually as I'm looking at it --

21 JUDGE MACE: It looks like it refers to  
22 Qwest's performance.

23 MR. FFITCH: We could maybe have Qwest take a  
24 look and see if there's a concern there.

25 MR. SHERR: Your Honor, Adam Sherr for Qwest,

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1 we're not in a position to release the confidentiality  
2 of this. Obviously it was just handed to us.

3 MR. FFITCH: Again, I would be happy if  
4 parties wanted just to remove that page and return it.

5 JUDGE MACE: Why don't we do that, that seems  
6 like a reasonable resolution.

7 Has everybody ripped their page out?

8 I would like to mark this for purposes of  
9 cross-examination as Exhibit 231.

10 CHAIRWOMAN SHOWALTER: Could somebody collect  
11 all of these?

12 JUDGE MACE: Could we have a volunteer to  
13 collect the confidential pages, please.

14 MR. SHERR: (Volunteered and collected.)

15 JUDGE MACE: Let me indicate then for the  
16 record that Exhibit 231 is Dr. Blackmon's testimony in  
17 UT-000883 and that it excludes page, I believe it was  
18 page 15 that was confidential. I'm sorry, could you  
19 tell me what page was it that was confidential?

20 MR. FFITCH: Page 15, Your Honor.

21 JUDGE MACE: The confidential, page 15, is  
22 removed.

23 BY MR. FFITCH:

24 Q. Can you turn to page 11 of this document,  
25 Mr. Wilson.

1397

1 A. Yes, I'm there.

2 Q. Are you generally familiar first of all with  
3 this document? This is the testimony of Glenn Blackmon  
4 in Docket UT-000883.

5 A. Generally I am familiar with it, I have  
6 reviewed it, but my memory is not perfect.

7 Q. All right. Well, that's why I provided you  
8 with a copy, and if you need time to take a look at it  
9 as we go through, just let me know.

10 In this Docket 883, Staff placed significant  
11 weight on the market structure analysis, did they not?

12 A. I'm hesitating because I want to reconcile  
13 that with my own understanding in words. Yes, that's  
14 true.

15 Q. And again, I have referred you to page 11,  
16 which begins with a heading market structure analysis,  
17 page 11 of Dr. Blackmon's testimony. And that analysis  
18 includes whether unbundled network elements are  
19 reasonably available and financially viable as a mode of  
20 competition, correct?

21 A. Yes, that's my recollection. I was actually  
22 in Africa when this happened, so, and not working here,  
23 but I will go with that.

24 Q. And in that case, Staff concluded that  
25 unbundled network elements were neither reasonably

1398

1 available nor financially viable as a means of entry for  
2 the small business market, correct?

3 A. I think yes, I think that's true.

4 Q. So I assume it's safe to say that your  
5 current recommendation is based on a new view of that  
6 issue?

7 A. Yes, that's correct, we have had the 271  
8 proceeding since then.

9 Q. So you're now saying that UNEs are, in fact,  
10 reasonably available and a financially viable entry mode  
11 for CLECs for the entire business market?

12 A. Yes.

13 Q. The Commission has another docket going on  
14 right now in Washington state that will decide if the  
15 UNE-P is going to remain reasonably available in  
16 Washington state, does it not?

17 A. That's my understanding.

18 Q. And that's Docket UT-033044?

19 A. I will accept that subject to check, I'm not  
20 assigned.

21 Q. And in that case, Qwest is, in fact, asking  
22 the Commission to have mass market switching removed  
23 from the UNEs that are made available to CLECs, correct?

24 A. I don't know many details about that case.

25 Q. Subject to check?



1399

1 A. Subject to check I will accept that.

2 Q. And this Commission will make a decision on  
3 that issue in approximately nine months?

4 A. If you say so.

5 Q. So sitting here today, you and I don't know  
6 if the current market structure in Washington will  
7 remain the same or not in that respect, do we?

8 A. No, I have only looked at the current market  
9 structure now.

10 Q. The Washington Commission is currently  
11 conducting proceedings to reexamine the price of the  
12 unbundled loop in Washington state; is it not?

13 A. That's the new generic cost docket?

14 Q. Well, there's actually more than one cost  
15 docket, but you're aware that the Commission is  
16 currently examining UNE prices including reexamining the  
17 price for the UNE loop, are you not?

18 A. Yes.

19 Q. And the Federal Communication Commission has  
20 just recently initiated a rule making to reexamine the  
21 definition of TELRIC; isn't that the case?

22 A. I don't know, I have not been working on  
23 federal matters for some time directly.

24 Q. All right. Well, then my next question just  
25 relates to the Commission's pricing proceedings. The

1400

1 outcome of the Commission's pricing proceedings will  
2 affect the financial viability of competitors using UNEs  
3 in Washington state, will it not?

4 A. That's possible.

5 Q. Perhaps substantially?

6 A. One way or another.

7 Q. And sitting here today, you and I don't know  
8 whether CLECs will view competition via UNEs as a  
9 financially viable option at the conclusion of those  
10 proceedings, do we?

11 A. No, we don't know what will happen then.  
12 They may have done lots of things to mitigate that  
13 though in between now and then too.

14 Q. Have you done any analysis in this case of  
15 what the impact on the Washington telecommunications  
16 marketplace would be as a result of the elimination of  
17 UNE-P?

18 A. No.

19 Q. Have you done any analysis of the financial  
20 viability of competition via UNEs in Washington state  
21 with an increase at hypothetical levels of the UNE loop  
22 cost?

23 A. No.

24 Q. Now you mentioned the 271 proceeding earlier.  
25 Qwest has received 271 approval and now has new

1401

1 authority to market long distance service in Washington,  
2 correct?

3 A. Yes.

4 Q. And they have been offering and marketing  
5 that service since January of this year, emphasizing  
6 their new ability to offer one stop shopping; is that a  
7 fair statement?

8 A. I don't know.

9 Q. Were you present in the hearing room when we  
10 heard testimony from U S West witnesses regarding their  
11 various offerings for long distance bundles?

12 A. I have been present through most of the case,  
13 yes.

14 Q. And we have heard testimony in this hearing  
15 about how successful that marketing has been, haven't  
16 we?

17 A. We have heard testimony about the marketing.

18 Q. And we have heard that customers get  
19 discounts for signing up for long-term bundles, don't  
20 they?

21 A. Qwest customers, CLEC customers, which ones?

22 Q. Qwest customers get discounts for signing up  
23 for long-term bundles that include local service and  
24 long distance service, correct?

25 A. We may have. I don't have a perfect

1402

1 recollection of that, but I will accept that subject to  
2 check.

3 Q. And, well, perhaps it's easier if you look  
4 back at an exhibit here, but I am directing you to  
5 Exhibit 24 just to help refresh your memory about some  
6 of that testimony.

7 A. Thank you.

8 JUDGE MACE: Is this part of Mr. Reynolds'  
9 exhibits?

10 A. I'm there.

11 Q. Okay, you're ahead of me. I'm looking at  
12 page 2 of that exhibit, and the two left-hand columns of  
13 numbers in that exhibit indicate the number of customers  
14 signed up for long distance service in Washington, do  
15 they not? I'm just being general because this is a  
16 confidential exhibit, but that's the general nature of  
17 what's shown on this exhibit, correct?

18 A. I haven't looked at it before. It looks like  
19 that's what it says.

20 Q. And if we look at the totals at the bottom of  
21 those columns, these totals represent, and I'm looking  
22 particularly at the first total, would you accept  
23 subject to check that the first column of numbers refers  
24 to access lines?

25 A. It says the first column are automatic number

1403

1 identifiers representing the billed telephone number  
2 associated with the presubscribed lines.

3 Q. All right. And this number represents in  
4 just eight months a figure that is a very significant  
5 fraction of the total number of business lines ascribed  
6 to CLECs in Washington state, does it not?

7 A. Yes.

8 Q. And will you accept that if Qwest continues  
9 at the same rate, if you do the math in a little over  
10 two years they will have signed up a number of local  
11 Washington business customers equal to the total number  
12 of lines that you have calculated for CLECs in the  
13 state, correct?

14 A. That's possible.

15 Q. Would you agree that Qwest's new 271  
16 authority is an aspect of the telecommunications market  
17 structure in Washington?

18 A. Yes.

19 Q. And that's an aspect of the market structure  
20 that was not examined in Docket 883, was it, because  
21 Qwest did not have the authority at that time?

22 A. Right.

23 Q. Did you include an analysis of the impact on  
24 the market today of Qwest's new 271 authority in your  
25 testimony and exhibits in this case?

1404

1 A. Could you please resay that?

2 Q. Did you include an analysis of the impact on  
3 the Washington telecommunications market of Qwest's new  
4 271 authority in your testimony and exhibits in this  
5 case?

6 A. Thank you, sir. No, I did not.

7 Q. I'm going to now ask you to turn to page 12  
8 of Dr. Blackmon's testimony.

9 A. Thank you, I'm there.

10 Q. All right. And look at lines 3 and 4. It  
11 states, the viability of each method as a mode of  
12 competition varies based on geography, customer size,  
13 and availability, correct?

14 A. That's what it says, yes.

15 Q. And Staff in this docket, in the 883 docket,  
16 looked at evidence of competition separately for small  
17 business and large business, did it not?

18 A. In 00883?

19 Q. Right.

20 A. I don't recall.

21 Q. I realize that you're perhaps at a little bit  
22 of a disadvantage perhaps not having refreshed your  
23 memory on this, but it's the case, is it not, that Qwest  
24 or that Staff recommended approval of the petition as to  
25 services provided to larger customers but in this

1405

1 testimony examines the small business customer market  
2 differently and recommends a denial for that market  
3 because of the lack of availability of UNEs and other  
4 factors? Is that a fair summary of the testimony as you  
5 recall it?

6 A. I think so.

7 Q. So in that case, again to restate the  
8 question, the Staff examined the evidence of competition  
9 separately for the small business and the large business  
10 markets, did they not?

11 A. It's a lot easier if I testify, but I -- yes.

12 Q. All right, well, the testimony speaks for  
13 itself.

14 A. Yeah.

15 Q. If you're not familiar with Staff's testimony  
16 in the last competitive classification case, you know, I  
17 guess it makes it tough to ask the questions, but --

18 A. I have focused primarily on this case.

19 Q. Is there any relationship between these two  
20 cases, Mr. Wilson?

21 A. I think so.

22 Q. The services are the same, are they not?

23 A. I think so.

24 Q. Petitioning company is the same, is it not?

25 A. Yes.

1406

1 Q. Some of the actual exchanges involved are the  
2 same, are they not?

3 A. Yes. I just don't remember every fact in  
4 here without having the chance to look at it and accept  
5 it.

6 Q. Let's go to page 18, line 18.

7 A. I'm there.

8 Q. And there Dr. Blackmon states, the WUTC must  
9 always consider both structural factors and market  
10 concentration; is that correct?

11 A. Yes, he does say that there.

12 Q. Has Staff changed its position on that point  
13 in this case, or should the Commission here continue to  
14 consider both those factors?

15 A. I think they should continue.

16 Q. And if we turn to page 19 at line 6,  
17 Dr. Blackmon notes that in that case the market  
18 structure, quote, is, well, I will start my quote  
19 earlier, "the market structure is much less certain,"  
20 and goes on to say that, market concentration is even  
21 more important, it's a more important factor to look at  
22 when the market structure is less certain. Is that a  
23 reasonable paraphrase of the testimony at that point?

24 MR. THOMPSON: This seems to call for -- I  
25 mean this particular question seems to require a lot of



1407

1 context, which I don't think Mr. Wilson necessarily has  
2 had the opportunity to gain by reading this recently.

3 JUDGE MACE: Maybe if Mr. Wilson was given a  
4 moment or two to review the passage you're referring to,  
5 he might be able to make a response.

6 CHAIRWOMAN SHOWALTER: Mr. ffitich, why wasn't  
7 this provided as a cross exhibit?

8 MR. FFITCH: Well, it is, Your Honor, I'm  
9 providing it now for the witness.

10 CHAIRWOMAN SHOWALTER: Well, I guess why  
11 wasn't it provided as a cross exhibit in the normal  
12 scheme of things?

13 MR. FFITCH: It's a public record, Your  
14 Honor. This is the Staff's own analysis of the Qwest  
15 petition in the last case. I certainly assumed that the  
16 Staff was very familiar with it, including this witness.

17 JUDGE MACE: Mr. Wilson, do you need some  
18 additional time to take a look at the document?

19 THE WITNESS: I need a question, please, I  
20 don't recall.

21 JUDGE MACE: Mr. ffitich, could you repeat  
22 your question.

23 CHAIRWOMAN SHOWALTER: There's an objection  
24 outstanding.

25 JUDGE MACE: I'm sorry, I thought your

1408

1 objection went to giving Mr. Wilson some additional time  
2 to review the document.

3 MR. THOMPSON: Right.

4 THE WITNESS: I have been reading the  
5 paragraph where we're at now. Maybe I could answer, I  
6 don't know.

7 BY MR. FFITCH:

8 Q. I'm directing you to page 19 to the paragraph  
9 that starts at line 6, and I'm just asking do you agree  
10 with my paraphrase that here Dr. Blackmon notes that  
11 where the market structure is less certain, where there  
12 are unknowns or uncertainties in the market structure,  
13 then it becomes more important to look at market  
14 concentration factors, and I'm just asking you if that's  
15 kind of a fair summary or paraphrase of what he says in  
16 this paragraph?

17 A. Yes, I think it is.

18 Q. Okay. And at line 8 in that paragraph, he  
19 says, therefore, we must look at how many customers have  
20 actually switched to a competitive provider, correct?

21 A. Yes, absolutely, like we did in this case.

22 Q. Now in this case you looked at the number of  
23 lines that switched or line loss factors as the  
24 predominant analytic factor; isn't that true?

25 A. Yes, taking into account any information

1409

1 available about the size of the customers that was  
2 reliable.

3 Q. And you don't, in fact, do not have testimony  
4 in this case about how many customers have actually  
5 switched to competitive providers in Washington, do you?

6 A. I think I total up the number of lines.

7 Q. All right. Again, and I understand your  
8 answer you total up the number of lines, but you have  
9 not provided testimony regarding the number of customers  
10 who have actually switched, correct?

11 A. Not heretofore, no. It's a lot.

12 Q. Let's turn to page 22 at line 16.

13 Do you have that?

14 A. Yes.

15 Q. There Dr. Blackmon agrees that a minority of  
16 business customers purchase a majority of lines,  
17 correct?

18 A. In the analysis he did there, that's what he  
19 found, yes.

20 Q. Why don't you take another look at that and  
21 see if you think that what he's saying there is a  
22 general principle or if it's a specific finding based on  
23 factual analysis in this 883 docket?

24 A. I don't think that it's true to be able to  
25 say that the majority of the lines are to big businesses

1410

1 in this case.

2 Q. Well, I'm asking you what this testimony says  
3 in the 883 docket, and here he's talking, is he not,  
4 about this general principle, if you will, if you look  
5 up at line 14, this narrative testimony prepared by  
6 Staff asks about, it is often said that 20% of the  
7 business customers pay 80% of the revenues, correct?

8 A. And then it says:

9 I don't know if that particular  
10 statistic is true, but I agree that the  
11 minority of business customers purchase  
12 a majority of the lines.

13 Q. Right. Do you disagree with that general  
14 point being made by Dr. Blackmon there?

15 A. In that case, no. I have no reason to.

16 Q. And he goes on to say that with a skewed  
17 distribution of lines across customers, you could easily  
18 achieve an overall 40% market share without necessarily  
19 serving small business customers, correct?

20 A. That's correct, that's what he said in  
21 September 2000.

22 Q. Did you provide any analysis in this docket  
23 of that skewing effect?

24 A. No, I couldn't, there was no data to do that.

25 Q. Mr. Wilson, do you know what Qwest's

1411

1 percentage market share of the small business customer  
2 market in Washington state is?

3 A. Yes, it's about 66%.

4 Q. And do you have a percentage of market share  
5 for the large business customer in Washington state?

6 A. Yes, that's also shown in Exhibit 225 and 201  
7 at page 14.

8 Q. Let me get that out.

9 A. I said earlier that I think that the basic  
10 business market is a fair approximation of the small to  
11 medium sized business customers, and then PBX and  
12 Centrex are for large sized customers.

13 Q. Okay.

14 A. That's how I break that delineation down.

15 Q. All right, so you have taken us to Exhibit  
16 225 to your latest calculation of the lines based on the  
17 updated restated filings?

18 A. Right.

19 Q. I just want to understand your testimony  
20 here.

21 A. Right.

22 Q. And your testimony is that on the top line,  
23 basic business, that's where you get your market share  
24 from?

25 A. For small to medium sized customers, and that

1412

1 definition has ranged anywhere from one to three to one  
2 to six lines per customers up to ten lines per customer.

3 Q. Okay, let's take a look at that a little bit  
4 more closely. First of all, your testimony is that the  
5 entire body of lines shown both for CLECs and for Qwest,  
6 here of course we're referring back to an earlier number  
7 for Qwest that you have earlier in your testimony, your  
8 testimony is that every single one of those lines is a  
9 small business line, that is the small business market  
10 in Washington state?

11 A. My testimony is that I think that's a fair  
12 assumption to make because of the pricing  
13 characteristics for basic business service and the fact  
14 that if you get more than about ten basic business lines  
15 for one customer, they start to look to a PBX, Centrex,  
16 or other type of solution. However, I am of the opinion  
17 that there's new equipment coming along all the time  
18 that allows a customer to put together a very, very  
19 small PBX system for example or the equivalent of it, so  
20 there's a little bit of blurring of the line. But  
21 basically you buy basic business service and you buy  
22 more than ten of those lines, and then it gets time to  
23 buy a PBX or a Centrex maybe.

24 Q. So your testimony is that there are no large  
25 business customers, no significant or deminimus number

1413

1 of large business customers purchasing basic business  
2 lines?

3 A. No, my testimony was that that would be a  
4 fair assumption.

5 Q. Well, if that's not your testimony, what  
6 proportion of the basic business lines are purchased by  
7 large business customers?

8 A. I don't know. I'm trying to make the  
9 distinction between my assumption and what really is the  
10 fact. I don't know what the real fact is, and I didn't  
11 testify about the fact.

12 Q. Now you have mentioned the different  
13 definitions of small business customer including three  
14 lines or less. Would you accept that the FCC uses the  
15 definition of three lines or less for a small or very  
16 small mass market business customer?

17 A. Yes, but I would also note that other  
18 carriers have testified about -- we have seen evidence  
19 about some of the carriers who think that ten or less is  
20 small business.

21 Q. All right, but I'm just focusing right now on  
22 the FCC definition of three lines or less; are you with  
23 me?

24 A. And I accepted that subject to check.

25 Q. All right. Do you know what the market

1414

1 share, the Qwest market share is in the small business  
2 line, excuse me, small business market defined as three  
3 lines or less?

4 A. No.

5 Q. With regard to your answer earlier about the  
6 market share which is shown on this page, that's based  
7 on business lines, correct, not on customers? Even if  
8 we accept your definition that this is the small  
9 business market, that's based on lines, not on  
10 customers, correct?

11 A. What page are referring to, sir?

12 Q. I'm still looking at Exhibit 225 and the  
13 chart that you have laid out there, the one you directed  
14 us to as your answer for market share.

15 A. Yes.

16 Q. Let's go to page 22 of the testimony of  
17 Dr. Blackmon. Actually, the question for that text is  
18 on the bottom of page 21, and he is asked:

19 Why do you conclude that Qwest is not  
20 having to fight to retain the small  
21 business segment?

22 And then the answer is on page 22, and his  
23 recommendation to deny the petition is based here in  
24 part on the pricing activities of Qwest, is it not? I'm  
25 referring you specifically to lines 5 through 7 on the



1415

1 top of page 22.

2 A. Right, I was just about to read those.

3 (Reading.)

4 Q. Actually, you can read the whole answer.

5 A. Okay.

6 Q. There he notes that:

7 Qwest has not reduced small business  
8 prices in these markets relative to the  
9 prices it charges in other less  
10 competitive markets.

11 Correct?

12 A. Yes.

13 Q. And he goes on to note that:

14 It's hard to imagine any firm allowing  
15 40% of its market to switch without  
16 responding by cutting price.

17 Correct?

18 A. Yes.

19 Q. Now in the conversation we just had, you  
20 indicated that Qwest by your testimony has apparently  
21 lost in excess of 30% of its market share for basic  
22 business lines.

23 A. Yes, since 1985.

24 Q. Did you conduct and submit in this case an  
25 analysis of pricing behavior by Qwest in the small

1416

1 business market?

2 A. No, I didn't, I looked at their tariff sheets  
3 and price lists a little bit, but I didn't do any  
4 analysis presented here. I also looked at the CLEC  
5 pricing.

6 Q. To your knowledge, has Qwest reduced its  
7 price for basic business services provided to small  
8 business anywhere in Washington?

9 A. I think that there have been a variety of  
10 price offerings like that, the \$26.89 rate still stays  
11 in effect though. Likewise CLECs have not changed their  
12 prices very much either.

13 Q. And to your knowledge, has Qwest reduced its  
14 price for any of the features that are subject to this  
15 petition other than promotions?

16 A. I don't know.

17 Q. You didn't conduct an analysis of that for  
18 this, for your testimony in this case?

19 A. No, that's not a statutory criteria.

20 Q. But it was an issue that was included in  
21 Staff's analysis in the last proceeding, was it not?

22 A. Yes.

23 MR. FFITCH: May I have a moment, Your Honor?

24 JUDGE MACE: Sure.

25 MR. FFITCH: Your Honor, the only other

1417

1 matter I have is to offer previously identified  
2 cross-exhibits for Mr. Wilson that we had provided at  
3 the last -- at the first hearing session. And I have  
4 conferred with Staff counsel about these exhibits, and I  
5 will try to state what our agreement is, and they can  
6 correct me if I don't have this right. I believe we  
7 have agreed to stipulate the admission of Exhibits 215,  
8 216, and 217, and Exhibit 220, 222, and 223. We are not  
9 offering -- I'm sorry, maybe I will stop there and make  
10 sure that Staff is in agreement with those.

11 MR. THOMPSON: So far, so good.

12 MR. FFITCH: All right. We are not offering  
13 Exhibits 218 or 221 or 219.

14 JUDGE MACE: And how about 229, 230, and 231?

15 MR. FFITCH: Yes, we are offering those.

16 JUDGE MACE: Any objection to the admission  
17 of the exhibits counsel has just identified as ones that  
18 are being offered including those that Staff has  
19 stipulated the admission of?

20 Hearing no objection, I will admit Exhibits  
21 215, 216, 217, 220, 222, 223, 229, 230, and 231.

22 MR. BUTLER: Excuse me, Your Honor, is 231  
23 this testimony of Ron Blackmon?

24 JUDGE MACE: Yes.

25 I would like to take a recess now until 4:05.

1418

1 (Recess taken.)

2 JUDGE MACE: Public Counsel completed  
3 cross-examination of this witness, and the next on the  
4 list is Mr. Melnikoff.

5 MR. MELNIKOFF: Thank you, Your Honor.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. MELNIKOFF:

9 Q. Good afternoon, Mr. Wilson.

10 A. Good afternoon, sir.

11 Q. I'm Steve Melnikoff, as you know, with the  
12 Defendant of Defense. Let me try to clear up a couple  
13 of areas that you recently testified to today. When you  
14 were looking at Exhibit 201T, page 27, discussing  
15 relevant market with Ms. Friesen, I believe you said  
16 something in response to a question of why you didn't  
17 look at digital service, the impact of digital service.  
18 You said something to the effect that there was not  
19 sufficient evidence in the record to evaluate the impact  
20 of digital service. Do remember that?

21 A. Approximately I recall the discussion.

22 Q. And then I think you were also looking at in  
23 that same section VoIP with Ms. Friesen and wireless.  
24 Is there sufficient data in the record to evaluate the  
25 impact of wireless in this docket?

1419

1 A. Not really.

2 Q. Is there sufficient data in the record to  
3 evaluate VoIP?

4 A. No, there isn't much data. Most of the  
5 evidence is more descriptive. Those entities aren't  
6 regulated and don't file information with the  
7 Commission.

8 Q. Now what I would like to do with you is  
9 switch subjects and go to your testimony, or I'm sorry,  
10 your rebuttal testimony, Exhibit 210, page 3, lines 10  
11 through 12. This is the price for TELRIC section of  
12 your rebuttal testimony.

13 A. Yes.

14 Q. And I'm trying to understand exactly what it  
15 is you are testifying in that section, particularly  
16 relative to the discussions you had today, earlier  
17 today. And that is, are you making a recommendation,  
18 any recommendation on price floors in this docket?

19 A. No, not really. As you pointed me to my  
20 testimony, I talk about TELRIC as being a very good  
21 price floor that is readily available as a benchmark.  
22 But really Staff feels that if Qwest should file prices  
23 in a price list, if it gets approval identical to what  
24 they are today, and then if Qwest reduces rates and  
25 there's concern about cost, really that would be the

1420

1 time to look at cost and price directly. Or even  
2 better, a generic approach for policy making purposes  
3 would be another way to do it, but really in this case  
4 this isn't the time or -- and it isn't necessary. We do  
5 have the TELRIC benchmark available.

6 Q. At some future date if that's what is at  
7 issue?

8 A. Right. And I point to TELRIC on purpose  
9 because it's available. TSLRIC and other things haven't  
10 been estimated currently.

11 Q. But in your mind price floors are not at  
12 issue in this proceeding?

13 A. Right.

14 Q. If we could go to Exhibit 205C, 204C, and  
15 203, exhibits that accompanied your testimony, and there  
16 was some discussion today in these areas. And I want to  
17 be very careful not to have too much discussion on these  
18 that might reveal some confidential material. If you  
19 look at 205C, page 1, on line 44, columns F, G, H, and  
20 I, you have some percentages, and I think there was some  
21 testimony today on this.

22 A. Yes, I have figured those out now.

23 Q. Okay. Because I must tell you I was at a  
24 loss. Let me set the framework here. You on F, columns  
25 F, G, H, and I are the four methods that a CLEC can or

1421

1 four modes that a CLEC can compete. You have resale,  
2 UNE loop, UNE-P, and facility owned loops, correct?

3 A. Right.

4 Q. Of those four, would you consider facilities  
5 based to be the most important in terms of constraining,  
6 as a constraining force to Qwest if their business  
7 service is classified competitive?

8 A. I will go with that.

9 Q. Okay. Now you have calculated percentages?

10 A. Yes.

11 Q. On lines 44 in those columns. And I thought  
12 I heard, well, when I -- when I -- and on line 44 there  
13 are actual line, there's line counts for each of those  
14 columns?

15 JUDGE MACE: On line 44?

16 Q. I'm sorry.

17 A. 43.

18 Q. 43.

19 A. Yes.

20 Q. And when I take either -- any of those  
21 columns, any of those figures off of line 43 and divide  
22 that into or by either the total lines shown on 43,  
23 column E, or the adjusted downward number of lines on  
24 column E, row 45, I can't seem to get, and I think this  
25 was part of the question previously, those percentages.

1422

1           A.     Right.  Could I explain how I calculated  
2 those, please?

3           Q.     Please.

4           A.     As I explained earlier, some of the CLECs did  
5 not provide a breakdown of their lines in terms of  
6 whether it was resale, UNE-P, UNE loop, or owned loops.  
7 They just gave us the total number of lines including  
8 via special access, and so that's why we couldn't sum  
9 from right to left across the columns.  And, in fact,  
10 that's true here at row 43.  If I took in row 43, column  
11 F, all of the lines via resale and I total them, they do  
12 total to the number shown at line 43.  And, in fact, if  
13 I total all of the lines in F, G, H, and I that way,  
14 they total to the number shown in line 43.

15                   JUDGE MACE:  Can I just, I would like to ask  
16 a question, because it seemed on cross-examination at  
17 one point there was a different number for the total for  
18 column I, so I'm assuming that you rechecked that and  
19 the actual number is what appears on the exhibit itself.

20                   THE WITNESS:  Yes, ma'am, I don't think I  
21 have made any other changes to column I, right, that's  
22 the number.

23                   JUDGE MACE:  No, but what I'm saying is that  
24 someone else added that column up and came up with a  
25 different number.



1423

1                   THE WITNESS: I'm assuming they're wrong and  
2 that I'm right.

3

4                   E X A M I N A T I O N

5 BY CHAIRWOMAN SHOWALTER:

6           Q.     Okay, so your testimony is that for column I,  
7 if you add all the numbers in the column you will get  
8 the number that's listed there in column 43?

9           A.     I think so.

10          Q.     Because at one point you had said that the  
11 numbers in column I were exchange only and that they  
12 don't have -- you don't show there in column I anywhere  
13 say a separate row which would be exchanges reporting  
14 and at the state level only and that if you imagined  
15 adding in that row you would then get to the number in  
16 row 43. Or at least that's how I understood your  
17 answers to Ms. Friesen.

18          A.     I may have confused you, because column I  
19 should total to the figure shown at cell I43, and so  
20 should column H total to the figure shown for the state  
21 CLEC total at H43 and also G43 and F43. However, what I  
22 have said is that you can not add F, G, H, and I43 and  
23 get E43. That's because some CLECs provided information  
24 in the total only.

25          Q.     Oh, total meaning not as to all the types of

1424

1 lines?

2 A. Right.

3 Q. Versus -- okay, I think I've got it.

4 A. Yes, ma'am. And so in order to create the  
5 percentages shown in F, G, H, and I, row 44, what you do  
6 is you sum F, G, H, and I43, and then you do the  
7 percentages for each one, and it works out correctly.  
8 The sum of F, G, H, and I, row 43, is not shown on this  
9 sheet. It's slightly less than the number shown at E45,  
10 and that's because I was totalling the available data,  
11 and so the percentages show you of the companies that  
12 provided a breakout, this is how the breakouts total up  
13 in percents.

14 Q. So if we were to imagine a column between E  
15 and F.

16 A. Right.

17 Q. And it was labeled companies providing totals  
18 only, not broken down by types of lines.

19 A. Right.

20 Q. Then that little E and a half --

21 A. Right.

22 Q. -- column down at line 43 would have a number  
23 in it; is that correct?

24 A. Right.

25 Q. And that's the missing number?

1425

1 A. Yeah.

2 Q. That would otherwise make this more  
3 transparent?

4 A. Yeah, and actually that number is about  
5 20,000 less than the number shown at E43.

6

7 C R O S S - E X A M I N A T I O N

8 MR. MELNIKOFF:

9 Q. And that would be the denominator of your  
10 calculations for the percentages?

11 A. The denominator being the bottom half of the  
12 fraction?

13 Q. Yes.

14 A. Yes.

15 Q. And I just want to -- I think I understand  
16 that now.

17 Now looking at this same page, I just want to  
18 get an understanding of what you mean by on line 45,  
19 column C, that it's a description of the number, the  
20 revised number in column F, line 45, which is a revision  
21 of the number, I'm sorry, of E, row E, column E, line or  
22 row 45 is a revised number of the cell in column C, row  
23 43, and your description is minus two carriers.

24 A. Right.

25 Q. And when I go to the notes, and I want to be

1426

1 careful not to divulge any confidential information, but  
2 when I go to the notes on Exhibit 203C, page 2, lines  
3 133 through 138 or maybe 139, there are some figures  
4 there for a particular carrier that's referenced on row  
5 or column C, row 45, 205C. Are those -- is that what --  
6 are those figures, those lines, what you're referring to  
7 partially as what was taken out?

8 A. Well, there's two takeouts.

9 Q. There was another carrier as well?

10 A. No. In looking at Exhibit 205C at the  
11 adjustment referenced at line 45.

12 Q. Yes.

13 A. That's one takeout. I did that to avoid  
14 double counts back in August or September when I learned  
15 that I had a double count issue. I think that's why I  
16 took it out. But the same carrier also recently filed  
17 another revision, which was to the best of my  
18 understanding a revision to the figures you referenced  
19 in the 130's on Exhibit 203. So those are two separate  
20 takeouts, and one was to avoid a double count, the other  
21 was to take out digital lines.

22 Q. But your revision on 205C --

23 A. That's a double count revision.

24 Q. That's the double count revision that's  
25 referenced in 203C?

1427

1           A.     I hope so, yes, that was my plan.

2                     Well, I guess we have confused it again.  The  
3 numbers at lines 133 and down on Exhibit 203C were  
4 revised very recently to take out digital, but there  
5 were also additional data that I took out to avoid a  
6 double count, because it was already in the Qwest  
7 wholesale data.

8           Q.     So I guess my question is, now that I may be  
9 even more confused, is that the -- in column -- going  
10 back to 205C, row E --

11                    CHAIRWOMAN SHOWALTER:  Column E.

12           Q.     I'm sorry, column E, row 45, is that number  
13 that's in that cell, that takes care of the double count  
14 from two carriers?

15           A.     Right.

16           Q.     And that is not the line count that is shown  
17 on 203C, lines 134 through 139?

18           A.     That's my understanding in how I treated it,  
19 yes, and that's because these carriers filed a variety  
20 of responses in a variety of forms for a variety of  
21 products, and some of the products were affected by  
22 these revisions, and others weren't, so you see bits and  
23 pieces here and there.

24           Q.     I think I understand it as long as you don't  
25 say anything else.

1428

1 A. Mum's the word.

2 Q. Let's just revisit HHI just for a little  
3 while, and what I would like to do is go to page 25 of  
4 your testimony, which is 201T.

5 A. I'm there.

6 Q. There you have a table of five zones at lines  
7 13 through 17. You have the words minimum and maximum.  
8 What do they refer to, those that are on lines 15 and  
9 16?

10 A. The table is intended to be a brief summary  
11 of and is a summary of the HHI analyses by wire center,  
12 which is in 209. And in 208 we sort that data, we  
13 compacted it. 209 describes individual CLECs. 208  
14 aggregates the CLEC figures, and 208 takes the data and  
15 sorts it into unbundled network element zones. So the  
16 minimum and maximum, taking Zone 1 for example,  
17 hopefully this will work out, the maximum in Zone 1 is  
18 shown there in the right-hand column on Exhibit 208 for  
19 Zone 1. You can see there's several figures, and some  
20 of them are higher, some are lower. And in Zone 1 the  
21 maximum is found there, and it's reported as the maximum  
22 in my testimony on page 25. And the minimum is the  
23 smallest HHI found in Zone 1 exchanges.

24 Q. And in all five of those zones the minimum  
25 never falls below 5,000, correct?

1429

1 A. That's right.

2 Q. Which is considerably higher than the 1,800  
3 which the Department of Justice represents or states  
4 that it represents highly concentrated market?

5 A. Yes.

6 Q. And as I understand your testimony on page  
7 24, that this, your HHIs and those zones was only  
8 calculated on the basis of -- or what -- it did not  
9 include the CLEC responses to Commission Order Number 6?

10 A. That's right, so the HHIs that I have  
11 described here are a little bit higher possibly than  
12 they would be if we had included that additional  
13 information.

14 Q. You say a little bit; would they go  
15 substantially down?

16 A. I doubt it.

17 Q. Would they go below 5,000?

18 A. I have no idea really, but I doubt it would  
19 change things much on the concentration analysis.

20 Q. Let's quickly go, this is a fascination of  
21 mine, go to the number of competitors. There seems to  
22 be a number of -- various numbers being bandied about in  
23 some of the testimonies. In your testimony, page 8 and  
24 9 I believe, you said you, and this is in 201T, that you  
25 sent out requests to approximately 2,200 registered

1430

1 competitive LECs.

2 A. About 200.

3 Q. I'm sorry.

4 JUDGE MACE: I think the number was 200.

5 Q. I'm sorry. And then your responses were from  
6 24, correct? Now this is on page 9 I believe of your  
7 testimony.

8 JUDGE MACE: Are you referring to his direct  
9 testimony?

10 MR. MELNIKOFF: Yes.

11 THE WITNESS: We may have different pages.

12 JUDGE MACE: I think you must have either a  
13 different version or you're in a different -- I have  
14 page 10 as showing where the response, showing the  
15 number of registered companies.

16 THE WITNESS: Right.

17 MR. MELNIKOFF: Yes, I'm sorry.

18 THE WITNESS: And then on page 12 is the 24.

19 MR. MELNIKOFF: Yes, apparently I was getting  
20 it off of two different versions.

21 BY MR. MELNIKOFF:

22 Q. But you have said that you were able to only  
23 aggregate 17.

24 A. Right. There was also wholesale data from  
25 Qwest on 34 carriers, and I put them together then



1431

1 avoiding double counts.

2 Q. In your --

3 A. The ones that Qwest had and the ones that we  
4 got responses to aren't exactly the same set.

5 Q. In your rebuttal testimony, which is 210, at  
6 page 6 it looks like you're saying there are 27.

7 A. Right, I might have gotten some more  
8 responses in between direct and rebuttal. Like I said,  
9 there were late responses coming in.

10 Q. And I believe Mr. Reynolds in his testimony  
11 talked about 37, somewhere in the neighborhood of 37,  
12 and Mr. Teitzel had a number 78, not of responses but of  
13 competitors they looked over. From your perspective  
14 having looked at the responses, how many competitors do  
15 you consider to be available now providing service for  
16 business service in Qwest territory in Washington state?

17 A. Because I believe that there are some who  
18 didn't respond but I don't know how many, not many, I  
19 would say somewhere around 40.

20 Q. So somewhere between -- almost another 50%  
21 from the 24 that you got in originally?

22 A. Possibly, yes.

23 Q. Any of them significant?

24 A. When we got the responses, I did try to think  
25 of, you know, are we missing some 800 pound gorilla or a

1432

1 100 pound gorilla in the data, and I don't think that  
2 we're missing anything significant. There are about 200  
3 carriers registered.

4 Q. And you only got a response from about 10%?

5 A. Well, out of the 200, some are doing  
6 residential, some are doing other things, some aren't in  
7 operation yet. I think that there's about 40 that are  
8 actively competing in this market against Qwest that the  
9 Commission regulates, and 24 out of 40 is actually a  
10 pretty good response rate to a sample survey I think.

11 Q. A good response rate to a regulated -- to a  
12 regulator that can impose fines on carriers?

13 A. Yeah, I have done surveys in the past in  
14 other dockets where I have got less than 10% response  
15 rates to Commission requests for information.

16 Q. In Exhibit 429, which is I don't know if you  
17 need to go there, but that was, that I think was the  
18 FCC's --

19 A. The local competition report.

20 Q. The local competition status as of December  
21 31, 2002. I think that was done, that was used on  
22 cross-examination of Ms. Baldwin. It indicated that  
23 there were 11 competitors in the state of Washington as  
24 of 2002. Can you reconcile your numbers with that  
25 number?

1433

1 A. No.

2 Q. I know, I don't want to be testifying, but  
3 let me give you one aspect, I know that the criteria  
4 that the FCC uses is at least 10,000 lines.

5 A. I do recall that, that you bring it up, but  
6 was it 10,000 or it might even be a bigger number than  
7 that actually, but I will take 10,000. But that could  
8 be one explanation, that some of the 40 or so I estimate  
9 might be smaller than that. The FCC report as I recall  
10 also spoke to the state as a whole, and I don't recall  
11 whether it broke out residential and business, so there  
12 could be a lot of variations in the data. I have seen  
13 these kinds of numbers bounce all over the place lots of  
14 times, and I think our numbers are pretty accurate.

15 Q. How many exchanges, talking about number of  
16 competitors now, how many -- let me refer you to page 22  
17 of your testimony, which is Exhibit 201T.

18 A. I'm there.

19 Q. I think it's line 8, suggesting that your  
20 exhibit shows at least one to three CLECs offering  
21 service at every exchange except Elk.

22 A. I'm on a different line, but that doesn't  
23 matter, I did say that, yes.

24 Q. How many exchanges are served only by one  
25 CLEC?

1434

1           A.     I provided that information in a response to  
2 a Public Counsel data request. I don't recall if it got  
3 entered. I think it's about four, but I --

4           Q.     Four exchanges?

5           A.     I guess I should probably try and refer to  
6 that, because it did take me a little while to figure it  
7 out. And that's based on both the Qwest wholesale data  
8 as well as the CLEC response data.

9           JUDGE MACE: Mr. ffitch, do you --

10          A.     I have the number, it's number five. Excuse  
11 me, it's Exhibit Number 220, and the answer is five.

12          Q.     All right. New subject, same page, lines 16  
13 through 19. I'm hoping we have the same version.

14          A.     Are we doing break even analysis?

15          Q.     That is the -- yes.

16          A.     Okay.

17          Q.     The imputation test.

18          A.     Yes.

19          Q.     You cite information that Qwest gave you or  
20 to the Staff to support that conclusion. Did you do any  
21 analysis to confirm the accuracy of that data?

22          A.     I accepted their response to our data request  
23 as it stood.

24          Q.     So it really isn't your analysis or the  
25 Staff's analysis, it's Qwest's analysis? And I'm

1435

1 looking at the question, what are the Staff's findings  
2 with regard to the break even analysis.

3 A. Right. Staff asked Qwest in June in our  
4 first set of data requests to provide us with the  
5 revenue they derive from the different types of lines,  
6 basic business, PBX, or Centrex in each wire center in  
7 Washington. And we spelled out exactly what kind of  
8 revenue we were asking them to report, and they provided  
9 that to us by wire center in a data response. And that  
10 data response is what Mr. Reynolds relied upon in doing  
11 his analysis. It's the same thing I would have done,  
12 and I agreed with his analysis.

13 Q. Did you look at that analysis?

14 A. Yes.

15 Q. And confirmed the accuracy of it?

16 A. It looked good to me, yes.

17 Q. On page 20 of your testimony, I'm sorry, no,  
18 I think it is page 20, I'm sorry, page 26, we're talking  
19 about a CLEC could, at line 2, because a CLEC could  
20 relatively easily enter Elk. Do you see where I am,  
21 from where I'm reading?

22 A. Yes.

23 Q. Is the prospect that a competitor can enter a  
24 market, is that equivalent to effective competition in  
25 your mind?

1436

1 A. No.

2 Q. At the bottom of 26 you talk about a survey  
3 conducted by the National Regulatory Research Institute,  
4 NRRRI, about customer perception of whether they can  
5 choose their local exchange carrier.

6 A. Right.

7 Q. Has any such survey applicable to Washington  
8 users been done?

9 A. Not that I'm aware of.

10 Q. On 26, lines 6 through 7, you talk about  
11 through structural framework of OSS and interconnection,  
12 competitors have the ability to make alternative service  
13 available.

14 A. Right.

15 Q. Do you rely heavily on -- do you rely on that  
16 as the basis for your finding on your recommendation  
17 that the petition should be granted?

18 A. Among other things, yes.

19 Q. Does the ability to make alternative service  
20 available equate to effective competition?

21 A. No, that's just one of the elements of the  
22 statutory definition. There also have to be no  
23 significant captive customers, and then the Commission  
24 looks at a variety of other factors.

25 Q. Does the ability to make alternative service

1437

1 available equate to effective competition?

2 A. No, not by itself.

3 Q. Does it equate to determining captive  
4 customers, the existence of captive customers?

5 A. No, not per se, but I think it does indicate  
6 that there's the possibility that they're not really  
7 captive customers.

8 Q. And I think we are near the final question,  
9 at least area.

10 In your rebuttal 210, Exhibit 210, page 7,  
11 lines 1 through 4.

12 A. I'm there.

13 Q. I'm not sure now that I have the right  
14 revision in front of me, but you talked that, wherever  
15 it is, and I apologize for having the wrong version  
16 here, that the Commission should look beyond market  
17 share numbers and also consider structure of the market  
18 itself. Do you remember that testimony?

19 A. I have said that.

20 JUDGE MACE: I believe it's on page 8.

21 MR. MELNIKOFF: Okay.

22 JUDGE MACE: Confidential page 9 through 12.

23 MR. MELNIKOFF: Oh, okay, I just had a  
24 different version.

25 BY MR. MELNIKOFF:

1438

1 Q. Do you see where I'm referring?

2 A. Yes.

3 Q. What actual structures of the market are you  
4 referring to?

5 A. The implementation of the OSS, operating  
6 support system, performance assurance plan, which was a  
7 very detailed process. The implementation of Qwest's  
8 standardized interconnection agreement is another. The  
9 implementation of rates for unbundled network elements  
10 is another. Those are examples that come to mind  
11 quickly.

12 Q. The impact of those examples, wouldn't they  
13 be captured in the market share figures?

14 A. I think so.

15 Q. So are we looking beyond market share to  
16 something that is an input into the market share  
17 calculation?

18 A. Well, we're looking at one of the other  
19 factors the legislature has listed as something the  
20 Commission can consider such as ease of entry.

21 Q. But if there's ease of entry, then that would  
22 be reflected in the market share, would it not?

23 A. I think that it is. For example, I think  
24 that since the implementation of OSS and interconnection  
25 for Qwest, we have seen substantial gains on the CLEC



1439

1 side.

2 Q. In fact --

3 A. There isn't any data here, but I think it's  
4 there.

5 MR. MELNIKOFF: Thank you, I have no further  
6 questions.

7 JUDGE MACE: Mr. Butler.

8

9 C R O S S - E X A M I N A T I O N

10 BY MR. BUTLER:

11 Q. First, Mr. Wilson, if you can refer back to  
12 Exhibit 205, you had an exchange with the Chairwoman  
13 about the figure on line 43. I think it was at 43, yes,  
14 line 43, under column I. And if I understood your  
15 testimony in response to the Chairwoman, you indicated  
16 that that figure does not include any lines from CLECs  
17 that reported lines at a level higher than the exchange,  
18 is that correct, and that it should simply reflect a  
19 summation of the numbers above it in column I; is that  
20 correct?

21 A. Yes.

22 Q. Now while you were talking with  
23 Mr. Melnikoff, I assure you I was paying absolute  
24 attention, but --

25 A. Thank you.

1440

1 Q. -- at the same time I was also doing a little  
2 arithmetic, and the summation that I did yielded a sum  
3 of 37,107, not the figure which is shown here. Could  
4 you --

5 JUDGE MACE: I want to indicate that my  
6 addition is the same as yours, I came up with the same  
7 number.

8 CHAIRWOMAN SHOWALTER: Which I think was  
9 Ms. Friesen's number.

10 MS. SINGER NELSON: It was mine.

11 CHAIRWOMAN SHOWALTER: Oh, Ms. Singer Nelson,  
12 I'm sorry.

13 BY MR. BUTLER:

14 Q. Could you recheck that figure and either  
15 revise your testimony and exhibits to reflect the  
16 corrected figure or provide an explanation for why there  
17 is a discrepancy?

18 A. It's my understanding that the discrepancy  
19 would be that some CLECs filed the number of lines via  
20 owned loop only at the state level, and that's the  
21 difference between the number that appears in my old  
22 exhibit and my new exhibit.

23 JUDGE MACE: Which old exhibit and which new  
24 exhibit?

25 THE WITNESS: Well, I have notes on a Exhibit

1441

1 C5 that doesn't say revised, and I revised it up to the  
2 number that appears on my revised Exhibit 205C. And so  
3 I'm assuming that that relates to first of all a  
4 misstatement by me that you can sum those up and get  
5 that number. Obviously you can't, you have done that,  
6 and you got the number that you said. And I'm saying  
7 that the difference is that we got, in between the  
8 original and the revised, we got more data at the state  
9 level.

10 MR. BUTLER: Can I ask as a record  
11 requisition that you double check that and confirm and  
12 just provide us with an explanation to reconcile these  
13 differences.

14 CHAIRWOMAN SHOWALTER: And I will just amend  
15 that. It seems to me that if we have a row and a column  
16 that reflected if the column were CLECs not breaking out  
17 their lines by F, G, H, and I, and the row were CLECs  
18 not breaking out their data by exchange, I don't know if  
19 there would just be a single cell that is the  
20 intersection of that column, that row, or maybe there  
21 would be something else, but I think that that would  
22 make it very clear to us where these -- this missing  
23 number or these missing numbers are. Do you follow my  
24 thinking?

25 THE WITNESS: No, I'm sorry, I didn't. But I

1442

1 could explain that in column I, for example, where there  
2 appears to be a concern that the explanation for why you  
3 can't add up column I and get the total shown in row 43  
4 is that you get a number that was just recited to us,  
5 37,107, which is about 1,000 less than what I've got  
6 there, and the difference is that somebody reported a  
7 total state number.

8 JUDGE MACE: It would be --

9 THE WITNESS: And if I were to provide  
10 something that added up, it would be this total state  
11 number, and I wouldn't give you any exchange data, and  
12 you would lose a lot of information.

13 CHAIRWOMAN SHOWALTER: Well, I still don't  
14 understand. There is 1,000, the number of 1,000 comes  
15 from somewhere, and isn't it possible to amend this  
16 chart to show that number in a cell. And I'm not sure  
17 if the cell is what I would characterize is as column,  
18 you know, a column halfway between E and F, you could  
19 call it E1, or --

20 THE WITNESS: I understand.

21 CHAIRWOMAN SHOWALTER: -- and/or if it would  
22 be a row, which I would say would be 42 1/2 I believe.  
23 If you had a 42 1/2 and you had an E1 and filled in  
24 whatever could be filled in, I think we would see,  
25 unless it reveals too much information which is another

1443

1 question, we would see what it is that we're not seeing  
2 now.

3 THE WITNESS: I have almost done that now by  
4 describing why it's different, but there is that danger  
5 in breaking these things out then, but I understand what  
6 you're talking about. I could have shown a column that  
7 was like, you know, the state total entries and then  
8 added them all up together, and it would foot and  
9 crossfoot better.

10 JUDGE MACE: So I guess the question is  
11 whether this should be denoted a record requisition or  
12 whether we should make a Bench Request for a revised  
13 exhibit that would make a showing like that if it were  
14 possible. We could make it Bench Request Number 4.

15 THE WITNESS: May I clarify, please?

16 JUDGE MACE: Sure.

17 THE WITNESS: Is that just for column I, row  
18 43, or am I supposed to do that for everything? Because  
19 there's a lot of these instances throughout.

20 CHAIRWOMAN SHOWALTER: Well, I guess it would  
21 be if line 43 is not an actual total of the columns,  
22 then it leaves the reader with a question as to why is  
23 there a different total than is reflected in the column.  
24 And so it would, as I say, it seems to me the easiest  
25 thing is to stick in both a row and a column, if

1444

1 relevant, by which these totals would then make sense,  
2 because there would be some plugged in number of the  
3 state only or the, well, whenever there is data that  
4 wasn't broken down the way you have broken it down, by  
5 filling in those numbers, we would see the gap. Now I  
6 think at this point we all know why there is a gap, and  
7 yet we seem to be struggling over it.

8 THE WITNESS: I can do it fairly quickly for  
9 that discreet item, but to do all of it I would have to  
10 go through all of this, and it would take me quite a lot  
11 of time.

12 CHAIRWOMAN SHOWALTER: By that discreet item,  
13 you mean in other words you can't revise this very table  
14 completely without --

15 THE WITNESS: Not without going clear through  
16 all of the data again and spending a fair -- last time I  
17 rushed it, and I can rush it again, but I prefer not to.  
18 I mean I worked with no days off from the middle of July  
19 until I got this done, so.

20 CHAIRWOMAN SHOWALTER: But these totals came  
21 from somewhere, these statewide totals came from  
22 somewhere.

23 THE WITNESS: Right here.

24 CHAIRWOMAN SHOWALTER: And they are almost  
25 completed reflected in this table but not completely.

1445

1                   THE WITNESS:  Almost, yeah, but there's --  
2   the phenomenon we have discussed goes from right to  
3   left, it goes from top to bottom.

4                   CHAIRWOMAN SHOWALTER:  Right.

5                   THE WITNESS:  And it goes through Exhibit 204  
6   and 205.  And what I did in leading to confusion for the  
7   reader was an attempt to be as transparent and provide  
8   as much information as possible to make things foot and  
9   crossfoot.  I didn't attempt the extra column just  
10  because I was concerned about confidentiality.  But if  
11  it didn't divulge confidentiality, it could be done.  I  
12  just thought it was simpler and more clear, and clearly  
13  I was wrong.  But there really are that number of lines  
14  reported.

15                  JUDGE MACE:  When you say there really are  
16  that number of lines reported, which number are you  
17  talking about?

18                  THE WITNESS:  At I43, and they are calculated  
19  as I have described.  The discreet change I can do  
20  pretty quickly, I just worry about a lot of them.

21                  JUDGE MACE:  How long would it take you to  
22  actually make an in quotes accurate revision of this  
23  exhibit?

24                  THE WITNESS:  About six weeks.

25                  CHAIRWOMAN SHOWALTER:  Well, I mean one way

1446

1 is simply to total up what is in the column, subtract it  
2 from what's at the bottom of column, and that presumably  
3 is what is not reflected on an exchange by exchange or  
4 type of loop basis.

5 THE WITNESS: As reported through some 34  
6 different or 27 different responses and the Qwest data,  
7 so it's many, many moving parts to get to that.

8 JUDGE MACE: Right, but at least you would  
9 have a total in one place that reflected the numbers  
10 that were shown, and then you would have a difference so  
11 that the exhibit at least didn't appear to read a column  
12 that didn't total the total figure.

13 CHAIRWOMAN SHOWALTER: Well, perhaps we could  
14 solve it this way. Is it your testimony today that the  
15 only reason for a state number, statewide total number  
16 in row 43 that's greater than the sum of the column, and  
17 let's talk about, you know, column F, G, H, and I, is  
18 the presence of CLEC information that was presented on a  
19 more macro level than these cells can reflect?

20 THE WITNESS: Right, probably so.

21 CHAIRWOMAN SHOWALTER: So then why would it  
22 take six weeks to simply plug that statewide number in  
23 if that's the only thing that could have produced it?

24 THE WITNESS: Because it took me many, many  
25 hours to get to this point, and I have to replicate it.



1447

1 And the last time I did it, I did it under a deadline  
2 that I didn't pick. You asked me how long it would  
3 take, I would prefer to take six weeks. Last time I  
4 worked every day and well overtime to do it. If I could  
5 work 5 days a week instead of 7 and 8 hours a day  
6 instead of 10 or 12, then I could do it in less time,  
7 but I would prefer not to.

8 CHAIRWOMAN SHOWALTER: So that I'm clear  
9 about what we're talking about, are we talking about  
10 going through your data and determining which CLECs  
11 presented their data only along total statewide basis  
12 geographically or total lines not broken down  
13 sufficiently?

14 THE WITNESS: Yes, simplistically that's  
15 exactly what we need to do, but operationally as an  
16 analyst to fill in all the cells and make them all add  
17 up correctly, it's a much more laborious task.

18 MR. THOMPSON: Could I suggest that we just  
19 take about a five minute break and maybe discuss a way  
20 to get the information that I think that you would like  
21 to have.

22 CHAIRWOMAN SHOWALTER: Well, possibly we  
23 should take a longer break than that, it's 5:00.

24 (Discussion on the Bench.)

25 CHAIRWOMAN SHOWALTER: I think we should

1448

1 break for the day. I don't think we're going to finish  
2 today, so we might as well just break.

3 JUDGE MACE: We'll resume tomorrow at I  
4 believe 1:30 is the time scheduled. It will be after  
5 the open meeting, so we will be back on the record at  
6 1:30 tomorrow afternoon.

7 MS. SINGER NELSON: Your Honor, could we just  
8 inquire as to how much longer Mr. Butler has. He is the  
9 last person to cross examine.

10 MR. BUTLER: Yeah, I don't have that much. I  
11 really apologize for having asked this question, so  
12 don't take this out of my ten minutes, please.

13 JUDGE MACE: All right, then let's hear the  
14 rest of your cross-examination.

15 MR. BUTLER: Oh, okay.

16 MS. SINGER NELSON: Thank you, Your Honor.

17 (Discussion on the Bench.)

18 CHAIRWOMAN SHOWALTER: We can't finish now.  
19 I don't see the point in continuing if we're going to  
20 have to come back tomorrow anyway, unless you really  
21 want to.

22 MR. BUTLER: No, that's fine.

23 JUDGE MACE: Okay, we'll resume tomorrow at  
24 1:30.

25 (Hearing adjourned at 5:05 p.m.)