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1 PROCEEDINGS

2 JUDGE MOSS: Good morning, everybody. My
3 name is Dennis Moss. I'm an administrative law judge
4 with the Washington Utilities and Transportation
5 Commission. We are convened this morning in a
6 complaint matter brought by the Lummi Nation against
7 Verizon Northwest, Inc., and Qwest Corporation.

8 This is our first prehearing conference at
9 which we will take appearances, discuss our process,
10 set a schedule, and conduct whatever other business
11 will promote an expeditious resolution of this
12 proceeding.

13 So let's begin with the appearances, and we
14 will start with the Complainant, Ms. Schaff.

15 MS. SCHAFF: Good morning. My name is
16 Margaret Schaff. I represent the Lummi Nation. My
17 address is 749 Deer Trail Road, Boulder, Colorado,
18 80302. My phone number is (303) 443-0182. My fax
19 number is (303) 443-0183, and my e-mail is
20 mschaff@att.net.

21 MR. NEUBECK: My name is David Neubeck. I'm
22 in-house counsel for the Lummi Nation. Just for the
23 record, I think the Complaint was signed by another
24 party from my office, Judith K. Bush. We work in the
25 same office. My mailing address is 2616 Kwina Road,

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1 Bellingham, Washington, 98226. My phone number is
2 (360) 384-2226. Fax number is (360) 312-9824, and my
3 e-mail address is davidn@lummi-nsn.gov.

4 JUDGE MOSS: Go ahead, Verizon.

5 MR. O'CONNELL: Timothy J. O'Connell, law
6 firm of Stoel Rives, LLP, 600 University Street, Suite
7 3600, Seattle, Washington, 98101. Telephone is (206)
8 624-0900; fax, (206) 386-7500; e-mail
9 tjoconnell@stoel.com. With me at counsel table is
10 Mr. Ridge.

11 MR. RIDGE: My name is John Ridge of Stoel
12 Rives, 600 University Street, Suite 3600, Seattle,
13 Washington, 98101. Telephone is (206) 386-7575, and my
14 e-mails is jhridge@stoel.com.

15 JUDGE MOSS: For Qwest?

16 MS. ANDERL: Thank you, Your Honor. Lisa
17 Anderl, in-house counsel for Qwest Corporation. My
18 address is 1600 Seventh Avenue, Room 3206, Seattle,
19 Washington, 98191. My telephone is (206) 345-1574. My
20 fax is (206) 343-4040, and my e-mail is
21 lisa.anderl@qwest.com.

22 JUDGE MOSS: I had Mr. Sherr down on the
23 pleadings. Will he be appearing as well?

24 MS. ANDERL: It's unlikely he will make an
25 appearance in this case.

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1 JUDGE MOSS: It does not appear that we have
2 an appearance from Public Counsel, but perhaps on the
3 bridge line? No. Nor does it appear we have an
4 appearance from Staff; on the bridge line? No. Are
5 there any other appearances today of counsel?
6 Apparently not.

7 There are no petitions to intervene. As I
8 recall, the Complaint, I believe, makes reference to an
9 audit or that one was done; is that correct?

10 MS. SCHAFF: That's correct.

11 JUDGE MOSS: From that I'm drawing the idea
12 there has been discovery already?

13 MS. SCHAFF: There was an informal issue
14 before the Washington Utilities and Transportation
15 Commission, and at that time, there was some discovery
16 done. It wasn't very conclusive. We still have a
17 number of outstanding factual issues that I think are
18 important to address.

19 JUDGE MOSS: So you want to do discovery by
20 data requests or otherwise?

21 MS. SCHAFF: Yes.

22 JUDGE MOSS: Mr. O'Connell?

23 MR. O'CONNELL: Before we invoke the
24 discovery rule, I was going to raise a pleadings
25 motion. Verizon intends to file a motion for summary

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1 determination on the statute of limitations issue. I
2 think that motion will end up, in fact, being
3 determinative, and so my suggestion is to hold off
4 invoking the discovery rule until after parties have
5 had a chance to review and brief that motion. There is
6 no reason to expend a lot of the parties' time and
7 resources pursuing discovery --

8 JUDGE MOSS: What you are suggesting may be
9 more in the nature of a motion to dismiss than a motion
10 for summary determination, but where would I look for
11 the statute of limitations?

12 MR. O'CONNELL: The applicable statute of
13 limitations is 80.04.240, and to the degree there is a
14 matter out of that, 4.16.160. That's what the
15 Commission determined last year are applicable statutes
16 of limitations in the Glick versus Verizon matter. I
17 think -- when damages were sought going back to 1995.

18 JUDGE MOSS: Through what period?

19 MR. O'CONNELL: According to the Complaint,
20 up until, I believe, 2004, 2005.

21 JUDGE MOSS: What do you contend the statute
22 of limitations is?

23 MR. O'CONNELL: Two years. The Complaint was
24 filed in January of 2006. I believe two years is the
25 outside limit according to 80.04.240, and in the Glick

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1 case, the Commission confirmed in a private case two
2 years is the applicable statute of limitations --

3 I referenced it as being a motion for summary
4 determination rather than a motion to dismiss because I
5 believe to resolve the matter, you are going to need to
6 look at some of the applicable records and a witness to
7 corroborate what are the applicable records.

8 JUDGE MOSS: So your assertion will be that
9 there are no material facts in dispute concerning the
10 period of the Complaint, and so in that sense, it has
11 the quality of a motion for summary determination. I
12 see your point. The other citation you gave me,
13 4.16.160, I don't believe I've ever reviewed Section 4
14 of the RCW.

15 MR. O'CONNELL: Title 4 is the generally
16 applicable statute of limitations title for the State
17 of Washington.

18 JUDGE MOSS: For civil actions?

19 MR. O'CONNELL: Correct, and in the Glick
20 case, which I would be happy to give you --

21 JUDGE MOSS: I've got a copy. Did you bring
22 a copy for counsel?

23 MR. O'CONNELL: I did, and I've already
24 provided a copy to counsel. There are some issues that
25 need to be briefed so I can't point to this and say,

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1 rule in our favor, but I think those issues are pretty
2 apparent and are pretty substantially dispositive
3 issues that it would make sense to take those issues up
4 before the parties begin factual development, which in
5 all likelihood is not necessary.

6 JUDGE MOSS: I do prefer if there are
7 threshold issues to have those briefed early and get
8 those out of the way. We've often done that in the
9 case of jurisdictional disputes, for example, a matter
10 with which I've had some familiarity with Qwest some
11 years ago.

12 Interestingly enough, in nine years of
13 presiding in Commission proceedings, this is the first
14 time I've had a statute of limitations argument, so
15 it's obviously not something that's real commonplace,
16 but this is the nature of a private complaint, so it
17 does raise perhaps some different legal concerns. So
18 it being your intent to file, what sort of time frame
19 are you looking at?

20 MR. O'CONNELL: I was hoping to be able to
21 file it today, but my witness that can corroborate the
22 documents was not able to complete her declaration. I
23 can commit to Your Honor that we can have the motion
24 filed within two weeks.

25 JUDGE MOSS: So that would be by about April

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1 6th?

2 MR. O'CONNELL: Yes.

3 JUDGE MOSS: Do you want to commit to that
4 date?

5 MR. O'CONNELL: Yes.

6 JUDGE MOSS: Would Qwest be joining that
7 motion?

8 MS. ANDERL: I believe that we would;
9 although, the allegations against us are somewhat
10 different, but I believe that any claims against us are
11 also barred by the statute of limitations.

12 JUDGE MOSS: What sort of response time would
13 you like to have, Ms. Schaff?

14 MS. SCHAFF: I don't know what's customary,
15 but I think probably two weeks or two weeks and a day
16 until the 21st would be sufficient.

17 JUDGE MOSS: I think a couple of weeks is
18 within the realm of reasonableness, so you want until
19 the 21st?

20 MS. SCHAFF: Yes, please.

21 JUDGE MOSS: With respect to discovery, I'll
22 say this, and that is if the Lummi Nation finds a need
23 for discovery in relation to this question, then I do
24 want them to go forward with that so they are fully
25 armed if they want to assert the disputes concerning

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1 those facts. As to the balance, I think we can just
2 agree that we will postpone any more substantive
3 discovery until we resolve this matter. I would expect
4 to resolve such a motion fairly quickly.

5 MR. O'CONNELL: Judge, the summary
6 determination rule references us to CR-56, the Superior
7 Court civil rules, and under CR-56, sub f, there is a
8 mechanism for a party to assert in response to a motion
9 for summary determination that they are unable to
10 adequately respond because of a need for discovery, and
11 Washington courts have articulated that, in fact, that
12 could be an appropriate response to a motion for
13 summary determination if the party opposing the summary
14 motion can point to specific facts that need to be
15 discovered that are relevant to the motion. Merely
16 just saying we want to do discovery in general is not a
17 sufficient response, but we certainly leave that to
18 you. If there are facts that need to be discovered, so
19 be it.

20 JUDGE MOSS: All I have at this point is the
21 pleading, so it's a little difficult for me to fully
22 appreciate the nature of the facts that might be
23 presented relative to that or any other issue in the
24 case. I would expect at some point to see some bills,
25 what evidence there might be of the presence or absence

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1 of the service in the matter, and I'm not quite sure
2 what I might see in that regard, but I understand your
3 point, and that's another point that might be developed
4 by argument if we need to have argument.

5 My preference is that we have things so
6 thoroughly briefed that we don't need to reconvene for
7 an oral argument. This seems pretty straightforward to
8 me on it's face. Although, I have in the past been
9 deceived by the appearance of things, so that wouldn't
10 entirely surprise me if it happened here.

11 Let's go forward with that, and given that
12 situation, I wonder if we might just put off any
13 further scheduling until we have disposed of this
14 threshold matter, and if it's just a matter of
15 schedule, I like for us to convene in person for this
16 first prehearing conference. I think it's good for
17 everybody to sit down and look at each other and we're
18 going to talk about scheduling a date for possible
19 settlement discussions as part of our procedural
20 schedule and the need for hearings, if any, blah, blah,
21 blah. We can do all that by telephone at a later point
22 in time, or I can have you here if you prefer. We will
23 just schedule the date for the motion and the response
24 today. I do want to try to understand the case a
25 little bit better. Ms. Schaff, is there any money

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1 claim against Qwest here?

2 MS. SCHAFF: No, there is not.

3 JUDGE MOSS: Qwest is involved by virtue of
4 being at one end of some technology. Is that the basic
5 gist of it?

6 MS. SCHAFF: That is correct, and I suppose
7 if there were a determination that monetary
8 compensation was due us, it could be at the fault of
9 Qwest if, in fact, Qwest disconnected the service that
10 was active and being paid for through Verizon.

11 What my understanding of the law is is if
12 there are two companies involved, it's up to them to
13 sort out who is responsible for what and who is
14 ultimately responsible to pay the claim. We were
15 paying Verizon, but we weren't paying Qwest, but if it
16 was, in fact, Qwest's fault that the service was not in
17 effect, I would suppose that Verizon would have a claim
18 against Qwest to recover what they have paid to us
19 eventually.

20 JUDGE MOSS: We can plow that ground if we
21 need to further down the line. I thought I understood
22 that to be the case, but I wanted to be sure. The
23 setup that we are talking here physically, as I
24 understand it from the pleadings, what we are looking
25 at here is Verizon phone service at one location on the

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1 reservation bridging to a Qwest service somewhere else
2 on the reservation? I think of it as an EAS bridge.
3 It's not like that? Ms. Anderl is shaking her head.

4 MS. ANDERL: I'm not the most technical
5 person in the room, but maybe I am. It was my
6 understanding of the allegations from the complaint is
7 that the service was a foreign exchange service, which
8 allows a person purchasing a piece of dedicated
9 transport from a distant central office to have a
10 presence in another central office whereby customers --

11 Say, for example, a Seattle company, a
12 Seattle insurance company who wanted to have a local
13 presence in Olympia could buy a private line service
14 from Qwest, purchase dedicated transport from Seattle
15 to Olympia, obtain a presence on the switch in Olympia,
16 obtain an Olympia telephone number, and then Olympia
17 callers would look in the Yellow Pages and see a local
18 Olympia telephone number, they would dial that number
19 and it would be connected to the Olympia switch and
20 then be transported over the private line portion to
21 the Seattle switch that connected with the phone that
22 then rings in the insurance office, and it enables --
23 it's not an EAS bridging in an unlawful sense because
24 all the components of the service are paid for by the
25 customer who desires to have the physical presence in

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1 the distant local calling area to enable customers from
2 that calling area to call him without incurring a toll
3 charge.

4 JUDGE MOSS: So when we use that term "EAS
5 bridging," we are necessarily implying something
6 illegal, are we?

7 MS. ANDERL: We are, based on prior decisions
8 of this Commission. Way back in the late '80's or
9 early '90's, EAS bridgers helped be performing an
10 unlawful act by avoiding access charges and toll
11 charges.

12 JUDGE MOSS: That's what I get for delving
13 into the realm of telecom acronym.

14 MS. ANDERL: A foreign exchange is legal, and
15 the way I explain the foreign exchange service, it was
16 wholly provided by Qwest because Qwest is the local
17 service provider in both Seattle and Olympia. There is
18 a jointly provided foreign exchange service where a
19 customer can obtain that same type of service between
20 Qwest and Verizon territory, and in those cases, the
21 companies cooperate to perform the foreign exchange
22 service.

23 What happened here, I don't have enough
24 information to tell you exactly what foreign exchange
25 circuits may or may not have ever been in place between

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1 Verizon and Qwest, but that's the sense that I have
2 that is the service that's alleged to be involved.

3 JUDGE MOSS: Is that about consistent with
4 your understanding, Ms. Schaff?

5 MS. SCHAFF: That's my understanding of FX
6 service. I would say from our point of view, we have
7 no other location. We just have one location on the
8 reservation, so we can't imagine why we ever would have
9 needed this service, and with 30 years of institutional
10 knowledge and people at the tribe that have done our
11 phone service, no one ever recalls ordering this or
12 having the need for it. It's something that was on the
13 bill and nobody knew what it was.

14 At one point, they called the phone companies
15 and said, What is this thing we are getting billed
16 almost a thousand dollars a month for, and they got an
17 unintelligible answer, so they ended up hiring an audit
18 firm to figure out what this was, and the audit firm
19 when it called the numbers that you were supposed to
20 call to get on this bridge, they weren't even connected
21 to us. They were ringing at somebody's home.

22 So then we went through this informal
23 process, and Qwest went back through their files and
24 said that the numbers that were calling and finding
25 different homes and so forth and using those numbers,

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1 Qwest said their records only go back to 1995, and
2 those numbers had not been assigned to any service at
3 that time.

4 So we don't know if the service ever existed
5 at all, and we don't have any reason for the service
6 ever to have had existed. Nobody recalls having needed
7 it or asking for its disconnection. We just eventually
8 figured out there was something on our bill that nobody
9 knew what it was and couldn't get an answer, and we
10 tried to have it disconnected and they wouldn't even
11 disconnect it. Since it wasn't connected --

12 JUDGE MOSS: I think that tells me all I need
13 to know at this juncture. It sounds like a most
14 intriguing matter if we get beyond the threshold issue
15 of the statute of limitations. So with that said, I
16 have probably said enough.

17 MR. O'CONNELL: While we are still on the
18 subject of scheduling the motion, again, thinking to
19 the comparable CR-56 process that we see in Superior
20 Court, the moving party would ordinarily be allowed a
21 reply on a summary judgement motion, so if it would be
22 acceptable, I would like to build in a week for us to
23 file a reply to the response. Ms. Anderl is saying two
24 weeks. I'm happy with that as well.

25 JUDGE MOSS: So May 12th then.

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1 MR. O'CONNELL: May 5 would be two weeks.

2 JUDGE MOSS: May 5th.

3 MS. ANDERL: That should give me enough time.

4 I will be back in the office on Monday, May 1st.

5 JUDGE MOSS: So I think that does complete
6 our scheduling needs for the day. It may not be the
7 most appropriate time to mention it under the
8 circumstances, but I will mention that we do as a
9 Commission encourage alternative dispute resolution in
10 complaint cases as in others, and as we move along,
11 that's something to keep in mind. As I mentioned, if
12 we get past the threshold and add additional procedural
13 dates, we will include a date for the parties to sit
14 down and talk about the settlement.

15 I neglected to check with the records center
16 before I came here today as to the number of copies we
17 need to accompany your filings. I will put that in the
18 prehearing conference order so you will not need to
19 file an excessive number of copies. All filings do
20 come through our records center, and I think everybody
21 seems to understand that process. Don't file things
22 directly with me. We do ask for electronic copies of
23 filings, and that's all spelled out in our procedural
24 rules.

25 I will, as I mentioned, enter a prehearing

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1 conference order that will basically restate the things
2 we have discussed today. Is there any other business
3 we need to take up this morning? Again, I thank you
4 all for being here this morning and look forward to
5 working with you to getting this case resolved.

6 (Prehearing conference adjourned at 9:58 a.m.)

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