

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

3)
4	QWEST CORPORATION,)Docket UT-063038
5	Complainant,)Volume VI
6)Pages 807-1001
7	vs.)
8)
9	LEVEL 3 COMMUNICATIONS, LLC;)
10	PAC-WEST TELECOMM, INC.; NORTHWEST)
11	TELEPHONE, INC.; TCG SEATTLE;)
12	ELECTRIC LIGHTWAVE, INC.; ADVANCED)
13	TELCOM, INC., d/b/a ESCHELON)
14	TELECOM, INC.; FOCAL COMMUNICATIONS)
15	CORPORATION; GLOBAL CROSSING LOCAL)
16	SERVICES, INC.; and MCI WORLDCOM)
17	COMMUNICATIONS, INC.,)
18	Respondents.)
19	_____)

20 An evidentiary hearing in the
 21 above-entitled matter was held at 9:01 a.m. on
 22 Thursday, April 26, 2007, at 1300 South Evergreen
 23 Park Drive, S.W., Olympia, Washington, before
 24 Administrative Law Judge THEODORA MACE.

25 The parties present were as follows:

26 QWEST CORPORATION, by Lisa Anderl,
 27 In-House Attorney, 1600 Seventh Avenue, Room 3206,
 28 Seattle, Washington 98191 and Ted D. Smith, Attorney
 29 at Law, Stoel Rives, LLP, 201 S. Main Street, Suite
 30 1100, Salt Lake City, Utah 84111.

31 ELECTRIC LIGHTWAVE, LLC, by Charles L.
 32 Best, Associate General Counsel, Electric Lightwave,
 33 LLC, 1201 N.E. Lloyd Blvd., Suite 500, Portland,
 34 Oregon 97232.

35 COMMISSION STAFF, by Jonathan Thompson,
 36 Assistant Attorney General, 1400 South Evergreen Park
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 38 98504-0128.

39 Barbara L. Nelson, CCR

40 Court Reporter

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1 VERIZON ACCESS, by Gregory M. Romano,
Attorney at Law, 1800 41st Street, WA 0105GC,
2 Everett, Washington 98201.

3 TCG SEATTLE, by Gregory L. Castle,
Senior Counsel, 525 Market Street, Room 2022, San
4 Francisco, California 94105 and David Wiley, Attorney
at Law, Williams Kastner & Gibbs, Two Union Square,
5 601 Union Street, Suite 4100, Seattle, Washington
98101.

6
7 LEVEL 3 COMMUNICATIONS, LLC, and
BROADWING, by Greg L. Rogers, Director of State
Regulatory Affairs, and Gregg Strumberger, Attorney
8 at Law, 1025 Eldorado Boulevard, Broomfield, Colorado
80021.

9
10 PAC-WEST TELECOMM, INC.; NORTHWEST
TELEPHONE, INC.; GLOBAL CROSSING LOCAL SERVICES,
INC., by Gregory J. Kopta, Attorney at Law, Davis
11 Wright Tremaine, 1501 Fourth Avenue, Suite 2600,
Seattle, Washington 98101.

12
13 WASHINGTON INDEPENDENT TELEPHONE
ASSOCIATION, by Richard A. Finnigan, Attorney at Law,
2112 Black Lake Boulevard, S.W., Olympia, Washington
14 98512.

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1 JUDGE MACE: Let's be on the record in
2 Docket UT-063038. We are ready to proceed with our
3 next witness, Mr. Neinast. And Mr. Castle, will you
4 be presenting the witness?

5 MR. CASTLE: Yes, I will, Your Honor.

6 JUDGE MACE: Why don't you go ahead.

7 MR. CASTLE: Thank you, Your Honor.

8

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

10 BY MR. CASTLE:

11 Q. Mr. Neinast, would you please state your
12 full name and business address for the record,
13 please?

14 A. Mark Neinast, 308 South Akard, A-k-a-r-d,
15 Room 710, Dallas, Texas, 75202.

16 Q. Thank you, Mr. Neinast. And do you have a
17 copy of your direct testimony, filed on February 2nd
18 of 2000 (sic), which has been identified as Exhibit
19 541-T, in front of you?

20 A. Yes, I do.

21 Q. And was that exhibit prepared by you or
22 under your direction?

23 A. Yes, it was.

24 Q. And do you adopt that exhibit as your
25 testimony in this proceeding?

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1 A. Yes, I do.

2 MR. CASTLE: Your Honor, I would offer Mr.
3 Neinast's testimony, Exhibit 541-T, into evidence,
4 please.

5 JUDGE MACE: Any objection to the admission
6 of that exhibit?

7 MS. ANDERL: No.

8 JUDGE MACE: Hearing none, I'll admit it.

9 MR. CASTLE: Thank you. Mr. Neinast is
10 available for cross-examination.

11 JUDGE MACE: And Mr. Smith, will you be
12 cross-examining?

13 MR. SMITH: Yes, just a couple of questions.

14

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

16 BY MR. SMITH:

17 Q. Mr. Neinast, do you have what's been marked
18 as Exhibit 548, which is excerpts from the
19 interconnection agreement?

20 A. I'm not sure. Is that going to be in this?

21 Q. It was in the Qwest cross exhibits.

22 A. I don't.

23 MR. CASTLE: Your Honor, if I may approach,
24 I can probably --

25 JUDGE MACE: Please.

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1 THE WITNESS: Thank you. Yes, I do, Mr.
2 Smith.

3 Q. Okay. I'd like you, if you would, to turn
4 to page 16. And again, this is one of those
5 definitions we've -- I want to make sure you're
6 there. Near the bottom, there's a definition for
7 exchange service or extended area service, EAS, local
8 traffic. Do you see that there?

9 A. I do.

10 Q. And let me just read it. It indicates that
11 that exchange service or extended area service, EAS,
12 local traffic means traffic that is originated and
13 terminated within the same local calling area as
14 determined for Qwest by the Commission.

15 A. Yes.

16 Q. Did I, first of all, read it accurately?

17 A. Yes, you did.

18 Q. And do you view that as a geographic
19 definition of local traffic?

20 A. Yes, I do.

21 Q. Okay. And then, let me ask you to turn over
22 to page 24. And you see the term rate center there?

23 A. Yes, I do.

24 Q. And rather than read the definition in, if
25 you could just look at it and let me ask you a

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1 question, whether you believe that definition also is
2 a -- defines -- is a geographic definition in the
3 sense that it's defining a geographic area?

4 A. I would say that the rate center represents
5 a geographic area.

6 Q. Okay. One other area. You indicated in
7 your testimony at -- oh, I can't remember where it
8 is. Well, let me just ask you this. You indicated
9 that TCG and Qwest are currently on a bill and keep
10 arrangement?

11 A. That's correct.

12 Q. Could you describe what bill and keep means?

13 A. Okay. Briefly, the bill and keep
14 arrangement is where each carrier bills its end user
15 customers and exchanges traffic with no compensation
16 monies being transferred between the companies.

17 Q. And that typically applies to traffic that
18 is either ISP traffic or voice, local voice traffic
19 that would be subject to reciprocal compensation were
20 it not for the bill and keep arrangement?

21 A. That's correct.

22 Q. One last question. You indicate at one
23 point that perhaps what the Commission should do in
24 this case is kind of wait out the FCC?

25 A. Yes, that's --

0815

1 Q. I probably didn't say that quite right, but
2 --

3 A. Well, that is AT&T's position, that there is
4 -- it is in front of them at this time, and we're
5 hoping that the FCC does approve it, and that would
6 solve this, rather than going through 50 iterations
7 of this issue.

8 Q. Right. Now it's true, isn't it, that the
9 sixth anniversary that the NPRM that began that in
10 April 2001 just passed?

11 A. That is true, but this is also the second
12 iteration of the intercarrier compensation aspect.

13 Q. But it is true, this has been going on for
14 six years without resolution to this point by the
15 FCC?

16 A. That's true, but it still doesn't change the
17 fact that we're trying to resolve it at a federal
18 level instead of at a state level.

19 MR. SMITH: Okay. I believe that concludes
20 my cross-examination. We would offer Exhibits 543
21 through --

22 MR. FINNIGAN: 543 is mine.

23 MR. SMITH: Oh, I'm sorry.

24 MR. FINNIGAN: You can offer it.

25 MR. SMITH: That's one of our favorite

0816

1 exhibits, but 544 through 548. And there is one of
2 those exhibits that --

3 MS. ANDERL: 546 is to be provided this
4 afternoon.

5 MR. SMITH: Yeah, 546, we will provide the
6 correct copies this afternoon.

7 JUDGE MACE: Mr. Castle.

8 MR. CASTLE: The only question I have is,
9 and I just saw this, it looks like there was a
10 question and answer from RFI that was included in the
11 packet we received, but wasn't listed in the exhibit
12 list, 1-8, and that does contain proprietary
13 information.

14 MR. SMITH: Just one moment here. RFI 1-8?

15 MR. CASTLE: Yeah.

16 MR. SMITH: It's in the package, but wasn't
17 --

18 MR. CASTLE: Unless my package got
19 disorganized.

20 JUDGE MACE: Actually, there's no listing
21 for a 1-8.

22 MR. CASTLE: Right.

23 JUDGE MACE: That's interesting.

24 MR. SMITH: Why don't we do it this way.

25 JUDGE MACE: Let's be off the record about

0817

1 this.

2 (Discussion off the record.)

3 JUDGE MACE: Let me indicate that there's no
4 objection to the admission of Qwest Cross Exhibits
5 544 through 548, with the stipulation that requests
6 for admissions -- TCG's requests for admission -- no,
7 Qwest's requests for admissions of TCG 1-8 will not
8 be offered. It apparently appeared in one or another
9 of the packets of exhibits for this witness, perhaps
10 inadvertently. But in any event, it's not being
11 offered, and those Qwest exhibits will be admitted
12 other than that. Thank you.

13 MR. SMITH: Thank you.

14 JUDGE MACE: Mr. Finnigan.

15 MR. FINNIGAN: Thank you.

16

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

18 BY MR. FINNIGAN:

19 Q. Good morning, Mr. Neinast.

20 A. Good morning, Mr. Finnigan.

21 Q. I assume that you've been in the room long
22 enough that you know I represent the Washington
23 Independent Telephone --

24 A. Yes, I have.

25 Q. Okay. Thank you. Do you have Cross

0818

1 Exhibits 542 and 543 before you? Do you need a copy?

2 A. I may have, but they may not be numbered as
3 such.

4 MR. FINNIGAN: May I approach the witness?

5 JUDGE MACE: Yes.

6 Q. These are not numbered, but the top item is
7 542 and the second page is 543.

8 A. Okay. Thank you.

9 Q. Looking at Exhibit 542, do you have that
10 now?

11 A. Yes.

12 Q. Okay. Do I understand that TCG's response
13 to this data request was that TCG does not provide
14 VNXX telephone numbers for call origination?

15 A. That's correct.

16 Q. By that, does that then mean that TCG
17 provides VNXX numbers for call termination?

18 A. That's correct.

19 Q. Okay. Taking a look at BR-1, and using the
20 scenario that I've described before that you probably
21 heard, that there's the Tenino Telephone Company
22 serving the city of Tenino that has extended area
23 service into Olympia. Got that? Have that in mind?

24 A. I do.

25 Q. What would TCG's expectation be where TCG

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1 supplies a customer with an Olympia number for call
2 termination, that customer is physically in Seattle,
3 and a Tenino customer calls that TCG Olympia number.
4 What would TCG's expectation be for how that call
5 would be routed to the TCG customer?

6 A. Okay. I don't believe that Tenino has a
7 direct trunk group to TCG Seattle, so I believe that
8 they would have to route the call through the tandem
9 there in Olympia, and the call would be passed by
10 Qwest to our TCG switch in Seattle for termination.

11 Q. And by Qwest tandem in Olympia, you mean the
12 local tandem?

13 A. Yes.

14 Q. Not an access tandem?

15 A. That's correct.

16 Q. Okay. Does -- is TCG collocated with Qwest
17 at the Qwest local tandem?

18 A. Yes, they are.

19 Q. And then TCG has facilities much like ELI
20 has described back to its switch in Seattle?

21 A. That's correct.

22 Q. Okay. Since TCG is on a bill and keep basis
23 with Qwest, presumably TCG would not expect to
24 receive any compensation for call termination from
25 Tenino; is that correct?

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1 A. That's correct.

2 MR. FINNIGAN: Thank you. That completes my
3 examination.

4 JUDGE MACE: All right. And do you have any
5 redirect?

6 MR. CASTLE: No, I do not, Your Honor.

7 JUDGE MACE: Oh, let me ask.

8 MR. FINNIGAN: Oh, I will ask Exhibits --
9 thank you -- 542 and 543 be admitted, please.

10 JUDGE MACE: Any objection to the admission
11 of those exhibits?

12 MR. CASTLE: No, Your Honor.

13 JUDGE MACE: And you have no redirect?

14 MR. CASTLE: That's correct, Your Honor.

15 JUDGE MACE: Thank you. Thank you. You're
16 excused.

17 THE WITNESS: Thank you.

18 JUDGE MACE: I believe the next witness or
19 the last witness is Mr. Sumpter.

20 MR. KOPTA: That's correct, Your Honor.

21 Whereupon,

22 .HE (SUMPTER - DIRECT BY KOPTA)

23 JOHN F. SUMPTER,

24 having been first duly sworn, was called as a witness

25 herein and was examined and testified as follows:

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1 JUDGE MACE: Please be seated. Let's be off
2 the record for a moment.

3 (Discussion off the record.)

4 Whereupon,

5 MARK NEINAST,
6 having been previously called as a witness herein,
7 was sworn by Judge Mace.

8 JUDGE MACE: Sorry about that. Are you
9 ready, Mr. Kopta?

10 MR. KOPTA: I am, Your Honor.

11 JUDGE MACE: Go ahead.

12

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

14 BY MR. KOPTA:

15 Q. Mr. Sumpster, would you state your name and
16 business address for the record, please?

17 A. My name is John Sumpster, last name's spelled
18 S-u-m-p-t-e-r. My business address is 4210 Coronado
19 Street, Stockton, California.

20 Q. And do you have before you what's been
21 marked for identification as Exhibit 501-T, which is
22 the Response Testimony of John F. Sumpster?

23 A. I do.

24 Q. And was that testimony prepared by you or
25 under your direction and control?

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1 A. Yes, it was.

2 Q. And if I asked you the questions contained
3 in that testimony today, would your answers be the
4 same?

5 A. Yes, they would.

6 Q. And do you have before you what's been
7 marked for identification as Exhibits 502 through
8 507, which are attachments to your testimony?

9 A. Yes.

10 Q. And were those exhibits prepared by you or
11 under your direction and control?

12 A. Yes, they were.

13 Q. And are all of the exhibits that we have
14 just discussed true and accurate, to the best of your
15 knowledge?

16 A. Yes, they are.

17 MR. KOPTA: Your Honor, I would move for
18 admission of Exhibits 501-T through 507.

19 JUDGE MACE: Any objection to the admission
20 of those exhibits?

21 MR. SMITH: No objection.

22 JUDGE MACE: Thank you. I'll admit them.

23 MR. KOPTA: And Mr. Sumpter is available for
24 cross-examination.

25 JUDGE MACE: Are you, Mr. Smith, crossing?

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1 MR. SMITH: Yes, yes, I will.

2 JUDGE MACE: Go ahead.

3

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

5 BY MR. SMITH:

6 Q. Good morning, Mr. Sumpter.

7 A. Good morning, sir.

8 Q. You've waited a long time this week.

9 A. I'm sure it's been worth the wait.

10 Q. Let me ask you just some general questions,
11 if I could, about Pac-West as an entity. How many
12 states do you operate in?

13 A. Over 30.

14 Q. And is that a fairly recent phenomenon? As
15 I was looking at the Web site, it looked like there
16 was some new areas coming into the Pac-West company;
17 is that correct?

18 A. That is correct. Over the last eight years,
19 our service territory has expanded and contracted at
20 least twice.

21 Q. Were you, until recently, primarily a West
22 Coast or Western United States company?

23 A. Yes.

24 Q. Okay. Would it be fair to say that, in the
25 state of Washington, Pac-West is primarily in the

0824

1 business of providing services to Internet service
2 providers, as opposed to other customers?

3 A. Although I don't have specific numbers
4 available to me, because we don't track our traffic
5 by that kind of descriptor, I wouldn't be surprised
6 if the majority of our traffic was not associated
7 with the ISP business.

8 Q. Okay. Now, do you have Mr. Brotherson's
9 testimony with you?

10 A. I do.

11 Q. Could you look at Exhibit 25? It's to his
12 rebuttal testimony.

13 A. I do not have his rebuttal testimony with
14 me.

15 MR. SMITH: I can -- if I can approach, Your
16 Honor.

17 JUDGE MACE: Yes, please.

18 Q. This is similar, Mr. Sumpster, to an exhibit
19 that was provided with regard to some other
20 companies. It was provided on a confidential basis,
21 because Qwest was not clear whether Pac-West might
22 consider that to be proprietary. And what it
23 purports to show, based on data available to Mr.
24 Brotherson, is that for the years 2005, 2006, there
25 was a certain percent of traffic exchanged between

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1 the two parties that originated with Qwest and a
2 certain percentage that originated with Pac-West. Is
3 that something you would consider to be a
4 confidential number?

5 A. No.

6 MR. SMITH: Okay. And nor would Qwest, so
7 if we could treat Exhibit 25 no longer as
8 confidential.

9 JUDGE MACE: Let me just ask. For whatever
10 reason, on my notes, I've already got the
11 confidential designation crossed off for Pac-West,
12 25-C. It makes me think that maybe I ought to have
13 crossed off the confidential designation for Level 3.

14 MR. SMITH: I think it was Level 3 and ELI
15 are the two that have been examined and we had not
16 looked at this one before.

17 JUDGE MACE: When I send out the exhibit
18 list, I'm hoping that you will verify that, but --

19 MR. SMITH: Right.

20 JUDGE MACE: Thank you. I just wanted to
21 check that. So this one is not confidential, 25 is
22 not confidential anymore?

23 MR. SMITH: Right.

24 Q. Mr. Sumpter, given that it's not
25 confidential now, maybe I can use the numbers. Do

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1 the numbers that appear on there that indicate that,
2 for those years in Washington, about 99.6 percent of
3 the traffic exchanged between Pac-West and Qwest was
4 originated on Qwest's side of the network, and .4
5 percent was originated on Pac-West's side of the
6 network? Do you have any reason to doubt the
7 veracity of those numbers?

8 A. No.

9 Q. Okay. Is that consistent with information
10 that's available to you, that it would be somewhere
11 in that general area?

12 A. Yes.

13 Q. Okay. Would it be a fair statement that
14 Pac-West provides little, if any, local -- and let me
15 rephrase this. By local exchange service, I'm
16 thinking of traditional TDM-type local exchange
17 service like Qwest would provide. So with that
18 definition, it's -- is it true that Pac-West provides
19 little, if any, local exchange service of that type
20 in the state of Washington?

21 A. I have to confess that your attempt at a
22 definition did not help much, but if by traditional
23 local service you mean 1FR service and 1FB service --

24 JUDGE MACE: Can you tell me if there's a
25 meaning to those acronyms?

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1 THE WITNESS: Yes.

2 JUDGE MACE: 1FR is?

3 THE WITNESS: One means one line, F means
4 flat rate, and R means residential. So that's a
5 common telecommunication term for a single-line
6 residential service using flat rating.

7 JUDGE MACE: Okay. And the other
8 designation?

9 THE WITNESS: Same thing, except for
10 business.

11 JUDGE MACE: Thank you.

12 Q. So it would be a single residence line to a
13 home or a single business line to a small business?

14 A. That's -- if that's what you meant by your
15 definition.

16 Q. Well, let's go with that one, and then
17 answer it in that context.

18 A. In that context, we do not provide those
19 services.

20 Q. Okay. Is the service you do provide, to the
21 extent you provide exchange type services, focused on
22 business customers, as opposed to residence
23 customers?

24 A. That is correct.

25 Q. Okay. Does Pac-West in Washington build, in

0828

1 any of the exchanges in which it offers services,
2 build what I would call loop facilities or facilities
3 that directly connect to customers?

4 A. If your use of the word build is limited to
5 actual construction where Pac-West hires a contractor
6 and trenches the street, the answer is no.

7 Q. Well, then, let me go to the next. Do you
8 lease facilities of that type that directly connect
9 to customers on occasion?

10 A. Yes.

11 Q. And would that be confined to business
12 customers?

13 A. Yes.

14 Q. Okay. The direct connection, would that be
15 for the purpose of providing that customer with its
16 basic exchange service, or would it be for some other
17 purpose?

18 A. I want to be cautious about the use of the
19 word basic, but those customer lines are for the
20 purpose of providing local service to our customers.

21 Q. Okay. And you also provide interexchange
22 type services to those customers?

23 A. Yes, Pac-West resells interexchange service
24 provided by a wholesale carrier.

25 Q. Okay. As I understand it, and we'll get

0829

1 into this in a few minutes when we look at some of
2 the information from your Web site, it appears to me
3 that one of Pac-West's major lines of business is to
4 provide a variety of services to Internet service
5 providers; is that a fair statement?

6 A. We provide a variety of services that we
7 hope will be useful to what we call service
8 providers, a subset of which is information service
9 providers.

10 Q. And when I used ISPs, I meant Internet
11 service providers.

12 A. As opposed to information service providers?

13 Q. Well, information service providers I think
14 may be a broader term, but I'm -- my question was
15 intended to focus on Internet service providers. And
16 by that, I mean companies like AOL or MSN or
17 Earthlink or Juno or that type of companies.

18 So let me rephrase. Is it a major line of
19 Pac-West's business to provide services to customers
20 like the ones I've just described?

21 A. Yes.

22 Q. Okay. Do you also serve smaller Internet
23 service providers, as well?

24 A. We provide service to smaller businesses of
25 several different types, including smaller Internet

0830

1 service providers.

2 Q. Okay. How many switches does Pac-West have
3 located in the state of Washington?

4 A. One.

5 Q. And without giving me the street address,
6 could you identify at least the city in which it's
7 located?

8 A. Tukwila.

9 Q. And that would be part of the Seattle
10 general area; is that correct?

11 A. Tukwila's pretty close to the southern end
12 of Seattle.

13 Q. Okay. But in terms of local calling areas,
14 is it your understanding that Tukwila would be in the
15 Qwest Seattle general local calling area?

16 A. Yes.

17 Q. Okay. How many points of interconnection,
18 approximately, does Pac-West have with Qwest in the
19 state of Washington?

20 A. I don't know the answer to that precise
21 question, but what I do know is that Pac-West buys
22 interconnection facilities from Qwest to every local
23 calling area in which Pac-West has obtained telephone
24 numbers.

25 Q. Okay. And when you -- I think you used

0831

1 local. Did you say local interconnection services?

2 A. I said local interconnection trunks.

3 Q. Okay. By local interconnection trunks, do
4 you mean trunks such as direct trunk transport that
5 would be purchased from your interconnection
6 agreement or ordered from the interconnection
7 agreement with Qwest?

8 A. I don't know if they are ordered out of the
9 interconnection agreement the way you phrased the
10 question. The services might be ordered out of your
11 private line tariffs, but in either case, they are
12 ordered pursuant to the authority we obtain in the
13 interconnection agreement.

14 Q. Okay. So do you know if some of the
15 interconnection facilities or services that connect
16 Pac-West to Qwest are what I would call TELRIC-rated
17 local interconnection services, as opposed to
18 services out of the local private line tariff?

19 A. I believe we purchase the majority of our
20 facilities out of the private line tariff, not at the
21 TELRIC rate.

22 Q. Do you know for a fact that you don't buy --
23 don't purchase any -- well, let me put -- is it your
24 testimony that Pac-West does not buy any TELRIC-rated
25 local interconnection services in Washington?

0832

1 A. I don't know if the answer is none.

2 Q. Okay. Let me ask you. Were you here when I
3 cross-examined Mr. Greene from Level 3?

4 A. I was here for part of the
5 cross-examination.

6 Q. Okay. And some of this is -- I've been
7 doing -- representing Qwest in interconnection
8 arbitrations with Level 3, and so we have tended to
9 use terminology that they use to describe components
10 on their network, and so I'm going to ask you about
11 -- a little bit about your network, and I may be
12 using some Level 3 terms. So if you'll be patient,
13 maybe we can identify what you call these things.

14 He referred to their switch located in the
15 Seattle area as a soft switch. Is that a term with
16 which you're familiar?

17 A. Yes.

18 Q. And is the switch that Pac-West maintains in
19 Washington also a soft switch?

20 A. No, it is an Alcatel 600E switch, which is a
21 traditional circuit switch.

22 Q. Okay. That then asks -- let's say you serve
23 let's assume Earthlink with a service that allows
24 them to obtain telephone numbers, allows them to
25 connect with their end users for dial-up Internet.

0833

1 If I'm -- what I'm understanding is that traffic will
2 end up being routed to your switch in Tukwila and, at
3 some point beyond that on your network, it would be
4 converted into IP; is that correct?

5 A. I believe so, and the best way, I think, to
6 answer that would be to look at one of the
7 attachments to my --

8 Q. Certainly.

9 A. -- testimony.

10 Q. Certainly.

11 A. And unfortunately, I have not marked mine
12 with the official exhibit numbers.

13 JUDGE MACE: What is it marked with your
14 number? We can track it that way.

15 THE WITNESS: I appreciate that, Your Honor.
16 I would rely on Attachment JFS-5.

17 JUDGE MACE: And that's 505 by our
18 numbering.

19 THE WITNESS: Thank you, Your Honor.

20 Q. Okay. So the question outstanding was where
21 on your network does the IP-TDM conversion take
22 place?

23 A. It would not take place on my network. So
24 using this diagram --

25 Q. Okay.

0834

1 A. -- the call would originate with one of the
2 Qwest customers in Rate Center A in the diagram.

3 Q. Okay.

4 A. Travel over the green loop. Mine is
5 colored.

6 Q. It's green on mine, too, so --

7 A. Congratulations.

8 JUDGE MACE: Oh, how come I don't have a
9 green one?

10 THE WITNESS: That's a good question. To
11 the Qwest central office, and from there it would
12 flow over the local interconnection trunk from the
13 Qwest office to the Pac-West network, and that would
14 be in Tukwila.

15 Q. And does this represent -- as you come --
16 the line that comes downward out of the Qwest office
17 to the -- what looks like three cabinets, is that
18 representative of the switch owned by Pac-West?

19 A. The three cabinets are the switch owned by
20 Pac-West, and the line connecting the Pac-West office
21 and the Qwest office is the local interconnection
22 trunk that Pac-West purchases.

23 Q. Okay.

24 A. Most likely from Qwest.

25 Q. Okay.

0835

1 A. And from there, our switch would look at the
2 dialed telephone number, recognize that the customer
3 was Earthlink in this hypothetical example, because
4 I'm not admitting Earthlink is, in fact, one of my
5 customers.

6 Q. Right, okay.

7 A. And we would ship it to Earthlink on the
8 line that is labeled replacement transport to the
9 Earthlink location, where Earthlink would receive the
10 call. And we've terminated our service, then, at
11 Earthlink's location, and they would convert it into
12 the Internet IP protocol communication.

13 Q. Now, maybe -- you indicated there's one of
14 the lines that says replacement transport? Oh, is
15 this JFS-4 we're looking at?

16 A. I'm looking at JFS-5.

17 MS. ANDERL: That's 5 on mine.

18 Q. Oh, okay. I've got one that, for the one
19 you're looking at, says JFS-4. So okay. I'm with
20 you now. Replacement transport. So if I understand
21 what you're saying, the service that is provided by
22 Pac-West, you assist Earthlink in getting the traffic
23 from Rate Center A, gathering it down to your switch,
24 but then you send it on to Earthlink on a -- well,
25 let me ask you this. Is that a -- the connection

0836

1 there, is that a TDM connection between Pac-West and
2 Earthlink, as opposed to an IP connection?

3 A. I'm tempted to correct something here about
4 the use of the word TDM, but I'll hold off on that.

5 Q. Okay.

6 A. It is a circuit switched connection.

7 Q. That's fine with me. So --

8 A. In that the Pac-West switch identifies a
9 circuit, a transmission path between the Pac-West
10 network and Earthlink's location, and establishes the
11 communication path. As a side note, TDM means time
12 division multiplex. It has nothing to do with
13 switching. It has everything to do with
14 transmission.

15 Q. Oh, okay. Thank you.

16 A. So the distinction -- the proper distinction
17 that I think you want to make in the future is
18 between IP, which is a form of packet switching, and
19 circuit switching.

20 Q. Okay. So to use that terminology, and I
21 appreciate that, the replacement transport line is a
22 circuit -- what was the term again? Not -- it's not
23 -- circuit switched?

24 A. No, well, it's a circuit switched circuit.

25 Q. Okay.

0837

1 A. And it is most likely a T-1, a DS1.

2 Q. Okay. Now, do you know where -- for traffic
3 -- well, are the -- do you know if the Internet
4 service providers that you serve, who offer service
5 in the state of Washington, do you know where each of
6 them maintains the equipment with which they make the
7 IP-to-TDM conversion?

8 A. In some cases, yes, but not uniformly and
9 not universally.

10 Q. Okay. For the ones that you are aware of,
11 are they in the state of Washington or are they
12 somewhere else?

13 A. I can't answer that, because I don't have
14 that information with me and I haven't sought it.
15 And our billing and tracking systems would not
16 normally have that kind of information. The way I
17 would have to attain that information would be to
18 search the customer records for these private line
19 loops that connect the customer to our switch, and
20 looking on the circuit layout record for that
21 particular private line, identify and write down what
22 the customer location was. That information is not
23 captured in our billing system for purposes of
24 tracking.

25 And the reason I'm not able to do it

0838

1 universally is because many of our customers
2 purchased that replacement private line from another
3 carrier. We've unbundled that service from our
4 switching service, so the customer can buy it from us
5 or they can buy it from a third party if they want
6 to, and in the case of a third party, we don't know
7 where they are.

8 Q. Okay. Would it -- is it -- would it be a
9 fair statement that some of them are likely to be --
10 that some of the locations in which the ISPs make
11 that conversion are in other states than Washington
12 for Washington traffic?

13 A. I don't know, but that's certainly a
14 possibility and that's why our service is a foreign
15 exchange service.

16 Q. Okay. So some could have some modem
17 functionality that would make the conversion located
18 in Washington, some might be somewhere else and find
19 it more convenient to buy a longer private line
20 circuit, T-1 circuit from your switch to some other
21 location?

22 A. It's possible for them to do that.

23 Q. Okay. Let's -- do you have -- I'd like to
24 refer to now, it's Exhibit 516, which is some web
25 pages that Qwest marked as -- if you don't have it, I

0839

1 think I can track down another copy here. You've got
2 it. Now, I have some in color here, if you're --

3 A. I'm jealous.

4 Q. Well, I can probably even provide one, if
5 you would like it, but what I've identified as 516,
6 and I will represent to you, I personally pulled this
7 off the Internet, looks like on the 18th of April,
8 and it -- it's an eight-page exhibit, and there are
9 four services provided. And I'd like to walk through
10 those with you for a few minutes.

11 The first two pages refer to a service
12 called managed modem service. Is that the service
13 we've just been talking about that Pac-West provides
14 to Internet service providers in Washington and in
15 other states, as well?

16 A. No, the service we've just been talking
17 about we call dial access, and the difference between
18 the dial access service that we've just been talking
19 about and managed modem service is that managed modem
20 service includes the conversion to IP.

21 Q. Okay.

22 A. And the reason I made that distinction is
23 because I have some knowledge of Earthlink's
24 practices, and they use their own modems.

25 Q. Okay. Well, let's -- why don't we go back

0840

1 to JFS-5 for a minute here.

2 A. Yes.

3 Q. And help me understand, then, on managed
4 modem service, what the components would look like,
5 if that's -- if one of your other exhibits would be
6 easier to show that on, feel free to take me there.
7 I'm just trying to understand how that -- how managed
8 modem service would be provided by Pac-West?

9 A. Managed modem service would be provided by
10 Pac-West by having the modems located either at the
11 Tukwila switch site and the conversion would be done
12 there --

13 Q. Okay.

14 A. -- or at one of Pac-West's other switch
15 sites.

16 Q. Okay. For the state of -- well, let me ask
17 you this. If you provide managed modem service to
18 ISPs in Washington, do you know if all of the IP-TDM
19 conversion takes place at the Tukwila switch or
20 whether, in fact, some of it is actually transported
21 to another switch location and done there?

22 A. I doubt that it's transported elsewhere, but
23 I don't know for sure.

24 Q. Okay. So it's more likely than not that,
25 for managed modem service for ISPs serving

0841

1 Washington, that the IP-TDM conversion would take
2 place in Tukwila?

3 A. That is correct.

4 Q. Okay. Now, so what kind of device -- is it
5 part of the switch, the device that performs the
6 IP-TDM conversion, or is it a separate piece of
7 equipment?

8 A. With the kind of technology we have at the
9 Tukwila site, it's a separate piece of equipment, and
10 that's because the Tukwila switch is a classic
11 circuit switch.

12 Q. Okay. So there would be some -- even though
13 they might be sitting next to each other, there would
14 be a connection from the switch to the device. Is it
15 -- I think on your Web site you refer to a network
16 access server, or NAS. Is that the device that does
17 the IP-TDM conversion?

18 A. Yes.

19 Q. Okay. So there would be some connection
20 between those two devices, even though they might be
21 sitting just a few feet apart, and the traffic would
22 be routed into there and it's at that point that the
23 IP-TDM conversion would take place?

24 A. Yes.

25 Q. Okay. Now, does Pac-West also provide, at

0842

1 least the way I've heard it described, an
2 authentication service for ISPs? Let me explain what
3 I mean. I'm in Olympia, I'm a customer of Earthlink,
4 Earthlink is served by your company through managed
5 modem service, I dial the local access number that
6 Pac-West has provided Earthlink, its call is routed
7 up to your switch. As I understand it, there is
8 typically, at some point around there, a function
9 where there's some communication to determine if --
10 is this really a legitimate customer that we should
11 allow onto the Internet, and that's what I mean by
12 authentication.

13 And the way I've understood it is Pac-West
14 would have a device, I think it's called a radius
15 server, that would communicate with a radius server
16 of the ISP and would just very quickly determine this
17 person who's just dialed in with this number and has
18 provided this password is legitimate, let them
19 through, or is no longer legitimate, don't let them
20 through.

21 So with that lengthy explanation, is that a
22 service that Pac-West provides to Internet service
23 providers?

24 A. I don't know.

25 Q. Okay. Now, for your managed modem service,

0843

1 when you do provide the conversion functionality
2 through the network access server, does Pac-West
3 provide any services on the other side, the IP side
4 of the network access server, or is it -- do you view
5 that as having been handed off to your ISP at the
6 network access server?

7 A. I'll try to be precise in answering that
8 question. The conversion to IP is a fairly simple
9 data process. The Internet service provider is
10 offering its customer a lot of content. Pac-West
11 does not offer any content. On the -- I'll call it
12 the far side of the modem, the network --

13 Q. Network access server?

14 A. Which I'll call a modem.

15 Q. That's fine.

16 A. If the IP's -- if the Internet service
17 provider's equipment that contains the content is at
18 a remote location, after the conversion occurs at the
19 Pac-West office, there needs to be transmission in
20 the IP format to the ISP's location. That
21 transmission occurs on the Internet.

22 Q. Right.

23 A. So out of the backside of the modem -- that
24 sounds like an inelegant phrase, but we'll let that
25 go.

0844

1 Q. I think it communicates.

2 A. Out of that side of the modem, you've got
3 the transmission to the ISP's server equipment. That
4 server equipment can be located in the Pac-West
5 central office if they want to buy collocation space
6 from us or it could be located somewhere else,
7 perhaps in another country. Pac-West will sell that
8 raw Internet bandwidth for that communication purpose
9 to the ISP or anybody else buying this service, or
10 they can buy it from a third party.

11 Q. Okay. Thank you. That's very helpful.
12 Now, as I understand it, part of -- and just -- I'm
13 looking at the first page of the Web site material.
14 One of the -- one of the facets of the service that
15 is provided by managed modem service is the
16 acquisition, if you will, of the local numbers that
17 the ISP is able to use. I'm looking at the first
18 bullet there. It says local access numbers. Is that
19 -- is that a correct statement that that's one aspect
20 of managed modem service?

21 A. Yes.

22 Q. Okay. And we've talked about the modems.
23 That's the third bullet. That's the function that's
24 done by the network access server. What do you -- do
25 you know what the bullet local dialed network means?

0845

1 I'm looking about seven bullets down.

2 A. I believe that's talking about Pac-West's
3 interconnection network with incumbent telephone
4 companies.

5 Q. This is referring to the -- if we look at
6 Exhibit 505, it's referring to the gathering, if you
7 will, of the traffic in Rate Center A on the
8 traditional public switched network; is that a fair
9 statement?

10 A. I'd rather describe it as all of the
11 interconnection trunks that Pac-West pays for between
12 its switch and the local calling areas with Qwest.

13 Q. Okay.

14 A. So it's the network.

15 Q. Okay. Do you know, Mr. Sumpter, in the
16 state of Washington, under your interconnection
17 agreement, whether -- if that trunk is a local
18 interconnection service offered under the
19 interconnection agreement, whether, under decisions
20 of the Washington Commission, that Qwest bears the
21 cost of that transport for ISP traffic?

22 A. My understanding is that there have been a
23 number of disputes between the parties over who's
24 responsible for paying for those. It was Pac-West's
25 position that a relative use factor, sometimes called

0846

1 RUF, applies, and given the ratio of traffic that
2 exists between the two companies, if the RUF applied,
3 that would mean Qwest would be responsible for paying
4 for 99 percent of those interconnection trunks.

5 I believe a settlement has been reached
6 where the parties split the cost of those
7 interconnection trunks 50/50.

8 Q. Who informed you of -- was that someone
9 internally that informed you of the 50/50?

10 A. Yes.

11 Q. Okay. One other question on the local
12 network. It's true, isn't it, that in order for this
13 service to work, managed modem service, it requires
14 more than just this interconnection trunk, as you've
15 referred to it. It also requires the Qwest switch
16 and it also requires all sorts of loop plant out
17 behind Qwest's switch for all these various and
18 sundry ISP customers to be able to dial in on?

19 A. Yes.

20 Q. Okay.

21 A. That's a valuable resource.

22 Q. Okay. If you would turn to page two of the
23 document, this also refers to managed modem service,
24 and I'm looking at the map of the United States, and
25 unfortunately, on yours, it probably isn't in color,

0847

1 but over on the left side, the West Coast side shows
2 dark lines and it says existing footprint, and then
3 all of the areas over -- I guess west of the
4 Mississippi probably over-describes it, there's some
5 in Texas.

6 MS. ANDERL: East.

7 Q. Everything on the eastern part of the United
8 States shows 2006 expansion. And what I would ask
9 you to explain is what the 2006 expansion refers to?

10 A. It refers to an expansion of our network and
11 our services completed in the year 2006.

12 Q. Was that a build-out or was that an
13 acquisition of another company?

14 A. It was a build-out.

15 Q. Okay. Let me ask you another question. Now
16 I'm going to refer to the Western United States. It
17 shows a variety of lines and areas. I'm from Utah,
18 so let me ask you this. It shows two dots in Utah,
19 which, at least, based on my knowledge of geography,
20 what looks like Salt Lake City and Provo. Does that
21 mean that Pac-West has some sort of facilities in
22 Utah, for example?

23 A. Yes.

24 Q. What typically would that be?

25 A. That would be the point of interconnection

0848

1 established by a facility that -- a transmission
2 facility that Pac-West pays for from its network to
3 that location in Utah.

4 Q. Okay. Is it -- is each of those dots, does
5 that necessarily represent a switch?

6 A. No, it represents a switch appearance that
7 -- I'm going to use an analogy.

8 Q. Okay.

9 A. In the wall along the building here, we have
10 outlets, power outlets. You can take an extension
11 cord and plug it into that wall outlet and at the far
12 end of the extension cord is a duplicate with the
13 same functionality as the wall outlet at the end of
14 the extension cord. That's the same function served
15 by these transmission facilities. So we have
16 switching -- literal switching facilities in a
17 relative few locations, and we extend their
18 capabilities geographically through the use of
19 extension cords that are transmission facilities we
20 buy from other carriers.

21 Q. So Mr. Greene, in talking about their
22 similar service, if not identical, talked about the
23 fact that they have a switch in Washington that
24 serves several states. Does Pac-West operate
25 similarly, where, for example, the Tukwila switch

0849

1 might serve Oregon or Idaho, just as examples of two
2 adjoining states?

3 A. Yes.

4 Q. Okay. And I don't want you to disclose
5 proprietary information, but approximately in that
6 Western piece, the pre-2006 piece, approximately how
7 many Pac-West switches would serve that entire area?

8 A. Eleven.

9 Q. Would most of those be in California?

10 A. Yes.

11 Q. Okay. Oh, down the left column on the
12 second page, under product details, it says, Service
13 can be port-based or usage-based. Could you explain
14 what that means, if you know?

15 A. I do. Let's think back to our discussion of
16 basic service, and I described a 1FR as a one
17 flat-rate residential line. That's a service that is
18 flat-rated. The customer pays a fixed amount per
19 month for however much usage they can cram into it in
20 that month. Another option is a measured service,
21 where the customer pays for the usage by the minute.
22 That's the difference between these two services.

23 The port-based is the flat-rate service.
24 They pay for the use of a modem for a month and as
25 much usage as they can get on that modem is covered

0850

1 by their monthly payment, or they can pay for the use
2 of modems by the minute.

3 Q. Okay. Which there's -- one question I kind
4 of skipped over when we were talking about the
5 network access server. Let's hypothesize this ISP
6 customer in Olympia of Earthlink dials local access
7 number, ends up going to your switch in Tukwila, then
8 it ends up being converted at the network access
9 server into IP-TDM.

10 Now, it's true, isn't it, that for the
11 duration of that -- I'll call it dial-up Internet
12 session, however long that session lasts, that the
13 network access server is sort of -- there's a
14 channel, if you will, it may be virtual, but a
15 connection that goes through there that's up and
16 operating and, when the end user says take me to
17 eBay, there's a conversion, then a communication out
18 to the Internet, and then the -- whatever eBay is
19 hosted, it will show a page and that will come back
20 and be converted back.

21 So during the course of that session, there
22 will be, depending on how much moving around the end
23 user wants to do on the Internet, there will be sort
24 of back and forth TDM-IP conversions or IP- TDM
25 conversions?

0851

1 A. Are you asking me to confirm that?

2 Q. Yes. Yeah, I meant to have a question mark
3 at the end of that, so --

4 A. The answer is yes. That was a good
5 description.

6 Q. Okay. There was some discussion earlier
7 about -- and I think when ELI or ELI's counsel was
8 asking some questions about numbers being stored in
9 switches, would it be fair to say that the Tukwila
10 switch is the place where numbers that Pac-West has
11 obtained for Washington customers, that it is in that
12 switch where those numbers are stored and, again, may
13 not be the right word, where they're managed out of
14 on your network?

15 A. I'm sure the majority and perhaps all
16 currently of our Washington NPA-NXXs are managed in
17 the Tukwila facility, but that's not a requirement of
18 the technology.

19 Q. Well, how else could it be done, then? What
20 -- when you say it's not a requirement of the
21 technology, how else could it be done?

22 A. Well, a subset of the numbers might be
23 managed in a different switch. It just requires
24 routing instructions in the switches for how to deal
25 with a call that is dialed to a particular number.

0852

1 Q. So the Tukwila switch could have an NXX that
2 it wished to be handled by one in California, and if
3 it hits your Tukwila switch, it would just route it
4 directly through to the switch that would manage it?

5 A. That is correct.

6 Q. Okay. I'd like now, if we could, to turn to
7 page three of Exhibit 516. This refers -- this and
8 the next page refers to a service called Voice
9 Source, and I'm just trying to get a basic
10 understanding. As I've read the information on these
11 two pages, this is a service provided by Pac-West to
12 what I would call a retail voice over Internet
13 protocol provider. Am I correctly describing this
14 service?

15 A. Yes.

16 Q. Okay. So this would be a service that you
17 would offer to a Vonage or a Skype or whoever else is
18 in that space?

19 A. If they survive, yes.

20 Q. I only learned this week that Vonage has a
21 little problem with a lawsuit, but --

22 A. I'd like to think Verizon has a problem with
23 a lawsuit, but --

24 Q. Touche. Just in very general terms, if --
25 let's use Skype and keep Vonage out of this. If

0853

1 Skype were to get this service from Pac-West, what is
2 it you're providing, in general terms, to Skype?
3 That's S-k-y-p-e, by the way.

4 A. And I'm going to broaden your question
5 slightly by saying this is a kind of service that
6 might also appeal to a cable company that is
7 attempting to provide telecommunications to its
8 broadband customers using VoIP.

9 Q. Okay.

10 A. Okay.

11 Q. Thank you.

12 A. This service assumes that the retail VoIP
13 provider, either Skype or a cable company, has their
14 own retail customers, the end user, but it also
15 assumes they do not have easy access to as many
16 numbers as they need, that they do not have easy
17 access to the systems that would comply with CALEA,
18 they do not have --

19 JUDGE MACE: That's C-A-L-E-A, I think?

20 THE WITNESS: Yes.

21 JUDGE MACE: The law enforcement system.
22 I'm not sure.

23 THE WITNESS: Right. Comprehensive Law
24 Enforcement Assistance Act, I think it is. CALEA.
25 Sorry for using an acronym without explaining it.

0854

1 JUDGE MACE: That's okay.

2 THE WITNESS: There are a number of
3 functions that need to be performed by a complete
4 telecommunications service provider if they're going
5 to provide local telephone service to end users.

6 Often, the VoIP provider is able to have
7 software that can transmit a telephone call and just
8 process a basic telephone call without too much
9 problem, but as soon as they try to get into
10 complying with all of the other requirements, like
11 911, like CALEA compliance, and like gaining
12 interconnection with lots of incumbent telephone
13 companies, they run into roadblocks.

14 Pac-West has already achieved all of those
15 functions, and we offer to let the VoIP companies use
16 those functions through this service, Voice Source,
17 and that's the purpose of this service.

18 Q. So if Skype has customers and they wish to
19 call PSTN numbers, just atypical number here in
20 Olympia, this service is Pac-West's way of sort of
21 providing the network interface, if you will, between
22 Skype and its customers and provides a network that
23 allows them to route that call to that PSTN number.
24 Is that a -- one of the things that it would enable
25 Skype to do?

0855

1 A. Yes, but it's not limited to one-way
2 traffic.

3 Q. Yeah, I was only using that as an example,
4 not as a -- what other things would it allow? I
5 assume it would also allow the PSTN caller to make a
6 call to the VoIP end-user of Skype?

7 A. Yes, the service allows the Skype customer
8 to have an Olympia telephone number, that telephone
9 number being provided by Pac-West to Skype, and then
10 Skype assigns it to its telephone customer, and then
11 the Skype customer and other customers of other
12 companies in Olympia, sharing Olympia telephone
13 numbers, are able to call each other. Now, if that
14 Skype customer calls Spokane, that will be a toll
15 call, and vice versa.

16 Q. Okay. Does Pac-West consider Skype to be a
17 customer of Pac-West or a telephone company doing --

18 A. That's a great question, and the answer is
19 they're a customer.

20 Q. Okay.

21 A. They're not a carrier.

22 Q. Okay. And that's why they need to come to
23 you, for example, to get telephone numbers, because,
24 under the NANPA, National -- North American Numbering
25 Plan Administrator rules, only CLECs, ILECs, mobile

0856

1 providers are -- there's a limited universe of
2 companies that are able to go get PSTN telephone
3 numbers; correct?

4 A. At the moment, with one exception.

5 Q. Well, I have to ask. What's the one
6 exception?

7 A. The one exception is an affiliate of AT&T
8 petitioned the FCC for permission to get numbers, and
9 that affiliate was not a certified carrier; it was an
10 enhanced service provider affiliate. The FCC granted
11 that exception and then refused to grant similar
12 requests that poured in from other enhanced service
13 providers. So that's the status --

14 Q. Sounds like a sore point?

15 A. Yes.

16 Q. Okay. Let me ask you this. If -- let me
17 just hypothesize another call. Let's assume, again,
18 Skype is your customer, they want to dial somebody in
19 Olympia. That call comes in and is somehow routed to
20 the network access server -- well, I probably need to
21 ask one question. For that traffic, is the network
22 access server in Tukwila, is that also the device
23 that provides the necessary IP-TDM conversion to
24 allow an IP customer to call a PSTN customer?

25 A. I'm not competent to answer that question.

0857

1 I don't know if it's exactly the same -- the same
2 equipment. I don't believe it is. I think the
3 equipment that's necessary to do the conversion for
4 VoIP purposes is called a media gateway, which I
5 believe is different than the --

6 Q. Okay.

7 A. -- network access server. And that
8 equipment can either be on the Pac-West network and
9 we would rent the use of it to Skype, or the VoIP
10 provider could have its own equipment and, in that
11 case, on Exhibit 505, that equipment would be in the
12 location identified as the former Qwest foreign
13 exchange customer in the lower left corner.

14 Q. Okay. Now, let's just assume, for purposes
15 of my question, that Pac-West has a media gateway
16 also sitting somewhere close to the Tukwila switch
17 that is utilized for -- in order to provide Voice
18 Source so that Skype can call in, Pac-West then
19 performs the conversion function. If I understand,
20 that would then go to your switch -- and let's assume
21 the customer, wherever it may be, let's say it has a
22 Seattle number, but, of course, it can be calling
23 from anywhere, has a Seattle number, but wants to
24 dial an Olympia customer, what happens when that call
25 comes to your switch? How is it then delivered to

0858

1 Olympia?

2 And then the second question is how is it
3 rated for intercarrier compensation purposes?

4 A. I want to make sure I've got the
5 hypothetical in mind.

6 Q. Okay.

7 A. So we're talking about a Skype VoIP customer
8 with a Seattle telephone number --

9 Q. Right.

10 A. -- calling Olympia.

11 Q. Right, a Qwest Olympia 1FR customer.

12 A. Okay. Again, using Exhibit 505, let's
13 assume that Rate Center A is Olympia.

14 Q. Okay.

15 A. Seattle is somewhere off the page.

16 Q. Right.

17 A. Okay. The call would originate with the
18 Skype customer in the IP format and would be
19 transmitted to the media gateway on the Pac-West
20 site.

21 Q. Right.

22 A. And that would be the Pac-West site on this
23 chart at the bottom. The Pac-West switch would
24 receive from the media gateway the dialed telephone
25 number, would do a translation, identify it as an

0859

1 Olympia call, and would transport it over the
2 interconnection facility to the Qwest Olympia office.

3 Now, because Olympia and Seattle are in
4 different local calling areas, Pac-West would receive
5 from Skype, through the media gateway, not only the
6 dialing numbers, the called numbers, but also the
7 calling telephone number, which is a Seattle
8 telephone number, and based on those two telephone
9 numbers, Pac-West would treat that call as a 251(g)
10 call for purposes of interconnection compensation.
11 That means access charges would apply.

12 Q. So under that scenario -- well, let's do two
13 questions. Under that scenario, then, Pac-West would
14 pay Qwest terminating access charges?

15 A. Yes, we would.

16 Q. Okay. And the second question, is it -- in
17 that scenario, would it actually be handed off to
18 Pac-West, the IXC, as opposed to Pac-West, the CLEC?

19 A. No, no. It would be handed off to Pac-West,
20 the CLEC. And I just misspoke. I said the call
21 would be handed off to Qwest over the local
22 interconnection facilities. It would be transmitted
23 over feature group D trunks, which are for the
24 purpose of access charges.

25 Q. Okay.

0860

1 A. Those feature group D access trunks are not
2 displayed on this chart.

3 Q. Okay. Now, let me just change the
4 hypothetical one item. Let's assume same call,
5 except that the calling party, the Skype customer,
6 has an Olympia number. How -- walk me through it
7 again, both routing and compensation.

8 A. The routing would be the same. The
9 compensation would be different because the two
10 telephone numbers are assigned to the same local
11 calling area. So the two telephone numbers are in
12 the same geography and reciprocal compensation would
13 apply to that call.

14 Q. And that would be the case even though it
15 enters the public switched telephone network in
16 Seattle?

17 A. That's correct. The place -- the point of
18 entry is irrelevant for purposes of determining
19 intercarrier compensation.

20 Q. Okay. Let's turn quickly, and maybe we can
21 go through this a little more quickly than we have
22 been, and I've really appreciated your explanations.
23 It's been very helpful. The next service is one
24 called PSTN On Ramp, and I'm looking at -- I think
25 it's the fifth and sixth pages of that exhibit.

0861

1 Could you just give me a general description of what
2 this service is and who would buy it and why?

3 A. This is a fairly stupid service.

4 Q. I'm not sure your marketing department would

5 --

6 A. I have no sympathy for them. My
7 understanding of PSTN On Ramp is that it doesn't have
8 a lot of intelligence built into it, so it's like a
9 very, very fast computer that has a lot of speed, a
10 lot of capacity, but its intelligence is not
11 hard-wired in, you know. It depends upon somebody
12 else doing something with it. This service would
13 appeal to an entity like Boeing Aircraft that has a
14 extensive private network and wants to not only
15 communicate on its private network, which is not
16 provided by Pac-West, but also wants to be able to
17 have its employees communicate with other entities
18 and other people who are not employees of Boeing
19 Aircraft.

20 It is the equivalent of a PBX trunk that
21 allows for off-network calling. And the way it works
22 is if a call comes in and the customer has a PBX
23 private network that is SS7-capable -- and in this
24 context, SS stands for Signaling System 7 -- if the
25 customer is SS7 capable, in some cases, they will

0862

1 communicate the originating telephone number to
2 Pac-West over the SS7 links the customer has with a
3 Pac-West network. And in those cases, Pac-West will
4 transmit not only the call, but the originating
5 telephone number.

6 We don't mess around with that. If the call
7 comes to us without the originating telephone number,
8 then we treat the traffic as it is described in our
9 interconnection agreement with incumbent carriers as
10 nonconforming traffic; that is, traffic where the
11 call information is messed up or missing.

12 And in that case, as I understand it --
13 well, each interconnection agreement is different,
14 but usually nonconforming traffic, that is, traffic
15 that is missing some of the call detail, if it's
16 below a percentage of the total traffic, it's treated
17 in proportion to the traffic that has all of the
18 information. So if 50 percent of the traffic is toll
19 traffic, then 50 percent of the nonconforming traffic
20 will be treated as toll. However, if the
21 nonconforming traffic reaches a certain cap level,
22 then all of the nonconforming traffic is treated as
23 toll. That make sense?

24 Q. As much sense as I can make of it, so --

25 A. Okay.

0863

1 Q. Yes. Thank you very much. Let me -- let's
2 just turn to the next -- the last one. This is the
3 last two pages called intelligent foreign exchange.
4 Is that just a -- I don't want to cast aspersions on
5 marketing. Is this just a fancy name for FX service?

6 A. Well, we like to think it's a fancy foreign
7 exchange service, but yes, it's foreign exchange
8 service.

9 Q. This is really a description of the foreign
10 exchange service offered by Pac-West in Washington?

11 A. Yes.

12 Q. Okay. Help me understand -- and this was a
13 term that was actually used in conjunction with PSTN
14 On Ramp. There is a term called Super POP that was
15 used. What does that mean?

16 A. Not to cast aspersions upon incumbent
17 telephone companies, but unlike incumbent telephone
18 companies, Pac-West and most other CLECs are willing
19 to let their customers collocate equipment in the
20 CLEC central offices. So a number of our switch
21 sites are set up for customer collocation, and those
22 switch sites are called Super POPs. It makes it
23 convenient for our customers to locate their
24 equipment of their selection, for whatever purpose
25 they pick, as long as it's not the manufacturer of

0864

1 explosives, and it makes it easy for the customer to
2 purchase and interact with Pac-West's services.

3 JUDGE MACE: Mr. Smith, I want to take a
4 recess at this point.

5 MR. SMITH: Okay. And I'm probably 20
6 minutes from the end, so --

7 JUDGE MACE: Okay. We'll take a -- we'll
8 recess till 10:30.

9 (Recess taken.)

10 JUDGE MACE: Let's be back on the record.
11 Mr. Smith.

12 MR. SMITH: I'm happy to announce, as I
13 looked at my cross, I think 20 minutes is -- I'll be
14 done in less than 20 minutes.

15 Q. I would like to clarify one area that I
16 talked to you about earlier, about the network access
17 server and how different ISPs operate. I just -- I
18 thought I heard something, and I want to make sure I
19 heard it correctly, and that is, if I understood what
20 you said, some Internet service providers prefer to
21 do their own modem functionality, if you will,
22 provide their own IP-to-TDM conversion. Is that --
23 did I hear you say that or not?

24 A. Their own circuit-switched to IP conversion,
25 and I did say that.

0865

1 Q. Okay. And others prefer to take advantage
2 of a service offered like Pac-West or Level 3, where
3 you essentially outsource that function and perform
4 it on their behalf?

5 A. Yes, they outsource it to us.

6 Q. They outsource to you and you perform it on
7 their behalf?

8 A. Yes.

9 Q. Okay. If you would turn -- it's marked as
10 Exhibit 518, it is excerpts from the Pac-West price
11 list here in the state of Washington.

12 JUDGE MACE: Actually, I think that's --

13 MR. SMITH: There's two different ones.

14 JUDGE MACE: Yeah, I have one marked 517
15 that says price list in the upper --

16 MR. SMITH: Yeah, that one is the price list
17 that refers only to Intelligent FX and to Voice
18 Source. 518 is some other excerpts, and that's the
19 one I wanted to refer to.

20 JUDGE MACE: Thank you.

21 THE WITNESS: What I have in my possession
22 is I believe the entire price list.

23 Q. Okay. And I think I can get you there. The
24 first place I would like you to go, if you would, is
25 to page 13.

0866

1 A. Is that --

2 Q. Which should be a map with the state of
3 Washington on it.

4 A. Thank you.

5 Q. Okay. And if I could, I'll just read --
6 it's headed, it's original page 13, it says Service
7 Area Map. And it says, The Company -- and I believe
8 this means the Company Pac-West -- provides local
9 exchange service in Washington within the service
10 territories of Verizon and Qwest. The Company
11 concurs in and hereby incorporates by this reference
12 all current and effective service territory and local
13 exchange boundary maps filed with the Washington
14 Utilities and Transportation Commission by Verizon
15 and Qwest. Did I correctly read that?

16 A. Yes, Pac-West honors the geographic rate
17 centers established by this Commission.

18 Q. Okay. And if a Qwest local exchange
19 boundary were to change for some reason, I read this
20 to say, and when that change is in effect, we're
21 automatically updating our own local exchange
22 boundaries to conform to that?

23 A. Yes, and I would assume that you would
24 update the Local Exchange Routing Guide, the industry
25 standard database, and by that update, the

0867

1 information would flow automatically into our
2 network.

3 Q. Okay. Refer over, if you would, to page 21.

4 And I'd like to look at the definition of exchange,
5 and let me read it. It says, Exchange means a
6 geographic area established by a company for
7 telecommunications services -- service within that
8 area. Is that Pac-West's definition of an exchange?

9 A. Those are the words in our price list.

10 Q. Okay. And then, to the next page, two
11 definitions. The first is interexchange. It says,
12 Interexchange means telephone calls, traffic,
13 facilities, or other items that originate in one
14 exchange and terminate in another.

15 And I'll ask you the same question. Is that
16 your price list definition of the term interexchange?

17 A. Yes.

18 Q. And then, finally, local calling area, near
19 the bottom of the page, it says, Local calling area
20 means one or more rate centers within which a
21 customer can place calls without incurring long
22 distance (toll) charges.

23 Is that a correct reading of your definition
24 of call -- local calling area from your price list?

25 A. Yes.

0868

1 Q. Okay. Now, Mr. Kopta and I have had some
2 discussion -- we've had some discussion as to whether
3 what was marked as Exhibit 519 really is the
4 interconnection agreement between Pac-West and Qwest
5 in the state of Washington, and I believe we have an
6 agreement that I can ask you a couple of questions
7 about a couple of the definitions and then, given
8 that there is some uncertainty, we will then jointly
9 check to make sure that we have -- that this really
10 is the information and will communicate that to the
11 Commission and the other parties. Do you have that?
12 It's marked as Exhibit 519.

13 A. I do not have a copy of it.

14 Q. Well, maybe I could just read this, ask you
15 to accept it, subject to check, and then Mr. Kopta
16 and I will do the checking. There's two definitions
17 I'd like to focus on. The first is identified as
18 Section 4.22, and it states, Exchange service or
19 extended area service (EAS)/local traffic means
20 traffic that is originated and terminated within the
21 local calling area as defined by Qwest's then-current
22 EAS/local serving areas and as determined by the
23 Commission.

24 I'll ask you if you accept that, subject to
25 check, consistent with what I just said that Mr.

0869

1 Kopta and I would do.

2 A. I'll not surprise you by answering yes.

3 Q. Thank you. It makes my life easier. And
4 then over 4.48, rate center, it says, Rate center
5 means the specific geographic point (associated with
6 one or more specific NPA-NXX codes and various wire
7 centers) being used for billing and measuring
8 telecommunications service. For example, a rate
9 center will normally include several wire centers
10 within its geographic area with each wire center
11 having one or more NPA-NXXs.

12 I'll ask you to accept, subject to check,
13 that's the definition of rate center.

14 A. Subject to check, yes.

15 Q. And maybe I could ask you, is that -- is
16 that your general understanding of a rate center,
17 just based on your experience in the industry?

18 A. Yes.

19 Q. Okay. And then I -- the very next one, if I
20 could just read it, 4.49, Rate center area is the
21 geographic area within which basic -- in which basic
22 exchange services are provided for NPA-NXX
23 designations associated with a particular rate
24 center.

25 And again, I'll ask you if you'd accept

0870

1 that, subject to check, that that's in the
2 interconnection agreement between the two parties?

3 A. Yes.

4 MR. SMITH: I believe that concludes my
5 cross-examination. I would offer -- make sure I've
6 got these. There are some data responses. Exhibit
7 512, which are some data responses; Exhibit 513, data
8 responses; 514, we've determined to not offer; 515
9 are some data responses; 516 is the Web site material
10 we just discussed; 517 is price list excerpts
11 relating to the voice service we discussed and
12 Intelligent FX; 518 is a variety of other price list
13 excerpts; and 519 is the interconnection agreement
14 excerpts that we've agreed we need to check. And I
15 would offer those and, in particular with 519,
16 subject to the check that Qwest and Pac-West will
17 subsequently make.

18 JUDGE MACE: Any objection to the admission
19 of those proposed exhibits?

20 MR. KOPTA: Only in a limited basis, and I'm
21 trying to identify which one. There are three
22 different data request responses in these exhibits
23 that are simply questions from Qwest with an
24 objection, and I don't -- those I don't see as having
25 any evidentiary value or probity as part of the

0871

1 record, and those data requests and responses are
2 Request Number Nine, which is part of the first set
3 of data requests, which is Exhibit 512. Then
4 Requests Numbers 20 and Request for Admission Number
5 13.

6 MR. SMITH: If I could.

7 JUDGE MACE: And that's in 514, which is not
8 being --

9 MR. KOPTA: That's actually in 514.

10 JUDGE MACE: That's not being offered.

11 MR. KOPTA: So that's not being offered, so
12 I think it's just the response to -- or actually, the
13 objection to Data Request Number Nine, which is part
14 of Exhibit 512. That is the only thing I would
15 object to.

16 MR. SMITH: Well, the reason I think we
17 offered it is there certainly is an objection, but
18 then it also contains a statement like, Pac-West does
19 not know the physical -- it does contain, as part of
20 the objection, some factual representations and
21 statements that Pac-West has provided that could
22 potentially be relevant in this case. That's why we
23 designated it.

24 JUDGE MACE: I commonly see on these answers
25 that there's some objection. I guess I'm not sure

0872

1 what the difference between those other answers that
2 have been admitted is -- are to this.

3 MR. KOPTA: The difference is that --

4 JUDGE MACE: You're making the objection, I
5 suppose.

6 MR. KOPTA: -- is that I'm making the
7 objection, and this is just an objection. On some of
8 the others there's an objection that says
9 notwithstanding this objection, and then provides
10 information that is then sponsored by a specific
11 individual within the company. So this is simply a
12 representation of Counsel. And I guess, you know,
13 I'm happy to be elevated as a witness in the case,
14 but at this point, my understanding is that the
15 representations of Counsel are nothing more than
16 representations and not necessarily evidence.

17 And I believe that Mr. Smith, in his
18 cross-examination, explored the extent to which Mr.
19 Sumpter is aware of the location of ISP customers,
20 and so I think to the extent that there's any need
21 for that kind of information, that that's already
22 been explored on an evidentiary basis and is not
23 really necessary to be included as an objection to a
24 data request.

25 MR. SMITH: May I -- well, I have always

0873

1 taken what Mr. Kopta has always said as gospel, so --
2 but it does contain, for example, a statement,
3 Pac-West rates calls by comparing the NPA-NXX on the
4 call records, Pac-West does not bill Qwest based on
5 physical location.

6 Obviously, that is information that, whether
7 it's a representation of Counsel or not, is
8 information that was communicated by Counsel,
9 obviously based on information provided to him by his
10 client. They felt that it was necessary to object
11 and include that information, and it's certainly a
12 factual representation that I think is -- merits
13 being left in the record.

14 JUDGE MACE: And just looking at the last
15 sentence, it appears to me that this, to some extent,
16 falls into the category of those other discovery
17 responses which have been admitted, where it says
18 subject to and without waiver of these objections any
19 and all -- and it goes on to recite something about
20 traffic exchange. So I'm going to admit it along
21 with the others --

22 MR. KOPTA: Okay.

23 JUDGE MACE: -- to which you did not object.
24 Then I'll be admitting Exhibit 512, 513, 515, 516,
25 517, 518 and 519, subject to the check that Counsel

0874

1 alluded to.

2 MR. SMITH: Thank you, Your Honor. That
3 concludes Qwest's cross-examination. And thank you,
4 Mr. Sumpster.

5 THE WITNESS: Thank you, sir.

6 JUDGE MACE: Staff and WITA still have
7 cross-examination? Mr. Thompson.

8 MR. THOMPSON: I was just going to say,
9 Staff has decided not to cross-examine Mr. Sumpster.

10 JUDGE MACE: Very well. And Mr. Finnigan,

11 MR. FINNIGAN: Thank you.

12

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

14 BY MR. FINNIGAN:

15 Q. Good morning, Mr. Sumpster.

16 A. Good morning.

17 Q. As you know, I'm Rick Finnigan. I represent
18 the Washington Independent Telephone Association, and
19 I'm sure you're glad to know that you're on the home
20 stretch.

21 Some general questions to start with. Does
22 Pac-West have numbering resources for the Toledo
23 exchange served by the Toledo Telephone Company?

24 A. I don't know the answer to that, but I doubt
25 it seriously.

0875

1 Q. Would your response be the same for other
2 independent company territories, such as the Tenino
3 Telephone Company?

4 A. Yes, for the reason that our service
5 territory is limited to the service territories of
6 Qwest and Verizon.

7 Q. And you don't have an interconnection
8 agreement in place with, for example, the Tenino
9 Telephone Company; is that true?

10 A. To the best of my knowledge, that is
11 correct.

12 Q. Let's take a look at your Exhibit 506, which
13 is JFS-6, if that helps your --

14 A. I understand. I have it.

15 Q. Okay, great. And this is a similar
16 depiction to the exhibit that you and Mr. Smith were
17 discussing a little bit earlier this morning; is that
18 correct?

19 A. It is.

20 Q. And you've been in the hearing room when
21 I've asked other witnesses about the Tenino calling
22 area and the Olympia calling area and that series of
23 questions?

24 A. Yes.

25 Q. Okay. So if we look at your Exhibit 506,

0876

1 Rate Center B could be the Tenino Telephone Company,
2 the Tenino exchange, would that be --

3 A. It could be.

4 Q. Okay. And Rate Center A could be the
5 Olympia rate center served by Qwest?

6 A. Yes.

7 Q. And where it says PW Network, where it shows
8 your switch, in essence, we could take that to be
9 Seattle?

10 A. Tukwila.

11 Q. Okay, Tukwila. Seattle calling area?

12 A. Yes.

13 Q. Okay. And on your exhibit, you've described
14 I think pretty clearly what Pac-West views as the
15 calling arrangement that would apply for a call that
16 originated from Tukwila that was -- or, excuse me,
17 from a Tenino customer that is headed for a Pac-West
18 customer physically located in Seattle, but having an
19 Olympia number; would that be correct?

20 A. Yes.

21 Q. Okay. With Mr. Smith, you described how
22 traffic would get from a Pac-West customer to Qwest,
23 and described in essence what you've labeled as a
24 251(g) traffic that would be subject to access
25 charges?

0877

1 A. Yes.

2 Q. And that's essentially toll traffic?

3 A. Well, toll is not a term used in Section
4 251(g) of the act.

5 Q. I understand that, but colloquially, we call
6 it toll traffic?

7 A. That's true, but I'm really nervous about
8 using colloquial terms when we're trying to be
9 precise.

10 Q. All right. Let's take a look at your
11 Exhibit 506. And assuming that you have a customer
12 in Seattle with a Seattle telephone number and that
13 customer desires to call an end user in Tenino, does
14 this exhibit depict how Pac-West would view the call
15 as flowing? I believe you indicated, in talking with
16 Mr. Smith, is that the call would go from Pac-West to
17 an access tandem; is that correct?

18 A. Let me use this exhibit and describe how
19 that call --

20 Q. Please.

21 A. -- would flow. Now, as I understand your
22 hypothetical, a Pac-West customer has a Seattle
23 telephone number. Let's assume on this diagram that
24 customer is in the lower right-hand corner. So
25 that's a Pac-West customer with a Seattle telephone

0878

1 number. And in your hypothetical, that customer,
2 that Pac-West customer, is calling a Tenino customer
3 in Rate Center B in the chart.

4 Q. That's correct.

5 A. Okay. The way the call would be processed
6 is the Pac-West customer would pick up the handset
7 and go off hook, would dial the Tenino telephone
8 number. That information would be accepted by the
9 Pac-West network, which would translate the
10 instructions from the customer, meaning the dialed
11 numbers, and would identify the need to establish a
12 circuit from the Pac-West switch to the Qwest office
13 and from the Qwest office to the Tenino central
14 office. That circuit would be established and the
15 Tenino customer's telephone would ring. Now,
16 assuming the customer answers the phone, the
17 communication would be established.

18 Q. Well, let's try and be a little more precise
19 on that. Over what facilities would that call
20 travel?

21 A. It would travel over the customer's loop
22 from the customer's premise equipment in the lower
23 right-hand corner over the heavy blue line, at least
24 on my chart, that is the Pac-West-provided loop, and
25 from the Pac-West switch to the Qwest office --

0879

1 Q. Let's stop there. Which Qwest office? When
2 you use the term Qwest office, what are you meaning
3 by that term?

4 A. Since this is a toll call, it would be the
5 Qwest tandem.

6 Q. And by tandem, you're referring to access
7 tandem, as opposed to a local tandem?

8 A. I'm not in a position to qualify my answer
9 as to whether it's an access tandem or some other
10 kind of tandem. Different incumbent telephone
11 companies have different architectures, and I'm not
12 specifically familiar with Qwest's and whether or not
13 they have separate access versus local tandems.

14 Q. Okay. Well, let's assume that they do have
15 separate tandems. They have both an access tandem
16 and a separate switch, which is a local tandem.
17 Which tandem would Pac-West route it to?

18 A. Given that hypothetical, I assume it would
19 be the access tandem.

20 Q. Okay. And please proceed with your
21 description.

22 A. From that point, the call would complete to
23 Tenino over whatever joint use access facilities
24 Tenino and Qwest have established between them.
25 Pac-West has no influence over the kind of

0880

1 interconnection Pac-West and Tenino have established.
2 Pac-West, for intercarrier compensation, would expect
3 to be billed access charges, either one bill from
4 probably Qwest for the entire access charge amount
5 and then Qwest and Tenino would split the bill, or
6 separate bills from each carrier for their part of
7 the access service.

8 Q. Do you understand that, in Washington,
9 switched access is billed on a multiple bill basis?

10 A. I'm willing to accept that.

11 Q. Please accept that. In your hypothetical,
12 where in the chain of traffic would the access record
13 be generated by which Tenino could bill Pac-West for
14 that access charge?

15 A. There are several places where it could be
16 billed.

17 Q. But I'm asking you where would it be billed?
18 Where would it be generated?

19 A. I'll explain where it could be billed. It
20 depends entirely upon the agreements between Tenino
21 and Qwest and the capabilities that the two companies
22 have invested in in their network. One possibility
23 is that Qwest, at its tandem, would create an 1101
24 record and provide that to Tenino for its billing
25 purposes.

0881

1 Another possibility is that Tenino could
2 capture the call detail record as the call is
3 actually in progress, which would include the
4 originating and the terminating telephone number, and
5 then, subsequent to the call, Tenino could use that
6 captured information to query the impact database,
7 determine the carrier that's responsible for the
8 originating telephone number, and develop its own
9 access billing record.

10 Both are possible, and I don't know if
11 Tenino relies on the 1101 records or has developed
12 its network sufficiently to develop its own records.

13 Q. But in your scenario, Pac-West, as the
14 initial carrier of the call, would not generate an
15 1101 record?

16 A. No, we generate the call detail record in
17 the SS7 information flow containing the necessary
18 information.

19 Q. Okay. You just said SS7 information flow.
20 Does that mean that if Tenino prepared an access bill
21 based upon the switch record, that Pac-West would not
22 pay that bill? That AMA record, as opposed to the
23 SS7 record?

24 A. Which switch record?

25 Q. The terminating switch record.

0882

1 A. We would if it was accurate. Let me be
2 complete. We would pay your access bill if it were
3 accurate.

4 Q. And who determines whether it's accurate?

5 A. The two companies, through dispute
6 resolution process.

7 JUDGE MACE: You said the AMO bill? What is
8 that?

9 MR. FINNIGAN: AMA, A-M-A.

10 JUDGE MACE: What does that stand for?

11 MR. FINNIGAN: I forget. Thank you.

12 THE WITNESS: Automatic message accounting.

13 JUDGE MACE: Thank you.

14 Q. Mr. Sumpter, would you please turn to Cross
15 Exhibit 511, please? Do you have the cross exhibits?

16 A. I do, but could you describe for me which
17 one is 511?

18 Q. Certainly. It is a document that says
19 Pac-West up in the upper left-hand corner, and it's
20 -- see that document?

21 A. I have it.

22 Q. Thank you. Do you recognize Exhibit 511 as
23 a bill for intercarrier compensation?

24 A. I do.

25 Q. And in this case, the bill was to Rainier

0883

1 Connect; is that correct?

2 A. That is correct.

3 Q. You understand that Rainier Connect is a
4 CLEC that operates in the state of Washington?

5 A. I do.

6 Q. Okay. Under the entry that says
7 Telecommunications 251(b)(5), would that be
8 reciprocal compensation charges?

9 A. Yes.

10 Q. And if I look at it, it's got a setup that
11 says, then, per message, and then a quantity of
12 3,239. Do you see that?

13 A. I do.

14 Q. Does that mean that there were 3,239
15 messages that were incorporated into this bill?

16 A. Yes.

17 Q. And down below that, I see there's an MOU,
18 and that then is a parenthetical phrase of per minute
19 of use, and the quantity is 157,589. Is that minutes
20 of use, then?

21 A. It is.

22 Q. Okay. And those minutes of use relate to
23 the messages in the line above it?

24 A. I live in that hope, yes.

25 Q. All right. And would you accept that,

0884

1 mathematically, the average minute per message is
2 48.65?

3 A. I'm willing to accept that.

4 Q. And that would suggest that that is traffic
5 bound for an Internet service provider, would it not?

6 A. I know a lot of people make that assumption.

7 Q. Would you make that assumption?

8 A. Not necessarily.

9 Q. Would you accept that the average holding
10 time for a call from one residential subscriber to
11 another residential subscriber is in the vicinity of
12 three to four minutes per call?

13 A. Yes.

14 Q. Would you also accept that the average
15 holding time for a call from one business to another
16 or from one residence to a business is in the
17 vicinity of six to eight minutes per call?

18 A. Yes.

19 Q. Okay. And you would -- would you also
20 accept that the holding times for calls to Internet
21 service providers are generally much longer than
22 either of the other two categories of calls I
23 described?

24 A. Yes, Internet service providers typically
25 have longer holding times, but I believe other

0885

1 classes of customers have similar long holding times.

2 Q. What classes of customer would that be?

3 A. Calls to my mother-in-law.

4 Q. That just means you raise the average.

5 A. But more precisely, I don't consider a law
6 firm's internal network to be an Internet service
7 provider, and so if Mr. Kopta is working off-site and
8 accessing his firm's Web site for purposes of
9 conducting business, I wouldn't consider Davis Wright
10 Tremaine to be an Internet service provider.

11 So rather than calling these typically calls
12 to Internet service providers, I would agree that
13 they are typically data calls of one sort or another.

14 Q. Okay. Given what you described to Mr. Smith
15 as Pac-West's general customer profile, you would
16 agree that it's more likely than not that these are
17 calls to an Internet service provider?

18 A. I'll agree with that with a caveat. Mr.
19 Smith asked me about our existing call profile, and
20 then he asked me a number of questions about customer
21 sets that we are attempting to serve in the nature of
22 VoIP service providers and -- well, VoIP service
23 providers. Their characteristics will be different.

24 Q. But for purposes of this discussion, we're
25 talking about your existing customer profile?

0886

1 A. Given that qualification, yes.

2 Q. Thank you. And if I go over to the rate
3 column, I see a rate per minute of .0018; is that
4 correct?

5 A. Yes.

6 Q. And that rate appears to be higher than the
7 FCC cap for calls to Internet service providers; is
8 that correct?

9 A. Yes, although the FCC cap only applies when
10 an incumbent carrier has made the mirroring offer and
11 then the capped rate applies to traffic that is
12 presumed to be ISP-bound because it is above the
13 three-to-one ratio of inbound to outbound traffic.
14 That rate does not apply unless the incumbent carrier
15 has made the mirroring offer.

16 Q. It's true that Pac-West does not have an
17 interconnection agreement with Rainier Connect, isn't
18 it?

19 A. No, but we've offered to negotiate an
20 agreement.

21 Q. Have you made that offer in writing?

22 A. Yes, we have.

23 Q. Okay. But at this time, you do not have an
24 interconnection agreement in place with Rainier
25 Connect?

0887

1 A. That is correct.

2 Q. Okay. Under what authority is Pac-West
3 attempting to assess reciprocal compensation charges
4 to Rainier Connect without an interconnection
5 agreement in place?

6 MR. KOPTA: Your Honor, I'm going to object
7 at this point. The scope of this proceeding is,
8 quote, unquote, VNXX, and a complaint by Qwest
9 against various carriers, including Pac-West, for
10 engaging in providing service through that form of
11 service. I see no indication and I've heard nothing
12 in the indication from Mr. Finnigan's questions that
13 this has anything whatsoever to do with Qwest or with
14 VNXX, but instead seems to be an effort to deal with
15 a private dispute that may be between one of his CLEC
16 clients and Pac-West, and therefore I would object to
17 any further questions on this and move to strike this
18 whole line of questioning.

19 JUDGE MACE: Mr. Finnigan.

20 MR. FINNIGAN: Yes, Your Honor. This
21 question does have to do a lot with VNXX, this whole
22 line of questioning does, actually. Mr. Sumpter has
23 testified that they assigned VNXX numbers, they
24 assign them for their ISP customers, that's what
25 their Web site material says, they assign them to

0888

1 their customers, their ISP customers. One of the
2 major issues in this proceeding is the level of
3 intercarrier compensation and the type of
4 intercarrier compensation that applies between
5 carriers, and I'm exploring Pac-West's present
6 practice in the environment, and that will have
7 probative value as to what course of action the
8 Commission should take in this proceeding.

9 JUDGE MACE: I'm persuaded by Mr. Kopta's
10 arguments. I'm going to sustain the objection
11 insofar as I'm going to ask you to move on to
12 something else, but I'm not going to strike what's
13 already in the record.

14 MR. FINNIGAN: Thank you.

15 Q. Mr. Sumpter, do you bill -- issue the same
16 types of bills to incumbent local exchange carriers?

17 A. Yes, our bills look like the exhibit we have
18 in front of us.

19 Q. So today you are billing incumbent local
20 exchange carriers for reciprocal compensation based
21 upon the number assignment, as opposed to the
22 physical location of the customers?

23 A. Is it okay if I make sure I understood your
24 question correctly?

25 Q. Please do.

0889

1 A. You were asking if we, Pac-West, bills
2 reciprocal compensation or access based on the
3 originating and terminating telephone numbers?

4 Q. I was asking just about reciprocal
5 compensation for the moment.

6 A. If the two telephone numbers involved in a
7 call are assigned to the same local calling area,
8 then we treat that call as falling under Section
9 251(b)(5) of the '96 act and subject it to access
10 charges.

11 Q. 251(b)(5)?

12 A. I'm sorry, I just misspoke. Subject it to
13 reciprocal compensation.

14 Q. Thank you.

15 A. Thank you.

16 Q. And you're doing that with incumbent local
17 exchange carriers with whom you do not have
18 interconnection agreements in place; is that correct?

19 A. If we have a tariff for reciprocal
20 compensation call termination in place in a state.

21 Q. The answer is yes?

22 A. The answer is yes, if we have the tariff in
23 place.

24 Q. You would agree that, in Washington, a CLEC
25 such as Pac-West does not have a tariff?

0890

1 A. You're right, and in that case, it resides
2 in our price list.

3 Q. So just to make sure I understand this,
4 based upon your Washington price list, you are
5 assessing incumbent local exchange carriers 251(b)(5)
6 reciprocal compensation, even though there's no
7 interconnection agreement in place?

8 A. Yes.

9 MR. FINNIGAN: Okay. Thank you. Your
10 Honor, that completes my cross-examination.

11 JUDGE MACE: Thank you.

12 MR. FINNIGAN: Thank you, Mr. Sumpter.

13 JUDGE MACE: Did you want to move admission
14 of exhibits?

15 MR. FINNIGAN: I do. I do. I will ask that
16 Exhibits 508 through 511 be admitted.

17 JUDGE MACE: Any objection?

18 MR. KOPTA: I just have the same objection
19 to Exhibit 511 that I made earlier to the examination
20 based on that exhibit.

21 JUDGE MACE: Well, insofar as it's
22 illustrative of what Mr. Finnigan is talking about,
23 was talking about in terms of Pac-West's practices
24 with regard to billing ILECs in general, I'm going to
25 allow the Exhibit 511 to come in. I will admit

0891

1 Exhibits 508 through 511.

2 MR. FINNIGAN: Thank you, Your Honor.

3 JUDGE MACE: And you have -- let's see here.

4 Yes, do you have redirect?

5 MR. KOPTA: A couple of lines of questions.

6 Thank you, Your Honor.

7 JUDGE MACE: Go ahead.

8

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

10 BY MR. KOPTA

11 Q. Mr. Sumpster, do you recall a discussion with
12 Mr. Smith with respect to Pac-West's managed modem
13 service?

14 A. Yes.

15 Q. And do you recall a question from Mr. Smith
16 as to whether that service includes Qwest's switching
17 and loop network within the local calling area?

18 A. Yes.

19 Q. And is it your understanding that Pac-West's
20 managed modem service that it provides to its
21 customers includes the Qwest switching and local loop
22 plant as part of that service?

23 A. Are you asking me if the managed modem
24 service includes Qwest's network?

25 Q. Yes.

0892

1 A. The answer is no. The service does not
2 include Qwest's network, except to the extent that
3 Pac-West buys or rents the use of Qwest's facilities
4 for its own purposes, but with regard to Qwest's end
5 offices and loop plant to its customers, Pac-West is
6 interconnected with Qwest, but the service that
7 Pac-West provides to its customers only recovers the
8 cost of Pac-West's service in our retail price to our
9 customers.

10 Q. And that rate is not designed to recover any
11 of the costs that Qwest incurs for switching or local
12 loop plant; correct?

13 A. Well, I need to be precise. The correct
14 answer to that question depends upon which customer
15 is calling. So if the Pac-West customer is calling
16 the Qwest customer, then Pac-West pays Qwest
17 compensation, either reciprocal compensation or
18 access charges for that call, and we recover that
19 cost from our customer as a part of the service
20 price.

21 However, if the Qwest customer calls the
22 Pac-West customer, Pac-West does not charge its
23 customer for the use of the Qwest network, because
24 our customer is not using the Qwest network; Qwest's
25 customer is. So directionality is important.

0893

1 Q. Thank you. Mr. Smith also discussed with
2 you several definitions from the Pac-West price list
3 and for the interconnection agreement between Qwest
4 and Pac-West. Do you recall those definitions?

5 A. I do.

6 Q. Is it your understanding that those
7 definitions limit calls to those -- within an
8 exchange as being 251(b)(5) calls only if both
9 calling parties are physically located within the
10 exchange?

11 A. No, neither the definitions in our contract
12 or the definitions in our tariff specifically mention
13 the physical location of the customer, and the
14 sections of the '96 act that apply, that is, Sections
15 251(b)(5) and 251(g), neither of those sections of
16 the law refer to physical location of customers. So
17 the answer is the determination is made based on the
18 characteristics of the call, and if the call meets
19 the characteristics of 251(g), then access charges
20 apply. And if it doesn't, then the default is
21 reciprocal compensation.

22 Q. And that is the circumstance under both the
23 Pac-West price list and the interconnection between
24 Pac-West and Qwest, as far as Pac-West is concerned?

25 A. Yes.

0894

1 MR. KOPTA: Thank you. Those are all of my
2 questions.

3 JUDGE MACE: Mr. Smith.

4

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

6 BY MR. SMITH:

7 Q. Just let me follow up on the first questions
8 that Mr. Kopta asked, about the Qwest network, the
9 switch and the loops to get to end user customers for
10 an ISP call. Let's go back to the hypothetical I
11 think we were using, which was an Olympia Qwest
12 customer calling an ISP served by Pac-West.

13 It's true, isn't it, that in order for that
14 call to be able to go Pac-West's facilities and then
15 to Pac-West's ISP customer, the loop that serves that
16 customer and Level -- and Qwest's switch are a
17 necessary part of that call routing?

18 A. Yes, for the customer that originates the
19 call.

20 Q. And I believe, in response to a question
21 that Mr. Kopta indicated -- you indicated, well, this
22 is Qwest's customer that is making the call. And my
23 question to you is, that Qwest customer is also the
24 customer of an ISP that is being served by Pac-West;
25 true?

0895

1 A. Yes.

2 MR. SMITH: Thank you.

3 JUDGE MACE: And Mr. Finnigan, anything
4 else?

5 MR. FINNIGAN: No, Your Honor.

6 JUDGE MACE: All right. I think we've dealt
7 with all of Mr. Sumpter's exhibits, so thank you.
8 You're excused.

9 THE WITNESS: Thank you, Your Honor.

10 JUDGE MACE: That brings us to the end of
11 cross-examination of witnesses, and our next -- well,
12 let me just go over a couple of housekeeping items.
13 I understand that -- I have a Bench Request Number
14 Two listed here. It was -- had to do with an amount
15 of money related to WECA payments. I regret to say
16 that I do not -- I don't have on my notes sufficient
17 information to tell me who's responsible for
18 providing that, although I thought that it was Mr. --
19 Ms. McNeil, who needed to provide it to Mr. Finnigan.

20 MR. FINNIGAN: That's correct.

21 MR. ROGERS: Yes, Level 3 and Broadwing.

22 JUDGE MACE: When will that be provided?

23 MR. ROGERS: It's a Broadwing-specific bench
24 request. I think we can dig into it upon my return
25 to the office and within a week's time.

0896

1 JUDGE MACE: Within a week's time. I think
2 that will be all right.

3 MR. ROGERS: All right.

4 JUDGE MACE: Make sure you provide it to all
5 the parties and to the Commission.

6 MR. ROGERS: Okay.

7 JUDGE MACE: And note that it's Bench
8 Request Two in this proceeding.

9 MR. ROGERS: Yeah.

10 JUDGE MACE: Thank you. Then, with regard
11 to Bench Request One, which was the diagram, I
12 understood that Mr. Greene or someone was going to
13 make it a document that was a little more readable
14 than what this is. Am I correct in that or is there
15 someone else who's going to be handling that?

16 MR. BEST: Your Honor, Chuck Best, again,
17 for Electric Lightwave. If you'd like, Mr. Robins
18 and I will take that document. I believe we have the
19 ability to put that through some sort of scanning
20 machine and reduce it down to 8 1/2 x 11.

21 JUDGE MACE: I don't know how the parties
22 feel about this, but I don't have any objection, as
23 long as everything on this document appears in that
24 document. You could -- you can make it nice, you
25 know what I mean? You can clean it up or type out

0897

1 what it is that's here. Just so that we have the
2 information. It doesn't have to -- it doesn't have
3 to look like this. No offense.

4 MR. FINNIGAN: You get a second shot.

5 MR. BEST: I'm not quite sure how to take
6 that, Your Honor.

7 JUDGE MACE: Take it in a good way. Off the
8 record.

9 (Discussion off the record.)

10 JUDGE MACE: Let's be back on the record.
11 We're discussing some of these exhibits, cross
12 exhibits that Qwest had designated for NTI, even
13 though there was no witness designated, and these
14 cross exhibits will be admitted as Exhibit 560, and
15 that exhibit will include NTI's Responses to Qwest's
16 First Set of Data Requests Number 10, NTI's Responses
17 to -- and NTI's Responses to Qwest's Second Set of
18 Data Requests Numbers 12, 13, and 15 through 20.

19 MR. KOPTA: That is correct.

20 MS. ANDERL: Thank you, Your Honor, that's
21 correct.

22 JUDGE MACE: That's 560.

23 MS. ANDERL: And with regard to Qwest's
24 offer of excerpts from the interconnection agreement
25 between Qwest and NTI for the state of Washington,

0898

1 Mr. Kopta and I have agreed and Mr. Kopta will
2 stipulate that that is the same interconnection
3 agreement that will be provided as Exhibit 519.

4 MR. KOPTA: That's correct.

5 JUDGE MACE: Thank you. Let's turn now to
6 the excerpts.

7 MR. KOPTA: Before we do that, Your Honor, I
8 believe Ms. Anderl had a clarification on one of the
9 stipulated data request responses from NTI.

10 JUDGE MACE: All right.

11 MS. ANDERL: Yeah, thanks. Just so that
12 it's clear, Data Request Response Number 10 just
13 says, See response to Request Number Six. The
14 response to Request Number Six is not included in
15 this packet of cross exhibits, because that was
16 already provided as an attachment to Mr. Brotherson's
17 direct testimony.

18 JUDGE MACE: And which number was that?

19 MS. ANDERL: I knew you were going to ask me
20 that, Your Honor. I think it's 17.

21 MR. KOPTA: Yes, that's correct, 17.

22 MS. ANDERL: So it's Exhibit -- both LBB-17
23 and Exhibit 17.

24 JUDGE MACE: Thank you. Is there anything
25 else about this particular set of -- this particular

0899

1 exhibit?

2 MS. ANDERL: Not NTI, no. Nothing else for
3 NTI.

4 JUDGE MACE: Can we turn to the Eschelon
5 packet that you have here? I only show it as
6 excerpts from the interconnection agreement.

7 MS. ANDERL: That's correct, Your Honor.
8 I'm sorry that I didn't do this sooner. I didn't
9 realize Mr. Ahlers was apparently not going to be
10 here today, but --

11 JUDGE MACE: He may be on the conference
12 bridge. No, he may be traveling.

13 MS. ANDERL: I do have an e-mail
14 representation from him, either e-mail or telephone,
15 now I can't recall, that he has no objection to this.

16 JUDGE MACE: So then this would be marked as
17 Exhibit 561, and for the record, I'll admit both 560
18 and 561 at this point. And then let's turn to the
19 exhibits for MCI.

20 MS. ANDERL: And again, that's just an
21 excerpt from the ICA.

22 JUDGE MACE: And I would mark that 562. And
23 Mr. Romano?

24 MR. ROMANO: No objection.

25 JUDGE MACE: No objection. I'll admit 562.

0900

1 MS. ANDERL: Thank you, Your Honor.

2 JUDGE MACE: Is that all there is with
3 regard to your cross exhibits, then?

4 MS. ANDERL: Yes.

5 JUDGE MACE: Is there anything else that we
6 need to address before we talk about the settlement
7 agreement process?

8 MR. ROMANO: Your Honor.

9 JUDGE MACE: Yes.

10 MR. ROMANO: One thing we may want to
11 address is whether to go ahead and have Mr. Vasington
12 adopt Mr. Price's testimony at this point, since it
13 will go actually into the case in chief, as opposed
14 to the settlement piece of it.

15 JUDGE MACE: And who is it that's going to
16 adopt his testimony?

17 MR. ROMANO: Mr. Vasington.

18 JUDGE MACE: Can you spell that for me,
19 please?

20 MR. ROMANO: V-a-s-i-n-g-t-o-n.

21 JUDGE MACE: Is he --

22 MR. ROMANO: Yes, he's here.

23 JUDGE MACE: Why don't we have him come
24 forward, then.

25 MR. ROMANO: Thank you, Your Honor.

0901

1 Whereupon,

2 PAUL B. VASINGTON,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5 JUDGE MACE: All right. Please be seated.

6

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

8 BY MR. ROMANO:

9 Q. Please state your name for the record.

10 A. It's Paul B., B, as in boy, Vasington, V, as
11 in Victor, a-s-i-n-g-t-o-n.

12 Q. Please state your business address.

13 A. 185 Franklin Street, Boston, Massachusetts,
14 02110.

15 Q. By whom are you employed and what is your
16 current position?

17 A. I'm employed by Verizon Communications. My
18 position is Director of State Public Policy.

19 Q. Would you please briefly describe your
20 professional experience and your educational
21 background?

22 A. I've been working for Verizon for just over
23 two years in my current position. Prior to that, I
24 was a consultant, vice president with Analysis Group,
25 Inc., which is an economic consulting firm. Before

0902

1 that, I was a Commissioner and Chairman at the
2 Massachusetts Department of Telecommunications and
3 Energy. Prior to that, I was economic consultant
4 with a different firm called NERA, N-E-R-A, and then
5 before that I was on the staff of the Massachusetts
6 Commission as director of telecommunications.

7 My educational background, I have a
8 bachelor's from Boston College and a master's degree
9 from Harvard University in public policy.

10 Q. Do you have before you Exhibit 551-T, which
11 is the response testimony of Mr. Don Price, which was
12 filed on February 2nd, 2007?

13 A. Yes, I do.

14 Q. Do you also have before you Exhibit 552,
15 which was filed as an exhibit to that testimony of
16 Mr. Price?

17 A. Yes.

18 Q. Are you adopting Exhibits 551-T and Exhibit
19 552?

20 A. Yes, I am, with the exception of the
21 testimony on Mr. Price's personal qualifications,
22 which is found on page one, line one, through page
23 two, line eight.

24 Q. Are there any other additions, corrections,
25 or deletions that need to be made to your adoption of

0903

1 these exhibits?

2 A. No, except to add my personal
3 qualifications, which I've just described.

4 Q. With those changes, are these exhibits true
5 and correct, to the best of your belief and
6 knowledge?

7 A. Yes, they are.

8 MR. ROMANO: With that, Your Honor, I would
9 offer those exhibits to be entered into the record.

10 JUDGE MACE: Is there any objection to the
11 admission of these exhibits?

12 MR. BEST: Your Honor, Chuck Best, again,
13 for Electric Lightwave. I apologize. I can't recall
14 what is in that testimony, but to the extent it
15 discusses the settlement, I would just renew the same
16 objection I've made for all the other testimony.

17 MR. ROMANO: If I may respond, Your Honor.

18 JUDGE MACE: Yes.

19 MR. ROMANO: Just that the testimony was
20 actually filed prior to execution of the settlement,
21 so it does not address the settlement, although it
22 makes the point that settlements and carrier-specific
23 negotiations are the proper resolution of the issues.

24 JUDGE MACE: I'll admit the Exhibits 551 and
25 552 on the basis of your representations, Mr. Romano.

0904

1 MR. ROMANO: Thank you.

2 JUDGE MACE: And this witness is going to
3 appear on the settlement panel. Now, that brings us
4 right to the settlement process, and so I think, in
5 the notice, we talked about having Mr. Williamson
6 also be available for questions with regard to the
7 settlement. Who else? Mr. Brotherson?

8 MS. ANDERL: Yes, Mr. Brotherson.

9 JUDGE MACE: And then Mr. Vasington. And so
10 it's 25 to noon. I know that there are -- there's
11 not going to be any cross-examination of Mr.
12 Vasington with regard to this particular testimony,
13 as I understand it. I have no one who has indicated
14 an interest in doing that, but he would be
15 cross-examined if Mr. Price was going to be
16 cross-examined with regard to the settlement.

17 I would propose that we adjourn now and
18 resume at 1:00 or 1:30, to go ahead with the
19 presentation of the settlement and have the panel
20 available at that time, but does anyone have a
21 different suggestion for how this should be handled?

22 MS. ANDERL: No, Your Honor. I would
23 propose the 1:30 start time, though, because I think
24 we would probably want to use a little bit of time
25 between now and noon to reconfigure the room so that

0905

1 the panel can be seated all together.

2 JUDGE MACE: Yes. Why don't I contact the
3 appropriate staff person who should do that, and
4 maybe, at your direction, he can handle that.

5 MS. ANDERL: I was just going to attempt to
6 direct co-counsel to do it, but --

7 MR. KOPTA: I don't think it's going to take
8 half an hour.

9 JUDGE MACE: Yes. Well, whatever works, I
10 guess.

11 MS. ANDERL: No, I was thinking the parties
12 can probably do it. I would assume it just means
13 moving one of these tables around and clearing our
14 stuff off of it.

15 JUDGE MACE: If you're comfortable with
16 that, that's fine with me, too. Yes, Mr. Rogers.

17 MR. ROGERS: Your Honor, I just had some
18 questions, I guess, about how you envisioned
19 conducting the panel. Level 3 did not estimate any
20 time for cross-examination, but did not understand, I
21 guess, that we were expected to do that separately
22 for the settlement portion. But, you know, we would
23 like to ask a few questions, potentially, and so I
24 don't know if that's what you were anticipating or
25 the other parties were anticipating, but I thought I

0906

1 might just raise that question at this time.

2 JUDGE MACE: I just noticed that when I
3 asked for cross-examination estimates, some of the
4 parties indicated they would have cross-examination
5 for the settlement panel, and I inserted those onto
6 the grid here, but, you know, we certainly have time
7 available and if you have questions, I'm happy to put
8 you in here, give a placeholder for you.

9 Is there anyone else -- what I have, then,
10 is Mr. Rogers, Mr. Castle, Mr. Thompson, and Mr.
11 Finnigan who've signed up for some time. Is there
12 anyone else who would want to be added to that list?
13 Mr. Kopta.

14 MR. KOPTA: Yes, Your Honor. Thank you.

15 JUDGE MACE: And Mr. Best.

16 MR. BEST: Yes, thank you, Your Honor.

17 JUDGE MACE: And Mr. Ahlers is not here, and
18 I already spoke with him about that.

19 MR. ROMANO: And Your Honor, I believe you
20 have me down, also, for some questioning.

21 JUDGE MACE: Yes, I do.

22 MR. ROMANO: Thank you.

23 JUDGE MACE: Sorry, I missed that.

24 MR. FINNIGAN: Friendly cross?

25 JUDGE MACE: So I guess that my initial take

0907

1 on how we would conduct that proceeding would be that
2 the witnesses are already sworn in, they would be
3 here to -- some counsel would present the settlement
4 agreement, and I would ask each of the witnesses to
5 make a brief presentation about it and, in
6 particular, to discuss how they believed adoption of
7 that settlement agreement would serve the public
8 interest, which is one of the Commission's main
9 criteria for approving settlement agreements.

10 I also have a question or two of my own that
11 I want to ask the witnesses, and then the parties
12 would be able to ask questions of the witnesses. I
13 haven't even thought about what an appropriate order
14 for those questions might be, and if you agree on an
15 order in which you want to ask questions, that would
16 be fine with me.

17 So is there anything that we need to add to
18 that in order to flesh out what our process is going
19 to be?

20 MS. ANDERL: The only thing that I would
21 suggest, Your Honor, is that we do, for ease of
22 reference in the record, give the settlement
23 agreement and potentially the narratives supporting
24 the settlement agreement an exhibit number.

25 JUDGE MACE: We can do that.

0908

1 MS. ANDERL: And there's also --

2 JUDGE MACE: I believe the settlement itself
3 is a confidential document, if I recall.

4 MS. ANDERL: There's a confidential number.

5 JUDGE MACE: Right.

6 MS. ANDERL: And a very small -- that's it,
7 is a confidential number, and so we could have it --
8 the redacted version be in the record, certainly, so
9 that it would be available to anybody who wanted to
10 see it. And then I would propose as a separate
11 exhibit the actual amendment that implements the
12 settlement agreement on a going forward basis. I
13 think it's just going to be, like I said, easier for
14 briefing and other purposes.

15 JUDGE MACE: That's fine. If that would
16 satisfy the parties with regard to process about the
17 settlement agreement, then I -- then the thing I
18 wanted to turn to, I guess last, is the question of
19 briefing. We can either do that now or we can do it
20 after the settlement agreement hearing.

21 MR. KOPTA: Just do it now.

22 MS. ANDERL: Now.

23 JUDGE MACE: One of the things I'm concerned
24 about is that we -- because of the number of parties
25 that are involved in this case, that there's some

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1 sort of agreed-upon outline for the brief. I know
2 this is done in some larger cases at the Commission,
3 and I would appreciate it if, when we talked about
4 the briefing schedule, you made some allowance for
5 submitting to me an agreed -- something that you
6 agree upon for an outline for the brief and that I
7 can at least take a look at before you go ahead and
8 start your briefing.

9 If this is not the way it's been done or you
10 have done it in the past, I'm happy to hear other
11 suggestions for how to handle it, but it would really
12 make my job a lot easier if there was some way that
13 the briefs followed a series of issues in a sort of
14 uniform way. Any --

15 MR. KOPTA: Well, I'm sure that we can
16 undertake to come up with a briefing schedule. We
17 have done that certainly in cost dockets.

18 JUDGE MACE: I don't mean a briefing
19 schedule; I mean a briefing outline.

20 MR. KOPTA: No, I meant a briefing outline.
21 Excuse me, I misspoke. Yeah, I think that we can
22 come up with something.

23 MS. ANDERL: Sure, we're happy to work on
24 that, as well.

25 JUDGE MACE: Okay. Then -- and have you

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1 talked about a briefing schedule amongst yourselves?

2 MR. KOPTA: Of course not.

3 MS. ANDERL: I thought one was established.

4 MR. BEST: Briefs are due May 1st, June 1st.

5 JUDGE MACE: Hold on. Maybe you're right,
6 and I could actually -- I'll refresh your memory.

7 MR. THOMPSON: Should we go off the record
8 at this time?

9 JUDGE MACE: Yes, let's be off the record.
10 (Discussion off the record.)

11 JUDGE MACE: Let's be back on the record.

12 We have discussed the schedule for briefs and found
13 that there actually is a schedule, that it was set up
14 in October of last year, and the parties still think
15 it's a good one. It will require the filing of
16 simultaneous initial briefs on June 1st and response
17 briefs on June 22. And the parties will provide me
18 with their proposed outline for the briefs when?

19 MS. ANDERL: I don't know, Your Honor. How
20 about a week from today?

21 JUDGE MACE: That would be May 3rd.

22 MS. ANDERL: May 3rd.

23 JUDGE MACE: That's fine. If you can do it,
24 that's good.

25 MS. ANDERL: Well --

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1 JUDGE MACE: If you slip a few -- as long as
2 I get it in enough time just to take a look at it, it
3 doesn't have to be May 3rd, but I'd like it, you
4 know, pretty soon.

5 MS. ANDERL: Let's -- is Monday, May 7th,
6 better?

7 MR. KOPTA: Probably.

8 MS. ANDERL: Why don't we just --

9 MR. SMITH: It's better for me, in that I've
10 got to be in New Mexico next week.

11 MR. KOPTA: Not Montana?

12 MR. SMITH: No. And I want the record to
13 show that I used the right state all day.

14 MS. ANDERL: Yeah, Your Honor, we'll get you
15 an outline on May 7th, and then --

16 MR. SMITH: It's New Mexico.

17 MS. ANDERL: -- you would either endorse it
18 or add some things to it.

19 JUDGE MACE: Sounds good.

20 MR. BEST: Your Honor, I apologize. I'm not
21 quite familiar with this providing an outline thing.
22 Are you suggesting or recommending that the parties
23 get together and agree on one or everybody submit
24 their own?

25 JUDGE MACE: Agree on one.

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1 MR. BEST: Okay. So --

2 JUDGE MACE: So you have to work together.

3 MR. BEST: It will be an interesting
4 process.

5 MS. ANDERL: We've found, historic
6 adversaries that we are, even in big dockets like
7 cost dockets or whatever, we've been able to cobble
8 something together that's sufficiently general to not
9 be prejudicial to anybody and sufficiently specific
10 to actually be meaningful. It's a delicate balance,
11 but we can do it.

12 JUDGE MACE: It has been done before.

13 MR. BEST: I'm willing to try, but I'm just
14 wanting to understand what your expectation is,
15 because obviously the parties then will have to
16 discuss what it should contain.

17 JUDGE MACE: Yes.

18 MR. BEST: Okay.

19 JUDGE MACE: Anything else? All right.
20 Then we will resume at 1:30.

21 MS. ANDERL: Okay. Thanks, Your Honor.

22 (Lunch recess taken from 11:46 to 1:30 p.m.)

23 JUDGE MACE: Is everybody ready to go on the
24 record? All right. Let's be back on the record in
25 Docket UT-063038. We are now scheduled to address a

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1 settlement agreement that was filed by Qwest and
2 Verizon in this case on an earlier date. I don't
3 have the date right in front of me. And so we will
4 have the settlement agreement both in redacted and
5 confidential form presented to the Commission today,
6 and an amendment to the interconnection agreement,
7 which is part of the settlement agreement terms,
8 we'll also have that. It's been marked and it will
9 be presented today, as well.

10 And we have three panel witnesses who will
11 address the settlement agreement, Mr. Brotherson, Mr.
12 Vasington, and Mr. Williamson, and then Counsel will
13 have an opportunity to cross-examine those panel
14 witnesses after they make their presentations, to the
15 extent they have presentations.

16 So let me find out, first, is there anything
17 of a preliminary nature before I go ahead and ask for
18 the presentation of the settlement agreement?

19 MR. BEST: Your Honor, Chuck Best, for
20 Electric Lightwave. And I apologize. I'm sure that
21 I'm just a little bit out of the loop through my own
22 neglect, but I'm kind of trying to follow
23 procedurally how we got here on this.

24 My understanding was that this settlement
25 was filed or the amendment was filed, it was

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1 initially approved by the Commission, and then Staff,
2 I believe, filed saying that it should not be
3 approved. Is that fairly accurate?

4 JUDGE MACE: Well, let me just say what I
5 think is the posture of things with regard to that,
6 and then Mr. Thompson, jump in if you want to.

7 My understanding is that that
8 interconnection agreement amendment was filed for
9 approval and the executive secretary of the
10 Commission issued a delegated order approving that
11 amendment, and then Staff filed a request for review
12 of the amendment prior to Commission approval.

13 My further understanding is that the
14 Commission has scheduled at its open meeting tomorrow
15 to take some action on that amendment, whether to
16 approve it or to handle it in some other way. And so
17 I don't know what the Commission will actually do at
18 this moment in time, but that's the status of things
19 with regard to that amendment.

20 Mr. Thompson, does that comport with what
21 you understand is happening?

22 MR. THOMPSON: Yeah, that's right.
23 Essentially, that the agreement was approved by the
24 secretary, sort of without the knowledge of advocacy
25 staff, so we thought that it would make more sense to

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1 bring that back -- what we're requesting is that the
2 Commission consider whether to approve the ICA
3 amendment in the context of or consolidated with this
4 proceeding, because the questions are so similar,
5 whether to -- you know, here, being whether to
6 approve the settlement as consistent with the public
7 interest and, under Section 252, whether it's
8 consistent with the public interest, convenience and
9 necessity, something like that. So it's our view
10 that they ought to be considered together.

11 JUDGE MACE: So that is one option that the
12 Commission might take. It could approve the
13 agreement or it could in some way incorporate
14 approval of the agreement in conjunction with
15 consideration of the issues in this case.

16 MR. BEST: If I could ask just one more dumb
17 question?

18 JUDGE MACE: It's not dumb.

19 MR. BEST: Is this proceeding today related
20 at all to that?

21 JUDGE MACE: Yes.

22 MR. BEST: To the Commission's action
23 tomorrow?

24 JUDGE MACE: Well --

25 MR. BEST: I guess what I'm trying to

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1 understand --

2 JUDGE MACE: See, and I understand your --
3 you know, this is important to get this aired. Yes,
4 in a sense, because that agreement or the amendment
5 is sort of mentioned in the settlement agreement as
6 one part of the settlement agreement, and what we are
7 doing now is reviewing the settlement agreement to
8 determine whether or not or, you know, allowing the
9 parties to ask questions, et cetera, as part of the
10 process of reviewing the settlement agreement to
11 determine whether the Commission can approve it.

12 And so there's a little bit of a disconnect
13 there between how the amendment is considered, but if
14 it's -- if it's folded in with this case, then it
15 would all be of a piece, because the settlement
16 agreement is something that we will address in this
17 case. I don't know if I made myself clear or muddied
18 the waters.

19 MR. BEST: I think that helps me, but I'm
20 just -- so if I'm understanding, it is not the intent
21 of the Staff or the Commission to take the
22 transcript, for example, in this case, somehow before
23 magically tomorrow and get it to the Commission so
24 they can review it as part of their determination.
25 I'm just trying to figure out how all this fits

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1 together. I heard what you said.

2 JUDGE MACE: Well, let me just say one more
3 thing, and that is there is not going to be from the
4 bench today any order approving the settlement
5 agreement, just so you know, and so there would have
6 to be -- correct me if I'm wrong. There would have
7 to be some initial order that would say the
8 settlement agreement is approved that the Commission
9 would then have an opportunity to deal with if you
10 challenged that order. So today there isn't going to
11 be that. It's going to come over time.

12 MR. FINNIGAN: May I inquire? I assume
13 that, since it's on the open meeting, Staff is
14 submitting some sort of recommendation to the
15 Commission essentially asking that the amendment be
16 treated in context with this proceeding, so I assume
17 asking for suspension of the effective date of the
18 amendment.

19 And I also am wondering, then, are Qwest and
20 Verizon going to be appearing tomorrow at the open
21 meeting asking that the amendment be approved or
22 allowed to take effect?

23 JUDGE MACE: Well, to jump ahead a little
24 bit, to answer your question, one of the questions I
25 was going to ask today, because I don't know exactly

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1 what the Commission is going to do tomorrow, is to
2 ask Qwest and Verizon, in the event the Commission
3 does rule that the approval of the amendment be
4 consolidated with making findings in this case, then
5 would Qwest and Verizon waive the 90-day approval
6 period. I don't know if that answers your question.
7 But that is a question I'm going to ask them today
8 before we close.

9 MS. ANDERL: We're prepared.

10 JUDGE MACE: Does that resolve --

11 MR. FINNIGAN: Yes. What it tells me is I
12 need to be here at the open meeting tomorrow.

13 JUDGE MACE: It could very well be, yeah. I
14 would attend if I were in your situation. Anything
15 else? Mr. Wiley?

16 MR. WILEY: Has the Staff issued a memo, as
17 they often do, to address this at this point?

18 JUDGE MACE: I don't know, but Staff filed a
19 document with regard -- let me back up. When it
20 requested review of the amendment, it filed a
21 document that asked, as I recall, that asked for the
22 Commission to consider the approval of the amendment
23 in conjunction with this case.

24 MR. WILEY: So there's nothing --

25 JUDGE MACE: But there may be a memo. There

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1 may be an open meeting memo. I'm not aware of that.

2 MR. THOMPSON: I think there may be an open
3 meeting memo, but I think it's substantially the same
4 as the petition for review that was already filed on
5 April 10th.

6 MS. ANDERL: Right. The only thing, this is
7 Lisa Anderl, for Qwest. The only thing that I would
8 ask for clarification on, and it doesn't matter to
9 me, but the Commission Staff's request for review of
10 the secretary's order was filed in the ICA docket,
11 063055, not this docket. I don't know if it was
12 served on all of the other parties. We obviously got
13 it because we're a party to both dockets, but maybe
14 that's the cause of some of the confusion in terms of
15 the other parties not --

16 JUDGE MACE: I'm sorry. I thought all the
17 parties might have received that. I was not aware
18 that you had not.

19 MS. ANDERL: Well, I did, but others --

20 JUDGE MACE: I'm talking about the CLEC
21 parties.

22 MS. ANDERL: Others may not have. I don't
23 know.

24 MR. THOMPSON: But I made a point of serving
25 on all parties to this proceeding, as well.

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1 MR. BEST: Your Honor, we did receive that,
2 but I think that's the only thing we received. I was
3 just curious, Mr. Thompson, if you don't mind, is
4 there anything more than that that's going to be
5 offered tomorrow for the public meeting?

6 MR. THOMPSON: I think there is a memo. If
7 it's not been made public yet, it's in the works.
8 But as I say, it just takes paragraphs from the
9 petition that was already filed and turns them into a
10 memo, so it's substantially the same as the petition
11 for review.

12 JUDGE MACE: Any other questions?

13 MR. ROMANO: Your Honor.

14 JUDGE MACE: Mr. Romano.

15 MR. ROMANO: Before we get to the panel, I
16 wonder if I could offer a few minutes of legal
17 explanation as to why I thought the settlement was in
18 the public interest.

19 JUDGE MACE: I don't have any problem with
20 that if the parties don't object. Go ahead. Yeah,
21 we're on the record. Go ahead.

22 MR. ROMANO: Thank you, Your Honor. As you
23 know, Qwest filed a complaint against Verizon Access
24 and the other parties in this proceeding on the
25 exchange of traffic with virtual NXX codes, and

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1 Verizon Access answered that complaint by suggesting
2 that the appropriate resolution of this issue was
3 through voluntarily negotiated agreements, and that's
4 exactly what's happened in this case with regard to
5 Qwest and Verizon Access.

6 We have entered into a settlement agreement
7 that resolves all past disputes on intercarrier
8 compensation, including compensation with regards to
9 virtual NXX traffic, and agreed to a methodology for
10 the exchange of that traffic going forward, which is
11 memorialized in the interconnection agreement
12 amendment that we've been discussing.

13 And settlements of this type generally are
14 encouraged, particularly under the RCW 34.05.060,
15 because it in essence resolves all the issues that
16 were raised in the complaint against a particular
17 carrier, which was Verizon Access.

18 And specifically, the agreement itself is in
19 the public interest because it addresses all the
20 issues related to VNXX traffic between the two
21 parties and it addresses Qwest's concerns about being
22 charged intercarrier compensation for what it
23 believes to be non-local calls while at the same time
24 implementing Verizon Access' position that these
25 types of issues should be resolved through

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1 voluntarily negotiated carrier-specific agreements.

2 And you know, as you may know, the carriers
3 are permitted to enter into agreements of this type
4 under both Washington and federal law. Under Federal
5 Law Section 252(E)(2)(a) of the Communications Act,
6 as amended, parties that negotiate agreements without
7 the need for arbitration may do so without regard to
8 the standards set forth in Section 251(b) and (c). A
9 state commission may only reject such an agreement if
10 it's discriminatory against a carrier that's not a
11 party to the agreement or if implementation of the
12 agreement is not consistent with the public interest.

13 In this case, the agreement does not
14 discriminate against any other carrier, particularly
15 since the fact that it's an interconnection agreement
16 amendment means that the anti-discrimination
17 protections set forth in Section 252(i) of the act
18 will protect other competitive local exchange
19 carriers. And the agreement, by its terms, applies
20 only to one incumbent local exchange carrier, which
21 is Qwest. Thus, there is no discrimination against a
22 telecommunications carrier that's not a party to this
23 agreement.

24 So for those reasons, I would offer that the
25 agreement itself is in the public interest and should

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1 be approved.

2 JUDGE MACE: Thank you. Anybody else have
3 anything in the way of this type of an opening
4 statement?

5 MS. ANDERL: No, Your Honor. We had
6 intended to have our witness present a summary of the
7 settlement agreement, and he was also going to
8 discuss the public interest issues.

9 JUDGE MACE: Very well. Are you ready to
10 present the settlement agreement, or Mr. Romano?

11 MS. ANDERL: Yes, we are. Your Honor, I
12 guess I'll begin.

13 JUDGE MACE: Go ahead.

14 MS. ANDERL: The witnesses who wish to
15 address the settlement, having been impaneled and
16 Qwest having called Mr. Larry Brothersson to the
17 stand, if it's appropriate, I would just have him go
18 next to give his opening statement, and then if the
19 other witnesses do so, I guess that they would all
20 then be available for cross.

21 JUDGE MACE: Let me just indicate that we
22 have pre-marked the settlement agreement in its
23 redacted form, the settlement agreement as Exhibit
24 570, if this is not on the record already, and the
25 confidential version of the settlement agreement as

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1 Exhibit 571, and the amendment, which we spent a
2 little bit of time talking about just a few minutes
3 ago to the interconnection agreement that the
4 Commission is now considering, that's marked as
5 Exhibit 572. So let's turn to Mr. Brotherson.

6 MS. ANDERL: And Your Honor, excuse me. Are
7 those admitted, then?

8 JUDGE MACE: I'll admit those exhibits at
9 this time.

10 MS. ANDERL: Thank you.

11 Whereupon,

12 LARRY B. BROTHERSON, PAUL B. VASINGTON, and

13 ROBERT WILLIAMSON,

14 having been previously duly sworn, were re-called as
15 witnesses herein and were examined and testified as
16 follows:

17 JUDGE MACE: Mr. Brotherson.

18 MR. BROTHERSON: Thank you, Your Honor. I
19 want to start with a brief summary of the settlement
20 agreement and the points that it touches on, and then
21 I'll also talk a little bit about public policy
22 matters related to the settlement.

23 The settlement addresses the resolution
24 between MCI and Qwest on the issue of VNXX. The
25 settlement was a multi-state settlement closing the

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1 issue in 12 states addressing -- actually, all 14
2 states. The settlement specifically excludes
3 compensation for VNXX traffic, but permits the
4 traffic to continue and to be routed over the LIS
5 trunks.

6 It compensates in the form of paying
7 reciprocal compensation only on local ISP traffic and
8 local voice traffic, and by those terms, I'm talking
9 about the definition of local that was advocated by
10 Qwest in these proceedings, calls that originate and
11 terminate within the local calling areas for --
12 traditionally treated as local under Commission
13 rules.

14 In addition to addressing the compensation
15 issue, we'd also address the transport issue, and
16 provided that, for transporting VNXX traffic back to
17 a CLEC switch or a single point of interconnection,
18 that Qwest would be compensated for the transport of
19 that VNXX traffic, which is something otherwise than
20 the way RUF is currently treated, at least in the
21 state of Washington, although that varies by state.

22 And it essentially closed out the issues
23 between the parties in this proceeding in a manner
24 that both parties felt made sound business sense and
25 were beneficial to their respective companies. Did

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1 you have a question?

2 JUDGE MACE: My understanding is that all
3 VNXX traffic is encompassed in the settlement
4 agreement; it's not just VNXX traffic that relates to
5 ISP-bound calls, ISP-bound calls that are outside the
6 local area?

7 MR. BROTHERSON: That's absolutely correct,
8 Your Honor. It addresses both voice VNXX and ISP
9 VNXX traffic, which of course distinguishes or is an
10 issue that was raised, excuse me, by Staff in their
11 motion, and that Mr., I think, Williamson addressed.

12 I want to echo somewhat the points already
13 raised by Verizon's counsel on the matter of public
14 interest, but more perhaps from a layman's term,
15 which is that the act contemplated that the parties
16 would negotiate individual agreements to address
17 their interconnection relationships, that this is in
18 the spirit and in compliance with those objectives,
19 and I think is something that almost has a
20 presumption that should be supported.

21 It certainly addresses, to the extent that
22 there were concerns about dial-up Internet access not
23 being available to certain areas, and I believe there
24 was some testimony around that, I think this
25 addresses that by permitting the VNXX traffic to

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1 continue. However, it also addresses concerns raised
2 by Qwest versus other parties on both the Qwest
3 foregoing -- or the originating party, let me put it
4 that way, is reciprocal, but the originating party
5 foregoing any originating charges that it may impose
6 on the call and the terminating party foregoing any
7 terminating charges that they may impose on the call,
8 both sides, if you will, leaving something on the
9 table.

10 I think it also implements the intent of the
11 ISP Order, which talked about the arbitrage and the
12 imbalance of traffic and, at least with respect to
13 the ISP minutes, continues to wean or reduce that
14 arbitrage situation that was raised as a concern in
15 the ISP Order.

16 That would, I think at this point, be my
17 summary, and I'm sure the other parties have --

18 JUDGE MACE: Mr. Vasington, I'll allow the
19 witnesses to give their opening remarks, and then
20 I'll turn to you for cross-examination.

21 MR. VASINGTON: Actually, I don't think I
22 can improve upon Counsel's eloquent and persuasive
23 statement, so leave it at that.

24 JUDGE MACE: Thank you. So now we'll turn
25 to Mr. Williamson.

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1 MR. WILLIAMSON: I agree, except for one
2 issue. Staff is always happy to see parties
3 negotiate an agreement, and particularly in this --
4 with this particular issue, which is so divisive, but
5 we're also concerned that, in this particular
6 agreement, it opens the door to toll bypass by
7 allowing voice traffic to use VNXX. We believe it's
8 in the public -- we believe it's in the public good
9 that ISP traffic be allowed to go over VNXX, even
10 though we disagree with parties that there are no
11 issues with that. But we're willing to allow it
12 because of the public good.

13 It seems inconsistent to us, in the middle
14 of a complaint case, to not make sure that an
15 agreement between the two parties is tied to whatever
16 the decision of the Commission will be in this case.

17 And so we'd be willing, if it would help to
18 move it forward, and if it's -- I'm not an attorney,
19 so if it's possible legally, we'd be willing to allow
20 the parties to move forward with the agreement as
21 long as it was stipulated that when the Commission's
22 decision comes out, if that changes the agreement,
23 that the agreement be amended to the Commission's
24 decision.

25 JUDGE MACE: Okay. And before I turn to

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1 Counsel, I guess I'd like to ask Mr. Brotherson or
2 Mr. Vasington or Counsel for Verizon or Qwest on that
3 very issue. What would be your position if the
4 Commission in this case decided that a different
5 treatment for VNXX was required than is incorporated
6 in your proposed amendment to the agreement? Would
7 the parties be seeking a further amendment to the
8 agreement?

9 MS. ANDERL: Shall I go first? It seems to
10 be unanimous. And Your Honor, we've thought about
11 this and we've talked about it. There is a change of
12 law provision in the interconnection agreement
13 amendment that the parties have submitted and that
14 the executive secretary approved. It's in Section
15 Seven, Change of Law. It says if any provision of
16 this amendment is found to be illegal, and I know how
17 annoying it is when we read something that may be
18 right in front of you, so I'm not going to finish
19 reading the whole paragraph, but it says the parties
20 have to renegotiate to comport with a final
21 non-appealable binding Commission or judicial order.

22 And I guess, you know, the question is is if
23 the Commission rejects the amendment, then this
24 change of law provision doesn't apply, and so that
25 kind of throws you into a whole 'nother thought

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1 process.

2 Mr. Brotherson, you wanted to add something?

3 MR. BROTHERSON: Only that the parties would
4 renegotiate the agreement to try and maintain the
5 spirit of the 14-state-wide agreement, you know, but
6 incorporating the rules of this Commission in the
7 state.

8 JUDGE MACE: I'd like to ask one more
9 question before I turn it over to Counsel. Mr.
10 Williamson, in I think it was the response that you
11 filed to the settlement agreement, you talked about a
12 number of the issues that were -- where problems were
13 created if the settlement agreement would be
14 approved. And one of them you talked about was the
15 effect on rural carriers. And I'm wondering if you
16 could say a little bit about what you think the
17 effect on rural carriers would be if the agreement
18 were to be approved?

19 MR. WILLIAMSON: Your Honor, I'm not sure
20 that I'm the expert to do that, so we may want to
21 follow up with Counsel, but since the rural carriers,
22 even though they're sitting in the room, did not file
23 testimony, we were concerned that the decision
24 between two large carriers would allow the rest of
25 the carriers to opt-in to that at a later date,

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1 basically giving an out to any Commission decision,
2 and that that could have a large impact on the rural
3 carriers, who would have a larger impact with access
4 charges.

5 MR. FINNIGAN: Your Honor, if I might.

6 JUDGE MACE: Go ahead.

7 MR. FINNIGAN: Yeah, the concern is
8 precisely as Mr. Williamson talked about. Under the
9 Commission's access regime and the WCAP Order, which
10 is an exhibit in this proceeding, it's that Ninth
11 Supplemental Order that we put in, all LECs have an
12 obligation to assess on their access charge a WECA
13 USF rate element of .00152 per originating and
14 terminating minute. And that money is to be
15 collected and remitted to WECA for distribution to
16 the rural companies.

17 To the extent that segments of traffic on
18 which that access charge element would apply, it's no
19 longer applied because of an agreement between
20 parties, that removes a revenue source for the rural
21 companies, and that is -- that is a concern.

22 JUDGE MACE: And so what is WITA's position
23 on this settlement agreement, then, if you're willing
24 to state that at this point?

25 MR. FINNIGAN: WITA's position is that the

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1 settlement -- the amendment and the settlement
2 agreement should be considered in the context of this
3 docket. And if Qwest and Verizon are not willing to
4 do that, given the 90-day clock, then we would be
5 asking that it be rejected, because it is
6 discriminatory as its effect is to the rural
7 companies, the rural LECs.

8 As Mr. Williamson indicated, as a filed
9 arbitration agreement under Section 251 and 252, any
10 other CLEC would have the opportunity to opt-in to
11 the agreement, although I think they'd have to, since
12 it's an amendment, they'd have to opt-in to the
13 entire Qwest-Verizon ICA. But to the extent that
14 that's seen as a way to avoid intercarrier
15 compensation on interexchange calling, that could
16 have a very detrimental effect.

17 I don't have the number in front of me, but
18 it's a substantial number, a substantial amount of
19 revenue that flows to WECA from Verizon, Qwest, and
20 other carriers.

21 JUDGE MACE: And if the Commission requested
22 that the agreement be modified so that only VNXX
23 traffic related to ISP-bound calls were included,
24 would that change your position on the settlement
25 agreement? What would be your position with regard

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1 to that modification? And bill and keep.

2 MR. FINNIGAN: Right, I understand. I don't
3 think I can speak precisely for WITA at this moment
4 on that proposal. From a general standpoint, I can
5 tell you that there is a concern within WITA about
6 the concept that you use essentially an arbitrage
7 mechanism to subsidize dial-up Internet access in
8 light of federal and state policies to be moving to
9 broadband.

10 I think a substantial question for the
11 Commission will be is this really a balancing of the
12 public interest to essentially prop up a disfavored,
13 if you would, if you will, form of Internet access
14 instead of concentrating the resources on finding
15 ways to expand broadband access.

16 So I know that general position is one -- is
17 WITA's position. As to the specifics on how that
18 amendment -- what you described in the context of
19 this particular amendment, I can't precisely
20 articulate at this moment.

21 JUDGE MACE: Well, I need to turn to Counsel
22 now, to see if they have questions. Did you have
23 anything else you wanted to add at this point, Mr.
24 Romano, before I go to other Counsel?

25 MR. ROMANO: Just that I'd like to say, I

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1 think our policy witness would like to respond here
2 at some point to some of what Mr. Finnigan just said.

3 JUDGE MACE: Yes, why don't you go ahead.

4 MR. VASINGTON: Thank you. While we
5 recognize that universal service policies and
6 traditional revenue flows is and has always been a
7 public policy concern, not just here, but nationally,
8 and figuring that out is a particular challenge right
9 now, it's not clear to me how allowing for rural
10 customers to call dial-up Internet providers without
11 paying toll or without access charges is really
12 putting at risk USF or other payment flows.

13 And there's two reasons for that. One is
14 there seems to be one undisputed fact amongst all of
15 the witnesses in this case, and that is that we're --
16 VNXX traffic is predominantly ISP-bound. Nobody
17 seems to contest that point, that really the vast
18 majority of traffic we're talking about here is
19 ISP-bound traffic.

20 And if you were to come up with a policy
21 that, in effect, said customers can't access dial-up
22 Internet providers without paying a toll charge on
23 the grounds that you then want to use the revenue
24 you'd get from that to support universal service,
25 there's a disconnect there, because customers don't

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1 pay toll charges to access Internet service
2 providers. The revenue source would dry up
3 immediately if you were to impose these charges.

4 So the notion that there's foregone revenues
5 because there's X minutes of customer usage of
6 dial-up Internet providers over VNXX, and if you're
7 going to charge access charges or toll, you're going
8 to now have revenue of X times whatever that charge
9 is is just completely false, because there won't be a
10 market for that. Customers just don't pay for toll
11 charges to access the Internet.

12 And in fact, it truly is in the public
13 interest and has been for a long time to promote
14 competitive markets and customer choice. We can't
15 forget customer choice as being one of those
16 significant consumer benefits that comes from the
17 opening of markets that we've developed.

18 And allowing customers to choose whether or
19 not they want dial-up Internet access or whether or
20 not they want to pay for their incumbent local
21 exchange carrier's or cable company's broadband
22 service I think is a significant public benefit.

23 I cringed at the thought of telling my
24 mother she'd have to give up her dial-up access and
25 pay more for broadband when all she wants is to do

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1 e-mail. So I'd just caution the Commission that --
2 to keep in mind that there really is no negative
3 impact on universal service in payment flows here,
4 and that anything that reduces customers' ability to
5 access the Internet provider of their choice would be
6 a negative thing for the public interest.

7 JUDGE MACE: Thank you. Shall I just go in
8 order, as I see you in front of me, for asking
9 questions or have you talked about an order? Mr.
10 Thompson.

11 MR. THOMPSON: How about if I go first?

12 JUDGE MACE: Go ahead.

13

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

15 BY MR. THOMPSON:

16 MR. THOMPSON: Actually, I -- if that's okay
17 with everybody. Seems to make sense to me. I don't
18 really have sort of formal questions. I did want to
19 make sure that Qwest sort of stated its response, I
20 guess, to the concerns expressed about universal
21 service funding in the state, as well, so --

22 MR. BROTHERTON: I'm going to respond
23 perhaps in a different manner than Verizon. Mr.
24 Finnigan said, well, these are calls that -- and you
25 go back to our examples. I go from Olympia up to

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1 Seattle, and what about the portion of the access
2 charges that would support universal service. And
3 sort of, you know, built into that statement is the
4 presumption that access charges apply.

5 I was the witness on behalf of a telephone
6 company that filed testimony laying out all of the
7 arguments about why I do not believe that VNXX
8 necessarily qualifies for a definition of a local
9 call and is exempt from access, so I took part and in
10 some ways identified with Mr. Finnigan's comments,
11 but at the same time, sat here and listened to all of
12 the other witnesses who came up before the witness
13 stand and testified that this was, in fact, a local
14 call or just like local or in some manner or another
15 qualified for treatment as local.

16 And one of the reasons that you approach a
17 settlement is because you may, in some instances,
18 have a situation where a call is deemed local, you
19 may, in fact, have a situation that it's deemed toll,
20 but if the Commission were to determine that these
21 types of calls were local -- and I don't necessarily
22 agree with that position and I'm not advocating that
23 -- but if they are, there's no access to support the
24 universal service fund anyway.

25 And so I think we have to step back and say

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1 that, in looking at a balance of interests here, that
2 this was a compromise position. I think the -- well,
3 I'll stop right there.

4 MR. THOMPSON: Would you agree that there
5 are different implications for allowing VNXX traffic
6 with respect to ISP-bound, as opposed to voice?

7 MR. BROTHERRSON: Yes, I would say that they
8 have different traffic patterns, they have different
9 holding times, so an ISP call is going to be
10 different than a voice call. It's my position that
11 VNXX or the assigning of NXX numbers outside of a
12 local calling area is an issue that sort of
13 transcends or is independent of the number that you
14 actually dial or the person you're calling, it's
15 either in the local calling area or it isn't, and
16 whether it's a tire store or a Dairy Queen or an ISP,
17 it's either a VNXX call or it's a call within the
18 local calling area.

19 Now, having made that call -- or made that
20 statement, there are unique aspects of the ISP
21 business, which is it's all one way, it's long
22 holding time, and it's not two-way with short holding
23 times, which are the characteristics of a voice call.
24 So they have different characteristics.

25 MR. THOMPSON: Well, the dial-up manner of

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1 reaching the Internet is declining, isn't it?

2 MR. BROTHERTON: The minutes -- the dial-up
3 minutes, I would say -- we get back to someone's
4 conversation here a couple of days ago about what's a
5 significant number -- are probably down from their
6 peak of three or four years ago because people are
7 buying broadband or they're signing up perhaps with a
8 cable TV company for their telephone service, which
9 is also getting them onto a broadband, so you're
10 seeing less dial-up minutes in that respect. I think
11 we've heard numbers of a billion minutes a day and
12 stuff kicked around here, as well, so I don't want to
13 imply that dial-up Internet is a minimal amount of
14 traffic in this country.

15 MR. THOMPSON: I guess looking at the maybe
16 the interconnection agreement amendment itself, if
17 you have that in front of you. On page five, there's
18 a definition at the top there of virtual NXX traffic.
19 Do you see that?

20 MR. BROTHERTON: Yes, I was just -- my
21 numbering might be a little different. I have the
22 document and -- yes, I have the definition. I'm
23 sorry.

24 MR. THOMPSON: Okay. And I guess that's
25 where the specific language is that would allow for

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1 the exchange of VNXX traffic, including -- well, it
2 says -- means traffic including, but not limited to
3 ISP-bound traffic. So it would include voice traffic
4 in the compensation scheme, the bill and keep
5 compensation scheme; right?

6 MR. BROTHERTON: Yes. Yes, it would.

7 MR. THOMPSON: Okay. So if this
8 interconnection agreement amendment were allowed to
9 go into effect, a company like a Global Crossing
10 offering a LATA-wide free calling, like you've
11 described in your testimony, could potentially opt in
12 to this kind of an agreement to be able to offer such
13 a service using VNXX; is that right?

14 MR. BROTHERTON: Perhaps, and I say perhaps
15 -- if a company distributed numbers and argued that
16 it was some form of FX-like traffic, as we've heard,
17 then I don't know if that would fall under your
18 definition of toll bypass or would fall under the
19 definition of a local call, which is one of the --
20 and I'm finding it very difficult to put the other
21 side's argument on the table, you know, in rejection
22 of my own testimony, but I need to do that to support
23 why the compromise is a rational position, so -- even
24 though it pains me to do so.

25 MR. THOMPSON: Well, do you agree that it

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1 opens up, as I think you've indicated in your
2 response, that it does open up some difficulties in
3 terms of figuring out what now will be the line
4 between, you know, a toll bypass scheme that should
5 be -- should not be allowed versus just a permissible
6 use of numbers for VNXX, as described in the
7 interconnection agreement?

8 MR. BROTHERSON: Perhaps. I think -- I've
9 been around the business for a long time, and no
10 matter how we write our definitions and our rules,
11 there tend to be people that do toll bypass under
12 some creative manner. I don't think that's going to
13 go away no matter what, but it is not the intent of
14 this to create a toll bypass product.

15 MR. THOMPSON: Well, what assurance do we
16 have that it won't create that opportunity, though,
17 is I guess what I'm asking?

18 MR. BROTHERSON: I would have to confess. I
19 haven't thought of your question, and I'm not sure at
20 this point exactly how to respond without -- without
21 trying to visualize how they would do it, how they
22 would bill, you know, structure it and what the
23 consequence would be. I'm sorry.

24 MR. THOMPSON: Okay. Fair enough. I'd like
25 to ask Mr. -- is it Vasington?

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1 JUDGE MACE: Yes, go ahead. Anyone on the
2 panel.

3 MR. THOMPSON: In your remarks a second ago,
4 I think you've referred to the fact -- and this is
5 another thing I wanted to ask you about -- that this
6 is primarily about ISP-bound traffic, the dispute
7 here. And maybe that's what it's about from your
8 company's standpoint.

9 How critical -- how critical is it to
10 Verizon Access that the ICA here include within the
11 definition of VNXX voice traffic?

12 MR. VASINGTON: Well, we don't want to close
13 the door on customer usage of VNXX, but the important
14 point to remember, though, is this -- this isn't
15 opening the door. The door has been open for use of
16 VNXX for ISP-bound and non-ISP-bound traffic and
17 there just hasn't been much non-ISP-bound traffic.
18 So the notion that this is somehow going to create a
19 tidal wave that creates a problem because some door
20 is opening now I think is a false one, because the
21 ability to do non-ISP or non-ISP-bound VNXX has been
22 available as long as there's been VNXX, and the
23 market test is there just hasn't been very much of
24 it.

25 So I think that we're elevating a

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1 theoretical risk over practical reality. The
2 practical reality is that there just hasn't been much
3 of this traffic so there's not much to be concerned
4 about here as far as toll bypass, especially when you
5 take into account that the effects of toll bypass
6 circa 1980-whenever, when everyone was worried about
7 the access charge regime and its contributions to
8 below market price local service is really a thing of
9 the past for two reasons.

10 One is you have -- the Commission has before
11 it right now a settlement agreement on an AFOR that
12 would not create a mechanism or that would move away
13 from a mechanism that allows for revenue changes from
14 one service to be recovered in another service.
15 Really, these types of concerns are moot, in my
16 opinion.

17 MR. THOMPSON: In the first part of your
18 answer, you indicated that -- I think your premise
19 was that VNXX has been allowed, has been something
20 that's --

21 MR. VASINGTON: It's been used.

22 MR. THOMPSON: Okay. But at least it's had
23 -- it's had at least an ambiguous legal standing,
24 wouldn't you agree?

25 MR. VASINGTON: You know, I don't want to

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1 characterize it. I know it's been an issue of
2 dispute in a number of different jurisdictions, and
3 it's been raised as an issue in this one, but it
4 certainly has been a feature of the marketplace here
5 and elsewhere for a significant amount of time.

6 MR. THOMPSON: Well, and some states have
7 specifically prohibited it, haven't they?

8 MR. VASINGTON: Yes.

9 MR. THOMPSON: Okay. And are you aware
10 specifically of the history in the state of
11 Washington with respect to AT&T proposing, in a
12 interconnection agreement arbitration, to define
13 local traffic based on NPA-NXX, as opposed to
14 geography?

15 MR. VASINGTON: Yeah, and I read that and I
16 understand that the Commission recognized that there
17 was a balancing of interests there, but it came down
18 on the side of a particular definition, and also
19 encouraged negotiated settlements in order to resolve
20 these kinds of disputes.

21 MR. THOMPSON: Okay.

22 JUDGE MACE: I think Mr. Williamson had his
23 hand up there.

24 MR. WILLIAMSON: Maybe I can get that
25 microphone. I just wanted to mention that I don't

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1 know that we know how much traffic via VNXX is voice.
2 We at Staff have not done a study, I was asked that
3 on the stand by pretty much everybody, and we
4 honestly don't know. But there appears to be some
5 evidence that it may be larger than we believe, in
6 particular in New Hampshire, where they did a very
7 detailed study.

8 If it's very small, then the impact is
9 almost nil, so it shouldn't be an issue for anybody
10 at the table. It shouldn't be something that we
11 would allow people to build their business plans over
12 if it doesn't agree with state rules, federal rules,
13 and industry standards.

14 JUDGE MACE: A question that occurs to me is
15 Staff is recommending that this settlement agreement
16 be approved only to allow, you know, VNXX for
17 ISP-bound traffic.

18 How would -- if the Commission adopted your
19 recommendation, how would the parties determine which
20 minutes were ISP-bound and which were not, or for
21 voice or whatever?

22 MR. WILLIAMSON: That's a very good
23 question.

24 JUDGE MACE: I mean, is that another
25 hearing?

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1 MR. WILLIAMSON: God forbid it would be
2 another hearing. I honestly don't know. I assume
3 that there's still some honor left in the industry,
4 and if the decision is that -- I know that caused a
5 little laughter, but I'm a simple engineer, but that
6 if the decision is that voice is prohibited, that at
7 least the majority of the industry would follow that
8 decision, I would hope.

9 JUDGE MACE: Yes, Mr. Vasington.

10 MR. VASINGTON: Yeah, I just want to address
11 one thing, because I brought it up. When I talk
12 about it being very small as a portion of the total
13 traffic and why that shouldn't raise a concern for
14 universal service considerations and toll bypass, the
15 notion that, well, then, we shouldn't worry about it
16 if it's taken away, I just want to address that,
17 because it's kind of like talking about the
18 unemployment rate being only four percent. Well, for
19 the person who doesn't have a job, it's a hundred
20 percent.

21 While the portion of traffic that may be
22 non-ISP-bound is very small and really has no impact
23 on universal service, behind that are real customers
24 who have actual services that they're using. So it's
25 not a flip-side thing that, well, if it's small, then

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1 we shouldn't care whether it gets taken away, because
2 it's being taken away from some actual customer who's
3 using the service.

4 JUDGE MACE: Anything else, Mr. Thompson?

5 MR. THOMPSON: Nothing else. Thanks.

6 JUDGE MACE: Mr. Rogers.

7 MR. ROGERS: We're just going to go around
8 the table? I'm happy to do that.

9 JUDGE MACE: Unless somebody suggests a
10 different order.

11

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

13 BY MR. ROGERS:

14 MR. ROGERS: Okay. I think I want to start
15 with Mr. Williamson, if I may. You know, we've
16 gotten to the point, I think, where we understand
17 that the Staff's position now, as the Judge has just
18 indicated, is that there ought to be an allowance for
19 locally dialed ISP-bound traffic that is virtual NXX
20 in nature, and that the terminating compensation rate
21 that would apply to that traffic, in your
22 recommendation, would be a bill and keep rate, a rate
23 of zero?

24 MR. WILLIAMSON: That's correct.

25 MR. ROGERS: Is that accurate? And I think

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1 in the documents that you've filed requesting that
2 the settlement agreement and amendment be reviewed,
3 and perhaps it's changed the posture of Qwest in this
4 proceeding, you've indicated that you've understood
5 this amendment to establish a bill and keep
6 relationship between Verizon and Qwest. Am I right
7 about that, that that is your understanding of what
8 this amendment effectively does?

9 MR. WILLIAMSON: For VNXX traffic, yes.

10 MR. ROGERS: I'm not sure I understand, in
11 my reading of it, how you arrive at that conclusion.
12 Can you explain to me how you arrive at -- that this
13 establishes bill and keep? Because I just heard Mr.
14 Brotherson -- the reason I guess I'm confused is Mr.
15 Brotherson gave a summary that said we've agreed that
16 compensation is due. And so that doesn't seem to
17 square with what you're saying is bill and keep, but
18 he's saying and I read there is a terminating rate
19 that will apply. So I'm not sure I understand.

20 MR. WILLIAMSON: I'm confused, because my
21 reading of it was that it was at zero percent, which
22 is bill and keep, but if Mr. Brotherson can read
23 something differently or someone could read that
24 portion for me.

25 MR. BROTHERSON: There is a terminating rate

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1 and then it applies only to the local dial-up ISP or
2 voice, as we've proposed it, but to the local ISP
3 traffic, and not to the VNXX traffic, so the rate
4 would only apply -- would exclude VNXX dial-up calls
5 and only apply to those dial-up ISP calls within --
6 where the ISP and the caller were in the same local
7 calling area.

8 I'm not sure -- if I was not clear before, I
9 want to make it clear. There's no compensation on
10 the VNXX traffic. There is compensation on local
11 traffic, that is to say, local voice and local ISP,
12 where the ISP and the customer or, in the case of
13 voice, where the two end users are in the same local
14 calling area, but the formula excludes VNXX traffic.

15 MR. ROGERS: Okay. I think that helps.
16 Effectively, if I'm understanding you correctly,
17 you're saying that the formula, the factor, right,
18 the RCF formula is what you're referring to when --
19 or the PCMF, I'm sorry.

20 MR. BROTHERTON: The percent compensable
21 minute factor, yes.

22 MR. ROGERS: Carves out virtual NXX traffic,
23 in effect, in establishing the factor; is that --

24 MR. BROTHERTON: Yeah, that is correct.

25 MR. ROGERS: And is that, Mr. Williamson,

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1 then what you're relying on when you say it's a bill
2 and keep rate?

3 MR. WILLIAMSON: Yes, and I was not speaking
4 to local traffic; only VNXX traffic.

5 MR. ROGERS: Okay. And so if we could, I'd
6 like to turn to Exhibit C, where those PCMF numbers
7 are laid out. Do you have that in front of you?

8 MR. WILLIAMSON: I'm not sure what C is.

9 JUDGE MACE: There's an Exhibit C to the
10 settlement agreement.

11 MS. ANDERL: Well, I'd object. I gave my
12 microphone away, but I'll object loudly. That is not
13 an Exhibit C to the amendment. It is Exhibit C to
14 the settlement agreement, and the settlement
15 agreement attached to it what the parties, at the
16 time of the settlement agreement, believed would be
17 the form of the interconnection agreement amendment,
18 also attached what they believed and what ultimately
19 did turn out to be the unitary rates and PCMFs, et
20 cetera.

21 But the interconnection agreement amendment
22 itself that implements the settlement doesn't have an
23 Exhibit C, it just, for each state, plugs in the
24 numbers that are shown here in one place on the
25 Exhibit C.

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1 MR. ROGERS: I guess I'm still not sure -- I
2 mean, I don't mean to get into confidential
3 information, that's not my intent, but I'm not sure
4 what's objectionable.

5 MS. ANDERL: Well, just a
6 mischaracterization of Exhibit C as a part of the
7 interconnection agreement amendment. It's not,
8 technically. It's part of the settlement agreement.

9 MR. ROGERS: Okay. And so if I'm just
10 referring to it incorrectly, forgive me, but if --

11 JUDGE MACE: That's okay.

12 MR. ROGERS: Is that all?

13 JUDGE MACE: I think that's the main thing,
14 just to let you know that --

15 MR. ROGERS: Okay.

16 JUDGE MACE: -- Exhibit C isn't part of the
17 amendment.

18 MS. ANDERL: I just didn't want there to be
19 a misunderstanding on the record.

20 MR. ROGERS: Okay. So with all of that,
21 does everyone know what I'm referring to at this
22 point on the panel?

23 JUDGE MACE: You're referring to Exhibit C
24 of the settlement agreement.

25 MR. ROGERS: Exhibit C of the settlement

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1 agreement.

2 MR. WILLIAMSON: State-specific unitary
3 rates is what it starts with at the top?

4 MR. ROGERS: Yes, yes. And Mr. Vasington,
5 I'd just like to sort of inquire a little bit with
6 you, if I could, about what these numbers reflect in
7 Washington under the Qwest-originated traffic section
8 of the initial PCMF on this page. The ratio or the
9 percentage is 82 percent. Do you see where I am?

10 MR. VASINGTON: Yeah.

11 MR. ROGERS: And so if I understand that
12 correctly, that would mean that 18 percent of the
13 Qwest-originated traffic would be considered virtual
14 NXX traffic; is that right?

15 MR. VASINGTON: Well, it's a negotiated
16 agreement, but at the foundation is an accounting for
17 virtual NXX traffic, so I don't know that you can
18 make it an exact mathematical equivalency there, but
19 certainly it reflects the fact that there is less
20 VNXX traffic as a percentage of the total for
21 Washington than there is for the other states.

22 MR. ROGERS: Why is that?

23 MR. VASINGTON: As I understand it, from
24 talking to people more expert in this than I am, it's
25 because we have some -- we or our affiliate have some

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1 modem banks here in Washington so that a significant
2 portion of the ISP-bound traffic is not VNXX; it's
3 within the local calling area.

4 MR. ROGERS: Now, is Verizon in the role of
5 an incumbent in any of these other states other than
6 Washington?

7 MR. VASINGTON: Idaho, Oregon. I'm not
8 sure. Maybe Counsel knows if there are others.

9 MR. ROGERS: So there are some incumbent
10 territories?

11 MR. VASINGTON: Am I correct on that?

12 MR. ROMANO: I think it's just those two on
13 a quick look here.

14 MR. ROGERS: Okay. So I guess, just for the
15 record, there is some incumbent territory that
16 Verizon has in Idaho and in Oregon, as well as
17 Washington?

18 MR. VASINGTON: Yes.

19 MR. ROMANO: Let me just add, I think
20 Arizona, as well.

21 MR. VASINGTON: Oh, yes, I'm sorry. Very
22 small area, number of customers, but yes, there is
23 some in Arizona.

24 MR. ROGERS: Okay. None in Colorado or
25 Iowa; is that accurate?

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1 MR. VASINGTON: Not that I'm aware of.

2 MR. ROGERS: Okay. Thank you. I think
3 that's all I had.

4 JUDGE MACE: Mr. Kopta.

5 MR. KOPTA: Thank you, Your Honor.

6

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

8 BY MR. KOPTA:

9 MR. KOPTA: I think I'll start by directing
10 the questions to Mr. Brotherson. You haven't talked
11 in a while, so I thought I'd give you a chance. If
12 the Commission were to approve the settlement
13 agreement and the amendment to the ICA, is it Qwest's
14 position that that amendment would be available to
15 other carriers to adopt?

16 MR. BROTHERSON: Yes, I think the amendments
17 filed with the Commission, if approved or has been
18 approved or whatever, then I think the opt-in rules
19 for the state of Washington would apply to the
20 documents that are filed.

21 MR. KOPTA: Okay. On a stand-alone basis,
22 just the amendment, not the entire MCI-Qwest
23 agreement that has the amendment in it?

24 MR. BROTHERSON: I can't tell you how the
25 opt-in applies. I heard Mr. Finnigan's comments, I

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1 heard -- you know, I'm not sure how the -- what the
2 opt-in rules are. We haven't had that request, I
3 guess, but it would be addressed.

4 MR. KOPTA: So at this point you don't know
5 whether this would be available as a stand alone?

6 MR. BROTHERTON: Actually, it's not going to
7 be my decision. It will be whatever the opt-in rules
8 of the state commission are, but I don't know.

9 MR. KOPTA: Okay. If you would please turn
10 to Exhibit 572, which is the interconnection
11 agreement amendment, and specifically on page four,
12 which is Attachment One of the amendment.

13 MR. BROTHERTON: I have it.

14 MR. KOPTA: And specifically drawing your
15 attention to the definition of unitary rate, which is
16 at the very bottom of that page.

17 MR. BROTHERTON: Yes.

18 MR. KOPTA: And that's defined to mean a
19 12-state weighted average, et cetera. Do you see
20 where I'm referring?

21 MR. BROTHERTON: I do.

22 MR. KOPTA: And could you explain to me why
23 it was 12 states instead of all 14 states for Qwest?

24 MR. BROTHERTON: In two of the states, the
25 VNXX issue was not an issue, as it were. In

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1 Colorado, ISP has been zero-rated for several years,
2 and in the state of Iowa, I think from the very first
3 interconnection agreement approved in that state,
4 it's been a bill and keep state. So when you're
5 talking about a bill and keep state that pre-dated
6 any of the debates around the VNXX issue, they were
7 carved out as an exception and we just settled the --
8 or addressed the issue in the states where it was a
9 live debate.

10 MR. KOPTA: And I'd like you to assume that
11 another carrier or CLEC, for example, would be able
12 to opt into just the stand-alone amendment. Do you
13 know what Qwest's position would be with respect to
14 how this unitary rate would apply to a carrier other
15 than Verizon?

16 MR. BROTHERSON: When you say how it would
17 apply, the unitary rate, it would be based on the
18 formula, which would look at their traffic,
19 identifying the local ISP, the local voice, the VNXX,
20 and would exclude the VNXX traffic based on their
21 traffic flows, compensate on the local traffic based
22 on their traffic flows at the unified rate.

23 MR. KOPTA: And would that unified rate be
24 the rate that is in this agreement?

25 MR. BROTHERSON: This agreement, the rate

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1 was arrived at through a weighted formula, looking at
2 the percentage of ISP traffic and the percentage of
3 voice traffic for that particular company.

4 If you're a company with all ISP traffic,
5 you're going to have a different rate than one with
6 some voice and some ISP, and if you are -- so you
7 would come up with a weighted combination rate to
8 reflect the two pieces, and then it would be applied
9 to the local minutes.

10 MR. KOPTA: So a CLEC adopting the amendment
11 would be adopting essentially the formula, but not
12 the specific rate that applies to Verizon?

13 MR. BROTHERTON: That's absolutely correct.

14 MR. KOPTA: Okay. And would it also be
15 calculated on a 12-state weighted average basis?

16 MR. BROTHERTON: Yes.

17 MR. KOPTA: If you would please turn to the
18 next page, page five. And at the top of that page,
19 there's a definition of virtual NXX traffic. Do you
20 see where I'm referring?

21 MR. BROTHERTON: I do.

22 MR. KOPTA: Is there anywhere in the
23 agreement that spells out how Qwest and a party
24 opting into this agreement would determine what is
25 virtual NXX?

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1 MR. BROTHERSON: I think the parties would
2 look at the originating and terminating points or
3 points of the call to determine if the ISP and the
4 calling party are in the same local calling area and,
5 based upon that, would determine it was a local or
6 non-local call.

7 MR. KOPTA: Well, I know that as part of
8 your testimony in this docket, you explain how Qwest
9 calculates what is or is not VNXX traffic, and then
10 essentially informs the CLEC of these calculations
11 and allows the CLEC to come back and have a
12 discussion. Is that kind of what you're describing
13 right here?

14 MR. BROTHERSON: Yes.

15 MR. KOPTA: But there's nothing in this
16 amendment itself that spells out how that process is
17 going to take place?

18 MR. BROTHERSON: Well, I think you define
19 what is a local call and what is a VNXX call. I
20 think the party -- by the definitions. I think the
21 parties, if they disagree that in fact this ISP is
22 located here or this ISP is not located here, that's
23 a factual question that will be resolved to conform
24 to the definition that is in the amendment that the
25 parties have agreed upon.

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1 MR. KOPTA: And how did Qwest and Verizon
2 come up with determining what is or is not virtual
3 NXX, make that determination?

4 MR. BROTHERTON: Actually, they brought --
5 they both brought their numbers to the table. I
6 think the minute -- the total minutes being exchanged
7 was spot on. I mean, and then --

8 JUDGE MACE: Was what? I'm sorry.

9 MR. BROTHERTON: Was almost identical on the
10 total minutes. I think they then looked at -- they
11 both proposed or put on the table what they felt were
12 the VNXX minutes, and I believe that the parties were
13 within a very narrow margin of each other on what
14 those were, the parties agreed to a number, we didn't
15 -- they represented that they were VNXX and that the
16 rest were within the local calling area. Those
17 numbers were very similar to our numbers. That would
18 give us no reason to doubt the veracity. And based
19 upon that, the parties said, okay, we both understand
20 and we're both going to honor the definitions in the
21 agreement and go forward.

22 MR. KOPTA: And just so Mr. Vasington
23 doesn't feel left out, is that your understanding of
24 how the process took place between Verizon Access and
25 Qwest?

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1 MR. VASINGTON: Well, it is now. I didn't
2 have any prior knowledge of that, but I have no
3 reason to doubt that that's what happened.

4 MR. KOPTA: Okay. Thank you. And if you
5 would, please, Mr. Brotherson, turn to page seven,
6 which is the last page of Exhibit 572. And drawing
7 your attention to Section Six, which is entitled
8 LIS, Local Interconnection Service, Trunking, SPOP,
9 Single Point of Presence, Arrangements. Do you see
10 where I'm referring?

11 MR. BROTHERSON: I do.

12 MR. KOPTA: And in this section, it states
13 that total local dialed traffic, which is a defined
14 term, will be exchanged over LIS trunking facilities,
15 including SPOP arrangements, ordered pursuant to the
16 terms of the agreement; is that correct?

17 MR. BROTHERSON: Yes.

18 MR. KOPTA: Is it the intent of this
19 amendment to limit the traffic for total local dialed
20 traffic to LIS trunking arrangements, and
21 specifically, would you exclude facilities that the
22 carrier itself provides that Qwest doesn't provide?

23 MR. BROTHERSON: I -- if I think I
24 understand the facts, I don't think that would be an
25 issue. It was simply that this was inserted in here

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1 to address the fact that whether VNXX were deemed
2 local or non-local, that VNXX traffic would be
3 continued to be allowed on LIS to reach the point of
4 interconnection with -- or the SPOP with the carrier.
5 The party who is delivering that traffic would have
6 to pay for the transport, but it could stay on the
7 LIS and it did not have to be put on any other type
8 of trunk group.

9 So that was all that I understood this to be
10 addressing, and I can't imagine, with that as the
11 intent of that language, that it would impact if
12 someone wanted to put it on other facilities at some
13 point and carry it further.

14 MR. KOPTA: So just to clarify, the intent
15 was not to limit the facilities over which this
16 traffic could be carried, but instead state, and
17 perhaps more precisely than I'm about to, that
18 whatever facilities the companies are currently
19 exchanging, non-toll type traffic could continue to
20 be used for the exchange of total local dialed
21 traffic?

22 MR. BROTHERTON: Let me say I think so, but
23 this also says it doesn't change the terms of the
24 interconnection agreement on anything unrelated to
25 this VNXX traffic. So to the extent you're getting

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1 into terms about ratcheting a feature group D and
2 issues like that, this is not addressing any of that,
3 and that would continue to be handled by the
4 interconnection agreement.

5 I don't want to over-generalize and say that
6 this is changing other things than it was intended.
7 But in response to your specific question about could
8 someone put this traffic on private line or their own
9 fiber if they've got facilities somewhere,
10 absolutely. I think this was addressing that it is
11 permissible to leave VNXX traffic on LIS, which was
12 one of the issues that of course comes up, depending
13 upon whether or not this is local call, and it was
14 not intended to go any farther than that.

15 I don't want my answer to go any farther
16 than that, because I'm not trying to change other
17 terms and arrangements in the agreement.

18 MR. KOPTA: Okay. And I think that's what
19 I'm getting at. I just, in my lawyer's paranoia,
20 since it says that this traffic will be exchanged
21 over LIS trunking, then certainly one possible
22 interpretation is that is the only way that it could
23 be exchanged, but as I'm hearing you today, that was
24 not the intent of this?

25 MR. BROTHERSON: It was not the intent, and

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1 I commented at lunch about discussing language with a
2 roomful of lawyers, each of whom would write this
3 differently.

4 MR. KOPTA: That's dangerous, isn't it?
5 I'll try not to do that. And I'm going to sort of
6 ask the Judge's question, which is -- and maybe it
7 would be helpful if you would look at page four of 11
8 of the settlement agreement, Exhibit 570. That's the
9 redacted settlement agreement, although it doesn't
10 involve any confidential information on this page.

11 MR. BROTHERSON: I'm on four of 11.

12 MR. KOPTA: Okay. And specifically Section
13 1.5.3, which is at the bottom of the page. Am I
14 correct that the filing of the amendment in the
15 separate docket from this one was made pursuant to
16 this section of the settlement agreement?

17 MR. BROTHERSON: Yes, the intent was that,
18 to the extent it addresses ongoing relationships with
19 the parties, it would be publicly-filed.

20 MR. KOPTA: And is it Qwest's view that this
21 settlement agreement is effective as we sit here
22 today, so that this provision effectively required
23 Qwest to file that amendment with the Commission?

24 MR. BROTHERSON: I believe so, yes.

25 MR. KOPTA: And do you know whether Qwest is

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1 willing to waive the 90-day thumbs up or thumbs down
2 requirement under the act for approval of
3 interconnection agreements by the Commission?

4 MR. BROTHERTON: I would defer that to my
5 Counsel. Are you talking about the 252 rules on
6 arbitration or the --

7 MR. KOPTA: I'm talking about the 252 rules
8 on Commission approval of negotiated, in this case,
9 agreements, that require that the Commission act
10 within 90 days or the amendment is deemed approved.

11 MR. BROTHERTON: You know, I'm going to
12 defer to my Counsel.

13 JUDGE MACE: Actually, I would like to hear
14 from Qwest and Verizon on that very issue. And since
15 it's brought up by Mr. Kopta, why don't we hear it
16 now.

17 MS. ANDERL: Your Honor, Qwest believes that
18 the Commission has acted, by virtue of its delegated
19 authority through the executive secretary to approve
20 the amendment. The question is whether the
21 Commission modifies or reverses that on review.

22 The parties do not wish to see
23 implementation of this agreement delayed, and I think
24 it would therefore be reluctant to waive the 90-day
25 clock and be in limbo. I think the parties would

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1 ask, as a first preference, that the amendment be
2 approved; and as a second preference, that it be
3 approved with some, you know, express language saying
4 the approval is conditional on the outcome in this
5 docket, if that's what the Commission wishes to do;
6 and a very distant third, not a preferred option, I
7 guess, would be the Commission would not
8 affirmatively disapprove that, but of course neither
9 Qwest nor Verizon is advocating for that.

10 So at this point, the answer is, as
11 delicately as possible, no, we're not willing to
12 waive the 90 days.

13 JUDGE MACE: But you're willing to ask that
14 the Commission approve the settlement agreement
15 conditioned on the outcome of this docket?

16 MS. ANDERL: We're willing to accept that if
17 that's what the Commission does.

18 JUDGE MACE: And hypothetically, would you
19 be willing to grant additional time beyond the 90
20 days of a certain amount? In other words -- that's
21 very awkwardly put, but one additional month, two
22 additional months, in other words, a finite period of
23 extension or waiver?

24 MS. ANDERL: And I guess I'd like to talk to
25 my client about that. We can do that just on a brief

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1 recess, maybe like to confer with Verizon, and maybe
2 would want to seek clarification, maybe tomorrow
3 morning when we talk to the Commissioners on the
4 bench about that, whether the ICA amendment would be
5 deemed approved or effective during that time while
6 we were waiting.

7 JUDGE MACE: Well, you've already said that
8 one of the things that you would accept would be that
9 -- this approval of the amendment conditioned on the
10 outcome of this docket. That's fine. But what I'm
11 talking about is not approval of the amendment and
12 granting a waiver of a certain finite period of time
13 for the Commission to consider the amendment prior to
14 approval or disapproval or whatever?

15 MS. ANDERL: And I guess my only question is
16 what's the status -- what the status of the amendment
17 would be during that period?

18 JUDGE MACE: I'm suggesting it would not be
19 approved. You would -- the Commission would take it
20 under advisement, and consideration of it might take
21 longer than the 90 days, and how much longer than the
22 90 days would you be willing to go in terms of
23 allowing the Commission time to consider whether to
24 approve the amendment?

25 MS. ANDERL: You know, unless Verizon has

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1 something they want to offer on this, at this very
2 moment, I might ask for a brief recess to confer and
3 come back with some more clarity on that.

4 JUDGE MACE: Well -- I'm sorry.

5 MR. ROMANO: Your Honor, I think we might
6 need more than just a brief recess. We actually
7 might need to carry it over till tomorrow at the open
8 meeting on that particular point. Because I think,
9 you know, we are willing, as Qwest is, if, given the
10 alternatives, to accept a conditional approval, but
11 extending the statutory deadline, we would have to
12 really confer with our client on that.

13 MS. ANDERL: And I guess, Your Honor, as I
14 said, because it's my view that the order of the
15 executive secretary, unless I'm wrong about this, is
16 not effective, we think that it is effective. And
17 what we would, I think, be willing to do, which might
18 accomplish the same goal, would be to extend any
19 deadline by which the Commission has to act, review
20 that order that was issued under the delegated
21 authority. That might accomplish the same goal.

22 That's a new rule. I haven't reviewed it
23 today or, you know, very recently. I need to double
24 check that.

25 JUDGE MACE: In light of the fact that we

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1 have been at this for some time, I would like to
2 propose that we do take a recess. I'm assuming that
3 other attorneys would have questions of the panel.
4 Am I correct in that, Mr. Best?

5 MR. BEST: Your Honor, I'll have a couple
6 questions and, at some point, like Mr. Finnigan, I'd
7 just like to make a statement about our position in
8 the matter, but I would hope -- well --

9 JUDGE MACE: You have a plane to catch at
10 4:00.

11 MR. BEST: No, I don't, I'm driving, so I've
12 got all the time in the world. But I'm hoping it
13 will only be five to ten minutes. Unfortunately, my
14 questions, when you see them, will probably open up
15 some complicated issues, but --

16 JUDGE MACE: Another can of worms.

17 MR. BEST: I try to be helpful.

18 JUDGE MACE: Mr. Wiley.

19 MR. WILEY: Yeah, Your Honor, I'll have a
20 couple questions, but I would ask that all Counsel
21 read the proposed memo, the Staff memo that I've just
22 read, because it begs the issue that we're just
23 addressing, which is what are we doing procedurally
24 here. If we're bifurcating these two issues, why are
25 we spending time, at least in briefing, on the

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1 settlement that the Commission has already approved.
2 And this memo says nothing about deferral or an
3 option of waiting a period of time and waiving the
4 90-day period. So I do think it's a relevant
5 procedural issue.

6 JUDGE MACE: A relevant procedural issue for
7 us?

8 MR. WILEY: For us to consider, particularly
9 for briefing purposes.

10 JUDGE MACE: Right. Let me -- let's take a
11 recess for ten minutes and come back.

12 (Recess taken.)

13 JUDGE MACE: Well, I sort of feel like this
14 is what they mean when they say we live in
15 interesting times. This is an interesting situation
16 for me, because I'm sort of distant from it, but for
17 you it may be fraught with all kinds of things,
18 issues and problems.

19 But in any event, on my way in I heard from
20 Ms. Anderl that you all had been discussing something
21 with regard to this question of waivers and such, so
22 I'm wondering if, Ms. Anderl, you would be willing to
23 talk about what you've discussed?

24 MS. ANDERL: Sure, Your Honor. We did
25 consult with Mr. Thompson and looked at the rule

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1 regarding the delegated authority of the executive
2 secretary to act, and I believe that that order from
3 the executive secretary approving the interconnection
4 agreement amendment is effective, thereby allowing
5 Qwest and Verizon to operate under it.

6 That doesn't mean that the Commission can't
7 undertake a review of that order, and I'm not sure
8 that the same 90-day clock in the federal act applies
9 to the review process. I think perhaps the
10 Commission's arguably met its statutory obligation
11 under the Telecom Act by acting -- delegating its
12 authority to the executive secretary and having the
13 executive secretary enter an order approving the
14 amendment.

15 So we're, therefore, arguably, at least in
16 my mind, and I, you know, wouldn't argue to the
17 contrary that we're in a situation where the
18 Commission may take as much time to review that order
19 as its own rules allow, and that may be open-ended.
20 I think it is.

21 But of course, as I said, the important
22 thing for Qwest and Verizon is that, during the
23 review period, the amendment is effective and the
24 parties are lawfully operating under it.

25 JUDGE MACE: Interesting. Good job. Mr.

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1 Thompson.

2 MR. THOMPSON: Well, I would just say I do
3 agree that the rule, which is WAC 480-07-904, says
4 that the executive secretary's decision shall take
5 effect immediately on entry of an order or on a later
6 date specified in the order, and it did say it takes
7 effect immediately, so I think it is approved. But
8 as Ms. Anderl said, I think the Commission has the
9 authority to reverse itself.

10 JUDGE MACE: The Commission would be
11 granting the petition for review, is that the --
12 would that be the mechanism?

13 MR. THOMPSON: Yes.

14 JUDGE MACE: This is really what the
15 Commission will do. It certainly has nothing to do
16 with -- I have no clout in that. I'm just curious
17 what the procedure is. The Commission has your
18 petition for review of that order before it and it
19 will be able to grant that petition for review. Is
20 that what you're looking for? And then it would
21 review the order and, during that time --

22 MR. THOMPSON: Right, we didn't know whether
23 our petition for review would be considered before
24 this hearing or after. Turns out it's after. But
25 all we were asking is for that determination of

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1 whether the ICA should be approved, should be kicked
2 over to this process, so --

3 JUDGE MACE: So that the Commission would be
4 conducting its petition -- or its review of that
5 secretary's order in this case. So the Commission
6 would have to consolidate that case with this case?

7 MR. THOMPSON: Right. I think, more
8 importantly, that the two parties to the agreement
9 and Staff are in agreement that there's no problem
10 with the amendment going into effect now and being
11 subject to change later in the event that the
12 Commission in this proceeding were to, for example,
13 prohibit use of VNXX for voice traffic, for example,
14 as Staff is advocating.

15 JUDGE MACE: Is that correct, Mr. Romano?

16 MR. ROMANO: That's obviously not our
17 preference, but we would be willing to abide by that,
18 which I would consider to be, in essence, a
19 conditional approval.

20 JUDGE MACE: And Qwest.

21 MS. ANDERL: Yes, Your Honor.

22 JUDGE MACE: Okay. All right. Thank you.
23 I appreciate the time we spent on this. It's helpful
24 to me, at least, I hope helpful to the Commission
25 itself.

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1 So Mr. Kopta, you were in the midst of
2 asking questions, and then you asked the most
3 important question of all. Do you have any other
4 questions?

5 MR. KOPTA: I hate to be anti-climactic,
6 but, actually, what I would like is, since Mr.
7 Brotherson was not able to answer essentially my
8 first question, to get a representation from Counsel
9 for Qwest as to whether, in Qwest's view, this
10 amendment, once it is effective or if it is in fact
11 effective today, whether the amendment standing alone
12 is something that another carrier, another CLEC could
13 opt-in to?

14 MS. ANDERL: It is Qwest's position that the
15 opt-in rules do not require Qwest to offer that on a
16 stand-alone basis. The opt-in rules only require
17 that Qwest make available the entire interconnection
18 agreement, including all amendments.

19 At this point, we have not received a formal
20 request for the amendment on a stand-alone basis. I
21 think while, legally, we are not obligated to offer
22 it, it would have to be a business decision, which we
23 have not yet made as to whether that would be
24 available.

25 It would, in all instances, only be a

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1 available on a 14-state basis, even if it was
2 available on a stand-alone basis, if you understand
3 what I'm saying. Stand alone meaning the amendment
4 severed from the underlying interconnection
5 agreement, but the amendment itself is a 14-state
6 agreement. So I want to be clear on that.

7 MR. KOPTA: So if a CLEC wanted this
8 amendment only for the state of Washington, that is
9 not something that Qwest would be interested or would
10 offer?

11 MS. ANDERL: I think that the only way that
12 Qwest would offer something like that would be if
13 Washington was the only state in which the CLEC did
14 business. Then it would still be a 14-state deal,
15 but the only state in which an effective rate would
16 be created would be Washington.

17 MR. KOPTA: Is that also true of the
18 settlement agreement?

19 MS. ANDERL: What's the question?

20 MR. KOPTA: Whether the terms of the
21 settlement agreement would be available to a CLEC
22 that's a party to this case?

23 MS. ANDERL: The settlement agreement
24 contains terms and conditions which I believe are
25 unique to disputes between Qwest and Verizon and do

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1 not address rights and obligations that are impacted
2 under Section 252(i), yeah, 252(i), and it's a
3 settlement agreement, resolves historic disputes,
4 isn't an interconnection agreement, and is therefore
5 not under any circumstances available for opt-in.

6 MR. KOPTA: Okay. Thank you.

7 JUDGE MACE: I guess I'd like to ask a
8 question. It sort of touches on this. I think I'm
9 going to ask Mr. Williamson, although some of the
10 other CLEC Counsel might want to address it.

11 Let's assume that Qwest did allow this
12 agreement -- or pardon me, the amendment, I guess, to
13 be adopted by other -- by other CLECs or by the CLECs
14 in this case. Looking at the way that the amendment
15 or the agreement is structured, do you think that,
16 practically speaking, it would be something that
17 CLECs would be interested in or it would make
18 business sense for them to do? In other words, to
19 try to get into an agreement with Qwest of the nature
20 of this agreement?

21 And I'm saying that because it seems to me
22 that I've heard that the traffic patterns between
23 Verizon and Qwest are maybe quite different than the
24 traffic patterns between other CLECs and Qwest.

25 MR. WILLIAMSON: It's true that the traffic

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1 patterns are different, but I understood Mr.
2 Brotherson to say that, the way it's constructed, it
3 would apply to different companies' usage. I haven't
4 studied that. That's just my opinion from here.

5 JUDGE MACE: So that you -- I know that
6 you're not a CLEC, but it would make some sense,
7 then, for a CLEC to try to adopt an agreement like
8 this?

9 MR. WILLIAMSON: I believe it would to some
10 CLECs, for sure. You know, and I can't speak for any
11 of them, but I believe it could very well. And of
12 course, Staff's concern was that if the amendment
13 wasn't tied to the decision in the case that we're
14 sitting on, then basically anyone could maybe opt in
15 to that and bypass the Commission's decision. The
16 way it sounds like here, as long as it's tied
17 together, then it would be a business decision based
18 on each particular CLEC, and I would expect that
19 there may be some that would want to.

20 JUDGE MACE: Thank you. Go ahead, Mr.
21 Rogers.

22

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

24 BY MR. ROGERS:

25 MR. ROGERS: If I may, I'm curious, Mr.

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1 Williamson, whether you make those statements with
2 the understanding that Verizon has -- its network
3 architecture and its traffic exchange would basically
4 carry traffic in the zigzag manner or is going to
5 have a triple transport network architecture, which
6 is what I understood you to say would be required to
7 qualify as local traffic or FX-like traffic during
8 your testimony.

9 MR. WILLIAMSON: Excuse me. I did testify
10 to that, but in the response to this, Staff decided
11 that it would be to the public interest to allow a
12 company to use VNXX, which would not require the
13 zigzag, for the express purpose of ISP-bound traffic.
14 So Staff is saying, even though we've testified and
15 believe in our heart of hearts that this bypasses
16 some rules and standards, that it's to the public
17 interest to allow it for ISP-bound traffic and would
18 not require a classic FX design.

19 MR. ROGERS: But so I'm sure I understand
20 you, you're saying you would put it into the bucket
21 of VNXX, as opposed to putting it in the bucket of
22 local, which, for some CLECs, would mean that the
23 percent, the ratios would be most likely flipped on
24 their head from what Verizon has in Exhibit C that we
25 referred to earlier.

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1 MR. WILLIAMSON: I do believe that Verizon
2 in Washington is designed in a different manner, so
3 their ratio is a little different, but I understood
4 Mr. Brotherson to say that that ratio would depend on
5 a particular CLEC's traffic, or I misunderstood.

6 So I guess, to answer your question, yes,
7 we're still saying that VNXX is not local traffic.
8 Local traffic is still calls that originate and
9 terminate physically in a particular local calling
10 area. Those that originate in a local calling area,
11 terminate in a different local calling area using
12 VNXX routing would be at a bill and keep rate.

13 MR. ROGERS: And it's still your opinion
14 that you think that would be an attractive
15 arrangement for most CLECs?

16 MR. WILLIAMSON: I don't know that I can say
17 for most CLECs. I think it would be a possibility
18 for some.

19 MR. ROGERS: Thank you.

20 JUDGE MACE: Mr. Kopta, are you finished
21 with your questions?

22 MR. KOPTA: Yes, I am. Thank you.

23 JUDGE MACE: So Mr. Best.

24 MR. BEST: Thank you, Your Honor.

25

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

2 BY MR. BEST:

3 MR. BEST: I guess I'll start with Mr.
4 Brotherson, since I know you. Mr. Brotherson, maybe
5 you can help me. And this may have been answered. I
6 know it was covered by Mr. Rogers, I think, but the
7 unitary rate mentioned at page -- it's in Section 4.1
8 of the -- it's Attachment One, the definitions.

9 MR. BROTHERSON: I have it.

10 MR. BEST: You have that? I'm just curious.
11 Maybe this was --

12 JUDGE MACE: Can you turn your microphone
13 on?

14 MR. BEST: I'm sorry. I just need to get
15 closer. Maybe it was explained and I just missed it,
16 but how was this rate arrived at?

17 MR. BROTHERSON: Well, first of all, the
18 unitary rate for ISP traffic by virtue of the FCC's
19 preemption is 0007 in all states, but the voice rate
20 for voice traffic varies from state to state. And so
21 if ten percent of your traffic is in State A and
22 State A has a certain rate, voice rate for
23 termination, and 90 percent of your traffic is in
24 State B, you then have a ten percent weighting and a
25 90 percent weighting to come up with what then

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1 becomes the rate, along with the weighting for the
2 ISP of 0007 to come up with what amounts to the
3 unitary or the unified rate to use.

4 It will -- the lowest rate, and remember,
5 we're excluding VNXX, so we're talking about what I
6 would call true local, what others would disagree on,
7 but on the true local calling, the lowest rate is
8 going to be for the traffic exchanged, a 0007. And
9 that would presume that a hundred percent of the
10 traffic is ISP, and there's no higher voice rate in
11 the formula.

12 And if you have a small percentage of voice
13 in addition to a large percentage of ISP, then you're
14 going to start seeing that number move, 00701, 0072,
15 0073, accordingly. So that's how the unified rate is
16 designed -- or unitary rate, excuse me.

17 MR. BEST: I think Mr. Rogers may have asked
18 this and I didn't tumble to it till fairly recently,
19 but so are you saying this rate, if a CLEC adopted
20 this, that this rate would be adjusted per the CLEC,
21 or is this the rate?

22 MR. BROTHERTON: This rate is arrived at
23 through the formula. The formula would be available
24 to the CLEC. The CLEC may have a different ratio of
25 voice and ISP, and obviously if the CLEC has a high

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1 percentage of voice traffic and a small percentage of
2 ISP traffic, the rate's going to be higher for that
3 particular CLEC.

4 MR. BEST: Great. Thank you. Do you know
5 what Qwest would charge a CLEC? Would it depend on
6 the traffic? I'm not quite sure.

7 MR. BROTHERTON: Yes, it would depend upon
8 two factors, the rates of the various states and the
9 percentage of voice traffic in those states. The ISP
10 rate, of course, is consistent across all states.

11 MR. BEST: Now, I know I'm going to ask this
12 next question at great personal risk. The page
13 before that, there's a definition of virtual NXX
14 traffic.

15 MR. BROTHERTON: Oh, the page after that,
16 yes.

17 MR. BEST: I thought it was before. I'm
18 sorry. Maybe I'm --

19 JUDGE MACE: You're in Attachment One now;
20 is that --

21 MR. BEST: Attachment One, the page before,
22 there's a definition of virtual NXX traffic.

23 MR. BROTHERTON: I have the definition of
24 virtual NXX traffic.

25 MR. BEST: Here's my question. Tell me why

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1 this definition wouldn't capture both Verizon and
2 Qwest's current foreign exchange traffic?

3 MR. BROTHERSON: Under the current rules,
4 the traffic is treated as local. I'm not sure. The
5 traffic is handed off inside the local calling area
6 and placed on a private line and transported on the
7 customer's loop outside.

8 MR. BEST: No, I understand that. I'm
9 talking about --

10 MR. BROTHERSON: Those are all the issues.

11 JUDGE MACE: Now, again, Mr. Best and Mr.
12 Brotherson, please don't talk over each other.

13 MR. BEST: Sorry, Your Honor. I'm just
14 talking about this definition.

15 MR. BROTHERSON: All I can tell you is I
16 believe that, by purchasing local exchange service in
17 the local calling area and routing the traffic onto
18 the private line, that it would fall under that
19 definition.

20 JUDGE MACE: And that definition is FX?

21 MR. BROTHERSON: FX, yes.

22 MR. WILLIAMSON: Maybe I'm missing it, but I
23 think what Mr. Best is getting at is where it states,
24 including, but not limited to ISP-bound traffic. And
25 if the Commission ruling in this case was that voice

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1 would not be included, then I would think this
2 paragraph would have to be changed and limit that to
3 ISP-bound traffic. Is that --

4 MR. BEST: Well, that's part of it. I guess
5 the other part is, it appears to me, we've been
6 discussing how there seems to be a variety of
7 definitions. It just strikes me, and I, like I say,
8 welcome comment, that this definition would capture
9 also foreign exchange traffic, because it's really
10 looking only to geographic or -- origination calling
11 area and the terminating calling area. That's all
12 I'm saying.

13 And I understand Qwest's position, Mr.
14 Brotherson, don't get me wrong. I'm just saying,
15 with this definition, though, in the interconnection
16 agreement, you may be stuck with that.

17 MR. BROTHERSON: Well, when you say stuck
18 with it, I think it was the intent of the parties to
19 recognize FX traffic as local traffic, and those
20 minutes were included in the local minutes and not
21 treated as FX minutes. So I think the parties
22 intended FX traffic to be treated as local traffic in
23 their settlement.

24 I'm not sure the parties would -- read the
25 definition the way or interpreted the definition in

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1 the manner you have, Mr. Best. I'm not saying you're
2 wrong or right. I'm telling you this is the
3 interpretation the parties operated under in entering
4 into the settlement agreement.

5 MR. BEST: I think that's all I have, Your
6 Honor.

7 JUDGE MACE: Thanks. Mr. Finnigan.

8 MR. FINNIGAN: Thank you, Your Honor.

9

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

11 BY MR. FINNIGAN:

12 MR. FINNIGAN: Mr. Brotherson, you described
13 the process between Verizon and Qwest in arriving at
14 the settlement agreement as each party came to the
15 table and disclosed the minutes of use; is that
16 correct?

17 MR. BROTHERSON: Yes.

18 MR. FINNIGAN: Are you able to tell us the
19 number of voice minutes that were exchanged, or is
20 that confidential and it's not something you want to
21 disclose?

22 MS. ANDERL: And I guess I will interpose an
23 objection in terms of -- I understand that it is
24 appropriate to inquire into a settlement agreement.
25 There's always a fine line between inquiring into a

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1 settlement agreement and stepping on confidential
2 settlement negotiations where the information is
3 exchanged, you know, subject to ER 408. And yet I'm
4 mindful of, you know, the parties' concerns here,
5 that they understand exactly what this
6 interconnection agreement amendment is, and so --

7 JUDGE MACE: And so --

8 MS. ANDERL: So I do object to the
9 disclosure of the underlying detail.

10 MR. ROMANO: And I would echo that objection
11 from the perspective of Verizon Access in terms of
12 any discussion of specific numbers of minutes and so
13 forth.

14 MR. FINNIGAN: Well, Your Honor, if they
15 want to view it as confidential, that's fine, but I
16 think that goes to considering the weight of Mr.
17 Vasington's comments that these are negligible or
18 minor minutes. If we're not willing to disclose the
19 number of minutes, there's no way to judge the volume
20 of minutes as he's characterizing them.

21 JUDGE MACE: So I guess I just want to
22 inquire. You know, oftentimes information that comes
23 into the record is confidential, but Counsel actually
24 has access to it. We just don't talk about it on the
25 record. Is this the kind of information that would

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1 be subject to a confidentiality agreement or am I
2 mistaken in that?

3 MS. ANDERL: Well, if it were to come in, it
4 certainly would be subject to the protective order,
5 but I think this is the type of information that
6 isn't even disclosable because of Evidence Rule 408,
7 that preserves the sanctity of the settlement
8 negotiations.

9 I thought I heard Mr. Finnigan asking for
10 just the number of VNXX voice minutes?

11 MR. FINNIGAN: Of both parties, yes.

12 MS. ANDERL: And we can confer. It may be
13 that that one limited piece of information would be
14 something that we'd be willing to disclose.

15 JUDGE MACE: All right. Well, why don't you
16 proceed, Mr. Finnigan, and then let's see where we go
17 from there.

18 MR. FINNIGAN: Sure. Mr. Vasington, in your
19 earlier comments, you mentioned the fact that there
20 was an AFOR before the Commission. You do understand
21 that that AFOR relates solely to Qwest and not to any
22 other incumbent local exchange carrier, do you not?

23 MR. VASINGTON: Yeah.

24 MR. FINNIGAN: Okay. Also, Mr. Vasington,
25 as I understand this agreement, this settlement

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1 agreement, this relates solely between Verizon's CLEC
2 operations in the state, as far as the state of
3 Washington is concerned, for the state of Washington,
4 and doesn't purport to address Verizon as the ILEC?

5 MR. VASINGTON: That's correct. It's
6 Verizon Access, as memorialized in my testimony, the
7 various entities.

8 MR. FINNIGAN: Mr. Brotherson, if you'd look
9 at Section 7.2, which is on the last page of the
10 amendment.

11 MR. BROTHERSON: I have it.

12 MR. FINNIGAN: And if I understand this
13 correctly, it says that if a provision of the
14 amendment is found illegal and only after a final
15 binding and non-appealable regulatory or judicial
16 process, then the change of law and negotiations come
17 into effect. Am I reading it correctly?

18 MR. BROTHERSON: That's correct. I think
19 that's pretty standard language, even in our
20 interconnection agreements.

21 MR. FINNIGAN: Okay. So as I understand it,
22 insofar as a Commission order in this docket is
23 concerned, that Qwest is willing to waive the
24 technical requirements of Section 7.2 and enter into
25 an amendment if there's a broad order addressing VNXX

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1 from this Commission in this docket. Is that -- do I
2 understand?

3 JUDGE MACE: Broad what kind of order? A
4 final order?

5 MR. FINNIGAN: Yeah, a final order of the
6 Commission in this docket.

7 MR. BROTHERSON: I'm not -- I'm not
8 purporting to be a lawyer for Qwest. If the
9 Commission finds any activity performed by anybody is
10 improper and there is an amendment, whether it was
11 issued, entered into recently or five years ago, that
12 permits that, then both parties presumably will quit
13 that activity and change the amendment accordingly.
14 I'm not sure how this relates to the issue of timing
15 of approvals, which I do not want to get into.

16 MR. FINNIGAN: Sure.

17 MR. BROTHERSON: But clearly, anything that
18 a Commission says the parties should not be doing, we
19 will make amendments to our agreements to reflect
20 that, and have done that when things like ISP Remand
21 Orders or Core Forbearance Orders or other things
22 have come down.

23 MR. FINNIGAN: I guess I raise the question
24 -- I should probably address this to Counsel, because
25 I've had attorneys argue on behalf of their clients

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1 that if there's an effective agreement, a regulatory
2 order doesn't affect it until such time as that
3 agreement is terminated or comes up for renewal.

4 And so given the way this language is
5 written about that there has to be a finding as to
6 this amendment itself, I'm just wanting to make sure
7 that we understand how Qwest and Verizon views the
8 change of law provision?

9 MR. BROTHERSON: I don't know what provision
10 of amendment means, if it's a finding of the
11 amendment or something that's being performed under
12 the amendment. I'd defer to Counsel on that.

13 MS. ANDERL: Shall I respond?

14 MR. FINNIGAN: Please.

15 MS. ANDERL: Well, and I don't know why Mr.
16 Brotherson gave up being a lawyer to be a witness,
17 because answering questions is decidedly not my
18 preference.

19 But, you know, I think maybe the best
20 reading of this change of law provision, you know,
21 without having had, you know, kind of time to
22 contemplate it at any length in the context of your
23 questions, Mr. Finnigan, is that I think that this
24 language exists in order to keep parties from having
25 to amend and reamend and reamend, depending on where

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1 you are in the appellate process.

2 I think, though, that if there's a final
3 binding order of this Commission that tells us that
4 there's a provision that is unlawful, we don't
5 violate the law.

6 MR. BROTHERTON: We don't usually keep doing
7 it.

8 MS. ANDERL: And we won't keep doing it.
9 Whether we amend the agreement or not at that
10 particular point while the appellate process, say, is
11 still unfolding is probably the issue here. We'll
12 stop doing it. We won't enter into an amendment
13 until it's clear what the amendment has to look like.

14 MR. ROMANO: And if I could respond.

15 JUDGE MACE: So that's a good question. I
16 mean, it says non-appealable regulatory or judicial
17 process. It could be a very long process.

18 MS. ANDERL: Exactly.

19 JUDGE MACE: So you're saying you would stop
20 doing what? What would you go back to if the
21 Commission issued, let's say, a final order after a
22 petition for reconsideration and it changed the
23 treatment of VNXX from what the settlement agreement
24 says? What would Qwest and Verizon do at that point?

25 MS. ANDERL: My understanding is we would

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1 comply with the Commission's order unless it was
2 stayed.

3 JUDGE MACE: So that would change the terms
4 of the agreement, possibly.

5 MS. ANDERL: It would change the way the
6 parties operate vis-a-vis each other, yes, and the
7 only question is whether a formal amendment would be
8 negotiated and executed at that point in time when we
9 still don't know if that's actually the end of the
10 story.

11 JUDGE MACE: Right, but the parties would
12 then go back to status quo now or what? Just think
13 it through.

14 MS. ANDERL: Yeah, to think it through, they
15 would go --

16 MR. BROTHERTON: Depends upon the wording of
17 the order.

18 MS. ANDERL: Mr. Brotherton's right, it
19 would depend upon the wording of the order. And
20 perhaps they would negotiate some sort of an interim
21 agreement.

22 MR. ROMANO: If I could, Your Honor.

23 MS. ANDERL: It's hard to say, because it's
24 such a general question.

25 MR. ROMANO: Yeah, I mean, I think one way

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1 around the entire issue, as we discussed earlier, is
2 the conditional approval. Because if that's the
3 case, then it's expressed at the outset that an order
4 that comes out will force the parties to look back at
5 this. So I think the conditional approval approach
6 that was discussed earlier probably moots the entire
7 discussion as to the particular sections here.

8 JUDGE MACE: Mm-hmm. Well, I don't want to
9 belabor it. I mean, part of the problem is, as Ms.
10 Anderl says, Qwest claims the Commission has approved
11 the amendment. Then I don't know -- it's only --
12 never mind. Let's not go further into it at this
13 point. I don't know that it would be beneficial,
14 really. I just have some questions about how things
15 would operate.

16 Mr. Best. Or no, Mr. Finnigan, you were
17 asking questions. Do you have any further questions?

18 MR. FINNIGAN: No, I don't.

19 JUDGE MACE: And Mr. Wiley.

20 MR. WILEY: Yes.

21 JUDGE MACE: Can you come up to the bench
22 and use one of the microphones?

23 MR. WILEY: Our substantive questions have
24 been asked by other Counsel, you'll be pleased to
25 know. And at the risk of beating a dead horse, I

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1 just want to clarify what's happening tomorrow. I'll
2 accept representation from Staff Counsel or Qwest or
3 Verizon or all three of you.

4 What I understand to be happening tomorrow
5 is a Staff -- effectively, a Staff motion for
6 reconsideration of the secretary's ministerial order
7 in conjunction with a motion for consolidation of the
8 two dockets. Is that a fair understanding? Okay.

9 And so the reference in the memo that
10 concerned me about the Commission having to act by
11 May 28th, in your two view, is not accurate, because
12 the ministerial order is already effective and the
13 Commission's secretary has approved the ICA
14 amendment; is that correct?

15 MS. ANDERL: That's my view.

16 MR. WILEY: Is that your view, too, Mr.
17 Thompson?

18 MR. THOMPSON: Well, I think -- my view is
19 that the Commission is still within the 90-day window
20 in which it could --

21 MR. WILEY: So I don't get a consensus.

22 MS. ANDERL: Well, let me ask, though, just
23 a point of clarification. Is May 28th really the 90
24 days, or is it June 28th?

25 MR. WILEY: The memo says May 28th. That's

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1 why.

2 JUDGE MACE: Yes, I reviewed that, too. May
3 28th is what it says. I haven't counted the actual
4 days. Let's be off the record.

5 (Discussion off the record.)

6 JUDGE MACE: Let's be back on the record so
7 we don't miss anything crucial here. We're just
8 talking about the fact that, although we did this off
9 the record, it appears that the deadline for
10 Commission action on the agreement is not May 28th,
11 as is stated in the open meeting memo, but a date in
12 June, June 21st; is that right? However, that still
13 presents problems in apparently there's still some
14 question about what, if any -- what, if anything, can
15 be done to extend the Commission's time allowed to
16 consider the issue of the amendment vis-a-vis
17 settlement agreement vis-a-vis any final
18 determination on the issues in chief in this case.

19 So anyway, I don't think we can resolve that
20 here, but are there any other questions from Counsel
21 about this settlement agreement?

22 Mr. Best, you said that you wanted to make
23 some sort of a statement on the record. Did you want
24 to do that at this point?

25 MR. BEST: Well, Your Honor, you asked Mr.

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1 Finnigan about whether he opposed the settlement or
2 not, and I actually wouldn't mind actually joining
3 him in opposing it. I mean, the truth is I don't
4 really care if these two parties do this. What I
5 care about, though, is sort of the precedential value
6 or the way that this is positioned in the case.

7 I mean, first of all, a complaint was filed
8 in the case basically saying that this was a
9 violation of the law. And what's strikingly
10 remarkable to me is that now we have parties saying,
11 Well, yeah, but we can ignore the law here because
12 it's good for consumers. And again, I don't agree
13 that the law is what they claim it is, but I guess
14 this settlement, to me, puts the cart a little bit
15 before the horse. How can you have a settlement of
16 an issue that hasn't been determined with respect to
17 the legality or not.

18 And I guess what's also troubling to me is
19 the Commission may view this as middle ground that's
20 been staked out by parties when, in fact, parties
21 like Electric Lightwave find this settlement awful.
22 We would never opt-in to it, we would not want it, we
23 certainly wouldn't want it as a compromise.

24 So I guess we would urge the Commission to
25 reject it. You know, the distinctions that are being

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1 drawn between voice versus Internet protocol traffic
2 we think are meaningless. I gather Staff is
3 believing because there's so much traffic, that must
4 mean there's so much customer demand. Well, the
5 truth is, as you know, we're trying to offer a
6 competitive foreign exchange product with Qwest. We
7 were offering it, and yet, according to this
8 settlement, that would not be allowed. And yet
9 there's no reason. We don't understand why that
10 would be when, in fact, the Commission in the
11 AT&T-Qwest arbitration order specifically said that
12 AT&T should be allowed to offer a functional
13 equivalent foreign exchange service.

14 So this whole thing, to me, and frankly, it
15 won't be to anyone's surprise, I already told most of
16 the folks in the room, that's why we oppose the
17 settlement being included in the case, because it
18 really throws, we think, the entire matter in kind of
19 a cocked hat. It's just -- it's a distraction.

20 We think the Commission needs to rule on
21 this issue. And again, like I say, if the Commission
22 issues an order and approves VNXX as a functional
23 equivalent to foreign exchange, I don't mind that
24 these folks are trapped in this agreement. I mean,
25 that's their problem, not mine. But what I am very

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1 concerned about is that this will somehow influence
2 the Commission and they will assume that this is some
3 sort of middle ground, which it is not.

4 So again, it just seems odd to me that a
5 settlement would take place when, in fact, the
6 contention of the parties is it's a violation of the
7 law.

8 MS. ANDERL: Your Honor, would we be
9 allowed a brief response?

10 JUDGE MACE: Sure. Well, let me just ask,
11 is there anyone else that wants to address the
12 settlement taking this position? Yes, Mr. -- I'm
13 sure you don't oppose the settlement.

14 MR. ROMANO: No, I was just going -- when I
15 have an opportunity, I'd like to respond.

16 JUDGE MACE: Sure. I'll give you an
17 opportunity, but I thought maybe I'd ask the -- okay.
18 Go ahead, Ms. Anderl, and then I'll turn to Mr.
19 Romano.

20 MS. ANDERL: Thank you, Your Honor. And I
21 understand Mr. Best and Mr. Finnigan wanting to make
22 their statements on the record. Obviously, we'll
23 have an opportunity to --

24 MR. FINNIGAN: I was asked. I didn't
25 volunteer.

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1 MS. ANDERL: No comment. We'll all have a
2 chance to address this thoroughly in brief. I just
3 wanted to respond to the one thing that Mr. Best said
4 and that I think may be at least an issue that is a
5 question in some people's minds, maybe Your Honor's
6 mind, and that is how can, you know, the parties, by
7 kind of waving a magic wand or entering into an
8 agreement, suddenly convert something that Qwest is
9 alleging is unlawful into something that is lawful.

10 And the analogy that I've been using, at
11 least with parties when I speak with them, is it's
12 kind of like an action in trespass. You know, if you
13 cut across my property without my permission, without
14 any license, without an easement, and I say, Don't do
15 that anymore, it's trespass. It's unlawful, it's
16 actionable civilly, potentially criminally. That
17 identical conduct can become lawful by virtue of an
18 agreement between the parties, an easement, a
19 license, an invitation.

20 And that's all this really is, is conduct
21 that, without consent of the parties, without an
22 appropriate agreement, and that is the transmission
23 of calls that are -- should otherwise be rated as
24 interexchange calls without the payment of
25 appropriate access charges, is unlawful.

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1 That same traffic exchanged via an
2 appropriate agreement reached after arm's lengths
3 negotiations between the parties, parties of equal
4 bargaining strength, is perfectly lawful.

5 And so I don't want -- and we'll obviously
6 flesh our arguments out more in the brief, but I
7 don't want the Commission to kind of be distracted
8 with some type of argument that, well, you can't
9 approve this -- if you buy Qwest's argument that it's
10 unlawful, you can't approve any sort of a settlement
11 that sort of endorses it.

12 JUDGE MACE: Go ahead.

13 MR. ROMANO: Thank you, Your Honor. I think
14 one thing to keep in mind is that the entire
15 foundation of the act is carrier-specific
16 negotiations, and that's what happened here. If a
17 carrier does not want to exercise 252(i) rights with
18 regard to the agreement, that's their choice, but
19 that provision is in place to protect against
20 discrimination.

21 And this type of settlement and agreement is
22 exactly what the Telecom Act envisions, and I think
23 it's the sort of thing that should be encouraged, and
24 I would leave it at that.

25 JUDGE MACE: Okay. And Mr. Brotherson.

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1 MR. BROTHERSON: Your Honor, I just have one
2 comment. I think Mr. Finnigan and Mr. -- I couldn't
3 help but smile, but Mr. Finnigan and Mr. Best both
4 object to the settlement, Mr. Finnigan because, in
5 his mind, this is clearly toll traffic and subject to
6 access, and Mr. Best because, in his mind, this is
7 clearly local traffic and subject to recip. comp.

8 JUDGE MACE: Right. And then the Commission
9 has to try to sort it out. Then is there anything
10 else that we need to address at this point? We have
11 a briefing schedule in place, you all are going to --
12 well, Mr. Kopta and Ms. Anderl are going to come up
13 with an outline. And I can't think of anything else,
14 but -- Ms. Anderl.

15 MS. ANDERL: Can we just confirm, Your
16 Honor, that the briefs can be filed electronically,
17 with hard copies delivered the next day?

18 JUDGE MACE: Yes, that's correct. That
19 would be fine for both initial and response briefs.

20 MS. ANDERL: Thank you.

21 JUDGE MACE: Thank you, panelists. I
22 appreciate your answers to the questions and your
23 presentations. It was very helpful. I hope, as I
24 reflect on it, that I'll be able to make the right
25 decision and the Commission will, too.

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1 MR. BEST: Any questions, call me.

2 JUDGE MACE: Thank you so much for your
3 cooperation and presentations.

4 MS. ANDERL: Thank you, Your Honor.

5 (Proceedings adjourned at 3:45 p.m.)

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