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JUDGE TOREM: We'll be on the record in Docket UT-093035. This is the petition for arbitration of an interconnection agreement between North County Communications and Qwest Corporation. Today is Wednesday, June 23rd, 2010. Again, it's a little after 3:30. This is Judge Adam Torem appearing for the Washington Utilities and Transportation Commission as the arbitrator in this matter.

Appearing for North County Communications is Anthony McNamer, and we have the spelling and all of his information here in front of the court reporter. She will make that part of the record. I'll save you essentially from reading your business card into the record, Mr. McNamer.

MR. MCNAMER: Okay.

JUDGE TOREM: Appearing for Qwest Corporation today is Lisa Anderl. And Ms. Anderl, all of your information is still the same?

MS. ANDERL: Yes. As long as you have me in Room 1506.

JUDGE TOREM: We do, apparently. As I just told you before going on the record, we called this telephonic prehearing conference to respond to a motion

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1 to compel responses to North County's first data  
2 requests. It came in last Wednesday, June the 16th,  
3 2010. I directed the following day that Qwest make its  
4 best attempt to satisfy and respond to those informally  
5 or file its response to the motion by close of business  
6 on Monday. That was accomplished.

7 On the heels of that response to the motion  
8 to compel came a motion to strike some or all of North  
9 County's rebuttal testimony, and given I was already  
10 writing a notice to schedule this conference, we are  
11 just combining the two proceedings. My intent is to  
12 hear the parties on both items today and issue a ruling  
13 on the record, so there won't be a following order from  
14 this. If you need a transcript, you can let our court  
15 reporter know and we will send you based on your order  
16 a copy of the transcript. Any questions procedurally?

17 One thing I did want to hit before we get to  
18 these items, and Mr. McNamer, it's merely in response  
19 to something you stated in the e-mail you sent in  
20 regards to Qwest's motion to strike, in this you said  
21 you were objecting based on nothing in the rules that  
22 allow a motion to strike and then indicated that you  
23 hadn't practiced before the WPUC before and you weren't  
24 familiar with the rules and practices as Qwest was.

25 I just wanted to say I understand that we

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1 have new attorneys appearing in front of us from time  
2 to time, but I wanted to call your attention to the  
3 Washington Administrative Code 480-07. It does have a  
4 lot more answers in it than even when I first started  
5 here three years ago I might have thought. These rules  
6 were rewritten probably 2006 or 2007, and they are  
7 fairly comprehensive.

8 I encourage you, particularly if we are going  
9 to have the arbitration itself three weeks from now,  
10 that you become very familiar and put some time into  
11 looking at these rules. You will find if you look at  
12 WAC 480-07-375, sub (1)(d), that evidentiary motions do  
13 include motions to strike, so there is an answer  
14 completely opposite to what you are suggesting in your  
15 e-mail right in the rules, and I just want to encourage  
16 you to look at these, and if you are going to want to  
17 practice on behalf of your client in front of the  
18 Washington Utilities and Transportation Commission,  
19 which is not known as the WPUC, if you are going to  
20 want to practice in front of the Commission that you  
21 address it by its appropriate name and by using the  
22 right rules.

23 As an ALJ, I'm much more tolerant of that  
24 than some of our commissioners might be, especially  
25 past chairmen, who might have responded and questioned

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1 your qualifications. I won't do that directly, but I  
2 give you fair warning that others at the Commission may  
3 not be so patient. So with that in mind, any other  
4 documents that come in procedurally truly need to be  
5 referencing the right rules and have to demonstrate to  
6 me that counsel is competent and has referenced the  
7 rules before, just pitching something out there as a  
8 response.

9 Now turning to the motion to compel,  
10 Mr. McNamer, I wanted to question first if the  
11 supplements that came in for Data Requests 1 and 2,  
12 which were related, and then Data Requests 3, 4, and  
13 18, if the supplementation that was given by Qwest  
14 resolved those issues?

15 MR. MCNAMER: For 1 and 2, it did resolve the  
16 issues. For 3, 4, and 18, I'm under a bit of an issue  
17 that my client is out of the country right now and has  
18 limited access to e-mail, so for 1 and 2, I know it  
19 resolved it, and for 3, 4, and 18, I'm waiting for a  
20 response from my client.

21 JUDGE TOREM: I know we are on the telephone  
22 today, but if you could use a handset so it comes  
23 through more clearly for the court reporter.

24 MR. MCNAMER: I am using a handset.

25 JUDGE TOREM: Our line connection must be a

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1 little bit scratchy today. So for 1 and 2 that were  
2 regarding the testimony of Renee Albersheim and Phillip  
3 Linse, the supplementation has resolved that?

4 MR. MCNAMER: Yes.

5 JUDGE TOREM: Then I won't address those.  
6 Turning to 3 and 4, Request 3 asked Qwest to describe  
7 how they were able to bill its customers or other  
8 carriers when Qwest or its predecessors had networks  
9 that were MF, or multifrequency, and Request 4, "State  
10 the last date that any of Qwest's networks used MF  
11 technology and where that MF technology was used."

12 Qwest provided a response to both of those,  
13 and your motion took issue with how Qwest characterized  
14 the question in DR-3, and then again took issue with  
15 what you said rewriting of the question and  
16 artificially narrowing it. What more did you want  
17 Qwest to provide than they did in the supplemental  
18 response? Are you telling me today you are not sure if  
19 it's sufficient?

20 MR. MCNAMER: Yes. I haven't had a chance to  
21 review it with my client, so if they provided an answer  
22 that wasn't based on their narrow version of the  
23 question but based on the actual question, then I  
24 assume it's sufficient. I just haven't had a chance to  
25 review it with my client.

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1           JUDGE TOREM: Ms. Anderl, did you want to  
2 expound at all on what you gave as the supplementation  
3 to No. 3 and 4?

4           MS. ANDERL: No, I don't really want to. I  
5 think it is a broad reading of the question as  
6 Mr. McNamer requested, and whether his client will be  
7 satisfied with it or not I guess remains to be seen.

8           JUDGE TOREM: Let me suggest then,  
9 Mr. McNamer, that I won't need to rule on the motion.  
10 I will assume this has been settled between the parties  
11 informally and that if it's still not sufficient to  
12 address the information your client is looking for  
13 before the hearing that one of two things will occur:  
14 Either further informal discussions as required by our  
15 rules will occur, or you will let me know that there is  
16 a need for us to have another discover conference. I  
17 don't think it will require a formal motion to compel,  
18 but simply you and Ms. Anderl can send me an e-mail  
19 where everybody is copied suggesting that Data Requests  
20 3 and 4 are still at issue.

21           Finally, let's turn to No. 18 before we get  
22 into the ones that are still in dispute. This was a  
23 request to state the name of the incumbent LEC's that  
24 connect to Qwest using multifrequency switches. It  
25 looks like I don't have the name, and that's been

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1 labeled as confidential, but this one had an original  
2 response that you objected to, and the supplementation  
3 actually explained the operator services and 911  
4 services that were still using MF technology. Do you  
5 know if this one, or is the same thing you are going to  
6 have to check with your client?

7 MR. MCNAMER: This one I think that their  
8 answer, I'm going to assume they will present the same  
9 question, which is if they say -- generally what I'm  
10 asking for is if there are people who are using this MF  
11 technology for operator services and 911, even though  
12 it may be one way, what other MF trunks do those  
13 people have?

14 Obviously, they have MF technology, and what  
15 other MF trunks do they have that they are using for  
16 interconnection with Qwest? I don't think that their  
17 answer resolved the issue. Again, I haven't discussed  
18 this with my client, but I don't think that one is  
19 going to resolve the issue. I'm less inclined to  
20 believe that this answer is going to resolve the issue.

21 MS. ANDERL: Your Honor, if I may, we are  
22 happy to work with NCC to get them the answer they are  
23 looking for. I do think that we tried to not object on  
24 the basis of that request for either vague or overbroad  
25 or unclear in any way, and we did try to answer them in



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1 a way we thought fit the circumstances that this  
2 arbitration presented, and then we tried to supplement  
3 them in a way that expanded the question per  
4 Mr. McNamer's motion to compel. If they want kind of  
5 more granular information, or you've given me A,B, and  
6 C, and I want D, E, and F, they are certainly welcome  
7 to send me an e-mail and we can probably answer those  
8 questions.

9 In our checking, there was no protective  
10 order in this docket. At least that was my  
11 recollection, or that Mr. McNamer hadn't signed it, and  
12 it may be the later, but that is why we did not in our  
13 original response reveal the name of the carrier  
14 because the carrier advised us that they wanted that  
15 held confidential.

16 JUDGE TOREM: I'm not sure there is a  
17 protective order in this case.

18 MS. ANDERL: I'm not sure if there wasn't one  
19 or we didn't have a signature page from counsel, but  
20 either way, it's one of those two things.

21 JUDGE TOREM: I'm looking to see what  
22 Order 03 in this case was. I remember there was a  
23 change in presiding officer, so I don't have  
24 recollection of issuing one myself, but I don't  
25 remember seeing one, and I'm not sitting where I can

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1 look at a terminal at our records and quickly see.

2 MS. ANDERL: Essentially in our supplemental  
3 response on 18, we said pretty much all of the other  
4 ILEC's in the state, save maybe one or two, have some  
5 MF trunk with us, and it's for 911 and operator  
6 services. It's one way and the traffic is segregated.  
7 Like I said, if NCC wants to refine the question a  
8 little bit more, fine. We are willing to try to  
9 cooperate.

10 JUDGE TOREM: When you are suggesting there  
11 is an issue of confidentiality, is that the names of  
12 the different ILEC's that might be involved?

13 MS. ANDERL: Yes.

14 JUDGE TOREM: So it's not something that  
15 Qwest would be willing to disclose the names of these  
16 ILEC's so that North County could be in touch with them  
17 to find out the sorts of switches they have, if that  
18 proved to be relevant.

19 MS. ANDERL: We would disclose it if it was  
20 under protective order.

21 JUDGE TOREM: So Mr. McNamer, if that's the  
22 kind of information that we need, then please let me  
23 know next week, if at all possible, by Tuesday of next  
24 week so I would have Wednesday and Thursday to turn out  
25 a protective order prior to the holiday weekend.

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1           MR. MCNAMER: Is there any reason not to have  
2 a protective order? Is it common that there is always  
3 a protective order in the case in which information may  
4 come up that's confidential and so that's not a reason  
5 for people not to disclose things?

6           JUDGE TOREM: It's simply because if  
7 documents are going to be made part of our record which  
8 is public or if there is information necessary to  
9 support relevant issues in the case, and in this sort  
10 of arbitration, it didn't appear to the prior ALJ or  
11 myself or to the parties, including your predecessor  
12 counsel, that the issues over the proposed changes to  
13 the existing interconnection agreement would really  
14 deal with anything that was confidential so none was  
15 entered.

16           If it proves necessary, we can enter one  
17 later this week or next week. I think it would be best  
18 for you to check with your client as to the necessity  
19 of that.

20           MR. MCNAMER: I will.

21           JUDGE TOREM: One of the other things that  
22 comes up is if we have a protective order and the  
23 information that's confidential has to be brought out  
24 in the hearing room, there are all manner you might  
25 guess of burdensome procedures to maintain the

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1 confidentiality in a public hearing room where we have  
2 to clear people out, hang up this particular bridge  
3 line and then reconnect people after, typically it's  
4 one or two questions, and parts of the transcript have  
5 to be made confidential, so if we can avoid those hoops  
6 to jump through, we do.

7 MR. MCNAMER: Okay.

8 JUDGE TOREM: Then your Requests 1 and 2 have  
9 been resolved. Requests 3, 4, and 18 you are checking  
10 with your client, and you will notify me somehow if  
11 there is a need for further discussion and a ruling for  
12 those.

13 Now the next group, you have in your motion  
14 Requests No. 5 and 6 and No. 13, and for the record,  
15 No. 5 asks that Qwest describe how the proposed changes  
16 relating to MF signaling will affect the amount NCC  
17 receives for termination of Qwest's calls with the  
18 description for Washington, Oregon, and Arizona.

19 Number 6 asks Qwest to provide an estimate of  
20 the percentage decrease in the amounts that NCC will  
21 receive from Qwest as a result of the proposed changes  
22 relating to MF signaling, the separate estimate for  
23 Washington, Oregon, and Arizona.

24 Request 13, "State the average decrease or  
25 increase in billing over the period of time since the

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1 relevant CLEC adopted new interconnection agreements  
2 over the year immediately prior to the adoption of the  
3 new agreements."

4 Qwest in response to No. 5 said they could  
5 not provide anything precise because they don't know  
6 what the volume will be, and they go on to discuss the  
7 dependance on the various traffic types. As to No. 6,  
8 they refer back to their prior response to No. 5, and  
9 finally, the answer to No. 13 as to the decrease or  
10 increase in billing, they object that it's irrelevant,  
11 and both of you have articulated your reasons why you  
12 think it is or isn't relevant. Mr. McNamer, I'm going  
13 to give you a chance to expound further on what you  
14 have in your motion.

15 MR. MCNAMER: I just think that obviously the  
16 main concern for my client is how this brand-new 314-  
17 page agreement is going to affect fees that are  
18 payable, well, right now to NCC but in the future to my  
19 client, outbound calls to Qwest, how they will affect  
20 them, so it's probably the entire concern from my  
21 client's perspective, and since Qwest is a person  
22 that's gone through 137 of these agreements, at least  
23 proposed them and drafted these agreements and  
24 obviously significant to that in the determine  
25 signaling these changes, I think it's a fairly

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1 reasonable question to ask them how they believe their  
2 own changes are going to affect my client. I would  
3 guess the reason why they are proposing the changes are  
4 to benefit Qwest, not to benefit the CLEC's they are  
5 entering into these agreements with, so I assume they  
6 probably thought about how this is going to positively  
7 affect the fees that are paid by Qwest and negatively  
8 affect the fees payable to CLEC's. I guess the other  
9 point is just because they can't give me an exact  
10 answer, they can give me the best answer they can give  
11 me.

12 JUDGE TOREM: Ms. Anderl?

13 MS. ANDERL: Your Honor, we think that our  
14 response to No. 5 is responsive really, and we also  
15 think honestly that these data requests propounded at  
16 this point in the proceeding when the CLEC has had the  
17 proposed interconnection agreement for over a year  
18 are -- I don't want to use the word "unreasonable," but  
19 seem to be something that could have been covered more  
20 in negotiation. They also seem to be things that North  
21 County is in a position to answer for themselves. They  
22 know what their traffic is. If they have any  
23 questions about which rates will apply, they could ask  
24 for those specifically referencing the Exhibit A. In  
25 Exhibit A, 7.1.2.3, will that rate apply, what minutes

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1 would it apply to. If we had a thousand minutes of  
2 use, what would be the bill, and we could answer those  
3 kinds of questions.

4           One of the problems we have had with NCC is  
5 not knowing what the billable traffic is and not being  
6 able to jurisdictionally segregate it. As Your Honor  
7 well knows, access charges apply to long-distance  
8 traffic and the long-distance carrier pays Qwest, or  
9 calls that originate with Qwest local traffic, local  
10 calls that originate with the Qwest customer terminate  
11 on an NCC customer, Qwest pays NCC. Joint switch  
12 access and other types of traffic are differently  
13 billed, and access itself is jurisdictionally dependant  
14 on whether it's an inter or intrastate call in terms of  
15 what types of access charges apply. So I think our  
16 answer is perfectly legitimate on 5 and 6 with regard  
17 to the substance of the way the question was asked.

18           With regard to 13, we would never have done  
19 that kind of an analysis. It doesn't ask really for  
20 extant data. It also doesn't apply to NCC. It applies  
21 to other CLEC's confidential information and with no  
22 linkage whatsoever to whether they were similarly or  
23 differently situated. Even if we could perform that  
24 work, it would have no bearing on the merits of the  
25 issues that are before you.

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1                   JUDGE TOREM: My understanding of this case,  
2 Mr. McNamer, is that parties have essentially agreed  
3 that the current traffic is one way from Qwest to your  
4 client.

5                   MR. MCNAMER: The current traffic, yes.

6                   JUDGE TOREM: So what I'm looking at is I  
7 concur with what Qwest's position is as to No. 13, and  
8 the relevance of that escapes me, so I'm going to  
9 sustain the objection to 13. As to 5 and 6, I also  
10 find that the response is probably as good as it can be  
11 given the way the question is phrased, and Ms. Anderl  
12 has anticipated what I was going to suggest, that if  
13 you perhaps have specific bills or months of calling  
14 data from 2009 or 2010 that you want to submit to Qwest  
15 and ask them to hypothetically rebill the calls or  
16 revalue what the bill would be under the proposed  
17 interconnection changes -- Ms. Anderl, is that what you  
18 were suggesting, that specific data could be  
19 reevaluated based on what Qwest's proposal is?

20                   MS. ANDERL: There would still have to be  
21 assumptions that would go into that because we  
22 basically need to have the kind of information that we  
23 are proposing NCC provide under the new agreement.

24                   JUDGE TOREM: But they don't provide at this  
25 time.



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1 MS. ANDERL: Right.

2 JUDGE TOREM: Because the old agreement  
3 didn't require it.

4 MS. ANDERL: Yes, and MF trunks don't allow  
5 us to determine it.

6 JUDGE TOREM: Mr. McNamer, from some of the  
7 testimony I've read from Mr. Lesser, it appears that he  
8 may be able to look at some of the prior billing data  
9 and make an estimate as to what percentage calls are  
10 local or long distance or any other category of calls  
11 for which Qwest is terminating their calls on your  
12 client's network and seek out Qwest's response to  
13 specifically what the billings might be, and then I  
14 think that would at least answer the question more  
15 specifically for Mr. Lesser and your client and give  
16 him an opportunity to let Qwest know what he's looking  
17 for. It's clear to me that you want to know what the  
18 financial impact might be on your client of the  
19 proposed interconnection agreement modifications?

20 MR. MCNAMER: I guess what I would say is  
21 based on what Ms. Anderl just said, assuming we don't  
22 switch over to SS7, that we stay with MF trunks, that  
23 they cannot create a bill under the new agreement  
24 because the MF trunks will not give them the  
25 information they need in order to create a bill under

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1 the new agreement.

2 JUDGE TOREM: I don't want to get into the  
3 substance of the items that are to be decided at the  
4 arbitration and after legal briefs are filed next  
5 month, but this question is vague and doesn't call for  
6 a specific dollar amount, so unless you resubmit the  
7 questions as a new request that has some specific  
8 examples that fit the current interconnection agreement  
9 and have the proposed interconnection agreement's  
10 required information so that Ms. Anderl's client can  
11 analyze it, I'm not sure what more they can provide.

12 So on this one, I'm going to deny your motion  
13 to compel for 5 and 6, but I encourage you to work with  
14 your client to formulate an appropriate question that  
15 can be answered so they can begin to evaluate this  
16 financial impact. I think that's important for your  
17 client to be able to do. It's an appropriate topic of  
18 questions, but the way it's asked right here doesn't  
19 work. So on 5 and 6, the motion is denied. As to 13,  
20 I'm sustaining the objection, and therefore, the motion  
21 is also denied, but that one on the basis of relevance.

22 Now, questions 7, 8, and 9, are three, in my  
23 opinion, very vague items here where you are asking  
24 Qwest in No. 7 to provide and estimate the costs of a  
25 central office, and in No. 8 to provide and estimate

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1 the life span of such a central office, and 9, provide  
2 and estimate the cost to convert an MF system to an SS7  
3 system. Again, I'm not an expert in telecommunications  
4 gear or technology, but even to me when I read these, I  
5 don't know how I would respond because I don't know the  
6 size of the central office you are asking about. I  
7 don't know the types of equipment you would want  
8 equipped, but it seems to me these are the kinds of  
9 things that your client should be able to go out on  
10 their own and obtain quotes for, and it's not Qwest's  
11 place to provide this information to you, and I don't  
12 see --

13 Other than telling me at the arbitration  
14 itself that it's going to be spendy to convert from MF  
15 switches to SS7 switches and wanting to put a specific  
16 dollar amount on that, that would be the limited  
17 relevance, but I'm denying the motion to compel on 7,  
18 8, and 9 simply because it doesn't appear its Qwest's  
19 job to sort out what the impact will be of a new  
20 central office if your client wants to go that way.

21 MR. MCNAMER: Can I get a comment on the  
22 record?

23 JUDGE TOREM: For the record, go ahead.

24 MR. MCNAMER: The reason why this is relevant  
25 is because obviously it relates to how much the

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1 potential damages that my client will receive if it was  
2 forced to comply with the SS7 provisions, and having  
3 the other party make a determination of the damages is  
4 something that is completely appropriate to have them  
5 do. It doesn't replace my client going out and proving  
6 the damages themselves. He will do that, but it acts  
7 as an admission, or hopefully an admission, on the part  
8 of the person opposing whatever the damage analysis is,  
9 so they are locked into a specific number so they can't  
10 at the hearing come back and say, Oh, no. We think it  
11 only costs five thousand dollars to do it, and when we  
12 put on evidence that says it will cost us a hundred  
13 thousand dollars to do that, we have them locked into  
14 an answer on this, which is perfectly appropriate to do  
15 in the discovery process.

16 JUDGE TOREM: I appreciate you putting that  
17 on the record. For me, if there is a financial impact  
18 and you want them to admit it, then asking them to look  
19 at a price range or something is one thing, but I'm not  
20 going to consider a motion to compel Qwest to go out  
21 and do the shopping for you on such a vague question.

22 If you have a central office design that  
23 requires specific equipment and you want Qwest to do as  
24 you say, formulate a question to which Qwest can  
25 actually attach dollar values of what a central office

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1 would be, and what you've asked here is just a central  
2 office. To me, there is going to be a variety of sizes  
3 and degrees of specificity and what level of technology  
4 for a central office, and you haven't specified it, so  
5 that's why the motion is denied. If you submit new  
6 requests to Qwest that are specific sufficiently that  
7 Qwest can answer them, then for the reasons you've  
8 stated on the record, Qwest may choose to answer those,  
9 or we will be back for a different motion later.

10 MR. MCNAMER: Okay.

11 JUDGE TOREM: Turning to No. 11 and No. 19,  
12 Request 11, it looks like this was supplemented. I  
13 can't tell. Ms. Anderl, you forwarded an attachment  
14 that lists out a number of ILEC's in the state of  
15 Washington.

16 MS. ANDERL: CLEC's.

17 JUDGE TOREM: Signed the template language?

18 MS. ANDERL: Yes.

19 JUDGE TOREM: And there are 87 of them listed  
20 in the data.

21 MS. ANDERL: Yes. Your Honor, if I could  
22 just clarify, that was an attachment to the original  
23 response to No. 11 prior to the motion to compel, but  
24 as I understand the motion to compel was that NCC  
25 wanted the actual documents produced to them and that

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1 this list was, in their view, not sufficient, but we  
2 did break it out by the names of the CLEC's who fit the  
3 categories as described in Ms. Albersheim's testimony,  
4 and we believed as we stated in our objection and  
5 responses that that was information that NCC could  
6 obtain from either the Commission, or we invited them  
7 to come to my offices, but it is many probably  
8 thousands of megabytes electronically and many, many  
9 file drawers full of paper, and we could not see the  
10 value relative to the burden of producing that in this  
11 docket.

12 JUDGE TOREM: I verified that the Commission  
13 does have these electronically, Mr. McNamer, and I'm  
14 not sure what the purpose of requesting so many  
15 different copies of interconnection agreements might  
16 be.

17 MR. MCNAMER: I guess the point they are  
18 trying to make by listing that 87 out of 137 CLEC's has  
19 opted into the template agreement is that somehow that  
20 that makes the template agreement valid. I'm not sure  
21 if there is 50 that didn't, but for our purposes in  
22 order to test that statement, which they make several  
23 times, the only way we can possibly test that is by  
24 looking to see if that's true. The only way you can  
25 see if it's true is to look at the form agreement and

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1 if all these people signed the form agreement.

2           The other problem I have with their response  
3 being these are public or come look at them yourself is  
4 they ask us the exact same question effectively, which  
5 is all the agreements that we reference in our direct  
6 testimony provide copies of them. Now, obviously we  
7 are a much smaller company than they are so we don't  
8 have as many copies, but they asked us for the exact  
9 same thing. They made the equivalent data request,  
10 which we responded to by providing them copies of the  
11 agreement. Not only do I think it's relevant, I also  
12 think it's inequitable for them to ask the exact same  
13 question of us, for us to respond appropriately by  
14 providing with the electronic version, and when we ask  
15 them the same thing, they say its burdensome. They  
16 think that us producing five is less burdensome.

17           JUDGE TOREM: Mr. McNamer, I appreciate that  
18 your company was willing to provide five of them.  
19 There seem to be 87 of them that are template language.  
20 There were 34 that apparently adopted some other  
21 negotiated agreement and a variety of other categories  
22 referenced in Ms. Albersheim's testimony. I wonder if  
23 a sample from each of those categories would be  
24 responsive sufficient for you to see that yes, here's a  
25 representation, and then have your company, if they

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1 want to look further, either go to our Web site here  
2 from the Washington Commission or make arrangements  
3 prior to the arbitration to be at the offices where  
4 Qwest has the materials and can make them readily  
5 available.

6           It doesn't seem to me they are suggesting  
7 that they don't want you to see the information. It's  
8 certainly public, but it's a question of cumulative  
9 information and the burden of producing quite a number  
10 of pieces of paper or quite a number of files to send  
11 down and having staff time burned on something that  
12 just proves the point that one copy would do.

13           MR. MCNAMER: I think that if they can make a  
14 representation that they give us a representative  
15 sample, that would be a logical start to the process.

16           JUDGE TOREM: Ms. Anderl, would that be  
17 something you could provide? You have various  
18 categories of these items.

19           MS. ANDERL: Sure, Your Honor, but I think  
20 Mr. McNamer's point in his motion to compel is we can't  
21 believe Qwest. Qwest submitted testimony saying this  
22 is the case and we don't believe them, and the only way  
23 we can test it is if we can see them all, because what  
24 if there were only 85, and so I'm not sure that again,  
25 asking them to take our word for it as if it would be



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1 true that this is a representative sample really does  
2 satisfy the motion to compel. We obviously would not  
3 claim as great a burden to provide five or whatever  
4 documents as 136.

5 MR. MCNAMER: I think the representation by  
6 counsel for Qwest would be something that we would be  
7 willing to accept is an accurate representation.

8 MS. ANDERL: I'm not giving the testimony. I  
9 will be happy to inspect certain subset of these IDA's  
10 and make a recommendation.

11 MR. MCNAMER: I think that's a logical  
12 starting point for me, Your Honor.

13 JUDGE TOREM: Then in an abundance of caution  
14 and to make sure that your client gets what they want,  
15 I'm going to grant in part your motion to compel Qwest  
16 to further respond to Request No. 11, and if you can do  
17 that without producing anything, Ms. Anderl, just by  
18 the appropriate representations after you've had a  
19 chance to discuss with Ms. Albersheim those portions of  
20 her testimony on Page 13, Lines, 7, 8, 9, and 10, and  
21 then ask her which of those from the attached lists  
22 that you e-mail me today that was part of the original  
23 response might be the most representative of the  
24 various categories and be prepared, if necessary to  
25 send those to Mr. McNamer and his client, that's the

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1 ruling. That's as far as I'm requiring you to go in  
2 this ruling.

3           If there are further disputes and that  
4 doesn't prove satisfactory to the client, then I will  
5 ask, Mr. McNamer, you make me aware of that and I will  
6 see if there is any reason to go further. The reason,  
7 counsel, that I'm even going this far on this and not  
8 saying that these are public documents that should be  
9 retrieved by the requesting party on their own is  
10 simply because you've represented to me that Qwest made  
11 the exact same response and you didn't object to it and  
12 you provided it, so I'm trying to keep the tables as  
13 even for both parties as I can.

14           So, Ms. Anderl, based on your client's  
15 request for similar information and their response, I  
16 can't let Qwest just deny it and say these are public  
17 because I would be willing to bet that those documents  
18 North County provided to you might also have been  
19 obtained from other sources and they went ahead and  
20 provided them, so to keep this as even-handed as  
21 possible, I'm going to have you go as far as North  
22 County did.

23           MS. ANDERL: Thank you, Your Honor, and just  
24 for the record, we don't think they were actually  
25 parallel situations.

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1                   JUDGE TOREM: I don't have their data  
2 requests --

3                   MS. ANDERL: Exactly, and I don't want to  
4 debate that. Just to clarify your ruling, Your Honor,  
5 are we simply at a point where I am to do research and  
6 report back to Mr. McNamer, or am I to provide him at  
7 least five agreements that reflect a representative  
8 sample of the information requested?

9                   JUDGE TOREM: You are to do the first part  
10 first, report back to Mr. McNamer that you've checked  
11 with your client, discussed it with your witness, her  
12 testimony, and then be prepared if he says, Well, we  
13 still want to see them, then you have five you've  
14 already consulted with your witness and you're ready to  
15 have those retrieved and sent to Mr. McNamer as  
16 promptly as possible.

17                   MS. ANDERL: May I request a clarification  
18 from opposing counsel?

19                   MR. MCNAMER: Sure.

20                   MS. ANDERL: The rules in Washington do  
21 require provision of a hard copy. Would you be willing  
22 to waive that and take an electronic only?

23                   MR. MCNAMER: Yes.

24                   MS. ANDERL: Thank you.

25                   JUDGE TOREM: The last of the discovery

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1 requests we have to deal with today is No. 19, which  
2 is, Mr. McNamer, your client asking for copies of all  
3 agreements Qwest has to purchase any other company's  
4 CNAM data, or call name data, I believe it is. Qwest  
5 objected because of relevance. Can you explain to me  
6 further the relevance of this data?

7 MR. MCNAMER: I can explain to you my  
8 understanding. Obviously, we are taking many of our  
9 requests on our conclusion that this agreement  
10 effectively requires us to convert our technology to  
11 SS7 if we want to get paid, and one of the issues that  
12 have come up with Qwest in the past is that when my  
13 client was looking at converting, whether or not it  
14 should convert to SS7 is one of the benefits that my  
15 client would have is that Qwest would be able to --

16 Well, my client could purchase CNAM data from  
17 Qwest and Qwest could purchase CNAM data from my  
18 client. There would be a mutual purchase of CNAM data,  
19 and what happened when my client was thinking about or  
20 at least looking into converting to SS7 is that Qwest  
21 said that they would not purchase CNAM data from my  
22 client if it converted to SS7 under the same terms that  
23 my client had to purchase it from Qwest.

24 So the reason why this is relevant is it goes  
25 to the issue of the cost of purchasing an SS7 network

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1 and also how my client would be treated by Qwest that  
2 did there would be any other benefits or burden to my  
3 client other than cost. One of the burdens that we  
4 think there will be is that Qwest wouldn't purchase  
5 CNAM data from us at the price we had to purchase it  
6 from them.

7 JUDGE TOREM: Mr. McNamer, when I looked  
8 through the case, both in the original petition for  
9 arbitration and the answer that was ultimately filed  
10 from North County, there is no mention whatsoever of  
11 the CNAM data as a potential issue. It comes up, I  
12 believe, in Mr. Lesser's responsive testimony, but as a  
13 way, if I'm recalling his testimony correctly today, as  
14 a potential demonstration of the impact or another way  
15 around the SS7 technology.

16 It's a side issue and in my mind today  
17 questionably relevant, but what you are asking for is  
18 copies of agreements Qwest has with other companies,  
19 and my understanding of what I have jurisdiction to  
20 arbitrate under the 1996 Act may be some of the things  
21 that how every CLEC and ILEC has to be treated equally,  
22 but because, as Ms. Anderl points out in her response,  
23 this is not a Section 251 service, then it's not a  
24 subject for the arbitration, so even that limited  
25 relevance I question. So I'm going to deny the motion

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1 on the relevance grounds and sustain the objection that  
2 Qwest made to this request.

3           So that, I believe, takes care of the motion  
4 to compel, and in sum what I've noted is that some of  
5 the informal resolution is still ongoing as to Requests  
6 3, 4, and 18, and that the parties will continue to  
7 work to resolve those, and I granted in part North  
8 County's Request 11 as to the production and  
9 verification of who has signed on to template and other  
10 negotiated ICA's, and if necessary, Qwest has been  
11 ordered to produce representative samples. And you've  
12 agreed to take those electronically. All other parts  
13 of the motion to compel were denied and/or Qwest's  
14 objections were sustained, so that's the summary of my  
15 ruling.

16           Turning to the motion to strike, last  
17 Thursday, June the 17th, was the due date for parties  
18 to file responsive testimony in this matter, and Qwest  
19 filed theirs electronically, at, I believe it was 2:39  
20 p.m. according to the e-mail, and later in the  
21 afternoon before five o'clock p.m., in came North  
22 County's electronic version of Mr. Lesser's testimony.

23           Qwest's motion points out that our rules, and  
24 I believe it may even be referenced in our prehearing  
25 conference orders regarding electronic filing are that

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1 electronic submissions come in at three o'clock on the  
2 filing date and are perfected by a hard copy being  
3 delivered to the Commission by noon on the following  
4 day, and Ms. Anderl, if I understood your motion, there  
5 were two parts to it. One was an objection to the  
6 timing of the electronic filing being close to two  
7 hours late, and based on that seeking to strike the  
8 entire testimony, and second, that if I wasn't willing  
9 to strike the entire testimony based on a strict  
10 reading of our rules and the timing that I in the very  
11 least strike portions of the testimony where Mr. Lesser  
12 clearly has taken what should have been  
13 simultaneously-filed testimony at a deadline, reviewed  
14 it, and offered additional testimony in a prefiled  
15 manner starting on a third of the way down Page 19 and  
16 concluding on Page 23 with additional comments on  
17 Ms. Albersheim's testimony.

18           So there is a two-part request; either strike  
19 it all or strike at least that part that quite  
20 transparently demonstrates a reading of the material  
21 that came in 21 minutes ahead of the deadline, and then  
22 there were five pages of testimony added prior to North  
23 County's testimony being submitted. Does that  
24 summarize your motion sufficiently?

25           MS. ANDERL: Yes, it does. Thank you, Your

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1 Honor.

2 JUDGE TOREM: In setting up this telephonic  
3 conference today, Mr. McNamer, I indicated you didn't  
4 need to tell me in writing anything about your client's  
5 response, but I would give you an opportunity today to  
6 respond to the motion.

7 MR. MCNAMER: I would say that given the fact  
8 that the rules -- obviously, I was looking at the wrong  
9 rule. I thought it was five o'clock and it was three.  
10 It wasn't a purposeful attempt to evade. Our testimony  
11 was finished the day before, but I'm fine with  
12 withdrawing the second portion of it that was filed  
13 after three o'clock. I think that's fair for the last  
14 three or four pages that she's moving to strike, which  
15 is responsive to their responsive testimony. I think  
16 that's fair to strike that. I will agree to strike  
17 that obviously, but I don't agree the whole thing  
18 should be stricken because it was late. It was still  
19 filed. It was filed late electronically. The  
20 Commission had it the next day before noon as the rules  
21 suggest.

22 JUDGE TOREM: It's as the rules require, and  
23 Ms. Anderl, was there anything else you wanted to make  
24 on your motion now that you've heard a response?

25 MS. ANDERL: No, Your Honor. I think that



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1 will satisfy our interests.

2 JUDGE TOREM: That's where I was going to go  
3 with this. If you were going to push the three o'clock  
4 rule, I did go back and find a few instances where in  
5 this particular docket, Qwest's motions or responses to  
6 same from North County had come in at about 3:19 p.m.,  
7 and I thought I would want to make sure we decide  
8 things on the substance and not focus too much on the  
9 procedural rules that when we have a very sharp  
10 practice, sometimes they result in sharp rulings, and I  
11 don't want one side to try to nit-pick the other to  
12 death.

13 What I'm hearing today is much more  
14 reasonable than what comes across in some of the  
15 filings, so I would encourage the parties that I'm  
16 going to grant, as you've suggested is fair,  
17 Mr. McNamer, that on Page 19 where it begins, "Have you  
18 read Mr. Linse's rebuttal testimony," everything  
19 thereafter will be stricken from Mr. Lesser's response  
20 testimony, but I'm not going to grant any more than  
21 that in the motion to strike, but again encourage the  
22 parties to take more of a tone than I've heard today of  
23 cooperation and mutual understanding than some of the  
24 tone of the testimony and some of the tone of the  
25 practice that we've had in motions.

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1           The zealous representation is all good. I  
2 don't want to discourage that. Your clients deserve  
3 that and are paying for it, and we are here to make  
4 rulings according to our administrative rules and  
5 whatever the Telecom Act allows us to do, but I don't  
6 want to get into having to worry about personalities  
7 creeping in or people who are pushing each other's  
8 buttons other than on the telephone, so let's try to  
9 avoid that.

10           We have a proceeding coming up in three  
11 weeks. If there is a way to settle this in the next  
12 three weeks between the parties, I encourage it. There  
13 has been some expression as to the concern with the  
14 amount of fees or costs involved in arbitrating, and if  
15 you are able to work something out between the parties  
16 between now and then, we can certainly take that up,  
17 and it would be a very short proceeding and save  
18 parties on briefing costs, but otherwise let's be ready  
19 on the 13th and 14th of July to cross-examine these  
20 witnesses, and Mr. McNamer, given your practice before  
21 us being brand-new, if there are procedural questions  
22 you need to ask, Ms. Anderl has sufficient experience  
23 that she may be able to give you the guidance you need  
24 if it's limited, or if we need to have another  
25 conference with all of us so you can ask those

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1 procedural questions of what something means in our  
2 rules or what the customs and practices that might be  
3 unwritten are, I would be more than happy to tell you  
4 my expectations to specific questions and have  
5 Ms. Anderl chime in if she thinks I'm differing too  
6 much from any other judge, so I make myself available  
7 for those items as you need.

8 MR. MCNAMER: Thank you very much.

9 JUDGE TOREM: With that in mind, I just want  
10 some scheduling on out-of-the-office things to be known  
11 as well. I will be in the office until the evening of  
12 July 1st and will not be around July 2nd. July 5th is  
13 a state holiday, and then I will be on military leave  
14 on the 6th, 7th, and 8th of July. I will be back on  
15 Friday the 9th, and if things stand as they are now in  
16 the State of Washington, the Commission will not be  
17 open for business on Monday, July the 12th due to a  
18 temporary one-day layoff that's being imposed on most  
19 state employees that day, so the last opportunity for  
20 us to do anything prehearing in this matter is on  
21 Friday the 9th of July, and our hearing will commence  
22 on the 13th on Tuesday after that one-day furlow or  
23 temporary layoff. So the window for me to do anything  
24 for you is before or on the 1st of July or again eight  
25 dates later on the 9th of July, okay?

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1 MR. MCNAMER: Okay.

2 MS. ANDERL: Thanks for the heads-up on that,  
3 Your Honor. That's helpful.

4 JUDGE TOREM: I will try to be monitoring  
5 e-mails from across the country, but I can't suggest  
6 between the first and the 9th or the night of the 8th  
7 when I get back how long it will take me to respond to  
8 something that crops up.

9 MS. ANDERL: I apologize I didn't check the  
10 procedural schedule before we got on the call today.  
11 The start time on the 13th, is that the usual 9:30?

12 JUDGE TOREM: I believe it is. I'm going to  
13 try to look and see.

14 MS. ANDERL: I probably have access to it as  
15 well.

16 JUDGE TOREM: I have it right in front of me.  
17 I've got to flip to the right page. The hearing is set  
18 for July 13th and 14th beginning at 9:30 in the  
19 morning.

20 MR. MCNAMER: Since I have you on the phone  
21 and you know the answer to this, is our physical  
22 attendance of both me and my client required for the  
23 hearing?

24 JUDGE TOREM: I think it would be much more  
25 preferable to have the witness there in the room,

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1 unless there is a reason that they physically can't  
2 travel, such as illness, but the tradition up here is  
3 to have our witnesses there at the hearing unless the  
4 other side agrees that they will conduct their  
5 cross-examination by phone, so if you work that out  
6 with Ms. Anderl to not have the client there, that's  
7 one thing.

8 I do want to insist that there be an in-body  
9 representative of North County in the room. That way,  
10 if there is any papers to be inspected or cross-exam  
11 exhibits handed up, that can be worked out, and if you  
12 want to work with Ms. Anderl to make sure if your  
13 client is not going to travel and she agrees to it,  
14 then I don't see why I would not as well, but you will  
15 have to take care of the logistical arrangements to  
16 ensure that any cross-examination exhibits are  
17 available for your client so that we are all literally  
18 on the same page if he's being cross-examined by phone.  
19 So because some of those logistical issues are  
20 difficult to overcome, we make that the exception  
21 rather than the rule.

22 MR. MCNAMER: Okay.

23 MS. ANDERL: It is our preference to have  
24 everybody in person. However, we wouldn't unreasonably  
25 withhold an agreement if there were physical

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1 limitations as to why a person couldn't attend.

2 JUDGE TOREM: I know we've had these dates  
3 set up for awhile now. I can't remember exactly. It  
4 might have been March or April that we set these dates,  
5 so I hope everybody, including the witnesses filing the  
6 testimony, were aware when they were asked to supply  
7 the testimony that they might be called to be  
8 cross-examined here in mid July. Anything else for the  
9 record today?

10 MR. MCNAMER: No, Your Honor.

11 MS. ANDERL: No, Your Honor.

12 JUDGE TOREM: Thank you both for working out  
13 the informal resolution to the requests that you did,  
14 and I trust, Ms. Anderl, that your client will be able  
15 to provide you what you need to finish working with  
16 Request No. 11, and we will go forward hopefully  
17 smoothly at the hearing next month.

18 (Prehearing conference adjourned at 4:28 p.m.)

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