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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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PAC-WEST TELECOMM, INC.,)	
Petitioner,)	
)	
v.)	DOCKET UT-053036
)	(Consolidated)
)	
QWEST CORPORATION,)	
Respondent,)	
)	
)	
LEVEL 3 COMMUNICATIONS, LLC.,)	DOCKET UT-053039
Petitioner,)	(Consolidated)
)	
v.)	
)	
QWEST CORPORATION,)	
Respondent.)	

STATUS HEARING, VOLUME VIII

Pages 205 - 246

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

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0206

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

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ALSO PRESENT:

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BRIAN THOMAS

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MARK REYNOLDS

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1 JUDGE TOREM: We are on the record now
2 at a little after 1:30 in the afternoon on Monday the
3 6th of August. This is Adam Torem, Administrative Law
4 Judge for the Utilities and Transportation Commission.
5 I'm in the Commission's hearing room, Room 108. We've
6 been invaded from -- a commission from Thailand is
7 upstairs in 206, so we are using the smaller
8 conference room today.

9 This is Dockets UT-053036, that case is
10 docketed with Pac-West Telecomm versus Qwest, and
11 UT-053039, Level 3 Communications versus Qwest. I'm
12 here in person with the court reporter, and Lisa
13 Anderl of Qwest/CenturyLink is here in person today.
14 I want to go through the other parties on the bridge
15 line, and as we said prior to going on the record, if
16 the court reporter doesn't have the spelling of your
17 name, I will ask you to go ahead and do that, but
18 otherwise we can do a very short form of appearances.

19 So let me start with Pac-West and ask the new
20 counsel to quickly introduce themselves and anybody
21 else on the line from Pac-West.

22 MR. MAYHOOK: Jeffrey Mayhook,
23 J-E-F-F-R-E-Y, M-A-Y-H-O-O-K.

24 JUDGE TOREM: Ms. Mayhook, you are on
25 the line also?

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1 MR. MAYHOOK: She may have you on mute.
2 We have a conflicting schedule today. L-A-U-R-A,
3 Laura Mayhook. Same spelling as the last name.

4 JUDGE TOREM: And there were some other
5 folks on the line from Pac-West. I don't think they
6 necessarily need to make an appearance today. Correct
7 me if I'm wrong.

8 MR. SHIFFMAN: That is correct, you have
9 Sam Shiffman and Novi Campbell.

10 JUDGE TOREM: But the Mayhooks will be
11 doing any speaking on behalf of Pac-West today; is
12 that correct?

13 MR. SHIFFMAN: That's correct.

14 JUDGE TOREM: Thank you, Mr. Shiffman.

15 Moving on to Level 3. Ms. Rackner, I'm not
16 sure if you have kept score as to who is on the line,
17 but I will start with you.

18 MS. RACKNER: Yes, this is Lisa Rackner,
19 R-A-C-K-N-E-R.

20 JUDGE TOREM: Anybody else on the line?
21 Mr. Shortley?

22 MR. SHORTLEY: Yes, this is Michael
23 Shortley, S-H-0-R-T-L-E-Y, for Level 3.

24 JUDGE TOREM: And anyone else for
25 Level 3?

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1 MR. SHORTLEY: There should not be.

2 JUDGE TOREM: I don't think I have
3 anybody else jotted down.

4 So let me turn back to Ms. Anderl here for
5 Qwest.

6 MS. ANDERL: Thank you, Your Honor.
7 Lisa Anderl, in-house attorney representing
8 Qwest/CenturyLink in this matter, and also on the
9 bridge is Mark Reynolds, who is our VP of public
10 policy for the Northwest Region. And I don't know if
11 Mr. Dethlefs has joined or not.

12 Hearing nothing, I would guess that he is not.

13 JUDGE TOREM: Okay.

14 Also on the line today is our policy advisor,
15 Brian Thomas. He will be listening in so that we can
16 continue our work on this case after the status
17 conference.

18 We set up this status conference I think about
19 a month ago, based on the parties' extending discovery
20 to this coming Friday, August the 10th, and also
21 looking to see if there might be any other issues
22 toward maybe an agreed statement of facts or other
23 things that the parties have been discussing over the
24 last few months.

25 Last week I sent out a notice that we would

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1 also have some limited oral argument, or at least a
2 presentation about Qwest's access tariffs. I know
3 that on Friday, as requested, Qwest filed some
4 supporting documentation, and Ms. Anderl got in touch
5 with me, and I believe other counsel this morning,
6 about a motion she wants to make regarding the
7 interconnection agreements, or ICAs, and making sure
8 they are formally part of the record in this case.

9 Let's turn first to the discovery issue, and I
10 don't know where we were. Let me ask. Ms. Rackner,
11 where is Level 3 in the discovery process, either in
12 sending out further data requests or responding to
13 those from Qwest?

14 MR. SHORTLEY: Your Honor, if I may, I
15 will address that for Level 3.

16 JUDGE TOREM: Okay.

17 MR. SHORTLEY: Level 3 has served
18 discovery on CenturyLink and a timed answer is not
19 quite due yet. We have received discovery from Qwest,
20 and I have now -- have now responded to all except one
21 question. We responded to the question, but it looks
22 for the production of certain invoices, which we are
23 pulling out of archives. I'm not aware of any
24 disputes at this point.

25 JUDGE TOREM: Do you think from

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1 Level 3's perspective we need to extend past this week
2 the deadline for discovery?

3 MR. SHORTLEY: I do not believe we need
4 to.

5 JUDGE TOREM: And since Ms. Anderl is
6 here, she can respond also as to any of those
7 responses, if she's going to need an extension.

8 MS. ANDERL: No, Your Honor, I don't
9 think so. I could just confirm with Level 3. My
10 recollection is that we got the data requests so that
11 they are due on Friday the 10th.

12 MR. SHORTLEY: That's my understanding.
13 That was my calculation, as well.

14 MS. ANDERL: And we are working away on
15 them. I expect that we will be able to serve them
16 timely. I don't have any outstanding discovery
17 disputes with Level 3, pending receipt of those
18 invoices, and also pending some analysis that we are
19 doing on the data request responses that we have most
20 recently received.

21 JUDGE TOREM: I'm going to stay with
22 you, Ms. Anderl, to ask about Pac-West. I do that as
23 a courtesy, because I'm not sure how Laura and Jeffrey
24 Mayhook, how much they know about their new client and
25 what discovery issues are still outstanding. I know

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1 you have talked with them. If you will state the
2 status of the discovery between Qwest and Pac-West, I
3 will let the Mayhooks chime in.

4 MS. ANDERL: And by the time I'm done,
5 I'm sure this will be perfectly clear.

6 We served the first set of data requests on
7 Pac-West back in May. Pac-West answered many of them
8 with objections, and some with some substantive
9 responses. I then had a meet-and-confer with
10 then-counsel for Pac-West, Art Butler, and Pac-West
11 agreed to supplement some of those responses. We got
12 the second supplement -- we got the supplemental set
13 of answers to the first set of data requests. Both
14 the answers to the first set and the supplemental
15 answers indicated that there was still information
16 that was going to be -- being produced. And so we
17 have had now a request for production of traffic
18 studies since May 29th, and I have regularly sought
19 updates from then-counsel, Mr. Butler.

20 I was originally told that the Pac-West
21 expert, who was needed to research this issue, was not
22 going to be back in the office until June 12th, and I
23 followed up on June 16th. Then I was out of the
24 country, then Mr. Butler was out of the country.

25 I followed up again on July 11th with

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1 Mr. Butler's partner, Steve Kennedy, and then I
2 followed up again toward the end of July, about maybe
3 the 26th or so, and had not at that point gotten
4 really any sort of a satisfactory answer as to whether
5 or not Pac-West was going to produce the documents
6 that we asked for or stipulated. Alternatively, the
7 offer I made was that they could stipulate to the
8 number of minutes that we had in our records.

9 And then, you know, in fairness to new
10 counsel, I called Ms. Mayhook about 30 minutes after I
11 got her notice of appearance, and tried to lay out to
12 her in brief and high level form the status of where
13 discovery was. I did, I believe, forward to her the
14 original set of responses, the supplemental set of
15 responses, and the -- what we were calling our third
16 set of data requests to Pac-West, what was actually
17 really our second set. That was kind of our mistake.
18 We did get answers to those. I believe there were
19 only two questions. We got answers to those on
20 Friday.

21 So it doesn't look like we have anything
22 outstanding with Pac-West, except for some
23 long-outstanding stuff that is relatively important to
24 us being able to prepare our case. I have not yet
25 heard a commitment in terms of when we would be able

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1 to get that. I have been holding off, obviously,
2 filing any sort of a motion to compel, because it did
3 seem like assurances were being given.

4 That's where we are.

5 JUDGE TOREM: Mr. Mayhook and
6 Ms. Mayhook, does that agree with what you know about
7 the status of the case?

8 MR. MAYHOOK: I think that's a fair
9 characterization, you know, given that the hand-off
10 has been very recent and that we have been working
11 laboriously to come up to speed, but obviously it's a
12 case of some duration and complexity. I think it
13 would be my druthers to maybe have some additional
14 conversation with Sam and Novi at Pac-West to try to
15 get to the next level of either production or the
16 basis for objection.

17 And then what I would like to do very soon,
18 within a reasonable time this week, come up with some
19 sort of response as to timing and see if we can't, to
20 the extent -- informal conversations with counsel at
21 Qwest, that we can develop a calendar that essentially
22 works for both sides.

23 I realize that it doesn't sound good at one
24 level because of the dates, but on the other hand,
25 given the time frame and the issues -- you know,

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1 Pac-West is a small company, and the matters here --
2 this isn't like a dispute that has occurred within,
3 let's say, even the last six months.

4 With that, I would just hope that after this
5 call today, you know, maybe tomorrow we could have
6 conversations on our side, huddle a bit, and then get
7 back with Lisa and see what we can arrange that's
8 satisfactory.

9 JUDGE TOREM: From the Commission's
10 perspective, I think that's fair for getting the new
11 legal team for Pac-West up to speed. I would hope,
12 though, that your client has already been working with
13 past counsel to comply with this, and that there won't
14 be a necessary motion to compel that we have to
15 dispute. They've seen this coming through their prior
16 counsel. If there is an agreed extension schedule as
17 to Qwest and Pac-West getting this wrapped up that you
18 can present by Thursday morning, then I would be happy
19 to entertain that and do a quick extension if it's
20 agreed.

21 Bear with us just a minute here.

22 (Pause in the proceedings.)

23 JUDGE TOREM: I think we can hear now.

24 I think, Mr. Mayhook, if we leave it as you
25 working with Ms. Anderl to work something out that's

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1 agreeable to both of you, it will be agreeable to the
2 Commission.

3 What I'm trying to make sure is that the next
4 major milestone that the parties owe the Commission is
5 Friday, September the 7th, for the simultaneous
6 initial testimony. And given the factual focus in
7 this case, it sounds as though the data requests that
8 are pending are going to be pivotal for both sides, so
9 I would like to see those produced sooner rather than
10 later, so that there's not a cascading effect that
11 requires a continuance of those other dates.

12 We do have the evidentiary hearings
13 November 7th and 8th, and I want to see if we can
14 stick to and hold those dates. That's the
15 Commission's main priority, is not having the
16 discovery period extend, which causes a slippage in
17 any of the other dates, because this is a very popular
18 case, as far as the number of people that will want to
19 be in the room, and coordinating all of those
20 schedules as we get into November and December will be
21 difficult. The Commission already has a utility rate
22 case scheduled the week after Thanksgiving, so there's
23 not a lot of room to slip.

24 With that said, I will leave you and
25 Ms. Anderl to resolve the discovery issues. If you

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1 can bring it again to my attention before --

2 Did we just lose power on that line?

3 MS. ANDERL: It sure looks like it.

4 JUDGE TOREM: So we will go off the
5 record.

6 (A brief recess.)

7 JUDGE TOREM: We are back on the record.

8 We had, on our end, the Commission here in Olympia,
9 the phone blinked off. I'm happy to find that when he
10 dialed back into the bridge line, everybody else was
11 still there. It's just our technology for some reason
12 here.

13 So what I was saying is that we want to stick
14 with those dates. I will leave the parties to resolve
15 the discovery issues. I think I was leaving off right
16 where I was saying by lunchtime on Thursday, if there
17 needs to be any extension, that I would see an agreed
18 motion or some kind of paperwork from the parties by
19 then. It will give me Thursday afternoon to craft
20 whatever order needs to go in and have it published on
21 Friday, so we have no lost time on the case.

22 Ms. Anderl, does that work for you?

23 MS. ANDERL: Yes, Your Honor. May I
24 also be able to make a couple of observations?

25 I do think that Pac-West has known since

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1 November of last year that we were going to go to an
2 evidentiary hearing, and your comments obviously
3 recognize that you understand that fact as well.
4 Pac-West has been, I think, an even more vehement and
5 long-standing proponent of the idea that we need
6 evidentiary hearings to examine the nature of the
7 traffic. And so for them to only have started looking
8 for the traffic studies upon the issuance of a data
9 request by me is -- and still not have them more than
10 two months later, is a little frustrating for us.
11 Especially since it is the -- the Qwest team has been
12 advocating for a rapid resolution to this case,
13 refunds of the monies previously paid, and Pac-West
14 and Level 3, although they are not in this piece of
15 the case obviously, but, you know, willing to
16 contemplate a much more extended schedule.

17 JUDGE TOREM: I understand those issues.

18 MS. ANDERL: To politely put my
19 frustrations on the record.

20 JUDGE TOREM: And I'm not sure that I
21 was hearing Mr. Mayhook say that his client wasn't
22 looking for these things yet, just that on the
23 hand-off, he doesn't know the status. I don't want to
24 allow it to be said that one side is disputing or not,
25 but the discovery period ends on Friday.

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1 Again, I'm anticipating if there's any
2 agreement, I will have it Thursday at noon. If
3 there's a motion to compel, I'll have that Thursday at
4 noon as well, and we will figure out a response
5 schedule for the Mayhooks to respond on behalf of
6 Pac-West if that's necessary.

7 Mr. Mayhook, would Thursday at noon, to catch
8 up with your client on this important issue, would
9 that work?

10 MR. MAYHOOK: Absolutely. And I thought
11 your proposal was fair enough. With that, I will
12 resist the old trial lawyer in me, talk. I'm going to
13 resist any editorial response. You will hear from us
14 by noon on Thursday. Thank you.

15 JUDGE TOREM: I appreciate it. We will
16 wait for the evidentiary hearing to see everybody's
17 trial work. I understand the status and posture of
18 the case. I know enough of the lawyers that I
19 understand how skillful you all can be.

20 MR. MAYHOOK: Well, you know, as the new
21 guy, I'm still in the mode where I like to be able to
22 pick up the phone and have a productive call with
23 Ms. Anderl and hope that we can let bygones be
24 bygones.

25 JUDGE TOREM: I'm sure if you have all

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1 the bygones gone by Friday, she'll be good.

2 Are there any other procedural issues besides
3 what I sent out in the notice last week? Let me go
4 around the table again and start back with Level 3.

5 Were there any other outstanding items from
6 the last status conference?

7 MR. SHORTLEY: No, Your Honor.

8 JUDGE TOREM: And I'm not sure,
9 Mr. Mayhook, if you've had a chance to review any of
10 the transcripts, or even think about it, or if there
11 were any specific items handed off to you from the
12 previous counsel.

13 MR. MAYHOOK: We have run through a fair
14 amount of the documentation that is on the
15 Commission's website as it relates to this docket. We
16 certainly have in front of us your order covering
17 today's matter, the status conference, as well as the
18 oral arguments. We believe that certainly there's
19 nuances here and there, but from a concept standpoint,
20 we understand the posture of the case.

21 JUDGE TOREM: So I'm not hearing any
22 other questions or outstanding issues.

23 Ms. Anderl, did you have any?

24 MS. ANDERL: Just the one you mentioned,
25 Your Honor, when you started. I apologize, I didn't

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1 have time to actually talk to other counsel about
2 this, I did just chat with you. I wanted everybody to
3 be on the same page in terms of what interconnection
4 agreements we are dealing with. I know there was a
5 mix-up very early on in the proceeding, when all the
6 parties thought the Pac-West interconnection agreement
7 was one thing, and it turned out to be another.

8 I brought with me hard copies of what I
9 believe to be the Pac-West ICA that was in effect when
10 the complaint was brought, and the Level 3 ICA that
11 was in effect at the time the complaint was brought.
12 I would be happy to leave Your Honor a hard copy of
13 each, send opposing counsel a hard copy of each, and
14 then also courtesy copy people with the electronic
15 version that we have in our files, and then, you know,
16 kind of a speak now or forever hold your peace sort of
17 thing.

18 I don't think they need to be exhibits. Maybe
19 they would be bench exhibits when we get to the
20 hearing, maybe the Commission would just take official
21 notice of them, but it's certainly handy to have a way
22 to refer to them when we are filing briefs.

23 MR. SHORTLEY: May I make a suggestion?
24 Ms. Anderl, if you want to send the Level 3 one to me,
25 we can look at it, compare it, and then maybe we can

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1 just stipulate that this is the relevant agreement.

2 MS. ANDERL: Great, that's what I was
3 hoping, Mr. Shortley.

4 MR. SHORTLEY: However we do that. I'm
5 happy to work with you to do that, to get it in the
6 record.

7 MR. THOMAS: Your Honor, this is Brian
8 Thomas. Can I ask a question?

9 JUDGE TOREM: Certainly.

10 MR. THOMAS: On the agreement, is it
11 possible when they are submitted to also indicate
12 whether they were like original initial agreements
13 entered into between, I guess at the time Qwest and
14 the two CLECs at issue here, or whether they were
15 opt-ins of somebody else's agreement?

16 JUDGE TOREM: I think Ms. Anderl may be
17 able to tell us that right now.

18 MS. ANDERL: I can. I can also put it
19 in the e-mail.

20 MR. THOMAS: Just put it in so that the
21 other parties have a chance to verify that.

22 MS. ANDERL: Okay.

23 MR. THOMAS: That would be great, thank
24 you.

25 MR. MAYHOOK: I like that suggestion,

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1 and I would like also to follow Michael's suggestion
2 on behalf of Pac-West, that you also, Lisa, send us a
3 copy of the ICA in question so we can look at it and
4 likewise on our side confirm whether that is the --

5 JUDGE TOREM: Was that Mr. Shiffman?

6 MS. ANDERL: I think that was
7 Mr. Mayhook.

8 MR. MAYHOOK: Yes, this is Jeffrey.

9 JUDGE TOREM: Okay, thank you.

10 MS. ANDERL: And just as a sneak preview
11 for all of you, because I know you can hardly wait.
12 In the pleading that we filed on Friday, which was
13 just the supporting documents with regard to the
14 access tariff issues, we do cite the ICAs that we
15 think are applicable, and there are docket numbers in
16 Footnotes 1 and 2, that if you wanted to go on the
17 Commission's website, should lead you to the ICAs that
18 we are thinking about. I will do the filing anyway.

19 JUDGE TOREM: And those are going to be
20 the same ones that come in in this filing --

21 MS. ANDERL: Yes.

22 JUDGE TOREM: -- is that correct?

23 Because that's where Mr. Thomas and I and the
24 commissioners, in reviewing the pending motions and
25 the issue as to whether access tariffs apply or not,

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1 there are portions of each of the motion that cite and
2 say diametrically opposed issues as to whether or not
3 Qwest -- I think it's Paragraph 49 of the CLEC motion.
4 It says, A review of Qwest's intrastate access tariff
5 demonstrate it does not apply to the traffic at issue,
6 but it doesn't cite to the ICA itself. And Qwest goes
7 on, as I indicated in the notice that went out last
8 week, to the opposite contention and has some
9 citations.

10 I think this pending filing will make it a lot
11 easier to interpret the motions and determine, one,
12 the answer to the question being posed by the CLEC,
13 but maybe the underlying issue is, is there still a
14 factual matter in dispute that will keep us from
15 resolving a motion for summary determination on that
16 particular point. So that's what the Commission's
17 thinking is and that's why we are asking these
18 questions.

19 Let me turn it back, then, to Mr. Shortley and
20 see if that raises anything else from Level 3 on this
21 topic. So I guess we're not really having oral
22 argument today, but just a discussion for
23 clarification purposes.

24 MR. SHORTLEY: Well, I suppose if -- we
25 want to make sure that all the documents are there.

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1 We may also want to stipulate as to what the tariff
2 documents are.

3 In this motion for summary determination, one
4 of the exhibits was relevant -- what we believe were
5 relevant excerpts of Qwest's intrastate access
6 tariffs. I don't know if it would be useful just to
7 get the whole thing -- to get the whole thing in the
8 court or relevant sections and relevant sections from
9 the interstate tariff, and have those stipulated to as
10 well, which we would obviously be happy to get or to
11 work -- to work with.

12 If there are questions about -- there are
13 other documents that are -- or excerpts of documents
14 that Your Honor or the Commission believes are missing
15 or would be useful to have, we would certainly -- you
16 know, we would certainly be more than willing to
17 address those and to get those documents in the
18 record.

19 JUDGE TOREM: We certainly have the
20 affidavit that was filed on behalf of Pac-West and
21 Level 3, but it was not as directly cited in the
22 motion as you are suggesting now be done in a
23 stipulation. That was the reason, when we were
24 looking at this and trying to determine, given the
25 length of time in this case, I think we're at the

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1 seven-year anniversary, and looking back to the
2 original pleadings to see, did these ever come into
3 the record and could we make a decision based on them,
4 that was one foundational issue, and then knowing
5 which ones. This would certainly be helpful if all of
6 the telcos involved in the case could have one
7 stipulated idea saying these are the agreements. And
8 as Mr. Thomas said, are they the original agreements
9 or some kind of opt-in?

10 Finally, as a Cliffs Notes to these documents,
11 if can we cut down the voluminous pages to these
12 particular agreed relevant sections, that would be
13 great. And if you can get that in in the next ten
14 days, so you have time to shift it around between
15 counsel, that would serve the Commission's purpose
16 quite well.

17 To be honest with you, I won't be here next
18 week, I'll be out in Denver, and I will be back in the
19 office Monday the 20th, and will hope to get back to
20 work on this particular portion of the order at that
21 point. So if I have something Friday the 17th, or
22 even Monday the 20th, as a stipulation, that would be
23 fantastic.

24 Mr. Shortley, would that work for you?

25 MR. SHORTLEY: Yes, your Honor.

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1 JUDGE TOREM: And Ms. Anderl?

2 MS. ANDERL: Your Honor, may I just
3 clarify that what you are looking for is a stipulation
4 maybe with pages attached of the relevant sections of
5 the ICAs?

6 JUDGE TOREM: Well, I think if you are
7 going to file the ICAs as a whole, you don't have to
8 reattach more paper, but just call out a good way to
9 find them, whether it's page numbers or section
10 numbers or paragraph numbers, I don't know, not having
11 seen those particular documents as a whole.

12 MS. ANDERL: Section numbers is going to
13 be the most accurate, just pages are a little dicey
14 when you print.

15 JUDGE TOREM: Yes, so section numbers.
16 If that can be the way it goes, then that should
17 prevent having to reattach additional portions again.

18 MR. SHORTLEY: Ms. Anderl, I think we
19 will also need to -- or it may make sense to agree as
20 to what relevant sections of the two Qwest tariffs
21 that we've been discussing back and forth would be.

22 MS. ANDERL: I agree with you,
23 Mr. Shortley, but that's going to be a little bit more
24 of a problem. We need to start looking -- this is
25 something we were going to do in testimony. Let's

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1 just say that this would accelerate the time line a
2 little bit. We were going to have our witness talk
3 about the sections of the access tariffs that would
4 apply and why. We are still pulling that information,
5 and I don't know if there are relevant -- I don't know
6 at this point if there are relevant differences
7 between the current access tariff and the access
8 tariffs that were in place in the, say, 2005 through
9 2007 time period.

10 JUDGE TOREM: For our purposes at the
11 Commission, we can wait on the broader expanse of what
12 will be relevant at the fact-finding hearing in
13 November. But to decide these motions on a basis of
14 law, I have to make sure there are no facts at issue.
15 So if you can agree as to what's relevant for the
16 purpose of the CLEC motion, then that should be
17 sufficient for this request and the stipulation on the
18 20th. If it carries over, then we will have to decide
19 if we have enough here, or if we see facts in dispute,
20 then this will be an issue that carries over for the
21 hearing.

22 If we can settle disputes now, with this
23 motion ruling in mid-September, I think that helps the
24 parties focus their preparation, but I understand
25 strategically how it cuts both ways. I can just

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1 encourage the parties to come up with as good a
2 stipulation as you think will serve answering these
3 questions.

4 MR. SHORTLEY: Your Honor, let me -- if
5 I may, Your Honor, let me just ask one question on
6 that. It sounded like there may be disputes between
7 the parties as to what -- you know, what provisions
8 and tariffs are relevant or not. Would a stipulation
9 as to authenticity, that these are -- that the
10 sections of the -- of the Quest intrastate access
11 tariff, for example, that were part of the documentary
12 appendix to the motion for summary determination, are
13 true and accurate copies of Qwest's Tariff No. WNU44,
14 or whatever it was, and then we would be free to
15 argue, you know, relevance and importance.

16 But at least there would be -- at least -- I
17 mean if that would -- if that would help alleviate any
18 foundational issues as to what has already been
19 submitted, I mean, that may be one way of addressing
20 that issue.

21 JUDGE TOREM: I think so, Mr. Shortley,
22 but that may already have been done in the supporting
23 affidavit.

24 MR. SHORTLEY: Okay.

25 JUDGE TOREM: And what wasn't clear

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1 again was whether these were actually in the record,
2 as opposed to just in the supporting affidavit in
3 excerpted form, and whether or not whether we needed
4 to have the entirety of the ICAs in the record, and
5 Ms. Anderl has brought them with her today. That
6 foundational issue, are they in the record, will be
7 resolved soon. And what we call them won't matter
8 until we get to an order after the hearing, if they
9 are bench exhibits or if they are something else. But
10 at least I will feel free to refer to them as in the
11 record, and I won't necessarily be limited by just
12 what's in that supporting affidavit. But perhaps also
13 now I'll be confident that the sections cited by Qwest
14 in their response to the motion are also in the
15 record.

16 Whether all of those relevance portions will
17 answer do they apply or not, and is it settled as a
18 matter of law, we will have to wait until the
19 September issue, when the commissioners sign an order
20 saying one way or the other.

21 MR. SHORTLEY: Fair enough, Your Honor.

22 MS. ANDERL: Your Honor, may I just --
23 just kind of an observation. This is Lisa Anderl.

24 It seems to me like there are actually two
25 separate questions here. And it seems like the first

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1 question, which is maybe the only one that you can
2 seek to answer at this stage, is do the ICAs
3 sufficiently reference or incorporate or bring in the
4 access tariffs so that a dispute under the ICA, a
5 tariff dispute under the ICA, can be adjudicated in
6 this type of a proceeding. That really seems to be at
7 the heart of the motion.

8 To the extent that those tariffs are brought
9 in so that a dispute about whether access charges may
10 or may not be applicable to a certain type of traffic,
11 I think that really does go to the factual issues of
12 what is the nature of the traffic. And if the access
13 charges do cover that, why and how do they based on
14 the type of traffic. And if they don't exactly cover
15 the access charges, you know, if the access tariffs
16 don't exactly apply, why is that? Is it because
17 Level 3 and Pac-West didn't order the access services
18 they were supposed to be ordering? Or is it because
19 our tariffs don't cover that and so we therefore go
20 home empty-handed? Those are the things I thought we
21 were going to be deciding in the hearing.

22 I think that Qwest and Pac-West and Level 3 --
23 maybe Pac-West is premature to say this, but maybe we
24 can all agree that it's Section 6 of our interstate
25 tariff and Section 6 of our intrastate tariff has the

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1 access charges in it. There are subsections that
2 address rates, there are subsections that address
3 definitional terms and whatever. That's where we are
4 going to be. But how those tariff sections relate to
5 the dispute we have here is honestly what I thought we
6 would be doing in the hearing.

7 JUDGE TOREM: Again, the ruling that
8 they have asked in their motion to make is that Qwest
9 is not, under the terms of its own access tariffs,
10 entitled to collect access charges from the CLEC on
11 that VNXX traffic, so that is the question.

12 If we answer it and say -- rule as they have
13 asked, then perhaps the hearing becomes moot, the way
14 you have laid it out just now, if we grant the summary
15 determination issue. I'm sure that's why it was filed
16 this way, is to perhaps make any further proceedings
17 moot, because you wouldn't be entitled to collect
18 those charges.

19 MR. SHORTLEY: Your Honor, this is
20 Michael Shortley. That is the intent of the motion.
21 I mean, there were several issues in it. But the two
22 that are -- the two that we believe can be determined
23 as a matter of law that do not need a hearing are
24 whether the traffic at issue, the VNXX traffic, is
25 inherently interstate in nature and therefore -- and

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1 whether, as a result, there is any jurisdictional
2 nexus between the interconnection agreement and the
3 interstate traffic for this commission even to -- even
4 to proceed any further. And assuming the answer to
5 that, do Qwest's tariffs as a matter of law address --
6 sufficiently describe the services at issue so that
7 the access charges apply, even if Qwest asked for that
8 relief in its original complaint.

9 I don't mean to get into the merits, but I
10 believe the way Ms. Anderl phrased the question, those
11 are precisely the issues that we believe are in a
12 brief and have argued are susceptible to
13 determination, to decision on a summary determination
14 motion.

15 JUDGE TOREM: And I think the Commission
16 is with you on that, Mr. Shortley and Ms. Anderl, that
17 the motions were clear and the responses were clear.

18 Again, the only question was on that latter
19 issue. The Commission understands the jurisdictional
20 matter on the applicability of the access tariffs. We
21 just didn't want to issue an order and find out we
22 were talking about oranges and you were talking about
23 apples, and have a motion for clarification that we
24 ruled on the wrong sections.

25 Maybe it's not artful reading, but of course

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1 the Commission thinks it's always the artful writing
2 on the litigant's part that wasn't as clear as it
3 could be to tell us what they wanted. So that's why I
4 wanted to have these pieces in the record, and make
5 sure that there was less opportunity for me and the
6 rest of the team to mislead the commissioners into
7 answering the wrong question.

8 I hope that's helpful as to why we are talking
9 about this today.

10 MR. SHORTLEY: And that's very helpful,
11 Your Honor.

12 Ms. Anderl, if you wish, why don't I -- if you
13 want me to, I can prepare a short stipulation that may
14 address these and share it with counsel for Pac-West
15 and Level 3.

16 MS. ANDERL: Mr. Shortley, if you have
17 the time and the energy to do that before I do, I
18 would love to see it. Yes, I would be happy to --

19 MR. SHORTLEY: I have neither, but I'm
20 happy to take a first run at it.

21 MS. ANDERL: Okay, that sounds good.

22 MR. MAYHOOK: If I can just interject,
23 because I very much concur -- this is Jeffrey. I very
24 much concur with what Michael just stated. I think in
25 more basic terms, at least from my perspective, it

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1 seems like the issue is one where there's no genuine
2 issue of material fact, and that it does relate to
3 applicable law. And if we can get through this issue
4 based on applicable law, then I think as a matter
5 of efficient administration, we don't have to get into
6 some of these other things.

7 Now, is what I have said, just to make sure
8 I'm tracking what's going on here, or what I'm
9 suggesting is beside the point?

10 MR. SHORTLEY: I think it's --

11 MS. ANDERL: I'm sorry, I didn't
12 understand the question.

13 MR. MAYHOOK: The question is simply
14 that -- to Michael's point, that this is an issue of
15 law. If there's no issues of fact, then this could be
16 a dispositive motion that I think goes away just on
17 the briefing of the applicable issues, without getting
18 into a fact finding, because none is necessary, does
19 it somehow downstream truncate the proceeding. And
20 this goes to the question of jurisdiction. I mean to
21 me, it's elemental.

22 MS. ANDERL: Your Honor, I certainly
23 didn't come down here today intent on formally
24 rearguing the motion for summary determination, but
25 now I am a little bit confused by the way both counsel

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1 have represented that this really may make this
2 proceeding go away. Because, you know, there is the
3 outstanding request by Qwest for refunds, you know,
4 refunds that the Commission ordered in these dockets
5 based on its original determination that VNXX
6 was subject to compensation under the ISP remand
7 order.

8 I am wondering if counsel now contend that if
9 the Commission finds that it has no jurisdiction to
10 move forward with the case, does counsel for Level 3
11 and Pac-West contend that the Commission has no
12 authority to unwind its prior requirement that Qwest
13 pay Level 3 and Pac-West?

14 Because it was my understanding that one of
15 the things we were always going to have to litigate
16 was the nature of the traffic that Qwest claimed was
17 VNXX, and whether the parties who have disputed, did
18 we calculate it incorrectly.

19 JUDGE TOREM: Well, let me interject.
20 From the Commission's perspective, Order 12 and
21 Order 13 started that unwinding process following the
22 remand. Order 15, which denied Qwest's petition for
23 enforcement -- I believe that was the one from late
24 June, just when I was getting into the case and Judge
25 Rendahl was stepping out.

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1 I'm just flipping to the --

2 MS. ANDERL: And I think that one
3 said --

4 JUDGE TOREM: -- order.

5 MS. ANDERL: -- not yet.

6 JUDGE TOREM: Paragraph 26 of Order 15
7 says, We find there is no basis to order a refund to
8 Qwest at this time. There's some discussion
9 referencing back to Order 12. But that the
10 evidentiary hearings will resolve this issue as well.

11 I don't think, Ms. Anderl -- and again,
12 counsel for the CLEC, let me know if you disagree. We
13 have just focused our discussion today on these two
14 issues and whether or not -- if we had no jurisdiction
15 over the traffic based on the remand, the decision in
16 the VNXX order on the other dockets, and now Orders 12
17 and 13, it may moot going into things from one
18 perspective. But funds that were transferred under an
19 issue and an order that's been reversed would still
20 need to be addressed in any case.

21 Mr. Shortley, let me give you a chance to
22 answer Ms. Anderl. Was Level 3 going to take the
23 position that checks that are cashed are past history?

24 MR. SHORTLEY: Depending upon the -- it
25 very well could, Your Honor, depending upon the

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1 outcome of the Commission's decision on the basic
2 jurisdictional issue.

3 If the Commission determines it has no
4 jurisdiction to continue, there would be no finding,
5 there would be no basis for a finding at this -- from
6 this commission as to who owes whom what. The issue
7 of the composition for the VNXX traffic, how that
8 traffic gets rating and who ultimately owes, which
9 party ultimately owes which party exactly how much,
10 would be an issue that could well be decided
11 elsewhere.

12 JUDGE TOREM: But it would have to be
13 decided at one point or another.

14 MR. SHORTLEY: That's correct, Your
15 Honor.

16 MR. MAYHOOK: That is correct. I think
17 probably what I was speaking to -- you know, again the
18 new guy here -- but it just seems like, you know, if
19 we are shifting into this corollary alternative
20 compensation scheme, if we can't get it this way we're
21 going to get it another way, it seems to me that, as I
22 understand matters -- and I don't have the big picture
23 fully nailed down, but as I understand matters, this
24 access charge issue would be the one where there is no
25 material fact. And that that is where, based on

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1 dispositive motion, if the CLEC prevail, the hearing
2 goes away.

3 Now, if it's a matter of law, the Commission
4 feels somehow that it could adjudicate that issue,
5 then there would likely be issues of fact. But
6 whether or not access charges are relevant for
7 conversation here -- you know, and I agree with the
8 briefing on the issue, it jurisdictionally puts the
9 Commission in the position of interstate ratemaking,
10 then I think that's problematic.

11 Again, I didn't come here to argue this, I'm
12 not prepared to argue. I just sort of was piqued by
13 what Michael said, and I think that it's something
14 fair to raise at this time if we are looking at
15 clarification.

16 JUDGE TOREM: Mr. Mayhook, I am hearing
17 all of the right buzz phrases from the right counsel.
18 I'm glad I walked into the right courtroom today.

19 The Commission has these issues, I think, well
20 under control. We've had our initial discussions with
21 the Commissioners, and you are answering questions
22 that we kicked around, as I would expect counsel for
23 each side to do. So I think the Commission is going
24 to have a ruling for you on all of these issues. It
25 was just that underlying question about the

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1 interconnection agreements and how to get to this
2 second one, if we needed to, on the access tariffs,
3 and making sure we were ruling on the correct ones and
4 getting it right.

5 This has been productive for me to at least
6 hear that we are in the ballpark, and as the new
7 judge, I've got it and can keep writing on the
8 outlines I've already got started. This has served as
9 a good fact finding and clarification piece for me.

10 Mr. Thomas, was there anything else that you
11 think you need to pose to flesh things out more, or do
12 you think we got what we needed from today's
13 proceeding?

14 MR. THOMAS: We got more than enough. I
15 just want to know if anybody wants to try to resolve
16 this by a flip of the coin and save us another couple
17 of years.

18 JUDGE TOREM: If only they were that
19 agreeable, Brian.

20 MR. THOMAS: I guess the answer is no.
21 Okay.

22 (Discussion off the record.)

23 JUDGE TOREM: All right. So let me go
24 around the table and see if there are any other
25 follow-on comments, then I can sum up what the

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1 assignments out for the Commission and for the parties
2 might be.

3 For Level 3, was there anything else to take
4 up today?

5 MR. SHORTLEY: No, Your Honor.

6 JUDGE TOREM: And for Pac-West?

7 MR. MAYHOOK: Good, Your Honor.

8 JUDGE TOREM: And for Qwest?

9 MS. ANDERL: No, Your Honor, but --
10 well, yes, Your Honor.

11 JUDGE TOREM: No, but...

12 MS. ANDERL: It drives me crazy when
13 people say, well, no, but just briefly. Yes, there
14 is.

15 I would just like to say, even in the
16 worst-case scenario for us, which is that the
17 Commission were to rule that they would have no
18 jurisdiction and couldn't proceed because of the
19 nature of the traffic, we would argue -- and we don't
20 think that's right, of course, but we would argue that
21 the Commission retains authority over the parties.
22 And that if it had no jurisdiction to rule on this
23 traffic, it didn't when it ruled on the traffic in
24 2006 either, and it does have jurisdiction over the
25 parties, you know, to set things -- reset things back

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1 to zero, as we march off to federal court.

2 That's all I wanted to say about that. Thank
3 you very much for bringing us together here today.

4 JUDGE TOREM: I understand those things
5 as well.

6 I think what we have due out, then, simply is
7 the filing of the interconnection agreements. That
8 will be done -- I think Ms. Anderl is going to leave
9 me with the hard copy she brought down today. I will
10 wait for a confirmation from all the parties, that she
11 sends you the electronic copy, that this is all
12 agreeable, before I make any reference to it. It will
13 save some appreciable postage and another trip down to
14 the Commission, if that's what it took. I will take
15 that from Ms. Anderl today and set it aside and wait
16 for another filing on that.

17 Secondly, the discovery issues, if there are
18 going to be any extensions or questions, Pac-West and
19 Qwest will let me know by noon on Thursday.

20 I think that's really it. If there's going to
21 be a stipulation, that will come in hopefully Friday
22 the 17th, Monday the 20th, right around that neck of
23 the woods. I know that, Mr. Shortley, you are going
24 to take the laboring oar on that for all counsel and
25 get back with Ms. Anderl.

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1 Was there anything else that we agreed to
2 deadlines in today?

3 MS. ANDERL: No, Your Honor.

4 JUDGE TOREM: Does anyone else want to
5 order a copy of the transcript for today? I know
6 Qwest has already indicated they are getting a copy.
7 Mr. Shortley?

8 MR. SHORTLEY: Yes, Your Honor, I would
9 like a copy, please.

10 JUDGE TOREM: And Mr. Mayhook?

11 MR. MAYHOOK: I suppose. If it's that
12 important I want one too.

13 JUDGE TOREM: All right, we will send
14 that.

15 Sherrilyn Smith is our court reporter today.
16 If you need her particular contact information, let me
17 know and we will get that out to you.

18 MS. ANDERL: Qwest wants an E-Tran and a
19 hardcopy, a mini.

20 JUDGE TOREM: Mr. Shortley, did you want
21 to specify a style in which you wanted the transcript?

22 MR. SHORTLEY: E-Tran a hard copy would
23 be fine as well.

24 JUDGE TOREM: Did you want a mini, like
25 four pages per?

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1 MR. SHORTLEY: Sure, that's fine.

2 JUDGE TOREM: So, Mr. Mayhook, it sounds
3 like that's the majority opinion. You'll go with
4 that?

5 MR. MAYHOOK: Yes. Only for today,
6 though.

7 JUDGE TOREM: All right. Thank you all.

8 MS. ANDERL: Your Honor, before we go
9 off the record -- or after we go off the record, but
10 before these guys hang up, may I borrow the bridge to
11 do a little bit of scheduling with the Mayhooks?

12 JUDGE TOREM: Certainly. I will step
13 out of the room and come back and sign the transcript
14 order form in a moment.

15 It is 20 after 2:00. Going once, going twice.
16 All right, this status conference is adjourned. Thank
17 you, counsel.

18 (Status conference adjourned 2:20 p.m.)

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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