

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
 Investigation into)
 4)
 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
 5) Volume 28
 Compliance with Section 271 of) Pages 3772 to 3951
 6 the Telecommunications Act of)
 1996)
 7 -----)
 In the Matter of)
 8) Docket No. UT-003040
 U S WEST COMMUNICATIONS, INC.'s) Volume 28
 9) Pages 3772 to 3951
 Statement of Generally)
 10 Available Terms Pursuant to)
 Section 252(f) of the)
 11 Telecommunications Act of 1996)
 _____)
 12

13 A Workshop in the above matters was held on
 14 July 9, 2001, at 10:00 a.m., at 1300 South Evergreen
 15 Park Drive Southwest, Room 206, Olympia, Washington,
 16 before Administrative Law Judge ANN RENDAHL.

17 The parties were present as follows:

18 THE WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION, by PAULA STRAIN and DAVE GRIFFITH, 1400
 19 South Evergreen Park Drive Southwest, Post Office Box
 40128, Olympia, Washington, 98504-0128.

20 WORLDCOM, INC., by ANN HOPFENBECK, Attorney
 21 at Law, 707 - 17th Street, Suite 3900, Denver, Colorado
 80202.

22 THE PUBLIC, by ROBERT W. CROMWELL, JR.,
 23 Assistant Attorney General, 900 Fourth Avenue, Suite
 2000, Seattle, Washington 98164-1012.

24 Joan E. Kinn, CCR, RPR
 25 Court Reporter

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1 QWEST CORPORATION, by LAURA D. FORD, Attorney
2 at Law, 1899 Wynkoop Street, Suite 700, Denver,
3 Colorado, 80202, and by MARY ROSE HUGHES, Attorney at
4 Law, 607 - 14th Street Northwest, Washington, D.C.
5 20005, and by LISA ANDERL, Attorney at Law, 1600 Seventh
6 Avenue, Suite 3206, Seattle, Washington 98191.

7
8 ELECTRIC LIGHTWAVE, INC.; XO WASHINGTON,
9 INC.; and TIME-WARNER TELECOM OF WASHINGTON, by GREGORY
10 J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
11 1501 Fourth Avenue, Suite 2600, Seattle, Washington
12 98101.

13
14 AT&T, by LETTY S. D. FRIESEN, Attorney at
15 Law, and by MITCHELL MENEZES, Attorney at Law, and via
16 bridge line by STEVEN WEIGLER, Attorney at Law, 1875
17 Lawrence Street, Suite 1575, Denver, Colorado 80202.

18
19 INTEGRA TELECOM, by KAREN J. JOHNSON,
20 Attorney at Law, 19545 Northwest Von Neumann Drive,
21 Suite 200, Beaverton, Oregon 97006.

22
23 TELIGENT SERVICES, INC., RHYTHMS LINKS, INC.,
24 AND TRACER, by ARTHUR A. BUTLER, Attorney at Law, Ater
25 Wynne, LLP, 601 Union Street, Suite 5450, Seattle,
Washington 98101.

26
27 WAISP and YIPES TRANSMISSION, RICHARD J.
28 BUSCH, Attorney at Law, Miller Nash LLP, 601 Union
29 Street, Suite 4400, Seattle, Washington 98101.

30
31 COVAD COMMUNICATIONS COMPANY, by MEGAN
32 DOBERNECK, Attorney at Law, 7901 Lowry Boulevard,
33 Denver, Colorado 80230.

34
35 ALSO PRESENT:

36
37 BETH REDFIELD, Commission Staff
38 TOM WILSON, Commission Staff
39 LARRY BROTHERRSON, Qwest
40 LAURIE EIDE, Qwest
41 MICHAEL SCHNEIDER, WorldCom
42 MICHAEL ZULEVIC, Covad

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P R O C E E D I N G S

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2 JUDGE RENDAHL: Good morning, we're here
3 today on Monday, July 9th, 2001, before the Washington
4 Utilities and Transportation Commission to begin the
5 fourth workshop in Dockets UT-003022 and 003040. Those
6 are the investigation into U S West Communication
7 Compliance with Section 271 of the Telecommunications
8 Act of 1996 and U S West's Statement of Generally
9 Available Terms Pursuant to Section 252(f) of the
10 Telecommunications Act of 1996. I'm Ann Rendahl, the
11 Administrative Law Judge presiding over this proceeding.
12 And I would like to take appearances from the
13 parties at this time beginning with Mr. Kopta here at
14 the left. I would start with Qwest, but since we're all
15 interspersed around the table, if that's acceptable.
16 Mr. Kopta.
17 MR. KOPTA: Gregory J. Kopta of the law firm
18 Davis Wright Tremaine, LLP, on behalf of XO Washington,
19 Inc., Electric Lightwave, Inc., and Time-Warner Telecom
20 of Washington.
21 JUDGE RENDAHL: Thank you.
22 Ms. Friesen.
23 MS. FRIESEN: Good morning, Your Honor, Letty
24 Friesen on behalf of AT&T.
25 MR. MENEZES: Mitch Menezes on behalf of

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1 AT&T.
2 MS. DOBERNECK: Megan Doberneck, Covad
3 Communications.
4 MR. ZULEVIC: Mike Zulevic, Covad
5 Communications.
6 JUDGE RENDAHL: I'm sorry, at this point,
7 let's just limit it to the attorneys representing the
8 clients. But thank you, Mr. Zulevic.
9 MR. BUSCH: Richard Busch with the law firm
10 of Miller Nash, representing the Washington Association
11 of Internet Service Providers and YIPES Transmission.
12 JUDGE RENDAHL: Thank you.
13 MR. CROMWELL: Robert Cromwell with Public
14 Counsel.
15 MS. HOPFENBECK: Ann Hopfenbeck representing
16 WorldCom.
17 MS. HUGHES: Mary Rose Hughes with the law
18 firm Perkins Coie, representing Qwest.
19 MS. FORD: Laura Ford with the law firm of
20 Perkins Coie, representing Qwest.
21 MS. ANDERL: Lisa Anderl, in-house attorney
22 representing Qwest.
23 MR. BUTLER: Art Butler with Ater Wynne
24 representing Tracer, Rhythms Links, Inc., and Teligent
25 Services, Inc.

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1 JUDGE RENDAHL: Thank you.

2 I would also like to remind everyone that we
3 still need to talk into the microphones so that everyone
4 around the table can hear us in the room and also the
5 court reporter. So if there is a microphone close to
6 you, please talk into it when you are speaking.

7 Also this morning Commissioner Oshie has
8 joined us, and I would like to introduce Commissioner
9 Oshie to everyone in the room, and I think he walked in
10 at the perfect time to hear all of the attorneys who are
11 participating in the matter, and we're just getting
12 underway, so welcome.

13 While we were -- before we got on the record,
14 we spoke about the various preliminary matters we need
15 to address this morning. Aside from the witnesses and
16 organizing exhibits and witnesses and the start and stop
17 times, there are two petitions to intervene before us
18 this morning, that of the Washington Association of
19 Internet Service Providers and that of Time-Warner
20 Telecom. I do think we need to address those this
21 morning. The other preliminary issues are a petition by
22 AT&T to release confidential Qwest data, a requirement
23 in a recent order in Docket UT-003013 that terms and
24 conditions for microwave collocation be discussed in
25 this docket, discussing incorporation of the seven state

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1 workshop transcript on 272 issues, and to discuss our
2 state's participation in the multistate or seven state
3 performance plan workshop.

4 There was some discussion before we went on
5 the record of not discussing those last four issues this
6 morning on the merits, but to set a time to discuss each
7 of those items later on in the week when the appropriate
8 persons are available to speak on these issues. So I
9 think the first matter I would like to bring up are the
10 petitions for intervention and then set a time, set
11 times for discussing the other matters, and then discuss
12 the witness list and exhibits and our start and stop
13 times at least for tomorrow and maybe later on in the
14 week.

15 So let's get -- is that acceptable to the
16 parties?

17 MS. ANDERL: Yes, Your Honor, generally. I
18 think though that when we discuss setting a time to talk
19 about some of these issues such as microwave
20 collocation, you may hear a consensus at least from
21 Mr. Butler and myself that we can do that this morning.

22 JUDGE RENDAHL: Okay.

23 MS. ANDERL: I don't know how others feel,
24 but.

25 JUDGE RENDAHL: Okay. Well, we will take

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1 those up each at a time.

2 But first let's take up the petitions for
3 intervention first of WAISP, the Washington Association
4 of Internet Service Providers, and then Time-Warner
5 Telecom.

6 Mr. Busch, you're here representing the
7 WAISP?

8 MR. BUSCH: That's correct, thank you.

9 JUDGE RENDAHL: And briefly just if you would
10 present the reasons why you believe the Commission
11 should allow your intervention, and then I will allow
12 time for Qwest and other parties to weigh in.

13 MR. BUSCH: Certainly.

14 JUDGE RENDAHL: So go ahead, Mr. Busch.

15 MR. BUSCH: We believe that the topics we
16 would like to discuss in this hearing are relevant under
17 the 271 process. The FCC in its Ameritech Michigan
18 order, Order Number FCC 97-298 dated August 1997,
19 clearly said that they would be interested in reviewing
20 any allegations of anticompetitive behavior by any of
21 the Bell operating companies when it comes to reviewing
22 their 271 applications. If you take a look at Paragraph
23 397, the FCC says:

24 Because the success of the market
25 opening provisions of the 1996 Act

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1 depend to a large extent on the
2 cooperation of the incumbents, evidence
3 that a BOC has engaged in a pattern of
4 discriminatory conduct would tend to
5 undermine our confidence that the BOC's
6 local market is or will remain open to
7 competition once the BOC has received
8 intralateral authority.

9 We believe that we have some examples from a
10 similar situation to long distance, and that is the
11 Internet access service. Where the local telephone
12 companies have the ability through the local bottleneck
13 to interact with the customers of a competitive service
14 provider, that is Internet access service, and we think
15 that the FCC would be very interested in reviewing these
16 circumstances that we have in the testimony.

17 As far as the timing of our petition, we
18 filed the petition the following business day after the
19 board made the decision that it should seek intervention
20 in this docket, so the petition was filed promptly after
21 the time the board made the decision to file.

22 Thank you.

23 JUDGE RENDAHL: Okay, for Qwest.

24 MS. ANDERL: Thank you, Your Honor, Lisa
25 Anderl representing Qwest. We did file a written

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1 opposition to the intervention of the WAISP primarily on
2 the basis that the petition is late without good cause.
3 Under 480-09-430, a petition for intervention that is
4 filed after the prehearing conference, which in this
5 case for Workshop IV would have been I think April 24,
6 must establish good cause for the late filing. And I
7 believe if that rule is to have any meaning at all, the
8 party seeking to intervene must show something other
9 than that they simply decided at the last minute to
10 intervene, and that's what we're hearing here.

11 It may be that Mr. Busch acted promptly upon
12 the decision of his client, but I think the point is his
13 client's decision was not timely. Most of the
14 allegations that are raised in the testimony that are
15 filed in anticipation of the petition being granted are
16 not even in the year 2001, much less, you know, well,
17 they date back to 1998. And so you simply can't sustain
18 an allegation of, well, these things are very recent and
19 it only came to our attention or became meaningful for
20 us to intervene at the very last minute. That's simply
21 not true. Mr. Busch's client has been corresponding
22 with U S West and Qwest on these issues since 1998.

23 We did file responsive testimony describing
24 how we believe we had addressed some of these issues.
25 But I think the petition is late without good cause. I

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1 believe that it raises a number of issues that can't be
2 fully explored in this docket given the amount of time
3 that we have and the amount of time that Qwest has had
4 to prepare a response to the issues that are raised,
5 nearly two weeks, not even knowing that these parties
6 would intervene. And so I think that not only have they
7 not complied with the rule on intervention but that
8 Qwest is potentially prejudiced by allowing a party to
9 come in and essentially broaden the issues in this way.
10 That's not to say that some of the inquiries that
11 Mr. Busch's client would like to make couldn't be argued
12 to be relevant to the 271 process, but it's simply
13 improper to bring them up in the time and manner in
14 which they have done so, so we oppose that petition.

15 JUDGE RENDAHL: Thank you, Ms. Anderl.

16 Is there any response, Mr. Busch?

17 MR. BUSCH: Thank you. The parties have been
18 discussing their concerns for a number of years, and you
19 will see by, if you review the testimony that's been
20 submitted, there was more recent correspondence about
21 more recent activities far later than 1998, and the
22 decision to file the testimony was made after there was
23 a belief by WAISP that Qwest had not been responsive to
24 our concerns, and the time line was running out for
25 participation in this docket.

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1 So while we recognize that some of the
2 examples of inappropriate conduct that we believe are
3 inappropriate conduct took place in '98, the reason why
4 we raised the issues again is that they're continuing,
5 and we would like to address Qwest's practices and
6 policies that give rise to this conduct. And we think
7 that's appropriate for a 271 proceeding when you're
8 trying to define how the marketplace will perform after
9 Qwest is in the long distance business.

10 JUDGE RENDAHL: Thank you.

11 Are there any other parties who wish to weigh
12 in on this matter?

13 Okay, hearing nothing, I'm going to take this
14 intervention under advisement, and this afternoon I
15 will, when we come back after the lunch break, I will
16 let you know my thoughts on the petition for
17 intervention and the response.

18 MR. BUSCH: Thank you.

19 JUDGE RENDAHL: Okay, and now Time-Warner
20 Telecom, Mr. Kopta.

21 MR. KOPTA: Thank you, Your Honor.
22 Time-Warner Telecom of Washington acquired most of the
23 assets of GST Telecom of Washington at the beginning of
24 this year. They are a facilities based provider of
25 local exchange service and essentially stepped into the

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1 shoes in many respects of GST Telecom, not perhaps from
2 a legal standpoint, but certainly from a practical
3 standpoint. GST is a party to this proceeding, and so
4 although it's not exactly a successor in interest kind
5 of situation, it's very similar. And Time-Warner
6 Telecom's interests are pretty much the same as those of
7 GST.

8 Time-Warner Telecom is willing to accept the
9 record as it currently exists and wishes just to
10 participate from this point on, and at this point is
11 monitoring the proceedings. And to the extent that
12 there are issues that arise in the future, may at that
13 point take a more active role, but at this point, it's
14 just simply wishing to be a party to this proceeding.

15 JUDGE RENDAHL: Thank you.

16 Is there any response by Qwest to the
17 petition for intervention?

18 MS. ANDERL: Based on Mr. Kopta's oral
19 representations here and his written petition, Qwest has
20 no objection to this intervention.

21 JUDGE RENDAHL: Hearing that response, the
22 petition for intervention is granted for Time-Warner
23 Telecom, Inc.

24 MR. KOPTA: Thank you, Your Honor.

25 JUDGE RENDAHL: Okay, turning to the next

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1 issue, let's start with setting a time to discuss the
2 microwave collocation terms and conditions, as that
3 might be the easiest to address.

4 Let's start off, Ms. Anderl, are you
5 addressing this issue?

6 MS. ANDERL: Yes, I am.

7 JUDGE RENDAHL: Okay, please go ahead.

8 MS. ANDERL: Your Honor, after we were
9 ordered to file microwave collocation terms and
10 conditions, we drafted some language and circulated it
11 to the two parties who had expressed an interest in
12 those terms and conditions, Teligent and WinStar, both
13 of whom were represented by Mr. Butler and both of whom
14 participated in the cost docket, 003013.

15 On June 29th, we filed a fully updated SGAT
16 with the Commission, and included in that filing was the
17 new microwave collocation terms and conditions, which
18 are acceptable to Teligent and WinStar and agreed to by
19 Qwest. We also courtesy copied the folks in Docket
20 003013 with just the nine pages that contained the
21 microwave collocation terms and conditions so that they
22 could pull that out easily and look at it. And it is
23 our understanding that there is no disagreement among
24 parties to the case in the cost docket. Of course,
25 Staff is a party, and I don't know what their position

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1 is on those terms and conditions from a party
2 standpoint, but I believe we're just waiting now to see
3 if anyone else wants to weigh in or for the Commission
4 to rule on those.

5 JUDGE RENDAHL: Okay. Are there any other
6 thoughts by the parties on the microwave collo terms and
7 conditions filed by Qwest?

8 Ms. Friesen.

9 MS. FRIESEN: AT&T doesn't have an objection
10 to including microwave terms and conditions. We have
11 not had an opportunity to get those to our engineers to
12 look at to ensure that we agree with them.

13 JUDGE RENDAHL: Can you speak up.

14 MS. FRIESEN: To ensure that we agree with
15 them, so I would just ask for that opportunity to take
16 those to our engineers and then bring back to you any
17 problems that we have. I don't anticipate any, but they
18 haven't had a chance to look at them.

19 JUDGE RENDAHL: What kind of a time frame are
20 you requesting?

21 MS. FRIESEN: We could do it middle of next
22 week.

23 JUDGE RENDAHL: Any other thoughts on the
24 microwave collo terms and conditions?

25 MR. BUTLER: Let me just add that from a

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1 standpoint of Teligent and WinStar, as Ms. Anderl said,
2 we did discuss those terms and conditions at some length
3 and, you know, cooperatively agreed upon language that
4 we felt was reasonable and appropriate and would concur
5 in her comments about those terms and conditions being
6 acceptable to Teligent and WinStar.

7 JUDGE RENDAHL: Okay. I think one of the
8 thoughts that the Commission had in having terms and
9 conditions be reviewed in this docket is that there
10 might be some form of a record developed if there are
11 any issues. So if there are issues, Ms. Friesen, that
12 your engineers have on the microwave collo terms and
13 conditions, would you be requesting the opportunity to
14 file testimony or to have a brief oral hearing on that
15 issue?

16 MS. FRIESEN: Just a brief oral hearing, Your
17 Honor. And I can endeavor to get some information back
18 to Mr. Wilson, who will be here this week, to try and
19 get that taken care of if we have any at all.

20 JUDGE RENDAHL: Okay.

21 MS. FRIESEN: Just an opportunity to make
22 sure we're okay.

23 JUDGE RENDAHL: Okay. So if no party objects
24 to what Qwest has filed, given that Staff in this
25 proceeding is in an advisory role to the Commission and

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1 is not in the same role that Staff plays in the cost
2 docket, we may be able to enter a very brief
3 supplemental order addressing the issue of microwave
4 collocation terms and conditions, as it is really an
5 issue that was addressed in Workshop II. So at this
6 point, why don't we wait and see what Mr. Wilson has to
7 say about microwave collocation terms and conditions and
8 at this point bring the matter, you know, defer this
9 issue until later in the week, and then we will figure
10 out what to do with it at that point. Is that
11 acceptable to the parties?

12 MS. ANDERL: That works for us.

13 JUDGE RENDAHL: Okay.

14 MS. ANDERL: With so many issues looming, you
15 kind of feel desperate to get some just checked off
16 completely, but I think it's reasonable to give AT&T a
17 chance to look at it.

18 JUDGE RENDAHL: I believe so.

19 Okay, are there folks here who can discuss
20 AT&T's petition to release the confidential data, or do
21 we need to simply just set a time to discuss that?

22 MS. FRIESEN: We need to simply set a time.
23 I'm not the attorney dealing with that. It is the
24 attorney that will be conversing with Mr. Munn on that
25 point, and I think that's coming up with respect to

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1 public interest.

2 JUDGE RENDAHL: So because it relates to
3 public interest issues, which is something we're
4 discussing later, probably even next week, that's
5 something we can discuss later this week. Why don't the
6 parties get together at the break, either lunch break or
7 mid morning break if we have one, and let me know after
8 the break when is an appropriate time for you all to
9 bring that up.

10 MS. FRIESEN: Okay.

11 JUDGE RENDAHL: And then we will set aside a
12 certain period of time to discuss and argue the issue.
13 Will Mr. Munn be here attending the workshop,
14 or will he call in when the time is appropriate?

15 MS. ANDERL: He will be here for Monday,
16 Tuesday, and Wednesday next week.

17 JUDGE RENDAHL: Thank you.

18 In terms of incorporating the seven state
19 workshop transcript, is that an issue we need to defer
20 until the appropriate parties are here, or is that
21 something that can be discussed this morning?

22 Ms. Friesen.

23 MS. FRIESEN: That again is an issue we need
24 to defer that involves Mr. Wolters, W-O-L-T-E-R-S, from
25 our office and his discussions with Mr. Steese, so I

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1 would much prefer that you hear from them.

2 MS. ANDERL: And, Your Honor, can I get a
3 clarification, incorporating the seven state record on
4 which issues, just public interest or all of Workshop IV
5 or --

6 JUDGE RENDAHL: My understanding is it's just
7 Section 272 issues.

8 MS. ANDERL: Okay.

9 JUDGE RENDAHL: Although if that's not the
10 case, I would appreciate the clarification from the
11 parties, what issues we are trying to save time on by
12 incorporating the transcript.

13 MS. FRIESEN: It's my understanding the
14 transcript goes to 272 issues alone, and that's the
15 shortcut.

16 MS. ANDERL: Well, that's what I understood
17 as well, and it was just phrased a little more
18 generally, and so I was worried there was something I
19 didn't know about. I think, Ms. Friesen, I can make a
20 phone call today or tomorrow, and probably we can just
21 come to a conclusion on that, if that's acceptable.

22 MS. FRIESEN: Okay.

23 MS. ANDERL: I think the agreement is to
24 incorporate in its entirety the seven state transcript
25 on 272 issues.

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1 MS. FRIESEN: If I can just have an
2 opportunity to talk with Mr. Wolters today, and I will
3 touch base with Lisa and see if we can put it to bed.

4 JUDGE RENDAHL: That would be good. I do
5 have a few questions about that, and Staff may have some
6 questions about it as well. Is it the parties' intent
7 that that workshop transcript plus the filed testimony
8 on 272 issues by the parties here in Washington would
9 negate the need for any discussion on the record of the
10 issue here in Washington?

11 MS. FRIESEN: I think this is where we may
12 have a difference of opinion. I think Mr. Wolters did
13 not intend for that to obviate the need for hearing time
14 at all.

15 JUDGE RENDAHL: Okay.

16 MS. ANDERL: And I can't speak to that, but I
17 will definitely talk to Mr. Steese and try to bring back
18 at least what our understanding is.

19 JUDGE RENDAHL: Okay. Because there may be a
20 need for Ms. Strain, Staff, and myself to actually ask a
21 few questions on the record even if the parties do not
22 have any. So I just wanted to clarify what the
23 understanding was on that issue. So we will wait to
24 hear back from Ms. Friesen and Ms. Anderl about the
25 issue either later today or tomorrow.

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1 MS. ANDERL: I think our witnesses have plane
2 tickets at this time.

3 JUDGE RENDAHL: Well, that's good.

4 MS. ANDERL: So if that's your concern, we
5 have not assumed that they won't be here.

6 JUDGE RENDAHL: Thank you.

7 Okay, and the last preliminary issue that we
8 needed to talk about is our state's participation in the
9 seven state PAP or PEPP workshop on the post 271
10 performance plan. I know that Staff, there is Staff
11 here at the Commission who are actually on a phone call
12 at the moment on this issue, and they would like to be
13 here for that discussion. So I would like to defer that
14 discussion until he's here unless we should go ahead.

15 Okay, let's defer that for a while, and let's
16 talk about -- let's go off the record to talk about
17 start and stop times and organizing the exhibits,
18 because I don't think we need to belabor the record on
19 that point, so let's be off the record.

20 (Discussion off the record.)

21 JUDGE RENDAHL: While we were off the record,
22 we went through the draft exhibit list that had been
23 circulated and talked about in what order witnesses will
24 be appearing specifically today but also later in the
25 week. And it's my understanding that Mr. Allen of Qwest

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1 will not be here today but will be here at the end of
2 next week when we bring back general terms and
3 conditions. Mr. Orrel as well or Mr. Orrel will also be
4 back next week and will not be testifying today. I also
5 understand that Mr. Allen's testimony will be adopted by
6 Lynn Notarianni and Mark Routh. Is that the
7 pronouncement?

8 Ms. Bumgarner and Mr. Freeberg had filed
9 supplemental testimony on forecasting issues, and
10 representatives of Qwest and WorldCom have explained
11 that they are in the process of discussing those
12 forecasting issues off line, and they will be working
13 this week to try to resolve the issues. If they can't
14 be resolved, then we may need to bring these witnesses
15 up next week or have them testify in the follow-up
16 workshop. And Ms. Hopfenbeck and Ms. Hughes or Ms. Rose
17 will let me know what's going on as the week progresses
18 on those issues.

19 AT&T has informed us that Mr. Hydock will not
20 be here but may be available by telephone if necessary
21 to respond to questions. Ms. Balvin for WorldCom and
22 Ms. Wicks on -- Ms. Balvin for WorldCom will be
23 testifying next week on general terms and conditions
24 like Mr. Allen and Mr. Orrel. Ms. Wick's testimony from
25 WorldCom is on the same issues as Ms. Bumgarner and

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1 Mr. Freeberg, and we will hear back from the parties on
2 those witnesses. Mr. Zulevic is here, and Mr. Knowles
3 will be here next week, I mean tomorrow, excuse me. We
4 are also informed that Ms. Huynh for WorldCom testifying
5 on subloops will be adopted by another witness.
6 Mr. Busch has informed us that Mr. Holdridge for YIPES
7 Telecom will need to be added to the witness list. And
8 did I miss anything?

9 Oh, and then Ms. Eide, Ms. Eide for Qwest, is
10 here to testify with Mr. Brotherson on technical issues
11 supporting Mr. Brotherson's testimony. She will be
12 answering questions that may be directed to
13 Mr. Brotherson. And if there are documents or data on
14 which Ms. Eide is relying on, we will set times for
15 those, for that data to be provided to the other parties
16 in accordance with the Commission's procedural rules.

17 And I think that concludes the issues that we
18 talked about in terms of witnesses and exhibits. Is
19 there anything that I have missed?

20 Okay, the next issue we started discussing
21 were the SGATs that Qwest has filed, both SGAT lites as
22 we call them, which are chapters of the SGAT addressing
23 certain issues, and the entire SGAT that was filed on
24 June 29th. Maybe if Qwest would briefly describe the
25 SGATs that have been filed, that would be helpful.

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1 MS. ANDERL: Thank you, Your Honor, Lisa
2 Anderl, I will do my best. Recognizing that I have not
3 been as close to the process as some of the other
4 attorneys, I might ask Ms. Hughes for some assistance.
5 But my understanding is that on June 21st when
6 Mr. Brotherson's and Ms. Liston's testimony, each of
7 those testimonies had an SGAT lite attached as an
8 exhibit which reflected Qwest's proposals or acceptance
9 of other parties' proposals that were relatively current
10 as of the date of the testimony filing, June 21st,
11 recognizing that some things had to be cut off in order
12 for the testimony to be prepared.

13 Subsequent to that SGAT lite filing, Qwest
14 prepared and filed an SGAT lite addressing those same
15 issues on July 2nd, a week ago today, and that was based
16 on our understanding that for purposes of the workshops,
17 Staff and that the other parties wanted the most current
18 version of the SGAT lite on the topics we were going to
19 be covering reflecting agreed upon issues or revised
20 language even subsequent to the rebuttal testimony.

21 So basically that's what those two things
22 are. And then -- and those are both SGAT lite filings.

23 Now separate from the SGAT lite, Qwest
24 prepared and filed an entirely new and updated SGAT on
25 June 29th. That SGAT shows in redline format changes

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1 from the only effective SGAT in the state, which was, I
2 believe, the one that was filed in March and then again
3 in April of 2000. It became effective in June of 2000
4 after the 60 days had elapsed under the statute.
5 Qwest's understanding is that that was, that old June
6 2000 SGAT, was the only effective whole SGAT on file
7 with the Commission and felt that after a year had
8 passed, so much had changed, so much language had been
9 agreed to, so many provisions were different now that it
10 would be a benefit for all of the parties and even CLECs
11 who are not parties to have available an updated SGAT.

12 And so this updated SGAT reflects order
13 language from Washington in Workshops I and II as
14 described in the cover pleading, and it reflects ordered
15 language from other jurisdictions as well as agreed
16 language from other jurisdictions. Now obviously if
17 there was ordered language from another jurisdiction
18 that conflicted with ordered language or rule language
19 from Washington, the Washington provisions took
20 precedence.

21 But that is what that new document is, and as
22 I believe the cover pleading requests that the
23 Commission allow that to become effective after 60 days
24 as the kind of new and improved revised and wholly
25 updated SGAT. So that's kind of on a -- that's

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1 obviously still in this docket, but it's kind of
2 separate from the SGAT lites that we have filed for
3 purposes of the Workshop IV.

4 JUDGE RENDAHL: Okay, so the document that
5 was filed on June 29th has a pleading attached to it, a
6 clean copy first revision, and then a marked up redlined
7 version?

8 MS. ANDERL: That's exactly what we intended
9 to file.

10 JUDGE RENDAHL: Okay. And Qwest is
11 requesting that the Commission allow this version to go
12 into effect within 60 days?

13 MS. ANDERL: Yes, I think it's pursuant to
14 Section 252(f) of the Telecom Act.

15 JUDGE RENDAHL: Okay. Any comments on the
16 June 29th version?

17 MS. FRIESEN: AT&T objects to the June 29th
18 version for various reasons. You may recall with
19 respect to the various workshops that have taken place
20 to date, Qwest has submitted SGATs from those various
21 workshops that purport to incorporate the orders or the
22 recommended decisions of this forum. AT&T has reviewed
23 several of those, in fact, back in May. We reviewed
24 some for interconnection collocation and resale, sent
25 our comments to Qwest, and have heard nothing since

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1 then. We noted in that review that their
2 interpretations of the orders fell short of what we
3 believe full compliance with those orders were.

4 In addition, what Qwest is bringing forward
5 in the June 29th SGAT includes again its interpretation
6 of those decisions that it likes out of various forums,
7 and it's hoping to incorporate those into the SGAT.
8 Here again the parties to this proceeding, in particular
9 those that were not present in those forums, should not
10 be subject to these changes in the SGAT. The SGAT
11 should remain as pristine as it was, evolving through
12 the various workshops with the agreements reached in
13 this state and others, you know, the things that they
14 did bring forward, notify the parties, and the parties
15 had an opportunity to discuss in this forum.

16 So AT&T objects to Qwest's attempt to have
17 the June 29th SGAT put in place as a replacement for
18 what is currently there and as a replacement for those
19 agreements that were reached in this forum during the
20 workshops.

21 JUDGE RENDAHL: And your objection lies
22 primarily with the incorporation of provisions from
23 other states that don't reflect what was agreed to in
24 this state?

25 MS. FRIESEN: That's correct, and to the

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1 extent that this -- certainly at this juncture it's a
2 blind document to most CLECs. We have not had an
3 opportunity to review section by section, you know, the
4 300 page some document to determine precisely what it is
5 that Qwest has done, and those reviews are enormously
6 time consuming. In fact, the workshops are what we
7 thought the purpose of those reviews -- were the purpose
8 of those reviews, and now they have changed the
9 document.

10 JUDGE RENDAHL: I do know that I had
11 requested the company to file a full SGAT after the
12 second workshop that reflected all of the changes made
13 in the first workshop and the initial orders from the
14 second workshop. So if there is more or if there are
15 other changes that were made to the SGAT in the sense of
16 additional changes made from other states, that's not
17 exactly the -- doesn't reflect the progress within this
18 state, which is I think what we had asked to be
19 captured.

20 And so I think there's -- I understand
21 Qwest's concern in that they have got 14 states evolving
22 at the same time, and keeping track of one version
23 versus another can be daunting. But I think it does
24 create confusion to file a document that is intended to
25 track evolution in one state and in fact incorporates

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1 information from other states.

2 Do you have any response to that thought?

3 MS. ANDERL: What is being prepared right now
4 is a road map to be provided to Commission and the
5 parties, which will map the June 29th SGAT to the
6 Washington specific requirements. And so my
7 understanding is that there will be a way to tell
8 without reading the whole document which provisions
9 Qwest believes are compliant with Workshop I, compliant
10 with Workshop II, or Washington agreed language.

11 JUDGE RENDAHL: And then the other sections
12 that have not yet been addressed or not yet been covered
13 in this state, that leaves those kind of -- you're still
14 requesting though that the Commission approve those in
15 60 days; is that correct?

16 MS. ANDERL: Not approve of them, no, just
17 allow them to become effective as a matter of law, by
18 operation of law rather. And there wouldn't be an
19 affirmative approval required, and the Commission would
20 still retain jurisdiction to continue its review of
21 those provisions even after they became effective just
22 as it's doing with the originally filed SGAT.

23 MS. FRIESEN: Your Honor, I would like to
24 object to that procedure and ask that Qwest be ordered
25 to withdraw the June 29th filing. I think it is

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1 enormously difficult for us to have to review that
2 document, try and figure out what they have changed,
3 even if they provide a road map to things that they have
4 left in place and assuming all else is changed, that's
5 an enormous task. It's also not what this Commission,
6 not what you had asked for, so I would ask that it be
7 withdrawn.

8 JUDGE RENDAHL: Any other comments on the
9 June 29th version?

10 Ms. Hopfenbeck.

11 MS. HOPFENBECK: WorldCom wants to go on
12 record echoing the concerns stated by Ms. Friesen. What
13 is particularly troublesome about this filing from
14 WorldCom's perspective is are those provision that Qwest
15 has stated purport to reflect this Commission's orders.
16 And it seems to WorldCom that it is really premature to
17 do this kind of filing. I mean Qwest has, particularly
18 as to those issues that this Commission has already
19 addressed in its orders and to which Qwest has responded
20 with a compliance filing, there has been a compliance
21 filing made, there have been comments filed by many of
22 the parties in this proceeding taking issue with those,
23 and there has been no action on those filings by the
24 Commission as of this date.

25 And I think at a minimum, until that is --

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1 until this Commission takes action on those comments and
2 Qwest's compliance filing, it would be premature for the
3 Commission to allow the 6-29 SGAT to go into effect
4 knowing that issues are disputed among the parties as to
5 what is consistent with Commission orders. So we would
6 also object and request -- and ask the Commission, ask
7 Qwest to withdraw this at this point.

8 JUDGE RENDAHL: Any other comments?

9 Mr. Kopta.

10 MR. KOPTA: Thank you, Your Honor. We would
11 concur with that same sentiment. I mean certainly it
12 makes sense as we're going through this process to
13 update the SGAT to reflect agreed language in
14 Washington, and as you had ordered, any ordered
15 language, now realizing of course that there is still
16 some disagreement over whether that language
17 appropriately reflects the orders that the Commission
18 has entered in this particular docket.

19 Going outside of this process and
20 incorporating provisions from other states, whether it's
21 agreed language or ordered language, does present an
22 enormous problem from our perspective in terms of having
23 to review and track what happened in other states.
24 There is no opportunity, and I personally am not
25 participating in other states other than the multistate,

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1 and so not having an opportunity to review that language
2 or to be involved in any discussion of whether that
3 language is appropriate for incorporation into a
4 Washington SGAT I think does present us with some
5 procedural as well as substantive problems with any of
6 those provisions.

7 So while I can appreciate the need for
8 updating the SGAT and making it I suppose available in
9 its latest and greatest form for any company that wants
10 to opt into it in Washington, I don't think that it
11 should be something that is prepared with materials
12 outside of the state of Washington, and certainly with
13 respect to language that is in contention, should be
14 something that is allowed to take effect at this point
15 in time until that issue has been resolved.

16 That's why we're here is to resolve those
17 kinds of issues. And once there is agreed language,
18 once there is language that the Commission has agreed
19 appropriately reflects the order, at that point it makes
20 sense to have a new SGAT be allowed to be effective
21 pending final approval by the Commission. But prior to
22 that point in time, I think that there are too many
23 problems for any kind of interim SGAT to be effective.

24 MS. FRIESEN: Could I just make one more --

25 JUDGE RENDAHL: Ms. Friesen, and then I'm

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1 assuming Qwest will want to respond.

2 MS. FRIESEN: I just have one more
3 observation I would like to make. To the extent that
4 Qwest desires to bring things forward from other states,
5 things that have been decided, and perhaps would like to
6 sync up various provisions in the SGAT, I don't think
7 that they should necessarily be precluded from doing
8 that in this forum, but I do think they ought to present
9 them to the parties first, give the parties an
10 opportunity to agree that, yes, they should be brought
11 forward to Washington, and then submit them to you
12 rather than doing it in the way they have.

13 JUDGE RENDAHL: Ms. Anderl.

14 MS. ANDERL: Thank you, Your Honor. I think
15 that everyone agrees in principle that it's a good idea
16 to update things but have apparently some objection to
17 the process. You know, we're willing to work with the
18 parties in terms of process, but we think that the fact
19 and the principle of making a more current SGAT
20 available is really the most important thing.

21 All of the parties at this table have
22 interconnection agreements that are effective between
23 themselves and Qwest that they're apparently happy with,
24 because we're not in, that I am aware of, arbitration
25 with any of the parties for a new interconnection

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1 agreement, and they may wish to avail themselves of the
2 SGAT as a template agreement when it's final. There may
3 be other parties who are not at this table who wish to
4 avail themselves of the SGAT.

5 We believe that it is very important that
6 something that reflects all of the progress that we have
7 made in 12 or 13 states to date be available as opposed
8 to an SGAT that is a year old, which in some cases
9 doesn't even reflect the availability of some of the
10 newer products and services that Qwest has either
11 determined to offer or been required by various FCC or
12 state decisions to offer.

13 And so we think that the SGAT of June 29th
14 can kind of live harmoniously with this process. We're
15 not intending to preclude any modifications or
16 discussions that might be made during these workshops.
17 We're not trying to short circuit that process, but we
18 just feel that it is important to have the more current
19 language reflected.

20 JUDGE RENDAHL: This is something that I am
21 going to take under advisement and may bring back this
22 afternoon or tomorrow morning on the June 29th SGAT and
23 how the Commission should handle it.

24 But I do want to talk briefly about the July
25 2nd just so that I know what we have. My understanding

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1 is that the SGAT lite updates are to Ms. Liston's
2 testimony and Mr. Brotherson's testimony. Is that
3 correct? Were there any other SGAT lites filed on the
4 2nd?

5 MS. ANDERL: No, those were the only two
6 witnesses who had SGAT lites as exhibits, and it was our
7 intent that we just update those two pieces.

8 JUDGE RENDAHL: Okay.

9 MS. HUGHES: And if I may supplement
10 Ms. Anderl's statement, Mr. Orrel also had additional
11 SGAT changes as a result of his testimony and as a
12 result of other workshops, and those changes are
13 reflected in this July 2nd filing as well.

14 MS. ANDERL: But, well, I just want to be
15 clear though that those changes which were resulting
16 from Mr. Orrel's testimony, it was my understanding it
17 was still in an SGAT lite that was attached to
18 Mr. Brotherson's testimony.

19 MS. HUGHES: That is correct.

20 JUDGE RENDAHL: Okay. Well, let's go off the
21 record for a moment and talk about timing and what we do
22 today, so let's be off the record for a moment.

23 (Discussion off the record.)

24 JUDGE RENDAHL: While we were off the record,
25 we sorted out the additional exhibits for

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1 Mr. Brotherson, namely the SGAT that was filed on July
2 2nd, and added onto it are Exhibit F proposed language
3 and Exhibit I proposed language. Those have been marked
4 as Exhibits 788, July 2nd, 2001, updated SGAT sections
5 including Exhibit F and Exhibit I. Mr. Brotherson's
6 pre-filed testimony begins with Exhibit 780-T and goes
7 through his rebuttal affidavit and exhibits, so his
8 testimony at this point runs from Exhibit 780-T through
9 788.

10 Let's have Mr. Brotherson and Ms. Eide stand
11 and be sworn in, and then we will begin with your
12 presentations, and then it will likely be time to break
13 for lunch.

14 (Whereupon LARRY BROTHERSON and LAURIE EIDE
15 were sworn as witnesses herein.)
16 (The following exhibits were identified in
17 conjunction with the testimony of LARRY
18 BROTHERSON: Exhibit 780-T is Direct
19 Testimony of Larry B. Brotherson (Qwest) re:
20 General Terms and Conditions, 5/16/01
21 (LBB-1T). Exhibit 781 is SGAT General Terms
22 and Conditions (LBB-2). Exhibit 782 is
23 Exhibit F - Special Request Process (LBB-3).
24 Exhibit 783-T is Rebuttal Affidavit of Larry
25 B. Brotherson (Qwest). Exhibit 784 is SGAT -

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1 General Terms and Conditions (LBB-4).
2 Exhibit 785 is Request Application - Bona
3 Fide Request Process (LBB-5). Exhibit 786 is
4 Request Application - Special Request Process
5 (LBB-6). Exhibit 787 is Exhibit I (LBB-7).

6 JUDGE RENDAHL: Okay, Mr. Brotherson, please
7 go ahead.

8 MR BROTHERSON: Thank you. The general terms
9 and conditions section, which is the section my
10 testimony addresses, contains in large part a lot of
11 legalese, the language that is found in commercial
12 agreements, things like limitation liability or
13 assignment or severability or indemnification, these
14 types of provisions.

15 When the testimony was originally filed, and
16 I guess more appropriately when rebuttal was filed in
17 response to testimony by the other parties, we had
18 numerous either sections or subsections or sub
19 subsections of paragraphs flagged as on cases where one
20 party or another, one CLEC or another, had disagreed
21 with our proposed SGAT language.

22 Over the course of now I believe this is our
23 sixth workshop, we have closed a lot of these issues,
24 have received counter language from a CLEC, perhaps in
25 some instances offered counter counter language back to

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1 them. But in any event, have reached consensus language
2 on a lot of these types of provisions.

3 We have had areas, however, where there is
4 honest disagreement and where there is impasse between
5 the parties, and I think for purposes of my introductory
6 review, I want to go through those areas of impasse,
7 because I think this is the place where we will have the
8 most serious discussion and the issues that probably
9 will have to be addressed and resolved by this
10 Commission if we're unable to close them.

11 The first section is in 1.7. 1.7 has to do
12 with offering new products and when the SGAT is
13 permitted to go into effect where a Commission orders
14 Qwest to offer a new product or Qwest chooses to offer a
15 new product. The main issue of dispute here is in
16 1.7.2, and that has to do with how the interim rates, if
17 you will, or how the rates will be imposed while the
18 Commission is getting ready to review and decide the
19 long-term pricing, for example, of the product.

20 Section 5.16.9 deals with confidentiality of
21 forecasts. It's my understanding that that matter is
22 being worked off line, and to the extent that
23 Mr. Freeberg resolves some of those issues, is the
24 confidentiality issue part of that discussion; do you
25 know? All right then, it's not, then I would stand

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1 corrected. That issue has been at impasse between the
2 parties in previous workshops. It has to do with how
3 forecast language is used and who may have access to it,
4 and we will have discussion about that.

5 Indemnification has been an issue in Section
6 9.

7 MS. FORD: Actually, it's, excuse me, there's
8 a typo there, it's 5.9.

9 MR. BROTHERSON: Excuse me, 5.9, and
10 essentially the issue in indemnification has been around
11 a cap associated with indemnification. Currently Qwest
12 proposes a cap on the indemnification to be equal to the
13 annual billing, and the CLECs and Qwest are at impasse
14 on that issue.

15 Section 17, which is the BFR process, as well
16 as Exhibit F, the special request process, and Exhibit
17 I, which is an ICB exhibit, are all somewhat related.
18 All of the RBOCs offer a bona fide request process.
19 Qwest does as well. In addition, Qwest through earlier
20 workshops has agreed to a shorter time frame for
21 specific products which are handled through a special
22 request process, and both BFR, a bona fide request, and
23 special requests in many instances involve individual
24 case based prices, and we have impasse not around all of
25 the issues, but certainly there are aspects of the

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1 special request process, for example, that the parties
2 have not reached agreement on and we will get into more
3 detail today.

4 Pick and choose, there's not a lot of
5 language dispute, but certainly there is a dispute
6 around the concept of what are legitimately related
7 provisions that Qwest can ask to be incorporated in
8 conjunction with a particular paragraph that a CLEC opts
9 to exercise pick and choose under. And there is, of
10 course, a dispute with the CLECs over that, if not in
11 the language, in the implementation of it.

12 Section 2.2 is dealing with a change of law,
13 how do we update the SGAT when there is a change of law,
14 and more importantly perhaps is how, assuming that in
15 some instances the parties are not going to agree on the
16 interpretation of the Commission's order or an FCC
17 order, what happens in the interim while we're working
18 through that process but the law has, in fact, changed.

19 2.3 deals with conflicts between the SGAT and
20 other documents that may be generated or even a
21 Commission order and which would control.

22 Section 4 deals with definitions. In the
23 course of negotiating interconnection agreements in the
24 past, and I think it's true here in this process as
25 well, we have gone back and dealt with the definitions

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1 at the end to reflect whatever it is the parties hammer
2 out in the way of language in the course of negotiating
3 a specific section. The definitions are then intended
4 to capture the thought that was agreed to in the section
5 itself or the term as used. We have been working
6 definition issues off line. By and large we're reaching
7 consensus on most of these, and I would not expect
8 definitions to be controversial, but experience has
9 taught me to always leave open the caveat. But at this
10 point, I think the definitions are being worked off line
11 and by and large should close.

12 Section 5.1.3 is an area of impasse, and it
13 has to do with disconnection of service if it's
14 impairing the other parties' obligations to serve. It
15 has to do with the question of can you disconnect the
16 service or refuse to take new orders on a service if it
17 is, in fact, having an impact on the network, and a lot
18 of that has revolved around definitions of what's
19 serious, what's an impact on the network, that type of
20 thing.

21 Limitations of liability will be addressed,
22 and I think there's some general issues around that that
23 you might expect. There's also a provision that has to
24 do with performance assurance plans and how they
25 interrelate to a limitational liability clause, and

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1 there will be language and a discussion around that.

2 There is some open issues associated with
3 intellectual property and also the sale of exchange and
4 how that comes into play in 5.12 around assignment of
5 the agreements, and to what extent does a sale of
6 exchange impact parties under the SGAT.

7 There are disputes still in the audit section
8 language around the audits, and probably not so much in
9 process again as in scope, and what are the -- what is
10 the purpose of the audit, and to what extent can a party
11 come in, and what documents are they free to look at in
12 the course of an audit.

13 There are a couple of section 12 issues,
14 maintenance and repair, that Mr. Orrel will testify to
15 but that are generally -- the Section 12 language
16 generally has been -- has -- we have reached consensus
17 on the majority of that section as well.

18 I think the parties have done a lot of give
19 and take and have made a lot of progress, and I think
20 given the number of issues that we started out with,
21 which was a very significant list in reflecting back
22 upon the testimony, I think, you know, both sides should
23 be commended on the progress they have accomplished,
24 although we still have, as I said, honest disagreement
25 on some sections that both sides I'm sure would like to

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1 make a record on for this Commission.

2 JUDGE RENDAHL: Thank you, Mr. Brotherson.

3 Let's be off the record at this point.

4 (Discussion off the record.)

5 (Luncheon recess taken at 11:55 a.m.)

6

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

8 (1:20 p.m.)

9 JUDGE RENDAHL: We're back on the record

10 after our lunch break, and as a preliminary issue

11 carried over from this morning, we were going to discuss

12 people's thoughts on Washington's participation in the

13 seven state workshop on the PEPP issues, the proposed

14 271 performance plan. I understand we have a Mr. Steve

15 Weigler on the line from AT&T.

16 Ms. Anderl, do you or someone from Qwest wish

17 to address this issue first? I'm not sure who made this

18 request, whether it was Qwest or other parties, to merge

19 the PEPP discussion into the seven state workshop.

20 MS. ANDERL: I'm not either.

21 JUDGE RENDAHL: Okay, that's fine.

22 MS. ANDERL: And I did make some contacts

23 over the noon hour, and I think what I understand is

24 that Washington and other state commissions have been

25 considering whether they would like to throw their lot

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1 in with the seven state, and John Antonuk is presiding
2 over that additional proceeding. As I understand it, we
3 did receive a preliminary ruling this morning with a
4 time line from him. I don't, I confess, have all the
5 details on that, and I'm not sure whether there was
6 actually a formal hearing or just a teleconference this
7 morning or what. But my understanding is that Qwest
8 thinks that there would be significant efficiencies that
9 could be gained by the Washington Commission and Staff
10 by joining into this seven state process and would
11 encourage the Commission to consider doing that.

12 JUDGE RENDAHL: Based on your participation
13 or based on the discussion this morning, do you have any
14 idea of what the time line is for that workshop?

15 MS. ANDERL: My understanding is that written
16 comments will be submitted through the summer. There
17 have been a period of time reserved in case the hearings
18 officer or the parties need to present oral testimony or
19 have an actual hearing and that Mr. Antonuk has
20 contemplated issuing a final report sometime in early to
21 mid October. And I hope someone will jump in and
22 correct me if I'm misstating anything.

23 JUDGE RENDAHL: And Mr. Antonuk is the ALJ
24 presiding over the seven state workshop?

25 MS. ANDERL: Yes.

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1 JUDGE RENDAHL: Okay.

2 MR. WEIGLER: Your Honor, I have the order in
3 front of me if you want the specific dates.

4 JUDGE RENDAHL: That would be fine. And,
5 Mr. Weigler, if you would go ahead and present your
6 thoughts as well on this process, that would be great.

7 MR. WEIGLER: Sure. Why don't I start out by
8 doing that. To start out, the purpose of the PEPP or
9 Qwest's proffering of PAP is part of these public
10 interest enquiry that the Commission must make to
11 determine if Qwest has fulfilled their 271 obligations.
12 In order for the Commission, meaning the FCC, to support
13 a finding that the requirements of Section 271 have been
14 met, there has to be a detailed and extensive record
15 created by each state following the state Commission
16 conducting an exhaustive and rigorous investigation. In
17 order to do that, parties must be provided with
18 opportunities to produce evidence and arguments
19 necessary to show that the application does not satisfy
20 the requirements of 271.

21 JUDGE RENDAHL: Can I ask you to slow --

22 MR. WEIGLER: And that's an order for the
23 FCC. It's kind of what the FCC set out for states to do
24 in order to determine if the various checklist items and
25 checklist related items have been met.

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1 JUDGE RENDAHL: Mr. Weigler --
2 MR. WEIGLER: So taking that into
3 consideration --
4 JUDGE RENDAHL: Mr. Weigler.
5 MR. WEIGLER: Yes.
6 JUDGE RENDAHL: Can you just slow down a bit.
7 MR. WEIGLER: I'm sorry.
8 JUDGE RENDAHL: There is a court reporter
9 taking this down, and I think you're, while I can
10 understand you, I'm not sure the court reporter can take
11 everything down without her wrists falling off
12 eventually.
13 MR. WEIGLER: I apologize.
14 JUDGE RENDAHL: Okay, thank you.
15 MR. WEIGLER: Should I start over?
16 JUDGE RENDAHL: No, just go slower.
17 MR. WEIGLER: Okay, absolutely.
18 So taking the FCC's kind of blueprint into
19 consideration, AT&T does not take issue to building a
20 record in front of them, a multistate entity. And, in
21 fact, if that -- if this Commission, meaning the
22 Washington Commission, believes that that would be
23 efficient, AT&T takes no issue to that.
24 However, AT&T does take issue to utilizing,
25 if there's a report that comes out of that, utilizing

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1 the report for more than an independent person
2 determination of what the workshops resulted in. I
3 think in other words, the Commission has to do their own
4 exhaustive and rigorous investigation on whether the
5 public interest is met by the Qwest proffered PEPP in
6 Washington. And so once the multistate process was
7 completed, AT&T would expect that Washington would
8 engage in its own exhaustive and rigorous investigation.

9 MS. FRIESEN: And if I could just add to
10 Steve's comment, this is Letty Friesen for AT&T,
11 Mr. Antonuk is not an ALJ, he's an independent
12 contractor who has been hired to facilitate the
13 multistate process. So I think that that makes it very
14 important to sort of heed Steve's admonition or desire
15 to have the states independently look at what
16 Mr. Antonuk's report advises. It would be important, I
17 think, from a state law perspective to have it reviewed
18 by the appropriate state.

19 JUDGE RENDAHL: Are there any other parties'
20 thoughts before we go back to Qwest on having Washington
21 participate in this multistate process?

22 Mr. Kopta.

23 MR. KOPTA: Thank you, Your Honor. We share
24 many of the same concerns that Mr. Weigler was
25 expressing in terms of the need to develop a thorough

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1 review of any performance assurance plan that Qwest
2 files in the state of Washington and a review that comes
3 in the context of this state's view of the public
4 interest in the state of Washington. There were some
5 discussions in the multistate procedure in terms of how
6 to address this particular issue, whether it made sense
7 to do it in the context of a seven state or multiple
8 state collaborative, and there was some discussion about
9 some economies that could be gained by building a
10 factual record in that kind of an environment since much
11 of the testimony and other documentation or comments or
12 whatever it is that's filed would cover some common
13 issues.

14 The concern that we expressed in the
15 multistate is the same one that we have here, which is
16 that the performance assurance plan is one of the most
17 vital aspects of any SGAT or 271 compliance, because
18 it's what makes sure essentially that Qwest complies
19 with its obligations under the Act, at least at such
20 time as it's given authority to provide interLATA
21 services. So the sufficiency of that particular plan to
22 accomplish that goal is critical since they could make
23 all the promises that they want to, and if they're not
24 held to them by any enforceable or reasonably
25 enforceable standard, then they might as well not even

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1 be there.

2 So I think one of the concerns that we have
3 is making sure that there is a thorough record
4 developed, and I know that one of the problems with this
5 kind of a proceeding is that the Commission has not been
6 involved in a day-to-day kind of operation. They are
7 just given a cold record and a cold report and said here
8 are the issues that are left to be resolved, you need to
9 resolve them. And in a workshop process where many of
10 the issues fall by the wayside because they are
11 negotiated, I think that makes sense. The Commission
12 shouldn't be here in a workshop kind of environment when
13 all it is or when the main point of it is to make sure
14 that you can work out as many issues as possible and
15 have as few issues to be litigated or to be decided by
16 the Commission as possible.

17 But I think with the performance assurance
18 plan, we're really in a situation where there are going
19 to be hopefully some additional issues that are worked
20 out, but the multistate process, unless the order that
21 came out this morning is different than what was
22 proposed when we were last together, is not going to be
23 a collaborative workshop process. It's going to be
24 essentially a hearing process, although there is some
25 question as to what kind of evidence is going to be

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1 presented.

2 So I'm not sure sitting here today, because I
3 haven't seen the order, what kind of information is
4 going to be available in multistate process. But
5 certainly from our perspective, we think that there
6 needs to be an evidentiary basis for any performance
7 assurance plan, that there needs to be an opportunity to
8 address that performance assurance plan by interested
9 parties on the basis of testimony, and that there will
10 be issues that will not be agreed to that will need to
11 be presented to the Commission. And given the
12 importance of this issue, it's our feeling that that
13 ought to happen in front of the Commission as opposed to
14 in a multistate process.

15 That having been said, there may be some
16 economies of presenting a record in a multistate
17 process. I'm not convinced personally that that's going
18 to happen. We certainly will participate if that's the
19 way that this Commission decides to go, but our
20 recommendation would be to have the proceeding here in
21 Washington, because it's a plan that needs to be
22 specific to the needs of customers and competitors in
23 Washington, not some one size fits all plan that is
24 going to be adopted throughout seven or eight or however
25 many multiple states that are reviewing this in this

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1 multistate process.

2 JUDGE RENDAHL: Thank you.

3 Ms. Doberneck, I believe.

4 MS. DOBERNECK: Megan Doberneck with Covad.

5 Generally speaking, to the extent that the multistate
6 process builds in adequate safeguards as far as an
7 ability to build an adequate evidentiary record, Covad
8 certainly supports that, if for no other reason than we
9 have limited resources and would prefer to try and
10 devote them to a forum where we can accomplish something
11 that would have broad effect, broad impact, and would
12 assist us in accomplishing our objectives through this
13 process.

14 That being said, I would certainly concur
15 with the comments of Mr. Kopta and AT&T, that we don't
16 feel comfortable saying that one plan will fit the needs
17 for each individual state, and that there should be some
18 mechanism built in to allow this Commission to address
19 and resolve those issues upon which the parties can't
20 reach agreement or which require further additional
21 evidentiary record in order to make sure that the
22 performance assurance plan is adequate for this
23 particular state. But I do think that being involved in
24 the multistate process can certainly go a long way to
25 resolve a lot of issues that may still be outstanding

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1 with regards to the performance assurance plan. I think
2 it's been fairly successful so far, but there is some
3 appropriate tailoring, there's some tailoring that needs
4 to go on before, for example, this Commission should
5 endorse it.

6 JUDGE RENDAHL: Thank you.

7 Mr. Busch.

8 MR. BUSCH: Thank you, Your Honor. The
9 Internet Service Providers Association would not have
10 any objections to participation in the seven state
11 process, but we would also like to make sure that there
12 is some type of a local review as well of Washington
13 specific issues by the Commission.

14 Thank you.

15 JUDGE RENDAHL: Mr. Cromwell, did you want to
16 weigh in? I'm not --

17 MR. CROMWELL: Yes, thank you, and I
18 apologize for coming late. I think I have an idea of
19 what the issue is. I certainly concur with the comments
20 I have heard regarding this from Mr. Kopta. I share
21 Ms. Doberneck's concerns, although I think our concern
22 is maybe inverted in that from a resource standpoint,
23 it's much easier for us to participate in a Washington
24 proceeding than it is to try and send someone to Denver.
25 Ms. Kimball of our office will be sort of taking point

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1 on these issues for us, and I frankly don't know whether
2 or to what degree we would be able to have her
3 participate in an out-of-state proceeding. I confess I
4 delight in not being that close to the budget issues.

5 But I think that our fundamental perspective
6 is that due process would require some form of
7 Washington proceeding which would allow for the
8 introduction of evidence, the review, and possible
9 rebuttal of what Qwest presents as well as if the
10 Commission decides to participate in a multistate
11 proceeding, presumably in the same role as it has,
12 sorry, I'm speaking of Commission Staff, assuming
13 Commission Staff participates in such a proceeding in
14 the same manner as they have so far, we may wish for the
15 opportunity to comment on, agree with, or oppose
16 positions that Commission Staff may develop in a
17 multistate out-of-state proceeding. And I suppose my
18 own concern as far as public counsel goes really
19 revolves around the due process ability to really review
20 what Qwest brings forward in this state by the PEPP.

21 JUDGE RENDAHL: Just to respond to that one
22 point, Commission Staff is in an advisory role here in
23 this matter, which means they don't take an independent
24 position advocating a role before the Commission. They
25 are advising me and the commissioners on these issues.

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1 So to the extent that Staff would take a position in a
2 seven state, I'm not sure that that would necessarily be
3 the case.

4 MR. CROMWELL: I'm not either.

5 JUDGE RENDAHL: So just so that we're clear
6 on that.

7 Are there any other parties that wish to
8 weigh in on this issue? Ms. Hopfenbeck is not here yet,
9 I notice, but, Ms. Anderl, do you have a response on
10 this?

11 MS. ANDERL: I do, Your Honor, thank you.

12 But before I do, may I ask Mr. Weigler to give us the
13 details of the procedural order in terms of the timing
14 that was received from Mr. Antonuk this morning.

15 JUDGE RENDAHL: Mr. Weigler, are you there?

16 MR. WEIGLER: Yeah, it's fading in and out,
17 but I can basically hear.

18 JUDGE RENDAHL: We will try to all speak into
19 our microphones; does that help?

20 MR. WEIGLER: That does help, thank you.

21 JUDGE RENDAHL: Okay.

22 Mr. WEIGLER: On June 29th, Qwest filed its
23 PEPP comments, and it says MPG final documentation and
24 affidavit. I take it that was the MPG report that
25 through the informal workshops that MPG put together.

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1 On July 27, 2000, participants are to file responses to
2 the Qwest filing including verified comments or
3 testimony addressing all matters that they consider to
4 be necessary to make an appropriate record for the
5 Commission. On August 3rd, 2001, there will be a
6 prehearing phone conference for the purpose of
7 identifying those issues or matters that can be decided
8 on the record created by the Qwest and the responsive
9 filings and for determining those issues that require
10 cross-examination and submission of responsive
11 testimony. On August 14th through 17th, there is a
12 first scheduled hearing date, and it indicates that
13 would be for Qwest's case and for as much of the cases
14 of other parties as can be accomplished. On August 27
15 through 29, there is a second round of hearings.

16 JUDGE RENDAHL: Hello, is someone calling in
17 on the bridge line?

18 MR. DIXON: Yes, this is Tom Dixon from
19 WorldCom.

20 JUDGE RENDAHL: Welcome, Mr. Dixon, this is
21 Ann Rendahl, Administrative Law Judge. Welcome back to
22 Washington.

23 MR. DIXON: Thank you. I was just checking
24 in on the status of the PAP or the PEPP, and it was
25 suggested I might call in to monitor.

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1 JUDGE RENDAHL: Well, that's what's going on
2 right now. Mr. Weigler from AT&T is just relating to us
3 the details of the dates, in fact, and what needs to be
4 filed in the seven state process.

5 MR. DIXON: Thank you, I won't involve myself
6 any further. I will just listen. I appreciate it.

7 JUDGE RENDAHL: Okay, thank you.

8 MR. WEIGLER: I was at August 27th through
9 29th of 2001. There is a second round of hearings, if
10 necessary, for completion of other parties' cases and
11 witnesses in addressing of issues raised at the first
12 hearings. Then the briefing day would be as late as
13 September 12, 2001. That would be 14 days from the last
14 hearing date. September 19, 2001, last day for reply
15 briefs. The need for reply briefs will be addressed at
16 the close of hearings. They would be due within seven
17 days of the filing of main briefs. And the
18 facilitator's report would be due to the Commission on
19 October 12, 2001.

20 Your Honor, there is just one other thing I
21 would want to comment on, if possible.

22 JUDGE RENDAHL: Please go ahead.

23 MR. WEIGLER: I think Ms. Doberneck commented
24 that there may be some things that could be -- or hinted
25 that there may be some things that could be worked out

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1 in a kind of a workshop or conciliatory fashion.
2 Attending, being an active participant in both the
3 informal workshops and attending the last prehearing
4 conference in front of Mr. Antonuk for the multistate,
5 it's my understanding that Qwest has not agreed to do
6 any more conciliatory kinds of discussions on the PEPP
7 and that the whole purpose of this PEPP would be or this
8 process would be to bring any disputes, and we have
9 identified 20 to 21 so far and I think there's at least
10 a couple more to identify, that any disputes would be
11 brought in front of the commissions for their
12 determination and that the record would be built in
13 front of Mr. Antonuk. But by no means did Qwest
14 indicate that they would be willing to have any workshop
15 or any of that type of give and take, that this is the
16 path they're putting forward and that they want a
17 determination that either it meets the public interest
18 tests or it doesn't. And I think the filing supports
19 that, but, of course, Ms. Anderl can comment on that.

20 JUDGE RENDAHL: Before we go to Ms. Anderl, I
21 would like to give Mr. Dixon an opportunity to weigh in.
22 Mr. Dixon, we have heard thoughts from AT&T and
23 Mr. Kopta's clients and Ms. Doberneck from Covad and
24 Public Counsel as well as the Washington Association of
25 Internet Service Providers through Mr. Busch. What is

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1 WorldCom's perspective on whether Washington should
2 participate in the seven state workshop and the benefits
3 of pursuing participation in that forum rather than just
4 addressing the PAP or PEPP plan here in Washington
5 state?

6 MR. DIXON: And, Judge, just as a favor, is
7 it possible to give me a summary of where you're at on
8 that from the other parties' perspective? I apologize
9 for being late, but I got hung up on another call.

10 JUDGE RENDAHL: Well --

11 MR. DIXON: Is there a direction that's going
12 by the majority of the people?

13 JUDGE RENDAHL: Well, I would say that in
14 general what I have heard, and parties can correct me if
15 I'm wrong, but I am hearing parties say there is some
16 benefit to consolidating the matter into the seven state
17 workshop and addressing some of the issues there, but
18 also concern that there may be matters that should be
19 resolved here in Washington state and that there are
20 certain state specific issues that should be addressed
21 here, that addressing issues here in Washington state
22 would be beneficial to some and not beneficial to
23 others. So I'm hearing some benefit both ways.

24 MR. DIXON: Fine, I appreciate that. The
25 reason I asked that question is WorldCom has no specific

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1 preference whether it be done in a multistate or in
2 Washington. I can not address Washington specific
3 concerns, because as you probably know, I have not
4 really handled the Washington proceeding, and I do not
5 know if there are specific unique Washington concerns
6 that have been identified by other parties. But I am
7 not familiar with them, quite frankly.

8 Our concern is to get it addressed somewhere.
9 From a resource allocation perspective, handling it
10 through the multistate process which has a process
11 established is fine with WorldCom. Frankly, that will
12 probably be held in part in Denver, which also makes it
13 easier for WorldCom and people located here. But our
14 real issue is getting it addressed somewhere. If
15 Washington chooses to do it separately, we will
16 participate at that level. If you do it in a
17 multistate, we will likely participate at least for
18 purposes of the performance assurance plan in a
19 multistate proceeding on a more active basis than we had
20 on checklist items.

21 So I don't know that we have a particular
22 preference, and I agree that both positions seem to have
23 merit. We will just do whatever the Commission chooses.

24 JUDGE RENDAHL: Thank you, Mr. Dixon.
25 Ms. Anderl.

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1 MS. ANDERL: Thank you, Your Honor. And
2 there have been quite a lot of comments that have been
3 made, and I don't know that we really have the time or
4 the need to respond to all of the comments.

5 Let me just say generally though that to the
6 extent that any parties are characterizing this as
7 really the first opportunity to take a look at this
8 performance assurance plan, that is incorrect, and I do
9 want to make it clear that there have been workshops
10 ongoing since last year. I believe there were a total
11 of five with the last one held, I think, if I recall
12 correctly, in May of this year, wherein the parties have
13 resolved a substantial number of issues with regard to
14 what the performance assurance plan should look like.

15 And there are a few remaining disputed
16 issues. As I recall, there are maybe four or five main
17 areas of disagreement. It may be that as you break
18 those areas out into specific issues, it does come up to
19 20 or 25 as Mr. Weigler said. I'm not aware of what
20 exactly that list is, but I think that a substantial
21 number of issues have been resolved in connection with
22 the performance assurance plan, and I don't think that
23 the remaining disputed issues are going to vary from
24 state to state. They really have to do with questions
25 that are going to apply in the performance assurance

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1 plan regardless of what state it is effective in.

2 And so I don't want the impression left that
3 we somehow need a lot of process or a lot of workshops
4 to take this document from beginning to end and start
5 going through it for the first time, because that's been
6 substantially accomplished, I believe, in the workshops
7 to date.

8 Now as to the question of can the Commission
9 rely on a record created in the seven state or does
10 something separately need to be done, you know, we at
11 Qwest are concerned with the resource allocation as well
12 from both the Commission Staff's perspectives and the
13 other parties and our own witnesses. If it works for
14 the Commission to participate in the seven state
15 workshop, and I don't know what type of due process
16 concerns that Mr. Cromwell has. He raised them
17 generally. I'm not sure that a determination has been
18 made as to what process is due in this case. But to the
19 extent that the Commission's practical and legal
20 concerns are addressed, I think there would be
21 significant efficiencies to be gained, because we are
22 essentially going to be looking at the same document for
23 all of the states with maybe some very, very minor state
24 specific differences.

25 However, to the extent that the Commission

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1 wants to conduct a separate proceeding, we would not
2 object to that. What we would only ask is that because
3 the seven state time line has been set up and we think
4 it's a realistic and achievable time line, that if
5 Washington were to want to conduct a separate parallel
6 process that the same type of time line be maintained so
7 that we would anticipate some sort of a report in the
8 September, October time frame.

9 And it may be that it's appropriate to do
10 something that is bifurcated in the sense of getting a
11 factual record during the seven state process but
12 issuing a separate Washington order. I don't know, it
13 may be that we ought to take this issue back to our
14 respective clients and talk about it some more later
15 this week. I know that the attorney for Qwest who is
16 the lead on the performance assurance plan, Lynn Stang,
17 is not in the office today. She is in Washington D.C.
18 And it may be that she can give me some additional
19 perspective now after having received Mr. Antonuk's
20 order, and we may have some additional light to shed on
21 how it might work later in the week.

22 JUDGE RENDAHL: Just to clarify, would Qwest
23 object to, if Washington did participate in the seven
24 state workshop, would Qwest object to then having that
25 order that comes out from Mr. Antonuk or the report or

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1 whatever it is called, having the Commissioners here
2 review that document for anything that they didn't, you
3 know, for any problems that they perceived in that
4 document, given that it's the equivalent of having an
5 administrative law judge for seven or more states put
6 together an order that then is in a sense subject to
7 review by, you know, if it were in one state, it would
8 be subject to review by the full Commission. I guess
9 I'm wondering how, not participating in the seven state
10 workshop, I'm not sure how each of the states deal with
11 the equivalent of an initial order.

12 MS. ANDERL: And I think that some of the
13 other folks who have been in the seven states might be
14 able to shed some light on that, but if what you're
15 asking is if Washington participates in the Antonuk
16 proceeding, for want of a better term.

17 JUDGE RENDAHL: Thank you.

18 MS. ANDERL: Would it be acceptable to Qwest
19 for the Washington Commission to treat the Antonuk
20 report as an initial or a recommended decision and then
21 have some sort of process subsequent to that and a
22 Washington Commission final order on that topic.

23 JUDGE RENDAHL: Correct, that's my question.

24 MS. ANDERL: If that's the question, I think
25 the answer is, no, we don't object to that. I want to

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1 triple check that with the lead attorney, but Ms. Ford
2 is indicating to me that that is actually the way it's
3 working in the seven states, that each state is ruling
4 separately on the issues or contemplated to rule
5 separately on even on the workshop issues, I mean not --
6 I mean even on the checklist items.

7 MS. FRIESEN: There are a couple of things I
8 would like to add to what Lisa has said. When
9 Mr. Antonuk issues an order in the workshop context, he
10 is not looking at state specific law. He is not looking
11 at state specific issues necessarily. He issues his
12 resolutions. Then the parties are given an opportunity
13 to comment. And our comments really are directed to the
14 commissions, so we give them written comments on his
15 reports. And then the Commissions will hold oral
16 arguments, if necessary. But they will have an
17 additional opportunity for some input from the parties
18 related specifically to the individual state and
19 Mr. Antonuk's resolution.

20 JUDGE RENDAHL: And then each state will
21 issue their own final order?

22 MS. FRIESEN: Right.

23 JUDGE RENDAHL: Okay.

24 Is there anything further from the parties at
25 this point on this issue?

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1 MR. CROMWELL: Judge Rendahl.

2 JUDGE RENDAHL: Mr. Cromwell.

3 MR. CROMWELL: As Ms. Anderl has outlined it,
4 I certainly don't have a problem with the Commission
5 participating in the seven state process. My concern
6 would be that if a party does not participate in that
7 process, what opportunity for presentation of evidence
8 to this Commission would there be procedurally? If
9 Mr. Antonuk issues a resolution, that parties can then
10 file a comment or brief type document on perhaps
11 asserting a position regarding that on a number of
12 issues. But if there is evidence that a party wishes to
13 introduce in support of its position regarding those
14 issues, how would that take place unless there were some
15 Washington specific review process?

16 JUDGE RENDAHL: Obviously I don't have the
17 answers to that, but I think that's a very good
18 question, and I don't know if other parties here who
19 have participated in the seven state may weigh in on
20 that.

21 Ms. Doberneck, I'm sorry, I'm still working
22 on your name.

23 MS. DOBERNECK: You're doing a very good job,
24 and I'm very impressed. Most people fail miserably.

25 One thing just to respond generally, because

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1 it seems to be a generalized concern about how we work
2 with this. Colorado, for example, has taken what was
3 used as the ROC PAP and then conducted in a very
4 informal manner individualized meetings with CLECs, with
5 Qwest, and has sort of developed its take on the PAP.
6 And so to the extent this Commission would like to
7 investigate other ways, for example, to accommodate
8 Washington specific issues or to verify to its own
9 satisfaction that the PAP does, in fact, accommodate
10 needs and demands of CLECs in this particular forum as
11 well as the concerns of the Commission, I think the way
12 Colorado has proceeded might provide a very good example
13 of using what has already been done and yet then
14 modifying it for that particular state.

15 JUDGE RENDAHL: Thank you.

16 Ms. Anderl.

17 MS. ANDERL: Yes, Your Honor, I would just
18 suggest that as one way to address Mr. Cromwell's
19 concerns too is that there are a number of participants,
20 to my understanding, in the seven state process who also
21 find it difficult or expensive or inconvenient to travel
22 to one or more of these workshops. And as I understand
23 it, there is an excellent audio system set up for
24 telephonic participation. And to the extent that there
25 may be more than one occasion to be in Denver that

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1 public counsel either couldn't do or didn't want to for
2 whatever reason, I think that your participation
3 wouldn't necessarily be precluded by an inability to
4 travel on a particular date, because I think the audio
5 has been pretty effective.

6 JUDGE RENDAHL: Thank you.

7 MR. CROMWELL: Playing ping pong here.

8 Actually, after hearing the schedule from Mr. Weigler,
9 my growing concern is how do I respond by the 27th
10 including filing testimony to something I don't yet have
11 and effectively won't have an opportunity to spend time
12 looking at until we're done with this workshop next
13 week. I mean it's fairly -- we certainly see the PAP as
14 over the long haul one of the more important documents
15 that are going to come out of this process. And in
16 essentially less than three weeks, what will be at the
17 end of this workshop, middle of next week, less than two
18 weeks, attempting to review formulated position, draft
19 of testimony, develop a witness, retain a witness,
20 getting that done in that time frame seems near
21 impossible.

22 JUDGE RENDAHL: Well, thank you, and I
23 understand that. This is something that obviously is
24 not for me to decide. I will bring this up to the
25 commissioners and ask them how they wish to proceed, and

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1 I will do that as soon as I can and let the parties know
2 what the resolution is. So thank you for your input,
3 and we will relay all of it and see what happens.

4 Okay, moving on to the next issue concerning
5 the WAISP intervention, in thinking about the request
6 for intervention over the noon hour -- I think everybody
7 has left the bridge line. They're not interested,
8 sorry, Mr. Busch.

9 MR. BUSCH: I won't take it personally.

10 JUDGE RENDAHL: I guess one of the thoughts I
11 had is if you can explain why the intervention and
12 testimony is appropriate in this workshop just very,
13 very briefly. Because I don't believe it was stated
14 very clearly in the petition for intervention.

15 MR. BUSCH: Very well, thank you. As a part
16 of the public interest analysis, the Commission is
17 interested in hearing about conduct that is believed to
18 be anticompetitive or discriminatory in light of any
19 RBOC's ability to control the local loop, the
20 bottleneck. And what the Internet service providers
21 have experienced over the past several years are a
22 recurring series of orders placed with Qwest or U S West
23 at the time for DSL service where the Internet access
24 service that's related to the DSL was initially intended
25 to be connected to an independent Internet service

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1 provider, but instead it ended up being installed at U S
2 West.net or Qwest.net. So we have examples of what we
3 believe to be are Qwest employees taking an order for
4 Internet access service for one of our member
5 organizations and then redirecting it over to Qwest's
6 service.

7 JUDGE RENDAHL: Okay, so you believe that
8 this is related more to an emerging services or loop
9 issue than it is to -- I guess what I'm trying to get a
10 sense of is this is not related to the FCC's order on
11 Internet service provider, it's not that issue having to
12 do with reciprocal compensation and ISP.

13 MR. BUSCH: Correct.

14 JUDGE RENDAHL: Okay.

15 MR. BUSCH: This is unrelated to ISP
16 reciprocal comp.

17 JUDGE RENDAHL: Okay. But you believe it's
18 related to the Commission's evaluation of Qwest's
19 compliance with 271 issues on loops and emerging
20 services.

21 MR. BUSCH: Frankly, I perceive it as more
22 tied up in the public interest analysis. It's not one
23 of the checklist items. It's the last analysis that the
24 Federal Communications Commission expects from the state
25 commissions. And listening to the discussion this

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1 afternoon about whether a Washington commission should
2 participate in a seven state process or hold hearings
3 separately or in addition to the seven state process, I
4 think our concerns are best dealt with in that type of a
5 proceeding. And if it is separate from Workshop IV,
6 then we don't have any concerns about our issues being
7 taken up at a different time as a part of the public
8 interest analysis.

9 JUDGE RENDAHL: Well, I think the public
10 interest analysis will be dealt with here in this
11 workshop, and I think the post 271 performance plan
12 issues are a separate issue. And whether they're dealt
13 with in the seven state workshop or here in Washington
14 in a separate workshop, that's yet another issue.

15 I guess one of the questions I had is, is
16 this an issue that, perhaps since Public Counsel
17 supported the intervention, is this something that
18 Public Counsel can properly support the testimony for or
19 adopt your witness? I'm concerned about expanding the
20 issues presented here in the workshop, and yet don't
21 want to not have the issues presented. It seems
22 appropriate, but I am concerned about the late
23 intervention and the lack of, you know, Qwest's
24 opportunity to respond through testimony appropriately.
25 And so I'm trying to evaluate this, and that's why I'm

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1 asking you these questions.

2 MR. BUSCH: I understand. Listening to your
3 questions, I'm wondering if I should provide you with a
4 couple more comments about how Internet service
5 providers interact with Qwest. Internet service
6 providers don't order loops or sub loops. They order
7 DSL service on behalf of an end user. For example, if
8 you were to subscribe to DSL service at your home, you
9 would need to choose a DSL provider. It could be Covad,
10 it could be Qwest, or any other provider of DSL service.
11 You also would be required to choose an Internet service
12 provider if you ordered Qwest's DSL service. And most
13 of our members who use DSL service rely upon Qwest as
14 the provider of that DSL service.

15 When an Internet service provider signs up a
16 customer for DSL service, the ISP will generally place
17 the order with Qwest. And once the order has been
18 placed with Qwest, we have several examples of the order
19 being installed, number one, with Qwest's DSL service,
20 but number two, with that DSL service being directed to
21 Qwest.net or U S West.net and not to one of the ISP
22 association's members as it was ordered.

23 JUDGE RENDAHL: Okay. Well, I think this
24 goes -- I mean this goes into the testimony that you're
25 intending to offer.

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1 MR. BUSCH: That's correct. I understand
2 you're struggling with --

3 JUDGE RENDAHL: Qwest, do you have,
4 Ms. Anderl or Ms. Hughes or --

5 MS. ANDERL: That's me.

6 JUDGE RENDAHL: Okay. Do you have a brief
7 response?

8 MS. ANDERL: Yes. I think that you have
9 correctly identified some of the difficulties with both
10 the timing and the subject matter that the WAISP wants
11 to address. Now I would hate to go on the record and
12 have the people I work for in Denver hear me invite the
13 WAISP to file a retail complaint against us, but it does
14 seem as though the issues that they raise are more
15 particularly that. They are not really wholesale
16 related issues.

17 The ISP members are not telecommunications
18 carriers, unless I miss my bet. Some of them may be
19 both, but I'm not aware that any of these ISPs are
20 carriers. The WAISP association is certainly not a
21 telecommunications carrier. It does not have an
22 interconnection agreement with Qwest and is really at
23 best raising potential issues with regard to the
24 potential, and I say not actual, discrimination in how
25 Qwest provisions its retail service. Internet service,

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1 Internet access service is not a telecommunications
2 service.

3 The only telecommunications service that
4 we're talking about here is Qwest's DSL, also a retail
5 service. But as Mr. Busch agreed, they, the ISPs, are
6 not seeking to offer DSL, the telecommunications
7 service, or to purchase loops from Qwest in order to do
8 that themselves. And so the issues are not really
9 related to 271 or emerging services or even the public
10 interest, in my view.

11 We have tried to work informally off line
12 with the WAISP to address their issues. As I mentioned,
13 we have been aware of their issues for some time. We
14 just simply feel very disadvantaged in being able to
15 respond on short notice to issues that are now attempted
16 to be characterized as 271 related, wherein the
17 allegations are serious, but the factual underlying
18 facts are not sufficiently detailed, and perhaps because
19 there was not time to do so, for us to really even
20 investigate or respond. And we really think that these
21 issues to the extent that there are any legitimate ones,
22 and we would be very concerned if there were, would best
23 be handled in a context outside of this proceeding.

24 JUDGE RENDAHL: Thank you.

25 Mr. Busch.

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1 MR. BUSCH: Yes, thank you. The challenge we
2 have and the reason why we're coming to you so late is
3 that we have talked to the senior legal advisor to an
4 FCC commissioner about these concerns, and they
5 expressed great interest in the first instance of what
6 they perceived to be slamming when it comes to Internet
7 access service. The feedback we have is that the
8 Commission will look first to the 271 process to see if
9 any complaints have been made or registered during the
10 271 process. And in the absence of any complaints
11 there, the FCC will assume that there are no problems in
12 the marketplace. So we were first encouraged to take
13 this to the 271 process.

14 The other alternative we had was the formal
15 complaint process with the FCC. And for cost reasons,
16 that is prohibitive for the membership to file a
17 complaint in Washington D.C. and to try to litigate that
18 through Washington D.C.

19 So based upon the informal feedback we have
20 received from a senior Commission Staff person, we feel
21 like this is perhaps the only opportunity we have to
22 bring these issues to light, which are directly relevant
23 to and expressly stated in the FCC's public interest
24 analysis.

25 JUDGE RENDAHL: Mr. Cromwell, do you have any

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1 thoughts on my suggestion that this might be related to
2 a public interest issue that Public Counsel may be
3 interested in?

4 MR. CROMWELL: Yes, I have. I think I agree
5 with what appears to be your sort of initial analysis,
6 that it may implicate the public interest. My
7 procedural concern would be as an effective matter how
8 do I adopt or propound the testimony that's been
9 submitted and essentially defend the cross-examination
10 of that witness either here next week or in some other
11 process the Commission might envision. When I reviewed
12 the motion to intervene and the testimony that Mr. Busch
13 filed, my quite frank impression was that this seemed
14 relevant to the issues around how Qwest is relating to
15 its customers, whether or not they are a CLEC or not.
16 We certainly traditionally view our role as representing
17 residential and small business customers. Some of the
18 members of WAISP are, in fact, small businesses who we
19 would see as our mission to represent their interests
20 before the Commission when they're not actually
21 represented by someone. So I guess I'm a bit concerned
22 about the practical implications of your suggestion.

23 JUDGE RENDAHL: I understand that.

24 MR. CROMWELL: I think as to the substance of
25 the allegations, I think they very clearly do implicate

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1 the public interest analysis that this Commission will
2 have to engage in if there are a preponderance of facts
3 that are established before the Commission that Qwest is
4 engaging in anticompetitive behavior. I think that's
5 clearly relevant to a public interest analysis and a
6 ruling that this Commission will have to make on that
7 point.

8 JUDGE RENDAHL: Having heard all the parties'
9 comments on this, unless there are -- is there anyone
10 else who would like to weigh in on this before I make a
11 ruling?

12 MS. ANDERL: Well, I guess the only other
13 thing I would add, Your Honor, is that the issues that
14 Mr. Busch wants to address are not in my view related to
15 long distance entry either, which is I mean essentially
16 what we're talking about when we're talking about public
17 interest. Is Qwest's entry into intralateral long
18 distance in the public interest. And I think that the
19 linkage he has tried to make on that is tenuous at best.
20 And so even if there were anticompetitive behavior
21 established, which we adamantly deny, it's not in the
22 area of service or business in which the Commission is
23 charged to consider, which is, is it in the public
24 interest to get it -- elect Qwest into intraLATA. So I
25 think that connection is tenuous at best and kind of to

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1 the extent that -- well, I will close my remarks there.

2 JUDGE RENDAHL: Okay, thank you.

3 Is there someone who has just entered in on
4 the bridge line?

5 Okay, having heard all the parties' remarks,
6 I am concerned that WAISP does have a very narrow issue
7 in this proceeding, and I'm concerned that we don't
8 widen the topic of public interest beyond that which the
9 Commission is supposed to look into under the Act.
10 However, I am also aware, not just from Mr. Busch's
11 presentation, but from my own involvement in this
12 process, that it is important for the State to document
13 allegations of anticompetitive or other problems with
14 Qwest's providing various services, and that it is the
15 State's job to document those and the FCC's job to
16 decide whether, in fact, ultimately that does pose a
17 problem. And in the -- and in terms of Washington State
18 fulfilling its role in gathering information and making
19 preliminary recommendations to the FCC, I think it is
20 incumbent upon us to document what we can.

21 And it is also under the Commission's rules,
22 which I evaluated at the break, if after -- if I do
23 allow WAISP in and after hearing the evidence and
24 reviewing it determine that it really, in fact, is not
25 appropriate as a part of this process, I can then

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1 dismiss WAISP from the proceeding and indicate that this
2 is not an issue for 271. But at this evidence gathering
3 stage, at this point, I am allowing a limited
4 intervention for WAISP to discuss this issue of DSL
5 slamming, for lack of a better term. And if I determine
6 later that this is truly not a 271 issue, then the party
7 may be dismissed. Thank you.

8 I'm sorry to take up so much time this
9 morning and this afternoon for preliminary issues, but I
10 think they're all necessary as we go through this
11 process.

12 So let's proceed now where we left off right
13 before lunch going back to Mr. Brotherson unless there
14 are any other issues we need to turn to. Let's turn to
15 Mr. Brotherson and Ms. Eide and start discussing various
16 issues. I guess we have an issues list circulated by
17 Qwest that we can start with.

18 Ms. Ford or Ms. Hughes, if you can explain to
19 us just briefly on the document, when it says issue
20 number, I guess G refers to general terms and
21 conditions. Is that the acronym?

22 MS. FORD: Yes, and these issue numbers
23 really began in Arizona, moved to Colorado, to the seven
24 states, and we have tried to keep them consistent.

25 JUDGE RENDAHL: Okay. So from this issue

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1 list, this issue list itemizes what Qwest believes are
2 the remaining impasse issues on general terms and
3 conditions?

4 MS. FORD: Yes.

5 JUDGE RENDAHL: Okay. To the extent that
6 other parties believe there are issues that have not
7 been resolved that are not included on this list, as I
8 mentioned this morning, please bring them up and discuss
9 them as we go along.

10 So let's start then with issue G-5 and NG-22,
11 should the rates, terms, and conditions for new products
12 be substantially the same as the rates, terms, and
13 conditions for comparable products and services that are
14 contained in the SGAT. Do the parties wish to let Qwest
15 go first or that the CLECs go first to present their
16 arguments on this?

17 MS. FORD: This is an AT&T issue, and I think
18 they might go first on this one.

19 MR. SCHNEIDER: Can I make a comment, please?

20 JUDGE RENDAHL: Mr. Schneider.

21 MR. SCHNEIDER: Thank you. The SGAT
22 reference is 1.7.2, is that supposed to be in the July
23 2nd SGAT lite?

24 MS. FORD: It is not. It was in an AT&T
25 exhibit.

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1 MR. SCHNEIDER: Do you have that exhibit
2 here?
3 MS. FORD: Do I have it, yes.
4 Can you explain that?
5 MR. MENEZES: I can explain the language.
6 And I have one hard copy, which I can copy later. It's
7 a fairly brief paragraph. But before describing the
8 paragraph, we probably should describe, excuse me, the
9 paragraph that AT&T is proposing, we should talk about
10 what 1.7.1 does or is intended to do.
11 JUDGE RENDAHL: Mr. Menezes, just to
12 interrupt briefly, if we look at Mr. Brotherson's
13 Exhibit 788.
14 MR. MENEZES: Yes.
15 JUDGE RENDAHL: Which by the way we haven't
16 admitted. Are there any objections to admitting
17 Mr. Brotherson's exhibits?
18 MS. FRIESEN: No objections.
19 JUDGE RENDAHL: Okay, Exhibits 780 through
20 788 will be admitted.
21 If we look at Exhibit 788, there is a 1.7.1
22 listed there, and you're saying that this 1.7.2 is not
23 here.
24 MR. MENEZES: Correct.
25 JUDGE RENDAHL: So that is language that AT&T

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1 has proposed and is not yet in the July 2nd version.

2 MR. MENEZES: That's correct.

3 JUDGE RENDAHL: Okay.

4 MR. MENEZES: Because Qwest does not agree to
5 include it in the SGAT.

6 JUDGE RENDAHL: Okay. Please go ahead.

7 MR. MENEZES: Okay. 1.7 starts off talking
8 about changes to the SGAT, and it talks about how a CLEC
9 opts into the SGAT. When we get into 1.7.1, it talks
10 about ways that a CLEC can order new products, Qwest new
11 products, and there was a lot of discussion in other
12 workshops about Qwest's productization of services and
13 the time it takes and how the terms and conditions can
14 be objectionable to CLECs and that Qwest would insist on
15 an amendment to an interconnection agreement before
16 being permitted to order a new product.

17 So what Qwest has proposed here in 1.7.1 and
18 1.7 -- let me back up, 1.7.1.1 and 1.7.1.2, they're sort
19 of parallel paragraphs. The first would have a CLEC
20 sign what Qwest is referring to as an advice adoption
21 letter in the instance where the CLEC wishes to accept
22 the terms and conditions that Qwest has unilaterally
23 generated for a new product, and it's a very quick --
24 it's intended to be a very quick process. The form
25 would be attached to the SGAT, so there would be no

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1 negotiation over the form at the time a CLEC wants to
2 order a new product. Qwest has stated that it would
3 have discreet terms and conditions for new products on
4 its Web site that a CLEC could essentially pull down
5 from the Web site, attach to this advice adoption
6 letter, and the CLEC could sign it and then submit it to
7 both the Commission and to Qwest. There was some
8 concern that the Commission would want to know that this
9 type of activity was going on, and so it would
10 accommodate those concerns. And so that's one path a
11 CLEC and Qwest can take.

12 Under 1.7.1.2, a CLEC may wish to start using
13 -- ordering the product right away but may not agree
14 with all of the terms and conditions that Qwest has
15 developed for the new product. And so this would
16 contemplate a slightly different form of advice adoption
17 letter with probably a slightly different name, which is
18 not reflected in the SGAT we have before us. That would
19 have the CLEC adopt on an interim basis the Qwest
20 established terms and conditions for the new product,
21 reserving the right to pursue negotiation and
22 arbitration of those terms. Once that process is
23 completed, the resolution of that negotiation or
24 arbitration would be brought back, and to the extent you
25 can do it, and rates is perhaps the most obvious one,

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1 the resolved terms would relate back to when the CLEC
2 first executed the form of advice adoption that has the
3 reservation of rights and the ability to further
4 negotiate.

5 So those are -- that's where we are so far
6 with the language, and we do need to talk about 1.7.1.2,
7 but before we do that, I will now talk about the
8 proposal that AT&T had made with a new section 1.7.2,
9 and the language reads as follows:

10 Qwest agrees that the rates, terms, and
11 conditions applicable to new products
12 and services that are not contained in
13 this SGAT shall be substantially the
14 same as the rates, terms, and conditions
15 for comparable products and services
16 that are contained in this SGAT. Qwest
17 shall have the burdon of demonstrating
18 that new products and services are not
19 comparable to products and services
20 already contained in this SGAT.

21 And that's the entirety of the proposal that
22 AT&T had made for a new Section 1.7.2. And the point of
23 the proposal is really this. The SGAT when we get
24 through this process will have rates that were
25 determined through the cost docket and terms and

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1 conditions negotiated and arbitrated essentially by
2 having evidence, briefs, and decisions by an ALJ and
3 then by the Commission. And to the extent Qwest is
4 generating new products that are comparable in that the
5 same elements of the network are being used, for
6 example, we would think that they should look a lot like
7 what's already in the SGAT and has already been improved
8 through the benefit of this process rather than having
9 to sort of start from ground zero and perhaps go through
10 more costing proceedings on prices and things like that.
11 So it's a way to try to conform new products to the
12 process that we have gone through and the results of the
13 process.

14 JUDGE RENDAHL: Okay. Now this language, was
15 it most recently discussed in -- well, where was it most
16 recently discussed?

17 MR. MENEZES: In the multistate proceeding
18 two weeks ago.

19 JUDGE RENDAHL: And that's where?

20 MR. MENEZES: It was conducted in Denver.

21 JUDGE RENDAHL: In Denver?

22 MR. MENEZES: Yes.

23 JUDGE RENDAHL: Okay. And what was the
24 outcome from Denver, still impasse, or are we waiting
25 for Qwest to respond? I'm just trying to get a sense of

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1 what the status is.

2 MR. BROTHERSON: We're at impasse on that
3 issue. Qwest responded in that proceeding as to our
4 position as to our positions. We didn't close the
5 issue.

6 JUDGE RENDAHL: Okay. And briefly, if you
7 can bring the microphone closer to you, Mr. Brotherson,
8 what is Qwest's opposition to that proposal?

9 MR. BROTHERSON: Well, we have had -- there
10 are several aspects of it that we disagree with, and I
11 will try and talk about all of them. First of all, if
12 you go back to 1.7.1, which is to say, well, what do you
13 do when a new product is rolled out, and Qwest offered a
14 couple of alternatives. One is, well, we will put terms
15 on the Web, you can take those and simply start
16 processing your orders and go about your business. The
17 CLECs have said, well, we may not agree with those
18 terms. And we said, well, then there's an alternative
19 in 7.1.1.2 that is to say just operate in the interim
20 under these terms and conditions while we negotiate an
21 amendment, and then when that amendment is completed, it
22 will supersede the original terms, and we will operate
23 under the new terms.

24 So we felt that first of all, there was an
25 opportunity for the CLECs if they have any objections to

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1 any aspects of the new offering, including the price,
2 for example, to raise it through that process. And
3 they're not foreclosed in any way. Secondly, I think
4 each party's -- the language about burden of proof has
5 come up a number of times in the negotiations, and Qwest
6 simply feels that each party's burden of proof in a
7 Commission proceeding is going to be dictated by the
8 Commission's rules and whatever the Commission says the
9 parties' respective burdens of proof are as to whatever
10 the issue happens to be that arises.

11 And I think that to seek a commitment in
12 advance of an issue saying that you will have the burden
13 of proof on this issue goes too far and even usurps the
14 Commission's right to assign through its rules the
15 parties' responsibilities. I think the statement that a
16 product should be priced not on its own cost but on,
17 necessarily, but on comparable products almost begs the
18 argument that, a different argument, but almost begs the
19 same argument as the dispute about the price itself,
20 because you're getting into a dispute about what is a
21 comparable product. The price of a new product will be
22 established for that product based upon the appropriate
23 cost data for that particular product, not other -- not
24 the cost of other comparable products.

25 I think Mr. Menezes said that this would

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1 avoid some costing proceedings. I'm not sure choosing
2 -- saying we're going to price it based on what we might
3 feel is a similar product is going to necessarily avoid
4 any costing proceedings. If there's going to be a
5 dispute about the cost of this product, we're going to
6 be in front of the Commission, and we're going to get it
7 resolved.

8 So I think it's appropriate rather than
9 putting language that says, you will as a cost for this
10 product something similar and then debate what is
11 something similar, that we simply submit our costs based
12 upon the costs associated with that product, and the
13 Commission will either approve them or they won't. So
14 we (a) didn't want to -- well, (b) we're at impasse and
15 don't agree to using a surrogate cost other than what
16 the actual product costs are, and we don't agree to
17 adopting any language that changes the burden of proof.

18 JUDGE RENDAHL: Ms. Friesen.

19 MS. FRIESEN: Could I ask some questions of
20 Mr. Brotherson?

21 JUDGE RENDAHL: Please go ahead.

22 MS. FRIESEN: Mr. Brotherson, is it your
23 position that Qwest has no obligation to bring forward
24 to the Washington Commission Qwest's new product
25 offerings terms and conditions and rates for the

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1 Commission's approval?

2 MR. BROTHERSON: No.

3 MS. FRIESEN: It's not your position then?

4 MR. BROTHERSON: No.

5 MS. FRIESEN: You do have an obligation to
6 bring them forward to the Commission for approval?

7 MR. BROTHERSON: Yes, I think 1.7 lays out
8 how the SGAT is amended. But as you recall, there was
9 concern that during that process the CLECs be able to
10 order the product.

11 MS. FRIESEN: And when in that product roll
12 out does Qwest bring forward the new product to the
13 Washington Commission for its approval?

14 MR. BROTHERSON: I believe when they go in
15 and amend the SGAT with the new product offering.

16 MS. FRIESEN: How often does Qwest amend the
17 SGAT?

18 MR. BROTHERSON: We don't have a history on
19 that. We're in the process of a workshop developing the
20 first one. There have not been amendments because of
21 the fact that with these workshops going on, we have
22 actually been rolling out -- anything that was rolled
23 out during these workshops has simply been incorporated
24 into the workshops and developed.

25 MS. FRIESEN: And, in fact, it's true, is it

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1 not, that Qwest has been offering new products to CLECs
2 for quite some time that it has not brought forward into
3 these workshops nor has it placed inside the SGAT?

4 MR. BROTHERSON: I don't believe that is
5 true. I believe that we have filed cost docket
6 testimony and information associated with the products
7 that as we -- as they have been developed and they --
8 and a cost model has been established, they have been
9 incorporated into the cost dockets as they're updated.

10 MS. FRIESEN: There have been, let's take a
11 concrete example, there's something called a single
12 point of presence or SPOP. This is a product offering
13 by Qwest. It's new. It's not contained within your
14 SGAT and nor has it been put into your SGAT by Qwest;
15 isn't that true?

16 MR. BROTHERSON: It's in the AT&T
17 interconnection agreement. I don't believe it's in the
18 SGAT.

19 MS. FRIESEN: No, it's not in the AT&T
20 interconnection agreement.

21 Your Honor, I would like to remind or point
22 to the SPOP product that was placed into Workshop Number
23 II as evidence of Qwest offering new products that it
24 does not, in fact, bring forward to the Commission. I
25 think you will see some evidence of that later.

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1 JUDGE RENDAHL: I don't have the exhibit list
2 from the second workshop in front of me, but that is an
3 issue that was addressed in the second workshop as to
4 whether the SPOP has been fully merged with the SGAT.

5 MS. FRIESEN: My point in bringing it up here
6 is that Mr. Brotherson's claim that the SGAT is the
7 avenue through which new products are offered and they
8 are offered upon amendment for the Commission's review,
9 I think the evidence clearly indicates that that has not
10 been Qwest's track record, that it has not, in fact,
11 amended its SGAT. It has imply issued product
12 offerings. I think XO has another one of those more
13 recent product offerings already submitted in this
14 workshop which has not been brought in necessarily to
15 the SGAT. It was sent out to the CLECs, and there has
16 been no attempt made by Qwest to amend the CLEC or I
17 mean amend the SGAT and bring it before the Commission
18 for approval.

19 JUDGE RENDAHL: May I ask a question,
20 Mr. Brotherson?

21 MR. BROTHERSON: Yes.

22 JUDGE RENDAHL: Understanding that we are in
23 the middle of a process with the SGAT and that's in part
24 what these workshops are about, in part they're about
25 the 271 process, and in part they're about a large

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1 arbitration to get the SGAT language in place, once this
2 process is completed and there is a final SGAT in place,
3 is it Qwest's intent at that point to incorporate new
4 product offerings into the SGAT or at this -- I will
5 leave it at that.

6 MR. BROTHERTON: Yes.

7 JUDGE RENDAHL: Okay. So at this point,
8 would you say it's because Qwest is in the process of
9 developing the SGAT that new product offerings aren't
10 necessarily incorporated into the SGAT now because the
11 SGAT is still in process?

12 MR. BROTHERTON: Yes, except notwithstanding
13 AT&T's comments, I believe that as these products have
14 come up, they have been debated in the workshops, and it
15 was my statement that we have continued to -- we have
16 not reached a final SGAT to which then would go back and
17 reach amendment, but rather as the parties have
18 negotiated language in these various sections, it has
19 rolled in various issues associated with products that
20 the CLECs have asked for. And to that extent, those
21 changes, if you will, reflect terms and conditions that
22 have changed from what we previously offered our
23 products under.

24 There is also, and I think we will get into
25 that testimony later, a process called CICMP in which

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1 there is going to be a product notification of changes
2 going out to CLECs, and that's going to be addressed
3 later in a workshop by another witness.

4 MS. FRIESEN: I would just like to respond
5 briefly, if I may.

6 JUDGE RENDAHL: Ms. Friesen.

7 MS. FRIESEN: I don't think it's an accurate
8 statement to suggest that all new products have been
9 discussed in these workshops. They have not, nor did
10 Qwest intend to do that. That's evidenced by the fact
11 that we went through Workshop Number II, and thereafter
12 Qwest issued three or four new collocation offerings.
13 Decommissioning is one of the most offensive. It's also
14 not entirely true to suggest that the CICMP process is
15 the place wherein this takes place, because the CICMP
16 process is now under reconsideration by Qwest and has
17 been an evolving process over time. You will hear a
18 discussion of that later wherein it will be revealed
19 that Qwest wants to take it off line and out of
20 consideration of this workshop, CICMP, and that they are
21 going back to the drawing board. I will also put
22 evidence in the record, the discovery on why CICMP
23 hasn't worked to date.

24 So I think the evidence shows that these new
25 products don't necessarily come into these workshops.

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1 They aren't necessarily brought before the commissions
2 for consideration. The rates aren't necessarily TELRIC,
3 and they may or may not be judged to be TELRIC. So
4 AT&T's proposal is to try and create in the SGAT an
5 opportunity for Qwest to bring these forward, amend its
6 SGAT whenever it needs to, so that it wouldn't have to
7 amend it all the time, but certainly provide a place
8 where CLECs and Qwest and commissions could rest assured
9 that the offerings that Qwest is making during these
10 interim periods before they have been reviewed by the
11 Commission are as close to their legal obligations as
12 possible, and that's why AT&T is proposing 7.1.2, 1.7.2,
13 sorry.

14 JUDGE RENDAHL: Okay, is there anything
15 further from Qwest on this issue?

16 MR. BROTHERRSON: Yes, I just want to sort of
17 go back to the intent of 1.7 originally, which was that
18 the concern was raised by the CLECs, if a commission
19 orders you to roll out a new product or if you choose to
20 roll out a new product, we want to be able to start off
21 ordering that product, you know, in the interim before
22 we go through all of this process, so we developed some
23 language about how to go through it on this interim
24 basis. What we don't agree to is the AT&T proposed
25 language around burden of proof and what should be the

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1 cost model. But it is our intention that the parties
2 would be able to order in the interim under this
3 language, and that was its original intent.

4 JUDGE RENDAHL: Okay, thank you.

5 Ms. Doberneck.

6 MS. DOBERNECK: Thank you. We would like to
7 go on record and say that we support AT&T's language in
8 this regard. You know, when we're talking about, for
9 example, something that Qwest is ordered to do because
10 it is a marketing opening device, excuse me, a market
11 opening device or something that the Commission orders
12 Qwest is obligated to provide under the Act, it's
13 imperative that the terms and conditions and the rates
14 that are associated with that product are actually
15 accessible by a CLEC. To the extent that so there is a
16 new product, great, will it help competition, but it can
17 come under restrictive terms and conditions or rates
18 that don't really permit a CLEC to take advantage of a
19 new product.

20 So we certainly concur and approve of AT&T's
21 language, because it puts some, you know, puts some
22 boundaries around that new product offering that allows
23 CLECs, for example, to take advantage of it and yet
24 certainly don't restrict Qwest's ability to then go
25 ahead and say, you know, there's a problem here, it's

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1 not the same, it's not similar, we should be able to
2 charge more or less, different terms and conditions. So
3 I don't believe it precludes Qwest from doing what they
4 believe they need to do to protect their interests or
5 their legal rights, and yet at the same time it gives
6 CLECs an opportunity to take advantage of a new product
7 that is out there.

8 JUDGE RENDAHL: Any other comments on this?

9 Ms. Strain, did you have a thought on this?

10 MS. STRAIN: Well, I just had a question to
11 AT&T. Were you proposing to delete any part of 1.1.7
12 that is in the SGAT lite now, or was it your intent just
13 to add 1.7.2 to what is already in the document now?

14 MR. MENEZES: Yes, it's the latter, that we
15 would add 1.7.2 as a new provision.

16 MS. STRAIN: And leave the other provisions
17 as they are?

18 MR. MENEZES: Well, I do have a few comments
19 on 1.7.1.2, but they're separate, they haven't been made
20 yet.

21 MS. STRAIN: Okay.

22 MS. FRIESEN: And I have just -- when we get
23 to 1.7.1.1 and 1.7.1.2, I have one more request to make
24 of Qwest, so whenever we're ready.

25 JUDGE RENDAHL: Okay, well, I think we may be

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1 done with 1.7.2, and let's move on then to 1.7.1.1
2 unless are there any issues with 1.7 or 1.7.1?

3 Okay, then 1.7.1.1 is on the table.

4 MS. FRIESEN: With respect to 1.7.1.1, it
5 references an advice adoption letter, the form of which
6 is attached hereto as an exhibit. And I'm sorry, but
7 again as I look at my SGAT lite, I don't have a copy of
8 that. So I'm wondering, Laura, did you guys submit
9 that?

10 MS. FORD: It's not in the SGAT lite. I
11 believe we did make that an exhibit in one of the
12 workshops, and then Mitch had raised a concern about
13 that form for 1.7.1.2, and I gave him a form trying to
14 address his concern that has not been introduced.

15 MS. FRIESEN: Is it your intention to
16 introduce it into this record? I think it's important.

17 MS. FORD: Certainly, we would be willing to
18 do that.

19 MS. FRIESEN: Could we have an opportunity to
20 look at the letter and be heard on it?

21 MS. FORD: I believe you have it, but sure.

22 MS. FRIESEN: But maybe I don't understand,
23 Laura. Were you going to modify it further based on
24 what Mitch had given you? I thought that's what you
25 were going to do, and then bring the modified version

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1 back.

2 MS. FORD: Well, what we ended up doing was
3 to really go back to having two forms. One was the
4 advice letter 1.7.1, and then one was kind of an initial
5 advice letter that included some savings language, you
6 know, not waiving any rights by signing that letter, as
7 Mitch had requested, and that has only been provided
8 informally to Mitch.

9 MR. MENEZES: I actually don't recall getting
10 it.

11 MS. FORD: Right after, but we will get you
12 another copy.

13 JUDGE RENDAHL: I think what obviously we
14 need to do is to have whatever exhibits are referenced
15 in this SGAT lite obviously need to be attached for full
16 review. So, Ms. Ford, if you'd take a look at that and
17 make sure we get copies sometime during the week for
18 review, that would be helpful.

19 MS. FORD: We will do that.

20 JUDGE RENDAHL: Thank you.

21 Anything else on 1.7.1.1?

22 MS. FRIESEN: No.

23 JUDGE RENDAHL: Okay, 1.7.1.2.

24 MS. DOBERNECK: I'm sorry, I just have one
25 question.

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1 JUDGE RENDAHL: Oh, I'm sorry, Ms. Doberneck.

2 MS. DOBERNECK: Just a clarifying question on
3 1.7.1.1, and we don't participate in a multistate, and
4 this may have been answered previously, but my question
5 is, can a CLEC begin ordering whatever product will be
6 ordered pursuant to the form advice adoption letter upon
7 execution of that letter even prior to, for example,
8 approval by the Commission?

9 MR. BROTHERSON: Yes.

10 MS. DOBERNECK: Okay. So the parties can
11 operate under the advice letter and then act depending
12 on what the Commission does; is that correct?

13 MR. BROTHERSON: Yes.

14 MS. DOBERNECK: Okay, thank you.

15 JUDGE RENDAHL: Okay, let's turn to 1.7.1.2.
16 Is that Mr. Menezes?

17 MR. MENEZES: Yes, and it was pretty much hit
18 on in the discussion of 1.7.1.1, but in this paragraph,
19 it should be a different form. We need to call it
20 something different. We need to attach it. There were
21 a few edits from the multistate which we could take now
22 or off line. I would say that in the third line down in
23 1.7.1.2, the language that we had I thought worked out
24 was after the word conditions in about the middle of the
25 line to include on an interim basis there. I would

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1 strike by executing on an interim basis.

2 JUDGE RENDAHL: So it should read, CLEC
3 agrees to abide by those terms and conditions on an
4 interim basis?

5 MR. MENEZES: Correct, so you just strike by
6 executing, just those two words, and you would have it,
7 on an interim basis by executing the whatever we call
8 it.

9 JUDGE RENDAHL: Is this something, Ms. Ford
10 or Ms. Hughes or Mr. Brotherson, that you're aware was
11 agreed to in the seven state?

12 MS. FORD: I don't recall specifically, but
13 we don't have any problem with it.

14 JUDGE RENDAHL: Okay.

15 MR. MENEZES: Right, it's just clarifying it.

16 JUDGE RENDAHL: Okay.

17 Is there anything else on 1.7.1.2?

18 Mr. Menezes.

19 MR. MENEZES: I think once we see what Qwest
20 comes back with with the forms, we will want to have a
21 little more discussion, but we don't need to do any more
22 right now.

23 JUDGE RENDAHL: Okay, great.

24 The next issue on the Qwest log jumps to
25 Section 5 of the SGAT. Is there anything else in

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1 Section 1 that the parties have issues with?

2 MR. BROTHERTON: If you will turn the page, a
3 little bit of history, there were a few early issues
4 that sort of arose, I'm not sure under -- on what
5 rationale, but wound up getting keyed up early in the
6 list that are somewhat out of order.

7 JUDGE RENDAHL: Oh, I see.

8 MR. BROTHERTON: When we start, starting with
9 about issue 22 forward.

10 JUDGE RENDAHL: I do see now.

11 MR. BROTHERTON: It will follow the contract
12 order quite clearly. But some of these early issues
13 were raised and wound up getting placed in the front of
14 the issues list somewhat out of order. So we can go
15 either way. If you would prefer to move to issue G-22
16 and start with 1.8 and then go back, we can, or we can
17 just continue down the form as it exists.

18 JUDGE RENDAHL: Why don't we take them in
19 SGAT order. It makes a little bit more logical sense to
20 me. So if you don't mind jumping around on your issues
21 list, let's turn to issue G-22, that's SGAT Section 1.8,
22 pick and choose.

23 MS. FRIESEN: Before we get there, I would
24 like to talk very briefly about a modification that I
25 believe Qwest, Larry Brotherton, agreed to in Arizona

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1 with respect to Section 1.3, and it's not in here in
2 this SGAT lite.

3 JUDGE RENDAHL: And what is that?

4 MS. FRIESEN: With respect to Section 1.3, if
5 you look fourth line down where it's discussing that
6 Qwest will offer network elements, ancillary service,
7 telecommunications services available for resale, and
8 here's the problem, within the geographic areas in which
9 both parties are providing local exchange service at
10 that time. Now Mr. Brotherson and I had a conversation,
11 and I can find the record, I think it was in Arizona, in
12 which we discussed that it is Qwest's intent by this
13 language that Qwest will offer its SGAT in its operating
14 territories at the time the CLEC comes to adopt it. It
15 is not meant to, but in fact does, limit the CLEC as
16 well, and there are instances, many of them, in fact,
17 where a CLEC won't be offering service anywhere at the
18 time. So this language would confusingly limit the
19 CLEC, and I think that Mr. Brotherson agreed to just
20 simply delete both parties and replace it with Qwest.

21 MR. BROTHERSON: That's correct, we did.

22 MS. FORD: Qwest is instead of are.

23 MR. BROTHERSON: We made that agreement. I'm
24 sorry I missed that. We changed Qwest to both parties
25 in so many places.

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1 JUDGE RENDAHL: So the reference to both
2 parties on the fourth line of Section 1.3 should read
3 Qwest; is that the change?

4 MS. FORD: Right, and the are should be
5 changed to is.

6 JUDGE RENDAHL: The or should be -- oh, the
7 are, thank you. Okay, so instead of both parties are,
8 Qwest is, all right.

9 Is there anything else between 1.3 and 1.8
10 that we need to address?

11 MS. FRIESEN: Not from AT&T's perspective.

12 JUDGE RENDAHL: Okay, let's turn to Section
13 1.8.

14 Is this an AT&T issue?

15 MS. FRIESEN: It is, I suppose.

16 JUDGE RENDAHL: Now the Washington Commission
17 and the parties addressed pick and choose language in
18 Workshop II, and I'm wondering, is this the same
19 language, and did we resolve it, or are there additional
20 issues that need to be worked on?

21 MS. FRIESEN: There is at least one impasse
22 issue, and it is in relation to how Qwest determines
23 something is legitimately related to the provision. So
24 while we agree to the language, it's the implementation
25 that's a problem.

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1 JUDGE RENDAHL: Okay. Do you need to
2 elaborate on that?

3 MS. FRIESEN: I do. In our testimony, we
4 have described an example, and it's one wherein Qwest
5 has made it very difficult for AT&T to opt into an
6 interconnection agreement. Well, actually, there are
7 three examples in there, but the one I will discuss,
8 which Qwest summarily dismisses as a miscommunication,
9 and we take issue with that, because we don't believe it
10 was, AT&T was attempting to acquire some blocking
11 reports. In order to help some end user customers both
12 of Qwest and of our own, Qwest informed us that we
13 should adopt or amend our interconnection agreement --

14 MS. HUGHES: Excuse me, I'm just a little
15 confused. Ms. Friesen, are you now testifying? I know
16 you indicated earlier that your witness would not be
17 here, and you, you know, asked us if we objected, and we
18 have not objected, but it was not our understanding that
19 in place of your witness, you intended to do what you
20 appear to be doing now, which is to be testifying and
21 offering for the proof of the matters that you are
22 asserting this information for the record. So, you
23 know, to that extent, we would object to your not having
24 a witness available to present this testimony.

25 MS. FRIESEN: This is in our witness's

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1 testimony, and I am simply trying to paraphrase it to
2 tee up the issue for the Judge, and I'm trying to
3 confine it to a single issue which will enlighten the
4 discussion of legitimately related and describe what we
5 think is wrong.

6 MS. HUGHES: Well, again, I think I made the
7 objection, we would object to counsel for AT&T stepping
8 into the shoes of the AT&T witness, who has chosen not
9 to be here, in presenting testimony.

10 JUDGE RENDAHL: Ms. Friesen, I counsel you to
11 legitimately make comments about your witness's
12 testimony without making it sound as if you are, in
13 fact, testifying. There may be a way to present the
14 information, to tee it up here for discussion without
15 recapping the information.

16 MS. FRIESEN: Okay. Our witness has
17 testified that we attempted to get some blocking reports
18 from Qwest, Qwest refused to give those to us, told us
19 that we needed to amend our interconnection agreement,
20 and this is contained in his testimony. We attempted to
21 amend our interconnection agreement to adopt just the
22 provision related to obtaining those blocking reports.
23 Qwest's response to us, as you will see in his
24 testimony, is that you have to adopt a whole host of
25 forecasting provisions completely unrelated to obtaining

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1 these blocking reports. It's that kind of problem that
2 we have encountered, because Qwest and the way in which
3 Qwest interprets legitimately related provisions that is
4 contained in Section 1.8 and under the law, it's that
5 kind of a problem that we have encountered. And we
6 believe that the way in which they are determining that
7 something is legitimately related is wholly subjective,
8 that there is no criteria, and that they frequently use
9 it as a means of delay.

10 JUDGE RENDAHL: Before we go on, and given
11 that Mr. Hydock is not here, in the past when witnesses
12 have not been present and if parties don't object to the
13 testimony being admitted for discussion purposes, we
14 have admitted them and gone on. Now if Mr. Hydock were
15 to be here later in the week, we could defer that, but
16 it appears that he's in Nebraska and is not going to be
17 available here.

18 Ms. Hughes, I understand your objection to
19 Ms. Friesen testifying for her witness who is not here,
20 but do you have any objection to the information in the
21 testimony that was pre-filed in the exhibits being
22 admitted for purposes of discussion here?

23 MS. HUGHES: We do not, Your Honor, but we
24 would object, as I indicated previously, to counsel for
25 AT&T reiterating, you know, on the record the testimony

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1 of an absent witness.

2 JUDGE RENDAHL: Okay. Once the testimony is
3 admitted though, they can be referred to as a page
4 number or referring to page number, et cetera. Do you
5 have any problem with that type of discussion of a
6 witness's testimony?

7 MS. HUGHES: We do not.

8 JUDGE RENDAHL: Okay.

9 MS. HUGHES: To be very clear, we do not.
10 But because of the issues that are here on the table
11 that we would like to get through in these two days and
12 we do believe that we can get through them, we simply
13 would object to this duplication of testimony.

14 JUDGE RENDAHL: Okay. Well, if the parties
15 don't object, should we then admit the testimony of
16 Mr. Hydock for purposes of using it for discussion?

17 MS. HUGHES: If I may ask for a
18 clarification, I'm concerned about what you mean, Your
19 Honor, for purposes of discussion. He's not here. We
20 do have his pre-filed testimony. We have responded to
21 it. Mr. Brotherson is here. He is standing for
22 cross-examination. You know, as I said, we're not --
23 I'm not sure what you mean by having Mr. Hydock's
24 testimony available for discussion purposes.

25 MS. FRIESEN: May I make a quick observation?

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1 JUDGE RENDAHL: Ms. Friesen:

2 MS. FRIESEN: Mr. Hydock has been present at
3 other workshops in which Ms. Hughes has participated,
4 and not once has she asked him a single question in
5 relation to his testimony or this particular piece of
6 evidence that we brought forward. So to the extent that
7 there is a claim of prejudice to them because he is not
8 here, I would strongly object to that sort of objection
9 in light of the recent past.

10 JUDGE RENDAHL: Okay, I am just trying to
11 make sure the record is clear here in the state of
12 Washington, and in the past where witnesses have not
13 been present and parties didn't object, we admitted it
14 for purposes of the record and to allow the parties to
15 discuss the issues without recapping the testimony. So
16 I'm asking you, Ms. Hughes, if it's possible for us to
17 admit the testimony so that we can then discuss the
18 issue on the record.

19 MS. HUGHES: It is, Your Honor, we do
20 stipulate to the admission of Mr. Hydock's testimony.

21 JUDGE RENDAHL: Okay.

22 MS. HUGHES: What we object to, so that I'm
23 very clear, is counsel for AT&T testifying live in place
24 of Mr. Hydock, having chosen not to make him available
25 this week.

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1 JUDGE RENDAHL: I understand your objection.
2 I don't know that we need to address that any further.
3 So at this point for purposes of allowing the
4 record to proceed, I'm not hearing any objections to the
5 admission of Mr. Hydock's testimony and exhibits, which
6 would be 830 through 839; is that correct?
7 Okay, they are admitted.
8 (The following exhibits were identified in
9 conjunction with the testimony of MICHAEL
10 HYDOCK: Exhibit 830-T is Affidavit of
11 Michael Hydock (AT&T) re: General Terms and
12 Conditions, 6/7/01 (MH-1T). Exhibit 831 is
13 3/27/01 Multistate Workshop Transcript at pp.
14 19-21 (MH-2). Exhibit 832 is Voice Message
15 for Tim Boykin (AT&T) by Scott Schapper
16 (Qwest), April 30, 2001 (MH-3). Exhibit 833
17 is E-mail message to Christine Schwartz from
18 Chuck Ploughman, April 6, 2001 (MH-4).
19 Exhibit 834 is Interconnection Notification -
20 ATX (MH-5). Exhibit 835 is AT&T Proposed ADR
21 Language (MH-6). Exhibit 836 is Letter to
22 Christine Schwartz from Christina Valdez,
23 3/30/01 (MH-7). Exhibit 837 is 12/6/00
24 E-mail message from Mark Miller to Christine
25 Schwartz (MH-8). Exhibit 838 is 12/18/00

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1 letter from Christina Valdez to Christine
2 Schwartz (MH-9). Exhibit 839 is 1/31/01
3 E-mail message from Christina Valdez to
4 Christine Schwartz (MH-10).

5 JUDGE RENDAHL: Let's address the issue
6 itself. Does Qwest have a response to the issue that
7 Mr. Hydock addresses in this testimony and exhibits on
8 pick and choose?

9 MR. BROTHERRSON: Yes, a couple. I responded
10 to that in my direct testimony as well. I think that
11 it's clear that the -- as to the law that legitimately
12 related issues can be required. What we're debating is,
13 well, what will be a legitimately related issue. We
14 apparently had a dispute with AT&T on that issue in the
15 past, and I think that's simply going to have to be
16 resolved by commissions if the parties are in
17 disagreement. But the language in the SGAT is not in
18 dispute in that it reflects the FCC's guidance.

19 MS. FRIESEN: And, Your Honor, we don't
20 believe that. The purpose of this investigation is to
21 look not only at the SGAT language, but also what
22 they're doing. To the extent the way that they define
23 or determine something as legitimately related is
24 creating a barrier to competition and making it
25 difficult to exercise the pick and choose right of

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1 CLECs.

2 In addition, Qwest has, and it's in
3 Mr. Brotherson's testimony, indicated that when an
4 individual CLEC chooses to opt into a particular
5 provision that you get to not only, you know, suffer the
6 consequences of whatever they determine is legitimately
7 related, so they're going to pile things onto it, but
8 they're also going to give it to you for a very short
9 period of time. That is to say that if you adopt a
10 particular provision from an interconnection agreement
11 or the SGAT that has a three year term originally but
12 the CLEC that adopted that agreement has already had it
13 for two and a half years or even longer, then the CLEC
14 will only get that particular provision for the time
15 remaining on the original agreement for the original
16 CLEC. That's Qwest's interpretation of how long a
17 duration you get of a particular provision that they
18 choose or that they pick and choose. And we believe
19 there again that's another indication of Qwest's delay
20 tactics and attempt to impede a CLEC's ability to
21 compete.

22 We think the FCC is very clear in 47 CFR
23 Section 51-809, subsections B and subsection C, that to
24 the extent that there is a provision in an SGAT that a
25 CLEC would like to opt into, that the CLEC should get

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1 the termination or the duration of that provision for
2 the course of its contract. Now Qwest in its rebuttal
3 testimony of Mr. Brotherson has cited to an FCC decision
4 that he claims supports their position that they can
5 offer to the CLEC that it chooses to opt into a
6 particular provision two weeks on the provision if
7 that's all that's left in the original contract that
8 they're opting into. That FCC decision that they cite
9 is not a decision on point, and they're citing dicta in
10 a footnote.

11 To the extent that you take a look at the
12 dicta, I think at best the FCC is saying that the
13 original termination clause would apply. So if the
14 contract had a three year term on it, then the provision
15 you're opting into should last for three years. But I
16 don't even think that you should look at the dicta in a
17 footnote. I think you ought to look at 47 CFR Section
18 51-809, subparagraphs B and subparagraph C. Both of
19 those rules of the FCC clearly outline the duration and
20 how things are supposed to be offered for pick and
21 choose.

22 JUDGE RENDAHL: Okay, so if I understand the
23 issues that AT&T has with the implementation of pick and
24 choose, it has to do with the interpretation of what is
25 legitimately related and also the duration of something

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1 that a CLEC might opt into.

2 MS. FRIESEN: Correct.

3 JUDGE RENDAHL: Okay, and I understand that
4 we're at impasse on those issues at this point.

5 MS. FRIESEN: We are.

6 JUDGE RENDAHL: Okay, Mr. Menezes.

7 MR. MENEZES: I have a couple of comments on
8 the legitimately related issue, and then I have a
9 question for Qwest, if I could.

10 JUDGE RENDAHL: Please go ahead.

11 MR. MENEZES: Okay. On legitimately related,
12 and this is partly for the benefit of the CLECs who were
13 not at the multistate, in Section 1.8.2, the bottom two
14 lines, Qwest has agreed to add this language so that
15 when Qwest tells a CLEC that certain additional
16 provisions must be opted into when a CLEC seeks to opt
17 into a particular provision, Qwest will provide a
18 written explanation of why Qwest considers the
19 provisions legitimately related, including legal,
20 technical, and other considerations.

21 Along the same lines, in Section 1.8.3, AT&T
22 had made a proposal that Qwest rejected, and it is -- it
23 would be in the third line up from the bottom of 1.8.3
24 towards the end of the line before the new sentence,
25 CLEC may, we would propose adding the following. In any

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1 such dispute, and this is a dispute around whether a
2 provision is legitimately related, in any such dispute,
3 Qwest shall bear the burden of proving that terms are
4 legitimately related.

5 And when we last spoke, Qwest objected to
6 that on the ground that it was not a legal standard that
7 Qwest needed to adhere to. And since that discussion, I
8 have found a paragraph in the FCC's First Report and
9 Order, it's Paragraph 1315, 1315, and the paragraph
10 reads in part:

11 Given the primary purpose of Section
12 252(i) of preventing discrimination, we
13 require incumbent LECs seeking to
14 require a third party to agree to
15 certain terms and conditions to exercise
16 its right under Section 252(i) to prove
17 to the state commission that the terms
18 and conditions were legitimately related
19 to the purchase of the individual
20 element being sought.

21 So I would put that forward as the legal
22 standard, and I'm wondering if Qwest given that would
23 still object to the language that AT&T had proposed.

24 MR. BROTHERSON: I believe we would. I
25 think, Mitch, I would disagree with your

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1 characterization of why we disputed that. Our dispute
2 was that, and we have seen this come up in a number of
3 paragraphs where AT&T has said, well, we're going to
4 have the contract assign the burden of proof to Qwest,
5 and our belief is that the commissions in their
6 proceedings, and they handle proceedings between parties
7 all the time, are perfectly capable of determining who
8 has the burden of proof.

9 Now in the example that you just read,
10 perhaps it's going to be very clear who has the burden
11 of proof at least on the general issue, but I don't
12 believe it's appropriate to start assigning that in
13 contract language. Rather we should simply let the
14 Commissions deal with it in their administrative --

15 MS. FORD: If I could jump in, I had a chance
16 over our week break also to do some research, and I not
17 only found the language that you refer to, but in
18 Principle 10 of the Washington Commission's Interpretive
19 and Policy Statement related to Section 252(i), it
20 clearly states that the ILEC has the burden of proof, so
21 it's not an issue.

22 MR. MENEZES: So does that mean Qwest would
23 include the language in the SGAT? I mean the problem
24 becomes for people reading the contract and implementing
25 a contract, they're going to have to go and track down

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1 these legal rules instead of, you know, if you have it
2 in the document, it's clear.

3 MR. BROTHERTON: I don't believe that's
4 appropriate, Mitch. You could almost go paragraph by
5 paragraph and start assigning burdens based on those
6 paragraphs. And then to the extent that the Commission
7 rules change at some point in time on any issue, the
8 question then becomes how does that impact the contract.
9 I think issues like how is evidence admitted, who's got
10 the burden of proof, what kind of documentation is
11 supporting, are all things that are handled by the
12 hearing examiners and by commissioners all the time
13 without having to add that kind of language into a
14 document.

15 MS. DOBERNECK: This is Megan Doberneck with
16 Covad. I guess my concern is from a purely practical
17 standpoint, if Qwest does not have the burden of proof,
18 how would you ever go about proving up this issue. What
19 you're then asking CLECs to do is an impossibility,
20 which is prove it is not legitimately related, and I
21 mean I guess that's where I have a problem fundamentally
22 by if we don't assign a burden of proof, then arguably
23 the burden is on CLECs to show it's not legitimately
24 related when we're not the entity seeking the addition
25 of additional terms and conditions. And I guess further

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1 I'm somewhat confused because it sounded to me like
2 perhaps this issue was resolved by the Washington -- I
3 can't remember.

4 MR. BROTHERRSON: Rules.

5 MS. DOBERNECK: Rules, there's a specific
6 terms. So I guess from a purely practical -- from a
7 practical standpoint, not assigning a burden of proof
8 suggests to me that Qwest will assert the position that
9 a CLEC has to prove that it's not legitimately related,
10 and I just don't think that's manageable or feasible.

11 JUDGE RENDAHL: Just for the parties'
12 edification, if you're not aware, there is an
13 interpretive and policy statement on pick and choose
14 here in Washington state where the Commission has made
15 determinations on how to implement pick and choose, the
16 pick and choose provision. And so maybe that's all that
17 needs to be said at this point. And between now and the
18 follow-up workshop, maybe the parties will have an
19 opportunity to compare that with the issues that are at
20 impasse now and see if that gets you any farther.

21 MS. FORD: If I could just point out, in that
22 policy statement, interpretive and policy statement, at
23 Principle 8, it does address the issue of how long a
24 provision is available when it's in an interconnection
25 agreement, how long it's available for opting into, so

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1 maybe AT&T could take a look at that as well.

2 JUDGE RENDAHL: Thank you, I think that at
3 this point I have heard enough until the follow-up
4 workshop, and maybe between now and then, the parties
5 can take another look at it. And if this is also being
6 addressed in Nebraska, then that's another opportunity
7 for the parties to hash it out before the follow-up
8 workshop. And if we're at impasse, we're at impasse,
9 and then we deal with it later.

10 Is there anything further on Section 1.8, the
11 pick and choose?

12 Mr. Menezes.

13 MR. MENEZES: A question for Qwest.

14 JUDGE RENDAHL: Go ahead.

15 MR. MENEZES: To whomever at Qwest, and you
16 have heard the question before, if a CLEC adopts another
17 CLEC's interconnection agreement, so CLEC B opts into
18 CLEC A's interconnection agreement, and CLEC C wishes to
19 make an adoption and chooses to opt into the CLEC B
20 document, does Qwest permit that?

21 MR. BROTHERTON: Yes, we do, if it's a filed
22 agreement, yes.

23 MR. MENEZES: Okay. I would like to just
24 point to it's marked as Exhibit MH-4 in the pre-filed
25 testimony of Michael Hydock. I'm not sure what the

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1 number is with our numbering here. But it's a letter
2 from Chuck Ploughman to AT&T. It's an E-mail message.
3 And in this instance, AT&T was seeking to adopt the New
4 Edge Network's agreement in Wyoming, which was adopted
5 by New Edge, it had adopted a Covad agreement in
6 Wyoming, and Qwest's answer was:

7 Since New Edge Networks opted into the
8 Covad agreement, it is not available for
9 adoption. However, you can opt into the
10 underlying agreement with Covad.

11 And so AT&T did go round and round with Qwest
12 on that. And given Mr. Brotherson's answer that we
13 could have done this, and this E-mail is dated April 6,
14 2001, I'm wondering how it is that Chuck Ploughman, who
15 is the individual at Qwest who sent this and who is the
16 Qwest business negotiator with AT&T and I believe
17 perhaps other CLECs for interconnection agreements, how
18 he didn't know that this was the policy.

19 MR. BROTHERSON: I can't answer that question
20 at this time.

21 MR. MENEZES: Thank you.

22 JUDGE RENDAHL: Okay, is there anything
23 further?

24 Ms. Doberneck or anyone else on pick and
25 choose?

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1 Mr. Kopta.

2 MR. KOPTA: This is really more of a
3 technical thing. In Section 1.8.3.1, we had this
4 discussion in a prior workshop. As Laura pointed out,
5 the Commission does have rules and regulations governing
6 252(i) as well as complaints to enforce interconnection
7 agreements, and so I'm wondering why this additional
8 language was added in Washington.

9 MR. BROTHERSON: This was language that was
10 proposed to us that we agreed to in other states, and we
11 carried it forward. I think elsewhere you will see --
12 well, that's the reason, it was just simply carried
13 forward.

14 MR. KOPTA: I mean it doesn't really do any
15 harm since the Commission already has that and it's kind
16 of superfluous, I just wanted to make sure there wasn't
17 some other reason to put it in there.

18 MR. BROTHERSON: No.

19 MR. KOPTA: Okay.

20 JUDGE RENDAHL: Okay, the next section is
21 Section 2, and before we go on into Section 2, I would
22 like to take a break, an afternoon break. Just so we
23 know what we're doing next, the first reference I have
24 to Section 2 is issue G-24, which is Section 2.2. Is
25 there any -- do we need to start with 2.1, are there any

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1 issues with 2.1, or when we come back, can we jump right
2 into 2.2?

3 MR. MENEZES: 2.2.

4 JUDGE RENDAHL: 2.2, okay.

5 Let's take a break and be back at 3:20, I'm
6 going to start up at 3:20, and we will plod through and
7 go until 5:00. So let's be off the record, I will see
8 you back at 3:20.

9 (Recess taken.)

10 JUDGE RENDAHL: I think where we left off, we
11 were starting on Section 2.2, and I think we're starting
12 with SGAT Section 2.2, which is issue G-24 and is an
13 AT&T and XO issue.

14 MR. SCHNEIDER: Your Honor, this is Mike
15 Schneider with WorldCom, before you go to 2.2, can I ask
16 a question on the last sentence of 2.1?

17 JUDGE RENDAHL: Yes.

18 MR. SCHNEIDER: And I don't know that I have
19 been sworn in. Do I need to be sworn in?

20 JUDGE RENDAHL: Yes, you do, and please stand
21 and raise your right hand, and would you please state
22 your full name for the record, please.

23 MR. SCHNEIDER: Michael W. Schneider for
24 WorldCom.

25 JUDGE RENDAHL: And spell your last name.

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1 MR. SCHNEIDER: S-C-H-N-E-I-D-E-R.

2 JUDGE RENDAHL: Thank you.

3 (Whereupon MICHAEL W. SCHNEIDER was sworn as
4 a witness herein.)

5 MR. SCHNEIDER: I would like to ask Qwest
6 what they intend by the last sentence of 2.1, because to
7 me, reading that, it seems to conflict with the change
8 in law provision that follows in 2.2 and 2.3.

9 MS. HOPFENBECK: And before you answer that,
10 Qwest, I would just note for the record that it's my
11 understanding that WorldCom submitted an exhibit in the
12 Colorado workshop in which we requested that this
13 sentence be deleted from the SGAT, and so I would also
14 ask that you respond explaining why, the reasons that
15 Mr. Schneider has just outlined, we think it conflicts
16 with the change of law provisions. And so if you could
17 explain why you rejected that recommendation on
18 WorldCom's part, that would be good as well.

19 MR. BROTHERTON: Well, the language is in
20 here to address a couple of different issues, but
21 specifically it says that unless the context shall
22 otherwise require, and we tried to carve out that kind
23 of annoying exception, but the general statement is that
24 when we talk about a statute or a regulation or a rule
25 that we mean -- or a tariff that we mean the rules,

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1 regulations, and tariffs that are currently in effect at
2 that time.

3 And the best example I would give is in the
4 area of resale. If a CLEC is reselling Qwest's
5 services, to the extent that our retail tariffs change
6 from time to time, what you're going to be reselling is
7 whatever is in the current retail tariffs, and that's
8 the type of scenario it was intended to address.

9 I don't believe it's inconsistent with the
10 change of law. I think that in the change of law we
11 talk about how if there's a change of law that affects
12 the agreement, the parties will amend the agreement.
13 And I don't believe that simply having a sentence in the
14 first section that says, unless the contracts shall
15 otherwise require any reference to any agreement or
16 other regulation, rule, or tariff applies to such
17 agreement, rule, or tariff as amended and supplemented
18 from time to time would necessarily be construed to say
19 that the parties don't have to amend their agreement to
20 reflect a change in law. And I think without this, it
21 would -- it would freeze the SGAT in time without
22 recognition that the tariffs change, the retail
23 offerings change, Commission rules change, and that this
24 is simply incorporating that fact into the document.

25 MR. SCHNEIDER: But in the -- well, just

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1 reading it literally, the sentence says that any
2 reference to any agreement or regulation, rule, or
3 statute, and that can be a federal statute, a state
4 statute, a federal rule, FCC rule, it says that, you
5 know, if you reference it and there's a change, if it's
6 amended or supplemented, then we just get the change.
7 And in the case of a statute, regulation, or rule, we
8 just take any successor provision. In other words, if a
9 statute or a FCC regulation is changed, this sentence to
10 me says that that's what we get.

11 And to me, it's in direct conflict with the
12 change in law provision, because just after this
13 section, you say that if there's a change in an FCC
14 regulation or a statute or a law, then we, you know, we
15 negotiate an amendment to the SGAT or the agreement that
16 basically, you know, determines what that statute means
17 or what that change in law means to the agreement. And
18 this seems to kind of muddy that up, and that's why I
19 suggested that this thing be deleted.

20 MR. BROTHERTON: Well, I don't believe
21 they're inconsistent, but I think to strike the first
22 sentence, more to the point, would be to, for example,
23 then freeze the parties into operating under rules,
24 Commission rules, that may have changed over time, that
25 would freeze the parties into reselling under tariffs

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1 that are no longer the valid tariffs that Qwest is
2 offering retail services under. And that was the intent
3 of that was just to reflect the reality that if a CLEC
4 comes in as a resaler, what they're reselling is
5 whatever are in the current tariffs, and as tariffs
6 change from time to time, that becomes the retail
7 product that a CLEC would be reselling. I guess I don't
8 read the inconsistency that you do.

9 JUDGE RENDAHL: Mr. Brotherson and
10 Mr. Schneider, just I understood, Mr. Schneider, you
11 have objections with the last sentence in 2.1, and,
12 Mr. Brotherson, I just heard you say the first sentence,
13 so just to make sure we're not at cross purposes --

14 MR. BROTHERSON: I'm sorry, I misspoke, I
15 meant the last sentence.

16 JUDGE RENDAHL: Okay, I just wanted to make
17 sure we were not at cross purposes here.

18 MR. BROTHERSON: No.

19 JUDGE RENDAHL: Okay.

20 MR. SCHNEIDER: My response to that is it
21 doesn't freeze anything, you know, to take this out.
22 Because if there's a change in a statute or a
23 regulation, the change in law provision allows us to
24 make a change to the agreement, to incorporate that
25 change, and to both determine through the negotiation

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1 process what that change means to the agreement. And so
2 therefore I don't think we need to talk about statutes
3 or regulations or rules in this sentence. If you want
4 to just limit it to just strictly to resale offerings in
5 a tariff that is referenced in here, I think that would
6 be -- that would be better than what it is now.

7 Also, if you have -- it talks about third
8 party offerings, guides, or practices, or Qwest or other
9 third party offerings, guides, or practices like a tech
10 pub, if you have a change in the tech pub or something.
11 I thought the CICMP process is supposed to discuss that
12 with the other CLECs in the CICMP process, and we would
13 all, you know, come together and agree if that change
14 was good or if we objected to it. To me, this enables
15 Qwest to basically have a unilateral change of the
16 agreement without the CLECs being able to respond.

17 JUDGE RENDAHL: Thank you, Mr. Schneider.

18 Before we go further though, can you spell CICMP for the
19 record. I'm not sure the court reporter, I'm not sure
20 if this is a familiar term yet. If it is, that's fine.

21 MR. SCHNEIDER: I think it's actually stated
22 in earlier sections in 1.7.1, C-I-C-M-P.

23 JUDGE RENDAHL: Thank you, and that's the
24 Co-provider Industry Change Management Process?

25 MR. SCHNEIDER: Correct.

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1 JUDGE RENDAHL: Okay, thank you.

2 Is this, I take it we're at impasse on this
3 issue.

4 MS. HOPFENBECK: If I could just go a little
5 further, because maybe it's just we're talking past each
6 other.

7 JUDGE RENDAHL: Please go ahead.

8 MS. HOPFENBECK: Mr. Brotherson, I would just
9 like to direct your attention to the way 2.2, the first
10 sentence of 2.2 reads. 2.2 says that:

11 The provisions in the agreement are
12 intended to be in compliance with and
13 based on existing state of the law,
14 rules, regulations, and interpretations
15 as of the date hereof.

16 I understand as of the date hereof to be the
17 effective date of the agreement. Do you understand
18 that?

19 MR. BROTHERSON: Yes.

20 MS. HOPFENBECK: Okay. Then if you go back
21 to the last sentence of 2.1, as Mr. Schneider just
22 discussed, that sentence suggests that whenever the
23 agreement references a statute, regulation, or rule,
24 that it would apply to the agreement even as amended and
25 supplemented from time to time.

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1 MR. BROTHERTON: Yes.

2 MS. HOPFENBECK: So that -- and that's where
3 I think we find the conflict. What we believe is that
4 as stated in 2.2 that the agreement should be construed
5 in accordance with the state of law as of the effective
6 date and that when there's a change of law, an amendment
7 to the law, an amendment to the rules and regulations,
8 then the remainder of Section 2.2 kicks in and sets
9 forth a process by which those changes would be
10 incorporated into the agreement but that they wouldn't
11 automatically be considered to be a part of the
12 agreement as suggested by 2.1. Am I missing -- that's
13 why we -- that's where we see the inconsistency.

14 MR. BROTHERTON: Well, you're not missing
15 anything in the sense that it is our intent in 2.2 to
16 say, you know, this is based on the existing law, and if
17 the law changes, we will negotiate a change in the SGAT
18 to reflect that, and we will get into that when we move
19 to that section. The language in 2.1 was simply
20 intended to say that to the extent that we refer to the
21 Commission's rules, to tariffs, regulations, statutes,
22 or the like, that they are whatever are currently in
23 effect. I don't believe that's inconsistent, and to the
24 extent that a rule change in effect changes the parties'
25 rights under the SGAT, I think we would exercise Section

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1 2.2 and amend an agreement if there's a Commission
2 order, for example, that changes the law.

3 I don't think, however, we would go in and
4 amend the SGAT every time a Commission, for example,
5 updates its procedural rules or Qwest updates its retail
6 tariffs or statutes are changed if they are not creating
7 something that would directly impact the agreement and
8 in effect constitute a change in law that requires an
9 amendment of the SGAT.

10 MR. SCHNEIDER: But does 2.1 say that, that
11 if this change in law doesn't impact the agreement or
12 is, you know, a minor change or update, I don't think it
13 says that. I think it says that, you know, any -- from
14 time to time as amended or supplemented regardless of
15 whether it changes the agreement or not.

16 MR. BROTHERRSON: I think it's we're reading
17 them differently. I'm not sure how to respond other
18 than to say that 2.2 is intended to provide how we would
19 change the agreement when there is a change in law that
20 affects the agreement. And 2.1 is simply intended to
21 reflect that we're going to operate under whatever the
22 current rules and regulations are. If there is a
23 current rule or regulation that impacts the agreement in
24 terms of the rights of the parties, I think we have to
25 do the change of law.

03901

1 JUDGE RENDAHL: Ms. Doberneck.

2 MS. DOBERNECK: WorldCom's comments have
3 prompted a thought that was not otherwise apparent
4 before we got onto this conversation, and I'm looking
5 specifically at the parenthetical included in that last
6 sentence which references Qwest or other third party
7 offerings, guides, or practices. As I'm sure you are
8 familiar, we have a great deal of concern about
9 references to Qwest policies, methods of procedures,
10 things of that nature which are Qwest documents which
11 permit it to alter or change the terms and conditions.

12 So I understand, for example, here we're
13 talking about applicable rules, statutes, regulations,
14 and my question is first, why would, for example, Qwest
15 guides or practices arise to that level? And second,
16 while I realize we get to this issue when we talk about
17 prioritization of the agreements, I still think that it
18 creates a conflict when you talk about, and I apologize
19 because I don't have the section, oh, Section 2.3, and
20 my concern is that we have a conflict between that last
21 sentence of 2.1 and 2.3, because they both are, at least
22 as I read them, mandatory and major, so we have a
23 conflict already set up between provisions in the SGAT
24 itself.

25 JUDGE RENDAHL: Okay, now before we move on

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1 to 2.3 as well, it appears to me that there's an impasse
2 that we're not going to be resolving today on 2.1. Is
3 that fair to characterize?

4 MS. HOPFENBECK: Yes.

5 JUDGE RENDAHL: And that there is an
6 apparent, from WorldCom's perspective, there is a
7 disconnect between 2.1 and 2.2 in terms of the change
8 of --

9 MS. HOPFENBECK: Yes, from WorldCom's
10 perspective, there is a conflict between 2.1 and 2.2 and
11 between 2.1 and 2.3 for exactly the reasons that
12 Ms. Doberneck has spelled out.

13 JUDGE RENDAHL: Okay.

14 MS. HOPFENBECK: You can't on the one hand
15 say that the SGAT prevails and then on the other state
16 that changes in policy will be incorporated into the
17 SGAT.

18 JUDGE RENDAHL: And I understand that Qwest
19 doesn't necessarily agree with WorldCom's and Covad's
20 position at this point and that we are at impasse, so I
21 think maybe we ought to move on.

22 Are the issues that are set forth in G-24,
23 they appear to be different issues than we have just
24 discussed, although the issues in G-13 and G-25 touch
25 upon what we just discussed; is that correct?

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1 MR. BROTHERSON: I would say that's a fair
2 characterization.
3 JUDGE RENDAHL: Okay, should we move then on
4 to 2.3 first to get into it and close out the issue and
5 then back to 2.2?
6 MR. BROTHERSON: That's fine.
7 JUDGE RENDAHL: Okay, let's move on to the
8 issues involving 2.3 in issue G-13 and G-25.
9 Ms. Friesen or Mr. Menezes, do you wish to
10 address this?
11 MR. MENEZES: Yes, thank you.
12 MS. HOPFENBECK: Your Honor, I hate to
13 interject this but --
14 JUDGE RENDAHL: Can you use your mike,
15 please, Ms. Hopfenbeck. Thank you.
16 MS. HOPFENBECK: 2.2 was also at issue
17 between WorldCom and Qwest in Colorado. WorldCom
18 suggested proposed language. And while Qwest has
19 incorporated quite a bit of that language, there are
20 sections that are new to this agreement that we haven't
21 seen before with which we have some difficulties on 2.2.
22 JUDGE RENDAHL: Okay, I think we're going to
23 go back to 2.2 after we address G-13 and G-25.
24 MS. HOPFENBECK: Okay, sorry.
25 JUDGE RENDAHL: So hold that thought, please.

03904

1 Mr. Menezes.

2 MR. MENEZES: In 2.3, AT&T proposes the
3 deletion of the first clause on the first line that
4 reads, unless otherwise specifically determined by the
5 Commission, and then the sentence would just begin, in
6 cases of conflict between SGAT and Qwest tariff and read
7 as it is now written that introductory clause.

8 JUDGE RENDAHL: Mr. Menezes, in the version
9 that I have, which is the SGAT version filed -- oh,
10 thank you.

11 MR. MENEZES: I'm sorry, it's on page seven.

12 JUDGE RENDAHL: Got it now. I read Section 3
13 and thought we were done. So okay, go ahead.

14 MR. MENEZES: That introductory clause, I'm
15 not sure what it means really. I mean unless the
16 Commission specifically determines otherwise, I think
17 that if the Commission makes a determination, that would
18 be in the nature of an order of the Commission. It
19 might come out as rules. It might be in the generic
20 docket. And if that happens, that would fall under the
21 change in law provision, and we have a process which we
22 haven't discussed yet, because that's in Section 2.2,
23 where a change in law is dealt with with a negotiation,
24 and then if there is no agreement, there is dispute
25 resolution. To put it here I think puts the whole

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1 provision into question about when you have a conflict
2 and when you don't when a Commission is acting. I think
3 we have handled it or we will have handled it adequately
4 in 2.2 when we finish going through that section.
5 That's the comment AT&T has here.

6 JUDGE RENDAHL: So essentially hold that
7 thought until we get back to 2.2?

8 MR. MENEZES: To complete the discussion,
9 yeah, I think it would be instructive to have the
10 discussion on 2.2.

11 JUDGE RENDAHL: Okay.

12 Mr. Brotherson, any thoughts on that?

13 MR. BROTHERSON: Well, we can talk about it
14 again in 2.2, but we believe that no matter what
15 language the rest of the clause contains, that a
16 Commission has the authority to specifically order
17 otherwise, and we simply added that language to reflect
18 concerns that were raised in a previous workshop by the
19 hearing examiner.

20 JUDGE RENDAHL: I'm sorry, I missed the last.

21 MR. BROTHERSON: By the hearing examiner.

22 JUDGE RENDAHL: Okay, thank you.

23 Well, let's turn to 2.2 then. That seems to
24 be where all the --

25 MR. SCHNEIDER: I do have a --

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1 JUDGE RENDAHL: Mr. Schneider.

2 MR. SCHNEIDER: -- comment on 2.3. In
3 Colorado testimony, I proposed --

4 JUDGE RENDAHL: Would you please speak into
5 the microphone as well, thank you.

6 MR. SCHNEIDER: In Colorado testimony, I had
7 proposed a sentence to replace the last sentence in 2.3.
8 I think the last sentence in 2.3 is a little bit vague.
9 I mean I don't quite know what they mean by that last
10 sentence, and I had proposed that that sentence be
11 struck and replaced by this sentence:

12 Cases of conflict may include the
13 addition of rates and terms or
14 conditions that do not directly conflict
15 with the SGAT or where the SGAT is
16 silent.

17 Basically, you know, I think it's just a lot
18 more clear than this last sentence in 2.3, and it's
19 basically better language.

20 JUDGE RENDAHL: Could you repeat the
21 language, please.

22 MR. SCHNEIDER: Okay.

23 Cases of conflict may include the
24 addition of rates, terms, or conditions
25 that do not directly conflict with the

03907

1 SGAT or where the SGAT is silent.

2 JUDGE RENDAHL: Thank you.

3 Mr. Brotherson.

4 MR. BROTHERSON: Well, we did discuss that in
5 another workshop, and we disagreed with it there, and I
6 guess I would disagree with it here as well. I don't
7 believe we have added to the interpretation of the
8 document by saying that a conflict can exist where there
9 doesn't appear to be a conflict, and a conflict can
10 exist when the SGAT is silent. To the extent that
11 there's a conflict, it should apply, but I think by
12 adding language that says you can have a conflict where
13 there doesn't appear to be a conflict, it almost raises
14 a presumption that I don't believe is either needed or
15 appropriate in the language.

16 MS. HOPFENBECK: I think what we're trying to
17 prevent by adding this language is the situation where
18 there is a new -- a tariff filed that includes terms and
19 conditions perhaps that on which the SGAT that has been
20 adopted by a carrier as their interconnection agreement
21 is silent on. And we want to prevent Qwest from being
22 able to really argue because we think this -- it
23 violates this whole concept of how we deal with changes
24 of law and amending agreements unilaterally, preventing
25 that, we want to prevent Qwest from basically taking the

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1 position that we are bound by changes to their tariffs
2 that we haven't agreed to previously, and we're bound
3 simply because they're new terms and conditions that
4 they have added and the SGAT is now silent on, and
5 therefore we are bound to comply with them. Essentially
6 in that instance, we think the amendment process has to
7 be followed in order to incorporate such new terms and
8 conditions into our interconnection agreements.

9 JUDGE RENDAHL: Okay, thank you.

10 Ms. Doberneck.

11 MS. DOBERNECK: Megan Doberneck with Covad,
12 one thing. We agreed with the language WorldCom has
13 proposed in Section .2.3, and I would like Mr. Zulevic
14 to be sworn in so he can provide verified testimony as
15 to why this is such a big issue for Covad and why we
16 feel so strongly that we cover not only those situations
17 in which there is a direct conflict, but where external
18 documents add to our obligations or where the SGAT is
19 actually silent. So if I could get Mr. Zulevic sworn
20 in.

21 JUDGE RENDAHL: Could you please state and
22 spell your full name.

23 MR. ZULEVIC: Yes, it's Michael Zulevic,

24 M-I-C-H-A-E-L.

25 JUDGE RENDAHL: Thank you.

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1 MR. ZULEVIC: Last name is Zulevic,
2 Z-U-L-E-V-I-C.

3 JUDGE RENDAHL: Thank you.

4 (Whereupon MICHAEL ZULEVIC was sworn as a
5 witness herein.)

6 MR. ZULEVIC: Without getting too heavily
7 into another topic which will come up a little bit
8 later, the CICMP process, I would like to point out that
9 we have had on a practical level some experience with
10 terms and conditions being placed upon Covad that were
11 not part of our interconnection agreement and definitely
12 not a part of this SGAT. And it just seems extremely
13 unreasonable to have language in the SGAT that would
14 allow this to continue. Anything that we are bound to
15 do should be controlled either in an interconnection
16 agreement or an SGAT if it's that important to Qwest
17 doing business with us. If it is not that important,
18 then if the SGAT or interconnection agreement are
19 silent, do not include that, then the silence in there
20 should prevail basically. They should not be able to
21 introduce new terms and conditions that are not included
22 in there.

23 And one of the practical applications that I
24 have seen here was a document that is required to be
25 signed when you accept the collocation, and there were

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1 terms and conditions in there that were definitely not
2 part of our interconnection agreement or the SGAT, but
3 we were not allowed to take possession of that
4 collocation or start placing orders or doing service,
5 providing service, until that was -- that agreement was
6 signed. This is an agreement that has gone through some
7 modification, because it was pointed out several
8 workshops ago beginning in Colorado, but we have yet to
9 finalize even that and make sure that it's consistent
10 with the SGAT as we currently have it negotiated. So I
11 really would be opposed to having any language in here
12 that would allow that type of practice to continue.

13 JUDGE RENDAHL: Thank you.

14 Ms. Friesen.

15 MS. FRIESEN: As I understand the language
16 that's currently in Section 2.3, that last sentence was
17 written for the benefit of Mr. Antonuk, and I'm not
18 quite understanding why Qwest is disagreeing with the
19 previous language and the additions that WorldCom has
20 proposed and Covad supports. Because if you read the
21 language that is currently in the SGAT, it says:

22 To the extent another document abridges
23 or expands the rights or obligations of
24 either party under this agreement.

25 To me, that suggests that where the agreement

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1 is silent, if they attempt to add additional language,
2 then they are thereby attempting to expand the
3 agreement. And so I guess my question to Mr. Brotherson
4 is, how are you distinguishing what's in there now from
5 what Mr. Zulevic and the WorldCom people are proposing?

6 MR. BROTHERSON: Well, I would agree to the
7 first part of your statement which -- and I believe that
8 this last sentence addresses Mr. Zulevic's concern about
9 that some new product offering that he feels is
10 inconsistent. It says:

11 To the extent another document abridges
12 or expands the rights or obligations of
13 either party under the agreement, the
14 rates, terms, and conditions of this
15 agreement shall prevail.

16 I think that addresses the concern about what
17 about something new that's rolled out. I think language
18 that says when there does not appear to be a conflict
19 there is a conflict or if it's silent there can be a
20 conflict doesn't add in the sense that it doesn't expand
21 anything beyond this sentence unless it's intended to
22 create a potential conflict merely by being silent or
23 presumption of a conflict even if it's silent.

24 MS. FRIESEN: Let me ask you --

25 MR. BROTHERSON: And I certainly wouldn't

03912

1 agree to anything that would presume a conflict.

2 MS. FRIESEN: Let me ask you --

3 JUDGE RENDAHL: Ms. Friesen, before you go
4 ahead, I think Ms. Doberneck had a comment.

5 MS. DOBERNECK: I suppose my -- when we're
6 talking about presuming a conflict or something of that
7 nature, I think we are looking at it from the
8 perspective of lawyers. It is very easy to envision a
9 scenario in which provisions do not directly conflict as
10 the provision currently suggests, and yet there can be a
11 problem in that a particular external policy or method
12 of procedure can add without being encompassed in that
13 direct conflict scenario.

14 So I think that's what we're trying to
15 capture by saying where it's not a direct conflict or
16 where the SGAT is silent, to ensure that, you know, as a
17 matter of law we don't preclude ourselves from
18 attempting to protect our current rights and obligations
19 under the agreement. So I don't think we're trying to
20 presume a conflict. We're just looking at it from a
21 purely legal perspective. The law considers a conflict
22 one thing versus, you know, what business people or in
23 reality would also constitute a conflict.

24 JUDGE RENDAHL: Ms. Friesen, very briefly,
25 and then Qwest very briefly, and then I think we may

03913

1 just about have beat this one.

2 MS. FRIESEN: Mr. Brotherson, I guess just so
3 I can understand your position, to the extent that the
4 SGAT is silent, and let's say, for example, Qwest comes
5 up with a policy for collocation that adds terms and
6 conditions to something that is already offered in the
7 SGAT, but the SGAT is silent with respect to these terms
8 and conditions, do you view that to be a conflict?

9 MR. BROTHERSON: To the extent that it would
10 abridge or expand the rights of the parties, yes.

11 JUDGE RENDAHL: Okay, are there any --
12 briefly, Mr. Kopta, and then, Ms. Hughes, did you have a
13 comment after Mr. Kopta?

14 MS. HUGHES: Only to comment that I think the
15 result is agreed upon. It's a dispute over which
16 language better captures that result, so just to suggest
17 that we are at impasse on this and can move on.

18 JUDGE RENDAHL: Right.

19 Briefly, Mr. Kopta.

20 MR. KOPTA: A separate but related issue. We
21 share the same concerns that have been discussed, and
22 the problem then becomes a practical one of what happens
23 when there is a conflict. And right now certainly as
24 reflected in some of the documents that XO has produced,
25 including Exhibit 881 for this workshop, Qwest simply

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1 announces that it has changed a particular policy and it
2 will apply as of X date. And if the CLEC believes that
3 that's in conflict with its agreement or the SGAT,
4 obviously the agreement once it's been adopted, once the
5 SGAT has been adopted, the agreement, then the issue
6 becomes what happens in the meantime.

7 From our perspective, the status quo which we
8 view as the SGAT or the agreement should govern as
9 opposed to any change or new policy that Qwest has
10 unilaterally promulgated, at least until such time as
11 there is some resolution of the dispute. Right now
12 because CLECs are in the position of largely obtaining
13 services from Qwest, Qwest has the practical ability to
14 impose new terms and conditions pending any resolution
15 of a dispute.

16 And so we had proposed some language at an
17 earlier workshop, in a multistate workshop, that would
18 essentially maintain the status quo of the agreement and
19 preclude Qwest from enforcing any conflicting provision
20 of another document until such time as the dispute is
21 resolved, and I will read the language that we had
22 proposed.

23 JUDGE RENDAHL: Now which section does
24 this --

25 MR. KOPTA: This is 2.3, this would be a

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1 sentence that is added to the end of the existing
2 language in 2.3.

3 JUDGE RENDAHL: Before we start discussing
4 alternate language, because of the hour and because of
5 how far we have not gotten today, I'm wondering if it
6 might be appropriate to once we stop at 5:00 to share
7 this information with the other parties and then bring
8 this up first thing tomorrow morning. If there are
9 other parties who also have changes for this section, it
10 might be best to do this off line and then bring it back
11 in the morning. Is that acceptable?

12 MR. KOPTA: That would be fine, and it's the
13 same language that had been proposed in the multistate,
14 so Qwest is familiar with the language.

15 JUDGE RENDAHL: Okay.

16 MR. KOPTA: Those in the multistate obviously
17 are not, but that's the concept.

18 JUDGE RENDAHL: Okay.

19 MR. KOPTA: Is just that Qwest wouldn't
20 enforce any particular provision outside of the SGAT if
21 the CLEC contests it as conflicting with the SGAT or the
22 agreement until such time as that dispute is resolved.

23 JUDGE RENDAHL: Well, I would support any
24 efforts that might resolve this language dispute. And
25 if in the morning you haven't reached a resolution on it

03916

1 but you still think that the language is helpful to move
2 things along, you can distribute it, and we will move
3 forward from there.

4 MR. KOPTA: And it could be that we just
5 provide it as part of a brief assuming that the issue is
6 at impasse.

7 JUDGE RENDAHL: Okay.

8 MR. KOPTA: But it was just the language that
9 would crystallize that particular concept.

10 JUDGE RENDAHL: I appreciate that.

11 MR. KOPTA: So it's really the concept I
12 think that at least previously Qwest had not agreed to
13 that concept, and so this is an issue where there's a
14 disagreement, I think, over concept, not just over
15 language.

16 JUDGE RENDAHL: Okay, well, let's see what
17 you all can do off line after we end at 5:00, and let's
18 move on, if we can.

19 Back to 2 or still on 2.2, but a different
20 issue on 2.2, unless we have beaten the whole thing,
21 beaten this dead horse completely.

22 MR. MENEZES: 2.2?

23 JUDGE RENDAHL: 2.2.

24 MR. MENEZES: We haven't done 2.2.

25 JUDGE RENDAHL: All right.

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1 MR. MENEZES: We have things to talk about.

2 JUDGE RENDAHL: All right, let's talk about
3 2.2 then, Mr. Menezes.

4 MR. MENEZES: Thank you. Section 2.2 as has
5 been discussed is to deal with, there's some
6 introductory language, but the second half of it deals
7 with changes in law and how those get implemented given
8 the fact that you have an agreement with terms and
9 conditions between the parties.

10 JUDGE RENDAHL: Now are we looking at Exhibit
11 788?

12 MR. MENEZES: It is 788, and it starts --
13 it's a little confusing because of all the deletions,
14 but it does start on page five, and where the
15 underlining text ends about seven lines down, you skip
16 all the way over to page seven at the top.

17 JUDGE RENDAHL: So what used to be Section
18 3.0 is included in Section 2.2?

19 MR. MENEZES: Well, I don't know that that's
20 right, because there's 3.0 on the next page. I'm not
21 sure. I'm sorry, right, that strike through of 3.0 is
22 actually part of 2.2.

23 JUDGE RENDAHL: Thank you.

24 MR. MENEZES: Sorry.

25 JUDGE RENDAHL: Okay, just for clarification

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1 for the record.

2 MR. MENEZES: So what we have here is that if
3 there is a -- if an existing rule, which is defined in
4 this provision to include laws and several items, if
5 it's changed, vacated, dismissed, stayed, or modified,
6 then this process would kick in, which is a negotiation
7 and then dispute resolution process, if the parties are
8 not able to resolve the -- how the change of law should
9 be implemented in the agreement in the form of an
10 amendment. Now the comment I have is where we -- if you
11 number up from the bottom of 2.2 11 lines, the first
12 word in that line is ordered, and it ends a sentence,
13 and then it begins, during dependency.

14 JUDGE RENDAHL: Yes.

15 MR. MENEZES: And if you take that all the
16 way to right before the last sentence, which is the
17 fourth line up all the way at the end of the line, it
18 ends 15 days of dispute resolution, period, so it's that
19 whole block of text. And the AT&T proposal is simply
20 that starting with during dependency of that sentence
21 would go, during dependency of any negotiation, and they
22 would insert right after negotiation, or dispute
23 resolution for an amendment pursuant to this Section
24 2.2, the parties shall continue to perform their
25 obligations in accordance with the terms and conditions

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1 of this agreement, period, and strike all the rest of
2 the text up to the last sentence.

3 The thing that we would like to be sure of is
4 that when there is a change of law and the parties are
5 working to determine how it be implemented in the
6 interconnection agreement that there remains the
7 certainty of the terms and conditions that are already
8 existing in the interconnection agreement. The language
9 that Qwest has added that I suggest be stricken allows,
10 I think, Qwest to, after a certain period of time, to
11 change how it's going to behave under the agreement even
12 though that the parties may have gone to dispute
13 resolution and it is still a live dispute.

14 And what they have done here too is they --
15 the language suggests that the -- the party resolving
16 dispute must as an initial matter determine some interim
17 manner of behavior, interim operating agreement, and it
18 just seemed very confusing to inject that into the
19 dispute resolution process. Because if an arbiter were
20 to determine at the outset how the parties should behave
21 and then go on to determine the merits of the dispute,
22 it seems like you might as well just get it all done,
23 and it seems like an unnecessary interim step in this
24 process. Just have the obligations continue, and allow
25 the dispute resolution to proceed, and when it's done,

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1 then the parties conform the agreement and their
2 behavior to what the resolution of that dispute process
3 is.

4 MS. FRIESEN: It's also, I would like to add
5 one other comment, it's also very unclear from this
6 language in during the pendency of the dispute on what
7 the interim agreement will look like, what you're
8 supposed to use during that. So even though this may be
9 the first issue that the arbiter needs to look at, there
10 is still some -- there is still a gap.

11 JUDGE RENDAHL: Ms. Hughes, did you have a
12 comment or then, Ms. Hopfenbeck.

13 MS. HUGHES: I think Mr. Brotherson can
14 address our comment.

15 JUDGE RENDAHL: Okay.
16 Mr. Brotherson.

17 MR. BROTHERSON: Sure. I think first of all
18 I guess my comment would be if it's not obvious from the
19 redlining, there has been a considerable amount of
20 change and back and forth on this particular section. I
21 think that the thrust of what Qwest was attempting to
22 address and has continued to attempt to address, and we
23 have offered it in several different versions now, and
24 at the heart of the disagreement with AT&T predominantly
25 has been whether or not the SGAT should continue in

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1 operation after there has been a court ruling or a
2 Commission decision that changes the SGAT. And our --
3 it's our belief that, in fact, it's our experience that
4 in some cases if there's something unfavorable to a
5 CLEC, we have had problems getting people to come to the
6 table to negotiate a change in the SGAT to reflect the
7 change of law. And CLECs may have a similar version or
8 view about Qwest.

9 But a couple of scenarios can come to mind.
10 If Qwest is ordered to discontinue a service by this
11 Commission or a court, the question then becomes, do the
12 parties continue to offer that service having been
13 ordered to discontinue for some indefinite period of
14 time while they negotiate and/or dispute the reading or
15 meaning of that order. Conversely, if Qwest is ordered
16 to provide a new service by a Commission or a court, do
17 the parties continue to say, well, we will operate under
18 the old agreement, we're not going to do this, while we
19 spend the time negotiating this new language for however
20 long that may take.

21 And it was the intent of Qwest in its
22 language to, its initial language which is not now being
23 offered, and later as a compromise to say, no, we can
24 not go on indefinitely. If we've got an order that
25 creates a change in law, at some point we've got to

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1 start dealing with that. And we have provided in this
2 language a 60 day window at which point the parties will
3 continue to operate under the old agreement even if it's
4 inconsistent with the law. But that stops the process,
5 and it offers then an alternative that says you go to a
6 dispute resolution.

7 And the first thing you ask the arbitrator to
8 do, and this presumes that the parties aren't going
9 directly to the Commission, but the first thing you do
10 is ask the arbitrator to say what is going to be the
11 interim operating arrangement while we're sorting this
12 out. And that's the intent of the language, that's the
13 intent of the thrust of this whole section, and I think
14 it's at the heart of the dispute in 2.2, specifically
15 what are the obligations of the parties while they're
16 negotiating a change of law amendment.

17 JUDGE RENDAHL: Thank you.

18 Ms. Hopfenbeck and then Ms. Friesen.

19 MS. HOPFENBECK: WorldCom concurs with the
20 recommendation of AT&T and would simply add that it is
21 our view that by inserting this period in which -- this
22 short period in which the arbitrator will have to come
23 -- I mean impose an interim agreement on the parties,
24 essentially what we have done is shortened the dispute
25 resolution process. There already is -- this provision

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1 already contemplates that the parties will resolve this
2 consistent with an expedited dispute resolution process
3 that's set forth in the agreement. We believe that
4 that's sufficient.

5 And I think we need to remember here that
6 while Mr. Brotherson is talking about a situation where
7 -- and Qwest is talking about a situation where they
8 believe there's been a change of law, it's definitely a
9 situation where the parties are in dispute and the
10 parties are -- have a disagreement as to whether there
11 has been a change of law that needs to be incorporated.
12 That's what's going to be before the arbitrator in
13 resolving the dispute once you get to dispute
14 resolution, and we don't believe that that arbitrator
15 should be called upon to essentially prejudge that
16 decision in 15 days what should be made in due course
17 within the process that's set forth in the agreement.

18 JUDGE RENDAHL: Ms. Friesen.

19 MS. FRIESEN: When we had a discussion about
20 this issue in the multistate proceeding, Mr. Brotherson
21 pointed out on the record there, and he didn't bring it
22 forward today, but he pointed out on the record there
23 that it takes some lag time. So, for example, if a
24 decision comes down that says Qwest must offer X and
25 Qwest doesn't have a "product" for that or terms or

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1 conditions associated with that, Mr. Brotherson made it
2 clear that it takes time to generate those and to do
3 those so that they wouldn't be able to be made
4 immediately available. So it's our feeling that the
5 language that AT&T proposes balances the risk on both
6 sides, and it certainly allows Qwest enough time to
7 develop its products during the dispute period if it has
8 to do it.

9 To do it this way, I suspect Qwest will come
10 to these mini arbitrations or these interim arbitrations
11 and say they can't possibly offer this new product they
12 have been required to offer because they don't have
13 terms, conditions, prices, product, that kind of thing.
14 So it really I think hurts the CLECs more than it does
15 Qwest.

16 JUDGE RENDAHL: Thank you.

17 Ms. Hughes.

18 MS. HUGHES: Just two final comments. First
19 of all, as Mr. Brotherson indicated, the language in
20 this section has been the subject of extensive
21 negotiations during the course of the last five weeks,
22 and the language that is at issue now was language that
23 Qwest offered I guess a week ago in an effort to see if
24 we couldn't balance out this issue a bit more and bring
25 it to closure. Unfortunately, that doesn't appear to be

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1 the case.

2 But our intent in this language in indicating
3 that during the 60 day negotiating period the parties
4 would continue to perform the obligations under the
5 agreement was intended to be responsive to the comments
6 that Ms. Friesen made, but we have also attempted to
7 deprive either party of any incentive to delay promptly
8 negotiating a change of law amendment by the new
9 language that says that if, in fact, this goes to
10 dispute resolution after 60 days that the first order of
11 business would be for the arbitrator to decide what the
12 business relationship will be during the time when the
13 matter is being resolved by arbitration.

14 Ms. Friesen did, I think, make a comment that
15 has merit, and that concerns an ambiguity about what
16 would the parties be doing during that 15 day period
17 when the arbitrator is deciding the issue on an interim
18 basis. And we will clarify that during -- until the
19 arbitrator has rendered her decision on what the interim
20 operating procedure will be between the parties, the
21 parties shall continue to perform their obligations
22 under the agreement. So we will incorporate that latter
23 comment, but otherwise I believe we are at impasse.

24 JUDGE RENDAHL: Okay, thank you.

25 So except for the change that Ms. Hughes just

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1 mentioned for Section 2.2, it indicates we're at impasse
2 on Sections 2.2 and 2.3.

3 Then let's move on then to the next reference
4 on the issues list that Qwest provided is 4.0. Is there
5 anything in Section 3.0 that the parties have issue
6 with?

7 MS. FRIESEN: Yes, there is.

8 JUDGE RENDAHL: Okay.

9 MS. FRIESEN: 3.2.

10 JUDGE RENDAHL: Then let's turn to Section
11 3.2.

12 MS. FRIESEN: Mr. Menezes has some language
13 changes that were agreed to previously that didn't make
14 it into this, but I also have a quick question about the
15 new CLEC questionnaire. Did Qwest intend to bring that
16 into this record?

17 MR. BROTHERSON: We can make that available
18 as a late filed exhibit.

19 MS. FRIESEN: Really what I'm asking, Larry,
20 if you will recall, the last version we saw was version
21 16, and I believe Laura suggested that that version was
22 going to be changed to be consistent with Section 3.2.1,
23 and I don't know whether those changes have been made.
24 So I guess what I would ask of Qwest is that they bring
25 forward the new CLEC questionnaire to this proceeding

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1 that incorporates the changes in it that would
2 accommodate 3.2.1.

3 Recall that --

4 MR. BROTHERTON: I recall the history.

5 MS. FRIESEN: Let me try and narrow it for
6 you, it might be easier to do quickly. The new CLEC
7 questionnaire version 16 has all the various states.
8 You have to fill these things out for various states,
9 and you have to fill it out every time. And in the
10 state thing was going to be extracted from -- I don't
11 want to mischaracterize what Laura said what changes to
12 the new CLEC questionnaire were going to be, but I guess
13 I would like to see those changes made and then brought
14 into this record.

15 MR. BROTHERTON: Well, we agreed we would
16 make the changes, and I think, you know, in terms of
17 history, we took the original CLEC questionnaire that we
18 asked CLECs to fill out, we have divided it now into two
19 parts at the request of AT&T and others to say, well, we
20 need this information right away, if we've got this, you
21 can start ordering, and the rest of the information you
22 can send us later. We have agreed to make those
23 changes.

24 However, to make that change on the -- on the
25 -- in terms of filing a document today may not reflect

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1 the fact that we have not updated the software in the
2 systems to have incorporated those changes yet. So I
3 think our agreement was we would make the changes we
4 have agreed to in the last workshop as we hammered out
5 this language, but I don't think we have those changes,
6 the software written that incorporates those changes
7 yet, and so we don't have a version 17 of the CLEC
8 questionnaire yet to file in this proceeding.

9 MS. FRIESEN: At some point, can you make
10 that available, maybe as a late filed exhibit, so that
11 we can just examine it to make sure it's consistent?

12 MR. BROTHERTON: Well, I can make 16, version
13 16, available as a late filed exhibit. I, you know,
14 we're going to have to make changes to the actual input
15 on the screen that the CLECs fill out, and I can't
16 commit us to, you know, what the process is for doing
17 that.

18 MS. FORD: I think, although I'm not as
19 familiar with this as some people in this hearing room
20 might be, I think this would fall under our commitment
21 to make the changes in 45 days of the agreement, and I
22 think what I had said last time was that you would see
23 it in version 17 without giving a time line.

24 MS. FRIESEN: Well, I guess then I would like
25 the record to have, in accordance with Mr. Brotherton's

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1 offer, version 16, so you can at least see what's
2 missing and what needs to be changed so that when we
3 prepare, get ready to look at the final report, if that
4 hasn't been done, that there will be underlying
5 implementation documents that are different than what
6 the SGAT says, and so there will be, you know, SGAT
7 promise or the failure to act.

8 JUDGE RENDAHL: The questionnaire is the one
9 that's being referred to in Section 3.2, and as I
10 understand it, there is a version that doesn't include
11 all the changes that Qwest has so far agreed to make; is
12 that correct?

13 MR. BROTHERTON: Correct.

14 JUDGE RENDAHL: And Qwest agrees to make
15 questionnaire 16, version 16, available as an exhibit?

16 MR. BROTHERTON: Correct.

17 JUDGE RENDAHL: And, Ms. Friesen, you want to
18 make notations on that questionnaire or have testimony?

19 MS. FRIESEN: To the extent -- well, I don't
20 know how you want to handle it. They have promised to
21 change the questionnaire, and I have no objection to
22 that. I would just like to ensure that it happens, so I
23 guess it would be helpful to have 16 in here so that the
24 record reflects at least what 16 was and to the extent
25 that version 17 never transpires or comes to be, I will

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1 bring it up to the FCC I guess if we're past this
2 workshop.

3 JUDGE RENDAHL: Mr. Brotherson, how difficult
4 would it be to bring a copy of 16 into the record?

5 MR. BROTHERSON: I have a copy of 16 right
6 now.

7 JUDGE RENDAHL: Okay.

8 MR. BROTHERSON: The question of what's
9 involved to roll out the new version that reflects the
10 changes that we have agreed to in the last workshop, I
11 can't answer. The programming involved in that, I just
12 don't have the answer to that.

13 JUDGE RENDAHL: Okay.

14 Ms. Hughes, how many copies, you just have
15 one copy right now of 16?

16 MS. HUGHES: Yes.

17 JUDGE RENDAHL: Okay.

18 MS. HUGHES: We just have one copy of 16, but
19 we can make copies available to anyone who wants one
20 here.

21 JUDGE RENDAHL: If you can have copies
22 available for tomorrow morning, and since I'm not sure
23 if you have participated in the hearings before the
24 Commission, it is helpful to have them hole punched, 3
25 hole punched. So when you make the copies, if you could

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1 have them hole punched, that would be great. And then
2 we can bring this up tomorrow morning, Ms. Friesen, and
3 address with Mr. Brotherson any questions you wish to
4 ask him of the exhibit.

5 MS. FRIESEN: Okay, thank you.

6 JUDGE RENDAHL: Okay.

7 MS. STRAIN: I have a question.

8 JUDGE RENDAHL: Ms. Strain.

9 MS. STRAIN: Now the SGAT lite I'm looking at
10 appears to have two sections numbered 3.2.1, and I'm
11 assuming we're talking about the first one, but the
12 section on page nine also appears to be numbered 3.2.1.

13 MS. FRIESEN: I was referring to if you look
14 at page eight.

15 MS. STRAIN: Right.

16 MS. FRIESEN: I mean up to, that's the new
17 CLEC questionnaire.

18 MS. STRAIN: Right.

19 MS. FRIESEN: And we have one other comment
20 to that piece. And then if you go to page nine, 3.2.1,
21 which was -- which is contained in what is formerly 3.3,
22 see the strike outs there.

23 MS. STRAIN: Right. Well, they were both
24 numbered 3.2.1, and my question was, was one of them
25 supposed to be numbered 3.2.2 or some other number?

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1 MR. KOPTA: The second 3.2.1.
2 JUDGE RENDAHL: Which one?
3 MR. MENEZES: The second one, there shouldn't
4 be two, but the second one is the one she was talking
5 about.
6 JUDGE RENDAHL: Well, it appears that there
7 are two Sections 3.2.1, and apparently the second one
8 should be 3.2.2.
9 MR. BROTHERRSON: I believe that's correct.
10 JUDGE RENDAHL: Okay.
11 MS. STRAIN: And, Letty, is that the one that
12 you had the problem with was what's now going to be
13 called 3.2.2?
14 MS. FRIESEN: Yes.
15 MS. STRAIN: Okay.
16 JUDGE RENDAHL: Well, then we will bring up
17 the issue on what should be 3.2.2 tomorrow morning with
18 the exhibit questionnaire version 16.
19 Okay, let's move on to Section 4. Oh, we
20 can't do that.
21 Mr. Menezes.
22 MS. HOPFENBECK: We have a couple of issues
23 also.
24 JUDGE RENDAHL: Okay. Mr. Menezes and then
25 Ms. Hopfenbeck.

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1 MR. MENEZES: In 3.2.1 on page eight, the
2 language that reads, the remainder of this questionnaire
3 must be completed within two weeks for Qwest to continue
4 processing the orders. Now that was -- okay, Qwest had
5 agreed and I am sensing they still agree to delete the
6 phrase at the end, for Qwest to continue processing new
7 orders.

8 MR. BROTHERRSON: We did agree to that, and I
9 apologize that that didn't make it into the --

10 MR. MENEZES: No problem, I just wanted to
11 clarify that. And I do have a question, because the
12 breakage of language here changed since the last draft I
13 saw. The next sentence says, this questionnaire will
14 then be used to, and then the following items, and I'm
15 confused I guess. I assumed that these things would be
16 done at least to the extent possible once you get the
17 information that's enumerated under 3.2, that you don't
18 wait to do these things until you get the completed
19 form; is that correct?

20 MS. FORD: That's true, why don't we strike
21 then.

22 MR. MENEZES: Yeah, if we strike then --

23 JUDGE RENDAHL: Where are we striking then?

24 MR. MENEZES: It is in 3.2.1, the second line
25 down, at the very end it starts, this questionnaire will

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1 then be used to.

2 JUDGE RENDAHL: Thank you.

3 MR. MENEZES: Strike it there.

4 And that's all I have.

5 JUDGE RENDAHL: Okay.

6 Ms. Hopfenbeck.

7 MS. HOPFENBECK: The first question I had I
8 think is just a clarification. You have identified a
9 list, a limited list of information required on the new
10 CLEC questionnaire that you have to fill out before
11 placing any orders, and I just wanted to make -- I
12 thought credit information, billing information, and
13 summary billing were subsets of billing and collection.
14 And I don't have the new CLEC questionnaire in front of
15 me, but that was my understanding. I may be wrong. But
16 if I am right, I think you probably don't want to
17 separately identify billing and collections in section
18 one and then the other three. Am I wrong on that?

19 MS. FRIESEN: Annie, it might be helpful to
20 have that CLEC questionnaire tomorrow and have Larry go
21 through which sections need to be filled out, because
22 then that will elucidate that.

23 MS. HOPFENBECK: Right. Then with respect to
24 what is identified as 3.2.1 on page nine, and I would
25 also note that it is true there are two 3.2.1s, and so

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1 one of -- that probably has to be corrected.

2 MS. HUGHES: I think we have already made
3 that correction.

4 MS. HOPFENBECK: Okay. WorldCom had
5 suggested a little different language to describe the
6 situation in which a CLEC doesn't have to complete a new
7 questionnaire, and I think the most significant
8 suggestion we had is that the CLECs that are previously
9 completed a questionnaire need not fill out a new, we
10 suggested update, but anyway, the CLEC questionnaire if
11 no material changes in the information required have
12 occurred. Our concern is simply that there might be,
13 you know, just some minor change, but it's not material
14 to the ability of Qwest and the CLEC to do business
15 together. And I mean the new -- this new CLEC
16 questionnaire is a very extensive document that requires
17 a lot of work, and our concern is not to have to do that
18 unless there has been a material change in the
19 information required.

20 MR. BROTHERTON: Then I guess if we have a
21 dispute over what's material, we can resolve that. I
22 don't know. I think, you know, if you go back to the
23 history of how we got here, we -- the CLECs had raised
24 concerns about filling out the questionnaire, so we
25 split it out, and we listed the critical information

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1 that we needed, and then we provided time to fill out
2 the rest of the stuff.

3 So I guess, you know, to the extent that we
4 provided the additional time to provide any new
5 information, I think that if there has been any change
6 in the information required, at some point in time,
7 we've got to have it. And if we change it to material,
8 then we get into this debate of, well, I don't have to
9 provide the new information, I don't feel it's material.
10 I think we would propose that it read the way it does.

11 MS. HOPFENBECK: I guess I'm just suggesting
12 that, you know, it's not -- we understand that. I mean
13 when you're talking about a CLEC that's not currently
14 doing business with Qwest, I mean it makes perfect sense
15 to have sort of an initial piece of information that
16 allows them to get into business expeditiously and then
17 -- and this is the new CLEC questionnaire, not the new
18 product questionnaire. This is the information that the
19 parties need to do business together.

20 I'm talking about the situation where the
21 parties are already doing business, and the question is
22 whether Qwest has the information it needs to continue
23 to do business. I mean if they don't, then I think the
24 information is clearly material and needs to be updated.
25 But if they can still do business, it's not material,

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1 and it's not that we need more time to complete the
2 questionnaire, it's that it is terribly time consuming
3 to do, so it's in our view a waste of our resources to
4 have to update the questionnaire or actually to fill out
5 a new questionnaire.

6 I mean maybe the other way to do it is to
7 just say we update the questionnaire for new -- for
8 different information as opposed to having to fill out a
9 completely new questionnaire. That would be an
10 alternative resolution to this.

11 JUDGE RENDAHL: I have a question just about
12 the process, and maybe this will help, or maybe it
13 won't. Is this questionnaire something that, it looked
14 quite lengthy, is going to be produced, you know, from a
15 disk so that if there is something that as you say needs
16 to be updated, your zip code changes, your contact
17 person changes, that you don't need to submit an
18 entirely new document but update a single question as
19 opposed to producing an entirely new document, although
20 if it's already in the system, changing it and printing
21 out a new copy may not be that much trouble. I don't --
22 I'm not sure what the issue is here, but that's what I'm
23 hearing.

24 MS. HOPFENBECK: You're cutting to exactly
25 the point that's troubling to us is the need to complete

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1 an entirely new questionnaire if any single bit of
2 information changes.

3 MR. BROTHERTON: I believe the fact to be
4 that's it's only -- that we would only require an update
5 if the new information, the new contact person, the new
6 telephone number, the new fax number. I need to confirm
7 that, and I will report back in the morning.

8 MS. HOPFENBECK: If so, could the language be
9 changed say to clarify that only an update is required
10 as opposed to what's suggested here, which is if there
11 has been any change, an entirely new CLEC questionnaire
12 has to be completed?

13 MR. BROTHERTON: Yes.

14 MS. FORD: Yes, we -- I have been in contact
15 with these people, and if I can just jump in, we can
16 agree with that and get you some language.

17 MS. HOPFENBECK: Great.

18 MS. FORD: And also to your prior point about
19 credit information, billing information, summary billing
20 being part of billing and collection, there should be
21 sub bullets.

22 JUDGE RENDAHL: Thank you, Ms. Ford.

23 Mr. Schneider.

24 MR. SCHNEIDER: Yeah, with regard to 3.2.1,
25 it says, the remainder of this questionnaire must be

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1 completed within two weeks. Two weeks of when? I don't
2 think that's clear. Does that mean two weeks after
3 placing the first order, two weeks after completion of
4 the first part of the CLEC questionnaire, two weeks
5 after beginning completion?

6 MR. BROTHERSON: Well, I think we'll change
7 that to read, within two weeks of completing the initial
8 portion of the questionnaire.

9 MR. SCHNEIDER: Okay, thanks.

10 JUDGE RENDAHL: Okay, are there any other
11 clarifying questions for Section 3?

12 Okay, let's move on to Section 4 with the
13 understanding that we will go back to the version 16 of
14 the questionnaire in the morning. Definitions, and who
15 would like to take the laboring oar on this?

16 MS. HOPFENBECK: I guess I would just start
17 out by saying that one of the -- WorldCom is one of the
18 principal parties with whom there is a lot of dispute
19 about definitions, because WorldCom has suggested adding
20 many definitions that are not currently reflected in the
21 SGAT. WorldCom and Qwest are in the process of
22 discussing this off line. And based on my conversation
23 with Mr. Dixon, we are optimistic that we are going to
24 be able to work this through or most of it through with
25 Qwest off line.

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1 And so I would suggest that we defer this,
2 and I might be able to talk with Ms. Ford, and we can
3 talk about sort of what the timing is, and we could
4 present to the Commission tomorrow a suggested time to
5 bring it up again if it's not resolved by the parties.

6 MS. FORD: Right, Tom Dixon and I have been
7 exchanging voice mails. I thought he would be here this
8 week so we could get this done, but we're glad to have
9 you, of course, and so that's a good way to go.

10 JUDGE RENDAHL: Why don't we do that unless
11 there are other issues that other parties have with
12 definitions that they would like to raise at this point.

13 MS. FRIESEN: No, I've got a few I can grab
14 off line, but.

15 JUDGE RENDAHL: Okay.

16 Mr. Zulevic.

17 MR. ZULEVIC: Qwest had also been -- Covad
18 had also been working with Qwest as well as WorldCom on
19 the definitions, and there were some that I had some
20 concerns about, but I would be more than happy to work
21 off line with Laura and with Mr. Dixon to get a
22 clarification on those. There was also one other one in
23 here that we may have to talk about separately, but
24 we'll let it go until we have the bulk of them taken
25 care of.

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1 JUDGE RENDAHL: Okay, well, why don't all
2 parties then work together, and we support any work that
3 you all can do to reach agreement on this. So we will
4 hear back from you tomorrow or -- I guess it will have
5 to be tomorrow, because that's when we're ending this
6 for this week, the terms and conditions for this week.
7 So we will hear back from you tomorrow on definitions.

8 So let's move on to Section 5, and let's see,
9 and the first issue then is G-29, Section 5.1.3 unless
10 there is another issue before that.

11 Ms. Hopfenbeck.

12 MS. HOPFENBECK: No issue.

13 JUDGE RENDAHL: The issue is when is it
14 appropriate to disconnect services that are impairing a
15 party's obligations to serve and lists AT&T and Covad as
16 the parties with concern. Who would like to take the --

17 MR. BROTHERRSON: The laboring oar?

18 JUDGE RENDAHL: Yes, the laboring oar or the
19 initial stab.

20 MR. BROTHERRSON: I will take an initial stab
21 only to set the table. I guess I think we need some
22 clarification about the specific sections that AT&T has
23 a problem with. But the original provision said that if
24 the -- if there's a connection to the network and it's
25 impairing service, that connection could be

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1 disconnected. We have put some extensive refinements
2 around that.

3 5.1.3.1 talks about where there's an
4 immediate threat to the safety of either parties'
5 employees or customers or the public, we can move very
6 quickly.

7 5.1.3.2 says, well, if it's service impacting
8 but doesn't meet the safety parameters in 5.1.3.1, if
9 it's service impacting such as low level noise or other
10 interference with the other parties' network, there's a
11 different procedure.

12 And then finally 5.1.3.3 said, well, if it's
13 non-service impacting but it affects the network,
14 there's an even longer period of time for notice.

15 So we think we have tried to capture at least
16 the thrust of what AT&T and others have suggested in
17 trying to refine what kind of window of notice is
18 applicable for what kind of level of service impairment.

19 JUDGE RENDAHL: While you were discussing
20 this, Qwest distributed an exhibit or a version of
21 5.1.3.1 which I believe you wanted to make an exhibit.

22 MR. BROTHERRSON: That's correct.

23 JUDGE RENDAHL: Okay, this will be marked as
24 Exhibit 789, and it's Qwest's proposed change to Section
25 5.1.3.1.

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1 MR. BROTHERSON: Yeah, I believe one of our
2 disputes, and Mitch, correct me if I'm wrong, was we had
3 struggled over how to come up with a defining
4 impairment, and this new exhibit for 5.1.3.1
5 incorporates language that says, imposes immediate
6 threat to the ability of a party to provide
7 uninterrupted high quality service to its customers. We
8 captured that language out of AT&T's proposed language
9 or actually accepted language in the dispute resolution
10 section. So we took the language that you had used to
11 describe impairment, and we have used it here again in
12 5.1.3.1 in hopes that we have captured the dispute.

13 MS. FRIESEN: I need to just add to what
14 Mr. Brotherson had said, which was a fairly good
15 synopsis of the issue. If you take a look at the SGAT
16 lite on page 18, 5.1.3.1, the word we were getting hung
17 up on in the concept was operational integrity of the
18 party's facilities. AT&T was hoping to exclude from
19 this provision things that were what we consider
20 somewhat minor, like cross talk on wires. We didn't
21 think those kinds of things should constitute Qwest's
22 ability to -- they don't pose an immediate threat, and
23 they shouldn't constitute or create the ability to stop
24 service.

25 JUDGE RENDAHL: Okay, and this new proposed

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1 exhibit appears to eliminate the words operation or
2 physical integrity of the other party's facilities.
3 Does that --

4 MS. FRIESEN: It does.

5 MS. HUGHES: It does, it would be substituted
6 in place of that language. The new language is, to
7 provide uninterrupted, high quality services to its
8 customers, and that is language that AT&T had proposed
9 we use in the dispute resolution section, and it struck
10 us as language that could productively be used here to
11 try and close this issue.

12 MS. DOBERNECK: Can I ask just a question
13 about the mechanics of how this proposed 5.1.3.1 would
14 work, and I'm looking specifically at sub point or paren
15 3, the proposed remedy for such impairment of any
16 effected service, and then followed by the sentence,
17 either party may discontinue the specific service that
18 violates this provision, through to the end of the
19 sentence. It seems to me that that sub point 3 presumes
20 an opportunity to cure or an opportunity to discuss the
21 proposed remedy, but it also gives either party the
22 right to discontinue the specific service. So I'm
23 wondering mechanically what are we talk -- is there a
24 cure period, what happens, how can the other party
25 respond before service is discontinued?

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1 MS. HUGHES: If I can answer that, the issue
2 of a cure has been discussed extensively in the past,
3 and what we are trying to capture here is the fact that
4 if the impairment at issue poses an immediate threat to
5 the safety of the people identified, you know, we don't
6 anticipate any cure period. Either party, and this is
7 reciprocal, should be able to immediately discontinue
8 that service.

9 We did at the request of CLECs put in the
10 language that you see identified there about providing
11 notice, identifying the impairment, the date and
12 location of the facilities causing the impairment, and a
13 proposed remedy. But none of that, that's purely by way
14 of notice and additional information that the CLECs
15 asked that we agree to provide.

16 But that does not affect the ability for the
17 circumstances identified for either party to immediately
18 discontinue the service, because it is viewed as at such
19 an important threshold of threat that either party
20 should be able to immediately discontinue the service,
21 at the same time providing notice to the other party as
22 to the impairment and the basis for identifying the
23 impairment and a proposed remedy for curing the
24 impairment.

25 MS. DOBERNECK: I certainly don't have a

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1 disagreement with that, but my question is, if we're
2 talking about discontinuance of service, what I'm
3 wondering is within that -- within the notice provided,
4 is there, for example, is there when you're talking
5 about the proposed remedies, would that include say
6 we're discontinuing your service, here's our proposed
7 remedy, when is the discontinuance of service and it's
8 effective, you know, obviously because if we're doing
9 something that would cause Qwest to say we're
10 discontinuing your service, the question, you know, I
11 don't necessarily dispute your ability or right to do
12 so, but the question is, when in fact there is an actual
13 discontinuance, will Qwest provide notice of that or
14 when it intends to discontinue service, just so to the
15 extent that we have end users or customers that need to
16 be notified also that we can then in turn say, hey,
17 here's the service, contact the end user, so we can take
18 care of business on our end as well as addressing the
19 problem.

20 MR. BROTHERTON: We do agree to provide
21 immediate notice by E-mail, but I think the scenario
22 we're describing in 5.1.3.1 is probably the most
23 critical scenario and one that can affect either
24 parties' employees, you know, electrical charge on the
25 line or whatever it happens to be.

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1 We through the process of these negotiations
2 have pared out and identified in 5.1.3.2 and 5.1.3.3
3 scenarios that are of a less health or safety oriented
4 type of scenario, and in those, we do provide more
5 notice, five days in the 1 and 15 days in the other.
6 And so we have tried to, instead of having one all
7 encompassing phrase, we have tried to layer it to
8 address the various scenarios.

9 MS. DOBERNECK: So then, and I just want to
10 make sure I understand, 5.1.3.1 basically involves a
11 situation in which there would be an immediate
12 discontinuance of service because of the nature of the
13 threat; is that correct?

14 MR. BROTHERTON: Yes.

15 MS. DOBERNECK: Thank you.

16 JUDGE RENDAHL: Mr. Menezes.

17 MR. MENEZES: Mitch Menezes, AT&T. I have
18 read through your change in Exhibit 789, and while I
19 appreciate the effort, I just want to put in context
20 where this language comes from and how it is applied in
21 the section where AT&T had proposed its use.

22 The language uninterrupted high quality
23 service is used in the expedited dispute resolution
24 section that we had proposed as sort of one of the
25 triggers for when a party can pursue expedited dispute

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1 resolution, a faster process to resolve a dispute. It
2 was not used as a trigger in that instance to disconnect
3 or discontinue service. So I don't want to equate -- it
4 seems to me if we start using it this way, it could
5 equate that expedited dispute resolution only comes if
6 you're getting a service disconnection or something, and
7 I don't think I want to go there.

8 But I do have a counter for you, which I hope
9 will bring us closer. On the third line down of 5.1.3,
10 an immediate threat, and I would insert the following,
11 of a service interruption, and then delete the rest of
12 that line.

13 JUDGE RENDAHL: This is on line 3?

14 MR. MENEZES: It is on line 3.

15 JUDGE RENDAHL: An immediate threat of
16 service disruption?

17 MR. MENEZES: Interruption.

18 MS. HUGHES: So then delete to the
19 operational or physical integrity of the other party's
20 facilities?

21 MR. MENEZES: Sorry, we're on Exhibit 789.

22 MS. HUGHES: Oh, I'm sorry, I thought you
23 were in the old language.

24 JUDGE RENDAHL: And you would delete all the
25 way through to customers?

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1 MR. MENEZES: Correct, I'm sorry, you're
2 right.

3 JUDGE RENDAHL: So an immediate threat of a
4 service interruption, that party shall provide?

5 MR. MENEZES: Yes, that's right.

6 MS. HUGHES: We can agree to that if it will
7 close the issue. What we have found in the past is that
8 we have been asked successively to agree to things, and
9 then we are told at the end of the day it still will not
10 close the issue, so you can understand our desire to
11 have a full and final agreement here.

12 MR. MENEZES: Well, assuming it's acceptable
13 to other CLECs, and I think that issue comes up when the
14 CLECs haven't necessarily participated, so it's the
15 nature of the process, I'm afraid.

16 MS. HUGHES: Yeah, my question was directed
17 to AT&T.

18 MR. MENEZES: It's fine.

19 MS. DOBERNECK: And even though the question
20 wasn't directed at us, it's fine by Covad as well.

21 JUDGE RENDAHL: Well, I'm glad that we have
22 some agreement.

23 Except, Mr. Kopta?

24 MR. KOPTA: No problems here.

25 JUDGE RENDAHL: All right. Well, thank you

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1 all for working on that one.

2 It is 5 to 5:00 and we've got to move
3 materials next door, so I'm going to propose that we
4 stop here today, and then we pick up tomorrow morning
5 back at 3.2.2 or wherever we were with the version 16,
6 complete that, and move back to Section 5.

7 MS. HUGHES: And can I just ask a clarifying
8 question?

9 JUDGE RENDAHL: Yes, Ms. Hughes.

10 MS. HUGHES: What exactly, I guess it's AT&T,
11 do you have in mind with respect to 3.2 tomorrow?

12 MS. FRIESEN: I think you're supposed to
13 produce the questionnaire.

14 MS. HUGHES: Which we will and which you
15 have.

16 MS. FRIESEN: And I think Ms. Hopfenbeck
17 asked for clarification at least from Mr. Brotherson, or
18 a clarification should be provided by Mr. Brotherson of
19 what the pieces are that are required to be filled out
20 so she understands the separate billing issues. And
21 then there are some pieces in that SGAT or in that
22 version 16 that Laura Ford indicated would be changed in
23 the newer version, and those have not apparently yet
24 been changed. And just for purposes of the record, I
25 would like for her to clarify that.

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1 MS. HUGHES: Thank you.

2 MS. HOPFENBECK: WorldCom's issues have been
3 settled. Laura was already able to confirm that I was
4 correct that those should be subsets of the billing and
5 collection issues, so it's just these changes issues.

6 JUDGE RENDAHL: Well, I understood that AT&T
7 had some questions to ask to Mr. Brotherson based on the
8 exhibit based on what corrections needed to be made to
9 it, and so we will do that briefly first thing in the
10 morning as a part of getting through that issue, and
11 then we will move on.

12 Okay, we will be off the record for the day,
13 and we will be back here in the morning starting at 9:00
14 in room 207.

15 (Hearing adjourned at 5:00 p.m.)

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