

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 VIII
7) Pages 1449 to 1545
8 For Competitive Classification)
9 of Basic Business Exchange)
10 Telecommunications Services.)
11 _____)

8

9 A hearing in the above matter was held on
10 October 22, 2003, from 1:30 p.m to 4:45 p.m., at 1300
11 South Evergreen Park Drive Southwest, Room 206, Olympia,
12 Washington, before Administrative Law Judge THEODORA
13 MACE and Chairwoman MARILYN SHOWALTER and Commissioner
14 PATRICK J. OSHIE and Commissioner RICHARD HEMSTAD.

15 The parties were present as follows:

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

2 JUDGE MACE: Let's be back on the record in
3 the matter of the Petition of Qwest Corporation for
4 Competitive Classification of Business Exchange
5 Telecommunications Services. This is Docket Number
6 UT-030614. We are convened on October 22nd at the
7 offices of the Washington Utilities and Transportation
8 Commission in Olympia, Washington. And I would like to
9 take appearances just briefly. The Commissioners are
10 here with me on the Bench, Chairwoman Showalter,
11 Commissioners Hemstad and Oshie. My name is Theo Mace,
12 an Administrative Law Judge for the Commission.

13 And, Mr. Sherr, would you begin, please.

14 MR. SHERR: Sure. This is Adam Sherr for
15 Qwest. Lisa Anderl is also I believe on the bridge line
16 for Qwest.

17 MR. BUTLER: Arthur A. Butler for WebTEC.

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

21 MR. FFITCH: Simon ffitch for Public Counsel.

22 MS. WATSON: Lisa Watson for Commission
23 Staff.

24 MR. THOMPSON: Jonathon Thompson for
25 Commission Staff.

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1 JUDGE MACE: Thank you.

2 And on the bridge line?

3 Ms. Anderl, are you on the bridge line?

4 Is there anyone on the bridge line who wishes
5 to enter an appearance?

6 (Discussion on the Bench.)

7 JUDGE MACE: Is there anyone on the bridge
8 line who wants to enter an appearance today, Ms. Anderl?

9 MS. ANDERL: Oh, I'm sorry, Your Honor, yes,
10 I had said yes.

11 JUDGE MACE: Yes, I had the mute caller
12 button on, so we didn't hear you.

13 MS. ANDERL: Okay.

14 JUDGE MACE: And anyone for AT&T?

15 Anyone for MCI?

16 I just want to indicate for the record that
17 Ms. Friesen and Ms. Singer Nelson indicated to me
18 yesterday that they would not be present at the hearing
19 today.

20 CHAIRWOMAN SHOWALTER: It still sounds as if
21 this mike is not really working. It certainly wasn't
22 when Ms. Anderl was talking. I think the closer you get
23 to it, the worse it is.

24 JUDGE MACE: Ms. Anderl, we're going to mute
25 you again, and you're going to have to rely on

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1 Mr. Sherr.

2 MS. ANDERL: That's fine, Your Honor, I
3 didn't expect to be taking an active role today.

4 JUDGE MACE: All right, we have the mute
5 caller button on now, and it seems better.

6 CHAIRWOMAN SHOWALTER: Which probably means
7 there's an open line somewhere in the system.

8 JUDGE MACE: The first thing that we need to
9 address on the record today is resuming Mr. Wilson's
10 cross-examination. Before we go ahead with the
11 cross-examination, I understand that there has been a
12 revision to the exhibit we were dealing with yesterday
13 at the close of the hearing. That was 205C.

14 Mr. Thompson.

15 MR. THOMPSON: Correct, it began I guess as a
16 discussion in Mr. Butler's cross-examination of
17 Mr. Wilson of a possible records requisition, but then I
18 think there was some discussion of a Bench Request by
19 the Chairwoman to make revisions to Exhibit 205, and we
20 have endeavored to do that, and that's what we have
21 distributed as what's been pre-marked as Exhibit 232.
22 And I'm not sure how you would like to proceed, but I
23 could -- it seems to me we could have Mr. Wilson explain
24 what modifications or formatting changes he has made to
25 Exhibit 205 in response.

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1 JUDGE MACE: I think that would be helpful.
2 Mr. Wilson.

3 THE WITNESS: Thank you, Your Honor. I first
4 of all wanted to apologize for my own inability to
5 comprehend exactly what was requested. I was pretty
6 concerned I had to redo a lot of work, and as it turned
7 out I was able to, once I understood what I needed to
8 do, I think address the questions pretty quickly
9 actually.

10 Exhibit 232 that has been handed out has
11 portions of the worksheet highlighted in yellow to show
12 you the reformatting that I have done to the worksheet
13 to allow the user to replicate all of the figures that
14 appear there and track all of the summations, et cetera.

15 I think maybe the best place for me to start
16 to explain what I did here to reformat the data would be
17 to turn your attention, please, to cell, the column at
18 the top that says L, and that's the column of data from
19 the CLEC data responses and from the wholesale Qwest
20 data. Actually, this is just the CLEC responses that
21 provided the lines via owned loops. And you will see
22 that I have displayed here the same data that appeared
23 before all the way down column L except for when you
24 reach row 43, which has been highlighted, and you see a
25 number which is highlighted at L43, that's the number

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1 that several counsel had arrived at, and I agree that
2 does sum and total that column.

3 There was a problem yesterday because the
4 figure 981 was missing when you went to the state CLEC
5 total figure shown at L44, and the reason was that there
6 were miscellaneous lines reported by carrier DO earlier.
7 I have shown those miscellaneous lines now broken out
8 separately in column K at cell number K43. So then what
9 I have also shown in a note at line 47, it says: Note,
10 L44 equals L43 plus K43. Therefore, I hope that I have
11 shown a trail so that the state CLEC total of owned
12 lines is easily traceable through the worksheet.

13 Because I had described several other
14 characteristics of the worksheet yesterday that
15 indicated that I felt it was not possible to sum up
16 figures all the time moving from right to left, I
17 cleaned up or reformatted column F and G. And now if
18 you look at column E, total lines, in fact it does equal
19 the total of resale lines, UNE-P lines, UNE loop lines,
20 owned lines, and miscellaneous lines.

21 As I had indicated, the reason that I needed
22 to clarify this was that there were CLECs who provided
23 miscellaneous provisioning methods. They didn't detail
24 them in specific as to whether it was resale or UNE-P or
25 UNE loop or owned. They just said we have lines, and

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1 they didn't describe the method of provisioning, so
2 miscellaneous provisioning methods now are broken out in
3 column F.

4 Likewise location data was slightly off on
5 the totals, and so I added columns N and O to break out
6 the data and report separately information that was
7 provided to us as miscellaneous locations information.
8 By that it was not specified to us, they just told us
9 how many locations they had, and they didn't specify
10 whether it was via UNE loop, resale, UNE-P, or owned
11 loops. So I clarified the additions from right to left,
12 if you will, across the columns and also rectified the
13 totals at the bottom with all of the information shown
14 clearly so you can add things up.

15 Lastly, there was -- or two other items.
16 There was at row 45 concern yesterday morning when I was
17 cross examined by Ms. Singer Nelson that I was concerned
18 myself that the percentage figures shown on line 45 were
19 not traceable, and I have provided with a note shown at
20 line 48, yes. At line 48 there's a note that says Q44
21 equals 043 plus N43. Let's see now, oh, that was my
22 note for the totals over there, I apologize. Let's see,
23 oh, I think all the math adds up now, and the
24 percentages are clear.

25 Also down at the bottom of the sheet because

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1 I had this opportunity to completely show all of my
2 work, I did show you the effect of the most recent
3 revisions to the carriers' data when they clarified
4 analog and digital submissions.

5 MR. THOMPSON: Well, I want to -- should -- I
6 could either at this point let you follow up with
7 additional questions if you have any, or I could ask
8 Mr. Wilson the questions to just offer the exhibit for
9 admission into the record.

10 CHAIRWOMAN SHOWALTER: I just have, just
11 trying to understand, I have sort of forgotten I guess,
12 but of the several last columns on the right, they
13 referred to locations. So just for example let's say
14 column P, row 4, there's a number there. What is that
15 saying, that shows what?

16 THE WITNESS: Yes, the data request collected
17 information about the number of lines per location via
18 collecting number of lines and collecting number of
19 locations served. So P43 shows you that that number of
20 locations were served by the CLECs.

21 CHAIRWOMAN SHOWALTER: Meaning business
22 locations like customers?

23 THE WITNESS: Yes.

24 CHAIRWOMAN SHOWALTER: Okay.

25 THE WITNESS: And they were served via resale

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1 lines.

2 CHAIRWOMAN SHOWALTER: I see, that's what I
3 didn't quite catch.

4 THE WITNESS: Yes.

5 CHAIRWOMAN SHOWALTER: Okay.

6 JUDGE MACE: Mr. Butler.

7 MR. BUTLER: Yes, at the risk of being
8 permanently labeled the troublemaker and with a certain
9 note of irony since I was one of the parties trying to
10 get access to this information in the first place, I
11 might suggest that this exhibit be further refined to
12 mask the identities of the carriers in the note at the
13 bottom, lines 54 through 58, since I think it could
14 easily be determined which carriers you're talking about
15 here, because it's public knowledge which carriers
16 responded with revised data. So perhaps that could
17 simply be recast with the total revision reflected
18 without identifying the carrier.

19 JUDGE MACE: Mr. Thompson.

20 MR. THOMPSON: Well, yeah, if that's --
21 that's not a bad point. We could certainly do that.

22 THE WITNESS: I can do that readily, and that
23 would be consistent with the way I portrayed the data in
24 Exhibit 225.

25 JUDGE MACE: All right, then we have this

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1 before us now for purposes of cross-examination, and we
2 will expect that we will get a further revised -- it
3 will be Exhibit 232 revised to mask that information.

4 Mr. Butler -- well, and do you offer the
5 exhibit at this point?

6 MR. THOMPSON: Yes.

7 JUDGE MACE: Is there any objection to the
8 admission of Exhibit 232 assuming that it's revised to
9 mask the carriers listed in lines 54 through 58, any
10 objection?

11 I will admit the exhibit.

12 Mr. Butler.

13 MR. BUTLER: Yes.

14

15 Whereupon,

16 THOMAS L. WILSON,
17 having been previously duly sworn, was called as a
18 witness herein and was examined and testified as
19 follows:

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

21 BY MR. BUTLER:

22 Q. Mr. Wilson, with respect to Exhibit 205 --

23 COMMISSIONER HEMSTAD: Mr. Butler, I think
24 you need to turn on your microphone.

25 MR. BUTLER: I think it is on.

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1 CHAIRWOMAN SHOWALTER: You need to get it
2 close.

3 MR. BUTLER: Oh, okay.

4 BY MR. BUTLER:

5 Q. With respect to Exhibit 205 and this revised
6 version of that, 232, does 232 represent the latest
7 information you have incorporating all of the revisions
8 that you received from the various CLECs? Is this the
9 most up-to-date information about line counts in other
10 words?

11 A. Yes, it is. Exhibit 232 is -- it doesn't add
12 any new data above line 53 to what has been there all
13 along, and line 53 and below reflects all of the
14 revisions then.

15 Q. Okay. So this is your recommended count of
16 all the lines that the Commission should consider in the
17 various categories; is that do I understand that
18 correctly?

19 A. That's right, I have calculated here a figure
20 that also appears in Exhibit 225, and I say it that way
21 because it's not going to be here on 232 much longer,
22 but that does reflect my final conclusions.

23 Q. Was there any impact on the PBX and Centrex
24 line counts from the revisions that were submitted in
25 response to Order Number 6?

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1 A. There were impacts to the PBX numbers, but no
2 change in Centrex.

3 Q. Okay. And those are reflected on Exhibit
4 225?

5 A. Yes.

6 Q. Yesterday afternoon you indicated that you
7 thought you might have to make a large number of changes
8 in order to comply with the request. Do I understand
9 your testimony at this point that these were the only
10 changes, or were there others that you think still need
11 to be made?

12 A. Yesterday I was not understanding the nature
13 of the questions in the discussion, and I thought it
14 would take more work than it did to do this. I really,
15 again, I have described it as a reformatting rather than
16 a revision just because I didn't change any of the data
17 itself.

18 Q. I noticed in the WorldCom or MCI response to
19 Order Number 6 a statement that WorldCom provided
20 separate responses for MCI Metro and MFS. Did you count
21 both MCI Metro and MFS as separate competitors, or did
22 you count them just as one?

23 A. Well, for example in the column on Exhibit
24 232 labeled number of CLECs offering service, I counted
25 those two MCI companies separately.

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1 Q. And would that be true for other instances
2 where there were affiliated carriers?

3 A. I think --

4 Q. Let me ask are there other instances where
5 there are affiliated carriers?

6 A. Yes, there are a couple of companies that own
7 several affiliated carriers, and I have treated them all
8 as individuals.

9 Q. Do you know what the number is of those
10 affiliated carriers, how many in total there are?

11 A. Not exactly. It's less than five.

12 Q. Could you turn to Exhibit 224, please, and
13 that is the Horizontal Merger Guidelines.

14 A. Yes, thank you, I'm there.

15 Q. Specifically if you could go to Section 0.1,
16 which is on page number 2.

17 A. I'm there.

18 Q. Can you go to the paragraph on what is
19 designated as page number 2 in the guidelines, the
20 paragraph starts, the unifying theme.

21 A. Yes.

22 Q. Do you see the second sentence, there is a
23 definition of market power?

24 A. Yes.

25 Q. It says:

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1 market share.

2 Do you see that?

3 JUDGE MACE: It should be, the version of 23
4 that I have would show that definition at lines 5 and 6.

5 Q. That's what I have, yes. It is the first
6 section of the answer in response to the question, what
7 is Staff's analysis of other indicators to market power,
8 et cetera.

9 A. Oh, thank you. And then it -- I answer,
10 market power is the ability to raise and maintain price
11 above cost without losing market share.

12 Q. Yes, that's the reference.

13 A. Yes, sir, yes.

14 Q. Would you agree that that definition is
15 different in significant respects with the definition of
16 market power we just read from the Horizontal Merger
17 Guidelines?

18 A. I guess the difference is profitability.
19 There's an assumption in the Justice Department that the
20 company with market power can raise price profitably.

21 Q. Did you intend to offer a definition which
22 differed in significant respects from that in the
23 Horizontal Merger Guidelines?

24 A. Actually, I didn't even consider the
25 Horizontal Merger Guidelines. I relied on economic

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1 theory alone.

2 Q. Can you tell me where your definition came
3 from?

4 A. From my college education.

5 Q. Do you have a reference to a text or an
6 article or a court decision that defines market power in
7 this way?

8 A. I could probably find one in the texts that I
9 studied.

10 MR. BUTLER: Could I make a record
11 requisition for that, for the reference to this
12 definition of market power.

13 CHAIRWOMAN SHOWALTER: I don't think the
14 witness has said that he does have one.

15 JUDGE MACE: My sense of his answer is that
16 he is relying on his background.

17 THE WITNESS: That's correct. I think in my
18 textbooks that probably appears, or notes.

19 MR. BUTLER: But the problem is that I have
20 never seen this definition anywhere in any court case,
21 any economic text, any article.

22 JUDGE MACE: You can make that argument in
23 your brief I think.

24 CHAIRWOMAN SHOWALTER: Well, the more precise
25 question is, do you have available today a textbook that

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1 you know of that has that definition, and if the answer
2 is no, then I think that's what we need.

3 THE WITNESS: No.

4 MR. BUTLER: I will take the question that
5 the Chairwoman offers.

6 CHAIRWOMAN SHOWALTER: Well, in other words,
7 it's the probably that's causing the problem here.

8 MR. BUTLER: Okay.

9 BY MR. BUTLER:

10 Q. Am I correct that your analysis of market
11 shares included lines that were provided by CLECs using
12 special access services from Qwest?

13 A. Yes, that was asked of the CLECs in the
14 question, provide total number of lines including via
15 special access.

16 Q. At Exhibit 201, page 9, if we could go there,
17 please.

18 A. All right.

19 Q. There you refer to the 271 approval for Qwest
20 and performance assurance plan. Am I correct that your
21 analysis of effective competition is based in part upon
22 your understanding of evidence relating to Qwest's
23 provisioning and repair of unbundled network elements on
24 a basis that is equal for both CLECs and for itself?

25 A. Yes, I would agree with that. I was

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1 attempting to analyze the statutory factor to be
2 considered, ability of alternative providers to make
3 services readily available.

4 Q. Was that review that you conducted based upon
5 review of the results of Qwest's quality performance
6 assurance plan, the QPAP?

7 A. To a certain extent I think it was. When I
8 presented Staff's recommendation in May at the open
9 meeting, I mentioned the recently received May quality
10 performance report and indicated there that I had looked
11 at a variety of parity measures and found that Qwest was
12 providing service at or above parity both within and
13 outside of MSA's and with and without trucks rolling.

14 Q. Would you agree that the performance
15 assurance plan has no performance matrix relating to
16 special access services?

17 A. Yes, I would, but I would also agree that the
18 CLECs are supposed to move off of that.

19 Q. With respect to the provisioning of special
20 access services, am I correct that you did not have any
21 information about the installation intervals or repair
22 intervals for special access services provided by Qwest?

23 A. That's correct, although there is information
24 in the quality report about provisioning of DS1s and
25 other larger facilities that are much like the provision

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1 of special access.

2 Q. Did you do any analysis or comparison of the
3 provisioning or repair intervals for special access of
4 the DS1 or DS3 to business exchange service intervals?

5 A. No, I didn't.

6 Q. In your analysis of whether there is
7 effective competition for Qwest business exchange
8 services, did you conduct any analysis or reach any
9 conclusions about what the minimum viable scale for a
10 CLEC is, that is the smallest average annual level of
11 sales that a committed entrant must persistently achieve
12 for profitability at current prices?

13 A. No, I didn't.

14 Q. Did you conduct any analysis about the
15 profitability generally of CLECs operating in
16 Washington?

17 A. No, I didn't understand that to be an
18 assignment in this case at all.

19 Q. Did you do any analysis about whether Qwest
20 has any absolute cost advantages over CLECs?

21 A. Other than looking at the prices of the UNEs,
22 looking at the expected -- what -- looking at the amount
23 of revenue that Qwest achieves by wire center for the
24 relevant products, and also taking a quick look at the
25 Staff's proposed new UNE rates in the generic, I don't

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1 think so, no.

2 Q. So you did not look at any other costs that
3 CLECs might face?

4 A. No, I felt that there are so many variables
5 that to make assumptions was just not going to be useful
6 to explain anything meaningful to the Commission about
7 that.

8 Q. Are you aware of the basis upon which certain
9 telephone excise taxes are imposed in Washington,
10 specifically E911, WTAP, TDD type taxes, i.e., that they
11 are imposed on the basis of subscriber switched access
12 lines?

13 A. I don't think that -- yes, excuse me, it is
14 my understanding that those taxes are based on
15 subscriber switched access lines, and there's a
16 conversion for aggregated lines like PBX and stuff.

17 Q. Did you consider in your analysis that
18 because Qwest is not a subscriber that it does not pay
19 E911, TDD, WTAP taxes on the lines that it uses to
20 conduct its business including the lines used by its
21 employees such as salespeople?

22 A. No, I had no idea I should.

23 Q. Am I correct then that you did not conduct
24 any analysis or evaluation of whether or how many CLECs
25 are required to pay those excise taxes in their business

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1 operations?

2 MR. THOMPSON: I'm going to object to that as
3 asked and answered.

4 MR. BUTLER: It's a slightly different
5 question.

6 CHAIRWOMAN SHOWALTER: Wasn't the answer a
7 yes answer to the first question? Didn't the previous
8 question include his knowledge about the --

9 MR. BUTLER: The previous question had to do
10 with Qwest. This question had to do with CLECs.

11 JUDGE MACE: I will allow the answer.

12 A. No, I didn't do any analysis of that, but
13 it's my understanding that it is the end users that pay
14 those bills, and the companies collect it, and so it's a
15 pass through for them.

16 BY MR. BUTLER:

17 Q. I'm talking about the lines used in their
18 business by their salespeople, business offices, et
19 cetera.

20 A. I don't know if they pay taxes on those or
21 not.

22 Q. Did you do an analysis about whether and to
23 what extent Qwest has the demand in the various
24 exchanges tied up through long-term contracts?

25 A. No, I didn't investigate that. I have looked

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1 into long-term contracts in the past and have over the
2 years realized that the Commission's regulation of the
3 issue seems to be keeping apace with the matters before
4 it, so that wasn't a concern for me.

5 Q. Did you examine to what extent Qwest has a
6 first mover advantage?

7 A. No, I didn't. We think that the structural
8 frameworks and the competitive policies in place plus
9 the existing data showing competition is sufficient.

10 Q. I'm almost done here.

11 Would you agree that different CLECs target
12 specific customer groups, different specific customer
13 groups? For example from the ATG petition for
14 intervention there was a statement that ATG targets
15 small to medium sized customers.

16 A. I agree with that, and Mr. Slater, the
17 witness for Integra, also described his company that
18 way. However, I think it's important to realize that
19 when a CLEC has targeted a particular customer, perhaps
20 a small to medium sized business customer that they have
21 managed to successfully woo over to their network, and
22 if they have found that in reaching that customer they
23 may have passed another enterprise customer along the
24 way down the block, they might try and pick that
25 customer up too. So I don't think that companies

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1 generally try to avoid business when it comes knocking
2 at their door or when it's low hanging fruit to be
3 picked.

4 Q. Did you conduct any investigation about that
5 in the analysis of what the various business plans of
6 the CLECs were and the extent to which they stuck to
7 them?

8 A. No, I didn't. I think I have already
9 explained I didn't analyze CLEC business plans. We
10 again find that the other factors that we find more
11 important satisfy the conditions for approval.

12 Q. As you sit here today, do you have any
13 evidence upon which you can express an opinion about
14 which specific customer groups are targeted by the CLECs
15 operating in the various exchanges?

16 A. The only evidence is really contained in
17 Exhibit 204 where -- and it's also augmented with 205
18 where you can see the number of lines that subscribers
19 are purchasing from CLECs and from Qwest in every wire
20 center in the state except for Elk in the data set, so
21 that was what we relied on.

22 Q. One final question, and perhaps you have
23 already answered this, and, you know, please tell me if
24 you have. Did you do any evaluation of what would
25 likely happen to market shares if Qwest were granted

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1 pricing flexibility and the ability to price
2 discriminate?

3 A. We did not do an analysis showing what we
4 would think would happen to the market share except that
5 we have analyzed the issue of approval and recommend
6 approval, and I think it's safe to say that we believe
7 that upon approval competition is going to do its job,
8 that there is effective competition.

9 MR. BUTLER: I'm done.

10 JUDGE MACE: Then let's turn to the
11 commissioners.

12

13 E X A M I N A T I O N

14 BY CHAIRWOMAN SHOWALTER:

15 Q. Yes, I have some just what I would call
16 directional or qualitative type questions. We have a
17 lot of evidence in this case, some of it's quantitative,
18 some of it's qualitative. We have evidence on a range
19 of things obviously beginning with the core, which is
20 analog services, but a number of other services. So I
21 would like to ask you first simply to imagine starting
22 with the data that we have on analog services, and I
23 take that to be Exhibit 225, and I think it was whatever
24 we just had, 226, and related types of exhibits. Would
25 you regard that as the -- as quantitative evidence at

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1 the core of this case?

2 A. Yes, I would, Chairman, Chairwoman Showalter.

3 In fact, Staff concluded that the actual core of the

4 case, as you have put it, is Exhibit 55, which is the

5 Qwest wholesale data. When we had completed our review

6 of that data, it shows effective competition across the

7 state, and then when we got the additional --

8 Q. Which I will ask --

9 A. -- augmentation to the core data with the
10 CLEC data, then it impressed us further.

11 Q. Okay. So as to the analog data alone, in
12 your view that data alone demonstrates effective
13 competition; am I correct?

14 A. Yes, it does, Chairwoman Showalter.

15 Q. All right. Now let's not, I would like to
16 say let's not assume that it does or it doesn't at the
17 moment.

18 A. All right.

19 Q. I would simply like to ask you in a
20 directional sense whether the following factors make
21 Qwest's case better. I'm not saying that it's
22 sufficient or not sufficient but that it's better, and
23 by Qwest's case I mean their petition for competitive
24 classification. So discussing these increments one at a
25 time, does the presence of non-Qwest digital data make

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1 Qwest's case better because of a partial
2 substitutability or competitive, some degree of
3 competition?

4 A. Yes.

5 Q. All right. Does the presence of non-Qwest
6 wireless information or the presence of wireless, the
7 wireless industry, make Qwest's case better?

8 A. Yes.

9 Q. All right. Similarly VoIP if it is
10 non-Qwest?

11 A. Yes.

12 Q. And cable if it is non-Qwest, I guess we
13 would have to say, what is the right term, voice over
14 cable?

15 A. Yes.

16 Q. All right. And does the presence of 271
17 compliance including the QPAP process make Qwest's case
18 better?

19 A. Yes, that's absolutely one of the very
20 critical pieces that has moved us from where we were in
21 UT-000883.

22 Q. All right. Does the presence of UNE rates
23 make Qwest's case better now?

24 A. Yes, we have UNE loop rates, we have UNE-P
25 rates, that we're -- those being available does make

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1 Qwest's case better.

2 Q. Now would that be on the assumption that
3 those rates are fair or appropriate as distinct from
4 their mere presence?

5 A. The fact that they have been set in
6 compliance with the Telecom Act and this Commission has
7 found them to be true TELRIC rates that are fair, just,
8 reasonable, and sufficient I think is very important,
9 yes.

10 Q. All right.

11 A. Because that tells you that it is the proper
12 price level for those elements.

13 Q. All right. Now I would like to switch over.
14 To the extent that Qwest offers digital services that
15 may compete fully or partially with the analog services
16 at issue here, does that fact make Qwest's case worse?

17 A. That one is difficult for me to answer,
18 because I do not have information about -- I would
19 assume that we would need to know something about the
20 CLEC digital lines too to be able to determine whether
21 it made Qwest's case better or worse.

22 Q. Well, I already asked you on the digital
23 side, for CLEC side, I believe I did, non-Qwest digital
24 services. So if you're simply adding them to a total on
25 their own --

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1 A. Right.

2 Q. -- and if the CLEC digital services make
3 Qwest's case better and Qwest's digital services make
4 Qwest's case worse. I'm not looking for magnitude or
5 amount.

6 A. I agree with you.

7 Q. I'm just looking for direction.

8 A. Yes.

9 Q. I'm primarily just trying to get my own
10 analytical framework here.

11 A. Sure, no, I agree with you about that too.

12 Q. Okay. And to the extent that Qwest offers
13 wireless services, doesn't that make Qwest's case worse?

14 A. Yes.

15 Q. And similarly, if Qwest does offer some of
16 the other services, VoIP or cable, if it did, that
17 would, to the extent that those services are to some
18 degree competitive with Qwest's analog services, doesn't
19 that make their case worse?

20 A. That's right, because as you noted, we have
21 already carefully counted for the opposition lines in
22 those categories, so yes, it does make Qwest's case
23 worse then.

24 Q. And is the reason it makes it worse is that
25 it's a single company, and so if all that were happening

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1 and if the only thing that were happening is that Qwest
2 was competing with itself and we didn't have CLECs in
3 the picture, yet we showed this big array of wireless
4 competing against analog competing against digital, if
5 it were all Qwest, that would not be true competition,
6 would it?

7 A. That's right. I would like to note, however,
8 that when we talk about it making Qwest's case worse, I
9 think there are regulatory safeguards in place to
10 protect against things like below cost pricing
11 obviously, because we do have TELRIC prices in place and
12 that price floor.

13 Q. Okay, and actually, that's the next place I
14 want to go, that TELRIC price floor. Before I do, did I
15 omit anything in your mind that you can think of that
16 makes Qwest's case worse or better in terms of these
17 qualitative elements I have mentioned?

18 A. I think you have hit the highlights.

19 Q. Okay. Well, going to the floor, the TELRIC
20 price floor, am I correct that the statute we're working
21 under prohibits Qwest from pricing below cost; is that
22 the term?

23 A. Yes, ma'am.

24 Q. And assume for the moment that TELRIC is the
25 appropriate way to determine that. Now first of all, is

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1 it TELRIC per se, or is it TELRIC plus common costs or
2 shared costs? I'm a little confused whether TELRIC is a
3 shorthand term we're using or it is the term.

4 A. That is the term.

5 Q. Okay. Now Ms. Friesen asked you some
6 questions about what would happen if Qwest got down to
7 TELRIC prices, and I want to assume for this question
8 that Qwest would not go below the statutorily authorized
9 floor. I'm trying to think through what effect that
10 would have on the competitive market should Qwest do
11 that. And the first question I have is, if Qwest
12 started to price at the statutory floor let's say, the
13 statutorily permissible floor, first of all, what
14 happens to the wholesale price that Qwest would charge
15 on resale? Would it be about 85% of TELRIC; is that
16 what would happen?

17 A. I think that sounds about right, yes.

18 Q. So that would then become a quote, quote,
19 below cost price that TELRIC, that presumptively anyway,
20 Qwest would have to charge?

21 A. For resale.

22 Q. For resale.

23 A. Yeah. I think I'm following you and that I
24 agree with your hypothesis.

25 Q. Would that be a pressure on Qwest not to go

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1 down to TELRIC because it might --

2 A. Well, they would --

3 Q. -- be put into a situation where at least
4 presumptively it was supposed to charge 85% of that --

5 A. Right.

6 Q. -- for --

7 A. I think it does discipline their downward
8 pricing behavior a little bit, although resale is not a
9 very good disciplinarian for pricing behavior, but that
10 would limit them on their downward approach.

11 Q. And again, I'm really looking for direction,
12 general directions, but it seems as if it might act of
13 more of a disciplinarian at that low, toward that low
14 end than it certainly would act at the higher end.

15 But getting past that, supposing a price
16 close to the statutory floor caused some CLECs to go out
17 of business. I think your answer to Ms. Friesen was
18 that it could cause some CLECs to go out of business.

19 A. I did discuss that with her, and I would like
20 to clarify if I could, please.

21 Q. Okay.

22 A. First of all, TELRIC as I understand it is an
23 approximation that does -- of costs that does include --
24 of forward looking long run incremental costs that does
25 include a contribution to common and joint costs.

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1 Q. Okay.

2 A. The difference between TELRIC, total element
3 long run incremental cost, and TSLRIC, total service
4 long run incremental cost, is that TSLRIC doesn't
5 include common and joint costs. It's as close as
6 economists and regulators have come to the economic
7 theoretical ideal of marginal cost. In marginal cost
8 you don't include common costs. And so I do need to
9 clarify that if Qwest were to price at TELRIC, their
10 competitors still could go as low as TSLRIC and remain
11 in business according to economic theory.

12 Furthermore, in assumed competitive markets
13 such as the market for corn production, farmers are
14 price takers, the price is equal to marginal cost, and
15 they thrash out their livings on that paradigm, and corn
16 is produced in our country nevertheless.

17 What really happens in the telecommunications
18 market today is that pricing is following I think a
19 newly observed trend where customers are finding that
20 the price of the service and the access to the service
21 is becoming pretty generic. It's becoming available,
22 and that's not the most important thing to them all the
23 time when they select a provider anymore. One of the
24 things that customers are most interested in, and it's
25 going to be increasingly important in the future, is

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1 value added network services. And Ms. Singer Nelson's
2 hypothesis was one which I answered with that response,
3 that it's the value added nature of the competition that
4 is going to make a huge difference in the market as
5 well.

6 Q. All right. Now but supposing Qwest lowered
7 its prices to something that's statutorily permissible,
8 and supposing it did drive out of business let's say a
9 third of the CLECs. Did you say earlier you think there
10 are about 40 CLECs in the state?

11 A. I think there's about that many actively
12 competing that we're seeing in this case, yes.

13 Q. All right. Supposing we arrived at a
14 situation three years from now where there were only say
15 25 CLECs instead of 40. Is it possible to say one way
16 or the other that having 40 CLECs is a more competitive
17 market than 25, or could 25 be more competitive in terms
18 of, I don't know, market share or prices, service
19 differentiation?

20 A. That's correct, the number itself is not so
21 important as the proof in the pudding of customers being
22 served and market share, yeah.

23 Q. Now I assume if you get down to too low a
24 number, such as two, that answer would be different,
25 that at some point the absolute number if it's low

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1 enough suggests a duopoly or some situation that's not
2 very competitive?

3 A. That's right, game theory suggests you get
4 those small numbers, you know, like a tennis game with
5 two, then people can collude and bad things can happen.
6 Also it isn't enough to discipline the incumbent more
7 dominant provider. But I would like to note that that
8 type of a phenomenon I think in Washington state as a
9 whole, if we saw that happening everywhere, it would be
10 a concern. If it were happening in certain areas, there
11 might be other explanatory factors as well.

12 Q. But if it did occur in certain areas, if for
13 example it came to pass that say rural areas only had
14 two providers, that would be cause for concern, wouldn't
15 it?

16 A. Yes, I think so. I have tried in the Staff
17 analysis to focus particular attention on those most
18 vulnerable areas of our state.

19 Q. And then speaking of the number of CLECs, do
20 you have the ability to either determine or estimate
21 what percent of the CLEC lines in the state are
22 represented by CLECs who are parties to this proceeding?

23 A. There is that ability. I didn't do that.

24 CHAIRWOMAN SHOWALTER: I would like to have
25 you determine that. My concern is how many of the

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1 active lines are represented here or are not.

2 JUDGE MACE: That will be Bench Request
3 Number 4.

4 BY CHAIRWOMAN SHOWALTER:

5 Q. And I believe my final question is to get
6 your reaction to some of the other witnesses'
7 suggestions for a more formulaic approach to how we
8 evaluate competition. And I could find it, but as I
9 recall one of the witnesses suggested that unless an
10 exchange had I think it was at least three switches,
11 well, I tabbed this somewhere I think with an ask
12 Mr. Wilson on it, but let's see, I think it was
13 Mr. Gates.

14 A. I think that's correct, I just can't remember
15 the details on the factors, but --

16 Q. Oh, here, I have found it. If you want to
17 turn to it if you have it, it's Exhibit 504, page 29,
18 but I think I can summarize. He proposes the following
19 parameters. The presence of at least three CLECs
20 providing services, one of which must be providing
21 services from its own switch. That's point number 1.
22 Point number 2, facilities based CLEC market share of at
23 least 30% within any exchange, and that would apply to
24 at least 50% of exchanges statewide. Point number 3 was
25 at least one CLEC with a facilities based market share

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1 of at least 10%, and that would apply in at least 50% of
2 the exchanges statewide. And point number 4 was a total
3 CLEC market share, both resale and facilities based, of
4 at least 45%. And this suggestion is that all of these
5 would be present.

6 And I just would like your reaction to that
7 which I think I might call more of an input approach
8 than I think what yours is what I would call more of an
9 output approach. Maybe that's not quite apt, but you
10 are looking at the end user distribution of lines, this
11 is looking at the input at the wholesale level in a
12 sense.

13 A. Well, my reaction is to it that first of all
14 Staff really did feel bound by the statutory analysis,
15 and we have pretty much adhered to that. These are in
16 addition to the statutory requirements, and I haven't
17 given it a lot of thought, but I do think that there's a
18 couple of problems with the proposal.

19 Operationally it's a lot of work and
20 calculation to figure all of this out on an ongoing
21 basis, and I don't know whether all of these factors are
22 really necessary to determine effective competition and
23 to grant pricing flexibility to Qwest. For example,
24 having three CLECs in an exchange, at least one of them
25 with their own switch, it's like the other options, I

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1 think Mr. Gates was trying to make suggestions on how
2 the Commission might make competition even more robust
3 than it already is, which is effective already.

4 The fact that he would want to have one
5 switch probably in an exchange before it could get
6 classified as competitive is not necessary in order for
7 CLECs to capture customers from and compete against
8 Qwest. They can have their switch and operate it from
9 Seattle and serve many lines throughout the Seattle LATA
10 from one single point of presence, and we have CLECs
11 doing that today. We have seen several CLECs who are
12 represented in the record here with lines they're
13 serving to customers in the state and have been for a
14 long time beginning with operations that centered on a
15 switch situated out of state even. So the fact that
16 there is this requirement that there be a switch there
17 is in my opinion not a requirement to find that it's
18 effectively competitive.

19 I think that really a lot of these types of
20 criteria are focusing more on what might become portions
21 of a review for impairment analysis perhaps in the
22 Triennial Review process and really might more properly
23 be applied there.

24 But the other thing that I have a real
25 problem with is stating any particular market share

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1 percentage. I find that very arbitrary, and I think
2 that has to be a complete analysis of the economics of
3 the situation. Market share analysis by itself is not
4 enough, and it's very arbitrary to say 30%. Why not 20%
5 or 40%. Who knows what that magic number is, it's one
6 that was picked. So I don't really like the arbitrary
7 nature of some of the measures either.

8 Q. All right. I guess maybe this is my last
9 question. I recognize you have analyzed the case under
10 the parameters of the statute, although the statute says
11 may, that we may classify competitive if we meet -- if
12 those measures are met. But is it your belief that if
13 we classify Qwest, these services as competitive, that
14 Qwest will not have or gain market power for those
15 services?

16 A. Yes.

17 CHAIRWOMAN SHOWALTER: Okay, thank you.

18 JUDGE MACE: Commissioner Hemstad.

19

20 E X A M I N A T I O N

21 BY COMMISSIONER HEMSTAD:

22 Q. I want to pursue a bit further this price
23 floor discussion. In your testimony and/or response to
24 cross-examinations, I'm looking back at my notes in your
25 responses to Ms. Singer Nelson, am I correct that you're

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1 assuming that price floor could be set at TELRIC?

2 A. Yes, I am, that's a readily available set of
3 data that's been tried and tested here.

4 Q. But, and I think you would agree, statute
5 prohibits below cost pricing?

6 A. That's correct also.

7 Q. And so is that your answer as to why, would
8 that be the nature of your answer as to why the Staff
9 doesn't want any condition for below cost pricing?

10 A. Yes.

11 Q. Because it's unnecessary?

12 A. We think so.

13 Q. But that having been said, apparently it's
14 your testimony that what measure of cost would
15 ultimately be prohibited would await some future
16 complaint proceeding or generic cost or pricing
17 proceeding?

18 A. Yes, I think so.

19 Q. And why wouldn't it be appropriate to
20 determine that here?

21 A. Well, partly just because it hasn't been
22 analyzed, discussed, there hasn't been cost study
23 analysis done in this case, and it isn't necessary to do
24 that. It's already been done in the generic case with
25 the TELRIC elements.

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1 Q. Well, do I take that answer to mean that it
2 has essentially been determined that TELRIC would be the
3 standard?

4 A. I think that it's good for the Commission to
5 have the opportunity to select a cost measure at the
6 time that it's needed or, you know, like you were saying
7 earlier, upon complaint or in a generic so that first of
8 all the Commission can develop a standard that would
9 apply to everybody. TELRIC is readily available to go
10 ahead and do that now, it's ready.

11 But, you know, the Commission embarked upon
12 an inquiry when the statute was originally passed to
13 examine, well, what shall be the measure, and a
14 symposium was held in Seattle to hear from all the
15 economists around the world about what the right measure
16 is, and there were X number of economists and X number
17 of recommended measures. I think that here, because we
18 haven't had that debate and really selected one, we
19 think that it shouldn't be an issue here. There are
20 readily available tools elsewhere and other vehicles.

21 Q. Well, I suppose, well, first, just an
22 historical footnote, I have it in the back of my mind
23 that at the time the standard was set at long run
24 incremental costs, that was before TELRIC had been
25 articulated by the FCC.

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1 A. That's right, after quite a lot of
2 proceeding, that was concluded as the measure I think in
3 the Centrex case. So by recommending TELRIC, we're
4 recommending actually a conservative measure.

5 Q. But apparently that being left open, I
6 suppose then both, well, all the parties to this
7 proceeding are left at least with some degree of
8 uncertainty as to what is the bright line standard to be
9 applied for below cost pricing?

10 A. They are left uncertain about the standard,
11 but there is a benchmark out there that's like a red
12 flag that when it's reached it's an issue. The TELRIC
13 does serve as the benchmark or flag, if you will. And
14 they have all participated in those generic cost
15 proceedings too.

16 Q. Well, are there any other arguable standards
17 that could be put forward by either a complainant or by
18 the company?

19 A. Oh, I think so. There's fully distributed
20 cost is another measure. So I guess I'm offering
21 alternatives, whether they're arguable or not, I think
22 TELRIC is arguably sustainable, but.

23 Q. Well, finally just one clarifying question.
24 In response to a question from the Chair about a TELRIC
25 issue and in the wholesale environment, and I think the

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1 Chair used an example of well, say it were 85% of
2 TELRIC, and I think you answered yes, you agreed with
3 that. But there would be a TELRIC standard for
4 wholesale. In other words, TELRIC itself is those long
5 run costs, and the wholesale cost is different from the
6 resale or retail cost, and so I don't understand your
7 response that there can be something that would be 85%
8 TELRIC and that would be okay.

9 A. I saw you shaking your head when I answered
10 that earlier. I was hearing the Chairwoman say that
11 Qwest had brought -- reduced its price to equal TELRIC,
12 and then the way the resale feature works is you -- the
13 CLEC gets --

14 Q. A discount from --

15 A. -- a discount from that rate, which if it was
16 equal to TELRIC it would be below TELRIC then.

17 Q. Yeah, but the discount reflects those costs
18 that the ILEC does not incur in its wholesale
19 operations.

20 A. You have made a good save there, you're
21 right.

22 Q. That's the whole point.

23 A. You're right, you're right, so there is that
24 small margin there, right.

25 Q. But so there would be a -- put it this way,

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1 there would be a different TELRIC for retail, and there
2 would be a TELRIC for wholesale, it would be different,
3 right, reflecting what the long run element costs are
4 for that wholesale service?

5 A. You have made a good point, I agree.

6

7 E X A M I N A T I O N

8 BY CHAIRWOMAN SHOWALTER:

9 Q. I mean I asked it as a genuine question, I
10 wasn't presuming the answer, but I vaguely thought that
11 our -- that the wholesale prices actually were a flat
12 percentage off of retail, which is derived from avoided
13 costs, but that the formula isn't avoided costs, it's
14 85%. And I'm not saying that that scenario would
15 ultimately come to pass because of the situations we
16 would get into, but that just on the surface isn't the
17 wholesale price something like 85% of retail regardless
18 of what the avoided costs really are underneath? I
19 don't know.

20 A. Given current retail rates, actually the
21 wholesale or TELRIC rate is quite a lot less than 85%.

22 Q. Is the retail, is the resale price, I think
23 I'm talking about resale.

24 A. Yeah.

25 Q. Is it determined -- is it a percentage of

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1 retail, or is it retail minus certain costs?

2 A. It's both, and it's expressed as a
3 percentage.

4 Q. Well --

5 A. The percentage is minus costs, which is
6 14.74. It amounts to that much, and so it's a flat
7 percent is applied to the retail rate.

8

9 E X A M I N A T I O N

10 BY COMMISSIONER HEMSTAD:

11 Q. Well, it may or may not be relevant to this
12 proceeding, but my understanding is that the discount
13 would reflect those costs that are not incurred by the
14 ILEC.

15 A. Right.

16 Q. Because it doesn't have to perform the resale
17 or the retail functions.

18 A. Right, so Qwest prices at TELRIC, the resale
19 rate is 85% of TELRIC, but that is not -- it's below
20 TELRIC, but it's not below cost I think is the point.

21 COMMISSIONER HEMSTAD: Well, I suppose we'll
22 leave it at that.

23 THE WITNESS: Thank you.

24 JUDGE MACE: Commissioner Oshie.

25 COMMISSIONER OSHIE: Thank you.

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E X A M I N A T I O N

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BY COMMISSIONER OSHIE:

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Q. Mr. Wilson, I believe you were in the hearing room when both Mr. Reynolds and Mr. Teitzel testified, maybe not for the whole, their whole testimony, but at least I assume you were here for parts of it.

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A. Yes.

Q. And if I heard both Mr. Reynolds and Mr. Teitzel correctly, they both said that there were certain elements or piece parts of the services that are listed in Qwest Exhibit 2, which is the service that's subject to this petition, that were provided to the customer and by via a digital platform. And as the way I understood it that within each service that was listed in Exhibit 2, let's say that any individual service was an umbrella, but under the umbrella there were these pieces of that service that were offered to the customer that were delivered digitally. Do you recall that testimony?

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A. Somewhat.

Q. And would it be safe for me to assume that Staff has not analyzed the services listed in Exhibit 2 to that fine a detail?

A. Yes.

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1 COMMISSIONER OSHIE: Perhaps then we could
2 make a Bench Request at this time, Judge Mace. And that
3 would be to, you know, for the services listed in Qwest
4 Exhibit 2, I would ask that are there any services at
5 least in whole or in part that are classified by Qwest
6 as a digital service, and if so to list those services
7 or pieces or parts of the service. And then the second
8 question would be, is Qwest requesting that the
9 Commission reclassify any of those digital services as
10 part of this competitive classification petition?

11 JUDGE MACE: Mr. Sherr.

12 MR. SHERR: I have to admit that I don't
13 think I completed either question. Let me parrot back
14 what I thought you asked, Commissioner Oshie, and please
15 correct me if I'm wrong. Are you asking in Exhibit 2 if
16 any of the services listed are wholly digital services?

17 COMMISSIONER OSHIE: No, whether they're the
18 services, and probably better said, are any of the
19 services in Exhibit 2 in part a digital service?

20 MR. SHERR: May I ask a clarification?

21 JUDGE MACE: Go ahead.

22 MR. SHERR: Do you mean whether they are at
23 any part served over a digital facility?

24 COMMISSIONER OSHIE: No, I think I mean that
25 are any of the components of the service that are

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1 offered to the customer, are they digital?

2 CHAIRWOMAN SHOWALTER: This may or may not
3 help, just I have some notes on that page from some
4 witness, I didn't pin it down, but to the effect that
5 some witness testified that these are all analog
6 services, they operate over analog customer premises
7 equipment, and so someone has testified I believe that
8 the equipment involved is analog equipment. So do you
9 want to ask whether any of these services are provided
10 over something other than analog equipment --

11 COMMISSIONER OSHIE: No.

12 CHAIRWOMAN SHOWALTER: -- or if there are
13 analog equipment, is there something behind the
14 equipment that's digital?

15 COMMISSIONER OSHIE: No, that's -- I mean I
16 am, of course, familiar with that testimony as well, but
17 I believe that it was under cross-examination
18 Mr. Reynolds had in his testimony stated that there were
19 piece parts, not necessarily that they were all
20 delivered in the digital -- that, you know, the service
21 listed is classified as or considered by Qwest to be an
22 analog service but that there were parts of that
23 service, let's say voice mail or some other component of
24 it, that was digitally platform service.

25 JUDGE MACE: Mr. Sherr, do you understand now

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1 what the Bench Request is?

2 MR. SHERR: Yes, and more importantly
3 Mr. Reynolds does, so we will provide a response to
4 that.

5 JUDGE MACE: So there is an A and B section
6 to this Bench Request, which is Number 5.

7 CHAIRWOMAN SHOWALTER: Can you be sure to
8 define your terms that you are reporting on.

9 MR. SHERR: We will.
10 So the second part of the question is, to the
11 extent that the first question is yes, is Qwest seeking
12 competitive classification of the umbrella service or
13 just the piece part?

14 COMMISSIONER OSHIE: Of the piece part.

15 MR. SHERR: Okay.

16 JUDGE MACE: Anything else?

17 COMMISSIONER OSHIE: No further questions.

18 JUDGE MACE: 15 minutes.

19 (Recess taken.)

20 JUDGE MACE: We will address the question of
21 the briefing schedule as soon as the Chairwoman returns
22 or whenever we can after she returns.

23 Mr. Thompson, redirect?

24 MR. THOMPSON: Yeah, actually, Your Honor,
25 maybe this would be a good time to talk about Exhibit

1501

1 225, because I never actually offered it into the record
2 previously.

3 JUDGE MACE: All right, we can actually
4 address the exhibits right now if that's okay with the
5 Commissioners.

6 Do you offer what's been marked as 225C in
7 evidence?

8 MR. THOMPSON: Yes, Your Honor.

9 JUDGE MACE: Is there any objection to the
10 admission of proposed 225C?

11 Hearing no objection, I will admit it.

12 You know, we also have the matter of the
13 remaining Staff exhibits. Are the parties in a position
14 to address those exhibits at this point? Those exhibits
15 are 201T through 212. I think that they have been
16 offered, there were objections earlier, are there any
17 objections at this point to the admission of those
18 exhibits?

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

21 Let me make a note to make sure I have that
22 recorded, and then let's go to Exhibit 84. Exhibit 84,
23 I don't know that it was actually marked, but it's the
24 ATG cross-examination exhibit. It was two pages of an
25 annual report, and I think that ATG and Qwest have come

1502

1 to an accommodation that the ATG 2 page exhibit would be
2 marked 84, and then the Qwest supplemental or record
3 requisition exhibit, which was the Qwest annual reports
4 for I think 2001 and 2002.

5 MR. SHERR: I believe it was 2000 and 2001,
6 but.

7 JUDGE MACE: 2000 and 2001 would be marked as
8 Exhibit 86. And so is there any objection to the
9 admission of Exhibits 84 and 86 as I have described
10 them?

11 Hearing no objection, I will admit those
12 exhibits.

13 And then Exhibit 85 has been marked. It is a
14 supplement to what was Exhibit 62. I believe it was a
15 discovery response, and I don't recall the topic of it
16 at this point.

17 MR. SHERR: Your Honor, it's regarding DID.

18 JUDGE MACE: Is that a record requisition as
19 well?

20 MR. SHERR: No, it wasn't.

21 JUDGE MACE: It was just a supplement?

22 MR. SHERR: It was a supplement that Qwest
23 distributed by mail on October 15, and it's been
24 distributed to the parties, and it's marked as Exhibit
25 85.

1503

1 JUDGE MACE: Is there any objection to the
2 admission of that proposed exhibit?

3 Hearing no objection, I will admit that
4 exhibit.

5 MR. FFITCH: I have just a clarification
6 question for Mr. Sherr, that was distributed by mail
7 also?

8 MR. SHERR: It was, on October 15th.

9 MR. FFITCH: All right.

10 MR. SHERR: And if you need another copy, I
11 can certainly get one.

12 MR. FFITCH: I just don't have one right
13 here, but if it came by mail, then we'll have it.

14 JUDGE MACE: Now let's turn to Public Counsel
15 Record Requisitions. They were 3, 4, and 5 Record
16 Requisitions. They have been marked proposed Exhibits
17 27, 28, and 29. I believe that's Mr. Reynolds. Is
18 there any objection to the admission of those proposed
19 exhibits?

20 MR. MELNIKOFF: I'm sorry, Your Honor, which
21 exhibits?

22 JUDGE MACE: They were Record Requisitions 3,
23 4, and 5, and they have been marked 27, 28, and 29.

24 MR. FFITCH: These are six copies of each for
25 the Bench.

1504

1 JUDGE MACE: Mr. Melnikoff, do you have an
2 objection to those?

3 MR. MELNIKOFF: No, I do not.

4 JUDGE MACE: I will admit those exhibits
5 then.

6 MR. FFITCH: I'm sorry, Your Honor.

7 JUDGE MACE: It was 27, 28, and 29, those
8 were your record requisitions I believe.

9 MR. FFITCH: Yes, thank you, I just wanted to
10 make sure I got the numbers, thank you.

11 JUDGE MACE: And do you have them then, 27,
12 28, and 29?

13 MR. FFITCH: Yes, thank you.

14 JUDGE MACE: And then to finalize, the last
15 exhibit that I have that's outstanding is 612C, Qwest
16 Record Requisition 9 or Record Requisition 9. Is there
17 any objection to the admission of that proposed exhibit?

18 Hearing no objection, I will admit that.

19 MR. SHERR: Your Honor, may I ask a
20 clarification?

21 JUDGE MACE: Yes, you may.

22 MR. SHERR: Has Bench Request 1 been marked
23 and admitted?

24 JUDGE MACE: No, it has not. I believe none
25 of the Bench Requests have been marked, and I was

1505

1 actually intending to deal with the admission of those
2 in the order. I believe that's been done in the past.
3 I can consult with the Commissioners and make some
4 earlier indication of that to the parties if they would
5 wish that.

6 MR. SHERR: Oh, I'm sorry, that may just be
7 my misunderstanding, I thought it would get an exhibit
8 number so that we could refer to it. So we should refer
9 to the response as simply --

10 JUDGE MACE: I can take care of that as one
11 of the post hearing matters that I deal with if that
12 would make it more convenient for the parties.

13 MR. SHERR: Thank you.

14 JUDGE MACE: Is there anything else we need
15 to deal with regarding exhibits?

16 MR. THOMPSON: Yes, Your Honor, there's one
17 other matter, and this came up in the Commission's Order
18 Number 15 granting Public Counsel access to highly
19 confidential CLEC information. There was some
20 indication in there that the Commission might wish to do
21 an in camera --

22 JUDGE MACE: Hold on, Mr. Thompson.

23 (Discussion on the Bench.)

24 JUDGE MACE: Let's deal with the rest of this
25 later on and go ahead with your redirect at this point.

1506

1 MR. THOMPSON: Okay.

2

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. THOMPSON:

5 Q. Mr. Wilson, I'm going to start my redirect by
6 asking you to think back, it's been some weeks ago now,
7 to when Mr. Levin was cross examining you, and he asked
8 you a number of questions about whether particular types
9 of services represented effective competition for
10 Qwest's services that are set out in the petition, and
11 you said that some services were. Do you want to revise
12 that?

13 A. Well, I want to say that I think it was a
14 little confusing that -- I'm not saying that just
15 because a competitor has developed and tariffed and
16 price list a service that that makes the market
17 effectively competitive. A given service can be a
18 substitute for an existing Qwest service, and it can be
19 evidence of some effective competition, but by itself
20 it's not effective competition.

21 Q. Mr. Levin also asked you if you had looked at
22 Qwest's tariff to determine which of Qwest's services
23 might -- that are not mentioned in the petition might be
24 substitutes for those services that Qwest did list in
25 its petition, and you said that you had not done that.

1507

1 Why didn't you do that?

2 A. Well, because really what I did do was look
3 at what Qwest was seeking competitive classification for
4 and review that. I was satisfied that their request is
5 sufficiently discreet and separable that we could do
6 that. So really I just looked at what they filed for.

7 Q. Well, is it appropriate to look at, to think
8 of other Qwest services as being alternatives under the
9 -- within the meaning of the statute?

10 A. No, I don't think so. I think that those --
11 if I were to do so, I would have to include all of the
12 CLEC alternatives like those also, and I didn't do that.

13 Q. Both Ms. Singer Nelson and Mr. ffitch asked
14 you if there was evidence that you analyzed
15 demonstrating that CLECs are contesting the part of the
16 market for small business customers. Were you able to
17 determine anything from the Qwest wholesale data in that
18 regard?

19 A. Well, first of all, I have tried to make
20 clear that the Staff feels that the three product
21 segments in the petition, basic business, PBX, and
22 Centrex themselves delineate distinctions between small
23 and large customers. We see the basic business market
24 as predominantly focused on the small to medium sized
25 customer. And so we do think that by looking at it that

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1 way and seeing the number of CLEC lines in the basic
2 business market portrayed here, you can see that there
3 is, in fact, a lot of competition within that product
4 segment.

5 And then when you take a look at the data
6 itself, which there -- it's difficult to find here
7 examples showing actual competition serving small
8 customers because the data is aggregated, and it's not
9 susceptible to analysis using averages, as I discussed
10 with Mr. ffitch yesterday. But carefully examining the
11 data that is available does show some important clues
12 that Staff found very meaningful to indicate robust
13 effective competition for small customers, and there are
14 a couple of examples I would like to point to if I
15 could.

16 For example, in Mr. Teitzel's Exhibit 55,
17 which is a list by Qwest of all of their wholesale
18 competitors' lines by wire center, and in that list you
19 can find especially in Exhibit 55 at page 8 where there
20 are several exchanges listed, and I would like to point
21 to the resale and UNE-P lines being provided in places
22 that are extremely off the beaten path, if you will.
23 They are not in urban dominated markets at all, and you
24 can see where there are lines being provided to
25 customers in the numbers of one or four, and I think

1509

1 that that's very significant when you go out on Eastern
2 Washington or on the peninsula and you find examples of
3 CLECs penetrating to that very fine level in rural or
4 insular isolated markets.

5 Also in Exhibit 204 you can find examples,
6 especially in the data showing lines via owned
7 facilities, which is especially important evidence of
8 competition that the competitors are building their own
9 lines even in places like Port Orchard. So those are
10 some of the additional kinds of examples of small
11 business competition that are actually in the record.

12 And again, I want to emphasize that I believe
13 that those examples are actually replete throughout the
14 data, but because it's aggregated, you can't always see
15 it, and so I have pointed at those few examples where
16 without revealing confidentiality I can indicate that
17 there really are these very surprising new developments
18 in competition in our state.

19 Q. Ms. Singer Nelson also asked you whether in
20 response to the Commission's Order Number 8 you sent a
21 revised list of questions to all 200 some CLECs asking
22 them to revise their responses to the Commission's
23 questionnaire in light of the digital-analog
24 distinction. Why is that not something that you did at
25 that time?

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1 A. Well, we did -- because that isn't what we
2 said we had committed to do. We did commit to check all
3 of the responses and verify analog and digital, and we
4 did that. To do what Ms. Singer Nelson asked I take to
5 mean contacting companies that didn't even respond, and
6 we didn't do that either.

7 Q. Ms. Singer Nelson also had a series of
8 questions to you about what your practice was in
9 aggregating the data when a carrier indicated that they
10 couldn't tell or they didn't know whether their lines
11 were analog or digital, and you said that I think in
12 such an instance you would include them as analog. Can
13 you explain why that -- why you did that?

14 A. Sure. Typically when that happens, there
15 were a couple of things going on there. For example,
16 that -- I already had the CLEC data response in front of
17 me when that happened, and so I had that available to
18 look at. And when I had a company that was just doing
19 pure resale or focusing on resale and UNE-P only, a lot
20 of times they weren't able to verify analog and digital.

21 Actually, it's my understanding --
22 recollection that pretty much all of them also verified
23 the Qwest data, and I used the Qwest data. Qwest had
24 sorted it as analog already also. With UNE-P and
25 resale, it's very difficult for CLECs to with any

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1 accuracy tell us if it's analog or digital unless it was
2 bought as a digital service. They really don't have
3 much more information about it either because Qwest is
4 the network service provider there.

5 Q. In that instance, it would be the issue would
6 really be whether it's a digital line or an analog line,
7 right, as distinct from a digital service or an analog
8 service?

9 A. Yeah, like one of the recent revisions that
10 came in with the explanation of the criteria showed that
11 some carriers felt like if there was any digital element
12 anywhere in the call path, then that made it a digital
13 service or something like that. And in the case of the
14 carrier that made that explanation, we have made the
15 revision anyway. But whether they could really verify
16 that or not, I kind of doubt it.

17 Q. Again in Ms. Singer-Nelson's
18 cross-examination, she referred you to a sheet from
19 Qwest's tariffs that she represented as having been
20 filed in compliance with the Commission's order in the
21 UT-000883 case. Have you been able to check up on
22 whether that is, in fact, the case since then?

23 A. Yes, I have, I did look at the Qwest tariffs
24 and price lists to study their compliance with the
25 UT-000883 order, and the sheets that I was shown

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1 yesterday were actually compliance sheets pursuant to an
2 addition -- a subsequent Commission action. Last fall
3 the Commission classified Qwest's digital services in
4 the same markets where UT-000883 authority was granted
5 for analog services. Qwest asked for digital authority
6 for their digital services in that same set of markets
7 in Docket UT-021257, and the sheets I was shown
8 yesterday were implementing that additional authority
9 that was granted last fall.

10 Q. I want to talk to you now about Ms. Friesen's
11 cross-examination. She asked you about a portion in
12 your testimony where you were discussing I think a paper
13 by someone named Longstaff, and the upshot of your
14 testimony there I think was that you wanted the
15 Commission to take a technologically neutral approach in
16 this case. And I think you said in that discussion that
17 digital services should not be considered an alternative
18 under such an analysis. Is that correct, and well, why
19 did you say that?

20 A. Well, if that's what I said, I didn't mean
21 to. Digital services under the theory that Longstaff
22 recommends should be considered. Although we don't have
23 information about it, I think we have plenty of
24 information about analog competition to support Staff's
25 recommendation. I think that I didn't mean to say that

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1 following Longstaff's recommendation we would not
2 consider digital. Actually though to do so, we would
3 want to include the digital CLEC lines too, so.

4 Q. Ms. Friesen also asked you about your
5 statement and your testimony that it's easy for CLECs to
6 enter the market in competition with Qwest, and she
7 asked you about additional costs in addition to those
8 things that you had identified such as whether a company
9 would have to hire personnel and so forth. Should those
10 kinds of entry costs be of concern for the Commission in
11 this proceeding?

12 A. No, I don't think so, because in economic
13 theory when we look at competition and pricing, the
14 relevant factor for all of the competitors is going
15 forward, what kind of a price can they put together
16 going forward to cover their costs going forward and
17 stay in business and complete effectively. The types of
18 costs that I was being asked about are startup costs,
19 which become fixed or sunk costs, and therefore
20 irrelevant for forward looking decision making in
21 economic theory.

22 Q. Well, in other words, costs that would be
23 incurred by a company first entering the market in
24 Washington?

25 A. Startup costs are fixed and sunk costs.

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1 Q. Ms. Friesen asked you whether after a
2 granting of competitive classification to Qwest it might
3 be able to lower its prices to cost in some parts of the
4 market and raise them above cost in others, and you said
5 yes. If this is legally possible, do you think it will
6 happen?

7 A. No, Staff doesn't think that that would
8 happen, and the reason we think that it wouldn't happen
9 is because we have found and recommend that there is
10 effective competition everywhere in the state. For
11 Qwest to successfully manage a pricing strategy like
12 that, they would really have to have significant market
13 power and a lack of effective competition. In this
14 case, the effective competition will discipline Qwest's
15 pricing behavior we think.

16 Q. I'm going to move on to Mr. ffitch's
17 cross-examination, and he asked you some questions about
18 your familiarity with the Triennial Review Order from
19 the FCC, and you said that you hadn't specifically
20 reviewed it for your work in this docket but that you
21 had read a summary. Does your summary of information
22 about the TRO cause you concern about the future of
23 UNE-P, the unbundled network element platform, in
24 Washington?

25 A. Well, no, it doesn't, because first of all,

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1 my basic fundamental understanding stems from the
2 Telecom Act, and the Triennial Review Order after all is
3 implementing that Act, and the requirement to make
4 unbundled network elements available is based upon
5 various findings. And in my understanding of what's
6 going to happen in the Triennial Review process is that
7 it will follow the Act still, and therefore -- and I
8 seem to recall this in the summary, it was a summary
9 issued after the five members voted and long before the
10 text of the decision came out actually, and in that
11 summary, this word impair or impairment analysis keeps
12 coming up and I think probably is a prominent feature of
13 any review that this state Commission might pursue.

14 And that's what I have been saying all along
15 on behalf of Staff is that that impairment analysis is
16 going to occur, and if the impairment analysis shows
17 that UNE-P, well, really switching is not necessary to
18 be in -- made available any longer as an unbundled
19 network element because it wouldn't impair competition,
20 then I think the Staff recommendation remains very
21 viable.

22 On the other hand, also I suspect that the
23 impairment analysis, I have heard phrases like triggers
24 in various markets, and it would be consistent with my
25 understanding of how the FCC might operate, that they

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1 might expect state commissions to do an impairment
2 analysis on some geographic level other than the whole
3 state. And so presumably there is very likely to be
4 markets where impairment would be found and other places
5 where impairment would not be found, so. But those
6 would all be findings of the Commission to be facts, and
7 so it doesn't concern me.

8 Q. Okay. Mr. ffitch also asked you about the
9 Commission's order in UT-000883 and pointed you to some
10 provisions of Staff testimony from Dr. Blackmon and the
11 Commission's order in that case where both Dr. Blackmon
12 and the Commission were expressing reservations about
13 whether the data, the aggregate data in that case,
14 obscured a lack of competition for the small business
15 market, small number of lines. Was there anything
16 different about the data in that case as compared with
17 the data available in this case?

18 A. Yes, there was. I actually did sign the
19 protective order in that case so that I could look at
20 that data. I was very interested in finding out if
21 there were data to analyze and compare how much has
22 changed since the UT-000883 docket, and I was unable to
23 make that type of comparison. In the UT-000883 docket,
24 the data that was collected was aggregate data for
25 competition for all of the services in that case.

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1 Incidentally 883, the list of services is the same as it
2 is in this case, it's just that it was services provided
3 over a DS1 or higher and in certain areas, but so this
4 case really does broaden that authority.

5 The data that was found in -- that I found in
6 the record in that case did not break it out by basic
7 business, PBX, and Centrex, which we do have here, and I
8 think that that's very significant. As I have said,
9 basic business reflects small business markets, so we do
10 have a lot more data as I was pointing out in the
11 exhibits as well. And also at that time UNE loop rates
12 hadn't been set, UNE-P wasn't available, and so there
13 wasn't any data like that there.

14 Q. Mr. ffitch also asked you if you had done any
15 analysis to determine what would happen to competition
16 in the state if UNE prices were set at various different
17 levels, you know, hypothetical levels I guess, and you
18 indicated that that had not been part of your analysis.
19 Why didn't you do that sort of analysis?

20 A. Could you reask the question, please?

21 Q. Okay. Again, I think the question stemmed
22 from potential impact of the generic pricing proceeding
23 on, you know, if UNE prices were to change in the future
24 what the impact of that might be in a competitive
25 environment.

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1 A. Uh-huh.

2 Q. And I think his question to you was whether
3 you had made an analysis of that, and you indicated that
4 you had not. Are you recalling that?

5 A. I remember the discussion somewhat.

6 Q. Well, let me ask you this. If the UNE prices
7 were to go up.

8 A. Yeah.

9 Q. And Qwest were in the meantime granted
10 competitive classification for these services, would
11 competitors have any assurance that they wouldn't be
12 subject to a price squeeze?

13 A. If UNE prices went up?

14 Q. Yes.

15 A. I don't think so, because as discussing with
16 the Bench earlier, the idea that the UNE price is also
17 the price floor for the services, and if the UNE price
18 goes up, the price floor goes up. Therefore, with that
19 new benchmark, Qwest couldn't go below it. I don't
20 really understand how a price squeeze could have
21 occurred under that hypothetical.

22 Q. Mr. Butler asked you in his cross-examination
23 to make a comparison of some language in your testimony
24 about where you set out a definition of market power.

25 A. Right.

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1 Q. And he compared it to some language in the
2 DOJ merger guidelines. How, you know, if those are to
3 be, if your definition is to be taken completely
4 literally, how would you compare your definition of
5 market power to that of DOJ?

6 A. Well, to borrow a concept we were bandying
7 about earlier, would that be good or bad for Qwest, I
8 think that my definition is a little bit tougher on
9 Qwest than the DOJ's would be.

10 Q. And why is that?

11 A. Well, because the DOJ's definition has to do
12 with profitability, and mine doesn't.

13 MR. THOMPSON: That is all I have for
14 redirect.

15 JUDGE MACE: Mr. ffitch.

16 MR. FFITCH: Just a couple things, Your
17 Honor.

18

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

20 BY MR. FFITCH:

21 Q. Mr. Wilson, the Chairwoman was asking you
22 about various factors which would be better or worse for
23 Qwest if taken into account, and she gave you a list of
24 factors which would be worse for Qwest and asked if you
25 could think of any others and whether any had been

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1 omitted, and you couldn't think of any other ones. Let
2 me ask you about another couple of potential factors and
3 see what your opinion is about these.

4 Perhaps to assist with kind of visualizing or
5 framing this question we could go to the page of your
6 direct where you summarize the HHI levels for the
7 different zones. And I apologize, I just had that open
8 and I closed it up.

9 JUDGE MACE: I think it's page 25.

10 Q. Page 25.

11 A. I have it.

12 Q. And my question is, I will try to frame this
13 carefully, if the relevant geographic market in this
14 state were defined as instead of statewide, Qwest
15 service statewide service territory, which it is now,
16 correct?

17 A. Yes.

18 Q. If it were instead defined as the urban
19 exchange market versus the rural exchange market, with
20 respect to the rural exchange marketplace, would that be
21 worse for Qwest; would that definition of the relevant
22 geographic market be worse for Qwest?

23 I realize you have not made that calculation,
24 and perhaps if we need to we can look at this chart here
25 on page 25 and then at your Exhibit 209. But if we were

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1 to subdivide the geographic market between urban and
2 rural, in the rural part of that subdivision, would that
3 be worse for Qwest?

4 A. First --

5 Q. I'm sorry, go ahead.

6 A. First of all, you have asked me to kind of
7 put it in the context of the market concentration data
8 which, you know, I don't put a great deal of weight on.
9 I would look at the actual subscription levels that the
10 market share line count in the rural areas as well, but
11 just --

12 Q. And that's actually fine.

13 A. Yeah, I thought so.

14 Q. If you want to talk about it in terms of the
15 percentage market share based on percentage of lines,
16 that would be fine.

17 A. Right.

18 Q. For purposes of this question.

19 A. I would answer that that it doesn't make
20 Qwest's case worse to define it just as rural. And
21 that's because, as I have tried to communicate here,
22 Staff has found what we consider to be very respectable
23 amounts, effective amounts of competition in rural areas
24 too in the state. And to separate the rural from the
25 urban really is -- that's exactly what's going on with

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1 this case. The urban area has already been classified
2 as competitive, at least in a number of exchanges, and
3 so classifying -- using the relevant market as just the
4 rural portion is really almost what's happened here
5 today, and we do think that that's fine for Qwest.

6 Q. Well, Mr. Wilson, all the data that you have
7 submitted and that Qwest has submitted includes all of
8 their exchanges. It does not exclude the urban
9 exchanges that you're referring to, does it?

10 A. No.

11 Q. And your calculations of statewide market
12 share and Qwest's calculations include the urban
13 exchanges, don't they?

14 A. Yes.

15 Q. And, in fact, Qwest has taken no action
16 whatever in those urban exchanges in response to the
17 previous grant of competitive classification for those
18 exchanges, has it?

19 A. Pricing action, that may be true. But again,
20 we do find ample effective competition in rural areas
21 also, and my answer remains the same to your question if
22 we defined as relevant market as rural only, is that
23 good or bad for Qwest, I think it's just fine for Qwest.

24 Q. And you're basing it -- you have not gone
25 through -- let's turn to Exhibit 209C just to again try

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1 to provide -- try to tie this discussion to some data.
2 You have not gone through these exchanges yourself and
3 classified them as urban or rural, have you?

4 A. No.

5 Q. But you do have an overall number for the
6 basic business line market share for Qwest that you have
7 presented in your testimony?

8 A. Yes.

9 Q. All right. And boy, I think that's probably
10 been spoken in a non-confidential sense a number of
11 times in this case, but I have also seen it on
12 confidential documents, so I'm not sure if we can talk
13 about it on the open record. It's certainly contained
14 in your most recent revision, which is Exhibit --

15 A. 225.

16 Q. -- 225. I don't know if people have that
17 number in mind as the statewide, your calculated
18 statewide market share for basic business lines. That's
19 shown on the top line of Exhibit 225 on the far
20 right-hand side, right?

21 A. Right. What I'm saying though, Mr. ffitch,
22 is that looking at the rural market as you suggest as
23 the relevant market, I think you have pointed out quite
24 accurately that the urban market is already pretty
25 competitive, and that's included in my data. If we

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1 exclude that from the data, we're excluding both sides
2 of the equation. We're excluding the CLEC lines, and
3 we're also excluding all of the Qwest lines. When you
4 get into the urban -- into the rural markets, we're
5 seeing market shares that still are pretty low. They
6 may be a little bit higher. In that sense I guess it's
7 bad for Qwest. But when we look at whether that's
8 effective competition or not, we get the same answer.

9 Q. Well, I asked you a very specific question.
10 Well, I'm sorry, perhaps it was a general question in
11 the same sense that the Chairwoman's factors were
12 general, it's better or worse for Qwest. But the gist
13 of my question I think as you went to is how, if we look
14 at their market share numbers, is it worse for Qwest if
15 you focus on the rural segment of the market, and your
16 initial answer was no.

17 But let's look at Exhibit 209, let's have in
18 mind the market share number for basic business lines
19 that you have put out as the statewide average, and
20 let's go through and look at some exchanges that you
21 could agree are rural.

22 A. Why don't we look at Exhibit 205 and include
23 the CLEC data too.

24 Q. Okay.

25 JUDGE MACE: Well, 205 is the one that's been

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1 revised.

2 THE WITNESS: Oh, I'm sorry, 232.

3 JUDGE MACE: 231.

4 CHAIRWOMAN SHOWALTER: 232.

5 JUDGE MACE: Thank you, 232.

6 MR. FFITCH: It will take a minute to find

7 that.

8 THE WITNESS: And earlier I had mentioned

9 Port Orchard for example.

10 MR. FFITCH: Can I have a moment, Your Honor.

11 I'm not sure this is the exhibit that is going to make

12 my point. This was put together quite a bit differently

13 than --

14 THE WITNESS: Yeah, it aggregates rural

15 places maybe too much for your purpose.

16 MR. FFITCH: We have some different

17 information on 209.

18 BY MR. FFITCH:

19 Q. I understand your point that 209 does not

20 include CLEC information, but just for purposes of this

21 directional kind of consideration that the Chairwoman

22 was looking at, why don't we use 209, and then with your

23 qualification that maybe we ought to also look at the

24 205 if we're looking at this issue.

25 A. Sure. I understand, you have written your

1526

1 questions that way anyhow.

2 Q. Well, actually, I haven't written the
3 question, I just -- I'm interested in inquiring into
4 this in response to the Chairwoman's question.

5 A. Okay.

6 Q. Let's go back to 209 and look at Aberdeen,
7 the first exchange there, and would you agree that you
8 would categorize that as a rural exchange?

9 And I just want to go along --

10 A. Sure.

11 Q. I want to have -- just do ones that you're
12 comfortable categorizing as rural just for purposes of
13 this hypothetical discussion.

14 A. I would call that non-urban dominated but not
15 completely rural. It's medium rural.

16 Q. Okay. If we look at the total Qwest market
17 share there.

18 A. Yeah.

19 Q. That's significantly higher than the
20 statewide average, is it not?

21 A. Right.

22 Q. Quite significantly higher?

23 A. That's because we haven't included all of the
24 CLEC lines partly.

25 Q. What about the -- why don't you just go to

1527

1 the next one on the page that you're comfortable with as
2 a rural or non-urban exchange?

3 A. Sure. Battleground.

4 Q. Okay. And same question, if you look at the
5 total Qwest market share, significantly higher than the
6 statewide average, correct?

7 A. Yes, it is. That wouldn't have been the only
8 thing I looked at, but you're right. Because also in
9 Battleground I did find surprising amounts of
10 competition in that exchange in towns that are in the
11 Battleground exchange that I had never even heard of.
12 They're not even incorporated towns.

13 Q. Right, but that doesn't show up on this
14 exhibit, does it?

15 A. No, that's why I don't like to rely on HHI
16 alone.

17 Q. So we're trying to look at what we have here
18 in the record.

19 A. Right.

20 Q. And again, as a directional factor, does it
21 help or hurt? I'm not going to go through this whole
22 exhibit, but why don't we keep going, and you can find
23 the next non-urban exchange for me.

24 A. Belfair.

25 Q. All right. That's also significantly higher

1528

1 than the statewide average, correct?

2 A. It's -- you asked me that earlier, and I
3 assume you're referring to the statewide average I
4 calculated?

5 Q. Right.

6 A. Yeah.

7 Q. Okay. How about Black Diamond?

8 A. That's another one which from the viewpoint
9 of the FCC at least is a rural exchange. That's a rural
10 portion of King County.

11 Q. At some point you get out into the
12 outskirts --

13 A. Yes, it's --

14 Q. -- and you're not sure --

15 A. It's one of those fabled Goldsmith amendments
16 where it's a rural place in an urban area.

17 MR. THOMPSON: I wonder just for clarity of
18 the record if a more appropriate comparison wouldn't be
19 with the percentages in these various rural exchanges to
20 the percentage that Qwest offered based on the same
21 data. I don't know if that's an objection, it just
22 seems like a more apt comparison.

23 MR. FFITCH: I appreciate Mr. Thompson's
24 assistance with my examination, it sounds like
25 reredirect.

1529

1 BY MR. FFITCH:

2 Q. I think, you know, perhaps we can stop at
3 this point and just return to the basic question. Based
4 on this exhibit, if you will accept that as we go
5 through these non-urban exchanges for the most part
6 we're going to find Qwest market shares that are higher
7 than the statewide average market share that you
8 calculated, correct? I know you've got qualifications
9 about whether we should use this exhibit, but let's just
10 start with this exhibit.

11 A. The answer is yes.

12 Q. So it's worse for Qwest in that sense if we
13 focus only on non-urban exchanges?

14 A. In the scenario you have cast, that's
15 correct.

16 Q. Okay. Now I understand that you would also
17 like us to look at the data which includes, that you
18 have calculated, which tries to bring in the CLEC
19 supplied data into a unified picture. Now you haven't
20 calculated, you haven't prepared an Exhibit like 209
21 with that data in it, have you? Your aggregation
22 exhibits look different than this, don't they?

23 A. Right, I haven't aggregated the CLEC data by
24 zone.

25 Q. Okay. Now if we took that data, your

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1 exhibits aggregating that data for the different
2 exchanges, what is your opinion about whether it is
3 better or worse for Qwest if we make that
4 urban/non-urban split?

5 A. Using what I think is your criteria that the
6 average market share is higher in that group than what I
7 have calculated statewide, it's higher probably.

8 Q. So that it would be worse for Qwest?

9 A. Right.

10 Q. All right.

11 A. But I have to say I haven't done that, and I
12 have been constantly surprised by the extent of
13 competition in rural areas. And again, I want to point
14 out that separating the urban from the rural markets has
15 an effect that cuts both ways. It eliminates some of
16 the CLEC competition from the analysis, but it also
17 eliminates a very large amount of Qwest competition.
18 And in small rural towns where we're seeing these kinds
19 of market shares, it's really quite significant,
20 especially when you take into effect, into account the
21 Main Street effect is kind of the way I think about it.
22 When you consider competition happening on Main Street,
23 they talk about it at the barber shop, and it spreads
24 very quickly. So a small fire in a rural area equates
25 to a bonfire in an urban area sometimes, to make an

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1 analogy.

2 MR. FFITCH: I don't have any other
3 questions, Your Honor.

4 JUDGE MACE: Thank you.

5 Mr. Melnikoff.

6

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

8 BY MR. MELNIKOFF:

9 Q. I have just one area, Mr. Wilson. In
10 response to Mr. Thompson's question about the Longstaff
11 paper, I believe you said your response was something
12 like, under Longstaff's formulation we would analyze
13 digital service, but we would also include CLEC digital
14 services.

15 A. Right.

16 Q. If you did that, and now addressing the
17 Chairwoman's directional questions, what would be the
18 net impact of analyzing the combined digital services of
19 Qwest and non-Qwest providers?

20 A. I can't answer that, Mr. Melnikoff. There is
21 no digital data that I have been privy to.

22 Q. Can you do a directional?

23 A. No, I can't.

24 Q. But that would be what would be required if
25 you did it under the Longstaff recommendation, correct?

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1 A. Ideally, yes.

2 MR. MELNIKOFF: Thank you.

3 JUDGE MACE: Mr. Butler.

4

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

6 BY MR. BUTLER:

7 Q. Mr. Wilson, you were asked a couple questions
8 by the Chairwoman about arguably alternative services.
9 Specifically with regard to cable, would you agree that
10 cable services are primarily provided to residential
11 customers and not to business customers?

12 A. Yes.

13 Q. And, in fact, cable infrastructure generally
14 does not extend to business areas; isn't that correct?

15 A. Generally that's my understanding also.

16 Q. You were asked some questions about
17 Mr. Gates' proposal for criteria designed to encompass
18 at least the concepts behind the statutory factors, and
19 you expressed some disagreement with the notion that
20 there would be a requirement that a switch be located in
21 each exchange. Did you understand Mr. Gates' proposal
22 to be that the CLEC have a switch located in each
23 exchange or only that there be a CLEC that was providing
24 service through its own switch, wherever that switch may
25 be located?

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1 A. When I was discussing it with the Chairwoman,
2 I think we were hypothesizing the switch in the
3 exchange.

4 Q. Am I correct that your concern about that
5 factor would be eliminated if that factor were a -- that
6 there be at least one CLEC providing service using its
7 own switch even if that switch is located elsewhere?

8 A. I would also disagree with that just because
9 now that you have asked me about it, I would also
10 disagree about that just because the proof is in the
11 pudding that there's a lot of CLEC competition already,
12 and many of them are doing it without switches.

13 Q. Do you think that the Commission ought to
14 consider whether CLECs that are offered up as providing
15 effective competition would qualify say under the
16 Horizontal Merger Guidelines concept of committed
17 entrants?

18 A. Sorry, I got started thinking about I haven't
19 talked to anybody at the DOJ to find out what to believe
20 about that. Could you ask your question again?

21 Q. Sure. Do you think the Commission should
22 consider whether CLECs are committed versus uncommitted
23 as the Horizontal Merger Guidelines define those terms
24 in making its assessment about whether there's effective
25 competition?

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1 A. No, not under the statute.

2 Q. Let me ask you about the price floor
3 discussion that you had. It is the case, isn't it, that
4 TELRIC cost estimates include a factor for Qwest's
5 overhead and profit; there is a markup in there,
6 correct?

7 A. My understanding is that for investments and
8 expenses there is a cost of capital factor, and return
9 is included in that cost of capital.

10 Q. And there is some factor for common costs, et
11 cetera, right?

12 A. There are factors for common costs.

13 Q. All right. Now would you agree that a CLEC
14 paying a TELRIC based price for an essential input to
15 its service would also have to recover its own overhead
16 and profit as well as retailing costs in order to remain
17 in business?

18 A. In the long run, that's true.

19 Q. So if a price --

20 A. Or excuse me, in --

21 Q. Sorry.

22 A. In the short run they wouldn't have to
23 though.

24 Q. In the long run then in order to remain in
25 business they would have to cover their costs, and that

1535

1 would include an additional factor for overhead, profit,
2 and covering retailing costs; isn't that correct?

3 A. Right.

4 Q. Okay.

5 A. That's the common entrepreneur's dilemma.

6 Q. So if a price floor were set at TELRIC, Qwest
7 could reduce the margin that a CLEC could enjoy to the
8 point where it could not cover its overhead and profit
9 or retailing expenses; would you agree with that?

10 A. Assuming that the CLEC's costs are the same,
11 yes.

12 Q. You mean assuming they have overhead and
13 profit requirements and retailing costs?

14 A. No, I'm sorry, I was thinking more about
15 perhaps they might be able to build a better mousetrap
16 themselves less expensively than purchasing unbundled
17 network elements from Qwest.

18 Q. But for a CLEC that does purchase unbundled
19 elements, that would be true, correct?

20 A. Right. And let's be clear that what we're
21 talking about when we go to pricing at TELRIC, right now
22 the basic business rate is \$26.89. In Zone 1 Seattle I
23 think the TELRIC rate is closer to \$8, so we're talking
24 about massive price reductions.

25 Q. I would next like to talk about the

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1 difference in the market power definitions and whether
2 your test is tougher on Qwest or the Horizontal Merger
3 Guidelines' definition is tougher. Your test is the
4 ability to sustain a price above competitive levels
5 without losing market share; isn't that correct?

6 A. Right.

7 Q. Would you agree that under your test a
8 provider that had 100% market share and charged a price
9 well above competitive level and lost one customer would
10 satisfy your test?

11 A. You're going to have to run that by me again,
12 please.

13 Q. Would you agree that under your test a
14 provider that charged a price well above the competitive
15 level and lost one customer would be found to not have
16 market power?

17 A. Under the literal interpretation of my words,
18 that would seem to be true.

19 Q. And under the Horizontal Merger Guideline
20 definition, that price that that same provider charged
21 could be very profitable; isn't that correct?

22 A. Okay.

23 Q. You were asked some questions by Mr. Thompson
24 about the Triennial Review Order and the impairment
25 analysis, and correct me if I'm wrong, but I believe

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1 that you stated that you felt that the Commission didn't
2 need to be concerned if as a result of the Triennial
3 Review process they found that there was no impairment,
4 that they could safely assume that there would be no
5 adverse competitive impact. Was that a fair statement
6 of what you said?

7 A. Sure.

8 Q. Okay. And you just saw a summary of the
9 Triennial Review Order, you haven't read the order
10 itself; is that right?

11 A. That's right, I saw a summary that came out
12 in like February or March, shortly after the five member
13 oral vote.

14 Q. Did that summary include provisions
15 addressing the tests or the definitions of impairment
16 that the FCC rejected?

17 A. No.

18 Q. Were you aware that in Paragraph 109 of the
19 Triennial Review Order the FCC specifically said that:

20 We reject arguments that we should
21 require the unbundling of network
22 elements to remove an incumbent LEC's
23 market power in the retail market and we
24 should use the Horizontal Merger
25 Guidelines to identify market power,

1538

1 that the Act requires only that network
2 elements be unbundled if competing
3 carriers are impaired without them
4 regardless of whether the incumbent LEC
5 is exercising market power or the
6 unbundling would eliminate this market
7 power.

8 A. Am I supposed to accept that subject to
9 check?

10 Q. No, I was just asking if you were aware that
11 the Triennial Review Order states that.

12 A. I have not read the Triennial Review Order.

13 Q. Would that change your opinion about whether
14 a finding of no impairment would be the equivalent of a
15 finding that there was no market power?

16 A. Not necessarily. I haven't always agreed
17 with the FCC in my recommendations.

18 Q. But would you agree that the test that they
19 adopted would not necessarily mean that there would be
20 no market power if they found there was no impairment?

21 A. Could I take a --

22 Q. Based upon what I just represented to you.

23 A. I will take a look at it.

24 JUDGE MACE: Mr. Butler, the witness hasn't
25 had a chance to read it, and he has said that he hasn't

1539

1 really seen the Triennial Review Order. I think you
2 would need to have him take a look at that section that
3 you read before you go much further.

4 MR. BUTLER: I was just asking him if the FCC
5 stated that its impairment test was not the equivalent
6 of a finding that there was no market power whether that
7 would change his opinion about whether the Commission
8 could safely rely upon a finding of no impairment to
9 assume that there was not a problem with market power.

10 JUDGE MACE: Go ahead, Mr. Wilson.

11 A. Well, I think I already answered that I
12 wouldn't necessarily agree with the FCC about that.

13 BY MR. BUTLER:

14 Q. And why is that?

15 A. Because I think that that's for this
16 Commission to determine.

17 MR. BUTLER: That's all I have, thanks.

18 JUDGE MACE: All right, I think we have
19 addressed all of the exhibits for Mr. Wilson, and they
20 have been admitted or not offered as the case may be, so
21 that concludes your cross-examination, Mr. Wilson,
22 you're excused.

23 THE WITNESS: Thank you.

24 JUDGE MACE: We do have a couple of
25 outstanding exhibit items to address, but I wanted to

1540

1 return to the briefing schedule matter. The
2 Commissioners are here, and there's a slightly new
3 proposal about the briefing schedule, and I wanted to
4 make sure you were aware of it.

5 Mr. Sherr represented that the parties have
6 talked again, and they're talking about filing an
7 initial brief on October 31st, a reply brief on November
8 10th, and Qwest would be willing to extend the deadline,
9 the statutory deadline, until December 8th, which is a
10 Monday.

11 CHAIRWOMAN SHOWALTER: That's probably not
12 possible. Our calendar is set such that we have to
13 meet. I doubt we can do it, we can check, but this
14 isn't a matter of just a number of days, this is a
15 matter of slots that we have. We can check.

16 We can go off the record for this.

17 JUDGE MACE: Let's be off the record.

18 (Discussion off the record.)

19 JUDGE MACE: We did spend a little bit of
20 time off the record discussing the briefing schedule,
21 and the Commission is not able to determine whether or
22 not the proposed alternative briefing schedule would
23 work. More than likely it won't, but we need to get
24 back to the full calendar to determine what dates would
25 work if there were to be an extension of the briefing

1541

1 schedule.

2 As I indicated, we had already discussed
3 Exhibit 612C to some extent, and as I started to discuss
4 that, Staff was bringing up some additional issue, and I
5 don't recall what it was.

6 MR. THOMPSON: Oh, I apologize if I broke
7 into the middle of a discussion of a different exhibit,
8 mine was another matter that maybe should wait.

9 JUDGE MACE: Well, let me just ask then, 612C
10 is Record Requisition Number 9. Is there any objection
11 to the admission of that exhibit?

12 All right, then I will admit that exhibit.

13 Staff.

14 MR. THOMPSON: Yeah, the other matter was in
15 the Commission's Order Number 15 that granted Public
16 Counsel's request for access to the highly confidential
17 CLEC information, there was we read a portion of that
18 order to suggest that the Commission might want to
19 perform an incamera review of that information, and in
20 any case we have the questionnaires filled out by the
21 various CLECs, and we can provide those to the
22 Commission for its review if that's the Commission's
23 desire.

24 (Discussion on the Bench.)

25 JUDGE MACE: No, the Commission is not

1542

1 interested in -- oh, well, let me make sure I've got
2 everybody on board here.

3 Yes, the Commission is not interested in
4 having those documents.

5 MR. THOMPSON: Okay.

6 JUDGE MACE: Is there anything else we need
7 to address before we adjourn?

8 MR. FFITCH: Your Honor, we have --

9 JUDGE MACE: Or before we close the record.

10 MR. FFITCH: Your Honor, I have the 800 pound
11 gorilla, Exhibit 800.

12 JUDGE MACE: Yes, is there any objection to
13 the admission of that exhibit?

14 Hearing no objection, I will admit Exhibit
15 Number 800.

16 MR. FFITCH: We're also attempting to send
17 this out to people electronically if that's of any help
18 to people. We are trying to do that, it may have
19 already happened.

20 JUDGE MACE: Very well.

21 Anything else?

22 The record is closed.

23 (Discussion off the record.)

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

25 I'm sorry to have to do this, but the court reporter has

1543

1 called to my attention that Ms. Friesen did review the
2 transcript from yesterday where there was a discussion
3 of certain additional data that was supplied to
4 Mr. Wilson for purposes of his aggregation of CLEC data.
5 There was an identification of a carrier made in the
6 transcript, and so Ms. Friesen had requested that that
7 portion of the transcript be stricken. It appears at
8 page 9, and is there any objection to my striking those
9 portions of the transcript that identify the carrier?

10 MR. SHERR: Your Honor, this is Adam Sherr
11 for Qwest, I don't think page 9 is going to ultimately
12 be the number of the transcript page. I don't know if
13 you know what that is or if the court reporter can help
14 us, so we don't know yet. Can I ask is it just a single
15 reference?

16 JUDGE MACE: It's a single page.

17 MR. SHERR: A single reference?

18 JUDGE MACE: There are four lines of text
19 involved.

20 MR. SHERR: Okay. Would it be possible to
21 reserve the question?

22 JUDGE MACE: Is it possible for the reporter
23 to provide this page as a confidential page or highly
24 confidential?

25 Let's be off the record and discuss this off

1544

1 the record.

2 (Discussion off the record.)

3 JUDGE MACE: Let me indicate on the record
4 now that I'm instructing the court reporter to designate
5 as confidential that page of the transcript that
6 Ms. Friesen reviewed and indicated to the court reporter
7 AT&T had problems with as far as confidentiality. And I
8 will send out a notice that will indicate the parties
9 have to respond to me what portion of that confidential
10 page they or she seeks to have stricken and then can
11 make some kind of a ruling about that.

12 Okay, let's be off the record again.

13 (Discussion off the record.)

14 JUDGE MACE: We have had a brief discussion
15 of the Bench Request Number 5 that was made today, and
16 Qwest has advised us that the response will be provided
17 on Monday or possibly Friday of this week.

18 MR. SHERR: Your Honor, is it 4 or 5? I
19 believe you said 4 before.

20 JUDGE MACE: Okay.

21 MR. SHERR: I apologize, my notes say 5.

22 JUDGE MACE: Sorry, there is a Bench Request
23 Number 4, how many lines in this case are attributable
24 to CLECs who are parties. Is that what you're talking
25 about? There's another one, Bench Request Number 5 for

1545

1 services listed in Exhibit 2, are there parts of those
2 services that are digital. Do you remember that?

3 MR. SHERR: I do, thank you.

4 JUDGE MACE: Is that the one you were looking
5 for to get by --

6 MR. MELNIKOFF: You reminded me of Bench
7 Request Number 4, I would like to see that as well
8 before we file our initial.

9 JUDGE MACE: I thought that was directed to
10 Mr. Wilson.

11 MR. MELNIKOFF: Yes.

12 JUDGE MACE: Mr. Thompson.

13 MR. THOMPSON: I'm told that Mr. Wilson said
14 he could have that done by tomorrow.

15 MR. WILSON: Yes.

16 MR. THOMPSON: Much quicker than Qwest I
17 might add.

18 JUDGE MACE: All right, Bench Request Number
19 4 will be provided to the parties on Thursday.

20 Anything else?

21 All right, the record is closed.

22 (Hearing adjourned at 4:45 p.m.)

23

24

25