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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 LEVEL 3 COMMUNICATIONS, LLC,)

4)

5 Petitioner,)

6)

7 vs.) DOCKET NO. UT-053039

8) Volume I

9 QWEST CORPORATION,) Pages 1 - 16

10)

11 Respondent.)

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13 A prehearing conference in the above matter

14 was held on July 8, 2005, at 9:32 a.m., at 1300 South

15 Evergreen Park Drive Southwest, Olympia, Washington,

16 before Administrative Law Judge ANN E. RENDAHL.

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19 LEVEL 3 COMMUNICATIONS, LLC, by VICTORIA
20 MANDELL, Regulatory Counsel, and GREGG STRUMBERGER,
21 Regulatory Counsel, 1025 Eldorado Boulevard,
22 Broomfield, Colorado, 80021; telephone (Mandell) (720)
23 888-2439.

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25 QWEST CORPORATION, by LISA A. ANDERL,
Associate General Counsel, 1600 7th Avenue, Suite 3206,
Seattle, Washington 98191; telephone, (206) 345-1574.

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31 Kathryn T. Wilson, CCR

32 Court Reporter

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

2 JUDGE RENDAHL: Good morning. I'm Ann
3 Rendahl. I'm the administrative law judge presiding
4 over this proceeding. We are here before the
5 Washington Utilities and Transportation Commission on
6 Friday morning, July 8th, 2005, for a prehearing
7 conference in Docket No. 053039, which is a petition
8 for enforcement filed by Level 3 Communications, LLC.

9 The purpose of our prehearing this morning is
10 to take the appearances of the parties and to discuss a
11 schedule for the Commission's consideration of this
12 petition and Qwest's counterclaim and address any other
13 issues we need to discuss, such as discovery, if we
14 need that, or a protective order.

15 So let's go ahead and take appearances.
16 Before we do that, I need to make a disclosure. Based
17 on the pleadings, which I read briefly this morning, I
18 noticed that one of the attorneys who signed the
19 pleading for Qwest was Alex Duarte. He lived
20 downstairs from my mother in a three-unit building in
21 Berkeley for several years. He's not a friend, but
22 he's an acquaintance, but I don't think it would in any
23 way bias my presiding over this case, but I do need to
24 disclose. These things come up occasionally where
25 people cross your path, so is there any objection to my

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1 continuing to preside over this proceeding?

2 MR. STRUMBERGER: Not from Level 3.

3 MS. ANDERL: And neither from Qwest; nor do
4 we think Mr. Duarte is going to have an active role in
5 the hearings.

6 JUDGE RENDAHL: Let's take appearances.
7 Since this is your first appearance, if you could state
8 your full name, the party you represent, your full
9 address, telephone number, fax number, and e-mail, that
10 will be helpful. What I will do is put together -- I
11 know it seems like a lot of information, but it's
12 helpful in getting the information to the records
13 center, and that way, we can contact you in any way by
14 U S Mail, by fax number, and by e-mail.

15 Usually what the Commission does is when
16 sending out orders and notices, we send a courtesy
17 e-mail copy to everyone on the list and then back up by
18 mail, and if I need to communicate with you or you need
19 to communicate with each other, then we have all that
20 information that's attached to the prehearing
21 conference order. Mr. Strumberger?

22 MR. STRUMBERGER: I'm Gregg Strumberger,
23 G-r-e-g-g, S-t-r-u-m-b-e-r-g-e-r. I'm regulatory
24 counsel for Level 3 Communications, LLC. The business
25 mailing address is 1025 Eldorado Boulevard in

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1 Broomfield, Colorado, 80021. My telephone number is
2 (720) 888-1780. My fax number is (720) 888-5134, and
3 my e-mail is gregg.strumberger@level3.com.

4 JUDGE RENDAHL: Thank you. Ms. Mandell?

5 MS. MANDELL: Victoria Mandell, regulatory
6 counsel for Level 3 Communications, LLC; same address
7 as Mr. Strumberger. Telephone number is
8 (720) 888-2439. Fax is (720) 888-5134, and the e-mail
9 address is victoria.mandell@level3.com.

10 JUDGE RENDAHL: Thank you very much.

11 Ms. Anderl?

12 MS. ANDERL: Appearing for Qwest, Lisa
13 Anderl, associate general counsel. Mailing address is
14 1600 Seventh Avenue, Room 3206, Seattle, Washington,
15 98191. My telephone is (206) 345-1574. My fax is
16 (206) 343-4040, and my e-mail is lisa.anderl@qwest.com.

17 JUDGE RENDAHL: Thank you. I'll ask both
18 parties, is there anyone else you want to be on the
19 electronic list for either Level 3 or Qwest?

20 MR. STRUMBERGER: For Level 3, we will have
21 Rick Thayer, T-h-a-y-e-r.

22 JUDGE RENDAHL: What would his e-mail address
23 be?

24 MS. MANDELL: I believe it's
25 richard.thayer@level3.com.

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1 JUDGE RENDAHL: If you find later that's not
2 the case, if you could just call me or e-mail me, and
3 my e-mail address is arendahl@wutc.wa.gov. That will
4 be on the prehearing conference notice as well so you
5 know how to communicate with me; and for Qwest?

6 MS. ANDERL: Yes, Your Honor, Adam Sherr,
7 please, and it's adam.sherr@qwest.com. I would like to
8 have Mr. Mark Reynolds on there as well, but I can't
9 remember his e-mail because it autopopulates when I
10 send him e-mails. I think he's mark.reynolds with the
11 numeral three.

12 JUDGE RENDAHL: I have it from other cases,
13 but I'll add him onto the list.

14 Do you all want to invoke the discovery rule?
15 Is there any reason to invoke that in this proceeding?

16 MS. ANDERL: Yes.

17 MR. STRUMBERGER: Yes.

18 JUDGE RENDAHL: Okay, and that's WAC
19 480-07-400. We discussed protective order before going
20 on the record, so you would like a standard protective
21 order in this proceeding?

22 MS. ANDERL: Yes, Your Honor.

23 MR. STRUMBERGER: That's fine.

24 JUDGE RENDAHL: That will be issued either
25 before or after the prehearing conference, depending on

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1 which gets done first. Under the rule for petitions
2 for enforcement, things that we talk about in the
3 prehearing or that you need to inquire into is
4 conference is -- first of all, do you all feel this
5 matter needs a hearing?

6 MR. STRUMBERGER: Yes, we do.

7 JUDGE RENDAHL: Having read through, as I
8 said, in sort of a cursory fashion this morning, it
9 appears there are issues of fact we need to sort
10 through and also issues of law, so you would like to do
11 a briefing as well?

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

13 JUDGE RENDAHL: Do you have a schedule that
14 you are proposing?

15 MR. STRUMBERGER: We do. Unfortunately, we
16 don't have a printed copy.

17 JUDGE RENDAHL: That's all right.

18 MS. ANDERL: Your Honor, before we go to
19 that, could I address one procedural issue that I'm
20 afraid is going to escape me if we don't do it right
21 now?

22 JUDGE RENDAHL: Go ahead.

23 MS. ANDERL: I would like to say I talked
24 with the attorneys for Level 3, and I think we would
25 like to stipulate that electronic service is acceptable

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1 as if it were received in paper copy between each
2 other, and we would also like to request electronic
3 filing at the Commission with paper copy to follow the
4 next day.

5 MR. STRUMBERGER: That is acceptable with
6 Level 3.

7 JUDGE RENDAHL: Then I will make it clear in
8 the prehearing conference order that I've authorized
9 the parties to submit their documents electronically on
10 the filing deadlines that we've set. What that means
11 is you need to file a paper copy with the Commission
12 the next business day, so it extends the filing
13 deadline one day so you don't have to get the paper
14 here on that day.

15 MR. STRUMBERGER: In other proceedings with
16 Qwest, and Lisa, just to make sure this is okay with
17 you, we exchanged documents and served the other party
18 in both pdf and in Word format. Is that acceptable to
19 you?

20 MS. ANDERL: I think it is. I know there
21 have been some issues with the Word file and being able
22 to see hidden data in Word files. I think everybody is
23 over that. I think there is a technical solution to
24 that, and I think it's helpful to have a Word document
25 you can manipulate, so that's fine with me.

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1 JUDGE RENDAHL: I would prefer both Word and
2 pdf, if you can overcome the technical issue of when
3 you have confidential information. There is a way to
4 lift the masking in Word, unless you figure out how to
5 do it properly so you can't unmask it.

6 MS. ANDERL: There is also another issue,
7 Your Honor, where if a document had been through
8 multiple revisions, if you didn't do the right type of
9 a save to it before you sent it, they could go in and
10 see your track changes.

11 JUDGE RENDAHL: So beware when you do file
12 because the Commission posts documents that are filed
13 electronically on our Web site. So to avoid any of the
14 issues involving confidential information, just be sure
15 that you have cleaned it up.

16 MR. STRUMBERGER: Okay.

17 JUDGE RENDAHL: So with those details, why
18 don't you all let me know the schedule that you've
19 proposed.

20 MR. STRUMBERGER: I'll just read it off. We
21 have June 21st was initial complaints filing. July
22 8th, of course, prehearing conference. August 10th,
23 motions for summary judgment if the parties deem
24 necessary. August 25th would be the ALJ's response to
25 those motions.

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1 August 31st, parties file direct testimony.
2 September 8th, parties may file reply testimony.
3 September 15th is the hearing. September 27th,
4 simultaneous posthearing briefs. October 12th for ALJ
5 recommended decision. October 24th, parties may file
6 exceptions to the recommended decision.

7 Week of October 31st will be oral argument
8 before the Commission. November 18th, Commission
9 issues order. November 28th would be petitions on
10 reconsideration, and discovery would remain open until
11 September 6th.

12 JUDGE RENDAHL: Until September 6th?

13 MR. STRUMBERGER: That's correct.

14 JUDGE RENDAHL: Let's go off the record for a
15 minute while we talk details, so we will be off the
16 record.

17 (Discussion off the record.)

18 JUDGE RENDAHL: While we were off the record,
19 the parties proposed a schedule, and we made a few
20 minor changes to the schedule to accommodate holidays,
21 etcetera.

22 The schedule as the parties have proposed,
23 and which I think will work, Level 3 filed its petition
24 on June 21st. The prehearing conference, of course, is
25 today, July 8th. The parties have the option of filing

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1 motions for summary judgment simultaneously on August
2 10th, and on August 25th, I would issue a ruling on
3 those motions.

4 Just as an aside, do you want any opportunity
5 to file responses, or is it just a simultaneous motion?

6 MR. STRUMBERGER: Simultaneous motion is fine
7 with us.

8 MS. ANDERL: Yes, that's fine.

9 JUDGE RENDAHL: Then on August 31st, the
10 parties would file direct testimony. On September 8th,
11 is the opportunity to file reply testimony. On
12 September 15th, we will schedule a hearing here at the
13 Commission. How many witnesses do you all anticipate
14 at this point for the hearing?

15 MR. STRUMBERGER: At most, two. Probably
16 one, maybe two at the most. I would say three, but I
17 highly doubt that, probably just one or two.

18 MS. ANDERL: One or two is the same number
19 for Qwest. We have an 80 percent chance of going with
20 one witness and a 20 percent chance of there being a
21 second witness.

22 MR. STRUMBERGER: Likewise.

23 JUDGE RENDAHL: We can talk time frames as we
24 get closer to the hearing. Usually we start at 9:30,
25 but if you think you need additional time, we can

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1 probably start at nine.

2 MR. STRUMBERGER: 9:30 would be fine as long
3 as we need to take an opening case if things stretch
4 out.

5 MS. ANDERL: Your Honor, I would like to
6 suggest nine o'clock because we may want to do some
7 administrative stuff, like marking exhibits beforehand.

8 JUDGE RENDAHL: What I might build into this
9 schedule then is prior to the hearing is have you all
10 file your witness lists, any estimated cross time for
11 the other party's witness, any cross-exhibits that you
12 can exchange at that point. We have done this in many
13 of our hearings, and it seems to work well and be very
14 efficient, and then submit your proposed exhibit list.

15 I will compile all of that together in one
16 consolidated exhibit list, premark the exhibits, send
17 it back to you so you know what's already been
18 premarked, and put together a schedule, including the
19 witnesses. You can let me know what order you want the
20 witnesses to appear, and then I will put together a
21 schedule and an agenda for the hearing, and that way,
22 it does avoid some of the need for a prehearing. Is
23 that acceptable?

24 MR. STRUMBERGER: Level 3 has done that in
25 other proceedings and we absolutely like that.

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1 JUDGE RENDAHL: So for the date for
2 submitting the cross-exam estimates, cross-examination
3 exhibits, and your exhibit lists, as well as your
4 witness list, if you can send them to me by close of
5 business on Monday the 12th, then I can compile it and
6 put it together.

7 MR. STRUMBERGER: Will you be issuing a
8 scheduling order after this?

9 JUDGE RENDAHL: Yes. It's part of the
10 prehearing conference order. There will be a schedule
11 attached to the prehearing conference order.

12 MR. STRUMBERGER: And that will include all
13 the information that you want?

14 JUDGE RENDAHL: Yes. So cross-examination
15 estimates, witness lists, cross-examination exhibits,
16 and exhibit lists. So depending on the size of the
17 cross-examination exhibits, if you can send them
18 electronically and then also bring copies with you when
19 you come to the hearing, then I think that will be
20 sufficient. As long as you can exchange them with the
21 parties, I think that will do it. If they are
22 sufficiently large and you can't send them
23 electronically, if you could send them overnight to the
24 Commission, that would be helpful.

25 So that's the only addition to the schedule

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1 we didn't talk about off the record. Then on September
2 15th, we have a hearing. September 27th, the parties
3 will file simultaneous briefs. On October 12th, I
4 would enter a recommended decision. By October 24th,
5 the parties will file any exceptions to that
6 recommended decision.

7 We will look at an oral argument on either
8 November 2nd, 3rd, or 4th, depending on the
9 Commission's schedule, and I will have that resolved
10 before the prehearing conference order goes out. How
11 long do you want oral argument? Just a couple of
12 hours?

13 MS. ANDERL: Your Honor, a morning or an
14 afternoon, so 9:30 to noon or 1:30 to 3:30 would be
15 fine for us, I think.

16 JUDGE RENDAHL: Do you think you would need
17 two hours, an hour for each side, or do you want a half
18 an hour? How much time do the parties need for
19 argument?

20 MS. ANDERL: It so depends on how many
21 questions the commissioners have. I think we could
22 probably each agree we didn't need more than 20 or 30
23 minutes per side, but you need to build in time for
24 commissioners to ask questions. They are going to be
25 interested and engaged in this issue and typically have

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1 a significant amount of questions. I think it's safe
2 to build in two-and-a-half hours.

3 JUDGE RENDAHL: Is there a preference of
4 morning or afternoon?

5 MR. STRUMBERGER: Not at all. We are fine
6 with scheduling a half day, and likewise, we doubt we
7 will need more than 20 or 30 minutes but want to give
8 the commissioners time to ask questions.

9 JUDGE RENDAHL: Then the Commission would
10 enter an order by November 23rd, and then the parties
11 would have the opportunity to file petitions for
12 reconsideration by Monday, December 5th.

13 The parties discussed discovery off the
14 record. My understanding is discovery will be open
15 until September 6th and that the parties have agreed
16 that the Commission's rules which allow for responses
17 within ten business days is acceptable at this point,
18 but if the parties find that it's not working, just
19 call me, send me an e-mail, let me know that you need
20 to change, or if there is a dispute, please bring it to
21 my attention immediately as the schedule is very
22 condensed.

23 MS. ANDERL: Your Honor, we didn't discuss
24 this, but in looking at the schedule, I see that there
25 are only 11 business days from the time the testimony

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1 is filed to the day of the hearing, so perhaps we could
2 have a ten-business-day response up until -- for
3 discovery promulgated on or before -- well, I'm sorry.
4 Could we go off the record and talk about this?

5 JUDGE RENDAHL: Let's go off the record.

6 (Discussion off the record.)

7 JUDGE RENDAHL: While we were off the record,
8 we talked about shortening the response time for
9 discovery after direct testimony was filed, and I
10 believe the proposal is to shorten it to five business
11 days for a response; is that correct?

12 MS. ANDERL: Yes, after August 31st.

13 JUDGE RENDAHL: Is that acceptable to
14 Level 3?

15 MR. STRUMBERGER: Yes, it is.

16 JUDGE RENDAHL: We will make that change to
17 the schedule. Any other changes to the schedule
18 anybody sees at this point?

19 MR. STRUMBERGER: No.

20 MS. ANDERL: No, Your Honor.

21 JUDGE RENDAHL: Is there anything else we
22 need to talk about this morning, because the only thing
23 I see on my list -- we've talked about filing with the
24 Commission. The only question would be the paper
25 copies, and I need to coordinate with the records

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1 center and find out how many people within the
2 Commission are on this docket. I don't expect there
3 will be that many, aside from myself and the
4 commissioners and maybe the policy advisor, so I will
5 let you know. It will be in the prehearing conference
6 order how many paper copies you need to file.

7 Other than that, is there anything else we
8 need to talk about?

9 MR. STRUMBERGER: Level 3 has no issues at
10 this point.

11 MS. ANDERL: No, Your Honor.

12 JUDGE RENDAHL: With that, I'm assuming
13 you've discussed with the court reporter if you need to
14 order a transcript. Other than that, this prehearing
15 conference is adjourned. Thank you very much.

16 (Prehearing adjourned at 10:05 a.m.)

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