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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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PAC-WEST TELECOMM, INC.,	)
Petitioner,	)Docket UT-053036
	)Volume I
	)Pages 1-12

5

v.

6

QWEST CORPORATION,	)
Respondent.	)

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9                   A pre-hearing conference in the  
10 above-entitled matter was held at 10:33 a.m. on  
11 Monday, June 27, 2005, at 1300 South Evergreen Park  
12 Drive, S.W., Olympia, Washington, before  
13 Administrative Law Judge C. ROBERT WALLIS.

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15                   The parties present were as follows:

16                   PAC-WEST TELECOMM, INC., by Gregory J.  
17 Kopta, Inc., Attorney At Law, Davis Wright Tremaine,  
18 LLP, 2600 Century Square, 1501 Fourth Avenue,  
Seattle, Washington 98101.

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19                   QWEST CORPORATION, by Lisa Anderl,  
20 Attorney at Law, 1600 Seventh Avenue, Room 3206,  
Seattle, Washington 98191.

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24                   Barbara L. Nelson, CCR

25                   Court Reporter

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1           JUDGE WALLIS: Let's be on the record,  
2 please. This pre-hearing conference will please come  
3 to order. This is a pre-hearing conference in the  
4 matter of Commission Docket Number 053036, and it is  
5 being held in Olympia, Washington, on June 27 of the  
6 year 2005.

7           My name is Administrative Law Judge C.  
8 Robert Wallis, and I'm presiding this morning. The  
9 assigned Administrative Law Judge, Ann Rendahl, is  
10 unavailable to conduct this pre-hearing conference,  
11 and the record of the conference and the pre-hearing  
12 conference order will be transmitted to her so that  
13 she may conduct the balance of the proceeding.

14           Let's begin by asking for appearances at  
15 this time, please. For the Petitioner.

16           MR. KOPTA: Gregory J. Kopta, of the Law  
17 Firm Davis, Wright, Tremaine, LLP, on behalf of  
18 Pac-West Telecomm, Inc. My address is 2600 Century  
19 Square, 1501 Fourth Avenue, Seattle, Washington,  
20 98101-1688. Telephone, 206-628-7692; fax,  
21 206-628-7699; and e-mail gregkopta@dwt.com.

22           (Cell phone ringing.)

23           MS. ANDERL: Excuse me, Your Honor. I  
24 forgot to take care of one minor administrative  
25 detail.

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1 JUDGE WALLIS: Set it to stun, please.

2 MR. KOPTA: I like the sound effects. Mine  
3 just turns off.

4 MS. ANDERL: Representing the Respondent,  
5 Qwest Corporation, Your Honor, Lisa Anderl, in-house  
6 attorney. Business address is 1600 Seventh Avenue,  
7 Room 3206, Seattle, Washington, 98191. My telephone  
8 is 206-345-1574; my fax is 206-343-4040; and my  
9 e-mail is lisa.anderl@qwest.com.

10 JUDGE WALLIS: Thank you very much. Let me  
11 ask if there is anyone in this room at this time that  
12 wishes to petition for intervention in this docket?  
13 Let the record show that there is no response. We  
14 have had no request for attendance via the bridge  
15 line and I have not turned on the bridge line as a  
16 consequence. Are there expected to be any discovery  
17 activities in this docket?

18 MS. ANDERL: Yes, Your Honor. Qwest would  
19 expect to do some small amount of discovery through  
20 data requests.

21 JUDGE WALLIS: What is the nature of the  
22 discovery that you'll be seeking?

23 MS. ANDERL: I believe, Your Honor, that we  
24 will just be asking questions to get more detail  
25 about the type of traffic that's at issue.

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1 JUDGE WALLIS: Very well.

2 MS. ANDERL: The type of traffic that's  
3 being routed, the originating and terminating points  
4 around the whole VNXX issue.

5 JUDGE WALLIS: And is there any objection to  
6 invoking the discovery rule?

7 MR. KOPTA: Well, at this point, this will  
8 go also to the issues, the issue that we raised  
9 certainly would not involve a need for any factual  
10 development. It's purely a legal issue. If the  
11 issues are expanded as Qwest proposes to expand them,  
12 then it may be that these sorts of issues would be  
13 appropriate, but at this point, we object to  
14 expanding the scope of the issues beyond those that  
15 we've set out in our petition.

16 MS. ANDERL: Well, and Your Honor, I guess  
17 that is what -- I don't really understand that  
18 objection, because I've not -- I don't think that our  
19 answer or our counterclaim expands the issues.

20 JUDGE WALLIS: Mr. Kopta.

21 MR. KOPTA: Well, from our perspective, they  
22 do expand the issues, because we are asking for  
23 enforcement of the agreement as written in terms of  
24 providing compensation for traffic that is local, as  
25 rated by the local exchange routing guide and

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1 industry practice, and that is the issue, from our  
2 perspective. It's not an issue of going outside of  
3 industry practice and using customer location as a  
4 way of identifying the nature of the traffic.

5 MS. ANDERL: Well, Your Honor, it's our  
6 position that customer location is inexorably linked  
7 to the industry practice of locating how you rate and  
8 route the traffic, and that the VNXX, the practice of  
9 using VNXX to de-link the telephone number from the  
10 physical location of the customer is exactly the  
11 issue that is teed up by this complaint and directly  
12 along the lines of what we think needs to be  
13 adjudicated.

14 JUDGE WALLIS: I think that, just based on  
15 the parties' comments, that the issue does include --  
16 or the issues in this docket do include the issue of  
17 customer location, that it is linked by the petition  
18 and the answer, and that, consequently, that kind of  
19 discovery will be allowed. When we talk about  
20 schedule, we will talk about a schedule for  
21 discovery. Is there a desire for a protective order?

22 MR. KOPTA: Not knowing the nature of the  
23 discovery, it may be that one is appropriate in terms  
24 of if Qwest is going to be asking for customer  
25 location information, essentially CPNI, customer

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1 proprietary network information.

2 MS. ANDERL: We agree that that type of  
3 information should be protected and a protective  
4 order will be appropriate.

5 JUDGE WALLIS: Very well. We'll arrange for  
6 entry of a protective order.

7 Procedural schedule is the next topic for  
8 consideration, and I suggest at this time we move to  
9 look at WAC 480-07-650, which, in subsection four,  
10 identifies procedural determinations that must be  
11 made. Those will be necessary to determine a  
12 schedule, and the first question is whether the  
13 parties believe that the issues raised can be  
14 determined on pleadings and submissions and oral  
15 statements without further proceeding, or do we  
16 believe that a hearing will be necessary?

17 MR. KOPTA: Our position is that the former  
18 is appropriate, that no hearing should be necessary,  
19 that we should be able to proceed on a paper record.

20 MS. ANDERL: At this point, without knowing  
21 whether there will be disputes as to facts, we would  
22 concur.

23 JUDGE WALLIS: Very well. Let's establish  
24 --

25 MS. ANDERL: I would like -- you said oral

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1 statements, and I did want to make sure that there  
2 was a chance, either before the ALJ or before the  
3 full Commission, for oral argument.

4 JUDGE WALLIS: Yes. My intention would be  
5 to allow oral statements, subject to the review by  
6 the presiding administrative law judge, at the  
7 parties' determination, as that point nears.

8 What do we believe will be an appropriate  
9 schedule for discovery for the submission of  
10 additional information and for the scheduling of an  
11 opportunity for parties to comment or argue the  
12 matter to the ALJ?

13 MS. ANDERL: Your Honor, I would say that we  
14 can get our discovery served within a week. And  
15 typically, then, there are two calendar weeks  
16 permitted for responses, ten business days, unless  
17 that date is otherwise shortened. And then, of  
18 course, some time to synthesize the responses and  
19 determine if a follow-up is necessary.

20 So I think, realistically, we might be  
21 looking at four to six weeks before any opening  
22 pleadings could be filed, assuming that the pleadings  
23 would be simultaneous. I don't know if -- we haven't  
24 talked about whether there should be two rounds of  
25 simultaneous comments or the complainant should file

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1 first with Qwest responding, so that makes a  
2 difference, I guess.

3 JUDGE WALLIS: Very well. The schedule  
4 provided for in the rule requires a recommended  
5 decision within 75 days of the date the petition was  
6 filed, which, in this case, was June 9th, so that  
7 would be roughly July 9th, August 9th, and two weeks  
8 would be August 23rd, in rough numbers.

9 Backing up from that, we would need three to  
10 four weeks for preparation of an order, which would  
11 put the oral session into the last week of July, and  
12 I'm presuming that the parties would like to provide  
13 further information to the Commission. Do you  
14 believe that's correct?

15 MR. KOPTA: We would certainly like to, yes.

16 MS. ANDERL: As would we. I think that  
17 probably the complaint and answer gives a framework  
18 --

19 JUDGE WALLIS: Yes.

20 MS. ANDERL: -- of what the issues are, but  
21 the nature of these pleadings make them a little  
22 awkward to read. I think it's probably easier for  
23 the parties to explain their positions in a brief,  
24 where you get more of an opportunity to do a  
25 narrative.



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1           JUDGE WALLIS: Do you think that the  
2 additional information should be provided as an  
3 appendix to the brief or provided prior to the  
4 briefing?

5           MS. ANDERL: I was contemplating, Your  
6 Honor, that the briefing would include any additional  
7 information appended to it, either in the form of  
8 exhibits that are discovery responses or in the form  
9 of affidavits, if necessary, or declarations, but not  
10 prior to briefing.

11           JUDGE WALLIS: Very well. If we are aiming  
12 for oral comments during the week of July 25th, when  
13 would you like to file your briefs?

14           MS. ANDERL: Will there be one round of  
15 briefs or two?

16           JUDGE WALLIS: We're on a pretty tight time  
17 schedule here.

18           MS. ANDERL: I understand that, Your Honor.

19           JUDGE WALLIS: I'm thinking one round.

20           MS. ANDERL: Okay. Well, and I mean, of  
21 course Pac-West can waive the time line and the rule  
22 if they choose to do so.

23           JUDGE WALLIS: That's correct. We haven't  
24 asked if they choose to do so. Would you like  
25 simultaneous opening and answering or seriatim

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1 briefing?

2 MR. KOPTA: I think simultaneous and a  
3 single round would be sufficient. I think each of us  
4 is fairly familiar with the other's position.

5 JUDGE WALLIS: Very well. Okay. So on what  
6 schedule? I can share my calendar.

7 MS. ANDERL: I'm just going to look up  
8 there.

9 MR. KOPTA: We're thinking the 15th.

10 MS. ANDERL: Your Honor, I was thinking July  
11 18th, which is just the difference between a Friday  
12 and a Monday, but I don't know that we'll have  
13 discovery responses by then, since that's only three  
14 weeks from today.

15 JUDGE WALLIS: Okay. What if we moved the  
16 hearing date into the first week of August, using the  
17 term hearing loosely.

18 MS. ANDERL: Then July 22nd, that Friday,  
19 would probably work for us.

20 MR. KOPTA: We have some internal scheduling  
21 issues that make that week not so good.

22 JUDGE WALLIS: Let's be off the record for  
23 an informal discussion on the scheduling.

24 MS. ANDERL: Thank you.

25 (Discussion off the record.)

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1           JUDGE WALLIS:  Let's be back on the record,  
2  please.  During a scheduling discussion, the  
3  following schedule has been determined appropriate  
4  and is agreed by the parties.

5           Qwest will propound its discovery questions  
6  no later than July 1.  Answers to those questions  
7  will be due no later than July 15th.  Pac-West will  
8  propound its discovery questions no later than July  
9  6th, and answers to those questions will be due no  
10 later than July 19th.

11           The parties will submit simultaneous briefs  
12 by July 27.  It's contemplated that those briefs will  
13 contain a full legal argument on the issues that have  
14 been joined in this docket, and may include the  
15 submission of additional evidence as attachments to  
16 the brief.

17           The oral presentation will take place on the  
18 morning of August 3rd, to begin at 9:30 a.m., and the  
19 decision deadline under the Commission's rule in this  
20 docket is July 23 (sic).  That's for a subject --  
21 decision by the presiding officer, and that is  
22 subject to review by the Commission.

23           Very well.  Is there anything further to be  
24 undertaken this morning?

25           MS. ANDERL:  Excuse me, Your Honor.  You

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1 said July 23rd as the deadline.

2 JUDGE WALLIS: I'm sorry, it's August 23rd.

3 MS. ANDERL: There's nothing from Qwest,  
4 Your Honor.

5 MR. KOPTA: Nothing more from Pac-West.

6 JUDGE WALLIS: Very well. Thank you all for  
7 attending, and this matter is adjourned.

8 (Proceedings adjourned at 11:01 a.m.)

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