

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

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3 JUDGE RENDAHL: Let's be on the record. Good
4 afternoon. As you all know, I'm Ann Rendahl, the
5 administrative law judge presiding over this
6 proceeding. We are here before the Washington
7 Utilities and Transportation Commission this afternoon,
8 Wednesday, May 19th, 2004, for a prehearing conference
9 in Docket No. UT-043007, captioned, In the matter of
10 the second six-month review of Qwest Corporation's
11 performance assurance plan.

12 The purpose of this prehearing conference is
13 to discuss the status of the proceeding, discuss the
14 current status of the Long-Term PID Administration
15 Collaborative; address Qwest's March 31st motion for a
16 change of schedule, evidentiary hearing, and discovery,
17 and to hear from the parties on that motion; establish
18 a new procedural schedule, and identify any other
19 matters for discussion this afternoon.

20 Before we go through that agenda, I would
21 like to take appearances from the parties, and as all
22 of you have appeared before the Commission in this
23 proceeding, except for Ms. Smith, if you could please
24 state your name and the party you represent for the
25 court reporter, beginning with Qwest, I think that will

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1 satisfy us.

2 MR. OWENS: Good afternoon, Your Honor.

3 Douglas N. Owens, attorney at law. My address is on
4 file representing Qwest Corporation.

5 JUDGE RENDAHL: Thank you. For staff?

6 MS. SMITH: Shannon Smith. I'm here though
7 for Greg Trautman who is out of the office, so I will
8 not be entering an appearance today but just
9 reiterating that everything you have for Greg Trautman
10 is still correct.

11 JUDGE RENDAHL: Thank you. For Covad?

12 MS. FRAME: This is Karen Frame with Covad
13 Communications Company, and I believe my information is
14 on file.

15 JUDGE RENDAHL: Thank you. Ms. Singer
16 Nelson?

17 MS. SINGER NELSON: Michel Singer Nelson
18 appearing on behalf of MCI, and with me from MCI is
19 Chad Warner.

20 JUDGE RENDAHL: Thank you. For Eschelon?

21 MR. SMITH: Ray Smith. My information is on
22 file.

23 JUDGE RENDAHL: Thank you very much. In
24 terms of the status of this proceeding, following the
25 February 11th prehearing conference, I entered Order

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1 No. 1, which established the procedural schedule. Then
2 Qwest filed a motion on March 31st requesting a
3 modification of that schedule and requesting
4 evidentiary hearings and discovery in this proceeding,
5 so the Commission canceled the procedural schedule and
6 requested responses from the parties, and the
7 Commission also rescheduled a prehearing conference
8 that was scheduled for April 28th until this afternoon.

9 Now, on a separate matter, the Commission
10 proposed in Order No. 2 a change to QPAP Section 7.5.
11 After all the parties agreed to that proposal, the
12 Commission recently approved in Order No. 3 Qwest's
13 modification to QPAP Section 7.5, or I guess the
14 agreed-to modification to that section.

15 So that's my understanding of where we are in
16 this proceeding. Is that a correct summary?

17 MR. OWENS: As far as Qwest is aware, yes,
18 Your Honor.

19 JUDGE RENDAHL: And then in terms of the
20 Long-Term PID Administration, you are all much more
21 familiar with that than I am, but most recently on May
22 6th, Qwest filed with the Commission a notice of
23 modifications to SGAT Exhibit B explaining that the
24 changes were agreed to during recent LTPA sessions and
25 the subsequent impasse process from the collaborative.

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1 So I guess my question to all of you is,
2 beginning with Qwest, what's the current status of the
3 impasse process? What's the timing? It leads into the
4 process here, but before we get to the motion, kind of
5 where are we, and is there really anything for this
6 Commission to decide in the six-month review process
7 after the LTPA process?

8 MR. OWENS: On behalf of Qwest, Your Honor,
9 thank you. It's my understanding that the way the LTPA
10 process was established for the impasse resolution, it
11 involved the facilitator issuing a recommendation based
12 on position statements on each of the impasse issues,
13 and then if that recommendation didn't break the
14 impasse, then the state staffs would conduct a vote on
15 each of the impasse issues, which was not binding, but
16 it was possible that the state staffs themselves could
17 come up with a solution that the parties had previously
18 considered and that that might break the impasse.

19 It's my understanding that with respect to
20 six out of the eight issues that were in the impasse
21 process, those procedural steps have been completed.
22 It's my understanding that the seventh issue, which is
23 DI-5, the facilitator's recommendation was issued
24 Friday. There have been some exchanges of e-mails
25 between Qwest and CLEC's over that. The state staff

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1 vote is scheduled for the 25th.

2 The concluding issue, PO-2, the facilitator
3 recommendation has been issued, and I don't believe
4 there has been any agreements or decision that the
5 impasse has been broken on that issue, and the state
6 staff vote is scheduled for the 27th. So the
7 procedural steps, as I understand it, would conclude
8 with the 27th in the LTPA.

9 And in answer to your question, it's my
10 understanding that of those issues, there are some
11 aspects of some issues that have been resolved, and
12 other issues as to which no aspects have been resolved,
13 and therefore, to your concluding question, yes, as far
14 as Qwest understands, there are still things for this
15 commission to do in the six-month review.

16 In addition, the LTPA process by its nature
17 did not address the QPAP impacts of agreed or otherwise
18 resolved changes, new PID's or changes to PID's, and
19 therefore, the Commission would need to address those
20 in the six-month review, to the extent there are any
21 agreed determinations.

22 JUDGE RENDAHL: Thank you. Before I turn to
23 the other parties on this, you mentioned that there
24 were ten issues at impasse.

25 MR. OWENS: Eight, I think. Did I say ten?

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1 JUDGE RENDAHL: You said ten. When you said
2 six of ten were resolved --

3 MR. OWENS: I meant to say eight.

4 JUDGE RENDAHL: -- and then you talked about
5 the remaining two, I was a bit confused, but now I'm
6 fine. The six that you say have gone through the
7 impasse process, I understand those are the ones where
8 you say some aspects of those issues have been resolved
9 and others are not at all resolved.

10 MR. OWENS: That's correct.

11 JUDGE RENDAHL: Let's turn to Staff and then
12 to the other parties. Anything else Staff would like
13 to add to what Mr. Owens has just explained?

14 MS. SMITH: Thank you, Your Honor. May I
15 have a moment to confer?

16 JUDGE RENDAHL: Please, and if you would like
17 Mr. Spinks to relate the information, that's fine as
18 well.

19 MS. SMITH: I think I will take you up on
20 that, and Mr. Spinks will say whatever needs to be
21 said.

22 JUDGE RENDAHL: Thank you.

23 MR. SPINKS: Good afternoon, Your Honor.
24 This is Tom Spinks for the staff. One correction to
25 Mr. Owen's recitation, I received an e-mail yesterday

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1 from Mr. Kern, the facilitator -- he sent it to all of
2 us -- indicating that the vote was canceled, that it
3 wouldn't be necessary as Qwest had indicated that it
4 had accepted the BI-5 resolution.

5 JUDGE RENDAHL: So the BI-5 issue may be
6 fully resolved?

7 MR. SPINKS: I don't know if it's fully,
8 because the main issue that was at impasse has been
9 resolved, but several of these issues, as Mr. Owens
10 indicated, have baggage with them that isn't resolved,
11 and it's not clear at this point whether parties intend
12 to use the six-month review to bring those back up or
13 not.

14 MR. OWENS: Thank you for that correction. I
15 wasn't aware of Mr. Kern's e-mail. I was aware that
16 Qwest had expressed its view on BI-5. What I wasn't
17 aware of was what position the CLEC's had taken on the
18 facilitator's recommendation, but you've informed me
19 the vote by the state staffs have been canceled, so
20 thank you.

21 JUDGE RENDAHL: At least in terms of an LTPA
22 impasse issue, it looks like there are seven at this
23 point instead of eight with the residuals still needing
24 to be brought up.

25 MR. SPINKS: That's my understanding, and

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1 then the PO-2 issue will be voted on on Friday.

2 JUDGE RENDAHL: The 28th or the 21st?

3 MR. SPINKS: The 28th. That will complete
4 the LTPA portion of the issues that were considered in
5 that.

6 JUDGE RENDAHL: Let's turn to Ms. Frame.

7 MS. FRAME: I really have nothing else to
8 add. Although, it's my understanding that, and
9 r. Warner from MCI can probably help me out on this,
10 but Qwest is not in agreement with the facilitator's
11 recommendation --

12 JUDGE RENDAHL: You'll have to speak slowly
13 and speak up.

14 MS. FRAME: Something is wrong with my phone
15 connection here. I can hear you, but can you hear me
16 at all?

17 JUDGE RENDAHL: Yes, but now that you are
18 speaking up, it's much better.

19 MS. FRAME: I think I'm going to go ahead and
20 defer this particular issue to MCI, because I'm not
21 directly involved in the LTPA process, but I believe
22 Mr. Warner has some more information that would be
23 helpful to the Commission.

24 JUDGE RENDAHL: Thank you, Ms. Frame.

25 MR. WARNER: This is Chad Warner with MCI.

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1 Again, it is my understanding too that we are still
2 waiting for the PO-2 decision state staff vote on that,
3 and then the other issues that were at impasse, we have
4 gotten recommendations, and then the state staff has
5 voted on those as well in many instances, so those are
6 issues that we would likely be addressing in the
7 six-month review.

8 JUDGE RENDAHL: Mr. Warner, if you could
9 speak up a bit more, that would be helpful.

10 MR. WARNER: Is that better?

11 JUDGE RENDAHL: That's better. Thank you.
12 So you would agree with what Mr. Owens and Mr. Spinks
13 explained in terms of the status.

14 MR. WARNER: Correct.

15 JUDGE RENDAHL: Mr. Smith, are you in
16 agreement with that recitation of the status of where
17 we are?

18 MR. SMITH: Yes. I agree that the status of
19 LTPA and the six-month review will have to resolve
20 issues that come out of the LTPA, meaning that the
21 recommendations of the facilitator and/or the state
22 staffs will have to be brought to the Washington
23 Commission to rule upon.

24 JUDGE RENDAHL: On those impasse issues that
25 are not resolved.

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1 MR. SMITH: Correct.

2 JUDGE RENDAHL: Without going into detail at
3 this point as to what the other six issues are that we
4 need to talk about, let's turn now to Qwest's motion.
5 And I'll first hear from Qwest and then the other
6 parties. My understanding is that in the motion, Qwest
7 asked to have the issues list due date be rescheduled,
8 which the date was canceled as well as the other
9 procedural dates, so we have a clean slate there, and I
10 think the issues we need to talk about are the request
11 for evidentiary hearings and the request for discovery
12 and then the issue of seeking an initial order as
13 opposed to going for an order of the Commission
14 directly. Is that your understanding of what is at
15 issue, Mr. Owens?

16 MR. OWENS: Yes, Your Honor.

17 JUDGE RENDAHL: Please go ahead.

18 MR. OWENS: Thank you, Your Honor. I think
19 it's fair to say that the issues that the Commission
20 will consider in this six-month review are complex, and
21 the experience with the essentially nonevidentiary
22 process in the LTPA has been such that Qwest strongly
23 believes and has requested and moved for the relief of
24 an evidentiary hearing to consider what it considers to
25 be very significant issues that remain unresolved after

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1 that mediation process.

2 Qwest believes that only with an evidentiary
3 process that creates a record, an evidentiary record,
4 will it be possible and reasonable for the Commission
5 to decide these issues, and these issues, just to
6 highlight some of them, was alluded to by Ms. Frame
7 earlier. Three of the issues that remain unresolved,
8 line splitting, loop splitting, and XDSL-I, are pretty
9 technical, and we believe that not only those issues
10 but other issues that are unresolved, and certainly the
11 PAP aspects, are issues that have been partly or fully
12 resolved, would benefit from the creation of an
13 evidentiary record.

14 We believe that as the authorities recited in
15 the reply, I won't repeat here, but we believe the
16 authorities do support that if a party requests an
17 evidentiary hearing in a process like this that's
18 devoted to a change in the QPAP that could result in a
19 modification of Qwest's payment obligations that an
20 evidentiary hearing should be provided under statutory
21 authority that the Commission has claimed that
22 authorizes that action by the Commission.

23 The evidentiary hearing and discovery are
24 sort of two sides of the same coin. In order for the
25 parties to be able to prepare and intelligently try the

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1 case on a record, some discovery, we believe, is
2 required, and then the final issue in terms of an
3 initial order, originally back in February when there
4 was, perhaps, a perception that more of the issues,
5 more of the more complex issues would be resolved by
6 agreement, Qwest agreed to waive an initial order, but
7 at this point, we think having the administrative law
8 judge issue an initial order and then have that subject
9 to review makes more sense. I think the Commission
10 would benefit by the application of the initial order
11 process, so we would request that.

12 JUDGE RENDAHL: Okay. I would like to hear
13 first from Staff on this point.

14 MR. SPINKS: This is Tom Spinks again. In
15 our comments on Qwest's motion, I think we concluded by
16 saying that we wouldn't know whether or not we agreed
17 with the motion until we knew what the full scope of
18 the issues would be in the review, and it's not clear
19 to me what that scope is going to be, what parties are
20 going to ask for.

21 Insofar as Mr. Owens mentioned line sharing,
22 loop splitting, XDSL-I, I know he did deal with line
23 sharing and loop splitting requests on a paper record
24 in the last review; although, the XDSL is a new one we
25 haven't, but it isn't clear until, I think, we have

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1 identified what all will be before us in the review as
2 to the type of proceeding that it's best pursued in.

3 JUDGE RENDAHL: Does Staff object to
4 discovery if there is an evidentiary hearing?

5 MS. SMITH: I don't believe Staff would
6 object to that, if there is, in fact, an evidentiary
7 hearing, but that agreement is prefaced on actually
8 having a hearing.

9 JUDGE RENDAHL: What if there is no
10 evidentiary hearing?

11 MS. SMITH: In that case, I don't believe
12 that discovery would be necessary.

13 JUDGE RENDAHL: For MCI, Ms. Singer Nelson?

14 MS. SINGER NELSON: Thank you, Judge.
15 CLEC's, basically, we stated our position in our
16 written response to Qwest's motion, and as a general
17 matter, CLEC's don't agree with Qwest that we should
18 schedule an evidentiary hearing in this case, and we
19 agree with Staff that the point of the collaborative
20 was to save time and gain efficiencies. The purpose of
21 that collaborative is lost if we have a de novo
22 proceeding in each state when one of the parties is
23 unhappy with the outcome of the collaborative.

24 What the CLEC's believe would be more
25 appropriate would be a process that looks more like an

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1 appeal of the LTPA decision than a de novo hearing so
2 that the record from the collaborative would be sent up
3 to the Commission. The parties could file comments on
4 the recommended decision, and the Commission can then
5 make its own decision based on the underlying record
6 before it.

7 I know Mr. Owens said that the issues in this
8 case, in the LTPA process are complex, but as
9 Mr. Spinks pointed out, this case in the past has been
10 handled on a paper record, and Qwest really hasn't
11 identified yet, for me, anyway, why this particular set
12 of issues is any different than the issues that we've
13 handled in the past.

14 And then as far as the discovery issue,
15 again, the CLEC's would oppose Qwest's request for
16 formal discovery because just like the evidentiary
17 hearing, Qwest has provided no real explanation for why
18 discovery is necessary, and the Commission's evaluation
19 of this phase, of the six-month review of the PAP, when
20 we haven't had the necessity for discovery in the past,
21 and informal discovery did take place in the LTPA
22 process, so any necessary discovery should have been
23 asked and answered in that collaborative process.

24 As we represent in our written response, the
25 Commission six-month PAP review process is not one of

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1 the proceedings that's described directly in the
2 discovery rule, and as we argued in the written motion,
3 the CLEC's oppose Qwest's general request for discovery
4 on that basis. This proceeding is more either in the
5 nature of an appeal of the collaborative process or in
6 the nature of a rule-making than a complaint
7 proceeding, and the Commission should not use the
8 complaint model but instead use the rule-making model
9 where discovery is not the norm.

10 And then I don't know if Ray has anything to
11 add on behalf of Eschelon or if Karen has anything to
12 add on behalf of Covad, but our opposition to Qwest's
13 request was a joint opposition.

14 JUDGE RENDAHL: Mr. Smith?

15 MR. SMITH: I concur with Ms. Singer Nelson's
16 statement.

17 JUDGE RENDAHL: Ms. Frame?

18 MS. FRAME: Same with Covad, Your Honor.

19 MS. SINGER NELSON: The only other point I
20 wanted to make is it seems to the CLEC's that without
21 any more specifics from Qwest that the reasons for an
22 evidentiary hearing in the discovery rules be invoked
23 in this docket. It seems to the CLEC's that the only
24 reason Qwest wants the discovery and hearing is to
25 delay the effectiveness of the changes in the past, and

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1 only Qwest would benefit from the delay. The CLEC's,
2 in fact, are harmed by any excessive delay.

3 JUDGE RENDAHL: Mr. Owens?

4 MR. OWENS: Thank you, Your Honor. In brief
5 response, Qwest vigorously disagrees that this process
6 is or should properly be considered as any kind of
7 appeal from the LTPA. The LTPA was an attempt at
8 mediation and resolving disputes by agreement. It was
9 in no way an adjudicative forum in which anyone was
10 authorized to make any decision that could be appealed
11 anywhere.

12 There was no record. There was no evidence
13 adduced under oath or in any other way, and one of the
14 problems that Qwest has is with the facilitator's very
15 loose use of the word "evidence" in some of his
16 recommendations. We do not believe that this
17 Commission would, under MCI's view of the world, even
18 have a record from which this commission could make any
19 kind of appellate decision as that term is used in the
20 Administrative Procedure Act. No judge of any state
21 admitted any evidence that would comprise such a record
22 for this commission to review.

23 It also seems to me that it's inconsistent
24 for the CLEC's to cast around -- at one point they say,
25 Well, the LTPA was in the nature of some kind of

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1 inferior judicial tribunal from which this commission
2 can consider an appeal. Then they turn around and say,
3 Well, this commission's six-month review process is a
4 rule-making, and because of that, you shouldn't take
5 evidence. Well, the Commission can take evidence in a
6 rule-making. It's specifically provided for in the
7 Act.

8 With regard to the criticism that Qwest
9 hasn't explained why it believes these issues shouldn't
10 be considered in an evidentiary proceeding where in the
11 prior six-month review the issues weren't, well, that
12 was a matter of agreement. We don't have Qwest
13 agreeing to a paper procedure in this case.

14 We also have the situation that the issues
15 that Qwest believes will be on the issues list and as
16 to which there has not been resolution in the LTPA are
17 really not Qwest issues. Qwest did not push those
18 issues forward. They were the issues of the CLEC's, so
19 for the CLEC's to say, Well, Qwest hasn't identified
20 the issues that it thinks are going to require a
21 hearing, if you want Qwest's view, we believe the
22 issues that I mentioned as being those as to which
23 there has been no resolution whatsoever as well as some
24 aspects of others, but specifically the line
25 splitting -- and it's line splitting, not line

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1 sharing -- loop splitting, and XDSL-I are those that
2 are going to require some detailed testimony and the
3 creation of a record.

4 With regard to the criticism that we haven't
5 explained why discovery is needed, I alluded to the
6 fact that the experience in LTPA was part of why Qwest
7 is making this request, and that includes the fact that
8 there was information adduced in comments that was new
9 to Qwest as to which Qwest didn't have the opportunity
10 to respond, and Qwest believes that had there been some
11 kind of discovery, that kind of surprise wouldn't have
12 occurred, and that's one of the reasons why Qwest is
13 seeking the application of discovery in this case.

14 With regard to the notion that the Commission
15 didn't have discovery in the prior case, that again was
16 because no party asked for it. The Commission's order,
17 procedural order in this case, specifically found that
18 the proceeding, the first six-month review, was of the
19 type that qualified for the application of the prior
20 discovery rule, and we mentioned that in our reply. So
21 the fact that no party asked for it in the last review
22 was really the only reason why, at least as I read the
23 Commission's order, why there was no discovery in the
24 last case.

25 Qwest has no interest in delaying the

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1 effectiveness of any changes. Presumably, Qwest has
2 demonstrated that by making the filing on, I think it
3 was May the 6th, to immediately change the Exhibit B to
4 incorporate the agreed-on changes in PID's that
5 resulted from the LTPA, so I don't think that criticism
6 is supported by the record, but Qwest does have,
7 obviously, a significant interest, just as the CLEC's
8 have, in changes that are made to the QPAP, and we
9 believe that the proper process needs to be followed
10 since the attempt to resolve these differences by
11 negotiation and mediation hasn't produced success on
12 all of the issues. It's produced success on some, or
13 at least partial success on some. That concludes my
14 response.

15 JUDGE RENDAHL: Thank you. I have a few
16 questions for all of you. I guess first as to
17 discovery -- first, let's go to the issue of the record
18 from the LTPA. What sort of documents, what sort of
19 information -- I'm not going to call it a record at
20 this point because it was not the same as the
21 multistate hearings on the QPAP, where, in fact, there
22 were transcripts and hearings, etcetera, and evidence
23 that were incorporated into the Commission's 271
24 proceeding.

25 What is available from the collaborative that

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1 can be a start for this commission to be aware of what
2 happened? Is it just the written recommendations of
3 the facilitator? Mr. Owens, are you aware of what's
4 available?

5 MR. OWENS: Your Honor, I think I might call
6 on Ms. Burke to respond to that on Qwest's behalf
7 because I have not participated directly in the LTPA
8 process, but I believe she has or at least has more
9 access to the documents that were produced.

10 MS. BURKE: Your Honor, there are minutes
11 that were produced plus the facilitator's
12 recommendations and the parties' statements on the
13 impasse. There may be other documents about which I'm
14 not aware. I've not been participating in this portion
15 for very long.

16 JUDGE RENDAHL: So there are minutes of
17 face-to-face meetings and/or conference calls?

18 MS. BURKE: There are.

19 JUDGE RENDAHL: And then the facilitator's
20 written recommendation on each issue?

21 MS. BURKE: Yes.

22 JUDGE RENDAHL: Plus the parties' written
23 responses or statements on the facilitator's
24 recommendation?

25 MS. BURKE: Uh-huh.

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1 JUDGE RENDAHL: Is there any document of the
2 state staffs' vote on that issue?

3 MS. BURKE: I believe the LTPA distribution
4 was e-mailed might be available.

5 MS. SINGER NELSON: Perhaps since Mr. Smith
6 and Mr. Warner are both involved in the process, they
7 can illuminate this issue as well.

8 MR. WARNER: This is Chad Warner with MCI. I
9 will say that there was continually updated issues
10 matrix that the facilitator kept on all the issues that
11 have notes on what transpired. As mentioned, there
12 were weekly meeting minutes that were produced on the
13 LTPA Web site on Qwest's Web page.

14 Again, the facilitator first put out the
15 impasse to make sure that everybody understood and
16 agreed that this was the actual impasse and what the
17 issue was for that impasse, and that's included in the
18 impasse document in his recommendations, and then also
19 e-mails were received to state staff vote when
20 appropriate as well and who voted and what the outcome
21 was.

22 JUDGE RENDAHL: So there is an e-mail record
23 of the state staff vote?

24 MR. WARNER: There is. I don't know that
25 that was requested to be posted to the Web site or not.

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1 I know that generally the facilitator with his
2 recommendation requested that Qwest post that to their
3 Web site, and I don't know that that's happened today
4 with the recommendation being posted, and I don't know
5 for sure if the state staff votes were specifically
6 requested to be posted or not, but they are out there
7 on e-mail through the distribution list.

8 JUDGE RENDAHL: Mr. Smith, anything in
9 addition to what Mr. Warner or Ms. Burke mentioned?

10 MR. SMITH: I would concur with Mr. Warner
11 that the facilitator's recommendation as the single
12 document contains the agreed-upon impasse document
13 between Qwest and the CLEC's. The comments of the
14 parties on the impasse and the facilitator's
15 recommendation and reasoning, those impasse documents
16 and the facilitator's recommendation when the state
17 staffs voted were also supposed to be posted on the
18 LTPA Web site. I looked at the Web site as Mr. Warner
19 was speaking, and some of the e-mails regarding the
20 state staff votes have been posted already.

21 JUDGE RENDAHL: Mr. Spinks, anything you wish
22 to add in terms of what's available from the LTPA?

23 MR. SPINKS: No. I concur with all that's
24 been said.

25 JUDGE RENDAHL: In terms of discovery,

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1 Mr. Owens, what exactly does Qwest have in mind?

2 MR. OWENS: I guess the use of the
3 Commission's data request process and discovery that we
4 are talking about, not any subpoenas or depositions or
5 anything of that nature.

6 JUDGE RENDAHL: How long does Qwest believe
7 it would need for a discovery process prior to either a
8 paper record or an evidentiary hearing, whichever way
9 we go?

10 MR. OWENS: Your Honor, the way we had
11 thought about this is -- and an evidentiary hearing the
12 way we normally do things is we prefile the testimony,
13 and so we were sort of counting from when we achieved
14 the issues list, counting from that date forward about
15 six weeks to file testimony, and we would do the
16 discovery in that period, and then there could be reply
17 testimony a couple of weeks after that and the hearing
18 following the reply testimony.

19 JUDGE RENDAHL: How many days of hearing are
20 you anticipating?

21 MR. OWENS: Of course, I can't speak for
22 however many witnesses the CLEC's would feel or Staff,
23 but with the possibility of six issues, I would think
24 two days would be a reasonable estimate.

25 JUDGE RENDAHL: Does Qwest object to the

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1 commissioners sitting on the hearing?

2 MR. OWENS: No, Your Honor, which could
3 obviate an initial order.

4 JUDGE RENDAHL: Any comments from the other
5 parties as to what they would anticipate requesting for
6 discovery if discovery were allowed, beginning with
7 MCI?

8 MS. SINGER NELSON: Your Honor, I guess I'm
9 kind of unclear as to what you are seeking. When I
10 first heard you ask that question of Qwest, I was
11 thinking you were asking for specific types of
12 questions, specific types of information that we would
13 be seeking versus the format or whether it should be
14 the interrogatories or should it be depositions.

15 If it's the format that you are asking about,
16 we think that if there is any discovery at all that it
17 should be an informal process and not the formal
18 process, and we would be willing to participate in an
19 informal process if the Commission finds that discovery
20 is necessary, and as far as the types of information we
21 would seek, are you looking for that kind of specifics?

22 JUDGE RENDAHL: I think that would be
23 helpful. I think in this case, I'm looking for the
24 minimal process to save resources for all parties that
25 will still satisfy every parties' need to create an

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1 appropriate record and create the appropriate
2 information for the Commission to decide this issue.

3 MS. SINGER NELSON: The rule does allow for
4 informal discovery, and we would be willing to
5 participate in that if the Commission does find, in
6 fact, that discovery is appropriate, and as far the
7 specific types of information we would be looking for,
8 Chad or Ray, do you want to address that for the judge,
9 please?

10 MR. SMITH: This is Ray Smith with Eschelon.
11 Our sense was that in LTPA, both parties had the
12 opportunity to ask questions and get information, and
13 as such, we didn't think it was needed in this
14 proceeding, so it's hard to contemplate what we would
15 ask.

16 The second part is it also depends on what
17 the issues are. Qwest has suggested that they thought
18 most of the issues in this review, if not all of them,
19 would come from the CLEC's. That was new information
20 to CLEC's at this time.

21 JUDGE RENDAHL: Mr. Warner?

22 MR. WARNER: I would agree. I don't know
23 what the status is at this point. With the things that
24 have been mentioned, like line splitting, loop
25 splitting, I don't think those were complex issues. I

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1 don't think they are complex. The information is
2 there. The party's position and everything is there,
3 so I don't know what else I would request from Qwest.

4 MS. SINGER NELSON: It sounds like MCI, at
5 least, doesn't have a lot of information that it would
6 seek from Qwest. There wouldn't be a lot of discovery
7 necessary.

8 MS. FRAME: Same with Covad, Your Honor. I
9 don't think there is a lot of additional anything that
10 we would be seeking. It seems to me though the
11 informal questions that were posed of the other parties
12 during the LTPA process would be the types of questions
13 that would be asked during discovery, and I believe
14 that Mr. Warner or Mr. Smith could probably help us
15 with that particular issue or at least about the amount
16 of questions that were posed of the parties.

17 JUDGE RENDAHL: Anything from Staff on this
18 issue?

19 MR. SPINKS: I think we concur mainly with
20 Mr. Smith's remarks in particular. I don't know what
21 additional -- there has been questions asked and
22 answered repeatedly by the parties, exchange of
23 information throughout the collaborative, so I'm not
24 sure what else is out there that we need, but the other
25 part is it depends, of course, on what all issues get

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1 brought before the Commission. If something new comes
2 at us in the six-month review that hasn't been part of
3 the collaborative before, then some questions may need
4 to be asked about it.

5 JUDGE RENDAHL: When you talk about,
6 Mr. Spinks, that there was information or questions
7 asked and information exchanged, was that all on a
8 verbal basis, or was there anything written down?

9 MR. SPINKS: I recall the CLEC's asking Qwest
10 for various data on how frequently something has been
11 ordered or how many misses there were, that sort of
12 thing, and Qwest has readily produced answers to those
13 questions for them. Some of them came in the form of
14 mini studies, I believe, and I think Mr. Smith and
15 Mr. Warner might be in a better position to flesh that
16 out for you.

17 JUDGE RENDAHL: Before we go there, at this
18 point, as I said, my goal here is to minimize the
19 process but make sure that everybody's needs are
20 satisfied. It's kind of like splitting the baby
21 though in this case. I do agree with Qwest in this
22 situation that we can't use the LTPA process as an
23 appeal, per se, but that doesn't mean we ignore what
24 occurred there.

25 So I think to short-circuit that process, I

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1 will be seeking a Bench request of all the available
2 information from the LTPA Web site as well as any other
3 written information that might be relevant, and I will
4 have to think about how best to capture that, but I
5 think that's the best way to get that to the
6 Commission, avoiding a dispute as to whether this is an
7 appeal or not.

8 I think discovery is appropriate. I guess
9 I'm a bit confused about what informal discovery might
10 be. I think it's best for parties to try to work it
11 out with one another, but I understand the need to have
12 some documentary, some written back and forth that
13 documents what the questions were and what the
14 responses are, and that's what data requests are.

15 So I'm wondering, Mr. Owens, if there is
16 anything you might be able to work out with the parties
17 in terms of discovery. I'm not opposed to allowing
18 discovery, but because we are going to have one of
19 these processes every six months, I think the goal is
20 to minimize how much everybody spends on this type of
21 situation, understanding the eventual impact it could
22 have on Qwest's pocketbook. So I guess I will allow
23 discovery, but I would like to have the parties work
24 together to try to minimize the expense of that on each
25 other.

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1 MR. OWENS: We'll be glad to work in that
2 vein, Your Honor.

3 JUDGE RENDAHL: I would like to hold off on
4 scheduling a hearing because I would like the parties
5 to try to work out through discovery what the issues
6 actually are and what issues actually might need to be
7 litigated and what might actually need to be conducted
8 on a paper process. So I'm going to not rule on that
9 request at this point for a hearing because I think
10 there is a significant amount of information that needs
11 to be exchanged between all the parties as to what
12 really actually needs to be heard by the Commission,
13 and I will confer with the commissioners as to whether
14 they seek to sit on a hearing if a hearing occurs, and
15 then I will let you all know what that decision is.

16 What I would like is to have some discovery
17 occur. I will issue the Bench request and have the
18 parties engage in discovery, and then I would like to
19 have an issues list be prepared following that initial
20 set of discovery, and then I think we will be in a
21 better position to know what we actually need to do in
22 terms of a hearing or paper process. Is that a fair
23 splitting of the baby in this situation?

24 MR. OWENS: Yes, Your Honor.

25 JUDGE RENDAHL: In terms of timing, we really

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1 can't complete the issues identification until the 27th
2 of May. It seems like we would have to have an issues
3 list come out some time after that point. What is
4 reasonable for the parties on that?

5 MR. OWENS: I thought I heard you say that
6 you wanted the discovery exchange of information to
7 precede the issues list?

8 JUDGE RENDAHL: I think that would be
9 helpful, so whatever point after May 27th when there
10 has been a final impasse process at the LTPA, plus
11 incorporating within that time period any discovery
12 that's needed. We are supposed to be concluding this
13 at the end of June, but that doesn't look like that's
14 going to happen, at least at this point. Is it
15 reasonable to try to get an issues list together by the
16 end of June?

17 MS. SINGER NELSON: Your Honor, it seems to
18 me -- this is the way I'm thinking -- that it would be
19 more helpful to have an issues list, maybe a
20 preliminary issues list that we can work with prior to
21 conducting discovery that we would know --

22 JUDGE RENDAHL: What issues you are
23 discovering on?

24 MS. SINGER NELSON: Exactly, and the benefit
25 at the end of that process to putting together an

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1 issues list or comparing the preliminary list with what
2 we come up with at the end of the discovery period.
3 Maybe I'm thinking differently than everybody else is
4 on this.

5 MR. OWENS: I think that's a good idea,
6 speaking for Qwest.

7 JUDGE RENDAHL: There is nods from the staff
8 side of the table. Hearing you say it, I think it
9 makes a lot of sense.

10 MR. OWENS: It seemed to me, Your Honor, that
11 back in February, what people had in mind -- I can't
12 speak for anybody but myself, and I think you assigned
13 the scribner role for the issues list to Qwest, and we
14 are happy to continue in that role -- was there would
15 be some kind of discussions among counsel canvassing
16 the parties about the issues they needed to be
17 considered. We could probably do that, I don't know,
18 in a week or maybe a little longer to kind of come up
19 with a preliminary list after the 27th, and then we
20 could begin whatever discovery we can do, and that
21 might take, I don't know, another three weeks or four
22 weeks to get that completed, and then we would be in
23 the position to finalize the issues list.

24 MS. SINGER NELSON: That sounds reasonable to
25 MCI.

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1 MR. SMITH: This is Ray Smith with Eschelon.
2 We would be prepared to discuss the issues at this time
3 or tomorrow. The only issue at LTPA is a state staff
4 vote on an LTPA facilitator recommendation, and I don't
5 believe that the outcome of that vote really has any
6 impact on what the issues are.

7 JUDGE RENDAHL: Meaning you think it's going
8 to remain an impasse issue regardless of the state
9 staff vote?

10 MR. SMITH: MCI and Eschelon have asked Qwest
11 through LTPA if they would agree to abide by the LTPA
12 facilitator's recommendation on that matter to see
13 whether it was an impasse issue. We have not heard a
14 response yet. If the answer from Qwest is we agree to
15 abide by the LTPA facilitator's recommendation, it
16 would not be an issue in the six-month review. If
17 Qwest does not agree to abide by the LTPA facilitator's
18 recommendation, then Eschelon would anticipate bringing
19 the issue to this review.

20 JUDGE RENDAHL: I guess at this point in
21 terms of a schedule, and I do want to talk about issues
22 in just a minute, is it possible to have a joint issues
23 list, with Qwest as the scribe -- thank you,
24 Mr. Owens -- filing something with the Commission by
25 Friday the 4th of June at the latest? If it's earlier,

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1 that's fine, but as an end date....

2 MR. OWENS: From Qwest's standpoint, assuming
3 we can sort of reach the necessary people among the
4 parties -- I don't know what people's schedules are
5 between now and the 4th, but assuming we can do that, I
6 don't see any problem with coming up with a joint
7 preliminary list by the 4th.

8 JUDGE RENDAHL: Because I think there is some
9 work that can happen starting now from the impasse
10 issues that are out there, what issues need to be
11 brought to the Commission, such as the QPAP affect any
12 of these that are resolved and the full resolution. So
13 what the issues are and what actually needs to be done
14 in addition by the state. So I think Friday the 4th
15 would work unless other parties have proposals.

16 MS. SINGER NELSON: Your Honor, this is
17 Michelle Singer Nelson. If we could do even the end of
18 next week, the 28th, that would at least get us started
19 on the process a little sooner, a week sooner, so then
20 we could schedule about three weeks of discovery, and
21 we would be at about June 18th for the end of that
22 period. So we could move everything up a little, a
23 week, to move things a little more quickly.

24 JUDGE RENDAHL: Would that work for you,
25 Mr. Owens?

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1 MR. OWENS: Again, subject to being able to
2 schedule conferences, I was adopting the June 4th
3 suggestion recognizing that people aren't always
4 available when you want to reach them, and if you need
5 to talk live then --

6 JUDGE RENDAHL: Why don't we start with the
7 28th, and then if you all need more time, then we can
8 work on that. I think what might be best is if you all
9 can e-mail Mr. Owens and let him know what issues you
10 believe are pending, that will be a good start, and
11 then if Mr. Owens needs to schedule a conference call
12 to discuss it, we can work that out.

13 MS. SINGER NELSON: We will do that. Thank
14 you, Judge.

15 JUDGE RENDAHL: So the end of discovery would
16 be the 18th of June barring any unforeseen
17 circumstances. And then we could have an issues list
18 the following week. What's an appropriate date?

19 MR. OWENS: A week later, the 25th?

20 MS. SINGER NELSON: I don't have a problem
21 with that.

22 JUDGE RENDAHL: Then what I would do is
23 schedule a prehearing conference the week of the 28th.
24 Is there any date that you are all aware of that would
25 work or not work?

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1 MS. FRAME: The week of June 28th?

2 JUDGE RENDAHL: Of June 28th.

3 MR. OWENS: None for Qwest, Your Honor.

4 MS. FRAME: We have arbitration hearings in
5 Minnesota, but that's been rescheduled for a later
6 date.

7 MS. SINGER NELSON: Your Honor, it looks like
8 the beginning of that week is better than the end of
9 that week for me, so if we could schedule it Monday,
10 Tuesday, or Wednesday, that would work out better for
11 me.

12 JUDGE RENDAHL: Again, the conference bridge
13 will be available, so there is no need to fly out here
14 for the prehearing.

15 MS. SINGER NELSON: Okay.

16 JUDGE RENDAHL: We will decide at that point
17 what process we want to pursue, and I think that will
18 guide us where we need to go.

19 In terms of the issues, which I did want to
20 talk about, in the last prehearing, we talked not only
21 about LTPA issues but other issues that parties were
22 interested in bring to the Commission in the six-month
23 review, and at that time, Covad had requested
24 establishing a PID to track Qwest's overall performance
25 under the QPAP. Ms. Frame, is that still an issue?

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1 MS. FRAME: I'm sorry, Your Honor. Somebody
2 just walked into my office. It was a little
3 distracting. Could you please repeat your question?

4 JUDGE RENDAHL: In the last prehearing
5 conference, you had requested on behalf of Covad that
6 the Commission consider in this review process
7 establishing a PID to track Qwest's overall performance
8 of the QPAP similar to the Colorado Performance
9 Assurance Plan noting there were some problems with
10 calculation of the PID. Is that still an issue for
11 Covad in this proceeding?

12 MS. FRAME: I believe so, Your Honor.

13 JUDGE RENDAHL: Are there any other issues in
14 addition to the LTPA impasse issues that we've
15 discussed that Covad believes needs to be brought
16 before the Commission in this six-month review?

17 MS. FRAME: I'm sorry. I didn't realize that
18 we were going to go straight into the issues during
19 this prehearing conference.

20 JUDGE RENDAHL: It's more of an issue that
21 you need to bring up to Mr. Owens.

22 MS. FRAME: That's correct, and I will do so
23 during this next week, Your Honor.

24 JUDGE RENDAHL: I'm trying to get a sense of
25 what might be out there.

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1 MS. FRAME: Let me just pull out my file.

2 JUDGE RENDAHL: I will turn to Eschelon while
3 you are looking for that. Mr. Smith, during the last
4 prehearing, you had suggested that Eschelon was
5 requesting that Qwest's aggregate payments be made
6 available to the public. Is that still an issue for
7 Eschelon?

8 MR. SMITH: Yes.

9 JUDGE RENDAHL: In addition -- I'm looking
10 for my prehearing conference order -- you suggested
11 that there might be state-specific issues spun off from
12 the LTPA process, which we've talked about. These are
13 kind of the spin-off issues of how to implement the PID
14 changes and the QPAP's and establishing payment levels,
15 and I assume that will be an issue on most of these
16 impasse issues; is that correct?

17 MR. SMITH: I think on only one of them. The
18 changes that Qwest and the CLEC's have agreed to make
19 to PO-20 should drive a change in the tier designation
20 of that measure. The other impasse issues that
21 Eschelon would contemplate bringing that come out of
22 LTPA, the tier designations should already be
23 designated.

24 JUDGE RENDAHL: Okay. And Mr. Spinks, I
25 think in the last prehearing, Staff had talked about

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1 implementing the batch hot-cut process. Is this still
2 something that Staff still needs to be addressed in
3 this proceeding given the uncertainty surrounding the
4 TRO?

5 MR. SPINKS: Due to the uncertainty and the
6 continuing uncertainty in the TRO, it isn't clear that
7 we need to pursue that in this six-month review. I
8 would leave it to the CLEC's to raise it as an issue if
9 they believe it does.

10 JUDGE RENDAHL: Similar to my question to
11 Mr. Smith, you had suggested that there might be some
12 QPAP changes based on PID changes from the LTPA, such
13 as diagnostic standards to be changed to benchmark or
14 parity and payment levels. Do you foresee those as
15 issues for the impasse issues in this proceeding, or
16 did my question make sense?

17 MR. SPINKS: I'm sorry. I thought you were
18 talking to Mr. Smith. This whole process was about
19 adding some products -- for product-developing
20 standards, and the question is now, should they go into
21 the QPAP or which one should and what designations if
22 they are not there, but it seems to me for a lot of
23 them, there is already a PID and a tier level and that
24 established. So I believe the only work that needs to
25 be done is the product itself is added to the QPAP. If

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1 Qwest objects to that, then it would be an issue.

2 JUDGE RENDAHL: I guess on most of these, I
3 will wait to see what the issues list is before
4 muddying the waters any more here.

5 So the process at this point is for an
6 initial issues list by Friday, May 28th. The discovery
7 period ends on Friday, June 18th, and a final issues
8 list by Friday, June 25th, with a prehearing conference
9 the week of June 28th, and the process to consider
10 those issues to be determined at that prehearing
11 conference. Is there anything else we need to address
12 at this point this afternoon?

13 MR. SMITH: My question on the final issues
14 list, is it contemplated that the only changes that
15 would happen from the initial would be potentially
16 removal of issues based on what parties learn in
17 discovery?

18 JUDGE RENDAHL: I guess it could be adding an
19 issue if there is something nobody anticipated that
20 spawned another issue. I'm not going to rule that out,
21 but I would like to avoid whole new issues being
22 brought in, but if there is a related issue or subissue
23 that needs to be brought in, I think that's acceptable.
24 My goal is you will all narrow the issues rather than
25 expand them.

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1 MR. SMITH: Thank you.

2 JUDGE RENDAHL: Hearing nothing, thank you
3 all for your input today, and this prehearing is
4 adjourned.

5 (Prehearing conference adjourned at 2:36 p.m.)

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