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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 PAC-WEST TELECOMM, INC., )  
 )  
 4 Petitioner, )  
 )  
 5 vs. ) DOCKET NO. UT-053036  
 ) Volume II  
 6 QWEST CORPORATION, ) Pages 40 - 54  
 )  
 7 Respondent. )

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 8 LEVEL 3 COMMUNICATIONS, LLC, )  
 )  
 9 Petitioner, )  
 )  
 10 vs. ) DOCKET NO. UT-053039  
 ) Volume II  
 11 QWEST CORPORATION, ) Pages 40 - 54  
 ) (CONSOLIDATED)  
 12 Respondent. )

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13  
 14 A prehearing conference in the above matter  
 15 was held on November 19, 2008, at 10:05 a.m., at 1300  
 16 South Evergreen Park Drive Southwest, Olympia,  
 17 Washington, before Administrative Law Judge ANN E.  
 18 RENDAHL.

19 The parties were present as follows:  
 20 PAC-WEST TELECOMM, INC., by GREGORY J. KOPTA  
 21 (via bridge), Attorney at Law, Davis, Wright, Tremaine,  
 1201 Third Avenue, Suite 2200, Seattle, Washington  
 98101; telephone, (206) 757-8079.

22 QWEST CORPORATION, by LISA A. ANDERL,  
 23 Attorney at Law, 1600 Seventh Avenue, Room 3206,  
 Seattle, Washington 98101; telephone, (206) 345-1574.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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1                   QWEST CORPORATION, by THOMAS DETHLEFS (via  
bridge), Attorney at Law, 1801 California, Tenth Floor,  
2                   Denver, Colorado 80202; telephone, (303) 383-6646.

3                   LEVEL 3 COMMUNICATIONS, LLC, by GREGORY  
ROGERS, Attorney at Law, 1025 Eldorado Boulevard,  
4                   Broomfield, Colorado 80021; telephone, (720) 888-2512.

5                   LEVEL 3 COMMUNICATIONS, LLC, by LISA A.  
RACKNER (via bridge), Attorney at Law, McDowell &  
6                   Rackner, 520 Southwest Sixth Avenue, Suite 830,  
Portland, Oregon 97204; telephone, (503) 595-3925.

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

2 JUDGE RENDAHL: Good morning. I'm Ann  
3 Rendahl, the administrative law judge presiding over  
4 these consolidated proceedings, and we are here before  
5 the Washington Utilities and Transportation Commission  
6 this morning, Wednesday, November 19th, 2008, for a  
7 prehearing conference in Docket UT-053036, captioned  
8 Pac-West Telecomm, Inc. versus Qwest Corporation, and  
9 Docket UT-053039, captioned Level 3 Communications,  
10 LLC, versus Qwest Corporation.

11 On September 17th, we had a prehearing  
12 conference in these cases, and at that conference,  
13 other than taking appearances and addressing some  
14 procedural issues, I deferred addressing any of the  
15 usual scheduling of this case due to the likelihood  
16 that the Federal Communications Commission, or FCC,  
17 would be entering an order concerning compensation for  
18 ISP-bound traffic in response to the DC circuit court's  
19 mandamus court in Core Communications versus FCC by  
20 November 5th, as well as the possibility that the FCC  
21 might be entering an order performing the intercarrier  
22 compensation system.

23 So as know, the FCC did enter an order  
24 concerning ISP-bound traffic compensation and response  
25 to the mandamus order but did not act on a plan for

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1 reforming intercarrier compensation, and those of you  
2 who are involved in that are busy preparing comments on  
3 that, on some proposals.

4 So now we are back to talk about what the  
5 impact of the FCC's action is on this case and how we  
6 should proceed. So before we go any farther, let's  
7 take our brief appearances and then we will talk about  
8 how to go forward, beginning with Qwest.

9 MS. ANDERL: Thank you, Your Honor. Lisa  
10 Anderl representing Qwest Corporation. I have an  
11 attorney on the bridge.

12 MR. DETHLEFS: Tom Dethlefs, spelled  
13 D-e-t-h-l-e-f-s, for Qwest Corporation.

14 JUDGE RENDAHL: Is Mr. Dethlefs making a  
15 formal appearance in the case?

16 MR. DETHLEFS: I believe I did a number of  
17 years ago, but I can't honestly remember, so I guess  
18 the answer would be yes.

19 JUDGE RENDAHL: So his information would be  
20 in our master service list information. If you could  
21 speak up when you stay this, but if you could give us  
22 your e-mail address please?

23 MR. DETHLEFS: It's  
24 thomas.dethelfs@qwest.com.

25 JUDGE RENDAHL: And if we find we don't have

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1 your information, you may just want to submit a letter  
2 or Ms. Anderl submit a letter making sure that your  
3 address is the same as it was three years ago, because  
4 we've had some time in this case, and who knows what's  
5 happened in between.

6 MS. ANDERL: Thank you, Your Honor. We will  
7 take care of that.

8 JUDGE RENDAHL: For Level 3?

9 MR. ROGERS: Appearing on behalf of Level 3,  
10 I'm Greg Rogers.

11 JUDGE RENDAHL: On the bridge line?

12 Ms. Rackner, are you there?

13 MS. RACKNER: Yes, I'm here.

14 JUDGE RENDAHL: Did you make a full  
15 appearance at the last prehearing? I'm trying to  
16 recall.

17 MS. RACKNER: Yes, I did.

18 JUDGE RENDAHL: Anyone else on the bridge  
19 line for Level 3?

20 MR. ROGERS: No, Your Honor.

21 JUDGE RENDAHL: For Pac-West?

22 MR. KOPTA: On behalf of Pac-West Telecomm,  
23 Gregory Kopta of the law firm Davis, Wright, Tremaine.

24 JUDGE RENDAHL: Is there anybody else who  
25 needs to make an appearance for Pac-West, Mr. Kopta?

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1 MR. KOPTA: Not at this time, Your Honor.

2 JUDGE RENDAHL: Is there anyone else who  
3 needs to make an appearance in this case? With that,  
4 let's go forward, and while we were off the record and  
5 briefly while we were on the record, explained where we  
6 are in this case, and so I guess at this point I would  
7 like to hear from all three parties about where we need  
8 to go in this case.

9 I understand there have been some scheduling  
10 discussions between the parties and I appreciate that,  
11 so maybe we will start with Level 3 and Pac-West and  
12 then go to Qwest for follow-up. So starting with you,  
13 Mr. Rogers, where are we in the case and what do you  
14 all propose to do?

15 MR. ROGERS: Well, I believe where we are is  
16 that we now are well positioned to address the district  
17 court's remand back to the Commission after the FCC's  
18 order with respect to the Core mandamus that they were  
19 directed to respond to.

20 So we've talked about where we are in this  
21 proceeding and what a schedule might look like. I  
22 think everybody is essentially in agreement that the  
23 approach ought to be that we can make our respective  
24 legal arguments in the form of -- and I think we talked  
25 about a different couple of ways we might present our

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1 legal arguments, but some consensus that we might do it  
2 in the form of a partial motion for summary  
3 determination and file those simultaneously, and then  
4 we would have an opportunity to file replies, and then  
5 from that point forward, it would be in your hands to  
6 determine any further proceedings that would be  
7 necessary. Then we talked about what dates might work  
8 well for the filing of those respective legal  
9 arguments.

10 JUDGE RENDAHL: Did you all talk about issues  
11 you agree that need to be discussed in the motions for  
12 summary determination?

13 MR. ROGERS: We did not get into identifying  
14 specific issues and setting out an outline of issues or  
15 anything like that detailed; rather just to agree that  
16 proceeding with legal arguments initially seemed to  
17 make the most sense after the FCC's order.

18 JUDGE RENDAHL: Anything further, Mr. Rogers?

19 MR. ROGERS: I don't think so. I can stand  
20 to be corrected if I've misspoken, but I believe that's  
21 where we stand at this point.

22 JUDGE RENDAHL: Mr. Kopta?

23 MR. KOPTA: I think Mr. Rogers accurately  
24 summarized the discussions that we've had with Qwest.  
25 The only thing I would add is that there was consensus

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1 that there were legal issues that would need to be  
2 addressed. There were not such agreement on any  
3 factual issues.

4 We, as you will recall, at the initial  
5 prehearing conference had proposed a bifurcated  
6 approach in which there would be legal briefing, and  
7 then if the Commission makes the determination that  
8 some moneys should be returned to Qwest that there  
9 would be a corresponding factual inquiry, and that was  
10 something that we discussed among the parties and  
11 something that we couldn't reach agreement on.

12 So our thinking was that we would treat this  
13 very much as a superior court type proceeding in which  
14 we would file cross-motions for summary determination  
15 with the thought that the Commission may be able to  
16 decide all the issues based on the legal briefing, but  
17 in the event that there were factual issues that the  
18 Commission found needed to be addressed, then those  
19 could proceed to an evidentiary proceeding very much as  
20 if this were a superior court complaint case, and the  
21 parties were filing for summary determination to either  
22 resolve the entire case or at least resolve legal  
23 issues and then have a limited set of factual issues  
24 that would need to be addressed by the Commission.

25 JUDGE RENDAHL: So that reflects Mr. Rogers'



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1 characterization of the motions for summary  
2 determination as partial motions given that they may or  
3 may not address all the issues?

4 MR. KOPTA: That's correct. Obviously, Lisa  
5 will speak for Qwest, but based on our discussions, we  
6 just wanted to make sure that at least the legal issues  
7 were addressed, and if those are dispositive, then the  
8 case goes away, and if not and there are factual  
9 issues, then there would be additional proceedings, and  
10 so it may be that it's a full motion for partial  
11 summary determination, or in effect, it may only be  
12 partial depending on how the Commission makes the  
13 determination on those motions.

14 JUDGE RENDAHL: So at this point, you would  
15 agree that we don't need to set a schedule for any  
16 evidentiary hearing on factual issues until after the  
17 motions are resolved?

18 MR. KOPTA: I think at that point, we can  
19 make that determination better at the time, that there  
20 is a determination we need to make those factual  
21 findings. So at this point, we would just propose the  
22 motions, and then once the Commission issues a  
23 decision, then if there is a need for evidentiary  
24 proceedings, then certainly that would be the best time  
25 to schedule them.

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1 JUDGE RENDAHL: Thank you. Anything further?

2 MR. KOPTA: No, Your Honor. I think that  
3 covers it from my perspective.

4 JUDGE RENDAHL: So Ms. Anderl?

5 MS. ANDERL: I think Mr. Rogers and Mr. Kopta  
6 have pretty much fleshed out the discussions we've had.  
7 It is our position that the motions for summary  
8 determination can and should resolve the issues on  
9 remand, so we were pretty adamant in the private  
10 discussions that we had that there was no need for a  
11 bifurcated proceeding.

12 I think we don't have to decide that today,  
13 because what the parties have agreed upon is a round of  
14 motions and replies. It's going to be our position  
15 that those will resolve everything. It's going to be  
16 their position potentially that they don't, and we need  
17 to move forward depending on what Your Honor's or the  
18 Commission's decision are, but we can hold that  
19 discussion for another day because we do agree on the  
20 initial approach going in.

21 JUDGE RENDAHL: What are the dates that you  
22 all have decided for motions?

23 MS. ANDERL: I believe that we proposed, and  
24 the Gregs were checking on January 15th for opening and  
25 February 18th for responses.

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1           MR. ROGERS: I just mentioned to Lisa this  
2 morning that in our further checking at Level 3, we  
3 felt that we could and perhaps should bring in the  
4 response date a bit from that date, so that's about a  
5 month or more from the initial filing date, and we  
6 think we could do responses probably in a faster  
7 turnaround period, so three weeks, and I'm looking at  
8 my calendar here to see what date we might propose as  
9 an alternative, but I would --

10           JUDGE RENDAHL: Three weeks would be February  
11 the 5th. I don't have a preference, so really it's up  
12 to you all in terms of how much time you think you  
13 need. What I think would be useful, and I think I  
14 alluded to that earlier, is maybe having -- if you all  
15 can't agree on an issues list or in a sense an outline,  
16 I do have some topics I would like you all to address.  
17 So I could go either way on that as long as those  
18 issues that I would like to have addressed are  
19 addressed, and they may be the same you all have.

20           MS. ANDERL: Subject to whatever dates we  
21 agree on and subject to the views of the other parties,  
22 we could try to work on an issues list or a briefing  
23 outline to submit to you, or we could just take the  
24 topics you want and weave them into our pleadings is  
25 the way we think the advocacies best present.

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1           MR. ROGERS: We are happy to take that  
2 approach, the latter approach where if you have an  
3 approach in mind, an issues list in mind, I think we  
4 would be happy to work within that framework and  
5 present our arguments in response to those issues that  
6 you've identified.

7           JUDGE RENDAHL: That's fine. I don't think  
8 this is the type of case like a cost proceeding where  
9 we've had very detailed outlines. I'm not wanting to  
10 force you all into an arbitrary outline, so I'll just  
11 let you know what my topics are and you can weave those  
12 in in any way you wish in your advocacy.

13           I think the first issue which everyone will  
14 probably want to address is what the effect of the  
15 FCC's November 5th order is on the issues in this case.  
16 The second is given the amount of time that has gone by  
17 since the ISP remand order was entered, what state of  
18 that interpretation of that decision, what is the law  
19 that applies to interpreting the parties', their  
20 interconnection agreements, and that somewhat ties into  
21 what's the effect of the FCC's order, and then address  
22 the issues that are raised in the court's remand order.

23           So those are the three primary topics that I  
24 have, and then if there are other issues that you think  
25 need to be addressed, but those are the key legal

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1 issues for me that would be helpful in resolving these  
2 issues.

3 MS. ANDERL: Certainly. Your Honor, I did  
4 just want to check with Mr. Dethlefs. I think we had  
5 asked for the February 18th reply because of potential  
6 conflicts or other hearings that he was in.

7 MR. DETHLEFS: Yes, Your Honor. I am going  
8 to be out of commission for the week of the 4th of  
9 February, and that's why we had proposed February 18th  
10 as the reply date, so I can get back from my trip and  
11 spend time on it.

12 JUDGE RENDAHL: Is there a strong objection  
13 from Level 3 and Pac-West to the 18th date?

14 MR. KOPTA: Not from our perspective. We are  
15 fine with the dates that have been proposed.

16 MR. ROGERS: We don't have a strong  
17 objection. We just thought we might offer that as an  
18 alternative and didn't know what the scheduling  
19 dictates were that were behind that initial proposal.

20 MS. ANDERL: Thank you. All things being  
21 equal, we would like to see things go sooner rather  
22 than later, but in this case, those two weeks seemed  
23 like a small amount and they seemed to be important on  
24 our end, so thank you for that.

25 JUDGE RENDAHL: All right, and then I will

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1 endeavor to enter an order as quickly as possible after  
2 taking everything under consideration, and then we will  
3 defer any other procedural dates until after the order  
4 resolving the motions for summary determination, and  
5 given past experience, any petitions for interlocutory  
6 review of my initial order on those issues. I'm savvy  
7 enough to know it doesn't end with me. So we will just  
8 take it up as it goes, and is there anything else we  
9 need to talk about this morning?

10 MS. ANDERL: Not from our perspective, Your  
11 Honor.

12 MR. KOPTA: Not from me, Your Honor.

13 JUDGE RENDAHL: With that, I appreciate you  
14 coming all the way from Colorado, Mr. Rogers. Is there  
15 anything else you want to add?

16 MR. ROGERS: The only thing that occurs to me  
17 is if we are all okay with your proposed set of topics,  
18 then you don't need or expect to hear anything back  
19 from us as to an issues list or an outline or anything  
20 further?

21 JUDGE RENDAHL: Correct, as long as you all  
22 address those three issues that I raised in your  
23 motions and pleadings, then I don't need it in any  
24 particular order. As I said, I'm not going to  
25 micro-manage how you wish to advocate your positions.

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1 It's not like other cases where it really helps to have  
2 a structured outline. Thank you all very much, and we  
3 are off the record.

4 (Prehearing conference adjourned at 10:25 a.m.)

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