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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of Level 3 )  
Communications, LLC's Petition for )Docket UT-063006  
Arbitration Pursuant to Section )Volume V  
252(b) of the Communications Act of )Pages 284-526  
1934 as Amended by the )  
Telecommunications Act of 1996, and )  
the Applicable State Laws for Rates,)  
Terms, and Conditions of )  
Interconnection with Qwest )  
Corporation. )

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An arbitration in the above-entitled matter was held at 9:37 a.m. on Tuesday, October 24, 2006, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge ANN RENDAHL.

The parties present were as follows:

QWEST CORPORATION, by Ted D. Smith, Attorney at Law, Stoel Rives, LLP, 201 S. Main Street, Suite 1100, Salt Lake City, Utah, 84111, and Thomas Dethlefs, Senior Attorney, Law Department, 1801 California Street, Tenth Floor, Denver, Colorado 80202.

LEVEL 3 COMMUNICATIONS, LLC, by Erik Cecil, Regulatory Counsel, Richard E. Thayer, Director of Interconnection, Law and Policy, Scott Porter, Regulatory Counsel, 1025 Eldorado Boulevard, Broomfield, Colorado 80021, and Chris Savage, Attorney at Law, Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, NW, Suite 200, Washington, D.C., 20006.

Barbara L. Nelson, CCR  
Court Reporter

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1           (The following exhibits were marked in  
2           conjunction with the hearing.)

3                   E X H I B I T   L I S T

4   DISPUTED LANGUAGE/ISSUES

5   1        Qwest's Draft Interconnection Agreement, with  
6           disputed language, filed 10/20/06  
7   2        Level 3's Draft Interconnection Agreement,  
8           with disputed language, filed 10/23/06  
9   3        Disputed Issues List, filed 10/20/06  
10 4-10     (Not Used)

11   LEVEL 3 COMMUNICATIONS

12   KENNETH L. WILSON

13 11-T     KLW-1T: Prefiled Direct Testimony (filed  
14           5/30/06)  
15 12        KLW-2: Curriculum Vitae  
16 13        KLW-3: Power Point Slides re: Combining  
17           Traffic on Trunk Groups for Efficiency  
18           (refiled 9/13/06)  
19 14        KLW-4: LIS Trunking v. PRI Trunking Diagram  
20 15        KLW-5: Quad Link Diagram  
21 16-T     KLW-6: Prefiled Reply Testimony (filed  
22           9/15/06)

23   CROSS-EXAMINATION EXHIBITS

24 17-C     Level 3 Responses to Qwest's 1st Set of Data  
25           Requests. (CONFIDENTIAL - IN PART)

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1 18-C Level 3 Supplemental Responses to Qwest's  
2 1st Set of Data Requests. (CONFIDENTIAL -  
3 IN PART)  
4 19-C Level 3 Responses to Qwest's 2nd Set of Data  
5 Requests. (CONFIDENTIAL - IN PART)  
6 20 Alabama BellSouth/Level 3 Contract Amendment  
7 21-30 (Not Used)  
8 MACK D. GREENE  
9 31-T MGD-1T: Prefiled Direct Testimony (May 30,  
10 2006)  
11 32 MGD-2: Level 3 Network Interconnection and  
12 Architecture in Washington (refiled 8/31/06)  
13 33 MGD-3: Level 3 Network Interconnection:  
14 Comparison Between Level 3 and Qwest  
15 Facilities.  
16 34 MG-4: QCC Wholesale Dial/Level 3 Managed  
17 Modem Comparison  
18 35 MG-5A: IP to PSTN Call (refiled 9/15/06)  
19 36 MG-5B: PSTN to IP Call (refiled 9/15/06)  
20 37 MG-5C: Managed Modem (refiled 9/15/06)  
21 38 MG-5D: AOL Dial ISP Call (refiled 9/15/06)  
22 39 MG-5E: Qwest/Level 3 Seattle, WA Network  
23 (refiled 9/15/06)  
24 40 MG-5F: VoIP calls from Level 3 to Qwest end  
25 users follow the exact path in reverse,

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1 Qwest/Level 3 Spokane, WA Network (refiled  
2 9/15/06)  
3 41-C MG-5G: Effect of Commission Adoption of Qwest  
4 ISP, VoIP Compensation and Network  
5 Architecture Proposals in Washington  
6 (Confidential) (refiled 9/15/06)  
7 42 MG-5H: Qwest/Level 3 Pasco, WA Network  
8 (refiled 9/15/06)  
9 43 MG-6T: Supplemental Direct Testimony (August  
10 18, 2006).  
11 44 MG-7: (More detailed version of MG-2)  
12 45 MG-8: Excerpt of ATIS 0406000-2200 (refiled  
13 8/31/06)  
14 46-T MDG-9: Prefiled Reply Testimony (filed  
15 9/15/06)  
16 CROSS-EXAMINATION EXHIBITS  
17 47 Level 3 Managed Modem Website Material  
18 48 Level 3 VoIP Enhanced Service Website  
19 material  
20 49-50 (Not used)  
21 QWEST CORPORATION  
22 LARRY B. BROTHERRSON  
23 51-T LBB-1T: Prefiled Direct Testimony (Replaced  
24 8/18/06)  
25 52 LBB-2: VNXX Diagram (refiled 8/25/06)

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1 53 LBB-3: Qwest Interconnection Agreement -  
2 Attachment J  
3 54 LBB-4: Examples of VoIP Calls (refiled 8/25/06)  
4 55 LBB-5: Proper Routing of Terminating VoIP Calls  
5 (refiled 8/25/06)  
6 56 LBB-6: VNXX v. IXC v. FX (refiled 8/25/06)  
7 57 LBB-7: LIS v FGD Interconnection (refiled  
8 8/25/06)  
9 58 LBB-8: Comparison Level 3 VNXX Service/Qwest FX  
10 Service/IXC Service For Calls Outside the Local  
11 Calling Area. (refiled 8/25/06)  
12 59-T LBB 9RT: Prefiled Reply Testimony (filed  
13 9/15/06)  
14 CROSS-EXAMINATION EXHIBITS  
15 60 Intercarrier Compensation for ISP-Bound  
16 Traffic, Order on Remand and Report and Order,  
17 16 FCC Rcd 9151 (2001)  
18 61 In the Matter of the Petition for Arbitration,  
19 AT&T and TCG v. Qwest, Docket UT-033035, Order  
20 05; 2/6/04  
21 62 Excerpts from Developing a Unified Intercarrier  
22 Compensation Regime, Further Notice of Proposed  
23 Rulemaking, 20 FCC Rcd 4685 (2005)  
24 63 Transcript of Proceedings before the Public  
25 Utility Commission of Oregon (Petition of Level

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1           3), ARB 665 (August 30, 2006)

2   64    A single exhibit consisting of excerpts from

3           WAC 480-120-021

4   65    In the Matter of Amendments of Part 69 of the

5           Commission's Rules Relating to Enhanced Service

6           Providers, CC Docket No. 87-215, ORDER,

7           Adopted: April 19, 1988; Released: April 27,

8           1988

9   66    Central Office Code Assignment Guidelines, May

10          5, 2006, Alliance for Telecommunications

11          Industry Solutions (ATIS)

12   67-70 (Not Used)

13   WILLIAM R. EASTON

14   71-T   WRE-1T: Prefiled Direct Testimony (Replaced

15          8/18/06)

16   72-TC   WRE-2RT: Prefiled Reply Testimony (filed

17          9/15/06) (CONFIDENTIAL)

18   73    WRE-3: Second Amendment to Interconnection

19          Agreement between Verizon North, Inc. and Level

20          3, filed with Wisconsin Public Service

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22   74    WRE-4: Interconnection Agreement between

23          BellSouth and Level 3

24   75    WRE-5: First Amendment to Interconnection

25          Agreement between SBC and Level 3

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2 76 Excerpts from the Local Competition Order, 11  
3 FCC Rcd 15499 (1996)

4 77 Excerpts from 47 U.S.C. Section 251(c)

5 78 Text of 47 C.F.R. Section 51.5

6 79 Excerpts from 47 C.F.R., Part 51, subpart H  
7 (Sections 51.701 et seq.)

8 80 Excerpts from 47 U.S.C. Section 153

9 81 Excerpts from Developing a Unified Intercarrier  
10 Compensation Regime, Further Notice of Proposed  
11 Rulemaking, 20 FCC Rcd 4685 (2005)

12 82 Transcript of Proceedings before the Public  
13 Utility Commission of Oregon (Petition of Level  
14 3), ARB 665 (August 30, 2006)

15 83 Interconnection Agreement between Qwest and  
16 Sprint Spectrum (Docket UT-023022)

17 84 Interconnection Agreement between Qwest and  
18 Nevada Wireless (Docket UT-033058)

19 85 Excerpts from Intercarrier Compensation for  
20 ISP-Bound Traffic, Order on Remand and Report  
21 and Order, 16 FCC Rcd 9151 (2001)

22 86-90 (Not Used)

23 PHILIP LINSE

24 91-T PL-1T: Prefiled Direct Testimony (Replaced  
25 8/18/06)



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1 92 PL-2: Page from WilTel Web Site

2 93-T PL-3RT: Prefiled Reply Testimony (filed  
3 9/15/06)

4 CROSS-EXAMINATION EXHIBITS

5 94 Excerpts from Transcript of Hearing: Level 3  
6 v. Qwest, Oregon PUC, Arb 665, August 29 and  
7 30, 2006

8 95 Excerpts from Qwest SGAT for the State of  
9 Washington, June 25, 2002

10 96 Qwest Investor presentation, August 2005

11 97 Qwest Ex Parte, FCC Docket 96-96, October 5,  
12 2000

13 98 U.S. West Ex Parte, FCC Docket 96-98, Dec. 2,  
14 1999

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1                   JUDGE RENDAHL: Good morning, everyone.  
2 We're here before the Washington Utilities and  
3 Transportation Commission in Docket Number UT-063006,  
4 which is the request for arbitration by Level 3 for  
5 an interconnection agreement with Qwest Corporation.

6                   Today is Tuesday, October the 24th. It's  
7 9:38, approximately, and we're starting our  
8 evidentiary hearing in the arbitration today. My  
9 name is Ann Rendahl. I'm the Administrative Law  
10 Judge and Arbitrator in this proceeding.

11                   And before we go any farther, I'd like to  
12 take appearances from the parties, beginning with  
13 Level 3. If you've already stated an appearance on  
14 the record, please just give your name and your firm  
15 or the party you represent, and if you haven't  
16 previously filed a notice of appearance or stated an  
17 appearance on the record, you need to give full  
18 information, which is your name, the party you  
19 represent, your address, your phone number, your fax  
20 number, and your e-mail address.

21                   MR. CECIL: Okay. Erik Cecil, Regulatory  
22 Counsel for Level 3, and with me today are Rick  
23 Thayer, Director of Interconnection, Law and Policy,  
24 and Scott Porter, Regulatory Counsel for Level 3, as  
25 well as Mr. Savage, who will enter an appearance.

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1 MR. SAVAGE: I'm the new guy.

2 JUDGE RENDAHL: Good morning.

3 MR. SAVAGE: Good morning. Chris Savage,  
4 that's S-a-v-a-g-e. I'm with the firm of Cole,  
5 C-o-l-e, Raywid, R-a-y-w-i-d, and Braverman,  
6 B-r-a-v-e-r-m-a-n, LLP. We are at 1919 Pennsylvania  
7 Avenue, NW, which is NW in the address, Suite 200,  
8 Washington, D.C., 20006. And do you want the firm's  
9 or my personal --

10 JUDGE RENDAHL: Your direct line.

11 MR. SAVAGE: My direct line is 202-828-9811;  
12 my direct fax is 703-991-1470; and my e-mail is  
13 Chris.Savage@CRBLaw.com.

14 JUDGE RENDAHL: CRB@ --

15 MR. SAVAGE: CRBLaw --  
16 Chris.Savage@CRBLaw.com.

17 JUDGE RENDAHL: CRBLaw.com?

18 MR. SAVAGE: .com, yes.

19 JUDGE RENDAHL: Okay. Thank you very much.  
20 Okay. And for Qwest?

21 MR. DETHLEFS: Tom Dethlefs, the last name's  
22 spelled D-e-t-h-l-e-f-s. I am in-house counsel for  
23 Qwest, and I've previously filed an appearance.

24 MR. SMITH: I'm Ted Smith. I've also  
25 previously filed an appearance. I'm with the law

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1 firm of Stoel Rives, the Salt Lake City, Utah office,  
2 and I'm appearing for Qwest.

3 JUDGE RENDAHL: All right. Thank you very  
4 much. We have two preliminary matters we need to  
5 talk about this morning. First, I had asked the  
6 parties to file a disputed -- a jointly-disputed  
7 issues list by last Friday, as well as the  
8 interconnection agreement language, essentially a  
9 draft contract with the disputed language identified.

10 I understand that the parties have not  
11 reached an agreement yet on the template of the  
12 agreement to be used. I do have a disputed issues  
13 list, and I have marked them on an exhibit list, the  
14 Qwest interconnection agreement language as Exhibit  
15 1; Level 3's interconnection agreement version as  
16 Exhibit 2; and the disputed issues list as Exhibit 3.

17 So the first issue we need to talk about  
18 this morning is the status of the parties'  
19 discussions on which version of the contract we  
20 should be using, and second, there is a motion to  
21 strike filed by Level 3 yesterday that we need to  
22 address this morning before we begin hearing  
23 testimony from the witnesses.

24 So first, let's talk about the contract. And  
25 Mr. Dethlefs, you were talking off the record and I

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1 asked you to restate what you were saying on the  
2 record.

3 MR. DETHLEFS: Okay. Let me give just a  
4 very brief background of where we're at. When Qwest  
5 -- when Level 3 filed their petition, it was our  
6 understanding that they used a template that had been  
7 used in other states, but that Qwest had not proposed  
8 for the state of Washington.

9 So when Qwest filed its response, we  
10 attached the template that we had, in fact, proposed,  
11 and there was a possibility that those two contracts  
12 had different provisions in them. Our position was  
13 basically that, you know, changes in law had  
14 occurred, so we should use a current template.

15 Earlier this year, in a procedural  
16 conference, we discussed this issue, and subsequent  
17 to that conference, we sent a comparison of the two  
18 templates to Level 3 and, after a period of time,  
19 parties began to discuss discussions to try to  
20 resolve discrepancies in the template. These  
21 concerned things that were marked in each of the  
22 templates as agreed language, but there were, in  
23 fact, differences.

24 Those discussions are still ongoing. Mr.  
25 Thayer and I just had a discussion this morning, and

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1 what we would propose to do is submit to you an  
2 agreement that has all the common language, and there  
3 are two issues that are still being discussed that  
4 have not been resolved, and when we file that  
5 document, we would identify those for you and  
6 presumably each take a position on what ought to  
7 happen to the two remaining items.

8           The two remaining items, one is the transit  
9 traffic provision, provisions of the agreement, and  
10 the other one is a question of whether the state  
11 commission can authorize UNEs on its own that are  
12 different or in addition to what the FCC has ordered.

13           On the transit traffic issue, I don't  
14 believe that the two templates that were filed with  
15 the petition and the response respectively had  
16 different language on that issue, but we need to  
17 check that. And so what I would suggest is that  
18 we're given something like a week before we file our  
19 initial briefs so you have something to use as you go  
20 through the briefs and won't have to figure out  
21 whether there's a difference between their template  
22 and our template on the vast majority of the  
23 provisions in the agreement.

24           JUDGE RENDAHL: All right. The party from  
25 Level 3?

1           MR. CECIL: Just insofar as the issues are  
2 concerned, Your Honor, Level 3 believes that, to the  
3 extent we're unable to agree on those, that they can  
4 be dealt with entirely on briefs, that we don't need  
5 any evidence on those. They're questions of law, if  
6 we're unable to resolve those.

7           JUDGE RENDAHL: Okay. So the question I  
8 have, are these -- I guess I'm confused. I thought  
9 the issue was the template version we're using, and  
10 I'm not sure exactly what that means. Does that --  
11 it seems to be you are in disagreement on a wide  
12 variety of issues, and so there's disputing language  
13 that should be the same in whichever template you're  
14 using. I'm not sure what the template difference is.

15           MR. DETHLEFS: Well, what we have to do --  
16 the discussions that have taken place between Qwest  
17 and Level 3 have not necessarily been tied to the  
18 specific differences between the two templates that  
19 were filed with the petition and the response. So  
20 there are differences, however, because Qwest had  
21 updated its template and had proposed that to Level 3  
22 well before Level 3 filed its petition in this  
23 matter, and it was our understanding that Level 3  
24 just used the earlier template that -- they took the  
25 position that that was the appropriate template to

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1 use because it was used in the negotiations from the  
2 first five or six states.

3 JUDGE RENDAHL: So they're both based on a  
4 Qwest template; it's just a different age of the  
5 template that we're talking about, and one of those  
6 issues is this issue of state commission authority  
7 for UNEs?

8 MR. DETHLEFS: See, that's -- when Mr. Cecil  
9 said he believes these additional issues can be  
10 briefed, it's our position that, on those two  
11 particular issues, there are probably not any  
12 differences between the two Qwest templates, and  
13 therefore those two issues were not raised properly  
14 in this proceeding such that the Commission should  
15 consider them.

16 Now, Level 3 may have a different position  
17 on that. I won't really know until we actually do a  
18 red-line -- till I go to those original documents  
19 that were filed with the petition and the response  
20 and look at those two specific issues.

21 Like I said, the discussions that have taken  
22 place between Level 3 and Qwest haven't been tied to  
23 resolving the differences in the templates; they've  
24 included other matters, and I believe these two  
25 particular issues are those other matters, which are



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1 legitimate to consider in states subsequent to  
2 Washington, but we don't believe should be considered  
3 in Washington.

4           But it should be a simple matter for us to  
5 identify those for you and for us to deal with that  
6 once we figure out exactly what the differences are  
7 there.

8           JUDGE RENDAHL: Mr. Cecil, did you have  
9 anything to add?

10           MR. CECIL: I think our understanding of  
11 what occurred is a little bit different than that,  
12 but maybe we can just wait and see if we can resolve  
13 these issues with Qwest before we have to dive into  
14 them in great substance.

15           JUDGE RENDAHL: That would be my preference.  
16 It sounds like this is an issue that can be resolved.  
17 I just want to make sure -- this is my last question  
18 on this -- if we're having discussions today and  
19 tomorrow and Thursday, if necessary, about contract  
20 language, the contract language we're going to be  
21 talking about here, there's no differences between  
22 the template that Level 3 filed and what Qwest filed;  
23 correct? So if somebody's talking about a certain  
24 section number, those will be the same in both  
25 versions and the disputed language will be reflected

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1 the same in those versions?

2 MR. DETHLEFS: Well, we haven't actually had  
3 the opportunity to -- because we didn't get -- their  
4 contract wasn't filed till yesterday, is my  
5 understanding. We haven't been able to -- had the  
6 opportunity to take the two documents, compare them  
7 on Word, and then figure out, you know, exactly what  
8 the difference is and what should be the agreed  
9 language.

10 So for example, on the transiting issue,  
11 it's my understanding that, subsequent to the time  
12 that they filed their response in these negotiations  
13 that have been going on, that Level 3 has actually  
14 proposed new transit language.

15 JUDGE RENDAHL: Okay. But we're not going  
16 to be talking about transit language in the hearing  
17 today and tomorrow; correct?

18 MR. DETHLEFS: That's right.

19 JUDGE RENDAHL: Okay. So the issues that  
20 we're talking about for the hearing that are in  
21 dispute raised in the testimony, there may be issues  
22 that are legal in nature that you'll be disputing on  
23 brief that -- we're not talking about that. I'm  
24 talking about the language that, you know, throughout  
25 the testimony, there's references to different

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1 language. I just want to make sure that when we get  
2 to testimony and somebody says, let's look at section  
3 blah, blah, blah, it's not different in Qwest's  
4 versus Level 3's, which creates a great problem for  
5 me.

6 So at this point I suggest we not worry  
7 about that at the moment, but I think we're going to  
8 have to double-check as we go through, so there's no  
9 difference from what Level 3 is proposing and what  
10 Qwest is proposing as we go through. That's my  
11 concern right now.

12 MR. CECIL: Perhaps I can just add a  
13 clarifying point. The disputed points list is a  
14 joint disputed points list. So we're agreed on what  
15 language is in dispute.

16 JUDGE RENDAHL: In the disputed issues list?

17 MR. CECIL: Correct.

18 JUDGE RENDAHL: So we probably shouldn't  
19 even look at the contract. We should just go off the  
20 disputed issues list for the hearing.

21 MR. CECIL: That would be -- yes, I think  
22 that's the best way to proceed.

23 MR. SMITH: I agree. I think that's the  
24 document where the disputed language, we both agreed  
25 that we've each stated -- the issue then is did --

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1 when we each created our updated contract, did we  
2 properly reflect that in there, and I did the one for  
3 Qwest. I can assure you there may have been the  
4 possibility of cutting and pasting errors that we  
5 need to double-check, so --

6 JUDGE RENDAHL: Okay. Well, then, for  
7 purposes -- to resolve this issue for the hearing, so  
8 we can move on, we'll use the disputed issues list  
9 language, and I would love it if you all will resolve  
10 this issue without further discussion with me, but if  
11 you need to, I'm available.

12 Okay. So for the contract, let's move on,  
13 contract issue. The next issue, we need to talk  
14 about is the issue of motion to strike. And for the  
15 record, I'll note that I started this issue with an  
16 e-mail to -- addressing Level 3's cross exhibits,  
17 which -- many of which are FCC orders and FCC rules  
18 and Commission orders and Commission rules, and  
19 raised the question of whether these were properly  
20 cross exhibits or whether these were really  
21 addressing issues we could address in brief,  
22 understanding that there is quite -- there are quite  
23 a few references in Qwest's testimony to legal  
24 issues.

25 And as a result of back and forth e-mails

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1 between all the parties, I suggested it was really  
2 Level 3's option as to how they wished to proceed.  
3 We could go forward as planned with the cross  
4 exhibits or they could file a motion to strike, and  
5 that was their option.

6 I received a motion to strike yesterday  
7 before noon, which is what I had requested if Level 3  
8 was going to file a motion. So how I'd like to  
9 proceed is to have a brief argument from both parties  
10 on this, and I'm suggesting about ten minutes per  
11 side. If you think that's too much, that's fine with  
12 me. I just don't want to shortcut anybody. If you  
13 need more time, please let me know.

14 I have had a chance to look through the  
15 motion that was filed yesterday, the list of portions  
16 of testimony that should be stricken. I've gone  
17 through all of that. So I've gone through the motion  
18 quite -- in quite detail, but I would like to hear  
19 from both sides on those issues, and I'll start with  
20 Level 3.

21 MR. SAVAGE: This is going to be my motion.  
22 May I actually suggest that, since we wrote the  
23 motion, it's out there, everyone's read it, it might  
24 make more sense, in terms of being efficient, to let  
25 Qwest go first in response to our motion, and then I

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1 can -- I can do it either way, but I thought that  
2 might be -- alternatively, I can take three minutes  
3 and reserve the rest of my time for reply.

4 JUDGE RENDAHL: I think it's fine to go  
5 direct to Qwest and allow some time to respond. So  
6 unless, you know, there was anything additional you  
7 wanted to add, but I --

8 MR. SAVAGE: Assuming you've read the --

9 JUDGE RENDAHL: I've read the motion.

10 MR. SAVAGE: Then I'd just as soon wait to  
11 hear what Qwest has to say in response to that.

12 JUDGE RENDAHL: Mr. Dethlefs, are you  
13 responding?

14 MR. DETHLEFS: Yes, I will. Yes, I will.  
15 Your Honor, we got the motion yesterday. We spent  
16 some time going through it. There are 123  
17 references, and by references, I mean sequences of  
18 line numbers that they've asked to have stricken.  
19 Three-quarters of those were in the August 18th, 2006  
20 testimony, and much of that was actually recasting  
21 testimony that had been filed in May, and so Level 3  
22 has known about the, you know, legal citations in our  
23 briefs for quite some time.

24 We've had arbitrations in five other states.  
25 They have never objected to the citations of legal

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1 authorities in any of those states. Many times these  
2 legal authorities are cited for propositions that are  
3 factual in nature, and often that is a blurred line.  
4 You know, there are mixed issues of facts.

5 I think we ought to keep in mind what the  
6 purpose of this proceeding is, and that is to adopt,  
7 basically, a legal document that is supposed to be  
8 based upon good policy and federal law. And what  
9 Qwest's approach has been in this proceeding is to  
10 take language that Level 3 has proposed, compare it  
11 to the language that Qwest has proposed, and then  
12 state our position, whether it be factual or legal,  
13 with respect to that language.

14 Now, Level 3 has taken a different approach.  
15 They haven't compared the language, they haven't, in  
16 their testimony, gone section by section and done it  
17 the way Qwest has done, but their testimony is  
18 nevertheless full of statements about the law. They  
19 just don't put any legal authority to back them up.

20 For example, there's testimony by Mr. Wilson  
21 that a point of interconnection is a financial  
22 demarcation point. Now, that, if anything, is a  
23 legal proposition, and he states in his testimony --  
24 doesn't cite a legal authority for it, but it is a  
25 legal proposition, so really, the only difference in

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1 the approaches between Level 3 and Qwest is that  
2 Qwest has sought to include in its testimony specific  
3 legal references that its testimony is based in part  
4 on.

5           This is not a jury trial where we have to  
6 separate out the legal issues from the factual issues  
7 so that the right party decides them. The Commission  
8 can determine very easily whether something's a legal  
9 issue or a factual issue, and there's no point in  
10 going through an exercise where we take 123 line  
11 references that could have been challenged many, many  
12 months ago, slicing up Qwest's testimony, and then  
13 saying to Qwest, You should come back and put all  
14 those references in your briefs instead of having  
15 included them in your testimony.

16           We are not objecting to Level 3  
17 cross-examining our witnesses with respect to legal  
18 matters. They can -- in every other state, they have  
19 cross-examined us about statements in FCC orders,  
20 statements in state commission orders, FCC  
21 regulations, and so this is a complete surprise to  
22 us. It is not fair to us to have our testimony  
23 dissected like this based upon a motion that, had the  
24 Commission determined many months ago was correct, we  
25 could have used that ruling, then, to fix the



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1 testimony so that it's coherent.

2 All this does is make a mess of the record  
3 in this proceeding. It would be very difficult,  
4 after we go through this, if some of the sections in  
5 Qwest's testimony have been stricken, to figure out  
6 later on exactly what's properly included part of the  
7 testimony, what's properly cited, what have you.

8 So we would submit to you that the  
9 appropriate thing to do is to just go forward with  
10 the hearing with this testimony in its current form,  
11 not to try to slice it apart and draw a line that  
12 isn't necessary to be drawn here because, as I said,  
13 this is not a jury trial.

14 JUDGE RENDAHL: Okay. Mr. Savage.

15 MR. SAVAGE: I was delighted when you said  
16 that you said you started this, because I thought I  
17 started it, because I was the one that started  
18 dumping all these -- well, if I'm going to  
19 cross-examine on this, I'm going to need this, I'm  
20 going to need this, and so the list that inspired  
21 your e-mail in part began with me.

22 First, where to begin? As a procedural  
23 matter, I mean, most of us have been through a number  
24 of these things. The normal practice, at least in my  
25 experience in arbitrations, is that if there are

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1 objections to be made to a witness' testimony,  
2 they're made, as in a normal trial, at the time the  
3 testimony is to be introduced.

4           And so I thought, to the extent you invited  
5 us to consider and file a motion in advance of the  
6 hearings so it would all be laid out in advance was  
7 actually giving Qwest greater notice for our specific  
8 problems with their testimony than they would have  
9 had in a normal case.

10           There's certainly nothing that I'm aware of  
11 in any procedural order here or elsewhere that would  
12 have prevented us from making the admission of X  
13 testimony for us to actually say we object to that  
14 because it contains blah, blah, blah, blah.

15           So while I think it's correct that, gosh, it  
16 would have been nice for them if they had gotten it  
17 even earlier than they got it, the fact that they  
18 have a detailed list of everything we object to  
19 before we ever even started the hearing, you know,  
20 the day before their witnesses are likely to come on  
21 stand actually gives them greater time to adapt and  
22 deal with it than they would have in a normal case.  
23 So I think that the notion somehow this is unfair to  
24 Qwest is just -- just wrong.

25           We certainly agree that this is not a jury

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1 trial, and as we said in our motion, you know, we  
2 don't have any doubt that you and the Commission will  
3 be able to look at this and sort out that's a legal  
4 argument versus that's a fact. We do have a number  
5 of concerns, however, that that -- the fact that  
6 we're comfortable with you guys doing that won't  
7 solve for us.

8           First, yes, we've all done the  
9 cross-examination on legal stuff, you know, it's a  
10 lot of fun. It's like you're in law school. You get  
11 to argue with the witness and, you know, you get to  
12 ask the questions, they're under oath, and all that  
13 sort of stuff, but I'm not sure that it actually  
14 produces a useful record for the Commission above and  
15 beyond essentially supplemental legal argument.

16           Second, as we pointed out in our brief,  
17 there is -- there is a distinction on appeal to the  
18 deference given to findings that are properly  
19 classified as fact versus matters of law, and we  
20 consequently do face a risk, if this material remains  
21 in the testimony as testimony, that we would in some  
22 way be prejudiced on that come appeal. Court of  
23 Appeals would say, Well, you know, it's testimony,  
24 it's fact. I have to -- you know, I'll defer to  
25 that, versus that's just law.

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1           Now, we can, of course, argue that to the  
2 court, but we'd start with a strike against us if it  
3 came in as sworn testimony, as compared to something  
4 in the other party's briefs, and we shouldn't be  
5 subject to that prejudice.

6           Second, I think directly contrary to Mr.  
7 Dethlefs, I think that the record would be cleaner  
8 and more precise if the witnesses were, in fact,  
9 restricted to testifying about things they actually  
10 know about, as compared to -- or, as I mentioned, the  
11 footnote in the filing, in the case of experts,  
12 things as to which they are qualified to express an  
13 opinion, as compared to, Well, the FCC meant this,  
14 the law said that, we're required to do this and  
15 that. I mean, we all have our views on those things,  
16 I suppose, but fundamentally that's the job of the  
17 lawyers in this kind of a process, and then your job  
18 and the Commission's job to, you know, see how well  
19 we do in explaining what the law is and explaining  
20 why it should apply to these facts.

21           Now, on the notion of mixed law and fact, I  
22 guess every state's law is different, but as I read  
23 the Washington cases that I cited in the filing, it's  
24 very clear that not only is law out of bounds for  
25 witnesses, so too is mixed law and fact. To say,

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1 Well, this conduct is negligent, applying law to the  
2 fact.

3 And finally, with respect to the jury trial  
4 or lack of a jury trial, one of the cases, I think it  
5 was the Hicksey (phonetic) case, but I could dig that  
6 up, but one of the cases that made specific reference  
7 to the fact that, on a motion for summary judgment,  
8 to the extent that a witness' affidavit contains  
9 statements of law it's to be disregarded.

10 Now, procedurally, when you're in a motion  
11 for summary judgment, there's no jury involved,  
12 there's never been a jury involved. But even at that  
13 stage, when it's entirely before the judge, the law's  
14 clear that it's appropriate to remove this testimony.

15 So I just -- I don't think there's any  
16 unfairness, I think it would actually speed the  
17 transcript along and make it cleaner, and I think the  
18 law's pretty clear.

19 Now, two points. With respect to sorting it  
20 out, there's sort of the hard way and there's the  
21 easy way. The hard way would be to sit here right  
22 now and everybody get out their testimony books and  
23 start going line-by-line, see what we think.

24 It might be easier to, particularly since my  
25 assumption is that the Qwest witnesses would be

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1 coming up tomorrow in the normal case, simply, as  
2 each witness comes up, go over that witness'  
3 testimony and say, Okay, well, if you rule in my  
4 favor today and say I agree that the legal testimony  
5 is not to be permitted and we will sort out with each  
6 witness what that is, then, first of all, that would  
7 give Level 3 and Qwest the opportunity, knowing that  
8 that's the ruling, to go over these things and  
9 identify, you know, one where even they would concede  
10 it's legal, and then we could focus our discussion  
11 tomorrow on a witness-by-witness basis on matters  
12 that maybe they would argue, well, that's not really  
13 legal and focus the discussion, rather than taking it  
14 one after the other. Give them some time to digest  
15 the ruling and apply it. I think that would be more  
16 efficient.

17           Second, as I said at the beginning, the  
18 normal practice in these kind of things, if there are  
19 objections to witnesses' testimony, the time is when  
20 that comes in. And we certainly understand that if  
21 you were to grant our motion, that Qwest would take a  
22 keen look at the testimony we filed and, to the  
23 extent that they found any objectionable legal  
24 opinion, you know, discussion in our testimony, we  
25 would expect to see a motion on that when that

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1 witness was on the stand.

2           So I mean, I don't think there's anything  
3 unfair about that. We have, as Mr. Dethlefs said, we  
4 approached this case differently. We tried to focus  
5 on the facts. Now, we're all inveterate, you know,  
6 policymakers, and so to the extent that someone says,  
7 This is what it has to be, you know, they're required  
8 to blah, blah, blah, if it slipped in, it slipped in,  
9 but we understand that this works both ways.

10           So again, just in summary, our  
11 recommendation would be grant the motion, but let's  
12 take it a witness at a time, and perhaps the parties  
13 can reach some agreement so that the only time we  
14 have to thrash it out before you tomorrow is on those  
15 parts of testimony we weren't able to agree.

16           JUDGE RENDAHL: Do you have any brief  
17 response to that suggestion, Mr. Dethlefs?

18           MR. DETHLEFS: Well, I have a few points to  
19 make. First, this is an arbitration under the  
20 Telecom Act. There is no connection between the  
21 procedures that this Commission follows and the  
22 procedures that apply either in state or federal  
23 court. This Commission is not bound under the APA by  
24 the rules of evidence, and so all the legal  
25 authorities that he's claimed he's cited from

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1 Washington aren't applicable here.

2           Finally, this will be unfair to Qwest in  
3 this sense. First, their witnesses are going up  
4 today, so we're basically put in the position to  
5 slice and dice their testimony right now. They have  
6 not stayed any truer to factual legal distinctions  
7 than we have. Their witnesses repeatedly make  
8 statements, they leave out a legal cite, but they  
9 make a proposition that fundamentally will be decided  
10 as a legal matter. I gave an example in my opening.

11           It's a lot of effort to go through this.  
12 There's 123 different references. It will take a lot  
13 of time and it doesn't serve any purpose, because,  
14 ultimately, what he's already admitted is that the  
15 legal authorities are something that the Commission  
16 does get to consider. So why do we break it out and  
17 spend the time doing that when, even if it's taken  
18 out of the testimony, it's something that's still  
19 legitimate for the Commission to consider.

20           We think it's more sensible to have the  
21 legal and factual issues with respect to specific  
22 contractual provisions discussed side-by-side because  
23 then you have it all there at once, and that's why we  
24 did it in our testimony. This is the way all the  
25 arbitrations that this company has done with other



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1 companies, in all the arbitrations that have been  
2 done with Level 3, five so far have been completed,  
3 this is the way it's been done, and they have never  
4 objected to even -- even at hearing, much less with a  
5 motion to strike to the approach that Qwest has  
6 taken.

7 MR. SAVAGE: May I have a brief --

8 JUDGE RENDAHL: Very brief.

9 MR. SAVAGE: -- rejoinder? First, I don't  
10 think that Mr. Dethlefs addressed at all the  
11 different treatment on appeal in federal court of  
12 fact versus law, and I did cite some cases, federal  
13 court cases on that, so I think that's a problem  
14 that's hanging out there for us.

15 Second, I cited Washington law because we're  
16 in Washington. I think it's fair to say that one  
17 would find in essentially any jurisdiction that  
18 conducts trials that -- at least American  
19 jurisdiction that conducts trials, that witnesses are  
20 not permitted to testify as to matters of law, except  
21 in very unusual cases. There's some exceptions that  
22 really don't apply here.

23 So it's not like, Oh, gee, it's Washington  
24 law, so you have to do it. It's a good idea that  
25 everyone that conducts adjudicatory hearings applies.

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1 And we cited Washington law because we're in  
2 Washington. But if he wants law from 50 other  
3 states, we can do that.

4 JUDGE RENDAHL: I don't think that's going  
5 to be necessary. And with some trepidation, I sent  
6 off the e-mail that I sent off knowing it would  
7 create this firestorm. But it is troubling when more  
8 than half of the cross exhibits you receive are cases  
9 and rules, where those are things that really can be  
10 argued in brief.

11 And I have sat through the 271 hearings and  
12 several arbitration proceedings, so I am familiar  
13 with what the process has been, but it seems to me  
14 it's getting to a point where there's a crossing of  
15 that very gray line in arbitration proceedings where  
16 you are deciding what the language should be based on  
17 the networks in place and the law, but that doesn't  
18 mean that all of the legal issues need to be  
19 discussed in testimony, and there's a certain line,  
20 it seems to me, over which you don't need to go.  
21 There's no need for legal argument. You can address  
22 cases, you can address the law in a way that doesn't  
23 then go into reaching legal argument that really  
24 needs to be in brief.

25 And so I would like to go through at least

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1 -- see how long it takes to get through the  
2 Brotherson list. I'm inclined to strike certain  
3 portions of the testimony that are outright legal  
4 argument. I'm not going to strike citations to  
5 cases, quotes out of cases, but when you go beyond  
6 that to make a statement of legal conclusion, that  
7 legal conclusion is not appropriate for a witness in  
8 a case, even if that witness is an attorney. You're  
9 qualified on your policy position, but not -- a  
10 lawyer is not usually allowed to testify in a  
11 proceeding.

12           So that's sort of the tack that I'm taking,  
13 and so I'm tempted to grant in part the motion to  
14 strike, to take out the most egregious legal  
15 arguments, but to keep in, understanding that it is  
16 in Level 3's testimony, as well, and I don't want to  
17 create a circus here, but I think we need to begin to  
18 draw a line, and so that's kind of where I'm going  
19 here.

20           So what I'd like to do is to start with Mr.  
21 Brotherson's testimony and just go through, because  
22 there's quite a lot that I don't think is  
23 objectionable in this current proceeding. And so if  
24 you start with what's been marked as Exhibit 51.

25           MR. SAVAGE: If I can have a copy of Mr.

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1 Brotherson's testimony before me? Great.

2 JUDGE RENDAHL: Let's be off the record for  
3 a moment.

4 (Discussion off the record.)

5 JUDGE RENDAHL: Let's be back on the record.  
6 The first reference that Level 3 cites to is on page  
7 eight, and there's a variety of references on the  
8 page to testimony to be stricken. All of these  
9 issues, all of these statements are setting up the  
10 issues in a matter that doesn't outright reference  
11 the law, but does, you know, it is mixed law and  
12 fact. I have no problem with this, this is setting  
13 up the issue, it's not objectionable. Page --

14 MR. SAVAGE: Your Honor, can I ask a  
15 question about that?

16 JUDGE RENDAHL: Yes.

17 MR. SAVAGE: Looking at line ten, it says,  
18 VNXX is the inappropriate assignment by CLECs of  
19 local telephone numbers. Now, I don't know --

20 JUDGE RENDAHL: I think that's a policy  
21 argument. It's policy/law. I don't have an issue  
22 with that.

23 MR. SAVAGE: Okay.

24 JUDGE RENDAHL: Okay. You know, parties are  
25 entitled to make arguments in their testimony, and at

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1 this point it's hard to distinguish between the law  
2 and the policy, and so in that type of situation, I  
3 do not find that objectionable.

4 MR. SAVAGE: Okay.

5 JUDGE RENDAHL: You can argue the other way  
6 in brief, if you wish. On page nine, there's another  
7 -- there's a variety of references here. Now, this  
8 is an example. It starts out the issue on line four,  
9 about this issue of treatment of an enhanced service  
10 provider under FCC rules, but then, starting on line  
11 six, it describes what the exemption is and makes  
12 some implications about what that exemption is.

13 Now, this is where I begin to have some  
14 concerns about explaining the law in testimony, and  
15 this is a difficult one, because it is tied directly  
16 to what the language is, so --

17 MR. SAVAGE: If I can help, Your Honor?

18 JUDGE RENDAHL: No, I'm not done yet. You  
19 know, this is an argument, a legal argument. Under  
20 the ESP exemption, the location of the enhanced  
21 service provider point of presence is treated as the  
22 end user customer for purposes of determining whether  
23 a call is treated as a local or interexchange call.  
24 That's an interpretation of the ESP exemption that  
25 the parties are going to dispute, and it's okay to

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1 set up that there's an ESP exemption, but it starts  
2 to get a little bit iffy about at which point, you  
3 know, how far we need to go here.

4           So this is setting up the issue at this  
5 point, so I don't know that it belongs at this point.  
6 So I'm tempted to strike line six, where it starts,  
7 Under the ESP exemption, through line 14. And again,  
8 down on -- starting on line 37, after setting up that  
9 there's an issue with the mirroring rule, there's an  
10 argument about misunderstanding the mirroring rule,  
11 being in full compliance and, again, it's  
12 questionable -- that one I'm going to allow in,  
13 because it's not -- it's not as much explaining what  
14 the mirroring rule is.

15           So it's very difficult to parse through  
16 this, but -- so I would strike where it begins, Under  
17 the ESP exemption, on line six through line 14, in  
18 part because this is setting up the issues and  
19 there's no need to explain what the exemption is at  
20 this point.

21           And then, if you turn to the next one, which  
22 is page 13, I understand the objection is to --  
23 quoting from the Commission's order, but I don't have  
24 an objection with quoting from the Commission's order  
25 or comparing it to the definition in this proceeding.

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1 I think that's appropriate. So I don't have a  
2 problem with that.

3 If you turn to page 15, there's a request to  
4 strike lines 13 through 17, which quote from the  
5 Second Circuit Court of Appeals decision in Global  
6 NAPS, N-A-P-S, and I don't think this is appropriate  
7 in testimony. This is something that is in legal  
8 briefs, so that portion should be stricken.

9 If you go next to page 16, there's an  
10 objection to lines 28 through 30 and, on the next  
11 page, lines one through five. Again, this is similar  
12 to the other VNXX portion. It's just describing what  
13 the Commission's definition is versus the FCC's  
14 definition, and there's -- I don't find that  
15 objectionable, so that's not a problem.

16 If you turn to page 24, which is the next  
17 item to be stricken. First, lines three through  
18 four, that's really -- there's no citation of law;  
19 it's a description of what the issue is in here.  
20 Call rating is an issue, so I'm not finding that  
21 objectionable.

22 You then go down to lines 12 through 19, and  
23 that's a description of a Commission order. There's  
24 quoting from the order, although there's some  
25 language that has some argument in it. I'm not -- it

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1 doesn't completely go over the line here.

2           Then you go on to the next page, 25. At  
3 that point, on line two, where it says, As I have  
4 described them, Level 3's proposals go even beyond  
5 those of AT&T. On line three, it says, Thus the  
6 concern expressed by the Commission in its order, et  
7 cetera, et cetera. At that point, that's legal  
8 argument.

9           MR. SMITH: Starting with thus?

10           JUDGE RENDAHL: Starting with thus. That's  
11 legal argument and that really belongs -- that's a  
12 comparing of the Commission order with the facts in  
13 the case, and that is legal conclusion that belongs  
14 in the brief, so line -- starting with "thus" on line  
15 three through line five should be stricken.

16           There's also a proposal to strike lines  
17 eight through 23. That is a recitation of Commission  
18 rules and some discussion of what those rules are.  
19 That doesn't strike me as legal argument as much as  
20 setting up the issue.

21           You then go to the next page --

22           MR. SAVAGE: Before you move to that page --

23           JUDGE RENDAHL: Yes.

24           MR. SAVAGE: I had hoped to start focusing  
25 on about line 20, where it says, The Commission's



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1 rule requires the Commission to focus on geographic  
2 issues. And I could have written that. Starting on  
3 line 20, it's saying that essentially the effect of  
4 that rule is what you must do to decide this case is  
5 da, da, da, da, da, da. The rule specifically  
6 requires the Commission to -- I mean, that is not  
7 testimony. That isn't even policy. That's argument,  
8 in that the law requires a particular result.

9 JUDGE RENDAHL: Well, again, in these cases,  
10 it's a very fine line.

11 MR. SAVAGE: I know.

12 JUDGE RENDAHL: And it's a very fine gray  
13 line, so if you turn to the next page, page 26, I do  
14 find that lines four through 14 do go over the line.  
15 This is an argument about the facts in the case and  
16 the law, and there's sort of a cutout there where  
17 there's a line that says, on line eight, Qwest's  
18 tariffs are consistent with the Commission rules, and  
19 there's a footnote. You know, I don't have any  
20 objection with keeping that in. You know, that's  
21 consistent with what I've allowed in in the past, but  
22 it gets -- this is where it starts to get -- as I  
23 went through all this, and I have to say, sometimes I  
24 would go back and forth. You know, you've got the  
25 situation where you're quoting the Second Circuit

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1 Court of Appeals and making legal argument, and  
2 that's a little different from this.

3 And for somebody who's been in the business  
4 as long as Mr. Brotherson has and has the experience,  
5 both policy and otherwise, that's the gray line I'm  
6 having a difficult time dealing with. And so --

7 MR. SAVAGE: If he wants to state that  
8 Qwest's tariffs are consistent with the Commission's  
9 rules as his opinion and quote the tariff, we'll  
10 withdraw our objection to that, but we certainly  
11 agree with the rest of the stuff you --

12 JUDGE RENDAHL: So that's how I had looked  
13 at this last night. I don't have any objection with  
14 quoting what the tariff is, quoting what the  
15 Commission's rules are, but it gets troubling.

16 MR. SMITH: Well, and I understand, Your  
17 Honor. Can I jump in for just a moment?

18 JUDGE RENDAHL: Please.

19 MR. SMITH: I mean, for example, on line  
20 six, there's nothing to suggest that any of these  
21 rules to the POI or the location of the CLEC  
22 facilities, sure, he's interpreting the rules that  
23 he's read, but these are not delving into the depths  
24 of Commission language. I mean, these are fairly  
25 obvious observations made by an experienced witness

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1 who's dealt with these kinds of issues, and it is his  
2 opinion. I mean, obviously it's subject to either  
3 cross-examination or a counter argument, so --

4 JUDGE RENDAHL: Well, on second thought, I'm  
5 going to just keep in that whole paragraph, so the  
6 suggestion for pages -- on page 25, lines 20 through  
7 23, and then page 26, I'm going to allow it in, but  
8 there's -- it's starting to go beyond the line.

9 For example, actually, I would strike lines,  
10 where it said, "It would be difficult," I would  
11 strike line eight through 13, because at that point  
12 it really does go into legal argument. It's more  
13 appropriate in brief.

14 MR. CECIL: So you are striking eight  
15 through 13, starting with "it?"

16 JUDGE RENDAHL: "It would be." So that  
17 would be stricken.

18 MR. CECIL: But then, starting with four,  
19 where it says, These rules conclusively --  
20 demonstrate conclusively that this interconnection,  
21 that stays in?

22 JUDGE RENDAHL: That stays in, up through  
23 footnote nine. All right. Then, if you go to the  
24 next page, which is page 29, I don't find the  
25 discussion on lines 14 through 16 to be a problem.

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1 This is a discussion of his experience over his time  
2 in the industry, and while it may go over into some  
3 interpretation of law, it's hard to discern that, so  
4 that stays in.

5 Likewise, on page 30, there is a cite to the  
6 ISP Remand Order. Again, I don't have a problem with  
7 quoting from it, and there's an interpretation  
8 starting on line 19 of what the FCC had to say, but  
9 --

10 MR. SAVAGE: Your Honor, if I can just --  
11 cross-examination on lines 19 and 20, for example,  
12 will be to quote from Mr. Brotherson from the First  
13 Circuit's Global NAPS case, where the Global NAPS  
14 Court quotes the FCC's brief that was filed in that  
15 case that shows why the statement is wrong.

16 Now, this is why we get -- this is why we're  
17 here. That's how you cross-examine this. We know  
18 that's not what the FCC meant and we know it because  
19 of later court decisions.

20 I'm just raising that if you want -- I  
21 understand you're not striking the simple quotation  
22 from the order, but to leave in this stuff ends up,  
23 you know, putting us in a position of simply, well,  
24 gee, you didn't read footnote nine of that order,  
25 well, you didn't read this. And we're in the

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1 dilemma, well, do we ignore it because it's just law  
2 or do we take the risk that someone will say, well,  
3 but --

4 MR. SMITH: I would just respond to say that  
5 the statement is they were -- looking directly at  
6 what is above, saying that the FCC focused on  
7 problems unique to the compensation mechanism that  
8 applied to traffic where the ISP was located in the  
9 same LCA, I -- I mean, if, you know, of all the  
10 orders that is central to most of the issues in this  
11 case, it's the ISP Remand Order.

12 JUDGE RENDAHL: But does that make it  
13 appropriate to argue it in testimony? That's where  
14 my issue is.

15 MR. SMITH: I know there's a line, Your  
16 Honor.

17 MR. SAVAGE: And Your Honor, just to use  
18 this as sort of a microcosm. I understand -- we all  
19 know each other's positions very well. I understand  
20 perfectly well Qwest's position that the ISP Remand  
21 Order only had to do with calls in the ISP was  
22 located in the original -- we know that that is their  
23 view of that order and that is an issue between us as  
24 a legal issue, but as in an opposing brief, you know,  
25 what they will cite is the parts of the ISP Remand

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1 Order that they think support their interpretation of  
2 it.

3           The counter to that -- you know, we're not  
4 going to be able to call in, you know, the then  
5 Commissioners of the FCC and say, What were you  
6 thinking about. The only way to rebut these kind of  
7 claims is legal argument. You ignored footnote this,  
8 you ignored paragraph that, you ignored what they  
9 said in their brief here that the First Circuit  
10 quotes.

11           So again, we all understand there's a gray  
12 line here, but I don't see how, you know, unless Mr.  
13 Brotherson somehow can say, Well, I actually was  
14 Chairman Powell's assistant at the time, and I can  
15 tell you, violating my confidentiality obligations,  
16 that what we talked about was such and such, you  
17 know, that would be competent testimony about what  
18 the FCC meant.

19           MR. SMITH: May I jump back in real quickly?

20           JUDGE RENDAHL: Well, actually, I misread my  
21 notes, which was I had intended to strike this whole  
22 portion, because I think, beginning from line six  
23 through 24, it is something that can be made in  
24 brief. It's clear from other arguments throughout  
25 the testimony that this is the issue and this, from

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1 six through 24 on page 30, and from one through 19 on  
2 page 31, and page -- and line one through line 20 on  
3 page 32 and line one through 13 on page 33, this is  
4 clearly, all of this, discussion about the law,  
5 what's been done in other circuits, what the FCC has  
6 done.

7           And I understand Mr. Brotherson is a lawyer,  
8 and would be qualified, if he was a lawyer in this  
9 case, to make legal argument in brief, but this isn't  
10 a brief, and I think this doesn't undercut Mr.  
11 Brotherson's testimony. He's made his policy  
12 position on VNXX, and this is argument that can be  
13 made in brief that doesn't undercut Qwest's position,  
14 because we all know this is what Qwest's position is,  
15 and Qwest can make this argument in brief  
16 effectively, and it doesn't detract from Qwest's  
17 testimony by taking this out of the testimony.

18           MR. SMITH: If I could just very briefly  
19 respond, Your Honor. I do believe there is a  
20 difference between pure legal argument and trying to  
21 put a company's position in the context of recent  
22 events, and I believe if you'll look at this -- these  
23 three pages, this is an effort on the part of Mr.  
24 Brotherson to essentially update the Commission on  
25 events as interpreted by Qwest, recent legal events

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1 that are directly relevant to the issues in the case.  
2 And sure, we can address these in briefs and the  
3 other parties -- other parties certainly can dispute  
4 any characterizations of this, but given the  
5 inherently legal nature of what we're doing, it seems  
6 appropriate that a witness be able to say, And here's  
7 some recent events that help explain why Qwest takes  
8 the position it takes. It helps put Qwest's position  
9 into context, so --

10 JUDGE RENDAHL: Well, I understand that, but  
11 I think there's -- I think there are ways to put this  
12 issue in play as opposed to reciting and arguing  
13 about what the cases say, because that just invites  
14 legal argument and cross-examination on the law from  
15 the other side, and I don't believe it creates a very  
16 clear record, and that's -- this is argument that can  
17 be made in brief.

18 And so this is like the discussion of the  
19 Second Circuit Global NAPS decision earlier in the  
20 testimony. I just think this really crosses that  
21 gray line. There's quite a lot that I've allowed in,  
22 because I think it is appropriate, given the nature  
23 of the proceeding, but at this point, when we're  
24 talking about case after case and comparing, I think  
25 it crosses that line, and I don't think it detracts



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1 from what Mr. Brotherson is saying about the issues.

2 MR. SMITH: I've made my point, Your Honor,  
3 so we can move on.

4 JUDGE RENDAHL: And if you look to page 34,  
5 there's a variety of places. And this is talking  
6 about the mirroring rule, m-i-r-r-o-r-i-n-g. And  
7 here, it gets very difficult to parse out, like I  
8 just did, what is objectionable and what is not, and  
9 so to the extent that there's a need to cross-examine  
10 about the legal analysis that's in here, I think this  
11 part is essential to discussion later in the  
12 testimony, and so I would allow in what is on page  
13 34. So there's no striking out what's on page 34.

14 If you look at page 35, starting on line  
15 eight, eight through 14, here is a point where  
16 there's some analysis of how the mirroring rule  
17 works, and I think those lines are not necessary to  
18 -- you know, we've had some discussion about what the  
19 mirroring rule is, there's a quote from the ISP  
20 Remand Order about what the mirroring rule is, and I  
21 think at the point where you're starting to interpret  
22 what Qwest's view of what the mirroring rule is and  
23 how it's applied, it gets a little sticky.

24 So lines eight through line 14, where it  
25 ends "to make," I think that isn't as crucial to Mr.

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1 Brotherson's testimony. I think the point has been  
2 made about what the issue is under the mirroring rule  
3 that can be teed up for brief.

4 MR. SMITH: What about the final sentence of  
5 what -- if the ILEC must offer to exchange all  
6 appropriate traffic at 0007, Qwest clearly makes that  
7 offer to Level 3. That's a factual statement. Then  
8 it follows that the election is the CLEC's to make.  
9 The mirroring rule, from our perspective, is a fairly  
10 straightforward application of a provision in the ISP  
11 remand order. If you'll look down below, there's an  
12 attachment to the agreement that allows the party to  
13 make the election. I certainly think that sentence  
14 12 through 14 or 12 to 14 is -- while there's some  
15 interpretive stuff in there, there's also factual  
16 material in there as to what Qwest is doing with  
17 regard to the mirroring rule.

18 MR. SAVAGE: And if I could be heard on  
19 that, Your Honor. There's the question of what is  
20 the document that Qwest put forward, what does that  
21 document say. There's a factual question and we  
22 don't dispute it. I mean, it says what it says and  
23 it's there.

24 The question of whether the language in that  
25 document constitutes an adequate and appropriate

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1 offer under the terms of the mirroring rule is not a  
2 factual question. That's like -- the question is not  
3 was the light green; the question was was he  
4 negligent by going through the intersection. But  
5 whether or not the language that they submitted is an  
6 appropriate offer under the mirroring rule is an  
7 entirely legal question. Here's what they said,  
8 here's the rule, we argue about whether it's good  
9 enough. I'm sure Mr. Brotherson, being an attorney,  
10 has a view about that, but, again, it's not  
11 appropriate for testimony. So I'm essentially  
12 agreeing with your decision there to strike.

13 MR. SMITH: Well, the parenthetical is very  
14 clearly not legal analysis. It's an offer.

15 MR. SAVAGE: Excuse me. First of all, all  
16 appropriate traffic, there's a lot of law bearing on  
17 appropriate. And second of all, Qwest clearly makes  
18 that offer to Level 3. What offer you made to us is  
19 defined entirely by the four corners of that  
20 document. That's the offer you made to us.

21 MR. DETHLEFS: It's right there.

22 JUDGE RENDAHL: Well, I think, again, this  
23 is one I struggled over last night.

24 MR. SAVAGE: Sorry to have ruined your  
25 evening.

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1           JUDGE RENDAHL:  There is -- I have circled  
2 appropriate, because I couldn't find that in -- as a  
3 reference in any particular law, and so -- any  
4 particular legal citation there and -- but, anyway, I  
5 will allow it in and I will allow cross-examination  
6 on that point, but this is where we get -- this is  
7 where it begins to cross the line for me.  Let's move  
8 on.

9           MR. SMITH:  So we're striking down through  
10 the first?

11           JUDGE RENDAHL:  No, we're not striking  
12 anything.

13           MR. SMITH:  Oh, okay.

14           JUDGE RENDAHL:  We're not striking anything  
15 on that page.

16           MR. DETHLEFS:  Your Honor, just for the  
17 record, Level 3 apparently is taking the position  
18 that Qwest has not previously made a correct offer  
19 under the mirroring rule.  I want to go on record  
20 that the traffic that is contemplated by the  
21 mirroring rule Qwest is today offering, if it hasn't  
22 in the past, to exchange traffic at the rate  
23 contemplated in the mirroring rule, so --

24           JUDGE RENDAHL:  I think that's -- you've  
25 said it, so that's enough.  All right.  Page 37, the

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1 lines at issue are seven through 11, and this is a  
2 situation where the sentences mix arguments of law  
3 and fact. There are statements of legal opinion here  
4 that, while Mr. Brotherson is a lawyer and is  
5 qualified to make as a lawyer, he is not the lawyer  
6 in this proceeding. He is a witness.

7           So I'm going to allow it in and allow  
8 cross-examination on those points, but, you know, I  
9 don't want to dice up Mr. Brotherson's testimony  
10 unnecessarily. If there's chunks that can be taken  
11 out without dicing it up, I will do that, but this is  
12 troublesome to me. So if you're keeping notes on  
13 this for the future, please do so.

14           Page 44, lines nine through 17 are at issue.

15           MR. BROTHERSON: I'm sorry, Your Honor,  
16 those lines again?

17           JUDGE RENDAHL: Lines nine through 17,  
18 quoting the Oregon decision and the Vermont Second  
19 Circuit decision. Yes, this is a correct statement  
20 of what the law is, because these are decisions that  
21 the Oregon Commission and the Second Circuit have  
22 made, but Mr. Brotherson has made his point at the  
23 point where he says, on lines eight and nine, for all  
24 the reasons I've stated, VNXX violates the public  
25 interest and should be banned. So where it starts

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1 about the Oregon Commission and ends on line 17,  
2 through the use of VNXX, that's unnecessary legal  
3 argument in the testimony and that can be made to  
4 bolster Qwest's argument in brief, so that's  
5 unnecessary.

6 MR. SMITH: Now, what about the last  
7 sentence on the bottom of that page, Qwest's language  
8 is consistent with --

9 JUDGE RENDAHL: That's fine, that's fine.  
10 I'm leaving that in.

11 MR. SMITH: Okay. So now, what is coming  
12 out? Sorry.

13 JUDGE RENDAHL: So it's from line nine,  
14 beginning, The Oregon Commission --

15 MR. SMITH: Okay.

16 JUDGE RENDAHL: -- through line 17, ending  
17 with the sentence that ends "through the use of  
18 VNXX."

19 And on page 45, I don't have any objection  
20 to allowing lines one and two.

21 On page 48, lines seven and eight, I'm going  
22 to allow it in, because it is not -- it is discussing  
23 the ISP Remand Order, but there are policy issues  
24 involving arbitrage and market distortions, and those  
25 are policy issues -- while they are in the ISP Remand

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1 Order, this kind of argument is bordering on legal  
2 argument, but addresses policy issues, so I will  
3 allow it in.

4 On page 54, I think this discussion is  
5 necessary to a discussion of VoIP, voice over  
6 Internet protocol. While it does begin to make legal  
7 arguments about how VoIP should be defined, that is  
8 an issue in the proceeding. So I think it would --  
9 taking out those lines 11 through 17 would dice up  
10 Mr. Brotherson's testimony to the point where it  
11 wouldn't make sense, so those sections are allowed  
12 in.

13 Page 60, lines 16 through 17, I don't have  
14 an issue with that first sentence because it, again,  
15 is making a comparison with -- this is all about the  
16 definition, and while this could be made in brief, it  
17 is also logical to include it in testimony of this  
18 kind.

19 Page 61, the issue is line 17 through 22.  
20 We're now citing to an order and, on the next page,  
21 quoting from it. I would simply strike from line 18  
22 the first -- that word at the end, where, to the end  
23 of the line, and then leave the quote on the next  
24 page, 62.

25 MR. SMITH: So you strike from --

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1                   JUDGE RENDAHL:  Where it says, Where the  
2  FCC.

3                   MR. SMITH:  -- 18 to 22, the last word of  
4  18?

5                   JUDGE RENDAHL:  Yep.  Page 62, leave the  
6  quote.  That's perfectly fine.

7                   Page 63, again, there's some argument in  
8  there, but without -- it's difficult to take this  
9  language out without completely dicing up the  
10 testimony, and given where we are in the proceeding,  
11 I'm just going to leave it in and allow  
12 cross-examination on it.

13                   Lines 18 through 22, there's a discussion  
14 about restating the FCC's ruling that the ESP will be  
15 treated as an end user.  This begins to get into some  
16 legal argument that can be made later.  Mr.  
17 Brotherson states the basis of the argument and it  
18 can be moved on in brief to argue about what the ESP  
19 exemption is and how it applies to the language, and  
20 so I would strike line 18, The requirement that uses  
21 the VoIP on line 18 through the next page, 64, line  
22 three.

23                   Page 66, the only thing objectionable on  
24 line 23 and 24 that I can see is somehow interpreting  
25 the ESP exemption, it's not sufficient, and it would



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1 create -- would make it difficult to understand the  
2 testimony to remove it, so I will leave it in.

3 On page 67, starting on line four, in answer  
4 to that question, there's now an interpretation of  
5 what the FCC has said and interpreting FCC  
6 statements, so I think it's appropriate to strike  
7 what's line four, in answer to that question, through  
8 line 16, because it's too hard to determine what is  
9 legal and what is factual here, and this argument can  
10 be made in brief, based on what's already in the  
11 testimony.

12 Page 68, I don't find lines two through --  
13 I'm going to allow both of these, lines two through  
14 five and eight through ten, and allow  
15 cross-examination on it. It's hard to remove them  
16 from the testimony without making it hard to  
17 understand.

18 Page 69, lines 12 through 19, starting with,  
19 That is because, I think it means an ESP.

20 MR. SMITH: Yes, thank you.

21 JUDGE RENDAHL: This is a discussion about  
22 how the ESP exemption works and it seems to me is  
23 appropriate for discussion in brief. I think there's  
24 enough in the testimony on this issue, and I don't  
25 think it would make it hard to understand to remove

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1 that portion through line 19, ending with issue four,  
2 un-paren, period.

3 And finally, on page 70 --

4 MR. SAVAGE: My opponent cites no cases.

5 JUDGE RENDAHL: I will allow it in, and if  
6 there needs to be any cross on that, that's fine.

7 So that is how I have interpreted this fine  
8 line of legal argument versus what's necessary to  
9 discuss the language in the case and how it relates  
10 to the law.

11 So what I'd like to do is have us take a  
12 ten-minute break and see if you guys can talk amongst  
13 yourselves. I've gone through all the testimony and  
14 I've tried to cross out what I think is blatantly  
15 legal argument. And as I go through, there is more  
16 and more that I find that's just fine in the language  
17 that goes through than in this first piece of  
18 testimony.

19 So why don't we take a break and come back,  
20 and I'm happy to go through with you what I have  
21 found, or you all can reach some agreement amongst  
22 yourselves on how you want to do this. So why don't  
23 we be off the record until 11:00 and then we'll come  
24 back.

25 MR. SAVAGE: Can I ask a question on the

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1 record --

2 JUDGE RENDAHL: Yes.

3 MR. SAVAGE: -- that might make our  
4 discussions easier?

5 JUDGE RENDAHL: Yes.

6 MR. SAVAGE: As I interpret your ruling --  
7 we do appreciate the work. We put you to a lot of  
8 work to try to look at this. There's some cases  
9 where, even though the witness is indeed on some  
10 level discussing the law or making a legal  
11 conclusion, in order to facilitate the presentation  
12 of the case, you're permitting that legal material  
13 into testimony?

14 JUDGE RENDAHL: Yes, because I don't think  
15 it's fair at this point to, as Qwest counsel  
16 suggested, to dice up the testimony. If there's  
17 something that is -- if it's not going to harm the  
18 presentation of the testimony, then it should come  
19 out. For example, those recitation of the cases, you  
20 can take out that paragraph, it can be -- the  
21 argument can be made in brief without harming the  
22 testimony. I understand it's Qwest's position, but I  
23 don't want to make it difficult for the witness to  
24 explain his or her position.

25 But I think -- so you know, if there's a

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1 piece in a sentence that interprets the law, you  
2 can't excise out that phrase without doing harm to  
3 the, you know, the sentence or the structure of the  
4 testimony, and so that's the way I proceeded.

5 MR. SAVAGE: What I'm trying to do at the  
6 moment is protect this on appeal, and so, in a way,  
7 if we have a clear understanding on the record that,  
8 for the reasons you've just stated, there is truly  
9 legal material that's remaining in the testimony,  
10 that will help.

11 JUDGE RENDAHL: There is some legal material  
12 remaining in the testimony, and it would probably  
13 remain in Level 3's testimony if there was a similar  
14 motion to strike.

15 MR. SAVAGE: Right.

16 JUDGE RENDAHL: And in part, an arbitration  
17 of agreements under the Telecom Act involve issues of  
18 law and fact, and there's some -- there's almost no  
19 way of getting around it. While the Commission can,  
20 under our rules for arbitration proceedings, can take  
21 into consideration the APA and other provisions of  
22 law, we're not required to.

23 So I'm not troubled by some discussion of  
24 how the law and the fact and the language and the  
25 provisions interplay, but where there's blatant legal

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1 argument, that is troublesome to me. Okay.

2 MR. SAVAGE: That's all.

3 JUDGE RENDAHL: So with that, let's go off  
4 the record, and we'll be back at 11:00.

5 (Recess taken.)

6 JUDGE RENDAHL: Let's get back on the record  
7 after our break. I understand you all have had some  
8 time to look through these, at least Mr. Brotherson's  
9 reply testimony, which was marked as Exhibit 59-T,  
10 but I think it might be as quick for me just to go  
11 through, and then if you all have arguments on a  
12 particular piece, you can do that. And maybe we can  
13 get through all of this before noon and then start up  
14 with the testimony in the afternoon.

15 MR. SAVAGE: Okay.

16 MR. SMITH: Your Honor, going back to -- as  
17 Ms. Anderl said, there's one issue we'd like to  
18 discuss, page 67.

19 JUDGE RENDAHL: And this is Exhibit 51-T?

20 MR. SMITH: Yes, the direct.

21 JUDGE RENDAHL: Page 61?

22 MR. SMITH: Sixty-seven. I'll wait for you  
23 to get there.

24 JUDGE RENDAHL: I'm there.

25 MR. SMITH: Striking lines four through 16.

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1 Ms. Anderl made a very good point, and that is, part  
2 of the problem is the way the introductory phrase is  
3 written. It says, In answer to that question, the  
4 FCC said no.

5 Had we been aware that we'd be dealing with  
6 this issue, Mr. Brotherson could very well have said,  
7 Qwest's position is no, and then go on to provide the  
8 example, which we do think adds some benefit to the  
9 record of how Qwest believes the ESP exemption works.

10 And I do think, as you get past that  
11 introductory sentence, this is sort of Qwest's  
12 factual description of how we think it would work.  
13 Now, maybe when you get to the very last sentence, By  
14 purchasing local service ESP exemption to terminate  
15 traffic without incurring access charges, that's  
16 obviously our legal conclusion, but I guess our view  
17 is everything prior to that, with the introductory  
18 statement that I said if our introduction to the  
19 sentence on page four were a little different would  
20 merely be explaining Qwest's position of how this  
21 works.

22 So with that, we would request that you give  
23 some reconsideration to your ruling on that one.

24 JUDGE RENDAHL: So you would suggest to  
25 strike the last sentence beginning on line 15 of page

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1 67 that begins, By purchasing local service?

2 MR. SMITH: Right. Clearly, that ultimately  
3 is the legal conclusion Qwest has stated.

4 JUDGE RENDAHL: Okay. And then you would  
5 suggest to modify or to strike the phrase beginning  
6 on line four of page 67?

7 MR. SMITH: Yeah, and maybe you could  
8 strike, "In answer to that question, the FCC said no  
9 to." Qwest's position is that the answer to that  
10 question is no, and then go on.

11 JUDGE RENDAHL: So you would insert, The  
12 answer to that question is no?

13 MR. SMITH: Or Qwest's position is that the  
14 answer to that question is no.

15 MR. BROTHERTON: Just by striking the FCC.

16 JUDGE RENDAHL: So it says, In answer to  
17 that question, comma --

18 MR. SAVAGE: Your Honor, if I can respond  
19 briefly a minute?

20 JUDGE RENDAHL: Speak up.

21 MR. SAVAGE: This just makes it a little  
22 more -- now I'll yell at everybody. This just makes  
23 it a little more subterranean. Qwest's position is  
24 -- Qwest's position on what, Mr. Brotherton? Well,  
25 on what the ESP exemption means and how it works. So

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1 your position is that the ESP exemption means. I  
2 understand they're trying to save this, but what --  
3 you were right the first time.

4 What this is is they're explicating their  
5 understanding of how this FCC ruling works, and  
6 that's legal argument, and it doesn't stop being  
7 legal argument if they take out the magic FCC word.

8 JUDGE RENDAHL: All right. Well, I think  
9 I'm understanding. I want to be consistent with how  
10 I have dealt with other situations in the testimony,  
11 such as the discussion on the mirroring rule, and I  
12 think I would allow, as it is stated, In answer to  
13 that question, the FCC has said no. Maybe if we  
14 strike that --

15 MR. SAVAGE: Maybe strike the whole  
16 sentence.

17 JUDGE RENDAHL: I would just strike the  
18 whole sentence, I would strike the whole sentence,  
19 beginning on line four, lines five and six, ending  
20 service as an end user), period. Strike that  
21 sentence. Leave the remainder in there up until line  
22 15, as you suggested, to strike beginning with, By  
23 purchasing local service, and strike that last  
24 sentence and keep the remainder in. I will have no  
25 problem with that, given how I've ruled on the



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1 mirroring rule discussion. So that's how we would  
2 resolve that. Is that workable?

3 MR. SMITH: That is acceptable to Qwest.  
4 With regard to Mr. Brotherson's reply testimony,  
5 given your earlier rulings, the reference on page 15,  
6 where Mr. Brotherson quotes from one of the Global  
7 NAPS cases --

8 MR. SAVAGE: The question actually starts at  
9 the very bottom.

10 MR. SMITH: Yeah, it starts on the line --

11 JUDGE RENDAHL: Please don't talk over each  
12 other.

13 MR. SMITH: Yeah. Begins on line 25 of page  
14 14 through line 17 of page 15. Given your earlier  
15 rulings, we believe consistent with them would be the  
16 removal of that portion.

17 We quickly went through the remainder of Mr.  
18 Brotherson's reply testimony and the items that Level  
19 3 proposed to remove, and we felt the remainder were  
20 -- leaving them in was consistent with your prior  
21 rulings. I believe that Level 3 had an issue on at  
22 least one of them, though, so --

23 JUDGE RENDAHL: All right. And --

24 MR. SAVAGE: Do you agree with what he just  
25 said?

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1           JUDGE RENDAHL: Well, why don't I hear from  
2 you first, Mr. Savage.

3           MR. SAVAGE: Well, I was concerned in  
4 particular with the discussion which may be the same  
5 sort of problem, but on page 18, on lines 13 through  
6 14 --

7           JUDGE RENDAHL: Okay. You need to speak up.

8           MR. SAVAGE: Page 18, lines 13 through 14,  
9 Where it states, Qwest is in full compliance with the  
10 mirroring rule, that's simply a legal conclusion as  
11 to the law that should apply there. I don't see why  
12 that needs to stay in.

13           Now, I understand on the next page where we  
14 say -- where he's saying that Mr. Greene demonstrates  
15 that we misunderstand the mirroring rule, as I  
16 understand your earlier rulings, you would probably  
17 view that to be acceptable, but maybe not.

18           JUDGE RENDAHL: Well, I agree that that line  
19 on page 18, line 13 through 14, that last sentence in  
20 the paragraph should be, you know, to be consistent,  
21 it should be stricken. It's not going to do harm to  
22 Mr. Brotherson's reply testimony, and I don't have a  
23 problem with keeping in what is on page 19, simply --  
24 both lines one through three, 18 through 20, and 25,  
25 because it is just too hard to excise from the

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1 testimony and we can allow cross-examination, and I  
2 don't want to dice up the testimony too much at this  
3 point.

4           So I would remove, for Exhibit 59-T, what's  
5 been marked as Exhibit 59-T, Mr. Brotherson's reply  
6 testimony, the line 13 through 14 on page 18 and the  
7 section we discussed on page 15, but would deny the  
8 motion to strike on all other references.

9           MR. SAVAGE: We understand that -- I  
10 understand that to be consistent with what we just  
11 did on the direct, so --

12           JUDGE RENDAHL: Okay. So with that, let's  
13 move on to Mr. Easton's testimony. We'll be off the  
14 record for a moment while we retrieve the documents.

15           (Discussion off the record.)

16           JUDGE RENDAHL: Let's be on the record.  
17 We're discussing what's been marked as Exhibit 71-T,  
18 which is Mr. Easton's direct testimony -- replacement  
19 direct testimony, excuse me. And the first reference  
20 that, in the motion to strike, is on page one, lines  
21 seven through 18.

22           While there's a discussion of the Telecom  
23 Act and Qwest's duty, given what Mr. Easton's  
24 testimony is about relating to compensation, it's  
25 necessary to tee up what the issue is, so I don't

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1 have any objection to what's in lines eight through  
2 14, ending with reasonable profit period, end quote.  
3 There's a footnote, too.

4 But beyond that, there's legal argument, and  
5 I think, because this page is also setting up the  
6 issue and there is some argument later that clearly  
7 states Qwest's position and Mr. Easton's position on  
8 this, I don't think taking out that section from line  
9 14 through 18 will do any injustice to the testimony,  
10 so that's what I would take out there.

11 MR. DETHLEFS: Your Honor, just very  
12 briefly, before we get in -- I mean, there are a  
13 number of other references on this particular issue  
14 in Mr. Easton's testimony. Level 3 takes the  
15 position that each party is responsible for all the  
16 costs on its side of the point of interconnection,  
17 and that is a legal conclusion which Mr. Easton is  
18 addressing in all this. So we would anticipate,  
19 then, that those type of statements in Level 3's  
20 testimony would also be stricken.

21 JUDGE RENDAHL: Well, I think in terms of  
22 setting up the issue, I think, as I go through, there  
23 are other sections where Mr. Easton makes these  
24 arguments in a slightly different way. You know, it  
25 starts, Despite the law. You know, we're making some

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1 legal conclusions here. And so at this point I would  
2 strike it and, let's, as we go on, let's see. As I  
3 said, if there are objections and motions to strike  
4 portions of Mr. Wilson's and Mr. Greene's testimony,  
5 we will entertain them based on, you know, what we've  
6 gone through today.

7 MR. DETHLEFS: I only wanted to make that  
8 point because I'm not quite sure Level 3 wants to  
9 have that statement that each party is responsible  
10 for all the costs on its side of the point of  
11 interconnection, which is a legal conclusion stricken  
12 from their testimony. They might want to reconsider  
13 whether that's really what they want to do.

14 JUDGE RENDAHL: Well, why don't we go  
15 through and see exactly what it is we're striking  
16 from Mr. Easton.

17 Okay. The next page at issue is page four.  
18 Again, there's a recitation of the -- what's stated  
19 under the Telecom Act, and then there's an  
20 interpretation of the Telecom Act and the FCC's  
21 decision in the Local Competition Order.

22 I think it's acceptable for Mr. Easton to  
23 set up the issue, and at the point it needs to be  
24 argued, it can be argued in brief, so starting on  
25 line 16, As the FCC has recognized, through the end

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1 of the sentence on line 18, I would strike that.

2           Okay. The next page, page five, lines one  
3 and two are at issue. This is, you know, debateable.  
4 I would allow lines one and two in simply because I  
5 think it needs to be there to set up Qwest's  
6 position.

7           At the bottom of the page, I will allow in  
8 on 18 and 19, and also 21 through 23. Eighteen and  
9 19 is just -- it's finishing up setting up the issue.  
10 While it borders on legal conclusion about what's  
11 just and reasonable, there needs to be some tie-in to  
12 what the argument is here, so it will be allowed in.

13           And then the discussion about what Mr.  
14 Fitzsimmons, F-i-t-z-s-i-m-m-o-n-s, one of Qwest's  
15 witnesses, this is a discussion about cost causation.  
16 I don't really see why this needs to be taken out.  
17 Again, there's no blatant argument about the law, and  
18 if there is, then I'm missing. You all can  
19 cross-examine on it.

20           On page ten, there's a request to strike  
21 something on line 35.

22           MR. SAVAGE: Starting with "however" is what  
23 I had in mind.

24           JUDGE RENDAHL: All right. And going on to  
25 page 11, lines one through three, this has to do with

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1 wording in the agreement and what the effect of the  
2 change of the word is, and there needs to be some  
3 discussion in there about why Qwest objects to it.  
4 While it may border on the law, I think, similar to  
5 the discussion of Mr. Brotherson's testimony, there's  
6 going to be some in the testimony, and I think that's  
7 acceptable.

8           Now, beginning on line eight through 10, I  
9 think this is argument that can be made in brief and  
10 has been stated in the testimony, and removing this  
11 line is not going to make Mr. Easton's testimony  
12 unintelligible.

13           Also on page 11, there's a motion -- the  
14 motion includes striking lines 15 through 21.

15           MR. SAVAGE: And I meant there to start with  
16 the word "while" on line 15.

17           JUDGE RENDAHL: I understood that. And  
18 again, there's -- the legal discussion is in that  
19 first phrase in the sentence, beginning with, While a  
20 CLEC has the right, et cetera, et cetera. Again,  
21 it's too hard to take that out from what the issue is  
22 here in the case, and so I will allow that portion  
23 in.

24           On page 12, the language objected to is on  
25 line 21 through 23. Again, I don't see that this is

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1 blatant legal argument. I think it needs to be there  
2 to tie together what Qwest's position is on the  
3 language, and I think it's not objectionable.

4 On page 14, there's a question and answer on  
5 line 17 through 19, beginning, Why is Qwest opposed  
6 to the Level 3 language. Again, this has to do with  
7 the issue of whether there's an obligation to  
8 compensate. That's the key issue in the case, and  
9 while it can be argued more in brief, I don't think  
10 think this goes over the line, so I would allow it.

11 On page 16, the language objected to is on  
12 lines four through 20 of page 16, and this is a  
13 difficult one, as well, because it has to do with the  
14 dispute over ISP-bound and VNXX traffic, and the only  
15 objectionable sentence I find in there is the one  
16 beginning on line 12, where this is the key legal  
17 issue in the case, one of the key legal issues in the  
18 case, about how the FCC defines ISP-bound traffic.

19 I can allow it in and we can have some  
20 cross-examination on this legal issue in the case,  
21 but I'm not sure it's necessary for this particular  
22 witness. If we struck the sentence beginning on line  
23 12, so that it would read in the -- you would take  
24 out the sentence starting, In the ISP remand order,  
25 up until it says information access. I would leave



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1 in information access, then strike "as such this,"  
2 and so it would say, Information access traffic,  
3 okay?

4 Now, that's one way of resolving this.  
5 Another way, instead of just dicing and slicing the  
6 testimony, is to leave it in and allow  
7 cross-examination.

8 MR. SAVAGE: Well, if I could -- I would  
9 urge you to think about this a different way.  
10 Starting with, In the ISP remand order and going to  
11 line 18 is entirely legal argument; right? I mean,  
12 we know that there is traffic that falls into these  
13 various categories. That was factually established  
14 at the technical conference and maybe gone over here.  
15 The legal question is whether and to what extent  
16 traffic of different types that have been established  
17 on the record do or do not fall under the  
18 exclusionary language of 51, 47 C.F.R., 51.701, and  
19 how that applies to 51.709.

20 I mean, that -- I guess I'd suggest that  
21 that entire bit can go without in any way interfering  
22 with Qwest's ability to make its case. It just would  
23 be made in the briefs.

24 JUDGE RENDAHL: Mr. Dethlefs.

25 MR. DETHLEFS: Well, you know, the question

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1 is -- you know, it's not worth the fight. Our  
2 language has a specific sentence in our contract  
3 language that speaks to how VNXX and ISP traffic are  
4 treated under the contract, and all he's saying is,  
5 you know, this is done because this is the way the  
6 rule works. Take out the sentence. We can say that  
7 in our brief. I don't have a problem with that.

8 JUDGE RENDAHL: Take out 12 through 18?

9 MR. DETHLEFS: You can take out the whole Q  
10 and A, because I don't think taking out 12 through 18  
11 is going to make the first part make any sense.

12 JUDGE RENDAHL: So we can take out four  
13 through 18 without doing injustice to the testimony?

14 MR. DETHLEFS: Do four through 18, yeah. As  
15 long as it's clear that our contract language does  
16 have this specific treatment of those two types of  
17 traffic, we can make that point in the brief and I  
18 don't need to have a witness testify to that.

19 JUDGE RENDAHL: And I believe that's clear  
20 in both Mr. Easton's and in part in Mr. Brotherson's  
21 testimony, to the extent that they cross over.

22 MR. DETHLEFS: Right.

23 JUDGE RENDAHL: Okay. And then, likewise,  
24 at the end of the page, page 16, starting on line 20,  
25 there's a Q and A about how the federal courts have

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1 reviewed the issue, and then goes on on page 17  
2 through line 12, and I believe that's the motion to  
3 strike. Similarly, I would strike that portion.

4 MR. DETHLEFS: I'm okay with that.

5 JUDGE RENDAHL: Because it can be made in  
6 brief. All right. Page 19.

7 MR. SAVAGE: We'll withdraw this, given  
8 everything you've said. The questions are posed for  
9 the reasons cited above.

10 JUDGE RENDAHL: I'm not sure what you're  
11 talking about.

12 MR. SAVAGE: Page 19, lines one through two.

13 JUDGE RENDAHL: Oh, I see. You're there  
14 before I am.

15 MR. SAVAGE: Yeah, I'm sorry. We'll  
16 withdraw our objections to that line in light of your  
17 other rulings.

18 JUDGE RENDAHL: I was going to deny it.

19 MR. SAVAGE: I'm figuring out how you're  
20 going with this stuff.

21 JUDGE RENDAHL: And page 23, similarly, I  
22 don't have any objection to the language there on  
23 page 23.

24 MR. SAVAGE: And just to be clear, I used  
25 lines 13 through 14 as one of the examples in my

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1 brief. This is going to draw cross-examination on  
2 the law.

3 JUDGE RENDAHL: Correct.

4 MR. SAVAGE: Okay.

5 JUDGE RENDAHL: But it's unclear why they  
6 have required this, whether it's a legal issue. It's  
7 unclear to me, it may not be unclear to all of you,  
8 but it's unclear to me whether this is a requirement  
9 because of their own internal requirements, because  
10 it starts in 1984, or for some other reason, so it is  
11 fair for you to cross-examine on that issue. It's  
12 not blatantly legal argument, as far as I'm  
13 concerned.

14 MR. SAVAGE: Okay.

15 JUDGE RENDAHL: All right. On page 24, the  
16 motion is to strike lines seven through 15 and line  
17 23. Line 23, I think the issue is that all IXCs are  
18 required to pay certain charges.

19 MR. SAVAGE: Yes.

20 JUDGE RENDAHL: I don't have any issue with  
21 that and you can cross-examine on it if you wish.

22 Lines seven through 15, I think the only  
23 objectionable part of that is the two sentences  
24 beginning on line 11, Nothing in the act or the FCC's  
25 regulations. I think those issues can be argued in

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1 brief, lines 11 through 15, so I would strike that,  
2 that portion of the discussion. I think it's clear  
3 from other portions of the testimony that that's what  
4 the issue is.

5 Page 25, I have no issue with the language.  
6 I deny the motion on that.

7 On page 26, likewise, I deny the motion to  
8 strike lines seven through eight.

9 Page 27, this is --

10 MR. SAVAGE: Little too fast for me.

11 JUDGE RENDAHL: Okay.

12 MR. SAVAGE: I'm trying to keep track of  
13 what your ruling is in realtime here. Okay. Sorry.  
14 Go ahead.

15 MR. DETHLEFS: Oh, Your Honor, there is one  
16 --

17 JUDGE RENDAHL: All right.

18 MR. DETHLEFS: -- on page 24. Did we  
19 preserve lines 14 through --

20 JUDGE RENDAHL: Fourteen and 15?

21 MR. DETHLEFS: Fourteen and 15, yeah. I  
22 thought we --

23 JUDGE RENDAHL: The last two sentences?

24 MR. DETHLEFS: Yeah.

25 JUDGE RENDAHL: Yes, we can do that. I

0361

1 don't think that's a problem.

2 MR. SAVAGE: We have no objection to those  
3 lines.

4 JUDGE RENDAHL: So strike lines 11 through  
5 14. Just the first word act, period, on line 14,  
6 that would be stricken, keeping the last two  
7 sentences on page 24. Thank you.

8 Okay. So page 25, the objection there I'll  
9 deny. I mean, the motion to strike on 25 is denied.

10 The motion to strike lines seven and eight  
11 on 26 is denied.

12 The motion to strike lines eight through ten  
13 on page 27 is denied.

14 The request to strike on page 31, lines 16  
15 through 17 that's discussing the language, is denied.

16 On page 32, while there's argument on lines  
17 17 and 18, 17 and 18 and 23 through 25, it's not --  
18 it's a mixed issue of legal conclusion and discussion  
19 of the language, and I will allow it.

20 Page 33, line one, I don't see the issue  
21 there, and I will allow it.

22 Page 34, similarly, the request to strike  
23 lines nine and ten, 13 through 15 and 17 through 19,  
24 that's denied. I'll allow that language in. Page  
25 35, the motion to strike lines ten through 14, I

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1 think the last two sentences of that paragraph on  
2 page 35, as was just discussed, the FCC definition of  
3 a meet point interconnection arrangement, that's  
4 interpreting what the FCC's definition is and  
5 discussing some discussion about the obligations.

6 Now, this is one I'm hesitating on, because  
7 it may be necessary to include this to make it  
8 understandable. And I would allow cross-examination  
9 on it. So any thoughts on that language?

10 MR. DETHLEFS: Your Honor, this one, I mean,  
11 he's not really interpreting the FCC rule. The rule  
12 says build and maintain. He's trying to make the  
13 point that their definition expands the circumstances  
14 to include circumstances in which the CLEC is not  
15 building and maintaining, and so I think it should be  
16 left in.

17 MR. SAVAGE: Well, I mean, from my  
18 perspective, again, the FCC's definition says what it  
19 says. On this particular -- I mean, as a legal  
20 matter on this particular legal issue, the issue is  
21 we believe they're trying to impose an unduly  
22 restrictive reading of specific words in a definition  
23 out of the context in which the FCC adopted it. So  
24 the cross-examination again will be, Well, let's look  
25 at what the FCC said, there's no requirement to

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1 actually build there, is there, it's more a -- you  
2 know, so it will certainly generate cross out of the  
3 Local Competition Order on the one hand. On the  
4 other hand, I don't see how they're harmed if he  
5 doesn't testify to his view that what they're doing  
6 is consistent with the FCC's definition. The  
7 language they're proposing is there for all of us to  
8 see.

9 JUDGE RENDAHL: I would just simply strike  
10 the sentence, As was just discussed, the FCC  
11 definition, and leave the remainder of it. So we'd  
12 strike on page 35 the sentence beginning on line ten  
13 and ending on line 12.

14 And then, lastly, in this exhibit, on page  
15 37, there's a motion to strike a portion of a  
16 sentence, and I would deny that simply because it's  
17 too hard to take that bit out, although it is  
18 actually --

19 MR. SAVAGE: Actually --

20 JUDGE RENDAHL: This motion is to strike  
21 lines one through six.

22 MR. SAVAGE: If we can simply stop after the  
23 word UNES. That's what I actually intended. In  
24 addition, Level 3 has also -- I'm now reading from  
25 the bottom of page 36. In addition, Level 3 has also



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1 stricken the prohibition on using this form of  
2 interconnection to access UNEs, period, is what I  
3 propose. And then his commentary that what we're  
4 proposing is contrary to what the FCC said we  
5 disagree with for various reasons.

6 JUDGE RENDAHL: And I would agree with that.  
7 I think that argument can be made in brief. Even  
8 though it's a recitation of the report and order, it  
9 is implying some argument there, so I would strike  
10 that portion.

11 MR. DETHLEFS: Just the quote?

12 MR. SMITH: Beginning with UNEs?

13 JUDGE RENDAHL: No, after UNEs. So put a  
14 period after UNEs, and strike the remainder of line  
15 one through line six.

16 All right. With that, that's Mr. Easton's  
17 direct testimony. On the reply testimony, which is  
18 Exhibit 71-T, the first request to strike is on page  
19 two, lines one through six. I don't have an issue  
20 with this. This sets up the issue for discussion,  
21 and if there needs to be some cross-examination on  
22 that, then you can go ahead and do that, Mr. Savage.

23 On line five, the motion is to strike lines  
24 eight through ten. While there's some argument that  
25 this is contrary to applicable law, it's -- I think

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1 it's difficult to -- it also addresses cost  
2 causation. I think it's difficult to strike that  
3 piece of it without doing harm to the testimony.

4 MR. SAVAGE: May I suggest if we could  
5 simply, on line ten, strike the words "both to  
6 applicable law and?"

7 JUDGE RENDAHL: I wouldn't do that, and I  
8 think you can ask cross-examination questions on that  
9 if you wish, but I don't want to just, if I can avoid  
10 it, slice pieces out of a sentence.

11 On page six, the motion is to strike lines  
12 four through 13. I think I would strike from line  
13 seven, beginning with the sentence starting "Indeed,"  
14 all the way through line 13. I think that's an  
15 interpretation of law. So I think if we strike that,  
16 it would be a lot cleaner.

17 On page eight, the objection is to lines 20  
18 through -- 23 through 25. I don't have an issue with  
19 that discussion. That will remain in.

20 Page nine, there's an objection to lines 13  
21 through 14 and 16 through 21. While there is some  
22 argument about there's no basis in law and some  
23 interpretation, I think, as with Mr. Brotherson's  
24 testimony, if we just take out certain portions of  
25 the sentence, it does harm to what the testimony is

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1 trying to convey, and you can ask cross-examination  
2 on these portions of the testimony. So that would  
3 remain in.

4 On page ten, the motion is to strike lines  
5 one and two and lines ten through 13. I would deny  
6 that part of the motion. I think it's fine and you  
7 can cross-examine on the interpretation of what the  
8 law is if you need to on relative use factor.

9 (Cell phone ringing.)

10 MR. SAVAGE: Excuse me. I apologize.

11 JUDGE RENDAHL: That's a nice ring.

12 MR. SAVAGE: Sort of retro.

13 JUDGE RENDAHL: All right. On line 12 --  
14 page 12, the motion is to strike a portion of line  
15 14, and then line 16 through 18. I would simply  
16 strike the last sentence, There is no lawful basis  
17 for providing Level 3 such discriminatory treatment.  
18 That would come out.

19 On page 15, lines two and three I do not  
20 find objectionable and it's too hard to take it out.  
21 You can delve into this on cross, if you wish.

22 And then the last piece of Mr. Easton's  
23 testimony is on page 22. It's not a confidential  
24 portion of the testimony and the objection is to  
25 lines ten through 16. The page is yellow, but the

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1 language we're talking about is not confidential.

2 I think the objection truly would be to  
3 lines 14 through 16, and since it refers to Mr.  
4 Brotherson's testimony, and I'm not sure how much of  
5 this was allowed in or not allowed in, I'm going to  
6 deny the motion on this particular language, because  
7 it's too hard to parse it out at this point.

8 Okay. Let's be off the record while we move  
9 to Mr. Linse's testimony. That's Exhibit 91-T.

10 (Discussion off the record.)

11 JUDGE RENDAHL: Let's be back on the record.  
12 And we'll start with Mr. Linse's replacement direct  
13 testimony, which is marked as Exhibit 91-T. The  
14 first objection is to page three, lines eight through  
15 15, and 17 and 18. This is really setting up the  
16 issue. To the extent that there's argument there,  
17 I'm going to allow it in. I don't have an objection  
18 to that.

19 On page eight, there is a statement about --  
20 this is lines five through six on page eight, a  
21 discussion about what's required for creating POIs.  
22 It's too hard to parse this one out. I will allow  
23 that in and if you wish to cross-examine on the  
24 issue, you can.

25 On page nine, the objection is to lines 11

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1 through 12, or a portion of the sentence on lines 11  
2 through 12, and then on, again, line 18 through 19,  
3 having to do with obligations under the act. I think  
4 it's too hard to strike these from the language and I  
5 think it conveys what Qwest's position is.

6 MR. SAVAGE: Actually, Your Honor, if I  
7 could be heard on that. If you look at the sentence  
8 on ten and 11 and simply stop after the word network,  
9 it's perfectly coherent. To achieve that capability  
10 would require substantial modification of Qwest's  
11 current network, period. Now, we disagree with that,  
12 but that's a factual assertion. And gee, that's not  
13 an obligation under the act is totally gratuitous and  
14 can be cut out without interrupting any flow  
15 whatsoever.

16 I mean, at the end of the day, I can -- if I  
17 -- if we cut out that last phrase, I cross-examined  
18 him about, Well, what is required to modify your  
19 network. If we don't, and then let's talk about  
20 paragraphs and paragraphs of the Local Competition  
21 Order that discuss how much modification is a  
22 reasonable modification that you can expect to do.

23 MR. DETHLEFS: Your Honor, we can take that  
24 clause out, put a period after network and --

25 JUDGE RENDAHL: All right. So line 11 would

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1 end at network, and strike, "which is not an  
2 obligation under the act" through line 12.

3 And I guess the other part of it would be on  
4 line 18, and I suggest -- I'm guessing, Mr. Savage,  
5 you would be moving to strike this is a redefinition  
6 of Qwest's obligation, or just simply this is a  
7 redefinition -- or the sentence would read, again,  
8 this is a modification?

9 MR. SAVAGE: Modification, yes.

10 JUDGE RENDAHL: So it would strike on line  
11 19 redefinition of Qwest's obligation and?

12 MR. SAVAGE: Yes, that's correct.

13 JUDGE RENDAHL: Or and a?

14 MR. SAVAGE: Yes. Again, this is a  
15 modification of its existing --

16 MR. DETHLEFS: There's no reference, though,  
17 to under the act or under the law or --

18 MR. SAVAGE: Well, Qwest's obligation.  
19 That's --

20 MR. DETHLEFS: It could be referring to  
21 contractual obligation.

22 JUDGE RENDAHL: I'll allow it in and I'll  
23 allow you to cross-examine on that point, and we'll  
24 go from there.

25 All right. Page 31 is the next reference

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1 that's objected to, lines seven through nine. Again,  
2 this is part of the paragraph that's setting up what  
3 the issue is and what the concerns are, and so I  
4 don't have any objection to identifying what the  
5 issue is, that there's an issue of law involved with  
6 this. So that doesn't trouble me, so I will deny  
7 that part of the motion.

8 On page 32, there's a reference -- let's  
9 see. The motion is to strike line 31. I think you  
10 meant 21.

11 MR. SAVAGE: I did. I apologize.

12 JUDGE RENDAHL: Okay. Twenty-one, and the  
13 note to the Triennial Review Order. The portion I  
14 think you're objecting to is, "Upon decisions made in  
15 the Triennial Review," and on the next page,  
16 "Triennial Review Remand Order," with a footnote,  
17 "Qwest is no longer obligated to unbundle its  
18 signaling network." Is that the portion you're  
19 objecting to?

20 MR. SAVAGE: Indeed, yes.

21 JUDGE RENDAHL: Mr. Dethlefs, do you have  
22 any objection to taking that sentence out with the  
23 footnotes?

24 MR. DETHLEFS: Well, does Level 3 take an  
25 issue with that? I mean, is this even a disputed

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1 point? Do you think (inaudible).

2 JUDGE RENDAHL: Can you repeat that?

3 MR. DETHLEFS: Oh, I'm sorry. Is Level 3  
4 taking issue with the statement, though? I mean, we  
5 were relieved of the obligation to provide unbundled  
6 signaling. So if this isn't even a point of dispute,  
7 there shouldn't be a --

8 MR. SAVAGE: I think this actually relates  
9 back to the contract discussion earlier in that, as I  
10 understand, one of the issues that's open on the  
11 contract is the extent to which the state has the  
12 authority to impose unbundling obligations on one  
13 theory or another, notwithstanding what the FCC did.  
14 And given that that's a disputed legal point, at  
15 least maybe by the time things get done, even though  
16 -- even though literally stated, lawyer to lawyer, I  
17 might parse this and say, Yeah, okay. Given that it  
18 might become a matter of some dispute in the future,  
19 I thought it a wiser course to take out the pure  
20 legal commentary here.

21 MR. DETHLEFS: Well, but, you know, the  
22 issues that are in dispute were framed in the  
23 petition and response, and requesting unbundled  
24 signaling was not one of those.

25 MR. CECIL: Well, then it becomes a factual



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1 question of whether something is unbundled signaling.  
2 The law is what the law is, and that can be dealt  
3 with on briefs.

4 MR. DETHLEFS: And that's what my point is.  
5 Why are we --

6 JUDGE RENDAHL: Well, I would take it out.  
7 I would just take it out, make it cleaner. We can --  
8 I don't think it does harm.

9 MR. SMITH: So is it the last part of 21?

10 JUDGE RENDAHL: Last part of line 21 on page  
11 32, and that sentence continuing onto line two of  
12 page 33, with the footnotes.

13 All right. Page 34, I believe the portion  
14 on lines ten through 12 is really a statement of the  
15 issues, and so I don't have any problem with it, and  
16 on page 35, on lines eight and nine, that's really a  
17 mixed issue there, and if you need to cross on it,  
18 you can do so. Lines 15 through 16 --

19 MR. CECIL: I'm sorry, so page 34 stays in,  
20 even though --

21 MR. SAVAGE: Yes, it stays in.

22 JUDGE RENDAHL: Page 34 stays in.

23 MR. SAVAGE: On page 35, if we could get rid  
24 of the first word on line 16, I'd be a happy camper.

25 JUDGE RENDAHL: Well, I think, you know, I'm

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1 not going to parse it this --

2 MR. SAVAGE: Okay.

3 JUDGE RENDAHL: You know, I'm not going to  
4 take out Qwest's position here. So you can argue  
5 that on brief, and if you want to cross-examine on  
6 whether it's unlawful, you may do so. All right.

7 MR. CECIL: So you're specifically  
8 permitting cross, then, on page 35, line nine, where  
9 he's making a claim about what is and what's not  
10 required by the FCC --

11 JUDGE RENDAHL: Yes, because it's a --

12 MR. CECIL: -- citing the C.F.R.?

13 JUDGE RENDAHL: Yes, because it's a part of  
14 the sentence and I don't want to strike it. If you  
15 want to ask cross-examination on it, you may. It's  
16 not blatant legal argument. It is, but it's in the  
17 sentence and it's too hard to parse it out. So you  
18 can cross on it. I'm not striking it.

19 MR. CECIL: Because we're looking at this  
20 witness as a network expert to talk about what's  
21 going on in the network, not exactly what's required  
22 by FCC rule.

23 JUDGE RENDAHL: Well, you can cross-examine  
24 Mr. Linse, and if he doesn't know what the FCC is  
25 talking about, then you can discuss it at that point.

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1 MR. CECIL: Okay. All right.

2 MR. SAVAGE: I think we've cleverly  
3 telegraphed which attorney was going to cross-examine  
4 Mr. Linse.

5 JUDGE RENDAHL: That's fine. Let's move on  
6 to what's been marked Exhibit 93-T, which is Mr.  
7 Linse's reply testimony. The first objection is to  
8 page 21. No, I'm sorry, page 11. I'm looking in the  
9 wrong column. And that would be line 21. And I  
10 think the objection is to the word inappropriately.  
11 Again, I'm not going to strike the word. I think we  
12 can move on.

13 Page 12, the objection is to lines six  
14 through nine and 21 through 22. The question asks  
15 about violating industry guidelines.

16 MR. SAVAGE: But when you get to page 13,  
17 you see why I moved to strike that.

18 JUDGE RENDAHL: I understand that.

19 MR. SAVAGE: Okay.

20 JUDGE RENDAHL: I'm going to leave it in,  
21 because the sentence is the sentence. It's not his  
22 testimony. And so I'm going to leave that part in,  
23 although the answer yes does respond to the question.  
24 But I'm going to leave it in and let you  
25 cross-examine on that point.

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1           I think the objection to line 20 through 21  
2 is the reference to FCC rules, but I -- again, I  
3 don't find that objectionable at this point. On page  
4 13, I can't necessarily strike the question and leave  
5 part of the answer, so I'm merely going to strike the  
6 first -- the second sentence that starts INC  
7 guidelines are really more than mere guidelines.  
8 Strike that sentence and the footnote, and then the  
9 last sentence, Level 3's method is in violation of  
10 these industry -- and it's a partial sentence,  
11 anyway, so we'll just take that out.

12           MR. DETHLEFS: Your Honor, on that one, I  
13 mean, we have a difference of opinion as to whether  
14 the guidelines are part of the law or were something  
15 that's, you know, a factual requirement by an  
16 industry, you know, prepared document. So this last  
17 one, once you take out the statement that it's an FCC  
18 mandate, it's still important for him to be able to  
19 testify as to whether they're in compliance with the  
20 guidelines. Level 3 takes the position the  
21 guidelines aren't part of the law.

22           JUDGE RENDAHL: All right. Would you  
23 complete the sentence by saying these industry  
24 guidelines, if that's what was intended?

25           MR. DETHLEFS: Yes, yes.

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1           JUDGE RENDAHL: All right. Well, I'll allow  
2 that in, allow cross on lines nine through ten, but  
3 the sentence on lines six and seven is taken out.

4           Then, on line 22 through 24, while this  
5 implies some legal argument, I think this is a  
6 position and a policy of Qwest, as well, and so I'm  
7 going to allow those sentences in and you can cross  
8 on them if you wish.

9           On page 15, the objection is to lines 15  
10 through 17, the question and the first answer. I  
11 think the objection is probably to the word  
12 appropriate or inappropriate, and I think you can  
13 argue about that both in brief and you can cross on  
14 that if you wish. I'm going to keep it in.

15           Line 20 -- I'm sorry, page 16, lines two  
16 through six, I would, consistently with before, on  
17 page 13, where I'm allowing lines nine through ten,  
18 although it's somewhat questionable, I would keep in  
19 the remainder of line two on page 16, and then keep  
20 what's on lines four through six.

21           And then, on page 17, the objection is to  
22 lines two through 15. I would strike the sentence on  
23 line two going through line four, and keep the  
24 sentence beginning on line four beginning with "the  
25 history," and keep that. And then on -- I would

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1 strike the last sentence of the next question of the  
2 Commission's determination and just leave the  
3 reference to the case.

4 So I would strike the sentence beginning on  
5 line 14, "In these dockets," and ending with "to  
6 bridge EASes." And that completes Mr. Linse's --

7 MR. SMITH: There's one more on page 20,  
8 wasn't there?

9 JUDGE RENDAHL: Is there? Am I missing it?

10 MR. DETHLEFS: Seventeen and 18.

11 JUDGE RENDAHL: Ah, on page 20, lines 17 and  
12 18, that goes back to the same issue, and I can't  
13 remember what I did there.

14 MR. CECIL: Where you struck the union  
15 references?

16 JUDGE RENDAHL: Right.

17 MR. CECIL: Again, that raises that same  
18 issue.

19 JUDGE RENDAHL: I think we could strike that  
20 sentence starting on line 16, As I described in my  
21 replacement testimony, because if that's stricken,  
22 then this should be stricken, as well. So lines 16  
23 through 18. All right. And that finishes with Mr.  
24 Linse.

25 MR. SAVAGE: Your Honor, if you're going to

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1 make an 11:55 --

2 JUDGE RENDAHL: Upstairs. We need to break.

3 So when we come back on the record, very briefly --

4 actually, if you all are back a little early, we can

5 just run through it off the record and I can put on

6 the record what we choose to strike for Mr.

7 Fitzsimmons. And then we will be done with this

8 exercise.

9 Again, I apologize for inviting this, but on

10 the other hand, I think we need to start setting some

11 clear guidelines about what's in the testimony. All

12 right. We'll be off the record.

13 (Lunch recess taken.)

14 JUDGE RENDAHL: Let's be back on the record

15 after our lunch break. So we were going to talk

16 about the remainder of the motion to strike, but I

17 believe we have a withdrawal.

18 MR. SAVAGE: Based on our interpretation of

19 your rulings this morning, we would withdraw our

20 motion to strike the portion of Dr. Fitzsimmons'

21 testimony that we had identified, subject to our

22 right to cross-examine with respect to it.

23 JUDGE RENDAHL: That is accepted. So we are

24 now moving on to our first witness, which is Mr.

25 Greene, for Level 3. But before we do that, I

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1 understand, Mr. Smith, you may have an objection or  
2 motion?

3 MR. SMITH: Motion. We would similarly move  
4 to strike a few areas, and I could go through them.  
5 Before that, if I could, Dr. Fitzsimmons is coming in  
6 at some point this afternoon. We had listed him as  
7 third. And if at all possible, assuming we don't get  
8 to Mr. Brotherson today, we would probably want to  
9 lead with Dr. Fitzsimmons tomorrow; is that right,  
10 Tom?

11 MR. DETHLEFS: Well, if he's here and we're  
12 ready to start witnesses, we'd rather get him on so  
13 we don't have to pay for his time to stay here for  
14 the entire hearing. Since Level 3 is doing their  
15 witnesses out of order, we thought we might ask for  
16 that same courtesy for Dr. Fitzsimmons.

17 JUDGE RENDAHL: That's fine. I have no  
18 objection to moving witnesses in and out as we need  
19 to do that. All right. So Mr. Greene's direct  
20 testimony begins on what's been marked as Exhibit  
21 31-T.

22 MR. SMITH: Right. And I have two items  
23 there. The first is on page 16. Footnote Number  
24 Four is a quotation reference to the Vonage Holdings  
25 Order and certainly, from our perspective, is legal



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1 conclusions related to that order. So we would move  
2 to strike the footnote only.

3 MR. CECIL: We'd just withdraw that, Your  
4 Honor.

5 JUDGE RENDAHL: So the Footnote Number Four  
6 on page 16 will be stricken.

7 MR. SMITH: The second item in Exhibit 31-T  
8 is on page 27, and it's lines 11 through 16.

9 JUDGE RENDAHL: Right.

10 MR. SMITH: The first sentence is a  
11 reference to a -- some FCC case that wasn't cited  
12 that reached the conclusion that Verizon had done  
13 something, and then, from that, the next sentence is  
14 a sentence that is based on that sentence, on the  
15 characterization of that decision, so we would move  
16 to strike lines 11 through 16.

17 JUDGE RENDAHL: Mr. Cecil.

18 MR. CECIL: I don't see that this is so  
19 clearly within what we've discussed previously. The  
20 witness is testifying to his understanding, what's  
21 happened in the history in the industry within his  
22 experience as a business witness. He's not  
23 advocating for particular interpretation of a rule or  
24 of a case or applying that rule or case to facts.  
25 It's his personal impression.

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1 JUDGE RENDAHL: Mr. Smith.

2 MR. SMITH: Well, I would just say, I mean,  
3 he obviously is characterizing and not even citing a  
4 case for a point in this to advance their advocacy.  
5 And then, on the basis of his statement of what the  
6 FCC found, suggests that if that could happen to  
7 Verizon, it could happen to Qwest. So the conclusion  
8 that -- first of all, there is a conclusion, a legal  
9 conclusion as to what the FCC found and then an  
10 inference that's drawn from that conclusion, so we  
11 believe striking it is entirely consistent with what  
12 we've done thus far today.

13 JUDGE RENDAHL: Well, I had looked at this  
14 same item last night and I think it's appropriate to  
15 strike it. I don't think it detracts from the  
16 argument that Mr. Greene is trying to make. He's  
17 made his point and this is just to bolster it, and I  
18 think the argument can be made in brief, as well, so  
19 --

20 MR. SMITH: The next goes to Mr. Greene's  
21 supplemental testimony, which I believe is Exhibit  
22 43, and there's one item here, page four, Lines 14  
23 through 21. And maybe I'll give you -- let me just  
24 stop for a moment, let everyone read that.

25 If everyone's read it, I mean, it's a

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1 characterization by Mr. Greene that Level 3's  
2 proposal on Issue Number 13 is consistent with the  
3 act, Washington law, and policy. It also then  
4 characterizes a policy that Level 3 asserts the  
5 Washington Commission has, again, not citing the  
6 particular case, and then the ultimate conclusion  
7 from all this is thus there's no need to argue about  
8 the definition of LIS. So in our view, it's clearly  
9 a legal conclusion that should be stricken.

10 JUDGE RENDAHL: Consistent with my prior  
11 rulings, I think he's setting up -- Mr. Greene is  
12 setting up Issue 13, and while there's a reference to  
13 the act and the law, it's in the midst of a sentence,  
14 so I wouldn't be striking that, but the remainder of  
15 that paragraph, beginning with the word "moreover" on  
16 line 17, I would strike that to the end, and Level 3  
17 can make that argument in its brief about what the  
18 Washington Commission believes about use of network  
19 resources.

20 MR. SMITH: Okay. And then the -- I have --  
21 looks like five in the reply testimony, which is  
22 Exhibit --

23 JUDGE RENDAHL: 46-T.

24 MR. SMITH: -- 46-T. First is on page one,  
25 lines 11 to 22. This is an argument that goes to the

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1 issue of the template, and perhaps that issue will  
2 ultimately be resolved, but this is very clearly --  
3 despite the fact that it is introduced with saying,  
4 Though I'm not a lawyer, it then goes on to make what  
5 I believe is clearly legal argument in terms of who  
6 has what burden to file an interconnection agreement  
7 and whose template should govern. So we would move  
8 to strike that.

9 JUDGE RENDAHL: Mr. Cecil.

10 MR. CECIL: I believe, Your Honor, this is  
11 consistent with your earlier language. I mean,  
12 you've allowed the Qwest witnesses to comment upon  
13 their understanding, comment upon the effective  
14 contract language, and this is actually entirely -- I  
15 see this almost entirely factual in nature, as the  
16 witness is just discussing what is -- what has  
17 transpired with regard to negotiations.

18 I find it quite a stretch to even claim that  
19 there's real legal argumentation. But to the extent  
20 that that can be interpretation, I think that's  
21 permitted within the scope of your previous rulings.  
22 You've allowed their witnesses to testify and  
23 characterize whether our traffic's appropriate or  
24 inappropriate, you've allowed them to say what the  
25 criteria are under various exemptions, so it seems to

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1 me this is within that.

2 JUDGE RENDAHL: While it does start "I'm not  
3 a lawyer," I do think this is similar to what I've  
4 done before, setting up what an issue is in the case,  
5 even though it does involve some legal discussion.  
6 If you need to cross Mr. Greene on this, that's fine.  
7 I don't have any objections with keeping this in the  
8 testimony.

9 MR. SMITH: All right. I said I had five in  
10 this testimony. It's only four. The next one is on  
11 page three, lines 20 through -- I'm sorry, yeah, page  
12 three, lines 20 to 23.

13 JUDGE RENDAHL: About -- I believe it would  
14 start after "no?"

15 MR. SMITH: Right.

16 JUDGE RENDAHL: I have read the FCC's ISP  
17 Remand Order, and end with "for example?"

18 MR. SMITH: Yes.

19 JUDGE RENDAHL: And I think it's appropriate  
20 to strike that.

21 MR. CECIL: Your Honor, may I be heard?

22 JUDGE RENDAHL: Yes, you may.

23 MR. CECIL: You've allowed Qwest witnesses  
24 to actually include specific references to rules.  
25 For example, you allowed Mr. Linse to include

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1 specific references to Code of Federal Regulations  
2 and testify at length as to the application to those  
3 Code of Regulations in the fact. I believe this  
4 witness is qualified to read and say, Gee, I didn't  
5 find these words. If they want to cross-examine him  
6 on that, they're certainly entitled to. I don't  
7 think this is legal argumentation.

8 JUDGE RENDAHL: I disagree. I think this  
9 isn't necessary for Mr. Greene to state what his  
10 position is and he's made some -- I will allow the  
11 remainder of this discussion of that paragraph giving  
12 examples, and with that, Level 3 can make the  
13 argument about what the ISP Remand Order or the FCC  
14 says.

15 MR. CECIL: He simply testifies --

16 JUDGE RENDAHL: The next sentence says, It's  
17 a strange legal fiction. That seems to be making an  
18 argument. So I would -- I don't -- I think this is  
19 distinguishable from other situations. This can be  
20 taken out without harming what Mr. Greene is trying  
21 to say.

22 MR. CECIL: Well, I believe it does affect  
23 what he's said. It's integral to what he's trying to  
24 set up. What he's trying to set up is his  
25 understanding of what he's got to comply with as a

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1 business and network matter and whether or not -- you  
2 know, he's not saying that -- he's not testifying to  
3 the legal effect per se of what it should be; he's  
4 saying if indeed there is this rule, it is a strange  
5 legal fiction to think that. Because he goes right  
6 to the heart of an issue, in Level 3's view, is that  
7 physical location of a particular ISP server or set  
8 of modem banks, imposing those requirements on us is  
9 -- reaches odd and contrary results, from Level 3's  
10 perspective, that he chooses that launching point.

11 He's not saying here -- there's no legal --  
12 your specific ruling was I don't want blatant legal  
13 commentary out where it reads like a brief and  
14 multiple case cites. It's nothing like that. He  
15 simply says, Gee, I didn't find these words here, and  
16 this affects what my business should be required, and  
17 here is the example. So if you take those words out,  
18 we lose the setup of what the example is going to be.

19 JUDGE RENDAHL: Well, and I think you can  
20 tie that back in in your brief, because the sentence  
21 says, I have read the FCC's ISP Remand Order and the  
22 FCC does not say. That's making -- that's  
23 interpreting the case, all right. That's  
24 interpreting the order.

25 MR. CECIL: Okay.

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1           JUDGE RENDAHL: All right? Then it goes on  
2 to say it's a strange legal fiction. In my mind,  
3 that's making a conclusion of law about what the ISP  
4 Remand Order says. And you're free to argue that in  
5 your brief, to make the connection from the example  
6 in the testimony to how it relates to the law.

7           MR. CECIL: Okay. I see what you're saying.

8           MR. SMITH: The next one is actually in that  
9 same paragraph. And Your Honor, you may have already  
10 ruled on this. It's the next page, beginning on the  
11 sentence -- end of line five down to line nine. It  
12 gets into this whole question of terminates, and as I  
13 read it, I viewed this as an extension of the legal  
14 conclusions that were reached in -- that we just  
15 discussed on page three, and as such, felt that those  
16 two represent legal conclusions that should likewise  
17 be struck.

18           JUDGE RENDAHL: Well, as I did with some of  
19 Qwest's testimony, where it's somewhat integral to  
20 the testimony to explain the point of view of the  
21 company, then it should remain in. And so I would  
22 allow that to stay in. It's not, as I see it, a  
23 blatant reading of a case.

24           MR. SMITH: Okay. And then, finally, if you  
25 could turn to page seven. And I'm looking at lines



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1 three to nine. Maybe I can just -- it says,  
2 According to my layman's understanding of Washington  
3 State law, it is consistent with compensation  
4 requirements, and then goes on to talk again later in  
5 the last sentence, the seven through nine, I  
6 understand that Washington State reciprocal  
7 compensation rates apply to all traffic, so on and so  
8 forth.

9 I believe those are clear legal conclusions  
10 as to the meaning of Washington law, and specifically  
11 the application of Washington State reciprocal  
12 compensation rates.

13 JUDGE RENDAHL: Mr. Cecil.

14 MR. CECIL: I believe, again, that this  
15 would be consistent -- for example, you've allowed in  
16 several statements where Qwest witnesses testify as  
17 to how traffic should be rated, even within the  
18 closer context of an actual rule cite. I think all  
19 this is is this is what I understand the rule and the  
20 application to be, and here's how my contract  
21 language affects this.

22 And I think that you have previously ruled  
23 that that's permissible testimony. The witness is  
24 simply testifying to his understanding of what the  
25 law is and how our contract would work on that. He's

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1 not saying that this rule should apply thus.

2 JUDGE RENDAHL: Mr. Smith.

3 MR. SMITH: Well, I would just merely say, I  
4 mean, the words speak for themselves. He's making  
5 very direct legal conclusions as to what Washington  
6 law is. That's different than citing a rule that  
7 says what it says. This isn't citing the rule. This  
8 is making the conclusion.

9 MR. CECIL: If anything, I think the witness  
10 is simply stating what the issue is and how he  
11 understands the contract would apply. He's  
12 testifying to Level 3's definition, not what  
13 Washington says the definition should be, nor what  
14 the FCC says the definition should be.

15 MR. SMITH: Well, I never suggested it said  
16 anything about the FCC.

17 JUDGE RENDAHL: Well, I, in looking at this,  
18 I think, similar to how I discussed the mirroring  
19 law, the mirroring rule, I think this is integral to  
20 the testimony and can be crossed upon, but I don't  
21 think at this point it's so blatant that I would  
22 strike it.

23 MR. SMITH: Thank you, Your Honor. That's  
24 all I have.

25 JUDGE RENDAHL: All right. With that, Mr.

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1 Cecil, Mr. Greene is here. I'm going to swear him in  
2 and administer the oath, and then you can take care  
3 of the foundation.

4 MR. CECIL: Okay.

5 JUDGE RENDAHL: Mr. Greene, could you state  
6 your full name for the record, please?

7 MR. GREENE: My name is Mack Denzil Greene.

8 JUDGE RENDAHL: Okay. And you are with  
9 which party?

10 MR. GREENE: I am with Level 3.  
11 Whereupon,

12 MACK DENZIL GREENE,  
13 having been first duly sworn, was called as a witness  
14 herein and was examined and testified as follows:

15 JUDGE RENDAHL: Okay. Thank you.

16

17 D I R E C T E X A M I N A T I O N

18 BY MR. CECIL:

19 Q. Good afternoon, Mr. Greene.

20 A. Good afternoon.

21 Q. Do you have with you your testimony filed in  
22 this case?

23 A. I do.

24 Q. And that would be testimony consisting of  
25 Exhibit 31-T and 43 and 46-T, which would be your

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1 direct testimony, your supplemental direct and your  
2 reply testimony?

3 A. That's correct.

4 Q. And as you sit here today, first of all, are  
5 you the same person that caused this testimony to be  
6 written?

7 A. I am.

8 Q. And you are familiar with its content?

9 A. I am.

10 Q. And have you reviewed that testimony in  
11 preparation for today?

12 A. Yes, I have.

13 Q. And do you have any updates to that  
14 testimony, any updates or changes?

15 A. We did submit the new map that provided  
16 greater detail, which I believe would be a  
17 replacement.

18 JUDGE RENDAHL: It's Exhibit 44, which was  
19 offered during the technical conference, as I  
20 understand, but we didn't receive the actual version  
21 until today.

22 MR. CECIL: Right, that would be MG-7, the  
23 network diagram. Do we have that now? Has it been  
24 passed out?

25 JUDGE RENDAHL: It has. We have it.

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1           MR. CECIL: No, that's -- no, the other one,  
2 the one -- the MG-7 --

3           JUDGE RENDAHL: Let's be off the record for  
4 a moment.

5           (Discussion off the record.)

6           JUDGE RENDAHL: Let's go back on the record.  
7 While we were off the record, we determined that what  
8 had previously been handed out as Exhibit 44 was, in  
9 fact, Exhibit 44, and Mr. Cecil handed out a  
10 replacement exhibit for what's been marked as Exhibit  
11 32.

12           And Mr. Greene, can you explain what the  
13 difference is between this new version and the one we  
14 had before?

15           THE WITNESS: Yes, the previous version  
16 labeled the connectivity from Seattle to Yakima as a  
17 DEOT and I think it's color-coded as a purple or  
18 maroon line.

19           JUDGE RENDAHL: All right.

20           THE WITNESS: We have, after reviewing the  
21 facilities, that circuit actually is leased by Level  
22 3, so we recolored it with the appropriate blue color  
23 to denote it was a Level 3 circuit. We also  
24 relabeled the MUX that's shown in the Yakima local  
25 calling area as being a Level 3-leased MUX.

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1           JUDGE RENDAHL: Okay. So this is  
2 Replacement Exhibit 32. I'm sorry, Replacement  
3 Exhibit 33. Now I'm confusing the record.  
4 Replacement Exhibit --

5           MR. THAYER: Thirty-three.

6           JUDGE RENDAHL: Replacement Exhibit 33, and  
7 I'm holding up a 11-by-17 copy of something labeled  
8 Level 3/Qwest Interconnection Architecture, which, as  
9 Mr. Greene has described, is different from what we  
10 previously had included as Exhibit 33, so it's just a  
11 Replacement Exhibit 33.

12           The other document is a color map of  
13 Washington State, titled Rate Center Coverage, and  
14 has different color descriptions of Level 3's  
15 facilities and services, I'm sure we'll hear more  
16 about that, dated 5/20/06, and this is Exhibit -- or  
17 what's been marked as Exhibit 44, which is described  
18 in the exhibit list as a more detailed version of  
19 MG-2, which is Exhibit 32. So it's a more detailed  
20 version of the map that's Exhibit 32. So with that,  
21 I hope we clarified the record there.

22           THE WITNESS: I believe so.

23           JUDGE RENDAHL: Go ahead, Mr. Cecil. I'm  
24 sorry to interrupt.

25           THE WITNESS: If I could have my counsel

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1 pass some copies down to me, I neglected to pick them  
2 up.

3 Q. At this time, do you have any other  
4 corrections or updates to your testimony?

5 A. I do not.

6 MR. CECIL: Your Honor, I -- quick question.  
7 Do you want to -- do we need to move these exhibits  
8 now?

9 JUDGE RENDAHL: You can now, yes.

10 MR. CECIL: So I'd like to move, Your Honor,  
11 Exhibits 33, replacement for 33 and 44.

12 JUDGE RENDAHL: Well, do you want to offer  
13 all of the exhibits, 31 through 46-T?

14 MR. CECIL: I'm sorry. Yeah, I was unclear.  
15 Yeah, and offer 31-T through 46-T.

16 JUDGE RENDAHL: All right. Are there any  
17 objections to admitting into the record what's been  
18 marked in the exhibit list as 31-T through 46-T?

19 MR. SMITH: No objection, other than to say  
20 that those portions that were stricken, we're  
21 agreeing to accept them subject to the items that  
22 were stricken from 31-T and the other direct  
23 testimonies.

24 JUDGE RENDAHL: Yes, and let's discuss a  
25 detail, which is I will, when we stamp the final

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1 record in this case, I will go through and cross out  
2 those portions of the testimony that are on the  
3 record that we have -- that we will be striking. So  
4 with your agreement to that -- otherwise, I'd have  
5 you all file new versions of testimony indicating the  
6 portions that are stricken. So if you agree that I  
7 will do it based on the record, then that's what  
8 we'll do.

9 MR. CECIL: Level 3's agreed, Your Honor.

10 MR. SMITH: Likewise from Qwest.

11 JUDGE RENDAHL: Okay. So I will -- anything  
12 on the record that we have agreed to strike, then  
13 whatever is admitted excludes that portion that is  
14 stricken.

15 MR. SMITH: With that understanding, no  
16 objection.

17 JUDGE RENDAHL: All right. Well, then,  
18 what's been marked as Exhibit 31-T through 46-T will  
19 be admitted, and Mr. Greene is available for cross.

20 MR. SMITH: Okay.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. SMITH:

24 Q. Good afternoon, Mr. Greene.

25 A. Good afternoon.



0396

1 Q. Thought it was going to be this morning.

2 Let's start with Exhibit 44, the new --

3 A. New map.

4 Q. And I'm just trying to identify how many  
5 points of interconnection or POIs, P-O-Is, Level 3  
6 indicates that it has in Washington. Do you know the  
7 number or do you need to count them?

8 A. I would need to count. And also one  
9 clarification. These are just the points of  
10 interconnection that we have with Qwest.

11 Q. Right. I understand that you may have some  
12 --

13 JUDGE RENDAHL: One at a time. Wait till  
14 the other's finished, please.

15 THE WITNESS: I'm showing eight from the  
16 map, which is consistent with my recollection.

17 Q. Okay. Now, one thing new to this map over  
18 Exhibit 32 that it replaces is -- forgive me, I'm a  
19 little color blind, but I believe it's a blue line  
20 that comes in about halfway across the southern  
21 boundary of Washington, comes up to Seattle, and then  
22 goes down towards Portland. And in fact, from  
23 Seattle down towards Portland, there's -- looks like  
24 there's at least a couple of those lines. Could you  
25 tell me what that is?

0397

1           A.    That blue line represents Level 3's backbone  
2 network, our fiber network as it traverses through  
3 the state.  You'll see multiple lengths that appear  
4 to be going in the same direction, and that is  
5 primarily for diversity.

6           Q.    Okay.  So those actually do represent  
7 separate fiber links down --

8           A.    That's correct.

9           Q.    -- I guess what I would call the I-5  
10 corridor?

11          A.    That would be a fair analogy.

12          Q.    Okay.  Now, does Level 3 have any loop plant  
13 that it uses to provide traditional local exchange  
14 service with?

15          A.    It does.  It has a metro network in the  
16 Seattle area.  And a metro meaning that that  
17 particular network stays within the confines of the  
18 city limits, so to speak, and directly connects our  
19 backbone facilities to the premises of customers.

20          Q.    Is that only in the Seattle area?

21          A.    In the state of Washington; correct.

22          Q.    And do you provide what I would call  
23 traditional voice services to customers in the  
24 Seattle area with that?

25          A.    The quick answer is yes.  The services that

0398

1 Level 3 provides are based primarily upon IP  
2 technology, so I hesitate around the adjective  
3 traditional, but some of the services employed by  
4 customers in those areas are to make phone calls, as  
5 an example, which I will consider a traditional  
6 service.

7 Q. Are you talking like VoIP?

8 A. VoIP would be one example.

9 Q. But you don't -- if I understand correctly,  
10 you don't provide what I would call a traditional  
11 circuit switched end user type service?

12 A. No, all of our services are based upon IP  
13 technology.

14 Q. Okay. And how many switches does Level 3  
15 have in the state of Washington?

16 A. When you say circuit switches or soft  
17 switches or --

18 Q. Let's start with circuit switches.

19 A. Circuit switches. Level 3 just recently,  
20 within the last year, acquired a company known as  
21 WilTel, W-i-l-T-e-l, and through that acquisition  
22 picked up approximately 20 circuit switches  
23 throughout the United States. I unfortunately do not  
24 recall if one of those switches is located in Seattle  
25 or not. I do know, however, that we have a number of

0399

1 different -- what we characterize as soft switches,  
2 meaning that switches -- they're switches that are  
3 based upon IP technology and, instead of switching  
4 individual circuits, they switch packets of  
5 information between locations.

6 Q. In Washington?

7 A. In Washington, in Seattle.

8 Q. How many soft switches do you --

9 A. We just finished adding some additional  
10 switches from a new vendor there. I want to say that  
11 number is approximately four.

12 Q. Are they all in the same location?

13 A. Yes, they're all in the same location.

14 JUDGE RENDAHL: Please don't talk over one  
15 another. Mr. Smith, if you can wait.

16 MR. SMITH: I'll try and slow down here.

17 Q. Back to Exhibit 44, you show another item  
18 called DEOT, which is a blue dot; correct?

19 A. That's correct.

20 Q. Port Angeles would be an example, and  
21 Liberty Lake out in Eastern Washington. What is the  
22 distinction between a DEOT location and a POI  
23 location?

24 A. A DEOT, or D-E-O-T, is a direct end office  
25 trunk. Those facilities are software-based, they're

0400

1 jointly provisioned between Level 3 and Qwest. It  
2 effectively connects a Qwest switch back to a Level 3  
3 media gateway. The connectivity of those logical  
4 circuits comes through a POI, or point of  
5 interconnection, P-O-I. In the case of a DEOT, Level  
6 3 is not financially responsible for that circuit.  
7 Qwest is financially responsible for that circuit  
8 between the point of interconnection and the switch  
9 in which the DEOT terminates.

10 In the case of a POI, Level 3 is financially  
11 responsible up to that point of interconnection, and  
12 then Qwest's responsibility takes over on the other  
13 side of it, so to speak, if you thought of it as a  
14 linear thing, moving from left to right.

15 Q. So if we were looking over in the Seattle  
16 area, I'm looking at a Bremerton, what looks like a  
17 DEOT. Would another way to say that -- I guess the  
18 way Qwest would say it is that that's what's called a  
19 direct trunk transport. Is that another synonymous  
20 term?

21 A. Yes, it has been used in certainly a number  
22 of the states that we've had these conversations as a  
23 synonymous term. Direct trunk transport, or DTT,  
24 refers to the actual transport component that would  
25 get you from point A to point Z.

0401

1 Q. So when you say that Qwest bears the  
2 financial responsibility, the transport from  
3 Bremerton over to the red dot denoting POI in Seattle  
4 is a facility that would be provided by Qwest, and  
5 Qwest does not charge Level 3 for that; is that  
6 correct?

7 A. Correct, with the caveat, because of the bay  
8 that comes through here, that circuit may actually  
9 physically connect back to Aberdeen or some other  
10 place.

11 Q. Oh, okay.

12 A. But that is, you know, correct that Qwest  
13 bears the financial responsibility for that. Qwest  
14 does not charge Level 3 for those circuits.

15 Q. Okay. Sorry I missed Puget Sound in there.  
16 If, say, we're over on the other side, there's an  
17 Enumclaw, Black Diamond. That one would likely go  
18 into either Tacoma or Seattle; would that be correct?

19 A. That would be correct, and in the case,  
20 again, Qwest would have the responsibility to bring  
21 the traffic from the blue dot to the red dot.

22 Q. And that's one of the -- that's based on the  
23 current interconnection agreement, I believe a  
24 question of financial responsibility for those DEOTs  
25 or direct trunk transports is one of the issues in

0402

1 this case; correct?

2 A. That's correct.

3 Q. Okay. Let's turn now, if we could, to the  
4 other -- the replacement Exhibit 33, and I'd like to  
5 switch gears for a minute and talk about VoIP, or  
6 voice over Internet protocol.

7 A. Okay.

8 Q. And I'd like you to help trace for me a  
9 call, and over here we show a VoIP phone over in the  
10 far right. Let's say we have -- a customer somewhere  
11 in the world on a broadband connection has the  
12 appropriate CPE to make a VoIP call, wants to call  
13 someone down in Yakima.

14 A. Okay.

15 Q. Could you -- and again, obviously we could  
16 get into massive levels of detail. Could you provide  
17 sort of a high level view of how that call gets from  
18 this VoIP phone here down to this end user in Yakima?

19 A. Okay. I'll be happy to do that. The call  
20 really, I guess, takes part -- takes place, I should  
21 say, in two phases. The first phase is the call  
22 setup, where, you know, multiple networks will talk  
23 with one another to see if there is a path available,  
24 and then, if there is a path available, actually  
25 works -- the networks work together to set that up.

0403

1           And then the second phase is the actual call  
2 taking place where the, in this case, the voice  
3 communications are exchanged from one party to the  
4 next.

5           So if we were to start with the VoIP phone,  
6 this person would pick up their handset or do  
7 something, it could be software, they could simply  
8 just click a button on their screen that says dial.  
9 That would send a signal down to the VoIP provider  
10 soft switch, basically saying --

11       Q.   That's this cloud, sort of the lower middle  
12 --

13       A.   Correct.

14       Q.   -- on the right side?

15           MR. CECIL:  Just so the record's clear,  
16 we're referring to Exhibit 33?

17           MR. SMITH:  Yes, Replacement Exhibit 33.

18           THE WITNESS:  Will send a signal via IP  
19 packets to the VoIP provider's soft switch.  The VoIP  
20 provider who is connected with Level 3 would send a  
21 signal from their network to a Level 3 edge proxy  
22 server.  And the edge proxy server denotes the point  
23 officially.

24           JUDGE RENDAHL:  So you would have to travel  
25 on the light blue dotted line from the cloud saying



0404

1 VoIP provider network up through the Level 3 router  
2 --

3 THE WITNESS: Correct.

4 JUDGE RENDAHL: -- and then, on a dark blue  
5 line to the Level 3 edge proxy server, which is that  
6 circle with the arrows on it?

7 THE WITNESS: Correct. From there, the call  
8 then travels to a Level 3 core proxy server.

9 JUDGE RENDAHL: Along the blue dotted line?

10 THE WITNESS: Along the blue dotted line.

11 The core proxy server would make a query to this box  
12 that's labeled LNP server, which stands for local  
13 number portability, to basically see whose phone  
14 number is being dialed. It's important, so that the  
15 call can be routed correctly, that we understand  
16 ultimately whose network that call should go to. And  
17 with the advent of number portability, we have to do  
18 a double-check on each call.

19 Once that's understood, in this case, it  
20 came back that that number belongs to Qwest, and  
21 specifically in the Yakima area, the core proxy  
22 server then signals the Level 3 soft switch via the  
23 dark blue dotted line that it has a call to make out  
24 to Qwest.

25 The Level 3 soft switch would then take what

0405

1 had previously been an IP-based signaling protocol,  
2 convert that into SS7, or signaling system seven, and  
3 communicate through the Level 3 STP, or signal  
4 transfer point.

5 Q. That's the items up on the --

6 A. Up on the top.

7 Q. Up underneath the label?

8 A. Up underneath the label, to the Qwest STP.

9 The Qwest STP would then communicate down to the  
10 Qwest switch in Yakima. That switch is actually not  
11 denoted on this diagram. What's denoted on this  
12 diagram is a tandem switch. Tandem switches are  
13 responsible to switch calls between switches. So  
14 there would be, if this diagram were further  
15 expanded, an end office switch labeled here, and then  
16 off that end office switch would be a person's local  
17 loop and their normal phone.

18 Once that signaling has taken place and both  
19 networks complete the negotiation that there is a  
20 call and here's the path the call should be switched  
21 on, the -- and it will cause the person's phone to  
22 ring here in Yakima. Once that person picks up,  
23 then, from the VoIP phone, through the VoIP  
24 provider's soft switch on the light blue dotted line  
25 through the Level 3 edge proxy server, the core proxy

0406

1 server, the call will then take a path through to the  
2 Level 3 media gateway. The media gateway provides  
3 the mechanism that takes what originated as an IP  
4 signal and converts it into TDM.

5 Q. And that's time division multiplexing?

6 A. That is correct. It would then pass it on  
7 the solid dark blue line through various private line  
8 pieces of equipment down to ultimately a MUX here in  
9 the Yakima area. The call would then actually be  
10 physically placed on -- or physically take place  
11 across the direct end office trunk that goes from the  
12 Level 3 MUX to the tandem switch, and then the tandem  
13 switch would have switched that call or set up a  
14 connection to the end office switch and then  
15 ultimately, you know, into the consumer's telephone.

16 Q. Now, as the call -- let's say these two  
17 people talked for five minutes and their words  
18 passing back and forth, if I understand it correctly,  
19 the media gateway continues to remain engaged, a  
20 channel or a port or some identifiable portion of  
21 that media gateway is engaged for the duration of  
22 that VoIP call?

23 A. That is correct.

24 Q. Okay. And as the person on the VoIP phone  
25 says something, it goes in IP, goes over there, the

0407

1 media gateway immediately translates it into TDM and  
2 sends it on and vice versa?

3 A. Correct, because it is a bi-directional  
4 communication. A person can both talk and listen, or  
5 full duplex, as it's called in the industry.

6 Q. So let me ask you this. In terms of -- I  
7 think I understand the media gateway, but, very  
8 briefly, the distinction between the soft switch and  
9 the media gateway in a VoIP call?

10 A. So there are two soft switches on this  
11 diagram.

12 Q. And I'm sorry. I --

13 JUDGE RENDAHL: Please don't talk over the  
14 witness. Were you done?

15 THE WITNESS: Well, there are two soft  
16 switches labeled. I was curious if you wanted to  
17 compare --

18 Q. Why don't you talk about both.

19 A. -- compare the two of them. Specifically,  
20 the soft switches that are inside of the box --  
21 excuse me, the soft switch inside the box that's  
22 labeled Level 3 Seattle facility, that soft switch is  
23 responsible for converting the IP signaling that's  
24 originated by the VoIP user to make a call or  
25 initiate a call. It's responsible for maintaining

0408

1 the link, or what's referred to as call supervision,  
2 and then it would be responsible for sending a  
3 disconnect message.

4 So if the VoIP provider, let's say, were to  
5 have an argument and hang up, that switch would send  
6 a message off to the Qwest network, call's over, go  
7 ahead and release the line.

8 Q. What if the person in Yakima got mad and  
9 hung up?

10 A. The message would -- the same message --

11 Q. Go the other way?

12 A. -- would just go in the other direction. So  
13 it's really responsible for sort of that call  
14 signaling setup and supervision. The media gateway  
15 in this context, and it does have multiple purposes,  
16 is responsible for providing a port that allows the  
17 IP-based communication to interface into the TDM  
18 world or the PSTN, because it's a different  
19 formatting of information that takes place on the  
20 PSTN.

21 The VoIP provider soft switch, which was in  
22 the cloud on the right-hand side of the document,  
23 would be responsible for similar items as the Level 3  
24 soft switch. It would also be responsible for  
25 delivering potentially what is known as class

0409

1 features. If somebody had call waiting or call  
2 forwarding or that type of feature set added to their  
3 account, that switch would be responsible for  
4 providing those features to the actual VoIP end user.

5 Q. Okay. Now, the VoIP provider's soft switch  
6 would be owned and operated by someone like Vonage or  
7 Skype. Would that --

8 A. Those are two --

9 Q. Good examples?

10 A. -- predominant VoIP providers in the world  
11 today.

12 Q. Now, as I understand it, the edge -- Level 3  
13 edge proxy server and the core proxy server are both  
14 Level 3 pieces of equipment that are provided as part  
15 of the VoIP service that you provide to a Vonage or  
16 Skype?

17 A. They are. They are, in the case of the core  
18 proxy server, because of the way IP networks work,  
19 it's important that the fastest path across the  
20 network is taken so that the call maintains a level  
21 of quality that's acceptable to end users, and so  
22 that device is responsible for ensuring that those IP  
23 packets route efficiently across the network, as well  
24 as querying other databases to help in the call  
25 setup. And it is a Level 3 device.

0410

1           The edge proxy server is the demarcation  
2 point between the Level 3 network and our customer's  
3 network. We also use it as the device to actually  
4 tag traffic so that, as it ingresses our network, we  
5 have the ability to tag it as being VoIP. We  
6 specifically go in and provision a core proxy server  
7 for each customer, and then the attributes of the  
8 traffic they send us are provisioned into that  
9 server.

10        Q.    So the core proxy server has the capability  
11 of determining whether a call is a VoIP call?

12        A.    The edge proxy server.

13        Q.    I'm sorry, edge proxy server?

14        A.    And it's not so much -- it's not making that  
15 determination; a provisioner is, through the  
16 contractual relationship that we have with our  
17 customer, denoting that any traffic that comes in via  
18 this means is enhanced.

19        Q.    Okay. Now, you said the edge proxy server  
20 was the dividing line between the networks, but as I  
21 look at this, it appears to me it's this router up  
22 above?

23        A.    And that's -- it does appear that way on the  
24 diagram, but as we go in and engineer a network, and  
25 certainly an IP network, there are multiple routers

0411

1 that -- and/or switches that control how packets move  
2 across that network. If you look at this particular  
3 router, you can see that one side of it is connecting  
4 back into sort of Level 3 devices by the dark blue  
5 lines, and then another side of it is connecting out  
6 into either the public Internet or other providers'  
7 networks via light blue lines. Because it has a  
8 number of different types of traffic flowing across  
9 it, we can't use it as the demarcation point because  
10 it really is just a transit point on the network.

11           It's not until traffic comes to this  
12 particular edge proxy server, it's provisioned again  
13 with the customer-specific information, has what's  
14 known as firewall information in it, meaning it's  
15 only accepting traffic from certain points and  
16 certain IP addresses on the network or on another  
17 network, as it may be. So we consider that to be the  
18 demarcation point between our customers' network and  
19 ours.

20       Q. Okay. One additional question along this  
21 line. Let's assume, instead of the VoIP call going  
22 to a customer in Yakima down here in the lower left,  
23 that the customer's actually over in Pasco. Where,  
24 in that situation, is the call handed off from Level  
25 3's network to Qwest's network?



0412

1           A.    It would be physically handed off at the  
2 Level 3 MUX in the Yakima area, and then would go on  
3 a DEOT to the Yakima switch and then, as we've looked  
4 in some industry databases, there appears to be  
5 trunking from the Yakima tandem out to the Pasco  
6 switch, but that's owned and operated by Qwest and  
7 not dedicated to Level 3, whereas the purple DEOT is  
8 dedicated to Level 3.

9           Q.    Now, do you know if Yakima and Pasco are in  
10 the same local calling area?

11          A.    I believe, from looking at the Qwest tariff,  
12 that the Yakima local calling area and the Pasco  
13 local calling area are not in the same local calling  
14 area.

15          Q.    Okay.  Let's -- now, kind of using the same  
16 diagram, let's talk about ISP traffic, if we could.

17          A.    Okay.

18          Q.    And let's continue to use Yakima as our  
19 example, only here, let's say, just hypothetically,  
20 Earthlink is a ISP customer in Washington of Level 3,  
21 and let's assume they've marketed their services and  
22 a end user, Qwest end user local exchange customer in  
23 Yakima served out of the end office switch that we  
24 don't have there, but we know would also be there, is  
25 served by Earthlink, and let's say that customer,

0413

1 that end user customer wants to initiate a dial-up  
2 Internet call through its relationship with  
3 Earthlink. Could you walk us back through that one?

4 A. Sure, I'd be happy to. I guess one  
5 clarification. Would it be easier for the record if  
6 I use Spokane, because it has all the elements listed  
7 there, or would you rather I stay with Yakima?

8 Q. Why don't we use Yakima.

9 A. Okay. Fair enough.

10 Q. And then we can circle back and add some  
11 other elements.

12 A. Okay, okay. So in that scenario you just  
13 described, again, there would be an end office switch  
14 that isn't depicted here that the end user who  
15 subscribes to Qwest's local telephone service, but  
16 also is an ISP customer of Earthlink, would go to  
17 their computer and hit the connect button or dial my  
18 ISP button, and that would cause the modem either in  
19 or beside that user's computer to go off hook on the  
20 line, the end office switch would listen for the  
21 DTMF, or the tones, basically, as the number is  
22 dialed, that end office switch would see that through  
23 a lookup that that number should be routed to Level  
24 3, an SS7 message would go up to the Qwest STP, over  
25 to the Level 3 STP, and then over to the Level 3 soft

0414

1 switch, basically saying I have a call coming to you  
2 from this number, dialing this number, are you able  
3 to accept it.

4 JUDGE RENDAHL: Before you go on, Mr.  
5 Greene, I just want to clarify the record. So DTMF  
6 stands for?

7 MR. SAVAGE: Dual Tone Multi-frequency.

8 THE WITNESS: Dual Tone Multi-Frequency.

9 JUDGE RENDAHL: Dual Tone Multi-Frequency.

10 THE WITNESS: Correct.

11 MR. SMITH: I would like the record to show  
12 that's the first time he hasn't known an acronym.

13 JUDGE RENDAHL: He's done very well. And  
14 then these -- when you talk about sends the SS7  
15 signal up to, you're referring to the arrows --  
16 there's words "to SS7," and then arrows up and down  
17 in the --

18 THE WITNESS: Correct.

19 JUDGE RENDAHL: -- Yakima LCA box in the  
20 lower left-hand corner, basically meaning it sends  
21 the signals up to these machines depicted at the  
22 upper -- at the top of the left-hand side of the  
23 page, labeled Qwest STP and Level 3 STP?

24 THE WITNESS: That is correct.

25 JUDGE RENDAHL: Okay. Sorry to interrupt.

0415

1 Q. And what does STP stand for?

2 A. Signal transfer point.

3 Q. Okay.

4 A. And dual tone multi-frequency is a standard  
5 method where two frequencies, or the sound of two  
6 frequencies are combined to represent the numbers on  
7 our telephone, as well as the asterisk in the panel  
8 key.

9 Q. Before you proceed, as I understand it, the  
10 way Level 3 offers its ISP-managed modem service, the  
11 telephone number this end user in Yakima would call  
12 would be a number that would be a local number to  
13 Yakima? In other words, it would have the --

14 A. Correct.

15 Q. -- NXX associated with the Yakima end  
16 office?

17 A. Yakima end office or somewhere in the Yakima  
18 local calling area.

19 Q. Okay.

20 A. So it would appear as a local phone call to  
21 that end user.

22 Q. Okay. Go ahead.

23 A. So once the signaling path has been  
24 established, our soft switch would signal back that,  
25 yes, I can accept that call, place it on channel X.

0416

1 And channel X represents a channel on the direct end  
2 office trunk. So once that happens, the switches  
3 would work together and physically place the call  
4 onto this DEOT coming out of the Yakima tandem. It  
5 would occupy a channel in that DEOT, occupy a channel  
6 on the private line coming back to the Level 3 MUX in  
7 the Qwest central office in Seattle, and then would  
8 occupy a channel on a private line going over to the  
9 Level 3 Seattle facility, and then ultimately into a  
10 port on the Level 3 media gateway.

11 The first thing that would happen after that  
12 is that the user's credentials would be verified,  
13 effectively, their user name and password would be  
14 checked against the database, and that functionality  
15 happens via a communication ultimately from their  
16 modem out to the Level 3 radius proxy server, which  
17 is approximately in the middle of the diagram, as  
18 well as the customer radius server.

19 Q. And that's down at the middle bottom --

20 A. Yeah, bottom middle, yeah. Our customers  
21 are responsible for maintaining the relationship of  
22 user names and passwords, and our server queries  
23 their server to validate that it is a correct user  
24 name and password combination. The ISP may have, you  
25 know, time of day restrictions placed on somebody's

0417

1 account or perhaps they are delinquent in paying  
2 their bill and may not want to allow them access.

3           Once that access has been approved, the  
4 media gateway will then allow the IP packets that are  
5 generated by the user's software and their computer  
6 to flow, again, through these private lines from  
7 Yakima up to Seattle, across the media gateway and  
8 then on through various routers to the Internet, and  
9 based upon the particular destination that that user  
10 was going to, and I say destination was they could be  
11 ultimately trying to get to Amazon.com, they could be  
12 trying to get to their e-mail, they could be trying  
13 to get to I-tunes to download some new music or  
14 whatever it may be out on the Internet.

15       Q.   Okay. Let me ask you -- this is a similar  
16 question to the VoIP call. During the course of  
17 this, and let's say the customer's on for 20 minutes,  
18 and customer goes to Amazon.com and checks his  
19 checking account and then goes to eBay and rejiggers  
20 his fantasy football team or whatever.

21           During the course of that ISP call, as I  
22 understand it, the media gateway likewise has a  
23 portion of its capacity, a port that is dedicated to  
24 maintaining the connection and translating  
25 information coming back from a Web site and sending

0418

1 it to the computer here and vice versa. Is that a  
2 fair way of characterizing it?

3 A. That is a fair way of characterizing it. It  
4 ties a little bit into my visual aid that I brought  
5 along. I guess I'll describe it for the record. It  
6 is a box. It's approximately two feet high and a  
7 little less than about 18 inches wide and about 18  
8 inches deep. This box represents the size that 8,000  
9 modems take up in our facilities. So when you talk  
10 about that being dedicated, a piece of this box, one  
11 of 8,000 would be dedicated to that individual call  
12 for the duration of that call.

13 Q. You did a very nice job with the aluminum  
14 foil, too.

15 A. Thank you.

16 Q. Let me ask you -- I think I finally got the  
17 terminology correct. I called it a screech, and I  
18 think we've now learned that it's a squelch; is that  
19 correct? Would you describe -- I used to be a  
20 dial-up customer, actually with Earthlink, and I  
21 would dial in and I would hear this kind of horrible  
22 sounding noise. Tell me what's going on there and  
23 what is making that noise and why?

24 A. And actually, I did give that answer, I  
25 believe it was in Oregon, that it is a squelch, and

0419

1 from a technical standpoint of view, squelch actually  
2 is the suppression of the sound; it's not the actual  
3 sound itself.

4 Q. It's a non-squelch?

5 A. Yes. Actually, I don't know what the -- it  
6 is not being -- the sound is not being squelched  
7 would be I guess the appropriate way to describe  
8 what's physically happening. But you're correct. To  
9 the human ears, it's a bunch of high-pitched squeaks  
10 and sounds.

11 What's physically happening is the modem is  
12 using the phone line to transmit data to another  
13 modem on the other end, and it does that by literally  
14 placing different frequencies that represent  
15 different bits of data onto the physical phone line.  
16 In the exact same way that my voice could vibrate a  
17 microphone and the microphone could convert my voice  
18 vibrations into different frequencies or to the  
19 actual frequency of my voice as I speak it, an  
20 electrical current off that line, the modem is doing  
21 the same thing.

22 And those sounds represent those data bits  
23 going back and forth. That sound is not squelched  
24 because of human factors. People want to know that  
25 something's going on, and it's a little unnerving to



0420

1 sort of hit a button, and most dial-up connections  
2 will take between 20 or 30 seconds to sort of  
3 establish themselves, and people want to know that  
4 something's actually happening as they wait those 20  
5 or 30 seconds.

6           And during that time period, the modems are  
7 going through what's known as a handshaking process,  
8 where they are testing and determining how fast they  
9 can transmit data across the line, establishing how  
10 they may compress that data so they can send more  
11 data across the line, and generally just establishing  
12 the link between, again, modem A and modem B.

13       Q.   Okay.  And is -- so the -- if I understand  
14 it, the noise, whatever we're going to call it,  
15 usually takes place while the authentication process  
16 is taking place?

17       A.   Correct.  And that noise is -- or those  
18 sounds are always there, it's just, after the  
19 authentication process, the noise is squelched so  
20 that you don't hear it.

21       Q.   I'm on the Internet, so I don't -- I know  
22 I'm --

23       A.   Yeah, you know you're up and you can get to  
24 your browser or your e-mail.  So effectively the mute  
25 button is pressed and the user does not hear the

0421

1 sounds that are being transmitted on the line.

2 Q. Is it the media gateway and the modem in the  
3 computer that are jointly making the noise?

4 A. Yes.

5 Q. The two modems?

6 A. The communication is two-way, so one modem  
7 sends out a signal that says I think the line is this  
8 fast, do you agree. The other modem would send a  
9 signal back, no, I don't think it is that fast, I  
10 think it's this fast, and they basically effectively  
11 negotiate how fast the line can transmit data without  
12 error. Without error is important because if there  
13 is error in the line, then the data has to be  
14 retransmitted, which takes up more time on the line  
15 and the effect is creating a slower experience for  
16 the user. So it does attempt to negotiate as fast a  
17 connection as possible, but not one that would  
18 introduce too many errors into the line.

19 Q. One last question on this, and that is let's  
20 say I'm on the line and I'm on with Amazon and I want  
21 to go to Yahoo Fantasy Sports. Is it the soft switch  
22 that does the rerouting, if you will, on the  
23 Internet?

24 A. No. What would happen in that case, your  
25 computer had previously sent out a signal to the

0422

1 Internet and ultimately let's say an e-mail server to  
2 download your e-mail, and then you decide to go check  
3 your fantasy football. Your computer would generate  
4 a different message with a different addressing  
5 scheme in the IP address to connect to let's say a  
6 file server that had the fantasy football. It does  
7 that through a couple different means. One of them,  
8 which is not depicted here, is a domain name server,  
9 so typically we go to a browser and we think in  
10 English terms, like Amazon.com.

11 Well, ultimately, Amazon.com is a computer  
12 server somewhere out on the Internet, and that server  
13 is represented by a numeric address, the 196.1.10.0.  
14 Those types of things are very difficult for people,  
15 obviously, to memorize, and also, for redundancy  
16 purposes, may change.

17 So there's a server out there that converts  
18 that Amazon.com request into that computer or IP  
19 address, and then the routers throughout the network  
20 would move the traffic based upon the address or  
21 destination that it was ultimately going to.

22 Q. What then does the soft switch do with  
23 regard to an ISP call?

24 A. So the soft switch is responsible for  
25 maintaining or allowing the setup of the call,

0423

1 maintaining the call supervision as that call takes  
2 place. We have a product that we sell to our ISP  
3 customers that we call Zap, and it's the ability to  
4 disconnect a user mid-session. Let's say somebody  
5 hasn't paid their bill and happens to tick past  
6 midnight on the last day of their account being  
7 active. The ISP could send a message that says  
8 disconnect that person now, I don't want to allow  
9 them to be on anymore. And the soft switch would  
10 correspondingly send a disconnect message over to the  
11 Qwest network to take the call down.

12           So it's really responsible for the call  
13 supervision and setup. You know, if that piece of it  
14 were to fail, then the call would fail, as well.

15       Q. I'd like to shift gears. Let's use the same  
16 exhibit. Well -- oh, you indicated that if we use  
17 Spokane, there might be a little more detail that  
18 would be helpful.

19       A. Yeah, to the extent that it sort of  
20 describes the relationship graphically, you can see  
21 here that there's -- there are two end office  
22 switches, one that begins with the label LBLKWA and  
23 another that begins with the label SPKNWA.

24           In the case of the SPKNWA switch, Qwest and  
25 Level 3 worked together to establish a direct end

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1 office trunk to that switch. So calls to and from  
2 that switch actually traverse the local loop of the  
3 customer, the Qwest switch, and go directly onto a  
4 direct end office trunk that goes straight onto the  
5 Level 3 network, where, in the case of the LBLKWA  
6 switch, there isn't a direct end office trunk  
7 provisioned all the way out to that switch. A call  
8 would first have to be sent to the Qwest tandem.  
9 That tandem switch would then switch the call onto a  
10 direct end office trunk to then be sent directly to a  
11 Level 3 network.

12 Q. Okay. Then, under the current  
13 interconnection agreement, costs -- or Level 3 does  
14 not compensate Qwest for anything, in this case, up  
15 until the point of interconnection?

16 A. It really depends upon the direction of the  
17 call, so in the case of a call originating on the  
18 Level 3 side of the network and terminating on the  
19 Qwest network, we would compensate Qwest for the  
20 termination services that they're providing for a  
21 call that one of our users originated. In the case  
22 of a Qwest-originated call, the opposite would apply.

23 Q. The ISP call, Level 3's position is that  
24 Qwest bears financial responsibility up to the point  
25 of interconnection; is that right?

0425

1 A. That is correct, that is correct.

2 JUDGE RENDAHL: Just to clarify the record,  
3 when you talk about the loop, the customer loop to  
4 Qwest, that's the line going from the telephone in  
5 this Spokane LCA box -- the telephone or the computer  
6 to what's designated as the end office switch;  
7 correct?

8 THE WITNESS: That would be the loop, yes,  
9 that's correct.

10 JUDGE RENDAHL: Just wanted to clarify for  
11 the record.

12 Q. Okay. Let's talk for a minute about a point  
13 of interconnection. Would you agree that a point of  
14 interconnection is a physical location where the  
15 Level 3 network and the Qwest network are connected  
16 to exchange traffic?

17 A. I would agree, yes.

18 Q. What kind of physical piece of equipment  
19 actually connects the two networks?

20 A. It's typically a cable, not too different  
21 than a cable that perhaps we could see here  
22 connecting the phone here in the conference room. A  
23 POI, as we have historically established them with  
24 Qwest, could fall into a couple different categories.  
25 We could have, and I don't believe this situation

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1 exists, but we could designate a point in the street  
2 literally where Level 3 fiber is and where Qwest  
3 fiber is and we could establish a point between those  
4 two fiber networks to say that's the point of  
5 interconnection.

6 We've also leased collocation space, and one  
7 example would be in Seattle, where we would consider  
8 the edge of that designated collocation space to be  
9 the point of interconnection. And in the case that's  
10 listed here in Yakima and also in Spokane is we've  
11 leased a private line, in some cases we actually  
12 leased it from Qwest, and we typically also lease a  
13 multiplexer that allows lower speed services, and  
14 what I mean by lower speed is the circuits may be  
15 DS1s or sometimes referred to as T1 speed, or the  
16 equivalent of 24 phone calls, or they could be DS3  
17 speeds, or the equivalent of 672 phone calls.

18 It's the MUX that allows multiple T1s to be  
19 connected into a larger facility such as a DS3, which  
20 is more economical from a transport perspective.

21 Q. Maybe you explained it more than I could  
22 understand. Is there a gizmo, a widget that actually  
23 hooks the two networks together?

24 A. Yes, I mean, you could go down into the  
25 central office and you could find a port where the

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1 wires actually terminate and you could say, on this  
2 side, it's Qwest's, and on this side, it's Level 3.  
3 You can find that physical point. You could put a  
4 label on it, spray paint it a different color, do  
5 whatever you want to do, but you could find that  
6 physical point.

7 Q. Is it typically fiber facilities that are --

8 A. In our case, we actually interconnect not  
9 through fiber facilities; we actually -- and fiber  
10 typically denotes that it's an optical or it's using  
11 light pulses to transmit the information. We  
12 actually interconnect at an electrical level, meaning  
13 that it's a TDM, but a DS1 or a DS3 signal base that  
14 provides that connectivity.

15 Q. You would agree that traffic does not stop  
16 at a POI; it flows back and forth through the POI?

17 A. Yes, I would agree that that's the case,  
18 just like it flows through a media gateway or flows  
19 through a router. It doesn't stop.

20 Q. There's nothing -- as distinguished from a  
21 media gateway, there's no piece of equipment there  
22 that causes a conversion from TDM to IP to take  
23 place; right?

24 A. That's correct, but when you look at a  
25 modern telecommunications network, there are multiple



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1 pieces of equipment that cause conversions. Qwest,  
2 as many local exchange carriers have done, has placed  
3 digital loop carriers out that make more efficient  
4 use of telephone or scarce transport resources. So  
5 there could be a pedestal at the corner of somebody's  
6 neighborhood that physically converts that signal  
7 from the analog sound waves to a digital component  
8 right there in their neighborhood. It could then get  
9 further converted from this electrical DS1 or DS3  
10 signal to an optical signal. So there are multiple  
11 conversions that happen throughout the line.

12 Q. I understand that, but I'm trying to make --  
13 you indicated a POI, and then you compared it to a  
14 media gateway, that traffic flows through a media  
15 gateway. The distinction is, is it not, that at a  
16 POI it's -- the traffic's flowing through, there's  
17 not a device there that is doing IP-to-TDM  
18 conversion, whereas, at a media gateway, that is  
19 taking place?

20 A. Yes, there is a TDM-to-IP conversion that  
21 takes place at the media gateway, much like an  
22 analog-to-digital conversion takes place at a  
23 pedestal where there's the digital loop carrier.

24 Q. Does an analog-to-digital conversion take  
25 place at a POI, typically?

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1 A. Not typically, no.

2 Q. Okay. Do you believe an analog-to-digital  
3 conversion takes place at the POI here in Seattle?

4 A. No, the conversion that most likely takes  
5 place there is an electrical to optical conversion,  
6 where there would be DS1 or DS3 signals coming in  
7 and, on the other side of that, maybe an OC3 or OC12  
8 connection or an optical connection going out.

9 Q. Is that the DACS that does that?

10 A. That could happen as part of the MUX. It  
11 could be, as an example in Seattle, an OC3 MUX. An  
12 OC3 is the equivalent of three DS3s. So there could  
13 be three electrical DS3s coming into that MUX, and  
14 one optical OC3 coming out of it.

15 JUDGE RENDAHL: And where are you pointing  
16 to?

17 THE WITNESS: The MUX in the Level 3  
18 collocation in the Seattle LCA.

19 JUDGE RENDAHL: Okay. So you said that's  
20 optical or --

21 THE WITNESS: It's electrical on one side  
22 and optical on the other.

23 JUDGE RENDAHL: Okay.

24 Q. But that conversion does not take place at  
25 the point of interconnection; it takes place on -- at

0430

1 a piece of equipment on one or the other side of the  
2 point of interconnection; correct?

3 A. I would consider, you know, the point of  
4 interconnection to be that multiplexer, which, you  
5 know, has a cable that goes out to the edge of the  
6 collocation space.

7 Q. I thought -- well, I thought we -- at least  
8 the way understood it is the point is where the Level  
9 3 cable and the Qwest cable meet and are connected?

10 A. Correct, and that connects into a  
11 multiplexer.

12 Q. Do you agree that a point of  
13 interconnection, and let's use the Seattle one  
14 specifically, is not an ISP location?

15 JUDGE RENDAHL: When you say let's look at  
16 the Seattle one, we're still referring to Exhibit 33?

17 Q. Right. It's the one in the upper left  
18 corner. Is an ISP located at the point of  
19 interconnection?

20 A. In essence, I guess there are two ways to  
21 look at it. In the case of Earthlink, you know,  
22 Earthlink is headquartered down in Atlanta, Georgia.  
23 And one could say, well, if I wanted to mail a letter  
24 through the post office to Earthlink, where would I  
25 address it. You'd address it to Atlanta. But

0431

1 Earthlink also purchases a bundled service from Level  
2 3 that includes phone numbers, numbering resources,  
3 includes the transport of which those components are  
4 represented here on this diagram so that they can  
5 provide a presence to their customers that allows  
6 them to be able to dial a local number to reach the  
7 Internet.

8 Q. Well, so the question is is Earthlink  
9 located at that point of interconnection? Does it  
10 have --

11 MR. CECIL: Objection. Asked and answered.  
12 I think the witness just explained that.

13 MR. SMITH: Well, was it yes or no?

14 JUDGE RENDAHL: The objection is granted, so  
15 if you can ask your next question, because I think  
16 that's -- or a different question, because I think he  
17 did answer your question.

18 Q. Well, does Earthlink have facilities at the  
19 point of interconnection?

20 A. Yes.

21 Q. That it owns?

22 A. It leases those facilities as part of a  
23 bundled service that it purchases from Level 3.

24 Q. So does that mean that Qwest is handing off  
25 traffic to Level 3 at the point of interconnection?

0432

1 Let me say that -- is it -- based on what you're  
2 saying, is Qwest handing off traffic to Level 3? I'm  
3 sorry, let me get it right. Is Qwest handing off  
4 traffic to Earthlink at the point of interconnection?

5 MR. CECIL: I'll just renew the objection  
6 here. I think that's kind of an odd question. We've  
7 been discussing Level 3's network. Asked and  
8 answered. I'll just make that objection. Asked and  
9 answered. We spent a lot of time discussing where  
10 the Level 3 facilities are, what all of those are  
11 for, what our customers buy or don't buy from us.

12 JUDGE RENDAHL: I think this is a new  
13 question, and I'll deny the objection.

14 THE WITNESS: I would answer yes. The  
15 customer is dialing a number that's been published by  
16 Earthlink, either on a CD they may mail out to people  
17 or on the Internet in some way. They dial that  
18 number with the expectation of reaching Earthlink.  
19 The number that is dialed creates the traffic that is  
20 ultimately passed through that point of  
21 interconnection.

22 Q. But its presence there, if I understand what  
23 you're saying, is through the service it purchases  
24 from Level 3?

25 A. That's correct.

0433

1 Q. Level 3 -- or Earthlink does not have its  
2 own Earthlink-owned facilities at the point of  
3 interconnection in Seattle; correct?

4 A. At the point of interconnection, at our  
5 point of interconnection in Seattle, no. Earthlink  
6 may have its own facilities in Seattle, but  
7 specifically at our point of interconnection, no.

8 Q. Do you know, Mr. Greene, the relative amount  
9 of traffic that flows each way between Qwest and  
10 Level 3 in Washington? In other words, what percent  
11 is flowing from Qwest's network to Level 3, ISP-type  
12 traffic, for example, and flowing VoIP traffic coming  
13 back the other way in relative terms, compared to  
14 each other?

15 A. I guess one point of clarification, Level 3  
16 and Qwest exchange ISP-dialed traffic, we exchange  
17 local traffic, we exchange VoIP traffic, and we also  
18 exchange traditional long distance traffic. The vast  
19 majority, 90-plus percent, is traffic originated by  
20 Qwest end users to ISP customers of Level 3's.

21 Q. Is it -- would 95 percent surprise you?

22 A. No, it would not.

23 Q. So the vast majority?

24 A. Vast majority, yes.

25 Q. Let me ask you. As I understand it, the

0434

1 primary VoIP service that Level 3 provides to third  
2 parties is called VoIP enhanced local service; is  
3 that correct?

4 A. We refer to it as ELS, or enhanced local  
5 service.

6 Q. Let me show you what's been marked as  
7 Exhibit 48. Your Honor, do you need one?

8 JUDGE RENDAHL: I have one. Thank you.  
9 This is the web page?

10 MR. SMITH: Mr. Greene's giving the I need a  
11 drink sign here.

12 JUDGE RENDAHL: Let's be off the record for  
13 a moment.

14 (Recess taken.)

15 JUDGE RENDAHL: Let's go back on the record.  
16 We've taken our afternoon break, and we're discussing  
17 Exhibit 48; is that --

18 Q. Well, actually, I was going to back up and  
19 ask a couple of questions on an earlier line of  
20 questions. We talked, Mr. Greene, about -- you  
21 indicated that through the service that Earthlink  
22 buys from Level 3, it has a -- the POI is a location  
23 for Earthlink; correct?

24 A. Yes, it's part of the bundled service that  
25 Earthlink buys from Level 3.

0435

1 Q. So is the POI also the location -- is the  
2 POI also a location for all other ISP customers of  
3 Level 3 who similarly buy that same service and who  
4 obtained traffic that flows through the same point of  
5 interconnection?

6 A. Yes.

7 Q. Now, and that would be the same if the call  
8 originates in the Seattle local calling area and is  
9 delivered to the POI in the local calling area, in  
10 the same local calling area? The answer would still  
11 be the same?

12 A. Would be the same, yes.

13 Q. Now, what about a situation where -- let's  
14 say -- I think Olympia and Tacoma are in different  
15 local calling areas?

16 JUDGE RENDAHL: Don't look at me.

17 MR. WILLIAMSON: Yes.

18 Q. Let's assume the traffic from Olympia is  
19 routed to the POI in Tacoma, they're in different  
20 local calling areas. Would the POI in Tacoma  
21 likewise be a location for ISPs who received traffic  
22 through that point of interconnection --

23 A. Yeah.

24 Q. -- for Olympia traffic?

25 JUDGE RENDAHL: Before you go ahead, Mr.



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1 Smith, are you referring to a particular exhibit?

2 MR. SMITH: I was just looking at Exhibit 44  
3 when I asked the question.

4 JUDGE RENDAHL: Go ahead, Mr. Greene.

5 MR. SMITH: I think he already answered it.

6 THE WITNESS: I kind of whispered it in  
7 there. So the answer would be yes. In the case of  
8 Olympia and Tacoma, we've actually looked at this  
9 one, there's approximately 26 miles from Olympia to  
10 Tacoma. Qwest would have the responsibility to carry  
11 that traffic those 26 miles, and then we would have  
12 the responsibility from Tacoma -- let's take the case  
13 of AOL that's in Herndon, Virginia, had the  
14 responsibility to carry it the 1,800 or however many  
15 miles it is to that.

16 Q. Well, I thought you indicated AOL is located  
17 at the POI?

18 A. Correct, and so that bundled service they  
19 buy effectively is transported from Tacoma all the  
20 way back to Herndon.

21 Q. Let's go back to Exhibit 48. We were  
22 starting that. And this -- I'll represent I printed  
23 this off of your Web site on -- six days ago, and it  
24 describes a service listed as VoIP enhanced local  
25 service. Is this the service -- is this your sort of

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1 primary service, if you will, that you provide to  
2 third-party VoIP providers?

3 JUDGE RENDAHL: Mr. Smith, there's a  
4 question?

5 MR. CECIL: The copy that I have has some  
6 garbled printing throughout, and I just wondered if  
7 so did the other copies.

8 JUDGE RENDAHL: When you say garbled copies,  
9 what are you referring to?

10 MR. CECIL: Well, symbols where there should  
11 be letters.

12 MR. SMITH: I can tell you I printed it  
13 three or four times.

14 JUDGE RENDAHL: Let's be off the record for  
15 a moment.

16 (Discussion off the record.)

17 JUDGE RENDAHL: Let's go back on the record.  
18 While we were off the record, we determined that  
19 there are some odd symbols on this, looking like an A  
20 with a circumflex on the top and a Euro symbol  
21 appearing at different times, Euro meaning the money  
22 in Europe, the coins. And so, Mr. Greene, you were  
23 going to say something?

24 THE WITNESS: Yeah, in looking at it, it  
25 appears that there's probably some just error with

0438

1 the printer, but this does appear to be a printout of  
2 the Level 3 Web site that displays information about  
3 our enhanced local service.

4 Q. And I believe you indicated this is the  
5 primary service that you provide to third-party VoIP  
6 providers, like Skype and Vonage and that type of  
7 customer?

8 A. Correct.

9 Q. Is it also true that you provide this  
10 service to large cable companies who also provide  
11 VoIP service?

12 A. That's correct.

13 Q. If I understand correctly, and this is from  
14 some earlier hearings, you primarily provide this to  
15 wholesale -- or you primarily provide this to  
16 third-party VoIP providers, but it's also my  
17 understanding you provide this service directly to  
18 large business customers and large government  
19 customers; is that true?

20 A. That is correct.

21 Q. In which case the relationship would be more  
22 of a direct retail relationship, as opposed to a  
23 wholesale; is that right?

24 A. Yes, that would be correct.

25 Q. Now, it's also my understanding that the

0439

1 company, the Level 3 company that provides this  
2 service is a different company than the company that  
3 has sought the interconnection agreement in this  
4 case; correct?

5 A. It's a different subsidiary of a larger  
6 company, but that is correct.

7 Q. It's level -- it's a company called Level 3  
8 Enhanced Services?

9 A. Correct.

10 Q. As opposed to Level 3 Communications, which  
11 is the --

12 A. The CLEC.

13 Q. -- Petitioner in this case?

14 A. The CLEC entity.

15 Q. Now, are they -- what is the relationship?  
16 Is one a subsidiary of the other or are they common  
17 subsidiaries of a single parent?

18 A. They are common subsidiaries of a single  
19 parent. I believe the term is sister companies or  
20 sister subsidiaries.

21 Q. Okay. Now, as I understand it, you also  
22 provide some other products to VoIP, third-party VoIP  
23 providers in addition to VoIP enhanced local service?

24 A. Correct. They may have a desire to use our  
25 network facilities to connect different points in

0440

1 their network, so they could buy private line  
2 services or wavelength services, which are  
3 effectively just transport types of services to  
4 connect point A to point Z. They could also purchase  
5 access to the Internet itself. An individual network  
6 is not interconnected into the Internet unless it  
7 uses the services of an ISP. And ISPs provide both  
8 dial-up services, which we spent some time talking  
9 about, as well as dedicated services, where you have  
10 a physical link, a private line link that is sold,  
11 that connects one customer's network into the  
12 Internet at large.

13 Q. Let me ask you this. Are there any  
14 circumstances under the Level 3 proposed language in  
15 this case where Qwest would be allowed to assess  
16 terminating access charges on a VoIP call originated  
17 on Level 3's network and terminate it on Qwest's  
18 network in Washington?

19 A. Not through the interconnection  
20 architecture, no.

21 Q. So the answer is, under your language, there  
22 would be no situation in which a VoIP call originated  
23 on Level 3's network would be subject to terminating  
24 switched access charges?

25 A. That's correct.

0441

1 Q. Do you know if any third-party VoIP  
2 providers served by Level 3 hand off traffic to  
3 Internet -- or to interexchange carriers for  
4 termination?

5 A. Yes, they do.

6 Q. What would the circumstance be?

7 A. They could do that to deal with what's known  
8 as an overflow situation. As an example, let's  
9 assume they wanted Level 3 to be their primary  
10 provider to terminate their traffic, but at some busy  
11 hour during the week, the link between their network  
12 and our network was already full of calls, they'd  
13 want to have a backup path so that those calls could  
14 overflow to another service provider, and that other  
15 service provider could very well be an interexchange  
16 carrier.

17 Q. As I understand it, from a discussion we had  
18 in another state, that is purely a backup kind of  
19 plan? That is certainly not their intention?

20 A. Based upon the pricing that they get, it  
21 could, you know, very well be a backup. Or, you  
22 know, not every one of our VoIP customers uses us  
23 exclusively. So I would be speculating as to, you  
24 know, what their intentions were, but, you know,  
25 backup would be one scenario. It could be also the

0442

1 primary path if they got rates that they were  
2 comfortable with to terminate their traffic.

3 Q. In the situation where Level 3 is a -- let's  
4 say a retail provider to a large business or large  
5 government, would you ever hand off traffic to a  
6 VoIP, VoIP traffic in Washington to an IXC to  
7 terminate?

8 A. Yes, we would. Again, in an overflow type  
9 of situation, we would do that.

10 Q. Now, if I understood some testimony  
11 elsewhere, that is not something Level 3 likes to do,  
12 is it?

13 MR. CECIL: You know, Your Honor, at this  
14 point, I'm going to to interpose an objection. Mr.  
15 Smith repeatedly brings up, you know, as I understand  
16 from another state. If he wants to cross-examine the  
17 witness based on some record in some other state or  
18 bring that into this record to examine him, that's  
19 perfectly fine, but at some point -- I don't know  
20 what the intent is here. There's just all these  
21 references to other states. If he's going to ask the  
22 questions, ask the questions. If there are other  
23 pieces of the record that have bearing on Mr.  
24 Greene's testimony, either for purposes of  
25 impeachment or clarification, he's certainly entitled

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1 to cross on that.

2 JUDGE RENDAHL: Mr. Smith, do you have an  
3 offer of proof on that?

4 MR. SMITH: Well, I mean, I can provide --  
5 I'm happy to just ask the question here, and then if  
6 there's a problem, then I can go to the transcript in  
7 the other states. So I'll rephrase the question.

8 JUDGE RENDAHL: Please do.

9 MR. SMITH: And could you read the last  
10 question back for me here?

11 (Discussion off the record.)

12 Q. I was asking you about the situation where  
13 -- under which Level 3 would hand off traffic to an  
14 IXC. Let me ask it this way. Is that something  
15 Level 3 would prefer not to do?

16 A. Yes, we view -- we view interexchange  
17 carriers as carriers supporting a particular class of  
18 traffic, specifically long distance traffic, which is  
19 traditionally subject to tariff charges and switched  
20 access charges, which is a regime or application of  
21 charges that we feel is inappropriate for VoIP  
22 traffic and would result in higher costs for us and  
23 higher costs for our customers.

24 Q. So when you do that, it's only because  
25 there's a network situation that would -- that can



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1 only be solved by handing it off to an interexchange  
2 carrier?

3 A. Correct. We don't have an alternate path or  
4 a preferred path, I should say. It's not the  
5 alternate path. And in our inability to use a  
6 preferred path, we have to go to an alternate path,  
7 because we want to allow the traffic to flow. We  
8 don't want to refuse calls or block calls in any way.

9 Q. Does Level 3 pay terminating switched access  
10 rates on VoIP calls in Washington that are terminated  
11 to independent telephone companies in the state of  
12 Washington?

13 A. Traffic that we send, the VoIP traffic that  
14 we're sending to Qwest today, as part of that local  
15 number portability dip that we do in the call setup,  
16 we determine that Qwest is the end user, so we're not  
17 passing those calls through Qwest over their  
18 interconnection trunks.

19 When we contract with an interexchange  
20 carrier for services, they typically are giving us a  
21 rate that may -- maybe we could directly correlate to  
22 somebody's tariff or it could potentially be a blend  
23 of rates. They made a marketing decision to say, I'm  
24 going to offer up this rate to terminate all  
25 interstate traffic in Washington, regardless of who

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1 it's going to. And they have some assumption in  
2 their pricing that says, Well, I expect X percent to  
3 go to Qwest at one rate, X percent to go to Verizon  
4 at a different rate, and they worked all that out.

5 So you can't necessarily draw a line between  
6 an individual LEC's tariffs and the rates that we pay  
7 to an interexchange carrier, because oftentimes they  
8 are a blend of multiple elements.

9 Q. Well, let me come back to the question  
10 asked, and that is do you utilize interexchange --  
11 well, do you -- does Level 3 pay terminating access  
12 charges to independent companies to terminate VoIP  
13 calls?

14 MR. CECIL: Objection, asked and answered.

15 JUDGE RENDAHL: It has been asked and  
16 answered.

17 Q. Do you pay rates that are in excess of 0007  
18 cents, dollars per minute of use to independent  
19 companies in Washington to terminate VoIP traffic?

20 A. We do not have an interconnection trunk  
21 group to an independent phone company which we are  
22 directly exchanging VoIP today. However, we do pay  
23 interexchange carriers more than 0007 to terminate  
24 that traffic in the event that it is going to an  
25 independent phone company.

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1 Q. And that rate may be some sort of blended  
2 rate, but it is higher than 0007?

3 A. That's correct.

4 Q. On page -- do you have your direct  
5 testimony, Mr. Greene?

6 A. I do.

7 Q. Page 23.

8 JUDGE RENDAHL: That's Exhibit 31-T.

9 MR. SMITH: Yes.

10 Q. I'm looking at the bottom of the page above  
11 -- the lines 20 and 21. You say, Level 3 agrees --  
12 well, let me -- the question is is Level 3 trying to  
13 avoid paying access charge on interexchange traffic.  
14 The answer is, Absolutely not. Level 3 agrees that  
15 this traffic's subject to access charges and has  
16 language in its proposed agreement that provides for  
17 payments of those access charges.

18 Did I correctly read the testimony?

19 A. Yes, you did.

20 Q. Do you recall the data request that Qwest  
21 propounded with regard to that testimony?

22 A. Off the top of my head, no.

23 Q. Okay. Well, let me show you. Let's mark as  
24 -- excuse me. This would be a 19-C, which denotes  
25 that some of the data responses -- it's the full set

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1 of the second set of data requests, that denotes that  
2 at least some of the responses are confidential.  
3 Now, let me ask you to look at 29. I don't believe  
4 --

5 JUDGE RENDAHL: Excuse me. Go ahead.

6 MR. CECIL: We never received the paper  
7 copies of all those directly from Qwest. We'd asked  
8 that they be delivered out here. I think they ended  
9 up -- your exhibits, I think you guys sent them to  
10 Broomfield. So we don't -- do you have extra copies  
11 of those that you can share with us before you get  
12 into it? Those never came to Level 3.

13 JUDGE RENDAHL: I have writing on mine.  
14 Does yours have writing -- I have written on mine.

15 MR. WILLIAMSON: I don't have any writing on  
16 mine. It's a clean copy. Is this what you're --

17 MR. SMITH: Let me look at it here. This is  
18 it.

19 JUDGE RENDAHL: Do you need a copy for the  
20 witness, as well?

21 MR. CECIL: Yes.

22 MR. SMITH: And I'm happy to -- I think we  
23 can look at it together.

24 MR. CECIL: Well, I -- yeah.

25 JUDGE RENDAHL: Okay. All right. Let's go

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1 ahead.

2 Q. I'm showing you -- it's part of Exhibit  
3 19-C, and it's the response to Data Request 29. And  
4 I'll ask you, Mr. Greene, if you'll look at that and  
5 determine if that appears to be the Level 3 response?

6 A. It does appear to be my response to that  
7 question.

8 Q. And if you look at the second page, that is  
9 one you prepared; right?

10 A. Correct.

11 Q. And if I'm not mistaken, this one does not  
12 contain any confidential information?

13 A. There's no confidential information in this  
14 response.

15 Q. Okay. Now, I'll represent to you that I --  
16 that Qwest, when it asked the question, referred to  
17 the very -- the testimony we just read, and then it  
18 says, Please respond to the following questions  
19 related to that statement.

20 First of all, is Level 3 an interexchange  
21 carrier in Washington? And I believe the answer is  
22 no; is that correct?

23 A. The answer is no, but we need to look at all  
24 the corporate subsidiaries that are out there,  
25 specifically that the party that is requesting

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1 interconnection with Qwest is not an interexchange  
2 carrier. However, there are other corporate entities  
3 that I mentioned, WilTel, which is a subsidiary of  
4 Level 3, is an interexchange carrier in Washington.

5 Q. So in the answer you provide here, you are  
6 referring only to Level 3 Communications, L.L.C. So  
7 the answer, then, is if you change it to is there  
8 someone in the Level 3 family of companies that  
9 provides interexchange -- or is an IXC in Washington,  
10 the answer would be yes?

11 A. Yes.

12 Q. Okay. Now, the second question, Describe  
13 the specific situations with regard to ISP traffic in  
14 which Level 3 would pay access to Qwest. Do you see  
15 that?

16 A. I do.

17 Q. And I believe the response is a one-plus  
18 dial call to an ISP served by Level 3 would be  
19 carried by a retail IXC selected by the Qwest local  
20 telephone customer and handed to Level 3. The IXC  
21 collecting per-minute charge from the Qwest land line  
22 customer would pay originating access to Qwest. And  
23 then you go on to say this is different than when a  
24 locally-dialed call is made, which I believe is the  
25 more typical way that the service is provided.

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1           Now, in that situation, it is not Level 3  
2 that is paying the access charges, is it?

3           A.   That's correct.

4           Q.   It's whoever the end user's IXC -- it's the  
5 IXC that the end user is using?

6           A.   That is correct.

7           Q.   So when you say Level 3 -- when you say you  
8 agree it's subject to access charges, you're not  
9 agreeing that it's subject to access charges that  
10 could be imposed on Level 3?

11          A.   In that particular call flow. There are  
12 other call flows or types of calls in which access  
13 charges would apply.

14          Q.   An ISP call?

15          A.   Not an ISP call, no.

16          Q.   Okay. This is the only situation related to  
17 the testimony that we just reviewed on page 23, in  
18 which access charges would -- could be, under the  
19 Level 3 language, could be imposed on an  
20 interexchange carrier?

21          A.   Well, in looking at the testimony, it says,  
22 is Level 3 trying to avoid paying access charges on  
23 interexchange traffic. We consider interexchange  
24 traffic to be traffic that is traditionally long  
25 distance in nature. If somebody were to place a call

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1 through their pre-subscribed long distance carrier,  
2 and let's say there's a person in Virginia that  
3 pre-subscribes to Acme Telephones Service, and they  
4 call somebody in Seattle. Acme Telephone Service  
5 could contract with Level 3 to terminate that traffic  
6 on Acme's behalf. Because that call is a traditional  
7 PSTN-originated call and it is terminating on the  
8 PSTN, in this case, it's an interstate call, going  
9 from Virginia to Washington, that traffic would be  
10 subject to terminating access charges on the  
11 Washington side. And as the party contracted by Acme  
12 to terminate it, we would -- and if we terminated  
13 directly to Qwest, we would be the financially  
14 responsible party to pay those terminating access  
15 charges to Qwest.

16 Q. Okay. But my question was focused on ISP  
17 traffic.

18 A. Correct. And I was just pointing out that  
19 the testimony is not. And I thought that's where  
20 your question began.

21 Q. Well, no, I'm talking about trying to  
22 explore what you meant through a data request.

23 A. Okay, okay.

24 MR. CECIL: You were also asking him if that  
25 was the only -- you were actually making very



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1 conclusory statements about his entire testimony.

2 JUDGE RENDAHL: All right. Well, why don't  
3 you rephrase the question that you want to ask Mr.  
4 Greene, so that we know what you're asking.

5 MR. SMITH: Well, I think he's answered that  
6 one. I'll move on.

7 Q. And then the Subsection C says, Describe the  
8 specific situations with regard to VoIP traffic in  
9 which Level 3 would pay access charges to Qwest.

10 Well, let me back up. The question in B  
11 said in which Level 3 would pay access charges to  
12 Qwest. So to the extent you're saying this IXC will  
13 pay it, you've really misstated who will pay the  
14 access charges in the ISP situation. It's not Level  
15 3 --

16 MR. CECIL: Objection.

17 Q. -- it's the IXC; right?

18 MR. CECIL: Objection, argumentative. The  
19 answer states it right there and says what it says,  
20 so --

21 JUDGE RENDAHL: Okay.

22 MR. SMITH: I'm trying to contrast the  
23 question to the answer.

24 JUDGE RENDAHL: I understand. And I believe  
25 that he has answered the question, but why don't you

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1 ask it a different way just so that I can understand  
2 what the issue is here.

3 Q. The question asked when would Level 3 pay  
4 access charges. The answer says when a one-plus call  
5 is dialed, but it really isn't Level 3 that's paying  
6 the access charges; it's the pre-subscribed IXC of  
7 the calling party; right?

8 A. In that case. But understand that the Level  
9 3, again, supports multiple types of traffic. And  
10 where we are supporting the termination of long  
11 distance traffic from an IXC, we would fully expect  
12 to pay access charges, both the variable and the  
13 fixed elements of Qwest's tariff to Qwest. That's  
14 one of the big issues that's in dispute in this  
15 arbitration, is whether or not we're able to use the  
16 existing interconnection facilities to terminate that  
17 type of traffic. And it is our expectation that if,  
18 again, it's traditional long distance traffic, we  
19 would pay and remit the tariff charges, as Qwest has  
20 them posted.

21 Q. But none would be paid in the ISP call  
22 situation?

23 A. In the Qwest end user dialing a Level 3  
24 telephone number to reach an ISP served by Level 3,  
25 no.

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1           Q.    Okay.  Now, the next question says, Describe  
2   the specific situations with regard to VoIP traffic  
3   in which Level 3 would pay access charges to Qwest.  
4   And you say, A one-plus dialed call to a VoIP number  
5   served by Level 3 would be carried by a retail IXC  
6   selected by the Qwest local telephone handed off to  
7   Level 3 -- that's really describing a similar  
8   situation, except that in this case the Qwest end  
9   user is dialing a VoIP number; right?

10          A.    Correct, that's not local to them.  So if we  
11   go back to Exhibit Replacement 33, we talked about  
12   calls going in both directions to a VoIP provider.  
13   One of the things that we didn't mention is that --  
14   excuse me, VoIP phone -- is that in those call flows  
15   described, the originating party and the terminating  
16   party had phone numbers that were local to one  
17   another.

18                If this VoIP subscriber did not have a  
19   Yakima phone number and let's say he had a  
20   Washington, D.C. phone number, when this Yakima Qwest  
21   end user went to call them, that call would be  
22   carried by that end user's pre-subscribed long  
23   distance carrier and then handed off ultimately by  
24   Level 3 in Washington, D.C. to terminate.

25                So you really have to look at the telephone

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1 numbers and who's dialing who to determine which path  
2 it may take on a network and then whether or not  
3 access charges would apply. So in that example, you  
4 have a PSTN user in Yakima calling a VoIP phone  
5 number in Washington. Because they aren't local to  
6 one another, that PSTN user would have to use its  
7 pre-subscribed long distance carrier. That  
8 pre-subscribed long distance carrier would pay  
9 originating access charges to Qwest to originate that  
10 call and bring it across the country.

11 Q. Turn the call around. Let's say that you've  
12 got a VoIP end user, Washington, D.C., Washington,  
13 D.C. number --

14 A. Telephone number.

15 Q. Only this time they want to call Pasco.

16 A. Okay.

17 Q. If I understand it, that call traverses as  
18 we talked earlier, and it's handed off to Qwest in  
19 Yakima?

20 A. That's correct.

21 Q. Yakima is not in the same local exchange --  
22 local calling area as Pasco?

23 A. Correct.

24 Q. Would Qwest have the right, under your  
25 language, to impose terminating access charges on

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1 that call?

2 A. No. Under our language, no, because we  
3 would consider this call to be an information service  
4 and being transported into Yakima, which is our point  
5 of interconnection in that LATA and where we exchange  
6 the calls with Qwest.

7 Q. But you would agree that, in that situation,  
8 Qwest would, in order to terminate that call, be  
9 required to transport the traffic from Yakima to  
10 Pasco in that they are in different local calling  
11 areas?

12 A. That is correct.

13 Q. Okay. That's yours. Let's turn now to --  
14 see if I can get this straight -- another item from  
15 the Web site, and this was pre-marked as Exhibit 47.

16 MR. SMITH: Oh, I don't know whether, Your  
17 Honor, we should do it along the way. We would offer  
18 Exhibit 48 and Exhibit 19-C.

19 JUDGE RENDAHL: Any objection?

20 MR. CECIL: Subject to the notations we've  
21 made on the record, no.

22 JUDGE RENDAHL: Okay. The notations about  
23 the symbols on 48? Okay. So noted, and they'll be  
24 admitted.

25 MR. CECIL: And then, just going to have to

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1 ask him to pass down copies of exhibits. We didn't  
2 receive any, so --

3 MR. SMITH: Oh, I'm sorry. Yeah.

4 Q. Mr. Greene, this is a document marked as  
5 Exhibit 47. And I'll tell you I took it off the Web  
6 site, and it looks like we also got a few of those  
7 funny markings. This one relates to -- it's called  
8 Level 3's managed modem service. Are you familiar  
9 with this Web site material?

10 A. I am, and it's -- in spite of the markings,  
11 does appear to be the content that can be found on  
12 Level3.com's Web site.

13 Q. Okay. Is it fair to say, Mr. Greene, that  
14 the Level 3 managed modem service that you provide  
15 that we've talked a little bit about is a means by  
16 which a large part, if not all of the Internet  
17 functionality that an ISP needs to provide to its  
18 customers, is outsourced, if you will, to Level 3,  
19 and Level 3 provides that on behalf of the ISP?

20 A. Correct. If you look at all the major ISPs  
21 in the U.S. today, America Online is still the market  
22 leader with over 50 percent of the traffic. MSN,  
23 Earthlink, Net Zero, Juno, and there are about six  
24 others or so that round out the top ten. All of  
25 those providers have outsourced the network

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1 components to providers like Level 3 or Qwest.

2 Q. So when you call it a fully outsourced dial  
3 network platform, and I'm reading from the first  
4 sentence of the second paragraph, that's what you're  
5 referring to?

6 A. Correct.

7 Q. And if I -- you have the ones with one of my  
8 underlines. I believe you indicate, also, that Level  
9 3 exchanges or processes or exchanges 30 billion  
10 minutes of this type of traffic per month. Is this  
11 nationwide or is this bigger?

12 A. This is nationwide. We compete primarily  
13 with Qwest and Verizon business for this type of  
14 traffic, and Level 3 estimates that it has about 60  
15 percent of the market share in providing these types  
16 of services, the ISPs, with Qwest and Verizon  
17 business collectively providing probably another 30  
18 percent, and the other ten percent is smaller  
19 providers, other CLECs.

20 Q. So would you consider yourself the market  
21 leader?

22 A. We would.

23 Q. Now, it's -- just to make the record  
24 completely clear, one of the items that you provide  
25 as part of this service is the modem functionality,

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1 the initial modem functionality that we talked about  
2 when the end user dials in and gets on the network at  
3 the media gateway?

4 A. Correct, and then that modem functionality  
5 is both initial and deployed throughout their session  
6 on the Internet.

7 Q. And during -- and in the state of  
8 Washington, you have one media gateway, if I'm not  
9 mistaken?

10 A. We have media gateways located in one  
11 location. As we talked about a little bit earlier, a  
12 box this size could support 8,000 simultaneous calls.

13 JUDGE RENDAHL: When you refer to a box this  
14 size, you're referring to the box covered in tin  
15 foil?

16 THE WITNESS: Yes.

17 JUDGE RENDAHL: That's your show and tell?

18 THE WITNESS: Our show and tell project.

19 Q. Two feet by two feet by 18 inches?

20 A. Yes, and so I believe we have between 30 and  
21 40,000 trunks established with Qwest.

22 Q. Okay. So the media gateway we're talking  
23 about here is a combination of several of these, many  
24 of these put together in one --

25 A. Well, this would represent one media



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1 gateway. There may be three of them stacked on top  
2 of one another, approximately the size of a  
3 refrigerator.

4 Q. But there's only --

5 A. One location.

6 Q. -- one location?

7 A. Correct.

8 Q. And that is in Seattle?

9 A. Seattle.

10 Q. Okay. One question. You talked about --  
11 are there still ISPs that provide their own modem  
12 functionality?

13 A. I'm sure that there are. There may be some  
14 -- what we sometimes refer to in industry as mom and  
15 pop ISPs, where there's somebody that's decided to  
16 put a couple computers and modems into their garage  
17 and send out some brochures or e-mails and, you know,  
18 advertise a service. But the majority of dial access  
19 traffic in the U.S. is coming via the national  
20 providers, again, like AOL, MSN, Earthlink.

21 Q. You indicated, I believe, that AOL has a  
22 somewhat unique, probably misused, maybe a somewhat  
23 unusual means of purchasing their service from Level  
24 3, as opposed to some of the other ISPs?

25 A. I'd use the term different. One would argue

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1 that since AOL is the biggest ISP, that they set the  
2 standard.

3 Q. I don't mean unusual in the negative sense.

4 A. Okay. But different in that AOL, as an ISP  
5 in its relationship with Time Warner, has a good  
6 amount of content that it supports, and it has made a  
7 request that, instead of passing the traffic out onto  
8 the Internet backbone, that we hand the traffic  
9 directly to them, and that they, in turn, either  
10 through their proprietary software that they deploy  
11 or now through their new web interface, would connect  
12 that to the Internet backbone themselves.

13 Q. And that's represented, I believe, on  
14 Replacement Exhibit 33, with the --

15 A. Correct. So if you look there, you'll see  
16 that out of the Seattle facility of Level 3's, the  
17 traffic across -- in this case, across the top of the  
18 diagram would traverse to the AOL network, and then,  
19 after traversing the AOL network, would then go onto  
20 the Internet at large.

21 Q. Okay. Are there any other ISPs who  
22 similarly interconnect with you, or buy service from  
23 you in a manner similar to AOL?

24 A. AOL's architecture is different. Most of  
25 the other ISPs look to just have us place that

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1 traffic onto the Internet backbone at large, and it  
2 very well may stay on our network. Level 3 has  
3 another line of business where it offers storage and  
4 content services to a number of providers. There's a  
5 new phenomenon on the Internet called youtube, where  
6 people can place their own home movies and other  
7 things onto a server and send e-mails to their  
8 friends to come look at a movie or commercial,  
9 whatever they happen to tape. And Level 3 sells the  
10 collocation and the servers and other things to  
11 support that content. So it could very well, in  
12 fact, you know, not leave our backbone, because we  
13 sell those type of services, as well.

14 JUDGE RENDAHL: Just to clarify the record,  
15 although most of us probably know what this is,  
16 youtube is spelled how?

17 THE WITNESS: Y-o-u-t-u-b-e.

18 JUDGE RENDAHL: Thank you.

19 Q. You indicate on Exhibit 47, a little further  
20 down in the third paragraph near the end, that one of  
21 the benefits of Level 3's service is a 40 to 60  
22 percent cost advantage that you'll experience with  
23 our soft switched network. Do you know how that 40  
24 to 60 percent number is calculated?

25 A. Mostly by the economies of scale. I mean,

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1 if you are an ISP and you've got to have your own  
2 network, your own technicians, your own equipment,  
3 the expertise and training to support all that,  
4 combined with a much smaller purchasing power from  
5 the equipment providers and other network providers,  
6 your costs, you know, can add up. And we bring the  
7 economies of scale through the bundled services that  
8 we offer, such that people are able to take advantage  
9 of a higher purchasing power and get cost savings.

10 Q. Have you seen the actual calculation by  
11 which that 40 to 60 percent number was created by  
12 Level 3?

13 A. No, but it doesn't seem unreasonable based  
14 upon my experience in the industry.

15 Q. But you didn't calculate it?

16 A. I did not calculate it out.

17 Q. Let me turn to one final area. At several  
18 points in your testimony --

19 MR. SMITH: Oh, let me offer Exhibit 47, as  
20 well.

21 JUDGE RENDAHL: Is there any objection to  
22 admitting what's been marked as Exhibit 47, noting  
23 that there are various symbols throughout that may  
24 not actually be on the Web site?

25 MR. CECIL: I'll note for the record there

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1 was only questions on the first page. Are you also  
2 moving the second two pages in?

3 MR. SMITH: Yes, I am.

4 MR. CECIL: Yeah, I'll just note that first  
5 page, you know, fairly self-authenticating, it has  
6 the URL on the bottom of it. The second two pages  
7 don't.

8 MR. SMITH: I'm happy to lay a foundation  
9 for it.

10 JUDGE RENDAHL: Do you want him to lay a  
11 foundation or -- why don't you go ahead and do that.

12 MR. CECIL: Why don't you go ahead and do  
13 that.

14 Q. Mr. Greene, does this -- have you seen this  
15 document before, the second and third pages?

16 A. I have. They appear to be a .pdf that you  
17 can download from our Web site that gives you some  
18 explanation of the Level 3 managed modem service.

19 Q. Do you have any reason to think this isn't  
20 the .pdf that's currently on the Level 3 Web site  
21 that describes Level 3 managed modem service?

22 A. I have no reason to think that.

23 Q. All right. And when you download a .pdf,  
24 you don't necessarily get the little mark down on the  
25 bottom; is that correct?

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1           A.    Correct.  .pdf stands for portable document  
2 format, and it's a means for marketing organizations  
3 or other people to publish a document that can be  
4 universally read in different computer systems.

5           Q.    Okay.

6           JUDGE RENDAHL:  Thank you.  Just for point  
7 of clarification, if you look on the front page on  
8 the left-hand side, there's a shaded area where it's  
9 underlined Level 3 Managed Modem E-Brochure.  Would  
10 that be what's attached?

11           THE WITNESS:  Correct.  The little icon to  
12 the left of it is the symbol for .pdf, and more than  
13 likely clicking that link would get you to this  
14 two-page document.

15           MR. SMITH:  And I will just represent that  
16 that is indeed what that is, because I did it, and  
17 that's what the second and third pages represent.

18           MR. CECIL:  No objection.

19           JUDGE RENDAHL:  All right.  What's been  
20 marked as Exhibit 47 will be admitted.

21           Q.    Okay.  Let me go into one, I think, final  
22 area, and that's -- in various places in your  
23 testimony, Mr. Greene, you refer to the fact that  
24 Level 3 has been able to reach agreement with other  
25 ILECs, SBC, or AT&T, I guess as it's now called.  It

0466

1 was SBC, I think, when you entered the agreement,  
2 Verizon and BellSouth; correct?

3 A. Correct. Actually, I see it on page 23 of  
4 my testimony, where you had me before.

5 Q. Okay.

6 JUDGE RENDAHL: Is that Exhibit 31-T,  
7 direct?

8 THE WITNESS: The direct, direct testimony.

9 Q. And I believe the testimony you've given is  
10 that, well, we've been able to work things out with  
11 these other carriers; is that correct?

12 A. That would be an accurate analogy.

13 Q. It is true, is it not, that the agreements  
14 that you've been able to reach with these other  
15 carriers were the result of negotiation, compromise,  
16 give and take, and that each party gave things in  
17 order to get things?

18 A. Yes.

19 Q. Let me show you exhibit -- okay -- let's see  
20 where I hid it. Twenty.

21 JUDGE RENDAHL: We're looking at what's been  
22 marked as Exhibit 20?

23 MR. SMITH: Yes.

24 JUDGE RENDAHL: That is identified as  
25 portions of the Alabama BellSouth/Level 3 contract

0467

1 amendment?

2 MR. SMITH: Exactly.

3 Q. Do you recognize -- well, let me wait for --

4 JUDGE RENDAHL: Does everyone -- this is a  
5 two-page document. Does everyone have a copy of  
6 this? Okay.

7 Q. Do you recognize this document, Mr. Greene?

8 A. I do.

9 Q. And if I understand it, this is an amendment  
10 to an agreement in Alabama, but it represents a more  
11 general agreement with BellSouth; is that correct?

12 A. That's correct.

13 Q. And I'm looking down at -- and this is still  
14 in effect?

15 A. It is.

16 Q. Okay. I'm looking down at Section 7.5.1.2,  
17 the large paragraph in the middle of the page.

18 A. Correct.

19 Q. Is it a fair reading of this that this  
20 agreement -- that provision represents an agreement  
21 between Level 3 and BellSouth that they will exchange  
22 VoIP traffic, they have not agreed on the proper  
23 intercarrier compensation for that, but agree to be  
24 bound by an FCC -- whenever the FCC reaches its  
25 decision?



0468

1           A.    Yes, we refer to it as an agreement to  
2 disagree.

3           Q.    Okay.  And that would include an FCC  
4 decision that would impose access charges on VoIP  
5 traffic?

6           A.    If the FCC were to so decide that, then yes,  
7 access charges would apply, and that would be the go  
8 forward means of settling out that traffic.

9           Q.    And it's true, isn't it, that BellSouth  
10 takes the position that access charges are -- should  
11 apply to VoIP traffic?

12          A.    Yes.

13           MR. SMITH:  Okay.  I'd offer Exhibit 20.

14           JUDGE RENDAHL:  Is there any objection to  
15 admitting Exhibit 20?

16           MR. CECIL:  No.

17           JUDGE RENDAHL:  All right.  Exhibit 20 will  
18 be admitted.

19           MR. SMITH:  Okay.  I'd like to -- now I'm  
20 going to be looking at an exhibit to Mr. Easton's  
21 WRE-3.  I think it's his direct, is it?  The reply  
22 testimony of Mr. Greene, in which he --

23           JUDGE RENDAHL:  No, WR-3 on my list is --

24           MR. SMITH:  Mr. Easton.

25           JUDGE RENDAHL:  Yes, second amendment to

0469

1 interconnection agreement between Verizon and Level  
2 3. Is that what you're turning to?

3 MR. SMITH: That is. Let me get there.

4 JUDGE RENDAHL: Marked as Exhibit 73.

5 Q. I'll let you --

6 A. I'll need to share with you.

7 Q. Okay. We can share.

8 MR. CECIL: Did you have any other copies of  
9 that exhibit?

10 MR. SMITH: It's attached to Mr. Easton's  
11 reply testimony.

12 MR. CECIL: All right.

13 JUDGE RENDAHL: Off the record for a moment.

14 (Discussion off the record.)

15 JUDGE RENDAHL: Let's be back on the record.

16 Q. This is Exhibit 73. I'd like you to turn,  
17 first of all, if you could, to Section 2.1.

18 JUDGE RENDAHL: And what page might it be  
19 on?

20 MR. SMITH: That would be page six. Well,  
21 in the upper right-hand corner, it's page seven; at  
22 the bottom of the page, it's page six.

23 JUDGE RENDAHL: Page seven in the upper  
24 right-hand corner and page six on the bottom?

25 MR. SMITH: Right, it's Section 2.1.

0470

1 Q. Are you familiar with Section 2.1 of this  
2 agreement?

3 A. I am.

4 Q. And if I understand it correctly, it's an  
5 agreement whereby Level 3 and BellSouth agree to  
6 exchange traffic, but at a rate -- oh, did I say  
7 BellSouth?

8 A. You did. It's Verizon.

9 Q. I'll get these names straight. Level 3 and  
10 Verizon agree to exchange -- have agreed to exchange  
11 traffic, but the rate, rather than 0007 rate, begins  
12 at 0005, and then, over time, goes down to 0004; am I  
13 correct?

14 A. That's correct.

15 Q. And at the current time, 0004 is the rate?

16 A. At this current time?

17 Q. Right.

18 A. Yes, that is the rate.

19 Q. And would it be fair to say this is one of  
20 those gives and takes that was part of the agreement?

21 A. That is correct.

22 Q. Okay. And I'm looking now on page seven at  
23 the bottom, eight up in the right-hand corner,  
24 Paragraph 2.2. As I read this, it indicates, not  
25 identically to the BellSouth agreement, but

0471

1 similarly, that the parties do not agree on the  
2 compensation for VoIP; is that correct?

3 A. That's correct.

4 Q. And how does it work here with Verizon,  
5 then?

6 A. With Verizon, again, we have this agreement  
7 to disagree. We -- further on, it discusses that we  
8 will settle that traffic based upon its direction at  
9 the applicable reciprocal compensation rate, and then  
10 at such time the FCC makes a decision on the  
11 compensation of VoIP, that settlement will be trued  
12 up in a retro -- a retro perspective and, on a  
13 prospective basis, the FCC rules would carry forward.

14 Q. Okay. As I look at Paragraph 3.2 now on the  
15 next page, I believe, if I read it correctly, it  
16 requires Level 3 to track and identify VoIP traffic  
17 for that purpose?

18 A. Yes, that's correct.

19 Q. Okay.

20 JUDGE RENDAHL: Which paragraph are you  
21 looking at?

22 MR. SMITH: 3.2, bottom of page eight.

23 Q. And as with BellSouth, Verizon takes the  
24 position, do they not, that access charges should  
25 apply to VoIP traffic?

0472

1 A. Correct.

2 Q. Okay. And let me just ask you, with regard  
3 to BellSouth, it's my understanding that Level 3 and  
4 BellSouth, part of their agreement is that, as it  
5 relates to the Core Forbearance Order, the one that  
6 eliminated the growth caps and the new market rule,  
7 it's my understanding that BellSouth -- that Level 3  
8 and BellSouth have agreed that the growth caps will  
9 continue to apply to Level 3 -- or to ISP traffic  
10 destined for Level 3?

11 A. Well, specifically in the BellSouth  
12 agreement, that agreement was struck prior to the  
13 core communications decisions from the FCC in October  
14 of 2004, and that agreement has a -- what's referred  
15 to as a no change of law provision, meaning that the  
16 agreement takes precedent. If the law changes, the  
17 agreement still holds.

18 Q. Okay. So as a result of that, Level 3 is  
19 unable to require BellSouth to enter an amendment to  
20 eliminate the growth caps at the present time; is  
21 that what that means?

22 A. I mean, we could always, I guess -- there's  
23 no prohibition to entering into amendments to  
24 eliminate the growth caps. The parties have not  
25 entered into an amendment to eliminate the growth

0473

1 caps in that particular contract.

2 Q. Has Level 3 requested BellSouth to enter  
3 such an amendment?

4 MR. CECIL: Objection, both relevance and  
5 confidential as to whatever discussions are ongoing  
6 between Level 3 and BellSouth right now, and  
7 actually, that would be subject to the  
8 confidentiality agreement between the two companies,  
9 so I would object to the extent that any of that  
10 requires Mr. Greene to answer to anything that those  
11 two parties would consider confidential.

12 And secondly, just more broadly to the  
13 relevance of that question.

14 JUDGE RENDAHL: Mr. Smith, can you explain  
15 the relevance?

16 MR. SMITH: It was Mr. Greene and Level 3  
17 that opened the door on the relevance or irrelevance  
18 of agreements with other RBOCs, and I believe it's  
19 entirely appropriate to ask, given the fact that  
20 they've brought the issue up, what the status of the  
21 situation is with BellSouth.

22 JUDGE RENDAHL: Mr. Cecil.

23 MR. CECIL: Two points. First of all, I  
24 think we've been incredibly patient with this line of  
25 examination, permitting Mr. Smith to explore those

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1 areas he believes relevant.

2           Secondly, the agreements were offered by  
3 Level 3 for evidence on the issue of  
4 multi-jurisdictional trunks, and Mr. Smith not only  
5 not questioned on those issues, but strayed far away  
6 and deep into those agreements on other issues which,  
7 you know, for purposes -- we're happy to let him  
8 explore to some point, but you know, I think there's  
9 -- I think we've reached both the end of whatever  
10 potential relevance or probative value that has and  
11 reaching directly into matters we would consider  
12 confidential and quite sensitive.

13           JUDGE RENDAHL: Well, I'm sensitive to the  
14 issue of negotiations and confidentiality, so I'm  
15 going to grant the objection as to the most recent  
16 question, but I think to the extent that Level 3  
17 brought into question the issue of the give and take  
18 of the agreements, so far I haven't had a concern up  
19 to this point.

20           MR. CECIL: And I would just note for the  
21 record that I don't think Level 3 brought into the  
22 record a give and take of the agreement so much as  
23 the point of these agreements is demonstration of  
24 where we've agreed to reach agreements with other  
25 carriers to utilize our interconnection network for

0475

1 the exchange of all forms of traffic.

2 JUDGE RENDAHL: Thank you. Mr. Smith, do  
3 you have any further questions?

4 Q. Well, let me just -- has BellSouth and Level  
5 3 to this point reached any agreement to lift the  
6 growth caps?

7 MR. CECIL: I would just object. You know,  
8 if there is any agreement, it would be publicly  
9 filed. They're more than -- you know, if there is an  
10 agreement, it's going to be memorialized in a  
11 publicly-filed document. Qwest obviously has availed  
12 themselves of that, both in discovery and what they  
13 can take administrative notice of. If there's no  
14 agreement there and no agreement's been to ink yet,  
15 then it is what it is.

16 JUDGE RENDAHL: I'm going to deny the  
17 objection. Mr. Greene, if you know the answer to the  
18 question, please answer. If not, you don't know.

19 THE WITNESS: Actually, I'm personally  
20 involved in the negotiations with BellSouth. I was  
21 in Atlanta two weeks ago when we had begun the  
22 process to strike a new interconnection agreement,  
23 and one of the items that we are discussing is the  
24 removal of the growth caps, as they are no longer  
25 applicable as we understand the current law.



0476

1 Q. Was that a no, then, to my question, that  
2 the parties entered an agreement?

3 A. We've only begun the process.

4 Q. Is it true that Level 3 and BellSouth are  
5 treating the new markets portion of the core  
6 forbearance, treating that traffic that would be  
7 subject to terminating compensation now on a bill and  
8 keep basis currently?

9 A. That's correct.

10 Q. Finally, if we could look at -- I want to  
11 turn now to -- it's WRE-5, which is the third exhibit  
12 attached to Mr. Easton, and that would be Exhibit 75.  
13 Are you familiar with that particular amendment?

14 A. Yes, this appears to be the first  
15 superseding amendment to the interconnection  
16 agreement between Level 3 and SBC, now under the  
17 corporate name of AT&T.

18 Q. Okay. If I could turn you to page nine of  
19 that, which is, sadly, page eight up in the  
20 right-hand corner. I'm not quite sure why these  
21 don't match up.

22 If I'm looking at paragraph six, that  
23 indicates a similar rate, terminating compensation  
24 rate that began at 0005, and has now gone down to  
25 0004; is that correct?

0477

1 A. That is correct.

2 Q. And then, if you look at the top of the next  
3 page, it indicates that if this amendment continues  
4 on, then, beyond the termination date, which I  
5 believe was December 31st of 2006, that the rate  
6 would then fall to 00035. Is that a fair statement?

7 A. That is correct.

8 Q. And as I read, again, bottom of page ten,  
9 down in the lower right-hand corner, if I read 7.3  
10 right, that indicates, similar to some of the other  
11 agreements, that Level 3 must calculate the  
12 difference between what they're paying and what they  
13 would pay utilizing interstate access rates; is that  
14 correct?

15 A. It would be actually interstate and  
16 intrastate access rates. We have agreement to pay  
17 the reciprocal compensation rate for the exchange of  
18 VoIP traffic and then calculate what that traffic  
19 would have cost at the applicable tariff rate, and  
20 once the delta between what we've paid and what it  
21 would have cost reaches a threshold of a half-million  
22 dollars, the parties are to sit down and settle it.

23 Q. And doesn't it also call for, in the last  
24 sentence, that once you reach a certain level, money  
25 will be placed in an interest-bearing escrow account?

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1 A. If we're unable to settle it, yes.

2 Q. Okay. Have you been able to settle it at  
3 this point?

4 A. We have not reached the delta at this point,  
5 the delta threshold, I should say.

6 Q. Does SBC take the position that AT&T now --  
7 take the position that access charges apply to VoIP  
8 traffic?

9 MR. CECIL: You know, objection. I mean, to  
10 the extent that this witness knows what AT&T's  
11 positions are on that, at this time, these are  
12 questions about a document that was executed in early  
13 2005, a different time, different regulatory  
14 environment, and now we're going into an old -- to  
15 the exploration of what AT&T's advocacy may or may  
16 not be on VoIP or access charges.

17 MR. SMITH: Well, let me rephrase the  
18 question.

19 JUDGE RENDAHL: Please do.

20 Q. Isn't that what it suggests in 7.3, in  
21 setting up an escrow account on traffic that's  
22 characterized as IP to PSTN? That's VoIP traffic,  
23 isn't it?

24 A. It is. What this agreement doesn't reflect  
25 is the work that Level 3 has participated with AT&T

0479

1 in in developing the Missoula plan, which is a  
2 comprehensive plan for reform of intercarrier  
3 compensation, and that plan calls for VoIP not to be  
4 treated as switched access traffic, but to be treated  
5 differently.

6 Q. But in the meantime, this agreement  
7 continues to apply?

8 A. Correct.

9 Q. And the Missoula plan may or may not be  
10 adopted by the FCC?

11 A. But it is certainly AT&T's public position  
12 in support of that plan.

13 Q. Looking at 7.3, and given the fact that it  
14 apparently has not been superseded by an agreement,  
15 is it fair to say that, under this agreement and  
16 until something supersedes it, that AT&T's position  
17 is that access charges would apply to VoIP traffic?

18 MR. CECIL: Objection, argumentative.

19 JUDGE RENDAHL: I'm not seeing the  
20 argumentation here.

21 MR. CECIL: Well, he's saying AT&T's  
22 position would be as results in the agreement. I  
23 mean, the contract is the contract. He's asking my  
24 witness to agree that that's AT&T's position. AT&T  
25 has a contract with Level 3, that's one thing.

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1    Whatever their position is is another.  So that  
2    somehow makes no sense.

3                JUDGE RENDAHL:  Can you restate the question  
4    any differently?

5                Q.  Well, the fact that you have an existing  
6    agreement with AT&T, that has not been superseded,  
7    that requires money to be escrowed related to --  
8    based on the application of intrastate and  
9    interstate-switched access traffic to VoIP traffic,  
10   does that indicate to you that AT&T takes the  
11   position that access charges should apply to VoIP  
12   traffic?

13               A.  No, it's a contract that was struck back in  
14   2005.  I've had personal conversations with the  
15   leadership at AT&T around the Missoula plan and what  
16   their feelings are and whether or not access charges  
17   should apply to VoIP, and they are in agreement with  
18   us that they should not.

19               Q.  Well, until Missoula plan is adopted, AT&T's  
20   position is that access charges apply to VoIP; isn't  
21   that correct?

22               A.  Not to any conversation that I've had with  
23   them.

24               Q.  That if the Missoula plan is adopted, it  
25   would be made retroactive; is that your

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1 understanding?

2 A. They have -- I've not had any specific  
3 conversation with AT&T on what charges should apply  
4 to this traffic outside of the fact that we have  
5 agreement that, at a minimum, the local reciprocal  
6 compensation rate should apply. We have not hit the  
7 threshold for settlement and so we've had no dialogue  
8 specific to the traffic that's been previously  
9 exchanged.

10 In our lengthy conversations around industry  
11 reform and what should take place as far as VoIP,  
12 AT&T has adopted a position, that we agree with, that  
13 access charges would not apply to VoIP, and those  
14 positions are expressed in the Missoula plan that's  
15 been put forth to the FCC and industry.

16 Q. And in doing that, they've not abrogated the  
17 contract that we're looking at; correct?

18 A. Correct.

19 MR. SMITH: That concludes my  
20 cross-examination, Your Honor.

21 JUDGE RENDAHL: Okay.

22 MR. SMITH: And I believe I've offered the  
23 various exhibits I referred to.

24 JUDGE RENDAHL: Do You intend to offer at  
25 all through Mr. Greene the exhibits to Mr. Easton's

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1 testimony, or do you intend to offer those through  
2 Mr. Easton's testimony?

3 MR. SMITH: Well, given the fact that I have  
4 utilized them in cross-examination, we would also  
5 offer Exhibit 73 and 75. I don't believe I referred  
6 to 74.

7 JUDGE RENDAHL: Is there any objections to  
8 admitting those into the record?

9 MR. CECIL: Only to note for the record  
10 that, you know, to the extent they were used for  
11 cross-examination, sure, but, you know, Mr. Easton  
12 did testify to those in his testimony, so --

13 JUDGE RENDAHL: Well, I'm happy to withhold  
14 admitting them until we take Mr. Easton on at this  
15 point. But I don't see -- is there any objection to  
16 the fact that they are what they are?

17 MR. CECIL: None at all.

18 JUDGE RENDAHL: All right. So would you  
19 agree to admitting them?

20 MR. CECIL: That is fine.

21 JUDGE RENDAHL: We'll admit them into the  
22 record, then. Exhibits 73 and 75 will be admitted.

23 MR. SMITH: And then, if I'm not mistaken,  
24 we also admitted 20, 47 and 48; is that --

25 JUDGE RENDAHL: That's my understanding. I

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1 have that on my list. I don't believe -- were there  
2 any other cross exhibits that -- there was 19 and 20  
3 and 47 and 48. Mr. Cecil?

4 MR. SMITH: Oh, 19, I'm sorry.

5 JUDGE RENDAHL: Mr. Cecil, do you have any  
6 redirect for the witness?

7 MR. CECIL: I do, Your Honor.

8

9 R E D I R E C T E X A M I N A T I O N

10 BY MR. CECIL:

11 Q. Mr. Greene, you'll recall at the beginning  
12 -- do you recall some discussions about the Level 3  
13 media gateways in Seattle?

14 A. I do.

15 Q. And that Mr. Smith asked you several  
16 extensive questions about those? Do those soft  
17 switches only serve the state of Washington?

18 MR. SMITH: I'll object. I think we started  
19 off talking about media gateway and the question  
20 turned into soft switches. I just --

21 MR. CECIL: Well, I --

22 MR. SMITH: I shouldn't say object.

23 JUDGE RENDAHL: Let's not speak over one  
24 another, please. Mr. Cecil, wait till the  
25 objection's made.



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1           MR. SMITH: Just asking for clarification.  
2 Are we talking about media gateways or soft switches,  
3 because I get confused.

4           JUDGE RENDAHL: Mr. Cecil, maybe you can  
5 restate your question.

6           MR. CECIL: Certainly.

7           Q. Referring to Exhibit Number 33, Mr. Greene,  
8 Mr. Smith asked you questions about the Level 3 soft  
9 switch and Level 3 media gateway, both of which are  
10 located in Seattle. Do you recall that line of  
11 questioning?

12          A. I do.

13          Q. And do you recall that Mr. Smith asked you  
14 about how those devices interoperate or provide a  
15 variety of services?

16          A. I do.

17          Q. Do you recall that Mr. Smith asked you a  
18 series of questions about what services those devices  
19 provide within the state of Washington?

20          A. I do.

21          Q. Can you do those -- are those devices  
22 limited? Is their service area limited to the state  
23 of Washington?

24          A. No, they're not. Those devices actually  
25 support a multi-state area. As an example, the

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1 entire state of Oregon is served by the media gateway  
2 and soft switches that are in Seattle. In modern  
3 telecommunications networks, the processing power of  
4 computers, the space in which computers occupy and  
5 other things has come down significantly from the  
6 time when circuit switches and circuit switched  
7 networks were designed and deployed.

8           It doesn't make any technical or engineering  
9 sense to break up a box that, you know, is  
10 demonstrated here by this box in foil that can  
11 support 8,000 simultaneous connections. You can't  
12 break that apart and put different pieces of it in  
13 different areas. It is as functional as it is  
14 because it has that economy of scale. It wouldn't be  
15 practical for us to put a box that supports 8,000  
16 connections in Yakima, as an example, when only a  
17 thousand connections perhaps are needed there.

18           The economies that drive the ability of  
19 folks like AOL and Microsoft and others to offer  
20 dial-up services at the prices they do is one of an  
21 economy of scale and the ability to use devices that  
22 aggregate this traffic in central points in the way  
23 that Level 3 deploys its architecture, and in the  
24 same way that Qwest deploys its architecture.

25           Q. Now, what do you mean in the same way that

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1 Qwest deploys its architecture?

2 MR. SMITH: Your Honor, I am going to  
3 object. I certainly asked about the soft switches, I  
4 asked if they were located in Seattle. There  
5 certainly was no intent to indicate that they might  
6 not serve other areas, but I believe this is clearly  
7 beyond the scope of the direct examination.

8 JUDGE RENDAHL: Mr. Cecil.

9 MR. CECIL: Actually, this entire exhibit  
10 was offered as a comparison between how Level 3 and  
11 Qwest offer these services, and one of the core  
12 issues in this case is that very question. How do  
13 the different companies do it and how should they do  
14 it. Qwest has a different view of that and that  
15 obviously brings into question, well, how do they do  
16 that.

17 JUDGE RENDAHL: But the question is whether  
18 this was within the scope of the cross-examination,  
19 not what was within the scope of the exhibit that Mr.  
20 Smith offered.

21 MR. CECIL: We'll get to it another way,  
22 then.

23 Q. The -- you mentioned Oregon, Mr. Greene.  
24 Are there any other states that these switches  
25 currently serve?

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1           MR. SMITH: Well, I'll raise the same  
2 objection. We're not disputing these switches may  
3 serve other areas, but that was not an area I  
4 addressed with Mr. Greene. It's beyond the scope.

5           JUDGE RENDAHL: Is there an offer of proof  
6 you need to make for why you're pursuing this exact  
7 line of questioning?

8           MR. CECIL: Let me withdraw the question and  
9 I will come --

10          Q. Mr. Smith also asked you several questions  
11 about call flows on an IP network, Mr. Greene. Do  
12 you recall those?

13          A. I do.

14          Q. And call flows specific to Level 3?

15          A. Yes.

16          Q. The dotted lines on this network, do those  
17 represent the -- what do those represent?

18          A. The dotted lines represent IP  
19 communications, or communications that are using the  
20 Internet protocol format.

21          Q. Are these the only paths that these  
22 communications can take?

23          A. No, the IP networks are typically redundant  
24 at many levels, and a particular call could have a  
25 packet that flows to the north side of the network,

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1 and inside of that same call could have a packet that  
2 flows to the south side of the network. All the  
3 network points are not depicted here. This is  
4 simply, believe it or not, a simplified view of how  
5 the networks connect to one another.

6 Q. And there was some specific discussion of  
7 the use of VoIP phones. Do you recall that?

8 A. Correct, I do recall that.

9 Q. And you indicated -- I believe there was  
10 some questions about some broadband VoIP calls  
11 originating in IP and terminating to TDM. Do you  
12 recall that?

13 A. I do.

14 Q. These VoIP services in these instances here,  
15 can you describe just a little bit about how these  
16 services are provided? Are they provided  
17 stand-alone, or are they integrated into other  
18 services?

19 A. Is it the services that Level 3 offers or  
20 the services that the VoIP provider would offer?

21 Q. The VoIP provider.

22 A. Yes, the VoIP provider could offer not only  
23 the voice component of it; they could offer voice  
24 mail, they could offer conferencing services, they  
25 actually may offer the actual broadband connection

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1 itself to the customer, as well as e-mail services  
2 and a number of other things that they could put  
3 together in a single bundle or sell as individual  
4 services.

5 Q. Mr. Smith asked you some questions about the  
6 media gateway, specifically in a series of questions  
7 about when portions of the media gateway are  
8 dedicated to a call. Do you remember that?

9 A. I do.

10 Q. Do you recall that? Specific to that, can  
11 you be more specific as to what functions the media  
12 gateway dedicates on which end of the network,  
13 whether it's going IP-to-TDM or TDM-to-IP in terms of  
14 what actually happens with that gateway?

15 A. That gateway, as the name implies, is the  
16 path in which a call would traverse that, either  
17 begins or ends on the PSTN network, and again, either  
18 begins at some IP end point. That IP end point could  
19 be a VoIP subscriber or it could potentially be an  
20 ISP server or an e-mail server or something of that  
21 nature.

22 There are a multitude of different protocols  
23 and technologies that are used in the PSTN, but it  
24 primarily operates in a world of time division  
25 multiplexing. Think of them as sort of boxcars on a

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1 train. They're individual time slots, and thus the  
2 name time division, that are then multiplexed, or  
3 woven up onto a higher speed circuit. So you have  
4 potentially multiple trains going down multiple lines  
5 on a particular circuit. In the IP world, those  
6 individual boxcars are in effect decoupled and can --  
7 boxcar one can take a different path than boxcar two,  
8 even though they, in effect, in this analogy belong  
9 to the same train.

10           That decoupling actually brings a great deal  
11 of efficiency into the network because you aren't  
12 tying up network resources if there aren't boxcars.  
13 If you can think of a TDM connection, there's always  
14 a boxcar for every single time slot on that  
15 particular network, whether or not there's actually  
16 something to move from point A to point B.

17           In an IP network, a boxcar only exists if  
18 something is being moved. So if we even think about  
19 something as simple as me speaking right now, there's  
20 -- as many times as you can hear my voice, there's  
21 also silence. And in that silence, there's no  
22 information that needs to be transmitted.

23           In a TDM network, you've got to dedicate the  
24 network to that call regardless if there's silence or  
25 not. In an IP network, you don't have to make that

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1 same dedication, and thus you get an efficiency  
2 because that boxcar, again, using my analogy, that  
3 would otherwise be dedicated to silence on a TDM  
4 network can be used for another call in an IP  
5 network, and because of that, is much, much more  
6 efficient than what you'll find in a traditional  
7 circuit switched network.

8 Q. You mentioned -- I believe there was some  
9 discussion about the media gateway supporting 8,000  
10 modem calls. Is that the only thing those ports --  
11 that gateway can do?

12 A. No, actually, it's a universal gateway,  
13 universal in the sense that it can support a data  
14 call or one -- a call that is a modem that's  
15 attempting to connect to the Internet, and that very  
16 same port, once that ISP-bound call is over, could  
17 then transmit voice traffic destined for the PSTN.

18 So each port on that device is able to move  
19 back and forth from either data or voice. And again,  
20 one of the efficiencies that's gained and certainly  
21 being able to support 8,000 calls in a box that is  
22 effectively the size of a large microwave oven is  
23 also a huge efficiency over what you would see in a  
24 traditional circuit switched network.

25 Q. Mr. Smith asked you some questions, I



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1 believe, about a call flow between Pasco and the  
2 Level 3 media gateway. Do you recall that?

3 A. I do.

4 Q. In that situation, I believe there was some  
5 discussion of the trunk ports. Can you describe  
6 which trunk ports get opened and where they are in a  
7 call flow situation between the Qwest end office  
8 switch in Pasco and the Level 3 media gateway?

9 A. Sure. Beginning with the Pasco central  
10 office and the end office in that particular  
11 location, there would be a line-side port that would  
12 be opened up when this caller goes off hook with  
13 their telephone or picks up the receiver on the  
14 telephone or hits connect on their modem service, or  
15 on their modem, I should say. That completes the  
16 circuit and it signals to the switch that there's a  
17 call being attempted to be played -- or made, I  
18 should say.

19 So the switch would dedicate a port facing  
20 toward the customer for that call. It would also  
21 have to dedicate a port facing the tandem switch in  
22 Yakima for that call. So on that end office port --  
23 excuse me, on that end office switch, two ports would  
24 be tied up. The same thing would happen at the  
25 tandem switch in Yakima. There would be the

0493

1 interoffice or intermachine trunk between the tandem  
2 location and the end office would be dedicated, as  
3 well as a port on the DEOT out to Qwest -- excuse me,  
4 out to Level 3 would be dedicated, so two ports would  
5 be occupied there. Coming up into the media gateway,  
6 a port, in this case, the call coming to the media  
7 gateway would be dedicated, but on the backside of  
8 the media gateway, because it's now IP technology,  
9 nothing has to be dedicated. Again, one of those  
10 efficiencies.

11 Just as your computer connects into a local  
12 area network and has what's known as a category five  
13 LAN cable plugged into the back of it, this device  
14 also has an Ethernet cable plugged into the back of  
15 it, which allows it to talk with the other devices in  
16 the Seattle gateway facility.

17 JUDGE RENDAHL: Okay. Let's be off the  
18 record for a moment.

19 (Recess taken.)

20 JUDGE RENDAHL: Let's be on the record after  
21 a brief break, and we're continuing with redirect.

22 Q. Mr. Greene, do you recall, going back to  
23 some of those questions, there was a call flow that  
24 was discussed that originated in VoIP and I think  
25 terminated in Yakima from a broadband connection.

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1 And there was just something unclear about that. It  
2 was a D.C. telephone number, and I wasn't clear and I  
3 don't think the record was clear. Did you say that  
4 the customer was in D.C. or had to be in D.C., or did  
5 that matter?

6 A. Well, one of the differences between VoIP  
7 and a circuit switched network is that, in a circuit  
8 switched network, you know that there's a line  
9 dedicated to a particular customer, and although the  
10 switch doesn't know it, you probably have some record  
11 of where that customer's address is and so on and so  
12 forth. And that can somewhat be associated with the  
13 line, because they are traditionally given a phone  
14 number that's relevant to that particular switch, so  
15 there's some level of geographic relevancy between  
16 the phone number and the customer, and typically  
17 that's defined at what's known as a rate center level  
18 or exchange level. You know that this exchange  
19 covers this geography, and so you could pretty much  
20 assume that any customer making a call with those  
21 telephone numbers are in that geography.

22 Two things have happened, I guess, since  
23 that architecture was designed. One is the advent of  
24 wireless technology, or cellular technology, I should  
25 say, and the ability to port numbers that were

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1 traditionally associated with land lines to your cell  
2 phone. And obviously, with your cell phone, you  
3 could take it anywhere in the United States or the  
4 world and make a call, and that number would still  
5 have that association with a particular exchange or  
6 rate center, but obviously the geographic association  
7 would be clearly broken if I were to put my cell  
8 phone in my pocket and fly across the U.S.

9           The other situation is with the VoIP  
10 network, where I could have software on my laptop  
11 computer that allows me to make calls and could have  
12 a phone number assigned to my laptop. And very much  
13 like my cell phone, I could take that laptop with me  
14 and plug in and make phone calls. And the  
15 association of that phone call would be my phone  
16 number, but there is no association to where I'm  
17 physically located.

18           And to a large degree, I guess it's somewhat  
19 irrelevant. You know, the switch that's actually  
20 switching that call doesn't know where that person is  
21 physically located. It just knows that, you know,  
22 line 22 is the one that's making this call.

23           And similar sort of I guess analogies apply  
24 to VoIP and to cellular. You really look at what is  
25 the phone number of that individual to use for the

0496

1 rating and settlement of the call.

2 Q. There were some questions that Mr. Smith  
3 asked you about AOL, and you mentioned, I believe,  
4 Herndon, Virginia. Do you recall that?

5 A. I do.

6 Q. Does that mean that, in an IP network, you  
7 know the location of the equipment? Is that your  
8 testimony?

9 A. You know the location of certain pieces of  
10 equipment or you would certainly -- again, I think I  
11 talked about Earthlink, as well. You know that  
12 Earthlink's mailing address, if you were to send a  
13 stamped letter to them, would be Atlanta, Georgia,  
14 but the routers and the different pieces of equipment  
15 and ultimately the file server or web server or  
16 e-mail server that person connected to, you don't  
17 know where that is. It's only associated with a  
18 particular IP address.

19 Q. So could it be anywhere?

20 A. Absolutely could be anywhere. And that's  
21 one of the beauties of the Internet, is that it has  
22 allowed a global community to come together and it  
23 allows access of individuals to things that are not  
24 just local. I could take my dial-up connection here  
25 in Olympia and text message or chat with somebody

0497

1 that's literally sitting right beside me and have a  
2 communication with them and, at the very next moment,  
3 look to buy something on Amazon.com, who happens to  
4 have servers up in Seattle, and at the very next  
5 moment jump onto the Library of Congress' site in  
6 Washington, D.C. to do a research project, all using  
7 the exact same dial-up connection.

8           And that is, you know, one of the beauties  
9 again of the Internet, is that it allows this global  
10 access to information.

11           Q. Mr. Smith asked you several questions about  
12 the effect of our contract language on access  
13 charges. Do you recall that?

14           A. I do.

15           Q. Is it your testimony that Level 3 would  
16 impose the same charge on a VoIP call regardless of  
17 where these VoIP end users or the equipment is  
18 located?

19           A. Correct. Our language proposes that VoIP is  
20 an information service and, as such, it's not subject  
21 to access charges. But that doesn't mean that one  
22 party is not going to pay the other party for the use  
23 of its network; it just simply says that the access  
24 charge regime isn't going to apply to that  
25 settlement. If we send a call to Qwest and use its

0498

1 network and have them terminate that call, we would  
2 compensate for that. And we feel the appropriate  
3 rate for compensation is the reciprocal compensation  
4 rate, not access charges.

5 Q. And then I guess in that -- well, why is  
6 that, is the question?

7 MR. SMITH: Object. That is beyond the  
8 scope of cross-examination.

9 MR. CECIL: Want me to be a little more --

10 JUDGE RENDAHL: Well, I believe there was  
11 some cross-examination about the access charges and  
12 how that would -- when Level 3 would pay access  
13 charges, but as to the reasons why that is so, I  
14 don't believe we got into that, although it is  
15 triggered by the cross, so I'm going to allow this  
16 question, so go forward.

17 THE WITNESS: I'm sorry. Could you repeat  
18 the question?

19 Q. Why is it that Level 3 proposes to rate all  
20 this IP traffic at a reciprocal compensation rate in  
21 its contract language regardless of where the IP end  
22 user is located?

23 A. I guess I'll try to answer it from a  
24 business perspective, because there's -- you know, as  
25 being familiar with this case, there's all kinds of

0499

1 legal arguments that could be made that I'm not  
2 equipped to make.

3 Q. Just start --

4 JUDGE RENDAHL: Don't talk over your  
5 witness, please.

6 THE WITNESS: I'm not equipped to make any  
7 of the legal arguments. When you look at the diagram  
8 and the flows of the call and the resources that are  
9 being used, and let's take, you know, the calls  
10 terminating up here to the left to Seattle or Spokane  
11 or to Yakima. The resources on the Qwest network  
12 that a call that's originated on the Level 3 side of  
13 the network are the same resources that are used for  
14 local calling. Qwest is not carrying that call  
15 outside the LATA. It's inside of those areas.

16 And again, we're not saying that those calls  
17 should be transmitted for free. We're saying that  
18 those calls should be settled not pursuant to  
19 switched access tariffs, they should be settled  
20 pursuant to reciprocal compensation rates. We  
21 believe that VoIP is a separate class of traffic. It  
22 involves a net protocol conversion, it involves  
23 access to enhanced services that you wouldn't  
24 normally find in a phone service, and as such, it  
25 should be treated differently. And that's what our



0500

1 language reflects.

2 Q. Mr. Smith also asked you some questions  
3 about Level 3 handing off to IXCs for termination.  
4 Do you recall that?

5 A. I do.

6 Q. And I believe there was a particular focus  
7 on Level 3 handing off to Qwest versus handing off to  
8 an independent. Do you recall that?

9 A. I do.

10 Q. Can you explain, from a business network  
11 perspective, why that's necessary to hand off to an  
12 independent in that manner?

13 MR. SMITH: I object to that. I -- there  
14 wasn't a question as to why or why not somebody has  
15 to. I was merely asking what intercarrier  
16 compensation regime applies when traffic is delivered  
17 to an independent.

18 JUDGE RENDAHL: I believe there was some  
19 questioning having to do with under what  
20 circumstances when it would be and why it would be  
21 passed off, so I'm going to allow this question.

22 THE WITNESS: The rationale for it is  
23 primarily a business one. Level 3, as I mentioned  
24 earlier, is a sponsor of the Missoula plan. We are  
25 part of the group that is putting that forth. And

0501

1 one of the concerns of that group and also of the  
2 industry as a whole is this notion of phantom  
3 traffic. And that adjective is typically used to  
4 describe traffic that is sent to a particular carrier  
5 to terminate, but they don't either -- either they  
6 don't know who it came from or how that traffic  
7 should be rated. They don't have enough information,  
8 again, to determine who to bill or what to bill.

9           And Level 3, as a business policy, doesn't  
10 want to do anything that exacerbates that problem.  
11 With our connections directly to Qwest in exchange of  
12 traffic with Qwest, Qwest knows exactly who's sending  
13 it to them because they get to see the trunks. With  
14 an independent that would potentially have traffic  
15 given to them via one of Qwest's tandem switches that  
16 ultimately came from Level 3, that independent would  
17 not necessarily have the ability to determine that  
18 that traffic came from Level 3.

19           Given that, we don't want to be a willing  
20 participant that sort of creates a problem. Our  
21 stated business policy is that VoIP is an information  
22 service and, as such, is not subject to access  
23 charges, but if there isn't a way to measure and see  
24 who the party is that's sending the traffic and the  
25 confusion that that would create and the problems

0502

1 that creates for other providers in the industry,  
2 we've taken the business stance that we don't want  
3 to, again, exacerbate a problem that already exists.

4           So we made the policy decision to use an  
5 interexchange carrier that is either potentially  
6 directly trunked into that independent or, as we  
7 understand from Qwest, if a feature group D trunk was  
8 used, the appropriate switch recordings would be  
9 forwarded onto the independent such that they would  
10 know which party was responsible for the charges to  
11 settle out the completion of that call.

12           Independents cover a minority of the certain  
13 areas here in the United States, and as such, it  
14 doesn't represent, again, a large volume of traffic,  
15 so even though it happens to be a more expensive  
16 alternative, given the smaller amount of traffic that  
17 is ultimately destined to those rural areas, it made  
18 business sense for us, again, not to further  
19 complicate a industry problem that exists today.

20           Q. Do you recall Mr. Smith asking you several  
21 questions about Level 3's managed modem products?

22           A. I do.

23           Q. And I think he asked you some questions  
24 about the total volume of traffic between the two  
25 networks today in terms of dial-up traffic and

0503

1 percentages in dial-up traffic. Do you recall that?

2 A. I do.

3 Q. Are those -- is the amount of dial-up  
4 traffic on the increase or decrease?

5 A. I guess everything's somewhat relative. As  
6 a whole, dial-up access to the Internet is declining.  
7 However, Level 3 has been successful in its marketing  
8 to the ISPs that are receiving that traffic that we  
9 have won accounts that we previously didn't hold. So  
10 even though the overall dial-up or dial access market  
11 is declining as people migrate to broadband, Level 3,  
12 in certain areas, has actually seen a rise in traffic  
13 because we successfully sold our services to more  
14 ISPs that previously used other providers.

15 So there could be instances where if you  
16 were to look specifically at a traffic report of  
17 exchange between Qwest and Level 3, you may see an  
18 increase, again, largely due to that phenomenon of us  
19 winning more market share, but if you look at dial  
20 access traffic as a whole, it is declining and  
21 actually making a rather dramatic decline as the  
22 adoption of DSL and cable modem services continues to  
23 increase here in the States.

24 Q. And you mentioned that that served over  
25 several tens of thousands of interconnection trunks

0504

1 with Qwest today?

2 A. Tens of thousands. Level 3 has 1.8 million  
3 interconnection trunks in the U.S. today, and again,  
4 approximately a billion minutes of ISP usage  
5 traverses our network every single day.

6 Q. I believe Mr. Smith asked you about some  
7 specific call flows from Yakima on an ISP dial-up  
8 basis. You said those were, I think, offered using a  
9 local number; is that correct?

10 A. Yes, we -- I think we talked specifically,  
11 and I think the example was Earthlink. So Earthlink  
12 would have a number that they had assigned to them by  
13 us or was ported in to the Level 3 network if they  
14 previously used another provider, but it would be  
15 part of an exchange that is inside of the Yakima  
16 local calling area.

17 Q. In that situation, and I believe you were  
18 discussing a Qwest end user using their local service  
19 to make that dial-up call, are they paying a  
20 per-minute rate to make that call to the ISP today?

21 A. No, as I understand it, Qwest's local  
22 exchange tariffs are flat rate. If -- as I  
23 understand it, Qwest's proposal were to be adopted  
24 and it would require the media gateway or some modem  
25 functionality or ISP POP to be in that local calling

0505

1 area, and if it weren't, access charges should apply,  
2 that customer would then have to use their  
3 pre-subscribed long distance carrier to reach their  
4 ISP, and most of the market rates that I've seen out  
5 there today are between three and five cents per  
6 minute for that type of usage, which would materially  
7 affect and probably make dial-up ISP services  
8 unaffordable for the vast majority of Washington  
9 citizens.

10 Q. So is it your testimony that these services  
11 have never been offered in that manner, to your  
12 experience, the ISP dial-up services on a per-minute  
13 basis?

14 A. Some ISPs have 800 plans, or I should say  
15 what they call toll-free plans, where if you're in an  
16 area that doesn't have a local number to reach the  
17 ISP, you can dial a toll-free, an 800 number to reach  
18 the ISP, and those would be on a per-minute basis,  
19 but that is by far and away the majority of usage.  
20 It's, you know, for the rare instances that somebody  
21 may be traveling and is in a remote area, but still  
22 needs to connect to their ISP.

23 JUDGE RENDAHL: Mr. Cecil, just so I can  
24 clarify my understanding, you're saying a permanent  
25 or a per-minute basis?

0506

1 MR. CECIL: Per minute.

2 JUDGE RENDAHL: Thank you.

3 Q. In reviewing the Level 3 managed modem  
4 product, Mr. Smith asked you some questions about how  
5 Level 3 offers that as a fully-outsourced platform, I  
6 believe. Do you recall that?

7 A. Yes, I do.

8 Q. Is that, to your understanding, is that  
9 generally how these services are offered by carriers  
10 competing in this particular market space?

11 MR. SMITH: I will object. I think that  
12 whole area was asked and answered.

13 JUDGE RENDAHL: Can you repeat your  
14 question, Mr. Cecil?

15 Q. I guess my question is -- it goes to -- let  
16 me write this down. Just a sec. Is Level 3 unique  
17 in offering a fully-outsourced network platform to  
18 ISPs for wholesale dial-up services?

19 A. No, it is not. We've got two primary and  
20 very healthy competitors in the form of Qwest and  
21 Verizon Business in the marketplace.

22 Q. And to the best of your knowledge, do they  
23 offer these services in a similar manner?

24 A. Yes, my understanding is that they use  
25 architectures that are similar to ours.

0507

1 Q. And are their offerings, whether wholesale  
2 or retail, similar to how Level 3 offers those?

3 MR. SMITH: I'll object for foundation  
4 grounds.

5 JUDGE RENDAHL: Mr. Cecil.

6 MR. CECIL: Well, let me ask it this way.

7 Q. Are you aware of what your competitors do in  
8 the marketplace?

9 A. Yes, I am.

10 Q. And do your competitors offer these sorts of  
11 services in a similar manner?

12 A. Yes, they do.

13 Q. And one of those competitors is Qwest?

14 A. That's correct.

15 Q. Do you recall that Mr. Smith asked you some  
16 -- several questions about the interconnection  
17 agreements that Level 3 has with other large  
18 incumbent local exchange carriers?

19 A. Yes, I do.

20 Q. And I believe he asked you several questions  
21 about the give and take in those agreements. Do you  
22 recall that?

23 A. Yes, I do.

24 Q. Specific to Verizon, do you recall whether  
25 or not Level 3 and Verizon were able to reach



0508

1 agreement without arbitration?

2 A. Yes, they were able to avoid that process.

3 Q. And can you describe some of the gives and  
4 takes that Mr. Smith asked you about when he was  
5 focusing -- when he was focusing, for example, on the  
6 rates that the parties agreed to exchange that  
7 traffic? Do you recall that he asked you about some  
8 gives and takes?

9 A. Yes, I do.

10 Q. Can you describe what some of those other  
11 gives and takes were?

12 A. Yeah, I'd be happy to. Specifically with  
13 Verizon, a give on their part was to not look for us  
14 to interconnect in every local calling area. The  
15 interconnection agreement simply calls for us to go  
16 to each of their tandem locations.

17 They also allowed for the exchange of all  
18 types of traffic, not just local traffic and  
19 ISP-bound traffic, but interexchange traffic on the  
20 interconnection trunks. I guess that was both a give  
21 and a take. The benefit to them is not having to  
22 deploy a second network to do something that a  
23 network that had already been built was capable of  
24 doing.

25 We did not reach a definitive agreement on

0509

1 how to deal with VoIP. We somewhat agreed to  
2 disagree, but we outlined a mechanism of how to treat  
3 the traffic in the interim, which is to pay the  
4 reciprocal compensation rate for VoIP, and once the  
5 FCC makes a ruling, to apply that ruling as it's  
6 made.

7 We also agreed upon a rate that was lower  
8 than the 0007 rate that had been prescribed by the  
9 FCC for ISP-bound traffic.

10 We also, I mean, one of the gives is we were  
11 both able to avoid going through a lengthy  
12 arbitration and litigation process to move this  
13 agreement forward.

14 Q. And is it your testimony that those things  
15 were valuable to the Level 3 business?

16 A. They were valuable to Level 3, and Verizon  
17 also expressed similar value on their side.

18 Q. To your knowledge, how long has Level 3 and  
19 Qwest been in arbitrations?

20 A. In arbitrations, in actual hearings, I  
21 believe we have passed our one year anniversary. I  
22 believe we've been negotiating this agreement for a  
23 time period that is closing in on two years.

24 Q. In negotiating these agreements with Verizon  
25 and these other carriers, did you become familiar

0510

1 with their networks?

2 A. Yes.

3 Q. And do you know -- are you familiar with  
4 their trunking networks and their trunking  
5 requirements?

6 MR. SMITH: I object, Your Honor. This is  
7 clearly beyond the scope of -- I asked questions  
8 about contract provisions and the issue of  
9 differences between Qwest's trunking network, and the  
10 trunking network of other ILECs was never a subject  
11 of discussion.

12 JUDGE RENDAHL: And I think I agree, so I  
13 think we're getting a bit beyond the area of cross.

14 Q. Okay. Do you know when the Verizon  
15 agreement, the date of that agreement was signed? Do  
16 you recall?

17 A. We've had interconnection agreements with  
18 Verizon that go back to 1999. The underlying  
19 agreement I believe was struck in 2002, and then  
20 amended in 2004, is my recollection.

21 Q. Mr. Smith asked you several questions  
22 regarding Verizon's advocacy with regard to VoIP. Do  
23 you recall that?

24 A. I do.

25 Q. To the best -- and he also asked you several

0511

1 questions, I believe, about BellSouth and AT&T;  
2 correct? Do you recall that?

3 A. I do.

4 Q. So you've had experience negotiating  
5 contracts with ILECs over some period of time on a  
6 nationwide basis; is that correct?

7 A. That is correct.

8 Q. Based on that experience, would you find it  
9 customary that carriers would agree to disagree on  
10 certain items that the law has not -- or considered  
11 unsettled in the law in their interconnection  
12 agreements that they filed? Did you find that  
13 unusual or customary?

14 A. I think, because of the size of Level 3 as a  
15 carrier, the amount of traffic we exchange with other  
16 incumbent LECs, we're, you know, somewhat unique than  
17 if you were to look at some boilerplate agreements  
18 that exist out there. And I think there are  
19 provisions that both parties, you know, looked to to  
20 obtain and agree upon. And it's not just the law.

21 Qwest's, you know, public position on VoIP  
22 is that access charges should apply.

23 MR. SMITH: You know, I object. That answer  
24 goes well beyond even the question, let alone the  
25 scope of cross-examination. The answer is

0512

1 unresponsive. He's starting to talk about what  
2 Qwest's public position is on a particular issue, and  
3 that was not the question.

4 JUDGE RENDAHL: Mr. Greene, can you limit  
5 your answer to the question, please?

6 THE WITNESS: I guess I will end there with  
7 that statement.

8 MR. CECIL: Just a couple, one or two final  
9 questions, Your Honor, and I'm finished.

10 Q. The agreements that have been looked at, the  
11 Verizon agreement, do you know if that agreement is  
12 on file and approved in this state?

13 A. It is.

14 Q. And the BellSouth agreement, is that on file  
15 in all BellSouth states and available?

16 A. Correct, in nine BellSouth states.

17 Q. And is that also true of the SBC agreements?

18 A. Yes, the SBC agreement covers I believe 13  
19 or 14 states.

20 Q. So would these agreements be available to  
21 any carrier to opt into if they choose?

22 A. Yes, they would be.

23 Q. Including Qwest's subsidiary, QCC, if they  
24 were acting as a CLEC or registered as a CLEC in that  
25 state?

0513

1           A.    As I understand the rules, any CLEC can  
2 choose to opt into a particular agreement, as long as  
3 they can fulfill the requirements of that agreement.

4           MR. CECIL: Thank you. I have nothing  
5 further, Your Honor.

6           JUDGE RENDAHL: Is there any re-cross?

7           MR. SMITH: No.

8

9                           E X A M I N A T I O N

10 BY JUDGE RENDAHL:

11          Q.    All right. I do have a few clarifying  
12 questions, which I will limit, so we won't belabor  
13 this too much. I have some questions for my benefit  
14 that I'm going to be asking all the witnesses, and so  
15 -- and this is just to clarify my understanding of  
16 what you all mean when you refer to these things.

17          A.    Okay.

18          Q.    How do you -- how do you define toll or toll  
19 traffic? Is that the same as access or is it  
20 different?

21          A.    It depends upon the context. Typically,  
22 with a local interconnection network, that network  
23 would also be used to transmit traffic that is not  
24 just local in nature, but also within the LATA  
25 boundaries. In certain instances, a call from one

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1 local exchange to another local exchange inside the  
2 LATA boundaries would create toll charges, and that's  
3 sometimes referred to as toll traffic or, more  
4 specifically, as intraLATA toll.

5           The term is -- toll is also used generically  
6 to refer to I think any interexchange traffic, and so  
7 one could potentially consider a PSTN user in  
8 Virginia that made a phone call to a PSTN user in  
9 Seattle as making a toll call, as a per-minute charge  
10 would apply to it above and beyond any local rates  
11 that would apply. So the definition, I think,  
12 depends upon the context.

13       Q.   Okay. Do you use access in the same way,  
14 or do you distinguish toll and access?

15       A.   I would distinguish toll in the sense of  
16 that intraLATA call would not necessarily involve an  
17 interexchange carrier or an IXC. As I understand it,  
18 the incumbent providers, 271 subsidiaries aside, have  
19 been able to offer intraLATA toll services since '84,  
20 and that would be -- and so there wouldn't  
21 necessarily be an access charge there, but there is  
22 an additional per-minute charge that is collected  
23 from the end user and, as I understand the  
24 intercarrier compensation rules, that particular call  
25 will be compensated at a higher level, not a

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1 reciprocal compensation rate, whereas if an  
2 interexchange carrier were used, there would be  
3 originating and terminating access charges.

4 Q. So then how do you define access?

5 A. I would define it as calls that are subject  
6 to the switched access tariff of a local exchange  
7 carrier, and those typically have a per-minute or  
8 variable piece and typically also a facilities piece  
9 that may be represented as direct trunk transport,  
10 DTT, entrance facilities or other facility type  
11 components.

12 Q. Okay. And then what's the difference  
13 between access and switched access? Are they the  
14 same thing or is it --

15 A. I would say they're the same thing.

16 Q. Okay. And then just other terminology. Can  
17 you explain to me your understanding of the  
18 difference between an exchange, a local calling area,  
19 a rate center and a wire center? Do you understand  
20 what I'm asking you?

21 A. I am. I might have to -- I should have  
22 written all four of those down.

23 Q. Okay. I'll repeat them for you. An  
24 exchange, a local calling area, a rate center, and a  
25 wire center. And how do those concepts all



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1 interrelate with one another?

2       A.    Okay.  My definition of an exchange would be  
3 the fourth, fifth and sixth numbers in a ten-digit  
4 telephone number.  The first three are the area code,  
5 the next three I would consider to be that exchange,  
6 what's commonly referred to as an NXX.  It represents  
7 a block of 10,000 telephone numbers.

8            An individual exchange could be supported by  
9 a single carrier or that 10,000 block of telephone  
10 numbers could be broken into 1,000 blocks, and that  
11 exchange could be supported by multiple carriers.  
12 The first thousand phone numbers could belong to a  
13 cellular guy, the next thousand numbers could belong  
14 to the incumbent LEC, the third thousand could belong  
15 to a CLEC, and so on and so forth.

16           A local calling area is typically defined by  
17 a state commission.  It represents, as I understand  
18 it, where a community of interest exists and people  
19 have a desire to call locally around -- between one  
20 another, traditionally for voice traffic and  
21 traditional voice traffic.

22           The Commission defines those boundaries.  I  
23 guess any public party could petition the Commission  
24 that a local calling area could be expanded, and  
25 typically, as I understand it, the incumbent provider

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1 would do a cost study and determine what additional  
2 costs would be overlaid onto all users to expand the  
3 local calling area, and then I guess the Commission  
4 would make a determination if it were mandatory,  
5 meaning that it's included in everybody's price plan,  
6 or if it's optional and the consumer had a choice of  
7 whether or not to include different areas in their  
8 calling plan.

9 Q. Could there be more than one exchange in a  
10 local calling area?

11 A. Yes, there could be more than one exchange  
12 in a local calling area, as well as more than one  
13 rate center, as well as more than one wire center.

14 Q. And how do you define a rate center?

15 A. The way I define it, as a network person, is  
16 I literally go into the LERG, and it's a tag that's  
17 assigned to a group of exchanges. To be honest with  
18 you, I don't know its origins, but perhaps it was as  
19 different exchanges were still all in the same area,  
20 but there was enough people in that area to warrant  
21 that more than 10,000 phone numbers had to be  
22 assigned, you still wanted to have a way to sort of  
23 explain that all these people were still in the same  
24 area, even though they have phone numbers out of  
25 different exchanges and thus the term perhaps rate

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1 center, but I'm speculating a little bit there.

2 But rate centers can be found. The  
3 relationship is that there is probably one rate  
4 center with multiple exchanges inside of it, and it  
5 could be multiple 1,000 blocks of phone numbers or  
6 multiple 10,000 blocks of phone numbers.

7 The wire center, I understand it to be the  
8 boundaries in which an individual incumbent LEC's  
9 switch or serving wire center serves. So if you were  
10 to plot out the location of all the land lines that a  
11 switch served, that would define the wire center  
12 boundaries. And there could be multiple switches in  
13 one rate center or multiple boundaries. As an  
14 example, Seattle, Qwest has multiple switches there,  
15 and depending upon where you live will determine what  
16 central office your line is connected to, but those  
17 switches are all combined in the same Seattle rate  
18 center, which is part of a larger local calling area,  
19 which also, I believe, includes neighboring  
20 jurisdictions and suburbs --

21 Q. Okay.

22 A. -- having multiple exchanges throughout the  
23 lot.

24 Q. Thank you for entertaining my questions.

25 A. Okay. I hope it's the same answer everybody

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1 else gives.

2 Q. Well, that's why I'm asking. Okay. I do  
3 want to talk about your direct testimony very  
4 briefly, and if you can turn to page 32 of Exhibit  
5 31-T.

6 MR. SMITH: What page number, again?

7 Q. Thirty-two.

8 A. Thirty-two.

9 Q. Lines five through seven. And can you just  
10 explain, in maybe some plainer words, what you mean  
11 by that sentence, beginning, Lastly?

12 A. On line five?

13 Q. Yes.

14 A. I guess what I meant here, and it's probably  
15 only well-known between Level 3 and Qwest as to how  
16 many trunks are on the WilTel feature group D network  
17 and the number of trunks that are in interconnection  
18 network. I've only looked at this on a national  
19 level, but that network, specifically the feature  
20 group D network, is one-tenth the size of the local  
21 interconnection network that we have. So just  
22 inherently, if we were to try and follow Qwest's  
23 proposal, that network would have to be made ten  
24 times larger to handle the traffic that's existing  
25 today.

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1           Secondarily to that, Level 3 purchased  
2 WilTel approximately a year ago, and WilTel's largest  
3 customer, which represented between 60 and 70 percent  
4 of their revenues, was formerly SBC, now known as  
5 AT&T, and WilTel was supporting their 271 affiliate's  
6 long distance product. After SBC purchased AT&T,  
7 they made the business decision to move all that  
8 network -- or all that traffic off the WilTel network  
9 onto the AT&T network. It unfortunately is one of  
10 the reasons, in our earnings call this morning, that  
11 we missed our sales expectation. They've been more  
12 aggressive in moving that traffic off our network  
13 onto their own network than we had originally  
14 forecast.

15           So we have a network that is ten percent of  
16 the size. It also has its largest traffic component  
17 diminishing. As we go out and look to acquire  
18 companies, one of the things, obviously, is to  
19 further our product set and perhaps be able to  
20 address new markets, but it's also to find synergies  
21 and opportunities where the combination of both  
22 companies would result in a net savings.

23           And one of the big synergies that exist  
24 between Level 3 and WilTel is the ability of the  
25 traffic that's forecast on the WilTel network to be

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1 handed by the Level 3 switching architecture, and we  
2 no longer have to maintain what is a very costly  
3 circuit switched network that they have.

4           Because we have agreements in 85, 90 percent  
5 of the United States to use trunking, and actually,  
6 that agreement also expands into Washington with  
7 Verizon, to use existing local interconnection  
8 network, that certainly made business sense for us  
9 and we were, you know, through negotiation, and now  
10 through arbitration, trying to find a way to have it  
11 make business sense for Qwest. We want to pay them  
12 their tariff charges. We don't see that there's any  
13 revenue lost in this scenario by using the existing  
14 trunking, and that's really what this paragraph is  
15 trying to convey.

16       Q. Okay. One last question, and that's on the  
17 next page, the --

18       A. Page 33?

19       Q. Page 33, in the top paragraph, in the last  
20 sentence there, beginning, To avoid the situation.  
21 And it says that Level 3's agreed to send such  
22 traffic only to Qwest toll tandems, where adequate  
23 recordings for the third parties can be made.

24           Now, my question has to do with how can you  
25 identify that these are third parties, as opposed to

0522

1 Qwest customers, Qwest customers served by Qwest, as  
2 opposed to customers served by third parties? How do  
3 you identify that traffic?

4 A. By doing a database lookup. We're able to  
5 look at the telephone number and determine who the  
6 end carrier is. There is one small exception to  
7 that. If there -- and I believe there still is  
8 carriers that purchased UNE-P services from Qwest and  
9 now are under a commercial arrangement appear in the  
10 industry databases as Qwest. We don't get to see  
11 those people as somebody different. There's no  
12 standard database that allows us to do that. So  
13 since their identity is masked, Qwest doesn't update  
14 the database, their identities are masked to us, you  
15 know, that traffic would still flow through to Qwest.

16 You know, it is a situation that exists out  
17 there. It's, you know, so it's a bit of a hole in  
18 our proposal, it's a hole in their PRI proposal,  
19 because the same thing holds true when we use PRIs.  
20 There's a hole in our proposal that deals with the  
21 former UNE-P subscribers. There's also a hole in  
22 Qwest's PRI proposal, because it does not provide  
23 records to these folks, as well. They're masked to  
24 us. We don't know how many there are and to what  
25 extent that is still a problem. And if Qwest would

0523

1 identify them, we'd route the traffic differently,  
2 but they don't.

3 JUDGE RENDAHL: Okay. Well, that's all I  
4 have. Did you have a follow-up to my question?

5

6 R E C R O S S - E X A M I N A T I O N

7 BY MR. SMITH:

8 Q. Yes, and it's -- when you said a database  
9 lookup, what database are you speaking of?

10 A. We subscribe to -- actually, it's a service  
11 that -- and I'm forgetting the actual vendor that  
12 supplies it to us, but it's basically doing a local  
13 number portability lookup to see whether or not that  
14 number has been ported, and if it has been ported,  
15 who is the owning OCN, so that, you know, so if it  
16 was let's say formerly a Qwest telephone number and  
17 gets ported over to carrier X, if you looked in one  
18 database, you would -- it would appear that that  
19 phone number's part of this individual exchange, and  
20 that exchange belongs to Qwest.

21 So without doing that additional lookup, you  
22 wouldn't be able to determine that number had been  
23 ported and is no longer with Qwest. It is now, in  
24 fact, with carrier X.

25 Q. So it's a database maintained by some third



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1 party; is that --

2 A. Correct.

3 Q. But you don't know --

4 A. I can't remember the vendor that they're  
5 using, but everybody, you know, has to do that to be  
6 able to route calls in a modern network with ported  
7 phone numbers. Otherwise, you'd constantly be  
8 sending calls to the wrong place to get them to their  
9 final destination.

10 MR. SMITH: Thank you.

11 JUDGE RENDAHL: Okay. So unless there are  
12 any questions from Mr. Williamson.

13 MR. WILLIAMSON: I have a couple, and  
14 they're really quick.

15

16 E X A M I N A T I O N

17 BY MR. WILLIAMSON:

18 Q. The first one falls in the exact same  
19 sentence that the Judge was asking, to avoid the  
20 situation of sending traffic to a Qwest that they  
21 can't identify, you said that you would send that  
22 traffic to Qwest toll tandems?

23 A. Yes.

24 Q. If you could identify it yourself. And I  
25 was just curious whether that would be over a feature

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1 group D trunk in the arrangement you already had with  
2 them or what would you come up with?

3 A. It could be over feature group D trunking  
4 arrangement, or we actually may, in fact, send it to  
5 an interexchange carrier to do that. We do have  
6 trunks to interexchange carriers, and it's easier for  
7 us to maintain one big pipe to an interexchange  
8 carrier than to try and maintain a bunch of very tiny  
9 pipes to individual access or toll tandems. So but  
10 it could be over either method.

11 Q. And then my last question and my second, was  
12 there ever a time that Level 3 provided dial-up  
13 Internet access where they always had a physical  
14 presence in every local calling area that they  
15 served, or had customers that dialed in, do you know?

16 A. No, not in the seven or eight years that  
17 we've been in this business, we certainly have not  
18 done that. It's just -- there isn't any economical  
19 way to do that, and that's why you find, again, all  
20 the major ISPs and the vast majority of traffic  
21 coming into the Internet today comes over  
22 architectures exactly like the one we have. It's  
23 just the only way to do it economically. Otherwise,  
24 you'd materially change the way dial-up would have to  
25 be provided here in the United States.

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1                   JUDGE RENDAHL: Ms. Steel, do you have  
2 anything?

3                   MS. STEEL: No, thank you.

4                   JUDGE RENDAHL: Okay. Well, is there  
5 anything more for this witness? All right. Thank  
6 you very much, Mr. Greene.

7                   THE WITNESS: Thank you.

8                   JUDGE RENDAHL: You may step down. You may  
9 fly out, if you wish. And we'll be off the record  
10 for today. We'll reconvene again tomorrow morning.

11                   (Proceedings adjourned at 5:25 p.m.)

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