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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	Docket UT-061625
QWEST CORPORATION)	Volume V
To be Regulated Under an)	Pages 400-554
Alternative Form of Regulation)	
Pursuant to RCW 80.36.135.)	

A hearing in the above-entitled matter was held at 1:35 p.m. on Wednesday, March 14, 2007, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge PATRICIA CLARK, Chairman MARK SIDRAN, Commissioner PATRICK OSHIE, and Commissioner PHILIP JONES.

The parties present were as follows:

QWEST CORPORATION, by Lisa Anderl, In-House Attorney, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191.

U.S. DEPARTMENT OF DEFENSE, by Stephen S. Melnikoff, Regulatory Counsel, Regulatory Law Office, U.S. Army Litigation Center, Office of the Judge Advocate General, 901 N. Stuart Street, Suite 700, Arlington, Virginia 22203.

COMMISSION STAFF, by Gregory Trautman, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington 98504.

PUBLIC COUNSEL, by Simon ffitch, Assistant Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104.

Barbara L. Nelson, CCR
Court Reporter

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1 JUDGE CLARK: Good afternoon. It's
2 approximately 1:35 p.m., March 14th, 2007. This is
3 the time and the place set for continuation of the
4 hearing in Docket UT-061625. The record should
5 reflect that all Commissioners are present and all
6 parties are represented by counsel.

7 Are there any preliminary matters that we
8 need to address before we proceed with the testimony?

9 MR. MELNIKOFF: Yes, Your Honor.

10 JUDGE CLARK: Mr. Melnikoff.

11 MR. MELNIKOFF: One quick procedural matter.
12 I request leave to be absent after today from the
13 hearings.

14 JUDGE CLARK: You're excused.

15 MR. MELNIKOFF: Thank you.

16 JUDGE CLARK: And when we recessed yesterday
17 afternoon, Qwest had called its next witness, that is
18 Mr. Williams, who was sworn in and ready to go. I
19 just want to remind everyone that we are only
20 scheduled to have two witnesses this afternoon.
21 We're scheduled to have Mr. Williams, and then we are
22 going to take Dr. Loube out of order in order for him
23 to catch his flight. So we have a limited amount of
24 hearing time available this afternoon.

25 Mr. Williams, I just want to remind you that

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1 you remain under oath.

2 THE WITNESS: Yes.

3 Whereupon,

4 MICHAEL WILLIAMS,

5 having been previously duly sworn, was recalled as a

6 witness herein and was examined and testified as

7 follows:

8 JUDGE CLARK: Ms. Anderl.

9 MS. ANDERL: Yes, Your Honor, having
10 previously introduced the witness yesterday and his
11 exhibits having been admitted, we would tender him
12 for cross-examination.

13 JUDGE CLARK: Thank you.

14 MS. ANDERL: Unless you would like him to
15 restate his name and identifying information for the
16 Commissioners.

17 JUDGE CLARK: I believe the Commissioners
18 are aware that the next witness is Mr. Micheal
19 Williams.

20 MS. ANDERL: Great.

21 JUDGE CLARK: But thank you for that offer.
22 Mr. ffitch.

23 MR. FFITCH: Thank you, Your Honor.

24

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

0404

1 BY MR. FFITCH:

2 Q. Good afternoon, Mr. Williams.

3 A. Good afternoon.

4 Q. Could I ask you, please, to turn to a cross
5 exhibit that's been marked 53-C for you? Do you have
6 that?

7 A. Let's see. Is that -- I have a 63-C, but I
8 have one that I'm not sure.

9 Q. It's the response to -- supplemental
10 response to Public Counsel -- it's response to Public
11 Counsel 83, it's been marked as Exhibit 53-C. It's
12 behind the supplemental response to PC 14. It's also
13 in the same exhibit.

14 A. Okay.

15 Q. It's the Retail Service Quality Performance
16 Plan's self-actuating penalties summary sheet.

17 MS. ANDERL: Your Honor, may I assist my
18 witness in finding that?

19 JUDGE CLARK: Please.

20 THE WITNESS: Now I have it. Thank you.

21 Q. And could you turn to page nine of the
22 exhibit, please? That's our page numbering, the
23 handwritten page numbers.

24 A. Okay.

25 Q. All right. It should say -- make sure we're

0405

1 on the same page, literally. It should say Retail
2 Quality Performance Plans, Self-actuating Penalties
3 Incurred By Metric at the top.

4 A. Yes.

5 Q. All right. And this is a confidential
6 document. I'm not going to ask you any of the
7 numbers. It's my understanding that the state names
8 and the years, that information's not confidential,
9 is it?

10 A. Correct.

11 Q. Now, Mr. Williams, when AFOR or price cap
12 alternative regulatory plans were originally adopted
13 in several other Qwest states, those plans included
14 self-executing service quality metrics, did they not?

15 A. Yes, in various forms.

16 Q. All right. And if we look at this chart, we
17 can see that the states that did that included
18 Arizona, Colorado, Minnesota, and as well as New
19 Mexico; is that correct?

20 A. Yes.

21 Q. Now, in most of the states where Qwest's
22 AFOR's recently been extended or modified, the
23 revised AFOR plan has continued in at least some form
24 of the self-executing service quality metrics. Is
25 that right, also?

0406

1 A. In most of the states that have revised or
2 extended, did you say?

3 Q. Yes, and perhaps we can get at this by just
4 talking about specific states instead of --

5 A. Right, because it's gone down from seven
6 states to three that have self-executing plans.

7 Q. All right.

8 A. So those three, yes, there are still some
9 self-executing items, although most of them fewer
10 than there were before.

11 Q. All right. And so for Arizona, for example,
12 continues to have self-executing metrics, and now,
13 under their continued AFOR, they have five metrics;
14 is that right?

15 A. Yes.

16 Q. Colorado originally had 13 metrics and
17 they're continuing their AFOR with now two metrics;
18 correct?

19 A. Yes.

20 Q. And in New Mexico, the Commission recently
21 issued a final order on pricing and service quality,
22 which largely applies metrics under New Mexico
23 statute; correct?

24 A. It's under New Mexico's rules, the service
25 quality portion.

0407

1 Q. All right. Okay. But it does include
2 self-executing penalties or incentive payments, as
3 well, does it not?

4 A. Yes.

5 Q. And that is under their AFOR plan, your AFOR
6 plan in New Mexico?

7 A. Yes.

8 Q. Could I ask you to please turn to page three
9 of your rebuttal testimony? That's exhibit --

10 JUDGE CLARK: Forty-seven.

11 Q. -- 47. Thank you, Your Honor. Do you have
12 that?

13 A. Yes.

14 Q. Could you please go to page three of the
15 testimony?

16 A. Okay.

17 Q. To line eight?

18 A. Okay.

19 Q. And there you state that Ms. Kimball, Public
20 Counsel witness, quote, provides no causal link
21 between the presence of Service Quality Performance
22 Program, or SQPP, and Qwest's improving service
23 quality, end quote; correct?

24 A. Yes.

25 Q. Now, isn't it correct that Ms. Kimball's

0408

1 testimony contains a quotation from an order of this
2 Commission with regard to Qwest's Service Quality
3 Performance Program, which specifically states that
4 the SQPP provides a constant incentive for the
5 company to meet SQPP standards?

6 A. Where does she say that?

7 Q. It says that on page 16 of her direct
8 testimony, if you'd like to go look at that, line 18.

9 A. The sentence that it says, While the SQPP
10 continues, it provides a constant incentive for the
11 company to meet SQPP standards?

12 Q. Correct.

13 A. Okay. I see that.

14 Q. And the quote continues, does it not?

15 A. Yes. Well, another sentence, yes, for the
16 rest of that paragraph.

17 Q. All right. And it's true, isn't it, that in
18 that order, in this quote, the Commission found that
19 the credit requirement in the SQPP has provided and
20 should continue to provide important incentives in
21 fostering good service quality; isn't that right?

22 A. Yes, back then, uh-huh.

23 Q. So is it your testimony that the Commission
24 somehow got this wrong, that -- do you disagree with
25 the conclusion that the SQPP, in fact, provided

0409

1 incentives?

2 A. That was not my testimony.

3 Q. Well, your testimony was that Ms. Kimball
4 provided no causal link between the presence of SQPP
5 and Qwest's improving service quality. Do you
6 disagree that this Commission order on the topic,
7 specifically on the topic provides that causal link?

8 A. No, I believe the Commission in the --
9 during the period of the SQPP found that it was a
10 mechanism for providing the incentives that you quote
11 -- that you referred to in Ms. Kimball's quotation of
12 the Commission's order, but what she had provided was
13 improving performance. There may be a correlation
14 certainly, but neither the Commission nor Ms. Kimball
15 has, as far as to my knowledge, drawn a causal link.
16 They see the SQPP as a mechanism, it's providing
17 incentives, but to say that it caused and that if it
18 weren't there the service quality would not have
19 improved is nowhere shown by anyone and, in fact, in
20 the year that it's been since the SQPP expired,
21 Qwest's performance continues to be as good or better
22 than it was before.

23 So there's probably more evidence now for
24 the past year that perhaps the SQPP was no longer
25 needed and indeed was allowed to expire and should

0410

1 remain so.

2 Q. Okay. Well, let's explore that a little
3 bit. Can you turn to Exhibit 47 again, your rebuttal
4 testimony?

5 A. Okay.

6 Q. Go to page five, line three. Now,
7 basically, in the testimony just before this, you've
8 been making the assertion that you just again made
9 that, after the expiration of the SQPP, the company's
10 service quality has not gotten worse or -- I believe
11 you say sustained or improved; correct?

12 A. Generally so, yes, uh-huh.

13 Q. All right. And so then, kind of in aid of
14 that point here, you're discussing telephone
15 answering time to repair centers; right?

16 A. Yes.

17 Q. And just to clarify that a bit, this
18 measures the average time that a customer has to wait
19 to reach a live representative; correct?

20 A. Yes.

21 Q. And the statement you made in your testimony
22 initially was that Qwest had only missed the standard
23 once in two years; correct? That was your original
24 testimony?

25 A. Yes, sir.

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1 Q. And then you corrected that on the stand
2 yesterday to indicate that that happened actually
3 twice in 2006; correct?

4 A. Yes.

5 Q. And one of those times was in December 2006.
6 That was one of the months that was missed in 2006?

7 A. Yes.

8 Q. And that was the month we had the windstorm
9 in western Washington, what has been designated as
10 the Hanukkah eve storm, December 14th, 15th; right?

11 A. I believe that's correct. December had lots
12 of bad weather.

13 Q. All of your repair call centers are not
14 located in Washington, are they?

15 A. Right.

16 Q. Where are the repair call centers located?

17 A. I don't know where they're all located.

18 Q. Do you know where any of them are located?

19 A. Not specifically. We have lots of centers
20 and there have been some changes, and so I'm not up
21 to date on where those are. We have some in major
22 cities in various places, but I really don't know
23 which ones are repair, which ones are provisioning.

24 Q. Washington customers call many different
25 call centers when they make a call for repair, don't

0412

1 they?

2 A. I don't know that. I believe they call one
3 number and it may go more than one place, but how
4 many, I don't know.

5 Q. They're not all handled in Washington State;
6 correct?

7 A. I don't know that. I don't believe so.

8 Q. You don't believe they are?

9 A. Correct.

10 Q. All right. Well, Qwest certainly does not
11 commit to handle every Washington call in Washington,
12 does it?

13 A. Not that I'm aware of.

14 Q. And that's specifically so that the calls
15 can be routed throughout the region to whatever call
16 center's available; right?

17 A. That would be my understanding, but I don't
18 have personal knowledge of all of that detail.

19 Q. When a significant event, a weather event,
20 for example, is predicted in service territory, does
21 Qwest take measures to make sure the staffing is
22 adequate in its network of service centers to respond
23 to expected calling?

24 A. We certainly staff our centers to
25 accommodate expected levels of calling and, when

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1 there are severe situations, we try to augment that,
2 that I'm aware of. But beyond that, I'm not real
3 familiar with exactly how that's done.

4 Q. Okay. If we made a record requisition for
5 the location of Qwest's repair call centers, would
6 Qwest be able to provide that information for this
7 record?

8 A. I believe we could.

9 MS. ANDERL: Your Honor, I'd object. It's
10 untimely and not relevant.

11 JUDGE CLARK: Mr. Ffitch.

12 MR. FFITCH: Your Honor, we requested this
13 information in a data request earlier. The company
14 objected and refused to provide it and argued earlier
15 in this proceeding that it was not relevant. We're
16 renewing the request based on the examination of Mr.
17 Williams. I believe it's quite relevant.

18 JUDGE CLARK: Well, I'm going to sustain the
19 objection. I believe we'll have difficulty allowing
20 examination on that particular records request if
21 it's expounded now.

22 Q. Call volumes to the repair centers are
23 generally declining, are they not, Mr. Williams?

24 A. I don't know that that's true.

25 Q. Let's get back to Qwest's performance on

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1 telephone answer time at repair centers. Could I get
2 you to turn, please, to Exhibit 52? That's the
3 collection of service quality performance reports
4 that are sent out to customers. Do you have that?

5 A. Yes, pages one of ten, or ten pages? Is
6 that --

7 Q. Yes, it's ten pages, and those were sent out
8 when the SQPP was in effect to report on your service
9 quality performance; correct?

10 A. That's my understanding, yes.

11 Q. And that was in effect for five years and we
12 have in this exhibit reports for those five years, do
13 we not?

14 A. Yes.

15 Q. And would you accept that if we looked at
16 each of the reports for the five years, that Qwest
17 never once failed the repair answer time standard
18 during the five years of that program?

19 A. Subject to checking it all, yes.

20 Q. So on this particular standard, at least,
21 Qwest's performance has actually worsened since the
22 end of the SQPP, hasn't it?

23 A. Nope. You yourself referred to the bad
24 weather that occurred in December. At the same time,
25 we were having bad weather down in Arizona, New

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1 Mexico, in the same month. We had heavy call volumes
2 during those months that -- generally, and I believe
3 that those kinds of extenuating circumstances that
4 cause a miss or are related even to a miss do not
5 constitute evidence of deteriorating performance.

6 Q. You're not suggesting that there were no
7 similar events whatever in Washington State in that
8 five-year period, were you? Or are you, excuse me,
9 are you suggesting?

10 A. No, I said nothing about that.

11 Q. Please turn to Exhibit 47, your rebuttal
12 testimony again, and this time go to page 18. And
13 starting at the bottom of page 18 there at line 18,
14 you address the question of trunk blocking reports;
15 correct?

16 A. Yes.

17 Q. And just to summarize here, you're --
18 actually, you just have one Q and A, which goes on to
19 the next page, in which you point out that there were
20 some errors in the trunk blocking reports and that
21 therefore Public Counsel's recommendations, Ms.
22 Kimball's recommendations were, you know, based on a
23 false premise, essentially; correct?

24 A. Yes.

25 Q. And these trunk blocking reports, just for

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1 reference here during this line of questioning, are
2 in Exhibit 163; correct?

3 A. Yes.

4 Q. Go there if you'd like.

5 A. Mm-hmm.

6 Q. Okay. And these are also confidential, so
7 be careful not to talk about specific numbers.

8 MS. ANDERL: I'm sorry, Mr. Ffitch. What
9 exhibit are you referring?

10 MR. FFITCH: 163 for Mr. Williams. It's I
11 think the last one in his list.

12 MS. ANDERL: Thank you.

13 Q. Would you accept, subject to check, and you
14 certainly can look at the corrected exhibit, Mr.
15 Williams, but would you accept, subject to check,
16 that according to Qwest's restated or corrected
17 reports, the company failed the Commission's standard
18 for E911 trunk groups four months, four different
19 months, during the year 2006?

20 A. One incident in each of those four months.

21 Q. All right. And in your testimony, though,
22 in your rebuttal testimony, you're indicating that
23 the company, once the exhibit -- excuse me, once the
24 report is corrected, you're in substantial
25 compliance. Isn't that what your testimony says?

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1 A. Yes.

2 Q. It's your position that missing the standard
3 four times in one year is substantial compliance with
4 that rule?

5 A. Four out of 12 is the minority of the
6 months, and also those months occurred in the first
7 five months of that period, so the last seven months
8 have been without a miss.

9 Q. Do you know whether the company's trunk
10 blocking reports for 2005, as reported to the
11 Commission, were accurate or not?

12 A. For 2005, the inaccuracy that caused us to
13 restate to the best of our ability as shown in
14 Exhibit 163, that inaccuracy was actually
15 over-reporting, and so 2005 has that same issue of
16 too many trunks reported, but it's supposed to only
17 be those trunks that are blocking in the busy hour.
18 And inadvertently, over that long period of time, it
19 wasn't discovered that what was being reported was
20 all trunks that had any blocking, even if they may
21 roll over into another trunk and not really actually
22 cause a blocked call.

23 And so yes, 2005 has that same problem. We
24 were not able to go back that far beyond what we've
25 already tried to do in 2006, so what has been

0418

1 reported for 2005 still has that problem.

2 Q. And the reports for 2005 show that for every
3 month in 2005 Qwest failed the E911 trunk blocking
4 performance standard; correct?

5 A. Yes, off and on, it did. Mm-hmm.

6 Q. Well, in every month?

7 A. Well, there's a -- even with the
8 over-reporting, there were a couple months. Oh, I'm
9 sorry, in 2005?

10 Q. Yeah.

11 A. Yes, you're right. I'm sorry, I was looking
12 at a couple months prior to that. So yes, in 2005.

13 Q. And those reports haven't been corrected or
14 restated, have they?

15 A. Right.

16 Q. So we don't actually know what your
17 performance was for blocking E911 trunks in 2005?

18 A. You do know it would be better than that,
19 because this is, as I said earlier, it's
20 over-reported. It's showing too many trunks which
21 reached a blocking condition, but many, if not most
22 of them, would have rolled over into what's called a
23 final trunk group, and it should have only been the
24 final trunk groups and just in the busy hour, not all
25 the other hours of the day.

0419

1 So I think it's very safe to say that the
2 trunk blocking for E911 would have been better than
3 this. I would also say that this strict reporting of
4 E911 trunks doesn't show the whole story. The E911
5 network is much more robust and is designed to roll
6 over even from these trunks when they block. They
7 don't actually stop a call. They roll over into
8 other groups that other venues handle, such as there
9 are trunks for wireless that serve 911 for wireless.
10 There are wireline trunks, but they serve the
11 wireless network, and these trunks, when they block,
12 they roll to the wireless trunks, and then when those
13 block, they roll to the wireline trunks that support
14 VoIP.

15 And so there's a whole cascading scheme of
16 this kind of redundant protection that says that what
17 you see here while -- even if we were reporting it
18 with the trunks that should have been reported, would
19 not -- it doesn't indicate the whole story with
20 respect to 911.

21 Q. Are you aware, Mr. Williams, that this
22 Commission conducted a rule-making within the last
23 couple of years and took a look at service quality
24 metrics that are a matter of administrative rule in
25 this state?

0420

1 A. I wasn't involved in that that I can recall,
2 but I would take your word for that.

3 Q. Do you know if Qwest sought to correct the
4 standard that's in the Commission rule during that
5 rule-making to fix this problem that you -- this
6 alleged problem that you've described?

7 A. I'm not saying it's a problem. I'm saying
8 it's -- it is what it is. It reports the 911 -- the
9 trunks that are designed to support 911 within our
10 wireline network. Then you also have, outside of
11 that, what the public service answering points do,
12 which is to work with us and other providers to have
13 redundancy, and so this is -- this is not a problem,
14 per se; it's just that when you look at any number,
15 you have to take it into context. And to say that
16 911 is having problems because of what -- even what
17 2005 says, which is probably an overstatement of any
18 trunking blocking issues, is not an accurate picture.

19 Q. Let's look at another topic, Mr. Williams.
20 Take a look, please, now at cross-exam Exhibit 62.
21 This is a response to Data Request 91.

22 A. Okay.

23 Q. Do you have that? And on the first page,
24 there's a Section C down at the bottom?

25 A. Yes.

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1 Q. It states there that, in Washington, Qwest
2 provided \$43,833 in customer credits in 2006;
3 correct?

4 A. As for repair remedies.

5 Q. Okay. And that's higher than the previous
6 years shown there, correct, in that C?

7 A. Yes.

8 Q. That might be perhaps due to the rain and
9 windstorm in 2006 that we just discussed?

10 A. That could have been an element.

11 Q. So it might be a bit lower if you sort of
12 corrected for that unusual weather, mightn't it?

13 A. It might. January to November and December,
14 all three months of 2006, had that kind of an issue,
15 so --

16 Q. We all remember. Trying to forget.

17 A. Yeah, more than I did. I wasn't here.

18 Q. Can you turn to the next exhibit, which is
19 63-C, and I've got to find the page number here
20 myself. Look at the confidential materials. Page
21 three of the exhibit.

22 MS. ANDERL: Your Honor, I wonder if I might
23 just remind my witness that this is a document that
24 is a new exhibit, because it is the response to
25 Public Counsel Data Request 92-S1, not the original

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1 response.

2 THE WITNESS: Right.

3 Q. I'm sorry, I steered you to the wrong page.
4 You should go to page four. And if you look -- do
5 you have that?

6 A. Yes, I do.

7 Q. If you look at the Colorado section of the
8 chart, second from the top -- hold on a second. If
9 you go to the far right column, we see a number
10 representing the dollar amount of customer remedies
11 provided in Colorado in 2006; correct?

12 A. Yes.

13 Q. And that's in thousands, is it not?

14 A. Yes.

15 Q. All these numbers on this chart are in
16 thousands, are they not?

17 A. Yes, they are.

18 MR. FFITCH: Now, without -- well, I need to
19 inquire of Qwest whether they object on
20 confidentiality grounds to a characterization of the
21 relative size of this number to the Washington number
22 that we just saw that was the 43,000 that was not
23 confidential?

24 JUDGE CLARK: Ms. Anderl.

25 MS. ANDERL: I'm trying to formulate a

0423

1 response, Your Honor. Yes, thank you.

2 Clarification, Mr. ffitch. The number on which line
3 under Colorado?

4 MR. FFITCH: The out of service line.

5 MS. ANDERL: Well, I mean, if you want to
6 say is it, you know, twice as big or 17 times as big
7 or whatever --

8 MR. FFITCH: No, just a generic adjective,
9 small or larger.

10 MS. ANDERL: Okay. Sure. No, go ahead. We
11 won't claim that relative size to be confidential.

12 MR. FFITCH: All right.

13 Q. This is certainly higher than the amount
14 paid in Washington that we just looked at for repair
15 credits, right, Mr. Williams?

16 A. The number is higher than the number you
17 quoted from Washington.

18 Q. In any event, in your opinion, is the amount
19 in Colorado higher because the dollar amount of
20 remedy credits provided to customers is higher in
21 Colorado, or alternatively, are there more out of
22 service conditions not cleared within 24 hours in
23 Colorado versus Washington?

24 A. I have not done that analysis as to
25 explaining the difference that you're referring to.

0424

1 I have looked at the out of service and the repair
2 commitment requirements in Colorado for remedies, and
3 they are generally less stringent than what
4 Washington has in place. So if they are greater, as
5 this appears to show, it's not due to the fact that
6 Colorado is more severe than Washington in its rules
7 governing what we pay for remedies on repair.

8 Q. So that would increase the likelihood that
9 it's because there are more violations?

10 A. It could be many factors, and I haven't done
11 that analysis. It could be the basis upon which it's
12 handled. I don't -- I haven't done that analysis, so
13 it could be any -- I just know it would not likely be
14 because Washington was less severe in its -- or less
15 robust in its repair remedy.

16 Q. All right. Can you look at Arizona right
17 above there, please, for that same out of service
18 number? And that's a larger number again. Do you
19 find that?

20 A. Yes.

21 Q. Okay. That's larger than Colorado and
22 larger than Washington; correct?

23 A. Yes.

24 Q. And I have the same question about Arizona.
25 Is it because the credits are higher for Arizona

0425

1 customers or is it because the service quality is
2 worse?

3 A. Again, I haven't done that analysis to
4 explain why that number's larger. Arizona has had
5 its share of bad weather, as well. They're part of
6 the northern Mexico monsoon each year, and so it can
7 have that effect.

8 Q. Well, let's look at New Mexico, since you
9 mentioned -- I think you mentioned New Mexico.

10 A. I said northern Mexico.

11 Q. Oh, northern Mexico, sorry. Okay.

12 A. That's a weather phenomenon.

13 Q. If we look down at New Mexico, just near the
14 bottom of the page, we see the number for out of
15 service there, which is higher than Arizona, higher
16 than Colorado, higher than Washington; correct?

17 A. Yes.

18 Q. And I have the same question with regard to
19 New Mexico.

20 A. I haven't done an analysis as to the
21 comparison between the two, but I have been
22 extensively involved in New Mexico due to the recent
23 AFOR and rule-making matters, and New Mexico has, for
24 three years running, had record-breaking weather,
25 2004 first, then 2005, and then 2006 had broke those

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1 records as to the severity and extent of weather, all
2 of this following a long period of drought, several
3 years of drought, which, in the telephone world,
4 tends to leave you a little vulnerable, because when
5 you have a drought you don't have the same kind of
6 routine conditions that keep you up to date on where
7 you're having plant problems, and there's no other
8 way in the industry to tell.

9 And so when New Mexico hit those
10 record-breaking years, following years of drought,
11 then we had phenomenally greater numbers of trouble
12 reports, and I would say that that's a very --
13 probably a strong factor in the high amount of
14 payments in New Mexico.

15 Q. All right. Finally, can I get you to go
16 back to Exhibit 53-C, where we started, with the
17 summary of the self-executing metric states? That's
18 page nine of 53-C.

19 A. Let's see. I shouldn't have put it away.
20 Summary of --

21 Q. Well, it's the same page we looked at
22 before, page nine, has the multiple states.

23 A. Okay. I just lost it for a minute. It got
24 jumbled in all my papers here. Page nine. Oh, now,
25 is this the -- I'm sorry. This isn't the -- okay,

0427

1 it's 53?

2 Q. Yeah.

3 A. Okay. Here's 53.

4 Q. The front of the exhibit refers to 03-014S1,
5 and then we go to page nine.

6 A. Okay. I have that.

7 Q. Okay. And if you look at the New Mexico
8 Section under the year 2005 --

9 A. Yes.

10 Q. -- there's a reference to a rather large
11 settlement reached with regard to service quality
12 performance from July 2005 to March 2006; correct?

13 A. Yes.

14 Q. And Qwest has been operating under an AFOR
15 in New Mexico while this settlement was reached;
16 correct?

17 A. With respect to 2005, that column, yes.
18 With respect to 2006, it's still pending. So yes,
19 2005, we were under the AFOR; 2006, the Commission
20 put in place an interim AFOR, but that has yet to be
21 addressed as to how to handle the performance results
22 in that period.

23 MR. FFITCH: Okay. Thank you. May I just
24 have a moment, Your Honor? I think I may be done.

25 JUDGE CLARK: You may. We'll take a moment

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1 off record.

2 (Recess taken.)

3 JUDGE CLARK: Ready to go back on?

4 MR. FFITCH: Sorry. Yes, Your Honor, ready
5 to go back. Those are all questions I have.

6 JUDGE CLARK: All right. Thank you, Mr.
7 ffitich. Is there any inquiry from the Bench?
8 Chairman Sidran, Commissioner Oshie, Commissioner
9 Jones?

10

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

12 BY COMMISSIONER JONES:

13 Q. Good afternoon, Mr. Williams.

14 A. Good afternoon.

15 Q. You mentioned that the Colorado conditions
16 were less stringent than the Washington Commission
17 standards. Could you clarify that?

18 A. Yes. With respect to remedy, we have both
19 remedy provisions and service quality rules. And the
20 remedy provisions, I was looking at provisioning
21 interval remedies, held order remedies, installation
22 commitments remedies, out of service remedies, and
23 repair commitments remedies. And in those five
24 categories, three of them are less stringent if you
25 just compare Washington to Colorado, and one of them

0429

1 is about the same, and the other one, they have one
2 category, the held order remedy, is somewhat more
3 stringent. So on the whole, it's less stringent on
4 the remedy side.

5 If you go to the rules and just, aside from
6 the individual customer remedies, and go over to more
7 the standards that the Commission's put in place,
8 again you find that that's generally the case, as
9 well.

10 Colorado only has a remedy paid on two or
11 one metric, repair access metric, and that, when it's
12 two consecutive months -- and as was pointed out
13 earlier in my cross-examination, the AFOR revisions
14 streamline that down from 13 down to two. Compare
15 that to Washington, which has far more, as you know,
16 so overall, Washington is more robust, if you will,
17 in the sense of being severe or stringent on service
18 quality in its existing rules.

19 Q. I guess I'm a little confused, so let's go
20 to the Appendix C of the settlement agreement, the
21 modified AFOR.

22 A. Okay.

23 Q. Do you have that? Specifically, this talks
24 about the customer service guarantee program?

25 A. Yes, I have that.

0430

1 Q. And item number two there is what you call
2 -- I think it's an out of service trouble condition
3 credit. And what I'm trying to drive at, is that
4 similar -- because in Colorado, I think you stated
5 for the record that there were two standards or two
6 incentives still remaining by the Colorado Commission
7 under service quality standards. One is the out of
8 service standard and the other is the repair center
9 access standard; correct?

10 A. Yes.

11 Q. So I'm trying to compare apples with apples.

12 A. Okay.

13 Q. Is the out of service trouble standard for
14 the state of Washington in Appendix C customers will
15 receive a credit who are out of service for, what is
16 it, two working days, longer than two working days?

17 A. Looking at Appendix C?

18 Q. Yes.

19 A. Right.

20 Q. And what's the similar -- my understanding
21 of Colorado, just reading the information, is it's 24
22 hours?

23 A. Right.

24 Q. So which is more stringent?

25 A. Well, this isn't the whole story.

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1 Q. Okay.

2 A. Let me pull out my note on that so I can
3 address it more directly. Lost my note. The
4 Appendix C addresses both the two working days, which
5 is the credit of \$5, and then Part B, if the out of
6 service condition exceeds seven calendar days, a
7 customer will receive a credit equal to their monthly
8 local exchange service rate, including any associated
9 regulated features for the month. And Colorado will
10 receive also a kind of a pro-rated adjustment on that
11 basis. What you don't see is the number of days --

12 Q. I see.

13 A. -- that you multiply this by, and so that's
14 where I was saying they were roughly the same. Not
15 precisely the same, but roughly the same. This \$5
16 credit may tweak that up a little, but other than
17 that, they're roughly the same.

18 Q. And what is your understanding of Appendix
19 C? Is this credit automatically applied without the
20 customer requesting it?

21 A. Yes, that's correct.

22 Q. So it's an automatic adjustment. And is
23 that the case for Colorado, as well?

24 A. Yes.

25 Q. What about the other Colorado condition?

0432

1 I'm having -- could you address that compared to the
2 state of Washington repair center access, 85 percent
3 in 60 seconds? Is there anything similar for our
4 state?

5 A. And where are you looking for the 60
6 seconds, just so I can link up?

7 Q. I think I saw it in one of the -- I think in
8 the 53-C, in your -- one of the exhibits.

9 A. Okay. I was looking at the wrong sheets.

10 Q. This was in response to Public Counsel, I
11 think, a data request.

12 A. Okay. Fifty-three?

13 Q. Fifty-three, if you look at the summary,
14 Arizona and then Colorado?

15 A. Just to be sure I'm grounded. That's 52.

16 Q. The standard answer, 85 percent in 60
17 seconds.

18 A. Okay.

19 Q. Is there anything similar for the state of
20 Washington, to your knowledge, in this settlement
21 agreement or in our current rules?

22 A. It's not addressed in the settlement
23 agreement and I'm struggling to find my copy of the
24 rule that would tell me that for -- it's not a remedy
25 matter; it's a payment matter, where this -- the

0433

1 settlement agreement is dealing with the customer
2 service guarantee program, whereas the Colorado
3 number that you're referring to is not a remedy
4 matter; it's a kind of a rule type matter on the --
5 across a whole period of time, not just for
6 individual customers.

7 Q. Okay. My second line of questioning is on
8 -- I think it's page 17 of your testimony. You
9 address this investment per line standard in the
10 SQIP, in the previous incentive that the Commission
11 had in place. And I'd just like to understand your
12 reasoning as to why you think that this -- why this
13 is a poor index.

14 I think this is in response to Ms. Kimball's
15 testimony, where you state on line 11, Aggregate
16 investment per line numbers have very little
17 correlation to service quality performance.

18 A. Yeah.

19 Q. Are you there?

20 A. Yes, uh-huh.

21 Q. And my understanding that there was a
22 commitment of, what was the number, \$133 per line
23 that the company had to maintain during the period of
24 that commitment?

25 A. That earlier commitment, I don't recall

0434

1 exactly.

2 Q. Okay.

3 A. I wasn't close to the investment piece of
4 that at the time.

5 Q. But more generally, why are you opposed to
6 this sort of a commitment? One would, just from a
7 common sense economic standpoint, I would think that
8 investing in lines for service quality would either
9 maintain or maintain existing levels of service
10 quality and that increasing balance would increase
11 service quality and declining balance would perhaps
12 deteriorate, would it not?

13 A. It's a logical thought. I think, in the
14 environment we're in, what I was pointing out in my
15 testimony was just simply that -- just a bland
16 assertion that declining investments somehow would
17 translate to some danger in that regard, and I showed
18 that we have had some declines in investment, they
19 haven't been steep, but we have had declines and
20 we've had improving service quality across the same
21 period.

22 I think the real point why this is not a
23 concern or shouldn't be, I don't believe, is because
24 the competitive landscape here is such that no
25 company who's doing business in Washington in the

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1 telecom business and competing for customers can
2 afford to let their service decline, and so they
3 would assure that they're investing in rehabilitation
4 where that makes sense or in new plant where that
5 makes sense, just as a matter of staying competitive.

6 And so, you know, to me, this is one of the
7 areas that's really strongly governed, if you will,
8 by the competitive landscape that we have in
9 Washington.

10 Q. So if I follow your line of reasoning and
11 your criticism of the SQIP, the Service Quality
12 Incentive Program proposed by Public Counsel, is that
13 it is I think you used the words obsolete and
14 symbolic of the punitive regulation in a monopolistic
15 era. You are asserting that in a competitive era
16 with intermodal competition, that these sorts of
17 incentive programs are no longer suitable. Is that
18 the nexus of your --

19 A. Certainly clear here in a state like
20 Washington, where the competition is so very
21 significant, and even if you didn't go along with
22 intermodal or any of those details, you see us in the
23 business of losing lines, we're losing customers of
24 those lines, and any company that's going to succeed
25 in this kind of an environment has to remain

0436

1 competitive, and to do that would require appropriate
2 levels of investment, appropriate levels of attention
3 to service, customer service, all those various
4 things that you have to do to stay competitive.

5 Q. In general, would you call the SQIP an
6 incentive program or a penalty program?

7 A. It would appear to me to be a penalty
8 program. If you look at Ms. Kimball's exhibit that
9 summarizes, kind of estimates what we would pay under
10 the SQIP for performance that we've had recently,
11 we'd be paying over a million dollars for performance
12 that is really kind of hard to argue is nothing short
13 of really good performance.

14 Q. Then to follow on that line of reasoning,
15 what would you call the CSGP, the Customer Service
16 Guarantee Program, that the company has agreed to in
17 the settlement agreement? Is that an incentive
18 program, a compensation program? What sort of broad
19 rubric would you put that under?

20 A. We kind of broadly do put it under remedies
21 as we look across the company. And it's a
22 compromise, really, between the parties. We believe
23 the competitive conditions are such that you wouldn't
24 need to have this prescribed type program in
25 Washington, but if you look elsewhere where there

0437

1 aren't so prescribed, you find us and other companies
2 voluntarily offering remedies. And you see in one of
3 these exhibits, I forget which one, but there's quite
4 a number where, in response to a data request, we
5 provided what we're paying. I think it was one of
6 these recent ones that we just looked at, and the
7 basis in many cases is voluntary, voluntary,
8 voluntary. So that's because of the competitive
9 landscape that we have across our region, and
10 Washington is right near the top of that in terms of
11 the intensity of competition.

12 So nevertheless, we'd be doing some of this
13 voluntarily anyway, so it wasn't too hard for us to
14 compromise with the Staff to continue to do that and
15 to continue to report it as we agreed to do.

16 Q. But you would not characterize Appendix C as
17 a voluntary program by the company, would you?

18 A. No, if I were to report this, it would be
19 pursuant to an AFOR.

20 Q. Have you costed out at all what Appendix C
21 might cost during the term of the AFOR based on --
22 this may get into a confidential area, but have you
23 done any analysis based on performance on out of
24 service issues, on delayed primary basic exchange,
25 what it might entail for the company?

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1 A. Sitting right here, I can't think of that
2 number or the -- I did that. It may exist and it
3 might even exist within my group, but I handle a
4 nationwide responsibility, so I'm not right up on
5 that we've looked at that number, because it was not
6 something that was really out of line with what we'd
7 be willing to do anyway.

8 Q. So in sum, do you represent the company on
9 quality service issues before all 14 Commissions in
10 the Qwest area?

11 A. My organization within Qwest does. On
12 occasion, it's me that's the witness, but I would
13 also have others that testify that would report to
14 me.

15 Q. So -- and is it my understanding -- I'm
16 trying to summarize what Public Counsel asserted --
17 that there are three states -- under the 14 states,
18 there are three that still impose standards on
19 service quality standards on the company?

20 A. Well, all of the states have some form of
21 standard, but only three actually have the
22 self-executing.

23 Q. Excuse me. Self-executing standards?

24 A. Yes.

25 Q. And what states would you most compare the

0439

1 state of Washington to in terms of the state of
2 competition, number of access lines and such, if you
3 had to pick two?

4 A. Colorado and Arizona.

5 Q. Thank you.

6 JUDGE CLARK: Redirect, Ms. Anderl.

7 MS. ANDERL: Yes, Your Honor.

8

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

10 BY MS. ANDERL:

11 Q. Following up on Commissioner Jones' last
12 question, Mr. Williams, to the extent that Colorado
13 and Arizona have self-executing penalty plans, and
14 you indicated that you would most compare Washington
15 to those states, are you recommending that the
16 Commission should find it appropriate to institute a
17 plan with self-executing penalties on that basis,
18 because you think that the states are comparable?

19 A. No, both of those states have less onerous
20 -- well, at least the self-executing aspects of those
21 states are less onerous than what Colorado already
22 has in place in terms of its rules, its standards.
23 Washington, Washington does not have self-executing
24 in the way of that, but the standards are there, the
25 service has been improving. Washington is really at

0440

1 the forefront; therefore it makes sense for it to
2 step into this world of competition and still have,
3 as it does, in place, some of the most robust rules
4 in the nation. It's in the top quartile of the
5 entire nation, while also being in the top quartile
6 of competition, I would say, on broad measure. So if
7 anything, Washington could be in the lead of
8 recognizing that while still protecting itself with
9 the rules it already has in place.

10 Q. Aside from Washington, Arizona and Colorado,
11 what is -- are there any other comparably large
12 states in Qwest's service territory?

13 A. Perhaps Minnesota.

14 Q. Does Minnesota have any -- does Minnesota
15 operate under an AFOR?

16 A. Yes.

17 Q. Does Minnesota have any self-executing
18 penalties --

19 A. It does.

20 Q. -- anymore? Penalties or customer remedies?

21 A. It has some self-executing penalties, but
22 they're not anywhere -- they're really pared down
23 from what they used to be and they're less than the
24 others than what, for example, Washington's was, and
25 its standards are less severe than Washington's

0441

1 current rules.

2 Q. Mr. Williams, take a look at Exhibit Number
3 53-C, and this is the page that Mr. ffitch had you on
4 previously, page nine of ten, entitled Retail Service
5 Quality Performance Plans?

6 A. I have more trouble finding that particular
7 exhibit. That's not it. I'm shuffling too many
8 papers. Oh, 53?

9 Q. Yes.

10 A. Okay, page nine of ten?

11 Q. Yes.

12 A. Okay.

13 Q. Are you there?

14 A. Yes.

15 Q. Okay. Now, on the fourth -- the block that
16 indicates Minnesota --

17 A. Yes.

18 Q. -- there, what does that show in the column
19 for 2006?

20 A. You're showing me that I was misremembering,
21 mis-recalling this, that there are no more of those
22 self-executing penalties. I was recalling another
23 change that we had made that was more on the remedy
24 side. So yes.

25 Q. Okay. So through 2005, your answer was

0442

1 correct?

2 A. Right.

3 Q. But from 2006 forward, there are none?

4 A. Yes.

5 Q. Okay. And what is the state on the bottom,
6 if you recall? My state name has a hole punched
7 through it.

8 A. It's Oregon.

9 Q. Okay. Now, let me see if I have any more
10 questions for you on that exhibit. Mr. ffitch asked
11 you a question about the two occasions in 2006 when
12 Qwest failed the repair answer time metric. Do you
13 recall that?

14 A. I think so.

15 Q. And it was in July and December of 2006 --

16 A. Okay.

17 Q. -- when that standard was exceeded? Is that
18 your recollection?

19 A. The repair answer time?

20 Q. Yes.

21 A. Yes. That was part of my testimony, as
22 well, yes.

23 Q. And Mr. ffitch referred you to Exhibit 52,
24 which are the service quality performance results
25 that Qwest filed under the SQPP. Do you recall that?

0443

1 A. Yes.

2 Q. And he asked you to agree that in each of
3 those years that those reports were filed, Qwest
4 never once missed that metric. Do you recall that?

5 A. Yes.

6 Q. Was the metric in those years that were
7 covered by these reports the same as the metric that
8 Qwest is currently under?

9 A. In terms of repair call answer?

10 Q. Yes.

11 A. I'm struggling to remember that.

12 Q. Well, why don't you just take a look at the
13 page two of ten in the middle column, where it says
14 answer time, performance repair calls?

15 A. Okay.

16 Q. Is it your understanding that that
17 accurately reflects what the service standard was at
18 that time?

19 A. Yes, now I recall the change that had
20 happened. Eighty percent of repair calls within 30
21 seconds, as opposed to the present of 60-second
22 average wait time.

23 Q. So can you reasonably correlate whether
24 those were similar standards, or is it reasonable to
25 compare the two standards?

0444

1 A. They're really different approaches to a
2 similar thing, but you can't just -- they're not the
3 same.

4 Q. Now, when you talked to Mr. ffitch about the
5 trunk blocking reports, and that's Exhibit 163-C, or
6 Qwest's supplemental response to Public Counsel Data
7 Request Number 88, can you take a look at that with
8 me, please?

9 A. Yes.

10 Q. And let's just, for instance, look at page
11 -- they seem to be hand-numbered by Public Counsel.
12 Let's look at page 40.

13 A. Okay.

14 Q. This shows February 2006 at the top, and on
15 the right-hand side, it says, Restated; is that
16 correct?

17 A. That's correct.

18 Q. And so to the best of your understanding,
19 this report and the pages that follow show the
20 correct results for 2006?

21 A. Insofar as is possible to correct them, and
22 we explained that in the cover letter when we filed
23 the restatement with the Commission.

24 Q. Okay. Now, this shows that there was
25 blocking on the 911 trunks in February 2006, doesn't

0445

1 it?

2 A. On one trunk group, yes.

3 Q. Yes. Does that necessarily indicate that
4 calls were blocked?

5 A. No.

6 Q. And is that the explanation that you gave
7 earlier, that the calls roll over?

8 A. Yes.

9 Q. Okay.

10 A. Well, right. This also has a note that's
11 not confidential that indicates the dynamics of that
12 particular environment, where when you do have trunk
13 blocking, we send a request to the customer, in this
14 case -- well, not the customer so much, but the
15 client, the public service answering point or public
16 safety answering point, and we take care of our part,
17 we notify them it's blocking, maybe we ought to
18 augment, and in this particular case, we had done
19 that, but had gotten no response. So it just
20 illustrates the dynamics of that environment where we
21 don't control both ends, so we can't really take
22 responsibility for the result in the environment of
23 911 or in the environment of toll.

24 Q. So turn to the next page, please, 41. And
25 it says that, in the notes column, and that isn't

0446

1 confidential, it says TGSRs have been issued February
2 9th and March 16th. What's a TGSR?

3 A. It's a trunk group service request.

4 Q. Okay. And what is that, then?

5 A. It's our mechanism for notifying the person,
6 either the carrier or the public service answering
7 point or whoever's our partner on the other end that
8 it's time to service the trunk to augment or provide
9 that kind of capacity increase.

10 Q. And is it mandatory that the customer act on
11 that?

12 A. No, it's not.

13 Q. Okay. Are you aware of any of Qwest's
14 competitors in the state of Washington who are
15 required to pay self-executing penalties under a
16 trunk group blocking services standard?

17 A. To my knowledge, none.

18 Q. You talked a little bit about the out of
19 service remedies in Colorado with both Public Counsel
20 and Commissioner Jones. Do you recall that?

21 A. Yes.

22 Q. Okay. Now, the settlement agreement in this
23 docket adds an out of service metric to the Customer
24 Service Guarantee Program; is that right?

25 A. Yes.

0447

1 Q. And is that a metric that requires a larger
2 payment on behalf of Qwest than is currently in
3 place?

4 A. Yes, that's what I was referring to earlier
5 when I said it makes it a little bit -- they're
6 roughly the same, but this makes it a little more
7 serious, more severe.

8 Q. For the --

9 A. For Washington and Qwest in Washington.

10 Q. Okay. Are there any -- any standards in the
11 Customer Service Guarantee Program that you're aware
12 of where Washington has the most severe customer
13 remedy, in other words, most favorable for the
14 customer remedy of all of the 14 states?

15 A. Yes, it's in the area of the -- both the
16 installation commitment remedy and the repair
17 commitment remedy, where when we miss that
18 commitment, the payment is \$25, and that's larger
19 than any state in Qwest's territory.

20 Q. By how much?

21 A. Nine dollars is the number that I can -- I
22 think the nearest is Arizona, \$16.

23 Q. And is Qwest in the settlement agreement
24 committing to retain that \$25, at at least that level
25 for the term of the AFOR?

0448

1 A. Yes.

2 MS. ANDERL: Thank you, Mr. Williams. Thank
3 you, Your Honor. I have no further redirect.

4 JUDGE CLARK: Thank you for your testimony,
5 Mr. Williams. Is there any objection to this witness
6 being excused? Hearing none, you're excused.

7 Okay. Why don't we take a moment off
8 record. Our next witness will be Dr. Loube.

9 (Recess taken.)

10 JUDGE CLARK: All right. We're back on the
11 record. We're taking one witness out of order in
12 order to accommodate Dr. Loube's traveling plans.
13 Mr. ffitch.

14 MR. FFITCH: Thank you, Your Honor.

15

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

17 BY MR. FFITCH:

18 Q. Good afternoon, Dr. Loube.

19 A. Good afternoon.

20 Q. Would you please state your name and spell
21 your last name for the record?

22 A. Robert Loube, L-o-u-b-e.

23 Q. And by whom are you employed?

24 A. Rhoads & Sinon, L.L.C.

25 Q. And you were retained by Public Counsel in

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1 this docket to prepare testimony and exhibits in
2 support of Public Counsel's alternative AFOR proposal
3 and responding to the other parties' testimony; is
4 that correct?

5 A. That is correct.

6 Q. Do you have any changes or corrections to
7 your testimony?

8 A. One correction.

9 Q. Okay. Could you take us there, please?

10 JUDGE CLARK: I kind of let this go so far,
11 Mr. ffitch, but I'd really feel more comfortable if I
12 swore him in. I think he's not very likely to lie
13 about his name or -- but, you know, when we get to
14 corrections and testimony, I'd feel a little more
15 comfortable if I administered the oath first.

16 MR. FFITCH: All right. We have no
17 objection, Your Honor.

18 JUDGE CLARK: Thank you.
19 Whereupon,

20 ROBERT LOUBE,
21 having been first duly sworn by Judge Clark, was
22 called as a witness herein and was examined and
23 testified as follows:

24 JUDGE CLARK: Thank you. Please be seated.
25 Thank you.

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1 THE WITNESS: You're welcome. I have one
2 correction. It's on my direct testimony.

3 Q. Okay. That's Exhibit 90?

4 A. Yes, Exhibit 90.

5 Q. C.

6 A. Page 39, line eight.

7 Q. Okay. All right.

8 A. The last word should read AFOR. Therefore,
9 the line eight should read, "To evaluate the proposed
10 AFOR," rather than as it now reads, "To evaluate the
11 proposed merger."

12 MR. FFITCH: All right. Thank you. And
13 Your Honor, Exhibits 90-C through 103 for Mr. Loube
14 have already been admitted into the record, and
15 therefore we now make Dr. Loube available for
16 cross-examination.

17 JUDGE CLARK: Thank you, Mr. ffitch. Ms.
18 Anderl.

19 MS. ANDERL: Thank you, Your Honor.

20

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

22 BY MS. ANDERL:

23 Q. Good afternoon, Dr. Loube.

24 A. Good afternoon.

25 Q. I'm Lisa Anderl, and I work for Qwest as an

0451

1 in-house attorney and have some questions for you.
2 My first one was going to be with regard to the
3 correction that you made to your testimony, whether
4 you knew something that I didn't know about a merger
5 taking place?

6 A. Oh, no, I haven't seen anything in the Wall
7 Street Journal lately.

8 Q. Correct.

9 A. And I don't get inside information.

10 Q. How long have you been with your current
11 consulting firm?

12 A. Since 2001, April 2001.

13 Q. Okay. Thank you. And prior to that, did
14 you ever work for a telecommunications company?

15 A. No, I've never worked for a
16 telecommunications company.

17 Q. And have you ever advised a
18 telecommunications company with regard to investment
19 decisions?

20 A. No, I have not.

21 Q. Or planned a telephone network?

22 A. I planned a telephone model of a network.

23 Q. A cost model?

24 A. Cost model.

25 Q. Right. Okay. And I see that you consulted

0452

1 in Thailand. What organization did you consult to?

2 A. The Telephone Organization of Thailand.

3 Q. And what is that? Is that a trade
4 organization, a government organization?

5 A. No, no, no. It's the company that was in
6 the process of being privatized.

7 Q. Okay. Government-owned telecommunications
8 company?

9 A. Correct.

10 Q. Okay. Now, have you read the settlement
11 agreement, the narrative and the revised plan of AFOR
12 that are Exhibits 4 and 5 in this docket?

13 A. Yes.

14 MR. FFITCH: Excuse me, Your Honor. I had
15 meant to make sure that my witness had a copy of the
16 AFOR up there. May I approach?

17 JUDGE CLARK: Please.

18 MR. FFITCH: May I inquire if Dr. Loube
19 needs -- would he also need narrative statements or
20 supporting testimony or just the AFOR itself?

21 MS. ANDERL: I actually don't know that I
22 have questions on any of those documents. I was just
23 ascertaining whether he read them, but -- at this
24 point.

25 MR. FFITCH: All right.

0453

1 THE WITNESS: Thank you.

2 Q. Now, do you understand that the stipulated
3 proposal for AFOR would have Qwest regulated in
4 general as if it were a competitively classified
5 company subject to certain exceptions and certain
6 transition period requirements?

7 A. That's generally what you asked for.

8 Q. And that, under those circumstances, unless
9 a particular service was subject to an exception or
10 subject to a transition period requirement, it could
11 be offered by Qwest as if it were a competitively
12 classified service?

13 A. That's what you asked for.

14 Q. Okay. And do you see anything in the
15 stipulated plan of AFOR that would indicate that
16 that's not the way it would happen?

17 A. No.

18 Q. Okay. Have you participated in Washington
19 as a witness or consultant in any competitive
20 classification proceedings?

21 A. No.

22 Q. Okay. In the packet of cross-examination
23 exhibits that we distributed last week, marked for
24 you -- or the first four exhibits were Commission
25 orders and/or Staff memoranda in connection with

0454

1 Qwest's various petitions for competitive
2 classification. Let me just ask you about those
3 briefly. Exhibit Number 104 is a Commission order in
4 Docket Number UT-990022. Have you read that order?

5 A. Yes, I've reviewed it.

6 Q. Okay. And Exhibit Number 105, have you read
7 the order marked as Exhibit Number 105?

8 A. Yes.

9 Q. What about Exhibit Number 106?

10 A. This is the 17th order?

11 Q. The Docket Number 030614?

12 A. Order number 17?

13 Q. Yes.

14 A. Yes, I have read that one.

15 Q. Okay. Terrific. And then Docket Number
16 050258, Exhibit Number 107, is a copy of a Staff
17 memorandum in connection with a petition for
18 competitive classification that was taken up at an
19 open meeting. Did you read that?

20 A. Yes.

21 Q. And are you aware of what the result of that
22 open meeting agenda item was?

23 A. Well, it doesn't say in the -- in this memo
24 what that was.

25 Q. I know. I'm asking you if you're

0455

1 independently aware of what the outcome was?

2 A. No, I'm not.

3 Q. Would you accept, subject to your check,
4 that the Commission accepted the Staff recommendation
5 to allow Qwest's petition for competitive
6 classification of digital business services, switched
7 and private line, and specified wire centers to go
8 into effect as filed?

9 A. That's -- they accepted this memorandum, is
10 what you're saying?

11 Q. I'm asking you if you'd be willing to accept
12 --

13 A. Sure.

14 Q. -- subject to check, that that's what the
15 Commission did. Yes. Okay. Thank you.

16 Are you aware that in each of these four
17 proceedings, except the last one, Public Counsel
18 opposed Qwest's petition?

19 A. Yes, that's what it says.

20 Q. Okay. In your testimony that is filed today
21 in this docket, either your reply testimony or your
22 cross answering testimony, do you identify any harms
23 to the market that have occurred as a result of the
24 Commission granting any of those petitions for
25 competitive classification?

0456

1 A. No, I didn't include anything from those
2 previous cases in my current review.

3 Q. So if I were to ask you whether, in your
4 testimony, you identify any harms to any particular
5 customers or customer classes as a result of the
6 Commission granting those petitions, would your
7 answer be the same? My prior question addressed
8 markets and this question addresses customers or
9 customer classes?

10 A. No, I did not review the aspects, the
11 record, or the outcomes or the history of those
12 cases.

13 Q. And you were a witness in the Verizon rate
14 case, were you not?

15 A. Yes.

16 Q. And did you actually testify in that docket
17 in terms of standing cross-examination, or was there
18 a settlement?

19 A. There was a settlement.

20 Q. Okay. Were you -- and you were a witness on
21 behalf of Public Counsel?

22 A. Correct.

23 Q. Were you a witness in the Verizon-MCI merger
24 docket?

25 A. No, I was not.

0457

1 Q. Did you participate in that case in any way?
2 Did you participate in that case in any way, other
3 than being a witness, such as being a consulting
4 expert for any party?

5 A. In the state of Washington?

6 Q. Yes, I'm sorry.

7 A. No, I did not participate in the case in the
8 state of Washington.

9 Q. Okay. I have some general questions for
10 you, Dr. Loube, with regard to your testimony. So
11 let's have you please turn to your direct testimony,
12 which has been marked as Exhibit Number 90-C, page
13 two, line 22.

14 MR. FFITCH: Page two, line 22.

15 Q. Yes. And page three, line one, both lines
16 there, you use the phrase effective competition?

17 A. Correct.

18 Q. Can you please define what you mean by
19 effective competition in those two sentences?

20 A. Yes, effective competition is when there are
21 a sufficient number of competitors such that no one
22 in the market can exert market power. I think I gave
23 an example further on in my testimony about the
24 automobile industry, where I show that in the
25 automobile industry there are enough evenly-sized and

0458

1 evenly-powerful companies so that they discipline
2 each other.

3 Q. And so the automobile manufacturing
4 industry, in your view, would -- in the United States
5 is an example of a competitive market?

6 A. An effectively competitive market.

7 Q. Okay. Can you give me examples of any other
8 effectively competitive markets that you would feel
9 comfortable with?

10 A. Probably gas stations in the city of
11 Seattle. There's probably a whole bunch of others.

12 Q. Now, is it your testimony that prices in
13 effectively competitive markets never go up?

14 A. No.

15 Q. Okay.

16 A. My testimony says that when there's, you
17 know, in an effectively competitive market, prices
18 could go up. I didn't say it in the testimony, but I
19 also believe it, that if, say, the input into an
20 industry goes up, say we go back to my gasoline
21 example, if the price of gasoline to gas stations
22 goes up, then we would expect that the gas stations
23 would all increase the price.

24 Q. So it's not your testimony, then, that any
25 price increase indicates that a market for an item is

0459

1 not effectively competitive? That was a confusing
2 question, and I think it had too many notes in it.

3 A. Yes.

4 Q. Is it your testimony that any price increase
5 for a good or service indicates that the market for
6 that good or service is not competitive?

7 A. My testimony is that when a price goes up,
8 okay, can a company sustain a price increase above
9 others' prices, you know, prices of others or prices
10 of something that somebody might think is similar or
11 prices of something that is there, like a cable cost.
12 If the price goes up and it can be sustained to go
13 up, then that is a showing that there's monopoly
14 power, and it's different than if the price goes up
15 simply because an input goes up and the prices of all
16 participants also go up.

17 Q. Okay. So if all market participants raise
18 their rates, it tends to indicate -- or raise their
19 prices, it would tend to indicate that -- well,
20 wouldn't -- let me see. If all providers of a good
21 or service in a market raise their prices for that
22 good or service, what would that indicate to you?

23 A. It could indicate one or two things. It
24 could indicate that an input price goes up or it
25 could indicate collusion and they all got together

0460

1 and decided to raise the price together.

2 Q. And which is it with the gas stations?

3 Strike that question, strike that question.

4 And so in a competitive market, prices might
5 go up and prices might go down, and it wouldn't
6 necessarily tell you anything about the state of
7 effective competition?

8 A. That's correct.

9 Q. So like, for example, the price for
10 calculators and computers have come down over the
11 years?

12 A. They could come down because of
13 technological change, that the industry's become more
14 efficient, prices could go down, yes.

15 Q. And prices for things like airline tickets
16 to Europe could go up?

17 A. I haven't gone to Europe in a long time,
18 haven't been looking at that industry, but, yeah,
19 possibly. And I guess one of the reasons that that
20 might have occurred might be that jet fuel went up.

21 Q. Or that the price of airplanes went up?

22 A. Or the price of airplanes. That's probably
23 sensitive in this state.

24 Q. A little. Now, on page four of your Exhibit
25 90-C, line 22 -- and Your Honor, if I get this Q and

0461

1 A in and you want to break at 3:00, that would
2 probably be a decent place to do that.

3 JUDGE CLARK: That would be wonderful.

4 Thank you.

5 Q. Okay. You say that the plan would thwart
6 competition. Do you see that?

7 A. Yes.

8 Q. Competition in what market?

9 A. It would thwart competition in two markets.
10 It would thwart competition in the market for --
11 actually, in the market for bundled services, because
12 it would allow Qwest to raise a price in a
13 noncompetitive market, basic service, residential, in
14 a noncompetitive market, make enough funds, generate
15 cash revenue that it could then use to reduce the
16 prices of its bundles in the competitive market. So
17 it's the interaction of those two.

18 Q. So the thwarting of competition is in the
19 competitive bundled services market?

20 A. It would allow them to have an advantage so
21 that they could reduce their rates in that market.
22 Gives them that opportunity.

23 Q. And if Qwest did not do so, then the plan
24 wouldn't thwart competition in that way?

25 A. That's up to Qwest to do or not to. I'm

0462

1 saying they have the opportunity to do it because
2 they are requesting the right to increase rates in a
3 noncompetitive market giving them cash that gives
4 them the opportunity to thwart competition in the
5 bundled markets.

6 MS. ANDERL: Your Honor, I have a couple
7 more follow-ups on this, but they can just as easily
8 be taken up when we come back.

9 JUDGE CLARK: All right. We're at recess
10 until 3:15.

11 (Recess taken.)

12 JUDGE CLARK: We can go back on the record.
13 All right. Ms. Anderl.

14 MS. ANDERL: Thank you, Your Honor.

15 Q. Dr. Loube, back to the line of questioning
16 we were on before the break, did you say that market
17 for bundled services is an effectively competitive
18 market?

19 A. I would say that it's a competitive market,
20 yes.

21 Q. And so the prices set in those markets or in
22 that market would be at competitive levels?

23 A. It would appear to be, yes.

24 Q. Now, let me ask you a question, and I'm
25 going to ask it to you as a hypothetical question,

0463

1 because I'm going to ask you to assume with me that
2 you're wrong in one aspect of your testimony, so I
3 would imagine you're going to want to do that as a
4 hypothetical.

5 A. Okay. Sure enough.

6 Q. Assume you're wrong about the allocation or
7 assignment of the loop costs and assume that, in
8 fact, hypothetically or otherwise, there are no other
9 services from which Qwest can recover that loop cost
10 and so it should, in fact, properly, economically,
11 from a cost causative standpoint, whatever other way
12 you want to put it, be assigned for recovery from
13 basic service, okay. Have that in mind?

14 A. Okay.

15 Q. If that is the case and Qwest were to be
16 permitted to take a dollar increase on its 1FR
17 service, and that \$1 increase still did not cover the
18 costs of that service -- you still with me?

19 A. We have a singleproduct firm.

20 Q. We have a single -- we have the residential
21 market, the stand-alone line that is currently at
22 12.50 now being priced at 13.50.

23 A. And it's only selling local service. It
24 can't sell anything else?

25 Q. I didn't say that.

0464

1 A. Well, that's the hypothetical you're
2 drawing.

3 Q. No, the firm sells bundled services, as
4 well.

5 A. Okay. So it's selling multiple products and
6 it's got an input that is used to provide multiple
7 products. So --

8 Q. No. Let me try it again.

9 A. Okay.

10 Q. Let's see if I can make it more simple.
11 Assume you're wrong. We'll always start with that.

12 A. Okay.

13 Q. But --

14 A. I'm used to being wrong, so that's all
15 right.

16 Q. Hypothetically. And that --

17 A. My wife tells me that all the time.

18 Q. -- the Commission determines that the price
19 for local service does not currently cover its cost
20 and still won't with the \$1 increase, okay?

21 A. Okay.

22 Q. Okay. Under those circumstances, would
23 Qwest's ability to take a \$1 increase in the 1FR
24 thwart competition?

25 A. Under those circumstances, no.

0465

1 Q. Okay. Thanks. Turn to page six in your
2 Exhibit 90-C, your testimony.

3 A. Yes, I'm there.

4 Q. Okay. You state that broadband Internet use
5 is lower for low-income families than it is for
6 families with higher incomes. Is that kind of the
7 gist of your testimony at lines six through 11?

8 A. Yes.

9 Q. Is broadband use the same as broadband
10 availability?

11 A. No. Broadband use is when somebody buys it
12 and uses it, and availability is when the service is
13 available to anybody to buy it.

14 Q. Okay. And the statistics that you cited in
15 your testimony are in connection with broadband use,
16 not broadband availability?

17 A. That's correct, but when a low-income person
18 doesn't have any money, if it's available, they can't
19 use it.

20 Q. In order to access the Internet via a
21 broadband connection, do you need anything other than
22 the broadband connection? For example, a computer?

23 A. Yeah, usually it takes some kind of
24 equipment.

25 Q. And might the prices for computers be a

0466

1 barrier or an obstacle to a low-income family being
2 able to access the Internet at all via broadband
3 connection or otherwise?

4 A. That is true.

5 Q. Turn to page 17, lines seven and eight,
6 please.

7 A. Mm-hmm. I'm there.

8 Q. Oh, thank you. And actually, onto line
9 nine, it's the sentence that starts, New technologies
10 such as wireless. Can you describe for me what
11 circumstances must be present or would have to be
12 present for you to consider wireless a source of
13 effective competition?

14 A. People would have to use it as a substitute
15 for wireline in a significant way.

16 Q. Now, some people already do; right?

17 A. Yes.

18 Q. In your testimony, you cite a statistic of
19 approximately eight percent of households use
20 wireless service as their prime or their sole
21 telephone connectivity?

22 A. I used that number as an example of where
23 people could be cutting the cord. However, we have
24 to be very careful when we talk about substitution in
25 this instance, because most of the time, when

0467

1 somebody takes a sample, they use individuals, they
2 say how many individuals have cut the cord. Well, if
3 you go to households, households are not individuals,
4 okay.

5 The counter example I wish to discuss is
6 very dear to me, it's my daughter's household. There
7 are seven people in that household. Each one of them
8 has a cell phone and no one in that household, you
9 know, is using a wireline phone. And the question
10 is, the reason why I'm bringing this example up, is
11 has the wireline company lost seven lines or just
12 one?

13 And that is why counting in this particular
14 matter is very difficult, because the surveys that we
15 get ask how many individuals now have cut the cord,
16 and the comparisons I'm trying to make is how many
17 households. And this example shows you that seven
18 individuals cut the cord, but at most the wireline
19 industry only lost one line.

20 Q. At most one or --

21 A. In this particular example that I'm giving.

22 Q. Because there was only one line before they
23 cut the cord?

24 A. No, there might have been no lines.

25 Q. Could there have been two?

0468

1 A. There could have been two, yes.

2 Q. Okay.

3 A. I'm saying, though, in a previous
4 generation, we barely had the one.

5 Q. So let me refresh my memory on the answer
6 that you gave to my question about what circumstances
7 have to be present or would have to be present for
8 you to consider wireless a source of effective
9 competition, and I believe that you answered that
10 people would have to be using it instead of wireline
11 phones in -- did you say substantial or significant
12 number?

13 A. Either one of those words are good enough.

14 Q. Okay, great. Pick the one you like, because
15 I'm going to ask you to quantify that for me.

16 A. Okay. Substantial.

17 Q. Okay. What would be substantial in your
18 view?

19 A. In this view, what I'm doing is saying,
20 Look, we've got about four million wireless lines in
21 this state. If a large number of those people, say a
22 half of them, okay, thought that there was a
23 substitute for wireline, wireless for the wireline,
24 your company would be out of business in the wireline
25 industry.

0469

1 So therefore, we have to accept the fact
2 that most of the people who are currently using their
3 wireless phone don't use it as a substitute for the
4 wireline phone.

5 Q. Understood. Now, so somewhere between today
6 and Qwest out of business, wireless would become
7 effectively competitive against our wireline service;
8 is that correct?

9 A. Right.

10 Q. Okay. And Qwest out of business you just
11 kind of determined would be at the 50 percent level?

12 A. You'd be in trouble, yeah.

13 Q. Okay. Where along that continuum do you
14 think or how would you determine when you got to the
15 effectively competitive state as you moved from --
16 let's just use the eight percent to 50 percent?
17 Somewhere between eight and 50 percent, it's going to
18 be effectively competitive; right?

19 A. When you try to raise your price by \$2 or a
20 dollar and can't do it.

21 Q. And people go to wireless?

22 A. Right.

23 Q. So you wouldn't be saying that wireless has
24 to be considered a direct substitute by all customers
25 before it can be considered a source of effective

0470

1 competition?

2 A. No, all -- the four million people, whatever
3 the line number is that wireless currently have, I
4 think Mr. Teitzel has it in his testimony, they all
5 don't have to do it, no.

6 Q. So there's something like 4.1 million
7 wireless subscribers in the state?

8 A. Right.

9 Q. And there's only --

10 A. A hundred -- one million -- I think in ARMIS
11 you have 1.3 million subscribers.

12 Q. Residential?

13 A. Residential subscribers. So it's not a --
14 that's not a confidential number.

15 Q. No, it's not. The number of people who are
16 using wireless as a direct substitute for wireline
17 service has been increasing year over year, at least
18 that's what the data show, isn't it?

19 A. That's correct.

20 Q. Do you have any reason to suspect that that
21 trend will not continue?

22 A. Not at this time, no.

23 Q. Okay. And in fact, wireless plans have
24 become cheaper over the years, haven't they?

25 A. Yes, they became cheaper over the years over

0471

1 the time period in which the FCC made sure that there
2 were more and more competitors in the wireless
3 market. As the wireless market becomes less
4 competitive, as it has mergers, as the number of
5 companies get fewer, I'm not sure if I would say that
6 that trend would continue.

7 Q. And wireless service plans have become more
8 feature-rich over the years during which the prices
9 have come down?

10 A. Please explain that. I'm not sure what you
11 mean.

12 Q. Wireless plans have shown a tendency to
13 include more services under the single price, for
14 example, caller ID and call waiting and unlimited
15 long distance as a part of a single monthly rate?

16 A. That's true. My -- still my wireless rate
17 is significantly above my wireline rate.

18 Q. With -- you have a cell phone? You do have
19 a cell phone?

20 A. I have a family plan.

21 Q. Does it include long distance?

22 A. It includes long distance, I'm sure, but
23 it's sold on a basket of peak minutes. And off-peak,
24 you get a very cheap rate, obviously; on peak, you're
25 charged by a per-minute basis. I also have a

0472

1 wireline phone that is -- also gets -- it gets
2 unlimited calling, which is cheaper than wireless.

3 Q. Okay. Unlimited local or unlimited long
4 distance?

5 A. Unlimited local and long distance combined.

6 Q. Okay.

7 A. And the wireless phone has a basket of
8 minutes, and if you go over the basket of minutes,
9 it's pretty expensive. It's like 45 cents a minute,
10 I think.

11 Q. Turn to page 18 of your testimony, please.
12 Lines four and five, you talk there about outside
13 plant upgrades to the cable network in the amount of
14 a hundred billion dollars.

15 A. That is correct.

16 Q. Okay. Now, is it your testimony that the
17 one hundred billion dollar investment was all
18 directly attributable to the provision of telephone
19 service over the cable networks?

20 A. All I'm saying is is that a hundred billion
21 dollars was paid in upgrades of outside plant that I
22 don't know for sure whether or not that was just for
23 telephone. In fact, it probably wasn't. It was
24 probably also to provide better video service.

25 Q. Would you take a look at the document that's

0473

1 been admitted as cross-examination Exhibit 115,
2 please?

3 A. Sure. Mm-hmm.

4 Q. Do you recognize that as the cover page and
5 the cited paragraph of the document that you
6 reference in your footnote 11?

7 A. Yes.

8 Q. In that document, the FCC quotes an NCTA
9 study; is that right?

10 A. That's correct.

11 Q. Okay. And that NCTA study indicates that
12 the one hundred billion dollars has enabled cable
13 operators to offer more channels of basic and digital
14 cable services?

15 A. That's correct.

16 Q. Also premium movie services?

17 A. Right, it's a multi-product company.

18 Q. Okay. And then including also high-speed
19 Internet access?

20 A. Yes.

21 Q. And also cable telephony?

22 A. Among others.

23 Q. So how much of that one hundred billion
24 dollars would be properly attributable to an
25 investment in a network to provide cable telephony?

0474

1 A. I don't know.

2 Q. Let's look at your testimony on page 25.

3 And this is a confidential number in the question and
4 the answer that starts on line five, but I don't
5 think we need to worry about disclosing anything
6 confidential. You ask yourself the question, How has
7 Qwest's decline in switched access line sales been
8 offset by the sale of other Qwest products?

9 A. That's correct. That's the question I ask.

10 Q. And I want to ask about the use of the word
11 offset. What do you mean when you use the word
12 offset there?

13 A. Offset from the point of view of sales,
14 offset from the point of view of revenues, offset
15 from the point of view of products.

16 Q. And you've done a numerical comparison that
17 indicates that the number of special access voice
18 grade equivalent lines increased by more than the
19 decline in business switched access lines. Is that
20 right?

21 A. That's correct. I believe that data is from
22 ARMIS.

23 Q. And those are not confidential numbers?

24 A. Right.

25 Q. So about -- oh, I won't even try to do that.

0475

1 Well, about 1,700 more voice grade equivalents sold
2 than business access lines lost?

3 A. That's correct.

4 Q. Okay. Did you do a direct revenue
5 comparison in terms of the revenues that Qwest would
6 expect to receive from those special access voice
7 grade equivalent lines compared to the revenue it
8 would have lost by the loss of the business switched
9 access lines?

10 A. No, ARMIS doesn't give the revenues, doesn't
11 break down the special access lines in terms of what
12 kinds of special access lines, so I don't know what
13 rate to put to those special access lines, so I did
14 not do that kind of a comparison.

15 Q. So you're not contending that the revenues
16 would be equivalent?

17 A. I haven't contended that, no.

18 Q. Okay. So that's not what you meant when you
19 used the word offset?

20 A. I know that the revenues have gone up in the
21 interstate arena, I know that the rate of return in
22 the interstate arena is very high, and therefore I
23 know that, to a certain extent, revenues are. I
24 didn't do any one-to-one comparison between the
25 revenues for the business line and the revenues --

0476

1 the increased revenues associated with the special
2 access.

3 Q. Okay. And if you take a DS1 special access
4 line, that has -- what are the voice grade
5 equivalents on a DS1?

6 A. Twenty-four.

7 Q. And so then you would say that is 24 voice
8 grade equivalents compared to and would offset in
9 your testimony a loss of 24 business switched access
10 lines if Qwest were to sell one DS1 and lose 24
11 business switched access lines?

12 A. I'm just saying that is the count of lines
13 and count of connections.

14 Q. Do you have an understanding about what the
15 approximate price point would be for a DS1?

16 A. I don't know your prices.

17 Q. Do you know any incumbent LEC or RBOC
18 providers's prices?

19 A. I've looked at them in the past. I don't
20 know what they are today.

21 Q. Do you think that they're priced at 24 times
22 the business rate?

23 A. No, they're usually a discount off that.

24 Q. Okay. Let's turn to page 36 of your
25 testimony.

0477

1 MR. FFITCH: Thirty-six?

2 Q. Thirty-six.

3 A. Thirty-six. This is also proprietary data
4 on this.

5 Q. Yes, yes. Now, talking about stand-alone
6 DSL, is stand-alone DSL the only way an independent
7 non-facilities-based VoIP provider can provide
8 telephone services to a customer?

9 A. A customer has to get to the VoIP provider
10 with a broadband connection. DSL is one way, a cable
11 modem is a second way.

12 Q. What about a Wi-Max type option?

13 A. There are various ways. I don't know
14 exactly how Wi-Max works.

15 Q. Are you familiar with a company based in the
16 Seattle area that just recently made a public stock
17 offering called Clearwire?

18 A. I've heard of them. I don't know their
19 business plan.

20 Q. Okay. Turn to page 38, please. You say
21 there on line nine that from 2002 to 2005,
22 non-primary lines declined by 40 percent for Qwest
23 and that these lines were most likely lost to
24 high-speed services and wireless carriers. Do you
25 see that?

0478

1 A. Yes.

2 Q. Is it your testimony, then, that broadband
3 connections and wireless are at least a substitute
4 for second lines?

5 A. Yes.

6 Q. I am loath to go into the HHI, but I think
7 we'll do a little bit of that next, since that's
8 where we are in the testimony.

9 A. Okay.

10 Q. Turn to page 43 of your testimony, where you
11 have table one.

12 A. Okay.

13 Q. When you say residential primary line, HHI,
14 what is the primary line?

15 A. Okay. What I did here was --

16 Q. And I'll let you give me the explanation,
17 but I do want somewhere in there --

18 A. The primary line -- the primary line is, I
19 would say, the first line into the house, the first
20 or the main avenue of providing service.

21 Q. And that's whether it's packaged or bundled
22 or not?

23 A. Right, in this situation, I did not make a
24 separation on whether it's packaged or bundled when I
25 did this calculation. Essentially what I did was I

0479

1 took the households in the state and then made an
2 allocation of the households in the state to the
3 Qwest territory, so that was my total market size,
4 was the number of residential households in the Qwest
5 territory. And then I took the Qwest lines that I
6 have in here, what's known as primary line and ARMIS,
7 so I took out all the non-primary lines, so that
8 could be second or third, whatever number of
9 residential lines outside of the primary line, the
10 first line sold to the household.

11 I also eliminated from the Qwest number the
12 lifeline lines, so these are only lines here for
13 Qwest that are the primary line less the lifeline
14 lines.

15 Q. Now, in order to allocate market share to
16 the non-Qwest providers, you used national numbers;
17 right?

18 A. Yes.

19 Q. And if, as Mr. Teitzel has explained, some
20 VoIP providers are not reporting the lines over which
21 they're providing VoIP or are not CLECs, that data
22 would not necessarily be reflected in the percentages
23 that you used to allocate the market share; isn't
24 that right?

25 A. Let's be a little more specific. He was

0480

1 talking about the cable CLECs, right, not the -- not
2 the VoIPs. I put -- the independent VoIP, I put in
3 here at three percent, which is not the numbers he
4 was talking about, because we both agree that the
5 FCC's report doesn't have the independent VoIPs in
6 it. What we disagreed about was whether or not the
7 FCC report has the cable VoIP lines. Notice you see
8 I have a number in here of 3.5 percent. That he was
9 saying, well, why shouldn't I have said something
10 like 5.7 percent. And all I can say is that if I
11 used his 5.7 percent number, it wouldn't have made
12 that much of a difference.

13 Q. Now --

14 A. It would have been an insignificant
15 difference in the results of this analysis.

16 Q. Now, the horizontal merger guidelines have
17 been marked as a cross-examination exhibit, Number
18 114, or admitted as 114. I don't know if I need to
19 have you look at those --

20 A. Oh, okay.

21 Q. -- but what types of transactions are those
22 guidelines designed for?

23 A. They're generally designed for mergers,
24 that's what their name is. On the other hand,
25 though, the HHI is also used. I used it -- in this

0481

1 report, I took FCC data about HHIs for the wireless
2 companies, and they're published regularly, having
3 nothing to do with mergers.

4 Q. Now, on page -- well, I'm sorry, let me give
5 you the exhibit number first. This is your RL-4, the
6 appendix testimony that you drafted to discuss the
7 HHI more specifically. So Exhibit 93.

8 A. Oh, okay.

9 Q. And I just wanted to refer you to footnote
10 number three on page three.

11 A. Yes.

12 Q. I went to that Web site --

13 A. Uh-huh.

14 Q. -- and wanted to ask you -- or I went to a
15 Web site that was as close to that one as I could
16 possibly get. After WCB and before NECA, the IAD, is
17 it possible that that should be IATD as the Web
18 address?

19 A. I cut and paste --

20 Q. Okay.

21 A. -- from where it was, but they might have
22 changed it since I did that.

23 Q. Was it a Web --

24 A. But it is the industry analysis and I
25 believe it used to be called the Industry Analysis

0482

1 Division. It now might be called the Industry
2 Analysis and Technology Division or something like
3 that, so --

4 Q. Okay. And it's a Web site -- at least the
5 one you were looking at was replete with reports; is
6 that right?

7 A. Correct.

8 Q. That you could link to and open up?

9 A. Right.

10 Q. And there were access minutes and lines and
11 all kinds of other things?

12 A. There were various reports in there.

13 Q. Yes. So which ones did you look at?

14 A. This is the NECA reports on the number of,
15 as I say up here, filings by the National Exchange
16 Carrier Association, NECA.

17 Q. But filings, which ones, on what topics?

18 A. The ones on line counts.

19 Q. Access -- switched access line counts?

20 A. They are the line counts filed under the
21 universal service program.

22 Q. Uh-huh, okay.

23 A. Because I was comparing the line counts for
24 the rural carriers to the line counts for the total
25 state and for Qwest.

0483

1 Q. Okay. Now, is it your -- is it your
2 testimony that the -- let's go back to your regular
3 testimony with table one, page 43. The residential
4 primary line, is it your testimony that the
5 residential primary line basic service market is a
6 market in the sense of the merger guidelines?

7 A. What I was doing here, in the sense of the
8 merger guidelines, this is residential primary line.
9 Basic stand alone, yes. I believe that the basic
10 stand alone market is a market.

11 Q. Okay. What is the basic stand alone market?

12 A. In other words, it's when customers don't
13 buy bundles.

14 Q. Okay. But the line counts that you used
15 here are lines that are sold as parts of packages and
16 bundles?

17 A. Right. I was trying to show here that there
18 is a wider way to look at it, not exactly the basic
19 market, because if we looked at just the basic
20 market, all we have is essentially Qwest and the
21 remaining circuit switched Comcast and very little
22 else. Most other -- most other parts of the market
23 have bundles of one sort or another.

24 Q. So my question is do you believe you've
25 defined a market in the same sense that the merger

0484

1 guidelines define a market?

2 A. In the primary line, yeah, that's at one
3 level. In other words, there's various levels of
4 looking at markets and sub-markets. We have the
5 market for all residential services and we have a
6 sub-portion of it, which I think is extremely
7 important for this case, which is the stand alone
8 market.

9 Q. Okay. So the basic stand alone market. But
10 that isn't reflected in this table?

11 A. No.

12 Q. Okay. And this table includes lines for
13 which you told me earlier there is effective
14 competition?

15 A. Yes, it has some of the bundled lines in
16 there, yes.

17 Q. Okay. What is the -- for Qwest in
18 Washington, what is the competitive market based
19 price for the primary residential line?

20 A. We don't have a competitive market for it
21 yet.

22 Q. Do you agree with the merger guidelines'
23 definition of market power?

24 A. Yes, if you can raise a price and sustain
25 that price, then that is market power.

0485

1 Q. Okay. Over competitive levels?

2 A. Over competitive levels, yes.

3 Q. Okay. I'm even more loath to ask you about
4 critical elasticities, but we'll do that, too.

5 A. Okay.

6 Q. Turn to page 48 of your testimony, please.

7 A. Sure.

8 Q. Now, page 48, lines seven through 15, would
9 you agree with me that there is a distinction between
10 market price elasticity of demand and a firm price
11 elasticity of demand?

12 A. Sure, sure. The elasticity of demand to the
13 firm is usually a little higher and could be a lot
14 higher. It's higher than the market. A good -- a
15 simple example would be the elasticity for beer.
16 It's probably pretty low to some groups, but the
17 elasticity for Bud versus Miller or something like
18 that could be higher, so the elasticity to the firm
19 is always going to be higher than the elasticity to a
20 particular product.

21 Q. Now, if Qwest were to raise its 1FR basic
22 stand alone service rate above the competitive level,
23 whatever that is --

24 A. Correct.

25 Q. -- wouldn't that price increase, in fact,

0486

1 incent competitors to enter the market?

2 A. The question is would it?

3 Q. Could it?

4 A. It's a possibility.

5 Q. Sometimes, if a price is increased above the
6 competitive level, competitors are incented to enter
7 a market?

8 A. Right, but if they can sustain the price
9 above that level, then the competitors don't have
10 enough power to stop the firm from earning a monopoly
11 profit, from exercising market power.

12 Q. Above the competitive level?

13 A. Right, whatever it raises.

14 Q. Let's see. I think we're doing really well,
15 Dr. Loube. I have quite a lot more questions for
16 you, but all of them are about Public Counsel's
17 recommendation on the terms of an AFOR. And so I'm
18 going to ask you -- you had given some
19 recommendations about what an AFOR should look like
20 in your direct testimony, but is it correct that
21 Public Counsel has modified its position and proposal
22 in your cross answering testimony?

23 A. That's correct.

24 Q. And so if we wanted to look at Public
25 Counsel's current proposal in this docket, we would

0487

1 look at Exhibit 103, which is RL-14?

2 A. That is correct.

3 Q. That's where we'll be for the rest of the
4 afternoon, then. Now, you recommended that Qwest's
5 1FR service be frozen at \$12.50 for the four years of
6 the AFOR?

7 A. That is correct.

8 Q. Okay. In the Verizon rate case, Public
9 Counsel was party to a settlement that actually
10 increased Verizon's basic rates \$2.53; is that
11 correct?

12 A. That is correct.

13 Q. Okay. And in that docket, I believe you
14 filed testimony where you noted that \$20.58 was the
15 national average and suggested that rates at that
16 level were not unreasonable; is that correct?

17 A. Well, we have my testimony and we can look
18 at it, and the \$20.50 rate was a national average
19 including a SLC, yes; it's not the national average
20 for the rate itself. So that includes the subscriber
21 line charge first and, second, what we have here in
22 the Verizon case is a full revenue requirements case
23 where we understand what a just and reasonable
24 revenue requirement is, and that makes it
25 significantly different than the case we had before

0488

1 us today.

2 Q. In that case, you didn't actually perform a
3 revenue requirement analysis, did you? You just made
4 recommendations to the Commission about how they
5 would set rates, assuming either a positive or
6 negative revenue requirement?

7 A. That's correct. I was hired to do rate
8 design analysis more in that case.

9 Q. Okay. And because the docket was settled,
10 the revenue requirement was not fully litigated; is
11 that right?

12 A. It was not fully litigated, but Staff came
13 in with a complete set of testimony, I believe the
14 Public Counsel sponsored some adjustments and the
15 company came in with a complete set of testimony.

16 Q. And Dr. Loube, I will just confirm for you
17 that Exhibit Number 8 -- 108, rather, is your
18 testimony in that docket, and if you should want to
19 check the questions I just asked you, your answer's
20 on page 51, and you are in fact correct that the
21 \$20.58 included the subscriber line charge.

22 So your testimony in that docket, and you
23 just tell me if you think this sounds right, you said
24 as of October 15th, 2003, the average residential
25 rate was \$14.57, and the average subscriber line

0489

1 charge was \$5.91, for a total of 20.58.

2 MR. FFITCH: Your Honor, could I ask that
3 Counsel direct the witness to the specific part of
4 his testimony that she's asking him about?

5 JUDGE CLARK: Yes.

6 MS. ANDERL: Oh, I'm sorry, I thought I did.

7 Q. Exhibit 108.

8 A. Right. What page?

9 Q. Page 51, lines three through six.

10 A. That's correct.

11 Q. And at that time, at the time you filed your
12 testimony, Verizon's rate for local service was \$13;
13 is that right?

14 A. That's correct.

15 Q. Let's see. Now, are you familiar at all
16 with the Commission's order in the Verizon-MCI merger
17 case?

18 A. I've looked at it. You gave it to me as an
19 exhibit. I didn't see it before then.

20 Q. Okay. Are you aware of whether any party in
21 that docket made a recommendation to the Commission
22 that the Commission should require Verizon to
23 continue to offer stand alone DSL as a condition of
24 the merger?

25 A. I believe Public Counsel did.

0490

1 Q. Are you aware of whether that recommendation
2 was adopted or not?

3 MR. FFITCH: Your Honor, I guess I'm going
4 to object in the sense that we sort of have a memory
5 test going on here, that the witness has testified he
6 wasn't in the case. We have the order in front of
7 us, which summarizes all of Public Counsel's
8 positions and the ultimate decisions of the
9 Commission. Counsel's not even directing the witness
10 to any particular part of the order, which speaks for
11 itself. All of these things are a matter of public
12 record.

13 So I'm going to object to this line of
14 questioning, that it's essentially a memory test for
15 something that the witness did not participate in.

16 JUDGE CLARK: Ms. Anderl.

17 MS. ANDERL: Your Honor, I don't intend to
18 be giving the witness a memory test. I don't even
19 need to cross him on it to establish the things that
20 are in the order because I can cite the Commission to
21 their prior orders. The reason I'm asking these
22 questions is only to find out the context in which
23 Dr. Loube and Public Counsel are making the
24 recommendations they are and what informed his
25 decision to make certain recommendations and whether

0491

1 some of these -- whether knowledge about some of
2 these things that I'm asking him informed his
3 decision. That's the contextual thing I'm after.
4 That's the purpose of the cross.

5 MR. FFITCH: Well, Your Honor, then I would
6 suggest that Counsel should direct the witness to the
7 relevant portions of this order if you're referring
8 to the merger order.

9 JUDGE CLARK: The objection is sustained and
10 you need to direct the witness.

11 Q. Well, Dr. Loube, I believe you answered one
12 of my prior questions by telling me that you only
13 looked at this merger order after I gave it to your
14 counsel as a cross-examination exhibit?

15 A. That's correct.

16 Q. Okay. That concludes that line of
17 questioning. Let me ask you a little bit about --
18 and we're still on Exhibit 103 now, which is the
19 recommendations that you've made, and Subsection
20 B(1)(c), you recommend a cap in the features price?

21 A. That's correct.

22 Q. And that is the cap at the level of the
23 consumer price index minus two percent; is that
24 right?

25 A. That is correct.

0492

1 Q. Do you know what the consumer price index
2 was last year?

3 A. No, I don't memorize the consumer price
4 index.

5 Q. Well, you never know. Why don't you take a
6 look at Exhibit 112, please?

7 A. Okay. All the way back to 1913.

8 Q. And that's a four-page document. Do you see
9 that there are column headings on page one that do
10 not carry over to the other pages?

11 A. Yes.

12 Q. But that the last column on the right, far
13 right column is -- oh, I'm sorry, the third -- well,
14 let's see. Let's just make it easy. There's January
15 through December, and then the next column after
16 December, it says annual average; is that right?

17 A. Yes.

18 Q. But that's a cumulative number; right?

19 A. Yes, it says it's -- well, it's not
20 cumulative, it's based at a hundred in 1982 to '84.

21 Q. So you need to go over to the next column to
22 the right or further than -- or average average
23 column, far right column, to determine what the
24 annual consumer price index was for any particular
25 year; is that right?

0493

1 A. That's correct. Well, the percentage change
2 in the consumer price index.

3 Q. Percentage change. So for 2006, would it be
4 your interpretation of this document that the
5 consumer price index change was 2.5 percent or 3.2
6 percent?

7 A. Well, it depends on what your basis is.
8 That's the difference.

9 Q. Okay. What would your recommendation be
10 that the Commission should use if it adopted this
11 features cap requirement?

12 A. I'd take it annually, 3.2.

13 Q. Okay. So under those circumstances, Qwest
14 could increase the price of its features in 2007 by
15 0.7 percent?

16 A. 3.2 minus two is 1.2.

17 Q. Oh, 1.2, okay.

18 A. You were doing the other one.

19 Q. I was doing the other one.

20 A. That's okay.

21 Q. 1.2 percent?

22 A. Yeah.

23 Q. Okay. So on a \$10 feature, that would be a
24 dime?

25 A. Something like that.

0494

1 Q. Okay. What features would be included in
2 this cap?

3 A. Those that are currently in your residential
4 features tariff.

5 Q. Okay. So not -- you wouldn't try to include
6 things like voice mail or inside wire maintenance?

7 A. I'm not an expert on your tariff from the
8 point of view that I know in some states those items
9 are regulated, and some states they are not. And if
10 in this state they are not in the tariff, then they
11 wouldn't be in the group.

12 Q. Okay. Now, where in your testimony do you
13 explain the rationale for why increases should be
14 capped at the level you proposed?

15 A. I'd say page 19.

16 Q. This is of Exhibit 90?

17 A. Yes, lines 12 to 17.

18 Q. Okay. Now, you say that this cap would only
19 apply to features purchased independently of Qwest
20 packages; is that right?

21 A. That's correct.

22 Q. Okay. But you also say elsewhere in your
23 testimony that packages can't exceed the price of the
24 stand alone components of the package?

25 A. That's correct.

0495

1 Q. So in essence, this price regulation on
2 features would indirectly regulate prices on
3 packages?

4 A. It wouldn't -- on an upward basis, yes. You
5 could reduce the price all you wanted.

6 Q. Okay. Let's look at your proposal with
7 regard to average pricing.

8 A. Mm-hmm.

9 Q. Now, this is an expansion of the provision
10 in the stipulated AFOR with regard to average pricing
11 to include more services under the -- under the
12 umbrella of no deaveraging; is that right?

13 A. Right, it restricts the ability on the
14 individual contracts. It allows for the maintenance
15 of what is our understanding that most of the
16 contracts are for the multi-line business, so where
17 Qwest uses the contracting today, they will still
18 have the flexibility to use that in the future.

19 Q. But you say on line two there, or line two
20 of that little bullet point, Qwest would not be
21 permitted to deaverage the nonrecurring and monthly
22 recurring rates for its services.

23 When you say its services, do you mean to
24 parallel the provision in the stipulated AFOR or --
25 which is limited to only some services, or are you

0496

1 broadening it?

2 MR. FFITCH: Your Honor, could the witness
3 be directed to the other exhibit that Counsel's
4 referring to?

5 MS. ANDERL: Sure.

6 MR. FFITCH: I believe it's Exhibit 4, which
7 is the AFOR agreement.

8 Q. Let me just direct you to the subpart that
9 I'm -- or the provision that I'm referring to in that
10 document, Dr. Loube -- Loube, sorry.

11 On the revised plan of AFOR that you have,
12 the no deaveraging provision, and I'm getting some
13 help here, is on page four, and it's the very first
14 provision on that page, Arabic numeral two. So let
15 me know when you're there, and then I can ask you the
16 question.

17 A. Yes, I'm there.

18 Q. Okay. This provision in the stipulated plan
19 references only digital business services, analog
20 private line and residential exchange service
21 features and packages. Your provision references
22 generally its services, meaning Qwest's services.

23 Is your provision intended to more broadly
24 encompass classifications of service than the
25 settlement agreement?

0497

1 A. Yeah, because it would include residential
2 service.

3 Q. Well, residential service is already going
4 to remain in the tariff, and no changes could be made
5 to that rate without Commission permission. Are you
6 meaning to include there -- let me just ask you
7 directly. Are you meaning to include analog business
8 services?

9 A. Yes.

10 Q. Okay. What about digital business services
11 that have already been competitively classified by
12 separate Commission order?

13 A. Well, that would be what you already have
14 done. It would agree with yours. In Exhibit 1 --
15 this is not Exhibit 1 for -- what is this exhibit?

16 Q. It's Exhibit 1 to Exhibit 4.

17 A. Four, yeah. But should I call this --

18 Q. The settlement agreement.

19 A. Could I ask what exhibit number this is?

20 JUDGE CLARK: Four.

21 THE WITNESS: Four. In Exhibit 4, Qwest and
22 Staff have already agreed to digital business
23 services, so I would --

24 Q. Well, let's assume --

25 A. -- take that into mind, also.

0498

1 Q. Assume with me that that provision in the
2 settlement agreement only applies to digital business
3 services that hadn't been previously competitively
4 classified, okay, that there were some wire centers
5 where digital business services were competitively
6 classified and some where they were not.

7 A. All digital business services.

8 Q. Okay, okay.

9 MR. FFITCH: Your Honor, is Counsel simply
10 asking the witness whether this is intended to apply
11 to services that have been competitively classified?
12 It seems like a confusing line of questioning. If
13 that's the question, then perhaps she could just ask
14 it that way.

15 JUDGE CLARK: Ms. Anderl.

16 MS. ANDERL: I was getting there. That's
17 not a bad question.

18 Q. Can you answer that, Dr. Loube?

19 A. I would stick with just the ones I've
20 mentioned so far.

21 Q. Have you or any other Public Counsel witness
22 in this proceeding presented any evidence to show
23 that previously competitively classified services are
24 no longer subject to effective competition?

25 A. Not in this proceeding, no.

0499

1 Q. Are you aware of whether Qwest's wholesale
2 loop prices in the state of Washington are
3 deaveraged?

4 A. Your UNE-L?

5 Q. Yes.

6 A. Yes.

7 Q. In fact, the FCC required that, did they
8 not?

9 A. I'm trying to remember whether it was a
10 requirement or a requirement to get interstate access
11 service -- I mean, interstate access support. At one
12 point, many companies did not do so. Then, in the
13 CALLS order, in order to get your complete support,
14 you had to deaverage, but I'm not sure if every
15 company did and whether or not they required every
16 company to do so.

17 Q. But you know that Qwest's are?

18 A. Yes, I know that your UNE-Ls are deaveraged.

19 Q. Let's talk for a minute about the hard cap,
20 hard rate cap on caller ID service.

21 A. Mm-hmm.

22 Q. And that's on the third page of this exhibit
23 at the top.

24 A. Correct.

25 Q. Is that for residence service or business

0500

1 service or both?

2 A. Residence.

3 Q. And you didn't make this recommendation in
4 your initial testimony that was filed on January
5 29th, did you?

6 A. No, this is an additional one.

7 Q. Okay. What changed between January 29th and
8 February 16th that caused you to add this provision?

9 A. I had a discussion with my client, Public
10 Counsel, and we talked about this, and we felt that
11 there's certain public interest privacy and
12 protection that could be gained from having this kind
13 of service, that people used it for those purposes,
14 and that this particular service should be
15 protected.

16 Q. Public Counsel is recommending retaining the
17 one free call allowance for directory assistance for
18 residence customers in this case; is that right?

19 A. That's correct.

20 Q. Are there any other carriers in the state of
21 Washington, to your knowledge, that are under a
22 regulatory requirement to offer free directory
23 assistance?

24 A. I don't know of all of them in the state.

25 Q. Are you aware of any that are?

0501

1 A. No, I've not done a survey of those in the
2 state, of the directory assisted rates in the state.

3 Q. I understand your response. Can you -- have
4 you discovered any that are?

5 A. No, I have not.

6 Q. Okay. Thank you.

7 A. Sure. I'm sorry if I was a little
8 misleading.

9 Q. Now, Qwest's revised plan of AFOR that's the
10 stipulation does retain free directory assistance
11 with regard to calls from hospitals, does it not?

12 A. Yes, I believe it does.

13 Q. And it also retains free directory
14 assistance for those subscribers who are unable to
15 use the printed directory?

16 A. That's correct. So therefore, we all need
17 to walk to the hospital to use 411.

18 Q. And under Qwest's plan of AFOR, is there any
19 reason that you know of that Qwest could not choose
20 to offer free directory assistance as either a
21 promotional offering or as part of a package?

22 A. Sure. Let me do that over again. When
23 Qwest requests and if the Commission grants the
24 company the right to price things flexibly, then
25 Qwest could do as Counsel suggested and offer it as

0502

1 either a discount or offer it as some kind of bonus
2 to customers or in a package. That's possible.

3 Q. Let me ask you some questions about your
4 recommendations with regard to broadband capability.

5 A. Mm-hmm.

6 Q. On Exhibit 113, you responded to a Qwest
7 data request in connection with this recommendation;
8 is that right?

9 A. I believe so. Let me find it. Yes, it's
10 one page.

11 Q. Yes.

12 A. Uh-huh.

13 Q. So in that response, is it fair to summarize
14 that response as saying that you studied neither the
15 cost to implement your recommendation, nor the
16 potential take rate of subscribers?

17 A. That's my response and I still stand by that
18 response. That's the answer I gave and that's the
19 answer I still have. Of course, I also reviewed
20 Qwest's responses to Staff's data request, in
21 particular Staff Data Request Number 9 request said
22 that it had never -- has not done a study of the cost
23 of expanding broadband in the Qwest Washington
24 service area, and that would have been the lead in
25 where I could have gone to to find out where and what

0503

1 type of services and what type of equipment is
2 necessary to see what the cost of providing broadband
3 was. So without that lead in, I felt it was
4 extremely difficult for me to do the independent
5 study.

6 Q. Well, the question that you're referring to
7 was a general question by Public Counsel as to
8 whether Qwest had studied costs to increase its DSL
9 availability rate by a specific percentage; isn't
10 that right?

11 A. That's correct.

12 Q. Okay. And in your recommendation here,
13 you're not actually making a percentage increase
14 recommendation so much as you're making a
15 recommendation that a certain number of additional
16 lines in each wire center be made capable?

17 A. That's correct. They're different
18 recommendations and different questions, but the
19 inputs to answer the costs of providing those are the
20 same inputs.

21 Q. What study have you done to determine if
22 broadband connections are available in Qwest's wire
23 centers from other providers, other than Qwest?

24 A. I haven't done that study.

25 Q. Now, you also recommended reporting

0504

1 requirement regarding broadband deployment; is that
2 right?

3 A. That's correct.

4 Q. And this report would be in addition to any
5 reports that Qwest currently files?

6 A. Correct.

7 Q. Let's talk for a minute about lifeline
8 services for telecommunications. Do you understand
9 how lifeline service works in the state of Washington
10 for voice connections?

11 A. I'm not familiar with all your regulations.
12 I'm familiar with the general idea of lifeline. I
13 helped write the rules in the FCC's order.

14 Q. Good. So do you understand generally, then,
15 that Qwest is fully compensated for the basic service
16 rate on a lifeline line through customer payments and
17 reimbursement from state and federal agencies?

18 A. I know that the federal agency provides a
19 certain amount. It's not a federal -- well, it's
20 authorized by the FCC, you receive it through an
21 administrative company. I don't know what the
22 relationship is in the state for the state side of
23 it.

24 Q. Okay. And are you aware that customers do
25 pay some amount for the line?

0505

1 A. Yes.

2 Q. Okay. Now, and is your proposal for
3 broadband lifeline similar to the voice lifeline
4 service where Qwest would be compensated for the
5 service rate through state and federal funding?

6 A. I can't speak to what the federal would do
7 at this point.

8 Q. What about state funding? Do you know if
9 there's any source of state funding for broadband?

10 A. At this point, I don't know.

11 Q. Okay. Did you provide information in your
12 testimony about any telecommunications company in
13 Washington that offers a broadband lifeline program?

14 A. No, it's a new service. It's a new idea.
15 It's there to help people.

16 Q. Assuming, for purposes of today's
17 discussion, that \$10 per month would not cover
18 Qwest's cost for broadband lifeline service. How
19 would you propose that those costs be covered?

20 A. I think that's something that we need to
21 negotiate and find out.

22 Q. Now, with regard to reporting requirements,
23 you're aware that the settlement proposal modifies a
24 number of Qwest's reporting requirements with regard
25 to financial and accounting requirements; is that

0506

1 right?

2 A. Yes.

3 Q. And you had previously said that Qwest's --
4 the proposal in Staff's testimony was acceptable to
5 Public Counsel?

6 A. That's correct.

7 Q. Okay. Is the settlement proposal with
8 regard to financial and accounting reporting
9 acceptable to Public Counsel?

10 A. All except for one.

11 Q. The allocation of revenues?

12 A. No, that's a different one.

13 Q. Okay. What is it, then?

14 A. It is the one that's the five percent
15 property transfer. We would be willing to stay with
16 a one percent property transfer.

17 Q. Okay. With regard to the service quality
18 reporting requirements, where Qwest would continue to
19 report under the service quality rules and would
20 report semi-annually about its performance under the
21 Customer Service Guarantee Program, is that portion
22 of the settlement acceptable to Public Counsel?

23 A. I think it's clear throughout my testimony
24 that I'm relying on Ms. Kimball to speak to that
25 issue.

0507

1 Q. So I should ask Mary Kimball about that?

2 A. Yes.

3 Q. Now, let's go ahead and talk about the
4 allocation of revenues associated with packages. You
5 have a recommendation in your testimony that Qwest be
6 required to allocate revenues such that the discount
7 associated with any package is allocated to either
8 the interstate jurisdiction or the non-regulated
9 sector; is that right?

10 A. That's correct.

11 Q. What investigation did you undertake to
12 determine how accounts are assigned today in this
13 regard?

14 A. In your particular state, I did not. I've
15 done it in the past in other places.

16 Q. Is it your testimony that Qwest should not
17 be permitted to offer a discount on its
18 telecommunications services?

19 A. No.

20 Q. Okay. And if Qwest were to offer a package
21 or a bundle of only regulated intrastate
22 telecommunications services?

23 A. Then there's no allocation to take place.

24 Q. And if Qwest were to add one interstate or
25 non-regulated service to that package, the discount

0508

1 would then shift entirely away from the regulated
2 services?

3 A. It could. We would see what the package is
4 giving out from the point of view of the state
5 package first.

6 Q. I'm sorry. I didn't understand that answer.

7 A. We would look at what the package is on the
8 state side first. In other words, if you have a
9 package that has five state services and they want to
10 allocate, on an a la carte basis, say they go for
11 \$30, and you discount them on the state side and it
12 goes for \$20, okay, we'd start there. And then say
13 you had an additional service that was non-regulated
14 or interstate, and that service, you add that, so
15 your total package is \$30. But if that service was
16 sold independently, it would go for \$40, you know,
17 some higher number. You would start on the state
18 side with the \$20 package.

19 Q. Okay.

20 A. Okay.

21 Q. And you recommend further in your testimony
22 that Qwest be required to file a quarterly report
23 verifying that it would be following this allocation
24 principle?

25 A. Yes.

0509

1 Q. And is that a report that Qwest currently
2 files?

3 A. No.

4 Q. Okay.

5 A. Not that I know of. I don't think so.

6 Q. Now, there are provisions in your exhibit
7 that address service quality reporting requirements,
8 but is it your testimony that all of capital letter
9 D, starting on the third page of your Exhibit 103 and
10 going over to the fourth page, that all of that
11 should be addressed to Ms. Kimball?

12 A. Yes, I would appreciate if you would do
13 that.

14 Q. Okay. Would that include Arabic numeral 4,
15 under major outages?

16 A. Yes.

17 Q. Okay. In your February 16th testimony and
18 this recommendation, Exhibit 103, you include a
19 recommendation that Qwest be prohibited from seeking
20 relief from any of its obligations under the
21 Telecommunications Act of 1996 as to the state of
22 Washington; is that right?

23 A. That's correct.

24 Q. Now, you did not include that recommendation
25 in your January 29th testimony, did you?

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1 A. I don't think so.

2 Q. And do you have in your February 16th
3 testimony any section that discusses the rationale
4 for including this new requirement?

5 A. No, I believe we just borrowed this from Mr.
6 Wilson's testimony.

7 MS. ANDERL: I have no further
8 cross-examination. Thank you.

9 JUDGE CLARK: All right. Thank you. Mr.
10 Trautman.

11 MR. TRAUTMAN: Thank you, Your Honor.

12

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

14 BY MR. TRAUTMAN:

15 Q. Good afternoon, Dr. Loube. I'm Greg
16 Trautman, Assistant Attorney General, for the
17 Commission Staff. I just have a few questions.

18 Starting with Exhibit 90-C, which is your
19 direct testimony, and I'm looking now at page two on
20 line 20, and there you simply state that the proposed
21 rate increases are unfair and unjust. Do you see
22 that?

23 A. Yes.

24 Q. And there you're referring to the Qwest
25 proposal, and may I assume that would also be correct

0511

1 in your view with regard to the settlement proposal,
2 as well, which would allow for a \$1 increase in the
3 1FR?

4 A. Yes.

5 Q. Now, if you could refer to Exhibit 117, and
6 that's the one-page exhibit. At the top it is headed
7 Residential Local Exchange Monthly Recurring Charge?

8 A. I'm there.

9 Q. And also has a column with EAS adders.

10 A. Yes, I see that.

11 Q. Now, would you agree that the proposal in
12 the AFOR settlement to cap the residential Qwest
13 stand alone rate at 13.50 would result in rates that
14 compare favorably to the Qwest rates for the same
15 service in most of the other states where Qwest is
16 the dominant local exchange carrier?

17 A. Okay. There's several things that I'd like
18 to point out first. I haven't reviewed all of these
19 to verify that all of the rates presented in this
20 exhibit are correct. I'm accepting the fact that
21 they are, except that I'm pretty sure that Wyoming
22 does have zone charges. At one point while I was
23 doing the universal service administration, Wyoming
24 had a zone rate that went all the way up to \$69.
25 They used federal and state universal service money

0512

1 to reduce that to about 30 to \$31. So with that
2 caveat, I'm accepting all these other rates that you
3 have in your exhibit, okay.

4 Q. All right.

5 A. The next thing is that while the rate is --
6 appears to be lower than most of these rates, just a
7 rate comparison by itself -- so first, directly to
8 your question, let me answer it, yes, compared to
9 these rates, the rate in Qwest Washington is -- looks
10 favorable.

11 However, a simple rate comparison is not
12 adequate to say whether or not the rate is fair, just
13 and reasonable. You must also take into
14 consideration cost of service in the states, in the
15 various states, and if you looked at public documents
16 filed with the FCC, you'll find that Qwest Washington
17 is, on an embedded basis, has the third lowest costs
18 of all of the Qwest companies and, on a
19 forward-looking basis, it also has the third lowest
20 costs of all the Qwest companies. The two lower
21 companies in each of these comparisons are different.
22 In other words, in one of the comparisons, in the
23 embedded basis, Iowa and Minnesota are lower. In the
24 forward looking basis, I believe it is Utah and
25 Arizona that are lower. So therefore, Qwest

0513

1 Washington is the consistently lower cost state, and
2 therefore I would think that is it fair, just and
3 reasonable for a company that has lower costs to have
4 lower rates.

5 Q. So we should -- your position would be that
6 the Commission should not look at what other states
7 have done in terms of rates in making comparisons;
8 we should not look at the other states?

9 A. I think that's one comparison. I think the
10 comparison must be added. You must add to that
11 comparison the relative costs in the other states.

12 Q. Now, are you aware that Qwest -- that Public
13 Counsel has recommended, in the case of service
14 quality, that the Commission should look at several
15 other states and to see what they -- see what those
16 states are recommending on that score?

17 A. Well, in general, I'm not familiar with our
18 service quality. I've heard some discussions with
19 it, and I again would ask you to -- any service
20 quality questions to Ms. Kimball.

21 Q. All right. I was just going to ask whether
22 you'd accept, subject to your check, that in fact Ms.
23 Kimball recommends that the Commission look at
24 Arizona, New Mexico, Colorado, Minnesota, Oregon and
25 Iowa, and look at all their service quality

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1 requirements.

2 A. I would accept that subject to check.

3 Q. Turning to page 13 of Exhibit 90-C, and I'm
4 looking at lines 12 to 14, you state that prices of
5 39.95 and 54.95, referring to Comcast, cannot
6 discipline a carrier such as Qwest that wishes to
7 increase the rate for stand alone residential service
8 from 18.34, the local service rate, plus the SLC to
9 \$20.34. Do you see that?

10 A. I know that's what I said, but I didn't hear
11 the page when you gave it.

12 Q. Oh, I'm sorry. Page 13, lines 12 to 14.

13 A. Yes, I'm there. Okay.

14 Q. Do the rates referenced for Comcast include
15 only the stand alone residential service?

16 A. No, they do not.

17 Q. Do they, in fact, include long distance
18 service and other features?

19 A. Yes, and if you want to buy a package from
20 Qwest, you can, and the package for Qwest goes in
21 this range. So that if you want to buy a bundle,
22 you're in that range.

23 Q. But the rate that you're comparing of 39.95
24 to say 20.34, the 39.95 includes other services
25 beyond features and long distance, not just stand

0515

1 alone service?

2 A. But you can only get the 39.95 -- yes.

3 Q. That was my question.

4 A. The immediate answer is yes, but you can
5 only get the 39.95 if you buy other Comcast services.

6 Q. All right. If you could turn to what's been
7 marked as Exhibit 100-C, which is your RL-11, it is a
8 confidential exhibit, but I won't refer to the number
9 itself, just the location.

10 A. Oh, okay. I know which one it is.

11 Q. It's a two-page exhibit entitled Twelve
12 Months Results of Operations Ending 12-2005?

13 A. That's correct. I'm there.

14 Q. I'm looking now at the second page of the
15 exhibit, and I realize you're not putting forth this
16 exhibit as representing a full rate case review of
17 the company's results of operations; is that correct?

18 A. That is correct.

19 Q. However, looking at page two and looking at
20 the number in the upper right-hand corner, so the
21 line phrasing would be return on net rate base, and
22 then the upper right-hand corner says adjusted
23 intrastate operations, do you see that?

24 A. That's correct.

25 Q. And the number immediately below that, do

0516

1 you have that number in mind, that number that I'm
2 referring to in the upper right-hand corner?

3 A. Yes.

4 Q. Would you agree, subject to check, that this
5 -- that your estimated adjusted rate of return on an
6 intrastate basis is lower than Qwest's currently
7 authorized rate of return?

8 A. Sure, that's correct.

9 Q. And would you agree, subject to check, that
10 if you were to add 12 months of the 1FR rate increase
11 that's permitted under the AFOR settlement to that
12 number, it would also result in a rate of return
13 that's lower than Qwest's currently authorized rate
14 of return?

15 A. I have not done that analysis to add the --
16 one dollar?

17 Q. Yes.

18 A. Yeah, I have not done the analysis that
19 adding one dollar to my adjustments would make it --
20 the impact on my reported rate of return, so I don't
21 know.

22 Q. All right. Turning back to Exhibit 90-C, at
23 page 17, the paragraph starting on line three, you
24 talk about changes in technology and whether that
25 would require changes in the regulatory environment?

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1 A. Yes.

2 Q. Do you recall that?

3 A. Mm-hmm.

4 Q. You talk about investing in technological
5 change. My question is wouldn't Qwest need to
6 achieve at least its authorized overall rate of
7 return in Washington in order to be able to
8 financially support investments in new technology or
9 improve service quality?

10 A. Not necessarily. A company, when it makes a
11 new investment, looks at the return associated with
12 the new investment, and if the new investment is more
13 profitable than its embedded investments, it would
14 try to go ahead and do it.

15 Q. So in your view, they would not need to
16 achieve the rate of return?

17 A. They would -- no, they would go ahead and
18 invest in new technologies if the new technologies
19 are more profitable.

20 Q. Turning to page 18 of the same exhibit, you
21 refer to new technology -- you refer to cable
22 providers. On lines five through seven, you say --
23 actually, six and seven, you say that there's nothing
24 that prevents Qwest from adopting new technology, the
25 new technology and achieving the same low incremental

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1 cost. Do you see that?

2 A. Yes.

3 Q. Do you know whether the current cable
4 franchising laws in Washington might be a reason that
5 would prevent them from investing in that technology?

6 A. I'm not aware of the cable franchising laws.
7 However, they could invest in packet and Internet
8 protocol even without a cable franchise.

9 Q. And looking at that paragraph, actually
10 going back to page 17 and carrying over to 18, you
11 generally speak about cable VoIP telephony, and then
12 on page 18, at the end of the paragraph, lines nine
13 to 11, you refer to the sunk costs. Do you see that?

14 A. Yes.

15 Q. Have you done any studies concerning
16 investments and sunk costs that are incurred by VoIP
17 providers in Washington?

18 A. No.

19 Q. And if you could turn now to page 47, still
20 Exhibit 90-C.

21 A. Yes.

22 Q. And I'm looking now at lines 16 and 17, and
23 you're referring to various amounts and you refer to
24 the sum of UNE costs and the sum of retail
25 incremental costs. Do you see that?

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1 A. Uh-huh, yes.

2 Q. And on your -- when you're referring to the
3 UNE cost, or U-N-E cost, footnote 50 indicates that
4 your source of this was a study by NRRI. Do you see
5 that?

6 A. Yes.

7 Q. So you did not use the UNE or U-N-E rates in
8 Qwest's Washington Interconnection Tariff; is that
9 correct?

10 A. The NRRI study claims that it goes to the
11 largest carrier in the state and used inputs for
12 them, and therefore what it reports for the state of
13 Washington would be the Qwest number.

14 Q. Did you verify those numbers?

15 A. No, I did not.

16 Q. And as far as the retail incremental costs,
17 footnote 51, you indicate a reference to an AT&T ex
18 parte and NASUCA comments in an FCC proceeding. Do
19 you see that?

20 A. Yes, I do.

21 Q. What are Qwest's retail incremental costs in
22 Washington?

23 A. I didn't do a study of those.

24 MR. TRAUTMAN: Thank you. That's all I
25 have.

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1 JUDGE CLARK: Thank you, Mr. Trautman.
2 Chairman Sidran.

3

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

5 BY CHAIRMAN SIDRAN:

6 Q. Good afternoon. I just have a couple of
7 questions, I think. On page 22 of Exhibit 90, at the
8 top of the page, line three, you say the proposed
9 AFOR cannot ensure that customers pay only reasonable
10 charges because the carve-out for stand alone
11 residential service increases the rate for stand
12 alone service above a reasonable rate; correct?

13 A. Correct.

14 Q. Now, in your testimony, you've identified
15 the challenges in the absence of a general rate case
16 of figuring out, in traditional rate-making, what a
17 reasonable rate would be, and I believe Staff
18 witnesses, Ms. Strain, did a similar exercise trying
19 to get at this question of what would be reasonable;
20 correct?

21 A. That is correct.

22 Q. And I think you agree in your testimony, as
23 does Ms. Strain, and I think Mr. Trautman identified
24 this issue, that indulging reasonable inferences, it
25 appears that Qwest is currently earning below its

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1 authorized rate of return; is that correct?

2 A. Yes.

3 Q. So when it comes to trying to figure out the
4 impact of this proposed settlement's \$1 increase on
5 the basic rate for residential and understanding --
6 and you understand far better than I -- all of the
7 complexity involved in trying to divine what the
8 right number is in a general rate case, let alone in
9 the context in which we are operating, how did you
10 arrive at the conclusion that the dollar at issue
11 here is unreasonable?

12 A. Okay. Well, let me combine and go back and
13 correct my previous answer. When I came up with the
14 particular number that Staff counsel pointed out to
15 you, it was slightly below -- again, above and below
16 is reasonable to say -- the current authorized
17 return.

18 There are many items that were not taken
19 into consideration that would normally be taken into
20 consideration in a rate case. You have items such as
21 -- well, if the carrier gets the right to increase
22 some rates, what's the revenue associated with that
23 increase in rates. That's not in this estimate. So
24 there's that estimate. There's also would the
25 authorized rate of return change. I don't know if

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1 the current authorized -- you're saying that it
2 appears to be not reasonable because we're not making
3 the current authorized rate of return. That
4 authorized rate of return is up for grabs in a
5 general rate case.

6 So what I'm saying here is that the \$12.50,
7 the current rate, okay, appears on the surface to be
8 reasonable because the, as I mentioned to the
9 counselor, Staff counsel, that Qwest Washington's
10 costs, when you look at them in the general framework
11 compared to other Qwest companies, are lower than the
12 costs of other Qwest companies. Qwest -- in an
13 embedded cost model that the FCC uses to analyze the
14 costs of all companies, whether or not they get
15 universal service funds.

16 The FCC has another way of looking at costs,
17 and that is in a forward looking context, in a
18 forward looking model, and in that model Qwest's
19 costs are generally low compared to other -- Qwest
20 Washington versus other Qwest companies. So because
21 Qwest has relatively low costs, therefore I'm saying
22 that it is reasonable to come up with an answer that
23 the current rate is reasonable, because it is on the
24 general low side of rates compared to the other Qwest
25 companies, so that's where I get the reasonableness

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1 of the current rate.

2 Q. Well, I would probably put it a little
3 differently. It's reasonable, as I think you said in
4 your testimony, because the Commission said so. So
5 that makes it -- that makes it reasonable.

6 A. Yeah.

7 Q. I guess what I'm driving at is I take your
8 point about the lack of information in the absence of
9 a general rate case. What's not clear to me in this
10 context is how we know one way or the other, frankly,
11 whether a dollar is unreasonable or would result in
12 an unreasonable rate or a reasonable rate, because I
13 think reasonable minds could conclude that we don't
14 know, and you can make educated estimates on both
15 sides of this argument that it's within or without
16 the zone of reasonableness.

17 And I guess my question is would you say
18 it's beyond the zone of reasonableness to increase
19 the rate by a dollar?

20 A. Yes.

21 Q. All right. The other question I had related
22 to -- my understanding of this proposed settlement is
23 that it's -- this carve-out, as you put it, for the
24 stand alone residential service basically leaves it
25 in tariff as though this AFOR does not exist. It's

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1 still for the four years fully regulated and, at the
2 end of the four years, which I think we established
3 in yesterday's testimony, at the end of the four
4 years, this AFOR, absent extension by the Commission,
5 expires.

6 So as we sit here today, we would be talking
7 about potentially a \$1 increase over the four years
8 and the stand alone residential service would remain
9 in tariff during the AFOR and, absent some change
10 subsequently by the Commission, it would remain in
11 tariff after the AFOR. Is that your understanding?

12 A. My understanding is that it will remain in
13 tariff. I'm hoping you would adopt the Public
14 Counsel's proposed, which says 12.50, and not an
15 increase of a dollar, and I'm also trying to tell you
16 that the Public Counsel's AFOR proposal is a very
17 flexible one in that it allows the company to react
18 to the issue of competition wherever there's a
19 bundle. Wherever there's a Comcast offering of a
20 bundle, the company, under the Public Counsel's
21 proposal, has the right to do that, has the right to
22 react to competition.

23 Q. I appreciate that, and I want to ask you a
24 question, actually, about the bundles in a moment. I
25 guess what I'm trying to understand is if you have a

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1 carve-out for the stand alone residential service and
2 it remains in tariff and, absent further order of the
3 Commission, that will continue to be true even at the
4 end of the AFOR period, I'm not sure that we need to
5 reach the issue about the degree of competition in
6 relationship to this particular service because we
7 are keeping it in tariff, regulated, if we were to
8 accept this settlement or some variant of it, just as
9 it is today. Wouldn't it?

10 A. If you keep it under tariff and you maintain
11 a particular rate, then I don't think you have to
12 make a decision about the competitive nature. If you
13 want to just say, Here's my AFOR and it includes
14 these particular items, I mean, I hesitate because
15 I'm not a lawyer and I don't know -- you know, I
16 don't want to give a legal opinion about exactly what
17 an AFOR can and cannot encompass, but it's my
18 understanding that it's a fairly flexible way of
19 regulating and you can combine features of various
20 types of regulation, and thus you can keep some of
21 the rates under tariff and keep complete control of
22 them and allow other -- and therefore you don't have
23 to make a decision as to whether or not it's
24 competitive or not, and other services, you can say
25 we will allow pricing flexibility in either direction

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1 and there must be a price floor of some kind of cost
2 standard, and we've offered a cost standard of total
3 service long run incremental cost.

4 So I think that that combination can work.
5 Like I say, I'm not a lawyer; therefore, I'm not
6 positive that that type of flexibility is in the
7 AFOR, but it's my understanding it is.

8 Q. Well, I'm a lawyer, and I would be the last
9 to claim I'm positive about much. Let me go back to
10 this question of bundles, because I want to make sure
11 I understood your testimony in response to some
12 questions that Ms. Anderl asked you. And it has to
13 do with this notion in Public Counsel's proposal to
14 cap the features elements, price cap it at the
15 consumer price index less two percent.

16 A. Correct.

17 Q. And then you were asked about whether that
18 would also therefore extend to bundles, since the
19 other part of Public Counsel's proposal is that
20 bundles must -- that the prices for the a la carte
21 items must -- the bundle must cost less than the a la
22 carte price, I guess is what I'm trying to say.

23 A. Yeah, okay.

24 Q. So am I correct that the net result would be
25 that we would have a price cap for the features and

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1 because, in the bundle, those features must be at or
2 below the price that they would be offered at a la
3 carte, that we would in effect be extending a price
4 cap to the bundles?

5 A. For those bundles that don't include
6 anything like non-reg or interstate service, yes.

7 Q. Just for the elements that --

8 A. For the state.

9 Q. For these state elements?

10 A. State services, yes.

11 Q. Okay. And then, did I also understand your
12 testimony to be that when it comes to the bundles
13 market, if we could call it that, you view it as
14 competitive?

15 A. Yeah.

16 Q. So how do we square up the importation of
17 price caps into the bundles if the bundles market is
18 competitive?

19 A. Because price caps have generally been a
20 regulatory setting in which this particular type of
21 standard is supposedly a substitute for the average
22 rate of change in the competitive marketplace.
23 That's what a price cap is supposed to do.

24 Q. Okay. Well, I'm a lawyer and I don't
25 understand that, but I'll have -- I'll take that up

0528

1 later. Okay. Thank you. I appreciate it. Those
2 are all my questions.

3 JUDGE CLARK: Commissioner Oshie.

4

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

6 BY COMMISSIONER OSHIE:

7 Q. Dr. Loube, I just want to ask really
8 questions about one element of your proposed AFOR,
9 and that has to do with the hard cap on caller ID.

10 A. Uh-huh.

11 Q. And you engaged with Ms. Anderl a bit on
12 that, and I'd just like to explore it a little bit
13 further. Is it Public Counsel's position in this
14 case that caller ID is, to use the term, an essential
15 service?

16 A. I think it's a public safety -- in that
17 sense, you know, it's not essential in that you need
18 it to do everything, but -- like basic, okay. So
19 there's a slight difference between basic dial tone
20 and caller ID. But what we're saying is that caller
21 ID is something that enhances public safety, privacy,
22 and for that reason we want to give it a little more
23 consideration than it has done for the other
24 features.

25 Q. You make a distinction personally between

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1 public safety and an interest in privacy?

2 A. No, I think they're both in the same area of
3 consideration.

4 Q. Do you think everyone, then, should be
5 required to be enrolled in or take caller ID?

6 A. No.

7 Q. And would you agree that, when people make a
8 decision on whether or not they are interested in
9 protecting their privacy, they make a decision based
10 on its cost? I mean, for example, I don't have
11 caller ID with my, you know, home phone line, but --
12 and I don't because it -- because of the cost. I
13 just don't feel it's necessary.

14 So do you think other people make the same
15 decision at a price point, say if it costs X amount
16 of money, it's -- the privacy that's gained from
17 caller ID isn't worth it?

18 A. I think there are many people who don't have
19 it and they've made such a decision. All we're
20 saying in this is that for those people who it is
21 very important for, it serves a very highly sensitive
22 service to them, and we would like to help them have
23 some control over their lives.

24 Q. And can you define in at least some general
25 term the individuals who this service would be very

0530

1 important for?

2 A. I think the clients of many divorce lawyers
3 would probably find it very important.

4 Q. And so there's a distinction, then, between
5 -- and I assume, because of the -- because there's an
6 interest there in protecting that individual not just
7 from an invasion of privacy, but perhaps physical
8 harm, I'm assuming that that at least is one
9 component of your view here or your analysis or
10 Public Counsel's view?

11 A. That's correct.

12 Q. And so there's a distinction, then, between
13 protection of the individual from that -- from some
14 type of harm and, in a general sense, protecting
15 someone's sense of privacy?

16 A. Yeah, there's two levels. There is privacy
17 and the physical harm, yeah. I don't disagree with
18 that. I just -- we came to the conclusion that this
19 would have a public interest element to it, and
20 therefore we decided to include it in our AFOR
21 suggestion.

22 Q. And if Public Counsel were to value, if you
23 will, both of those elements, one protection of the
24 individual in the circumstance that you've explained,
25 and a sense of privacy, how do you think Public

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1 Counsel would value each of those elements?

2 A. I don't think we've quantified it to put any
3 number on it.

4 Q. Okay. Thank you.

5 JUDGE CLARK: Commissioner Jones.

6

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

8 BY COMMISSIONER JONES:

9 Q. Good afternoon, Dr. Loube.

10 A. Good afternoon.

11 Q. I understand you have a flight back to
12 Washington, D.C. tonight.

13 A. Yes.

14 Q. What time does your flight leave?

15 A. It's late. I can stay awhile.

16 Q. I think I've taken that redeye flight a few
17 times. My questions go back to some of the
18 discussion you had earlier on the definition of the
19 market and effective competition. You said that your
20 definition of the stand alone residential primary
21 market was to be the Qwest wireline, the Qwest
22 wireline subscribers, plus Comcast circuit switched?

23 A. That's correct. In other words, the circuit
24 switched people.

25 Q. But not -- not Comcast and other cable co-ax

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1 providers who offer VoIP services, not VoIP?

2 A. Not the VoIP.

3 Q. And --

4 A. The difference is that the VoIP service is
5 currently being offered as a bundle with other
6 products. The grandfathered circuit switched service
7 you could buy independently as a stand alone product.

8 Q. Is that definition of the primary market for
9 the entire state of Washington, or you are not trying
10 to refer to other in service territories of the WITA
11 companies or Qwest or CenturyTel or --

12 A. I think you wanted to say Verizon?

13 Q. Excuse me, Verizon.

14 A. Yeah, I'm just talking about Qwest in this
15 proceeding.

16 Q. Qwest in service territories?

17 A. Yes.

18 Q. Okay. On page 13 of your testimony, if
19 you'd refer to that, you talk about lines 18 and 19.
20 In the Qwest service territory, and I quote, I
21 estimated that the number of households that have cut
22 the cord is 123,187, or eight percent of the Qwest
23 service territory non-lifeline households. How did
24 you derive that number?

25 A. It's eight percent of the -- we took eight

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1 percent of the total households, I believe.

2 Q. The total households?

3 A. In the Qwest --

4 Q. Just in the Qwest service territory?

5 A. Correct.

6 Q. Not from the FCC ARMIS data that cover all
7 wireline line counts in the state of Washington. Was
8 this national FCC ARMIS data or was this some other
9 data?

10 A. No, this was from -- I have a footnote to
11 it. I think it's the subscription report of the
12 industry analysis division. The industry analysis
13 division puts out a variety of reports. One of the
14 reports lists -- I think it's telephone subscription,
15 I'll check, but I have a footnote to it -- the number
16 of households in each state. So we start with the
17 number of households in the state of Washington,
18 that's not in the ARMIS data at all.

19 And then what I did was that I took the NECA
20 data that I had the discussion with counsel, with
21 Qwest counsel, and it told me how many universal
22 service lines were in each carrier in the state, in
23 other words, Verizon, all the small carriers, and
24 Sprint and Qwest. So I took that total line count,
25 said Qwest has a certain percentage of that total

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1 line count, and I said that percent of that total
2 line count I will use to take the total state of
3 Washington residential lines, multiply it by that
4 Qwest indicator and say that is the Qwest households.
5 Did I explain that?

6 Q. Yeah, no, I follow your reasoning. So how
7 did you get to the, quote, cut the cord number at the
8 end of all that?

9 A. Well, then I took -- the eight percent
10 number was from this national health survey for the
11 year 2005, and I multiplied it by the number of Qwest
12 households.

13 Q. I see. So the conclusion you derived from
14 that number is that there is no effective sustained
15 competition from the wireless -- from wireless
16 subscribers --

17 A. That's correct.

18 Q. -- to the residential in service territory
19 Qwest market? The same thing for VoIP. Again, you,
20 in your testimony, you have concluded that VoIP is
21 not a sustained viable competitor to Qwest's stand
22 alone primary residential market?

23 A. Right.

24 Q. Based on the reasoning and all the to and
25 fro that we've had today for all the reasons that I

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1 don't want to get into, but basically you've, in
2 effect, eliminated that?

3 A. Right, I've said that their rates, in order
4 to get to VoIP, you need to buy broadband, and the
5 total package that you pay for VoIP is somewhere
6 between 60 and 80 dollars to get VoIP and the
7 broadband service, and that is just significantly
8 higher than the price of \$18 or \$20, and therefore it
9 would not discipline Qwest from raising its price by
10 \$2 or even \$1.

11 Q. So really, your reasoning is that there is
12 no effective price competitor, there's no discipline
13 on Qwest in this particular market within its service
14 territory from any --

15 A. That is correct.

16 Q. -- from any provider, and a normal
17 competitor would not raise prices by a dollar or \$2?

18 A. That's correct.

19 Q. And Qwest is able to do this because they
20 have no effective competition in that particular
21 market?

22 A. Yes.

23 Q. And there's no other alternative out there,
24 fixed wireless, somebody mentioned Clearwire today,
25 or Wi-Max, there's no -- in your opinion, there's no

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1 other competitor out there in this particular market,
2 not the package market, just this particular market?

3 A. In this particular market, that's my
4 opinion.

5 Q. On page five of your testimony, if you could
6 turn to that. We'll get into some confidential data,
7 but I just have a few questions on DSL -- on
8 broadband deployment and the Public Counsel AFOR
9 proposal. The Public Counsel AFOR proposal consists
10 of three parts, a DSL deployment commitment, a
11 broadband lifeline program, and a community
12 technology program; is that correct?

13 A. We gave -- yes and no. Yes, that it
14 includes at least two of those, the broadband
15 deployment and then I believe we said there'd be a
16 choice between the million dollar commitment or the
17 broadband lifeline.

18 Q. Oh, it's an either/or?

19 A. Yes.

20 Q. Let's get to the first one, though, because
21 I think that might be the most significant one. Have
22 you quantified what might be involved in terms of
23 extending DSL to 75 percent, I think, of the
24 customers that you talk about on page five? Have you
25 quantified that at all?

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1 A. The quantification is shown on lines 14
2 through 16. I can't --

3 Q. Right.

4 A. That will tell you how many additional lines
5 you need in order to make that particular standard
6 statewide.

7 Q. I'm going to ask you to put on your
8 engineering hat for a minute here. Do you have --
9 have you looked at, for those seven wire centers or
10 whatever it is, I don't know if -- does Public
11 Counsel agree that only seven wire centers need a new
12 -- whatever is broadband deployment for DSL?

13 A. No, that's not our agreement. That's not
14 what we're proposing. The seven wire centers that
15 are spoken about have zero DSL capability right now.

16 Q. Right.

17 A. Okay. What we're talking about is to make
18 sure that every wire center comes up to a 75 percent
19 minimum standard, so therefore we are spreading the
20 deployment through a much larger group than the
21 settlement proposal, not only from the point of view
22 that the 75 percent minimum is there, but in the
23 settlement proposal has a goal that is not a fixed
24 goal, it's just a goal, it's not a minimum
25 requirement, of 83 percent. Well, it would be

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1 possible to hit the 83 percent maybe by doing 99
2 percent in Seattle. So you're not, you know,
3 spreading the deployment throughout the state with
4 the 83 percent goal.

5 Q. Do you have -- talk about engineering for a
6 minute. Do you have any idea how the company is
7 going to accomplish this goal? Is it going to be
8 through installing new equipment, such as DSLAMs and
9 extending loops out to under-served areas, or is it
10 going to be a solution like line conditioning? And I
11 think you know what line conditioning is, don't you?

12 A. Yes. Okay. It would be a combination of
13 all the above. From the point of view of especially
14 the seven wire centers, where there's no capability,
15 you would have equipment in the wire center which is
16 normally -- you know, one of the major pieces of
17 equipment is things that people call DSLAMs.

18 Q. DSLAMs, yes.

19 A. That's for customers that are relatively
20 close to the wire center, okay. Then, for customers
21 who are relatively far away from the wire center,
22 there are one or two problems. Right now they could
23 be on loading coils that degrade the high-frequency
24 portion of the loop and enhance the low-frequency
25 portion of the loop, so you have to do what you said,

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1 line conditioning, in order to remove those loading
2 coils. Now, when you take the loading coils off,
3 obviously the low-frequency portion of the loop is
4 degraded, because that's what their purpose was, to
5 enhance that, so you're going to have to substitute
6 some kind of remote equipment to maintain the
7 low-frequency service, the basic voice in those long
8 loops, and the particular remote kind of equipment
9 that you need is going to have to be remote equipment
10 that is capable of providing both low and
11 high-frequency service.

12 And then the third problem that must be
13 solved is that there are some remotes that are old,
14 not -- they don't have to be very old, but you know,
15 one generation back, and they filter out those older
16 remotes, the high-frequency portion of the loop. So
17 you would have to do one or two things. You would
18 have to either put a DSLAM out standing next to the
19 remote or upgrade the remote so that it allows for
20 the passage of the high-frequency portion of the loop
21 through the remote.

22 So there are a variety of techniques, all of
23 which can be done and, in order to reach these goals,
24 you're going to have to use some combination of them.

25 Q. Is there anything in the record, either from

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1 the company or from Public Counsel, that quantifies
2 what your recommendation would entail?

3 A. No.

4 Q. That's all I have. Thank you.

5 A. Thank you.

6 JUDGE CLARK: All right. I think we're long
7 overdue of giving the court reporter a brief break,
8 which means that you all get one too. But when I say
9 brief, I'd like to emphasize that and make that be
10 under five minutes. We're at recess.

11 (Recess taken.)

12 JUDGE CLARK: All right. We're back on the
13 record. Redirect.

14 MS. ANDERL: Oh, Your Honor, I had requested
15 leave for re-cross on very limited follow-up to some
16 of Commissioner Jones' questions.

17 JUDGE CLARK: All right. And I will allow
18 that with the same proviso I gave Mr. ffitch, in that
19 it has to be strictly limited to a new topic raised
20 on Commissioner inquiry and that you must focus on
21 the inquiry by the Commissioner.

22 MS. ANDERL: Right. We'll endeavor to do
23 that.

24

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

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1 BY MS. ANDERL:

2 Q. Dr. Loube, Commissioner Jones asked you
3 about your definition of the market and effective
4 competition. Do you recall that line of inquiry?

5 A. Yes.

6 Q. Two questions for you. If Comcast and/or
7 wireless companies offered a service that included
8 more features and unlimited long distance for price
9 equal to Qwest's price for the stand alone 1FR, would
10 that constitute effective competition?

11 A. More features for the same price, for the
12 \$18.50 price? Whatever you --

13 Q. Yes.

14 A. Yes.

15 Q. And on a -- if those companies were not to
16 do that, can you identify in your opinion what needs
17 to happen to have effective competition for the stand
18 alone 1FR?

19 A. You have to have effective competition. I
20 gave you an example of effective competition in my
21 testimony, that you have four or five relatively
22 equal-sized companies with power to discipline each
23 other. That's effective competition. Now, what we
24 have now is, you know, you're saying -- your example
25 about wireless, their rates are much higher and they

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1 don't give unlimited service. Comcast does give
2 unlimited service, but its rate is higher,
3 significantly higher, \$54. That's much higher than
4 your \$18 rate that you're saying, so it doesn't
5 provide effective competition.

6 Q. Final question. Is there anything, in your
7 opinion, that this Commission can do to promote
8 effective competition for the stand alone 1FR?

9 A. No, it's going to have to wait for companies
10 that want to offer something that is there. The
11 Commission can't offer the service itself.

12 Q. Thank you.

13 JUDGE CLARK: Mr. ffitch.

14 MR. FFITCH: Thank you, Your Honor. I do
15 have a few questions. Mr. Loube has been on the
16 stand for a while, so I have more than just a couple,
17 but hopefully, understanding he's got a plane to
18 catch, I could be efficient here.

19

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

21 BY MR. FFITCH:

22 Q. I feel like we're going back in time a bit
23 to some earlier questioning a couple hours ago, but
24 you were asked by Qwest counsel, Mr. Loube, about why
25 you didn't build your testimony -- build into your

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1 testimony a discussion of the business competitive
2 classification cases that the Commission had going on
3 in the, you know, early 2000s, cases that you didn't
4 participate in, but you were asked why you didn't
5 build those into your testimony.

6 MS. ANDERL: Objection. I don't know if
7 there was a question there, but I do believe that
8 mischaracterizes my question.

9 MR. FFITCH: I'm just paraphrasing, Your
10 Honor.

11 JUDGE CLARK: The objection's overruled.
12 The objections, we'll take them, but it's overruled.
13 I think Dr. Loube can figure out where you're headed.

14 Q. Do you understand what I'm referring to, Dr.
15 Loube, or am I being too --

16 A. I think you're referring to Exhibit 105 and
17 106, and those first couple of orders that we -- that
18 I discussed with the Qwest counselor at the beginning
19 of my testimony?

20 Q. That's correct.

21 A. And those orders were about the business
22 market, and this case is about the residential
23 market. And therefore, I was interested in
24 understanding the residential market, and that's one
25 of the reasons why cases about business activity,

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1 activity in the business side of the market, was not
2 something that I included in my discussion.

3 Q. All right. You were also asked by Qwest
4 counsel to talk about reasons why prices might go up
5 in a competitive market. And it's the case, is it
6 not, that in some markets that appear competitive,
7 there are a limited number of participants, what's
8 referred to as the oligopoly situation. Do you see
9 price increases in that kind of a setting?

10 A. Well, I -- when I talked, I said -- I gave
11 the answer. I said, you know, could get a
12 possibility of prices going up due to collusion.
13 There can also be prices going up in oligopolies
14 where there's not a direct collusion, but there's
15 price signaling and price leadership.

16 Q. Do you have an oligopoly where you, say,
17 perhaps only have two strong competitors?

18 A. Usually we say that's a duopoly, if there's
19 two, but yes, there could be, you know, very easily
20 price signaling between two in order to get the price
21 to go up.

22 Q. Do we have any situations like that in the
23 competitive -- in the telecommunications market?

24 A. Well, it appears that we're drifting towards
25 a duopoly in the -- between the cable provider and

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1 the wireline ILEC.

2 Q. Another sort of competition-related
3 question, you were asked about the activity in the
4 wireless market by Qwest counsel as indicating
5 increasing competition and falling price. That was
6 the assumption of her question. You mentioned that
7 wireless companies were getting fewer. Has there
8 been consolidation in the wireless market that you
9 can point to?

10 A. Sure. AT&T, you know, you know, you got --
11 the BellSouth and Cingular is now completely under
12 one arm. We have Sprint-Nextel, we have -- what was
13 the other one that occurred, the mergers recently,
14 AllTel bought Western Wireless. I think those are
15 the major ones I remember.

16 Q. Do you know what impact that's had on the
17 pricing of wireless services?

18 A. I haven't made a complete study on that.
19 What I have shown is that the HHIs in the wireless
20 markets are rising, and so pretty soon we're going to
21 have to start worrying about whether or not it does.
22 Today it's still in the range of the two to three
23 thousands. All I'm saying is that we better be
24 careful that it doesn't get any higher with more
25 approvals and mergers.

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1 And the fact that the FCC changed the
2 spectrum rules. Used to be that you could only own a
3 certain percentage of spectrum in a particular
4 market. Now the FCC's changed that and there isn't
5 that limitation that one firm can only own a certain
6 amount in a particular market. A firm can own a very
7 large amount in a market and not use it if it doesn't
8 want to, so it's now getting to the point where there
9 could be barriers to entry that the FCC, in as little
10 as five years ago, was working very hard to prevent
11 those barriers to entry. It was a reversal of policy
12 by the FCC in the wireless market.

13 Q. Ms. Anderl asked you whether you knew or had
14 studied Qwest prices in a conversation regarding
15 voice grade equivalents and DS1 and DS3s, and you
16 answered that you had not done any investigation of
17 Qwest prices. Did you mean to say with respect to
18 DS1, DS3, voice grade equivalent type of matters?

19 A. That's correct, yes.

20 Q. Have you done an investigation of Qwest
21 prices for retail services of the type that we're
22 discussing in this case?

23 A. Yes.

24 Q. I won't ask the next question, because I
25 can't read my own handwriting, so --

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1 This question is perhaps just to satisfy my
2 own curiosity. You were asked questions about the
3 consumer price index, and there's an exhibit that you
4 were shown. And it's correct that Public Counsel's
5 feature price cap is tied to the consumer price
6 index; correct?

7 A. That's correct.

8 Q. Now, there is a consumer price index for
9 telecom; correct?

10 A. Right, the consumer price index provides --
11 Bureau of Labor Statistics provides a number of
12 consumer price indexes for different types of
13 services. This is -- the one provided was an amalgam
14 of all the services.

15 Q. And is that a significant difference -- is
16 that something that would, perhaps if a price cap in
17 this case is tied to consumer price index, is there a
18 significant difference between tying it to the
19 telecom CPI or --

20 A. Yeah, the telecom CPI, since 1997, has been
21 going down, so that if you were at a hundred in 1997,
22 you would be about at 97 or 98 today. That's
23 different -- the overall consumer average has gone up
24 since 1997, 1998, period.

25 Q. So by tying the price cap here to the

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1 general CPI, this is, in effect, more generous to
2 Qwest?

3 A. Correct.

4 Q. You were asked about the Public Counsel
5 recommendation to retain one free directory
6 assistance call. Do you recall those questions?

7 A. Yes.

8 Q. And it's the case, is it not, that at the
9 time that you included this in your exhibit as part
10 of our proposal, this was also the Staff's
11 recommendation in the case for a proposed AFOR;
12 correct?

13 A. That's my understanding.

14 Q. You were asked about -- some questions about
15 how the proposed broadband lifeline would work. The
16 recommendation contains a proposal that a plan be
17 negotiated by a certain date after the AFOR goes into
18 effect between Commission, Public Counsel and the
19 Company, does it not?

20 A. Yes. Yes.

21 Q. And that's a process where the technical
22 questions would be answered about how best to
23 implement such a program; right?

24 A. That's correct.

25 Q. Through a consensus process?

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1 A. That's correct.

2 Q. There's been a lot of talk about Comcast's
3 offerings. Does Comcast currently offer stand alone
4 voice service for new customers?

5 A. Not for new customers. They have a
6 grandfathered one, but not for new.

7 Q. So if you had it before, you could still
8 have it, but if you want to call Comcast right now
9 and get stand alone voice, you can't do that; is that
10 right?

11 A. That's correct.

12 Q. You were asked about the authorized rate of
13 return for Qwest, and your estimate -- or in your
14 Exhibit RL-11 of that, of their current rate of
15 return. That number in your exhibit is only an
16 estimate; correct?

17 A. That's correct.

18 Q. And in fact, all we have in this case is
19 estimates of what current rate of return the company
20 is earning; correct?

21 A. That is correct, yes.

22 Q. And that's because we haven't had the same
23 kind of analysis that you would have in a normal rate
24 review; correct?

25 A. Yes.

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1 Q. You were asked about whether you thought the
2 market for bundles was competitive, and you indicated
3 that you felt that it was competitive. When you're
4 referring to the market for bundles, are you
5 including the market for stand alone basic
6 residential service?

7 A. No.

8 Q. And are you including the market for stand
9 alone basic residential service with the addition of
10 one or two a la carte features purchased by
11 consumers?

12 A. No, I'm not.

13 MR. FFITCH: Those are all the questions I
14 have on redirect, Your Honor.

15 JUDGE CLARK: All right. Thank you. Thank
16 you for your testimony, Dr. Loube. Any objection to
17 this witness being excused?

18 MS. ANDERL: No.

19 MR. TRAUTMAN: No.

20 JUDGE CLARK: Hearing none, you are excused.

21 I think we should talk for just a few
22 minutes about the procedural schedule for tomorrow.
23 That is certainly a topic for which Commissioners
24 would not be required to stay, but I think we should
25 discuss whether or not we think we're going to finish

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1 the hearing tomorrow. We do have a fair number of
2 witnesses left to go, but the cross-examination
3 estimates that I have for those individuals are
4 pretty brief. I have two hours and 45 minutes of
5 cross-examination, and I'm wondering if the parties
6 think that's going to extend beyond eight hours of
7 real hearing time?

8 MS. ANDERL: Your Honor, on behalf of Qwest,
9 I would say that Dr. Loube's responses with regard to
10 the customer service issues may have added 15 extra
11 minutes to Ms. Kimball's cross-examination, but not
12 more than that.

13 JUDGE CLARK: Okay. So we're up to three
14 hours. And I'm sure that at this point, Mr.
15 Melnikoff is very thankful that he was excused from
16 tomorrow's proceeding.

17 MR. FFITCH: Your Honor, I think that -- I'm
18 quite confident we can finish tomorrow. I am working
19 on streamlining cross based on what's happened so
20 far. We do have a new wrinkle, which is that Mr.
21 Saunders is taking on service quality issues for
22 Kristen Russell, and that might add a bit of time to
23 him, but I think that some of the other folks that I
24 was going to examine, I think they're coming up a
25 little shorter, so maybe another 15 minutes or so

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1 might be added to our total time, too, and that would
2 probably be -- I believe we estimated 30 minutes for
3 Ms. Russell, so we might be up to 45 for him -- for
4 Mr. Saunders. So I'm adding another 15 minutes to
5 the total time.

6 JUDGE CLARK: This is really going the wrong
7 direction, truly going the wrong direction. I'm
8 seeing if we can somehow cut it to less than two
9 hours and 45 minutes, and so far, you know, it's a
10 losing battle. I'm almost afraid to ask Mr.
11 Trautman whether or not something dramatic's going to
12 happen here.

13 MR. TRAUTMAN: No. If anything, I think we
14 reserved ten minutes, and we may not have any.

15 JUDGE CLARK: You did. You only reserved
16 ten, so -- all right. But the parties anticipate
17 that we could complete the hearing tomorrow if we
18 convened at 9:30 and not recessed or adjourned at
19 midnight?

20 MS. ANDERL: I think that seems reasonable.

21 MR. TRAUTMAN: I think it's reasonable.

22 MR. FFITCH: Your Honor, one thing that we
23 could -- we'd be happy to do is begin the hearing at
24 9:00.

25 JUDGE CLARK: That's my next suggestion. If

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1 you do not think that we can complete the hearing
2 tomorrow between the normal hours of 9:30 and 5:00
3 p.m., we have a couple of options. One, provided I
4 could get a court reporter here on this very late and
5 short notice, which is not the same court reporter
6 who is here today, we could convene at 9:00 a.m.

7 The other option is that we can take a
8 shorter lunch break. You know, that is somewhat
9 difficult given how difficult it is to get in
10 someplace and served and back here in time. And the
11 third option, of course, is that we can stay a little
12 bit late tomorrow evening in order to finish
13 tomorrow. I didn't even throw in the other option
14 that everyone certainly has available, and that would
15 be to streamline your examination.

16 MR. FFITCH: Well, Your Honor, I think I
17 indicated that we are seriously trying to do that,
18 and we -- our estimates are there, they're outside
19 estimates, I would say, and I'm certainly making an
20 effort to, you know, to cut things out. I know this
21 isn't just -- this isn't, you know, just posturing.
22 I really think that some of the areas have been
23 covered, and I imagine we're going to be able to get
24 through some of the witnesses fairly quickly tomorrow
25 on the Staff side. So you know, I can't imagine

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1 we'll be going after 5:00 tomorrow.

2 JUDGE CLARK: Okay. So you're assuming we
3 could maintain the normal hearing schedule and
4 perhaps slightly modify lunch?

5 MR. FFITCH: I think that's probably a safe
6 way to do it.

7 JUDGE CLARK: Realistic.

8 MR. FFITCH: I think if we could have a
9 one-hour lunch instead of 90-minute lunch, that would
10 --

11 JUDGE CLARK: All right. Ms. Anderl.

12 MS. ANDERL: Your Honor, my
13 cross-examination is only for Ms. Kimball tomorrow.
14 I have no questions of any other witness. I think
15 Mr. ffitch's suggestion seems realistic.

16 MR. TRAUTMAN: It does to me, too.

17 JUDGE CLARK: All right. Then we are at
18 recess. Any other matters we need to address before
19 we recess for the evening? All right. We are
20 recessed until 9:30 a.m.

21 (Proceedings adjourned at 5:47 p.m.)

22

23

24

25