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BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition)
of) DOCKET NO. UT-061625
)
QWEST CORPORATION) Volume IV
) Pages 156 to 399
To be Regulated Under an)
Alternative Form of)
Regulation Pursuant to)
RCW 80.36.135)
_____)

A hearing in the above matter was held on
March 13, 2007, from 9:00 a.m to 5:05 p.m., at 1300
South Evergreen Park Drive Southwest, Room 206, Olympia,
Washington, before Administrative Law Judge PATRICIA
CLARK and CHAIRMAN MARK H. SIDRAN and Commissioner
PATRICK J. OSHIE and Commissioner PHILIP B. JONES.

The parties were present as follows:
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Joan E. Kinn, CCR, RPR
Court Reporter

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1 THE UNITED STATES DEPARTMENT OF DEFENSE, by
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2 Center, U.S. Army Litigation Center, 901 North Stuart
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stephen.melnikoff@hqda.army.mil.

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

2 JUDGE CLARK: Good morning, it's
3 approximately 10 a.m., March 13th, 2007, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for hearing in the Matter
6 of the Petition filed by Qwest Corporation To Be
7 Regulated Under an Alternative Form of Regulation
8 Pursuant to RCW 80.36.135, given Docket Number
9 UT-061625. Patricia Clark, Administrative Law Judge for
10 the Commission presiding.

11 This matter came before the Commission on
12 October 20th, 2006, when Qwest filed its petition for
13 alternative regulation. Intervention was granted to a
14 number of parties including Integra Telecom, Time Warner
15 Telecom, Covad Communications Company, and XO
16 Communications, referred to as the Joint CLECs, WeBTEC,
17 Northwest Public Communications Council, as well as the
18 United States Department of Defense and the Federal
19 Executive Agencies. Public Counsel is participating in
20 this proceeding as well as a separate section of the
21 Commission's staff.

22 During the prehearing conference that was
23 held in this matter on March 7th, 2007, the Joint CLECs,
24 WeBTEC, and Northwest Public Communications Council
25 requested leave to not participate further in the

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1 proceedings.

2 (Discussion off the record.)

3 JUDGE CLARK: Hopefully our technical
4 difficulties that I was experiencing earlier haven't
5 been too contagious on the court reporter.

6 A settlement in this proceeding, a multiparty
7 settlement in this proceeding, was filed on March 6.
8 The sole party that did not join in that settlement is
9 Public Counsel.

10 At this juncture, I will take appearances on
11 behalf of the parties. Here on behalf of Qwest
12 Corporation?

13 MS. ANDERL: Thank you, Your Honor, Lisa
14 Anderl, Associate General Counsel on behalf of Qwest
15 Corporation.

16 JUDGE CLARK: Thank you, Ms. Anderl.
17 Here on behalf of the Department of Defense
18 and the Federal Executive Agencies.

19 MR. MELNIKOFF: I'm Steve Melnikoff appearing
20 for the Department of Defense and all Executive
21 Agencies.

22 JUDGE CLARK: Thank you.
23 Appearing on behalf of Public Counsel.

24 MR. FFITCH: Simon ffitch, Assistant Attorney
25 General for Public Counsel.

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1 JUDGE CLARK: Thank you Mr. ffitch.
2 Appearing on behalf of the Commission Staff.
3 MR. TRAUTMAN: Greg Trautman, Assistant
4 Attorney General for Commission Staff.

5 JUDGE CLARK: Thank you. We have a rather
6 ambitious schedule this morning to go through exhibits
7 prior to having the commissioners join us, and we will
8 address these procedural matters hopefully in some
9 semblance of order.

10 The first issue that I have is a motion for
11 leave to file supplemental testimony of Wilford
12 Saunders, that was submitted by the Commission Staff,
13 and I need to inquire if there is any objection to that
14 motion.

15 MS. ANDERL: No, Your Honor.

16 JUDGE CLARK: All right, no objection from
17 Qwest.

18 Public Counsel?

19 MR. FFITCH: No objection, Your Honor.

20 JUDGE CLARK: Thank you.

21 At this juncture I would like the record to
22 reflect that the evidence has been prefiled and marked
23 with exhibit numbers, and I request that the court
24 reporter enter into the transcript the identification of
25 the exhibits as though individually read, and that

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1 reference is Exhibits 1 through 163.

2

3 BENCH EXHIBITS

4 1C Bench Request No. 1 - Qwest, CONFIDENTIAL

5 Response of Qwest including number of

6 customers & revenues for each service that

7 would be treated as competitively classified

8 2 Bench Request No. 2 - Qwest, AFORs approved

9 within the past 7 years and final orders and

10 judicial decisions related to the AFORs

11 3C Bench Request No. 3 - Qwest, CONFIDENTIAL

12 Chart Describing Qwest's investment,

13 particularly in DSL infrastructure in 14

14 jurisdictions for the past 6 years including

15 supplemental response

16 SETTLEMENT AGREEMENT

17 WITNESS PANEL: Mark Reynolds and Wilford Saunders

18 4 Reynolds and Saunders, Settlement Agreement

19 including Exhibit 1

20 5 Reynolds and Saunders, Joint Narrative of

21 Qwest and Commission Staff Supporting

22 Settlement Agreement

23 6 Saunders, Prefiled Testimony of Wilford

24 Saunders Supporting Multiparty Settlement

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1 ADDITIONAL EXHIBITS REGARDING SETTLEMENT

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3 8 Northwest Public Communications Council,

4 Separate Narrative

5 PARTY: QWEST

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7 11C Teitzel, CONFIDENTIAL Prefiled Direct

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9 including cover and table of contents) DLT-1TC

10 12C Teitzel, CONFIDENTIAL Washington Retail Access

11 Lines by Wire Center: 12/00 vs. 6/06 (12 pp.)

12 DLT-2C

13 13C Teitzel, CONFIDENTIAL Sampling of CLEC

14 Services in Washington (12 pp.) DLT-3

15 14 Teitzel, Sampling of Wireless Plans in

16 Washington (23 pp.) DLT-4

17 15 Teitzel, Sampling of VOIP Services in

18 Washington (6 pp.) DLT-5

19 16C Teitzel, CONFIDENTIAL Prefiled Rebuttal

20 Testimony of David L. Teitzel (36 pp.

21 including cover and table of contents)

22 DLT-6CRT

23 17 Teitzel, Pew/Internet: Home Broadband Adoption

24 2006 (26 pp.) DLT-7

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1 TEITZEL CROSS-EXAMINATION EXHIBITS

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4 19 Public Counsel, High-Speed Services for

5 Internet Access as of June 30, 2006

6 20 Public Counsel, Comcast Press Release February

7 1, 2007

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4 to Public Counsel DR No. 101
5 157 Public Counsel, FCC Form 477 Instructions
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7 32C Grate, CONFIDENTIAL Prefiled Rebuttal
8 Testimony of Philip E. Grate (40 pp. including
9 cover and table of contents) PEG-1CRT
10 33C Grate, CONFIDENTIAL Response to Staff's
11 Proposed Adjustments to Qwest Earnings (13
12 pp.) PEG-2R
13 34C Grate, CONFIDENTIAL Response to Allegation
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15 (17 pp.) PEG-3R
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17 Month AFOR Review (1 p.) PEG-4R
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21 Michael G. Williams (22pp. including cover)
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2 Provisioning Interval, Out of Service and
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13 128 Strain, Qualifications and Experience (4 pp)
14 PMS-2
15 129C Strain, CONFIDENTIAL Summary of Qwest Rate of
16 Return - 1998 to 2005 (2 pp.) PMS-3C
17 130C Strain, CONFIDENTIAL Qwest Adjusted Results of
18 Operations as of 12/31/05 (5 pp.) PMS-4C
19 131C Strain, Table of Current and Proposed
20 Accounting and Reporting Requirements (1 p.)
21 PMS-5
22 132C Strain, CONFIDENTIAL Summary of Qwest
23 Regulatory Adjustments to Results of
24 Operations, 1998 - 2005 (1 p.) PMS-6C
25

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1 133 Strain, Prefiled Cross-Answering Testimony of
2 Paula M. Strain (6 pp. including cover and
3 table of contents) PMS-7T
4 STRAIN CROSS-EXAMINATION EXHIBITS
5 155 Public Counsel - (3/9/07) Redacted Version of
6 Testimony of Paula M. Strain (Revised
7 12/16/04) UT-040788
8 WITNESS: RUSSELL
9 134 Russell, Prefiled Responsive Testimony of
10 Kristen M. Russell (22 pp. including cover and
11 table of contents) KMR-1T
12 135 Russell, Rules (7 pp.) KMR-2
13 136 Russell, Condensed Service Quality
14 Requirements/Standards (4 pp.) KMR-3
15 137C Russell, CONFIDENTIAL Access Line Table and
16 State Percentage (1 p.) KMR-4C
17 138C Russell, CONFIDENTIAL Performance Measure Line
18 Graphs and Source Document (4 pp.) KMR-5C
19 164 Saunders, Prefiled Testimony of Wilford
20 Saunders, Jr. (3 pp. including cover) - WS-2T
21 RUSSELL CROSS-EXAMINATION EXHIBITS
22 139 Public Counsel, Staff's Response to Public
23 Counsel DR No. 3
24 140 Public Counsel, Staff's Response to Public
25 Counsel DR No. 4

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1 141 Public Counsel, Staff's Response to Public
2 Counsel DR No. 5
3 WITNESS: WILSON
4 142C Wilson, CONFIDENTIAL Prefiled Responsive
5 Testimony of Thomas L. Wilson, Jr. (86 pp.
6 including cover and table of contents) TLW-1TC
7 143 Wilson, Qualifications (6 pp.) TLW-2
8 144 Wilson, Staff's Improved AFOR Plan (6 pp.)
9 TLW-3
10 145C Wilson, CONFIDENTIAL Rural v. Urban Lines and
11 Hypothetical Revenues (1 p.) TLW-4C
12 146C Wilson, CONFIDENTIAL Straw Man, Qwest
13 Exchanges Sorted by Access Line Density
14 (4 pp.) TLW-5C
15 147 Wilson, Summary of Local Exchange Monthly
16 Rates (1 pp.) TLW-6
17 148C Wilson, CONFIDENTIAL The Field of Dreams
18 (2 pp.) TLW-7C
19 149C Wilson, CONFIDENTIAL Comparing Verizon and
20 Qwest Monthly Rates and Revenues Per Line
21 (1 p.) TLW-8C
22 150 Wilson, Prefiled Cross-Answering Testimony of
23 Thomas L. Wilson, Jr. (10 pp. including cover)
24 TLW-9T
25

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1 WILSON CROSS EXAMINATION EXHIBITS

2 151 Public Counsel, SF Chronicle Article, dated
3 January 5, 2007

4 WITNESS: DEBORAH REYNOLDS

5 152C Reynolds, CONFIDENTIAL Prefiled Responsive of
6 Deborah J. Reynolds (32 pp. including cover
7 and table of contents) DJR-1TC

8 153C Reynolds, CONFIDENTIAL Qwest's 2006 Power
9 Outages (1 p.) DJR-2C

10 PUBLIC COMMENTS

11 154 Public Counsel, To be filed at conclusion of
12 evidentiary hearing

13

14 JUDGE CLARK: I do have one preliminary
15 matter before we go through the other exhibits to
16 address with Qwest, and I am concerned about one
17 exhibit, specifically 32C.

18 MS. ANDERL: Yes, Your Honor.

19 JUDGE CLARK: All right, there is a graph on
20 page 3 of that exhibit, it's at the top of page 3, and
21 there are a number -- it's not designated as
22 confidential at least on my copy, and if I look at the
23 text of the information included on page 5, it appears
24 that some of those numbers are indeed confidential, and
25 I'm wondering the appropriate treatment for this

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1 particular document, if you could consult, please.

2 MS. ANDERL: I will.

3 JUDGE CLARK: Thank you, we'll take a moment
4 off record.

5 (Discussion off the record.)

6 JUDGE CLARK: Ms. Anderl.

7 MS. ANDERL: Thank you, Your Honor, for
8 pointing that out to us. You are, in fact, correct that
9 the graph on the top of the page as well as the text
10 starting at line 9, or rather the small table starting
11 at line 9, is also confidential. We will substitute the
12 appropriately designated page shaded and on yellow as
13 soon as technical constraints allow us to do that.

14 JUDGE CLARK: All right, thank you. In the
15 interim, if the parties would be so kind as to mark
16 their copies of the document so that we don't have any
17 inadvertent disclosure of confidential information
18 during the hearing, I would appreciate that.

19 MS. ANDERL: And just so that --

20 JUDGE CLARK: Page 3 of 32C, all right.

21 Okay, the next item that I have is I
22 requested the parties to notify me if they had objection
23 to receipt of any of the exhibits that were either
24 prefiled or distributed during our prehearing
25 conference, and there was no objection lodged to a

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1 number of these exhibits, so bear with me as I bore you
2 to tears and see if there's any objection to the
3 admission of Exhibits 1 through 24C, 26 through 31C, 32C
4 through 45, 47 through 62, 64 and 65, both of those are
5 confidential documents, 66 through 78, 81C through 89,
6 90C --

7 MS. ANDERL: Um --

8 JUDGE CLARK: I'm sorry, 88.

9 MS. ANDERL: I'm sorry, Your Honor, I think
10 I've lost you.

11 JUDGE CLARK: Okay, where did you lose me?

12 MS. ANDERL: I lost where I lost you. I have
13 on the exhibit list that you just distributed, and I
14 think I lost you a couple of things back but I was kind
15 of trying to get caught up and see where I was, I have
16 some of the documents that are shaded and show that they
17 were not admitted I don't recall having made objection
18 to, but perhaps they came in, those were the ones that
19 came in after the time for lodging objections or too
20 close.

21 JUDGE CLARK: Right, let me clarify that.
22 What you have on the revised exhibit list in shaded font
23 are those documents that (A) a party has either lodged
24 objection to, or that (2) or (B) are new, and the
25 parties have not yet had an opportunity to express

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1 stipulation or objection. I just don't know your
2 position on those, there's no negative inference to draw
3 to those, we simply haven't yet had the opportunity to
4 address them, okay?

5 MS. ANDERL: Okay.

6 JUDGE CLARK: What I'm trying to do is just
7 segregate out those documents for which no party lodged
8 an objection, and if no party has lodged an objection,
9 to see if everyone is willing to stipulate to the
10 admission of those. And then we will go through the
11 documents for which there is objection and the new
12 documents.

13 MS. ANDERL: Okay, and so where I was was an
14 objection, we had previously lodged an objection to 79
15 and 80.

16 JUDGE CLARK: Right, which are excluded from
17 my list.

18 MS. ANDERL: And I wasn't sure if I heard you
19 say those or not.

20 JUDGE CLARK: Okay, so why don't we start
21 there to 78, commencing with 81C through 89, 90C through
22 116, 118C through 133, 134 through 143, 144 through 150,
23 152C through 153C, and 154. All right.

24 MS. ANDERL: I believe Your Honor has
25 excluded all of the ones to which Qwest had previously

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1 lodged an objection, and as we walk through those I will
2 double check that to make sure I didn't miss any.

3 JUDGE CLARK: Right. And in addition I
4 understand that there was a potential objection from
5 Public Counsel to 117, which you don't need to address
6 now, we will get to that, that may have been resolved,
7 and then there are simply some new documents for which
8 we don't know whether or not there are objections yet.
9 I think the simplest way to do this is to use the
10 revised exhibit list that you have and address these in
11 the order in which the witness would appear.

12 All right, so is there anyone who is
13 unwilling to stipulate to the admission of all of the
14 exhibits so designated?

15 People are shaking their head negatively,
16 which doesn't pick up real well on the microphones.

17 MS. ANDERL: No objection, Your Honor.

18 JUDGE CLARK: All right.

19 Mr. Melnikoff?

20 MR. MELNIKOFF: No objection, Your Honor.

21 JUDGE CLARK: Mr. ffitch?

22 MR. FFITCH: And these are the non-shaded
23 exhibits that you're referring to, Your Honor, that you
24 just read into the record?

25 JUDGE CLARK: Yes, these are the exhibits for

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1 which no one has lodged an objection.

2 MR. FFITCH: Your Honor, we don't have any
3 objection. I will preserve the right to make objections
4 to questioning regarding the exhibits at the hearing,
5 and it may be that as the questioning develops there
6 might develop a basis for challenging the exhibit. But
7 other than that reservation, Your Honor, we have no
8 objection to that list.

9 JUDGE CLARK: Mr. Trautman?

10 MR. TRAUTMAN: No objection.

11 JUDGE CLARK: All right, these exhibits are
12 admitted into the record through stipulation.

13 All right, the first document that I have on
14 my list that I believe is actually a new document is
15 Exhibit 25; is that correct?

16 MS. ANDERL: Your Honor, I agree that that is
17 the first document.

18 JUDGE CLARK: Oh, no, that's one to which
19 Qwest lodged an objection, sorry, on the basis of
20 relevancy, please proceed.

21 MR. FFITCH: Your Honor, I have advised Qwest
22 that Public Counsel is withdrawing that
23 cross-examination exhibit, that should resolve their
24 objection.

25 MS. ANDERL: Yes, it does.

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1 JUDGE CLARK: All right.

2 The next document in order is 156C, a
3 confidential document which is Qwest's response to
4 Public Counsel DR Number 101.

5 MR. FFITCH: Your Honor, that is a newly
6 submitted exhibit from Public Counsel, this is a DR
7 response that we received after the initial, if I recall
8 correctly, after the initial time for filing of
9 cross-exhibits.

10 JUDGE CLARK: All right, and when was that
11 document received?

12 MR. FFITCH: If I may have a moment, Your
13 Honor, the exhibit itself does not state the date of
14 production.

15 JUDGE CLARK: Right.

16 MR. FFITCH: Let me check my log. The log
17 indicates, Your Honor, I received that on March 6th.

18 JUDGE CLARK: All right, and the prehearing
19 conference was held on March 7th.

20 MR. FFITCH: Yes, Your Honor.

21 JUDGE CLARK: And so.

22 MR. FFITCH: By the time we received this, we
23 were in the middle of the production of the other
24 cross-exhibits, and so the timing was such that we
25 weren't able to examine and determine whether it was to

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1 be included due to just the timing of the production
2 process and other activities.

3 JUDGE CLARK: All right, Ms. Anderl, do you
4 have an objection to receipt of 156C?

5 MS. ANDERL: We do not.

6 JUDGE CLARK: Does any other party have an
7 objection?

8 MR. TRAUTMAN: No.

9 MR. MELNIKOFF: No, Your Honor.

10 JUDGE CLARK: All right, hearing none, 156C
11 is received.

12 157, Mr. Ffitch.

13 MR. FFITCH: Your Honor, this is another
14 subsequently filed exhibit. This is cited by
15 Mr. Teitzel in his testimony, and we realized that it
16 was not actually part of the record. We do have
17 questions about it, and we submitted it for that
18 purpose.

19 JUDGE CLARK: All right, and was this the
20 direct or rebuttal testimony?

21 MR. FFITCH: Rebuttal testimony.

22 JUDGE CLARK: All right.

23 Ms. Anderl.

24 MS. ANDERL: Your Honor, I'm struggling with
25 this, because technically of course we could object on

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1 the basis of timeliness, but in these regulatory
2 proceedings there's always there but for the grace of
3 God go I sort of lingering in the back of your mind. I
4 don't know why this wasn't offered at the prehearing
5 conference. Certainly Mr. Teitzel's testimony was filed
6 on February 16th, and his citation to this Form 477 was
7 out there in the record early enough for someone to have
8 known that they might want to cross on this particular
9 document. On the other hand, aside from that, I have no
10 substantive objection and would therefore waive any
11 timeliness objection I might have.

12 JUDGE CLARK: All right.

13 Any other party object?

14 MR. TRAUTMAN: No, Your Honor.

15 JUDGE CLARK: All right, well --

16 Mr. Melnikoff, I'm sorry, I didn't mean to cut you off.

17 MR. MELNIKOFF: No, Your Honor.

18 JUDGE CLARK: All right, well, this sort of
19 just brings to point my concern that exhibits come in
20 late. This is probably an excellent example, because no
21 party is indicating that the surprise would in any way
22 prejudice them, nonetheless I hope that this is a
23 cautionary measure to recognize that these exhibits,
24 that the Commission does require the predistribution of
25 cross-examination exhibits, and that it is necessary to

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1 get these documents to the other parties in a timely
2 manner so that we don't have to address the issue of
3 prejudice. I am going to without objection allow
4 Exhibit 157.

5 The next document I have is Exhibit 46C,
6 that's also a Public Counsel exhibit, Mr. ffitch.

7 MR. FFITCH: This is Qwest's objection, Your
8 Honor.

9 JUDGE CLARK: I'm sorry.

10 Ms. Anderl.

11 MS. ANDERL: Yes, Your Honor, let me just
12 turn to that document. Exhibit 46C is Qwest's response
13 to Public Counsel Data Request Number 50, that is a
14 document that contains both confidential and
15 non-confidential data. The question that was asked
16 relates to the current estimates of relative use of
17 cable facilities and central office equipment that Qwest
18 has made in order to comply with Section 64.901(b)(4) of
19 the FCC Rules and requests for all workpapers and
20 support documentation to develop these estimates.
21 Although we did respond to that request in discovery,
22 for purposes of the hearing we object to the material as
23 not relevant to any disputed issues.

24 JUDGE CLARK: All right, Mr. ffitch.

25 MR. FFITCH: Your Honor, this is relevant to

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1 an issue that was addressed by both Public Counsel
2 witness Dr. Loube and Staff witness Paula Strain, and
3 that is the issue of the correct accounting for DSL
4 revenues in intrastate Washington operations. This is
5 some of the underlying information that's used to make
6 that analysis, and that's why we requested it, and we
7 would like it to be part of the record for that reason.

8 I will note that in further reviewing this
9 exhibit, we determined that there appear to be either
10 omissions or information missing or maybe just a
11 nonresponsive answer I meant to say, in that we had
12 asked for information about cable facilities, and in
13 reviewing the actual response we did not see any
14 information about cable facilities in this particular
15 document. So that's an additional issue with this
16 exhibit that I think we would ask -- I think what
17 perhaps we should do is confer with the company at a
18 break and determine if this is the complete document, if
19 there is other information that was inadvertently not
20 provided with regard to cable facilities, and then we
21 can determine whether we need to go forward with the
22 exhibit.

23 JUDGE CLARK: All right, so you just want to
24 hold in abeyance at this juncture addressing this
25 exhibit?

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1 MS. ANDERL: That would be fine with Qwest.

2 MR. FFITCH: Unless Qwest can answer that
3 question right now with regard to this information
4 that's been provided, is it complete?

5 MS. ANDERL: I would need to review the
6 document with my witness.

7 JUDGE CLARK: Yeah, I'm not going to ask them
8 to respond to that at this juncture.

9 The next document I have is 158C.

10 MS. ANDERL: Your Honor, I don't know if you
11 mind if I kind of shortcircuit this. I can tell you we
12 have no objection before Mr. ffitch explains what the
13 document is, but if you want on the record the
14 background and why the document is coming in when it is,
15 then I will hold my tongue.

16 JUDGE CLARK: Mr. ffitch, is this the same as
17 the previous document? This is a supplemental response.

18 MR. FFITCH: Supplemental response received,
19 Your Honor, it's actually a response to a Staff data
20 request.

21 JUDGE CLARK: But they're not the movant.

22 MR. FFITCH: Right, I'm just explaining what
23 the document is.

24 JUDGE CLARK: Okay.

25 MR. FFITCH: And this again came in late,

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1 Your Honor, it was late received, requested later in the
2 process and answered after it was possible to include it
3 in the prior filing of exhibits.

4 JUDGE CLARK: Okay, with the same cautionary
5 note about giving documents to the Commission in
6 compliance with the predistribution guidelines
7 established in the docket, I will admit without
8 objection 158C.

9 58C was supplemented on March 9th, it's a
10 document that was originally filed and simply has a
11 correction to the exhibit. Any objection, Ms. Anderl?

12 MS. ANDERL: Your Honor, at this point we do
13 not have an objection, although -- no, we have no
14 objection.

15 JUDGE CLARK: Mr. Trautman?

16 MR. TRAUTMAN: No objection.

17 JUDGE CLARK: Mr. Melnikoff.

18 MR. MELNIKOFF: No objection, Your Honor.

19 JUDGE CLARK: All right, 58C is received.

20 63C indicated that it was to be supplemented
21 today. Immediately before going on the record this
22 morning Mr. ffitich did distribute revised copies to 63C.
23 Has everyone had an adequate opportunity to review that
24 revised document, Ms. Anderl?

25 MS. ANDERL: Yes, Your Honor, we have no

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1 objection to it.

2 JUDGE CLARK: Mr. Melnikoff?

3 MR. MELNIKOFF: No objection, Your Honor.

4 JUDGE CLARK: And Mr. Trautman?

5 MR. TRAUTMAN: No objection.

6 JUDGE CLARK: All right, Exhibit 63C as
7 modified, I mean as supplemented March 13 is received.

8 And the next one is 64C; is that correct?

9 MS. ANDERL: No.

10 JUDGE CLARK: 159?

11 MS. ANDERL: Yes.

12 JUDGE CLARK: I'm sorry.

13 Ms. Anderl.

14 MS. ANDERL: Yes, 159, and we did not have a
15 chance to lodge an objection to this document
16 previously. We do object to it as not relevant. I'm
17 not really sure what Public Counsel wishes to make of
18 this document. It's a question that Public Counsel
19 asked Qwest, Qwest objected to the question in
20 discovery, there's no substantive information attached
21 to it, I do not believe that Public Counsel's question
22 or Qwest's objection makes more or less likely any
23 relevant or disputed fact in the proceeding and is
24 therefore not a relevant document.

25 JUDGE CLARK: Mr. ffitch.

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1 MR. FFITCH: Your Honor, Qwest's answer time
2 and service quality issues generally are an issue in
3 this case. This is a question that asks for underlying
4 information about Qwest's operations with regard to
5 responding to customer repair calls and business calls.
6 We would like to use it in cross-examination. We think
7 it's clearly relevant to the service quality issues in
8 the case. Service quality is specifically mentioned in
9 the underlying statute that provides the basis for their
10 application, so we believe it is relevant.

11 JUDGE CLARK: All right, and the document
12 actually contains only the question and the objection;
13 is that accurate?

14 MR. FFITCH: Correct.

15 JUDGE CLARK: All right, the objection is
16 sustained.

17 Exhibit 163, that's a document that was
18 distributed immediately before going on the record this
19 morning by Mr. ffitch. Has everyone had an adequate
20 opportunity to review?

21 MS. ANDERL: Yes, Your Honor. Qwest did
22 supplement this response on Friday and does not object
23 to the supplemental response being made an exhibit in
24 this docket.

25 JUDGE CLARK: Mr. Melnikoff?

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1 MR. MELNIKOFF: No objection, Your Honor.

2 JUDGE CLARK: And Mr. Trautman?

3 MR. TRAUTMAN: No objection.

4 JUDGE CLARK: All right, Exhibit 163 is
5 received.

6 Exhibit 69, Ms. Anderl.

7 MS. ANDERL: I'm sorry, Your Honor, 79?

8 JUDGE CLARK: I'm sorry, 79, I'm looking at
9 79 and clearly saying something different.

10 MS. ANDERL: I think you were. Qwest did
11 object to 79 and 80, I think they're related and maybe
12 we can handle them together. They were timely filed, no
13 question about that, but Qwest does not believe that
14 either set of documents is relevant to any disputed
15 issues. It may be that Mr. ffitch can explain today or
16 through his foundational questions of Mr. Reynolds what
17 disputed issue in this docket these documents would have
18 a tendency to make more or less likely. But at this
19 point, looking at the documents on their face, they are
20 a number of screen shots from the Qwest web site, they
21 don't to my mind address any particular points that are
22 made, put in dispute by either the AFOR settlement or
23 the parties' testimony in this docket, and therefore we
24 were objecting to them on that basis.

25 JUDGE CLARK: Mr. ffitch.

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1 MR. FFITCH: Your Honor, the two exhibits
2 relate to, as Ms. Anderl has indicated, Qwest's Customer
3 Service Guarantee Program, and these are the web pages
4 that relate to that. The Customer Service Guarantee
5 Program is a part of the proposed settlement in this
6 case, and we believe that it's relevant information for
7 purposes of examining the nature of the program itself
8 that's currently in place, and we do have some questions
9 for witnesses about the Customer Service Guarantee
10 Program and about the web site.

11 JUDGE CLARK: All right, the documents both
12 reference a topic that is addressed in prefiled
13 testimony that was previously admitted this morning, the
14 objection to 79 and 80 is overruled, and both documents
15 are received.

16 Exhibits 160 through 162C are new documents
17 presented by Public Counsel to which a party has not yet
18 had an opportunity to object; is there any objection to
19 the receipt of any of these documents, Ms. Anderl?

20 MS. ANDERL: Thank you, Your Honor, no
21 objection from Qwest.

22 JUDGE CLARK: Mr. Melnikoff?

23 MR. MELNIKOFF: No objection, Your Honor.

24 JUDGE CLARK: And Mr. Trautman?

25 MR. TRAUTMAN: No objection.

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1 JUDGE CLARK: All right, without objection
2 Exhibits 160 through 162C are received.

3 Mr. ffitch, have you been able to adequately
4 address your concerns with cross-examination Exhibit
5 117?

6 MR. FFITCH: Yes, Your Honor, it's my
7 understanding that Staff does have questions of
8 Dr. Loube with regard to that exhibit, and therefore we,
9 on that understanding, we don't have any objection to it
10 coming in.

11 JUDGE CLARK: All right no other party lodged
12 an objection to its receipt, 117 is received.

13 126C I have a note in here that a revised
14 portion of this document was to be refiled, and I just
15 want to clarify that that is the information that was
16 submitted by Public Counsel on March 9th; is that
17 correct, Mr. ffitch?

18 MR. FFITCH: That's correct, Your Honor, and
19 this has been refiled. I have additional copies in the
20 hearing room if the Bench would like copies or if other
21 parties need copies. We did provide I believe 15 copies
22 with the filing, and my understanding is that our staff
23 served other parties in the normal course, but I do have
24 copies in the hearing room as well.

25 JUDGE CLARK: All right, actually I will take

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1 advantage of 3 additional copies for the commissioners,
2 but I just wanted to confirm that it is the document
3 that was filed on the 9th of March, that is the
4 appropriate document?

5 MR. FFITCH: Yes, Your Honor.

6 JUDGE CLARK: Thank you.

7 And 126C is received with that clarification.

8 The prefiled testimony of Wilford Saunders
9 has been designated as Exhibit 164, and no party had an
10 objection to the motion to supplement testimony, so I'm
11 assuming there is no objection to the receipt of this
12 document. Is that correct, Ms. Anderl?

13 MS. ANDERL: Oh, I'm sorry, Your Honor,
14 you're correct, there is no objection.

15 JUDGE CLARK: All right.

16 Commission Staff had an objection to the
17 receipt of Exhibit 151.

18 MR. TRAUTMAN: Yes, Your Honor, this is a
19 newspaper article from the San Francisco Chronicle dated
20 January 5th, 2007, that is sought to be brought in
21 through Mr. Wilson. Staff objects first because
22 Mr. Wilson is not the author of the article, has no
23 knowledge obviously, direct knowledge of the information
24 in it, and did not create it. It is hearsay, and in
25 fact it doesn't even have information about what has

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1 occurred, it has information about what AT&T allegedly
2 would do with some of their prices. And thirdly, it's
3 not relevant to the issues in this proceeding which
4 involves Qwest's AFOR and the various services and the
5 rates of Qwest, and allegations as to what AT&T will do
6 or may have done or may do in the future are simply not
7 relevant to the issues in this docket.

8 JUDGE CLARK: Mr. ffitch.

9 MR. FFITCH: Your Honor, we certainly
10 acknowledge that it's not authored by the witness. We
11 believe it's a legitimate cross-examination exhibit
12 going to the credibility of Mr. Wilson's theoretical
13 testimony with regard to economics and also the general
14 state of the telecommunications market. The record is
15 quite replete with, if you can modify the word replete,
16 with general statements about the telecommunications
17 market in the United States from a number of parties,
18 and we think this is another useful piece of information
19 that is intended simply for cross-examination purposes,
20 not for the necessarily actual factual material in the
21 record, but as a cross-exhibit going to the credibility
22 of Mr. Wilson's testimony on the question of
23 particularly pricing flexibility for features, which is
24 the subject of the article and the subject of some of
25 the testimony in the case.

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1 JUDGE CLARK: Mr. Trautman.

2 MR. TRAUTMAN: If I may briefly respond, I
3 would suggest that although Mr. ffitch says that the
4 truth of the matter asserted isn't relevant, in fact it
5 would be highly relevant. In other words, one would
6 have to assume that this is being offered for the truth
7 of the matter asserted, because if in fact these alleged
8 price increases had not occurred or have been changed,
9 then the underlying basis for whatever relevancy this
10 would have would be stripped away. And again, there is
11 no -- we have no way of crossing this exhibit, we don't
12 know what has occurred. And I would also indicate that
13 the fact that there may be testimony in the record that
14 there is competition in the industry is a highly
15 different question from whether what AT&T allegedly will
16 do with their prices is relevant to what Qwest -- to
17 what would happen upon passage of an AFOR.

18 JUDGE CLARK: Ms. Anderl, did you also wish
19 to be heard on this document?

20 MS. ANDERL: Thank you, Your Honor, yes, we
21 would, upon hearing Public Counsel's response, we would
22 join in the objection. I believe that if this document
23 is in fact to be used to impeach the credibility of
24 Mr. Wilson's testimony, the truth of matters asserted in
25 the article are of paramount importance, and it would be

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1 inappropriate to admit such a document which was not
2 prepared under oath and for which the author is not
3 available for cross-examination.

4 JUDGE CLARK: Anything further,
5 Mr. Melnikoff?

6 MR. MELNIKOFF: I thought I heard Mr. ffitch
7 indicate that it's for cross-examination purposes only,
8 maybe it won't be offered into the record as evidence, I
9 guess that's my question to counsel.

10 JUDGE CLARK: Well, hopefully we're
11 addressing the admission of all of these exhibits now,
12 or this little exercise is really truly for not.

13 MR. MELNIKOFF: Well, if it's not being
14 offered into the record for its evidentiary value, then
15 we would have no position or we would not object. If
16 it's being offered for the underlying factual
17 circumstances that it allegedly states, then we would
18 object to it.

19 JUDGE CLARK: Mr. ffitch.

20 MR. FFITCH: Nothing further, Your Honor.

21 JUDGE CLARK: All right, the objection to 151
22 is sustained.

23 And I believe that brings us to the end of
24 the exhibit list. Are there any further exhibits that
25 we need to discuss?

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1 MR. FFITCH: I have one matter, Your Honor.

2 JUDGE CLARK: Yes, is it an exhibit,
3 Mr. ffitch?

4 MR. FFITCH: It's related to Exhibit 163C,
5 and at this time I would simply like to advise the Bench
6 of an issue, and then we'll consult with the company at
7 a break. This is the new exhibit, the response to
8 Public Counsel 88 that was supplemented last Friday.
9 The new matter is that we discovered that the supplement
10 did not include information for January 2006. These are
11 trunk blocking reports, that's what the exhibit consists
12 of. We think that may be an inadvertent omission. We
13 have a copy of the January 2006 trunk blocking reports
14 that we obtained through other means than, you know,
15 this particular response. We need to talk with the
16 company and see if we can add that to the exhibit so the
17 exhibit is complete.

18 JUDGE CLARK: Okay, so you want the
19 opportunity to discuss with counsel further
20 supplementing Exhibit 163?

21 MR. FFITCH: To make it complete, yes, Your
22 Honor.

23 JUDGE CLARK: All right. And was there a
24 reason why we didn't discuss this when we were
25 discussing 163 and admitting it?

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1 MR. FFITCH: Yes, Your Honor, it was an
2 oversight on my part.

3 JUDGE CLARK: All right, we'll then hold that
4 one in abeyance until we know the content of the
5 document that we will be addressing.

6 All right, are there any other matters
7 related to the exhibits that we need to address this
8 morning?

9 Everybody is shaking their heads negatively.

10 MR. TRAUTMAN: We did have one procedural
11 matter as Mr. Saunders has adopted Ms. Russell's
12 testimony.

13 JUDGE CLARK: Yes.

14 MR. TRAUTMAN: And I have talked with
15 Mr. ffitch about this as well. We were going to handle
16 his testimony similarly to Mr. Reynolds in that they
17 would take the stand for the settlement, and then as
18 Mr. Reynolds will then be brought back later on his
19 testimony, we were going to suggest the same as far as
20 the adopted testimony of Ms. Russell, and I believe
21 Mr. ffitch agreed with that procedure.

22 JUDGE CLARK: All right, I understand,
23 Mr. ffitch, that you would then be given the opportunity
24 to examine Mr. Saunders regarding the terms and
25 conditions of the settlement and his testimony in

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1 support thereof, and then at a later portion in the
2 hearing you would then be given the opportunity to
3 cross-examine Mr. Saunders regarding Ms. Russell's
4 testimony; is that your understanding as well?

5 MR. FFITCH: Yes, thank you, Your Honor, we
6 would examine him with regard to service quality in the
7 time slot allowed for Ms. Russell.

8 JUDGE CLARK: All right, thank you.

9 MS. ANDERL: Your Honor, the only other issue
10 we have with regard to exhibits is that two of our
11 witnesses have very, very minor errata to their
12 testimony and two or three corrections at the most and
13 would like to do that when they are taken up on the
14 stand in the order that we're going to present them.

15 JUDGE CLARK: Ordinarily we don't address
16 those types of matters with the witnesses on the stand
17 and the commissioners present. These are very brief
18 matters?

19 MS. ANDERL: Very brief.

20 JUDGE CLARK: All right, with that proviso,
21 which I'm going to hold you to, I will allow that.

22 MS. ANDERL: Thank you.

23 MR. FFITCH: Your Honor, we have a similar
24 one word minor errata when Dr. Loube takes the stand.

25 JUDGE CLARK: Again that would be brief, I am

0212

1 assuming.

2 MR. FFITCH: Very quick, Your Honor.

3 JUDGE CLARK: All right.

4 Are there any other preliminary matters that
5 we need to address?

6 All right, what I will do at this juncture
7 then is take a recess, give the parties the opportunity
8 to confer.

9 Sorry, Mr. ffitch, do you have something
10 further?

11 MR. FFITCH: I apologize, Your Honor, I
12 didn't realize that you were going to close the session.
13 There were a couple of other things I just wanted to
14 mention of a procedural nature.

15 JUDGE CLARK: Please.

16 MR. FFITCH: First of all, we have agreed to
17 provide the Department of Defense with a complete set of
18 our cross-exhibits in the hearing room today, and they
19 have agreed to execute a copy of the protective order so
20 that they can receive the full set, and so we will be
21 taking care of that today.

22 In addition, I have advised Ms. Anderl that
23 based on the understanding that there is no objection to
24 Mr. Grate's exhibits, with the outstanding issue of I
25 believe it's 46C, we have determined that we don't have

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1 any questions for Mr. Grate in the hearing, so I wanted
2 to advise the Bench of that.

3 The final matter, which is a fairly
4 significant one I think, is, and again I spoke with
5 Ms. Anderl this morning, we do have, as often happens in
6 these cases, we have a number of questions that involve
7 confidential material. And often we, you know, there's
8 basically two ways to approach that. One is that we
9 point to the document and nobody says the words out
10 loud, the other is that we close the hearing room.
11 There's enough of that, certainly in my
12 cross-examination in looking at a lot of the
13 confidential information, having witnesses look at it
14 and talk about it, that I was going to suggest that Your
15 Honor at least consider closing the hearing room for
16 cross-examination. I believe we have -- it may be
17 easier to do in this case with the fewer parties, I
18 don't know if we have anybody participating on the
19 bridge line, it might just be an easier way to go to
20 take that approach, so I wanted to bring that up for the
21 Bench's consideration.

22 JUDGE CLARK: First of all, to the best of my
23 knowledge there is no party participating on the bridge
24 line this morning. There may be members of the advisory
25 staff listening to this particular portion of the

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1 proceeding, but those are individuals who would not be
2 excluded. To the extent any party does need to use the
3 individual numbers or address the actual content of
4 confidential information, it will be necessary to
5 conduct that portion of the proceeding in camera, and
6 individuals who have not signed a copy of the protective
7 order and agreed to abide by the terms and conditions
8 will be excluded from the hearing room for the in camera
9 session.

10 It is very disruptive to conduct in camera
11 proceedings, and for that reason during the recess I
12 would like the parties to the extent possible either
13 this morning or on the lunch recess confer and make a
14 list of the documents that you believe would need to be
15 addressed during an in camera session so that we do not
16 have to go into in camera session, exclude the public,
17 have two questions, let everyone back in, and five
18 minutes later do it again. And so rather than doing a
19 process that is very disruptive, I would like you to
20 consolidate to the extent practicable those confidential
21 exhibits so that we can hopefully conduct one in camera
22 proceeding. That may in fact necessitate calling some
23 witnesses out of order, and it may necessitate calling
24 some exhibits out of order, but I think that the lack of
25 disruption and inconvenience to the public would

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1 outweigh that. All right.

2 MR. FFITCH: Thank you, Your Honor, we'll
3 consider that and weigh whether it's, you know, smoother
4 and more efficient to simply try to conduct the
5 examination without talking about the numbers, we'll
6 take a look at that, thank you.

7 JUDGE CLARK: Right, if the parties are able
8 to make their point without using the substance of a
9 confidential response or confidential testimony, that's
10 certainly less disruptive and preferable, but I don't
11 want to restrict anyone's ability to be able to examine
12 on those numbers or develop the record if you so desire.

13 MR. FFITCH: Thank you.

14 JUDGE CLARK: Are there any other procedural
15 matters that we should address?

16 MS. ANDERL: No, Your Honor.

17 JUDGE CLARK: All right, we have several
18 things then to do during this recess, including having
19 counsel confer regarding those exhibits. I'm going to
20 assume a recess of approximately 15 minutes. If the
21 parties need additional time, please advise me. We're
22 at recess until approximately 10:15.

23 (Recess taken.)

24 JUDGE CLARK: Good morning, we're back on the
25 record, the record should reflect at this juncture of

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1 the hearing we are joined by Chairman Mark Sidran,
2 Commissioner Patrick Oshie, and Commissioner Philip
3 Jones.

4 The first item on this hearing agenda is the
5 presentation of the multiparty settlement agreement.
6 Ms. Anderl.

7 MS. ANDERL: Thank you, Your Honor, Lisa
8 Anderl representing Qwest Corporation. Good morning,
9 Chairman Sidran, Commissioner Oshie, Commissioner Jones.
10 I have been asked to present on behalf of Commission
11 Staff and Qwest a summary of the settlement agreement
12 that we have reached with Staff and many of the other
13 parties in this docket. We're pleased to do that today.

14 Qwest has received regulatory flexibility in
15 nearly all of its jurisdictions to date. In some of
16 those states, it's been through the regulatory process
17 such as we're following here resulting in an AFOR. In
18 other states it's been a legislative solution where the
19 laws regarding how pervasively we are regulated have
20 simply been changed. In Washington we are pleased to
21 bring a regulatory solution before the Commission in the
22 form of the plan of AFOR that has been identified as a
23 portion of Exhibit Number 4 in the record.

24 Qwest and Staff and the interveners in this
25 docket have signed the settlement agreement. The

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1 interveners include WeBTEC, the Joint CLECs, the
2 Department of Defense, and the Northwest Public
3 Communications Council also known as the Northwest
4 Payphone Association. This settlement agreement is
5 entered into by all of the parties to this docket except
6 for Public Counsel. Qwest believes that the plan is in
7 the public interest, that the plan meets the statutory
8 criteria for approval, and we urge the Commission to
9 approve the plan without further modification.

10 The plan itself is a modest proposal that
11 puts Qwest under a regulatory scheme more in line with
12 how some of its competitors are regulated. The evidence
13 in this docket will show that there are many competitors
14 who are not regulated at all. When we say that this
15 plan puts Qwest more in line with how some of its
16 competitors are regulated, what we intend by that is to
17 be referencing the CLEC competitors and how those
18 companies are regulated by this Commission. To that
19 end, the plan contains Appendix A that details which of
20 the Washington regulatory requirements are waived,
21 modified, or left unchanged under the plan.

22 Under the plan, Qwest will no longer be
23 subject to rate of return regulation and no longer
24 subject to certain tariffing and reporting requirements.
25 The plan is subject to certain transition period

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1 requirements and certain exceptions. It is a four-year
2 plan. The exceptions to the plan are listed in the plan
3 and include a number of services that will remain in the
4 tariff including the stand alone LFR for a flat rated
5 residential line. That also includes the measured
6 service that we provide to residence customers.
7 Directory listings, Qwest Customer Service Guarantee
8 Plan, Washington Telephone Assistance Plan services,
9 Life Line services, 911 services, pay phone services,
10 access services in the form of switched access, as well
11 as Qwest's wholesale obligations under the Act including
12 interconnection, resale, and unbundled network elements.
13 None of these services or Qwest's obligations associated
14 with these services is affected by the plan of AFOR, and
15 they will continue to be regulated as they have been in
16 the past.

17 During the period of the plan, there are what
18 are called transition period requirements. During this
19 four years, Qwest will remain fully subject to the
20 Commission's service quality rules and reporting
21 requirements. Qwest is also subject to a reporting
22 requirement under the Customer Service Guarantee Plan
23 that would be modified in the plan of AFOR from
24 reporting once a month to reporting semiannually. This
25 is something that Staff has agreed is appropriate.

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1 There is a \$13.50 rate cap on the 1FR. The 1FR is
2 currently priced at \$12.50, so there would be a \$1
3 increase possible over the period of the plan. It is
4 linked to and conditioned on Qwest's maintenance of its
5 Customer Service Guarantee Program in its traffic as
6 well as the addition of three specific enhancements to
7 the customer service measures that are in addition to
8 what Qwest is subject to today. Those customer service
9 enhancements relate to delayed orders, out of service
10 conditions, and trouble report conditions.

11 The parties to the settlement agreement have
12 also agreed to other conditions related to deaveraging
13 for certain services. Qwest has made commitments with
14 regard to certain services not to deaverage resident,
15 I'm sorry, not residence, rural and urban with regard to
16 residential features and packages and certain business
17 services.

18 There's also an agreement that Qwest will
19 continue to file the long form annual report as opposed
20 to the shorter form CLEC annual report. Furthermore,
21 Qwest will no longer prepare and maintain separate
22 jurisdictionally unique books for Washington, but will
23 be permitted to keep one set of books for both the FCC
24 and the Commission. Qwest will include a number of
25 Washington specific adjustments when it files its report

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1 and provide the financial and accounting information to
2 the Commission that are previous Washington rate case or
3 other adjudicative proceeding adjustments. In addition,
4 there is a modification under the plan of Qwest's
5 obligation to report securities transactions,
6 transactions with affiliates, and to obtain approval for
7 certain property transfers.

8 Finally, Qwest has made a commitment in the
9 plan to further the deployment of broadband services and
10 advanced services to underserved areas in the state by
11 virtue of making a commitment to deploy DSL to the seven
12 remaining wire centers that Qwest has in the state that
13 do not have DSL deployed, and the plan details the
14 obligation there, lists the seven wire centers including
15 places such as Elk and Waitsburg, Springdale, Northport.
16 Qwest will provide a report regarding the implementation
17 of that plan at least six, no later than six months
18 prior to the end of the AFOR plan so that Qwest's
19 progress on the DSL deployment can be reviewed as a part
20 of the comprehensive Commission review that is
21 anticipated during the last six months of the plan of
22 AFOR.

23 That summarizes the plan. Staff and Qwest
24 are pleased to present two witnesses who will also
25 answer questions about the plan, and I am available for

0221

1 questions as well, thank you.

2 JUDGE CLARK: Is there any inquiry for
3 Ms. Anderl before we proceed with the testimony of the
4 panel?

5 All right, if you would rise, please.

6 (Witnesses MARK S. REYNOLDS and WILFORD
7 SAUNDERS were sworn.)

8 JUDGE CLARK: Thank you, please be seated.

9 Ms. Anderl, is there any preliminary
10 introduction of the panel?

11

12 Whereupon,

13 MARK S. REYNOLDS AND WILFORD SAUNDERS, JR.,
14 having been first duly sworn, were called as witnesses
15 herein and were examined and testified as follows:

16

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

18 BY MS. ANDERL:

19 Q. Mr. Reynolds, would you please state your
20 name and your business address for the record.

21 A. (Reynolds) Yes, my name is Mark Reynolds, and
22 my business address is 1600 Seventh Avenue, Room 3206,
23 Seattle, Washington 98191.

24 Q. And, Mr. Reynolds, are you the witness that
25 Qwest has put up today to support and respond to

0222

1 questions about the stipulation and settlement agreement
2 including the revised plan of AFOR?

3 A. (Reynolds) I am.

4 MS. ANDERL: Thank you.

5 JUDGE CLARK: Mr. Trautman.

6 MR. TRAUTMAN: Thank you.

7

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

9 BY MR. TRAUTMAN:

10 Q. Mr. Saunders, could you give your name and
11 business address for the record.

12 A. (Saunders) My name is Wilford Saunders, Jr.,
13 my business address is 1300 South Evergreen Park Drive
14 Southwest, Olympia, Washington 98504.

15 Q. What is your position with the Commission?

16 A. (Saunders) My position with the Commission is
17 Assistant Director Telecommunications.

18 Q. And have you filed today with the Commission
19 Exhibit 6, which is your testimony supporting the
20 multiparty settlement?

21 A. (Saunders) Yes, I have.

22 Q. And are you Staff's witness today to also
23 answer questions regarding the settlement agreement?

24 A. (Saunders) Yes, I am.

25 MR. TRAUTMAN: Thank you.

0223

1 JUDGE CLARK: Thank you.

2 Any examination, Mr. ffitch?

3 MR. FFITCH: Yes, thank you, Your Honor.

4 Good morning, Commissioners. Good morning, Mr. Saunders
5 and Mr. Reynolds, I have a few questions.

6

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

8 BY MR. FFITCH:

9 Q. I am going to direct my questions this
10 morning to you, Mr. Saunders, in your capacity as the
11 Staff sponsor of the settlement and as the testimonial
12 witness of your Exhibit 6. I understand that
13 Mr. Reynolds is there if you need him for any reason to
14 help you with the questions, obviously he's present on
15 the panel also. But my questions will be directed to
16 you, and I have reserved, essentially reserving my
17 questions to Mr. Reynolds until he comes up at a later
18 time.

19 Let me start off with your Exhibit 6 on page
20 2, and I'm looking at line 7 there, lines 7 and 8; do
21 you have that?

22 A. (Saunders) Yes.

23 Q. And you indicate there that this is an
24 agreement that's been reached between all parties,
25 correct?

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1 A. (Saunders) Between all parties to this
2 proceeding except the Public Counsel section of the
3 Attorney General's Office.

4 Q. Right. Now it's true, is it not, that the
5 other interveners in this case other than Public Counsel
6 had narrow interests and have settled this case on a
7 narrow basis as specified in their own supporting
8 statements, correct?

9 A. (Saunders) It's a true statement that the
10 intervening parties have settled the case as described
11 in their separate areas.

12 Q. All right. And as a general proposition, the
13 majority of the components of this AFOR plan are not
14 specifically supported by the other interveners, they
15 simply have indicated they are not opposing the AFOR
16 plan and have asked for some specific provisions which
17 satisfied their own specific interests; isn't that
18 right?

19 A. (Saunders) I believe it is correct that the
20 interveners' narrative, which I can refer to if you
21 would like me to check, indicates that they are not
22 opposing the plan.

23 Q. And at lines 12 and 13 you state that this
24 plan is being submitted and should be considered under
25 the provisions of RCW 80.36.135?

0225

1 A. (Saunders) Yes.

2 Q. Now counsel for the company has walked
3 through the basic components of the plan, and I would
4 like to ask you a few questions about some elements that
5 are not in the plan. First of all, obviously there's no
6 freeze of rates at the current level in this plan; is
7 that correct, the basic 1FR residential rate is not
8 frozen at current levels in this plan?

9 A. (Saunders) Correct.

10 Q. And what is the treatment of installation or
11 connection charges in this plan?

12 A. (Saunders) Neither installation nor
13 connection charges are addressed by the plan.

14 Q. Does that mean that those could be increased
15 by Qwest without approval of the Commission?

16 A. (Saunders) I don't know.

17 Q. Now can I ask you about features?

18 A. (Saunders) Yes.

19 Q. There's no freeze or cap on any of the
20 features the company offers and -- the company offers to
21 residential customers; is that correct?

22 A. (Saunders) Unless any of them are covered by
23 the exceptions section of the plan, they are not
24 addressed.

25 Q. Are you aware that any of them are covered by

0226

1 the exceptions?

2 A. (Saunders) No, I am not.

3 Q. There are no exceptions for features in the
4 exceptions section; is that right?

5 A. (Saunders) Very well.

6 Q. And does this agreement require that features
7 be sold separately on an a la carte basis?

8 A. (Saunders) No.

9 Q. It does require that residential service be
10 sold on a stand-alone basis?

11 A. (Saunders) Yes.

12 Q. Is that right?

13 A. (Saunders) Yes.

14 Q. Does the agreement require that Qwest inform
15 its customers that stand alone residential service is
16 available?

17 A. (Saunders) There's no specific provision in
18 the agreement that describes -- that requires the
19 company to notify customers that the tariffed 1FR
20 service is in fact available, apart from the obligation
21 that they have to publish tariffs under existing
22 Commission rule and statute.

23 Q. All right. And that obligation, to
24 summarize, is that they file a tariff with the
25 Commission and that they post a sign in their business

0227

1 office that the tariffs are available for review; isn't
2 that what that --

3 A. (Saunders) Subject to check. I unfortunately
4 don't know the exact terms of all the rules; however, I
5 would say that that's subject to check an accurate
6 characterization.

7 Q. And the agreement eliminates the current
8 allowance to customers for one free directory assistance
9 call every month; is that correct?

10 A. (Saunders) The agreement lifts the
11 requirement that the company continue to provide a one
12 free directory assistance call for all customers. Some
13 classes of customers would retain that right under the
14 tariff as described in the exceptions, and the agreement
15 would not necessarily lift the company -- lift the
16 company's provision or remove the provision of that
17 directory assistance call. It merely gives the company
18 the option to change the way that it provides it or to
19 discontinue providing one free call to all customers.
20 In other words, the company has the option to continue
21 or to discontinue.

22 Q. What do you expect the company will do?

23 A. (Saunders) It's difficult for me to speculate
24 as to what the company's action might be.

25 Q. Well, here's a question I guess for

0228

1 Mr. Reynolds. Is it the company's intention to
2 discontinue the free call for directory assistance
3 except for the health related exception that's built
4 into the plan?

5 A. (Reynolds) It certainly gives us that option.
6 I haven't seen any specific plans to do that; however,
7 it was an important part of the settlement, and so I
8 would assume we might avail ourselves of that option.

9 Q. Are there any rate benefits or rate
10 reductions for any service for residential customers
11 that you can identify in the plan, Mr. Saunders?

12 A. (Saunders) The plan itself does not mandate
13 any rate reductions. However, Staff's conclusion and
14 Staff's opinion regarding the plan is that it is likely
15 to promote and preserve competition, which will likely
16 lead to benefits for customers either through provision
17 of better and more advanced services or through
18 reduction of overall customer prices through competition
19 among different customers, among different providers.

20 Q. Now this agreement does not contain any
21 service quality performance program of the type which
22 contains self executing penalties, does it?

23 A. (Saunders) No, it does not.

24 Q. And there is no provision in this agreement
25 that specifically addresses deployment of advanced

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1 services to underserved customer groups; is that
2 correct?

3 A. (Saunders) I'm not sure that I would agree
4 with that. However, the provisions in the plan that
5 address the deployment of advanced services are focused
6 primarily in the first instance on provision of advanced
7 services to underserved areas, those being the exchange
8 areas where DSL is not currently available in Qwest
9 territory, as described by Ms. Anderl. In addition, the
10 statute, as you apparently refer to, allows the
11 Commission to consider whether or not the plan will
12 result in the deployment of advanced services to
13 underserved populations. The plan, as you correctly
14 stated, does not specifically address that provision of
15 the statute. However, we feel that it is likely that
16 advanced services will be provided to underserved
17 classes as an overall result of Qwest's operation under
18 the alternative form of regulation. While not
19 specifically mandated, we think that it will be a
20 result.

21 Q. But there's nothing in -- that's a hope on
22 your part, but the plan doesn't actually address that
23 issue; is that correct?

24 A. (Saunders) Correct.

25 Q. It's true, is it not, that Qwest currently

0230

1 provides stand alone DSL?

2 A. (Saunders) It is.

3 Q. And in this agreement, does Qwest commit to
4 continue offering stand alone DSL ?

5 A. (Saunders) Not in this agreement.

6 Q. Does this agreement have any effect on
7 Qwest's obligations with respect to customer proprietary
8 network information, CPNI?

9 A. (Saunders) No, Qwest will still remain --
10 Qwest under the plan will not be relieved of any
11 obligation to comply with Commission Rule or Washington
12 Statute regarding the use of customer proprietary
13 network information.

14 Q. Do you agree with that statement,
15 Mr. Reynolds?

16 A. (Reynolds) That's correct.

17 Q. Let's go back and look at your Exhibit 6
18 again, if we could, Mr. Saunders, and go to page 5. I'm
19 looking at the last numbered section there, number 11,
20 which starts at line 11.

21 A. (Saunders) I am looking at line 11 of page 5.

22 Q. Page 5, and here you discuss provisions for
23 financial reporting. First let me ask you about the use
24 of this term transition throughout this agreement.
25 We're aware, I think we're all aware that the statute

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1 uses the term transition, but let me ask you if the use
2 of the term transition in this agreement binds the
3 Commission to any particular outcome at the end of the
4 four-year AFOR plan?

5 A. (Saunders) It does not bind the Commission to
6 any particular outcome at the end of the four-year plan
7 save that I think it would be fair to say that the
8 Commission could be expected to issue a decision of one
9 type or another at the end of the review period.

10 Q. But this agreement does not bind the
11 Commission to, for example, continue the AFOR in some
12 form after the end of the four years; is that correct?

13 A. (Saunders) If I may refer to the plan
14 specifically?

15 Q. Sure, go ahead.

16 A. (Saunders) Provision 2 of the plan states,
17 the terms of this plan --

18 Q. I'm sorry to interrupt, but could you give us
19 the page that you're on?

20 A. (Saunders) I'm looking at page 1 of Exhibit
21 1, this is the Qwest's Modified Proposal for AFOR
22 provided as an attachment to the settlement agreement, I
23 believe that it has been marked as Exhibit 4. Provision
24 2 of the plan for AFOR provides that:

25 The terms of this plan will be effective

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1 upon approval by the Commission and will
2 remain in effect for four years unless
3 extended or modified by Commission
4 order.

5 I think that the best way to understand and
6 interpret that in response to your question is that the
7 Commission is not bound to do anything except either to
8 consider and they may extend, modify, or not extend or
9 modify, their only obligation is to issue an order at
10 the end of the review period.

11 Q. Does the Commission have the authority under
12 this agreement to terminate the AFOR?

13 A. (Saunders) The statute provides authority for
14 the Commission to terminate the AFOR only with I believe
15 the consent of the company. However, in the context of
16 the current -- in the context of the current proposal
17 under the settlement, the Commission might have some
18 authority to do that in the context of modification.
19 That would call for a legal conclusion I think.

20 Q. Well, you're a lawyer, are you not,
21 Mr. Saunders?

22 A. (Saunders) I am not representing Staff or the
23 Commission in this proceeding.

24 Q. Let me see if I understand your answer in the
25 context -- you're -- as I -- what I thought I heard you

0233

1 say, so correct me if I'm wrong, is that in the context
2 of this settlement, there is an agreement that the
3 Commission -- one of the Commission's options is to
4 terminate the AFOR after this review period at the end
5 of the four years; is that correct?

6 A. (Saunders) Yes.

7 Q. Do you agree with that, Mr. Reynolds?

8 A. (Reynolds) Yes, I do.

9 Q. Mr. Saunders, does this settlement, and we're
10 looking at the correct provisions here on page 1 of the
11 AFOR plan, paragraph 2, does this require a hearing held
12 on the record with rights of discovery and rights of
13 intervention and participation for any party?

14 A. (Saunders) Could you refer me to the specific
15 line you're looking at?

16 Q. In particular I'm referring to paragraph
17 2(c), although my question goes to the entire section 2,
18 which is the review structure for the AFOR at the end of
19 the four years. Again my question is, does the
20 settlement require an adjudicative hearing held on the
21 record with rights of discovery and rights for all
22 parties to intervene and participate?

23 A. (Saunders) No, it does not in the strict
24 sense of your phrasing of the question. However, it
25 does leave to -- it does leave some discretion to the

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1 Commission as to how the proceeding will be conducted.

2 Q. Is Qwest required to file a petition to
3 extend the AFOR or modify it under this plan?

4 A. (Saunders) No.

5 Q. What happens if they don't?

6 A. (Saunders) If they do not file a petition?

7 Q. Correct.

8 A. (Saunders) If Qwest does not file a petition
9 for extension or modification of the AFOR plan, the six
10 month review will commence as scheduled. The review
11 will be performed by Staff with the involvement of other
12 parties, and the Commission will issue an order in which
13 it can either extend, modify, or terminate.

14 Q. And what kind of proceeding would lead to
15 that order?

16 A. (Saunders) The form of the proceeding would
17 be determined by the Commission. I believe it was the
18 intention and the understanding of the settling parties
19 that that would be an open proceeding in which all
20 parties to this matter would be able to participate,
21 would have rights to full information, and would be able
22 to present objections or arguments on the record.

23 Q. But there's nothing in this agreement that
24 constitutes a commitment by Staff and the company to
25 initiate an adjudication or use an adjudicative hearing

0235

1 process to resolve these questions about the future
2 status of the AFOR; is that right?

3 A. (Saunders) No, there is not, that is correct.
4 There are a number of other processes that the
5 Commission could employ if it so desired.

6 Q. And looking back at your Exhibit 6, page 5,
7 paragraph 11, regarding the transition that we talked
8 about, at lines 16 and 17 you indicate that the
9 reporting will be sufficient to enable the company to
10 return to traditional regulation without loss of
11 adjustments if the need should arise, correct?

12 A. (Saunders) Correct.

13 Q. And so is it accurate to say that one of the
14 options that this agreement provides for after the
15 review period and in consideration of all the evidence
16 is that the Commission could decide that Qwest should
17 return to traditional regulation under Title 80?

18 A. (Saunders) Yes, that would be correct.

19 Q. Do you agree with that Mr. Reynolds?

20 A. (Reynolds) Yes, I do.

21 Q. Mr. Saunders, does the agreement address what
22 would happen if Qwest merges with another entity or is
23 acquired by another entity?

24 A. (Saunders) The agreement and the plan
25 attached thereto addressed that question in two ways.

0236

1 Primarily by not accepting, by not granting an exception
2 for Qwest from the Commission's ordinary rules on
3 transfer of property with certain exceptions. Those
4 exceptions I believe specifically provide that the
5 Commission -- that any transfer of control, any merger
6 or acquisition involving Qwest would be specifically
7 subject to Commission jurisdiction. Furthermore, the
8 agreement applies to and is binding upon the parties and
9 their successors. So to the extent that if Qwest were
10 to be the subject of merger or acquisition, its
11 successor in interest would also be bound by the terms
12 of the AFOR. So the Commission has the opportunity to
13 review and rule on the transaction itself, and if
14 approved, the successor company would continue to be
15 subject to the AFOR.

16 Q. For the remaining term of the AFOR?

17 A. (Saunders) Correct.

18 Q. Moving on to another topic, is there any
19 provision in this notice for, excuse me, in this
20 agreement for any notice to customers about this change
21 in Qwest regulatory treatment?

22 A. (Saunders) No, the notice to customers
23 provisions of Commission Rule and Washington Statute are
24 not altered by this plan.

25 Q. Is there any notice required under this plan

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1 from Qwest to its customers if and when it decides to
2 increase its basic rate for residential service or to
3 eliminate the free directory assistance calling?

4 A. (Saunders) No, the plan does not specifically
5 address those provisions.

6 Q. Are there any customer notice provisions of
7 any kind in this plan?

8 A. (Saunders) No, there are not.

9 Q. Is there anything in this plan that limits
10 the amount of price increases for bundles or features?

11 A. (Saunders) No, there are not.

12 Q. Qwest is already free to lower prices for
13 bundles and features on short notice and to change
14 prices within rate bands, correct? Let me rephrase
15 that.

16 They have the right to request rate band
17 treatment under existing statute?

18 A. (Saunders) Yes, they do.

19 Q. And they have the right under existing law to
20 reduce prices at short notice, correct?

21 A. (Saunders) They have the right to reduce
22 prices at short notice within certain limits and subject
23 to rule. They can not, for example, lower prices below
24 cost.

25 Q. Right. And that restriction continues to be

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1 part of this agreement, correct?

2 A. (Saunders) There's a provision in the
3 agreement that we're -- in the AFOR agreement that
4 provides that the company will continue to abide by the
5 laws and statutes that require them to not offer
6 services below cost. This is one way in which they
7 would be different from a competitively classified
8 company I believe.

9 Q. Well, isn't it true that the chief effect of
10 this AFOR agreement is to give upward pricing
11 flexibility for bundles and features and basic
12 residential service for Qwest?

13 A. (Saunders) No, I would say that the chief
14 provision or the chief aim of this AFOR is to allow
15 regulatory flexibility as envisioned by 80.36.135.

16 Q. But if the company already has significant
17 flexibility to lower prices, the main effect of this
18 agreement is to give them flexibility to raise prices,
19 isn't it?

20 A. (Saunders) One of the primary subjects of
21 discussion among the parties over the last several
22 months was the burden imposed by traditional rate of
23 return regulation. The reporting burden was discussed
24 as being significant. It has been discussed in other
25 venues as being significant. I would agree that the

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1 plan does allow some upward pricing flexibility for the
2 company, but I would not agree that that is the primary
3 aim or the primary effect of this plan either on the
4 company or on the rate payers and the telecom consumers
5 of Washington state. I would say that it is, if
6 anything, a side effect.

7 Q. Now if Qwest raises its basic rate, its 1FR
8 rate, we'll know that, will we not?

9 A. (Saunders) Yes, those of us who take the 1FR.

10 Q. And will Qwest be required to file a tariff
11 with the Commission when it does that?

12 A. (Saunders) The 1FR will remain in tariff,
13 however the tariff as I understand it will implement a
14 price cap at \$13.50.

15 Q. Well, the company will have to file a --
16 well, my question is, will the company have to file a
17 tariff with the Commission when it -- if and when it
18 decides to raise the basic local rate?

19 A. (Saunders) The company already has a tariff
20 on file with the Commission. I think it's unlikely that
21 they would have to file a modification given that the
22 1FR tariff -- given that the 1FR tariff would pursuant
23 to this plan involve a price cap at \$13.50. So if the
24 company -- I'm not sure that I understand your question.

25 Q. Does not the current Qwest tariff for the 1FR

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1 rate state a price of \$12.50?

2 A. (Saunders) It does.

3 Q. So if the company under this agreement
4 decides to exercise its rights to raise that to \$13.50,
5 would it not have to file a revised tariff with the
6 Commission?

7 A. (Saunders) A revised tariff would have to be
8 filed. Whether it would be filed pursuant to the
9 approval of an AFOR or whether it would be filed at the
10 time of the -- of any implementation of a price increase
11 to the price cap is not something that I'm competent to
12 answer. I would say it could be either one.

13 Q. And it's true, is it not, that under the
14 terms of this agreement, that \$1 rate increase could
15 happen essentially immediately after agreement, after
16 approval of this agreement?

17 A. (Saunders) Yes, it could.

18 Q. Okay.

19 A. (Saunders) It could also -- it could also
20 never occur. It's possible that the company would
21 choose not to raise the 1FR rate to the full \$13.50
22 authorized by the rate cap provided in this plan if the
23 plan is approved.

24 Q. Well, I guess I started that line of
25 questioning with what was intended to be I guess kind of

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1 a concession that we will probably know when and if that
2 \$1 increase happens, but my next question is, is there
3 any way or any requirements in this agreement that allow
4 Public Counsel or the Commission or the Commission Staff
5 to track what happens with the prices of bundled
6 services and features during the term of the AFOR so
7 that it's possible for the Commission Staff and other
8 parties to review the effect of the operation of the
9 AFOR at the end of the four years?

10 A. (Saunders) The plan does not specifically
11 provide for separate tracking of bundles or feature
12 prices during the term of the AFOR. However, the
13 company is not excepted from the shall we say
14 heavyweight annual report requirement which provides
15 information for Staff on the company's financial
16 performance. The company is not excepted from the
17 minutes of use access charge rule which provides
18 significant data regarding the volume of services
19 purchased from the company. So we don't have any
20 particular or any specific provisions that would allow
21 us to track the bundles or the features offered by the
22 company separate from its overall performance.

23 Q. The company could be required to maintain
24 archives of the changing prices for those services,
25 could it not?

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1 A. (Saunders) To some extent my colleague Paula
2 Strain may be able to better answer the questions
3 regarding the precise content of the report that will be
4 provided by the company at the end of the AFOR for the
5 six month review period. Subject to check, I would not
6 contest your statement.

7 Q. Has Staff done any projections of the
8 increased revenue that could result from increasing
9 prices for bundles during the term of the AFOR?

10 A. (Saunders) Not to my knowledge, no.

11 Q. Has Staff done any projections of revenue
12 increases that could result from increased prices for
13 features?

14 A. (Saunders) Not to my knowledge, no.

15 Q. I should have asked this question a long time
16 ago, I have been using the term features over and over
17 again, I am referring to what we call vertical features;
18 what's your understanding of that term?

19 A. (Saunders) My understanding is that the term
20 vertical features is awfully hard to define. If you
21 look at the record in the recent legislative session, in
22 the governor's finance and taxation bill you will find
23 that ancillary services are defined fairly precisely,
24 and I would say that's a relatively reasonable analog,
25 and that includes things like caller ID.

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1 Q. Call waiting?

2 A. (Saunders) Call waiting, call forward, no
3 answer, these are things that are frequently described
4 as vertical features.

5 Q. All right. Well, I didn't want to testify
6 myself, I wanted you to explain what they are, but that
7 was the sort of thing I had in mind in using that term
8 in my questions. And maybe this is a kind of a good
9 place to segue briefly over to you, Mr. Reynolds, just
10 in terms of explaining a bit about the structure of this
11 agreement. Could I have you turn to your MSR-3, which
12 is an exhibit to your direct, that's Exhibit 70. Do you
13 have that?

14 A. (Reynolds) I do.

15 Q. Now this exhibit actually divides Qwest's
16 intrastate services up into three groups, correct?

17 A. (Reynolds) That's correct.

18 Q. And the first group starting on page 1 of the
19 exhibit is under the heading services which have been
20 competitively classified by the Commission, and that's
21 on page 1 of the exhibit, right?

22 A. (Reynolds) That's correct.

23 Q. And as I understand it, this AFOR plan
24 doesn't really do anything to change the regulatory
25 treatment of those services, right?

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1 A. (Reynolds) That's correct.

2 Q. And then the second category, which starts on
3 page 2, is services which would be treated as
4 competitively classified services under the AFOR, right?

5 A. (Reynolds) Mr. ffitch, I have one change
6 though to my last answer. It does actually change for
7 digital business services for which we only receive
8 competitive classification in competitive zones, the
9 company has made a commitment not to deaverage that
10 service if we get statewide treatment, competitive
11 classification treatment of that service, so that is a
12 change from before. We could have deaveraged the rates
13 for those services within the competitive zones, and we
14 now have committed not to do that.

15 Q. All right. And then the second category of
16 services, again beginning on page 2, is services which
17 would be treated as competitively classified services
18 under the AFOR, correct?

19 A. (Reynolds) That is correct.

20 Q. And that -- and then the third category
21 starts on page 3, services which would remain under the
22 AFOR, remain under tariff, excuse me.

23 A. (Reynolds) That's correct.

24 Q. And so other than your proviso about
25 deaveraging, these last two categories are the ones that

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1 are really affected by the AFOR plan in some way? Or
2 maybe I shouldn't be so general, it's maybe not
3 productive to look at it that way. Let's just take them
4 one category at a time.

5 The second category which you are referring
6 to as being treated as competitively classified, those
7 are the services that probably see the most impact from
8 this agreement in that they would be subject to the
9 pricing flexibility that's allowed under the agreement,
10 right?

11 A. (Reynolds) That's correct.

12 Q. And then the general thrust of the agreement
13 is that the final group which would remain under tariff
14 are not exclusively but in general to remain under
15 tariff and to be subject to the provisions of Title 80;
16 is that correct?

17 A. (Reynolds) That is correct, and I would go
18 back to answer one of your previous questions to
19 Mr. Saunders regarding nonrecurring charge. You asked
20 if we would have to file to change that, and obviously
21 we would, because it remains tariffed and in this
22 category.

23 Q. And that's under the third category?

24 A. (Reynolds) Yes.

25 Q. And when you say nonrecurring charge, you're

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1 referring to my question about installation or
2 connection charge?

3 A. (Reynolds) Right, for the stand alone 1FR.

4 Q. So you are not committing in this agreement
5 to not increase that charge, but you are not putting it
6 over into the middle category of pricing flexibility?

7 A. (Reynolds) That's correct. And, in fact,
8 there's a subtle commitment in the AFOR agreement that
9 Qwest would not seek to have these services
10 competitively classified either. Because if you read
11 literally the settlement agreement, it says that these
12 services will remain under tariff for the duration of
13 the plan.

14 Q. All right.

15 Now the agreement talks about residential
16 exchange service as remaining under tariff. As a matter
17 of fact, the agreement specifically provides that as
18 sort of as an exception to rate of return regulation
19 under tariff that there can be a price increase without
20 any further review of the company's earnings, correct?

21 A. (Reynolds) Yes, it establishes a price cap
22 that would allow the company to file to change the rate
23 for the 1FR under tariff.

24 Q. All right. And just sort of maybe closing
25 the loop on features discussion, if we look at page 2 of

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1 this exhibit, we see the top item on the list of
2 features that would get pricing, or excuse me, services
3 that would get pricing flexibility is residential
4 exchange service features, caller ID, call waiting, call
5 forwarding, other services like that, correct?

6 A. (Reynolds) That is correct. And I might add
7 that that's very consistent with the regulatory
8 treatment for the CLECs, and that's what we're seeking
9 here.

10 MR. FFITCH: We're going to get into a little
11 bit of confidential information here, but I think we
12 will do it, Your Honor, by just pointing to exhibits
13 rather than asking for any kind of other arrangement,
14 this is just a couple of numbers.

15 BY MR. FFITCH:

16 Q. So back to you, Mr. Saunders, does Staff know
17 what the revenue increase would be for the company which
18 would result from a \$1 increase in the basic residential
19 service?

20 A. (Saunders) I believe that Staff has
21 information that would allow it to calculate that.

22 Q. And it's my understanding that that number is
23 in the record in the testimony of Ms. Strain or could be
24 calculated from her testimony, Exhibit 131C; is that
25 your understanding?

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1 A. (Saunders) Subject to check, I would say that
2 that's probably correct.

3 Q. Then I think what I will do is I will take
4 that up with Ms. Strain when she gets on the stand.

5 And does Staff know what the revenue impact
6 of eliminating the one free directory assistance call
7 is?

8 A. (Saunders) Subject to check, I believe that
9 we have information sufficient to allow us to determine
10 that.

11 Q. And that information is confidential, just to
12 caution you if you were going to say the number, that
13 was provided by Qwest in a supplemental response to
14 Staff Data Request 35, correct?

15 A. (Saunders) Yes.

16 Q. And that data request response was provided
17 to Staff on March 7th?

18 A. (Saunders) Subject to check, I would not
19 contest that assertion.

20 Q. That was after the settlement was filed with
21 the Commission?

22 A. (Saunders) The settlement was filed with the
23 Commission on March 7th, on March 6th.

24 Q. Has Staff done a comparison of the financial
25 benefits received by the company under the settlement

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1 with those received by customers?

2 A. (Saunders) No.

3 Q. I just have a few more questions,

4 Mr. Saunders, about some additional details in the

5 agreement itself, so we will be kind of walking through

6 the document. The title of the document is Qwest's

7 Modified Proposal for an AFOR, I assume this is now

8 Qwest and Staff's modified proposal; is that correct?

9 A. (Saunders) Yes, it's Qwest's and Staff's and
10 presumably the other settling parties. As stated in my
11 testimony, this document which -- to which I assume
12 you're referring, that being Exhibit 1 to the settlement
13 agreement, which is titled Qwest's Modified Proposal for
14 an AFOR, was used by the settlings parties as a vehicle
15 of convenience to focus our discussions.

16 Q. And we're referring to Exhibit 4, what's been
17 marked as Exhibit 4, are we not, just for the record?

18 A. (Saunders) Yes.

19 The fact that it says Qwest's Modified
20 Proposal for an AFOR does not change the fact that it
21 represents the settled position of all of the parties.

22 Q. Just a couple more questions that I forgot to
23 ask about the review process under paragraph 2 here on
24 page 1.

25 Do participants in this review process have

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1 any right of discovery to request information from the
2 company at any time during either the review process or
3 a Commission proceeding that's preserved by this
4 agreement?

5 A. (Saunders) None that is preserved by this
6 agreement. As I stated earlier, the Commission has some
7 discretion to structure the proceeding that it will use
8 to explore and to conduct a review at the end of the
9 four year AFOR period.

10 Q. And would Staff support having itself a right
11 of discovery under the Commission's discovery rules and
12 support other interested participants in being able to
13 exercise discovery under the Commission's discovery
14 rules at the time of the review?

15 A. (Saunders) I wouldn't want to speak for what
16 Staff's position might be at a future proceeding.
17 However, I would note that it was the intention of the
18 parties in structuring this agreement that all parties
19 to this proceeding would have access to extensive
20 information regarding performance under the plan,
21 similar to the information that would be available to
22 Staff and provided by the company. So I don't think
23 there's a -- there's no intent among the settling
24 parties to limit the amount of information that would be
25 shared. However, I wouldn't want to commit Staff or the

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1 other settling parties to a particular position on the
2 availability of the discovery rule or the discovery
3 process in this future proceeding.

4 Q. Well, if we look at provision 2, it provides
5 that the company will file the information that's listed
6 in Appendix B, and we don't really have to go there,
7 it's a list of information that the company is required
8 to provide in conjunction with the six month review,
9 that's in 2(a), correct?

10 A. (Saunders) 2(a) provides a description of
11 information on its financial -- on the company's
12 financial condition that will be presented in accordance
13 with the review. The review is more broad -- is more
14 broadly scoped than a mere financial review. It will
15 also include information on the company's broadband
16 deployment plan as described in provision 4, it would
17 also include information provided to Staff on other
18 matters or provided to the parties on other matters.

19 Q. I guess what I'm struggling with is finding
20 any language that broadens the ability of parties to
21 gather information from the company or request
22 information from the company during this process. For
23 example, if we look at 2(b) the statement is at the end
24 of the section:

25 All parties to the AFOR proceeding will

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1 have access to the same material made
2 available to Commission Staff by Qwest.

3 Doesn't that limit or by its literal reading
4 anyway limit parties' ability to obtain information,
5 additional information from the company? For example,
6 if the material provided in Appendix B raises questions,
7 do companies have -- do parties have the right then to
8 conduct additional discovery about the financial
9 condition of the company under the Commission's
10 discovery rules?

11 A. (Saunders) The plan does not provide a right
12 for other parties to conduct discovery separate from the
13 review process or incorporated within the review process
14 on matters that are of interest to parties other than
15 Staff. So to the extent that -- to the extent that
16 another party might be interested in conducting
17 discovery on information or on topics not covered by
18 rule, not covered by AFOR, and not covered by Commission
19 Staff's requests to the company for information
20 necessary to conduct a review, those other parties might
21 be somewhat disadvantaged in that the -- in that this
22 agreement does not specifically provide for a discovery
23 process available to those other parties. In short,
24 Simon, when the time comes, the intention is that all
25 parties will work together to form a record upon which

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1 the Commission can make a reasonable determination as to
2 the continuation, modification, or cessation of the
3 AFOR.

4 Q. But it's not clear under this agreement what
5 ability the parties have to make that record, is it?

6 A. (Saunders) You're right, it's not clear.

7 A. (Reynolds) If I might add, I think that
8 provision 2(c), the last sentence, gives that authority
9 to the Commission. The Commission can design what that
10 proceeding looks like, and that's essentially where that
11 authority resides. And to the extent that we would hold
12 a prehearing conference probably at the end of the
13 review session, at that point if Public Counsel wanted
14 to engage in discovery, they could request that, and it
15 could be debated at that time. But that authority
16 resides with the Commission, not in this agreement.

17 Q. So is the company, Mr. Reynolds, able or
18 willing to commit today to agree that the Commission
19 proceeding that's referenced in this agreement would be
20 an adjudicative proceeding, that the company would
21 support an adjudicative proceeding with rights of
22 discovery for not just Public Counsel but for any
23 interested party who could establish a right to
24 intervene?

25 A. (Reynolds) No, I'm not.

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1 Q. Let's turn to, Mr. Saunders, well, we're not
2 turning, sorry, we're still on the first page of Exhibit
3 4, we're at paragraph 3, can you explain this provision,
4 please?

5 A. (Saunders) By Exhibit 4, you mean Exhibit 1
6 to the settlement agreement which is provided as Exhibit
7 4?

8 Q. Yes, perhaps we could just call it the AFOR
9 plan for the next two days.

10 A. (Saunders) Fine.

11 Q. Exhibit 4, the proposed AFOR plan, but could
12 you just briefly explain what provision 3 is, please?

13 A. (Saunders) Provision 3 was one of the -- one
14 of the essential elements for getting the interveners
15 and particularly the combined CLECs on board for this
16 multiparty settlement agreement. It is intended,
17 although I have to put in a caveat that I'm not sure I
18 understand all of the delicacies involved in their
19 position, it provides an assurance to the interveners,
20 particularly the combined CLECs, that if the Commission
21 chooses to revoke the competitive classification of
22 DS1/DS3 services that those services would not be
23 thereafter included in the AFOR, they would revert to a
24 -- they would revert to a previous form of regulation.
25 Again, this is not -- it's not my area of specialty,

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1 however, I feel I think that adequately and accurately
2 characterizes the subject of discussions among the
3 parties during the settlement negotiation.

4 Q. All right. And by its terms here, Qwest has
5 agreed not to contend otherwise? In other words, they
6 have agreed not to contend that those services are
7 nevertheless subject to pricing flexibility under the
8 AFOR; is that correct?

9 A. (Saunders) Correct.

10 Q. Well, let me give you a different
11 hypothetical. Let's say another type of service that
12 has been competitively classified other than DS1 or DS3,
13 and there's quite a list of them on Mr. Reynolds'
14 exhibit that we just looked at, Exhibit 70, let me just
15 mention for example the first one on the list, analog
16 business exchange service, which includes basic business
17 service, even one or two lines to a mom and pop grocery
18 store, just assume that that service for which it has
19 its competitive classification revoked by the
20 Commission; do you have that thought in mind?

21 A. (Saunders) Could you clarify, could we
22 clarify that we're talking about a hypothetical in which
23 a currently competitively classified service that is
24 neither a DS1 nor DS3 has its competitive classification
25 status revoked by the Commission during the term of the

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1 AFOR?

2 Q. That's correct, very well stated, that was
3 clearer than my question. And I gave an example of
4 analog business exchange service, you know, just to
5 provide a little more detail to the hypothetical. Now
6 what happens if that service is competitively -- if the
7 competitive classification is revoked during the term of
8 the AFOR? Am I correct, at least by implication
9 provision 3 provides that that service would continue to
10 have pricing flexibility under the AFOR notwithstanding
11 the revocation of the competitive classification; is
12 that correct?

13 A. (Saunders) In your hypothetical, I would say
14 that the AFOR plan does not bar Qwest from contending
15 that that kind of treatment should be applied to the
16 service you describe. It doesn't prejudge necessarily
17 the Commission's conclusion or any particular outcome
18 therefrom, but subject to check, I would say that -- hm,
19 let me withdraw that statement.

20 Under the plan as written, the hypothetical
21 you present would likely result in a situation in which
22 Qwest would not be barred from asserting that the
23 service so classified and whose revocation has been
24 revoked might be included in the AFOR.

25 Q. Mr. Reynolds, can you state your position on

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1 the hypothetical?

2 A. (Reynolds) Maybe put another way, I would say
3 that the only carve out of which you speak, Mr. ffitch,
4 is under 3 for purposes of this AFOR, so I would agree
5 with Mr. Saunders' response. Either we're moving in the
6 direction of pricing flexibility, or we're not.

7 Q. So am I correct, if I understand your answer,
8 is it correct that Qwest's position would be that if the
9 Commission revoked competitive classification for analog
10 business services, Qwest would take the position at that
11 point that they continue to have pricing flexibility
12 under the terms of the AFOR?

13 A. (Reynolds) That's correct.

14 Q. But this agreement does have a carve out to
15 address the interests of certain interveners that avoids
16 that outcome for DS1 or DS3 private line services; is
17 that right?

18 A. (Reynolds) That is correct.

19 A. (Saunders) That is correct. If I might offer
20 additional detail, the DS1 and DS3 services that are
21 carved out in this exception are in fact among the most
22 popular and widely used services for providing a variety
23 of business needs. The DS1 and DS3 services represent I
24 believe 1.54 megabit service and 24 times 1.54 megabit
25 digital service. They're very -- they're broadly

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1 useful, flexible, and reliable services. That's why the
2 CLECs like them, and that's why that would also make
3 them attractive to a number of businesses.

4 Q. But 1FR business service is widely used and
5 widely enjoyed by a lot of business customers in this
6 state, isn't it?

7 A. (Saunders) It is indeed.

8 A. (Reynolds) Mr. ffitch, I would think one of
9 the differences is that the CLECs have a longstanding
10 concern regarding DS1 and DS3, as was exemplified in the
11 Commission's competition docket stemming from the
12 business competitive classification proceeding that took
13 place and that resulted in a review of the company's
14 TRRO filing with the FCC, and the CLECs were concerned
15 about these services somehow getting tied up in an AFOR
16 in which to the extent that the Commission decided that
17 they wanted ongoing deliberations on these services that
18 Qwest would maintain that they were locked up in an
19 AFOR, and that was the concern that the CLECs expressed,
20 and this was a part of the settlement.

21 Q. Does this agreement purport to tie the
22 Commission's hands or remove its ability to proceed
23 under 86.330 to revoke competitive classification for
24 any service? I guess I'm directing that to Mr. Reynolds
25 first and then to Mr. Saunders.

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1 A. (Reynolds) I believe that the Commission
2 could engage in that type of proceeding. Obviously, you
3 know, they have that authority. I do believe though
4 that this AFOR if it's going to be meaningful
5 establishes certain rights for the company for a
6 four-year period, and we are seeking to be regulated in
7 a more flexible manner, and either we are or we aren't
8 during that period of time, you can't have it both ways.

9 Q. Well, shouldn't this agreement be amended
10 then to specifically state that the WUTC is precluded
11 from revoking competitive classification under 80.36.330
12 for all services except DS1 and DS3 if that's the
13 company's position?

14 MS. ANDERL: I object, Your Honor, I think
15 that mischaracterizes Mr. Reynolds' answer.

16 JUDGE CLARK: Response, Mr. ffitch.

17 MR. FFITCH: Well, Your Honor, it sounds as
18 if the company is saying the Commission can do what it
19 wants under the statute, but we're going to ignore it
20 and take the position that this agreement governs. And
21 I think it's unclear under the provisions of the
22 agreement, and I'm suggesting that Mr. Reynolds' company
23 should address that issue squarely, and if that's the
24 intent of the agreement, it should be reflected in the
25 terms of the agreement.

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1 JUDGE CLARK: Did you have a specific
2 response to the objection, Mr. ffitch?

3 MR. FFITCH: That's the only response I have,
4 Your Honor.

5 JUDGE CLARK: The objection is sustained.

6 BY MR. FFITCH:

7 Q. Mr. Saunders, let's turn to the third page of
8 Exhibit 4, the AFOR plan, and look at paragraph 7, three
9 quarters of the way down the page.

10 MS. ANDERL: I'm sorry, Mr. ffitch, where are
11 you?

12 MR. FFITCH: I am on page 3 of Exhibit 4.

13 MS. ANDERL: Thank you.

14 MR. FFITCH: Paragraph 7.

15 BY MR. FFITCH:

16 Q. And that states, does it not, and you have
17 referenced this before, that states, does it not, that
18 Qwest agrees to be bound by the provisions of 80.36.330,
19 paragraph 3, correct?

20 A. (Saunders) That is a correct statement of the
21 provision.

22 Q. And just to paraphrase that statute, that
23 prohibits companies that have competitively classified a
24 service from pricing that service below cost, correct?

25 A. (Saunders) May I refer to a copy of the

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1 statute?

2 Q. Certainly. I'm not trying to trick you, I'm
3 just trying to move on with the question, but please
4 feel free.

5 A. (Saunders) Subject to check, I will agree.

6 Q. All right, thank you.

7 Are the services, and when I say the
8 services, I'm referring to that middle group on
9 Mr. Reynolds' exhibit, the group that is going to be
10 treated as if it's competitively classified.

11 JUDGE CLARK: And you're referring to Exhibit
12 70?

13 MR. FFITCH: Exhibit 70, page --

14 JUDGE CLARK: 2.

15 MR. FFITCH: -- 2, thank you, Your Honor.

16 BY MR. FFITCH:

17 Q. Are the services shown there otherwise
18 generally subject to the provisions of Title 80?

19 A. (Saunders) The AFOR statute allows the
20 Commission to waive certain provisions under Title 80.
21 The AFOR plan sets out an appendix, Appendix A, which
22 specifically lists the provisions of Title 80 that this
23 plan would either waive, not waive, or find not
24 applicable. So I think that's probably the most precise
25 description of what portions of Title 80 would apply to

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1 services affected by this AFOR plan.

2 Does that answer your question, Mr. ffitch?

3 Q. Well, that helps, thank you, Mr. Saunders.

4 I'm looking at page 8 of Exhibit 4, which is one of the
5 pages that sets out the different statutory regulatory
6 waivers, and I don't see any reference there to any of
7 the provisions of 80.36.330 as being waived or not
8 waived one way or the other. And you would agree, would
9 you not, that 80.36.330 is the competitive
10 classification of services statute?

11 A. (Saunders) I would.

12 Q. So ordinarily if the company wanted to get
13 competitive classification of any one of these services
14 on page 2 of Exhibit 70, pages 2 and 3 of Exhibit 70,
15 they would file a petition under 80.36.330, and if it
16 were granted, they would be subject to the provisions of
17 80.36.330, correct?

18 A. (Saunders) And its implementing rules, et
19 cetera, yes.

20 Q. Right. Now the agreement as we have just
21 seen provides that Qwest agrees to be bound by only one
22 provision of 80.36.330, and that's subparagraph 3 with
23 regard to a price floor?

24 A. (Saunders) May I refer to the statute?

25 Q. Certainly, I have a copy or does your counsel

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1 want to --

2 MR. TRAUTMAN: I have a copy, I was hoping
3 you would have one if you're asking the question.

4 May I approach the witness?

5 JUDGE CLARK: You may.

6 A. (Saunders) I have reviewed the statute.

7 BY MR. FFITCH:

8 Q. Thank you. Well, perhaps just to come at it
9 this way, my general question is, the agreement does not
10 address other than this reference to 80.36.330(3)
11 whether or not any of these other provisions of the
12 competitive classification statute apply, does it?

13 MR. TRAUTMAN: Objection, are you, to be
14 clear, are you referring just to 330 or 320, because
15 there are similarities between the two statutes?

16 MR. FFITCH: Right now I'm referring to 330.

17 MR. TRAUTMAN: All right. When you said the,
18 well, my objection is when you said none of the
19 provisions of the competitive classification statute
20 apply, I just want to clarify that implies that if
21 nothing in 330 applies that there are not corresponding
22 provisions in 320 that would still apply.

23 MR. FFITCH: My questions, Your Honor,
24 related to 80.36.330.

25 JUDGE CLARK: All right, and I think it's

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1 important that you clarify that for the record,
2 Mr. ffitch, and so you might need to rephrase.

3 MR. FFITCH: Certainly, Your Honor.

4 BY MR. FFITCH:

5 Q. Again we have seen in item 7 on page 3 that
6 the company has specifically agreed to be bound by one
7 section, subsection 3 of 80.36.330, correct?

8 A. (Saunders) Correct.

9 Q. The agreement is silent as to the application
10 of any of the other provisions of 80.36.330 as far as I
11 can tell; is that correct?

12 A. (Saunders) Correct.

13 Q. Now the reason I'm asking these questions is
14 because Exhibit 70, page 2, refers to the services for
15 which the company is obtaining flexibility as services
16 which would be treated as competitively classified under
17 the AFOR, do you understand that, competitively
18 classified services?

19 A. (Saunders) You're referring to Mr. Reynolds'
20 Exhibit MSR-3 dated October 20th, 2006, correct?

21 Q. Correct, marked as Exhibit 70 in this
22 proceeding, and that refers to the services which are
23 going to be get pricing flexibility under this agreement
24 to be treated as competitively classified services,
25 correct, that's the phrase in the testimony?

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1 A. (Saunders) That is the phrase in the
2 testimony.

3 Q. Now you have a copy of the statute there that
4 provides, does it not, that the Commission can
5 investigate prices on complaint and that the company
6 would then have the burden of proof of showing that the
7 price is fair, just, and reasonable; that's in the
8 statute, right?

9 A. (Saunders) Section 4 of the statute provides:
10 The Commission may investigate prices
11 for competitive telecommunications
12 services upon complaint. In any
13 complaint proceeding initiated by the
14 Commission, the telecommunications
15 company providing the service shall bear
16 the burden of proving that the prices
17 charged cover costs, are fair, just, and
18 reasonable.

19 Q. Does that statute apply to services which
20 receive pricing flexibility under the AFOR plan?

21 MR. TRAUTMAN: Objection, calls for a legal
22 conclusion.

23 JUDGE CLARK: Response, Mr. ffitch.

24 MR. FFITCH: Well, Your Honor, this is the
25 witness that's been presented by Staff to explain the

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1 provisions of the agreement, and I'm not asking him for
2 a legal conclusion but for his understanding of the
3 intent of the agreement.

4 JUDGE CLARK: The objection is sustained.

5 You may rephrase your inquiry, Mr. ffitch.

6 BY MR. FFITCH:

7 Q. Mr. Saunders, in reaching this agreement with
8 Staff, or excuse me, with the Commission, well, I will
9 start again.

10 In reaching this agreement with the company,
11 is it your understanding that the agreement limits the
12 Commission's ability to apply any of the provisions of
13 80.36.330 other than subsection 3?

14 A. (Saunders) No, it's not my understanding that
15 the Commission's authority to apply 80.36.330 would be
16 modified in any way. 80.36.330 is not, as you observed,
17 listed in the list of Appendix A of items that are
18 waived, not waived, or not affected.

19 Q. All right. And 80.36.330 allows the company
20 or the Commission to investigate prices that have been,
21 for services, that have been competitively classified,
22 does it not?

23 A. (Saunders) It does for services that have
24 been competitively classified.

25 Q. And my question is, under this agreement, can

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1 the Commission investigate prices for services that are
2 given pricing flexibility under the AFOR plan?

3 A. (Saunders) Subject to check, I would say yes.

4 Q. Is that your understanding of the agreement,
5 Mr. Reynolds?

6 A. (Reynolds) I view sub 4 under RCW 80.36.330
7 as an enabling provision to support sub 3. And if
8 indeed the company has committed to being bound by sub 3
9 in its AFOR, that is its services will cover cost, the
10 Commission needs some sort of procedural method to
11 enable customers to bring disputes to the Commission
12 when the services are not covering cost, so I guess I
13 would agree with Mr. Saunders.

14 Q. What about if we read the statute to also
15 refer to fair, just, and reasonable rates, which it
16 does, does it not? It doesn't just refer to covering of
17 costs, it refers to fair, just, and reasonable rates,
18 does it not?

19 A. (Reynolds) Yes, it does.

20 Q. And if we read the statute that way, is it
21 Qwest's position that the Commission can investigate
22 prices under this provision for services that receive
23 pricing flexibility under the AFOR to determine if they
24 are fair, just, and reasonable?

25 A. (Reynolds) I don't think they can investigate

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1 it on their own motion, but I believe that they can
2 investigate a complaint. I believe that's the way that
3 that's written. So if a complaint is brought, the
4 Commission can investigate it.

5 A. (Saunders) Mr. ffitch, if I may, if I may
6 follow up on your question to Mr. Reynolds.

7 Q. All right.

8 A. (Saunders) The initial guiding principle for
9 this plan of AFOR is based on 80.36.320, which you have
10 not mentioned. 80.36.320 also refers to competitive
11 classification, but it is competitive classification of
12 companies, not of services. Mr. Reynolds' testimony of
13 October 26th, which you cited, describes services that
14 would be treated as competitively classified pursuant to
15 the AFOR. I think what's intended and what was the
16 subject of discussion among the parties in the
17 settlement process was providing an exception from the
18 ordinary treatment under 80.36.320, which I understand,
19 subject to check, allows for below cost pricing by
20 competitively classified companies of their services.
21 Qwest is not a competitively classified company, nor did
22 the parties feel that it reasonably could be described
23 as such pursuant to the AFOR. The AFOR is a creature of
24 -- is a unique creature of Washington and other states
25 law. Therefore, all of the provisions of 80.36.320

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1 could not be implemented for this company in this AFOR.
2 The provision of 80.36.330 to which you refer,
3 80.36.330(3), provides a convenient phrasing of the
4 company's commitment under the AFOR plan to continue to
5 price above cost, although as a general matter it wishes
6 to be treated as if it were a competitively classified
7 company.

8 JUDGE CLARK: Before we commence with further
9 inquiry, we are anticipating taking a lunch recess at
10 noon, and so I'm afraid that we will go over that if we
11 commence with further inquiry and response, we are at
12 recess until 1:30.

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

14

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

16 (1:30 p.m.)

17 JUDGE CLARK: All right, we're back on the
18 record. When we recessed for lunch, the panel
19 consisting of Mr. Reynolds and Mr. Saunders were on the
20 stand, Mr. ffitch was cross-examining. If you would
21 proceed, please.

22 MR. FFITCH: Thank you, Your Honor, I just
23 have a couple more questions for Mr. Saunders.

24

25

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

2 BY MR. FFITCH:

3 Q. If you could take Exhibit 4, which is the
4 proposed AFOR agreement, and turn to transition
5 provision 2, which is at the top of page 4; do you have
6 that?

7 A. (Saunders) I do.

8 Q. Thank you. This provision was touched on
9 earlier, essentially this is a provision where Qwest
10 agrees not to geographically deaverage nonrecurring and
11 monthly recurring rates for services that are listed
12 above in the provision, right?

13 A. (Saunders) Correct.

14 Q. And then the last sentence of the provision
15 states that:

16 This provision does not modify or
17 restrict Qwest's ability to enter into
18 individual contracts for services that
19 specify rates other than statewide
20 average rates.

21 Correct?

22 A. (Saunders) Correct.

23 Q. My question is, does this provision, this
24 last sentence of part 2, permit Qwest to enter into
25 individual contracts with residential customers, for

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1 example, customers who buy bundles or features, and to
2 thereby obtain the flexibility to enter into different
3 prices with different customers on the contract basis,
4 in effect deaveraging rates in different parts of the
5 state for different customer groups through the use of
6 contracting?

7 A. (Saunders) The last provision of that section
8 states that it does not modify or restrict Qwest's
9 ability to enter into individual contracts for service.
10 I would say that it does not -- it would allow the
11 company to enter into contracts for services using other
12 rates, terms, and conditions except as otherwise
13 prohibited by Commission Rule or statute. For example,
14 they would not be able to enter into a contract that
15 involved the sale of services below cost, would not be
16 able to exempt themselves from other application of
17 other Commission Rules or statute through the use of a
18 contract, but it could I suspect allow the company to
19 effectively deaverage rates in different places through
20 the use of individual case basis contracts.

21 Q. For residential customers purchasing features
22 or packages?

23 A. (Saunders) The intent of the settling parties
24 during discussions was not that this would apply to
25 individual residential customers, but that it would

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1 apply to large customers for whom individual case basis
2 contracts are a usual practice. However, it would not
3 be inconsistent with the language of this provision to
4 interpret it in the way that you suggest.

5 Q. Mr. Reynolds, I will turn to you on this one,
6 is it Qwest's position that under this provision Qwest
7 would have the right under the AFOR to engage in
8 deaveraged pricing for residential customers who
9 purchase features or packages on an individual contract
10 basis?

11 A. (Reynolds) Qwest would have the same rights
12 as competitively classified companies to contract with
13 their customers. Now to the extent that there are, to
14 the point that Mr. Saunders has made, to the extent that
15 there are contract statutes in the rules that apply, we
16 would be under those statutes and rules. To the extent
17 that these were services to be treated as competitively
18 classified, the statutes associated with contracting for
19 competitively classified services would apply.

20 Q. Can you point to me in the agreement where
21 those competitive classification statutes that you're
22 referring to are specifically addressed?

23 A. (Reynolds) I didn't refer to any competitive
24 classification statutes, I referred to contract rules
25 and statutes. Those are in the rules and the statutes.

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1 So to the extent that we have rules and statutes that
2 apply to our contract, to our ability to contract with
3 customers, those would apply. You don't see those
4 waived in Appendix A.

5 Q. Okay. Residential exchange service features,
6 right now they're on your middle group of services,
7 right?

8 A. (Reynolds) That's correct.

9 Q. And they're not competitively classified at
10 the present time?

11 A. (Reynolds) That's correct. And so to the
12 extent we wanted to contract, we could contract for
13 features with our customers even today. We would have
14 to file an ICV contract with the Commission in advance
15 and get approval. The difference between the treatment
16 of contracts for tariff services and competitively
17 classified services is we no longer have to file the
18 contracts with the Commission for competitively
19 classified services.

20 Q. What I'm trying to determine, this is really
21 for both of the members of the panel, is whether this
22 last sentence creates a loophole, if you will, that
23 might be a fairly large one in the sense that what the
24 first part gives in agreeing not to deaverage, the last
25 sentence takes away in the sense that if the company

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1 decides to embark on the practice of engaging in
2 deaveraging, excuse me, contracting for certain customer
3 groups in the sale of packages or features, it will then
4 be free under this provision, will it not, to
5 differentiate in the pricing for those services?

6 A. (Saunders) Would it be fair to characterize
7 your question or to rephrase your question to state that
8 -- I shouldn't be asking questions of the attorney.

9 Under the terms of this provision, there
10 would be generally applicable terms under which the
11 company would contract for its services as allowed under
12 ordinary rules and statutes and the AFOR. If individual
13 customers wanted to sign individual case basis contracts
14 for the services you have described at a higher rate, I
15 don't know that that would be prohibited if people want
16 to voluntarily pay more than is ordinarily charged for
17 the same services. I'm not sure that the -- I don't
18 think that this provision would prohibit the company
19 from charging and people from paying more if they wanted
20 to. I don't -- I'm not sure that I understand the
21 thrust of your question.

22 Q. Well, the customer would not have the choice,
23 the customer would be put in the position of, if they
24 were in the target market, of being told, if you want
25 this package, you buy it under a contract, and this is

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1 the price. If you live on the other side of the
2 mountains and you buy this same contract for these same
3 services, there's a different price, that's the scenario
4 that I'm trying to set up. And as I read this, that is
5 not prohibited, and maybe I can focus my concerns into
6 that question, that that is not a prohibited activity
7 under this provision, is it?

8 A. (Reynolds) I don't believe that it would be
9 prohibited, Mr. ffitch. I think as a practical matter,
10 I can't imagine the company wanting to engage in that
11 type of pricing, especially with mass market customers.
12 It would be extremely difficult for us to try to do that
13 type of deaveraging, and it would probably create ill
14 will with our customers. To the extent that we move to
15 a more flexible environment for pricing and contracting,
16 we're going to have to use common sense, because we're
17 going to have to also continue to survive in this
18 environment and face our customers every day. So to the
19 extent we do something that irritates our customers
20 doesn't make common sense. Our competitors don't do
21 that, and I don't think we'll do that either.

22 Q. Just a factual question, Mr. Reynolds, am I
23 correct, I guess I should really know this, but a number
24 of your packages are offered with -- require a long-term
25 commitment from customers to get certain prices, isn't

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1 that right, so that you're already offering some of the
2 bundles or packages in effect under a form of contract
3 with a customer?

4 A. (Reynolds) I believe that there are term
5 commitments that are allowed for customers that want
6 discounted prices.

7 Q. Mr. Saunders, does the AFOR prohibit the UTC
8 from initiating a general rate case during the four-year
9 term to decrease the rates for tariffed services?

10 A. (Saunders) By tariffed services, you mean
11 those services that remain under tariff provision
12 pursuant to the exceptions in the plan?

13 Q. Correct.

14 A. (Saunders) No, it does not.

15 Q. Do you agree with that, Mr. Reynolds?

16 A. (Reynolds) Could you repeat the question,
17 please.

18 Q. Does the AFOR prohibit the UTC from
19 initiating a general rate case during the four-year term
20 to decrease rates for tariffed services?

21 A. (Reynolds) Although I don't think there's
22 anything specific in the plan, my understanding was that
23 once we entered into an AFOR, that was the alternative
24 form of regulation. And to the extent that a rate case
25 was brought against the company, it seems to me that the

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1 only way you could bring a rate case against the company
2 is by invoking the excess of earnings rule, which is
3 waived in this AFOR, so I don't think that would be
4 possible.

5 A. (Saunders) Mr. ffitch, could you clarify what
6 you mean by a general rate case?

7 Q. Well, it's a case that is brought under the
8 Commission Statutes and Rules to look at all the
9 company's costs and revenues to set rates for its
10 regulated services.

11 A. (Saunders) In that case, I would agree with
12 Mr. Reynolds that a general rate case, which would
13 review the costs and the prices, costs, prices, terms,
14 and conditions of costs of service for all of the
15 company's services while the company was regulated under
16 an alternative form of regulation would probably not be
17 available, although that would be to some extent a legal
18 question to be pursued at the -- in a different
19 proceeding.

20 Q. Well, the reason I ask the question is
21 because I can't tell from reading the AFOR plan that we
22 have as Exhibit 4.

23 A. (Saunders) The intention of the exceptions --
24 the intention of using the exceptions as part of the
25 AFOR plan was to ensure that the protections of tariff

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1 are -- continue to be afforded to certain public
2 interest services that should not be, in the opinion of
3 the settling parties, subjected to the full -- subjected
4 to alternative regulation under the terms of the
5 agreement.

6 A. (Reynolds) Mr. ffitich, I would direct your
7 attention to page 8 of Exhibit 4, about the fourth or
8 fifth line down under miscellaneous waivers, it says RCW
9 80.04.360, earnings in excess of reasonable rates,
10 consideration in fixing rates, that waiver is granted by
11 this AFOR. I think that's generally the statute that
12 you would have brought a general rate case under.

13 Q. That's your opinion of what that statute
14 means?

15 A. (Reynolds) I think that that statute, it's
16 important that it's in place to be able to conduct a
17 general rate case.

18 Q. Does the AFOR plan, Mr. Saunders, bar any
19 other party from bringing complaint under Title 80 to
20 reduce any of the tariffed rates?

21 A. (Saunders) The AFOR statute, Title 80.36.135,
22 provides a complaint vehicle that any party may use.

23 Q. And that would be the exclusive remedy under
24 the statute?

25 A. (Saunders) Question whether that would be an

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1 exclusive remedy.

2 Q. Excuse me, under the agreement, I'm sorry, I
3 interrupted you, but to clarify the question, exclusive
4 remedy under the agreement.

5 A. (Saunders) Can you restate your question.

6 Q. You referred to a complaint provision in
7 80.36.135, and I asked you if that was the exclusive
8 remedy that would be available to a party who wished to
9 bring a complaint to reduce rates?

10 A. (Saunders) Subject to check, I would say yes.

11 Q. My last question, does the AFOR plan that
12 you're supporting here prohibit Qwest from seeking
13 so-called interim or emergency rate relief under the PNB
14 standard during the term of the AFOR?

15 A. (Saunders) Can you refer me to a specific
16 provision of law or rule?

17 Q. Yeah, I'm referring to the Commission's
18 decision in WUTC versus Pacific Northwest Bell, a 1972
19 decision that creates a six-part test for granting
20 interim or emergency rate relief, and I'm asking if
21 under this agreement the company is precluded from
22 bringing a request for emergency rate relief under that
23 rule?

24 A. (Saunders) I don't know, I would have to
25 review the nature of that decision before answering.

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1 Q. And, Mr. Reynolds, assuming that the \$1 turns
2 out not to be enough, if you had exercised the right to
3 increase the residential rate \$1 and the company felt
4 that additional revenues were necessary from the
5 regulated services, does this agreement preclude in your
6 understanding the company from seeking interim rate
7 relief under the PNB standard?

8 MS. ANDERL: Well, I guess I will object to
9 the question being addressed to Mr. Reynolds in that it
10 clearly does call for a legal conclusion on the basis of
11 a document that Mr. Reynolds has not been given an
12 opportunity to review or examine.

13 JUDGE CLARK: Mr. ffitch.

14 MR. FFITCH: Well, I think to suggest that
15 the company is not aware of the provisions of the PNB
16 standard or the general standard for interim rate relief
17 before this Commission is a rather surprising
18 suggestion. I'm simply asking either one of these
19 witnesses if this is an issue that's addressed in this
20 agreement. Perhaps the agreement is silent. I'm asking
21 if the company is prohibited from asking to increase
22 rates for reasons that are described in the PNB
23 standard, I'm not asking for a legal opinion.

24 JUDGE CLARK: All right, the objection is
25 overruled. Mr. Reynolds.

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1 A. (Reynolds) I honestly don't know the answer.
2 I would need to, as Mr. Saunders said, I would need to
3 review that decision and probably discuss it with
4 counsel to understand the legal implications of it.

5 MR. FFITCH: Thank you, I don't have any
6 other questions.

7 JUDGE CLARK: All right, I ordinarily turn to
8 Commissioner inquiry at this juncture because it seems
9 to cut down a little bit on what I call re-redirect
10 afterwards.

11 Chairman Sidran.

12

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

14 BY CHAIRMAN SIDRAN:

15 Q. Good afternoon. I want to go back and just
16 make sure I understood the response to some of Public
17 Counsel's questions interpreting the proposed settlement
18 agreement, and this has to do with the intent behind
19 paragraph 2 of the agreement, and in particular the
20 language that says that the AFOR will remain in effect
21 for four years unless extended or modified by the
22 Commission, and then the subparagraphs, in particular
23 (d) which says, that's D as in dog:

24 While the Commission deliberates the
25 terms, this AFOR shall continue in

1 force.

2 Now as I read that, this AFOR will expire at
3 the end of four years, and I know Public Counsel
4 inquired about that, but am I correct in my reading of
5 this that it's in effect for four years unless extended,
6 and there's a specific provision allowing it to continue
7 during deliberations, which in my view would make no
8 sense unless it was otherwise going to expire. So my
9 question is, does this AFOR expire in four years unless
10 extended, which is how I read that paragraph?

11 A. (Reynolds) That's my understanding as well.

12 A. (Saunders) Yes.

13 Q. All right, thank you.

14 The next question has to do with the same
15 language in this paragraph 2. After the words unless
16 extended, it says, or modified by the Commission, but I
17 don't see any limitation on the Commission's authority
18 under this agreement to modify during the four years.
19 And so I would like the parties to give me their
20 interpretation of the intent, since read literally I
21 would read it to say it remains in effect for four years
22 unless extended, which clearly implies at the end of the
23 four years, or modified by the Commission, which is
24 ambiguous as to whether that would include modifications
25 that might be possible during the four-year term. So

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1 could you enlighten me as to whether there is any
2 specific intent as to the authority of the Commission to
3 modify during the four years?

4 A. (Saunders) The statute specifically grants
5 authorization to the Commission to modify the terms of
6 an alternative form of regulation pursuant to a petition
7 from the company, so there is that independent grounds
8 for modification of an AFOR. The intent of the settling
9 parties with regard to this provision was that extension
10 or modification could only be accomplished through a
11 Commission order which would be forthcoming either
12 during or immediately following the review at the end of
13 the four-year period. So in the first -- from -- if it
14 were approved tomorrow, there would be four years during
15 which the Commission would not be able to modify on its
16 own motion the terms of the agreement.

17 Q. Or in fact modify unless it was pursuant to
18 petition from the company?

19 A. (Saunders) Correct.

20 Q. All right, thank you.

21 And Mr. Reynolds?

22 A. (Reynolds) That's my understanding as well.

23 Q. All right, thanks.

24 I want to turn to Public Counsel's line of
25 inquiry about procedure that would be available during

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1 this review process, and I think I heard the answer from
2 Mr. Reynolds, but I just want to confirm that what I
3 heard is what you said. Did I hear you to say that this
4 settlement agreement has no effect on the Commission's
5 procedural rules and that whatever process is due during
6 this review will be determined by the Commission, that
7 the settlement agreement does not purport to describe or
8 limit due process that the Commission may choose to
9 afford during the review process, did I hear that?

10 A. (Reynolds) That is correct.

11 Q. All right, thank you.

12 With respect to this review process, I would
13 like each of you to tell me what you think would be the
14 kinds of measures that would tell us whether the AFOR
15 has been effective in accomplishing its goals. What
16 will we be looking at in four years to say this has
17 worked or this has not worked, what are your criteria
18 for measuring effectiveness or success or failure?

19 A. (Saunders) I think the beginning of that
20 answer is provided in 80.36.135(2) where -- which lists
21 a specific -- which provides a specific list of goals of
22 the AFOR statute, whether it will facilitate the broad
23 deployment of technological improvements in advanced
24 communications -- advanced telecommunications services,
25 et cetera. This list of six items would be I think the

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1 beginning of the inquiry. In other words, has the AFOR
2 -- has the company provided broad deployment of
3 technological improvements under the terms -- under the
4 AFOR proposal. Has the -- has the regulatory process
5 indeed become more efficient. Has the service quality
6 been protected, preserved, and enhanced. Are rates
7 charged, rates and charges fair, just, reasonable,
8 sufficient, and not unduly discriminatory. These are
9 the kinds of things that the Commission could consider
10 during its review at the end of the four-year period,
11 not necessarily including each and all -- each and every
12 one of them, but this would be the starting point.

13 Q. Mr. Reynolds.

14 A. (Reynolds) Yes, and I agree with that. I
15 think the type of data that the Commission would look at
16 are, of course, our financial data. I think that we
17 would look at our service quality performance under the
18 Commission service quality metrics. I think you would
19 look at some of the same types of data that Mr. Teitzel
20 provides in his testimony. You can look at our rates
21 for our packages compared to the packages of our both
22 wireline and intermodal competitors. I think you would
23 look at what our market share looks like at that point
24 in time. So there are a number of different data points
25 that I think will help you answer the question as to the

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1 results, you know, of whether the AFOR was successful or
2 not in accordance with the policy goals of the statute.
3 And that's exactly the type of data that I think the
4 settling parties discussed as being part of that six
5 month review process, it's much the same type of data we
6 have tried to aggregate going into this plan.

7 Q. Which leads me to my next question, I would
8 like to know, especially from you, Mr. Saunders, do you
9 think that the agreement provides for adequate
10 collection of the kinds of data that you and
11 Mr. Reynolds have just described to allow the Commission
12 to be able to conduct this review at the end of this
13 period?

14 A. (Saunders) Yes, I do, for two or three
15 reasons. Firstly because it specifically addresses in
16 the accounting and financial provisions, reporting
17 provisions, at the end of the agreement and in Appendix
18 C is it?

19 A. (Reynolds) B.

20 A. (Saunders) B specifically addresses the kinds
21 of reporting that the company will be expected to
22 provide during the six month review at the end of the
23 AFOR period.

24 Secondly, because the Commission's service
25 quality and most other rules are not affected by -- are

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1 not affected by this plan, so we will have the majority
2 of -- we will have all of the necessary data from our
3 service quality and other rules that would enable the
4 Commission Staff to prepare a reasonable and complete
5 analysis of the company's performance in that area.

6 And lastly, because we will have -- we will
7 continue to have reporting of major, shall we say major
8 incidents above 5% of the company's rate base with
9 regard to transfers of property, affiliated interests,
10 et cetera.

11 We have worked hard to implement in the
12 settlement agreement arrangements and provisions that
13 will preserve the reporting that we feel is necessary to
14 monitor the company's performance but relieve them of
15 obligations to report on either an extremely frequent
16 basis or relatively frequent basis or things that they
17 feel -- that we felt as settling parties were not
18 necessary in an AFOR context.

19 Q. All right, thank you.

20 Mr. Reynolds, I want to go back for a moment
21 to this question of the Commission's authority to modify
22 the AFOR during this four-year period. I understand the
23 company, I think Ms. Anderl mentioned, has obtained
24 something similar in a number of other jurisdictions in
25 which Qwest does business, correct?

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1 A. (Reynolds) that is correct.

2 Q. And you can correct me because I'm doing this
3 from memory, but in Colorado do you not have an AFOR in
4 which the commission specifically reserves the right
5 under, I believe they described it in some limiting way
6 as unusual circumstances to modify the AFOR?

7 A. (Reynolds) You know, I'm not that familiar
8 with Colorado. I do think that Colorado is a bit unique
9 in that I don't believe it has a term associated with
10 it, and so it is the new state of regulation in that
11 state, and so that might be slightly different than like
12 a compact that we're entering into here. So, you know,
13 that might warrant different treatment because it is the
14 new standard for regulation in that state. That's my
15 understanding is that there's no, you know, it is the
16 state of regulation until the commission decides to
17 change it again.

18 Q. All right.

19 I want to shift gears, I noticed in
20 Ms. Anderl's description of the outlines of the AFOR
21 that she mentioned that provision which is number 4,
22 provision number 4 which begins at the bottom of the
23 first page of the what's Exhibit 4, the settlement
24 agreement, which talks about plans for broadband
25 infrastructure development, and described the plan to

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1 deploy DSL infrastructure to 100% of the wire centers.
2 She did not mention the very last clause, which goes on
3 to say that in effect there will be a report as I
4 understand it at the end of this period that is the
5 review process, there will be a report submitted about
6 how Qwest is progressing "towards the goal of ensuring
7 that wireline high speed Internet service is available
8 to over 83% of customers in its Washington service
9 area", and then there's a footnote there, Footnote
10 Number 3, which I will turn to in a moment, could you
11 explain to me what does that mean? I don't -- I have a
12 number of questions about what that means beginning with
13 I take it this is not a commitment on the company's
14 part, it's not saying that it's going to extend DSL
15 service to 83% of the customers, it's going to file a
16 report as to how it's doing; am I reading that
17 correctly?

18 A. (Reynolds) That is correct.

19 Q. So why shouldn't we expect that there would
20 be some kind of measurable goal as part of this process
21 where the company commits to expanding access to
22 broadband in its service territories?

23 A. (Reynolds) Well, I believe that there is a
24 measurable goal. I mean the measurable goal was our
25 offer to extend the DSL service and deploy DSL service

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1 in the seven wire centers where it currently is
2 nonexistent, and so that was the hard commitment. The
3 other idea was that we would provide a report to the
4 Commission. We know where we are today vis a vis
5 deployment of DSL in the state, and I think it was
6 important to take a look at where we are four years
7 hence, and that's another goal I think when you talked
8 earlier about how will we know success at the end of
9 this plan, you know, I think knowing where we are going
10 into it with deployment of advanced services to our
11 customers and where we are coming out of it I think is
12 another indication. But I would say that our commitment
13 was twofold, one was a hard commitment that we would
14 spend money, we would deploy DSL in the remaining seven
15 wire centers that doesn't have, and the other one was to
16 monitor the types of advanced services that we were
17 deploying and report out on that at the end of the plan.

18 Q. So where are you now in relationship to this
19 percentage of customers in your service area who have
20 access to DSL?

21 A. (Reynolds) We are at approximately --

22 THE WITNESS: And I can't remember, is this a
23 competitive or a confidential?

24 MS. ANDERL: I think we have provided the
25 document with these percentages on it on a confidential

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1 basis. I'm not sure that we would hold the statewide
2 number to be confidential as opposed to wire center by
3 wire center, so go ahead.

4 A. (Reynolds) We currently can deploy DSL to
5 customers, and this is I think the subject of numerous
6 discovery responses that the Commission wouldn't have
7 access to, but I think you do have access to your Bench
8 Request, and I believe that your Bench Request will tell
9 that currently at I believe the year end '06 I think it
10 reads 83% or 84% if you do the math. That's a little
11 misleading in that that number is made up of a baseline
12 number that we can serve without having to do any type
13 of network rearrangement to provide service to DSL
14 customers. That number is about it's between 77% and
15 79% where the company does not have to do any additional
16 work in its network to provision service. Where we have
17 loaded loops, which means that the loops are encumbered
18 with load coils and/or bridge tap which prohibits us
19 from providing DSL, we can go out and rearrange services
20 out in our loop network to provision additional
21 services. I suppose if all 83% of the customers wanted
22 service at that particular point in time, we probably
23 wouldn't be able to serve them all. But I think what
24 we're saying is that we have the ability through line
25 rearrangement to serve up to 83%, and so the goal that

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1 is put in here is a hard goal of 83%, and we can
2 currently provision, like I say, between 77% and 79% and
3 upwards of 83% if we do line rearrangement.

4 Q. Okay, I think I understood some of what you
5 just said, but at the end of the four years presumably
6 there would be a report that reports in relationship to
7 the 83% goal, just tell me what the percentage is that
8 we would be comparing that 83% against, is it this 76%
9 or 77% figure you have?

10 A. (Reynolds) I think you can compare it to
11 both, because at that point in time hopefully we have
12 the hard -- the absolute capability of providing service
13 to let's say 83%, 85% of our customers, and if we do
14 line rearrangement potentially we can provide service to
15 an additional 5%, let's say up to 90%. So you will have
16 both sets of data to see how the company is progressing.
17 The additional data you will have at that point, and if
18 you take a look at the footnote, is to the extent that
19 the company starts to deploy other types of technology
20 that provide broadband capabilities such as a VDSL type
21 of technology or perhaps an IVTV. To the extent that we
22 do that, that will be a part of that report as well.

23 Q. All right, well, thank you, that explains
24 what Footnote Number 3 was referring to.

25 So let me ask in relationship to the

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1 statutory policy goals that are to be encouraged by an
2 AFOR which relate to deployment of advanced technologies
3 to underserved areas or underserved classes of
4 customers, how does this goal of increasing service to
5 the percentage of customers in your service territory,
6 I'm not talking here about the wire center commitment,
7 how should we interpret this commitment to provide a
8 report in relationship to the goal of improving access
9 to advanced technologies in underserved areas and
10 classes of customers?

11 A. (Reynolds) Well, I would think that whatever
12 reports we file and whatever reports we provided going
13 into this AFOR have been on a wire center by wire center
14 basis, and when we file data with the Commission after
15 the four years of the AFOR it will also be on a wire
16 center by wire center basis, so you can see improvement
17 in underserved areas. You know, I can't help but go
18 back to the hard commitment though for -- I mean if
19 you're -- that is not a hard commitment, that's a goal,
20 and I think we have already talked through that. The
21 hard commitment truly is extending service to these
22 seven wire centers, and the reason I want to stress that
23 is that from an economics perspective, our ability to
24 recover our investment in those seven wire centers just
25 isn't there. That's why we have not deployed DSL to

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1 those wire centers to date. And so that is a commitment
2 on our part, this was not part of a company plan, and it
3 does, I think it does achieve a milestone in completing
4 DSL deployment to 100% of our wire centers, and so I
5 don't want to underestimate that part of our commitment.

6 CHAIRMAN SIDRAN: All right, thank you, I may
7 have some other questions, but I want to at this point
8 defer to my colleagues if they have any questions.

9 JUDGE CLARK: Commissioner Oshie.

10 COMMISSIONER OSHIE: Thank you, Judge Clark.

11

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

13 BY COMMISSIONER OSHIE:

14 Q. I've got a couple areas of questions, and one
15 deals with notice to customers, and there's been some
16 discussion in the cross-examination on the agreement
17 done by Public Counsel, but I would like to go back to
18 it. You know, and I would classify, you know, for
19 purposes of discussion two types of notice, one going
20 out to customers should this AFOR be approved and there
21 be a change in rates as a result of company action taken
22 under the authority granted by the AFOR, and then second
23 circumstance would be, you know, rate changes or term
24 and condition changes within the four-year term of the
25 AFOR, in other words a change made after the initial

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1 change has already been made by the company.

2 So let's go to the first circumstance. So
3 presume that an AFOR is approved by the Commission, the
4 company wants to make a change in rates, let's use the
5 1FR rate that's been specifically I think spelled out in
6 the agreement could go up \$1, let's presume that it does
7 go up \$1. What notice will customers get of that change
8 in rates, either under the terms of the agreement or
9 what the company is willing to commit to this afternoon?

10 A. (Reynolds) Well, in accordance I believe with
11 the rules that we have for customer notice for rate
12 increases, we would have to give our customers 30 days
13 notice of that increase, and so that's in accordance
14 with the rules, and those rules are not -- those rules
15 would not be varied for the 1FR service.

16 Q. So the --

17 A. (Reynolds) And just --

18 Q. Oh, go ahead.

19 A. (Reynolds) And I was just going to follow up
20 on the rest of your question at least preliminarily, to
21 the extent that as a result of the AFOR certain services
22 now are treated like competitively classified services,
23 my recollection is that in the price list elimination
24 legislation when we're moving services from tariff to
25 catalog, we are required to provide customers notice

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1 there as well. So I mean I think it's already embedded
2 in the statutes and rules what our requirements are for
3 customer notice.

4 Q. What --

5 A. (Reynolds) And the last item is once services
6 have moved to a catalog, I know that the company feels
7 its obligation to notify its customers when it makes
8 rate changes, so I mean even though I'm not sure that
9 that's an obligation under the Commission's rules, I can
10 tell you that that's a standard the company adheres to.

11 Q. All right, Mr. Saunders, do you agree with
12 that?

13 A. (Saunders) I would. I would also draw your
14 attention to the recent rulemaking on price list
15 elimination, which sets certain rules for customer
16 notice for example through the web site and other means
17 in lieu of providing price lists, but I support
18 Mr. Reynolds' statement entirely.

19 Q. All right, thank you.

20 One other area that I would like to question
21 the parties on to the settlement is if there is, perhaps
22 specifically to Qwest, has Qwest done an economic
23 analysis of the benefits it would receive under the AFOR
24 as a result of not having to file reports and the other
25 similar waivers that are contained in this agreement?

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1 In other words, some of the regulatory obligations would
2 be either waived or they would be limited, what's the
3 economic advantage to Qwest of doing that, what's the
4 dollar amount that's associated with those waivers?

5 A. (Reynolds) You know, Commissioner Oshie,
6 that's difficult to say on sort of an aggregate basis,
7 and I can tell you that we haven't done a comprehensive
8 economic analysis because the sands have been shifting
9 through the settlement process, so we actually didn't
10 know where we would end up until just a couple of weeks
11 ago.

12 I do know though that we, just to give you
13 some sort of an idea of some of the expenses that we
14 save when we reduce reports, I can remember doing some
15 analysis when we were conducting the proceeding on this
16 it was called a performance plan and what type of
17 expenses we incurred to put that -- to put the -- to
18 track the metrics, to report out on the metrics, and
19 this has nothing to do with penalties, but that the
20 expenses associated with that along with Customer
21 Service Guarantee Program and kind of our total service
22 quality liability, my recollection was, and this was --
23 this was the type of analysis where we identified the
24 analysts that work on it, we identified the amount of
25 time they spent, and then we multiplied it out times

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1 their labor rate, and I thought we came up with a number
2 that was in the neighborhood, and this was just for
3 service quality, about a quarter million dollars a year,
4 so that gives you a rule of thumb.

5 I haven't done any type of analysis on the
6 financial reporting, because actually what we have ended
7 up with still requires us to track a lot of information.
8 We are, you know, we do get quite a bit of efficiency
9 out of keeping one set of books for both the FCC and for
10 the state, and that was a very important goal going into
11 this AFOR. Perhaps, you know, you might want to when
12 Mr. Grate gets up, if he gets up, you know, he may be
13 able to answer some of the economies associated with the
14 financial reporting.

15 Q. All right, thanks, Mr. Reynolds.

16 And, Mr. Saunders, do you have anything to
17 add to that?

18 A. (Saunders) Not in particular, I think if I
19 understood the question correctly, it pertained
20 primarily to the company's economies that might be
21 realized through reduction of regulation. It would
22 certainly -- the AFOR plan as written is intended not to
23 reduce Staff's ability to maintain or track information
24 pertinent to the performance of the company, but it is
25 intended to improve the efficiency of regulation through

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1 streamlining potentially redundant reports by reporting
2 for example semiannually as opposed to monthly. The
3 same granularity of data would in most cases be
4 preserved, I believe in all cases would be preserved,
5 it's just that we wouldn't have to read the reports as
6 often.

7 And yes, there is a risk associated with that
8 in that if things really were to start going bad in a 35
9 day period, we wouldn't know about it until the 6 month
10 -- until the, you know, the biannual report came in.
11 But our experience in regulation over the last 2 years
12 has been that these things don't happen on a monthly
13 basis, it takes 6 months, a year, 2 years for problems
14 to develop. So we feel that the granularity of the data
15 is more than adequate to assure the Commission's ability
16 to monitor and enforce the rules.

17 Q. Thank you.

18 I've got one other question, and it really is
19 a very -- it's a general question but it's certainly
20 relevant to the discussion that we have had this morning
21 and later this afternoon. But, you know, why is it that
22 you believe the competitive environment is enhanced by
23 not deaveraging rates throughout the state? Start with
24 you, Mr. Saunders, how does not deaveraging rates
25 enhance competition throughout the wire centers in all

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1 wire centers throughout the state?

2 A. (Saunders) Let me start by saying that the
3 provision, the requirement that the company not
4 deaverage rates, not geographically deaverage rates, was
5 -- is intended primarily to give the benefits of
6 competition in the urban areas to customers in the less
7 competitive rural areas. As a practical matter,
8 experience has shown that competition burns much
9 brighter and seems to be much hotter in Seattle than it
10 is in the rural parts of Eastern Washington.

11 The danger as we understand it, and my
12 colleague Mr. Wilson can testify with more expertise as
13 to the economic rules behind it, but the danger when you
14 have a -- the danger that you have in a less than fully
15 competitive market, particularly where certain areas
16 potentially on the east side have reduced competition,
17 is that there is an opportunity for the companies that
18 do work there to charge higher rates than they would if
19 they faced more robust competition. By requiring that
20 the company, that Qwest under the AFOR not deaverage its
21 rates geographically across Washington, the rates
22 charged in rural Washington will remain the same as the
23 rates charged in urban Washington. That's bringing the
24 benefits of urban competition in terms of price, minimal
25 pricing, to consumers in rural areas.

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1 There is, however, as you perhaps observed,
2 the risk that small companies, start-up companies in
3 rural areas who might otherwise contest those rates will
4 have to price their services lower than they would if
5 the incumbent, if Qwest did deaverage their rates and in
6 fact made their rates higher in rural areas than they
7 are in urban areas. It's a tradeoff, and we felt that
8 the tradeoff was appropriate.

9 Q. Mr. Reynolds?

10 A. (Reynolds) You know, I think I agree, I agree
11 with Mr. Saunders. I'm not sure that a commitment to
12 not deaverage rates has that much to do with furthering
13 competition, but I do think that it has to do with
14 extending the benefits of the competition that's taking
15 place in urban areas to rural customers that might not
16 see competition develop quite as quickly. And that, you
17 know, that's -- I think that's the best I can do on that
18 answer, because I agree with you that to the extent that
19 you reflect the proper cost of providing service in
20 those rural areas, you will probably induce more
21 competitors into those areas by deaveraging rates even
22 though it's uncomfortable for consumers.

23 Q. And would you then agree that the effect of
24 the AFOR is to delay the entrance of competitors in
25 those rural territories where the wholesale costs are

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1 much higher than the retail costs that are being offered
2 because of the impact of competition or sort of the
3 transference of, if you will, competition in urban areas
4 to the rural territories?

5 A. (Reynolds) You know, I'm not that worried
6 about that, primarily because where we're seeing most
7 competition is through intermodal forms of competition,
8 and so they're not even facing our same cost curves or
9 buying products from us, they face completely different
10 cost curves, they have different technologies. And
11 where we price, our products can affect them, but I just
12 think that it's different, you know, their environment
13 is different enough, and I think their cost curves
14 ultimately are lower than ours, that it's not going to
15 matter.

16 Q. What about in the seven wire centers that
17 you're going to, that under the agreement Qwest is going
18 to begin to offer DSL services, by intermodal I
19 understand, we could, you know, run through them, but I
20 understand them to include both wireless and broadband
21 service, and let's use broadband as an example. It
22 would seem to me that unless the company would be
23 offering stand alone DSL, the entrance of new
24 competitors within those seven rural wire centers where
25 DSL is not being offered now would be very limited?

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1 A. (Reynolds) I would say, you know, to the --
2 and I honestly don't know the answer to your question.
3 I would -- I think that that -- the answer to your
4 question is available in the record somewhere. And
5 maybe when I say record maybe I'm going too far, because
6 I think it's available in some discovery that we have
7 provided to the effect that cable -- where cable
8 companies operate in this state and whether they operate
9 in those seven wire centers, to the extent that they
10 already have network there, they're already operating
11 services, you know. There are a couple of reports that
12 I would direct your attention to. One of them is in
13 Mr. Teitzel's testimony that gives a wire center by wire
14 center breakdown of our access line loss broken down by
15 business, res, and public customers, and what you will
16 see is there's some very, very small wire centers where
17 we have lost a lot of access lines, and I think that's
18 usually indicative of a cable operator being there and
19 being able to pick up those customers. And I -- have I
20 lost your question somehow?

21 Q. No.

22 A. (Reynolds) Okay.

23 Q. No, you haven't lost it.

24 A. (Reynolds) All right.

25 Q. And I guess I would ask you too,

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1 Mr. Saunders, that same question. The question that I
2 asked Mr. Reynolds is, doesn't the effect of the AFOR or
3 isn't the effect of the AFOR a delay in the entrance of
4 new competitors or does it inhibit existing competitors
5 in those smaller rural territories?

6 A. (Saunders) It does have that potentiality if
7 you assume that those competitors have the same
8 underlying costs that Qwest has. As a practical matter,
9 many of the intermodal competitors have, well, strictly
10 speaking we don't know what their underlying costs are,
11 but they have shown -- they have demonstrated a
12 willingness to enter markets that are already served by
13 companies like Qwest and to price at or below the
14 incumbent services, for example Clearwire and I guess a
15 number of other companies described in Mr. Teitzel's
16 testimony. So it does create the potentiality for a --
17 it does create the potential for purely local
18 competitors using the same technology that Qwest uses to
19 be disadvantaged in rural areas and therefore make it
20 more difficult for them to enter the market.

21 However, as a practical matter, the
22 telecommunications industry these days is much broader
23 than the regulated industry. And as Mr. Reynolds
24 pointed out, many of their competitors have very
25 different cost curves and very different underlying

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1 costs than Qwest does. The AFOR is not intended -- the
2 AFOR is by nature a hybrid animal, and we, in crafting
3 this settlement, we attempted to balance the interests
4 of consumers, particularly low income consumers and
5 those who want to see rates kept low, with the interests
6 of consumers and of the State in seeing competition
7 emerge throughout the state. This is a balance, we feel
8 it's an appropriate one that's likely to both preserve
9 and promote competition, which already seems to be
10 growing and fairly robust in many areas in Washington,
11 while maintaining overall rates low and keeping the
12 benefits of low rates available to all Washingtonians.

13 Q. Well, if there's apparent competition, in
14 other words through providers like Clearwire or,
15 Mr. Reynolds, you pointed out by a cable provider, I
16 mean you have indication from your, you know, from your
17 line loss there's a cable provider, why was it important
18 then in the AFOR to require that the company build out
19 DSL to 100% of the wire centers and to include it for
20 83%, at least that's the objective, the goal of the
21 AFOR, to 83% of the customers if the competition -- they
22 have alternatives already in those wire centers or in
23 other rural wire centers?

24 A. (Reynolds) Well, you know, it is one of the
25 policy goals of the AFOR statute is to, you know, expand

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1 advanced telecommunications service to underserved
2 areas, and I mean this is the most directly, you know,
3 direct way that we could do that. And even if there's a
4 cable company in these wire centers, we're bringing
5 competition. I mean we will hopefully bring down the
6 cables prices, and consumers will benefit from that. So
7 it does have benefits for us to move into markets even
8 if it's already dominated by another provider,
9 competition benefits.

10 COMMISSIONER OSHIE: All right, thank you.

11 JUDGE CLARK: Commissioner Jones.

12

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

14 BY COMMISSIONER JONES:

15 Q. I would like my first line of questioning is
16 what the Chairman was talking about earlier, and that is
17 on the term of the AFOR in the reporting requirements,
18 I'm a little confused about when we receive the reports
19 and when we review the results of the AFOR to see if
20 it's actually working or not to the goals that we state,
21 that you state in the agreement. So maybe you can walk
22 through me on some of the reports that we will receive
23 let's say in year one, year two, and year three, the
24 Commission will receive semiannually a service quality
25 report consistent with Class A company reporting

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1 requirements, correct?

2 A. (Reynolds) You will actually receive monthly
3 reports on service quality the way that you have always
4 received service quality.

5 Q. Okay.

6 A. (Reynolds) You will receive semiannually the
7 Customer Service Guarantee Program as part of that
8 report. Today that monthly report includes a subsection
9 for the Customer Service Guarantee Program, that will
10 now be provided to you every six months, so that's --
11 and that's the same information that you have
12 traditionally received.

13 Q. Okay. So, Mr. Reynolds, when you talk about
14 the Customer Service Guarantee Program, you refer to
15 Appendix C in the agreement?

16 A. (Reynolds) That's right.

17 Q. So that will be provided, these automatic
18 service credits for when you're out of service for five
19 business days, the out of service trouble condition
20 credit, those sorts of issues?

21 A. (Reynolds) That's correct.

22 Q. Is that your understanding, Mr. Saunders?

23 A. (Saunders) Yes, it is.

24 Q. Let's move to financial reporting. If you
25 read Appendix B, you see that sub 1 through 3, these

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1 confidential copies of the annual results of operations
2 is only received six months before the anniversary of
3 the AFOR in the year three and a half; is that correct?

4 A. (Reynolds) Actually, you will continue to
5 receive reports of operation and financial reports on an
6 annual basis throughout the plan. What has changed is
7 we used to provide that information to you quarterly, so
8 it's moved from quarterly to annually, but you will
9 receive that information. That information will be
10 slightly changed from what it was before to reflect the
11 changes in the plan, and that is, you know, we're going
12 to report out to you on what we call an MR or FCC basis.

13 Q. Right.

14 A. (Reynolds) And we're also going to keep sort
15 of side records associated with Commission adjustments
16 so that at the four year mark or the three and a half
17 year mark we can provide you a comprehensive report that
18 resembles the type of reporting that we have looked at
19 going into this plan, that Ms. Strain has looked at and
20 Dr. Loube and others have looked at, regarding what the
21 company looks like under rate of return regulation so
22 that you have -- you've got a snapshot going into it,
23 and we will try to recreate the wheel as much as
24 possible at the end of the term so that you have a look
25 that way too.

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1 Q. So just to confirm again, we will be
2 receiving annually what we call today the Commission
3 basis report on the financial operations of the company?

4 A. (Reynolds) Yes.

5 Q. Mr. Saunders, this is to you, paragraph 2,
6 and again the Chairman touched on this quite a bit, but
7 it implies a very busy 6 months in which Qwest has to
8 provide data, Staff will review, the Commission as you
9 said will set some standard or decide what kind of a
10 proceeding it is, we won't receive that information
11 until 6 months prior to the end of the AFOR, so we
12 really don't, I would argue we don't know what we're
13 dealing with, and then the Commission has to provide
14 both notice and hearing for whatever we decide to do.
15 Does the Staff think that all these actions can be
16 completed in 6 months, recognizing that other types of
17 proceedings of this nature often require, you know, 9
18 months, 12 months?

19 A. (Saunders) 6 months is the time allowed for a
20 competitive classification petition, 9 months allowed
21 for AFOR petition, 10 months is the usual time for a
22 general rate case as I understand it, and we try to get
23 rulemakings done within a year.

24 Q. We try to.

25 A. (Saunders) Well, we try very, very hard,

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1 Commissioner. As a practical matter, during the term of
2 the AFOR the Commission will continue to receive Qwest's
3 annual report, which we will continue to file as a --
4 under the heavy duty statute, not the light duty
5 statute, so there will be annual reports of operation.
6 We continue to get the service quality reports as we
7 have, we continue to get reports on large transactions
8 involving transfers of property, affiliated interests,
9 so we are not giving up -- we are not giving up the
10 ability to monitor on an ongoing basis the company's
11 performance in the market and the company's performance
12 for its customers in Washington.

13 Yes, you're right, the 6 months is going to
14 be a busy period, and it is for that reason that the
15 settling parties felt that a flexible approach to
16 process left to Commission discretion was appropriate
17 and would allow us to address the essential elements of
18 the deliberation while not getting caught up in what the
19 Commission might deem to be nonessential elements. This
20 is meant to be -- we will be monitoring Qwest every day,
21 every week, of every year. The 6 month period will be a
22 period of exceptional activity and controversy I'm sure.
23 However, we feel that it's in the interests, the
24 balanced interests of the customers, the agency, and the
25 company to get it done within a predictable period of

0311

1 time.

2 CHAIRMAN SIDRAN: Commissioner Jones, if it
3 will set your mind at ease, I would just like to note
4 that both your term and mine will expire before that
5 period runs.

6 COMMISSIONER JONES: That's extremely
7 reassuring.

8 A. (Reynolds) Commissioner Jones, I might add
9 one thing to that. I think the company is going to have
10 every incentive to want to make sure that we get all of
11 our cards on the table and that we have the plan
12 reevaluated and that we actually put forward what our
13 goals are for the plan far enough in advance that we can
14 sit down with the various parties that are interested in
15 this and get before the Commission hopefully similar to
16 this time, maybe including Public Counsel next time, you
17 know, a settled AFOR for your consideration, and that's
18 what your proceeding will be about. We can take -- I
19 mean we already have the base document this time, and it
20 will be modifying that based on what we have learned
21 over a four-year period, so it's not -- I mean this time
22 we were sort of starting brand new trying to put all the
23 information together, but I think we have already got a
24 head start on it for the six month process that's going
25 to take place at the end of the plan.

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1 BY COMMISSIONER JONES:

2 Q. Three and a half years is an awfully long
3 time in the telecom field, so that's my only note of
4 caution. But I do agree with the Chairman that I may
5 not be around at that time.

6 Let's turn to provision -- to the exceptions
7 paragraph 4 on the filing requirements if we could for a
8 minute, if you could get that in front of you. My
9 question concerns the transfer of property transaction
10 under sub c in paragraph 4. It's my understanding now
11 that under the transfer of property statutes that the
12 Commission has to approve any transfer of property,
13 there's no threshold on rate base or assets or anything
14 currently; is that correct, Mr. Saunders?

15 A. (Saunders) That's correct.

16 Q. So what was the reason in Staff's view of
17 giving the company more flexibility under this 5%
18 threshold? Is the Staff thinking that the company is
19 going to merge with another company, is it going to sell
20 some of its assets, or what was the Staff thinking of by
21 providing -- I certainly understand pricing flexibility,
22 service quality issues, but I'm having a bit of a
23 challenge understanding this transfer of property
24 transactions.

25 A. (Saunders) At the risk of mentioning a docket

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1 that is potentially extraneous to this matter, there was
2 a recent transfer of property docket in which the
3 company petitioned or the company gave us notice of a
4 transfer of a \$465 computer from its regulated to its
5 non-regulated division. The Staff's reasoning in this
6 case was merely that while large transactions have
7 significance, regulatory significance and financial
8 significance for the health and survival of the company,
9 day-to-day transactions of less than a somewhat
10 arbitrary number, that being 5% of rate base, could
11 reasonably be granted as a flexibility measure to allow
12 the company to conduct its business more flexibly
13 without adversely impacting our ability to regulate the
14 important transactions.

15 Q. Okay, let me walk through this a bit. The
16 threshold is 5% of rate base, is it Staff's
17 understanding that rate base will not change
18 substantially during the term of the AFOR based on the
19 separations freeze and issues like that, or is rate base
20 going to change?

21 A. (Saunders) I'm not sure that I'm -- I'm not
22 sure that I would be competent to answer that kind of a
23 detailed question about assumptions regarding rate base.
24 I can tell you that it was the logic of the settling
25 parties that --

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1 Q. But right now it's \$78 Million, correct?

2 A. (Saunders) Subject to check, Commissioner, or
3 as a Bench Request I would be happy to follow up on
4 that.

5 Q. Well, let's not get hung up on that, let's
6 just walk through a scenario or two here. If the
7 company decided to sell one exchange, let's say it has,
8 Mr. Reynolds, you have what, 120 exchanges in this
9 state?

10 A. (Reynolds) I think we have 112 wire centers,
11 the exchanges is a lesser number.

12 Q. What's the exchange number?

13 A. (Reynolds) I want to say in the 60's.

14 Q. Okay. So if the company decided to sell one
15 exchange and it were -- it came in under the threshold,
16 would that trigger this -- would it have to go through
17 Commission approval or not?

18 A. (Saunders) Yes, it would subject to provision
19 4(c)(ii).

20 Q. What about if it were let's say the company
21 let's say were to "cherry pick" or split up the exchange
22 area and decide to sell part of an exchange and it came
23 in at \$75 Million, under the threshold, the company
24 would not have to file with the Commission, correct?

25 A. (Saunders) Anything that involves the sale of

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1 an exchange, whether it's a large exchange or a small
2 exchange, would be subject to Commission review and
3 approval or disapproval. If the company wanted to
4 reduce the size of an exchange or break it up into two
5 separate exchanges, that I think would fall under
6 Commission review for different reasons not discussed in
7 the AFOR in that they would have to alter their
8 boundaries. The subsequent sale of any exchange with or
9 without altered boundaries would have to be subject to
10 the AFOR reviewed by the Commission and approved or
11 disapproved. The intent of the parties was that
12 anything that involved sale of an exchange similar to
13 what Verizon has done in the Northeastern states, what
14 Qwest did with a couple of Coastal Washington exchanges
15 several years ago, would be subject to Commission review
16 and approval.

17 Q. Is that your understanding, Mr. Reynolds?

18 A. (Reynolds) That's correct, and I might give
19 an example of a different type of property that could
20 potentially be above the threshold and below. We
21 recently sold a building in downtown Seattle that was
22 below that threshold, and we had to report it. Was
23 still many millions of dollars, but it was under the
24 threshold, that would no longer have to be reported or
25 subject to Commission approval. If we sold Bell Plaza,

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1 for example, in Seattle for \$79 Million, that would be
2 subject to your approval.

3 Q. Thank you.

4 My last question, I think I know enough on
5 that right now, my last question is for you,
6 Mr. Reynolds, in your Exhibit 70 and how it relates to I
7 think Mr. ffitch earlier was talking about the
8 revocation, the potential revocation of competitive
9 classification, and I'm a little confused on the point
10 now that we have had some discussion of it. Do you have
11 Exhibit -- these are the three baskets that Mr. ffitch
12 referred to of services, the first basket is services
13 which have been competitively classified by the
14 Commission.

15 A. (Reynolds) Yes.

16 Q. The second basket lists the 13 categories of
17 service that really is the heart of this AFOR that will
18 be treated as competitively classified under this AFOR.

19 A. (Reynolds) Right.

20 Q. And then the third basket is services which
21 would remain under tariff under the AFOR, which is
22 basically the 1FR service. One of my first decisions as
23 a Commissioner was in the digital business exchange
24 services, and I recall quite clearly that we
25 competitively classified digital business exchange

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1 services, but not for all the wire centers of the state
2 of Washington.

3 A. (Reynolds) That's correct.

4 Q. Is that correct?

5 A. (Reynolds) Yes.

6 Q. I think there were 50 odd --

7 A. (Reynolds) 58.

8 Q. 58. And so I'm looking at the first basket
9 where you have parentheses around competitive zones,
10 where you state competitive zones, and then I'm going to
11 the fifth category under services to be competitively
12 classified under this AFOR, it's the same digital
13 business exchange services, parentheses statewide?

14 A. (Reynolds) That's right.

15 Q. So is the effect of this AFOR as agreed to in
16 the settlement to take those 58, to put it bluntly, to
17 take those 58 wire centers that were excluded from the
18 competitive classification in that order and to make it
19 in effect a statewide umbrella classification status for
20 all digital business services?

21 A. (Reynolds) That's correct. And part of the
22 reason why we offered the prohibition on geographic
23 deaveraging for these types of services was to sort of
24 allay some of the Commission's fears that they had at
25 that time that these areas didn't have substantial

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1 enough competition. I mean if you recall the data, the
2 competitors weren't there and we weren't there either.
3 But it's much easier for us to administer our tariffs on
4 a statewide basis and our business on a statewide basis,
5 so we're willing to not geographically deaverage the
6 rates for those services so that the customers out in
7 the rural areas receive the same benefits as the urban
8 customers. And we did that in an effort to allay some
9 of the fears that you had at the end of the digital comp
10 class proceeding.

11 COMMISSIONER JONES: Thank you, that's all I
12 have.

13 JUDGE CLARK: All right.

14 Redirect, Ms. Anderl?

15 MS. ANDERL: Thank you, Your Honor.

16

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

18 BY MS. ANDERL:

19 Q. Mr. Reynolds, you had a conversation with
20 Mr. ffitch about the applicability of 80.36.330(3) and
21 (4); do you recall that?

22 A. (Reynolds) Yes, I do.

23 Q. Are there any changes or corrections you wish
24 to make to the testimony you gave in response to
25 Mr. ffitch's questions?

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1 A. (Reynolds) Yes, I believe that at the time we
2 were having the discussion we took a look at sub
3 provision 4 as perhaps a way that the Commission could
4 procedurally administer 3. That is that if, you know,
5 we had included 3 in our AFOR plan because, you know, it
6 would -- it was a provision that prohibited us from
7 pricing below cost, and I think Staff felt that that was
8 an important provision to continue on because we're not
9 an entirely competitively classified company yet. But
10 after having thought through it, you know, we included
11 that provision on a stand alone basis for a reason. I
12 mean 320 should not apply, we're asking, or I'm sorry,
13 330 should not apply, we're asking 320 to apply to us.

14 That is the basis of our plan is for us to be
15 treated like a competitively classified company with the
16 following exceptions, and that's how it works. Well,
17 one of the exceptions is that we're willing to be held
18 to an above cost standard, and we plucked that out of
19 80.36.330. Now to the extent that customers want to
20 complain against that, they don't need subsection 4 to
21 do that, they have subsection 7 in the AFOR statute,
22 80.36.135, to be able to bring complaints against the
23 company if we price below cost, so you don't need
24 subsection 4, and that's my testimony.

25 MS. ANDERL: Thank you.

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1 No further redirect.

2 JUDGE CLARK: Mr. Trautman.

3 MR. TRAUTMAN: Yes, I have two questions.

4

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

6 BY MR. TRAUTMAN:

7 Q. Mr. Saunders, you were asked I believe if
8 Staff had done an analysis of what the effect of a \$1
9 increase in the basic residential service would have on
10 Qwest revenues, and I believe you said you weren't sure
11 but you would look at that, and have you got further
12 information on that?

13 A. (Saunders) That is correct, I was asked the
14 question whether or not Staff had done an analysis of
15 the \$1 increase and its effect on Qwest revenues, and I
16 stated that I wasn't sure, and I checked, and we did in
17 fact do an analysis of the revenue impact, likely
18 revenue impact of the company's original proposal of a
19 \$2 increase in 50 cent increments over four years. We
20 did not do a separate analysis of a \$1 increase.

21 Our conclusion from the analysis of \$2 over
22 four years, as described in my colleague Ms. Strain's
23 testimony subsequent, was that with a \$2 increase over
24 four years the company would not -- we estimated that
25 the company would not be overearning as a result of that

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1 increase.

2 Q. And you were asked a question about the
3 revenue impact of eliminating the one free directory
4 assistance call, and do you recall that question?

5 A. (Saunders) I do.

6 Q. And I believe you recalled saying that this
7 was memorialized on March 7th; is that correct?

8 A. (Saunders) Yes.

9 Q. Did Staff have the information earlier prior
10 to that date?

11 A. (Saunders) I believe that as I -- I believe
12 that I stated in my answer that Staff had the
13 information necessary to calculate that, to make that
14 calculation. We received the information upon which we
15 calculated the answer to that question during informal
16 discussions with the company, Public Counsel, and the
17 other settling parties, well, the company and Public
18 Counsel. It was not formally memorialized at the time,
19 it was captured in I believe a data request as I -- as
20 agreed to in the answer.

21 MR. TRAUTMAN: Thank you, no further
22 questions.

23 JUDGE CLARK: All right, thank you for your
24 testimony, Mr. Reynolds, Mr. Saunders.

25 And is there any objection to the panel being

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1 excused, not the individual witnesses, but no further
2 inquiry regarding the settlement?

3 MR. FFITCH: Your Honor, I did have a couple
4 other questions to follow up on the Bench, and I wasn't
5 sure what time you would want to hear those. I'm happy
6 for counsel to follow up on my questions, perhaps I
7 should have spoken up earlier.

8 JUDGE CLARK: Yeah, that probably would have
9 been the best time to do it. I will allow the inquiry
10 provided that it is related specifically to a new topic
11 raised by Commissioner inquiry and not allow a second
12 opportunity for examination.

13 MR. FFITCH: These are direct follow ups, and
14 it should be quite brief.

15 JUDGE CLARK: Okay, so I would like you to
16 reference the Commissioner inquiry, please, if possible,
17 that you're referring to.

18

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

20 BY MR. FFITCH:

21 Q. This is for Mr. Saunders following up on
22 Commissioner Jones' question about the transfer of
23 property statute. And it's true, is it not,
24 Mr. Saunders, that in some cases when there is a
25 transfer of property and there is a gain on sale that

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1 some of that gain on sale is due to rate payers, is it
2 not?

3 A. (Saunders) Yes.

4 Q. Under this agreement where transfers under
5 \$78 Million are not reported to the Commission, isn't it
6 the case that a \$78 Million or less transfer will not --
7 there will not be an opportunity for rate payers to
8 capture their share of that gain?

9 A. (Saunders) No, I don't think that's correct.
10 Rate payers could still calculate -- could still capture
11 their portion of the gain during a subsequent evaluation
12 of the company's transfer. What's changed by the
13 statute -- what's changed by the plan in waiving certain
14 aspects of the transfer of property statute is merely
15 the advanced reporting thereof. The gain on sale might
16 I believe still be in the context of a later proceeding
17 might still be taken up.

18 Q. Mr. Reynolds, do you agree with that? My
19 understanding of this agreement was that merger, or
20 excuse me, transfers under \$78 Million were simply not
21 subject to the statute 80.12 and did not require filing
22 or Commission review or approval.

23 A. (Reynolds) I would agree that they would not
24 require Commission review or approval, but I think what
25 Mr. Saunders is saying is that in the ordinary course of

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1 our financial reporting to the extent that those assets
2 became known, which they will become known on our annual
3 reports, to the extent that any portion was due rate
4 payers, rate payers would have an opportunity at that
5 point once the sale is --

6 Q. Well, it's true, isn't it --

7 A. (Reynolds) -- part of our results of
8 operation.

9 Q. I don't understand when that opportunity
10 arises under this AFOR. At the present time you have an
11 80.12 proceeding to determine the amount of the gain on
12 sale that's due to rate payers, and then there's an
13 opportunity to deal with that in rates. What is the
14 opportunity that rate payers would have let's say --

15 A. (Reynolds) Could you read me the statute
16 where it says that?

17 Q. Where it says what?

18 A. (Reynolds) In 80.12 that we have to determine
19 what portion is available for rate payers. You just
20 made a statement that 80.12 states that that's what the
21 proceeding is about. I'm just not familiar with that,
22 I'm just asking you to clarify your question.

23 Q. Well, I think that the Commission has
24 interpreted the statute that way, and there have been a
25 number of proceedings where it has examined that issue

0325

1 in connection with transfers of property. I don't know
2 that I could point you to specific language in the
3 statute, because it uses a public interest standard, so
4 I think that that's where the sharing of the gain
5 arises.

6 My question to you is, I don't see the
7 procedural mechanism here for Commissioners to review or
8 rate payers to capture that benefit. It could be quite
9 significant, could it not?

10 A. (Reynolds) Was that a question for me?

11 Q. Let me rephrase the question.

12 Are you aware that in a number of cases for
13 transfers of property that the Commission has for
14 example divided the gain on sale for major company
15 assets on a 50/50 basis?

16 A. (Reynolds) I'm not aware of that, but I will
17 accept it subject to check. You know --

18 Q. So if you were making a transfer of a piece
19 of property worth \$78 Million, there would be \$35
20 Million potentially that was due to rate payers that I'm
21 trying to figure out under this agreement how rate
22 payers are able to avail themselves of that legally
23 required benefit?

24 A. (Reynolds) Well, I think if you take a look
25 at page 6 of Exhibit 4 and you look under transfers of

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1 property in the matrix, you're going to find out that
2 certain parts of 80.12 have -- the waiver of those parts
3 have been granted, but other parts the waiver has been
4 denied and that the Commission still has authority to --
5 they still have the rules in place. You know, if you
6 take a look at application of the public interest,
7 public hearings, statement required for nonpublic
8 service company purchases, general contents, I mean the
9 Commission still has a lot of authority intact. I think
10 the process that we were seeking to streamline was for
11 us to have to go to the Commission for approval of, you
12 know, of every property transfer under 5% of rate base.
13 To the extent that there's a property transfer that's
14 due or there's a portion of it that's due rate payers, I
15 think that that will become apparent in our financial
16 reporting, and the rate payer will have an opportunity
17 to avail themselves of their portion.

18 A. (Saunders) If I might follow up on
19 Mr. Reynolds' statement, the intent of the settling
20 parties was to -- I'm sorry, I have lost my train of
21 thought there.

22 Q. Well, Mr. Saunders, I think I understand the
23 intent of this, your example was a \$400 computer, but we
24 have an exemption here for transfers of up to \$78
25 Million. Staff started out at 1%, which is a

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1 significantly smaller amount of money I believe, \$15
2 Million; is that correct?

3 A. (Saunders) I don't have a calculator, but
4 subject to check I wouldn't contest it.

5 Q. Where did the 5% come from?

6 A. (Saunders) 5% was a number that was settled
7 on as what we felt was a reasonable balance between the
8 company's position and Staff's original position. We
9 felt that it would be sufficiently large to exclude the
10 very major transactions that have a life or death or a
11 significant impact on the company's health and major
12 operations in this state while avoiding micromanagement
13 of the company's day-to-day activities. Qwest is a very
14 large company, and even relatively small transactions
15 when performed on a relatively wide basis could have a
16 large -- could have a value of several million dollars.
17 And your entire -- you are correct in observing that the
18 plan does not specifically address a vehicle for rate
19 payers to recover any entitlement that they might have
20 on a transfer of property that falls under the floor
21 pursuant to this plan. We, as I stated, had to strike a
22 balance between micromanagement and shall we say
23 progressive regulation.

24 Q. Do you know, Mr. Saunders, if the annual
25 reports and Commission basis reports that will be filed

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1 by the company will reflect transactions or at the
2 present time routinely reflect transactions of \$78
3 Million or less?

4 A. (Saunders) I'm afraid I don't have that
5 information. You might well be able to direct that
6 question to one of my colleagues who are more familiar
7 with the specifics of the annual report.

8 MR. FFITCH: Thank you, Your Honor, the only
9 other questions I have were actually prompted by the
10 redirect, and so I don't believe that you had given me
11 leave to ask that type of question. I would like to,
12 but I have a feeling you don't want me to continue the
13 cycle, so.

14 JUDGE CLARK: You're correct.

15 MR. FFITCH: In that case, that concludes my
16 questions.

17 JUDGE CLARK: Thank you.

18 Thank you, Mr. Reynolds, thank you,
19 Mr. Saunders, we will take our afternoon recess at this
20 juncture. When we reconvene if the next witness could
21 be set up on the stand, that would expedite the hearing.

22 MS. ANDERL: Yes, Your Honor.

23 JUDGE CLARK: All right, we're at recess.

24 (Recess taken.)

25 JUDGE CLARK: We're back on the record,

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1 Ms. Anderl, would you call your next witness, please.

2 MS. ANDERL: Thank you, Your Honor. We have
3 called Dave Teitzel to the stand, and he is in the
4 witness chair.

5 JUDGE CLARK: Thank you.

6 (Witness DAVID L. TEITZEL was sworn.)

7 JUDGE CLARK: Ms. Anderl.

8 MS. ANDERL: Thank you, Your Honor.

9

10 Whereupon,

11 DAVID L. TEITZEL,
12 having been first duly sworn, was called as a witness
13 herein and was examined and testified as follows:

14

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

16 BY MS. ANDERL:

17 Q. Mr. Teitzel, would you please state your name
18 and your business address for the record.

19 A. Sure, my name is David Teitzel, it's spelled
20 T-E-I-T-Z-E-L, my business address is 1600 Seventh
21 Avenue, Seattle, Washington, zip code is 98191.

22 Q. And you're appearing here as Qwest's witness
23 on competition issues?

24 A. Yes, I am.

25 Q. What is your job title and job

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1 responsibilities with Qwest?

2 A. I am the Staff Director on Qwest Public
3 Policy, I am responsible for advocating on behalf of
4 Qwest for regulatory flexibility in state dockets as
5 well as FCC dockets.

6 Q. Thank you.

7 Mr. Teitzel, you have previously filed both
8 direct and rebuttal testimony, do you have your
9 testimony and exhibits with you at the witness stand?

10 A. Yes, I do.

11 Q. And do you have also Public Counsel's
12 exhibits for cross-examination at the witness stand with
13 you?

14 A. Yes, I do.

15 MS. ANDERL: Your Honor, all of those
16 documents having been previously admitted, we would
17 tender the witness for cross.

18 JUDGE CLARK: All right, thank you.

19 Mr. Ffitch, I just want to remind you before
20 we engage in this that some of these documents are
21 marked confidential, so we need plenty of notice if you
22 intend to inquire into any matters that would require an
23 in camera session.

24 MR. FFITCH: Thank you, Your Honor.

25 JUDGE CLARK: Thank you.

0331

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

2 BY MR. FFITCH:

3 Q. Good afternoon, Mr. Teitzel.

4 A. Good afternoon, sir.

5 Q. We have done this once or twice before.

6 A. Yes, we have, good to see you again.

7 Q. Likewise.

8 Please turn to your rebuttal testimony,
9 Exhibit 16C, and if you could go to page 4.

10 A. I have that page.

11 Q. On this table here, Table 1, and actually
12 also on Table 2 on the next page, you show something
13 called the convergence shares, correct?

14 A. They're actually called connection shares.

15 Q. I'm sorry, connection shares I meant to say,
16 thank you.

17 A. You're welcome.

18 Q. And these tables use data about subscribers
19 and service quantities, correct?

20 A. Yes, they do.

21 Q. But the tables don't address the identity of
22 the providers, do they?

23 A. They do not.

24 Q. So one provider could be selling a service in
25 two or three of these different categories, for example

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1 an ILEC could be selling wireless and high speed as well
2 as an ILEC service, correct?

3 A. That is correct.

4 Q. And if you look at the Table 1 on page 4,
5 could you look at the high speed lines, please?

6 A. I have that number.

7 Q. And we see the connection share there has
8 gone from 3% to 14%, has it not?

9 A. That is correct.

10 Q. That is the most dramatic increase of any of
11 the lines shown there?

12 A. In terms of an absolute change, that would be
13 true.

14 Q. Yes in percentage terms?

15 A. Correct.

16 Q. It's true, isn't it, that ILECs provide a
17 very significant portion of high speed via DSL, do they
18 not?

19 A. Yes, ILECs do provide DSL service and are
20 having success doing that.

21 Q. This information in the connection share
22 table that you show here doesn't tell us anything about
23 market share, does it?

24 A. It doesn't discuss market share, because
25 frankly market share is an extraordinarily difficult

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1 concept to quantify, especially in this market where you
2 have traditional wireline based competition in the form
3 of CLECs, ILECs, et cetera, as well as Mr. Reynolds
4 mentioned earlier in his remarks we've got VoIP
5 competition, wireless substitution, quantifying all of
6 that is extraordinarily difficult. I think connection
7 share is a reasonable way to look at the market
8 holistically to see how the market is changing in terms
9 of how consumers are using connections to the
10 communications network.

11 Q. Okay. But this is not intended by you to
12 provide any information about market share of Qwest in
13 these different technologies, is it?

14 A. It is not, it's strictly a view looking at
15 how the markets changed from 2000 to June 2006, which is
16 shown in Table 2, in terms of how the proportions are
17 changing of consumer connections to the communications
18 network.

19 Q. All right.

20 Now could you please turn the page on your
21 testimony to page 5, and look at Footnote 3, and there
22 you reference the FCC Local Competition Report for these
23 numbers that you have used in your tables, correct?

24 A. That is true.

25 Q. Could you please turn to Exhibit 18, your

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1 cross-exhibit, that's the Local Competition Report; do
2 you have that?

3 A. Yes, I do.

4 Q. Could you please go to page 12 to Table 8; do
5 you have that?

6 A. Just a moment, did you say page 12?

7 Q. Let's see, make sure I have that right, page
8 12, Table 8, yes.

9 A. Yes, I have that.

10 Q. And what I'm going to do with this particular
11 exhibit, the FCC Local Competition Report, is just look
12 at some of the other information we have in the record
13 about the market generally, and a premise of my question
14 or an assumption is that the questions accept that these
15 are national statewide figures, these are not Qwest
16 service territory specific numbers, so I just want you
17 to understand that that's the context of the questions.

18 A. If that was a question to me, could I
19 clarify? I believe you said national numbers, these are
20 specific to Washington, but they're not specific to
21 Qwest, they're statewide in Washington.

22 Q. Correct, I'm glad we got that clarified.
23 Having said that, let's look at Table 8, and this shows
24 the CLEC share, that's C-L-E-C, share of all switched
25 access lines in each state, correct?

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1 A. Yes, it does show that.

2 Q. And it also shows the national average, and
3 the national average of CLEC share is 17%, correct,
4 that's in the far lower right-hand corner?

5 A. As of June 2006, that is correct.

6 Q. And this is the most recent FCC Local
7 Competition report, is it not?

8 A. It is.

9 Q. It's dated January 2007, correct, if you look
10 on the first page of the exhibit?

11 A. That is correct.

12 Q. Now we see just above that that the
13 Washington share is below the national average, it's at
14 14%, is it not?

15 A. It is below the national average, but I
16 should clarify, and we may get into this in a moment,
17 but these data would exclude any access lines served on
18 a VoIP basis by companies such as Comcast in this
19 market. So to that extent, even though they're a CLEC
20 and they're serving customers in this state, those data
21 would not be included in this calculation, so it's not a
22 holistic look at the marketplace, if you will.

23 Q. Well, you're anticipating the question that I
24 do have, and we'll get there in a minute, but in any
25 event, what this table shows on its face is that the

0336

1 CLEC share is 14% of total access lines in Washington,
2 correct?

3 A. I would acknowledge that on its face it does
4 show that number.

5 Q. And that does include cable telephony, does
6 it not?

7 A. It includes cable telephony access lines
8 served on a circuit switch basis.

9 Q. All right, and again we're going to get into
10 that issue in a minute, but at least some types of cable
11 telephony are included in this?

12 A. I would grant that.

13 Q. And again, if we look back to 2004 on this
14 table going across on the Washington line, we see that
15 CLEC share in Washington has actually been essentially
16 flat since the beginning of 2004 with a 1% increase, has
17 it not?

18 A. Yes, these numbers on their face would show
19 that.

20 Q. And if you would, let's go to the top of the
21 right-hand column and just go down and look at the
22 percentages in other U S West states. First of all,
23 just as a general proposition, it's true, is it not,
24 that Qwest is the largest incumbent local exchange
25 company in all of its Qwest states, the 14 Qwest states,

0337

1 is it not?

2 A. That is true.

3 Q. If we look at the line for Arizona, we see
4 that they have 30% CLEC share, correct?

5 A. That's correct.

6 Q. And going down, you see Colorado is 19%, Iowa
7 is 15%, Minnesota 23%, North Dakota is 20%, Oregon is
8 %16, South Dakota is 33%, Utah is 24%, and all of those,
9 at least I attempted to limit that list to the ones,
10 those are all above Washington state in terms of CLEC
11 penetration, aren't they, or CLEC market share based on
12 this table?

13 A. On a statewide basis, that's correct.

14 Q. And there are the other U S West states shown
15 on here are at or below Washington, but not -- most of
16 them are not significantly below except I think New
17 Mexico is 8%, correct?

18 A. That is correct.

19 Q. Can I ask you to turn to Table 5 of this same
20 exhibit.

21 A. I have that page.

22 Q. All right, and this shows the CLEC carrier
23 lines by type of technology, it's basically divided
24 between coaxial cable and other technologies, correct?

25 A. Yes, it is.

0338

1 Q. Then it shows that CLECs using other than
2 coaxial are declining nationally since June 2005, does
3 it not?

4 A. Yes, it does.

5 Q. And that is the column in the middle under
6 the heading other technologies, right?

7 A. That's my understanding.

8 Q. Now on your rebuttal testimony, the page we
9 were just looking at, which is Exhibit 16, page 5,
10 beginning at line 15 you make the assertion that
11 Dr. Loube understates the market share in effect of
12 cable telephony in Washington because as you I think
13 just testified in your view the FCC data do not include
14 VoIP cable, the VoIP form of cable telephony provided by
15 cable companies; is that right?

16 A. That is correct.

17 Q. And you also state in this same section that
18 in general CLECs are actively migrating their customers
19 from circuit switched service to VoIP technology; is
20 that correct?

21 A. Well, I think I made that remark in my
22 testimony at page 5 relative to Comcast in particular,
23 because in this state, which is the topic of our
24 discussion today, Comcast has two versions of telephone
25 service. They've got a Comcast digital phone, which is

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1 their circuit switched version of telephone service
2 served over their coaxial network, they've got a Comcast
3 digital voice, which is their VoIP based version. And
4 they have frozen their circuit switched version of that
5 telephone service, and they are now actively, and very
6 actively I might add, marketing their Comcast digital
7 voice service in this state.

8 Q. So their circuit switch service is declining?

9 A. It is.

10 Q. And their VoIP service is increasing?

11 A. Yes, it is.

12 Q. And you have actually made that statement
13 more generally with respect to all CLECs in Washington
14 at line 13 of the exhibit, correct, in terms of
15 migrating customers from circuit switch to VoIP?

16 A. Well, we may get into this topic in a bit as
17 well in terms of cross, but there are other CLECs in
18 Washington such as MCI/Verizon, AT&T/SBC, who have
19 traditionally been wireline circuit switch CLECs
20 operating in this state providing service to the
21 residential telephone market, and they are now
22 converting their focus to VoIP based focus as well.

23 Q. All right.

24 A. So Comcast is probably the poster child for
25 that, but they're not alone.

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1 Q. All right. And we actually have the data on
2 that point for Comcast in Exhibit 20 in this record, do
3 we not? This is a -- I didn't really want to drag you
4 through all the numbers, this is an exhibit that you
5 cited in your testimony if you want to take a quick
6 look.

7 A. Give me a moment.

8 Q. Exhibit 20, it's a Comcast press release.

9 A. I have that exhibit.

10 Q. Well, this just verifies what you said, does
11 it not, if you look at the bottom of page 2, there's
12 language there under the heading of phone which actually
13 you quoted in your testimony regarding this trend with
14 Comcast, correct?

15 A. That is correct.

16 Q. And then if you go to Table 6 on page 11, we
17 actually have data that shows the decline for circuit
18 switched and the increase for VoIP, do we not?

19 A. We do.

20 Q. Okay. So can we go back, please, to Table 5
21 of the FCC report, that's Exhibit 18.

22 A. I have that table.

23 Q. So if cable carriers are, well, again just to
24 recap, if we see that coaxial cable is increasing the
25 number of lines served on the far left-hand column, if

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1 cable carriers are not reporting VoIP and circuit
2 switched lines are declining, it's hard to figure out
3 why this data shows increasing reporting, increased
4 numbers of lines for coaxial cable, isn't it?

5 A. Well, to clarify, Comcast is not the only
6 cable provider in the state. We also have Charter,
7 we've got Rainier Cable down in the Graham, Spanaway,
8 Centralia areas. Comcast is probably the largest cable
9 provider in this state, but they're not the only one.

10 Q. But you indicated both in your testimony
11 orally today and in your written testimony that you
12 viewed this as a trend with all cable CLECs.

13 A. I think it will be a trend over time, there's
14 no doubt about that.

15 Q. Can I ask you to turn --

16 A. I'm sorry, I think the cable providers are
17 all on different trajectories in terms of their time
18 frames. I can tell you, for example, that Cox is also,
19 even though they're not active in this state, involved
20 in migrating their customers to VoIP over time as well,
21 but they're on a later launch schedule than Comcast in
22 doing that.

23 Q. All right.

24 A. So it depends on the provider.

25 Q. Can I ask you to turn to Exhibit 157, please,

0342

1 and those are the instructions for the FCC Form --

2 A. I have that.

3 Q. -- 477, are they not?

4 A. Yes, they are.

5 Q. And this is the instructions for carriers
6 when they're filling out the data report forms to send
7 in the data that ends up in Exhibit 18, Local
8 Competition Report, correct?

9 A. That is correct.

10 Q. Please turn to page 7.

11 A. I have that page.

12 Q. And I'm looking at if you would look at
13 heading D, part 2, wireline and fixed wireless local
14 telephone; do you have that?

15 A. I do.

16 Q. Can you look at the first two sentences
17 there, would you please just read those?

18 A. Sure.

19 Included in part 2, report lines or
20 wireless channels, hereafter lines, that
21 you, including affiliates, use to
22 provide voice telephone service in this
23 state. For purposes of this data
24 collection, voice telephone service
25 means local exchange or exchange access

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1 services that allow end users to
2 originate and/or terminate local
3 telephone calls on a public switched
4 network, whether used by the end user
5 for voice telephone calls or other types
6 of calls carried over the public
7 switched network, for example, lines
8 used for facsimile equipment or lines
9 used occasionally or exclusively for
10 dial-up connection to the Internet.

11 Q. Thank you.

12 Mr. Teitzel, can a Comcast VoIP customer
13 originate a call that terminates on a local Qwest
14 customer's line in Washington?

15 A. Yes.

16 Q. And aren't almost all Qwest customers
17 connected to the public switched network?

18 A. Yes, they are.

19 Q. Can you point me to anything in this section
20 of the instructions here that specifically excludes or
21 prohibits cable carriers from reporting voice service,
22 voice telephony that's provided on a VoIP, using VoIP
23 technology?

24 A. Well, certainly. In FCC Docket CC4-36, as I
25 cited in Footnote 4 on page 5 of my rebuttal testimony,

0344

1 Exhibit 16C, Comcast has commented in that docket on
2 several occasions that they do not view VoIP service and
3 their version of VoIP service as a telephone service.
4 Rather they view it as an enhanced information
5 interstate service that would not qualify under these
6 terms for reporting. In fact, the FCC has also released
7 a set of Q&A's about the Form 477 process which is a
8 public document on their web site, and it says that
9 cable providers may provide VoIP counts, but they are
10 not required to report those. And certainly Comcast
11 views their version of VoIP as an enhanced service which
12 would be outside these boundaries.

13 Q. Well, setting aside the FCC Q&A, which you
14 actually did not cite or provide in your testimony,
15 first of all, the answer to my question I believe is you
16 can't point to anything in the specific instructions for
17 Form 477 that you have right here as an exhibit that
18 says, do not report VoIP based cable telephony?

19 A. I'm telling you the language says what it
20 says, Mr. ffitich.

21 Q. All right.

22 A. Comcast views their service --

23 Q. If you could please just answer the question,
24 I understand, you don't need to repeat your other
25 statement, because I'm going to ask you about that.

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1 Now Comcast statements in an FCC regulatory
2 proceeding about regulatory treatment of this service
3 are not determinative as to the reporting under this
4 form, are they? They're simply policy statements in an
5 FCC debate.

6 A. The FCC docket is an open docket, it is not
7 concluded as of yet, they have not determined how VoIP
8 should be classified.

9 Q. Right.

10 A. It may end up being classified as a telecom
11 service, at which time it clearly would fall within
12 these guidelines, but that docket is open, it's not
13 concluded.

14 Q. Now we don't have it in front of us, but you
15 have also indicated that the FCC Q&A on their web site
16 in fact apparently gives, and I haven't seen this
17 either, but apparently gives companies the option of
18 reporting this traffic on the Form 477, does it not?

19 A. It says, if the provider chooses to report
20 that sort of telephone service, they may. But once
21 again, clearly it's not a telephone service in Comcast's
22 view.

23 Q. All right, let's move on to another area.
24 Please turn to page 26 of your rebuttal, that's Exhibit
25 16C, and now we're going to be looking at some

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1 confidential pages.

2 A. I have that page.

3 Q. And so let's be careful not to -- I'm going
4 to try to conduct the examination without asking you to
5 state any of these numbers on the record that are
6 confidential.

7 MR. FFITCH: While the pages are yellow,
8 pages 26 and 27, I will just confirm with your counsel
9 that it's only the shaded material on both those pages
10 that's actually confidential; is that right?

11 MS. ANDERL: That's correct.

12 BY MR. FFITCH:

13 Q. What I want to cover here, Mr. Teitzel, is
14 basically the three different components of the
15 residential market, and that's essentially what you're
16 discussing here; is that right?

17 A. Would you point me to a line number, please,
18 on page 26, does it start at line 14?

19 Q. Sure, let's start at line 16. Well, let me
20 back up a minute and maybe provide some context for
21 this, and then we can go to the specific line number.
22 But basically wouldn't you agree that the residential
23 market that we're discussing here and you address in
24 your testimony in this section can be divided into three
25 different components, there are, number one, the

0347

1 customers who buy stand alone residential service with
2 nothing else, just plain old fashioned stand alone
3 residential service, that's one segment, correct?

4 A. I will agree with that. I may have a
5 qualifier in a moment, but proceed.

6 Q. Okay. At the other end of the spectrum, if
7 you will, you have customers who purchase packages or
8 bundled services, correct, from Qwest?

9 A. Correct.

10 Q. In the middle, if you will, there is a group
11 of customers who buy stand alone residential service and
12 one or more features from Qwest, correct?

13 A. That would be correct, and I would agree with
14 those three classifications as customers of Qwest in
15 terms of categories of services they would buy from the
16 company, but I would not agree that a stand alone 1FR
17 customer, for example, may be simply stand alone. Some
18 proportion of those customers very likely are buying
19 other services from other vendors, such as broadband
20 from Comcast, Verizon wireless service, a variety of
21 other services. But in terms of your categorization of
22 Qwest's market around what services buy from Qwest, very
23 narrowly I would agree with your definitions.

24 Q. Well, and we're talking about the customers
25 for residential telephone service, local exchange

0348

1 service, that's the three different groups are different
2 components of the residential local service market,
3 correct?

4 A. Once again, I would agree with you as far as
5 it goes, but I would not agree that those customers
6 don't have other options available to them. What was
7 just described is very strictly focused on the wireline
8 telecommunications market, and some of those customers
9 buy nothing but a line from the telecom provider, some
10 buy a package or bundle, some buy a la carte features.

11 Q. Okay.

12 A. On that narrow basis, I would agree with you.

13 Q. All right. And we have also information in
14 the record, and I think we probably are in pretty close
15 agreement on the ball park size of those different
16 segments of the market, and this is where we can look at
17 the exhibit that you have here. Let's look at line 16
18 on page 26, and we see a number there on line 16, do we
19 not, that's shaded?

20 A. We do.

21 Q. And that shaded number represents all the
22 customers who do not purchase bundles or packages from
23 Qwest, correct?

24 A. That's not correct, and that's the reason I
25 disputed this in my rebuttal testimony. The number

0349

1 shown here is characterized as being stand alone
2 residential service.

3 Q. No, you're not listening to my question,
4 because I will get there.

5 A. Okay.

6 Q. This number represents the combination of two
7 out of the three groups we just identified. It excludes
8 the group that purchases bundled services, correct?

9 A. That would be correct.

10 Q. All right. This represents that some of the
11 stand alone folks and that's the stand alone plus
12 features, correct?

13 A. Correct.

14 Q. And to some extent that was the thrust of
15 your testimony here was to indicate that that particular
16 percentage had two components in it, correct?

17 A. That is correct. The term stand alone is
18 problematic to me. Stand alone implies buying nothing
19 but a particular service.

20 Q. All right.

21 A. And that's not what that number means.

22 Q. So the first step here is that if we subtract
23 this number on line 16 from 100, we get the percentage
24 of customers that are buying bundles or packages from
25 Qwest, correct, that tells us how big that group is?

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1 A. That's true.

2 Q. All right. Now if you could turn to page 27
3 and go to line 16, you see an actual line count and then
4 a percentage count; do you have that?

5 A. I do.

6 Q. This is the line count and percentage count
7 for the customers who are stand alone customers of Qwest
8 with regard to residential service and purchase no
9 features or packages, correct?

10 A. They are customers who purchase no other
11 services from Qwest.

12 Q. All right.

13 A. Strictly looking at the Qwest market
14 narrowly.

15 Q. And then if we essentially, well, the
16 percentage that's left after we take out the bundled
17 folks and these stand alone folks, that remaining
18 number, which we can't talk about because it's
19 confidential, that represents the customers who buy
20 stand alone service and a feature or two, correct?

21 A. That would be correct.

22 Q. Let's talk about those folks now for a
23 minute. On page 27 at line 4 above, you described kind
24 of a representative example of somebody in this group as
25 a residential subscriber who may have a need for only

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1 call waiting and does not wish to purchase a
2 multifeature package or bundle to obtain that single
3 feature, correct?

4 A. That is correct.

5 Q. Now isn't it true that the most likely reason
6 why that customer would not want to purchase a
7 multifeature package or bundle is because of price and
8 also because of their perceived telecom needs?

9 A. I would say that's true if a customer only
10 wants one function, be it call waiting, be it voice
11 messaging, they would likely find it less expensive to
12 buy simply that feature and the access line rather than
13 a package.

14 Q. And at line 6 you say that this customer by
15 purchasing this one feature does reduce the differential
16 between their own cost and that of an offering perhaps
17 from a competitor, correct?

18 A. That's correct. If I could give you an
19 example of that, we have talked about the fact that the
20 Qwest 1FR is about \$18.30, and you add the end user
21 common line charge to it, if the customer were to buy
22 voice messaging for approximately \$10, then they're
23 talking about a net price of those two things added
24 together is something in the range of \$28. And the
25 point is, if you're talking about a \$28 price comparison

0352

1 to a \$24 VoIP offer or \$29 wireless offer, suddenly the
2 numbers look pretty compelling to the customer, and that
3 was the message here.

4 Q. But if that customer wishes to use VoIP, that
5 customer needs to purchase broadband service from
6 somebody, correct?

7 A. The person has already purchased it in my
8 view. They purchased the broadband connection, they're
9 making the incremental choice to buy VoIP for \$24.99
10 versus the \$28 I just cited.

11 Q. Well, you're speculating that some of these
12 customers in this middle group have broadband, some of
13 them do not, correct?

14 A. I would agree with you, some do and some do
15 not.

16 Q. And I believe that we have in your own
17 testimony, and I don't have a cite right here, a
18 statement about what the percentage of customers who
19 have broadband is.

20 A. It's about 50% in this state.

21 Q. Right, I wasn't sure if it was confidential
22 or not.

23 A. It's not.

24 Q. But you said it, so.

25 A. But the number is increasing regularly also.

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1 Q. So you don't know, do you, if this middle
2 group of folks that we're talking about in the
3 confidential percentage is 50% broadband or whether that
4 50% is concentrated perhaps mostly in the upper group
5 that is purchasing bundles or packages, you just don't
6 know where that 50% falls out of all of Qwest's
7 customers, do you?

8 A. That's not entirely true. In fact, I think
9 we have talked about Claritas data in my rebuttal
10 testimony that stratifies broadband penetration by
11 income level.

12 Q. Okay, but that's not correlated to these three
13 groups of whether a person buys stand alone versus stand
14 alone plus an a la carte feature or whether a person
15 buys a bundle, is it?

16 A. No, the data that I have seen is not that
17 granular.

18 Q. You're referring to demographic information?

19 A. That's correct.

20 Q. So unless a person has already got broadband,
21 they incur significant additional costs to take
22 advantage of a Vonage offering, take you back to the
23 example that you were trying to give me of something
24 that might tempt the customer who is only buying voice
25 service and one feature, that customer to take advantage

0354

1 of Vonage has to go out and spend the monthly, in
2 addition the monthly broadband charge, do they not?

3 A. And I would respond by saying what you're
4 asking me is the crux of the argument. The issue is do
5 customers buy broadband just to buy VoIP service. My
6 response to you is no, they don't. They buy broadband
7 because they want broadband for Internet access
8 purposes. Once they have made that purchase decision,
9 that investment is sunk, if you will, they can then make
10 an incremental purchase decision relative to VoIP.

11 Q. Correct.

12 A. So I would agree with you there always will
13 be that customer that doesn't have broadband, likely
14 always will be in this state.

15 Q. And in Washington state in Qwest's service
16 territory right now that's 50% of the customers?

17 A. It was 50% at the time the research was done,
18 but I think we talked about the fact that the increases
19 in broadband penetration are at the double digit level,
20 it's changing monthly. So that percentage is always
21 increasing in this state, it's not static.

22 Q. But in making decisions in this docket, the
23 Commission should look at the data that it has right now
24 and look at the specific information about the different
25 components of the market, should it not?

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1 A. I agree with you to an extent, but the
2 Commission should also look at what the trend data tells
3 them, because this plan will be in place for four years.
4 If, in fact, the trend is going steeply upward with no
5 indication that it's going to be plateauing at any
6 point, the Commission should take that into account when
7 they consider what options customers are going to have
8 within this state over that four year period.

9 MR. FFITCH: I don't have any further
10 questions for this witness, thank you, Your Honor.
11 Thank you, Mr. Teitzel.

12 JUDGE CLARK: All right, we'll see if there
13 is any Commissioner inquiry. Commissioner Oshie has
14 another commitment, and I'm wondering if he has any
15 inquiry before he needs to depart.

16 COMMISSIONER OSHIE: I have no questions, I
17 will be about five minutes I think.

18 JUDGE CLARK: Oh, okay, great.

19 COMMISSIONER OSHIE: Thank you.

20 JUDGE CLARK: Chairman Sidran?

21 CHAIRMAN SIDRAN: Thank you.

22

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

24 BY CHAIRMAN SIDRAN:

25 Q. Good afternoon, Mr. Teitzel.

0356

1 A. Good afternoon, sir.

2 Q. In your testimony, which you summarize in
3 your conclusion in I guess it's Exhibit 11 at page 42,
4 you basically say in the middle of that paragraph in the
5 last paragraph on that page that customer preferences
6 are clearly shifting away from traditional landline
7 services toward wireless and Internet based services
8 that have attractive and ever evolving
9 telecommunications applications. You go on to say
10 Qwest's competitors are decreasingly reliant upon
11 Qwest's network to deliver local exchange services and
12 are increasingly able to deliver telecommunications
13 services to customers via non-traditional means such as
14 wireless, VoIP, and cable telephony.

15 A. That's correct.

16 Q. And I believe we heard Mr. Reynolds basically
17 make the same point as your comment here, that
18 competition is moving away from circuit switched
19 traditional landline telephone service.

20 A. I think that's fair, and if I could give you
21 an example of that. You're aware of the MCI
22 Neighborhood product, which was extremely successful in
23 this state and many others, that was based on the
24 availability of UNE Platform, which as you recall was
25 phased out by the FCC, and we have now replaced that

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1 service with something called Qwest Platform Plus, and
2 that product has a smaller margin for MCI. For that
3 reason, MCI is now no longer actively marketing that
4 service even though they still have -- they're still
5 selling it to customers in this state, it's just no
6 longer being actively marketed. But they do have VoIP
7 services now that are available to anyone with a
8 broadband connection in this state, that's an example of
9 where we see the trend happening.

10 Q. And in fact I believe I heard Mr. Notebaert
11 at a speech he delivered where I was present and I
12 believe Mr. Nelson was present talk about Qwest's desire
13 at some point to offer some VoIP products perhaps in
14 conjunction with a wireless product. I know T-Mobile
15 for example has rolled out something similar in
16 Washington state.

17 So my question is, if the future of
18 telecommunications is in non-traditional wireline
19 technologies and lines of business, and since we don't
20 regulate any of those technologies or lines of business,
21 what is it about the regulation of traditional landline
22 business, which is what we're about here, that impedes
23 Qwest's ability to compete in these non-regulated
24 technologies and future lines of business for
25 telecommunications?

0358

1 A. That's a fair question. Qwest in fact does
2 have VoIP offerings today for both business and
3 consumer, so we are -- they're early in the production
4 cycle, we're focused in that direction, we know the
5 market is going that way. However, we've got a very
6 significant investment obviously in our circuit switched
7 network. We've got a lot of Legacy services, a lot of
8 customers served that way. We know we're transitioning
9 toward a market where Internet based services are going
10 to be the norm, not the exception, so Qwest is keeping
11 an eye on that. We're conducting trials on things like
12 YMAX for example with an eye to the future knowing that
13 that's where things are going, but I think the term
14 transition was used in the context of this plan. It
15 clearly is a transitional plan that gives Qwest some
16 measure of increased flexibility while that transition
17 is occurring.

18 Q. So would it be fair to characterize part of
19 what this is about is facilitating the ability of Qwest
20 to increase its revenue from this traditional landline
21 technology in order to facilitate its investment in
22 these new technologies and the advancement of these new
23 lines of business, which as I understand it is the
24 future?

25 A. Let me see if I can respond. I'm not sure

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1 it's so much about increasing Qwest's revenues as it is
2 about allowing Qwest the flexibility to compete on par
3 with our competitors. Mr. Reynolds talked about the
4 fact that CLECs are more lightly regulated than Qwest,
5 CLECs are still here in a big way in this state. Other
6 competitors aren't regulated really at all relative to
7 VoIP and to a lesser degree wireless, which does have
8 some service quality issues and regulation around it.
9 But if Qwest is more able to compete on par, we're
10 hoping that Qwest will be more successful in the
11 marketplace. That may translate to increased revenue
12 for Qwest, but it's only on that basis.

13 Q. Well, I mean it's not only on that basis,
14 because what's before us is an increase in revenue for
15 Qwest from its traditional landlines.

16 A. That's fair, that's a component of it.

17 Q. And the other part is to reduce Qwest's costs
18 that come with your reporting requirements and some of
19 what we have heard earlier about trying to reduce what
20 might be viewed as the economic burdens of the
21 regulation of the traditional landline business; is that
22 correct?

23 A. That's correct, there are some efficiencies
24 gained as well.

25 Q. But you don't really face traditional

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1 landline competition by people who are unregulated or
2 lightly regulated, because it seems to me the entire
3 thrust of your testimony is that the competition is
4 coming from these alternatives that are not regulated by
5 the state at all for the most part, and that's where the
6 future is, and that's where Qwest hopes understandably
7 to be; would that be fair?

8 A. Well, the consumer market in the state,
9 certainly Comcast is our largest competitor, I'm sure
10 you see Comcast ads in Olympia all the time, as I do
11 where I live north of Seattle. Again, they've got a
12 product, a circuit switched product, which is in the
13 Comcast price list, which I understand is going away,
14 but that has been regulated to that extent. I don't
15 believe you regulate at all their Comcast digital voice
16 product. So once again, that's part of the transition
17 that we're seeing in the marketplace today, and that
18 will continue on into the future. So I think certainly
19 in the consumer space, much of the competition will come
20 from the intermodal forms of competition.

21 CHAIRMAN SIDRAN: Thank you, that's all I
22 have.

23 THE WITNESS: Thank you.

24 COMMISSIONER OSHIE: No questions.

25 JUDGE CLARK: Commissioner Jones.

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

2 BY COMMISSIONER JONES:

3 Q. Good afternoon, Mr. Teitzel.

4 A. Good afternoon, sir.

5 Q. Could you turn to page 28 of your rebuttal
6 testimony, please. Concerns this issue of reliability,
7 I have a recollection that after the December 14, 15
8 wind storm that I saw some advertisements for Qwest
9 advertising the reliability, the high reliability of
10 your product in relation to Comcast.

11 A. I'm glad you saw those.

12 Q. So my question to you is based on the high
13 reliability, and this Commission had a workshop and the
14 Chairman was at a governor's press conference yesterday
15 talking about the lessons learned from the December
16 storm, and I think Qwest performed quite well in
17 relation to others, specifically Comcast. So does this
18 issue of high reliability enter into your planning
19 process, and have you noticed any data, since you
20 follow, as you said, you follow this data very closely
21 month to month, have you noticed any uptick or any
22 change based on the wind storm and reliability issues?

23 A. If you're asking have we seen a reduction in
24 our rates of loss --

25 Q. That's what I'm asking.

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1 A. I'm not sure that we have seen that. But the
2 question would be, we know we're losing lines and a lot
3 of lines to Comcast and to Rainier and to Charter in
4 Yakima, other competitors, the question would be what
5 would those rates of loss have been had we not done the
6 advertising. I think there's some incremental
7 difference there. It's a difficult thing to quantify.

8 We do think that the reliability message
9 resonates, in fact I have seen Verizon ads recently to
10 the same effect, that the service is always there, it
11 always works, that's important to many customers. To
12 other customers price is important or the availability
13 of unlimited long distance calling or calling to Canada,
14 those things are important. So it depends on what value
15 proposition the customer finds attractive. We think we
16 have a great value proposition, Comcast thinks they do
17 as well with their mix of services, even though they may
18 not have the same reliability as Qwest has.

19 Q. Do you participate in the weekly meetings,
20 understand your company has a weekly meeting, I think
21 Mr. Reynolds said Monday morning, to determine the next
22 response to the Comcast product or another product, are
23 you a part of in your job as public policy?

24 A. No, I'm not in those weekly meetings.

25 Q. Could you turn to page 9 of 10 of your

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1 rebuttal testimony, this regards the Claritas research.

2 A. I have that.

3 Q. Now you criticize Dr. Loube's presentation as
4 using "outdated national data", could you just for the
5 record again, and the quote is the data that he's using,
6 the year of the data and the type of data that he is
7 using for this sort of analysis on broadband Internet
8 penetration rates in Washington state.

9 A. Dr. Loube used data from 2001 and 2003 in his
10 testimony, and my concern with that and the reason I
11 felt it was important to address that here is that if
12 you look at the national trends in terms of broadband
13 penetration, they have ramped up steeply over the last
14 two years, it's been like a hockey stick. So if you
15 look at the market prior to that, it's not an accurate
16 representation of where we are today. Two years ago the
17 Internet penetration was probably in the range of 20%,
18 the low 20's, now it's in the range of 50% simply two
19 years later. So I think it's important for the
20 Commission to keep that in mind, because the trend is
21 not stopping, it's continuing upward and will be over
22 the next four-year period I'm confident, which is the
23 period of the AFOR we're concerned about here.

24 Q. Now turn to the next page, and we get into
25 some confidential data in a table, and I'm not going to

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1 refer to the specific percentage, but if you look at the
2 last three lines on that column, there's a remarkable
3 increase from year to year for a certain demographic
4 class that I find rather astounding.

5 A. I'm sorry, could you direct me to the page
6 again.

7 Q. Page 10.

8 A. Of my rebuttal?

9 Q. Yes, your rebuttal, can you go to your
10 rebuttal testimony.

11 A. Thank you, I have that.

12 COMMISSIONER JONES: And, Judge, if I venture
13 into confidential information, please hold me back. I
14 think I will be okay here.

15 JUDGE CLARK: Okay.

16 BY COMMISSIONER JONES:

17 Q. What I'm getting at is this percentage
18 increase from one year for this certain demographic
19 class that's listed at the bottom, and I would like --
20 when I first looked at this, I said this can't be true,
21 it's far too high for this increase in broadband
22 penetration rate. But could you, if it is true, and if
23 you think the Claritas information is correct for this
24 state, could you provide for the Bench or for me just
25 some reasons as to why this is increasing so rapidly, is

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1 it due to the fierce competition for example between
2 Qwest and Comcast, other providers, is it due to
3 packaged deals and bundles, what might this be due to?

4 A. Well, Commissioner Jones, I can give you my
5 beliefs as to why these numbers are increasing as they
6 are, and I think many of these customers may have used
7 dial-up Internet access in the past. Many customers now
8 have computers, I think that's known, the majority of
9 folks have computers. If you have a child in school,
10 for example, quite often you can track your child's
11 progress on line. Doing that with a dial-up connection
12 looking at the large amounts of graphics and files that
13 are on these web sites can be extraordinarily
14 frustrating. So I think it's applications like those
15 that are driving customers that are Internet users to go
16 ahead and step up to broadband Internet.

17 And I think you will, if you look at the
18 numbers also, you will see the largest increases in DSL
19 penetration as Claritas has defined it because I think
20 traditionally DSL has been less expensive than cable
21 modem service, so it's a more moderate intermediate step
22 up to a "broadband" connection even though the speed may
23 or may not be as high as some of the potentially higher
24 speeds that cable might offer.

25 That's my belief, that's one small example.

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1 But, you know, anyone that uses a computer will find
2 that if they're using a dial-up connection now with the
3 wide range of graphics and color that are on web sites
4 it takes forever for these pages to load on a dial-up
5 connection, so you are just compelled over time to step
6 up to broadband. I think that's what's driving these
7 numbers.

8 Q. I see, thank you.

9 My last question concerns this issue, and you
10 addressed it with Mr. ffitch on the incremental, whether
11 we should look at VoIP from an incremental cost
12 standpoint or from a total cost standpoint. And I think
13 he's making the point that 50% of the people in this
14 state do not have a broadband connection, and therefore
15 you need to look at the cost of broadband access and add
16 on to it the \$29 or the \$24 or the \$19 for a Skype or a
17 Vonage or whatever, right? You seem to be making the
18 categorical argument that it's a sunk cost, but I -- run
19 through again your reasoning as to why you abide by that
20 argument that's it's a sunk, and don't you recognize
21 that there are 50% penetration rates, I realize they're
22 rapidly increasing, but based on the record before us
23 there are still half the people who use
24 telecommunications services in this state do not have a
25 broadband connection.

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1 A. Sure, that's a fair question.

2 Q. And the other thing is how much does Qwest
3 charge for naked DSL, it's like \$34 a month, isn't it?

4 A. I think it's in the range of \$30, low \$30's.

5 Q. Right.

6 A. Commissioner Jones, let me try to respond to
7 your question. I think this is the is the glass half
8 full or half empty kind of a perspective. I'm viewing
9 this issue as if the glass were half full. I'm viewing
10 the market as the 50% that do have a broadband
11 connection, if you will bear with me for just a moment,
12 if you agree with me for a moment that those customers
13 have already bought broadband for the Internet purposes
14 we just talked about for accessing content-rich web
15 sites, for those customers when they get approached by a
16 Vonage for a \$24.99 unlimited long distance call with 17
17 features and they compare that to their Qwest price with
18 only 1 feature, it's a very compelling value
19 proposition. That's why Vonage has 2 million customers,
20 that's why Comcast is successful selling Comcast digital
21 voice.

22 In this docket, Qwest has made the commitment
23 that we will not deaverage our prices, so to the extent
24 there is competition for customers that already do have
25 broadband connection, keep in mind that's always a

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1 perpetually increasing number, when Qwest is not
2 deaveraging the effects of competition for the market
3 that does have broadband will represent a benefit to
4 those that don't in terms of price constraining
5 competition. We're not going to increase prices for
6 customers that don't have broadband access to deaverage
7 that market, if you will.

8 Again, I think it's important to keep in mind
9 this is a four-year plan. We have talked about
10 increases in broadband connection over the past several
11 years in the 20% range year to year, there's no sign
12 that that's decreasing. So assume that 50% will be 60%
13 then incrementally up from there. I think that's
14 important for the Commission to keep in mind.

15 Q. I understand that, and I accept that. It is
16 frustrating to this Commissioner at least that it is
17 because of the Form 477 lack of adequate reporting on
18 VoIP lines to the FCC, not to mention this Commission
19 because we have no jurisdiction over them, it's very
20 difficult to understand actually how many connections
21 there are from a Comcast, from a Charter, in this state.
22 You in your analysis, you take a certain percent of a
23 penetration rate in Spokane of 38%, and you have a
24 discussion with Dr. Loube on that point in your -- in
25 his direct and your rebuttal about what the number of

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1 Comcast or Charter lines or whatever coax cable would be
2 in the state that use VoIP services, and it's difficult
3 for me to -- the range you suggest in your testimony is
4 fairly broad, I think you on the bottom it's what,
5 98,000 and at the top end you say maybe 400,000; is that
6 correct?

7 A. I think the 98,000 or whatever, I think it
8 was 96 as I recall, that was based on Comcast public
9 statements and the Spokane market around what their
10 penetration rates were. Then we also took their public
11 statements relative to what they thought their ultimate
12 penetration might be, and they thought they could
13 penetrate 38% of their target market, that would
14 translate to 400,000 lines ultimately if they were
15 successful.

16 Q. Is there another way of getting at that
17 number of what their actual lines in use are for Comcast
18 so the Commission has a better factual basis on which to
19 proceed? For example, I think you said they just --
20 Comcast is building a customer service center in
21 Lynnwood in addition to the one in Fife.

22 A. They are.

23 Q. Could you take a customer -- would it be
24 accurate to use customer service reps as a percent in
25 terms of how many subscribers they could service and

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1 compare Qwest and Comcast and back out or derive a
2 number that way?

3 A. I suppose that could be done. It's pretty
4 broad gauged to assume that an employee is required to
5 serve X number of access lines, I suppose that could be
6 done. The difficult thing about VoIP, as we talked
7 earlier, is that it's not classified yet by the FCC.

8 Q. Right.

9 A. So until it is, the providers are not
10 compelled to report formally, certainly on a state by
11 state basis, to any jurisdiction the number of customers
12 they have in service. We do see public press releases
13 and that sort of thing, but it's a very, very difficult
14 thing to quantify right now.

15 Q. Well, and it creates a dilemma for the
16 Commission in a number of areas such as number
17 conservation, and as you know, they aren't required to
18 report for Part 52 purposes how they're getting and
19 acquiring their telephonenumber, so this is -- I'm not
20 asking you to answer the question, I thought you might
21 have some creative way other than this broad range that
22 you have in your testimony, but that's about the best
23 you can do?

24 A. Well, I can tell you this. At least relative
25 to Comcast and cable providers that are operating as

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1 CLECs, if their customer wants a white pages telephone
2 listing in the Qwest white pages database, they come to
3 Qwest with that request, and we then are able to track
4 that data. We do not distinguish Comcast circuit
5 switched lines from Comcast digital voice lines when
6 that listings request comes through. So Qwest does have
7 some data relative to listings that could be used to
8 quantify Comcast lines and service if the Commission was
9 interested in that data. But once again, it's only
10 Qwest's service territory, it would only be relative to
11 customers that actually request a white pages listing in
12 the Qwest database, and they don't all do.

13 COMMISSIONER JONES: Thank you, that's all I
14 have.

15 THE WITNESS: You're welcome.

16 JUDGE CLARK: Chairman Sidran.

17 CHAIRMAN SIDRAN: Thank you, just a follow up
18 question.

19

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

21 BY CHAIRMAN SIDRAN:

22 Q. It's not intuitively obvious to me when Qwest
23 faces this competition from these alternative
24 technologies, and I think you have testified that the
25 future is moving away from the traditional landline

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1 telephony that's the basis of Qwest's business.

2 A. Yes.

3 Q. How does it help Qwest compete with this new
4 world to increase its price, which is part of the AFOR
5 proposal, how does it help you compete to increase your
6 price for the traditional landline telephone business?

7 A. Well, first of all, Qwest is a very high
8 fixed cost business, and I think it was in Mr. Reynolds'
9 testimony as I recall that Qwest has not increased its
10 residential access line rate for about ten years, so
11 it's been flat at that level. A \$1 increase to \$13.50
12 we think may be sustainable in the market, although
13 frankly we're not sure until we actually make that kind
14 of a price change and see how the market reacts. Qwest
15 may have to take that price back down.

16 The \$12.50 price was set in a regulatory
17 environment, not a competitive environment. It's not
18 clear that that's the proper price point in the
19 marketplace today. We're not going to know that until
20 Qwest has a little flexibility to adjust that price up
21 and down. And clearly to the extent that the price does
22 go up and it minimizes the margin between Qwest's
23 service and a competitor's service, especially for a
24 customer that buys a feature as we discussed, there
25 could be competitive loss or competitive pressures. So

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1 once again, it's a transition step toward a more fully
2 competitive marketplace.

3 CHAIRMAN SIDRAN: Thank you.

4 THE WITNESS: Sure.

5 JUDGE CLARK: I just want to leave a place
6 card in the record for Commissioner Oshie so that he
7 will know which portion of the transcript to read. It
8 was necessary for him to leave the hearing immediately
9 preceding Commissioner Jones's inquiry.

10 I was going to turn to redirect, and
11 Mr. ffitch has just jumped right up to his microphone.

12 MR. FFITCH: Your Honor, if I may, I just
13 have one or two follow up to the Commissioners'
14 questions.

15 JUDGE CLARK: Is this going to be a practice,
16 Mr. ffitch?

17 MR. FFITCH: Your Honor, yes, it is, whenever
18 the Commissioners raise additional topics, we, as many
19 parties do, will request the opportunity to ask one or
20 two follow up on cross.

21 JUDGE CLARK: Okay.

22 MR. FFITCH: I will try to remember to do
23 that before redirect so that opposing counsel can
24 respond.

25 JUDGE CLARK: It's less disruptive if you do

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1 it before redirect, but I do want to make sure that this
2 is a new topic that you didn't have the opportunity to
3 explore earlier.

4 MR. FFITCH: Certainly, Your Honor.

5 JUDGE CLARK: Thank you.

6

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

8 BY MR. FFITCH:

9 Q. Just following up on first of all a question
10 from Commissioner Jones regarding the difficulty of
11 assessing the presence of the cable telephony providers
12 in the market. There is some information in your
13 rebuttal testimony, is there not, Mr. Teitzel, if we go
14 to page 17, line 7, if I'm not mistaken, you've got a
15 quote there from a Qwest, excuse me, a Comcast press
16 release, and the full press release as we have seen is
17 Exhibit 20 actually, correct?

18 A. That's correct.

19 Q. And here Comcast is estimating that on a
20 national basis, they have had some pretty good growth,
21 on a national basis they are now reaching 5.7% of
22 available homes; isn't that what this says?

23 A. That is correct.

24 Q. All right, thank you.

25 A. Sure.

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1 Q. I have one other question that follows up on
2 Chairman Sidran's question about rate levels. You
3 stated that the company has not had a rate increase for
4 many years in Washington state. It's true, is it not,
5 that the company actually agreed to a five year rate
6 freeze as part of its merger settlement agreement
7 between U S West and Qwest, correct?

8 A. I will accept that subject to check, I
9 believe that is correct.

10 Q. And before that was entered into, the company
11 had an opportunity to file a general rate case under
12 Washington's law in between its 1997 case and the merger
13 in approximately 2000, did it not?

14 A. I believe the company could have requested an
15 increase or taken action at that time.

16 Q. Right.

17 A. It did not. The point is the price has not
18 changed for that period of time.

19 Q. And the company also did not seek a rate
20 increase after, through a general rate case, after the
21 termination at the end of 2005 of the five year rate
22 plan, did it?

23 A. Not to my knowledge.

24 MR. FFITCH: Those are all the follow-up
25 questions I have, thank you, Your Honor.

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1 JUDGE CLARK: Thank you, Mr. ffitch.

2 Redirect?

3 MS. ANDERL: Yes, Your Honor. Before I ask
4 Mr. Teitzel my questions on redirect, I think it is the
5 practice that when a question is asked or at least in
6 this case answered subject to check that counsel provide
7 us with the reference necessary for us to check the
8 underlying facts he has assumed in his question. And I
9 would ask Mr. ffitch to do that on the next break for
10 us. I'm not sure how else Mr. Teitzel can check that.

11 JUDGE CLARK: Mr. ffitch.

12 MR. FFITCH: I'm not sure, I'm happy to do
13 that, Your Honor, I'm not sure which question Ms. Anderl
14 is referring to.

15 MS. ANDERL: The rate stayout or rate freeze.

16 MR. FFITCH: I did not ask that subject to
17 check as I recall.

18 JUDGE CLARK: It was answered subject to
19 check.

20 MR. FFITCH: Well, Your Honor, the rate
21 filings of the company are a matter of public record.
22 He can certainly consult with counsel and with the other
23 folks with the company and talk about whether he wants
24 to change his answer or not, but I don't think that's a
25 subject to check type of a question.

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1 MS. ANDERL: Your Honor, the question wasn't
2 about the rate filings, the question was about whether
3 Qwest had made a commitment, and I perhaps wasn't quick
4 enough if what I should have done was object and say
5 that the question was vague and ask for more specific
6 identification of where that commitment was made or what
7 Mr. ffitch was talking about, but the witness did answer
8 it subject to check. If we are in that position without
9 clarification from opposing counsel, we will handle it
10 as we need to do under the rule.

11 JUDGE CLARK: All right, I don't want to
12 spend a lot of time on this, I'm just going to assume
13 that Mr. ffitch is going to be able to easily provide
14 the case he's referring to to Ms. Anderl, and I think
15 that's what all of this is about, so I'm going to
16 require that, check the regs, if it's not required, that
17 may be changed.

18 Redirect?

19 MR. FFITCH: Thank you, Your Honor.

20 MS. ANDERL: Thank you.

21

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

23 BY MS. ANDERL:

24 Mr. Teitzel, you were asked some questions
25 about the availability of digital voice service from a

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1 cable provider such as Comcast and the need for a
2 broadband connection to obtain a VoIP or other type
3 service from either a Comcast or a Vonage type of
4 carrier; do you recall those questions?

5 A. Yes, I do.

6 Q. Do you know whether cable modem service is
7 required to be purchased as a separate item from Comcast
8 in order for a customer to order digital voice from
9 Comcast?

10 A. I think Comcast will sell their Comcast
11 digital voice to a non-Comcast broadband subscriber.

12 Q. And do you know what the price point for that
13 is, or the last time you checked?

14 A. It was in the \$50 range as I recall. It's
15 higher priced than it is if they buy it as part of a
16 package.

17 Q. Do you know what's included in that digital
18 voice?

19 A. Comcast digital voice includes a range of
20 features, I believe there's 12 features including
21 unlimited long distance calling and unlimited local
22 calling.

23 Q. If 50% of the customers are making an
24 incremental buying decision to obtain a broadband
25 connection and have availability to cable telephony type

0379

1 service, to what extent is that price constraining for
2 Qwest?

3 A. I think we talked about this already. If the
4 customer has already made the purchase decision to buy
5 the broadband and they're using the broadband for
6 Internet access, there are a variety of very affordable
7 VoIP alternatives out there to those subscribers. In my
8 testimony I talked about the fact that Sun Rocket has a
9 \$199 annual option, which is prepaid, which calculates
10 out to about \$16 a month. Vonage has a low price option
11 including about 500 monthly minutes of usage per month
12 at about \$15 a month. Those things are all very
13 compelling and very affordable relative to Qwest's
14 \$18.34 1FR including the end user common line charge to
15 customers that already have the broadband connection.
16 So to that extent, there is price constraining
17 competition in the marketplace through the segment of
18 the market that has the broadband Internet connection
19 already.

20 Q. And with Qwest's commitment not to deaverage
21 residential features or packages, would the price
22 constraints posed by Qwest by the customer group that
23 has broadband connection then extend to those customers
24 who did not have that broadband connection?

25 A. That's absolutely true.

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1 Q. And Chairman Sidran will have to forgive me
2 if I mischaracterize the question that I thought I heard
3 him ask, but I thought I heard Chairman Sidran ask you a
4 question along the lines of you don't face traditional
5 landline competition, do you, sort of a question, and I
6 think what he meant there, and I may be wrong, is that
7 there are not other telephone networks pervasively
8 overbuilding Qwest's network with another traditional
9 landline network to compete with us, and I don't know if
10 that is the way you answered that question or not, but
11 let me just ask you, to the extent that the competition
12 that you have talked about with web providers or
13 wireless providers, is it your testimony that those
14 services compete head to head for our traditional
15 landline services?

16 A. They definitely do.

17 Q. Finally, you were asked some questions about
18 cross-examination Exhibit Number 18, which was the Local
19 Telephone Competition report, and you were asked
20 questions about Table 8 on page 12. Mr. ffitch pointed
21 you to a number in the column under June 2006 for Qwest,
22 or not Qwest, I'm sorry, for Washington state showing
23 14% CLEC share end user switched access lines; do you
24 recall that?

25 A. Yes, I do.

0381

1 Q. Okay. Do you believe that that 14% is fairly
2 reflective of the CLEC presence in Qwest territory
3 specifically in Washington?

4 A. Once again, this is a statewide number, it
5 includes Qwest territory as well as independent
6 territory. I talked about the fact in my rebuttal
7 testimony that competition in this state anyway tends to
8 disproportionately focus on Qwest's service area,
9 because that's where the large cities are, that's where
10 the customers are. So to the extent that this is a
11 statewide number and there's less competition in the
12 independent territories, it will dilute this number with
13 respect to Qwest.

14 Q. And finally, Mr. Teitzel, you talked about a
15 wireless competitor offering a \$29.99 package; do you
16 recall that testimony?

17 A. I do.

18 Q. And do you have any understanding of whether
19 a customer buying that package would likely receive a
20 voice mail service in that wireless package?

21 A. Voice mail is typically included as a
22 standard feature.

23 Q. What about long distance calling?

24 A. That's also normally included as a standard
25 feature.

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1 Q. What about call waiting?

2 A. That's typically a standard feature.

3 Q. What about caller ID?

4 A. I believe that's also standard.

5 Q. Okay. And how would that \$29.99 package or
6 price for the wireless service compare with say a Qwest
7 service of the line plus voice mail and one feature?

8 A. If we're talking about a Qwest package
9 without long distance, it's about \$29 a month. If you
10 include long distance, it's \$20 on top of that, so
11 clearly it's a compelling value proposition.

12 MS. ANDERL: I have no further redirect,
13 thank you.

14 JUDGE CLARK: Thank you for your testimony,
15 Mr. Teitzel.

16 THE WITNESS: Thank you.

17 JUDGE CLARK: Is there any objection to this
18 witness being excused?

19 MR. FFITCH: No, Your Honor, I do have the
20 citation that counsel requested.

21 JUDGE CLARK: All right, you can provide that
22 on the recess.

23 And thank you, Mr. Teitzel.

24 THE WITNESS: Thank you.

25 JUDGE CLARK: One moment.

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1 (Discussion on the Bench.)

2 JUDGE CLARK: We're going to take a few
3 moments off record.

4 (Discussion off the record.)

5 JUDGE CLARK: We're back on the record.

6 Ms. Anderl, you had indicated before the recess a
7 preference to take a witness out of order.

8 MS. ANDERL: Yes, Your Honor, and that was
9 Dr. Bill Taylor, and Dr. Taylor's testimony and exhibits
10 have been marked and admitted as Exhibits 66 and 67. We
11 did discuss off the record that there was no examination
12 for this witness, so if his testimony is admitted and
13 there's no need for him to take the stand, we would
14 simply be content with the state of the record the way
15 it is.

16 JUDGE CLARK: And I just want to confirm with
17 Mr. ffitch that there is no examination of this witness.

18 MR. FFITCH: That's correct, Your Honor.

19 JUDGE CLARK: All right.

20 And I will confirm that there is no inquiry
21 from Commissioners regarding the testimony and the
22 exhibits of Dr. Taylor.

23 MS. ANDERL: Thank you, Your Honor, may
24 Dr. Taylor be excused from the hearing?

25 JUDGE CLARK: Without objection, you are

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1 excused.

2 MS. ANDERL: Does Your Honor wish to move on
3 to the next witness then?

4 JUDGE CLARK: Yes, if we could, if you could
5 call your next witness, please.

6 MS. ANDERL: Yes, Qwest's next witness is
7 Phil Grate.

8 JUDGE CLARK: Thank you.

9 MS. ANDERL: We would call Mr. Grate to the
10 stand.

11 (Witness PHILIP E. GRATE was sworn.)

12 JUDGE CLARK: Please be seated.

13 Ms. Anderl.

14 MS. ANDERL: Thank you, Your Honor.

15

16 Whereupon,

17 PHILIP E. GRATE,
18 having been first duly sworn, was called as a witness
19 herein and was examined and testified as follows:

20

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

22 BY MS. ANDERL:

23 Q. Good afternoon, Mr. Grate.

24 A. Good afternoon, Ms. Anderl.

25 Q. Would you please state your name and your

0385

1 business address for the record.

2 A. My name is Philip Grate, my business address
3 is 1600 Seventh Avenue, Seattle, Washington 98191.

4 Q. And by whom are you employed?

5 A. I am employed by Qwest Corporation.

6 Q. In what capacity?

7 A. I am a Staff Director in the Finance
8 Department.

9 Q. Is your microphone on, Mr. Grate?

10 A. Is it now?

11 Q. Yes.

12 A. Okay, my apologies.

13 I am a Staff Director in the Finance
14 Department at Qwest. I am in the regulatory cost and
15 accounting group.

16 Q. And, Mr. Grate, do you have before you your
17 prefiled direct or rebuttal testimony and the exhibits
18 attached thereto as well as Public Counsel's
19 cross-examination exhibits?

20 A. I do.

21 Q. Do you have any changes or corrections to
22 make to your prefiled rebuttal testimony?

23 A. I have two very brief corrections. On page
24 23 of Exhibit 32C at line 8.

25 Q. Okay, hang on just one minute, page 23.

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1 A. Page 25, I'm sorry, page 25, line 8.

2 Q. Line 8.

3 A. And this line reads, anticipate what such
4 changes might be, what data might be, or what data, and
5 between the word be and or, insert the word available.

6 My second and last correction is on Exhibit
7 33C, page 6, line 4, and there is a number at the end of
8 that line, the number is 2000, and it should read 2006.

9 Q. Okay, so that's the year?

10 A. Yes.

11 Q. The reference was erroneously to the year
12 2000 and you meant to refer to the year 2006?

13 A. That's correct.

14 JUDGE CLARK: If I could just get
15 clarification, is that for the year immediately
16 preceding the period or immediately following?

17 THE WITNESS: Immediately following.

18 JUDGE CLARK: Immediately following?

19 THE WITNESS: Yes.

20 JUDGE CLARK: Thank you.

21 BY MS. ANDERL:

22 Q. With those changes and corrections,
23 Mr. Grate, is your testimony true and correct to the
24 best of your knowledge?

25 A. Yes.

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1 MS. ANDERL: All right, thank you.

2 Your Honor, Mr. Grate's own testimony as well
3 as all of Public Counsel's exhibits save 46C having been
4 admitted, we would tender the witness for
5 cross-examination.

6 MR. FFITCH: And, Your Honor, we had
7 indicated earlier to Qwest counsel that we had, in fact
8 we had indicated this morning we had no questions for
9 this witness. We do have the matter, however, of the
10 outstanding exhibit that we have been discussing with
11 opposing counsel, and I think we have now ascertained
12 that our cross-examination exhibit, Exhibit 46, is
13 complete.

14 JUDGE CLARK: If I can just offer a
15 suggestion. If the only thing that you have regarding
16 this witness is just some discussion regarding the
17 exhibit, I think that that is certainly a topic that we
18 could address without Commissioners present. If that's
19 the case, I would like to turn first to see if
20 Commissioners have any inquiry of this witness.

21 MR. FFITCH: That's the case, we I believe
22 have an outstanding dispute about the relevance of the
23 exhibit, and I might want to inquire briefly of the
24 witness in aid of the offer just to lay foundation for
25 the exhibit. But other than that, that's all.

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1 JUDGE CLARK: All right, let's see if
2 Commissioners have any inquiry for this witness then.
3 Commissioner Jones is indicating he does not, and
4 Chairman Sidran is indicating he does not. The Bench
5 has indicated that they do not have any inquiry of
6 Mr. Grate, and so at this time it would be logical for
7 them to conduct other agency business while I address
8 the Exhibit 46C.

9 All right, Mr. ffitch, when we were
10 discussing the topic of 46C this morning, my
11 recollection is that you had some additional data that
12 you wanted to supplement this exhibit with; is that
13 correct?

14 MR. FFITCH: Well, Your Honor, on this
15 exhibit we were going to determine if it was complete
16 and if the company, you know, if the company understood
17 the question, and we have now I think satisfied
18 ourselves that both Staff or Public Counsel rather and
19 Qwest have satisfied themselves yes, the answer is
20 complete, this is the answer that they wish to provide,
21 and the remaining dispute is whether it's relevant.

22 JUDGE CLARK: All right, thank you, I
23 appreciate you addressing them in that order.

24 MR. FFITCH: If I may, Your Honor, I would
25 ask a couple of questions of the witness just in aid of

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1 the analysis of the relevance issue.

2 JUDGE CLARK: I will allow.

3 MR. FFITCH: Thank you, Your Honor.

4

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

6 BY MR. FFITCH:

7 Q. Good afternoon, Mr. Grate.

8 A. Good afternoon, Mr. ffitch.

9 Q. I guess this isn't quite fair because I said
10 I didn't have any cross-examination, but hopefully this
11 will be brief. Dr. Loube discussed in general the
12 question of the proper accounting for DSL investments
13 and revenues in his testimony, did he not?

14 A. Yes.

15 Q. And then if we need to I can direct you to
16 it, but I think it's kind of straightforward. Part of
17 that analysis, is it not, is an assignment of
18 investments in revenues and expenses between
19 non-regulated and regulated activities in a manner
20 codified in the FCC Part 64 rules, correct?

21 A. That was not my understanding. My
22 understanding is that Dr. Loube's testimony was with
23 regard to the separation of investment and expenses
24 under the FCC's Part 36 rules.

25 Q. The first step before you get there though is

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1 to make the analysis required by the Part 64 Rules, is
2 it not?

3 A. To be sure.

4 Q. And if you look at Exhibit 46, do you have
5 that?

6 A. Yes.

7 Q. Exhibit 46 asks you to provide current
8 estimates of relative use of cable facilities and
9 central office equipment that Qwest has made in order to
10 comply with referenced Part 64 Rule, does it not?

11 A. Yes.

12 Q. And the reference to cable facilities, you
13 understand that to be a reference to looped facilities?

14 A. It can include loop facilities, yes.

15 MR. FFITCH: Your Honor, on that basis we
16 think that we have established that this
17 cross-examination exhibit is relevant to an issue that's
18 been raised by Dr. Loube and as argued this morning also
19 by Staff witness Paula Strain.

20 JUDGE CLARK: Ms. Anderl.

21 MS. ANDERL: Well, Your Honor, I guess what I
22 don't understand is why if it is relevant, and of course
23 the test for relevance is it tends to make a disputed
24 fact more or less likely, why it was not included in
25 Dr. Loube's testimony. I don't know what use Public

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1 Counsel wants to make of this, it's not been
2 characterized in any way by their witness, it's not
3 really effectively been crossed on, nor do I understand
4 Public Counsel to have any intent to cross-examine on
5 it, and I think that he has not been able to establish
6 that it is relevant since even though Part 64 may be
7 mentioned, it's not at all clear that this goes to
8 making the proof or the likelihood or less likelihood of
9 a disputed fact that is dispositive of any contested
10 issue in this case more or less likely.

11 JUDGE CLARK: All right, does anyone else
12 want to be heard on this?

13 Mr. Trautman is shaking his head negatively.

14 MR. TRAUTMAN: No.

15 JUDGE CLARK: Thank you.

16 Mr. Ffitch, did you have anything further?

17 MR. FFITCH: No, Your Honor.

18 JUDGE CLARK: All right, I am going to admit
19 the exhibit, and the Commission will determine the
20 appropriate weight, if any, to give to this document.
21 But this is an excellent example of the concern that I
22 raised at the prehearing conference regarding the use of
23 documents in this particular proceeding as exhibits. If
24 you wish to present a document as an exhibit, it's
25 important for you to conduct some examination on it so

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1 that the Commission is able to ascertain the salient
2 point that you would like to address. Now this is a
3 difficult situation because we now have a document that
4 there will be no cross-examination on, but I think you
5 have at least established the test for relevancy, and
6 therefore I will admit it.

7 MR. FFITCH: Thank you, Your Honor, we have
8 no further questions.

9 JUDGE CLARK: All right, thank you for your
10 brief testimony, Mr. Grate.

11 THE WITNESS: My pleasure.

12 JUDGE CLARK: Is there any objection to this
13 witness being excused?

14 All right, hearing none, you are excused.

15 THE WITNESS: Thank you.

16 JUDGE CLARK: And I think that we could at
17 least accomplish one more ministerial function with the
18 little remaining time that we have, and that is we could
19 take the next witness and administer the oath.

20 MS. ANDERL: Yes, that would be Qwest's
21 witness Mike Williams.

22 JUDGE CLARK: All right, and that is the only
23 thing that we will do so that Mr. Williams is ready to
24 testify in the morning, we will not be pursuing
25 examination.

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1 MR. FFITCH: Your Honor, if I may, I
2 apologize for interrupting, but we had a conversation
3 with Qwest counsel just a moment ago about whether we
4 would tender Dr. Loube out of order tomorrow because of
5 his travel schedule, and I wanted to bring that up
6 before we get Mr. Williams going.

7 JUDGE CLARK: All right, it's my
8 understanding from your estimate of cross-examination
9 that you only have an hour for Mr. Williams; is that
10 correct?

11 MR. FFITCH: That's correct, Your Honor.

12 JUDGE CLARK: And we have approximately two
13 to three hours for Dr. Loube tomorrow. And what time
14 does Dr. Loube need to depart in order to catch his
15 flight?

16 MR. FFITCH: 5:00, Your Honor.

17 JUDGE CLARK: 5:00 would be the latest.
18 Ms. Anderl, do you think we can conclude Mr. Williams
19 and Dr. Loube both tomorrow afternoon after 1:30?

20 MS. ANDERL: That seems reasonable if
21 Mr. ffitch doesn't take longer than his hour. It would
22 still be taking Dr. Loube out of order because it would
23 be taking him ahead of Mr. Reynolds, but we don't have
24 any objection to that.

25 JUDGE CLARK: All right, well, I think that

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1 that's what I'm going to do then is go ahead and put
2 Mr. Williams on to be followed immediately by Dr. Loube.

3 MR. FFITCH: Thank you, Your Honor.

4 JUDGE CLARK: All right.

5 (Witness MICHAEL G. WILLIAMS was sworn.)

6 JUDGE CLARK: Thank you.

7 And is there anything further to be
8 considered on this record? Oh, no, you need to go ahead
9 and introduce Mr. Williams.

10

11 Whereupon,

12 MICHAEL G. WILLIAMS,
13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

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

17 BY MS. ANDERL:

18 Q. Mr. Williams, could you please state your
19 name and your business address for the record.

20 A. My name is Michael Williams, my business
21 address is 1801 California Street, Room 2220, Denver,
22 Colorado.

23 Q. By whom are you employed and in what
24 capacity?

25 A. I am employed by Qwest as Director of

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1 Regulatory Compliance.

2 Q. And, Mr. Williams, I understood that you
3 actually did have one or two errata to your prefiled
4 testimony; is that correct?

5 A. Yes.

6 Q. Do you need to go get that?

7 A. I need to get that.

8 Q. And so, Mr. Williams, Exhibit Number 47 is
9 your prefiled rebuttal testimony, do you have changes or
10 corrections to that?

11 A. Yes, on page 4 of my rebuttal testimony, line
12 9 where the number 19, it says 19 instances, it should
13 read 18 instead of 19.

14 Q. Okay.

15 A. And then on page 5, the next page, line 7
16 starts with the words, once in two years, that should
17 read twice in two years, which modifies the next
18 sentence also to say, since these two misses in July,
19 and then insert, and December 2006, and then the rest of
20 the sentence continues. So we changed the words that
21 single to these two, change miss to misses, and insert
22 the words, and December, after July.

23 Q. Okay, and, Mr. Williams, if I might just ask
24 you, why don't you just read those two sentences into
25 the record as they should read corrected.

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1 A. Okay.

2 MR. FFITCH: And what was that page again?

3 THE WITNESS: Page 5.

4 MR. FFITCH: Thank you.

5 A. Now to read the whole thing it's lines 6
6 through 8.

7 Qwest's performance has missed this
8 standard only twice in two years. Since
9 these two misses in July and December
10 2006, there has not been a repeated
11 problem.

12 BY MS. ANDERL:

13 Q. Okay, thank you.

14 Do you have any further corrections to make
15 to your testimony or exhibits?

16 A. One to, well, two changes on one exhibit,
17 this would be Exhibit 48 also labeled MGW-2. In the
18 table at the top which is titled Washington Retail
19 Service Quality Results, the third row down representing
20 trouble report rate, moving over to the right, the
21 number for September, the month of September, which
22 currently says zero should have a one in it.

23 Q. Okay.

24 A. And then the next table down, the repair
25 center access row, which is the fifth row down on that

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1 table representing 2006, the far right number for the
2 month of December currently says 40, should read 62.

3 Q. Okay.

4 A. And that's all.

5 Q. With those changes and corrections, is your
6 testimony and are your exhibits true and correct?

7 A. Yes.

8 MS. ANDERL: Thank you.

9 Your Honor, then his testimony and Public
10 Counsel's cross-examination exhibits having been
11 previously admitted, we would tender the witness for
12 cross in the morning, or in the afternoon.

13 JUDGE CLARK: 1:30.

14 MR. FFITCH: And, Your Honor, we did have,
15 perhaps this is a good time to indicate that we have I
16 think reached an agreement with Qwest on Exhibit --

17 JUDGE CLARK: 163.

18 MR. FFITCH: -- 163. We are supplying the
19 data for I believe it's 2006 January that was missing
20 from that exhibit, and we're going to provide copies to
21 the Bench and to parties.

22 JUDGE CLARK: And do you have those copies
23 available now?

24 MR. FFITCH: I do.

25 JUDGE CLARK: All right, we will then recess

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1 for the evening and you can distribute.

2 MR. FFITCH: Thank you, Your Honor.

3 JUDGE CLARK: Are there any other matters we
4 should address before we recess for the evening?

5 MR. FFITCH: Is our start time for tomorrow
6 1:30 p.m., Your Honor?

7 JUDGE CLARK: 1:30 p.m., the Commission has
8 an open meeting.

9 MS. ANDERL: May we leave some items in the
10 room in boxes?

11 JUDGE CLARK: You may leave some items in the
12 room in boxes. We can put some confidential items if
13 you wish in the back room and lock it up.

14 MS. ANDERL: Thank you.

15 MR. FFITCH: Do you know, Your Honor, has the
16 Commission made any provision for a longer hearing day
17 tomorrow in order to say finish a witness after 5:00,
18 has that been discussed or is that an option?

19 JUDGE CLARK: That actually hasn't been
20 discussed for tomorrow, but if we're going to get
21 Dr. Loube on his plane I think we're going to have to
22 recess at 5:00, and he would be the second witness on
23 tomorrow.

24 MR. FFITCH: Yes, I was I guess being
25 optimistic that perhaps he might be done and if we had

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1 another witness that we could finish up. I guess I'm
2 looking at the schedule, and so I think that we're in
3 good shape to finish on Thursday, but I just thought I
4 would inquire for planning purposes.

5 JUDGE CLARK: I appreciate that.

6 MR. FFITCH: Thank you, Your Honor.

7 JUDGE CLARK: All right, we're at recess
8 until 1:30 p.m.

9 (Hearing adjourned at 5:05 p.m.)

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