

0186

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

| | | |
|-------------------------|---|------------------|
| PAC-WEST TELECOMM, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Docket UT-053036 |
| |) | (Consolidated) |
| QWEST CORPORATION, |) | |
| |) | |
| Respondent. |) | |
| |) | |

| | | |
|-----------------------------|---|------------------|
| LEVEL 3 COMMUNICATIONS, LLC |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Docket UT-053039 |
| |) | (Consolidated) |
| QWEST CORPORATION, |) | |
| |) | |
| Respondent. |) | |

STATUS CONFERENCE, VOL VII
PAGES 186-204
ADMINISTRATIVE LAW JUDGE ANN E. RENDAHL
ADMINISTRATIVE LAW JUDGE ADAM TOREM

1:30 P.M.
JULY 2, 2012
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

REPORTED BY: ELIZABETH PATTERSON HARVEY, RPR, CCR 2731

Buell Realtime Reporting, LLC
1411 Fourth Avenue
Suite 820
Seattle, Washington 98101
206.287.9066 | Seattle
206.534.9066 | Olympia
800.846.6989 | National
www.buellrealtime.com

0187

1 A P P E A R A N C E S:

2 ADMINISTRATIVE LAW JUDGE:

3 ANN E. RENDAHL
4 Washington Utilities and Transportation Commission
5 1300 South Evergreen Park Drive SW
6 PO Box 47250
7 Olympia, Washington 98504
8 360.664.1136

9 ADAM TOREM
10 Washington Utilities and Transportation Commission
11 1300 South Evergreen Park Drive SW
12 PO Box 47250
13 Olympia, Washington 98504
14 360.664.1136

15

FOR PAC-WEST TELECOMM (Via telephone):

16

17 ARTHUR A. BUTLER
18 Ater Wynne
19 601 Union Street
20 Suite 1501
21 Seattle, Washington 98101
22 206.623.4711
23 aab@aterwynne.com

24

FOR LEVEL 3 COMMUNICATIONS (Via telephone):

25 LISA F. RACKNER
McDowell Rackner & Gibson
419 Southwest 11th Avenue
Suite 400
Portland, Oregon 97205
503.595.3922
lisa@mcd-law.com

MICHAEL J. SHORTLEY, III
Vice President - Legal
Level III Communications
225 Kenneth Drive
Rochester, New York 14623
585.233.1168
michael.shortley@level3.com

26

0188

1 A P P E A R A N C E S (Continued):

2

FOR CENTURYLINK, formerly QWEST (Via telephone):

3

LISA A. ANDERL
Associate General Counsel
CenturyLink
1600 Seventh Avenue
Room 1506
Seattle, Washington 98191
206.345.1574
lisa.anderl@centurylink.com

8

THOMAS DETHLEFS
Corporate Counsel
CenturyLink
1801 California Street
10th Floor
Denver, Colorado 80202
303.383.6646
thomas.dethlefs@centurylink.com

10

11

12

13

* * * * *

14

15

16

17

18

19

20

21

22

23

24

25

0189

1 Olympia, Washington July 2, 2012

2 1:30 p.m.

3

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

5

6 JUDGE RENDAHL: On the record. We're here
7 before the Washington Utilities and Transportation
8 Commission this Monday, July 2, 2012, for a telephonic
9 status conference in Docket UT-053036, captioned Pac-West
10 Telecomm, Inc. vs. Qwest Corporation; and Docket UT-053039,
11 captioned Level 3 Communications, LLC, vs. Qwest
12 Corporation.

13 I'm Ann Rendahl, Director for Policy and
14 Legislation at the Commission. Because of staffing
15 constraints in the Administrative Law Division, I've been
16 serving on this case as an ALJ.

17 But now that Judge Torem has returned to the
18 Commission following his military leave, he will be
19 presiding over these cases following the status conference.
20 And we will issue the appropriate notice shortly.

21 So let's take appearance from the parties,
22 beginning with Pac-West.

23 MR. BUTLER: This is Arthur A. Butler from
24 Ater Wynne Law Firm appearing for Pac-West.

25 JUDGE RENDAHL: Mr. Butler, you'll need to

0190

1 slow down and speak a little more clearly into the phone.

2 MR. BUTLER: Sure. Arthur A. Butler, of Ater
3 Wynne Law Firm for Pac-West.

4 JUDGE RENDAHL: Thank you very much.

5 For Level 3?

6 MR. SHORTLEY: This is Michael Shortley,
7 S-H-O-R-T-L-E-Y, Vice President Legal of Level 3
8 Communications for Level 3.

9 JUDGE RENDAHL: Thank you.

10 MS. RACKNER: This is Lisa Rackner of the law
11 firm McDowell Rackner & Gibson, outside counsel for Level 3.

12 JUDGE RENDAHL: Thank you.

13 And for CenturyLink?

14 MS. ANDERL: This is Lisa Anderl, inhouse
15 counsel representing CenturyLink.

16 MR. DETHLEFS: And this is Tom Dethlefs,
17 inhouse counsel for CenturyLink as well.

18 JUDGE RENDAHL: Okay. Thank you all.

19 During the May 1 prehearing conference, the
20 parties agreed to hold a status conference for several
21 purposes, mainly to see where the parties are with discovery
22 and with the information needed for factual issues in this
23 case.

24 So I have a few questions that I'll tell you
25 up front here my questions, and then we can just go through

0191

1 them and you all can let me know where you are with your
2 discovery efforts.

3 So first, because for lack of a better word,
4 it's not really a cutoff, but you all had agreed that you
5 would need until June 22 for discovery, where we are in
6 discovery in this case. Is there a need to modify the
7 schedule to address any discovery issues, or is there a need
8 for more time; identifying whether you all have determined
9 whether there are any agreed statements of fact; and can we
10 set a date for the parties to file an agreed statement of
11 facts for the parties to use when developing testimony?

12 So those are the issues on my agenda for the
13 status conference.

14 I don't know if there's any others that you
15 all have.

16 MS. ANDERL: Your Honor, I think for
17 CenturyLink, that covers some of the outstanding issues we'd
18 like to discuss.

19 I don't think we have any others independent
20 of that.

21 MR. SHORTLEY: Neither does Level 3.

22 MR. BUTLER: Nor does Pac-West.

23 JUDGE RENDAHL: Okay. So who would like to
24 tell me where we are on the status of discovery?

25 MS. ANDERL: Well, it may depend on which

0192

1 party you talk to. If you don't mind, if I let you know
2 where we are and then the others can go?

3 JUDGE RENDAHL: That sounds good.

4 MS. ANDERL: Okay. This is Lisa Anderl on
5 behalf of CenturyLink.

6 We feel still kind of in the middle of
7 discovery. We've propounded one set of data requests for
8 each party and got responses. We did follow-ups and we --
9 follow up requests, and we got responses from Level 3 on the
10 22nd and Pac-West on the 29th.

11 I started on vacation on the 22nd. So while
12 Mr. Dethlefs has had a chance to review those responses from
13 Level 3, I think it's fair to say I'm still in the process
14 of reviewing both Level 3 and Pac-West responses.

15 And as far as the Pac-West responses go, all
16 of our witnesses and experts are still reviewing as well.

17 I think we do know that we would like to have
18 some additional follow-up data requests. And given the
19 amount of time between now and the due date on the
20 testimony, I think it's reasonable to continue to allow
21 discovery to be had.

22 JUDGE RENDAHL: Okay. Either Level 3 or
23 Pac-West?

24 MR. BUTLER: This is Art Butler for Pac-West.
25 Among the data requests that Qwest propounded

0193

1 were some questions about traffic studies. And Pac-West is
2 still in the process of trying to analyze old call record
3 detail tapes.

4 And we've indicated to Qwest that that
5 process is ongoing, and we have not yet been able to get
6 information they've requested to them. So it's appropriate
7 that we have additional time in order to allow that process
8 to continue.

9 JUDGE RENDAHL: So you don't object to
10 extending discovery?

11 MR. BUTLER: No, since we haven't been able
12 to come up with the information that's requested.

13 JUDGE RENDAHL: Okay. And for Mr.
14 Shortley?

15 MR. SHORTLEY: We do not have any objection
16 to extending discovery so long as it's within the scope of
17 the existing discovery.

18 As Ms. Anderl mentioned, there were some
19 follow-up data requests from the first set of requests that
20 CenturyLink sent out which we responded to, and I believe
21 there are still a couple of outstanding questions that we're
22 -- the parties are trying to work through.

23 If there's additional targeted follow-up, I
24 don't have any objection to that.

25 Based on my own work right now, I do not

0194

1 believe we will have any additional discovery for
2 CenturyLink, but I'm not 100 percent positive of that.

3 JUDGE RENDAHL: Ms. Anderl, is the extent of
4 the additional discovery you're anticipating within the
5 scope of what Mr. Shortley just described?

6 MS. ANDERL: At this point, yes.

7 But you know, it depends on what we see, I
8 guess. A certain answer or maybe just additional thoughts
9 might drive us to say, "Hey, there is something else we
10 wanted to know and it's important."

11 I mean, I do think that we tried to cover the
12 waterfront in terms of trying to identify the nature of the
13 traffic at issue in the first sets of data requests.

14 So I'd be surprised if anything went outside
15 of it, but it's hard for me to agree do that at this point,
16 you know, to say absolutely positively. So maybe we could
17 leave that to an objection if one were to arise.

18 JUDGE RENDAHL: That's what I was going to
19 suggest, if there is something that's clearly outside of the
20 scope of addressing in follow-up to what's already been
21 asked, then it may be you need to let me know if there's a
22 dispute.

23 Or actually, you should let Mr. Torem know,
24 and then he can manage that dispute. Isn't that lovely, to
25 pass this on to somebody else?

0195

1 So do you all have a proposal for when that
2 final cutoff would be, as the initial testimony is due on
3 September 7?

4 MS. ANDERL: We can't make a proposal, your
5 Honor, until we know what the timing is on the responses
6 that we're going to get. And so I think that we should just
7 allow discovery to continue on until maybe a week before the
8 first round of testimony, a week or two, and then discovery
9 should be reopened then for discovery to be had on the
10 testimony.

11 MR. SHORTLEY: I do object to having it open
12 until the first -- a week or so before the testimony.

13 If there's a specific issue, the data that
14 has not been provided, which I know there's still a couple
15 of questions from what we had provided, maybe we can come
16 back.

17 But what I would propose, any additional
18 discovery, that the cutoff would be that the answers to any
19 additional discovery have to be in by no later than the end
20 of the month.

21 MS. ANDERL: Well, if Pac-West isn't even
22 going to be able to get us their supplemental responses
23 until two to three weeks from now, and then we propound
24 discovery, you know, during the week of the 23rd or 30th,
25 those answers are necessarily going to extend into August.

1 And I don't blame Pac-West. I know they've
2 had a lot of change in personnel. And a lot of this data is
3 old. So I'm not being critical at all. I just think if
4 that's the amount of time we need, that's the amount of time
5 we should take.

6 JUDGE RENDAHL: Mr. Butler?

7 MR. BUTLER: Yes, I would agree, you know.
8 We're having trouble putting the information together, so it
9 would be appropriate to keep an open opportunity for
10 discovery, at least on that information, until we're able to
11 produce it.

12 JUDGE RENDAHL: So is this really more of an
13 issue with Pac-West data than it is with Level 3?

14 MS. ANDERL: Well, we still have, your Honor,
15 follow-up data requests to Level 3 that we are in the
16 process of writing up. I don't know if we will be able to
17 get them out this week with the kind of weird holiday week.

18 And then it depends on what kind of answers
19 we get to those, I mean, to those questions.

20 So if we serve discovery on Monday the 11th
21 and we have responses on Monday the 25th -- sorry. I'm
22 looking at June -- Monday, the 9th of July, and we get
23 responses on Monday the 23rd, we may not be able to ask
24 follow-up discovery on those last set of answers until the
25 end of July, beginning of August.

0197

1 JUDGE RENDAHL: So Mr. Shortley -- actually,
2 I'm going to ask all of you. If you -- I'm not sure this
3 discussion right now is the most useful, although it is an
4 opportunity for all of you to talk together.

5 I am open -- and I don't know about Judge
6 Torem; we'll have to confer about this -- about leaving
7 discovery open, including the responses. So responses to
8 any outstanding data requests would be -- would need to be
9 due no later than a week prior to the initial testimony
10 date.

11 So I'm going to have to confer with Judge
12 Torem while you all think about it. And it may be that you
13 all need to have a follow-on conversation with Judge Torem
14 about this, about setting a deadline.

15 MS. ANDERL: And your Honor, it might be a
16 good idea to just do another brief status conference in four
17 weeks, or five, you know, maybe four weeks, maybe on the
18 30th. Well, okay. I'm going to be on an airplane to Denver
19 that day. But generally, just to see where the parties are
20 by then.

21 JUDGE RENDAHL: Let's be off the record for a
22 moment.

23 (Discussion off the record.)

24 JUDGE RENDAHL: Back on the record. This is
25 Judge Rendahl. While we were off line, the parties were

0198

1 having a conversation about a possible resolution to this
2 discovery timing question.

3 And Mr. Shortley, would you like to tell us
4 what your thoughts are on this?

5 MR. SHORTLEY: Yes, your Honor.

6 Ms. Anderl, I'll try to summarize what we
7 discussed. If I get it wrong or it doesn't reflect what we
8 talked about, please feel free to join in.

9 The suggestion is that there be a follow-on
10 status conference toward the end of the month, maybe very
11 early August.

12 In the meantime, we keep the record open
13 until say a week before the testimony is due. If Level 3
14 believes that discovery is getting repetitive or there's
15 just simply too much follow-on, I'll simply reserve the
16 right to move to cut off discovery at or around the time of
17 the status conference.

18 MS. ANDERL: Excuse me, your Honor. That
19 seems reasonable to CenturyLink.

20 And then I think Mr. Butler or Pac-West
21 agreed that we'd just play it by ear, pending their --
22 Pac-West's ability to gather the data and the timing on
23 providing that.

24 JUDGE RENDAHL: All right. So if the parties
25 need a status conference at the end of July, early August,

0199

1 Mr. Butler, when are you back in the country?

2 MR. BUTLER: The 23rd of July.

3 JUDGE RENDAHL: All right. And what are the
4 parties' preferences for a status conference?

5 MR. BUTLER: From our standpoint, I think
6 early August would be preferable.

7 MS. ANDERL: I think the only day I'm not
8 available is the 1st. So the 2nd or 3rd or the 6th or 7th
9 would be good.

10 JUDGE RENDAHL: I'm going to defer to Judge
11 Torem on this date because I won't be in charge.

12 MR. SHORTLEY: My suggestion would be if we
13 could, I think I'm going to be actually out of town for part
14 of that. So the Monday the 6th or Tuesday the 7th would be
15 better for me than towards end of the previous week.

16 JUDGE TOREM: This is Judge Torem. The 6th
17 or 7th will work for me. Does it work for the rest of the
18 parties then?

19 Ms. Anderl, you said it works for you?

20 MS. ANDERL: Yes.

21 JUDGE RENDAHL: All right. Well then, we
22 will go work with our assistant, Ms. Walker, and figure out
23 an appropriate time and location. I'm assuming it will
24 mostly be a telephonic conference.

25 MR. SHORTLEY: That I would appreciate.

0200

1 JUDGE RENDAHL: Okay.

2 So the other issue I wanted to talk about,
3 and maybe it's really more appropriate for the next status
4 conference, is the likelihood or the possibility of having
5 an agreed statement of facts. And any thoughts by the
6 parties on that?

7 MR. BUTLER: Yes, this is Art Butler. I
8 would agree that that would be something more appropriate to
9 address at the follow-on status conference, since, you know,
10 we'll have a better idea at that point where we are and be
11 able to determine, you know, where we might be able to reach
12 agreement.

13 MS. ANDERL: Yes, I agree with that also on
14 behalf of CenturyLink, although we can certainly -- the
15 parties can certainly talk amongst themselves between now
16 and then to see how feasible that might be.

17 MR. SHORTLEY: This is Michael Shortley. I
18 agree with that as well. We'll certainly try to come up
19 with something, but there's really nothing yet.

20 JUDGE RENDAHL: Right. And it may also be
21 more appropriate, and that's something that can be discussed
22 in the next status conference, where it's really more
23 appropriate to develop that after the first round of initial
24 testimony.

25 MS. ANDERL: Agreed.

0201

1 MR. SHORTLEY: That may be.

2 JUDGE RENDAHL: All right. Well, with that,
3 I don't have any other issues that I think we need to check
4 in on today.

5 Judge Torem?

6 JUDGE TOREM: I don't have anything at this
7 point.

8 We'll get the schedule out for you for the
9 August 6 or August 7 choice of dates. And if you have a
10 preference in time, let me know sooner rather than later and
11 I'll try to get this notice out tomorrow.

12 MS. ANDERL: Thanks, your Honor. If it is a
13 Monday conference, I prefer it in the afternoon.

14 If it's a Tuesday conference, it makes no
15 difference.

16 MR. SHORTLEY: This is Michael Shortley, your
17 Honor. I'm on the East Coast, so there's a three-hour time
18 difference. So if it's going to be late in the day, it can
19 be late in the day. I guess that doesn't really matter.

20 JUDGE RENDAHL: Well, it would either be 1:30
21 or it would be 9:30, is our usual scheduling time.

22 MR. SHORTLEY: Either of those would be just
23 fine.

24 JUDGE RENDAHL: So if it's the afternoon, you
25 can close out your day.

0202

1 MR. SHORTLEY: Fair enough, your Honor.

2 JUDGE RENDAHL: Are there any other issues
3 the parties need to bring forward to me or Judge Torem?

4 MS. ANDERL: None that I can think of, your
5 Honor, for CenturyLink.

6 MR. SHORTLEY: Not at this point, your Honor,
7 for Level 3.

8 MR. BUTLER: Nor for Pac-West.

9 JUDGE RENDAHL: Okay. Well, please keep us
10 informed of the status of the discovery.

11 If there are issues that arise prior to the
12 August 6 or 7th status conference, you'll have Judge Torem's
13 contact information soon if you don't already have it in
14 your files. And please contact Judge Torem if there are any
15 issues. We'd like to take care of them early rather than
16 have them linger.

17 So thank you very much.

18 Would any of the parties wish to order a
19 transcript of today's conference?

20 MS. ANDERL: Yes, your Honor. CenturyLink
21 will take a transcript.

22 MR. SHORTLEY: Level 3 as well, your Honor.

23 MR. BUTLER: I don't think we need one for
24 Pac-West.

25 JUDGE RENDAHL: All right. Well, if there's

0203

1 nothing else, thank you very much.

2 This conference is adjourned. We're off the
3 record.

4 (Whereupon, the proceedings were
5 concluded at 1:55 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0204

1

2

C E R T I F I C A T E

3

4

STATE OF WASHINGTON

5

COUNTY OF KING

6

7

8

I, Elizabeth Patterson Harvey, a Certified Court

9

Reporter and Notary Public in and for the state of

10

Washington, do hereby certify that the foregoing transcript

11

is true and accurate to the best of my knowledge, skill and

12

ability.

13

IN WITNESS WHEREOF, I have hereunto set my hand and seal

14

this 11th day of July, 2012.

15

16

17

18

19

20

ELIZABETH PATTERSON HARVEY, CCR RPR

21

22

My commission expires:

23

JUNE 2012

24

25