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

2 JUDGE RENDAHL: Good morning. I'm Ann  
3 Rendahl, the administrative law judge presiding over  
4 this proceeding. Adam Torem, who is also presiding, is  
5 currently out of the office today. We are here before  
6 the Washington Utilities and Transportation Commission  
7 on Tuesday, August 21st, 2007, for a prehearing  
8 conference in Docket UT-073034, which is a petition  
9 filed by Qwest Corporation for approval of a  
10 stipulation with other CLEC's concerning proposed  
11 changes to the Qwest Performance Assurance Plan or  
12 QPAP, and Performance Indicator Definitions, also known  
13 as PID's.

14 The purpose of our prehearing this morning is  
15 to consider any petitions to intervene that were filed  
16 following the prehearing conference order, to hear  
17 argument on the issue of whether Qwest's petition is  
18 subject to the 60-day requirement in Section 252(f) of  
19 the Telecommunications Act of 1996, and to discuss any  
20 remaining scheduling issues and any other procedural  
21 issues the parties may have. Ms. Anderl raised off the  
22 record the question of whether we need to enter a  
23 protective order, and we will get to that.

24 Let's take appearances from the parties, and  
25 if you hadn't yet made an appearance in this

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1 proceeding, you will need to state your full name, the  
2 party you represent, your full address, your telephone  
3 number, fax number, e-mail. So let's start with Qwest  
4 and the stipulating parties; Ms. Anderl?

5 MS. ANDERL: Lisa Anderl, in-house attorney  
6 representing Qwest.

7 JUDGE RENDAHL: Ms. Zeller, you were not here  
8 at the first prehearing conference. Could you give us  
9 your full appearance, please?

10 MS. ZELLER: Ginny Zeller representing  
11 Eschelon Telecom, Inc., and my e-mail is  
12 gazeller@eschelon.com. My phone is (612) 436-1888; fax  
13 number, (612) 436-1988.

14 JUDGE RENDAHL: Your address, please?

15 MS. ZELLER: My address is 730 Second Avenue  
16 South, Suite 900, Minneapolis, Minnesota, 55402.

17 JUDGE RENDAHL: Thank you. Are there any  
18 other representatives of stipulating parties? Anyone  
19 for Covad or McLeod on the line, please? Okay. For  
20 Commission staff?

21 MR. THOMPSON: Jonathan Thompson representing  
22 Commission staff. I think I've put in a full  
23 appearance before.

24 JUDGE RENDAHL: Yes, you have, thank you.  
25 And for the parties seeking intervention.

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1                   MR. KOPTA: Gregory J. Kopta of the law firm  
2 Davis, Wright, Tremaine, LLP, on behalf of XO  
3 Communications Services, Inc.; Time Warner Telecom of  
4 Washington, LLC, and Integra Telecom of Washington,  
5 Inc. My address is 1201 Third Avenue, Suite 2200,  
6 Seattle, Washington, 98101. My telephone is (206)  
7 757-8079; fax, (206) 757-7079; e-mail,  
8 gregkopta@dwt.com.

9                   JUDGE RENDAHL: I understand Ms. Harris is  
10 also on the line. For purposes of our courtesy e-mail  
11 that we send out with notices and orders, Ms. Harris,  
12 would you like to have your e-mail address in that  
13 list?

14                   MS. HARRIS: Yes. My e-mail is  
15 sheila.harris@integratelecom.com.

16                   JUDGE RENDAHL: Thank you. Mr. Kopta, I  
17 noticed on your petitions to intervene that you listed  
18 Mr. Murley and Mr. Knowles. Do you wish their e-mail  
19 addresses to be included on our courtesy list?

20                   MR. KOPTA: That would be great if that would  
21 be possible.

22                   JUDGE RENDAHL: And I have Mr. Murley as  
23 ed.murley@twtelecom.com; is that correct?

24                   MR. KOPTA: That's correct.

25                   JUDGE RENDAHL: For Mr. Knowles, I have

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1 rex.knowles@xo.com.

2 MR. KOPTA: That is also correct.

3 JUDGE RENDAHL: Ms. Zeller, is there anyone  
4 else for Eschelon you wish to have on the list?

5 MS. ZELLER: Yes, please. It's Doug Denney,  
6 and his e-mail address is dkdenney@eschelon.com.

7 JUDGE RENDAHL: Ms. Anderl, would you like to  
8 have Mr. Reynolds and Ms. Viveros also included on the  
9 list?

10 MS. ANDERL: Yes, they are both misters, and  
11 I will have them each give their own e-mail.

12 MR. VIVEROS: It is chris.viveros@qwest.com.

13 JUDGE RENDAHL: Mr. Reynolds?

14 MR. REYNOLDS: My e-mail address is  
15 mark.reynolds3@qwest.com.

16 JUDGE RENDAHL: Thank you. Moving on from  
17 those administrative matters, thank you very much,  
18 let's address the petitions to intervene. In the first  
19 prehearing conference order from the July 31st  
20 conference, Judge Torem and I extended the time for  
21 interested parties to petition to intervene in this  
22 proceeding, so the Commission has received petitions to  
23 intervene from Integra, Time Warner Telecom, and XO.  
24 Are there any objections to granting those petitions  
25 for intervention?

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1           MR. KOPTA: Your Honor, before we get to  
2 that, I need to make one clarification in the petition  
3 to intervene from Integra. We have represented that  
4 Integra had actually already opted into the QPAP as  
5 part of its interconnection agreement, and upon further  
6 investigation discovered that was not, in fact, the  
7 case. However, Integra is still interested in this  
8 matter and would like to intervene as a participating  
9 party.

10           MS. ANDERL: Your Honor, with that  
11 clarification, we have no objection to the petitions.

12           JUDGE RENDAHL: For Staff?

13           MR. THOMPSON: No objections from Staff  
14 either.

15           JUDGE RENDAHL: Ms. Zeller?

16           MS. ZELLER: No objections, Your Honor.

17           JUDGE RENDAHL: With that, the petitions to  
18 intervene are granted, and that will be sent out in the  
19 prehearing conference order that will be entered  
20 following this prehearing conference.

21           Now we come to the main event here, which is  
22 the issue of the 60-day deadline in this proceeding.  
23 In its petition, Qwest asserts that the stipulation is  
24 subject to the provisions of the 1996 act governing  
25 Statements Generally Available Terms, or SGAT, in 47

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1 USC, Section 252(f), and in particular, that changes to  
2 an SGAT must be considered within 60 days of the  
3 filing, and under that provision, the Commission must  
4 act on the Qwest petition by Friday, August 24th, this  
5 Friday.

6           We've received oral and written comments in  
7 this proceeding from Staff and Integra, Time Warner  
8 Telecom, and XO all claiming that the 60-day deadline  
9 does not apply to this filing, and we provided an order  
10 that parties could have an opportunity to discuss that  
11 further today. So now is the time for parties to make  
12 their arguments. Let's begin with Qwest and the  
13 stipulating parties who bear the burden of proof on  
14 this issue, so unless you all have worked out a  
15 different order, that's how we will proceed.

16           MS. ANDERL: Your Honor, I have not had a  
17 chance to talk to Ms. Zeller about this, but I have  
18 talked to the other parties, and it may be that if  
19 everyone is amenable to a proposed process for  
20 scheduling and handling this docket that we can talk  
21 about the 60 day but that it may be an issue that is  
22 largely moot, and if I can just kind of lay out what  
23 Qwest had envisioned, maybe we can talk about that if  
24 that's all right.

25           JUDGE RENDAHL: I'll just check with other



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1 counsel. Mr. Thompson here in the room, are you  
2 amenable to that?

3 MR. THOMPSON: Yes. We have discussed this  
4 proposal as well, so I frankly did not come prepared to  
5 argue the issue, so we would be amenable to that.

6 JUDGE RENDAHL: Mr. Kopta, are you on board?

7 MR. KOPTA: That's fine with us.

8 JUDGE RENDAHL: Ms. Zeller, having heard what  
9 you heard, are you agreeable?

10 MS. ZELLER: Yes, thank you.

11 JUDGE RENDAHL: Go ahead, Ms. Anderl.

12 MS. ANDERL: Thank you, Your Honor. Qwest  
13 believes and can argue at some point about the  
14 applicability of the 60-day clock. We believe that it  
15 does apply, but we also believe that the statute allow  
16 the filing party to extend that time, and Qwest is  
17 willing to do that assuming there is no objection from  
18 the stipulating parties or other parties to this docket  
19 through and including up to November 30th of 2007.

20 What Qwest would propose is that in  
21 accommodation to the express desire for more process  
22 around these issues, we would recommend that the  
23 parties take the rest of August and all of September to  
24 allow the parties to talk to one another, to do  
25 discovery, if necessary, and to accommodate the ROC

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1 meetings that are at the end of September.

2           We would then propose that the issues in this  
3 docket be addressed in two rounds of written comments  
4 on a written record only with no hearings whereby any  
5 party who has issues that they wish to raise in the  
6 docket would file in the first round and have  
7 responsive opportunities in the second round with both  
8 of those sets of comments being due in October, October  
9 5th for the first round and October 26th for the second  
10 round, and then the Commission would then decide the  
11 matter on the written record to the extent that the  
12 initial order is waived, the Commission would enter an  
13 order by November 30th. If that was not enough time,  
14 then at that time, the parties could subsequently argue  
15 about the applicability of the 60-day clock.

16           Assuming nobody has any objection, we think  
17 that might allow to postpone that argument for another  
18 day and put the kind of process in place around these  
19 issues that would allow the parties to feel like they  
20 had an opportunity to address the issues adequately.

21           JUDGE RENDAHL: Any thoughts, comments on  
22 Ms. Anderl's proposal? Mr. Thompson?

23           MR. THOMPSON: We think that that would be an  
24 adequate process. I think the issues are going to be  
25 primarily policy issues about the appropriate level of

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1 liability for missing standards, and so we do believe  
2 that Qwest bears the burden of showing why there should  
3 be a change in prior Commission orders with regard to  
4 its level of liability under the QPAP, but we think  
5 that by parties going on a paper record and having two  
6 rounds of comments that we essentially get to the place  
7 we need to be with Qwest filing its statement of why it  
8 believes the change should be made and opportunity to  
9 respond to that by Staff. We think we will also be  
10 able to anticipate Qwest's arguments in the first round  
11 and be able to make an opening comment as well.

12 JUDGE RENDAHL: Ms. Zeller?

13 MS. ZELLER: It's acceptable to Eschelon,  
14 Your Honor.

15 JUDGE RENDAHL: Mr. Kopta?

16 MR. KOPTA: It's acceptable to us as well,  
17 Your Honor.

18 JUDGE RENDAHL: Are any parties opposed,  
19 including Qwest, if it becomes apparent to the  
20 Commission that it would be useful to have a hearing in  
21 this matter, is anyone opposed to the possibility of  
22 having a schedule after the two rounds of comments?

23 MS. ANDERL: Your Honor, we are not opposed  
24 to the idea of it. If we would like to stay to the  
25 schedule, we will having the hearing in November, but

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1 no. The concept of a hearing would be okay.

2 JUDGE RENDAHL: Any other parties wish to  
3 weigh in? All right. So my notes show the proposal  
4 would be some informal discussion, discovery, back and  
5 forth in August and September to accommodate the ROC  
6 meeting, Regional Oversight Committee, with the first  
7 round of comments on the stipulation and Qwest's  
8 petition on October 5th, 2007, with any responses filed  
9 to those comments on October 26th with right now a  
10 proposal for a final Commission ordered by the end of  
11 November, November 30th. Is that a correct  
12 understanding?

13 MS. ANDERL: Yes, Your Honor.

14 JUDGE RENDAHL: While you are still on the  
15 line, Ms. Anderl, I have two additional items I need to  
16 discuss with Qwest and the stipulating parties, and  
17 that is that having reviewed the petition more fully  
18 and considered comments by Staff and the others, I  
19 don't believe that the filing itself meets the standard  
20 of the Commission's rule for considering settlements in  
21 WAC 480-07-740, sub 2, which requires that parties  
22 filing settlements need to file supporting documents to  
23 demonstrate that the proposal is consistent with the  
24 law, public interest, and appropriate for adoption.

25 So I would like to establish a date where

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1 Qwest and the stipulating parties will supplement the  
2 petition and the attachments that were filed in June,  
3 so I'm open to a date for Qwest and the stipulating  
4 parties to file something, but I do believe it's  
5 necessary before we go farther with the process. How  
6 much time do you think Qwest and the parties would need  
7 to file something like that?

8 MS. ANDERL: Your Honor, I'm trying to think  
9 about what else we would need to file --

10 JUDGE RENDAHL: There needs to be some  
11 justification other than just a statement of what the  
12 proposal is.

13 MS. ANDERL: I understand.

14 JUDGE RENDAHL: So you can contact me in the  
15 next day or two and let me know what date would work  
16 for that filing for Qwest that would fit into the  
17 schedule that you all have already agreed to.

18 MS. ANDERL: Thank you, Your Honor. I'm  
19 thinking along the lines of the week after Labor Day  
20 might be appropriate.

21 JUDGE RENDAHL: You all can let me know  
22 either by phone or by e-mail and copy the other parties  
23 and let us know what date works, and I'll plug that  
24 into the prehearing conference order.

25 MS. ANDERL: Thank you.

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1                   JUDGE RENDAHL: I also have a Bench request,  
2 and in the interest of time, I will just issue that  
3 Bench request to Qwest today. It has to do with the  
4 issue raised by the intervenors about whether there is  
5 actually an SGAT being made available to CLEC's, so  
6 instead of reading it into the record, I will simply  
7 have that Bench request issued this morning so you all  
8 have that to look at. The only other issue I have on  
9 my list is the protective order. Ms. Anderl, what did  
10 you have in mind in terms of the form of the protective  
11 order?

12                   MS. ANDERL: Your Honor, the standard  
13 protective order, we think, will suffice. We have an  
14 informal request from Staff that we provide to them  
15 CLEC-specific impact data in terms of the financial  
16 impact as far as changes. That will involve CLEC's who  
17 are both parties to this case and who are not parties  
18 to this case.

19                   We would propose that we would provide a  
20 masked list that the other parties in this case as well  
21 as Staff would all have. For each individual CLEC, we  
22 would disclose to that CLEC their masking code, and we  
23 would disclose the master key for masking to Staff  
24 only. We believe that due to the nature of the  
25 information that's being provided, it would probably be

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1 classified only as confidential, not highly  
2 confidential, and we wanted to just put that out there  
3 and make sure that no one, at least no party, had an  
4 objection to that process and agreed that it would be  
5 covered under the normal form of the protective order.

6 JUDGE RENDAHL: I don't think masking is part  
7 of the normal form of the protective order, so what I  
8 would suggest to you all is to work off-line to an  
9 agreed protective order along the lines of ones we've  
10 had going in various cases at the Commission and then  
11 file a proposal for us to consider. Is that  
12 acceptable?

13 MS. ANDERL: Yes, Your Honor.

14 MS. ZELLER: Yes, Your Honor.

15 JUDGE RENDAHL: Is there anything else  
16 besides the schedule that we've talked about and the  
17 protective order that we need to address on the record  
18 this morning?

19 MR. THOMPSON: Yes. I think it would be a  
20 good idea to invoke the discovery rule just to get that  
21 formal process going. We've been going through an  
22 informal request so far, but I do think it would be a  
23 good idea so we do get formal responses that we can  
24 include in our comments.

25 JUDGE RENDAHL: Ms. Anderl or any other party

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1 have an objection to that?

2 MS. ANDERL: No objection.

3 MR. KOPTA: No objection.

4 MS. ZELLER: No objection.

5 JUDGE RENDAHL: So we will invoke the

6 discovery rule, and are the usual time frames

7 acceptable? We don't need to shorten the time for

8 responses in any way?

9 MR. THOMPSON: No. I think we have about six  
10 weeks or so until the first filing, so that should be  
11 enough time.

12 JUDGE RENDAHL: All right. Is there anything  
13 else we need to talk about this morning in this matter?  
14 Hearing nothing more, before we go off the record, does  
15 any party wish to order a copy of the transcript.

16 MS. ANDERL: Qwest will order a copy.

17 JUDGE RENDAHL: Any other party? All right.

18 MS. ANDERL: Your Honor, I just wanted to say  
19 thank you very much to you and the other parties for  
20 accommodating my scheduling consideration today. I'm  
21 very grateful for that.

22 JUDGE RENDAHL: I do intend to remain in the  
23 hearing room for about ten or fifteen minutes with the  
24 conference bridge available in case someone does call  
25 in at 9:30 and wishes to participate. Not everyone who



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1 received the prehearing conference order would have  
2 received the notice that went out yesterday. So with  
3 that safeguard, no problem, and I'm glad we could  
4 accommodate your request.

5           So with that, I'm going to adjourn the  
6 prehearing conference or actually put it in recess for  
7 about ten minutes, and then we will formally adjourn  
8 for people to call in. With that, is there anything  
9 else anyone wishes to weigh in on? With that, we will  
10 be in recess.

11           (Recess.)

12           JUDGE RENDAHL: We are back on the record.  
13 It is 9:41, and no party, no interested person has  
14 called in on the bridge line or appeared in the hearing  
15 room, so I am now adjourning the prehearing conference  
16 unless, Mr. Thompson, you have anything else to add.

17           MR. THOMPSON: No.

18           JUDGE RENDAHL: We are adjourned. Thank you  
19 very much.

20           (Prehearing adjourned at 9:40 a.m.)

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