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

2 JUDGE RENDAHL: Good morning. I'm Ann
3 Rendahl, the administrative law judge presiding over
4 this arbitration. We are here before the Washington
5 Utilities and Transportation Commission this morning,
6 Friday, March 3rd, 2006, for a prehearing conference in
7 Docket UT-063006, which is captioned, In the Matter of
8 Level 3 Communications, LLC's Petition for Arbitration
9 Pursuant to Section 252(b) of the Communications Act Of
10 1996, and the Applicable State Laws for Rates, Terms,
11 and Conditions of Interconnection With Qwest
12 Corporation.

13 The purpose of our prehearing this morning is
14 to discuss the procedural schedule for the arbitration
15 and any other procedural issues the parties wish to
16 discuss. Before we go any farther, let's take
17 appearances. If you could state your full name, the
18 party you represent, your full address, telephone
19 number, fax number, and e-mail address, that will help
20 us both get you e-mail versions of notices, etcetera,
21 and help your colleagues know how to get in touch with
22 you. So let's begin with Level 3.

23 MR. CECIL: Erik Cecil, E-r-i-k, C-e-c-i-l.
24 I'm regulatory counsel, Level 3 Communications, LLC,
25 1025 Eldorado Boulevard, Broomfield, Colorado, 80021.

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1 Phone number is (720) 888-1319. Fax is (720) 888-5134,
2 and the e-mail is erik.cecil@level3.com.

3 JUDGE RENDAHL: In the petition for
4 arbitration that was filed, Mr. Pena of Pena and
5 Associates filed the petition, and the petition also
6 lists Ms. Mandell and Mr. Thayer. Are those folks also
7 --

8 MR. CECIL: They are co-counsel at Level 3.
9 I believe he just omitted my name by mistake, because
10 I've been lead litigating co-counsel on the Qwest
11 proceedings regionwide.

12 JUDGE RENDAHL: So for the record, Victoria,
13 V-i-c-t-o-r-i-a, Mandell, M-a-n-d-e-l-l, and Rick
14 Thayer, T-h-a-y-e-r, should also be included?

15 MR. CECIL: Yes.

16 JUDGE RENDAHL: For the record, their e-mail
17 addresses are, victoria.mandell@level3.com, and
18 rick.thayer@level3.com, and their address and telephone
19 number would be the same?

20 MR. CECIL: The address would be the same but
21 the phone numbers would be different.

22 JUDGE RENDAHL: I have an extension of 2439.
23 Would that be Ms. Mandell's?

24 MR. CECIL: Yes, and 2620 would be
25 Mr. Thayer's.

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1 JUDGE RENDAHL: Thank you for that. Should
2 Mr. Pena also remain on the Commission's master service
3 list?

4 MR. CECIL: For the time being, we will just
5 leave it as it is.

6 JUDGE RENDAHL: But you will be the primary
7 person for mail service by the Commission?

8 MR. CECIL: Correct.

9 JUDGE RENDAHL: And the others can have
10 courtesy e-mail service?

11 MR. CECIL: That's correct.

12 JUDGE RENDAHL: Thank you. I'm sorry,
13 Mr. Butler, are you also with Level 3?

14 MR. BUTLER: Yes, Your Honor. Arthur A.
15 Butler with AterWynne, LLP. Address is 601 Union
16 Street, Suite 5450, Seattle, Washington, 98101-2327.
17 Telephone number is (206) 623-4711. The fax number is
18 (206) 467-8406. The e-mail is aab@aterwynne.com.

19 JUDGE RENDAHL: Thank you very much. Is a
20 courtesy e-mail copy sufficient with Mr. Cecil getting
21 paper, or do you also need paper service from the
22 Commission?

23 MR. BUTLER: Courtesy copy is fine.

24 JUDGE RENDAHL: For Qwest?

25 MS. ANDERL: I'm going to enter an appearance

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1 for myself and another attorney from our Denver office,
2 and then I'm going to let Mr. Smith enter his own
3 appearance. This is Lisa Anderl, in-house regulatory
4 attorney, representing Qwest. My business address is
5 1600 Seventh Avenue, Room 3206, Seattle, Washington,
6 98191. My e-mail address is lisa.anderl@qwest.com. My
7 phone number is (206) 345-1568, and my fax is (206)
8 343-4040.

9 Also an attorney on behalf of Qwest in this
10 proceeding is Tom Dethlefs, D-e-t-h-l-e-f-s, at 1801
11 California, Denver, Colorado, 80202. His telephone
12 number is (303) 383-6646. I will get his fax later for
13 the record. I don't have that.

14 JUDGE RENDAHL: I'm looking at your answer
15 and it's included in there: (303) 298-8197, and the
16 e-mail address would be --

17 MS. ANDERL: Thomas.dethlefs@qwest.com.

18 JUDGE RENDAHL: Mr. Smith, are you still on
19 the line?

20 MR. SMITH: Yes, Your Honor, I am. My name
21 is Ted Smith. I'm with the law firm of Stoel Rives.
22 I'm located in Salt Lake City. The address is 201
23 South Main Street, Suite 1100, Salt Lake City, Utah,
24 84111. My telephone number is (801) 578-6961. The fax
25 number is (801) 578-6999. My e-mail address is

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1 tsmith@stoel.com.

2 JUDGE RENDAHL: Thank you. For purposes of
3 paper service from the Commission, is it sufficient for
4 Ms. Anderl to receive the paper copy?

5 MS. ANDERL: Yes, Your Honor.

6 MR. SMITH: E-mail to me is fine.

7 JUDGE RENDAHL: So e-mail to Mr. Smith and
8 Mr. Dethlefs.

9 MS. ANDERL: That's correct.

10 JUDGE RENDAHL: Is there anyone else who
11 should receive e-mail service from either Qwest or
12 Level 3? For example, would Mr. Reynolds like to be on
13 the e-mail courtesy list, and I'm not sure if there is
14 anyone else from Level 3 that might also want to
15 receive e-mail.

16 JUDGE RENDAHL: Mr. Reynolds, would you like
17 to be on the e-mail courtesy list?

18 MR. REYNOLDS: I could just share a copy with
19 Lisa.

20 MR. SMITH: Your Honor, one other thing, I
21 have not yet filed for admission -- but we will get
22 that process taken care of shortly.

23 MS. ANDERL: Actually, Ted, that's not
24 necessary in Washington.

25 JUDGE RENDAHL: So there is no need to do

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1 that. With that, those details under our belt, we need
2 to talk about scheduling, and as it stands now, Level 3
3 filed its petition January 26th and Qwest just filed
4 its answer on February the 21st.

5 Order No. 1 in this arbitration, the
6 arbitration order, identified that the arbitrator's
7 report and decision would need to be filed and served
8 by May 19th to meet the nine-month statutory deadline
9 for the arbitration, and in order to meet that
10 schedule, the hearing and any posthearing briefs would
11 need to be completed no later than April 28th.

12 Now, I understand that the parties are
13 involved in similar arbitrations in other Qwest
14 jurisdictions, and is it the parties' intent to keep
15 that schedule, or do you wish to waive the statutory
16 deadline and have it extended out?

17 MR. CECIL: Lisa and I talked briefly
18 yesterday before I came out about a proposed schedule,
19 and we haven't had a lot of time to really discuss all
20 the issues that are raised, but as an initial matter,
21 we have moved out the statutory deadline in other
22 states, and the way Level 3 prefers to do that is not
23 to waive the deadline completely, but rather once we
24 get an idea of what looks reasonable relative to a
25 particular state, and then building in due time for the

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1 judge and the Commission to have their consideration in
2 putting some cushion on the back and put a date certain
3 just at the end of that, and that's something that
4 seems to work in other states, so as a conceptual
5 matter, I think that's where we would be.

6 JUDGE RENDAHL: Just for my purposes, I'm in
7 the middle of resolving a rate case with the
8 Commission, and the statutory deadline on that ends mid
9 April, and then I have another arbitration that's still
10 pending, the Verizon arbitration, and if you all would
11 like me to remain as the arbitrator in this matter, I
12 would appreciate extending it out a bit.

13 MR. CECIL: I think there are several things
14 we can do to accommodate those concerns, and Level 3
15 has some suggestions in that regard.

16 MS. ANDERL: We did propose a schedule which
17 would extend the schedule out with hearings in the
18 summer, actually.

19 JUDGE RENDAHL: That would work fine with me.

20 MS. ANDERL: I don't know how far Level 3 is
21 willing to go, but it seems to be consistent with time
22 frames we took in the other states.

23 JUDGE RENDAHL: Is there anything we need to
24 talk about on the record before we go off the record
25 and talk schedule generally?

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1 MR. SMITH: There is one issue that relates
2 to the contract itself. We discussed this with Level 3
3 two or three days ago on a similar call in North
4 Dakota, and that is the template agreement that Qwest
5 has filed as part of its answer is our version that
6 this TRO and TRRO compliant and the version that was
7 filed by Level 3 in their petition is an earlier
8 version of our template.

9 Now practically what that means is that there
10 is some new language in our template that is not in the
11 version that Level 3 filed, which means there may be
12 additional contested issues that would primarily, I
13 believe, relate to unbundled network elements.

14 The process we've agreed to in North Dakota
15 is to work with Level 3 to each examine the agreement
16 and see if there really are additional issues that are
17 going to need to be litigated, and I think we've tried
18 to do that over the next six weeks. So I don't know
19 that anything needs to specifically be done in regard
20 to the schedule, but there is that potential issue that
21 there may be issues in addition to those that are
22 specifically set forth in Level 3's petition that might
23 relate to some of this language.

24 I think where we are is we would propose that
25 we be in the same process that will be taking place in

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1 North Dakota. I think that would be applicable in
2 Washington as well that we go ahead and get the
3 schedule set but just recognize that we will try to
4 work through those issues, and if necessary as we move
5 along, we may need to get back together to identify any
6 new issues that we were unable to resolve.

7 JUDGE RENDAHL: Mr. Cecil?

8 MR. CECIL: Your Honor, Mr. Smith is correct
9 in pointing that out. I will note for the record since
10 he raised it that the parties negotiated for over a
11 year on this contract, and we actually filed petitions
12 for arbitration when those negotiations broke down. At
13 that time, we had actually agreed upon disputed issues
14 and what was going to go into arbitration, so there was
15 a UNE appendix that was arbitrated at that time.

16 Since then, apparently, Qwest has updated
17 what their view of the UNE world is. They've never
18 proposed to negotiate a new UNE appendix, actually,
19 with us. The first of it we've seen is this response
20 they've filed. My initial position on that would be I
21 would move to strike that from their response because
22 it was never negotiated, and I think that Section 252
23 of the Act is pretty clear on that.

24 At a minimum, I think it's viewed as an offer
25 to negotiate, and in that, we can find procedures to

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1 push that out and deal with that, but I certainly can't
2 move forward in a litigation with the possibility or
3 not knowing whether or not this is going to come in
4 that makes it a little bit difficult.

5 In the 30 days of hearings we've had so far
6 in other states, there has been no testimony on UNE's.
7 It's never been a contested issue. So they raised this
8 in North Dakota and a couple of other places where all
9 of a sudden, there is some new template they would like
10 to have in. We are happy to consider that, but the
11 timing is a little bit odd.

12 JUDGE RENDAHL: At this point, I would leave
13 it to you all to see if you could work out the issue,
14 and if it's unworkable, then I'm sure I will hear about
15 it and will either entertain a motion to strike or will
16 resolve it in some other way.

17 MR. CECIL: If we do have to resolve it and
18 issues do go into dispute, that would affect the
19 procedural schedule, and if that were the case, I would
20 propose that if UNE's are going to have to be an issue
21 and we are going to have to spend -- just because of
22 the schedules in other states that we have in
23 arbitration, there is just not that much time to sit
24 down and hammer through a UNE appendix, that we allow
25 the main case to go on, and if we come to loggerheads

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1 on some UNE issues that that be carved out in a
2 separate track or a separate proceeding.

3 I don't want to hold up issues here for the
4 sake of some new subset of issues that have all of a
5 sudden popped up. Typically, Qwest is typical with
6 other ILEC's. They are always refining and updating
7 these contract proposals. They are always a moving
8 target. So at some point, we've got to just have a
9 cutoff, but in fairness to them, it has been almost a
10 year now since we've even talked about these issues.
11 I'm sure there are things they want to address. That's
12 perfectly fair.

13 What that leads to is there would be separate
14 evidentiary issues, separate legal issues, and separate
15 testimony that would actually move on UNE's separate
16 from what we are doing here. I don't want to have a
17 train wreck in the middle of this case because for some
18 reason something goes wrong with UNE's, because
19 typically, we find these contracts are deeply
20 interwoven. I have no idea of what moving this -- it's
21 20-dimensional chess -- has, in effect, somewhere else
22 in my contract, because this is all telecommunications.
23 This is all the same network, and it's pretty much all
24 the same law.

25 JUDGE RENDAHL: I understand your concern.

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1 On the other hand, the Telco Act does allow companies
2 in response in their answers to address issues that
3 they believe are relevant to the arbitration. The
4 Commission has addressed that in other proceedings, the
5 Verizon arbitration proceeding where the CLEC's were
6 wanting to address additional issues in the TRRO, TRO
7 scheme that was not included in Verizon's initial
8 arbitration proceeding, and the Commission has
9 arbitrated those issues. So I don't have an issue with
10 addressing issues that Qwest has raised in its answer.

11 On the other hand, I understand that you are
12 in a process in 14 states. It's not just Washington
13 state. It is other states, and we may be the tail of
14 the dog here. I don't know what the schedule is in
15 other states. So I would encourage you to all to try
16 to work this through in the schedule, and to the extent
17 that if this is language that Qwest is proposing in
18 other states as well, it's not just us. The issue is
19 in other states.

20 I understand your concerns in terms of
21 scheduling and what you are prepared to do at this
22 time, and I would encourage you to work it through, and
23 if you reach an impasse, I'm available to resolve the
24 dispute, and if we need to amend the schedule, we will
25 address that too.

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1 MR. CECIL: I'll just note for the record
2 that has the potential of delaying the case for my
3 client and harming us otherwise by just slowing down
4 the schedule because new issues are all of a sudden
5 popping up in the proceeding, and I guess if we can't
6 work it out, and we are certainly interested in working
7 it out, but I do have concerns, and at some point, I
8 will reserve the right to propose other solutions as to
9 how we deal with this because I don't want to have to
10 deal with these issues in this case, and I've got
11 strong concerns about where this ends up and what
12 effect this has on my client's case.

13 JUDGE RENDAHL: Ms. Anderl?

14 MS. ANDERL: I'm going to say I think
15 Mr. Cecil's objections are duly noted for the record.
16 I think we might be better served here, instead of
17 worrying about a schedule we haven't even talked about,
18 go off the record and talk about the schedule and see
19 if we don't agree on dates.

20 JUDGE RENDAHL: I was going to suggest that
21 too, but the purpose for the prehearing is for people
22 to identify their concerns and issues so the Commission
23 is aware of what is out there in the future and what
24 may happen. I understand the concerns. I just wanted
25 to let you know how the Commission has addressed this

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1 issue in the past so it's not a surprise.

2 So at this point, I suggest we go off the
3 record, and I'm curious to hear what the schedule is
4 you all have hammered out. We will be off the record.

5 (Discussion off the record.)

6 JUDGE RENDAHL: While we were off the record,
7 we had some discussion about scheduling, but first had
8 some discussion about the need for invoking the
9 Commission's discovery rule, and the parties have
10 agreed that it's appropriate to invoke the Commission's
11 discovery rule and allow our rules governing discovery
12 to apply in this case.

13 There is also a request for a protective
14 order. A standard confidential level protective order
15 will be entered in this matter, and if the parties feel
16 it's appropriate to designate information as highly
17 confidential and modify the protective order for highly
18 confidential information, either party may move to
19 modify the protective order for that purpose.

20 In terms of the schedule, no later than March
21 31st, Level 3 will file a motion to compel if it needs
22 to file a motion to compel on discovery. Qwest has
23 agreed that for those discovery requests that it knows
24 it objects to off the bat that it will respond noting
25 that objection within five business days of receiving

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1 the discovery request. For those discovery requests
2 that Qwest can respond to or those portions of
3 discovery requests that it can respond to, Qwest will
4 do so within the 10 business days, which is the
5 standard Commission rule response time.

6 Qwest will reply to Level 3's motion to
7 compel by April 11th. On April the 18th at 1:30 p.m.,
8 the arbitrator will hear argument on the discovery
9 dispute. On April the 25th, the arbitrator will enter
10 a decision on the motion to compel. On May 9th, if the
11 decision is to compel Qwest to respond to the discovery
12 requests, those compelled data responses are due on May
13 9th. On May 23rd, the parties will file simultaneous
14 direct testimony. On June 30th, the parties will file
15 simultaneous responsive testimony, and there is a
16 discovery cutoff for any party to propound any
17 additional discovery by July 12th.

18 On August 14th, the parties will file with
19 the Commission their most recent agreed-upon version of
20 the disputed issues list and the most updated language
21 in dispute. Is that the best way of describing that?
22 Okay. On August 21st through the 25th, there will be
23 hearings in this matter. The Commission will evaluate
24 the need for all five days. As time goes on, you can
25 all let us know if we really only need four days.

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1 I'm going to add in some dates. It's
2 appropriate for me to know your estimated cross times
3 and receive cross-exhibits, so I'm going to go off the
4 record and fill in the schedule for my sake after I run
5 through this.

6 September 15th, the parties will file
7 simultaneous initial briefs. On September 29th, the
8 parties will file simultaneous responsive briefs. On
9 November 3rd is the date for the arbitrator's report
10 and decision to be entered, and I will hear from the
11 parties at some point in the future on whether you want
12 to follow the Commission's rule on filing petitions for
13 review of the arbitrator's decision answers and when
14 the Commission would rule on that, so I'll hear from
15 you all at a later date after you've had time to
16 confer.

17 And we understand there are technical
18 conferences going on this month both in Oregon and New
19 Mexico in similar proceedings in those states, and I've
20 reserved ruling on whether to require a technical
21 conference in this matter pending the parties'
22 experience in those other states and pending my
23 conferring with the staff and the commissioners for the
24 need of a technical conference. If we do have a
25 technical conference, it would be held workshop style

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1 but on the record so that any information from the
2 technical conference would be available for the record
3 in this proceeding.

4 Let's go off the record for a moment while we
5 fill in the gaps in the schedule.

6 (Discussion off the record.)

7 JUDGE RENDAHL: While we were off the record,
8 we clarified that by August 16th at noon, the parties
9 will send -- and this can be done electronically. This
10 can be done by e-mail to me -- to submit your estimated
11 cross-examination times of witnesses, the order of the
12 witnesses -- preferably you will all agree on that
13 before you submit it to me so I don't get two different
14 order of witnesses -- and your electronic list of your
15 cross-examination exhibits, and I will have your
16 prefiled testimony already submitted.

17 Then I will turn around to you all a
18 premarked exhibit list prior to the hearing and
19 evaluate whether the amount of time we fleshed out for
20 the hearing is actually going to work. Then if you
21 will all file with the Commission a paper copy and
22 serve on each other, provide a paper copy by close of
23 business on the 17th of August, then we will be all
24 ready to go.

25 We did discuss the need to invoke the

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1 extension of the paper filing rule to allow the parties
2 to submit all of these pleadings and testimony and
3 briefings and submissions electronically on the date
4 we've identified in the schedule with a one-day
5 extension for the paper copy for the next business day.

6 Mr. Butler?

7 MR. BUTLER: The question was asked about
8 filing confidential material electronically.

9 JUDGE RENDAHL: The process to do that is in
10 the rule. The Commission prefers that you file a
11 confidential and a redacted version. I will designate
12 in the prehearing conference order how many copies of
13 confidential materials and how many copies of redacted
14 we will need. Generally, we will need one redacted
15 original and the remaining copies original and copies
16 in confidential.

17 The Commission prefers to have the
18 confidential version be produced through a PDF version
19 and the other copies in their native format and PDF.
20 So does that clarify your concerns?

21 MR. BUTLER: Yes. Although, the rule says
22 one thing, it seems like every case is different about
23 how you actually designate them.

24 JUDGE RENDAHL: Some of you might be aware
25 that -- let's go off the record.

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1 (Discussion off the record.)

2 JUDGE RENDAHL: While we were off the record,
3 we clarified how filings are submitted electronically,
4 confidential and otherwise. I don't know that that
5 needs to be on the record. It was more of a technical
6 clarification with the parties, and we also just
7 discussed the fact that there is no need to do witness
8 summaries during the hearing of testimony nor is there
9 a need for opening statements by the parties during the
10 hearing.

11 With that, I can't think of anything else we
12 need to discuss at this time, and I will wait to hear
13 from all of you on the merits of the technical
14 conference and will let you know my preference on the
15 technical conference after I hear from you all, and I
16 will wait to hear from all of you on the end schedule
17 for this case. Other than that, I think we are done.
18 Is there anything else that you all need to discuss
19 this morning?

20 MS. ANDERL: No, Your Honor.

21 MR. CECIL: No, Your Honor.

22 JUDGE RENDAHL: Thank you very much for the
23 discussion. Let's be off the record, and I will be
24 entering a prehearing conference order within the next
25 few days that will include all this information as

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1 well.

2 (Prehearing conference adjourned at 11:35 a.m.)

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