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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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PAC-WEST TELECOMM, INC.)	
)	
Petitioner,)	
)	
vs.)	Docket UT-053036
)	(Consolidated)
QWEST CORPORATION,)	
)	
Respondent.)	
)	

LEVEL 3 COMMUNICATIONS, LLC)	
)	
Petitioner,)	
)	
vs.)	Docket UT-053039
)	(Consolidated)
QWEST CORPORATION,)	
)	
Respondent.)	

EVIDENTIARY HEARING, VOL X
PAGES 311 - 497

ADMINISTRATIVE LAW JUDGE ADAM TOREM

9:30 A.M.
FEBRUARY 7, 2013

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1 Olympia, Washington February 7, 2013

2 9:30 a.m.

3

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

5

6 JUDGE TOREM: Let's be on the record. I'm
7 Adam Torem. I'm the administrative law judge assigned to
8 these dockets, UT-053036, that's the case involving Pac-West
9 and Qwest/CenturyLink; and UT-053039, involving Level 3 and
10 Qwest/CenturyLink.

11 It's Thursday morning, February 7, 2013, a
12 little after 9:30 in the morning.

13 And we have, I think, a pretty well
14 understood and agreed agenda for today. We're dealing with
15 acknowledging on the record the settlement in Level 3's side
16 of the case, taking up the remaining evidentiary issues with
17 testimony being adopted, prefiled testimony.

18 We have three different witnesses to go over
19 today, two of which are present for cross-examination.

20 We offered last week the opportunity for
21 opening statements if the parties want to take five minutes
22 and lay out eight years of history.

23 And then we'll have testimony from Mr. Easton
24 and Mr. Shiffman.

25 And afterwards we'll have a chance to talk

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1 about the need for post-hearing briefs or other procedures
2 to get this portion of the indication hopefully wrapped up.

3 Let me take appearances for the parties, and
4 then Ms. Anderl and I will engage quickly about the
5 settlement agreement on the Level 3 side and some other
6 additional filing requirements. And we'll take up the
7 evidentiary issues next.

8 So for Qwest/CenturyLink?

9 MS. ANDERL: Thank you your Honor. Lisa
10 Anderl, inhouse attorney representing Qwest, now
11 CenturyLink.

12 MR. DETHLEFS: Tom Dethlefs, also an inhouse
13 attorney representing CenturyLink.

14 JUDGE TOREM: And Qwest?

15 MS. MAYHOOK: Laura Mayhook, Mayhook Law
16 PLLC, representing Pac-West Telecom.

17 MR. MAYHOOK: And Jeffrey Mayhook, Mayhook
18 Law PLLC, representing Pac-West.

19 JUDGE TOREM: And I know your appearance
20 information is all in the record.

21 Those microphones in front of you, if the red
22 light is on, we're broadcasting. I think we're a small
23 enough group to hear, but I don't know if we have anybody on
24 the bridge line or not.

25 So we've got appearances taken care of.

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1 Let's turn to the settlement agreement. We
2 got an indication last week at our status conference,
3 actually in the cross-exam estimates, that there was a
4 settlement reached between Level 3 and Qwest in multiple
5 jurisdictions.

6 We got a narrative filed on the 29th of
7 January that gave us a brief description. And it didn't
8 tell us too much, but it gave us the idea that the
9 methodology being used was that the agreement was going to
10 adopt a bill and keep regime for the VNXX traffic. It was
11 going to be consistent with the Commission's rulings on this
12 issue in this docket and prior dockets and resolve all of
13 Qwest's claims for refunds and access charges during the
14 disputed period between that company and Level 3.

15 On Friday, February 1, we got a copy of the
16 settlement itself. But it looks more like a CIA document
17 with the amount of blacked out portions. So in looking at
18 our rules and consulting with our staff, I think it would be
19 much better if I can get a copy, even if it's filed
20 confidentially, of the entire settlement agreement.

21 And I know that Level 3 is not here in the
22 room today, but I hope, Ms. Anderl, you'll be able to talk
23 to them and express how our WAC 480.07.740 doesn't address
24 anything about filing only a confidential. And if it's
25 their position that they only want to file the redacted

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1 version, then we'll probably have to have a settlement
2 hearing with the Commissioners so we can get the information
3 we need.

4 MS. ANDERL: Sure. Thank you, your Honor. I
5 will communicate with Mr. Shortley and other counsel if
6 necessary. But I think it's Michael Shortley who has the
7 decision on this, and we will discuss that.

8 I think the best thing to do at this point
9 would be to say Qwest is willing to file an unredacted copy
10 of the settlement agreement as a confidential document
11 because there is quite a bit of information in there that's
12 both unrelated to the Washington docket, unrelated to
13 Washington, and unrelated to any litigation. They're just
14 business disputes. We would prefer to keep those matters
15 confidential. But it would give the Commission and your
16 Honor an opportunity to look and see what we have redacted,
17 satisfy yourselves that those provisions don't relate to
18 this case, and maybe take it from there.

19 JUDGE TOREM: All right. I think that would
20 be appropriate. If there's going to be an issue, or if Mr.
21 Shortley or you have additional concerns, let me know early
22 next week. I'll be available Monday through Wednesday next
23 week and then I'm not available again until the 26th of
24 February. So hopefully we can resolve this. And I'll know
25 if there's going to be an issue on it, that we can set

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1 something up late February or early March in a conference to
2 discuss it. But if can be filed in the time I'm out of
3 state, we can go from there.

4 MS. ANDERL: I will talk to Mr. Shortley
5 tomorrow.

6 JUDGE TOREM: Thank you.

7 Turning to the evidentiary issues, last week
8 we had dismissed Level 3 from appearing today.

9 And there was some indication that their
10 witness, Mack Green, had filed testimony that perhaps, Mr.
11 Mayhook, you wanted to rely on some. So we got a note in
12 with extensive portions of the direct testimony as well as
13 the rebuttal testimony sought for admission, is my
14 understanding. The letter was that you anticipated moving
15 to admit all these portions.

16 Is that still your position today, that all
17 those listed are moved to be admitted?

18 MR. MAYHOOK: Upon reflection, I think my
19 main concern in having had an opportunity to think about
20 what we talked about last week was -- we also had a friendly
21 conversation yesterday with Ms. Anderl.

22 You know, for me, we obviously relied in
23 part, or at least referred to the testimony of Mr. Green and
24 certain remarks of Mr. Shiffman. And it's my impression and
25 understanding that up until the settlement, Level 3 and

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1 Pac-West had a united perspective on the main issues in the
2 case.

3 And clearly, as I indicated last time,
4 there's a great disparity in the resources of Level 3
5 compared to Pac-West. And so having Level 3 exit the case,
6 my concern is if there is somehow an eventual appeal and
7 that we're not able to, you know, get the issues resolved
8 definitively in this proceeding, then I think what Mr. Green
9 had to say would be very helpful by way of general
10 background.

11 The discussion we had yesterday went to,
12 among other things, would we be calling Mr. Shiffman as a
13 witness on -- on matters of -- the truth for the matters
14 asserted.

15 And our view is today there are portions of
16 it or none of it?

17 MS. MAYHOOK: I think none of it.

18 MR. MAYHOOK:. I think none of it. I just
19 wanted to make sure.

20 So I think that, just confirming with
21 counsel, we would not go through having Mr. Shiffman accept
22 the testimony for the truth of the matter asserted. We
23 would just have it there as general reference. And we would
24 not, for this proceeding, need to advert to it unless your
25 Honor decided that he wanted to make a comment.

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1 JUDGE TOREM: Okay. Thank you.

2 Ms. Anderl, any response?

3 MS. ANDERL:. I think that largely addresses
4 our issue. The conversation that we had with the Mayhooks
5 yesterday was simply that if there was an appeal, I didn't
6 want to have my client in the position of having factual
7 matters in Mr. Green's testimony be determined to be the
8 truth in a way that is adverse to us because we waived an
9 objection to the admissibility of the testimony for the
10 truth of the matter asserted without a witness to
11 cross-examine on it, et cetera.

12 In my letter to your Honor, I did stipulate
13 to certain sections of the testimony that were referenced by
14 Mr. Shiffman. I think that those can come in, no problem.
15 Mr. Shiffman's testimony can't really be read without being
16 able to see what Mr. Green said, and that's legitimate.

17 And I think we further, with regard to the
18 issue on the interest rates, have an agreement among counsel
19 this morning that I don't know if they want to offer Mr.
20 Green's testimony on the appropriate interest rate, but we
21 have determined that the parties will perhaps want to brief
22 that and argue it as a matter of law.

23 From our perspective, since it wasn't brought
24 up in Pac-West's testimony, though, we didn't put in any
25 evidence about the prior dealings between the parties in the

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1 docket, which we feel is of a relevant factual background.
2 And so we have a four-page exhibit that we prepared as an
3 additional exhibit for Mr. Easton's testimony. Counsel has
4 had a chance to look at it. I have not heard any objection
5 from them. And so we can take care of that issue that way.

6 JUDGE TOREM: Let me focus on, then, the
7 lines that you identified in your letter of yesterday
8 afternoon corresponded, except for that last piece on the
9 interest rate calculation, to all portions that were
10 requested originally by Pac-West counsel, and were referred
11 to in the direct testimony of Mr. Green as cited in Mr.
12 Shiffman's reply testimony. And my staff and I looked, and
13 we found that yes, we agree that those are the same line
14 numbers and page numbers, at least in general, that were
15 referenced.

16 And I concur, Ms. Anderl, that Mr. Shiffman's
17 testimony making reference to something that is no longer in
18 the record or never admitted makes no sense.

19 So Mr. and Mr. Mayhook, is there an
20 agreement, then, that those pieces that are cited by your
21 witness should be admitted and part of the record?

22 MR. MAYHOOK: Yes.

23 JUDGE TOREM: So those portions, it sounds
24 like counsel agree. And the Commission concurs as well.

25 So those will be admitted. And for the

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1 record, they are Mr. Green's direct testimony, page 10,
2 lines 1 through 6; page 24, lines 3 through 11; the entirety
3 of page 33 and 34; the entirety of 38 to 40. Those are the
4 pieces that were referenced by Mr. Shiffman.

5 The additional page regarding interest rates,
6 is there further discussion on that from Pac-West's point of
7 view?

8 That wasn't requested by your original
9 listing. Do you want that to come in or is that other
10 exhibit going to be sufficient?

11 MS. MAYHOOK: Can we take a moment to
12 review?

13 JUDGE TOREM: Sure. It's page 47, lines 1
14 through 20. I think it's the entirety of the page.

15 MS. ANDERL: And, your Honor, I thought the
16 Mayhooks had asked for that to be entered in the original
17 letter. But now I can't find it.

18 JUDGE TOREM: No, their original letter ended
19 at page 41 and picked up again on page 50.

20 So this was your own original request, as it
21 turns out.

22 MR. MAYHOOK: Well, it is what we asked for,
23 but I think, you know, you pointed out there were issues
24 with -- there.

25 MS. ANDERL: Your Honor, I don't know if my

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1 letter to you might contain an error, but the interest rate
2 is discussed at Mr. Green's testimony, actually page 51,
3 line 8 through page 52, line 7.

4 JUDGE TOREM: Okay.

5 MS. ANDERL: And that is what I meant to
6 reference in my letter to you. I don't have a copy of it in
7 front of me.

8 JUDGE TOREM: You have page 47, lines 1
9 through 20.

10 And there wasn't a complete question and
11 answer. But it had to do with the validity of the locations
12 of modems and things. I wasn't sure why you were asking for
13 that.

14 But the interest rate piece is on those pages
15 as you suggest.

16 MS. ANDERL: Let me pull that letter.

17 JUDGE TOREM: I'm sorry. It's another
18 paragraph I'm being pointed to that has the page 51.

19 But you included this page 47 piece perhaps
20 in error.

21 MS. ANDERL: Perhaps. As your Honor is
22 aware, I was up against the deadline. Let me just find it.

23 JUDGE TOREM: And you're correct that the
24 page 51, line 8 through 52, line 7 was requested in the
25 Mayhooks' letter of February 4.

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1 MS. ANDERL: And I guess page 47, lines 1
2 through 20, wasn't requested by the Mayhooks. You're right.

3 But it was cited by Mr. Shiffman, and that's
4 why we included it. And I can find you that.

5 MS. MAYHOOK: Let's just check if it is
6 cited.

7 MS. ANDERL: So in Mr. Shiffman's reply
8 testimony, page 14, line 7, the question there has a general
9 reference to that portion of Mr. Green's testimony.

10 JUDGE TOREM: Yes.

11 MS. ANDERL: So when we did the word search
12 in the electronic version and looked for the word "Green,"
13 we came up with these references. And that's how we made
14 that list.

15 JUDGE TOREM: All right. Then by my previous
16 logic, that would be admitted as well.

17 As far as page 51 and 52, Ms. Mayhook?

18 MS. MAYHOOK: I think if it helps for a more
19 complete record, we're happy to have that admitted as well.

20 I would note that on reflection it does
21 appear to deal specifically with Level 3's interconnection
22 agreement. So as long as we're able in briefing to address
23 the corollary to Pac-West's interconnection agreement, I
24 think the weight of the argument is the same, but the
25 citation may be different.

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1 JUDGE TOREM: Understood. And I think if it
2 applies simply with the methodology of how that interest
3 rate is being calculated and where he's drawing those
4 numbers from, if they're similar logic but different
5 numbers, given the information and given the differences,
6 I'll trust counsel to take care of that in briefing.

7 So all of these pieces, Ms. Anderl, that
8 you've asked for in your letter have now been admitted,
9 including the interest rate calculation that we've found on
10 page 51.

11 Any other issues with Mr. Green's
12 testimony?

13 All right, then.

14 MS. ANDERL: So the rest of it -- I'm sorry.
15 The rest of the information that is cited in the Mayhooks'
16 letter is going to be made a part of the record for
17 illustrative or contextual or background purposes only, but
18 not for the truth of the matters asserted?

19 JUDGE TOREM: I'm not admitting them to this
20 proceeding as the evidentiary hearing.

21 MS. ANDERL: Okay.

22 JUDGE TOREM: They've been filed here in the
23 expectation that they might have. But for the settlement,
24 Mr. Green would have adopted that testimony this morning and
25 we would have moved along.

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1 If there's an appeal from here, I expect that
2 the Mayhooks will cite to that information as needed.

3 Again, if there's citations in the brief that
4 go to federal court, Ms. Anderl, you can indicate the weight
5 of the evidence that might be given to it because it wasn't
6 subject to cross-examination, it wasn't formally admitted.

7 It's not relevant to the issues I have left
8 to decide. But if there are issues that might be remanded
9 back to me at some later date, it might be relevant then.

10 MS. ANDERL: I think I understand. So
11 knowing what I know about appellate proceedings from these
12 dockets, I think it would be accurate to say, and you can
13 correct me if I'm wrong, it is not a part of the evidentiary
14 record, but it will be a part of the administrative record
15 if that is sent up to court.

16 JUDGE TOREM: Appellate record,
17 administrative record, whatever it is, was filed in good
18 faith in this proceeding. It's not going to be created out
19 of whole cloth for purpose of appeal. So call it what we
20 will. We'll see how it's made use of later.

21 All right. I think we're ready to move on
22 to, if they're necessary, opening statements.

23 Mr. Mayhook, you had asked for some time. Do
24 you still want to exercise that option, because I think --

25 MR. MAYHOOK: I will demur.

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1 JUDGE TOREM: Ms. Anderl's exercise of that
2 was going to be dependent on yours.

3 MR. MAYHOOK: I'm going to waive that
4 hard-fought right.

5 MS. ANDERL: I did prepare one. I was
6 looking forward to it.

7 JUDGE TOREM: Ms. Anderl, I'll entertain it.

8 MR. MAYHOOK: I'm not giving you my five
9 minutes.

10 JUDGE TOREM: If we're ready to turn, then,
11 to witness testimony, we'll bring Mr. Easton up.

12 But I think, Ms. Anderl, if you do want to
13 set the stage with what you prepared, I will be happy to
14 hear it.

15 And we'll give Mr. Mayhook an opportunity.
16 Perhaps he'll want to take you up on his five minutes before
17 his witness or directly in response.

18 MS. ANDERL: I've been advised by our witness
19 that he has very finely calibrated the amount of coffee that
20 he has and I'm not to dilly dally.

21 Thank you, your Honor, for giving us the
22 opportunity to present a brief opening statement.

23 To set the context here, I think it is good
24 to just remember what the case is about. And the case is
25 about the petition to enforce an interconnection agreement.

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1 It is clear that this is an action that was
2 brought under the ICA. Both the initial claims and the
3 counterclaims were brought under the ICA.

4 There's no dispute that the facilities used
5 to complete the calls at issue and pass the traffic at issue
6 were facilities ordered and provided under the ICA. And
7 that's all caps, and shorthand for "Interconnection
8 Agreement."

9 And the Commission has the jurisdiction to
10 enforce the interconnection agreement. That's been very
11 clear under multiple federal law cases.

12 Included in the interconnection agreement are
13 provisions that reference the access tariffs as the proper
14 compensation method when interexchange as opposed to local
15 traffic is being exchanged.

16 I know that there are a lot of jurisdictional
17 arguments that have already been made. There are a lot of
18 jurisdictional decisions that the Commission has already
19 made. And for those we're grateful because it allows us to
20 move on to some of the other disputed issues.

21 But just to -- as an assurance that we are in
22 the right place in front of the Washington Commission, even
23 for traffic that is bound for the Internet, even for
24 jurisdictionally interstate traffic, I'm just going to quote
25 briefly from a 2011 Ninth Circuit Court decision, ATT vs.

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1 Pac-West at 651 F.3d 980. The Court said (as read), We
2 begin with a few well-settled principles. First, there is
3 no question that for jurisdictional purposes, ISP-bound
4 traffic is interstate in nature. ISP-bound traffic is
5 therefore subject to the FCC's congressionally delegated
6 jurisdiction. Within this ambit, the FCC's actions can
7 preempt state regulation to the contrary.

8 Now the court was, of course, reviewing a
9 district court, a lower court case.

10 And so the circuit court goes on to say, (as
11 read), But as the district court noted, the matter may be
12 subject, *italics*, to FCC jurisdiction without the FCC having
13 exercised that jurisdiction and preempted state regulation.
14 Determining whether the FCC has chosen to displace state law
15 turns on the scope of its intent in exercising its
16 jurisdiction.

17 The Court then goes on to discuss that the
18 FCC clearly did displace state jurisdiction for
19 Internet-bound traffic that originates and terminates within
20 the same local calling area. That's the traffic that is
21 under the ISP remand order under the ISP mandamus order, and
22 that is subject to the .007 cent compensation scheme. We're
23 not really debating that here.

24 But it's also clear that -- and now I'm not
25 quoting from the Ninth Circuit anymore. It's also clear

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1 that the FCC has not acted to displace the state law
2 jurisdiction over other types of ISP-bound traffic. And
3 that includes the VNXX dialed traffic.

4 It is clear from the case law in this case,
5 as well as other jurisdictions, that the ISP remand order
6 does not encompass VNXX traffic. And regardless of whether
7 the ISP-bound traffic is jurisdictionally interstate, it is
8 clear that the FCC has not acted to displace state
9 regulation of that traffic.

10 Parties in this case have argued, Pac-West
11 has argued, that there is no FCC scheme for compensation of
12 this traffic. That's perfect. That's right. That's why
13 we're here.

14 That doesn't mean we go to the FCC and, with
15 all due respect to the FCC, wait however long it takes them
16 to rule on an issue like this, which if they had wanted to,
17 they clearly had plenty of opportunity to up until now, as
18 the parties have observed.

19 The issue of VNXX has been out there since
20 2001. Government regulators knew about it. Carriers knew
21 about it. Had the FCC chosen to step in and set a rate or
22 regulate the pricing and compensation for ISP-bound traffic
23 that is VNXX dialed, it would have and could have done so.
24 The failure to do that, I think, leaves the Commission's
25 jurisdiction here clearly intact.

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1 So what is the case about now? It's about
2 the money.

3 First, there is the Qwest claim for refund.
4 Pac-West demanded payment of, and I'm quoting from a public
5 document filed by Pac-West now, merely one million dollars
6 from Qwest in 2005. After the original Commission order in
7 March of 2006, Qwest paid an agreed amount which is
8 currently a confidential number in the record, which
9 included a demand for interest.

10 Other amounts, subsequent to 2006, were also
11 paid under protest for VNXX-dialed traffic.

12 Since that time, the Commission has reversed,
13 and really affirmed on multiple occasions, that had it has
14 reversed the original holding and analysis that required the
15 original payment from Qwest to Pac-West.

16 Pac-West continues to hold money that it has
17 no lawful claim on, continues to claim that there are issues
18 of fact with regard to the nature of the traffic, yet has
19 not offered traffic data to contradict Qwest's detailed
20 studies.

21 The second money issue is the compensation
22 for the use of toll facilities. VNXX routing enables a call
23 that crosses exchange boundaries and leaves the originating
24 calling area and terminates in a foreign calling area.
25 Pac-West -- and this is undisputed -- used VNXX routing,

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1 thereby enabling interexchange traffic. Qwest did not have
2 an option in real time or the ability in real time to
3 identify those calls. It would have been unlawful for Qwest
4 to block those calls, even if it had identified them. We
5 had no choice but to complete the traffic.

6 Carriers who wish to enable interexchange
7 calls are required to purchase tariff access services and
8 compensate the originating local exchange carrier, or LEC,
9 L-E-C.

10 Pac-West, while not purchasing access
11 services out of the tariff, received access services by the
12 VNXX dialing, enabling an interexchange call without going
13 on to the future group T-trunks. This is essentially as
14 though a passenger jumped on to the train without buying a
15 ticket and now, when asked to pay for the transport they
16 undeniably received, are saying we didn't go through the
17 turnstile, we didn't buy a ticket, we didn't fill out the
18 form, so we shouldn't have to pay for it.

19 So the solution -- Qwest has proposed a
20 two-fold solution. One is a calculation of the access
21 charges that would have been due to Qwest in 2008 and 2009.
22 And I say those dates because the access claims prior to
23 that time, we agree are discharged in the bankruptcy claims
24 for access charges; not the refund, which is different, but
25 access charges would have been extinguished by the

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1 bankruptcy.

2 However, there was a period of time from 2008
3 through 2009 when the Pac-West new interconnection agreement
4 was entered into, during which the VNXX dialing occurred and
5 no access charges or no compensation was received by Qwest
6 for the use of its interexchange facilities. That dollar
7 amount is in Mr. Easton's testimony. Again, it's
8 confidential.

9 At this time, the other option is a
10 calculation also supported by Mr. Easton's testimony for
11 transport charges only, which is a considerably smaller sum.
12 The transport -- having Pac-West pay the transport is very
13 fair. They receive the benefit of the transport. It
14 compensates Qwest to some extent. It is consistent with the
15 rulings in the VNXX docket with regard to allowing the VNXX
16 traffic to be exchanged on a bill and keep basis as long as
17 the CLEC covers the transport.

18 Those are our proposals. We believe the
19 testimony in this case amply supports the request for refund
20 and the request for compensation.

21 Happily for us, this is only a historic
22 dispute, as the parties do have a new interconnection
23 agreement since 2009 and have no current disputes before you
24 under that new ICA.

25 Thank you, your Honor, for that opportunity

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1 to make the statement.

2 JUDGE TOREM: Thank you, Ms. Anderl. That
3 sets the stage of a lot of issues that have already been
4 hard fought and decided and reminds us of the ground we've
5 covered, and sets the stage for what we have today.

6 Mr. Mayhook, did you want to offer a few
7 moments now?

8 MR. MAYHOOK: A very, very terse response,
9 your Honor.

10 We certainly did not come here today to argue
11 the case as it relates to the prior orders and the law of
12 the case, the applicable law of the case.

13 I'll note -- and I just want to make sure I'm
14 dialed in -- that especially as it relates to Order 12, that
15 this is an evidentiary proceeding. I'm looking at page 43.
16 And this is a conclusion of law, paragraph 11, that it is
17 necessary to conduct a further evidentiary proceeding to
18 determine the location of the ISP modems in each Qwest local
19 calling area and to determine the volume of the VNXX
20 ISP-bound traffic subject to compensation.

21 And then further, at the ordering paragraphs
22 on page 44, at paragraph 5, the Commission will initiate a
23 separate evidentiary proceeding to determine placement of
24 ISP modems in Qwest local calling areas and the appropriate
25 level of retroactive compensation due parties pursuant to

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1 this order.

2 I, as I say, understand the law of the case.

3 And we're not here for legal argument.

4 That said, especially when we have a
5 conversation this morning with Mr. Easton, there is a great
6 deal of legal discussion and summarizing of what this
7 Commission has done in this proceeding.

8 I think the Commission itself observed in the
9 course of its Order No. 12 that this is a very complex and
10 convoluted case.

11 I would also offer that until this case, and
12 until Order No. 12 in particular, that the law in this issue
13 was unsettled in Washington, or at the very least in need of
14 clarity, which the Commission has, I think, finally broken
15 the barrier.

16 So, you know, with that, I think I will
17 unavoidably, in going through Mr. Easton's testimony with
18 him this morning, touch and concern some of the legal
19 concepts. And I don't want to explore them to make legal
20 argument, if it appears that I am, but only to question the
21 inferences that he draws from his view of the case and
22 whether there's a basis.

23 JUDGE TOREM: Thank you for that
24 clarification.

25 I think we're ready to take up Mr. Easton and

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1 swear him in. Seating-wise, he would be behind the court
2 reporter unless we put him on this side. It may be easier
3 for the court reporter to actually see him. And I think we
4 have a microphone.

5 So Mr. Easton, while I reconsider that, let
6 me have you see if you can get comfortable in the chair to
7 my right. Before you get too comfortable, let me swear you
8 in.

9 <<<<<< >>>>>>

10

11 WILLIAM EASTON, witness herein, having been first
12 duly sworn on oath, was examined
13 and testified as follows:

14

15 JUDGE TOREM: If the red light is on, your
16 microphone is on. One touch ought to do it. We'll get you
17 started and then have Ms. Anderl take over from there.

18 MS. ANDERL: Mr. Dethlefs is going to defend
19 this witness.

20 JUDGE TOREM: All right. If you'll start by
21 stating your full name and spelling your last name for the
22 record, I'll let Mr. Dethlefs take it from there.

23 THE WITNESS: My name is William Easton,
24 E-A-S-T-O-N.

25

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1 DIRECT EXAMINATION

2 BY MR. DETHLEFS:

3 Q Mr. Easton, what is your business address?

4 A My business address is 1600 Seventh Avenue,
5 Seattle, Washington.

6 Q Have you prepared testimony for today?

7 A I have.

8 Q And would that testimony consist of your exhibit
9 WRE-1T and exhibits attached to that as well as Exhibit
10 WRE-14RT?

11 A Correct.

12 Q And you also have a supplemental exhibit for today
13 regarding the interest rate issue?

14 A I do.

15 MR. DETHLEFS: Your Honor, may I approach the
16 bench?

17 JUDGE TOREM: Yes, please.

18 JUDGE TOREM: So I'm being handed what's been
19 marked WRE-16C. It's a confidential exhibit, four pages.

20 I take that it a copy has been provided to
21 other counsel. And if we can have the rest of the
22 Commission staff provided a copy, I'd appreciate that.

23 MS. ANDERL: Your Honor, I just noticed that
24 that is not three-hole punched. I apologize for that.

25 JUDGE TOREM: Well, it will have to be

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1 three-hole punched before I can admit it.

2 MS. ANDERL: We'll be happy to collect it on
3 the break and three-hole punch them.

4 JUDGE TOREM: This one time, Ms. Anderl.

5 Q (By Mr. Dethlefs) Could you for the record state
6 what Exhibit WRE-16C is?

7 A WRE-16C provides some context for the payment that
8 was made to Pac-West by Qwest back in 2006 after the initial
9 order from this Commission.

10 And it provides not only the context, but
11 information about the interest rate that was paid in
12 association with that payment.

13 Q Thank you.

14 Do you have any correction to your testimony that
15 would you like to make?

16 A I do have one correction on page 24, line 3.

17 Q Is this your direct testimony?

18 A Yes, excuse me. My direct testimony, again page
19 24, line 3. And the word "millions" on that line should be
20 changed to "hundreds."

21 Q Do you have any other corrections to your
22 testimony today?

23 A I do not.

24 MR. DETHLEFS: Your Honor, we would offer
25 into evidence -- or excuse me.

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1 Q (By Mr. Dethlefs) If you were asked the questions
2 that are in your testimony, both your direct and your
3 rebuttal testimony today, would your answers be the same?

4 A They would.

5 MR. DETHLEFS: Your Honor, we would offer
6 into evidence Mr. Easton's direct testimony, which is WRE-1T
7 revised on October 9, 2012, to correct numbering in the
8 testimony.

9 And then attached to that we would offer
10 Exhibit WRE-4C, WRE-8C, WRE-11C, WRE-13C, and then his
11 rebuttal testimony, WRE-14RT and his supplemental exhibit
12 that we presented this morning, WRE-16C.

13 JUDGE TOREM: Let me go over those with you
14 one more time. We're going to have the direct testimony,
15 which is WRE-1T; then the supporting confidential Exhibit
16 4C--

17 MR. DETHLEFS: For consistence, both
18 confidential and nonconfidential.

19 JUDGE TOREM: Then you listed Exhibit 8, but
20 not Exhibit 9. Do you intend to leave 9 out?

21 MR. DETHLEFS: Your Honor, we don't believe 9
22 is used in any way in this proceeding. So we're not
23 offering 9.

24 JUDGE TOREM: All right. I just wanted to be
25 sure as I went through it. It dealt with the parties still

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1 at issue. So if it's not relevant, it's one less piece of
2 paper for me to review.

3 So we have 8, but not 9; 11 and 13.

4 And then we get to the rebuttal and reply
5 testimony. That would be 14-T. I believe there was an
6 exhibit appended to that one.

7 MR. DETHLEFS: It was 15-C and I believe that
8 that was related solely to Level 3.

9 JUDGE TOREM: And then today's Supplemental
10 Exhibit 16-C.

11 All right. So we have 1, 4, 8, 11, 13, 14
12 and 16 as the sum of the testimony you're seeking for Mr.
13 Easton to adopt and admit today.

14 MR. DETHLEFS: I believe you repeated those
15 correctly, yes.

16 JUDGE TOREM: Mr. Mayhook, Ms. Mayhook, any
17 objections to the testimony subject to cross-examination and
18 the supporting exhibits at this time?

19 MR. MAYHOOK: No objection.

20 JUDGE TOREM: I'll take it that was subject
21 to check.

22 MS. MAYHOOK: I apologize, your Honor. I
23 think we're unexpected why Exhibit 9-C was being not
24 included. It may be a little explanation, because it was
25 titled "Disputed VNXX minutes.

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1 JUDGE TOREM: If you have questions in that
2 regard on 9-C, you can certainly ask about it and then
3 separately move to have it admitted if it's relevant to your
4 case.

5 MS. MAYHOOK: Thank you, your Honor.

6 MR. MAYHOOK: That was going to be my
7 alternative. We can always co-opt it and make it Exhibit 2.

8 JUDGE TOREM: There many ways to get an
9 exhibit into the record.

10 These are simply the ones that Qwest believes
11 are relevant. And so without any objection to those,
12 Exhibits 1-T and 14-T, the two testimonial exhibits, are
13 admitted. Supporting exhibits to the direct 4, 8, 11 and 13
14 are admitted. And today the Supplemental Exhibit 16 is also
15 admitted.

16 The rest of them will be left in the same
17 state as we discussed Mr. Green's testimony as having been
18 previously filed, but not considered relevant to the
19 evidentiary hearing today, at least to this point.

20 MR. DETHLEFS: Thank you, your Honor.

21 With respect to Exhibit 16-C, I have a couple
22 of questions I'd like to ask Mr. Easton on the interest rate
23 issue.

24 JUDGE TOREM: Briefly.

25 Q (By MR. Dethlefs) Mr. Easton, when the Commission

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1 originally ordered Qwest to make payment to Pac-West on ISP
2 traffic, did Pac-West request an interest rate on that
3 amount?

4 A Yes. Pac-West's original interest rate request
5 was 1.5 percent per month. So that would equate to an 18
6 percent annual interest rate.

7 Q And what did Qwest actually pay?

8 A There was much discussion around the settlement
9 amount. I know we ended up settling for somewhat less than
10 was originally requested. I don't know whether that
11 reflected a reduction in principal or interest.

12 But regardless, the interest rate paid was well in
13 excess of the 12 percent that we are requesting here.

14 MR. DETHLEFS: Your Honor, we have no further
15 questions for Mr. Easton. We would offer him for
16 cross-examination.

17 JUDGE TOREM: All right. Mr. Mayhook, are
18 you conducting the cross-examination?

19 MR. MAYHOOK: Yes, I am.

20 JUDGE TOREM: If you will move the microphone
21 so it will pick up you questions and we can hear them, your
22 witness.

23 CROSS-EXAMINATION

24 BY MR. MAYHOOK:

25 Q Good morning, Mr. Easton.

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1 A Good morning.

2 Q It is a pleasure to meet you and to have a
3 conversation with you today, and I think just on the front
4 end with your clearly distinguished career with Qwest and
5 its antecedents as well as its new formation.

6 Regarding your job positions at Qwest, you
7 indicate that until 2001 you were a director of wholesale
8 finance, or at least the wholesale finance group. Can you
9 just briefly tell us whether that group had a mission
10 statement and what it was?

11 A I can't tell you whether we had a mission
12 statement or not.

13 I was, again, in wholesale finance, responsible
14 for tracking wholesale revenues, wholesale expenses, and
15 reporting upwards in the corporation.

16 Q And is it fair to say that it was your job to
17 guide the company in understanding the -- and managing its
18 costs as effectively as possible with the ultimate goal to
19 insure low operating costs, revenue assurance, those kinds
20 of things?

21 A That would be part of it, yes.

22 Q So given that and also your financial background,
23 your MBA, the degree emphasis?

24 A Finance and marketing.

25 Q Finance. So with your financial background, you

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1 had your piece of the grand mosaic at Qwest.

2 Can you say whether and to what extent your
3 mission as director of wholesale finance fed into the larger
4 company mission statement?

5 A It most definitely did. Again, I represented
6 wholesale, but the intent was to represent the overall
7 interest of the corporation.

8 Q And can you state for us your understanding of
9 what that mission, the overall company mission statement
10 was?

11 A Well again, I don't recall whether we had a
12 mission statement.

13 In my mind, the purpose of my job was to insure
14 wholesale performance to our revenue goals and expense goals
15 and meet our commitments to the corporation.

16 Q And as to the corporation, and again given your
17 MBA in finance, is it fair to say that you wanted to make
18 sure that the company was making money and not losing it?

19 A That would clearly be something that would be of
20 interest, yes.

21 Q And that the concern was profits and as good a
22 margin as you could get for the benefit of the company and
23 its shareholders?

24 A And its shareholders, correct.

25 Q Now in October 2001, you moved to the wholesale

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1 advocacy group. Could you state briefly the mission
2 statement of that group?

3 A We don't have a mission statement.

4 But the purpose for my role is to represent
5 wholesale in various regulatory proceedings such as we have
6 here today. I testify in cost dockets, I testify in
7 arbitrations, and I testify in complaint proceedings.

8 Q Thank you for that, because I kind of -- you would
9 think it was obvious, and certainly it was clear from the
10 number of times you testified here in Washington, which by
11 my count was 14, and you also have-- how should I say --
12 quite a number of hits on Google. In fact, how many times
13 have you testified?

14 A I don't have an exact number.

15 Q Just roughly?

16 A It would be something over 100 times.

17 Q So as an advocate, you advocate the company's
18 positions primarily in regulatory proceedings?

19 A The wholesale positions, correct.

20 Q Okay. So you're here today to discuss the
21 compensation ramifications of the Commission's November 14,
22 2011 ruling regarding the VNXX traffic.

23 And I think you, in summarizing your testimony,
24 point to those issued decisions in the so-called VNXX
25 complaint docket?

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1 A I do reference that proceeding in my testimony,
2 correct.

3 Q And that complaint docket was initiated when?

4 A That complaint docket, I believe, was May of 2006.

5 Q And then you also advert to the Commission's more
6 recent decision No. 12, which you point out reaffirmed, I
7 believe, that so-called VNXX complaint docket.

8 And I actually don't think it's -- you know, that
9 we need to get through all the explanations of what VNXX is.
10 I think we all understand that.

11 But I want to explore your perspective a little
12 bit given the background that you have. You say, for
13 example, on page 4 of your testimony, that Pac-West should
14 be required to compensate Qwest for this traffic, that being
15 the interexchange that you discussed previously, using the
16 access rates that the carriers have intentionally and
17 successfully avoided for several years as a result of these
18 VNXX numbering arrangements.

19 Are you, as an industry professional with I think
20 frankly, it's fair to say a storied career, are you familiar
21 with the concept of industry practice?

22 A Do you have a particular practice in mind?

23 Q Well, I think generally we advert to industry
24 standards and industry practice, especially since 1984,
25 which you mentioned later on in your testimony, that the

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1 practices evolve and adapt over time. And those practices,
2 one moment are how things are done.

3 And for example, a long time ago when I was in
4 Alaska, there were no access charges. And then suddenly
5 there was competition in, of all things, intrastate long
6 distance. And that was a hard-fought battle. And there had
7 been standards and practices up until that point. And then
8 after lengthy proceedings and rule making and legislating,
9 there was a new way of doing things, and suddenly that
10 became industry practice.

11 And I put it in the context of access charges
12 because that clearly is important to you in your testimony.
13 So when it comes to industry practice, might a carrier
14 that's looking to be profitable and successful, might it not
15 look for the lowest cost alternatives?

16 And if one does it, others do it?

17 A Well, certainly any company would do that. But it
18 also has to be a legal undertaking.

19 You talk about practices changing. In fact,
20 practices do change.

21 But the switched access regime that I talk about
22 at length in my testimony has been in place since 1984. And
23 nothing has changed that I'm aware of that would say those
24 switched access rates don't apply to interexchange traffic.
25 The traffic we're talking about in this case, this VNXX

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1 traffic, is in fact interexchange traffic, as this
2 Commission has found.

3 Q I think you made that point in your testimony
4 multiple times. And I suppose you have earned the right to
5 continue to say it during this proceeding, although I think
6 at a certain point we'll accept that fact and we don't need
7 to hear it again.

8 But that said, two points that you raised, 1984, I
9 assume that we're not talking about the George Orwell novel.
10 Tell us the milestone significance of 1984.

11 A Well, that was the divestiture, as I'm sure you're
12 aware --

13 Q Judge Harold Greene?

14 A -- where we split into the Bell operating
15 companies, seven companies.

16 Prior to that time, AT&T had a long lines
17 operation that provided long distance service.

18 Q I don't mean to interrupt you there, but I do not
19 want his Honor getting impatient with me, and I do not want
20 our discussion getting too academic or too historical. But
21 I want to make sure we're dialed in to the same point in
22 time and that you reference the significance of it, that we
23 get it.

24 Are you saying that Judge Harold Greene in the
25 breakup, the antitrust lawsuit that precipitated

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1 divestiture, are you saying that that -- his order provided
2 for access charges?

3 A What I was saying is --

4 Q Well, I'll let you explain, but are you saying
5 that?

6 A Let me finish my answer and I think you'll get
7 what you're looking for.

8 Q Okay. So there's no yes or no on that?

9 A Well, that--

10 Q I don't want to badger you. I'll let you explain,
11 but I just --

12 A Let me explain, because what I have to say does in
13 fact have to do with access charges and why that regime was
14 put into place in 1984 as a result of the divestiture.

15 Q Go ahead.

16 A So prior to 1984, AT&T had a long lines operation
17 that provided the long distance transport in this country.

18 After the divestiture, the access regime was put
19 into place. There were now competitors, such as MCI,
20 providing access or long distance services. An access
21 regime was put in place to insure that those local companies
22 were compensated by the long distance carriers for the
23 interexchange services they were providing. And that's how
24 switched access came about. That's been in place since
25 1984 and has evolved over the years, but the one principle

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1 that hasn't changed is that switched access rates apply to
2 interchange traffic.

3 Q Okay. And we could probably go on and on and talk
4 about the difference between certainly computer one and two
5 and telecom traffic and information traffic and all of the
6 other myriad practices that were occurring that led to
7 another milestone, which again was an antitrust statute
8 known as the Telecom Act of 1996. And that also
9 precipitated changes?

10 A Correct.

11 Q And those changes owing to the technology
12 unleashed rapid change?

13 A I would agree.

14 Q Okay. And that was the purpose of the
15 legislation, which I'm sure you would agree, codified in
16 principle Judge Greene's 1984 decision?

17 A That was certainly one of the intentions of that
18 legislation.

19 Q So with the Telecom Act, would you say in 1984 and
20 in 1986 (sic) that the regulators in particular were trying
21 to manage something new, and that there was resistance on
22 all sides because everybody was trying to get the best
23 position that they could get?

24 A Well, I think any time you have traumatic changes
25 in an industry such as we had in 1984 and in 1996 again with

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1 the passage of the act, there's a period of time where
2 everybody is attempting to figure out just what the rules
3 mean.

4 Q Yes. And those rules are the result of
5 legislation conducted by the regulators, correct?

6 A That's correct.

7 Q And -- okay. Anybody who's not with the company
8 here, close your ears.

9 Don't regulators understandably and fortunately,
10 don't they sometimes act with caution and they let change
11 occur in incremental steps?

12 A I think it depends on the particular regulatory
13 body and who happens to be there at that point in time.

14 Q Okay. Well, let's -- that's fair. And I think
15 reasonable people would disagree.

16 But the point is up until a certain point in time,
17 you were paying Pac-West and Level 3 and a lot of other
18 CLEC's for this ISP-bound traffic that was admittedly
19 creating an imbalance as this new technology and the rise of
20 the Internet and all of that other good stuff that now is in
21 full bloom. In those early days, did people fully
22 understand the technology and the markets and the potential
23 use all at once?

24 Did that happen all at once, or was change
25 gradual?

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1 A The technology and the markets, or what?

2 I'm not clear exactly what you're asking.

3 Q I always get help when I need it. The question is
4 was the Internet a dramatic change?

5 A Certainly that was a dramatic change.

6 Q Traumatic, did you say?

7 A Dramatic.

8 Q And it was, I think, traumatic and dramatic for a
9 lot of people.

10 And so with the Internet however -- and, you know,
11 again I don't want to get into a history here, but you have
12 been for your career -- and I don't recall when you started
13 at Qwest or its antecedents, but how long have you been with
14 the company?

15 A Almost 33 years.

16 Q Okay. 33 years. I'm humbled by the depth of your
17 experience.

18 The issue, I guess, for Pac-West, and I think it
19 goes to the heart of this case, the LEC perspective here is
20 one that's familiar to me because I represented those LEC's
21 in Alaska that wanted to get those access charges and that
22 viewed long distance as something evil, competition in long
23 distance.

24 So I'm just thinking now that here we are, and we
25 had something that was emerging very rapidly and my

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1 recollection is -- and I'll be interested to know if you
2 agree with me -- my recollection is that maybe some of the
3 regulators, maybe the FCC in particular, was -- they were
4 allowing the technology and the market to sort things out a
5 little bit before they legislated too quickly. Is that
6 fair?

7 A That's possible. That's possible.

8 Q All right. So I understand you have an unshakable
9 conviction in the durability and viability of access charges
10 going back to 1984.

11 That said, however, as it related to the
12 participants in this case, up until a certain point in time
13 you paid the reciprocal compensation to -- you paid that to
14 Pac-West, correct?

15 A We did pay Pac-West up until, I believe it was the
16 end of 2004.

17 Q Okay. 2004. And --

18 A The reason for that --

19 Q Well, let me ask the questions. We'll get into
20 the reasons for it. But I don't want to lose sight of some
21 other facts, because in addition to paying Pac-West, you
22 also paid Level 3.

23 And by my reckoning, at least -- and I didn't do
24 all my homework, so I'm sure you're going to help me out on
25 that. Based on your testimony today, there were at least

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1 nine other CLEC's that were likely also getting recip comp;
2 is that correct?

3 A When we filed our complaint in 2006, it was filed
4 against nine other CLEC's.

5 Now whether that was the case in 2004, I can't
6 tell you.

7 Q And for all this intentionality and success in
8 those heady days of the 1990's, where the mission statement
9 of the Telecom Act was the rapid deployment of advanced
10 technology at affordable rates -- at least that was my
11 mantra for a long time -- as it related to that mission
12 statement, this thing called the VNXX, was this a secret?

13 Was it a conspiracy that Qwest and its tier LEC
14 companies, the RBOC's, as we used to call them?

15 Was this something that was just completely
16 getting by you?

17 A Clearly in the early 2000's, Qwest and other
18 carriers in the industry were aware of this practice.

19 I don't think we were aware of how extensive it
20 was.

21 Again, as I note in my testimony, one of the
22 characteristics of VNXX is that numbers are assigned in such
23 a way that interchange called appear to be local. These
24 calls look like an ordinary local call to our switch. So
25 just based on the information that our switch has, it

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1 doesn't know that VNXX is going on.

2 So earlier you asked me why we paid up to 2004.

3 In part, we didn't know the full extent of it.

4 And another important factor was that up until
5 late 2004, when the FCC issued its core forbearance order,
6 there were caps on the amount of reciprocal compensation we
7 had to pay for this type of traffic. So it was limited,
8 what we were going to have to pay out.

9 When those caps were removed, it changed things.
10 And we became much more interested in finding out exactly
11 how much VNXX traffic was on our network and insuring that
12 we received the proper compensation for that traffic.

13 Q All right. So as I understand your testimony,
14 you're saying you knew, but not to the full extent.

15 A I believe that's correct.

16 Q Okay. And so then you also mentioned this core
17 thing at the FCC. And as I recall the genesis of this case,
18 I think the first stage of combat and that cap that you
19 mentioned resulted in an arbitration; is that correct,
20 between Qwest and Pac-West?

21 A I believe there was an arbitration.

22 Q Were you involved in that arbitration?

23 A I was not involved in that arbitration.

24 Q But you're aware of it?

25 A I'm aware of it. I'm not aware of the details. I

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1 just know there was an arbitration and that was one of the
2 issues.

3 Q Are you aware of the ultimate outcome of that
4 proceeding? -- which admittedly was a little different than
5 this one. It had its own issue.

6 But what happened at that arbitration proceeding
7 vis a vis the ultimate outcome?

8 A I'm not aware of what the ultimate outcome was.

9 Q So if I told you that Qwest lost that arbitration,
10 which was a precursor case to their subsequent enforcement
11 proceeding, would you be surprised or would that jog your
12 memory?

13 A Again, I'm not aware of what the outcome was. All
14 of that is subject to check.

15 Q That's fine. There's a lot going on here, as the
16 Commission noted in one of its orders.

17 I think getting back to what was going on, isn't
18 it fair to say that the issue was more known and prevalent
19 than, at least to my eye, comes through your testimony?

20 And when I -- I should qualify that a bit. You
21 were paying, until 2004 -- if I told you that I actually,
22 myself, arbitrated the issue in Hawaii, there they called it
23 VFX. It's Virtual Foreign Exchange in their lexicon. If I
24 told you we arbitrated the issue in the context of an ICA
25 resulting in an order, I think in 2004, but I don't remember

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1 -- I had to wait a long time for them to give me an order --
2 the parties acknowledged the service and the Commission
3 ruled it was subject to comp.

4 MR. DETHLEFS: Your Honor, I have an
5 objection. It sounds like the attorney is testifying.

6 MR. MAYHOOK: That's a fair objection. I'll
7 restrain myself, or try to.

8 JUDGE TOREM: Mr. Mayhook, as much as I would
9 like to go to Hawaii for the testimony, I want to keep us on
10 track of what the Washington case is. And I think you've
11 laid out sufficiently for my understanding, and hopefully
12 for any appellate record you wanted to create today, the
13 history of the case.

14 So let's focus on these payments that Qwest
15 stopped in 2004 and deal with the issues at hand.

16 MS. MAYHOOK: Fair enough. And for the
17 record and so I can just -- my intent here, there is a
18 certainty and there is much recitation of the Commission's
19 order here. And the way it reads is that this was the
20 settled law of the land, if you will.

21 And I just want to make sure that at least
22 from our perspective that we have some sense that it was
23 less than settled.

24 Q (By Mr. Mayhook) Moving on, you make an
25 observation on page 6 of your testimony -- never mind. I'm

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1 going to jump ahead even further.

2 Let's go to -- it starts at page 6, but your
3 description of the VNXX consistent with the previous
4 findings of the Commission. And you advert to the so-called
5 final VNXX order. Was that Order No. 10?

6 A I don't recall the order number.

7 Q Okay. And in that portion of your testimony, you
8 recite certain language from the Commission's order. And
9 part of that testimony was, it states, the great -- and I'm
10 looking at page 7 now of the last paragraph very briefly.
11 It says (as read) that the great majority of VNXX calls are
12 made to ISP's -- ISP-bound traffic. CLEC's use VNXX
13 arrangements primarily to serve their ISP customers. VNXX
14 enables the ISP dial-up customers to connect with the
15 Internet without incurring total or access charges.

16 Now, I have to admit, when I read that, it sounds
17 very bad. And it sounds very unfair. Would you agree with
18 that?

19 A I guess it depends on whether the companies who
20 are providing the transport that enables VNXX are
21 compensated.

22 The fact that the customers aren't incurring toll
23 charges is another issue.

24 Q Thank you. I appreciate that observation, because
25 it is another issue. And I think in regular parlance we'd

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1 say it was a good deal for them. Would you agree with me?

2 A For those customers.

3 Q And by customers here, we mean the ISP's who were
4 the CLEC customers, and then the dial-up customers that were
5 the customers of the ISP's. So it was a good deal for them,
6 was it not?

7 A It was a good deal for the dial-up customers not
8 to be paying toll charges.

9 Q And I know in my experience at state commissions,
10 there is something called the public interest. And I know
11 that it's something near and dear to my heart. And I think
12 you yourself a moment ago suggested that there are competing
13 forces or dynamics or policies here; is that fair?

14 A I think it would be fair to say that this
15 Commission and the FCC, when they set up the access charge
16 regime, when they set up toll charges to customers, took the
17 public interest into account and balanced those competing
18 interests, if you will.

19 Q But things never stay the same for very long, and
20 so we had this new thing just come out of God knows where,
21 and suddenly we have this thing called the Internet and we
22 have dial-up.

23 And the -- I guess there is a business end of
24 this. And the business end would be, would you agree with
25 me that if the CLEC was paying access charges, that that

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1 pretty much would have been the end of the ISP business as
2 well as limited greatly the access to dial-up customers?

3 And I say that because from a business
4 perspective, they couldn't afford it. Would you agree with
5 that?

6 A I don't know that I would agree with that.

7 I would go so far as to say it clearly added
8 impact on their business and enabled the CLEC's and the
9 ISP's to operate, to have lower operating costs than they
10 would otherwise. Whether that made a business viable or
11 unviable, I don't know. There were a lot of other factors
12 going on in the industry at that time.

13 Q Do you have a sense in the State of Washington of
14 the profile then, and maybe even now, of the profile of the
15 typical dial-up customer?

16 Do you know -- could you say who they are, where
17 they reside as a class or a segment of the body politic?

18 A I don't think I can as I sit here today.

19 I would tell you back in the late '90s and early
20 2000's I was a dial-up customer.

21 Q So was I.

22 There was some element here as well of competition
23 between the CLEC and their ISP customers and Qwest's own
24 self-interest -- and if I refer to Qwest's self-interest, I
25 do not mean that in a negative way because you have to have

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1 self-interest to succeed and survive.

2 But that moment occasioned by the dial-up traffic
3 and the blossoming of it and what -- I think where dial-up
4 is concerned we're still heavily embedding the largely rural
5 communities, lower income communities, maybe elderly. If
6 those customers were spending their money on the ISP's
7 dial-up service, isn't it a fact that at that point they
8 likely wouldn't have needed that second line for -- to -- if
9 Qwest was going to provide a similar competitive service?

10 A I guess I don't understand the question.

11 Q You know, at this point I'm not sure I do either.
12 So I'm going to withdraw that. But we'll let that go. I
13 think my problem is my handwriting.

14 All right. So let's move on to page 8. On page
15 8, and I think you mentioned it in a prior response, so line
16 18, you say this dispute between the parties dates back to
17 2004, when Qwest began withholding reciprocal compensation
18 payments from Level 3 and Pac-West for VNXX traffic.

19 Now, that withholding, that was something Qwest,
20 despite what had been an existing arrangement and an ongoing
21 record of providing payments to Pac-West, suddenly stopped
22 paying. And I know in judicial proceedings, and I think to
23 a certain extent maybe in regulatory proceedings, but I want
24 to see if you're familiar with it, that tactic is known as
25 self-help. Are you familiar with that concept?

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1 A Again, I've heard the term. I'm not a lawyer.

2 Q If a party has an expectation and an apparent
3 contract right based on consistent experience, and then
4 suddenly someone without availing themselves to process or
5 escalation within the confines of the contractual
6 arrangement suddenly stops payment, did the -- did Qwest
7 understand that that might have adverse impact on the party
8 that wasn't going to be getting the money and that had been
9 relying on a network arrangement and so on and so forth?

10 A I think the key words in your question were "an
11 apparent contract right."

12 Qwest clearly disagreed with that and interpreted
13 the interconnection agreement in a different way than
14 Pac-West did.

15 Clearly both parties had a financial interest in
16 this matter. Ultimately the matter came before this
17 Commission to enforce the interconnection agreement and to
18 interpret what that apparent contractual right was.

19 Q See, I was helping you out on that. And I was
20 trying to make you comfortable because I know what your
21 position is.

22 And I certainly know what Pac-West's is.

23 But you at least -- you, at least -- to me, it was
24 a clear contract, right.

25 But you at least have to acknowledge that there

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1 had been an ongoing, steady, consistent economic arrangement
2 that if it ceased, would be problematic for the entity that
3 has been relying on that revenue to cover its own costs to
4 serve its customers?

5 A From Pac-West's perspective, I'm sure that's the
6 case.

7 Q I'm asking from a Qwest perspective?

8 A From a Qwest perspective, if that practice had
9 continued on, particularly with the lifting of the growth
10 and new market caps that were eliminated with the court's
11 forbearance order, that was going to have financial impacts
12 on Qwest. Again, both parties are financially impacted --

13 Q All right. So --

14 A -- by the interconnection agreement.

15 Q But I think what's implicit, if not explicit in
16 what you just said, is that there were things going on from
17 a regulatory perspective that you saw were going to impact
18 your company, and so rather than go bang on the door of the
19 FCC or somewhere else, you said, you know, we're not going
20 to comply with this. And you put a stake in the ground.

21 A I would disagree with you.

22 Q You would?

23 A A decision was not made we would not comply with
24 the interconnection agreement.

25 A decision was made based on our interpretation of

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1 the interconnection agreement that this is not local
2 traffic, it's not subject to reciprocal compensation, and
3 we're not going to pay reciprocal compensation on that
4 traffic.

5 And clearly Pac-West was able to avail themselves
6 of their right to come before this Commission to have the
7 Commission enforce the interconnection agreement.

8 Q Well, those caps that you mentioned, they're
9 implicated in that arbitration that you're not so clear
10 about. And so you know, I'm going to ask you the question
11 anyway, and you either know or you don't.

12 Isn't it true that Qwest began withholding recip
13 comp payments from Pac-West based on Qwest's assertion that
14 the VNXX ISP-bound traffic exceeded the so-called growth
15 ceilings?

16 And that was, I think, implicated in paragraph 9
17 of Order No. 3 in the ALJ recommended decision in 2005.

18 And so on the one hand, there's a dynamic here, is
19 all I'm trying to get your handle on, as it relates to --
20 and this is significant. It will be significant when we
21 talk about the interest rates later.

22 When you deliberately -- I don't mean you
23 personally, but I mean Qwest. When Qwest deliberately
24 withheld payment as an act of self-help to the detriment of
25 Pac-West without it having, at that point, any warning, that

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1 was problematic even though there was clearly a basis for
2 your having to pay it?

3 A I would agree with you there was a dynamic going
4 on here. And the dynamic was it was unclear exactly what
5 the law was with regard to VNXX traffic. Qwest had one
6 interpretation. Pac-West had another. And it took years
7 for this matter to sort itself out through the courts to get
8 to where we sit here today.

9 Q And that includes this proceeding?

10 A And that includes this proceeding.

11 As it turns out, Qwest's interpretation of that
12 interconnection agreement was correct.

13 And this Commission has now agreed that this is
14 not local traffic that's subject to reciprocal compensation.
15 In fact, it's interchange traffic.

16 Q And as an advocate, that's your role, and you
17 obviously do it very well. And isn't it fair to say that in
18 that company role you are an activist?

19 You are out there trying to get people's attention
20 to do what works best for your company?

21 A I guess I would say it that I'm representing the
22 interests of my company and advocating on their behalf.

23 Q And you have a line of sight, and you seek to
24 influence the legislation of rules as well as to defend
25 actions taken in adjudicatory context, correct?

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1 A I'm not involved in any legislative activity.

2 Again, I represent our company in complaints,
3 arbitrations.

4 Q Okay. Well, on the arbitration, and based on a
5 comment you made a moment ago, then, I had mentioned the
6 ALJ's recommendation in that arbitration.

7 And then, you know, I'm going to ask you based on
8 again on what you just said, isn't it true that the
9 arbitrator in that case issued an order in favor of Pac-West
10 in December of 2004 ordering Qwest to pay Pac-West the recip
11 comp payments that Qwest had previously withheld?

12 A I guess I'm confused on what case we're talking
13 about. Is this the arbitration that I indicated I was not
14 familiar with?

15 Q You had indicated at one point that you weren't
16 familiar with it.

17 And then I apologize if I misinterpreted, but I
18 thought you made a comment a bit ago that suggested --
19 because you keep talking about these caps that were -- and
20 this was problematic for you.

21 And since the arbitrator ordered you to pay in
22 that proceeding, which it's in the record and can be
23 verified, and I don't want to press you any more on it,
24 but if you know about that, you can tell me now, and if you
25 don't, you can tell me now.

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1 A I don't. I was not part of that arbitration.
2 When I spoke about the court's forbearance order, I was
3 speaking from being familiar with that order. I remember it
4 coming out.

5 Q So you don't personally know today whether,
6 despite that order, that Qwest refused to pay?

7 A I don't recall. I don't know.

8 Q All right.

9 A I'm not involved in that particular proceeding.

10 Q Can you say here today, as part of this
11 evidentiary hearing, whether and when Qwest notified
12 Pac-West in writing that Qwest disputed its obligation to
13 pay the recip comp on VNXX traffic?

14 A I don't know how that communication took place. I
15 would imagine there was some form of communication.

16 Q Okay. But you can't say today?

17 A No. In fact, we do have an organization in our
18 company, like many companies, that handles disputes between
19 carriers. I would imagine there was contact between that
20 organization and someone at Pac-West.

21 Q Okay. Well, I appreciate your testimony. And I
22 appreciate our conversation this morning. And you're
23 helping me put this evidentiary hearing in context.

24 And while I'm sure we've, or I, have taxed the
25 patience of everyone here, I will go on record and say thank

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1 you to everyone for their patience.

2 But I think it's important to Pac-West and I think
3 it's important to this proceeding that we have a sense of
4 there were differences of opinions in a context where at a
5 certain point, even this Commission agreed that you had to
6 pay Pac-West, correct?

7 A It's taken many years for this issue to be
8 clarified, correct.

9 Q They want to make sure that the changes aren't too
10 sudden. And as a policy, can you tell me with your
11 expertise and experience why they would take that
12 approach?

13 Why should it take so long, especially when people
14 in business are in a hurry?

15 A Well, again, as you and I discussed earlier, there
16 were a lot of changes going on in the industry. How those
17 changes fit in with the existing rules and regulations is
18 something that takes some time to figure out.

19 Q Well, it does. You, of course liberally, call it
20 illegal in terms of what Pac-West was doing.

21 And there is -- I think also, you know, they had a
22 network, as you -- I think you've testified that at least
23 for purposes of this hearing, I think you've -- I think
24 you've also stated in your testimony that you're aware that
25 there was the so-called modem equipment and the related

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1 equipment that was in Tukwila?

2 A Correct. Up until, I believe, the end of 2007.

3 Q Up until a certain period.

4 And by the way, what -- that service area
5 surrounding Tukwila, what -- does that have a name?

6 And that's just for the record and for clarity
7 here.

8 A I don't know.

9 Q Don't know. All right.

10 So looking at page 9, I think we can just bounce
11 through there very quickly. You say how did the Commission
12 originally resolve these issues?

13 JUDGE TOREM: Mr. Mayhook?

14 MR. MAYHOOK: Yes.

15 JUDGE TOREM: Granted, it's your
16 cross-examination, but I think the Commission would make
17 best use of today's time by not going through the docket
18 history that's on pages 8, 9 and 10 unless you need to set
19 further context.

20 I understand there's a recitation on page 11,
21 12 and 13 of this Commission's previous findings in the VNXX
22 docket. And please be assured we're very familiar with this
23 docket.

24 MR. MAYHOOK: I know you are.

25 But I have to tell you, when I read this

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1 testimony it is -- on the recitation, I think it has an
2 effect.

3 And so I just want to make sure that -- and
4 I'm -- as I said before, the issues as they're seen from the
5 LEC perspective were not as settled.

6 So let's go to page 14.

7 JUDGE TOREM: Let's do that after a break.

8 What I'd like to do is come back at 11:15 or
9 as close to that as we can, go for about another hour.

10 You've had about 45 minutes or so today. You
11 said it would take about three hours.

12 But when we come back, we'll pick up for
13 about an hour and then plan for a lunch break of some length
14 that's agreeable after that.

15 Anything else, Counsel, before we take our
16 break?

17 All right. We're at recess.

18 (Recess)

19 JUDGE TOREM: It's a little after 11:15.

20 We'll go back on the record. Back to this witness.

21 CROSS-EXAMINATION (CONTINUING)

22 BY MR. MAYHOOK:

23 Q All right. We're on page 14 now. And this is the
24 testimony relating to the traffic analysis systems, starting
25 with Cross 7 and BI, which is an acronym for Business

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1 Intelligence.

2 I like reading your testimony. And I think I
3 liked reading it so much is why I belabored through the
4 front part. And I will offer the compliment now that this
5 is elaborate testimony. And I know whenever I'm dealing
6 with IT people, it goes right over my head.

7 But this -- do we call it Cross 7?

8 A Cross 7 was an earlier system used, yes.

9 Q So you put the termination date at line 6, and you
10 say it was utilized for reporting until 2009 for QC. And I
11 didn't want to guess at that QC. What is that?

12 A It's Qwest Corporation. I'm sorry.

13 Q That's okay. I thought it probably was. But you
14 know, we're good on that. Okay.

15 It basically -- you did a conversion in 2009. My
16 question is, when did it go into service?

17 A I'm not sure when Cross 7 went into service.

18 It was sometime, I would guess, shortly after the
19 Telecom Act because we use it or used it as a basis for our
20 CLEC billings.

21 Q In my view of these systems, at least in more
22 recent times, and you can help me out on this, this type of
23 system -- and, you know, frankly, when I read this, you
24 know, it felt like, you know, it was an episode of Person of
25 Interest, the machine. And they basically typically

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1 automate a process that might have, in a certain era, been
2 largely manual. This process is automated. So it basically
3 just works lots of data. Is that a fair characterization
4 here?

5 A It is done at a trunk by trunk level throughout
6 our entire network. So I mean, there is a fair amount of
7 number crunching going on when you think about the number of
8 trunks that we would have in our network.

9 Q Okay. But at the end of the day, it's just
10 pulling in data from all points and rolling it up and
11 running calculations and it spits it out?

12 A Correct.

13 Q Okay. So with this type of data, was this the
14 system that created what Mr. Shiffman refers to in his
15 testimony as the summaries?

16 A I'm not entirely familiar with the reference to
17 Mr. Shiffman's testimony.

18 Q Okay. Well, he's been saying you guys haven't
19 provided the detail.

20 And so my question -- and he says what he gets are
21 summaries, and how does he know the summaries are honest?

22 How does he know there's, you know, not some
23 corruption in the data?

24 He doesn't get to see that. He only gets to see
25 -- he doesn't get to see what goes through it. He only gets

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1 to see what comes out of it as it relates to its ultimate
2 reporting on general numbers, as opposed to seeing all the
3 figures that went into the rollup. Does that make sense?

4 A I guess I would respond like this: This system
5 results in a percentage calculation of VNXX traffic. We use
6 this percentage, have used this percentage, to withhold
7 payment on VNXX to Pac-West.

8 At any time they disagreed with that percentage,
9 they could have certainly come to us. We would have shared
10 the data with them, explained, as I've done here, how the
11 system worked.

12 Secondly, I would say as part of this proceeding,
13 Pac-West issued several discovery requests to Qwest. We
14 turned over a significant amount of data, the raw data that
15 goes into the summary calculations.

16 And then finally, I would note that in fact, all
17 of the traffic we're talking about here terminates to
18 Pac-West's own switch. And Pac-West certainly has the
19 capability of monitoring the traffic that's coming to their
20 own switch and verifying the traffic themselves if they're
21 not satisfied with what Qwest has done.

22 And clearly Mr. Shiffman, could have, as part of
23 his testimony in this case, provided his own analysis as
24 well.

25 Q So are you aware or not aware of Mr. Shiffman's

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1 testimony?

2 A I have read Mr. Shiffman's testimony.

3 Q You have read it. So you did read it prior to
4 today's proceeding?

5 A I did.

6 Q Okay. And having read his testimony, he has
7 indicated some of their travails in trying to go back to a
8 certain time period and recover tapes and, more importantly,
9 equipment that could read that particular medium; and that
10 the tapes themselves were in not such good shape, I think,
11 or maybe not. But do you recall that testimony?

12 A I don't recall that level of detail being in the
13 testimony.

14 I'm aware that there apparently were some issues.
15 I read about it in some of the discovery responses.

16 Q Okay.

17 A That Pac-West provided.

18 Q In my experience in billing disputes, you know,
19 typically there are guys out there who are way smarter than
20 I am who --

21 MR. DETHLEFS: Your Honor, I want to make an
22 objection. Too many of these questions are not really
23 questions. They're long statements followed by a question
24 relating to some aspect of what Mr. Mayhook has stated.

25 So I'd ask that Counsel be directed to just

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1 ask questions instead of making prefatory statements before
2 he does that.

3 JUDGE TOREM: Mr. Mayhook?

4 MR. MAYHOOK: I'll behave.

5 JUDGE TOREM: It's not a question of the
6 behavior.

7 I think it's a methodology for crafting the
8 questions. If they could be more focused, I think we'd all
9 appreciate it.

10 Q (By Mr. Mayhook) I do have a conversational style.
11 And I think that's the problem.

12 But the question is simply, aren't there
13 algorithms that people can run on data as it relates to
14 billing disputes.

15 And I'm probably trying to be too deferential to
16 Mr. Easton because I know the folks that do that. And I'm
17 asking you questions in your professional experience,
18 whether, you know, when you were in a billing dispute that
19 you provide the data and you search for the breakage, you
20 search for the corruptions in the data, the double billings,
21 the this and that.

22 This is a little different. I'm not familiar with
23 it. And so -- there's apparently a disagreement over who
24 produced what and who didn't.

25 And I'm just asking you if you provided the data

0377

1 through this Cross 7 system, would it be one that could be
2 subjected to that kind of algorithmic verification which is
3 usually done by a third party?

4 Are you familiar with that?

5 And can you say whether this particular Cross 7 is
6 amenable to that?

7 A You alluded earlier to some problems on the
8 Pac-West side of things in terms of being able to access
9 records of traffic that terminated at their switch. Again,
10 that would be one way to validate it.

11 A third party could compare Qwest's output with
12 what Pac-West's own switch said and do some analysis that
13 way.

14 In the absence of that information, a third party
15 could come in, analyze the Qwest system, look at the overall
16 conceptual description that I've provided here today, and do
17 some sampling of the data to see that they were comfortable
18 with it.

19 Q Do you know what switches they had and whether --
20 what generation and whether those switches had
21 capabilities?

22 Are we talking about the existing switches, or
23 switches going back now ten years?

24 A When you say "they," who are you referring to?

25 Q Pac-West. And thank you for that correction.

0378

1 A I do not know what switches they had and what
2 their capabilities were.

3 Q So you do not know, but you would conjecture that
4 surely they must; is that your testimony?

5 A My conjecture -- well, my understanding, based on
6 my years in the business, is if you've got a terminating
7 switch you can monitor and measure the traffic that
8 terminates to that switch.

9 Q Well, we are talking about ISP modems and servers.
10 And are they required to have CLLI Codes?

11 A I believe they do have CLLI Codes, yes.

12 Q You believe they have it?

13 A Yes.

14 Q You don't know if they're required to have it?

15 A I don't know. I would believe that to be the
16 case.

17 Q I mean, you know, we talk switches, we go back to
18 the '90s, it was DMS-500 classified switches.

19 Now we're into soft switches and metaswitches.
20 And you know, it does -- I get confused. We're talking
21 about existing capabilities, historical capabilities.

22 And so the question is, do you know whether that
23 -- the ISP modem and servers of that era, A), whether they
24 were required to have the CLLI Codes that would -- I think
25 is a requirement of what used to be the classic switches

0379

1 that would fill this room that now is, you know, a little
2 refrigerator or smaller?

3 A I don't know for a fact if they are required to.

4 I believe they would to the extent that they would
5 be a point in the routing of that traffic, there has to be
6 some way to refer to those in the local exchange routing
7 guide so that traffic could in fact get to them.

8 Q When billing disputes occur between carriers,
9 isn't it true as a general practice that they exchange CDR's
10 to try to resolve the dispute?

11 A Depends on the type of dispute. Sometimes that's
12 the case.

13 In this particular case, a CDR, which stands for
14 call detail record, wouldn't do any good.

15 But the call detail record has what the
16 originating telephone number is, what the terminating
17 telephone number is, what time the call occurred, has
18 information about the call duration.

19 But none of that information tells you whether in
20 fact that call was a VNXX call. Remember, the purpose of
21 VNXX calls was to assign numbers to make it appear that it
22 was a local call. So if I've got a call detail record in
23 front of me and I'm going through and analyzing it, I look
24 at a VNXX call on that call detail record just as a Qwest
25 switch would. And I would look at the originating number

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1 and I would look at the terminating telephone number, and I
2 would say that appears to be a local call. That doesn't
3 help with this kind of analysis.

4 And it's for that reason that Qwest has created
5 the system we have using BI, Business Intelligence, and
6 TUMS, T-U-M S, Trunk Usage Management Setup. We've created
7 that system so that in fact based on the switch locations
8 and modem locations, we can determine whether a call is VNXX
9 or not.

10 Q Did you build that system internally?

11 A Yes.

12 Well, there may have been in fact been outside
13 contractors for parts of it.

14 Q I see. Did the analysis in your traffic study
15 assume that ISP modems had CLLI Codes?

16 A I believe it did.

17 Q Okay.

18 A Because we were able to identify the location of
19 that modem.

20 Q Thank you. All right.

21 Let's take a giant leap to page 20. Actually, I
22 think we already covered some of the ground that's reflected
23 on this page as it relates to Pac-West's modems and servers
24 located in Tukwila.

25 But I wanted to ask you earlier, because there was

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1 some discussion that the modem was in Tukwila and then the
2 modem left the state, went to California; and then at
3 another time period there was a deployment, which is
4 addressed later, of multiple switches in Washington.

5 But for present purposes, if a call originates in
6 Washington and terminates in California, is that an
7 interstate interexchange or an intrastate interexchange?

8 A If I understand your example, it originated in one
9 state and terminated in another state, that would be an
10 example of interstate traffic.

11 Q Okay. And then does Qwest report its interstate
12 interchange traffic to the FCC or the WUTC?

13 A Could you repeat the question, please?

14 Q Where this interstate interexchange traffic -- ask
15 my kid to say that three times fast -- that interstate
16 interexchange traffic, is that reported to the WUTC or the
17 FCC?

18 A I don't know what they're reporting.

19 Q Does Qwest report it?

20 A I don't know what the reporting requirements are.

21 Q Okay. Back on page 20, you note that Pac-West had
22 modems in place that were functional in Bellingham, Seattle,
23 and Tacoma. And with this new arrangement, isn't it fair to
24 say since at least July 2010, there have been no apparent
25 issues between Qwest and Pac-West?

0382

1 A I'm not aware of any current issues around VNXX,
2 in part because we now have a new interconnection agreement
3 between the parties that addresses the matter.

4 Q Okay. Moving to page 22, there is some
5 discussion, and we had a brief discussion earlier, regarding
6 the data exchange with Pac-West.

7 And you note, for example, that beginning at line
8 18, the information provided there was helpful; you're
9 relatively dismissive here. You say not really. You say
10 that the total minutes received from Qwest is not
11 necessarily relevant, and then you note because any transit
12 traffic from an originating third party that transits
13 through Qwest's network and terminates with Pac-West should
14 be excluded, and even if it was done, utilizing the total
15 minutes without additional information is of little value.

16 In the preparation of that testimony, is this an
17 area of your expertise that you have direct knowledge, or
18 did you rely on third parties to develop that response?

19 A This is something that I understand.

20 Q Okay.

21 A Keep in mind, what we're trying to determine in
22 this proceeding is the amount of VNXX traffic. It's a
23 subset of total traffic.

24 So just looking at the total traffic figure, which
25 in fact includes some transit traffic that Qwest did not

0383

1 originate, doesn't give us any information about the amount
2 of VNXX traffic. You need more information than that.

3 Q All right. But you yourself as a witness, this is
4 an area that's within your subject matter knowledge and
5 expertise, and that you as a company executive and advocate
6 were able to -- you yourself made the determination
7 regarding relevancy, and you looked at that data yourself;
8 is that correct?

9 A There were a number of people looked at that data.
10 I certainly looked at that data.

11 Q Okay. On page 29 at line 13, and there is --
12 there is -- I think your testimony, it's kind of thematic.
13 There's myriad references to transport that Pac-West
14 allegedly did not purchase.

15 And so maybe with the perspective that you have
16 and your experience, if they're going to have to get to a
17 Qwest end office in an area where they're serving customers,
18 or a tandem, aren't they going to have to have a T1 to get
19 there?

20 A Depends on their volume of traffic.

21 Q Okay. And if they had a volume of traffic --
22 well, let's step back a moment.

23 What, in your estimation -- so it's clear for the
24 record, what would be the formula for having a volume of
25 traffic that would necessitate their having a T1?

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1 A Well, I'm not a network engineer.

2 But let's talk about transport. There's two types
3 of transport.

4 There's what's called dedicated transport, which
5 is transport that's dedicated --

6 Q Well, I'm going to respectfully ask you to back up
7 a minute because I asked you a question as it relates to if
8 there's a volume of traffic -- well, I asked you about
9 wouldn't they need a T1 to get -- they'd have to acquire
10 that T1 from you to Qwest to hit its end office or tandem.

11 And so you said it depends on the volume.

12 So I would like to just focus for a moment so we
13 don't lose that point and have to go back over it again as
14 it relates to what is the formula?

15 Is it an economic decision?

16 I'm giving you a hint.

17 A If I could be allowed to complete my answer, I
18 think it will in fact answer your question.

19 Q All right.

20 A You made the assumption that you needed to decide
21 whether to -- what size dedicated transport to get, whether
22 you get a T1 or a T3.

23 What I'm suggesting is there's a decision that
24 comes before that. And that is whether you use shared
25 transport, where you pay per minute of use, and your

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1 traffic, Pac-West, is going to ride the same facility, a
2 shared facility, as other carriers' traffic. That's the
3 first decision to make.

4 If you've got enough traffic that it becomes cost
5 effective to pay a flat rate for dedicated transport, if you
6 have enough minutes, in other words, it will make economic
7 sense to purchase dedicated transport.

8 And then the next decision you need to make is how
9 large a dedicated transport pipe do you need. And depending
10 on your traffic levels, you decide whether to purchase a
11 larger dedicated pipe or not. There are multiple ways to
12 reach that end office. And they -- those are economic
13 decisions that are made every day in this industry.

14 Q Okay. So whether it's a T1 or something else, you
15 said they don't purchase dedicated transport throughout
16 these calls.

17 But I'm suggesting wouldn't they have to have
18 something to hit the end office or a tandem?

19 A There has to be a connection in the network,
20 correct.

21 Q Thank you.

22 On page 31, throughout the testimony there are
23 multiple references that use terms that I would regard as --
24 they're furtive, they're negative. It says at line 19 and
25 20, Pac-West did not order switched access services out of

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1 the tariff, but chose instead to conceal the true
2 interexchange nature of the VNXX traffic to avoid access
3 charges.

4 As you sit here today, honestly, do you have any
5 personal knowledge as to any intent or intention to conceal
6 the nature of the traffic?

7 A Absolutely. As we talked a few moments ago, the
8 whole purpose of VNXX and the only reason a carrier would
9 ever assign numbers in that manner is to make it appear that
10 interchange calls are local calls. And the reason I say
11 that is because numbers are assigned where there is no
12 physical location in that local calling area.

13 Q Okay. So whether from a regulatory perspective,
14 which would be a matter of public policy, or through a
15 company perspective as it relates to its own operations in
16 satisfying the demands of its owners or shareholders or just
17 to have a sustainable business, isn't it a key assumption
18 that in deploying your network, whether you build one or
19 lease elements, isn't it a fact that every company will look
20 for the most efficient and economic path that it can find?

21 A I would agree.

22 Q Okay.

23 A Understand that there are rules and regulations
24 associated with various network configurations, and there
25 are consequences to choosing one form of network over

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1 another.

2 Q Yes. And some of these matters -- we talk about
3 1984. I mean, we could have -- and I'm not arguing with
4 you. I don't want to do that. But these seem to be legacy
5 concepts that are somehow out there in a time period of sea
6 change.

7 And I have before me these files, myriad orders,
8 and great complexity, and I think --

9 JUDGE TOREM: Is there a question?

10 Q (By Mr. Mayhook) The question. I apologize. I'll
11 withdraw.

12 On page 35 you were asked the question in your
13 direct testimony, Are you aware of another state commission
14 that has ordered this type of compensation treatment for the
15 VNXX traffic.

16 And you cited an Oregon case in 2006 involving
17 Qwest and Level 3.

18 Isn't it true that there were other jurisdiction
19 that had contra views?

20 A I'm sure that's the case, as we discussed earlier.
21 It's taken some time for the courts to clarify what settled
22 law on this issue is.

23 Q Okay.

24 A But I threw this out. It happened to be an
25 arbitration that I participated in. And this is how one

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1 commission that I was aware of chose to address the
2 transport issue.

3 Q Fair enough.

4 You know, one matter I overlooked that I want to
5 catch before we leave your direct testimony, on page 10 --
6 okay. We're at line 6.

7 A On page 10?

8 Q Yes. In July 2008 the Commission issued its final
9 order in the VNXX complaint case finding that VNXX service
10 was lawful if compensation was paid to the originating LEC
11 for transporting. That is your testimony.

12 And so my question is, can you state -- I guess
13 the question is -- and I think I really need help on this
14 one. Do you know the order that you're referencing there?

15 The date the order was released? Okay. Strike
16 that.

17 So the question is, in the final VNXX order, did
18 this Commission require any of the CLEC's to refund payments
19 received prior to July 2008?

20 A I don't believe so. Again, that was a complaint
21 proceeding. It was different in that it didn't involve the
22 interpretation and enforcement of an interconnection
23 agreement that the parties were operating under, such as
24 this proceeding does.

25 Q Okay. So -- but -- all right. So your answer is

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1 you don't think so?

2 A Why don't you repeat the question just to make
3 sure I understand.

4 Q Did this Commission, the Washington Commission, in
5 that final VNXX order, require any of the CLEC's to refund
6 payments received prior to July 2008?

7 A And my answer would be no, they did not. And that
8 had to do with the nature of that proceeding being very
9 different in nature than the proceeding we're in today.

10 Q Thank you.

11 Following the issuance of the final VNXX order,
12 did any CLEC in the State of Washington actually, despite
13 what the Commission required, did any CLEC in the state
14 actually provide Qwest a refund of any recip comp payments?

15 A Related specifically to that order?

16 Q Yes. Did they voluntarily say, Hey I owe you some
17 money, pay you back?

18 A I'm not aware of that.

19 Q I guess the better way of saying it is did anyone
20 monetarily pay a refund?

21 A Not that I'm aware.

22 Q Is Qwest the only ILEC in the State of Washington?

23 A I don't believe so.

24 Q I think you're right.

25 Can you mention any of the others that you're

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1 aware of?

2 A There would be some independent companies.

3 Q Okay. How about Verizon?

4 A Verizon would be another example.

5 Q Okay. All right.

6 On to the rebuttal testimony. On page 21, line
7 16, you say Qwest has explained to Pac-West that CDR's do
8 not contain information on the physical location of the
9 originating and terminating callers.

10 And so I ask you, as far as that explanation goes,
11 was that something that occurred within your personal
12 knowledge?

13 Are these things you know about, or did you have
14 people within your own company that you ask questions and
15 they give you the lowdown on what's there and what's not
16 there?

17 A There are certainly people in the company I can
18 consult with on these matters.

19 This is clearly something I understand from my
20 years in the business.

21 Q You do understand. So you didn't consult with
22 anyone on this?

23 A I spoke with people about this particular issue.

24 But again, if CDR's in fact contained the
25 necessary information, Qwest wouldn't have gone to the

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1 trouble and expense of creating the systems it has in order
2 to produce the traffic studies that I referred to in my
3 testimony.

4 Q Is it possible that inside of the CDR itself that
5 you would find -- you will have a trunk group with a
6 physical location referenced inside of it?

7 A I believe that's possible.

8 Q It's possible.

9 And if you have that physical location inside of
10 it and you couple that with the CDR's from the modems, would
11 that give you more accurate representation where the
12 equipment is located?

13 A Again, you need to know where the terminating
14 switch is and where the originating switch is. And I don't
15 believe, based on my understanding of call detail records,
16 that that information is contained in those records. And
17 certainly that wasn't the view of our technical experts in
18 the company who said look, if you really want to track down
19 VNXX calls, this is the methodology you need to use.

20 Q And I'll accept that as your response. And that's
21 fair.

22 I would only ask is it possible that sometimes
23 techs in particular, that they like things the way they like
24 them and in their view, this is how things are done and
25 unless you give it to me the way I like it, I'm not going to

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1 mess with it because it's a burden?

2 Is that fair?

3 A I would say based on my knowledge of our company,
4 that clearly was not the case here.

5 I mean, this is very expensive technology and
6 software to deploy. And it's not deployed and purchased
7 based on the whim of a tech not being comfortable looking at
8 things a different way.

9 Q Now, as I understand it, your statement, you said
10 or referred to the terminating switch and the originating
11 switch, correct?

12 A Correct.

13 Q Okay. We are talking about modems?

14 A Correct.

15 Q And is the modem somehow the functional equivalent
16 of -- in this context is it like a terminating and
17 originating switch?

18 A In the case of Level 3, the switch and modem
19 happened to be co-located.

20 I don't believe that's necessarily the case with
21 Pac-West. We used their modem locations.

22 Q And you wouldn't know if their switch has that
23 same functionality, let's say, as the Level 3 switch?

24 A I don't know how their switches compare.

25 Q Okay. Just for clarification of the record -- and

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1 I do this all the time -- you referred to "their." And so
2 "their" is in the possessive. So who are we talking about,
3 "there"?

4 A You asked me a question about how the Level 3
5 switch compared with the Pac-West switch.

6 And I replied that I don't know how their, meaning
7 Pac-West and Level 3's, switching compare.

8 Q All right. Let's look at page 8.

9 MR. MAYHOOK: And I think we're winnowing
10 down. When are we taking a break for lunch?

11 JUDGE TOREM: 12:15.

12 MR. MAYHOOK: Okay. I just --

13 JUDGE TOREM: You don't have to fill the time
14 until 12:15.

15 MR. MAYHOOK: I'm kind of getting into my
16 odds and ends.

17 JUDGE TOREM: Okay. We're on page 8 of his
18 rebuttal testimony?

19 MR. MAYHOOK: Page 8.

20 Q (By Mr. Mayhook) So the statement is at line 13.
21 And it says, (as read), However, as I discussed in my direct
22 testimony, Qwest was forced to develop a special traffic
23 study methodology to measure this traffic due to the fact
24 that the existing switch recording information and systems
25 cannot distinguish VNXX traffic from legitimate local

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1 traffic.

2 So first of all, are we talking about the Cross 7
3 system here, the one you said was internally developed?

4 A In my testimony I talked about our traffic study
5 methodology. I mentioned three different parts of that:
6 Cross 7, which has since been replaced by Business
7 Intelligence, or BI, and also the TUMS system that we
8 discussed earlier. That's what I'm referring to there as
9 the traffic study methodology, the one that I've described
10 in my testimony and that you and I spoke about a little bit
11 earlier.

12 Q All right. Well, I'm just kind of wondering to --
13 whether and to what extent that when you say were forced to
14 develop a special traffic study methodology earlier when we
15 were discussing the Cross 7, is that methodology embedded in
16 the Cross 7?

17 Is it part of the platform?

18 A The methodology uses -- or at that time initially
19 used Cross 7 information in its analysis.

20 Q Okay. And I think earlier did you say that the
21 Cross 7 was deployed in '96?

22 A I believe so.

23 Q Okay. Let me take one last look at my notes here.

24 My apologies. Maybe you can help me. Did you
25 discuss the interest issue in your testimony?

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1 A Yes.

2 Q Okay. Do you recall what page?

3 A I address it both in the direct and in the
4 rebuttal.

5 Q Yes. And like I say, I'm just going down my --
6 we're closing in. All right. Page 5 in the rebuttal.

7 JUDGE TOREM: Mr. Mayhook, what are you
8 looking for?

9 MR. MAYHOOK: I wanted to have a brief
10 discussion on the interest rates.

11 JUDGE TOREM: I understand.

12 MR. MAYHOOK: And I'm thinking that's about
13 it.

14 JUDGE TOREM: Are you looking for it in the
15 direct testimony?

16 MR. MAYHOOK: Yes. I've got the direct
17 reference to it in 5. And I'm just wondering if in the
18 order of things -- and it relates to a response to Mr.
19 Green. But I think it is somewhat valid.

20 Do we have that in the direct as well? I'm
21 sorry.

22 JUDGE TOREM: It's on page 25 through 28 in
23 the direct. It's mentioned.

24 Do you want to just craft a question from
25 whole cloth?

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1 I think we understand the basic arguments
2 going back and forth.

3 Q (By Mr. Mayhook) Yes. I think there has been some
4 -- and I don't know if I'll get to discuss it again after
5 Mr. Easton's released. So there has been, you know,
6 discussion about interest rates.

7 And there has been, as I understand it, some
8 position taken -- and if it's not a position, we don't need
9 to talk about it, but there's -- is there a position that --
10 on the interest rate, is your position 12 percent?

11 A It's 12 per -- I discussed that in my testimony.
12 It also shows up in the exhibits. But that is the rate
13 we've used. It's the statutory rate for judgments in this
14 state.

15 As I noted earlier, the fact when Qwest was
16 ordered to refund Pac-West dollars back in 2006, the rate of
17 interest that Qwest paid was considerably higher than that.

18 Q What does Qwest allege is the time period
19 calculation for the 12 percent?

20 A Well, it goes back to when -- we can look at an
21 exhibit if you want to. It shows the calculations by time
22 period.

23 Q But for the record, can you tell me what time
24 period that it is Qwest's position is applicable to today's
25 evidentiary hearing?

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1 A If we look at Exhibit WRE-8C, which is a
2 confidential exhibit, you can see the 12 percent interest
3 calculations and the periods for which it applies. The
4 interest calculation is ten columns over.

5 Q So are we saying here -- is Qwest saying here that
6 the applicable interest calculation for the purpose of this
7 evidentiary hearing will run from February '6 to December
8 '7?

9 A So that exhibit is the basis for the refund
10 calculation.

11 Q Say that again?

12 A That exhibit is the basis for the refund
13 calculation. And it goes back to the time period when the
14 refund was made by Qwest to Pac-West.

15 Q All right. And that's -- I guess from a factual
16 perspective, I basically have two questions here.

17 One is I want to make sure that when you leave the
18 witness stand that the period that is in Qwest's view
19 subject to the 12 percent interest will run from the bill
20 date reflecting the February '6 billed amount; and that as I
21 am looking at this chart, it seems to run from February '6
22 to December '7.

23 And I just want to make sure that if there's
24 additional claims, I need for know about them now. So what
25 I see here is February '6 to December '7.

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1 And then -- do you want to respond to that before
2 I go to my next one?

3 A Yes. Let me explain the rationale for the time
4 periods.

5 In February of 2006, the Washington Utilities
6 Commission ordered Qwest to pay Pac-West and Level 3 the
7 reciprocal compensation for past periods. So that's the
8 time period at which money changed hands and Qwest no longer
9 had the use of that money. So that's the time period that
10 you begin applying your interest to. That's the starting
11 time period. Okay?

12 And the interest should continue to accrue up
13 until present day because we've been without the use of that
14 money.

15 Q So your testimony is that the interest accrues to
16 now, and it's accruing on a principal amount that runs from
17 February '6 to December '7?

18 A Correct. Actually --

19 JUDGE TOREM: Can I just clarify for the
20 record? You're saying December '7 as though it's a date. I
21 think we're talking February 2006.

22 MR. MAYHOOK: You're right. I apologize.

23 JUDGE TOREM: And December 2007.

24 MR. MAYHOOK: I meant to say that. So thank
25 you.

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1 THE WITNESS: Actually, it should be up
2 through April 2007 when the district court ruling occurred
3 remanding the decision back to this Commission. We stopped
4 making payments at that point in time, so the principal
5 would have stopped growing.

6 JUDGE TOREM: Is that reflected in the
7 exhibit by a break in the dates at April and May of 2007?

8 THE WITNESS: Yes. And there are some
9 figures for May of '07 to December of '07. As I've
10 explained in my testimony, that had to do with some trueups
11 of withholding percentages that were used by Qwest. As a
12 result of going to a month by month VNXX percentage, we
13 actually ended up overwithholding, if you will, for that
14 period May of '07 through December of '07.

15 Q (By Mr. Mayhook) And yes, whatever I said, I meant
16 to say February 2006 through December '7.

17 And I guess my question goes to, you know, if the
18 principal remains static or, you know, are you rolling the
19 accrued interest into principal?

20 And then I guess I would have to ask, you know,
21 just the assumptions as I see -- I've got the billed amount
22 on the left-hand side of the page. I've got the interest on
23 the right-hand side. And so you know, what are the
24 assumptions on, you know, the interest column?

25 Is it being compounded?

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1 A No. This is simple interest. This is not
2 compounded interest. You see a separate interest column.
3 And a principal and interest column.

4 MR. MAYHOOK: That concludes our questioning
5 of Mr. Easton.

6 JUDGE TOREM: That concludes our
7 cross-examination.

8 I hope you'll take the lunch period to
9 determine what, if any, redirect is necessary. The
10 Commission may also have some additional questions that
11 we'll pose directly after the lunch break if there are any.

12 If we go back on the record at 1:30, does
13 that give everyone sufficient time?

14 MS. ANDERL: Yes, I think so.

15 JUDGE TOREM: Then we're at recess until 1:30
16 p.m.

17 (Luncheon recess.)

18

19 JUDGE TOREM: Back on the record.

20 It's 1:37 on the clock. And we had finished
21 the cross-examination of Mr. Easton.

22 Rather than me pose any questions I might
23 have, I'm going to allow Mr. Dethlefs, see if you have any
24 redirect, and then we'll see if that might answer anything I
25 might already have.

0401

1 RE-DIRECT EXAMINATION

2 BY MR. DETHLEFS:

3 Q Mr. Easton, If you could look at page 22, line 14
4 of your direct testimony.

5 A Okay. I'm there.

6 Q The word "date" is used in that line. Is that the
7 correct word?

8 A It should be "data." So the word "a" which
9 precedes "date" and the word "date" should be stricken and
10 replaced by the word "data."

11 Q Okay. Thank you.

12 You were asked some questions this morning about
13 whether any of the other CLECs refunded the money to Qwest
14 after the Commission rendered its VNXX complaint case
15 decision.

16 And I believe you testified that they did not.
17 Can you explain why?

18 A Pac-West and Level 3 were not the only CLECs that
19 Qwest withheld dollars related to VNXX from. And so at the
20 time of that order, there were not refunds to be made from
21 Qwest's perspective.

22 Q And by "refunds," you mean refunds from CLECs to
23 Qwest; is that correct?

24 A Correct.

25 Q Okay. Did any of the other CLECs other than

0402

1 Pac-West and Level 3 bring complaint cases before the
2 Commission for compensation for VNXX traffic?

3 A No. It was Pac-West and Level 3, were the two
4 CLECs who did bring complaints.

5 Q And payments to CLECs from Qwest were withheld
6 from the very beginning on VNXX traffic; is that correct?

7 A Correct.

8 Q If you could look at Exhibit 8C to your direct
9 testimony, I'd like to go over how the interest calculation
10 is made on this page and have you explain it.

11 I'll point your attention to the final column on
12 the page indicating "Date Paid." What does that date
13 represent?

14 JUDGE TOREM: This is on page 1?

15 MR. DETHLEFS: Page 1 of 8C, that is correct.

16 THE WITNESS: The exhibit is titled "VNXX
17 Minutes Paid Under Protest." That would be the date that
18 those payments were made.

19 Q (By Mr. Dethlefs) And by "those payments," you
20 mean payments from Qwest to Pac-West; is that correct?

21 A Correct.

22 Q And please don't relay any of the numbers. The
23 numbers are confidential. I don't think the headings are.

24 The seventh column, there's a single number in
25 that column. Do you see that?

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1 A Yes, I do.

2 Q And what does that number represent?

3 A That is the amount that Qwest paid Pac-West as a
4 result of the Commission's initial order in this proceeding.

5 Q And then the next column, there's a series of
6 numbers under the title "VNXX Paid in Protest"?

7 A Correct.

8 Q What do those numbers represent?

9 A After the Commission's initial order, we started
10 paying CLECs again for the order. We paid in protest. So
11 those were amounts that Qwest paid to Pac-West.

12 Q And would those have been monthly payments?

13 A That is correct.

14 Q And why did the payments cease in April of 2007?

15 A That was when there was a district court ruling.
16 It remanded the issue back to this Commission.

17 Q And what did Qwest do with respect to VNXX traffic
18 after that decision?

19 A We quit paying for that traffic.

20 Q The next column over says "Interest R 12 percent,"
21 and there's various percentages underneath that. Do you see
22 that?

23 A Correct.

24 Q What do those percentages represent?

25 A That is the interest from the time the payment was

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1 made up until 12/31 of 2012.

2 Q And it's expressed as a percentage. What's the
3 percentage to be applied to?

4 A It's 12 percent interest, so it's one percent per
5 month. So for any given payment, it would be the number of
6 months from that payment date up to 12/31/2012.

7 Q Times the interest rate?

8 A Correct.

9 Q Of one percent per month?

10 A One percent per month. So if, for example, it
11 said 69 percent interest, that would represent 69 months.

12 Q Okay. And the interest, 12/31/2012, the next
13 column over, does that represent the actual amounts?

14 A Correct.

15 Q Was there any compounding done?

16 A No. Compounding refers to applying interest to
17 interest.

18 That was not done here. This was -- as you can
19 see, previous two columns, it was -- interest was just
20 applied to the principal amounts.

21 Q Okay. There's a break in the page between the
22 column -- in the columns and numbers. Do you see that?

23 A I do.

24 Q Going horizontally. What do the numbers below
25 that break represent?

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1 A From the time of that district court ruling, we
2 were withholding payment from Pac-West based on a calculated
3 VNXX percent. We have gone -- at the time, it was a frozen
4 percentage.

5 We have since gone back and calculated a
6 month-by-month percentage based on the traffic analysis in
7 that particular month. As a result of that month-by-month
8 percentage, we withheld too many dollars from May '07 to
9 December '07.

10 In other words, the actual percentage of VNXX
11 traffic was lower than the fixed percentage we had used
12 previously.

13 Q And those represent amounts that should be
14 credited to Pac-West; is that correct?

15 A That's correct.

16 Q And those --

17 A Those have also had interest applied to them just
18 as we did with the positive amounts.

19 Q And otherwise the table works the same on top as
20 the bottom?

21 A That's correct.

22 MR. DETHLEFS: No further questions, your
23 Honor.

24 JUDGE TOREM: So while we're on this exhibit
25 -- I think Mr. Dethlefs got most of the questions I would

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1 have had to explain this chart, Mr. Easton.

2 Let's take a look again above that break. It
3 shows a lump sum payment as a result of this Commission's
4 order, and the amount of interest applied to that would be
5 -- it looks to be 82 months times 12 percent interest per
6 month; is that right?

7 THE WITNESS: Correct.

8 JUDGE TOREM: Adds up to the figure under the
9 interest as of December 31st, 2012, column?

10 THE WITNESS: Yes.

11 JUDGE TOREM: And then adding that figure
12 with the lump sum gives you the principal and interest
13 figure?

14 THE WITNESS: Yes.

15 JUDGE TOREM: And that procedure is done with
16 each month's interest on the monthly VNXX payment all the
17 way through April 2007?

18 THE WITNESS: Yes.

19 JUDGE TOREM: And then credits are applied,
20 as you say, for over-withholding interest on those amounts,
21 and those are deductions essentially.

22 And at the bottom right-hand of the table,
23 there's a total due. That includes what Qwest is seeking as
24 a refund of the lump sum from March 2006, all of the VNXX
25 payments including any over-withholdings in the next column,

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1 plus the next column full of interest. Is that -- those
2 three on the bottom are added together to get that lump sum?

3 THE WITNESS: Yes.

4 JUDGE TOREM: Now, this stops December 31st
5 of last year. It was submitted in September of 2012. Was
6 there a reason, to your knowledge, why it was projected out
7 to the end of the year?

8 Was that an optimistic hope when this case
9 might be finished?

10 THE WITNESS: We picked it because it was
11 year-end. In theory, interest could still be applied until
12 settlement occurs.

13 JUDGE TOREM: So from Qwest's perspective, as
14 far as the interest rate, it's 12 percent; and it should be
15 applied in any number of additional months, from this chart
16 would be January of 2013 as well as this month, February, of
17 2013 until the Commission issues an order?

18 THE WITNESS: Correct.

19 JUDGE TOREM: And this interest we're talking
20 about in Exhibit 8C is simply interest on the refund and any
21 other payments made under protest, the refund due from the
22 Commission's ordered payment in March 2006?

23 THE WITNESS: Yes.

24 JUDGE TOREM: Now, are there additional funds
25 that Qwest is also seeking that are not in the form of a

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1 refund that interest would be applied to?

2 THE WITNESS: We had -- in addition to the
3 refund amounts, we've also asked for compensation for the
4 transport. We have not chosen to apply interest to those
5 transport amounts.

6 JUDGE TOREM: Okay. So if I understand
7 correctly, there's two different awards Qwest is seeking,
8 and your testimony, I think, sets that out. The interest
9 would only be applicable to the refund?

10 THE WITNESS: Correct.

11 JUDGE TOREM: All right. I think that takes
12 care of the questions that I had.

13 Mr. Dethlefs, does that require any further
14 redirect from your perspective?

15 RE-DIRECT EXAMINATION

16 BY MR. DETHLEFS:

17 Q Just one further question.

18 I believe you were asked whether it was 12 percent
19 per month, and I thought you said yes. That's an annual
20 rate; isn't that correct?

21 A It's an annual rate. So on this exhibit we were
22 just looking at, it would be one percent per month.

23 Q And is that intended to be until it's paid or
24 until the Commission's order is entered?

25 A From a financial standpoint, it should be until

0409

1 it's paid.

2 Q That's all I have.

3 JUDGE TOREM: Mr. Mayhook, does that raise
4 any cross-examination that you want to delve into?

5 RE-CROSS-EXAMINATION

6 BY MS. MAYHOOK:

7 Q I think we can -- just one simple follow-up
8 question, what you began your redirect with.

9 You were -- in talking about that other docket,
10 the final VNXX order, and the question regarding whether any
11 other CLECs sought -- or Qwest sought refunds from them or
12 if they paid them, you indicated that Qwest also withheld
13 payments; and so from your perspective, there really wasn't
14 anything to pull back; and then further, that the CLECs --
15 no other CLECs, to your knowledge, had initiated complaints
16 like Pac-West or Level 3 had with the Commission to resolve
17 the compensation.

18 I'm just wondering -- all of these carriers
19 probably have interconnection agreements with Qwest. And I
20 guess, have you had experience working with carriers
21 negotiating interconnection agreements?

22 A I don't typically get involved in negotiations.

23 I would get involved with arbitrations.

24 Q Which result from failed negotiations?

25 A Right.

0410

1 Q And would it be fair to say that there's generally
2 -- whether it's an interconnection agreement or maybe even a
3 commercial arm's length agreement between two carriers, that
4 there's some amount of horse trading that goes on, "I'll
5 give on this point if you give on that point," and that's
6 kind of the -- is that a fair --

7 A There is some of that that goes on in
8 negotiations, although typically, we like to have standard
9 language to ensure that carriers are treated in the same
10 manner.

11 MS. MAYHOOK: I'll accept that. Thank you.

12 JUDGE TOREM: Counsel, anything else for this
13 witness?

14 MR. DETHLEFS: No, your Honor.

15 JUDGE TOREM: All right. I'm not getting the
16 sign that there's any other Commission questions I need to
17 pose either.

18 So thank you very much, Mr. Easton, for your
19 testimony.

20 I think we're ready to hear from Mr. Shiffman now.
21 Given that we've only been back on the record for about 15
22 minutes, is there any need to take a break to get
23 Mr. Shiffman ready?

24 MS. ANDERL: Your Honor, just for me to
25 arrange my cross exhibits up here, that would be great.

0411

1 JUDGE TOREM: Let's take five minutes and
2 stick around the room here, and at two o'clock on the dot
3 we'll have Ms. Anderl ready to go and Mr. Shiffman by two
4 o'clock be comfortable in the chair. We'll be at recess.

5 (Recess.)

6 JUDGE TOREM: Back on the record at 2:00.

7 Ms. Anderl, it sounds like you're ready to
8 go, so I'm going to ask counsel for Pac-West which of you is
9 going to handle -- so I'll swear in your witness, and then
10 we'll go through the formalities and you can tender the
11 witness for cross-examination.

12

13 <<<<< >>>>>

14

15 SAM SHIFFMAN, witness herein, having been first duly
16 sworn on oath, was examined and
17 testified as follows:

18 JUDGE TOREM: Can you state and spell your
19 last name for the record.

20 THE WITNESS: Last name is S-H-I-F-F-M-A-N.

21 DIRECT EXAMINATION

22 BY MR. MAYHOOK:

23 Q Thank you.

24 Have you prepared the direct prefiled testimony in
25 this exhibit, which I do not have in front of me, which is

0412

1 -- do you have it?

2 JUDGE TOREM: We've numbered that now as
3 SS-1T, and the reply testimony as SS-2T.

4 Q (By Mr. Mayhook) SS-1T, have you prepared that
5 testimony?

6 THE WITNESS: Correct. Yes.

7 MR. MAYHOOK: Move for acceptance of his
8 testimony.

9 JUDGE TOREM: Is that going to be your direct
10 and reply testimony, 2T?

11 MR. MAYHOOK: Yes.

12 JUDGE TOREM: Any objections to its admission
13 to the record?

14 MS. ANDERL: No, your Honor.

15 Tender for cross?

16 JUDGE TOREM: I believe so.

17 CROSS-EXAMINATION

18 BY MS. ANDERL:

19 Q Good afternoon, Mr. Shiffman.

20 A Good afternoon. Sorry. I'm nursing a bit of a
21 cold.

22 Q If you need to stop and hit the cough button, go
23 right ahead.

24 My name is Lisa Anderl. We met back in November
25 at the mediation, and I'm going to be asking you some

0413

1 questions today.

2 Let me get some background from you first. By
3 whom are you employed at this point?

4 A I'm employed by UniPoint Holdings, Inc., I
5 believe.

6 Q And since -- for what duration of time have you
7 been employed by UniPoint Holdings?

8 A Ten to twelve years or so. Twelve.

9 Q If your LinkedIn profile said you had been there
10 since 1998, does that sound like that can be accurate?

11 A Actually, those are two separate companies. Both
12 companies have run under the DBA PointOne.

13 Q So ten or twelve years at UniPoint Holdings?

14 A Correct.

15 Q And in what capacity?

16 A Executive vice president.

17 JUDGE TOREM: Mr. Shiffman, can I ask you to
18 pull that microphone a little more in front of you so it
19 picks up. It will help me, and I'm sure it will help the
20 court reporter.

21 Q (By Ms. Anderl) And executive vice president with
22 what types of duties and responsibilities?

23 A Over the period of time, it's varied quite a bit.
24 It's gone from engineering roles to regulatory roles to even
25 sales support sort of roles. So it crosses the business

0414

1 quite a bit.

2 Q And your prior employment with the company that
3 was under the DBA of PointOne, what company was that? Was
4 that just UniPoint?

5 A No. That was just PointOne.

6 Q And what happened to PointOne?

7 A PointOne went through a Chapter 11 bankruptcy
8 restructuring.

9 Q When was that?

10 A The end of 2011, I believe. Sorry. The end of
11 2001.

12 Q Okay.

13 A Off by a factor.

14 Q And were you one of the founders of PointOne?

15 A I was one of the founders of UniPoint Holdings.

16 Q And were some of the other founders of UniPoint
17 Holdings also founders of PointOne?

18 A Correct.

19 Q And UniPoint Holdings has, as of September 2011,
20 entered into an agreement to either acquire or merge with or
21 somehow consolidate with Pac-West; is that right?

22 A That sounds about the right time period.

23 Q Is Pac-West still a separate legal entity?

24 A Yes.

25 Q It's not yet a part of UniPoint Holdings?

0415

1 A It is part of UniPoint Holdings, but it is a cell
2 of UniPoint Holdings.

3 Q So when was that merger actually -- or acquisition
4 consummated?

5 A That is somewhat of a rolling question in the
6 sense that there is not an exact date associated with that
7 because the last public utility Commission to approve the
8 acquisition was California late last year, late 2012. Once
9 that was complete, we could follow through with the
10 California Secretary of State in making all of the merger
11 documents complete. That happened late December, 2012.

12 Q So Pac-West is still a separate entity?

13 A Yes.

14 Q Separate corporate and legal entity?

15 A It is one of the companies underneath UniPoint
16 Holdings, but it is a separate California entity.

17 Q And do you have -- do you also hold a position
18 with Pac-West?

19 A I hold a position with the holding company. So by
20 that nature, yes.

21 Q But not directly for Pac-West?

22 Are you an officer or director of Pac-West?

23 A No.

24 Q Do you know how many employees Pac-West has?

25 A I would have to guess. I don't have a certain

0416

1 amount of knowledge. If you'd like an estimate, I can give
2 you that.

3 Q An estimate would be better than a guess.

4 A A guesstimate?

5 Q Approximately.

6 A Between maybe 40 and 60.

7 Q Is Pac-West a registered CLEC in the state of
8 Washington, Pac-West Telecomm?

9 A To my knowledge, they are, yes.

10 Q And is Pac-West Telecomm still operating in
11 Washington?

12 A Yes.

13 Q And providing services to customers in Washington?

14 A Yes.

15 Q Okay. Do you know what Pac-West's annual
16 intrastate operating revenues for the state of Washington
17 were in the last reported period, which was 2011?

18 A Not offhand, no.

19 Q If I were to ask you to accept, subject to check,
20 that it was between 650- and \$700,000, would you be able to
21 do that, with the source of your ability to check being a
22 publicly filed document with the Commission?

23 A The annual or quarterly report, yes, sure. If
24 that's what it says.

25 Q What types of services generate those revenues in

0417

1 Washington?

2 A In Washington, Pac-West generically and -- which
3 would hold true for Washington, offers, for the most part,
4 wholesale services to other carriers and service providers.

5 Q Including Internet service providers?

6 A That would be one, yes.

7 Q Okay. And forgive the question, because maybe it
8 answers itself. But does UniPoint Holdings have a line of
9 business or is it simply a holding company?

10 A It is simply a holding company.

11 Q So it doesn't generate revenues or provide
12 services?

13 A It does not have any direct services that it
14 provides.

15 Q And when Pac-West went through its bankruptcy
16 proceeding, you were not employed by Pac-West at that time,
17 were you?

18 A No.

19 Q Were you involved at all in the bankruptcy
20 proceeding?

21 A No.

22 MS. ANDERL: Your Honor, let -- well, let me
23 ask a couple of other foundational questions before we do
24 this.

25 Q (By Ms. Anderl) Mr. Shiffman, you prepared

0418

1 testimony in this docket; is that right?

2 A That's correct.

3 Q And you assisted counsel with the preparation of
4 Pac-West's discovery responses to Qwest's data requests?

5 A Correct.

6 Q Did you review any pleadings in the docket as they
7 were filed over the last year to two?

8 A I have reviewed some. I wouldn't say it's the
9 complete set in the docket.

10 Q Did you go back into the 2005/2006 time frame when
11 the Pac-West docket was not consolidated with Level 3 and
12 read any of the orders or pleadings from that time period?

13 A So I've been working on this matter for probably
14 about a year now. During the course of that year, I have
15 read some of those as well.

16 Q In connection with your assistance in the
17 preparation of data request responses, I have a document
18 that I would like to have identified as Exhibit SS-3X, which
19 simply means it's the next exhibit in line for you, and the
20 "X" stands for cross. We'll keep a copy here for me.

21 MS. ANDERL: And then, your Honor, how many
22 copies for the bench?

23 JUDGE TOREM: If you can hand one to me and
24 one to staff at back counsel table.

25 MS. ANDERL: Sure.

0419

1 Q (By Ms. Anderl) Mr. Shiffman, do you recognize
2 this document as Pac-West's response and supplemental
3 response to Qwest's Data Request No. 4?

4 A Yes.

5 Q And based on the heading, is it correct that you
6 assisted in the preparation of the supplemental response
7 that starts in about the middle of the page?

8 A Assisted, sure. Yeah.

9 Q Okay. Who's Jen Olson (phonetic)?

10 A She is somebody in Pac-West's finance department.

11 Q Okay. And can you explain to me what you mean
12 about the last line there where it states that Pac-West
13 essentially -- Pac-West's position that the Commission has
14 up until now elected not to enforce Orders 12 and 13?

15 Can you talk about what you think that means, or
16 what you meant when you said that?

17 A I believe the Commission hasn't sent orders to
18 enforce 12 or 13.

19 Q So if the Commission had issued a mandate saying
20 that it was intending to enforce those orders, do you
21 believe that that would have triggered a responsibility on
22 the part of Pac-West to pay the amounts demanded and/or fund
23 the previously agreed-upon escrow?

24 A I don't believe the Commission has ordered
25 enforcement of them because there isn't a rate or volume of

0420

1 traffic that the parties have been able to agree to yet.

2 Q Are you aware that in the Order No. 3 in the
3 Pac-West docket issued by the administrative law judge in
4 2005, that the administrative law judge ordered Qwest to pay
5 Pac-West based on the Pac-West demand amount?

6 A I don't specifically have Order 3 in front of me
7 right now. But I am aware that there is an order that the
8 Washington Commission had Qwest make payments to Pac-West
9 based upon the amounts of Qwest's self-help efforts up to
10 that point.

11 Q Right. And that amount that was ordered to be
12 paid, which I don't think is confidential and I believe is
13 in -- some \$637,000 in the order, that was based on
14 spreadsheets that Qwest prepared; is that right?

15 A I don't know the answer to that.

16 Q But if it says that in the order, then you would
17 assume that?

18 A I would assume that's what happened.

19 Q So to the best of your knowledge, in the 2005
20 period of time, Pac-West did not challenge Qwest's
21 methodology of calculating the VNXX traffic?

22 A I don't understand the question.

23 Q Okay.

24 MS. ANDERL: Your Honor, I don't think I have
25 any other questions on this exhibit given that the witness

0421

1 has been able to authenticate it. We would move its
2 submission.

3 JUDGE TOREM: Any objections?

4 MR. MAYHOOK: No objection, your Honor.

5 JUDGE TOREM: 3X is admitted.

6 MS. ANDERL: Thank you, your Honor. Let me
7 recapture my place.

8 Q (By Ms. Anderl) Do you know if Pac-West has a
9 reserve or accrual in order to pay the refund demand should
10 Pac-West not prevail in this docket?

11 A I know that the letter that you talked about, the
12 triple A letter, had a requirement to hold the reserve.
13 That requirement expired three years after the letter was
14 executed.

15 So past that, I don't know if they've kept that
16 reserve or not.

17 Q You don't know?

18 A Not part of my FO.

19 Q You didn't inquire?

20 A That wasn't -- no.

21 Q Do you know if Pac-West is financially able to pay
22 should the Commission rule in Qwest's favor?

23 A Again, I'm not part of the finance organization.

24 Q Are you aware of whether or not Qwest sought in
25 discovery in this case to obtain financial information about

0422

1 Pac-West's current financial status?

2 A I seem to remember that there was a discovery
3 request about some financing, financial matters.

4 MS. ANDERL: Your Honor, I have an exhibit
5 that I would like to hand out that is a three-page document
6 that would be marked as Exhibit SS4X for identification.

7 JUDGE TOREM: Okay. How many pages?

8 MS. ANDERL: Three.

9 Q (By Ms. Anderl) Mr. Shiffman, the document you've
10 been handed for identification, SS4X, do you recognize that
11 three-page document?

12 A Yes.

13 Q Were you the author of each of those responses?

14 A I worked with the Pac-West team to have the
15 responses drafted, yes.

16 JUDGE TOREM: Ms. Anderl, I'm looking at -- I
17 just want to avoid any confusion. It looks like this was a
18 four-page document originally, but we're missing page 3 of
19 4.

20 MS. ANDERL: You're right, your Honor. I
21 didn't even notice the page numbering. Page 3 of 4 was
22 intentionally omitted.

23 JUDGE TOREM: So there were four data
24 requests. This is only 1, 2, and 4.

25 MS. ANDERL: 1, 2, and 4. That's right. I

0423

1 should have asked the witness to identify that, but thank
2 you for doing that.

3 Q (By Ms. Anderl) So you did consult with counsel
4 in the preparation of these responses?

5 A I believe so, yes.

6 Q Okay. Now, on the third page, so Data Request No.
7 4, the objection is that the information requested is --
8 doesn't describe an item or category of items with
9 reasonable particularity and is vague. Do you see that?

10 A Yes.

11 Q Okay. Do you know if Pac-West contacted Qwest to
12 seek clarification on the data request?

13 A I'm not sure. I don't know.

14 Q Do you know whether or not that's required in
15 Washington?

16 A I'm not sure, no.

17 It also says that it's not relevant.

18 Q Well, that was my question. What I understand
19 this to be saying is that you don't know what we're asking
20 for; is that right?

21 A I think it's pretty standard language. I'm not an
22 attorney, so I don't know.

23 Q My question is, if that's what it means, if you
24 don't know what we're asking for, how can you conclude that
25 production of the information is either burdensome or

0424

1 irrelevant?

2 MR. MAYHOOK: Can I interpose an objection?

3 I've been letting counsel ask the questions
4 and not wanting to interrupt.

5 I'm kind of concerned that, you know, Mr.
6 Shiffman, who is a businessperson, not a lawyer, and he's
7 being asked to interpret a document. And the objection has
8 legal significance.

9 Frankly, for my part, I think especially if
10 Request No. 4 is an issue here, frankly, in my own business
11 experience, it is quite vague.

12 And I think that there -- whatever the
13 burdens are, when they got the response, they were free to
14 either make a motion or refine the call of the question so
15 maybe it was a little bit more specific.

16 So with that, I would object to, again, Mr.
17 Shiffman, a businessperson, being put in a position of
18 having to pass on a stated objection.

19 JUDGE TOREM: I understand the objection.

20 MR. MAYHOOK: Maybe it could be deliberated
21 among us, but I think it's...(Pause.)

22 JUDGE TOREM: I understand the objection.

23 Do you know, Mr. Mayhook, if you assisted in
24 the preparation or response to these data requests?

25 MR. MAYHOOK: I honestly don't recall seeing

0425

1 this.

2 JUDGE TOREM: Mr. Shiffman, you indicated you
3 had worked with Pac-West's team of some sort. Was there any
4 legal advice provided to you or that team?

5 THE WITNESS: I assume that these were
6 prepared with the help of counsel. But --

7 JUDGE TOREM: Your name is on here. Did you
8 get any advice of counsel as you helped attach your name to
9 these?

10 THE WITNESS: I assume that I did, but I
11 don't actually recall this particular -- responding to this
12 particular data request, whether counsel was involved in it
13 or not.

14 As just generally speaking, that was part of
15 our process. We did shift and change counsel, and I can't
16 remember the exact timing of that. This would have been
17 recent.

18 JUDGE TOREM: This is dated just before
19 Christmas last year; is that correct?

20 THE WITNESS: Yes.

21 JUDGE TOREM: And I remember the Mayhooks
22 have been involved in the case since at least August.

23 THE WITNESS: That's correct.

24 MR. MAYHOOK: And I'm biting my tongue here,
25 but again, there has been an in-house paralegal.

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1 THE WITNESS: Correct.

2 MR. MAYHOOK: And I -- only to assist in your
3 -- I probably shouldn't speak, but I just would point out
4 the fact that there is an in-house paralegal, and the
5 in-house -- when he talks about legal counsel, and again, a
6 businessperson, that there could have been maybe some --

7 THE WITNESS: We do have a paralegal
8 in-house. That's an attempt to help make these proceedings
9 a bit more efficient for Pac-West.

10 JUDGE TOREM: And in-house means in
11 California?

12 THE WITNESS: It actually means in Austin.

13 JUDGE TOREM: Where you're located?

14 THE WITNESS: Correct.

15 JUDGE TOREM: And again, I just want to make
16 sure, you participated in the responses; is that correct?

17 THE WITNESS: Correct.

18 JUDGE TOREM: And just before Mr. Mayhook
19 noted his objection, you said this is pretty standard
20 language. Was that referring to the question posed by Qwest
21 or to the response provided?

22 THE WITNESS: From what I understand, these
23 responses are fairly standard, like -- yes. So to answer
24 your question, the response.

25 JUDGE TOREM: Okay. So, Ms. Anderl, I've

0427

1 noted the objection. It doesn't require me, I think, to
2 make a ruling one way or the other.

3 But it's, I think, Mr. Mayhook's expression
4 that he wouldn't like you to get into a battle of words on
5 legal conclusions being drawn out of this witness. I
6 understand what, I think, direction you're heading with
7 these. And I'll just let you continue, and we'll see if
8 that objection requires me to interject any direction to you
9 as further questioning goes.

10 MS. ANDERL: Thank you, your Honor. I think
11 we're actually pretty much done with the legal wrangling,
12 and I was ready to turn to the substance.

13 Given the authentication of the documents, of
14 the three pages by the witness, before I have any other
15 questions, I'd move for the admission of Exhibit SS4X.

16 JUDGE TOREM: Any objection to these coming
17 in, Mr. Mayhook?

18 MR. MAYHOOK: Well, you know, frankly,
19 looking at the questions, I would have to ask for a ruling
20 on relevance.

21 The -- again, looking at the scope of the
22 evidentiary hearing and understanding that the standard for
23 relevance as it relates to such evidentiary hearings in
24 front of the Commission goes to its general helpfulness, the
25 issue is, I think primarily, whether Pac-West, given the

0428

1 constellation of such events as we've discussed this
2 morning, is entitled to a refund.

3 And I don't think that this particular set of
4 documents for this particular purpose goes to any issue
5 whatsoever that occurs in this proceeding.

6 JUDGE TOREM: You can express the relevance.
7 I understand the relevance to the ability to pay and knowing
8 the company's finances. But beyond that?

9 MS. ANDERL: I really think that's it, your
10 Honor. I mean, I'm not going to contend that this has
11 anything to do with how to calculate the refund or what the
12 nature of the traffic is.

13 But I certainly have a client who's very
14 interested in the company's ability to pay should we
15 prevail.

16 MR. MAYHOOK: Well --

17 JUDGE TOREM: I'm not sure I understand the
18 direct relevance here. I think the line of questioning may
19 have led to relevant evidence, but we haven't got there yet.

20 MS. ANDERL: And I was going to actually ask
21 the witness some follow-up questions on the questions that
22 were originally objected to.

23 JUDGE TOREM: Let's do that, and then I can
24 make a ruling as to whether these documents become relevant
25 in conjunction with the responses, because I'm not inclined

0429

1 to admit them yet because by themselves there are questions
2 posed and not answered.

3 Q (By Ms. Anderl) So, Mr. Shiffman, are you
4 involved at all with the filing of the annual report with
5 the Washington Commission?

6 A Yes.

7 Q And are you aware of whether -- what the most
8 recent time period covered was?

9 MR. MAYHOOK: Can I interpose an objection
10 from the foundation perspective?

11 Can we ask him what his level of involvement
12 is?

13 JUDGE TOREM: Mr. Shiffman, do you want to
14 elaborate on counsel's questions so we have a better idea
15 just what you do?

16 THE WITNESS: Yes. So generically with
17 annual filings or quarterly filings with different public
18 utility commissions, they ask things like line counts,
19 revenues. They vary from state to state. They have
20 different questions, but they're all somewhat similar.
21 Though the actual numbers are given to me by finance, I take
22 them at their face, and we work to get them filed with the
23 different commissions.

24 Q (By Ms. Anderl) So do you review the filing
25 packet before it goes out generally, the -- all of the forms

0430

1 once they're filled out and all the attachments?

2 A For most states, they're usually one or two pages.

3 Q Are you aware of whether or not Pac-West provided
4 an income statement and balance sheet in 2012 for the period
5 of 2011 when it filed its annual report in Washington?

6 A No, I'm not aware of that. I don't believe I was
7 involved.

8 Q If such an income statement and balance sheet
9 existed, would Pac-West be willing to produce that?

10 A I would have to defer to Pac-West Finance Group.
11 As I said, there has been a change in the management of
12 Pac-West. And previous management's actions don't
13 necessarily say what the current management's actions are
14 going to be.

15 Q So there were some concerns raised about producing
16 financial information due to privacy issues. Do you recall
17 that language in Data Response No. 2?

18 A Yes. I mean, generically speaking, the responses
19 that I received back from finance was for the parts that --
20 where Pac-West is a privately held company, there isn't --
21 wouldn't go above and beyond disclosing information.

22 Q Do you know whether there is a protective order
23 issued in this docket to protect confidential information?

24 A I believe that there is.

25 Q Okay. Does Pac-West have any reason to believe

0431

1 that that protective order would be insufficient to protect
2 any confidential information it were to produce in this
3 docket?

4 A I don't know that I can speak to that.

5 Q Does Pac-West have audited financial statements?

6 A I'm sorry. I can't answer that. I'm not in the
7 financial organization.

8 Q Okay. So when you responded to Data Request No. 1
9 asking for production of the financial statements, audited
10 financial statements for 2010 and 2011, you didn't check to
11 see if those documents existed?

12 A It was irrelevant to the question. It felt like
13 the question itself didn't need to be responded to. It
14 wasn't relevant to the proceeding or the questions that
15 we're trying to get answered.

16 MR. MAYHOOK: Your Honor --

17 MS. ANDERL: I have no further questions on
18 this document.

19 JUDGE TOREM: Let's move on, then.

20 Q (By Ms. Anderl) I believe it's been pointed out
21 in the hearing room today that Pac-West originally prevailed
22 in its petition for enforcement in front of the Commission;
23 is that right?

24 A Correct.

25 Q And after Pac-West prevailed, Pac-West made a

0432

1 payment demand on Qwest for the monies withheld; is that
2 right?

3 A I don't know what the process was at that time.

4 Q Okay. And you don't have any -- do you have any
5 personal knowledge of whether Qwest paid the demand?

6 A Not direct personal knowledge. But I've heard it
7 said enough times that I believe it's true.

8 Q No one's ever told you that Qwest didn't pay?

9 A No. No one has ever told me that Qwest didn't
10 pay.

11 Q And I think your counsel has said that you're not
12 a lawyer, and so I originally thought that perhaps you were
13 because of the objections with your name on them, and I
14 realize I've overlooked a question about your educational
15 background. Can you tell me where you went to school?

16 A University of Texas at Austin, computer science.

17 Q Bachelor of science?

18 A Yes.

19 Q Okay. And did you have any postgraduate
20 education?

21 A Actually, that's not entirely true. I have 14
22 hours left on my BS, 13 of which are Spanish. No hablo.

23 Q Living in Texas can't you just get waived in?

24 A I sincerely would hope that they would just send
25 me to Mexico for six months or something. I'll run wires

0433

1 and do cables or something.

2 Q Okay. So -- but computer science?

3 A Computer science.

4 Q So computer language didn't bother you?

5 A Computer language?

6 Q Yes, of Spanish.

7 A Oh, two totally different things entirely.

8 Q So based on your educational background, would it
9 be safe for me to assume that you know how to use Excel?

10 A Yes.

11 JUDGE TOREM: But not the Apple IIc.

12 THE WITNESS: I actually had the Apple II
13 Plus.

14 JUDGE TOREM: I thought he might.

15 MS. ANDERL: We're almost over my head here.

16 THE WITNESS: Well, it was expandable.

17 Q (By Ms. Anderl) Okay. I'm going to have some
18 questions for you in a little bit about some Excel
19 workbooks, so I want to make sure that you're comfortable
20 with that software.

21 A Correct.

22 Q And you are comfortable with looking at printouts
23 of the individual worksheets?

24 A Yes. I generally find them less effective, just
25 because you can't see how that number came to be. You can't

0434

1 see your formulas or anything like that.

2 Q It's not really a program that lends itself to
3 paper format, is it?

4 A I would agree with that.

5 Q Okay. So having established that you're not a
6 lawyer, I will ask you this question anyway. In 2006, when
7 Pac-West demanded Qwest to pay the amount the Commission
8 ordered, are you aware of whether there was any basis for
9 Qwest to have withheld payment or refused to pay at that
10 time?

11 A If I understood the question, I believe that
12 everything that I've heard is that the payment was withheld
13 by Qwest taking unilateral self-help measures. Where it
14 could have sought relief in a regulatory environment, it
15 decided what the rules were.

16 Q Right. But after the Commission ordered Qwest to
17 pay, was there any -- did Qwest have any legitimate reason
18 not to pay?

19 A Not to my knowledge.

20 Q You're comfortable with me talking about modem
21 location in general -- or modem or server location in
22 general in and out of the state of Washington without having
23 to go into a confidential record?

24 A Yeah, go ahead.

25 Q Do you know where the Pac-West -- well, first of

0435

1 all, can we agree to use "modem" and "server"
2 interchangeably for purposes of Pac-West equipment, or is
3 there some distinction between the two that you'd like to
4 make?

5 A If, when we say "modem," it could mean modem
6 and/or server, that's fine.

7 Q Do you know where the Pac-West modems were in
8 2004?

9 A We are still researching that to come up with the
10 actual statements.

11 I know I have -- different people have different
12 beliefs. But there's been several shifts in the employees
13 of Pac-West. There's been fires and thefts, and there's
14 been a lot of things that make it difficult to unearth
15 documentation.

16 Q If Qwest were to tell you that at least in the
17 period of 2004, 2005, 2006, and 2007 -- and I can break this
18 into year by year if you want -- but that Qwest's records
19 show that Pac-West had a modem in the Tukwila area, south of
20 Seattle, would that be consistent with at least some of the
21 information that you've heard?

22 A So this is my problem. I don't understand how
23 Qwest knows that. I mean, factually, I don't know how they
24 know that. If there's some magic there, I'd like to know
25 it.

0436

1 Q But you don't know where they were?

2 A I can't say factually where they were yet.

3 Q Do you know if modems have a CLLI Code associated
4 with them?

5 A They do not.

6 Q Servers?

7 A They do not.

8 Q How do they get traffic routed to them?

9 A From a switch that does.

10 Q Do you know where the Pac-West switch was in the
11 2004 through 2007 time frame?

12 A Yeah. It's my understanding that there was a
13 switch in a location in Tukwila. I don't recall exactly
14 what kind of switch it was. But I've been able to find
15 supporting lease agreements and things of that nature.

16 Q Okay. So the switch -- sorry. For the court
17 reporter here, CLLI is all caps, C-L-L-I.

18 The switch would have a CLLI Code associated with
19 it, right?

20 A Correct.

21 Q And you'd be able to find that in the local
22 exchange routing guide, or the LERG?

23 A It would be entered into the LERG. There is a
24 CLLI Code database if you're looking for an actual
25 correspondence between a CLLI Code and a physical location.

0437

1 Q And would it have been most efficient for Pac-West
2 to have colocated its modems with its switch?

3 A It could.

4 It could also locate them elsewhere. It could
5 have modems that worked in a capacity rollover instance. It
6 could have modems in other locations for redundancy
7 purposes.

8 So to say that it could have modems colocated
9 doesn't mean that's necessarily the end of it.

10 Q Going back to the 2005 administrative law judge's
11 order and then the 2006 Commission orders in the original
12 phase of this docket, are you aware of whether Pac-West
13 challenged Qwest's methodology for calculating the VNXX
14 traffic during that part of the proceeding?

15 A I'm not aware one way or another.

16 MS. ANDERL: We have another exhibit, your
17 Honor. It might just take me one minute to find it. Oh, I
18 know where it is.

19 Q (By Ms. Anderl) Mr. Shiffman, could you turn to
20 Mr. Easton's Exhibit WRE4 and WRE4C, which is the -- I think
21 an eleven-page document that we handed out to you before you
22 went on the stand?

23 A Okay.

24 Q Do you recognize the first two pages that are
25 nonconfidential data request responses that Pac-West

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1 supplied to Qwest in June of 2012?

2 A Okay.

3 Q Who is Debbie Tutt (phonetic)?

4 A A Pac-West employee.

5 Q So in Stockton, California?

6 A Not 100 -- I don't know.

7 Q Okay. Pac-West employee?

8 A Pac-West employees are distributed throughout the
9 U.S. Some are in Stockton and others are in other
10 locations.

11 Q And Phil Wroblewski?

12 A That's about as good as I can do too.

13 Q Is he a Pac-West employee also?

14 A No. He is a UniPoint employee.

15 Q Okay. Was he one of the people who was searching
16 for the data?

17 A Yes. He's over the IT organization. So it would
18 have -- it wouldn't have been Phil directly, but would have
19 been somebody that worked with him.

20 Q We're in a confidential part of the exhibit right
21 now. I want to ask you to turn to page 8. We're in a
22 confidential part of the exhibit.

23 And I know somebody just beeped in on the bridge
24 line, but that doesn't bother me, because I don't think I
25 have to refer to anything confidential in my questions.

0439

1 Mr. Shiffman, are you on page 8? And the page
2 numbers are in the upper right-hand corner in the header,

3 A I am now.

4 Q Okay. And is that -- the very top message, is
5 that a message that you sent to me and copied your counsel
6 on stating that you were enclosing an updated traffic report
7 of total minutes from Qwest to Pac-West in Washington?

8 A That's what it says.

9 Q Okay. And then if you turn to page 11, do you
10 recognize that as the -- a printout of the document that you
11 sent attached to that e-mail?

12 A I don't recall what the document was that I sent.

13 Q Can you accept that, subject to your checking?

14 A Yes, assuming that it checked out that this was a
15 printout of whatever was attached to that e-mail.

16 Q And then based on that discussion in the e-mail
17 and on the column headings here, this appears to be data for
18 2006; is that right?

19 A It would appear so, yes.

20 Q To the best of your knowledge, did Pac-West
21 provide any information other than that shown here in
22 response to Data Request No. 11?

23 A Do I have Data Request No. 11?

24 Q Sorry. That's the first two pages of this
25 exhibit, of this WRE4.

0440

1 A The white one. Now, can you ask the question
2 again?

3 Q Sure. No problem.

4 To the best of your knowledge, did Pac-West
5 provide any data in response to Data Request No. 11 other
6 than these first two white pages and the information in the
7 appended e-mail strings in response to Data Request No. 11?

8 In other words, have we captured here everything
9 you gave us?

10 A So Pac-West has -- apparently has a different
11 opinion on what the gold standard is for resolving traffic
12 disputes in the sense that Pac-West has offered four CDRs,
13 and reading in prior parts of this e-mail where they're
14 offering CDRs for a particular month.

15 My particular approach to this was for the -- for
16 Pac-West and Qwest to exchange detailed information and to
17 see if they were to match up.

18 Q Okay. But other than what's in this exhibit, and
19 the acknowledgement that you offered CDRs, did you provide
20 us with any other information on the traffic that's at
21 issue?

22 A I would have to go back and review other data
23 requests.

24 Q When do you think you would be able to do that?

25 A This week.

0441

1 MS. ANDERL: Well, your Honor, I mean, it's
2 not, I think, anyone's intent to reconvene tomorrow. I
3 guess I would accept "I don't know" or "yes" or "no," but
4 this is, on a non-multiday hearing, a little bit difficult.
5 Perhaps I could just accept the answer and move on.

6 JUDGE TOREM: Mr. Shiffman, take a look at
7 the entirety of Mr. Easton's Exhibit 4.

8 THE WITNESS: This is the problem I'm having,
9 is that Qwest had a stream of data requests. And so there
10 could be another data request that I do not remember.

11 Q (By Ms. Anderl) I'm just asking you. Thank you
12 for that comment.

13 MS. ANDERL: And, your Honor, if I may, I was
14 just seeking to clarify with Mr. Shiffman if, in response to
15 this data request, they provided anything other than the
16 response, the supplemental response, and the information
17 appended in the form of the confidential e-mails and
18 attachments.

19 MS. MAYHOOK: Can I ask a question just to
20 clarify?

21 Are you representing that every attachment to
22 the e-mail has been printed out and provided to Mr.
23 Shiffman? I'm just unclear on that. That might help.

24 MS. ANDERL: I'm asking Mr. Shiffman if he
25 knows whether there are data other than that which is

0442

1 contained in these e-mails.

2 I don't know how else to ask it, your Honor.

3 Mr. Shiffman was not on every single one of these e-mails

4 and has agreed, at least subject to check, that the last

5 page is a file -- a printout of a file that he appended.

6 THE WITNESS: There appears to be another
7 attachment inside of here. Is that -- so I think -- so is
8 everything in this e-mail chain captured in this?

9 Q (By Ms. Anderl) That's what I'm asking you. Did
10 you provide us anything that we didn't include?

11 A I would have to go back and look at this e-mail
12 chain.

13 MS. MAYHOOK: Do you have a computer
14 available with your e-mail?

15 I think the problem we're dealing with, a
16 paper copy of an electronic document is part of the problem
17 here.

18 MS. ANDERL: I don't know if we can get an
19 electronic copy.

20 MS. MAYHOOK: No, I recognize that. And if
21 there's a way to take care of this sooner rather than later.

22 Q (By Ms. Anderl) Well, let me try it this way.
23 The supplemental response was provided on June 29. Is there
24 an additional supplemental response?

25 A So let me sort of walk you through some of my

0443

1 troubles with this. So page 10 of your exhibit has what
2 looks to be an Excel attachment to it.

3 Q Yes.

4 A Qwest's WA 2006 minutes by originating OCN?

5 Q Yes. And is that what is shown in page 11?

6 A No.

7 Q It is not?

8 A It is not. It is what is shown in page 6. Starts
9 on 6, looks to go to 7. And then there are several other
10 pages in between.

11 Q Okay.

12 A It's difficult for me to say that this is the
13 complete set of information that was provided by Qwest in
14 this format.

15 Q Did you provide us traffic data for 2004?

16 A I don't recall.

17 Q Did you provide us traffic data for 2005?

18 A Also don't recall.

19 Q Did you provide any traffic data for 2007?

20 A I don't recall.

21 As I said earlier, my intent of the process was
22 for Pac-West and Qwest to come to an agreement on how the
23 data would be shared with each other and then the method of
24 determining what VNXX traffic was, whether it was interstate
25 VNXX traffic or intrastate VNXX traffic or exactly how we

0444

1 were going to describe those things. Unfortunately, it
2 seems like Pac-West and Qwest couldn't come to an agreement
3 on how they would determine that.

4 Q Could you please turn to your reply testimony on
5 page 13?

6 Let me know when you get there.

7 A Okay.

8 Q So on line 2, page 13, line 2, you say (as read)
9 Pac-West provided traffic data to Qwest. Is that traffic
10 data that you're talking about there the information that is
11 contained in Mr. Easton's WRE4C?

12 A No. I think that would be at least some of the
13 correspondence that you referenced back into the WRE4.

14 Q I'm sorry. Could you answer that question
15 again?

16 You started by saying "no," but then I think the
17 rest of your answer suggested that you were saying yes.

18 A Oh, I'm sorry. The "C" is the yellow parts of it.

19 Q Yes.

20 A So when I looked at it, it was just 4. Ask that
21 question again from the top.

22 Q From the top.

23 MS. ANDERL: Your Honor, after I ask this
24 question, if I might get a glass of water, I would be
25 grateful.

0445

1 Q (By Ms. Anderl) On page 13, line 2 of your reply
2 testimony where you say, (as read), Pac-West provided
3 traffic data to Qwest, is that testimony referring to
4 Exhibit 4 and 4C from Mr. Easton?

5 A At least. It could be referring to more.

6 Q Is it referring to more or you don't know?

7 A I don't know. It could be.

8 MS. ANDERL: Your Honor, may I?

9 Q (By Ms. Anderl) So let's go earlier in your reply
10 testimony. And all my questions about your testimony at
11 this point are going to be about your reply testimony.

12 My first one is on page 5. Let me know when
13 you're there.

14 A I'm there.

15 Q On line 9, you state that (as read) Mr. Easton's
16 comment merits some clarification to avoid being misleading.
17 What do you mean by "misleading"?

18 A As I'm sure most people in this room realize, the
19 telecommunication industry has very specific meanings for
20 very specific words. And they're also very oftentimes used
21 in generalities. So while I wasn't saying it was wrong, I
22 think it needs some clarification.

23 And the item that I was talking about there was
24 reciprocal compensation. So that term could generically
25 mean compensation between two carriers. Sometimes it

0446

1 specifically means the compensation at a local rate vs.
2 compensation at, say, an ISP-bound FCC .007 rate. You could
3 use the term "reciprocal compensation" generically to mean
4 both. But specifically I take that phrase to mean the local
5 rate.

6 Q And if Mr. Easton's testimony was using the term
7 "reciprocal compensation" but, in fact, intended to refer to
8 the ISP remand rate, then you don't think his testimony was
9 misleading, then, do you?

10 A It could be misleading depending upon which way
11 you took "reciprocal compensation" to mean.

12 Q Mr. Easton never suggested that Qwest pay Pac-West
13 at the local traffic rate, did he?

14 A I will say that Pac-West is -- and it could be
15 something that Pac-West is sensitive to.

16 Pac-West has had a proceeding in California where
17 precisely that shift has occurred. The State of California
18 believed that ISP-bound VNXX traffic was due the local
19 compensation rate and has since changed their position to
20 say ISP-bound VNXX and all ISP-bound traffic, for that
21 matter, is compensatable at the .007 FCC rate.

22 Q Okay. But Mr. Easton's testimony, if you look at
23 it, states that the, quote/unquote, reciprocal compensation
24 was for VNXX ISP traffic; isn't that right?

25 A I mean, I'm not sure what we're driving at here.

0447

1 I mean, my first thing I say on the line is (as read)
2 comments merit some clarification to avoid being misleading.

3 I in no way was inferring that that's what Mr.
4 Easton was trying to say or was saying, just clarifying what
5 it was. If I believed that he was trying to be misleading,
6 I would have said so.

7 Q Well, if I had asked it that way, we would have
8 been past this by now. Thank you.

9 Page 6, you're quoting from the FCC order at
10 paragraph -- FCC -- I think it's the ISP remand order, is it
11 not?

12 A It is tagged as that.

13 Q Yes. Paragraph 77. And the -- that order only
14 pertains to -- it was the Washington Commission has held the
15 Washington ISP remand order orders description of ISP-bound
16 traffic only applies to local ISP traffic; is that right?

17 A I think there's some debate about that.

18 Q Okay. Do you agree that the Commission has held
19 that VNXX is not subject to the terms -- not subject to
20 compensation under the terms of the ISP remand order?

21 A What type of VNXX traffic?

22 Q VNXX traffic bound for an Internet service
23 provider?

24 A I believe the actual Commission order says
25 intrastate VNXX traffic. It makes a differentiation.

0448

1 MS. MAYHOOK: I don't really have an
2 objection, but a clarification, because we're citing to an
3 FCC cite, and I'm not sure which commission you're referring
4 to? Are you referring to the Washington Commission or the
5 Federal Communications Commission?

6 MS. ANDERL: I was referring to the
7 Washington Commission.

8 MS. MAYHOOK: Thank you.

9 THE WITNESS: But the important thing in that
10 part of my testimony is the FCC -- what they are saying in
11 that paragraph is when compensation schemes change, that
12 they believe there should not be flash cuts from one
13 compensation scheme to another. And -- let alone
14 retroactivity on a change in compensation scheme.

15 Q (By Ms. Anderl) Mr. Shiffman, take a look at your
16 chart on page 8.

17 A That continues on 9?

18 Q Right. Is that data specific to Washington state?

19 A I believe that data is from the FCC. So I don't
20 believe it's state-based.

21 Q And is it specific to either Qwest or Qwest's
22 predecessor, U.S. West?

23 A I would have to go back and look. There is a note
24 in here. If we take a break, I can go back and check that
25 to give you an answer, just because it references an FCC

0449

1 website and FCC document, and I would suspect that that
2 would have the answers to those questions.

3 Q Now, looking at that chart -- and let's assume,
4 and you can clarify it later, that it is nationwide data --

5 A Okay.

6 Q -- for purposes of this discussion.

7 A All right.

8 Q And by the time the disputes in this docket arose,
9 second lines had dropped back below their 1995 levels,
10 hadn't they?

11 A So '95 to 2004 are almost identical.

12 And then there continues to be a decrease after
13 that.

14 And while this data drops off to 2006, I would
15 assume that that decrease continues. That's broadband.

16 Q And by the time this petition for enforcement was
17 filed in 2005, the 12.1 million nonprimary lines was less
18 even than they were at the 1995 levels, right?

19 A Yes. 2.1 is less than 13.9.

20 Q 12.

21 A 12. Thank you.

22 Q And even though 12.1 million second lines in 2005
23 is greater than the 11.4 million second lines in 1994 as a
24 percent of the total lines, the second lines were lower in
25 2005 than they were in 1994; isn't that right?

0450

1 A Yes. This chart clearly shows that the ILECs
2 already had their windfalls of profits due to VNXX
3 arrangements and other ISP-bound traffic.

4 Q Now, in this discussion starting at page 9 and
5 then going onto page 11, are you saying that because ILECs
6 were able to make money from second lines, that they should
7 not be allowed to seek compensation for the use of their
8 facilities by third parties?

9 A My comments around the second lines are to show
10 that the ILECs were indeed compensated throughout this
11 docket.

12 I continue to hear Qwest state that they have not
13 been compensated for any of this traffic. And I don't
14 believe that to be true.

15 Q Now, you say -- at page 11, line 8, you talk about
16 collecting undue monies. And I'm trying to understand what
17 you mean by the "undue monies" there. Are you referring to
18 access charges?

19 A That would be one category.

20 Q Are you also referring to Qwest's demand for a
21 refund of the monies that Qwest paid to Pac-West under the
22 Commission's original decision?

23 A That could be another bucket as well.

24 Q I'm asking you -- not what it could be. I'm
25 asking you, is that your testimony that both of those --

0451

1 A Both of those would fall under the undue category,
2 yes. Because I don't believe the Commission has -- the
3 Washington Commission has set a rate to which that traffic
4 will be compensated for. By that, I mean the VNXX traffic
5 that's in this proceeding.

6 Q So it's Pac-West's position in this case, then,
7 that the Commission should not order a refund of the money
8 that Qwest paid to Pac-West?

9 A Yes, until we can come up with what the
10 compensation scheme is and if that compensation scheme is
11 going to be applied retroactively.

12 The monies that continue to be referred to as a
13 refund were self-help measures taken unilaterally by Qwest.

14 Q The monies that Qwest paid to Pac-West were paid
15 under compulsion of a Commission order, were they not?

16 A I'm not sure exactly, but...(Pause.)

17 Q And you're aware, are you not, of the Commission's
18 decision in the generic VNXX docket, the complaint case that
19 Qwest brought in 2006?

20 A Not with as much detail, but I'm aware of that
21 case.

22 Q And are you aware that the Commission determined
23 that it was permissible for VNXX traffic to be exchanged in
24 Washington if the parties agreed to do so on a bill and keep
25 basis?

0452

1 A Can you say that again?

2 Q Yes. Is it your understanding that the result in
3 that docket was that the Commission held that VNXX traffic
4 was permissible in Washington so long as the parties agreed
5 to exchange it on a bill and keep basis?

6 A That's my understanding. I believe that they
7 didn't say that there was an unpermissible form, either,
8 that this is just one possible scenario.

9 Q And then also that the CLEC in a VNXX situation
10 would be required to pay for the transport --

11 A That that is part of the --

12 Q -- as part of the bill and keep arrangement?

13 A -- the VNXX docket, yes. As most CLECs do today,
14 Pac-West being included, Pac-West buys a significant amount
15 of transport in the state of Washington from Qwest for
16 precisely that reason.

17 Q Okay. During the disputed time periods in this
18 docket, and for general purposes let's just say the period
19 of 2004 through the end of 2009, do you know where
20 Pac-West's appointed interconnection with Qwest was?

21 A It was in various end offices. So I'm assuming
22 limited to Washington?

23 Q Well, yes.

24 A Various end offices throughout the state of
25 Washington and tandem.

0453

1 Q Are you aware that CLECs were permitted to elect
2 only one point of interconnection per LATA under
3 Washington's rulings?

4 A No, I wasn't aware of that. But it's common in
5 other states as well.

6 Q And do you know if that's what Pac-West did?

7 A I -- the research that I have seen thus far has
8 Pac-West making interconnection with Qwest at an end office
9 level where traffic justified.

10 Q Mr. Shiffman, go ahead and turn in your reply
11 testimony to page 13. You state at lines 19 through 21 that
12 Pac-West repeatedly asked for the source data that Qwest
13 used to produce its results but that Qwest has yet to make
14 that data available to Pac-West. Is that your testimony?

15 A The data and technology.

16 MS. ANDERL: Your Honor, we're going to do
17 the cross-examination exhibit thing again. So if you'll
18 bear with me while I get the right copies.

19 Q (By Ms. Anderl) Mr. Shiffman, did you participate
20 with your counsel in drafting data requests to Qwest asking
21 for various pieces of information?

22 A Yes.

23 Q And was that with both current counsel and prior
24 counsel?

25 A I believe that's true, yes.

0454

1 MS. ANDERL: Your Honor, the next document
2 that I'm going to hand you is a seven-page document. I
3 think for identification it's SS-5X?

4 JUDGE TOREM: Correct.

5 Q (By Ms. Anderl) Mr. Shiffman, do you have that
6 document in front of you?

7 A I do.

8 Q Do you recognize page 1 as Pac-West's first data
9 request to Qwest?

10 A Qwest's response to Pac-West.

11 Q Well, the data request and then also the answer?

12 A Yes.

13 Q Okay. And then with regard to the second page, do
14 you recognize that as Pac-West's second data request and
15 Qwest's response with the exclusion of the attached study in
16 Data Request No. 2?

17 A Second request as part of the first request?

18 So all these pages are numbered the first set of
19 data requests to Qwest?

20 Q Right. And if you take the paper clip off, you'll
21 see that each of them is numbered. So the first page is
22 numbered 1, the second page, the question is No. 2.

23 So do you recognize the second page as the
24 Pac-West data request and Qwest's answer?

25 A So am I missing page -- okay. So the first page

0455

1 is page 2?

2 Q The first page says page 2, yes.

3 A Okay. Yes.

4 Q And then the second page, which says page 3 but
5 contains Data Request No. 2 on it, do you recognize that --

6 A From the first set?

7 Q -- as Pac-West's request?

8 A Yes.

9 Q And Qwest's answer?

10 A Yes.

11 Q And then there's an Excel file named "Confidential
12 Attachment 2A" that's referenced there; is that right?

13 A It does reference 2A.

14 Q And we didn't include that in this.

15 A Okay.

16 Q Now, third page, it says page 4 on the bottom.
17 Yes, that is a little bit confusing.

18 But do you recognize that as Pac-West's third
19 question to Qwest and Qwest's answer?

20 A Yes.

21 Q Okay. And that answer also references some
22 traffic studies that were attached. Do you see that?

23 A Attachment 3A?

24 Q Right.

25 A Yes. Yes.

0456

1 Q And the next page, which is not numbered at all,
2 do you recognize that as a screen shot of what the
3 Confidential Attachment 3A Pac-West VNXX 2004 would look
4 like when you opened it?

5 A It appears so.

6 Q Okay. And there are a couple of tabs there
7 representing individual worksheets within the workbook?

8 A I see the tabs, yes.

9 Q And when we sent you -- when Qwest sent you this
10 response, did you open each of the Excel workbooks and look
11 at them?

12 A What was the date of this response?

13 So it's the first set of the data, so it had to be
14 some time ago. I can't factually say that I went through
15 each tab. I would suspect that I would.

16 Q And then with regard to Questions No. -- the last
17 two pages, do you recognize those as Pac-West's fourth and
18 fifth questions to Qwest and Qwest's response?

19 A Yes.

20 MS. ANDERL: Okay. Your Honor, we would
21 offer Exhibit SS-5X.

22 JUDGE TOREM: Can you give me the page count
23 one more time?

24 MS. ANDERL: I think it's seven pages, but
25 let me double-check.

0457

1 JUDGE TOREM: I'm only counting six.

2 MS. ANDERL: There's one unnumbered page.

3 THE WITNESS: It still would be six.

4 MS. ANDERL: It still would be six. You're
5 right, six pages.

6 JUDGE TOREM: Any objection to all six pages
7 of SS-5X being admitted?

8 MS. MAYHOOK: No.

9 JUDGE TOREM: All right. We'll admit that
10 one.

11 MS. ANDERL: Your Honor, the next document we
12 have for identification is a single page that is SS-6X.

13 Q (By Ms. Anderl) Mr. Shiffman, the data request
14 responses that we just went through as SS-5X, Requests 1
15 through 5 -- this new document that I've handed to you as
16 SS-6X, do you recognize that by looking at it and by its
17 title as an August 24, 2012, supplemental response to the
18 fourth question in Pac-West's first set?

19 A Yes.

20 Q Okay. And do you recall if you opened the Excel
21 file that was attached to that supplemental response?

22 A I assume that I did.

23 MS. ANDERL: Your Honor, I have a couple of
24 additional confidential documents that I'd like to hand up
25 and ask the witness about, and then I would, I think, be

0458

1 done with this particular data request and then maybe would
2 be a decent time for a break.

3 JUDGE TOREM: All right. So let's hand up
4 both of those documents together.

5 MS. ANDERL: I actually have three, and
6 they're not quite in the order that I want them to be. But
7 I'll get them there quickly.

8 JUDGE TOREM: So this will be 7, 8, and 9.

9 MS. ANDERL: And here's a set.

10 JUDGE TOREM: Ms. Anderl, what I've got in
11 front of me are three groups of papers. One appears to be
12 some of the VNXX billing amounts going back to 2004 through
13 January of 2006 which appear to have led to the lump sum
14 payment we referenced earlier; and two other sets of the
15 CLLI Codes with terminating state calls looking to be
16 Washington, and the code -- one of them has a 21-page
17 document with a code of 110 down the second column, and the
18 second one has another 18 pages with a code of 119 in that
19 second column all the way down for all 18 pages.

20 How did you want to number these documents?

21 MS. ANDERL: Thank you, your Honor. In the
22 exact order you just described them, the two-page document
23 being SS-7X, the 110 code being SS-8X, and the 119 code
24 being SS-9X.

25 JUDGE TOREM: All right. So there are two

0459

1 pages, 21 pages and 18 pages by that counting. Go ahead
2 with your questions.

3 Do you have those in front of you, Mr. Shiffman,
4 in that order?

5 THE WITNESS: I believe so.

6 JUDGE TOREM: Let me walk you through it one
7 more time.

8 The two page document, that should be the
9 easiest one to find, is going to be SS-7X.

10 And after that, No. 8 will be the one that
11 has 21 pages, and on the left-hand side, second column, it
12 says 110.

13 And then 119 will be SS-9. All right. All
14 set?

15 THE WITNESS: Yes. I may have a numbering
16 problem on earlier ones. But I've got these. So let's go.

17 Q (By Ms. Anderl) Okay. So Mr. Shiffman, looking
18 at SS-6X, which is the supplemental data request response,
19 that references a revised study including work papers; is
20 that correct?

21 Or do you see that part of the supplemental
22 responses?

23 A I do.

24 Q Okay. And do you recognize SS-7X as the first
25 worksheet in the workbook that was attached to this data

0460

1 request response?

2 A I assume that it is. Having it in paper form of
3 an electronic document, it's...(Pause.)

4 Q I agree it's not ideal. We spent quite a bit of
5 time trying to shrink these things to fit yesterday.

6 And let me ask you a foundational question. When
7 you got this data request response on or after August 24 of
8 2012, did you open the study and look at it?

9 A So maybe we can just answer these questions
10 generically across that because to specifically say when and
11 what and what time -- once we receive data back from Qwest,
12 the team would go through those data requests.

13 Q Do you recall if you personally looked at this
14 file?

15 A It looks familiar. But there's been other
16 spreadsheets thrown around that look like this too.

17 Q Okay. And do you know what the 110 and 119 codes
18 stand for?

19 Go ahead and think about it if you want to, but I
20 might be able to shortcut it.

21 A Please.

22 Q So take a look at the six-page document that we
23 just talked about, which is -- sorry, your Honor.

24 A Is that 5?

25 Q Yes, 5X.

0461

1 And take a look at the second data request
2 response, which indicates that the 110 code is
3 Qwest-originated traffic and the 119 code is
4 Pac-West-originated traffic.

5 A Okay.

6 Q Do you have any reason to doubt that --

7 A Seems to match up.

8 Q And so you see this Exhibit SS-8X, which when
9 printed out is 21 pages -- do you see that as generally a
10 paper reflection of one of the tabs or worksheets in an
11 Excel workbook file?

12 A Yes.

13 Q And that data goes from January 1st of 2006
14 through December 31st of 2006, does it not?

15 A In the interest of time, yes.

16 Q Okay.

17 A The first and the last page match up. I assume
18 the middle pages follow.

19 Q And then this SS-8X, based on our previous
20 agreement that the 110 code was traffic from Qwest,
21 Pac-West, do you see the number of minutes in the -- I think
22 it's the twelfth column. It's the only set of numbers with
23 commas in it.

24 A And we're on 8?

25 Q Yes. The top -- the column heading says "USWLCL"?

0462

1 A Okay.

2 Q Do you recognize that as Qwest's response
3 indicating the number of minutes that Qwest sent to Pac-West
4 for that time period over that particular identified route?

5 A Again, this being a paper copy, it looks like
6 there was even more chopped off on that that starts with
7 maybe an "M." I'm guessing it probably says minutes.

8 Q Okay. And you would have gotten this from us
9 electronically, right?

10 A Yes.

11 Q And so you would have been able to expand the
12 columns?

13 A Yes.

14 Q And you would have had somebody do that based on
15 what you told me your process was, and you would have had
16 somebody review the files when we sent them?

17 A Correct.

18 Q And then do you recognize SS-9X as the corollary
19 document to 8 with traffic going in the other direction from
20 Pac-West request?

21 A According to Qwest's answer, that would be
22 Pac-West-originated traffic.

23 Q Yes.

24 MS. MAYHOOK: I'm just getting really
25 concerned that we've got -- and I just want to clarify the

0463

1 question, because Ms. Anderl just mentioned that
2 Mr. Shiffman received these documents originally in
3 electronic format.

4 Did he also receive them in paper format?

5 MS. ANDERL: We had an agreement with
6 Pac-West that files of this nature were not required to be
7 transmitted on paper format.

8 MS. MAYHOOK: So are you asking him now to
9 authenticate that the paper copy you're giving him is what
10 he received via e-mail?

11 MS. ANDERL: I am asking him if he recognizes
12 these documents as a part of that electronic file, yes.

13 MS. MAYHOOK: I don't know how he can do that
14 without having the electronic file available to him as well.

15 MS. ANDERL: I would be delighted to set
16 something like that up if the witness needs to be provided
17 with a computer and access to the electronic file that we
18 transmitted so that he can compare it.

19 MS. MAYHOOK: I guess I don't know where
20 you're going with this, but it can get very -- I mean,
21 you're asking him to -- is this what you received, and he
22 doesn't have in front of him what he received. So I'm
23 concerned about that.

24 JUDGE TOREM: Let's see if that becomes
25 necessary, Ms. Mayhook, because the ultimate question here

0464

1 is yet to come. And I'm curious what it will be, too, but I
2 think for the purposes of setting it up and acknowledging
3 that he saw something that may be an exact copy or
4 reasonable facsimile of may be sufficient.

5 If we need to deal with the exact exhibit
6 electronically to get things done, it's not common in this
7 hearing room, but I suppose we'll figure something out.

8 So depending on what the ultimate question
9 is, Ms. Anderl, let's press along.

10 So we've established that 8 and 9X are these call
11 records from one direction or the other, and these columns
12 that are titled -- look like "USWLCL," perhaps minutes, are
13 the minutes that were exchanged from one direction or the
14 other.

15 MS. ANDERL: Yes.

16 JUDGE TOREM: Mr. Shiffman, that's all good
17 with you so far?

18 THE WITNESS: Yes.

19 JUDGE TOREM: Okay. Ms. Anderl, next.

20 Q (By Ms. Anderl) Mr. Shiffman, you can see that
21 near the right-hand edge of the page there's a heading -- a
22 column heading called "Traffic," and under that column
23 heading, that Qwest has inserted its determination as to
24 whether it was local or VNXX?

25 A I see a column with "Traffic," yes.

0465

1 Q Okay. Do you know if -- maybe I can ask it if you
2 would accept, subject to your check, that the supplemental
3 answer to Data Request No. 4 included not only this
4 information in electronic format but included parallel
5 information in electronic format for the year 2007?

6 A Are you asking -- so is 9 and 8 the 4A -- no. You
7 said No. 4. Which --

8 JUDGE TOREM: If you look at 6X.

9 Q (By Ms. Anderl) Yes, it is getting a little
10 confusing with all the numbers. We're on Exhibit 6X, which
11 is the supplemental data request, the response to Data
12 Request No. 4.

13 A And 8 and 9 are tabs on --

14 JUDGE TOREM: Those appear to be for calendar
15 year 2006.

16 And Ms. Anderl's question is, you've seen
17 these; do you also believe that Qwest, as part of the
18 supplemental response, sent similar data for calendar year
19 2007?

20 Q (By Ms. Anderl) And again, I would be happy to
21 take that answer subject to check.

22 A Yes. If Qwest is saying they did, I assume that
23 they did.

24 Q And thank you for that. And we just honestly
25 wanted to stop making copies of things.

0466

1 A Tree killing.

2 Q Yes.

3 A Because it is really hard to tell what any of it
4 really is.

5 Q Yes. But I'm happy to take that response subject
6 to check, as well as any parts of the questions that I ask,
7 subject to check, subject to you be being able to check the
8 electronic copy and validate that these printouts with their
9 limitations still nevertheless reflect as good a paper copy
10 as you can get, pretty much, of what an Excel --

11 A Yes. We like to have --

12 Q -- spreadsheet or worksheet would look like?

13 A Yes. Depending upon where we end up, I may want
14 to check it or not.

15 Q Sure.

16 MS. ANDERL: Your Honor, we would move the
17 admission of 6, 7, 8, and 9 cross. And that point be
18 willing to move on to another topic.

19 MR. MAYHOOK: Your Honor, we respectfully
20 object to the admission of this series of exhibits on the
21 grounds that it's, from the records standpoint, confusing.
22 It's prejudicial. I don't understand what the point of it
23 is.

24 These are Qwest-created responses that are
25 being moved in through a Pac-West witness. I don't know

0467

1 what it means. It's clear just from conversation today that
2 they speak different languages. They have different
3 viewpoints.

4 I don't know, from a records standpoint, if
5 somebody that's making a decision can look at this and,
6 based on testimony today, understand what it is. It looks
7 like compliance. It gives the appearance of being helpful.

8 We have testimony in the record that says
9 that what they give to us doesn't really comply with what --
10 how our world works, and then they have their difficulties
11 with what they have, and I get the same story on that side.

12 So I think at this point, it's prejudicial
13 because, again, it gives the appearance of compliance, and
14 it certainly has the patina of what company records look
15 like. But Mr. Shiffman did not produce these records. He
16 only received them.

17 So I don't know to your earlier observation,
18 what is the ultimate question here, other than admission and
19 getting it in through Pac-West.

20 THE WITNESS: If I may, the question --

21 JUDGE TOREM: Actually, not.

22 Ms. Anderl, can you just briefly address the
23 relevance portion and ultimate question that you either have
24 unintentionally already posed or will be posing?

25 MS. ANDERL: Probably would now be posing

0468

1 additional questions, your Honor.

2 This information is offered in response to
3 the reply testimony of Mr. Shiffman to which we had no
4 opportunity to respond, in which he claims in October of
5 2012 that Qwest did not make adequate data available to
6 Pac-West.

7 JUDGE TOREM: So this is the original
8 question, which I think was the ultimate question, pages 19
9 to 21 -- or lines 19 to 21 of page 13 where you had
10 Mr. Shiffman confirm his opinion that Qwest refused to make
11 certain data available?

12 MS. ANDERL: Right.

13 JUDGE TOREM: And you just made a showing of
14 all the data that Qwest made available?

15 MS. ANDERL: Not even all of this, because
16 I'm not done with that. But we had --

17 JUDGE TOREM: That's okay. You're offering
18 these documents not for numbers within them, just to show
19 that there was a response of some magnitude made by Qwest?

20 MS. ANDERL: Precisely. And in addition --
21 and I didn't ask Mr. Shiffman about this, but on the same
22 page, page 13, there's a statement on lines 4 through 6 that
23 Qwest has not provided CDRs or other supportive source data
24 behind the summary reports.

25 JUDGE TOREM: Yes, I believe that's where the

0469

1 two worlds are colliding.

2 MS. ANDERL: And I know there's plenty of
3 information in Mr. Easton's testimony already about why we
4 did not produce the CDRs, but there was no necessary reason
5 for us to sponsor the data request responses in through our
6 own witness, nor did we know that we would have to until we
7 were accused, like I said, at a point where there was no
8 further rebuttal allowed of not providing data.

9 JUDGE TOREM: So as to the objection as to
10 what these documents mean as to what's in the columns or the
11 numbers themselves, it really doesn't matter from Qwest's
12 perspective; these were provided, is the whole point?

13 MS. ANDERL: Well --

14 JUDGE TOREM: I think Mr. Easton's testimony
15 sums most of these up in Exhibit 4 and Exhibit 8.

16 MS. ANDERL: Yes.

17 JUDGE TOREM: So I wouldn't look to these for
18 the truth of the matter therein other than they were
19 provided?

20 MS. ANDERL: And there was also some
21 discussion that Qwest hadn't adequately described -- from
22 Mr. Shiffman, that Qwest hadn't adequately described its
23 methodology.

24 The Data Request No. 1, the first page of 5
25 -- SS-5X describes the methodology in response to a data

0470

1 request from Pac-West.

2 So we believe that this information is highly
3 relevant both to the -- responsive to Mr. Shiffman's reply
4 testimony and to the level of effort and the validity and
5 the credibility and the value of the Qwest calculations,
6 which is really -- as to the nature of the traffic, which
7 really is at the heart of this case.

8 JUDGE TOREM: Mr. Mayhook, anything further
9 in response?

10 MR. MAYHOOK: There's a limiting factor. And
11 this has been helpful discussion for me. And I respect your
12 Honor's view on this.

13 I think the limiting factor here is that --
14 and what concerns me and what's prejudicial also is that if
15 suddenly in closing brief and argument, to your point of the
16 truth of the matter asserted, we suddenly get somebody
17 interpreting these documents, writing calculations, and
18 they're appearing in closing brief when no one has really
19 walked through these and explained, that's problematic.

20 JUDGE TOREM: I agree.

21 MR. MAYHOOK: So I think there should be a
22 limiting factor as to their use.

23 JUDGE TOREM: And then you had additional?

24 MS. MAYHOOK: Well, I guess -- and maybe we
25 can deal with it at the break. But this is obviously one

0471

1 small piece of the picture that happened during the
2 discovery process. And there are clearly additional
3 follow-up data requests that I guess --

4 JUDGE TOREM: We would be here all week, and
5 I'm not interested.

6 This isn't a discovery dispute that I'm being
7 asked to resolve.

8 It's a point that Ms. Anderl wanted to make,
9 and roundabout as it's got, I think she's made her point
10 that Qwest did -- despite what's on the reply testimony,
11 page 13, in Qwest's opinion, here's an example of the types
12 of responses.

13 MR. MAYHOOK: And there's no objection to
14 that. And I wish this one was dated.

15 MS. MAYHOOK: No. 5?

16 MR. MAYHOOK: 5X. There's no dates on any of
17 this stuff.

18 And I know there was some conversation -- it
19 was mentioned, and your current counsel, all of this
20 preceded us. So I don't know, you know, again, what the
21 inferences are.

22 JUDGE TOREM: But I think, again, 5X, which
23 was already admitted, was shortly after the reference to the
24 testimony on page 13 and seems to be offered for the similar
25 purpose.

0472

1 Is there any clarification you want to
2 provide to that, Ms. Anderl?

3 MS. ANDERL: Your Honor, we're happy to look
4 in our records and make a stipulation as to the date of that
5 set of data requests and responses.

6 JUDGE TOREM: If it's necessary.

7 MS. ANDERL: The supplemental responses were
8 in August. So the original responses necessarily had to
9 predate August 24.

10 JUDGE TOREM: Okay. Well, I think with those
11 understandings -- I'm not sure if you just withdrew your
12 objection, at least to some portions, but I am going to --
13 objection is noted in the record.

14 I'll overrule it and admit 6, 7, 8, and 9X,
15 again with the understanding of what I think they're being
16 offered for.

17 And I certainly hope that the substance of
18 what's in there won't be used in brief to argue any amounts
19 that the Commission is being asked to award and that those
20 amounts that involve real dollars come from your own
21 witnesses's exhibits that were previously offered in a more
22 routine fashion. That would certainly add to the weight of
23 any arguments that come in after the close of today's
24 hearing.

25 With that, let's take a short break until ten

0473

1 minutes to 4:00.

2 Can you estimate for me, Ms. Anderl, what
3 you've got left just for mine and the court reporter's
4 scheduling for the rest of the day?

5 MS. ANDERL: Your Honor, I do have data
6 requests -- the second set, Set 2, Questions 1 through 5,
7 and Qwest's responses.

8 If counsel wants to take the break and
9 discuss whether they would be willing to stipulate that they
10 submitted follow-up data requests, Qwest responded to them
11 -- you know, and then I don't have to -- and that the real
12 follow-up came after that, maybe I can skip this. I think
13 it's, again, got some good information in it. Maybe we can
14 streamline it somehow.

15 JUDGE TOREM: Let's take a five-minute break,
16 counsel come back in five minutes, and I'll come back in
17 ten, and hopefully in those five minutes you had to discuss
18 it, Ms. Anderl, you can convince your counsel at the table
19 there that that's the way to go. If not, we'll take a
20 little bit longer.

21 With that streamlining, do you still think
22 we're going to be 30 minutes, an hour, 90 minutes today?

23 MS. ANDERL: This is my last line of
24 questions. So I would say no more than 30 minutes, I hope.

25 JUDGE TOREM: I understand those famous last

0474

1 words, having sat there and said the same to a military
2 judge. We'll see when we come back.

3 I'll see you in ten. You guys start talking
4 about that in five. We're at recess.

5 MS. ANDERL: Okay. Thank you, your Honor.

6 (Recess.)

7 JUDGE TOREM: Back on the record. It's a
8 little after four o'clock.

9 Counsel has indicated they have worked out an
10 agreement for presentation of the new cross-examine
11 exhibits.

12 Ms. Anderl, why don't you enlighten me and
13 the record.

14 MS. ANDERL: Sure. The next topic I was
15 going to go to was the follow-up data request that the
16 Mayhooks asked after they got hold of the case. And there
17 were five data requests, and they're numbered 2.1 through
18 2.5, and Qwest's responses thereto. And I was going to go
19 through and offer each of those.

20 I didn't hear Ms. Mayhook say that you had an
21 objection. I don't know if we had a stipulation, so I don't
22 know if we have to do any of the foundational stuff or not.

23 JUDGE TOREM: So this is going to be DR2
24 point --

25 MS. ANDERL: -- -1, 2.2, 2.3, 2.4, and 2.5,

0475

1 and in some cases minus the confidential attachments, but
2 that's by agreement.

3 JUDGE TOREM: Are these going to be all one
4 exhibit at this point?

5 MS. ANDERL: That's not the way they're
6 collated in my hand, but we can do that or we can hand them
7 out as five separate exhibits.

8 JUDGE TOREM: Let me know.

9 MS. ANDERL: Five separate exhibits.

10 JUDGE TOREM: So 10 through 14.

11 MS. ANDERL: And then maybe just a couple of
12 contextual questions for Mr. Shiffman on these, and then
13 subject to brief consultation with my co-counsel, I may be
14 done. So can I just hand these up, then?

15 JUDGE TOREM: Yes. And then when you hand
16 them to me and the witness and to Mr. Williamson, then I'll
17 confirm the page numbers for each of those exhibits while
18 you do that.

19 MS. ANDERL: So here's 10. I'll just do one
20 at a time.

21 JUDGE TOREM: That's okay. Hand them up, and
22 we'll call them out.

23 So SS-10X, it's the second set of data requests
24 dated August 24, 2012.

25 MS. ANDERL: 11.

0476

1 JUDGE TOREM: SS-11X is a two-page document.

2 MS. ANDERL: 12.

3 JUDGE TOREM: And by my count, SS-12X is a
4 six-page document.

5 MS. ANDERL: 13.

6 JUDGE TOREM: And 13 is a one-page document.

7 MS. ANDERL: And 14.

8 JUDGE TOREM: And 14 is also a one-page.

9 MS. ANDERL: And for clarification, further
10 clarification, they are numbered Data Requests 2.1 through
11 2.5, and responses sequentially.

12 And if I can just have a minute, then, your
13 Honor, to get them to the witness.

14 JUDGE TOREM: Yes, please.

15 MS. ANDERL: Your Honor, I'm recalling the
16 wisdom of why we did this in advance in other types of
17 hearings.

18 JUDGE TOREM: It's a lot of paper to move
19 around. I appreciate how short a time you had to put this
20 stipulation together.

21 So everybody should have in front of them
22 SS10 through 14, cross-examination, and they correspond to
23 August 24, 2012, responses to various data requests that are
24 numbered 2.1 through 2.5.

25 MS. MAYHOOK: I didn't stipulate to --

0477

1 MS. ANDERL: I know.

2 So, your Honor, may I ask the Pac-West
3 witness a couple of questions?

4 JUDGE TOREM: As to these documents you just
5 handed in?

6 MS. ANDERL: Yes, just one or two contextual
7 questions.

8 JUDGE TOREM: Go ahead.

9 Q (By Ms. Anderl) Mr. Shiffman, Exhibits 10 through
10 14 that have been handed up to you, do you recognize those
11 as Qwest data request responses to Pac-West's second set of
12 requests, in some cases without the attachments?

13 A Yes.

14 Q Okay. And did you work with your counsel to
15 prepare those follow-up requests, basically, or do you
16 recall?

17 A I assume so. This was a long time ago.

18 Q True.

19 And there were no subsequent follow-up requests,
20 were there, data requests, no third set or fourth set from
21 Pac-West to Qwest?

22 A If you say there weren't, I believe it. I frankly
23 do not recall.

24 Q Okay.

25 MS. ANDERL: Your Honor, with that, that's

0478

1 all I had on those requests -- sorry. I must be a little
2 warm because I'm not remembering whether we stipulated them
3 in. Yes, no?

4 JUDGE TOREM: I'm just going to confirm that
5 with the Mayhooks.

6 MS. MAYHOOK: Yes, we agree to stipulate the
7 exhibits as 10X through 14X.

8 JUDGE TOREM: Okay. Those are admitted.

9 I see you have a large-sized exhibit in front
10 of you, at least by page width.

11 What do you have next, Ms. Anderl?

12 MS. ANDERL: This is SS-15X. Mr. Shiffman
13 has a copy. Counsel for Pac-West has a copy, and the
14 Commission's advisors each have a copy.

15 JUDGE TOREM: All right. This is a one-page
16 eye chart.

17 MS. ANDERL: Your Honor, that is a document
18 that is designated as confidential pursuant to the
19 protective order. We could not find
20 11-and-a-half-by-17-inch yellow paper.

21 JUDGE TOREM: There's probably a reason for
22 that.

23 MS. ANDERL: I was going to say that might be
24 for the best.

25 JUDGE TOREM: So you're asking us to treat it

0479

1 as confidential?

2 MS. ANDERL: Please. Yes.

3 JUDGE TOREM: I can make part of it yellow.

4 And so what is it, this one-page something?

5 MS. ANDERL: This one-page something is
6 illustrative of both Mr. Shiffman's and my frustrations in
7 dealing with paper versions of the electronic documents.

8 But I simply wanted to ask Mr. Shiffman if he
9 could accept, subject to check, that this is a paper
10 representation of one of the tabs or worksheets in one of
11 the Excel workbook files that we sent in response to the
12 data request -- I believe it was No. 2 -- and simply have it
13 in the record as something that shows the Qwest response.

14 I believe most of the numbers are already in
15 Mr. Easton's testimony. But it shows the Qwest response and
16 also shows the -- so the degree of detail that was provided,
17 and again, kind of maybe illustrative of the difficulty we
18 had with some of the other spreadsheet documents.

19 And we would simply offer it, as I said, as
20 illustrative of one of the attachments that we provided in
21 response to, I believe, Data Request No. 2.

22 And if Pac-West or Mr. Shiffman can accept
23 that subject to their ability to check once they have the
24 electronic file, that would satisfy my interest, and we
25 would move its admission.

0480

1 JUDGE TOREM: So that's a long way of getting
2 to, "Mr. Shiffman, do you think you might have seen this
3 before?"

4 MS. ANDERL: Thank you.

5 THE WITNESS: My response was going to be I
6 am certain that this is something that is in a spreadsheet
7 somewhere on some tab.

8 JUDGE TOREM: So I am not to believe this was
9 just made up to test my eyes?

10 THE WITNESS: Your choice.

11 JUDGE TOREM: So given what it does and
12 doesn't stand for, is there any objection to it being marked
13 -- well, it's been marked -- to having it be admitted as
14 SS15XC, I guess?

15 MS. ANDERL: XC, thank you.

16 MS. MAYHOOK: As long as it's not being
17 admitted for the truth of the matter, the numbers asserted
18 therein. I think in terms of the similar limitation that
19 you had stated before, that would be fine.

20 JUDGE TOREM: That would expect me to
21 actually read and try to understand it, so it has to be with
22 those limitations. It will be admitted for that purpose.

23 MS. ANDERL: Thank you. I had hoped to
24 finish my cross-examination with more of a flourish, but
25 that concludes my questions.

0481

1 JUDGE TOREM: All right. Redirect?

2 MS. MAYHOOK: I think just a couple of very
3 brief questions to touch on just to close some matters out.

4 RE-DIRECT EXAMINATION

5 BY MS. MAYHOOK:

6 Q With regard to the Exhibits 8X and 9X -- and I'll
7 visually show you. These are the thick yellow --

8 A I think I actually have these labeled correctly.

9 Q Okay. Did those -- and I believe your testimony
10 to Ms. Anderl was that yes, you did see these at some point,
11 we couldn't quite establish which day they were e-mailed, et
12 cetera.

13 But having seen them and that they were in
14 response to a discovery request of Pac-West, did this
15 provide the info you were seeking from your request?

16 A No, it didn't.

17 What we were looking for were CRs or equivalent,
18 and the reason being is that that is Pac-West's, UniPoint's,
19 every carrier I've worked with, method of resolving billing
20 disputes between parties.

21 So what we were looking for was that level of
22 detail on a call-by-call, blow-by-blow, and then we could
23 compare those two parties and see where those differences
24 were.

25 Q Okay. And I --

0482

1 A And I appreciate -- I mean, there's some reason --
2 it's a report. But that data came from somewhere. And all
3 of the responses were summaries. Even if they are big long
4 spreadsheets, it still says, "This is a count of what
5 happened between here and here."

6 Q Okay. Thank you.

7 And then the next document I wanted you to just
8 take a look at again was confidential Exhibit WRE4C, which
9 is the e-mail exchange between you and Ms. Anderl.

10 JUDGE TOREM: Is it 4C?

11 MS. MAYHOOK: 4C.

12 JUDGE TOREM: That would have been from
13 Mr. Easton's original testimony.

14 MS. MAYHOOK: It was, thank you.

15 THE WITNESS: But I have it labeled as 4.

16 MS. ANDERL: But it was resubmitted. Well,
17 the first two pages are 4 because they're not confidential.
18 The "C" stands for confidential. So pages 3 through 11 are
19 4C.

20 THE WITNESS: But is it SS4?

21 JUDGE TOREM: No. This is the original.

22 THE WITNESS: I found my numbering problem.

23 JUDGE TOREM: If I'm looking at the right
24 exhibits, the e-mail exchange dated August 16 of 2012, is
25 that the one you're looking at?

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1 MS. MAYHOOK: Actually, the date at the top
2 is August 28, 2012.

3 JUDGE TOREM: That may be later in the
4 exhibit. So this is going to be page 8 of the confidential
5 exhibit from Mr. Easton's testimony, WRE4C.

6 MS. MAYHOOK: Yes. Thank you very much for
7 the clarification.

8 JUDGE TOREM: Okay.

9 Q (By Ms. Mayhook) Mr. Shiffman, have you had a
10 chance to find that?

11 If not, I'm happy to share.

12 JUDGE TOREM: Mr. Shiffman, this is the one
13 that looks to have your name at the top with your address at
14 PointOne.com sending to Ms. Anderl a report from 2006, and
15 the text of your message appears to be attached as an
16 updated traffic report. Do you see that one?

17 THE WITNESS: Yes, I am on that one now.

18 MS. MAYHOOK: Mine just wasn't on yellow
19 paper because I printed an extra copy.

20 Q (By Ms. Ms. Mayhook) So thank you for clarifying.
21 We've got the right document in front of us. And I just
22 very quickly wanted to touch on I don't think this involves
23 confidential information even though it was labeled as such.

24 If you look at the bottom of the first page for
25 the e-mail sent Tuesday, August 14, from you to Ms. Anderl,

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1 and copying several parties, you indicate that (as read),
2 The CDRs are available if Qwest wishes to receive them. If
3 so, Qwest will need to provide somewhere to upload them as
4 the CDRs for August alone are hundreds of megs.

5 Did you ever receive any follow-up from Qwest to
6 establish anything like an FTP, like a file transfer
7 protocol, or some other method of getting that data to
8 them?

9 Did anyone ever contact you?

10 A I don't believe that they did.

11 Q Okay.

12 A My recollection is that it just didn't want to
13 pursue my offer, which was somewhat unfortunate for the team
14 because they felt like they had spent so much time trying to
15 make the data available.

16 Q Okay. Thank you.

17 And my last question kind of reaches back to
18 earlier in the afternoon. You and Ms. Anderl were having a
19 discussion about the modems and modems and servers and
20 switches and going through something of the network history,
21 Pac-West network history of its switch located in Tukwila,
22 which I believe you discussed was removed in 2007; and then
23 additional network equipment, and perhaps you can expand on
24 that, was brought back into the state in 2010. Can you
25 clarify what was done in 2010 and why?

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1 A So --

2 MS. ANDERL: Well, your Honor, I'm going to
3 object because that is a time period that's outside the
4 scope of this dispute. I don't know that I care. I don't
5 know that it's harmful or prejudicial. I just don't know
6 that it's relevant.

7 MS. MAYHOOK: I think it's relevant because
8 the whole reason it's beyond the scope of this proceeding is
9 that it actually solved a problem. And I think in terms of
10 understanding how the problem was solved, that existed
11 before 2010 and didn't exist after 2010, there is some
12 relevancy there to help understand the magnitude, from a
13 business perspective, of what Pac-West -- how they could
14 approach a solution.

15 JUDGE TOREM: Does that clarify the
16 concern?

17 MS. ANDERL: It does not, to me, address the
18 relevancy, your Honor. But I'll withdraw the objection.

19 JUDGE TOREM: Well, let's hear the answer.
20 Hopefully it's not overly broad.

21 So what happened in 2010?

22 THE WITNESS: I almost forgot what the
23 question was. So Pac-West prior to that had exited
24 Washington from an equipment standpoint.

25 JUDGE TOREM: That was somewhere in 2007,

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1 correct?

2 THE WITNESS: Correct.

3 JUDGE TOREM: Do you know more specifically
4 approximately what month?

5 THE WITNESS: I could find out, but I don't
6 know exactly.

7 JUDGE TOREM: So let's move on to when we
8 came back.

9 THE WITNESS: So Pac-West moved out all of
10 their equipment.

11 Also, it is my understanding in parallel that
12 Pac-West and Qwest entered into a new interconnection
13 agreement, which explicitly defined out sort of what VNXX
14 traffic is, how would be compensated, what kind of equipment
15 would need to be put into a local market.

16 And today, I hear both sides say that there
17 aren't large mounting disputes on the traffic.

18 I think it kind of goes to show that if
19 Pac-West would have known from the beginning that they were
20 going to have to make these changes purely for regulatory
21 reasons, there wasn't -- the current configuration is
22 entirely to check a regulatory box. It's not -- it doesn't
23 service the consumers in Washington any better. It doesn't
24 make Pac-West's network any more efficient, doesn't make
25 Qwest's network any more efficient. It's truly just a

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1 regulatory change.

2 And if that regulatory change would have been
3 clear back in 2000 and aught whatever, it's clear to me that
4 Pac-West would have made that adjustment at that time.

5 MS. MAYHOOK: I have nothing further.

6 JUDGE TOREM: Any recross?

7 MS. ANDERL: No, your Honor.

8 JUDGE TOREM: I'm not sure that the
9 Commission has any questions at this point either. Most of
10 the ones we had anticipated were already asked at one point
11 or another. So thank you, Mr. Shiffman.

12 Just so we can review, then, both pieces of
13 Mr. Shiffman's testimony, SS1 and 2, were both admitted.

14 All of the cross-exam exhibits but for SS4X
15 were admitted. So 3 through 15 less SS4 were admitted to
16 the record as well.

17 Counsel, those were the only witnesses that
18 we had appearing today.

19 Mr. Green's testimony, we've already taken
20 care of which portions of that are explicitly admitted to
21 the record via the references in Mr. Shiffman's reply
22 testimony, as well as the additional piece on interest rates
23 that I fumbled around finding and locating, but those are
24 all easily identified in Ms. Anderl's letter yesterday
25 afternoon.

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1 So we've taken care of the evidentiary agenda
2 items for today. So that leaves now what?

3 MS. ANDERL: One other thing, your Honor.
4 Mr. Dethlefs and I were just conferring, wondering if we
5 needed another run-through on our witness's direct testimony
6 and exhibits as to what was admitted and what wasn't. We
7 think you did it when he was on the stand, but if it's not
8 too much trouble, it might save us having to wait a couple
9 weeks for the transcript.

10 JUDGE TOREM: No, I can go over that for you
11 very quickly.

12 For Mr. Easton, we went through Exhibit 1T
13 and the supporting exhibits, 4C, 8C, 11C, 13C.

14 And we also admitted his reply rebuttal
15 testimony, and that was 14.

16 And 16C was the new exhibit that you
17 submitted today.

18 Those items were all admitted to the record.

19 MS. ANDERL: Thank you. Perfect.

20 JUDGE TOREM: All right. From this point
21 forward, the ultimate questions that still remain are the
22 eligibility for the refunds. And there will be argument,
23 I'm sure, in the briefs as to whether Qwest met its burden
24 of proof that we discussed last week.

25 The other ultimate questions, again, on the

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1 time periods, I think there's a general agreement on those.
2 They've been set out in the testimony that was admitted, and
3 there's not a whole lot of conflict among the witness
4 testimony in that regard.

5 So it's two different groups of payments, one
6 being the refund and one being the transport.

7 There was concession by your witness today as
8 to interest applied only to the refunds. And so that's a
9 position I had hoped the witness was authorized to make on
10 behalf of the company. I just want to make sure that if the
11 interest calculation needs to be applied, if any, to
12 anything but the refunds, that Pac-West is put on notice
13 today that Mr. Easton spoke in turn or out of turn on that
14 regard.

15 MS. ANDERL: Thank you for that
16 clarification.

17 No, your Honor, we intentionally prepared the
18 calculations the way we did, seeking interest on the refund,
19 but just straight principal payment on the transport
20 component.

21 JUDGE TOREM: Okay. So what I'm expecting
22 briefing on are those topics, as to the funding, how the
23 calculations were made, and what awards counsel, either
24 side, is or is not entitled to. I think these can be
25 simultaneous briefs.

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1 Does anybody think we need to have two rounds
2 of briefing?

3 MS. MAYHOOK: When I shook my head for
4 simultaneous, I just thought you meant both parties
5 submitting at the same time.

6 I am inclined that reply briefs are usually
7 helpful, and perhaps limiting the page number is something I
8 think is effective. So I offer that for consideration.

9 MS. ANDERL: We would agree to do it either
10 way. I think we have a slight preference toward a very
11 limited reply opportunity because that's what lawyers do.

12 JUDGE TOREM: I understand.

13 MS. ANDERL: It's just very hard to take
14 opposing counsel's brief at face value without having a
15 chance to take one little shot back.

16 JUDGE TOREM: Let's talk about the initial
17 brief, then. How long do you think it will take to prepare
18 something, and then you can tell me if there's -- I don't
19 know that I need to limit your pages on the first one.
20 Hopefully it will be concise.

21 MS. ANDERL: You know, your Honor --

22 JUDGE TOREM: Do you want to wait for the
23 transcript?

24 MS. ANDERL: Typically the transcript is two
25 weeks. I don't see -- with the timeline we've been on in

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1 this case, I don't see any need to expedite the transcript.

2 JUDGE TOREM: So the transcript will be on or
3 about the 21st or 22nd. Let's call it two weeks from
4 tomorrow, on Friday the 22nd.

5 How many weeks after that do counsel need for
6 briefs? Two more?

7 MS. ANDERL: Could we have three, your
8 Honor?

9 JUDGE TOREM: That would be Friday, March 15,
10 if I'm calculating dates right.

11 MS. MAYHOOK: Yes.

12 MR. MAYHOOK: The Ides of March.

13 JUDGE TOREM: All right. So we have March
14 15 for initial briefs.

15 And give you another ten days or so for a
16 response, reply, and that will put us out to March 25, is
17 the Monday. Maybe the 26th, which is a Tuesday, is a good
18 day, so you can use Monday to edit whatever you left
19 hopefully over the weekend.

20 MS. ANDERL: Thank you.

21 JUDGE TOREM: So March 26 for reply briefs.

22 What's the page limitations counsel think
23 they should be held to for the reply briefs?

24 MS. ANDERL: Ten.

25 MS. MAYHOOK: That was what was going to come

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1 out of my mouth.

2 JUDGE TOREM: I was going to start with five.

3 MR. MAYHOOK: Me too.

4 JUDGE TOREM: What I'd like to see is -- if
5 it's ten pages for the reply, as long as counsel is thinking
6 the same thing, it should be plenty of pages.

7 For the initial brief, I would like an
8 appendix that tells me -- just extract the numbers into an
9 executive summary. And it should be one page, and maybe it
10 just can be an opening executive summary or an appendix,
11 however you want to refer to it, but a one-page, easy to
12 reference, all the numbers that you do or don't want to see
13 in the order coming from the Commission, because I want to
14 make it as easy as possible on the commissioners. I'm down
15 to two. One had to leave. He couldn't take this case any
16 longer. And if you give that to me, it will help with the
17 two remaining commissioners and not drive them out of the
18 Commission trying to resolve this case finally.

19 MS. ANDERL: Your Honor, we had proposed to
20 Pac-West yesterday -- and we were not able to come to an
21 agreement on it, and we didn't necessarily want to raise it
22 as a disputed issue. We had proposed that it could
23 streamline things if the parties were willing to withdraw
24 the confidentiality designations at least as to the
25 high-level total numbers, believing that the confidential

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1 information in the backup exhibits, of course, is
2 confidential; reasons kind of being maybe threefold.

3 One is the numbers are old. It's not an
4 ongoing dispute. So the commercial viability of old numbers
5 is less than new numbers.

6 Two, they are high level and summary numbers.
7 They don't really give you any ability to back into any sort
8 of traffic information, and -- maybe that was just two.

9 And then I guess maybe the selfish reason of
10 just making things easier to handle.

11 JUDGE TOREM: Let's do it this way. The
12 Commission -- because you have to prepare all the paperwork
13 and you have to comply with all the rules, if you don't want
14 the numbers protected anymore, the Commission is well
15 leaning toward an open records.

16 So if there's not a need to protect them any
17 longer in the new filings because they come in different
18 context, and as you say, the older, if you can submit it
19 without confidential, we'll take it without a confidential
20 designation. But I hope that there will be an agreement
21 between parties.

22 And it may be that once you get your briefs
23 together, final draft, you'll know what information is in
24 them, and you can easily say, "We're going to refer to this
25 previously confidential number," or dollar amount, "but we

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1 want to make it open." If there's a need, you can exchange
2 and file a memo explaining all of that, but I'm not sure the
3 Commission needs to look behind the curtain, so long as the
4 numbers come in on nonyellow paper. They'll be subject to a
5 public records request, which doesn't require you to run
6 down to the court to defend it.

7 MS. ANDERL: Thank you, your Honor, yes. And
8 I think it would only happen if we agreed we're not going to
9 make it a contested issue and make Pac-West defend the
10 confidentiality.

11 But if after reflection they're able to get
12 comfortable with it, we're certainly on board.

13 JUDGE TOREM: And again, the Commission,
14 unless there's a need to defend confidentiality, doesn't
15 have an interest in it. If we could have all of it open, we
16 would, because that's what the law requires, and we've
17 fought long and hard to get the section that we do have,
18 referring to confidentiality on the Title 80 utilities
19 issues.

20 MS. MAYHOOK: And I think we're hearing that
21 it's an issue that's probably best given some further
22 reflection and discussion amongst us, and if as a last
23 resort we need to involve the Commission, we have that. But
24 we'll try to resolve it amongst ourselves.

25 JUDGE TOREM: I don't think the Commission is

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1 going to want to get involved in a dispute. If it was
2 designated confidential to this point without challenge,
3 it's just really a question of how many colors of paper we
4 need to assemble.

5 MS. ANDERL: We're not going to bring it to
6 the Commission. Pac-West says there's no confidential
7 numbers.

8 JUDGE TOREM: You got my message loud and
9 clear.

10 MS. MAYHOOK: Fine. Sorry. Got it. Okay.

11 JUDGE TOREM: Okay. So, Counsel, then I'll
12 next hear from you on March 15 with opening briefs with the
13 executive summary page. Hopefully we don't have to set a
14 page limit for those other than what may be in our rules in
15 that regard.

16 And then a ten-page reply is the limitation
17 -- you don't have to fill it -- by Tuesday, March 26.

18 From there, if there are unanswered
19 questions, then Mr. Thomas, Mr. Williamson, and I will craft
20 bench requests or let you know that we still have unanswered
21 questions on the remaining issues.

22 We have tried our best to be ready and make
23 sure that today answered all of the mail that we were
24 expecting to open. I think it did, because we have the
25 original petitions for enforcement, the petition at this

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1 point plus counterclaims, and then sort through all of that
2 with the legal proceedings with the remand in between.

3 But I encourage you to look back to the 2005
4 filings and answer, and determine what were those original
5 questions and what's still before this Commission for
6 resolution so we don't end up with a motion to reopen this
7 record for something that was left out.

8 If the opening briefs can point to, without a
9 long setup, We're asking for this relief because it comes
10 from this part of the Qwest side, the counterclaims, or the
11 petition for enforcement, with just a footnote, that will be
12 helpful for us to get right into what we started with eight
13 years ago and make sure we're answering the questions now.

14 Anything else? All right.

15 Thank you all for being here. Hopefully
16 another month and a half we'll have what we need and shortly
17 thereafter we'll get things out to you.

18 Ms. Anderl, I will hear from you on the 0539
19 docket next week with a confidential filing on the
20 settlement with Level 3.

21 MS. ANDERL: Yes.

22 JUDGE TOREM: Okay. We are adjourned.

23 (Whereupon, the proceedings were
24 concluded at 4:35 p.m.)

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