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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

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PAC-WEST TELECOMM, INC., ) Docket UT-053036  
 ) (Consolidated)  
 v. )  
 )  
 Petitioner, )  
 )  
 QWEST CORPORATION, )  
 )  
 Respondent. )  
 -----)  
 LEVEL 3 COMMUNICATIONS, LLC, ) Docket UT-053039  
 ) (Consolidated)  
 Petitioner, )  
 )  
 v. )  
 )  
 QWEST CORPORATION, )  
 )  
 Respondent. )

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STATUS CONFERENCE, VOLUME IX  
Pages 247-310  
ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

1:30 P.M.  
JANUARY 29, 2013

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504-7250

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A P P E A R A N C E S

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ADMINISTRATIVE LAW JUDGE:

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(Continued...)

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1 FOR PAC-WEST TELECOMM (Via telephone):

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ALSO PRESENT:

7 SAM SHIFFLEY, via telephone  
8 BOB WILLIAMSON

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OLYMPIA, WASHINGTON, JANUARY 29, 2013

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1:30 P.M.

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P R O C E E D I N G S

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JUDGE TOREM: Well, let's go on the record.

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This is a status conference being conducted in the consolidated dockets of UT-053036, the Pac-West complaint against Qwest, now CenturyLink, and Docket UT-053039, a similar complaint filed by Level 3, also against Qwest, now CenturyLink.

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It's Tuesday, January 29, 2013. It's right about 1:30, and we're getting started in the status conference.

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This is Administrative Law Judge Adam Torem. I'm in the Commission's hearing room, Room 108 for today, with our consultant, Bob Williamson. And we have a number of other parties on the line.

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We'll start with Qwest for appearances.

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MS. ANDERL: This is Lisa Anderl, representing Qwest/CenturyLink.

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MR. DETHLEFS: Tom Dethlefs, representing CenturyLink.

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JUDGE TOREM: And Level 3?

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MR. SHORTLEY: This is Michael Shortley, representing Level 3.

24

25

JUDGE TOREM: And for Pac-West?

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1 MS. MAYHOOK: This is Laura --

2 MR. MAYHOOK: Jeffrey Mayhook and Laura Mayhook.

3 JUDGE TOREM: All right. Great.

4 Is there anybody else out there, attorneys or  
5 parties, who want to make an appearance?

6 MR. SHIFFMAN: This is Sam Shiffman for Pac-West, and  
7 I'm just observing.

8 JUDGE TOREM: All right. Thanks, Mr. Shiffman.

9 MR. SHIFFMAN: Thank you.

10 JUDGE TOREM: The agenda today really was originally  
11 set to talk about next week's hearing and confirm cross-exam  
12 estimates that were filed on Friday -- and I thank everybody for  
13 promptly doing that in a timely fashion -- and also to figure  
14 out and sort out what the remaining issues would be to be  
15 discussed at the hearing.

16 In last Friday's filings, Level 3 and  
17 Qwest/CenturyLink indicated they had come to terms of a  
18 settlement. There were no further details in the one-page  
19 letter filed, and there was some promise that perhaps -- an  
20 optimistic promise -- the documents would be signed and filed by  
21 today, the 29th of January.

22 To my knowledge, they haven't yet reached the  
23 Commission's e-mail boxes, but I want to put that to the top of  
24 the agenda so that all parties are aware of the Qwest-Level 3  
25 proposed settlement. Whatever summary of the terms would be

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1 welcome, and I'll accept any input on a deadline suggestion for  
2 filing those documents with the Commission and determine what  
3 affect that's going to have on Level 3's participation in next  
4 week's hearing, which is scheduled for the 6th and the 7th,  
5 Wednesday and Thursday of next week, February 2013.

6           So let's move to the settlement issue, and then we'll  
7 take up any remaining issues, legal or factual. I think we'll  
8 mostly start to exclude the legal issues -- those have been  
9 settled -- and the factual issues remaining just highlight those  
10 and be sure we know the scope of the testimony. And then with  
11 the settlement issue, go back and confirm cross-exam estimates  
12 and any adjustments to the schedule.

13           Were there any other agenda items that Qwest wanted  
14 brought up?

15           MS. ANDERL: No, Your Honor. I think some of the  
16 detailed issues that we would want to talk about, such as  
17 confidentiality of certain provisions of the settlement  
18 agreement, will be encompassed within the general topics that  
19 you listed.

20           JUDGE TOREM: All right.

21           And, Level 3, any other issues you need brought up?

22           MR. SHORTLEY: No, Your Honor.

23           JUDGE TOREM: And Pac-West?

24           MR. MAYHOOK: This is Jeffrey, and, you know, some of  
25 my questions are, you know, mainly procedural and things like

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1 whether there would be opening statements, closing statements,  
2 the potential, if at all, for filing of briefs, and/or, you  
3 know, I guess a closing statement would be, I guess, tantamount  
4 also to, you know, something like oral argument.

5           And then also to the extent it's appropriate -- and I  
6 think this relates back to what are the issues -- whether or not  
7 there's an understanding on each party's respective burden of  
8 proof.

9           JUDGE TOREM: Okay. Sounds good. I've got a note  
10 here about posthearing briefs, already, so we'll add those other  
11 items when we get down to that part of the agenda.

12           Thank you, Mr. Mayhook.

13           MR. MAYHOOK: Thank you.

14           JUDGE TOREM: All right. At this time, then, let's  
15 turn back to Ms. Anderl, Mr. Dethlefs, and Mr. Shortley.

16           If you can figure out who's going to explain the  
17 settlement in a little bit more detail so I have an idea if it's  
18 all settled or a settlement in principle only. Tell me what I  
19 need to know.

20           MR. SHORTLEY: Do you want me to at least start,  
21 Lisa?

22           MS. ANDERL: Sure, that would be great.

23           MR. SHORTLEY: Your Honor, I did receive within --  
24 literally within the last hour, the signature pages from  
25 CenturyLink, and I sent what would be Level 3's signature pages

1 of the settlement agreement to CenturyLink. So the settlement  
2 agreement has been executed. It obviously has not been filed.  
3 Nothing has been filed with the Commission yet, and we plan to  
4 do that. We'll talk about an exact date, Your Honor, in a  
5 moment or two, I guess, but it does settle -- the agreement does  
6 settle all issues in the litigation in Washington and calls for  
7 the dismissal of the various outstanding cases that are  
8 involved, which would include this, the case that we're on  
9 that's called for right now, the 2006 proceeding of -- the  
10 enforcement proceeding, I guess, by Qwest against a number of  
11 different parties, and the two court actions, obviously, only  
12 insofar as they affect the two parties in the settlement, which  
13 is Qwest and Level 3.

14 I think we'd be prepared, Lisa, to file. I'll leave  
15 that to you. I think we could -- I think I can probably do it  
16 at -- almost at any time.

17 So what do you think would be good for you, because I  
18 know you have a hearing to prepare for.

19 MS. ANDERL: Sure. Well, I think that -- well, Your  
20 Honor, we had -- Mr. Shortley and I had previously talked about  
21 the settlement narrative that's required under the rule, and we  
22 actually have a draft of that that I think we're both pretty  
23 happy with.

24 I think what we would like to do, though, is because  
25 this is a settlement that settles a number of issues, many of



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1 which are unrelated to the litigation and to Washington, we  
2 would like to discuss with Your Honor the ability to keep some  
3 of the terms and conditions confidential. And then probably  
4 between Qwest and Level 3 also talk about what we would want to  
5 redact. My thought is that if we are allowed to redact some of  
6 it, it just may be a little bit time-consuming, you know, to  
7 work through it together and figure out what we would offer to  
8 disclose and what we would like to have retained as either  
9 confidential or not even, you know, placed in the record at all.

10 JUDGE TOREM: If I'm hearing it correctly, there's  
11 multistate litigation that's being settled in the course of this  
12 agreement?

13 MR. SHORTLEY: There are multistate litigations in  
14 multiple different cases and multiple different -- and  
15 litigations on different topics.

16 MS. ANDERL: And also non-litigated disputes.

17 MR. SHORTLEY: Correct.

18 MS. ANDERL: I think business disputes that haven't  
19 arisen to the level of litigation yet.

20 MR. SHORTLEY: Correct.

21 JUDGE TOREM: Well, it would appear to me that the  
22 original petition and the counterclaims that were filed back in  
23 2005 and the remand order from the Federal District Court in  
24 2007 are really what's relevant to this Commission. I don't  
25 believe that this Commission had ever broadened the scope of the

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1 issues --

2 MR. SHORTLEY: Right.

3 JUDGE TOREM: -- it was trying to settle for the  
4 parties. This was, Mr. Shortley, your client bringing a  
5 petition and then Qwest bringing its own counterclaims within  
6 that?

7 MR. SHORTLEY: Correct.

8 JUDGE TOREM: And I was trying think a little bit  
9 more about this today and yesterday in considering what we would  
10 really need to act on a proposed settlement. This isn't a  
11 settlement that the Commission brought a complaint, and the  
12 Commission Staff is not actively participating in this case.  
13 And certainly given the amount of hours put in by the Commission  
14 and its policy staff and judges, we care. We want to make sure  
15 that's the right -- the right settlement of things, and that the  
16 Commission doesn't have an objection on policy grounds or  
17 otherwise. But as it's boiled down now, it really is an  
18 exchange of dollars between the two companies, and...

19 MR. SHORTLEY: I can tell you this, Your Honor. The  
20 settlement narrative that Ms. Anderl prepared -- and that is  
21 fine with me -- describes the -- kind of the nonmonetary  
22 outcome; like what we're going to do when -- like what we're  
23 going to be doing with ISP-bound traffic. And I think that  
24 document answers the questions that you have noted; the  
25 questions, the issues that you have just framed.

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1 JUDGE TOREM: And what I'm concerned with,  
2 Mr. Shortley, is that we not have you not file something that's  
3 overcomprehensive --

4 MR. SHORTLEY: Yes.

5 JUDGE TOREM: -- and ends up being, in turn, redacted  
6 of the irrelevant information to this case and looking to the  
7 public, if they were to review the document, as though something  
8 was being hidden, when, in fact, it's completely irrelevant --

9 MR. SHORTLEY: Right.

10 JUDGE TOREM: -- to the case before the Commission.

11 MR. SHORTLEY: And I think the settlement narrative  
12 will -- without filing the settlement agreement, I think the  
13 settlement narrative distills the settlement down to those  
14 issues that are relevant to this case.

15 JUDGE TOREM: Now, is there a possibility that your  
16 settlement document, if it's settling multistate litigation, can  
17 be filed in a more -- just a Washington-only form?

18 MR. SHORTLEY: Uh...

19 MS. ANDERL: Well, you know, Your Honor, that's an  
20 interesting question, and I think to some extent it could be.  
21 We haven't really, you know, sharpened the pencil and taken it  
22 to the document to do that.

23 One thing I can tell you, though, is as a part of the  
24 settlement, we will be required -- or we have agreed to and will  
25 file amendments to our interconnection agreement.

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1 MR. SHORTLEY: Correct.

2 MS. ANDERL: And that, since really -- since this is  
3 an enforcement action on interconnection agreement issues, the  
4 fact that we have reached, you know, up till now an undisclosed  
5 dollar amount settlement, which encompasses this case and  
6 others, and that we will amend our ICAs in a way that's public  
7 to reflect our agreement, is it possible that that would be  
8 enough for the Commission?

9 JUDGE TOREM: Maybe. I just think, Ms. Anderl, it's  
10 going to depend on what's there. We want to be able to approve  
11 from a policy perspective what's gone on, and we also want to be  
12 able to look at the methodology for how the traffic is being  
13 considered because, given the amount of research and just back  
14 and forth that the Commissioners went through in the VNXX  
15 order --

16 MR. SHORTLEY: Yeah.

17 JUDGE TOREM: -- to classify that kind of traffic and  
18 to now take that previous 2006 VNXX case and have it reapplied  
19 here as the remand order wanted us to do and we've done in this  
20 consolidated docket, there are still those issues to be applied  
21 as we came out of the last couple decisions.

22 If it is akin to intraLATA toll traffic, how are we  
23 treating this going forward?

24 As you say, the amendments to the interconnection  
25 agreements may be correct. And, again, whether the Commission

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1 wants to adopt that as a precedent for how we'll treat this  
2 traffic between most parties, all parties going forward in the  
3 industry, is something that I think we'd want to consider and  
4 perhaps even comment on in the course of approving the  
5 settlement authority. If we think that what you've done is the  
6 next best thing since sliced bread, I think the Commission might  
7 want to say as much to give guidance to other parties in the  
8 field.

9 MS. ANDERL: Well, and, Mike, I think the narrative  
10 agreement says -- and you can correct me if I'm wrong, and,  
11 obviously, it will speak for itself when we file it, I think it  
12 says we basically agreed to implement the results of the 063038  
13 docket, which is the generic VNXX docket, as to our relationship  
14 going forward.

15 JUDGE TOREM: Okay. And I guess it would just be a  
16 question of how it's being done.

17 MS. ANDERL: Yeah. Well, that would be through an  
18 interconnection agreement amendment that says ISP-bound VNXX  
19 traffic is going to be considered as on a bill-and-keep basis.  
20 You know, the parties are allowed under Washington law to agree  
21 to exchange ISP-bound VNXX traffic on a bill-and-keep basis as  
22 we have done in this case, and then I think that the -- you  
23 know, the CLEC is responsible for the transport facility.

24 And I think that that is the, you know, high level  
25 but accurate summary --

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1 MR. SHORTLEY: Yeah.

2 MS. ANDERL: -- of what the Commission decided in the  
3 2006 generic VNXX docket, and that has been implemented in a  
4 number of ICAs since then.

5 JUDGE TOREM: And is that essentially the methodology  
6 you're using looking back to help decide on the appropriate  
7 monetary amounts?

8 MR. SHORTLEY: The monetary amount, I will say this.  
9 There is nothing that was specifically allocated to this  
10 particular case. There were a number of different -- there were  
11 one, two, three -- four distinct pieces of litigation, and then  
12 a number of dockets, such as business commercial disputes, that  
13 have never gotten to litigation and just a number was agreed to.

14 MS. ANDERL: Yeah. And it's -- you know, if  
15 you locked up -- if you locked Qwest in a room and said, "You  
16 tell us what that number represents," we're going to -- we would  
17 tell you what we think it does. And if you locked Level 3 in a  
18 room and said, "You tell us what you think that number  
19 represents," and they would tell you they might have really  
20 assigned, you know, different valuations to different aspects of  
21 the settlement.

22 JUDGE TOREM: But in the lump sum, it addresses all  
23 of your concerns and all of the pending cases in all of the  
24 states?

25 MS. ANDERL: That's right.

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1 MR. SHORTLEY: Correct.

2 JUDGE TOREM: All right. Well, I suppose with the  
3 adequacy of that, we're not too concerned, but the methodology  
4 is what concerns the Commission so that we can comment or  
5 approve it as guidance going forward or -- or choose not to make  
6 any comment. I guess that will be up to the Commissioners.

7 MR. SHORTLEY: May I say that this -- you know, as  
8 Ms. Anderl indicated, there is and there will be in the  
9 settlement narrative, a description of what the parties have  
10 agreed to or will incorporate into an interconnection agreement  
11 going forward, so the Commission will see the methodology and  
12 will obviously see the interconnection agreement amendment  
13 because, obviously, those need to be approved.

14 Going backwards, there's nothing that really  
15 addresses methodology as here are a bunch of disputes. Here's a  
16 number.

17 JUDGE TOREM: All right.

18 MR. SHORTLEY: And everything is fine and dandy for  
19 what we've covered.

20 JUDGE TOREM: With the hearing itself going forward  
21 next Wednesday between, now, Pac-West and Qwest/CenturyLink, I  
22 wonder if it would help inform the Commission's proceedings  
23 going forward to know how this was settled or not.

24 Ms. Anderl, what's your view on that?

25 MS. ANDERL: You know, I don't think it has -- I'm

1 not sure that it has a lot of guidance or wisdom to impart to  
2 the Pac-West case, really, like I said, because we're settling  
3 so many diversive business issues amongst -- or between Level 3  
4 and Qwest that I think it's, you know, sometimes the bigger and  
5 the messier the case, the easier it is, you know, to -- to talk  
6 to yourself into compromises that get rid of a lot of things.  
7 And, you know, like I said, assigned value may be in the two  
8 different parties' minds in different ways where you end up  
9 happy.

10 I'm not aware that we have similar sort of global  
11 settlement negotiations ongoing with Pac-West, and it's  
12 certainly the last -- when we last spoke with Pac-West, when the  
13 Commission facilitated the mediation, we have not -- yeah. I'm  
14 not sure that there's enough similarity in between the parties  
15 in terms of the basis for the settlement that there, you know,  
16 is in the basis of the claim. That's why the case is  
17 consolidated. But I think I'll just stop talking before I have  
18 to move to strike anything I say.

19 MR. MAYHOOK: Well, this is Jeffrey, and if I could  
20 just interject quickly, I appreciate the -- His Honor asking the  
21 question, because, certainly, it's on my mind given, you know,  
22 your public concerns, and then, obviously, third parties looking  
23 at it and to the extent there's some implicit, if not explicit  
24 precedential value, so I appreciate your asking the question.

25 I will say that -- and I was aware that a settlement



1 had occurred between Level 3 and CenturyLink, and now that we're  
2 official, on the record, and so on, you know, it would be our  
3 intention certainly to want to preserve Mr. Greene's testimony  
4 as part of our records. He was the witness for Level 3, and I  
5 think we generally adopted it and incorporate it by reference.  
6 And, you know, it is clear that the two litigants here, if you  
7 will, are parties of substantial resources, and that Pac-West is  
8 not of their stature. And so I think that your -- your  
9 questioning here and the potential impacts on us, as this  
10 conversation evolves right now, that we'll come to some  
11 understanding on just how we're going to handle this.

12 MS. ANDERL: Well, and, you know, I appreciate  
13 Mr. Shiffman's comments, but I don't think that Pac-West really  
14 incorporated Mr. Greene's testimony, and nor do I think that  
15 there's enough similarity between the parties in terms of the  
16 factual construct of their network to make Mr. Greene's  
17 testimony relevant to the Pac-West case. That's --

18 (Simultaneous talking.)

19 MR. MAYHOOK: Well, I would respectfully disagree,  
20 and I think that the magic word here is the policy implications.

21 And I think that we -- we certainly see the  
22 similarities on our part, and we have been -- I think, you know,  
23 going back to 2005, have been following walk, step. And, again,  
24 given the disparity of resources, you know, we clearly could on  
25 our own not be able to mount what Level 3 had mounted, and we

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1 most definitely, from a policy perspective, identify with the  
2 issues as stated.

3           So I think that the -- you know, clearly the two  
4 entities that have achieved the settlement, you know, there's  
5 been a fair amount of horse trading of probably substantial  
6 proportions and that, you know, in the horse trading, I am  
7 pleased that they were able to resolve their differences.

8           And, frankly, I would hope that even though we are  
9 set for hearing the week after the next, that to the extent -- I  
10 know Sam, who's on the call, has been having his own business  
11 discussions with a business counterpart that, you know, we just  
12 come up with something tantamount to a global settlement as  
13 well, although clearly, the disparity in size potentially  
14 militates against that, but, you know, I don't know what I don't  
15 know.

16           But I think it is clearly an issue for us as it  
17 relates to Mr. Greene's testimony in particular. And to the  
18 extent this is a -- you know, a hearing -- and I should have  
19 mentioned it on the front end, but I also, you know, needed to  
20 hear the two parties make their representations to you before I  
21 could say anything. Otherwise, it would have been presumptuous  
22 on my part.

23           JUDGE TOREM: Well, Mr. Mayhook, again, this is Judge  
24 Torem, and I think one of the issues I had listed was whether --  
25 if Level 3 was excused from the hearing because it -- it is a

1 settled issue, whether or not Mr. Greene's presence would also  
2 be excused -- you know, they wouldn't be presenting a witness --  
3 and what to do; whether to admit, or as you say, preserve his  
4 testimony for some use.

5 Let me disclose that I understand the -- I don't know  
6 if "symbiotic" is the right word, or at least the cooperative  
7 nature of the two CLECs going up against Qwest/CenturyLink, and  
8 going, whether it was wholly in lockstep or not, remains to be  
9 seen.

10 But when I looked at Mr. Greene's testimony -- and,  
11 again, this came from really the timing issue as to my delay in  
12 issuing the order on the legal motions. Quite frankly, the bulk  
13 of the issues discussed in his 50-some pages have been settled  
14 legal issues now by the rulings that were issued in Order 18.

15 So if we're going to preserve any portion of his  
16 testimony that's instructive to the Commission in deciding the  
17 case, I'd like for you to specify when we get there, exactly  
18 which pages and portions you think are still relevant.

19 I can tell you that --

20 MR. MAYHOOK: I think --

21 JUDGE TOREM: I can tell you --

22 MR. MAYHOOK: I think that is a very fair and  
23 reasonable suggestion, and we certainly would, in the interest  
24 of efficiency of economy, take that if you'll allow us to do it.

25 JUDGE TOREM: And we'll see what objections

1 Ms. Anderl might have because, again, if it would be instructive  
2 to helping the Commission hear what Mr. Greene had to say from a  
3 policy perspective on how to treat these issues, regardless of  
4 how the company may have settled and compromised on his  
5 testimonial attestations, you know, you look at pages 26 to 41,  
6 the question of whether access charges are applicable in his  
7 original direct testimony, that's now a settled legal issue by  
8 Order 18. The jurisdiction, the argument that all these calls  
9 are interstate in nature, 41 to 47, my opinion it's irrelevant  
10 now because it's a settled issue, and it's the law of this case  
11 that they're intrastate.

12           So that's half of the testimony pages right there  
13 that I have just telegraphed to you. I'm not going to find or  
14 entertain an idea that they're still relevant, and I think that  
15 if they were the basis for you drafting questions against  
16 Mr. Easton, a cross-examination of referring to that might be  
17 one use. But whether you want them admitted, and then they'd be  
18 admitted without any cross-examination from Qwest, there's some  
19 due process issues on both sides that come to mind immediately.  
20 So it's possible.

21           And in cross-examination, some questions can be  
22 crafted from documents that weren't necessarily admitted or to  
23 be admitted but used just to craft a question. I know you're  
24 clever enough to get the right pieces you want in regards to  
25 whatever ruling or guidance I might give. But I would just hope

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1 that as we get ready for next week's hearing, if it's to go as  
2 scheduled, that we figure out those resources you've described  
3 of Level 3 that have been put into preparing for next week are  
4 made use of efficiently.

5 MALE SPEAKER: I would appreciate that.

6 MR. MAYHOOK: Well, I appreciate how you have framed  
7 that. I think, you know, for my part, you know, I'm not only  
8 taking the here and now of next week, but I'm also thinking, you  
9 know, my record posthearing and whether or not there's something  
10 in there, even though it might not be something that, from the  
11 standpoint of the hearing itself and respecting what you said  
12 and I -- I think your admonition regarding the law of the case  
13 was very appropriate and -- and I'm glad, you know, Sam is on  
14 the phone to hear it.

15 But that said, it also -- when the case is said and  
16 done, you know, there might be bits and pieces of that that  
17 fairly and duly constitute part of the record for which, you  
18 know, I wanted to show Mr. Greene's testimony.

19 And, again, given the disparity in resources, you  
20 know, we -- we kind of relied on that testimony being in the  
21 record. And if it's -- I guess my concern would be that if it's  
22 expunged from the record, then I couldn't refer to it or cite to  
23 it in the benefit of potential appeal, which I hope doesn't  
24 happen, but, you know, that's just kind of far from being  
25 clever, which I can say with humility.

1 JUDGE TOREM: Well, it's thorough.

2 MR. MAYHOOK: I mean, that is as basic as it comes  
3 when it comes to just what's in the best interest of the client.  
4 And we're -- you know, we're kind of David; that we're, you  
5 know, with the two Goliaths that have -- have reached an  
6 accomodation and -- and we're not there.

7 JUDGE TOREM: Well, fair enough. I'm not too worried  
8 about the impact of the documents that have been filed in  
9 anticipation of hearing but not actually admitted. You'll have  
10 to find the right procedural approach to have them available for  
11 you if there is a need for an appeal further. It's back to  
12 superior court or federal court as the case may be. Certainly  
13 they have been filed and are part of at least that  
14 administrative record. But whether they're part of the record  
15 that we would rely on as an admitted exhibit, I guess I would,  
16 in my experience in litigation, draw the distinction between  
17 court records and appellate records and evidence being used.

18 So I appreciate the candor on how you might want to  
19 characterize those documents for use currently or in the future.  
20 I can only really worry about the current use, and I'll have to  
21 leave the procedural quandaries to you if there is an appeal.

22 MR. MAYHOOK: Well, that is fair enough. And we'll  
23 noodle that. I won't belabor, and I just appreciate the  
24 conversation that we've had on that point today.

25 JUDGE TOREM: Okay. Well, and, again, if there's

1 some documents that you want to be have available for  
2 cross-examination next week, we can talk about setting a time  
3 for you to make sure that those representatives from Qwest know  
4 which documents you'll be referring to so their witness can be  
5 adequately prepared to answer those, and we don't have to waste  
6 time having him reread another witness's testimony. Hopefully,  
7 we could get that done -- today's Tuesday -- maybe by Friday we  
8 could have you provide the page listing of things from which you  
9 might draw questions, and you would like their witness to be --  
10 Mr. Easton to be prepared.

11 As for the actual presence of Mr. Greene, are you  
12 seeking that in any way or form next week?

13 MR. MAYHOOK: No. And I -- you know, out of respect,  
14 I would not do that, and I probably should have a discussion  
15 with the client and my better half, as it relates to Mayhook  
16 Law, who's much more astute on these matters than I am.

17 But at least as I sit here today and -- and speaking  
18 with candor, it's not my expectation that Level 3, which has  
19 gotten out of the case, would actually produce him for a  
20 hearing, so...

21 JUDGE TOREM: Well, I raise the question simply  
22 because when Mr. Jamie Johnson filed your client's cross-exam  
23 estimates, he may or may not have been aware of the settlement,  
24 but he listed Mr. Greene for one hour of what I presumed would  
25 be a friendly cross-exam or at least something to further

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1 illuminate those issues that you're looking for either now or  
2 for future appeal.

3 MR. MAYHOOK: And you're correct on that. And even  
4 though certainly there were press reports about the global  
5 settlement, again, not presuming, we did want to reserve time to  
6 engage him in examination. And for the purposes of the hearing  
7 week after next, obviously, that would drop out of the equation  
8 as it relates to time.

9 JUDGE TOREM: All right. Now, the only other  
10 question I think I have related to the settlement for Pac-West  
11 is the issue of whether or not seeing those terms of the  
12 settlement that were not going to be held confidential as  
13 between the two companies would influence potentially your  
14 client's position and how they wanted to approach, as you  
15 suggested, potential global settlement of Pac-West's issues with  
16 Qwest and CenturyLink, or how you would litigate this case.

17 MR. MAYHOOK: Well -- and I'm so pleased that you  
18 raised this, and we've had similar thoughts and certainly on  
19 this phone call as we're hearing the conversation between  
20 Mr. Shortley and Ms. Anderl. I mean, clearly, if there's  
21 something in there that would seem to benefit our position and  
22 what we're arguing, we would be subvert to it.

23 And to the extent they have deemed to resolve  
24 something between themselves that suggests they have come up  
25 with a -- that suggests a policy implication that I would



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1 respectfully disagree with, I would certainly argue against that  
2 and, you know, suggest why that, from a policy perspective, it's  
3 not as universal as might be supposed.

4 JUDGE TOREM: Okay. Well, I'll leave that for  
5 Ms. Anderl to argue the universality of any principles Qwest and  
6 CenturyLink may have reached with their competitors at Level 3.

7 MR. MAYHOOK: Yeah, no. And just for what it's  
8 about, I mean, they are free contractually, insofar as I'm  
9 concerned, to do whatever they want. And, you know, parties all  
10 the time waive legal rights that they might otherwise -- or  
11 policy rights that they might otherwise enjoy.

12 And so they -- if they deem to, you know, in their  
13 horse trading on global issues, you know, when it was all rolled  
14 up, it was acceptable, I respect that.

15 But to the extent, you know, there is something here  
16 that is viewed as typical to, you know, generate, then I would  
17 just kind of do what I have to do to differentiate it from  
18 Pac-West.

19 JUDGE TOREM: All right. Well, I guess the original  
20 intent of my question was a veiled way of saying if you saw the  
21 settlement and had a chance to present its general approach to  
22 your client, would it be something you're going to seek a  
23 continuance on so you could see about --

24 MR. MAYHOOK: Ah.

25 JUDGE TOREM: -- adopting those same terms and having

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1 your client have a similar result, what Mr. Shortley reached,  
2 and a global settlement for Pac-West?

3 MR. MAYHOOK: Well, thank you for raising that  
4 possibility. You know, I'm very reluctant with what the parties  
5 have -- you know, where would Johnny-come-lately, you know, I'm  
6 very reluctant to, you know, suggest that I might seek a  
7 continuance.

8 But if I thought there -- certainly, in any event  
9 there was some material impact that it might have on the  
10 presentation of our case, I think I, you know, in the best  
11 interest of the client, would have to, you know, ask for it and  
12 assert a good cause.

13 JUDGE TOREM: Right. And let me say from the  
14 Commission's perspective, if we had one party opposing the  
15 continuance, if you and Qwest were to put one in jointly, the  
16 Commission would give that, I think, good consideration that the  
17 two parties had expressed that a breakthrough with Level 3 might  
18 lead to a breakthrough with Pac-West side.

19 However, if only one party was seeking it and the  
20 other wasn't interested in a true settlement, we're ready to go  
21 next week, and the Commission, believe it or not, wants to be  
22 done with this case.

23 MS. ANDERL: Well, and, Your Honor -- I mean, I  
24 understand that the settlement between Level 3 and Qwest is --  
25 to the fact that one was reached and is final is news to

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1 Pac-West. But the fact that the parties have been talking has  
2 certainly not -- that Level 3 and Qwest have been talking can  
3 certainly not be news to Pac-West since the Commission  
4 facilitated the mediation.

5 I do not like to characterize settlement negotiations  
6 or the absence thereof, because it was generally considered to  
7 be privileged. But I do not think that we are at a point with  
8 Pac-West that meaningful settlement discussions have been  
9 ongoing in any way that would suggest that a continuance would  
10 be fruitful.

11 JUDGE TOREM: All right. I just wanted to raise the  
12 possibility to determine, again, whether a breakthrough on one  
13 might lead to another. And as both of you have said, Qwest's  
14 relationship with Level 3 is separate and apart from its  
15 relationship with Pac-West. And I didn't think one settlement  
16 would be determinative, but I didn't want to foreclose the  
17 optimistic viewpoint that perhaps it would influence.

18 So it sounds to me as though the settlement  
19 between Pac -- between Level 3 and Qwest is nearly -- it's  
20 signed, almost ready to be sealed and delivered, but now just a  
21 question of how much of that is relevant to Washington, and  
22 directly how much of that might be relevant to this case in the  
23 hearing next week.

24 Let's turn back to when that can be provided to the  
25 Commission for our initial review. Perhaps, Mr. Shortley and

1 Ms. Anderl and Mr. Dethlefs, the approach here might be to file  
2 some of the documents sooner and an updated version of those  
3 documents later for our final action.

4 MR. SHORTLEY: Ms. Anderl, how about if we file the  
5 settlement narrative like in the next day or so?

6 MS. ANDERL: Yes. Sorry. I was talking on mute,  
7 but, yeah, you could just say you're reading my mind. I think  
8 we're ready to go with the narrative. That can certainly get  
9 people on the road.

10 And then, Mike, maybe you and I can carve some time  
11 out with Lisa Rackner and Jeff Novland (phonetic), if necessary,  
12 or just the two of us and decide what we're going to propose to  
13 file with the Commission.

14 MR. SHORTLEY: Okay. I think given that the  
15 settlement agreement itself has a lot of other stuff in it, I do  
16 think that -- Your Honor, I do think the narrative does give an  
17 accurate representation of how the issues in this case have been  
18 resolved.

19 And if that's -- you know, if you deal with -- I  
20 think we'll just say let -- let us file that and see what -- you  
21 know, see if you think -- if you think anything else is  
22 necessary.

23 JUDGE TOREM: And are you actually prepared to file  
24 that tomorrow without any further wordsmithing and tweaking?

25 MS. ANDERL: Your Honor, I think we could file it

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1 this afternoon. I think all I have to change is the fact that  
2 it says settlement agreement attached.

3 MR. SHORTLEY: I think that's right. I mean, I --  
4 Ms. Andrel thankfully drafted it and I signed off, so I think we  
5 could file it whenever Ms. Anderl can hit the button on it.

6 MS. ANDERL: Yeah, and I'm happy to do it this  
7 afternoon.

8 JUDGE TOREM: Okay. So we'll take the narrative  
9 today.

10 The settlement agreement itself, Ms. Anderl, do you  
11 think that we would -- you would have time to make all the  
12 different edits, deletions, redactions before the hearing next  
13 week?

14 MS. ANDERL: Oh, certainly. In fact -- I mean, I  
15 have one small appointment on my calendar tomorrow.

16 If Mike's got time, I'm willing to, you know, carve  
17 out as much time as necessary tomorrow to work on that.

18 JUDGE TOREM: So if I tell you the settlement by  
19 Friday, close of business?

20 MS. ANDERL: I think that's reasonable.

21 Mike, do you have time to do that?

22 MR. SHORTLEY: Yes. Tomorrow is Wednesday?

23 MS. ANDERL: Yes.

24 MR. SHORTLEY: I just have twelve to one, and four to  
25 five. I have meetings. Other than that, I'm on -- Eastern.

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1 Other than that, I'm wide open. I'll carve out as much time as  
2 we need.

3 JUDGE TOREM: All right. Well, I will leave --

4 MS. ANDERL: Okay. Twelve to one and four to five.  
5 Okay. I'll put something on your calendar if it doesn't impact  
6 those different times.

7 MR. SHORTLEY: Sure.

8 JUDGE TOREM: I'll leave the actual discussions and  
9 scheduling to the two parties, but from the Commission's  
10 viewpoint, we'll look to receive the narrative by later today.

11 And, again, please file that with all of the other  
12 parties as well electronically so that the Mayhooks and anyone  
13 else from Pac-West that needs to be on the same page knows the  
14 general direction of the settlement via the narrative today, and  
15 can actually read that document in a form you're proposing be  
16 publicly releasable on Friday.

17 Now, if there are other pieces of it that need to be  
18 filed as confidential, please make that clear, and in the cover  
19 letter if there are other issues.

20 Remember, our confidentiality rules here at the  
21 Commission are only those that are in statute and only those  
22 that are in our regulations as applied per the protective orders  
23 in this case, which I believe there is one.

24 MS. ANDERL: There are, Your Honor. There are  
25 actually two, because there's one for each docket number.

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1 JUDGE TOREM: Okay. So --

2 MS. ANDERL: And there was never a consolidated  
3 protective order issued because when the matter was  
4 consolidated, I believe the parties talked about it amongst  
5 themselves, and Level 3 decided they didn't want to see  
6 Pac-West's information and vice versa.

7 JUDGE TOREM: All right. Well -- and you know the  
8 early part of the history of the case and that procedural nature  
9 better than I would, having been in it from the start, so I  
10 appreciate the confirmation that there really is a protective  
11 order. But those would be the terms that govern what you submit  
12 and what's releasable to the other parties and the general  
13 public.

14 So if we have that by Friday afternoon, that would  
15 give myself, Mr. Williamson, and Mr. Thomas plenty of chance to  
16 read it and review it prior to the hearing. Then my  
17 understanding is those documents would be how you want us to  
18 settle the case, and there would be no further representation  
19 from the parties in an on-the-record proceeding before the  
20 Commission to issue an order in your docket, 053039, granting  
21 the relief that you have noted before, Mr. Shortley, of  
22 dismissing that particular docket and any associated litigation  
23 back and forth with the remand, I suppose, but for -- it's  
24 really contained to this docket number before this Commission.

25 MR. SHORTLEY: The agreement also provides that since

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1 the '06 docket is still technically open --

2 JUDGE TOREM: Okay.

3 MR. SHORTLEY: -- that the action by Qwest, insofar  
4 as it's against Level -- against Level 3 would also be resolved.

5 JUDGE TOREM: Right.

6 MR. SHORTLEY: Will also be dismissed.

7 JUDGE TOREM: So it sounds as though in that '06  
8 docket dealing with the VNXX case that we have adapted into the  
9 terms of this case --

10 MR. SHORTLEY: Mm-hm.

11 JUDGE TOREM: -- that you're seeking a supplemental  
12 order dismissing Level 3 from any ongoing proceedings there?

13 MR. SHORTLEY: Correct.

14 MS. ANDERL: Well, if I could interrupt, Your Honor,  
15 that docket number, 063038, was a complaint by Qwest against  
16 nine CLECs. The Commission issued a final order, an order on  
17 reconsideration, and then Level 3 filed appeals in both federal  
18 and state court kind of as -- well, you know, belt and  
19 suspenders depending -- to make sure you didn't get shut out of  
20 the one jurisdiction if the other jurisdiction decided that you  
21 should have been not in their court.

22 MR. SHORTLEY: Right.

23 MS. ANDERL: And my understanding and recollection is  
24 that Level 3 was the only appellant I believe that Qwest is a  
25 party in those cases, but that the defendant is actually the



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1 Commission. Those have been stayed pending these litigations.  
2 And I know Pac-West made an affirmative decision not to be an  
3 appellant in that case, so I think that litigation will just go  
4 away.

5 MR. SHORTLEY: Yes.

6 MS. ANDERL: And then so there will no longer be any  
7 question about the finality of the Commission's administrative  
8 actions in the docket, 063038.

9 JUDGE TOREM: Perhaps, Mr. Shortley, it sounds as  
10 though the Commission will be acting finally in 053039 with the  
11 expectation that your client actually take a voluntary nonsuit  
12 or a withdrawal?

13 MR. SHORTLEY: Yes, and that is provided for.

14 JUDGE TOREM: All right. Then so long as I can  
15 explain this to the Commissioners that they no longer have to  
16 look over their shoulder at Level 3 coming up behind them --

17 MR. SHORTLEY: No.

18 JUDGE TOREM: -- in federal court, that will make it  
19 easier for them to understand.

20 MR. SHORTLEY: I think there's a state court action  
21 pending in the state as well, and we will be filing the  
22 appropriate papers to have both of those dismissed.

23 JUDGE TOREM: All right. I think that takes care of  
24 the issues with the settlement, then, so by the end of day,  
25 we'll have the narrative; by Friday we'll have the settlement

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1     itself; and then the Commissioners, I can brief them as to how  
2     we might propose to act on it.

3                     And, again, if there's anything further that they  
4     want, we'll send out a notice summoning these two parties back  
5     in this one docket to handle it separate and apart from next  
6     week's evidentiary hearing.

7                     (Simultaneous talking.)

8                     JUDGE TOREM:   Which one of you wants to go first  
9     here?

10                    MR. MAYHOOK:   Go ahead, Michael.

11                    MR. SHORTLEY:  Thanks.  If I could just finish,  
12     just -- I guess just so we have it on the record and it's clear.

13                    Given that Qwest and Level 3 have settled, just for  
14     the record, Level 3 does not plan on putting a witness on next  
15     week, or, in fact, attending the hearing.

16                    JUDGE TOREM:   Understood.

17                    MR. SHORTLEY:  Very good.  Thank you.

18                    MR. MAYHOOK:   And then to Your Honor's point, would  
19     it be appropriate, you know, once we see the narrative and -- I  
20     mean, based on conversation, it sure seems relevant.  But if  
21     once we actually see whatever documents are filed either today  
22     or tomorrow and then Friday, the Commission in its own right  
23     wants to look at it as it relates to all these pending matters,  
24     but would we be expected or could we, if you think if it's  
25     appropriate, to also go on the record as to why we think it's

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1 relevant just, you know, from our perspective prior to the  
2 hearing so there's some sense in at least how we view it?

3 JUDGE TOREM: Maybe. I just am not sure. Once we  
4 get it -- and we have to act on it independently, Mr. Mayhook,  
5 from your client's pending evidentiary hearing, what comments  
6 might be useful at that point.

7 MR. MAYHOOK: Yeah.

8 JUDGE TOREM: If it would color how we go forward  
9 perhaps, but, again, the perfect lawyer answer: It depends on  
10 what you're going to tell me.

11 MR. MAYHOOK: Yeah. And I think from my standpoint,  
12 just thinking about, you know, my own hearing schedule, you  
13 know, it's -- it would be a little more than, you know, just a  
14 notice of intent with a general statement. I certainly would  
15 not launch into some kind of a briefing or, you know,  
16 regurgitation or anything. It just would be, you know, fairest  
17 to the parties that, "Hey, you know, we've looked at it and we  
18 think it's relevant to, you know, the issues," whatever, and,  
19 you know, just very generally and personally state the ground.

20 JUDGE TOREM: Well, perhaps that's better in a  
21 posthearing brief, and, certainly, I'll be able to tell from the  
22 way you question Mr. Easton.

23 MR. MAYHOOK: Okay.

24 JUDGE TOREM: You know, and you might be able to work  
25 in some questions as to how they settled with Level 3 and why

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1 you think it's different from Pac-West.

2 MR. MAYHOOK: Okay.

3 JUDGE TOREM: Those may be the avenues I suggest  
4 rather than an opening salvo to tell me what you think of the  
5 settlement. Again, that's between the two parties and up to the  
6 Commission to decide if it wants to accept it with any  
7 conditions and interject anything from a policy reason.

8 MR. MAYHOOK: Understood.

9 JUDGE TOREM: But, again, this was -- this is a  
10 private dispute that the Commission is resolving, and I don't  
11 want to pretend the Commission doesn't have any independent  
12 stake in this. Clearly, by the 063038 docket, the Commission  
13 did have a stake in determining how VNXX traffic was handled in  
14 this state and to pick up where the FCC left off.

15 So from that perspective, if you can tailor it to the  
16 Commission's policy rules, it would become a lot more relevant  
17 to this. But, again, it would depend on what we see in the  
18 filing today and later on Friday as to just how much grist there  
19 is to be disputed.

20 MR. MAYHOOK: Fair enough.

21 JUDGE TOREM: So, Ms. Anderl, I'll look forward to  
22 seeing the narrative later today, the settlement itself on  
23 Friday, and I am going to excuse Mr. Greene and Level 3 from  
24 appearing based on the representations today.

25 Mr. Mayhook, from our earlier discussion, because

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1 Mr. Greene won't be there, if there are pieces of his testimony  
2 that you think remain relevant to the issues to be discussed and  
3 you want to move that the Commission admit those, I want to make  
4 sure that Qwest has sufficient notice to their witness of the  
5 specific pages, essentially the line and verse that you want  
6 admitted from Mr. Greene, and propose those at least by the  
7 close of business on Monday. I'm certain that Mr. Easton  
8 reviewed Mr. Greene's testimony already. It's just so his  
9 hearing preparation can go smoothly that you cite those and file  
10 that with the Commission as well so that Mr. Thomas and  
11 Mr. Williamson and I can look at those and determine if we think  
12 they're relevant from the remaining issues that the Commission  
13 has to decide.

14           If there's any objections, Ms. Anderl will take those  
15 up first thing when we start the hearing next Wednesday. That's  
16 just so far as if -- if there are any pieces of the testimony  
17 you think are relevant for the evidentiary hearing, I'll leave  
18 again that future potential appeal issue for you to take up  
19 later. You might put that down that you think all of it is  
20 relevant for the future appeal. But as for the evidentiary  
21 hearing, those are the pieces I would entertain a motion to  
22 admit for what the proceeding before the Commission is relevant  
23 on Wednesday and Thursday next week.

24           Is that clear enough?

25           MR. MAYHOOK: That is very clear, and I appreciate

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1 it.

2 JUDGE TOREM: All right. Are we ready to move on,  
3 then, to what are the remaining issues, Ms. Anderl?

4 MS. ANDERL: Yes, Your Honor.

5 JUDGE TOREM: And, Ms. Mayhook? I'm not sure if at  
6 this point, Mr. Shortley, if you want to stay on the line to  
7 eavesdrop on what the remaining issues are or if you want to be  
8 excused at this point to press on.

9 MR. SHORTLEY: If it's just the same with everyone, I  
10 would like to be excused. I appreciate the offer. If there's  
11 anything you need, please give me a call.

12 MS. ANDERL: No objection from Qwest.

13 MR. MAYHOOK: And no objection here either.

14 JUDGE TOREM: All right. Mr. Shortley, your  
15 usefulness has come to an end on this call.

16 MR. WILLIAMSON: So to speak.

17 MR. SHORTLEY: So to speak. Thank you very much,  
18 Your Honor.

19 JUDGE TOREM: Thanks. I'll look forward to reviewing  
20 those documents later. And either we'll be in touch from the  
21 Commission just in writing with an order or a notice indicating  
22 we need to get on the record once again.

23 MR. SHORTLEY: Very good.

24 JUDGE TOREM: Thank you, sir.

25 MR. SHORTLEY: Thank you. Bye-bye.

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1                   JUDGE TOREM: All right. So, Ms. Anderl and Mr. and  
2 Mrs. Mayhook, let's take a look at the remaining issues.

3                   And, again, as I indicated, I want to make sure we're  
4 looking at a limited set of issues as to any traffic study  
5 methodology, perhaps, on how we can quantify the calls we're  
6 talking about. How we can identify. And maybe there's a  
7 stipulation to be made from the parties as to what the relevant  
8 time period might be for where reimbursement or charges might  
9 need to be addressed. But I really don't want to have any time  
10 wasted next week trying to cross-examine on issues of whether we  
11 have jurisdiction; whether these other legal issues that I  
12 understand, Mr. Mayhook, your client certainly wants to dispute  
13 if we go up on appeal, but that they are, as we've talked about  
14 earlier, the law of the case, and it shouldn't be taken up again  
15 next week.

16                   So when I'm looking at Mr. Easton's testimony, pages  
17 13 to 24 of his original direct gives Qwest's viewpoint on how  
18 their traffic study methodology was done. I'd anticipate you'll  
19 have questions on that and want to take him to task on some of  
20 that. His calculation of the number of VNXX minutes on pages 18  
21 to 20, certainly in the ballpark of what, if you don't ask  
22 questions, Mr. Williamson, Mr. Thomas, and I very well might.

23                   And there's a number of other areas where he suggests  
24 things that I think might be relevant, and I'll leave those to  
25 you.

1           Mr. Shiffman's testimony talks a little bit, in the  
2    rebuttal I know, on the time period that's at issue, and some  
3    question on the traffic studies. But if they were questions of  
4    the jurisdiction and the nature of things that we've talked  
5    about that Mr. Greene went into, those certainly wouldn't be  
6    relevant. They'd be already decided legal issues.

7           Let me hear first, then, from Qwest, you know, on  
8    your cross-examination of Mr. Shiffman, what issues you  
9    certainly are planning to inquire into.

10           MS. ANDERL: Well, Your Honor, as I go through the  
11    questions and I read Mr. Shiffman's testimony and Mr. Easton's  
12    testimony, I do have less and less to ask him about, because  
13    while I respect Your Honor and your advisors' desires to perhaps  
14    ask questions on the traffic study and the calculations  
15    admitted, the -- the other issues that are raised in  
16    Mr. Easton's testimony, Pac-West didn't rebut any of that. And,  
17    you know, so Pac-West didn't provide their own traffic study.  
18    Pac-West didn't provide their own analysis. Pac-West didn't  
19    provide data for information on how you could reach a  
20    jurisdictional conclusion about the traffic, nor did they refute  
21    the -- the Qwest information with regard to how the VNXX  
22    percentages should be calculated.

23           So I have to do have less and less from -- of  
24    Mr. Shiffman of a technical nature as I continue to review his  
25    testimony and kind of refresh myself in the case after kind of a



1 hiatus. I don't know if that gives you enough information to go  
2 on. His testimony is not that lengthy, so I think I said 60 to  
3 90 minutes. I was probably being very generous with myself.

4 JUDGE TOREM: All right. Well, then, I know that the  
5 estimate from Pac-West provided by Mr. Johnson to cross-examine  
6 Mr. Easton was on the order of three hours.

7 Ms. Mayhook and Mr. Mayhook, do you have an  
8 indication of three hours' worth of questions given some of the  
9 discussion today?

10 MR. MAYHOOK: You know, obviously, with -- Level 3 is  
11 exiting the case, and, you know, I -- you know, again, it was, I  
12 think when we prepared Mr. Shiffman's testimony that we  
13 actually -- because of what Level 3 had done, our view was maybe  
14 a more conceptual higher level that seemed to -- you know, in  
15 its own way was complementary, if you will, to what Mr. Greene  
16 had submitted.

17 And, so, you know, obviously, I don't want to try the  
18 patience of the Commission. I certainly don't want to  
19 cross-examine Mr. Easton, you know, any longer than is  
20 necessary.

21 Given you relied on his testimony, and, you know, I  
22 have -- I have done my share of hearings where I have had  
23 witnesses that come in from -- and certainly not CenturyLink.  
24 Other name-brand carriers, and I got people dancing around and,  
25 you know, I have had to ask the question fifty, you know, ways

1 to try to get them to commit to something.

2           And then I've had, you know, witnesses come in who  
3 were actually very candid, very direct, and very -- very  
4 responsive, and then so we got through very quickly. So, you  
5 know, the three hours, if I don't need it, I'm not going to use  
6 it.

7           But I think you have once again anticipated that I  
8 may want to pick up the slack, you know, just based on some of  
9 the things that I could have counted on Level 3 inquiring into,  
10 and I wouldn't have touched it, because I don't think I could  
11 have matched Mr. Shortley's clarity on it. And for me to go  
12 over the same, you know, matters would have been redundant.

13           So I think my assessment will be to stick to the main  
14 points, cross-examine him as necessary, and if we can do it in  
15 less than three hours, we most certainly will.

16           And I don't know if this has been helpful or not,  
17 but, you know, I'm just trying to give you a sense of, you know,  
18 my changed circumstances. I'm a little fluid at the moment  
19 until I can, you know, see what they're going to file later  
20 today and then again Friday. And then as we zero in now, I'm  
21 assuming that depending on some of the other procedural items  
22 that we will talk about as in opening statement and closing  
23 statement, that kind of thing if it's going to happen, I'm  
24 guessing we can do the hearing in one day.

25           JUDGE TOREM: That's my guess from where we are now,

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1 is that we'll only need Wednesday or Thursday to do this.

2 I imagine travel plans have already been booked to  
3 get out here on Tuesday to get ready for the hearing on  
4 Wednesday?

5 Do either party have a preference to start the  
6 hearing on Thursday instead of Wednesday?

7 MR. MAYHOOK: Well, Laura and I are able to drive up  
8 from Southwest Washington. Sam has booked his flight.

9 When are you coming in, Sam? Just remind me.

10 MR. SHIFFMAN: Just from a timing perspective, I  
11 guess Thursday would be better, because my flight gets in about  
12 nine o'clock in Seattle.

13 JUDGE TOREM: Is that on Tuesday night?

14 MR. SHIFFMAN: On Tuesday night, correct.

15 JUDGE TOREM: Ms. Anderl, is your witness available  
16 on Thursday?

17 MS. ANDERL: When we scheduled the case, we booked  
18 the hearing for both days, and so it's my belief that he is  
19 available for both days. He is in a hearing in Iowa today, so I  
20 don't have immediate access to him. But I think that he would  
21 be available. He's here in Seattle.

22 Of course, Mr. Dethlefs has actually made  
23 arrangements to fly into Seattle Monday evening just to make  
24 sure we didn't have any hiccups. But I have -- I have just sent  
25 him a little question via e-mail asking him if he cares whether

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1 we start on Wednesday or Thursday. I think he can -- you know,  
2 given technology and the fact that we work for a technology  
3 company, I think he can probably work just as effectively from  
4 here as he can from his home office in Denver if we start a day  
5 later, so I'd have to say that would be fine with me.

6 MR. DETHLEFS: Your Honor, this is Tom Dethlefs. My  
7 return flight is Thursday night. I don't know that it'll take  
8 the full day. It's a later flight. I think it's a 7:30 flight.

9 JUDGE TOREM: Well, if we start at 9:30 in the  
10 morning, even if we have some preliminary discussion, I'd be  
11 surprised if we are running late into the afternoon on either  
12 day.

13 So I will keep that in mind and make sure that  
14 there's more than adequate time to get you northbound to Sea-Tac  
15 to catch that flight out on Thursday.

16 MS. ANDERL: And, Your Honor, if it works for  
17 everyone to have that case on Thursday, you know, certainly even  
18 if Tom has to leave, the company would not be without a lawyer  
19 in the hearing room. We can figure it out.

20 JUDGE TOREM: All right. It sounds as though it's  
21 going to work in the interests of the parties to have an  
22 additional day of preparation, given the change in the posture  
23 of the case. So we will start the case -- I'm not going to send  
24 out a separate notice, but we'll let the court reporting company  
25 know that we're not going to be using the hearing room on

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1 Wednesday the 6th, but we'll commence the hearing on Thursday,  
2 the 7th.

3 Now, as far as how we commence it, again, I'll expect  
4 that the witness will come and be cross-examined in the time  
5 periods. It sounds as though we've got half a day at the most  
6 of cross-exam. If there's a need for posthearing briefs, I'd be  
7 happy to entertain that, but I don't want to bring it up until  
8 we hear how the cross-exam goes and we can set a schedule for  
9 that, probably giving two to three weeks to file something after  
10 the hearing, depending on your other schedules and competing  
11 demands for your time.

12 As far as the burden of proof -- or, first, let me  
13 turn to the opening statement issue.

14 How long do you think, Mr. Mayhook, you would want to  
15 speak to open the case and set the record up for your  
16 cross-examination?

17 MR. MAYHOOK: You know, I think it can go very  
18 swiftly. You know, I'll throw out, you know, fifteen minutes  
19 maybe.

20 JUDGE TOREM: And, Ms. Anderl, were you interested in  
21 making an opening statement on your client's behalf?

22 MS. ANDERL: Only if Mr. Shiffman does -- or if  
23 Mr. Mayhook does. So, yeah, I can go either way, Your Honor. I  
24 think it's typically not been the case, and I think the issues  
25 are pretty clear. I'm not sure. If you find it helpful, of

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1 course we're delighted to do it. If it's just an extra fifteen  
2 minutes each of the sound of our own voices, I don't need to do  
3 it.

4 JUDGE TOREM: And I'm not sure if it will take  
5 fifteen minutes to lay out, because we don't need the case  
6 history. That's been adequately summarized in a number of the  
7 orders that I'm going to be sure to review myself between now  
8 and next week.

9 MR. MAYHOOK: Yeah. No, even having said that,  
10 fifteen minutes seems excessive to me, too. So -- I don't  
11 know -- five to ten minutes.

12 JUDGE TOREM: I'd be happy to give you each five  
13 minutes to open and state what you believe the issues of the day  
14 are. And, again, these would be the factual issues that you're  
15 going to inquire into and the posture of the case.

16 If it runs a little over five minutes, all right.  
17 But if we're pushing ten, I think we're trying to fit in too  
18 much to an opening statement that is just making a record for  
19 appeal and not for the evidentiary hearing itself.

20 So I'm happy to have --

21 MR. MAYHOOK: Well, you know, fair enough. And, you  
22 know, I'll tell you, as we, you know, drill down and, you know,  
23 get used to the idea that Level 3 is out of the case, if it  
24 seems that, you know, an opening statement is either  
25 self-indulgent or superfluous under the circumstances, you know,

1 at the day of hearing, I'll be happy to waive it and just get to  
2 it. But, you know, sometimes, you know, just even a few  
3 introductory remarks might be helpful. But respecting the  
4 comments here, I'm not, you know...

5 JUDGE TOREM: All right. Well, I understand. I will  
6 offer that up when we begin as an option to both of you.

7 Now, as far as the order of the witnesses,  
8 Ms. Anderl, I understand that originally, these petitions were  
9 filed by the CLECs, so, typically, they would have the burden  
10 going forward. But given the developments in the case and the  
11 rulings, it's really the counterclaims on which we're ruling as  
12 to the effectiveness of things and which way payments might be  
13 ordered by the Commission from Pac-West back to Qwest.

14 So I wonder if essentially now it's Pac-West in the  
15 form of the claimant or plaintiff and should go first, followed  
16 by Pac-West as a respondent in this case as effectively going  
17 forward.

18 Were you prepared to put Mr. Easton on first?

19 MS. ANDERL: Yeah. I guess I don't have strong  
20 feelings about it. I did kind of expect that this question  
21 would come up, and I -- it was my preference that Mr. Shiffman  
22 would still be made available first for cross-examination just  
23 because I had -- always have had the thinking of it in the  
24 posture of, you know, that the petitioner goes first.

25 JUDGE TOREM: And I've tried to roll it over in my

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1 mind, too, as to where we really are.

2 MS. ANDERL: That's my preference, Your Honor, but if  
3 it makes sense for you to have us put Mr. Easton on first,  
4 that's fine.

5 JUDGE TOREM: I may refer a little bit more with  
6 Mr. Williamson and Mr. Thomas, when he becomes available again  
7 before the hearing, just to determine their inquiry. And I may  
8 just send you both an e-mail suggesting this is the order that  
9 I'd like to call the witnesses. I wanted to get your input  
10 today.

11 Mr. Mayhook, did you have any views on that?

12 MR. MAYHOOK: You know, I think I'd probably want to  
13 confer on that with -- with my partner, as well as Sam. I think  
14 I'm easy either way. I think, you know, I'm okay with taking on  
15 Mr. Easton first, but I'm also -- you know, if we're going to  
16 flip it, that's fine, too.

17 JUDGE TOREM: Well, I'll tell you what. I'll send an  
18 e-mail out by the beginning of next week with what our  
19 collective wisdom here that the Commission suggests is the right  
20 order for the logic of the case. And I won't intend for that to  
21 give you any idea of, Oh, this is how the Commission's viewing  
22 things, but simply on how we want to be prepared to digest the  
23 information and prepare our own examinations for next Thursday  
24 morning.

25 So what we've established now is, yes, there'll be an



1 opportunity for take-it-or-leave-it five-plus minutes of opening  
2 statement; the Commission will tell you which witness we're  
3 going to call first by Monday; and now we have this remaining  
4 issue of -- Mr. Mayhook, you raised the question of burdens of  
5 proof.

6 Did you want to elaborate further on that?

7 MR. MAYHOOK: Well, you know, I think you've already  
8 hit upon it. I think it's kind of obvious that, you know,  
9 we're -- the counterclaim, you know, that's our issue. And  
10 whether or not they, you know, meet the burden of proof, those,  
11 to the efficacy of their case, and it clearly is not something  
12 that should be assumed, and so I think that pretty much is where  
13 I was coming from.

14 JUDGE TOREM: But you weren't going to suggest that  
15 there was anything different than a preponderance of the  
16 evidence standard that we had to impose here?

17 MR. MAYHOOK: At the moment, I don't see it, but, you  
18 know, since you've raised it, that's a fair one.

19 JUDGE TOREM: Well, you raised the issue of, you  
20 know, addressing burdens of proof.

21 MR. MAYHOOK: Yeah.

22 JUDGE TOREM: And I thought, perhaps, you were going  
23 to point me to some other authority or other standard that  
24 hadn't been made clear.

25 MR. MAYHOOK: Well, I just -- and, frankly, no, I

1 think, you know, my issue is that -- you know, going back to  
2 when the case was filed, and then the Commission's most recent  
3 order, you know, there's -- you know, again, the issue with the  
4 access charges is the most obvious one.

5           And clearly from a, you know, burden of proof  
6 standpoint, no matter what, they always have the prima facie  
7 case. And it is -- it is one where, you know, they should be  
8 required to prove their justification, and we get to rebut it,  
9 and I don't think I have anything more elegant than that.

10           JUDGE TOREM: All right. Well, it sounds like, then,  
11 it would be standard for any proof that has to be done for a  
12 counterclaim by Qwest has to meet that preponderance standard.  
13 And if there are still issues in the original petition on which  
14 Pac-West wants to forge arguments that are still relevant, of  
15 course, your client would have to meet its burden as well.

16           So I think that exhausts the list of things that I  
17 had for this afternoon.

18           MS. ANDERL: Your Honor, I just have one other thing,  
19 and that was just to observe that -- you know, Pac-West is  
20 characterizing the counterclaim for access charges as one in  
21 which we have the burden, and we would agree with that.

22           I think it's important to remember that there is  
23 still the issue of the refund, and that is an issue that is tied  
24 to their original complaint, and we do not think that we should  
25 have the burden of establishing that we are entitled to a

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1 refund. We think that they should have the burden of  
2 establishing that they are entitled to retain those monies.

3 JUDGE TOREM: So you're trying to characterize it as  
4 the refund essentially is -- essentially automatic, but for --  
5 but we need a ruling from the Commission to put the money back  
6 where it started. If Pac-West wants to retain it, they must  
7 make arguments and give a preponderance of the evidence standard  
8 argument as to why?

9 MS. ANDERL: That's our position, yes.

10 JUDGE TOREM: All right. And I understand that  
11 Mr. Easton has identified those refund amounts he thought in his  
12 original testimony, so you've already set forth what you believe  
13 the evidence shows in that regard and subject to that testimony  
14 being admitted or corrected at hearing.

15 Did that make sense to you, Mr. Mayhook?

16 MR. MAYHOOK: Yes, it does.

17 And, Laura, do you have anything to add to that just  
18 because I'm driving at this point?

19 MS. MAYHOOK: I appreciate, yeah, you're in a car  
20 having to drive right now.

21 I'm not entire -- and we might just need to flush it  
22 out more. I'm not entirely sure I agree with the position that  
23 a refund is automatic, which is the underlying presumption in  
24 terms of the burden of proving Pac-West.

25 JUDGE TOREM: Well, I guess, "automatic" is probably

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1 too strong a word, but the money changed hands at the order of  
2 the Commission. And since that money was paid to Pac-West and  
3 to Level 3 for that matter, I'm sure that's addressed their  
4 settlement. But the money to Pac-West that's still at issue for  
5 us is a question of what should its disposition be. And if  
6 there's any portion of it that Pac-West believes it remains  
7 entitled to, despite the other rulings in the case that have  
8 come from the federal court and from the Commission since the  
9 money changed hands, I think Ms. Anderl's point is: Please be  
10 prepared to argue why you think any amount or all of it should  
11 be retained by your client, and I would tend to agree. I expect  
12 to hear some more argument as to why any portion of it is still  
13 relevant from the prior order.

14           Again, the Commission changed course from when it  
15 previously did and denied a motion to have the refund made  
16 earlier so that we wouldn't have the money chasing back and  
17 forth multiple times. But I think we've reached that point in  
18 the case where the Commission's prepared to rule on the ultimate  
19 disposition of those funds.

20           So I guess the short version is be prepared to argue  
21 if you want to keep any of it.

22           MS. MAYHOOK: Understood.

23                           (Reporter interruption for clarification.)

24           MR. MAYHOOK: I didn't hear that. I've got a lot of  
25 ambient noise, but...

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1 MS. MAYHOOK: I just said "understood."

2 MR. MAYHOOK: Oh, "understood," and -- well, and I  
3 think the answer is yes, at least.

4 JUDGE TOREM: Okay. So we'll make sure that issue is  
5 queued up for next Thursday.

6 Okay. Ms. Anderl, were there any other issues that  
7 we needed to talk about from Qwest's point of view?

8 MS. ANDERL: Just kind of going through, you know, I  
9 hate to bring this up because if I bring it up and you say,  
10 "Gee, that sounds like a great idea," I'm going to say, "Hm.  
11 I'm not sure I have enough time to do it."

12 But, you know, in the past we have pre-identified  
13 cross-examination exhibits. I know that that's been done in  
14 cases primarily where we had a lot of parties and expected a lot  
15 of documents and also where we had, you know, Commissioners  
16 sitting on the bench who didn't want to go through the whole  
17 procedural hoo-hah and -- and so I don't -- I just wanted to  
18 kind of flag that and say, Well, you know, should we plan on  
19 talking the first fifteen minutes of the day of the hearing  
20 about cross-examination exhibits and process? I'm fine to just,  
21 you know, get whatever documents Pac-West is going to cross on,  
22 you know, day of, and, you know, fine to produce mine the day  
23 of, too.

24 Like I said, I might be squeezing myself if I seem to  
25 now have to have them ready for you on Tuesday, but I wanted to

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1 at least bring it up since it's been an issue in other dockets.

2 JUDGE TOREM: Mr. Mayhook and Ms. Mayhook, do you  
3 understand?

4 MR. MAYHOOK: Yes. I share Lisa's sentiments here,  
5 and I think that the case is at this point tight enough that we  
6 could manage producing on the day.

7 Go ahead. Hello?

8 JUDGE TOREM: Yeah, we're here.

9 MR. MAYHOOK: Okay. I was probably getting my own  
10 echo and I didn't realize it.

11 Yeah, no. I think that we would probably be able to  
12 manage relatively smoothly producing and, you know, proffering  
13 whatever cross-examination exhibits we have on the day of.

14 JUDGE TOREM: I think we'll be okay with that from  
15 the Bench side as well, but perhaps those documents could be  
16 identified first thing on the morning of the hearing.

17 MR. MAYHOOK: Yes.

18 JUDGE TOREM: And if you can exchange them in advance  
19 without necessarily the labeling and all the rest, I just want  
20 those witnesses to know what they're looking at.

21 What I fear in not distributing them in advance,  
22 typically in a utility rate case, is that there's a complex  
23 series of calculations that has to be done.

24 MR. MAYHOOK: Yes.

25 JUDGE TOREM: I don't think that's necessarily the

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1 case in this matter, so I'm willing to go along with the  
2 parties' suggestion to just bring them to the hearing next  
3 Thursday, and we can digest them at the same pace as they're  
4 exchanged.

5 MR. MAYHOOK: Yeah, and I agree with all of that.  
6 But to the extent then, you know, just erring on the side of --  
7 you know, if I felt that, you know, in reviewing it there's  
8 something I haven't anticipated now that on the chance there's  
9 something that I -- I would rather not be subjected to, you  
10 know, allegations of unfair surprise or undue prejudice.

11 And if I think something was actually -- it would be  
12 more fair to disclose it on the front end and give folks, you  
13 know, some chance to digest, if I did want to provide that  
14 notice and a copy of the document, would that be okay, you know,  
15 as my option?

16 JUDGE TOREM: Certainly. I encourage both parties  
17 to. And if you have your cross-exam exhibits or some subset of  
18 them, again, without limiting you if you send them today to say,  
19 "That's all you get," send them in advance to each other. And  
20 please copy the Bench as well so that I can share them with  
21 Mr. Thomas and Mr. Williamson so the three of us can try to  
22 figure out where the question might come or see if those  
23 documents might prompt a question from us on the day of the  
24 hearing.

25 I highly encourage the unscheduled, you know, "Here's

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1 an e-mail saying here's a couple of our things for your witness.  
2 There may be more, and we'll make sure that all of these are  
3 present on the day of the hearing."

4 When you bring them on the day of the hearing, you're  
5 going to have sufficient numbers of them to hand one in for the  
6 record and one for myself, Mr. Thomas and Mr. Williamson, and  
7 then for the witness and counsel. So that sounds like an  
8 original plus six at a minimum to hand up.

9 MS. ANDERL: Thanks, Your Honor. That was my next  
10 question.

11 So seven copies total?

12 JUDGE TOREM: I think so.

13 MS. ANDERL: All right.

14 JUDGE TOREM: All right. Any other issues for today?

15 Mr. Williamson has one question he wants to pose to  
16 the parties, so let me, while you're thinking of your last  
17 issues, turn it over to Bob.

18 MR. WILLIAMSON: Well, just quickly. My  
19 understanding is that Pac-West is going to stipulate portions of  
20 Mr. Greene's testimony that they would like to be on the record  
21 by Monday, and I wondered if Qwest/CenturyLink was going to  
22 think about doing the same thing with Mr. Greene's testimony, if  
23 there's something they wanted to be included.

24 JUDGE TOREM: Ms. Anderl, I hadn't heard you mention  
25 anything about Mr. Greene's testimony you would find still



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1 useful.

2 MS. ANDERL: I don't think so. You know, in the  
3 interest of full disclosure, I know in dockets in the past, the  
4 Commission has wanted the testimony from settling parties to be  
5 admitted into the record at -- if not for the truth of the  
6 matter contained therein, but so as to at least create a context  
7 within which the settlement agreement can be considered and  
8 viewed and read.

9 And Mr. Shortley is not on now, so it wouldn't be  
10 fair for me to say, you know, how the parties would feel about  
11 that if I can't represent his point of view. But, you know,  
12 certainly something like that wouldn't have come as a big  
13 surprise to me. I don't believe that we are going to ask for  
14 any of Mr. Greene's testimony in the record to support the truth  
15 of any facts contained in there or to bolster any policy  
16 argument.

17 JUDGE TOREM: Okay. So the real question, then, I  
18 think is again for Mr. Mayhook to recall that he'll have an  
19 obligation to file the listing of the page numbers he thinks  
20 will be relevant by close of business Monday. And that if  
21 there's objections to any of that, Ms. Anderl will let us know,  
22 but it doesn't sound like I would anticipate any given that  
23 response. But at least it would give Mr. Easton a heads-up as  
24 to what questions and topics to anticipate from Mr. Greene's  
25 testimony.

1 MS. ANDERL: And, then, Your Honor, I guess my  
2 thinking is that it would, you know, probably only be  
3 Mr. Greene's direct because Pac-West knew about Mr. Greene's  
4 direct and, you know, has an argument that they relied on it  
5 when they filed their reply. They didn't know what Mr. Greene  
6 was going to put in his reply and couldn't possibly have relied  
7 on it because there was no filing subsequent to that.

8 But I guess -- so maybe that's just a shot across the  
9 bow, but maybe that would form the basis for some part of an  
10 objection if I do make one after we see what's offered up on  
11 Monday.

12 JUDGE TOREM: All right. Fair enough. And I think  
13 again the logic of that makes sense. And, again, most of the  
14 testimony that was the rebuttal testimony of Mr. Greene is about  
15 16 pages, and it had Roman numerals I through IX. I think I had  
16 crossed off several of those, as I had suggested earlier, as  
17 still foreclosed by the decisions in the case as legal issues  
18 that had been settled.

19 So I think Section IV about not -- Level 3 not  
20 misordering service from Qwest for LIS service for VNXX  
21 ISP-bound traffic, that page I put as marginally relevant. And  
22 Section VII about the compensation for transport services on  
23 page 12, of course, perhaps relevant. But the argument about  
24 Mr. Easton's financial analyses on page 14, but for the  
25 settlement, would have been something we would have inquired

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1 into out of the rebuttal. But the remainder of it looked like  
2 settled legal issues to us.

3 MS. ANDERL: Okay. Thanks for that clarification.

4 JUDGE TOREM: So it's possible that Mr. Mayhook could  
5 come up with some pages out of the rebuttal testimony as well  
6 that he thinks are relevant for questions for Mr. Easton,  
7 particularly that last piece on the financial calculus as it  
8 applies to Pac-West.

9 MR. MAYHOOK: Yeah. No, I appreciate that. And I  
10 think to the point that Ms. Anderl raised, I would advert to  
11 what you indicated earlier as it related to, you know, how  
12 should I say, dual designations; that this is -- you know, we  
13 think that this is appropriate for the evidentiary hearing, and  
14 this is something we just want to reserve and have in the record  
15 on appeal in the event that, you know, there might be one.

16 And so, again, there are those matters that fall  
17 within the law of the case, but they may be things that we would  
18 address on appeal. We might cite to Mr. Greene. And, you know,  
19 I'm, again, being candid here. You know, Level 3 is a big  
20 player, and I think that, you know, their view of things and --  
21 it will be taken how it's taken.

22 JUDGE TOREM: It's fine. And Level 3's gone to the  
23 cashier, and they're off the table.

24 MR. MAYHOOK: Yeah.

25 JUDGE TOREM: So the only ones left are you and

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1 Qwest.

2 MR. MAYHOOK: That's right. But, you know, again, I  
3 think my sense of the case, you know, not having been involved,  
4 thankfully, for seven years, I think that there was, you know,  
5 pride that, you know, individuals that were involved long before  
6 Sam; you know, that there was -- you know, they were riding the  
7 coattails of Level 3, and so I think that reminding folks of,  
8 you know, certain positions back in those days -- and I don't  
9 want to belabor this, but I just think that it has, from an  
10 appeal standpoint, some benefit.

11 JUDGE TOREM: And I understand the motivation for  
12 that, certainly, but the factual issues we have left, if you  
13 identify those pieces of the Level 3 testimony that are relevant  
14 for the evidentiary hearing, fantastic. If in your opening  
15 statement you want to indicate in a broad stroke for appeal to  
16 create the record as we have done today, that's -- there are  
17 other issues that you continue to disagree with on the decisions  
18 of law. But, again, based on my direction, we're not going to  
19 go into those next Thursday, that's fine, too.

20 MR. MAYHOOK: And I've got that, trust me, and I have  
21 that. I'm not --

22 JUDGE TOREM: Well, thanks for understanding the  
23 Commission's perspective as well.

24 MR. MAYHOOK: I do. I do. And it's a fair one, and  
25 I have been around long enough that it is not some case where

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1 I'm going to be, you know, not getting it. I understand what  
2 the positions are, and, you know, to say for the last time, I'm  
3 more concerned that -- that I have as many options as I can, if  
4 it's necessary, you know, on appeal for the matters that I think  
5 they might be helpful. I'm not going to try to convince you why  
6 they're helpful, and I'm certainly not going to try the  
7 Commission's patience in talking about that stuff, so we're on  
8 the same page.

9 JUDGE TOREM: All right. Excellent.

10 Mr. Mayhook and Ms. Mayhook, anything else from your  
11 client's perspective today?

12 MR. MAYHOOK: I think I'm good.

13 Laura?

14 MS. MAYHOOK: No, we're good. Thank you.

15 JUDGE TOREM: All right.

16 Ms. Anderl and Mr. Dethlefs?

17 MS. ANDERL: No, that's fine. Thank you, Your Honor.

18 JUDGE TOREM: Well, I appreciate all of your  
19 indulgence on the time.

20 Mr. Dethlefs, what else?

21 MR. DETHLEFS: Nothing else.

22 MR. SHIFFMAN: Excuse me. This is Sam Shiffman. I  
23 was wondering if I could say a couple of things real fast. I  
24 didn't want to interrupt while we were going back and forth.

25 JUDGE TOREM: Sure, Mr. Shiffman. What have you got?

0308

1           MR. SHIFFMAN: Well, there was just how -- traffic  
2 statistics and sort of how they are categorized and what the two  
3 parties believe.

4           I think from what I have been able to tell, Qwest and  
5 Pac-West have very different beliefs on what constitutes as sort  
6 of the gold standard for traffic statistics. And I just want to  
7 make sure that we're all clear on Pac-West doesn't necessarily  
8 sign up and stipulate to Qwest's traffic statistics at this  
9 point.

10          JUDGE TOREM: No, and I thought I understood that  
11 well from the rebuttal testimony you filed.

12          MR. SHIFFMAN: Okay.

13          JUDGE TOREM: And I'm certain that Ms. Anderl and you  
14 will have an opportunity to discuss that with a lot of candor on  
15 Thursday.

16          MR. SHIFFMAN: Agreed. Okay.

17          JUDGE TOREM: All right. Well, thank you,  
18 Mr. Shiffman, for that clarification.

19          Okay. So I will look for the settlement narrative  
20 today, the settlement itself on Friday, and as a courtesy,  
21 again, from Mr. Mayhook, all those portions individually  
22 identified by page and line numbers from the Greene testimony  
23 that you intend to refer to in any cross-examination or opening  
24 statements next week, you'll file that by close of business on  
25 Monday, the 4th of February.

0309

1                   We will not commence the hearing on Wednesday. We  
2 will begin on Thursday morning only, and probably be done by mid  
3 to early afternoon.

4                   Does that satisfy everybody's ideas?

5                   And you'll get an e-mail, hopefully, again, on Monday  
6 at the latest, with our choice of which witnesses we expect to  
7 hear first.

8                   MR. MAYHOOK: This all sounds good to me.

9                   JUDGE TOREM: All right. Well, then, thank you both  
10 all for your time.

11                   It's about five minutes to three, and we are  
12 adjourned.

13   (Proceeding concluded at 2:56 p.m.)

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3 STATE OF WASHINGTON )

) ss

4 COUNTY OF KING )

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter  
7 and Notary Public in and for the State of Washington, do hereby  
8 certify that the foregoing transcript is true and accurate to  
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal  
11 this 8th day of February, 2013.

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SHELBY KAY K. FUKUSHIMA, CCR

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18 My commission expires:

June 29, 2013

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