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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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In the Matter of the)

4 Petition of)

)

5 QWEST CORPORATION) DOCKET NO. UT-061625

) Volume III

6 To be Regulated Under an) Pages 77 - 155

Alternative Form of)

7 Regulation Pursuant to)

RCW 80.36.135.)

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A prehearing conference in the abovematter

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was held on March 7, 2007, at 9:35 a.m., at 1300 South

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Evergreen Park Drive Southwest, Olympia, Washington,

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before Administrative Law Judge PATRICIA CLARK.

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The parties were present as follows:

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QWEST CORPORATION, by LISA A. ANDERL,
Associate General Counsel, 1600 Seventh Avenue, Room
3206, Seattle, Washington 98191; telephone, (206)
345-1574.

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

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PUBLIC COUNSEL, by SIMON J. FFITCH, Assistant
Attorney General, 800 Fifth Avenue, Suite 2000,
Seattle, Washington 98104; telephone, (206) 389-2055.

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NORTHWEST PUBLIC COMMUNICATIONS COUNCIL, by
DAVID L. RICE (via bridge), Attorney at Law, Miller
Nash, 601 Union Street, Suite 4400, Seattle, Washington
98101; telephone, (206) 622-8484.

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25

Kathryn T. Wilson, CCR

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1 WEBTEC, by ARTHUR A. BUTLER (via bridge),
2 Attorney at Law, Ater Wynne, 601 Union Street, Suite
3 5450, Seattle, Washington 98101; telephone, (206)
4 623-4711

5 DEPARTMENT OF DEFENSE AND FEDERAL EXECUTIVE
6 AGENCIES, by STEPHEN S. MELNIKOFF, (via bridge)
7 Attorney at Law, Regulatory Law Office, U.S. Army
8 Litigation Center, 901 North Stuart Street, Suite 700,
9 Arlington, Virginia, 22203; telephone, (702) 696-1643.

10 COVAD COMMUNICATIONS COMPANY; XO
11 COMMUNICATIONS SERVICES, INC., INTEGRA TELECOM OF
12 WASHINGTON; TIME WARNER TELECOM OF WASHINGTON, by
13 GREGORY J. KOPTA (via bridge), Attorney at Law, Davis,
14 Wright, Tremaine, 1501 Fourth Avenue, Suite 2600,
15 Seattle, Washington 98101; telephone, (206) 628-7692.

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P R O C E E D I N G S

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JUDGE CLARK: Good morning. It's

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approximately 9:35 a.m., March 7th, 2007, in the

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Commission's hearing room, Olympia, Washington. This

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is the time and the place set for a prehearing

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conference in the matter of the petition of Qwest

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Corporation to be regulated under an alternative form

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of regulation pursuant to Revised Code of Washington

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80.36.135, given Docket UT-061625, Patricia Clark,

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administrative law judge for the Commission presiding.

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The purpose of the prehearing conference this

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morning is now threefold. The first mission we have to

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accomplish this morning is to number and mark the

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exhibits that will be used for next week's hearing.

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The second thing we need to do is determine how many

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days will be necessary for hearing in light of the

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settlement reached by all parties, with the exception

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of Public Counsel, and third, to estimate the

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cross-examination times that we will have for those

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particular days. In light of the settlement, we might

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also contemplate not using the entire week we have

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scheduled for hearing but rather altering the dates

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somewhat within that week.

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With that, I'll take appearances. Appearing

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1 on behalf of Qwest Corporation?

2 MS. ANDERL: Lisa Anderl representing Qwest.

3 JUDGE CLARK: Appearing on behalf of
4 Commission staff?

5 MR. TRAUTMAN: Gregory J. Trautman, assistant
6 attorney general for Commission staff.

7 JUDGE CLARK: Appearing on behalf of Public
8 Counsel?

9 MR. FFITCH: Simon ffitich, assistant attorney
10 general for Public Counsel.

11 JUDGE CLARK: We also have a number of
12 parties appearing on the Commission's conference
13 bridge. Appearing on behalf of WeBTEC?

14 MR. BUTLER: Arthur A. Butler.

15 JUDGE CLARK: The court reporter has reminded
16 me that when you are appearing telephonically, it is
17 necessary for to you state your name before you speak
18 in order for her to get an accurate transcript.
19 Obviously, that precaution doesn't apply for your
20 appearance, but for future communication, we would
21 appreciate it. Appearing on behalf of the Department
22 of Defense and Federal Executive Agencies?

23 MR. MELNIKOFF: Stephen Melnikoff.

24 JUDGE CLARK: Appearing on behalf of the
25 Northwest Public Communications Council?

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1 MR. RICE: This is David Rice on behalf of
2 the NPCC.

3 JUDGE CLARK: Appearing on behalf of the
4 joint CLEC's? I did have a conversation with Mr. Kopta
5 yesterday. I know that Mr. Kopta was intending to
6 appear at this morning's prehearing conference and
7 indicate that the joint CLEC's do not intend to be
8 present at next week's hearing.

9 The fact that Mr. Kopta is not present this
10 morning is probably my fault. I had an incorrect time
11 on my calendar for the prehearing conference this
12 morning. I don't recall, but I may have conveyed the
13 incorrect time to Mr. Kopta, so I'm going to simply
14 memorialize for the record that Mr. Kopta did advise me
15 of his intent and that -- that may be Mr. Kopta now.
16 Mr. Kopta? No.

17 Anyway, I'm going to accept his
18 representation in the telephone conversation to me
19 yesterday that they would like leave not to appear at
20 the public hearing, and that is granted. Are there any
21 preliminary matters that we need to address before we
22 proceed to work through the hearing dates, hearing
23 schedule, and marking of exhibits?

24 MS. ANDERL: No, Your Honor.

25 MR. TRAUTMAN: No, Your Honor.

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1 MR. FFITCH: Not preliminarily, Your Honor,
2 but we did have a couple of other items related to the
3 hearing that we did want to bring up at some point
4 today. I can raise those after we are done with
5 exhibits, relating to the hearing process and the
6 posthearing process.

7 MR. RICE: Your Honor, is this the time to
8 request leave not to appear at the hearing?

9 JUDGE CLARK: This would be the perfect time,
10 and it would also mean that assuming that were granted,
11 you wouldn't have to participate in this morning's
12 prehearing conference either.

13 MR. RICE: NPCC requests leave not to
14 participate in the hearing.

15 JUDGE CLARK: That request is granted.

16 MR. RICE: Thank you, Your Honor. Will we be
17 needed for the remainder of this hearing to discuss
18 issues related to the Settlement? Should I stay on the
19 line?

20 JUDGE CLARK: I think that probably it's more
21 appropriate to address that question to the other
22 parties to the Settlement in terms of the documents
23 that we will be marking for exhibits, the length of the
24 hearing, and the hearing start date. Mr. Trautman or
25 Ms. Anderl, do you feel further need for participation

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1 at this morning's prehearing?

2 MS. ANDERL: No, Your Honor. The only caveat
3 that I have is the extent to which the Commission will
4 require strict compliance with 480-07-740, and I can't
5 remember if Mr. Rice's client is a party to the
6 selected intervenors narrative or not, and the question
7 is simply whether NPCC would be filing something in
8 support of the Settlement, or at least in
9 nonopposition, and I haven't been in my office so I'm
10 not completely caught up on e-mails and filings.

11 JUDGE CLARK: Can you help me with that,
12 Mr. Rice?

13 MR. RICE: The NPCC will be filing its own
14 narrative. Has the narrative been filed on behalf of
15 Qwest yet?

16 MS. ANDERL: Yes. It was a joint narrative
17 with Qwest and Staff, and I believe all the remaining
18 intervenors filed a joint narrative as well. I
19 couldn't remember, David, if your client was on there
20 or not.

21 MR. RICE: We are not. We will file a
22 separate statement that likely adopts portions of your
23 narrative but sets out NPCC's position as well, but we
24 can get that hopefully on file today or tomorrow. It
25 depends on whether I can get in contact with my client

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1 and arrange things.

2 JUDGE CLARK: Mr. Trautman, did you have
3 anything further to add on this issue?

4 MR. TRAUTMAN: No. I was checking the
5 narrative that has been filed.

6 MR. FFITCH: There is one matter I just
7 wanted to confirm on the record that I've been advised
8 by WebTEC for the joint CLEC's, and the clients of
9 Northwest Public Communications Council, I believe, is
10 Mr. Rice's client, that they do not require service of
11 the actual cross-examination exhibits that Public
12 Counsel is tendering. They communicated that to me
13 yesterday. We will be providing a set to the
14 Department of Defense during next week's hearing by
15 agreement with Mr. Melnikoff, so I wanted to get that
16 on the record while we still have intervenor lawyers on
17 the phone.

18 JUDGE CLARK: Is that an accurate
19 representation of the communication with Mr. Ffitch?

20 MR. RICE: Yes.

21 MS. ANDERL: May I interrupt and ask if I can
22 piggyback on that as well. Anybody who wants copies of
23 our cross-exhibits for the intervenors, please let me
24 know, and anybody who doesn't, let me know that as
25 well. We have them available, but I don't need to mail

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1 them around if they don't want them.

2 MR. BUTLER: This is Art Butler. WeBTEC will
3 waive receipt of the copies of Qwest cross-examination
4 exhibits as well.

5 MR. MELNIKOFF: I would like them, if
6 possible, when I get out there Monday.

7 JUDGE CLARK: Mr. Melnikoff, you want both
8 the Public Counsel and Qwest exhibits?

9 MR. MELNIKOFF: Yes.

10 MR. TRAUTMAN: Your Honor, I believe Staff
11 will have one cross-examination exhibit, and I assume
12 Mr. Melnikoff would want that, and the other parties --
13 well, I guess I'll ask if they would waive.

14 JUDGE CLARK: Mr. Rice, do you want a copy of
15 the Commission staff cross-examination exhibit?

16 MR. RICE: We do not.

17 JUDGE CLARK: Mr. Butler?

18 MR. BUTLER: We don't need them either.

19 JUDGE CLARK: You don't need Commission
20 staff?

21 MR. BUTLER: No.

22 JUDGE CLARK: Is there anything further we
23 need to address with Mr. Rice at this morning's
24 prehearing? Thank you very much for your
25 participation, Mr. Rice. You are free to disconnect at

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1 your leisure.

2 MR. RICE: Thank you, Your Honor.

3 MR. BUTLER: May I ask, are we going to be
4 addressing any of the procedure we're dealing with the
5 proposed settlement, like any hearing requirements or
6 whatever? If not, I would ask to be excused from the
7 prehearing conference.

8 JUDGE CLARK: We will be talking briefly
9 about the hearing itself, the presentation of the
10 witnesses, the form that that will take, the order that
11 will take, the length of time, and potentially moving
12 the commencement of the hearing to a different day or
13 dates within the time already scheduled. If you have
14 interest in any of those topics, you might want to stay
15 on the line. We will not be discussing any of the
16 terms of the Settlement itself.

17 MR. BUTLER: Or whether there will be a
18 hearing required for the presentation of the
19 Settlement?

20 JUDGE CLARK: We will be going to hearing
21 next week on presentation of the Settlement.

22 MR. BUTLER: So maybe I better stay on the
23 line.

24 JUDGE CLARK: It's your call.

25 MS. ANDERL: If I might just interject, the

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1 Commission's rule does require the parties to the
2 Settlement, and there are many of them, to offer
3 witnesses in support of settlement. There is a
4 particular provision in this settlement agreement
5 whereby the intervenors collectively have requested
6 leave to be able to support the settlement for
7 statements of counsel without presentation of a
8 witness, so I don't want to be trying to read
9 Mr. Butler's mind here, but I think one of the things
10 that they are concerned about is getting the
11 dispensation to not have to arrange for a witness to
12 appear in support of the Settlement since they did not
13 have witnesses to date in this docket.

14 JUDGE CLARK: Is that your concern,
15 Mr. Butler?

16 MR. BUTLER: Yes.

17 JUDGE CLARK: So you are requesting leave to
18 not have a witness appear at the hearing but rather use
19 the narrative in support thereof?

20 MR. BUTLER: Yes, that's correct.

21 JUDGE CLARK: And my understanding is that
22 the narrative in support thereof does not go to the
23 merits of the Settlement itself but rather to the
24 rationale and support; is that correct?

25 MR. BUTLER: Yes, and to the disposition of

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1 the issues that were of concern to WebTEC.

2 JUDGE CLARK: Thank you. Are you planning on
3 attending the hearing in Olympia next week?

4 MR. BUTLER: If I have to make a statement
5 for counsel, yes. If not, no.

6 JUDGE CLARK: You could, of course, always do
7 that on the Commission's conference bridge.

8 MR. BUTLER: Again, I will probably not
9 attend the hearing.

10 JUDGE CLARK: Thank you. Mr. Melnikoff?

11 MR. MELNIKOFF: Yes, ma'am.

12 JUDGE CLARK: Will you be attending next
13 week's hearing?

14 MR. MELNIKOFF: As of right now, it's my
15 intention to attend at least one --

16 JUDGE CLARK: And you want copies of all the
17 cross-examination exhibits.

18 MR. MELNIKOFF: I do, and I can pick those up
19 at the hearing if that's acceptable to the parties.

20 JUDGE CLARK: Mr. Trautman, did you have
21 something?

22 MR. TRAUTMAN: No. That would be fine with
23 Commission staff to just provide them at the hearing.

24 JUDGE CLARK: Is there anyone else who needs
25 to be heard on any preliminary matters? Next I suppose

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1 it's appropriate to turn to, and the issues are kind of
2 interrelated, the issue of next week's hearing. The
3 Commission recognizes in light of the settlement that
4 perhaps less than one week is likely to be needed in
5 order for the parties to present their positions for
6 Commission consideration, and therefore, it would be
7 the Commission's preference to commence the hearing on
8 Tuesday, March 13th, rather than Monday, March 12th. I
9 need to know if that will create a significant hardship
10 to anyone. Ms. Anderl?

11 MS. ANDERL: Your Honor, I have two witnesses
12 who are coming from out of town who I believe have
13 already booked plane tickets, but I don't think that's
14 anything that can't be adjusted for, and I don't think
15 anyone has anything planned for the rest of the week,
16 so I would just say that subject to my being able to
17 check with my out-of-town witnesses, I believe --

18 Let me just kind of be candid. I think I
19 told Dr. Taylor and Mike Williams that they would be
20 off the stand by the end of the day Tuesday, no later,
21 and assuming that can still be true, I don't think they
22 have any conflicting commitments, so I think we are all
23 right.

24 JUDGE CLARK: Mr. Trautman?

25 MR. TRAUTMAN: That should be fine with

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1 staff. I'm kind of estimating forward of when the
2 staff witnesses would appear, and I'm just thinking
3 there may be one of our witnesses that isn't available
4 on Thursday, but if we can work around that, then
5 starting on Tuesday would not be a problem.

6 JUDGE CLARK: Mr. ffitch?

7 MR. FFITCH: Your Honor, we have passed out a
8 cross-estimate and potential order of witnesses, and
9 this sort of provides a segue, perhaps, into a
10 discussion of how the structure of the hearing and a
11 proposal that we were going to make, which I think
12 fits. Based on our estimates, we were envisioning that
13 the hearing would probably be two days; that day one
14 would be Qwest witnesses, and they would be finished on
15 day one, and then on the second day, we would tender
16 Public Counsel witnesses in the morning.

17 Ms. Anderl has estimated two to three hours
18 for Dr. Loube and then 30 minutes for Ms. Kimball, I
19 believe, so that we've only estimated an hour and 45
20 minutes for Staff, so it appears that we could finish
21 all of Public Counsel and Staff on day two. So that's
22 the framework that we were going to suggest, and it
23 looks like two days would be adequate from our
24 perspective.

25 In terms of whether that's Tuesday and

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1 Wednesday, getting to your question, Your Honor, our
2 out-of-town witness, Dr. Loube, has made travel
3 arrangements to arrive Monday midday and to depart
4 Wednesday evening, I believe it is, so that if we could
5 give him a time certain for Wednesday morning -- he was
6 going to be here in any event, so I think that would
7 work, the Tuesday, Wednesday schedule would still work
8 for us.

9 JUDGE CLARK: Ms. Anderl?

10 MS. ANDERL: That seems fine to me. I don't
11 know that I'm going to use two to three hours. I've
12 never encountered this particular witness before, but
13 certainly even at the long end, if he starts on
14 Wednesday morning, we can finish him by the noon hour.
15 The only question I have is that that's the discussion
16 of two days for substantive hearings on the contested
17 issue, and the question then is where and when does the
18 discussion of the Settlement fit in and did the
19 Commission want to take that up first thing or at the
20 end?

21 MR. TRAUTMAN: Your Honor, I was going to
22 mention the issue of having the Settlement and how that
23 would be handled. We would like to reserve 15 minutes
24 for Dr. Loube and perhaps 10 minutes for Ms. Kimball,
25 which shouldn't alter the schedule very much. The

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1 other question I had, I thought the Wednesday was an
2 open meeting day, and I didn't know if that would
3 interfere with Wednesday.

4 JUDGE CLARK: I'll have to take a recess and
5 check that. It was my intent to bring a calendar;
6 although I'm getting nods from the audience that that
7 is the case, so we will have to take that one up on a
8 recess. Is there anyone on the conference bridge who
9 wishes to be heard on the issue of commencing the
10 hearing on Tuesday rather than Monday?

11 MR. KOPTA: Your Honor, This is Greg Kopta of
12 the law firm Davis, Wright, Tremaine, LLP, on behalf of
13 the joint CLEC's. I apologize for not having gotten on
14 this morning. I was confused about the time.

15 JUDGE CLARK: Yes. I did make sure the
16 record was clear who created that confusion, Mr. Kopta.

17 MR. KOPTA: I wasn't going to say, but
18 anyway, as far as my clients are concerned and I am
19 concerned, two things. First, I would request that I
20 be excused from attending the hearings unless the
21 Commission would like me there for the Settlement
22 portion of the hearing, in which I would be happy to be
23 there for that and to represent presentation from my
24 clients' positions. But with respect to whether or not
25 the hearing begins on Tuesday, that would actually be

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1 preferable from my standpoint, so I have no objection
2 to having the hearing start on Tuesday.

3 JUDGE CLARK: Well, the portion of this
4 morning's prehearing conference that you missed was, at
5 least the representation by one other party, NPCC, and
6 that was also to request leave to not attend the
7 hearing and to rely on the narrative in support
8 thereof, which was granted, so if you wish that same
9 treatment, that can certainly be afforded.

10 MR. KOPTA: That's what I would request as
11 well.

12 JUDGE CLARK: That is granted.

13 MR. KOPTA: I would ask if I may be excused
14 from further participation in the prehearing
15 conference.

16 JUDGE CLARK: And that was my next question,
17 which you have already answered, and a leave to
18 disconnect at your leisure is granted.

19 MR. KOPTA: Thank you very much, Your Honor.

20 MR. BUTLER: Clarification. I believe I made
21 the same request, and if that could be granted for me
22 as well, then I will also drop off.

23 JUDGE CLARK: That is granted for you as
24 well, Mr. Butler.

25 MR. BUTLER: Thank you.

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1 JUDGE CLARK: I believe the only individual
2 remaining on the line regarding this morning's
3 prehearing is Mr. Melnikoff; is that correct?

4 MR. MELNIKOFF: This is, yes, Your Honor. I
5 would say that starting on Tuesday, I could work around
6 that to be very flexible. I probably have 20 minutes
7 or so for Dr. Loube and cross-examination obviously
8 dependent on what questions are asked by prior parties
9 and his responses.

10 JUDGE CLARK: Did you have any for
11 Ms. Kimball or any other witnesses?

12 MR. MELNIKOFF: Not at this point.

13 JUDGE CLARK: As I indicated earlier, these
14 issues are somewhat interrelated, so it's difficult to
15 come up with a really logical order in which to discuss
16 them, but perhaps in light of some of the comments, it
17 might be appropriate to discuss the order of the
18 hearing itself; that is, in terms of presentation of
19 the Settlement, and then any prefiled testimony and
20 exhibits.

21 I think it would be the Commission's
22 preference, absent hearing some persuasive argument
23 otherwise, for the commissioners to have presentation
24 of the Settlement first, and the reason for that is
25 Qwest, of course, is the petitioner in this proceeding

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1 and has the burden of proof, and so it would be
2 appropriate for them to go first and forward with their
3 primary case.

4 I understand that there are other reasons to
5 present these witnesses individually, but my
6 understanding is based on the Settlement and the
7 narratives presented in support thereof that now the
8 position of Qwest is that the Settlement is their
9 position. If you can confirm that, Ms. Anderl, that
10 would be helpful.

11 MS. ANDERL: The Settlement position is our
12 position in this case, yes.

13 JUDGE CLARK: So in your eyes, it would be
14 appropriate for that to be presented first.

15 MS. ANDERL: Yes, it would be appropriate for
16 the Commission to consider the Settlement first,
17 possibly in a joint or panel-type presentation.

18 JUDGE CLARK: That was my next suggestion.
19 At least in the proceedings that I have observed in the
20 transcripts that I have read of other proceedings, the
21 parties in support of settlement do take the stand
22 impaneled, so I will assume that that would be an
23 appropriate process for this proceeding as well unless
24 the parties indicate otherwise. Mr. Trautman?

25 MR. TRAUTMAN: Yes. That would be how Staff

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1 would envision it, yes.

2 JUDGE CLARK: Mr. ffitch?

3 MR. FFITCH: Your Honor, that does raise a
4 question which has come up in previous cases where we
5 have a nonunanimous settlement. Particularly here, we
6 do not have any testimony from a panel or from joint
7 witnesses supporting the Settlement. We don't have any
8 testimony from them. We have statements of counsel and
9 the narrative.

10 MR. TRAUTMAN: We do have testimony from
11 Mr. Saunders that was filed yesterday in support of the
12 Settlement.

13 MR. FFITCH: I stand corrected. In any
14 event, that raises the question in every nonunanimous
15 settlement case of how to deal with the other testimony
16 that's been filed in the case by settling parties, and
17 we have requested, and typically the Commission has
18 proceeded this way in the past, that we have an
19 opportunity to separately examine the witnesses of the
20 differing parties on their own testimony at some point
21 in the hearing. We don't have any objection to having
22 a panel on the stand to make a brief presentation about
23 the nature of the Settlement, but we would specifically
24 request that we then be able to cross-examine each of
25 the witnesses who filed testimony separately with

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1 regard to their testimony and with regard to the
2 Settlement; it's all interrelated. So with that
3 understanding, we wouldn't have any objection to a
4 panel, per se.

5 There is another issue raised by the panel
6 approach, which is that it's an opportunity for further
7 testimony, in effect, direct testimony by the
8 proponents of the Settlement, and it places nonsettling
9 parties in a rather difficult position. These
10 proceedings do not typically provide for live, direct
11 testimony to which other parties have to respond
12 immediately on the same day.

13 So what we would ask for in this case, both
14 because there is a settlement, which is new, a newly
15 filed settlement, newly filed supporting testimony from
16 Mr. Saunders, and newly filed narrative statement, we
17 would request the opportunity for our witnesses to
18 provide oral surrebuttal testimony when they first take
19 the stand to respond to the new material that's been
20 placed into the record by the settling parties, and we
21 would make a motion to that effect, Your Honor.

22 JUDGE CLARK: That would be oral surrebuttal
23 to the prefiled testimony of Mr. Saunders or the oral
24 surrebuttal to any oral direct, or exactly what is the
25 nature of that request?

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1 MR. FFITCH: It would encompass the
2 Settlement document itself and the supporting materials
3 that are filed with the Settlement documents, which
4 would be the Settlement and Mr. Saunders' testimony,
5 and then any statements that are made in the nature of
6 direct testimony from the panel. All of those things
7 together sort of combine the new evidence or new
8 support or new testimony that's a new part of the
9 record, and we would ask that our witnesses have a
10 chance for oral surrebuttal when they first take the
11 stand under direct examination to respond to those.

12 JUDGE CLARK: Ms. Anderl?

13 MS. ANDERL: We would object to that. Public
14 Counsel may, in fact, sitting here today be able to
15 make a case that they should have some limited
16 opportunity to respond to or react to the Settlement
17 Agreement, and there is possibly some middle ground
18 that we could agree upon as an appropriate course of
19 action, some brief written statement or something along
20 those lines, but frankly, the opportunity for their
21 witnesses to get on the stand on Tuesday or Wednesday
22 and give an undetermined amount of oral direct really
23 puts us in the same bad position that they claim they
24 are in now, and that is oral testimony, never heard it
25 before, never seen it before, have no opportunity to

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1 react, and that especially would be prejudicial for a
2 party like Qwest who has the burden of proof in this
3 case and would not have an opportunity for rebuttal,
4 which I believe we have as a matter of right.

5 If what Public Counsel wants to do is have an
6 opportunity to modify its position based on the
7 Settlement, I think Public Counsel has time between now
8 and the start of the hearing to prepare some brief
9 written surrebuttal or responsive testimony to which
10 Qwest would not likely have an objection, but frankly,
11 I think that what Public Counsel is asking for here
12 goes too far.

13 In addition, I don't contemplate that
14 Mr. Reynolds will be giving any oral direct testimony.
15 It will be oral testimony in response to questions from
16 counsel and the Bench in support of the Settlement in
17 the nature of cross-examination, but not direct, and I
18 think that the evidentiary record will amply
19 demonstrate that the Settlement is really a compromise
20 between Staff and Qwest and that the positions that
21 ended up being taken in the Settlement are kind of a
22 meeting point between the positions that were taken in
23 testimony. Nothing in this settlement can be seen as a
24 surprise or unexpected or in any way something that
25 Public Counsel needs to have until Wednesday to prepare

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1 oral responsive testimony on.

2 So that's where we are. We would object to
3 Public Counsel's request. We think that there might be
4 a compromise that would be appropriate to address their
5 desires.

6 JUDGE CLARK: Mr. Trautman?

7 MR. TRAUTMAN: Your Honor, Staff would also
8 object, and I concur with the observations of
9 Ms. Anderl and would also point out that what we are
10 doing in terms of providing a narrative and providing
11 very brief testimony of Mr. Saunders in support of the
12 Settlement is all contemplated by the rule as well as
13 providing witnesses to be available to answer questions
14 from the Bench on the Settlement. That's also provided
15 for by the rule, and we are simply following the
16 procedures in the rule.

17 The rule does not then provide for an
18 opportunity for oral surrebuttal on the part of
19 opponents. We are simply following the procedures in
20 the rule, and there isn't any provision for oral
21 surrebuttal, and I agree with Ms. Anderl that would
22 cause prejudice to the settling parties as well.

23 JUDGE CLARK: Mr. Melnikoff?

24 MR. MELNIKOFF: We don't take a position on
25 the request.

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1 MR. FFITCH: Your Honor, may I respond?

2 JUDGE CLARK: You may.

3 MR. FFITCH: I think the arguments of
4 opposing counsel really stand the whole matter on its
5 head. Let me back up a little bit and share our
6 thinking with you on this. We came in today with a
7 motion for oral surrebuttal as a moderate restrained
8 proposal. We considered the notion of asking for the
9 right to file written rebuttal to the new material
10 that's been filed and coupled with an extension of the
11 hearing.

12 Given the posture of the case and the
13 substance of new material that's been filed, we felt
14 that was an overreaction on our part, and in the
15 interest of not seeking a delay in the hearing and not
16 burdening the record with more written testimony, our
17 proposal, we thought, more efficient, limited
18 opportunity for our witnesses to simply make a
19 statement in response to the new material when they
20 took the witness stand, not to create a large amount of
21 additional process.

22 We think it's exceedingly unfair for us as a
23 party to simply be not given any opportunity whatever
24 to respond to a new document, new position that's been
25 placed into the record, with new supporting statements

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1 of counsel, with new evidence from an additional
2 witness who has not testified before, who has now filed
3 additional written testimony, and from the panel,
4 additional statements. That's all new material that we
5 need at least some opportunity to respond to, and for
6 counsel to turn that around and say that the unfairness
7 cuts the other way if we get that ability I think is
8 looking through the wrong end of the telescope.

9 The other point I would make with respect to
10 Mr. Trautman's comments is the rules certainly do not
11 preclude parties who do not settle from having the
12 right to respond in some fashion to new material that's
13 filed at the time of settlement. I'm not aware of
14 anything in the Commission rules that bar us from
15 having that opportunity. On the contrary, I think the
16 rules give the Commission and the Bench some ability,
17 some discretion to deal with those kinds of issues on a
18 case-by-case basis, and that's what we are asking for
19 here.

20 JUDGE CLARK: All right. I have not yet
21 committed to memory every one of the Commission's
22 regulations. That is my personal mission, but my
23 recollection of WAC 480-07-740 does give opposing
24 parties the opportunity to respond in some fashion to
25 the Settlement. The Commission has had the Settlement

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1 and the supporting narrative, and presumably the
2 parties have had the Settlement and the supporting
3 narrative since yesterday. That is in written form,
4 and that, I presume, is the document rather than in
5 lieu of prefiled testimony that those parties would be
6 supporting at the hearing rather than having witnesses
7 make an additional oral statement in support of a
8 document that necessarily speaks for itself.

9 Accordingly, the reg allows for and Public
10 Counsel will be given the opportunity to present
11 written comment or rebuttal to that particular
12 document. That would be limited strictly to the issues
13 raised in that document and not an opportunity to raise
14 new issues, and because I haven't yet committed these
15 regs to memory, I don't recall the time deadline that
16 parties opposing that document have, so if you will
17 just give me a moment.

18 That is provided in 480-07-742(c), and it
19 simply indicates that you have the right to
20 cross-examine witnesses and to present evidence
21 opposing the proposal, present argument, which I assume
22 would be comparable to the written narrative and
23 evidence. So given the fact that you are addressing a
24 written document that is before the Commission, I think
25 it's appropriate that that document also be in writing.

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1 MR. FFITCH: Your Honor, what would be the
2 deadline for us to make that filing?

3 JUDGE CLARK: How much time do you need to
4 prepare such a document?

5 MR. FFITCH: The reason we asked for oral
6 surrebuttal is because there is, in effect, no time to
7 prepare such a document. I'm scrambling to think what
8 we would request. I suppose that we would ask at the
9 outside for the opportunity to file that no later than
10 the time of hearing, perhaps, no later than the time
11 Dr. Loube would take the stand. Perhaps that's a
12 reasonable deadline so that there would be an
13 opportunity for opposing counsel to --

14 JUDGE CLARK: I have to tell you, Mr. ffitch,
15 that simply isn't going to work from the Commission's
16 perspective, and the commissioners are going to have to
17 have this document sufficiently in advance of hearing
18 to read it and understand the position taken by Public
19 Counsel with respect to the Settlement itself, so I
20 don't see even delaying the hearing until Tuesday that
21 there is any way on earth that that would be
22 acceptable.

23 I haven't yet called on the parties for their
24 objections, but I suspect that that would also draw
25 objection about any inadequate opportunity to prepare

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1 any inquiry they may have regarding that, so I'm going
2 to have to reject that time line simply because I think
3 it gives the Commission inadequate opportunity. I
4 think honestly the latest that the Commission could
5 give Public Counsel to prepare this is -- please
6 understand this would be a very limited document,
7 responding only to the terms and conditions in the
8 Settlement to which Public Counsel opposes, and I'm
9 thinking Friday afternoon, probably no later than three
10 p.m., and I would like to hear from you on that before
11 I turn to the other parties.

12 MR. FFITCH: I don't believe, Your Honor, in
13 all candor that that's a practical deadline for us. I
14 believe if that is established as the deadline, what we
15 would do, what I ask leave to do is consult with my
16 witnesses this afternoon and indicate to the Bench
17 whether we would actually be able to file something by
18 that time. I haven't talked to them. I'm not sure.

19 The difficulties you can imagine is that
20 folks are preparing for hearing right now, which is a
21 fairly time-consuming process, and doing this at the
22 same time I'm not sure is feasible. We will take as
23 much time as we can get. If you set a deadline, I will
24 let the Bench know if we are going to be able to
25 actually file something or not.

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1 JUDGE CLARK: I'm very sympathetic that you
2 are engaging in preparation for hearing, and that's
3 certainly true for every party in the room as well as
4 the Bench, and I believe that the document I'm
5 referring to is simply a part of preparation for the
6 hearing. Ms. Anderl?

7 MS. ANDERL: Your Honor, thank you. The
8 sooner we can get the document the better, obviously,
9 because we have frankly not completed our preparation
10 of cross-examination of Dr. Loube. Maybe this will
11 make it shorter. Maybe this will make it longer.
12 Certainly it will be something we have to react to. I
13 personally was going to say that if I got something by
14 noon on Monday, I could probably live with it, but
15 obviously, that doesn't speak for what the
16 commissioner's deadline is, and Friday would be just
17 delightful.

18 JUDGE CLARK: Mr. Trautman?

19 MR. TRAUTMAN: Friday would be sufficient for
20 Staff.

21 JUDGE CLARK: Mr. Melnikoff, do you have a
22 position on this, if you are still with us?

23 MR. MELNIKOFF: I'm here, and we don't have a
24 position on this.

25 JUDGE CLARK: Mr. Trautman, could you

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1 accommodate a different deadline on Monday?

2 MR. TRAUTMAN: Yes.

3 JUDGE CLARK: Then I'm going to modify the
4 proposed deadline for that, and if you could file that
5 by Monday morning, that would be at the start of
6 business. It will have to be as close to eight a.m. in
7 order to accommodate the Commission's need to also
8 review that, but that does afford you an additional
9 two-and-a-half days, approximately, to prepare such a
10 document.

11 MR. FFITCH: Could that be an electronic
12 filing deadline, Your Honor?

13 JUDGE CLARK: With a paper copy to follow the
14 following day.

15 MR. FFITCH: Thank you, Your Honor. That
16 will make it more feasible. I will still consult with
17 our folks and see if we are able to do this in the time
18 allowed. I will comment that I think as a practical
19 matter a significant amount of the burden of hearing
20 preparation is shifting to Public Counsel because of
21 our position in the case, and this will color some of
22 our requests in terms of the procedural aspects of the
23 hearing.

24 I think as a practical matter, that's just
25 where we are at now. The settling parties, as you can

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1 see from their cross-estimates and their proposed list
2 of exhibits, are not doing as much in the hearings any
3 longer, which is natural from their position, but we
4 still have issues to raise, evidence to present through
5 witnesses, cross-examination to conduct, and we are
6 here to ask that the Commission hearing process next
7 week accommodate that in a reasonable fashion. I
8 understand the other folks have reached a settlement,
9 but our position is under the rules, and we still need
10 to have an opportunity to present our side of the case,
11 and I'm confident the Commission will accommodate that,
12 but I wanted to respond to the notion that the burdens
13 are kind of equal here. I think we are kind of at a
14 different posture at this point.

15 JUDGE CLARK: The Commission is certainly
16 cognizant that Public Counsel is not a party to the
17 multiparty settlement and absolutely has the right not
18 only to present witnesses in support of its position
19 but to cross-examine the other parties' position, and
20 that, of course, will be accommodated in the hearing.

21 MR. FFITCH: Thank you, Your Honor.

22 JUDGE CLARK: All right. Speedily moving
23 along, who do we envision impaneling for inquiry and
24 support of the Settlement? Have the parties
25 contemplated that, Ms. Anderl?

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1 MS. ANDERL: Yes. We would offer Mark
2 Reynolds as our witness in support of the Settlement
3 Agreement. In addition, if there are specific
4 questions about aspects of the Settlement that go to
5 another witness's testimony, such as, for example, the
6 financial and accounting issues that were raised by
7 Mr. Grate, and I know that for Qwest's part at least,
8 no other subject matters specific witnesses will be in
9 the hearing room and available for questions during the
10 panel presentation, but we would plan on impaneling
11 only Mr. Reynolds.

12 JUDGE CLARK: Mr. Trautman?

13 MR. TRAUTMAN: We would plan on impaneling
14 Mr. Saunders, and likewise, we would have our other
15 witnesses available for specific questions, if
16 necessary.

17 JUDGE CLARK: And Mr. Melnikoff, I understand
18 that you will not be having a witness that will be
19 participating in the panel; is that correct?

20 MR. MELNIKOFF: That is correct, Your Honor.

21 JUDGE CLARK: Mr. Ffitch, did you have
22 anything that you would like to add on the topic of the
23 panel?

24 MR. FFITCH: Well, again, just to clarify,
25 Your Honor, our requested approach would be that we

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1 would simply defer any examination of the panel which
2 would be here to make a presentation of the Settlement
3 until after the panel steps down, and then we would
4 simply march through each witness, ask all our
5 questions at one time of the individual witnesses both
6 as to the Settlement and to their testimony and
7 exhibits. We don't see any purpose in sort of breaking
8 it up into two pieces. We think it makes more sense to
9 just reserve our examination for the individual
10 witnesses.

11 JUDGE CLARK: My understanding is, and please
12 correct me, that the prefiled testimony and exhibits
13 that are in the record thus far support to some extent
14 elements of the Settlement in specific regards, and in
15 other portions of the Settlement, there is, from my
16 brief reading of it at the 11th hour in the car on my
17 way to Tacoma's public hearing, that there are actually
18 new positions presented in the Settlement regarding
19 particular issues; particularly off the top of my head,
20 the level of the price flexibility that Qwest would
21 have during the transition period, the level
22 expenditures that would be necessary to report to the
23 Commission. Those are two that immediately come to
24 mind, and I don't think the Commission would envision
25 that you would have an opportunity to separately

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1 cross-examine a witness on the stand regarding a
2 position taken in the stipulation settlement which is
3 not embodied in that testimony. Do you understand my
4 concern?

5 MR. FFITCH: Well, let me make sure I
6 understand. Is your concern that we would actually be
7 precluded from -- let's take Mr. Reynolds for the
8 Company. We would be precluded from asking him any
9 questions about any of his testimony that's filed in
10 the case, and we can only ask him about the Settlement
11 itself?

12 JUDGE CLARK: I think that the Settlement is
13 now the position of the parties, so to the extent there
14 are positions taken in Mr. Reynolds' prefiled testimony
15 that are in support of his position in the Settlement,
16 the Company's position in the Settlement, obviously,
17 that would clearly be permissible.

18 To the extent that you wanted to inquire of
19 Mr. Reynolds separately about something that should
20 have been addressed to the panel, I'm a little
21 uncomfortable. Do you understand my concern is the
22 Settlement itself is now a written document that
23 replaces and supplants some portions of the prefiled
24 testimony and that you will be given an opportunity to
25 examine on that settlement and those new portions and

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1 new positions in the Settlement when the panel is
2 present, rather than reserving all of that inquiry for
3 individual witnesses.

4 MR. FFITCH: Well, Your Honor, what we are
5 asking is for an opportunity to examine the witnesses
6 in this case on the issues that are raised by the AFOR
7 statute. The Settlement now represents a joint
8 position of some but not all of the parties, and we
9 believe that Public Counsel has the right to examine
10 not only with regard to the joint positions, the
11 Settlement, certainly, which is a key issue here, but
12 in general to examine all the issues raised by an
13 application for an AFOR under the statute. We have
14 also filed evidence with an alternative proposal in
15 this case which is before the Commission.

16 I think we may be somewhat having a debate
17 that I'm not sure is all that -- we may not be all that
18 far apart in terms of what we are saying. What we are
19 saying is we would like the opportunity on the basis of
20 efficiency to simply -- no problem with having a panel,
21 no objection to having a panel. They can present the
22 basics of the Settlement, answer questions from the
23 Commission, and then we would proceed through our
24 cross-examination of the individual witnesses, and we
25 would be essentially addressing the Settlement but in

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1 light of all the evidence that's in the case.

2 Obviously, we are not proceeding as if the
3 Company's direct case is still be recommended to the
4 Commission or that the Staff's direct case is being
5 recommended to the Commission, but we think that all
6 the evidence that's been presented has a bearing on the
7 Settlement they are presenting is reasonable. So we
8 have trouble disentangling all of that into two
9 separate rounds of examination of Mr. Saunders or
10 Mr. Reynolds. We are simply suggesting that after the
11 panel is done, we will just go ahead and do sort of a
12 normal hearing on the Staff and Company witnesses. It
13 will be focused on the Settlement proposed, but we want
14 to have the opportunity, where appropriate, to look at
15 the other testimony that they filed in the case and the
16 discovery that's been provided to us. That's our
17 vision, I suppose, if you will.

18 JUDGE CLARK: I certainly want to hear from
19 the other parties on this, but just to make sure it's
20 clear, what I'm contemplating it is that there would
21 first be a panel. The panel will consist of two
22 individuals. That would be Mr. Reynolds on behalf of
23 Qwest and Mr. Saunders on behalf of Commission staff,
24 and any inquiry regarding the Settlement, terms and
25 conditions of the Settlement itself, that would be an

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1 appropriate time to examine regarding those particular
2 issues, and then my understanding is secondly, the
3 parties are willing to have the other witnesses take
4 the stand for specific inquiry, and I'm assuming that
5 inquiry would be limited to topics that are not
6 specifically addressed in the Settlement itself, but I
7 would like to hear from the other parties on this
8 particular issue.

9 MS. ANDERL: May Mr. Trautman and I confer,
10 Your Honor?

11 JUDGE CLARK: Yes. This would be an
12 appropriate time for us to take a brief recess --
13 Mr. Trautman?

14 MR. TRAUTMAN: When you asked who would be
15 present on the panel, we would have Mr. Saunders, and I
16 had indicated that we would have the other witnesses
17 available. I have to make one correction. Ms. Strain
18 would not be available Tuesday morning. She has a
19 commitment.

20 JUDGE CLARK: Okay. So perhaps during the
21 recess, you could confer regarding the individuals who
22 would be participating on the panel and their
23 availability under the proposed schedule.

24 MS. ANDERL: Your Honor, during the recess,
25 will you check the open meeting, and then maybe we can

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1 talk about how we fit all this in next week?

2 JUDGE CLARK: Absolutely. Thank you. We are
3 at recess until further call.

4 (Recess.)

5 JUDGE CLARK: We are back on the record.
6 Have the parties had an adequate opportunity to confer
7 during the recess?

8 MS. ANDERL: Yes, Your Honor.

9 MR. FFITCH: Yes.

10 MR. TRAUTMAN: Yes.

11 JUDGE CLARK: Can someone briefly sum up the
12 agreement that was reached?

13 MS. ANDERL: Your Honor, for Qwest -- let me
14 see if I can do that on behalf of the group.

15 Mr. Trautman and I do not object to Mr. ffitch holding
16 his cross-examination for Mr. Reynolds until
17 Mr. Reynolds is up on the stand by himself in the order
18 that we plan on presenting him. In other words,
19 Mr. ffitch does not want to cross Mr. Reynolds while he
20 is on the Settlement panel but wants to hold questions
21 on both the Settlement and Mr. Reynolds' direct and
22 rebuttal testimony until Mr. Reynolds comes around in
23 order. We don't object to that.

24 JUDGE CLARK: Mr. Trautman?

25 MR. TRAUTMAN: That is correct.

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1 JUDGE CLARK: Mr. ffitch?

2 MR. FFITCH: I don't want to speak for the
3 other parties, but I also believe we had an
4 understanding with regard to the scope of the
5 questioning involving the other witnesses, and that is
6 that the parties do not in general object to, the
7 settling parties do not object to us asking questions
8 of all of the identified witnesses with regard to all
9 of their testimony and exhibits that are going to be
10 placed in the record in the case with regard to the
11 Settlement and the statutory standards of the AFOR.

12 MS. ANDERL: Your Honor, that's why I didn't
13 try to memorialize that piece of it is, because I'm
14 only willing to say I have no standing objection I can
15 articulate at this time to questions I haven't yet
16 heard. It seems as though Mr. ffitch may be able to
17 ask questions to which I don't object of witnesses such
18 as Mr. Grate or others that touch both on his testimony
19 and the terms of the Settlement.

20 JUDGE CLARK: Mr. Trautman?

21 MR. TRAUTMAN: I would be in the same
22 position. I cannot make a complete acquiescence or
23 waiver on questions of that line without having heard
24 them all.

25 JUDGE CLARK: Mr. Melnikoff, are you still

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1 with us?

2 MR. MELNIKOFF: I am, Your Honor.

3 JUDGE CLARK: Do you want to weigh in on
4 this?

5 MR. MELNIKOFF: I do not.

6 JUDGE CLARK: I think that actually, the
7 first issue is the only one we can address at this
8 morning's prehearing conference. My concern was that
9 someone, for example, such as Mr. Reynolds, would be
10 subjected to duplicative or repetitive examination, and
11 the parties apparently have reconciled my concerns to
12 my satisfaction, and I think that the process will be
13 that the panel will present the Settlement; that if
14 Mr. ffitch wishes to examine Mr. Reynolds regarding the
15 Settlement or his testimony at that juncture, he's free
16 to do so. It will his one and only opportunity to
17 examine Mr. Saunders, and I think that Mr. Saunders
18 will probably be greatly relieved to know that this may
19 not lengthen the amount of time that he will be
20 impaneled and that Mr. Reynolds will later be recalled
21 to defend other portions of his testimony, so that's
22 the process I'm going to adopt.

23 I am not going to address in any way, shape,
24 or form any objections that anyone might raise at some
25 time during the hearing not having a clue what those

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1 might be or the validity of that particular line of
2 examination, so that's what we are going to do, and
3 Mr. ffitich, you can reserve your examination of
4 Mr. Reynolds.

5 MR. FFITCH: Thank you, and not to prolong
6 this, but I guess I want to make sure there is no
7 preliminary ruling on the scope of questions with
8 regard to the nonpanel witnesses. Obviously, we will
9 simply deal with individual objections that might come
10 up as they come up, but we are not precluded from
11 asking those witnesses about their testimony and
12 exhibits that they filed in this case is my
13 understanding as a general matter.

14 JUDGE CLARK: Well, we are about to get there
15 because next we are talking about who will be called
16 next.

17 MS. ANDERL: May I ask one or two more
18 questions about the settling panel process?

19 JUDGE CLARK: Yes.

20 MS. ANDERL: Will counsel or impaneled
21 witnesses be asked to give summary statements prior to
22 their being available for questions from counsel and
23 the Bench?

24 JUDGE CLARK: The parties can certainly
25 correct me if I have inaccurately reviewed documents,

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1 but it appears that in other proceedings I've reviewed
2 before the Commission that what has happened is the
3 Commission has requested counsel to briefly summarize
4 the terms and conditions in the Settlement, and
5 typically -- again, correct me if I'm wrong -- it
6 appears to be the process and practice of the
7 Commission that one counsel will do that rather than
8 numerous counsels doing that, but again, please correct
9 me. That is my understanding of the process. That
10 would be the process that I will anticipate following.

11 MS. ANDERL: Thank you.

12 JUDGE CLARK: And then the panel will address
13 whatever questions are presented to them, and then we
14 would proceed with calling individual witnesses; is
15 that correct?

16 MS. ANDERL: That is my understanding.

17 JUDGE CLARK: All right. We are just moving
18 right through this. Despite the fact that the
19 prehearing conference order did not require it, both
20 Qwest and Public Counsel did provide an order of
21 witnesses and some cross-examination estimates. Those
22 are very helpful, and Mr. Trautman has supplemented the
23 record this morning with some of his same information,
24 which is also very helpful. Thank you.

25 MS. ANDERL: Your Honor, I have extra copies

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1 if anyone in the hearing room needs that, of my
2 cross-exhibits and order of witnesses.

3 MR. FFITCH: While those are being passed
4 out, I'll just note a typographical error on our cross
5 list. Our witness is Dr. Robert Loube, not Dr. William
6 Loube. I apologize for that error, Your Honor.

7 JUDGE CLARK: So the Qwest witnesses will
8 then take the stand. Mr. Teitzel first, Grate,
9 Williams, Taylor, and then Reynolds.

10 MS. ANDERL: Yes.

11 JUDGE CLARK: So I am presuming that the
12 documents that you would like presented in the record
13 would be numbered accordingly.

14 MS. ANDERL: That is our preference.
15 Although I notice that Your Honor's exhibit list
16 doesn't follow that order. I don't care if we reorder
17 them or not, but yes, whether Mr. Teitzel starts with
18 No. 1 or No. 47, he is the first witness.

19 JUDGE CLARK: It would be my preference to
20 modify the order of the exhibit list to be consistent
21 with the presentation of the witnesses. I think that
22 would be a more efficient way rather than have people
23 flip through the witness list. I think it requires a
24 little more work on my part, and I'm certainly more
25 than willing to undertake that endeavor.

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1 MR. TRAUTMAN: Your Honor, for our witness
2 order, I'm looking at Public Counsel's --

3 JUDGE CLARK: Wait a minute. Let me get
4 there, please.

5 MR. TRAUTMAN: I anticipate we will have
6 Ms. Strain being first and then Ms. Russell and then
7 Mr. Wilson, and evidently there is no cross anticipated
8 for Ms. Reynolds; correct?

9 MR. FFITCH: Yes.

10 MR. TRAUTMAN: She could be number four.

11 JUDGE CLARK: So that would be the order in
12 which those witnesses would follow?

13 MR. TRAUTMAN: Yes.

14 JUDGE CLARK: Mr. ffitch?

15 MR. FFITCH: To continue our traditional role
16 of being the fly in the ointment, Your Honor, I would
17 just point out that both settling parties have moved
18 their lead policy witness to the end of their proposed
19 schedule, which is fairly unconventional. Typically,
20 and I understand they have some right to request their
21 preferred order. I would just make that observation
22 that their sort of umbrella overall witness is Reynolds
23 for Qwest. He's being put at the end, and Wilson is
24 the comparable witness for staff. He's being put at
25 the end of staff witnesses.

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1 The problem with that from an opposing party
2 position is that you get sometimes into where you get
3 the policy witness who is the 30,000-foot witness but
4 may not have the accounting or engineering or technical
5 background to answer questions. Typically when they go
6 first, they defer to their service-quality person or
7 their rate person who will be coming in later. When
8 they come last, you run into a problem of witnesses
9 potentially not being available any longer or having to
10 be recalled, so I would just make that observation
11 about the proposed line-up from both the parties.

12 JUDGE CLARK: I think you meant to say that
13 Mr. Wilson would be the 30,000-thousand foot level
14 witness on staff, not Reynolds?

15 MR. FFITCH: Yes, Your Honor.

16 JUDGE CLARK: I'm also presuming from your
17 comments that you would be objecting to excusing any of
18 these witnesses in light of the potential to need to
19 recall them; is that correct?

20 MR. FFITCH: Yeah, I think we would.

21 JUDGE CLARK: Assuming arguendo that I adopt
22 that order.

23 MR. FFITCH: Yes, Your Honor.

24 JUDGE CLARK: Do you want to go ahead and
25 present for the record the order Public Counsel has

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1 proposed for presentation of their witnesses?

2 MR. FFITCH: Your Honor, we would propose
3 having Dr. Robert Loube go first and then Mary Kimball
4 go second. We have some flexibility, understanding the
5 proposal for moving the hearing dates, so we can talk
6 about that when we get to it, but our preferred
7 recommendation is Loube and then Kimball.

8 JUDGE CLARK: Thank you. I think the order
9 of witnesses proposed by the parties is reasonable.
10 I'm going to adopt that order of witnesses, and I will
11 reconfigure the exhibit list so that it accurately
12 reflects the order in which the witnesses will be
13 testifying. In light of that, I'm presuming that the
14 first document that will be marked for identification
15 and numbering would be the Settlement itself; is that
16 correct?

17 MS. ANDERL: I think that's right, Your
18 Honor.

19 JUDGE CLARK: And then secondly, I would
20 follow that with the prefiled testimony of
21 Mr. Saunders.

22 MS. ANDERL: Or alternatively, Your Honor, if
23 the settlement narrative would be given an exhibit
24 number.

25 JUDGE CLARK: I don't think I would give that

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1 a separate exhibit number. I think I would take the
2 package of documents and accept the entire package of
3 documents as one exhibit rather than segregating those,
4 unless there is a specific preference or reason to do
5 so.

6 MS. ANDERL: Here's the only thing I'm
7 thinking, and just as a practical matter, a lot of
8 times in the Commission's final order adopting the
9 settlement agreement, we hope, they attach that as
10 Exhibit 2 to the final order and appendix, and maybe
11 sometimes it's cleaner if it's a separate exhibit
12 number in the record without extraneous documents.

13 MR. TRAUTMAN: Your Honor, the only other
14 point I thought of was that because of the position of
15 intervenors, we also have actually two joint
16 narratives. There is one joint narrative of Staff and
17 Qwest, and then there is the intervenors' letter
18 narrative, and then Northwest Public Communications
19 Council will have another narrative, so for that reason
20 I thought...

21 JUDGE CLARK: Point well taken, and I will
22 segregate those. I don't have all those documents yet,
23 so my crystal ball being particularly cloudy today, I
24 think I would have to wait to get them so I know what
25 I'm putting in, but that would be the general order in

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1 which I would number these documents if I even have
2 them.

3 And then I would follow with the prefiled
4 testimony of Mr. Saunders because that is the testimony
5 in support of the Settlement, okay? And then I will
6 number the remaining documents in order. I think that
7 that would be a rather laborious and painful exercise
8 to undertake during this morning's prehearing
9 conference, especially in light of the fact that one
10 rather large error was pointed out to me in my proposed
11 exhibit list before we ever went on the record, and
12 that is that the redacted portions of the testimony of
13 those witnesses who have confidential testimony is not
14 reflected. It is my understanding it is the
15 Commission's practice to include both of those with the
16 same number, one document having a confidential
17 designation and the second document simply having a
18 number, so that is my intent.

19 The draft exhibit list that you received will
20 be significantly altered in terms of adding the
21 redacted testimony and in terms of the order, so what I
22 propose to do is undertake that exercise and e-mail it
23 to all of the parties so that they will also have the
24 opportunity to comment on the second, third, and
25 whatever number of drafts is required to come up with

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1 an accurate list. Is that process acceptable to the
2 parties, or do you want to do this one by one?

3 MS. ANDERL: I think your idea is
4 outstanding, Your Honor.

5 JUDGE CLARK: Mr. Trautman?

6 MR. TRAUTMAN: That sounds fine for Staff.

7 MR. FFITCH: That's an excellent idea, Your
8 Honor. I did have a couple of points with regards to
9 the exhibit list. One was just to confirm our e-mail
10 that we sent this morning with reference to the
11 corrected versions of Dr. Loube's testimony that were
12 filed.

13 JUDGE CLARK: Thank you. I did get that,
14 Mr. ffitch, and what I would propose to do once we have
15 recessed this morning, I believe I have the corrected
16 versions of Dr. Robert Loube's testimony in the
17 binders, but I would like to confer with you on the
18 recess just to insure that I do have the accurate
19 version of Dr. Loube's testimony.

20 MR. FFITCH: I would be happy to do that.
21 The second point is we would like to request that you
22 include a number for the public comment exhibit. We
23 will be pulling together all of the letters and e-mails
24 that have been sent to the Commission and to Public
25 Counsel and placing them into a public comment exhibit

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1 and offering them for the record pursuant to Commission
2 rule and practice, so if Your Honor could assign a
3 number for that, include that in the list, that would
4 be appreciated.

5 Also, the timing for that is such that at the
6 hearing last night, the Chairman indicated that
7 comments would be received through the end of next
8 week, so in order to accommodate that, we would not be
9 able to submit this exhibit until the following week as
10 soon as possible in the event that any comments come in
11 by Friday, so that would postpone it a bit beyond what
12 we had intended, but certainly in the interests of
13 allowing customer comments, it's a good cause, but just
14 to let you know that that's how we would intend to
15 proceed if it meets the Bench's desire.

16 JUDGE CLARK: I would be inclined to adopt
17 that process. I want to hear if anyone has an
18 objection. You don't need to concur, but it would be
19 my indication to reserve at the very end of the exhibit
20 list a number for all of the public comments received
21 in this proceeding, and obviously in conjunction with
22 the Chairman's indication, we won't cut off the time of
23 comments until the end of the evidentiary record, and
24 that will be sometime next week. Is there any
25 objection to that?

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1 MS. ANDERL: No.

2 MR. TRAUTMAN: No, Your Honor.

3 JUDGE CLARK: Which now brings us, I think,
4 to hopefully what will be the final matter that needs
5 to be addressed this morning, and that is the schedule
6 for the hearing itself. During the recess, I did have
7 an opportunity to obtain an updated version of the
8 Commission's calendar, and everyone is correct. We do
9 have an open meeting on Wednesday the 14th of March,
10 and so after conferring with the available
11 commissioners, it looks like the Commission could
12 commence the hearing at 9:30 a.m. on Tuesday the 13th
13 and then reconvene the hearing at 1:30 p.m. on
14 Wednesday the 14th, and continuing thereafter, if
15 necessary, at 9:30 a.m. on the 15th.

16 Taking a look at the cross-examination
17 estimates presented by the parties, I think it is
18 highly likely that we would be able to complete the
19 hearing in a day and a half. That might require a
20 somewhat extended hearing schedule for one or both of
21 those days, and I do mean slightly extended hearing
22 schedule. Any comment on that; Ms. Anderl?

23 MS. ANDERL: I have no objection to this.

24 The only thing I might recommend is that if it looks
25 like the open meeting on Wednesday is going to go for a

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1 very short period of time we would consider on an ad
2 hoc basis reconvening at eleven or something.

3 JUDGE CLARK: I did foresee that possibility.
4 The Commission has other conflicts in its schedule that
5 would prevent that, and they would not actually be
6 available until 1:30 on the 14th.

7 MS. ANDERL: Thank you for that
8 clarification.

9 JUDGE CLARK: Mr. Trautman?

10 MR. TRAUTMAN: So you think that we can
11 complete by the end of Wednesday?

12 JUDGE CLARK: That would be the goal, to
13 complete by the end of Wednesday. I understand that
14 Public Counsel's witness, Dr. Loube, needs to fly out
15 of here Wednesday evening, so I would hope not to have
16 to continue the hearing to the following day in the
17 event he needs to confer with his witness.

18 MR. TRAUTMAN: In terms of slightly extended,
19 what were you envisioning?

20 JUDGE CLARK: That would be up to the length
21 and extent of cross-examination. My crystal ball is
22 very cloudy on that topic too, but I don't think it
23 would be reasonable to interrupt a witness's testimony
24 and require them to come back the following day to
25 complete their testimony. That's the sort of

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1 modification I would anticipate, not that parties would
2 be asked to say here until late into the evening hours.
3 Mr. ffitch?

4 MR. FFITCH: As you note, Dr. Loube is only
5 available until really the close of business on
6 Wednesday. He does have an evening flight out of
7 SeaTac, which should work with the schedule. However,
8 we would ask that he essentially be given a time
9 certain for Wednesday afternoon and that if he has to
10 be taken out of order we do that so that he can make
11 his plane connections.

12 JUDGE CLARK: Ms. Anderl?

13 MS. ANDERL: No objection. If we start with
14 Dr. Loube at 1:30 on Wednesday regardless of whatever
15 else we are doing, that shouldn't be any problem at
16 all.

17 MR. TRAUTMAN: I think that's fine; although,
18 that may mean we will probably be taking Staff
19 witnesses prior to that then, if we are going to be
20 done by Wednesday, because you have how many hours for
21 Dr. Loube?

22 MS. ANDERL: Two to three, but you know, if
23 we are done with all of the Qwest witnesses at three
24 o'clock or 3:30 on Tuesday, who knows how far I might
25 be able to get with Dr. Loube.

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1 JUDGE CLARK: I think what Mr. ffitch is
2 requesting is a time certain. We may not get to
3 Dr. Loube on Tuesday afternoon at all if we accommodate
4 his request for a specific date and time.

5 MR. FFITCH: He will be here, so if we have
6 plenty of time Tuesday as it turns out --

7 JUDGE CLARK: Then that would be acceptable?

8 MR. FFITCH: Yes. I was asking that no later
9 than.

10 JUDGE CLARK: So the request is that he take
11 the stand no later than 1:30 p.m. on Wednesday?

12 MR. FFITCH: The 1:30 p.m. is the Qwest
13 request.

14 JUDGE CLARK: That's when the hearing is
15 going to reconvene. What time is his flight? How late
16 is Dr. Loube going to be available on Wednesday?

17 MR. FFITCH: His flight is at ten p.m. He
18 needs to be there at eight p.m. and would need to leave
19 here probably by five or six.

20 JUDGE CLARK: I would say six o'clock to be
21 safe.

22 MR. FFITCH: If Ms. Anderl ends up with only
23 an hour for him, we could start at three. We are not
24 specifically requesting 1:30. It makes sense, but if
25 it looks like there is a bit of a Qwest witness to

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1 finish and then we get to Dr. Loube at two or 2:30 --
2 as long as he can be finished by the end of the day, we
3 would not have an objection.

4 JUDGE CLARK: So you are really not asking
5 for a specific date and time. You are just asking that
6 Dr. Loube's examination be concluded by the conclusion
7 of the hearing on Wednesday?

8 MR. FFITCH: That was our request. If it
9 helps to have it be 1:30 -- that was Qwest's
10 suggestion, not mine, but if it helps to have it that
11 way, then that's fine. I'm not sure it's essential
12 that we have a 1:30 start time. It is essential that
13 we have a five or six p.m. end time.

14 MS. ANDERL: This should not be a problem.
15 As long as we take Dr. Loube by three o'clock on
16 Wednesday, I think I can commit that we will get him to
17 his plane, and if it makes sense to finish a witness
18 before putting him on the stand, that makes a lot of
19 sense to me.

20 JUDGE CLARK: Mr. Trautman?

21 MR. TRAUTMAN: I think that sounds reasonable
22 to Staff.

23 JUDGE CLARK: Certainly we are going to take
24 Dr. Loube's testimony in a manner that will not
25 interfere with his flight. It sounds like there really

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1 isn't a request for a specific date and time; that as
2 soon as we can accommodate him, we will work him into
3 the schedule in a manner that allows him to keep his
4 current travel arrangements, and I am certainly
5 optimistic that we will be concluding the hearing
6 Wednesday afternoon and that this won't create a
7 problem for anyone.

8 MR. FFITCH: Thank you very much, Your Honor.

9 JUDGE CLARK: Is there anything further that
10 we need to consider on this morning's record;
11 Ms. Anderl.

12 MS. ANDERL: I have two things, Your Honor,
13 and maybe I don't even have two. Let me just throw
14 this out there. Mr. ffitich has said he doesn't have
15 cross-examination for Dr. Taylor. I believe we will
16 bring him in anyway to be available for questions from
17 the Bench, and even if the Bench has no questions for
18 him, I may wish to have him as my consulting expert. I
19 was going to ask whether we needed to bring him in, and
20 I'm not going to ask that, so we will have Dr. Taylor
21 here.

22 The other thing though that is a little bit
23 more substantive is do you want us here at nine
24 o'clock, possibly the counsel at least at nine o'clock
25 on Tuesday to do any housekeeping or sorts of things?

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1 A lot of times, we stipulate to the admission of
2 exhibits, direct and cross, and once we've had a time
3 to look those over, sometimes that can make the process
4 that starts at 9:30 go a little more smoothly if you've
5 had a half an hour with us.

6 JUDGE CLARK: It's kind of an awkward
7 situation because we don't have all of the
8 cross-exhibits yet. I understand that some of those
9 are still being duplicated. Ordinarily, we have those
10 by the time of today's prehearing conference so that we
11 can actually discuss the admission of exhibits so the
12 only thing I would be doing in my revised list is just
13 marking them for identification purposes, and we can
14 certainly do that in the form of meeting earlier on
15 Tuesday morning. We can do that in addressing the
16 e-mail and see whether people have any objection to
17 that and memorialize it on the record.

18 I recognize that people have a lot on their
19 plate right now, preparation for hearing, and I'm
20 hesitant to put too much more. So if it's possible, I
21 would propose that if you have objection to admission
22 of any of the exhibits that maybe that's something that
23 you could narrow and let us know in advance.

24 MS. ANDERL: Sure.

25 MR. FFITCH: I guess second to Ms. Anderl's

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1 suggestion, which is coming at nine o'clock on Tuesday,
2 would make sense just as a catch-all opportunity for us
3 to raise anything that comes up before the
4 commissioners are on the Bench. I would also say that
5 we do have all of our cross-exhibits in the hearing
6 room right now and are prepared to provide them to the
7 Bench and the parties.

8 MS. ANDERL: We have ours as well.

9 MR. TRAUTMAN: And we have ours. We have had
10 the nine o'clock premeeting in the past, and sometimes
11 it has been efficient.

12 JUDGE CLARK: We can certainly change the
13 time to meet at nine o'clock provided we have a court
14 reporter available for that modification, and the other
15 option is, of course, we meet at 9:30 without the
16 commissioners present and we do whatever administrative
17 details need to be sown up and then they come in when
18 we are finished. I don't have a burning preference for
19 the starting time for this process provided we make
20 sure the court reporter is available.

21 MR. FFITCH: Perhaps, Your Honor, we can
22 simply wait to see. We will just wait on the Bench's
23 pleasure on that, and we will be here at 9:30 unless we
24 hear otherwise.

25 JUDGE CLARK: When you get the revised

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1 exhibit list, if you have objection to any of the
2 exhibits that I've numbered, it would be helpful to
3 narrow the scope of that objection so that we don't
4 have to sit here and go through the exhibits one by one
5 to find out that there is only five of them to which
6 there is opposition that we need to argue; all right?

7 MR. FFITCH: We have discussed off the
8 record, Your Honor, the possibility of stipulating to
9 admission of cross-exhibits, in particular, data
10 requests that are designated, and I'm hopeful that we
11 will be able to do that on all sides as we've done in
12 past cases.

13 MR. TRAUTMAN: I have a clarifying question.
14 I had understood that the stipulating to the various
15 exhibits and we've done that in the past, but are we
16 also to file objections to exhibits at the same time?

17 JUDGE CLARK: No. What I'm proposing is a
18 very informal process. When you get the revised
19 exhibit list from me, if you can go through that
20 exhibit list and indicate whether or not you would be
21 objecting to the admission of any of those exhibits.
22 If you can let me know in advance, that would be
23 helpful so we know how much time to reserve Tuesday
24 morning.

25 Tuesday morning when we convene, I assume,

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1 the parties could stipulate to admission of all the
2 exhibits for which there is no objection and argue
3 only, not having to read through the entire list, argue
4 only about those ones for which they have objection.

5 MR. TRAUTMAN: But would the objections to
6 the exhibits, the cross-exhibits, occur when the
7 witness is on the stand, or would it just be -- maybe
8 I'm not entirely understanding.

9 MS. ANDERL: I think I understand what
10 Mr. Trautman is saying, and I guess one of the things,
11 Your Honor, is I don't think we all have a problem with
12 looking and determining if there are preliminary
13 objections. A lot of times though not all of these
14 exhibits get offered, so maybe it doesn't make any
15 sense to raise and argue an objection at nine in the
16 morning on Tuesday to a proposed cross-exhibit that
17 Public Counsel ends up deciding they are not going to
18 use after all. I don't know. Maybe we are getting
19 into too much detail.

20 JUDGE CLARK: I think we are getting into way
21 too much detail here. I think at this juncture what we
22 will do simply is if you know for sure that you are
23 going to be objecting to something, if you can bring it
24 to my attention, generally, without specific arguments
25 in support or anything like that, just generally

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1 speaking so I have a clue how much time to reserve,
2 that will have an impact on whether we start at nine or
3 9:30; that's all. Is there anything further we need to
4 consider on this morning's record?

5 MR. FFITCH: I do have a couple of items,
6 Your Honor. We will be asking for official notice of a
7 couple of Commission orders. I think there has been
8 different approaches in different cases. Sometimes
9 things are marked as exhibits and then sometimes the
10 Bench prefers that we don't do that and we just
11 indicate that we are asking for official notice, so I
12 just wanted to at this juncture indicate that we are
13 going to ask for official notice of the Verizon merger
14 order, which is document UT-050814, and the Verizon
15 general rate case order, UT-040788. If we do end up
16 using those as cross-exhibits, we will have extra
17 copies in the hearing room for examination on them. We
18 will have copies for the Bench and the witness.

19 JUDGE CLARK: Are there copies of those
20 orders documents that are included in the
21 cross-examination exhibits you have with you today?

22 MR. FFITCH: No, they are not, Your Honor.

23 MS. ANDERL: But they are included in my
24 cross list, Your Honor.

25 JUDGE CLARK: These are familiar to me, so it

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1 sounds like these are documents that will already both
2 be in the record, unless you object and Mr. Trautman
3 objects, of course.

4 MS. ANDERL: I'll be crossing last, actually,
5 or recrossing after Mr. ffitch's cross.

6 JUDGE CLARK: That's right.

7 MR. TRAUTMAN: We would not object to notice
8 of those Commission orders.

9 MS. ANDERL: We numbered them or provided
10 them as a cross-exhibit just exactly because of what
11 Mr. ffitch just said, and that is Commission's
12 preference in terms of how these are handled has been
13 different in different cases.

14 JUDGE CLARK: I'm presuming that it would be
15 more helpful to the Commission to actually have
16 documents marked as an exhibit so that they have hard
17 copies of those while the examination is being
18 conducted in the event they want to refer to any of
19 those.

20 I understand it's been done more than one
21 way. It doesn't sound like it matters a whole lot
22 which way. It's pretty much an administerial detail,
23 but I'll go ahead and mark those as exhibits, give them
24 a number, and insure that the commissioners have copies
25 in their binders.

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1 MR. FFITCH: Thank you, Your Honor. It
2 sounds like we don't have a problem with those two
3 orders, and if there are others we feel the need to
4 use, we will make sure we have copies of those, which
5 is a segue into my next point, which is just for the
6 record, we want to indicate that we may want to tender
7 additional cross-exhibits for a couple of reasons.

8 One is that we have data requests still
9 outstanding. I believe, the answers are due today.
10 There is 10 or 12 of them, I believe, and so we just
11 couldn't tell whether those were going to be
12 appropriate for cross-exhibits or not. We will make a
13 decision on those as soon as possible and identify
14 additional cross-exhibits if we have them.

15 Then the second reason is that while we have
16 made every effort to identify everything that we would
17 want to use for cross, there are just circumstances
18 that come up where as we get to hearing, we realize
19 there may be one or two additional items that we wish
20 to use, and we would reserve the right to tender those
21 as cross-exhibits prior to the time the witness takes
22 the stand.

23 Our practice has been to just do that as soon
24 as we can, but certainly by the time of the morning
25 that the witness is going to be on the stand at the

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1 latest if we have something that comes up at a very
2 late stage of the case. We believe this is consistent
3 with past Commission practice and fairness, so I just
4 wanted to get that on the record.

5 JUDGE CLARK: Ms. Anderl?

6 MS. ANDERL: We have no objection to that in
7 principle. It seems fair.

8 JUDGE CLARK: Mr. Trautman?

9 MR. TRAUTMAN: We have no objection.

10 JUDGE CLARK: I would just remind counsel
11 that you would need to bring sufficient copies of those
12 documents and recognize that if you want to examine a
13 witness on a document they've never seen before that or
14 haven't seen for some time, it may be necessary to take
15 adequate time during the hearing to give them the
16 opportunity to review that before examination, which
17 will, of course, delay process.

18 The other comment I want to make and make
19 sure everyone is clear on the cross-examination
20 exhibits is that if you offer a document for
21 cross-examination as a cross-examination exhibit, it is
22 anticipated that you will actually conduct some
23 examination on that document rather than simply putting
24 a bunch of documents in the record and having the
25 Commission sort of sort through those and figure out

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1 what you might like them to glean from that particular
2 document.

3 So a little advance notice that I think it
4 would be the preference of the Commission to have you
5 point out to them those portions of the document or the
6 topic or something in the document that would indicate
7 why the document is being received.

8 MS. ANDERL: And the commissioners would
9 prefer that we not wait until the brief to do that?

10 JUDGE CLARK: The commissioners would prefer
11 that you not wait until the brief to do that in the
12 event that they might have some follow-up raised by
13 that particular item.

14 MR. TRAUTMAN: I'm thinking, Your Honor, I
15 think in some of the other exhibits, not ours, but what
16 if the exhibits were stipulated into the record. If
17 they were, say, data request responses, would that
18 still require follow-up questions?

19 JUDGE CLARK: I think there is some confusion
20 between the admission of a document as an exhibit and
21 its use during the hearing. Stipulation gets it in
22 there. The second question goes to what do you do with
23 it once you get it into the record, and my comment is
24 with respect to what you do with it once you get it
25 into the record, and the anticipation is that it will

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1 in some form be used for the benefit of the
2 decision-making tribunal.

3 MR. FFITCH: If I may just join in the
4 conversation, Your Honor, we have designated a number
5 of exhibits, as we have done in other cases, which we
6 don't anticipate necessarily asking questions about but
7 referring to them in the brief as part of the record.
8 If we are not permitted to do that, Your Honor, that is
9 a change in practice we had not anticipated.

10 We understand the concern that you don't want
11 a pile of paper in the record. The choice that we are
12 faced with in some cases is to have the witness --
13 let's just say for example there is some useful
14 information in a data request which is going to help
15 the Commission ultimately. We are going to talk about
16 it in the brief and cite the exhibit, but really the
17 examination for the witness is simply, Mr. Reynolds,
18 didn't we ask you the following data request and this
19 information about DSL service in Washington, and
20 Mr. Reynolds says, Yes, we did, and then we say to him,
21 And you answered X, Y, and Z; did you not, and he says
22 yes.

23 We have in the past been asked by the Bench
24 to not conduct that kind of examination because the
25 document speaks for itself and it's something we can

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1 draw to the Bench's attention in brief. We've also on
2 the question of admissibility tried to avoid this sort
3 of basic examination of, Did we ask you this question
4 in a data request and --

5 JUDGE CLARK: I hate to cut in on you,
6 Mr. ffitch, but I think we are confusing a couple of
7 concepts here. First, this is exactly the question
8 that was raised by Ms. Anderl about whether or not the
9 Commission anticipates use during the hearing or use of
10 those exhibits following in the brief, and I think it
11 is their preference that there be some use of this
12 during the hearing.

13 Secondly, the little exchange of hypothetical
14 testimony that you just demonstrated to me is not
15 cross-examination. All of that inquiry relates really,
16 truly to the admissibility of a document, and I think
17 that there are certainly some expectation that
18 cross-examination will be cross-examination.

19 MS. ANDERL: Your Honor, if I might join in.
20 I love this conversation because I'm kind of on both
21 sides of the fence here. There have been plenty of
22 cases where documents have been admitted with no cross
23 and then one or another of the parties wants to do
24 redirect on the document, because we are sitting here
25 trying to anticipate, What are they going to do with

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1 this in the brief? They didn't ask any questions about
2 it. Do I need my witness's appropriate
3 characterization of this document on redirect?

4 So on the one hand, I sympathize with why the
5 Commission wants to hear cross on a document. On the
6 other hand, I think that there are documents that don't
7 particularly really lend themselves to
8 cross-examination. It is just a document that does
9 speak for itself and there is kind of no further
10 inquiry, and so I'm not advocating any particular
11 result. I'm just saying that I do understand what the
12 Commission's desire here is. I'm not sure it can fit
13 every time, and so to that extent, I'm perhaps taking
14 Mr. Ffitch's side on this debate, but we understand
15 what the Commission wants, and for our part, we will
16 endeavor to comply with that.

17 JUDGE CLARK: Do you understand the concern?
18 This is a concern of the Bench that a number of
19 documents come in. The Commission has absolutely no
20 idea what point you might wish to make in a multipage
21 document, and it's just sort of sitting there in the
22 record, which is a little bit troubling in the event
23 there is any clarifying questions or any points related
24 to it.

25 MR. FFITCH: Your Honor, I think that what we

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1 would endeavor to do is either tie it up in the hearing
2 or make a specific citation in the brief to what the
3 value of the document is.

4 JUDGE CLARK: Right, and that's what has
5 raised the topic is that apparently, a number of
6 documents have been admitted in the record that are
7 never seen or heard from again until they come to the
8 legal briefing stage, and there is sort of a disconnect
9 between those two concerns with respect to
10 commissioners having an adequate opportunity to
11 understand the purpose of a document while someone is
12 available for them to ask clarifying questions, which
13 is obviously not the case by the time you get to the
14 briefing stage.

15 Just wanted to give you some advance notice
16 that there is some anticipation that you will actually
17 use the documents in some fashion in the hearing, or at
18 least bring to the commissioners' attention salient
19 points so that they have the opportunity to do
20 clarifying if necessary.

21 MR. FFITCH: Your Honor, this will
22 significantly affect our cross-examination estimates
23 and make them -- in fairness I would have to say in
24 order to have that kind of examination with respect to
25 our exhibits, we will end up using a lot more time than

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1 we've predicted.

2 JUDGE CLARK: And actual examination assuming
3 admissibility?

4 MR. FFITCH: For example, we have quite a
5 large number of DR responses from Qwest that we've
6 identified as cross-exhibits, and quite a few of them
7 put data about different services in the record. It's
8 data that's discussed by the witnesses in general on
9 different issues. I would expect that the Company
10 would stipulate to the DR coming in because they
11 answered it and provided us with that data, and
12 assuming they don't have any other objection to it.

13 So if the Bench would like us to explore the
14 document in some detail and explain what it is, probe
15 it with the witness, there are some of these documents
16 that we had simply intended to refer to in the brief so
17 that we could make sure that the Commission had hard
18 information that was offered without objection by the
19 Company into the record to be discussed in the brief.
20 If we are going to be required to actually explore that
21 with witnesses on the stand, that's going to add
22 probably fairly substantially to our examination times.

23 JUDGE CLARK: All right, just give me an
24 example here, Mr. ffitich. I'm looking at your exhibit
25 list, and I'm looking at a nonconfidential exhibit,

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1 which is Qwest's response to WUTC DR No. 9. Do you
2 have a copy of that?

3 MR. FFITCH: I do, Your Honor. Which witness
4 is that identified for?

5 JUDGE CLARK: That is identified for
6 Mr. Reynolds. It's the second document listed on your
7 exhibit list. I'm just trying to run through an
8 example here to see if we can address the concern.

9 MR. FFITCH: Your Honor, this one --

10 JUDGE CLARK: Is it a bad example?

11 MR. FFITCH: It's a one-sentence answer to
12 a --

13 JUDGE CLARK: Take a look at the next one for
14 Mr. Reynolds, Qwest response to WUTC DR 23 S-1.

15 MR. FFITCH: Perhaps I could find one that's
16 a good example --

17 JUDGE CLARK: Well, it will be tough until
18 you know what my question is.

19 MR. FFITCH: Okay, Your Honor.

20 JUDGE CLARK: How many pages are in that
21 document, just the response, the third one on your
22 list, Qwest response to WUTC DR 23 S-1?

23 MR. FFITCH: That's a one-page answer, Your
24 Honor, indicating that there is no information
25 available.

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1 JUDGE CLARK: So my point is simply that if
2 there isn't something that the Commission is going to
3 be able to get from the document, I'm perplexed what
4 point you would make.

5 MR. FFITCH: Let's take an example, Your
6 Honor, of that last one we looked at. In this
7 question, Qwest was asked to describe their plans for
8 expanding residential broadband access in Washington
9 over the next year and then over the next five years.

10 The first answer was they did not have time
11 to respond due to the weather emergency, the Hanukkah
12 Eve storm, which it is now known as, I believe. The
13 supplemental response was, Qwest does not have specific
14 high-speed Internet deployment plans for the period
15 specified. We believe that's important information for
16 the Commission to have in front of it.

17 Frankly, this might have been one that we
18 would simply ask the witness about on the stand and
19 say, draw it to their attention, draw the
20 commissioners' attention to it. This is, we think, an
21 interesting position for the Company to take with
22 regard to broadband deployment; that position being
23 there is no plans for it.

24 JUDGE CLARK: I certainly don't want to get
25 into the merits on any of these issues, and we are

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1 rapidly heading in that direction. I was just trying
2 to encourage counsel to the extent you possibly can to
3 very narrowly limit what you present as an exhibit in
4 the record and have a use for it that will be
5 productive to the decision-makers while we are in the
6 hearing process.

7 MS. ANDERL: Your Honor, we understand and
8 accept that. I would just like to clarify for the
9 record that Mr. Ffitch did not finish reading our
10 answer.

11 JUDGE CLARK: And that's why I cut him off.

12 MS. ANDERL: That will be a document,
13 probably an exhibit.

14 JUDGE CLARK: This is not an appropriate time
15 to either be going into great detail about questions
16 and answers and what you want to do with that
17 information once you get it, etcetera. This is a
18 prehearing conference. This is not an appropriate
19 time, which is why I cut him off.

20 MR. FFITCH: Your Honor, if I could just --
21 first of all, we understand the Commission's desire
22 here, and our intention in every case has been to try
23 to offer evidence that is helpful to the record in
24 using one of several different techniques, including
25 citations in the brief. Using our judgment as to how

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1 to best present the case, we do try in every case to
2 tie up the evidence to the arguments so the Commission
3 can understand it. We are not interested in burdening
4 the record with paper, but let me give you an example
5 of another Reynolds exhibit which is --

6 JUDGE CLARK: Mr. ffitch, I hate to interrupt
7 you, but I don't need it. I think that what we are
8 going to have to do based on what you've told me is
9 that we are going to have to address this on a
10 case-by-case basis. I have indicated to you what the
11 Commission's preference is. If it seems to get out of
12 hand during the hearing, then we may have to modify
13 the process that we are going through, but that's just
14 the general guidance I wanted to give you well in
15 advance of the hearing.

16 MR. FFITCH: Thank you, Your Honor.

17 JUDGE CLARK: Is there anything further we
18 should consider on the record?

19 MR. FFITCH: Yes, Your Honor. We had at
20 least one other issue we wanted to raise. The briefing
21 schedule currently calls for the opening round of
22 briefs in this case to be filed on April 4th, and we
23 would like to request at this time an extension of time
24 for the opening brief to April 13th, which I believe is
25 the following Friday, Friday the 13th, and then some

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1 sort of reasonable extension of the reply round.

2 The reason for this request was initially
3 raised at the prehearing conference. At that time, we
4 were aware, all parties and the Bench were aware, and
5 discussed the fact that the PacifiCorp general rate
6 case, in which I'm also lead counsel, commences
7 evidentiary hearings in the last week of March, on
8 March 27th. The opening brief in this case is then due
9 three days after that evidentiary hearing concludes,
10 and we had raised some objections to the scheduling in
11 this case because of the overlap with PacifiCorp.

12 At that time, the hope was that PacifiCorp
13 might settle and that the conflict would go away. In
14 the event, Your Honor, the PacifiCorp case has not
15 settled, we are going to full hearing beginning on
16 March 27th, so I'm renewing the request for an
17 extension of time for the briefs to be filed.

18 In the discussion at the prehearing
19 conference, Qwest indicated that they would not have an
20 objection to that extension of time, and that's
21 reflected in the transcript of the prehearing
22 conference, which I have here. I'm not sure what
23 Qwest's current position on the request is, but in any
24 event, that's the background, Your Honor. We have a
25 serious overlap with hearing following just a week

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1 after this one with one intervening week. It will be
2 extremely difficult for us to file an opening brief on
3 April 4th in this docket, and as anticipated, we are
4 now renewing our request for an extension of time. The
5 issue is actually memorialized in a footnote in the
6 prehearing order in this case, the fact that we might
7 have to bring this back to the Bench, so we would renew
8 the request for an extension of the briefing schedule.

9 JUDGE CLARK: Ms. Anderl?

10 MS. ANDERL: Yes. Everything Mr. ffitch says
11 is true. The only thing I don't know the answer to is
12 whether it's certain that PacifiCorp will go forward at
13 this point and Mr. ffitch's request is therefore
14 premature, or whether it would be appropriate to make
15 that decision on the briefing schedule now,
16 alternatively to wait and make a decision on the
17 briefing schedule after the commissioners have been
18 consulted and another week has passed with regard to
19 the evolution of that other case. I'm just not
20 involved in it.

21 JUDGE CLARK: Mr. Trautman?

22 MR. TRAUTMAN: Staff would not have an
23 objection to the request.

24 JUDGE CLARK: Mr. ffitch, I think it would be
25 appropriate for -- I hate to have you do this again,

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1 but I think it would be appropriate for you to renew
2 that at the conclusion of the hearing when we have a
3 little bit of a clue about how extensive the briefing
4 will be based on the record that is adduced in this
5 proceeding.

6 It is my understanding that PacifiCorp is
7 continuing toward hearing. At least at this juncture,
8 there is no indication that the parties are settling
9 that particular proceeding. That would be going to
10 hearing at the end of March, and if you could be kind
11 enough to renew your request at the conclusion of the
12 evidentiary hearing or in the form of a written motion
13 shortly thereafter, I think that we could probably more
14 cogently deal with that request.

15 MR. FFITCH: Thank you, Your Honor. We will
16 be happy to do that.

17 MS. ANDERL: I did represent that we would
18 accommodate if there were a conflict, and all I'm
19 saying is if we are not sure there is a conflict.

20 JUDGE CLARK: I understand. Mr. Melnikoff?

21 MR. MELNIKOFF: I think that your potential
22 ruling makes sense.

23 JUDGE CLARK: I certainly do not want to cut
24 you off for saying that. Is there anything further we
25 need to consider on the record?

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1 MS. ANDERL: How do you want to handle, Your
2 Honor, the distribution of the cross-exhibits?

3 JUDGE CLARK: I'm getting there. Is there
4 something else we need to do on the record? What we
5 are going to do now is allow the court reporter to
6 conclude this portion of the prehearing conference.
7 After the court reporter has left, or during that
8 process, we will go ahead and insure that all parties
9 distribute copies of the cross-examination exhibits
10 that they have available with them today, and
11 hopefully, those are the order in which you would like
12 to use them so I can mark those for identification
13 purposes. Hearing nothing further, we are adjourned.

14 (Prehearing conference adjourned at 11:54 a.m.)

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