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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

3

In the Matter of the Petition )  
 4 for Arbitration of an ) DOCKET NO. UT-093035  
 Interconnection Agreement )  
 5 Between ) Volume V  
 ) Pages 32 to 60  
 6 NORTH COUNTY COMMUNICATIONS )  
 CORPORATION OF WASHINGTON )  
 7 )  
 and )  
 8 )  
 QWEST CORPORATION )  
 9 )  
 Pursuant to 47 U.S.C. )  
 10 Section 252(b). )  
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A prehearing conference in the above matter  
 12 was held on March 8, 2010, from 8:30 a.m to 9:10 a.m.,  
 13 at 1300 South Evergreen Park Drive Southwest, Room 212,  
 14 Olympia, Washington, before Administrative Law Judge  
 15 ADAM TOREM.

16

The parties were present as follows:

17

QWEST CORPORATION, by LISA A. ANDERL,  
 18 Attorney at Law, 1600 Seventh Avenue, Suite 1506,  
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 19 (206) 343-4040, E-Mail lisa.anderl@qwest.com

20

NORTH COUNTY COMMUNICATIONS CORPORATION OF  
 WASHINGTON, via telephone by CHRIS REICHMAN, Attorney at  
 21 Law, DICKS & WORKMAN, 750 B. Street, Suite 2720, San  
 Diego, California 92101, Telephone (619) 685-6800, Fax  
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Joan E. Kinn, CCR, RPR

24

25 Court Reporter

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

2 JUDGE TOREM: It's Monday morning, March the  
3 8th, 2010, it's a little after 8:30 in the morning.  
4 This is Judge Torem, and we're conducting a prehearing  
5 conference in Docket UT-093035. This is the arbitration  
6 of an interconnection agreement between North County  
7 Communications and Qwest. On the line from San Diego is  
8 Mr. Chris Reichman representing North County, and  
9 present here in Olympia is Lisa Anderl for Qwest.

10 Mr. Reichman, can you still hear us okay?

11 MR. REICHMAN: Yes, I can.

12 JUDGE TOREM: All right, just had some  
13 interference on your end of the line, so hopefully we'll  
14 keep that to a minimum.

15 This is a docket going forward based on the  
16 petition for arbitration that was filed back on August  
17 3rd of 2009, and as you both know, there's been a change  
18 in presiding officers from Judge Rendahl to myself, and  
19 that was effected last month, and we set a prehearing  
20 conference for originally tomorrow afternoon, and we  
21 moved it up to this morning, for the purpose of sorting  
22 out a schedule for a hearing if one needs to occur or  
23 setting a firm deadline at least for a final agreed  
24 interconnection agreement between the two companies.

25 Ms. Anderl, do you want to give me a quick

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1 status update as to where we are on perhaps reaching  
2 that resolution?

3 MS. ANDERL: Your Honor, I have nothing new  
4 to report since the last time we met other than that I  
5 believe there is some still dialogue at some level going  
6 on between the companies, but I don't know that I can  
7 say that progress has been made.

8 JUDGE TOREM: Mr. Reichman, are you aware of  
9 any other new discussions between the companies?

10 MR. REICHMAN: No, I'm not, I tend to agree  
11 with Lisa. There seems to be some progress being made.  
12 It really hasn't been substantive the last month.

13 JUDGE TOREM: Was that the last month?

14 MR. REICHMAN: Couple months, Your Honor, two  
15 months.

16 JUDGE TOREM: All right, well, I'm not going  
17 to worry too much then about the reasons for that, but  
18 simply ask then counsel to let me know what exhibits and  
19 witnesses they'll need to list and submit for a hearing  
20 then. If there's not going to be substantive  
21 discussions, we can't let this docket sit, and you'll  
22 have to submit it for the Commission to make a decision  
23 on the appropriate provisions for an updated  
24 interconnection agreement. The last --

25 MR. REICHMAN: Your Honor, actually as a

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1 preliminary matter, as we reported in our status report,  
2 we are going to respectfully challenge the jurisdiction  
3 of this Commission to --

4 JUDGE TOREM: Mr. Reichman.

5 MR. REICHMAN: Yes.

6 JUDGE TOREM: Sometimes with the quality of  
7 the line it's hard for the court reporter, so if you'll  
8 just speak a little bit more slowly and deliberately,  
9 and hopefully the reception will be improving. Go  
10 ahead.

11 MR. REICHMAN: Okay, sorry.

12 As a preliminary matter, as we reported in  
13 our status report, we actually are going to respectfully  
14 challenge the jurisdiction of the Commission to hear  
15 this matter pursuant to 252, because there is already an  
16 interconnection agreement in place.

17 Was that better?

18 JUDGE TOREM: Yes, thank you.

19 What I would expect then, Mr. Reichman, is  
20 that you'll file briefs on that topic or an appropriate  
21 motion. We can do this all on the day of the hearing,  
22 or we can set a very short notice time for you to file a  
23 more detailed motion, not just something in a status  
24 report, that would have the appropriate citations and an  
25 opportunity for Ms. Anderl to file a response. And then

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1 I can issue a ruling perhaps on the record or a short  
2 written order as the case may be continuing with the  
3 arbitration schedule as we'll set today or dismissing  
4 the case if your position turns out to be correct. Does  
5 that sound like an appropriate procedural schedule?

6 MR. REICHMAN: It does, Your Honor, and we  
7 would prefer to bring that in the form of a motion to  
8 dismiss.

9 JUDGE TOREM: All right, when do you think  
10 you'll be prepared to file that motion?

11 MR. REICHMAN: We can be prepared to file  
12 that motion within two weeks.

13 JUDGE TOREM: Okay, so you're proposing  
14 Monday the 22nd of March?

15 MR. REICHMAN: Yes, Your Honor, we can do  
16 that.

17 JUDGE TOREM: Ms. Anderl, would that work for  
18 you?

19 MS. ANDERL: Your Honor, two things. One is  
20 that we would like to request as part of the procedural  
21 schedule that NCC be required to file an answer to the  
22 arbitration petition either prior to or concurrent with  
23 their motion to dismiss, because we feel as though the  
24 issues aren't really joined on a substantive basis until  
25 we know what they were going to say in their answer.

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1 And if we do end up moving ahead on the merits, it would  
2 be helpful for us to have that. Ordinarily an answer  
3 would have been due 25 days after we filed our petition,  
4 but we've continued to waive that since we filed because  
5 of the negotiations, and so we would like to see that.

6 And I'm going to be out of the country the  
7 22nd through the 28th, so if NCC wants a third week  
8 until the 29th of March to file the answer and motion to  
9 dismiss, that would not impact my schedule in any bad  
10 way.

11 JUDGE TOREM: All right, Mr. Reichman, I  
12 noted as well that there's no answer filed, and I noted  
13 that the first order issued by the Commission on August  
14 7th in this docket, the ninth paragraph said that North  
15 County may respond with the answer. I think it would be  
16 helpful if we're going to go forward to actually have a  
17 formal answer at this point. Is that going to be a  
18 problem for the company to file one?

19 MR. REICHMAN: It's not going to be a problem  
20 so much, Your Honor, as that if the Commission does lack  
21 jurisdiction to hear the matter, it seems like an excess  
22 amount of work. I mean we would be happy to file an  
23 answer within a week of the determination on the motion  
24 to dismiss or a fairly short period after the  
25 determination of the motion to dismiss, but it seems

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1 like unnecessary work if the Commission does not have  
2 jurisdiction to hear this arbitration.

3 MS. ANDERL: Well, Your Honor, I understand  
4 Mr. Reichman's position, but honestly having evaluated  
5 the merits of their claim, I think that it's going to be  
6 unlikely that the Commission will dismiss this, and I  
7 think it does put us at a significant disadvantage not  
8 knowing what NCC thinks the issues are and then puts us  
9 on a much shorter fuse to have to get ready for hearing  
10 when we're told only weeks from now what NCC believes  
11 the issues are. And so I think that any burden to NCC,  
12 particularly in light of the amount of time that we've  
13 given since we filed our initial arbitration petition,  
14 is outweighed by Qwest's interests in knowing what NCC  
15 believes the issues to be.

16 JUDGE TOREM: Well, it appears to me, counsel  
17 for both, that the Commission has taken the case on  
18 assurances that it would be resolved and this was more  
19 of a formality to file things, so as much as both  
20 parties have filed waivers with the Commission of the  
21 time response for the Commission to issue a decision on  
22 this arbitration with the federal deadlines that are set  
23 by statute, I'm less inclined now to make this a  
24 priority to crunch it all together. The parties said  
25 they were going to resolve this, and I think part of my

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1 thinking today is by setting firm deadlines for,  
2 Mr. Reichman, for you to incur work in filing a motion  
3 and Ms. Anderl to do the same in filing a response, I  
4 just want firm deadlines for both of you. If you think  
5 your companies can resolve having to have counsel battle  
6 here before the Commission and file a negotiated  
7 agreement, great. If it's not, then we'll move on with  
8 the schedule. And we'll just set firm dates, and I  
9 won't be inclined to set continuances based on what we  
10 do today unless something else comes up aside from the  
11 need to continue negotiations to settle. There's been  
12 plenty of time for that, and as you said, Mr. Reichman,  
13 I'm a bit disappointed that there's not been substantive  
14 negotiations for the last few months. Your status  
15 reports have indicated as much, that since the holiday  
16 season things have tailed off.

17 I'm okay with setting the deadline for a  
18 motion to come in March 29th and an appropriate time  
19 later for Qwest to file a response, and then I will  
20 issue an order shortly thereafter I hope and then set a  
21 deadline 5 days after that motion for the answer to come  
22 in if we decide that there is jurisdiction. And I won't  
23 extend that simply if you're going to file an appeal or  
24 interlocutory appeal up to the Commissioners about  
25 jurisdiction. I will let you take that separate track,



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1 Mr. Reichman, but I will issue my initial order on  
2 jurisdiction based on your motion, and then 5 days later  
3 we'll have the response for the answer due. So unless  
4 the Commission stays that, that will be the deadline,  
5 because I won't grant a continuance from that. If I  
6 decide I have jurisdiction, I want to keep going on the  
7 schedule unless the three commissioners appointed by the  
8 governor say that they'll stay the schedule based on a  
9 separate motion from you. So that's a what if you lose  
10 on the motion, okay?

11 MR. REICHMAN: That makes perfect sense to  
12 North County, Your Honor.

13 JUDGE TOREM: All right, so Monday, March  
14 29th was the date. Typically I believe, Ms. Anderl, we  
15 would give 10 days, are you going to need any more than  
16 that?

17 MS. ANDERL: So 10 days being Friday the 9th  
18 of April, Your Honor, or 10 business days being Monday  
19 the 12th?

20 JUDGE TOREM: If we do the 29th --

21 MS. ANDERL: I guess 10 days would be  
22 Thursday the --

23 JUDGE TOREM: Wednesday the 7th.

24 MS. ANDERL: Oh, okay.

25 JUDGE TOREM: So we could go to Friday the

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1 9th if that is better for you, and that will give me the  
2 next full week and a few days to get my order out before  
3 I leave on some military duty.

4 MS. ANDERL: Okay, the 9th would work for us,  
5 Your Honor.

6 JUDGE TOREM: So we'll do this in the form of  
7 a one-shot motion and a one-shot response. We won't  
8 worry about replies. Hopefully you can lay out  
9 everything you need in the first motion, and I won't  
10 worry about a need for a reply. Is that going to work,  
11 Mr. Reichman?

12 MR. REICHMAN: Yeah. Obviously we would  
13 prefer replies, but if that's the way the Commission  
14 wants to set it, we can work with it.

15 JUDGE TOREM: I think for a jurisdictional  
16 issue, you should be able to make the case as to where  
17 there is no jurisdiction or not, and Ms. Anderl should  
18 be able to make the case succinctly in response to  
19 suggest why maybe you're wrong or perhaps why the  
20 jurisdiction is there regardless of whatever points you  
21 might be anticipated to make. On a jurisdictional issue  
22 like this that is not so fact dependent, and I think  
23 I've got a hint of where the argument is coming from  
24 based on what was in your status report, I would think  
25 you can do this based on just laying out a more fleshed

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1 out argument as to why you think who files the petition  
2 and the fact that there is an existing interconnection  
3 agreement changes what's in the Telco Act, so I don't  
4 think there's a need. If there's something completely  
5 unanticipated in Ms. Anderl's response, you can petition  
6 to file a reply, and I'll see if I grant that petition,  
7 I will consider the reply in my response, but I would  
8 hope that you'll have it in no later than the 16th, 5  
9 business days after Ms. Anderl's response.

10 MR. REICHMAN: No problem at all, Your Honor.

11 MS. ANDERL: And, Your Honor, could we  
12 confirm on the record that the March 29th filing, we  
13 will receive electronic service on that?

14 JUDGE TOREM: Yes, I would think the  
15 expectation in these dockets is that that's the deadline  
16 for filing, and based on the rules that we have now  
17 under 480-07 I think it's 140 or 145, I'll require that  
18 you submit that electronically and then follow up by the  
19 next business day with a hard copy at or before noon.  
20 So it's usually safer I think on these days just to make  
21 sure it arrives and is served here at the Commission,  
22 but if it's submitted electronically, you can perfect  
23 that by filing it the next business day and will still  
24 be timely. And I know both of you have already  
25 exchanged E-mails because we had a prehearing conference

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1 order previously.

2 All right, so if we have those deadlines for  
3 the motions, and I would hope that you'll have a ruling  
4 by the 21st, 22nd, 23rd of April, somewhere in there,  
5 and the answer would be due somewhere within that next  
6 week at the earliest, call it 5 business days later, so  
7 the 28th, 29th, or 30th of April. What it tells me is  
8 that when we get into May, I'll expect that will be the  
9 deadline, we'll be setting a deadline there for filing  
10 of witness and exhibits lists, and we'll hold a hearing  
11 sometime in June.

12 MS. ANDERL: Were you going to want prefiled  
13 testimony, Your Honor?

14 JUDGE TOREM: That would depend on the nature  
15 of the experts required. I think the issues that we  
16 have here, it started out with a question as to the  
17 multifrequency signaling technology.

18 MS. ANDERL: Yes.

19 JUDGE TOREM: And the upgrade to a SS7, and  
20 then later on there was a relative use factor item  
21 referenced. I wasn't completely sure that that was the  
22 same issue. Ms. Anderl, did you see that as a subset of  
23 the SS7 upgrade issue?

24 MS. ANDERL: I think they're related issues  
25 because they both have to do with how the companies

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1 exchange traffic, but I think they are separate.

2 JUDGE TOREM: Okay, so it's a different issue  
3 than the one raised in the petition, so I would  
4 appreciate if an answer is to come in eventually,  
5 Mr. Reichman, that you address both what was raised in  
6 the petition and anything else that's come up in  
7 substantive discussions or been noted in status reports  
8 when you file your answer to the petition. I'm not  
9 going to require a formal amendment to the petition, but  
10 if Ms. Anderl wants to take the time between now and mid  
11 April to file a more formal listing of expanded issues  
12 than those listed in there, I don't know if that's  
13 necessary, because I don't know the substance of this  
14 too much. I know it's -- I think it's Section 7 also of  
15 the existing interconnection agreement that has the  
16 various paragraph numbers that were referenced in the  
17 petition. Ms. Anderl, I see you looking for them, did  
18 you want me to --

19 MS. ANDERL: No, Your Honor.

20 JUDGE TOREM: -- pull them out for you?

21 MS. ANDERL: I was just going to say that I  
22 think that's one of the reasons why we really want to  
23 see NCC's answer, and we would prefer not to file an  
24 amended petition until we kind of know what NCC thinks  
25 the issues are.

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1                   JUDGE TOREM: All right, so right now we have  
2 a deadline of Monday, March 29th, for NCC to file the  
3 motion to dismiss, a response will be due the following  
4 Friday, April the 9th, and I'm hoping to issue a ruling  
5 within 10 days thereafter. We're not anticipating the  
6 need for a reply, but if there's going to be a reply,  
7 Mr. Reichman, you have April 16th as the deadline to  
8 file the appropriate motion under our procedural rules  
9 and submit your reply simultaneously. And when I issue  
10 my order, I will either grant or deny your motion to  
11 file a reply and include that in my consideration.

12                   Do you think, Ms. Anderl, it will take  
13 prefiled testimony on the issues that you know exist  
14 right now?

15                   MS. ANDERL: I think that prefiled testimony  
16 might be beneficial, because any time you're talking  
17 about engineering standards or technical issues like  
18 this multifrequency signaling, I think it's, for me, I  
19 don't have a technical background, it's a lot easier to  
20 read it ahead of time and process the information and  
21 then convene for cross-examination. I'm not sure that  
22 there would need to be a lot of time between the  
23 prefilings and the hearing. And maybe I'm just saying  
24 this because I'm so used to prefilings testimony, I can't  
25 envision the thought of putting on a direct case orally,

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1 but I do think it tends to work better with the  
2 prefiled. Streamlines things in the over all.

3 JUDGE TOREM: And how many witnesses do you  
4 think you would be preparing prefiled testimony on this  
5 issue?

6 MS. ANDERL: No more than one witness, and  
7 then possibly a second witness if there are other  
8 issues.

9 JUDGE TOREM: And are you envisioning then  
10 you would file your prefiled testimony, and Mr. Reichman  
11 and NCC would file responsive witnesses?

12 MS. ANDERL: My thinking is that both parties  
13 would file simultaneously, which has worked pretty well  
14 in these arbitrations. Maybe in this kind of a case  
15 because things are so simple, there wouldn't even be  
16 reply. We would just convene for cross-examination on  
17 the direct and then any brief oral reply or rebuttal  
18 might be appropriate.

19 JUDGE TOREM: Okay.

20 Mr. Reichman, how does that sound for you?

21 MR. REICHMAN: We prefer the chance to reply,  
22 Your Honor, just because we're not entirely sure what  
23 technical issues Qwest wants to raise at this point. My  
24 understanding is issues like the multifrequency  
25 signaling insofar as we're dealing strictly with Qwest's

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1 new proposed ICA were not significant issues between the  
2 parties.

3 JUDGE TOREM: Well, what if I give you with  
4 the anticipated ruling on the motion, and again this is  
5 only assuming that I rule in Qwest's favor that I do  
6 have jurisdiction and that we go forward, if I'm having  
7 that out toward the end of April with a week left, if I  
8 give you a month after that to digest the motion, file  
9 for any stays or otherwise that you would want,  
10 Mr. Reichman, maybe the 21st of May having the first  
11 filing deadline and then the 4th of June being the  
12 response deadline. You would both file testimony, and  
13 then your experts could review each other's filings and  
14 submit essentially rebuttal testimony, and then we would  
15 convene for a hearing sometime in June.

16 MS. ANDERL: Your Honor, I checked my  
17 witness's availability before I came today, and she is  
18 out of the country the second half of May, so. I'm  
19 sorry about that.

20 JUDGE TOREM: When does she depart?

21 MS. ANDERL: She didn't tell me. All she  
22 said was I'm out of the country the second half of May,  
23 and so it would probably be good not to have any  
24 filings, you know, those two weeks or the first week in  
25 June when she's back. Now I'm trying to look at a



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1 calendar and see if we could file our prefiled by the  
2 14th of May before she goes. That might work.

3 JUDGE TOREM: Mr. Reichman, do you have any  
4 witness issues?

5 MR. REICHMAN: No. Our technical witness to  
6 the extent that they'll be needed can be available any  
7 time other than the end of June, so I don't see any  
8 problem.

9 JUDGE TOREM: Let me propose then that,  
10 Ms. Anderl, I give you those first two weeks of May and  
11 then the following Monday the 17th to actually file it.

12 MS. ANDERL: Oh, okay good. That would  
13 probably work.

14 JUDGE TOREM: Assuming she's leaving the  
15 weekend in between, that will give you a chance to have  
16 that all formatted and delivered to the Commission and  
17 to NCC on Monday the 17th. And then we'll have -- you  
18 say she's going to be gone those next two weeks and I  
19 presume through the Memorial Day holiday on the 31st?

20 MS. ANDERL: Yes.

21 JUDGE TOREM: So if she's back in the office  
22 that first full week of June, let's just set a -- I'm  
23 trying to look when I could schedule the hearing. I  
24 have a hearing that I believe is going to go away the  
25 21st of June through the 23rd, and there's almost no way

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1 it takes all 3 days, so I'm thinking that we could book  
2 this if it's just going to be a 1 day or 2 day hearing  
3 for the 24th, 25th of June.

4 Is that going to work toward the end of June  
5 for your witness, Mr. Reichman?

6 MR. REICHMAN: No, it won't, Your Honor, my  
7 witness will not be available the last two weeks of  
8 June.

9 JUDGE TOREM: Okay. So if we move it forward  
10 then to somewhere the week of the 14th, are there any  
11 issues that week?

12 MS. ANDERL: Of June?

13 JUDGE TOREM: Of June.

14 MS. ANDERL: Yeah, Your Honor, Mr. Reichman  
15 had said they wanted to reply.

16 JUDGE TOREM: Right, so I'm looking at a date  
17 to set that.

18 MS. ANDERL: Yeah, and I don't know that that  
19 -- if my witness isn't back until June 1st, I don't know  
20 that that gives her time to really digest the opening  
21 testimony, write reply testimony, and be ready for a  
22 hearing the week of the 14th. I'm sorry, I --

23 JUDGE TOREM: Well, what I'm looking for is  
24 for her to write her reply testimony and submit it on  
25 either the 9th, 10th, or 11th, and have a hearing

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1 somewhere either the 16th or the 17th. And I would  
2 think if she's going to have -- she won't have  
3 Mr. Reichman's witness's testimony until she returns is  
4 what you're suggesting?

5 MS. ANDERL: Exactly.

6 JUDGE TOREM: So I'm thinking that would be  
7 the 1st or 2nd of June.

8 MS. ANDERL: Yes.

9 JUDGE TOREM: And that would give her a week  
10 to read it, a weekend in between, and then a couple days  
11 to get -- you know, the reply testimony from what you  
12 originally said we were thinking could be done on the  
13 fly.

14 MS. ANDERL: Could be.

15 JUDGE TOREM: So I'm hoping that there won't  
16 be too lengthy, and there will be opportunity for  
17 additional direct to adopt testimony or whatever comes  
18 in from Mr. Reichman's witness before she is turned over  
19 for cross. I just want to make sure we can get this  
20 done before Mr. Reichman's witness runs into things and  
21 we carry into July. So I think the response testimony  
22 if you want to have it later in the week on the 11th and  
23 then just have the weekend to digest it and prepare for  
24 hearing June 15th, 16th, 17th, 1 or 2 of those days  
25 should work.

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1 MS. ANDERL: And let me just if I may, Your  
2 Honor, check the message and see exactly what this  
3 witness told me on Friday.

4 MR. REICHMAN: Your Honor, if I may jump in  
5 just a moment.

6 JUDGE TOREM: Go ahead.

7 MR. REICHMAN: It's going to be our  
8 preference, if possible, to have this hearing pushed out  
9 to July anyway, because I'm facing trial in a libel case  
10 that is not going to go away. It's a one week jury  
11 trial on the 18th of June.

12 JUDGE TOREM: The 18th is a Friday.

13 MR. REICHMAN: That's trial call. The trial  
14 will be the next week.

15 JUDGE TOREM: Well, Mr. Reichman, I'm  
16 sensitive to that, but I understand that whether the  
17 case is called or not, it may yet be continued, and if I  
18 can get ahead of it on your calendar for a 1 day  
19 hearing, I'd rather do that on the 15th or 16th of June  
20 rather than if it gets called and delayed and pushed to  
21 be trailing that libel trial.

22 MR. REICHMAN: I understand that, Your Honor.  
23 I just want to make you aware of my schedule. It seems  
24 like we're already trying to compress things to work  
25 around Ms. Anderl's expert witness.

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1                   JUDGE TOREM: Well, we have both of your  
2 witnesses to work around, Mr. Reichman, so I'm just --  
3 if I miss the end of June and your trial goes in July,  
4 we're going to be out on the 1 year anniversary of this  
5 petition pretty soon in August. And I'm going to have a  
6 major issue on my schedule coming with a rate case from  
7 a utility here in March that's going to file at the end  
8 of the month, and quickly my availability is going to be  
9 sandwiched as well, so I think we're all fighting what's  
10 coming down the road.

11                   MS. ANDERL: Well, and, Your Honor, not to  
12 take sides with Mr. Reichman against you, but I wouldn't  
13 mind having a hearing in July either. I mean, you know,  
14 it's one thing for us to say, you know, we want to get  
15 this show on the road, but I think it's we want to do it  
16 in a way so that we don't, you know, tip off the rails  
17 either. And July, if it works for Your Honor's  
18 schedule, does seem like less of a forced fit, working  
19 around my witness and his.

20                   JUDGE TOREM: What is the schedule that you  
21 have for this trial, Mr. Reichman?

22                   MR. REICHMAN: Right now I'm scheduled for  
23 the 21st through the 24th for the full one week jury  
24 trial. I do not expect to be put on the wheels. This  
25 is in San Diego Superior Court, which I'm fairly

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1 familiar with, typically a one week jury trial will  
2 start the next week. It's shorter trials that go on the  
3 wheels.

4 JUDGE TOREM: So when in July do you think we  
5 would safely be able to schedule something based on what  
6 you know about your witness and the San Diego Superior  
7 Court schedule?

8 MR. REICHMAN: I think we would safely be  
9 able to schedule from the 5th on. And the other thing  
10 here is that I can, you know, I can always bring in Joe  
11 Dicks as coverage if my trial pushes, but the problem is  
12 he has a conflict the week that the trial is currently  
13 scheduled as well.

14 JUDGE TOREM: Okay, so you have no backup  
15 that week?

16 MR. REICHMAN: Correct, I have no backup the  
17 week of the 21st through the 25th, assuming my trial  
18 actually goes off then, which I strongly suspect it  
19 will.

20 JUDGE TOREM: All right, I guess I'm just --  
21 I'm having a hard time wanting to push this out a month  
22 after the target date I have here of the 15th or the  
23 16th, but you're telling me you each have one witness,  
24 we're going to give them until May 17th to file their  
25 preliminary testimony, and then Friday, June the 11th,

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1 to file reply testimony which I anticipate will be  
2 brief, and while it's fresh in everybody's mind going on  
3 the 15th or 16th for a 1 day hearing really, I can't  
4 imagine this taking more than even a half a day, so I  
5 would be willing if it -- well, it's probably a 3 hour  
6 flight up here, so you have to fly up the night before,  
7 Mr. Reichman, you and your witness?

8 MR. REICHMAN: Correct.

9 MS. ANDERL: And my witness has to travel  
10 from Denver, Your Honor.

11 JUDGE TOREM: So we would have people  
12 traveling the night before coming in for the hearing and  
13 probably traveling back out the day of the hearing to  
14 home. Are you telling me that with a jury call on  
15 Friday that a Wednesday hearing on the 16th would crush  
16 that preparation schedule to be up here for Tuesday  
17 night and fly back home Wednesday night?

18 MR. REICHMAN: I prefer not to do that, if  
19 possible, Your Honor, but if you really need that  
20 schedule, we can make it work.

21 JUDGE TOREM: Well, it's not that I really  
22 need it so much, it's I prefer to see this case be on a  
23 stricter schedule and be moving along. If you want to  
24 move it out until the week of the 5th after the July 4th  
25 holiday, than I'll re-stagger those dates to have a

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1 little bit more time for the reply testimony and have it  
2 fresher when it comes in, maybe move those back out.  
3 Although I don't see it helping. Maybe we just keep the  
4 dates I've scheduled, and then you have time to digest  
5 it with your witnesses and do prep to do May 17th and  
6 June 11th. Because I'm seeing if I move it to June  
7 18th, you've had that week you've been telling me you  
8 want time to work for your trial, the 25th you'll have  
9 been in trial all week, and if I make it July the 2nd,  
10 that's the week before hearing again. So I'm not sure  
11 what is best advantageous for folks. And your witness  
12 would be gone those last two weeks of June anyway you  
13 said?

14 MR. REICHMAN: Yes.

15 MS. ANDERL: Your Honor, if I might offer a  
16 suggestion that I think would work for Qwest is if we  
17 had the testimony, the direct on the 18th, maybe even  
18 the 19th or the 20th because there's a certain amount of  
19 polishing that we can do even while my witness is gone,  
20 and then replay testimony on the 17th of June, which is  
21 a Thursday, again assuming that Mr. Reichman's going to  
22 have it done by the 15th or so and then he's going to  
23 plunge into his trial prep, and then a hearing on July  
24 13th. Now I recognize that pushes that out a little  
25 bit, I just -- I know that the week of the 4th of July



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1 is problematic for travel for a lot of people. And so  
2 even though I'm here and don't mind driving to Olympia  
3 on the 7th, I don't know how well that works for  
4 everybody else.

5 JUDGE TOREM: Mr. Reichman, does that  
6 proposed schedule work for you?

7 MR. REICHMAN: That works, that actually  
8 works very well for me, Your Honor.

9 JUDGE TOREM: All right, so Wednesday, May  
10 the 19th, would be the initial deadline for testimony.  
11 Then on Thursday, June the 17th, would be the reply  
12 testimony. And on Tuesday, July the 13th, and we'll  
13 schedule if necessary Wednesday, July the 14th, but I  
14 really don't think we're going to need a second day, but  
15 I would rather have a second day in reserve so we don't  
16 end up with any additional delays, so if you will both  
17 please calendar for the 13th and the 14th of July, that  
18 will be fantastic.

19 MS. ANDERL: Perfect, Your Honor, thank you  
20 very much.

21 JUDGE TOREM: All right, we'll do that, and  
22 what I'm hoping is all of this becomes elementary  
23 because in a couple of weeks rather than filing a motion  
24 you're going to file an agreed interconnection  
25 agreement, as was originally suggested back in August

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1 and September.

2                   Let me just suggest, counsel, that both of  
3 you talk to the substantive negotiators at Qwest and at  
4 NCC, let them know we have these deadlines and the judge  
5 is not going to be prone to granting continuances  
6 because we've already sandwiched in enough other  
7 competing obligations. And I would like to have a  
8 decision out on not only the motion in a timely fashion  
9 in mid April, but have this off my plate by the end of  
10 the summer so I can focus on what's going to be a pretty  
11 heavy duty rate case in the fall and be able to dedicate  
12 my time accordingly. So all of our schedules are busy,  
13 but let your substantive negotiators know that I prefer  
14 they actually do some work on this in the next few  
15 weeks, see if they can get it done. And if they can't,  
16 we'll let the lawyers take over and I'll let you know  
17 what I think in it looks like there will be two rulings  
18 in sequence.

19                   Mr. Reichman, does that work for you?

20                   MR. REICHMAN: That works for me, Your Honor.

21                   Purely as a procedural aside, I would ask can  
22 Your Honor issue an order with these dates on it just in  
23 case I've miswritten anything while I'm on the phone  
24 here and misheard anything?

25                   JUDGE TOREM: Yes, I will be issuing a

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1 prehearing conference order in the next couple of days,  
2 and it will have the motion filing and response  
3 deadlines that we talked about. It will also contain  
4 the uncertain deadline of when the answer might be due,  
5 but it will be 5 business days after the order is served  
6 and entered, so that will be a deadline that I think I  
7 will include. If I'm granting the motion, then it will  
8 be irrelevant. If I'm denying the motion, part of the  
9 order will be that NCC will file an answer on a date  
10 certain based on the entry of that order.

11 MR. REICHMAN: Thank you.

12 JUDGE TOREM: All the other days will be in a  
13 schedule that I will attach to the prehearing conference  
14 order as kind of a 1 page portion of the order that you  
15 can circulate to all the folks that need to know on your  
16 staff.

17 MR. REICHMAN: Thank you, Your Honor.

18 MS. ANDERL: And then, Your Honor, just for  
19 clarification, if you were to deny or grant the motion  
20 and dismiss the petition for arbitration, then we would  
21 just default back to the Commission's procedural rules  
22 in terms of the timelines for Qwest to seek Commission  
23 review of that ruling?

24 JUDGE TOREM: That's correct. And again,  
25 we're assuming that if I do deny the motion that the

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1 only way that this schedule is slowed down is if there's  
2 a motion to stay granted while there's interlocutory  
3 review. So, Mr. Reichman, we're going to press on on  
4 the schedule that I will commit to writing regardless of  
5 the ruling. And if you win the motion, it will all go  
6 away only to be reset if the Commission overturns my  
7 granting of your motion. If I deny your motion, then  
8 we'll stay on this schedule even if the Commission is  
9 undertaking interlocutory review unless you persuade  
10 them that they need to stay everything. But with a May  
11 the 19th prefiled testimony deadline, my hope is that  
12 there will be a sufficient period of time where you've  
13 got to file your appeal with the Commissioners and  
14 before this May 19th date so that we can consider a stay  
15 if one is necessary or quickly act on a motion for  
16 review and get something out so we can preserve the  
17 schedule as much as possible.

18 MR. REICHMAN: That was my understanding in  
19 the event that Your Honor denied our motion.

20 JUDGE TOREM: All right, well, then I think  
21 you'll see the prehearing conference order later this  
22 week, and I'll see your motion to dismiss then at the  
23 end of the month on the 29th of March, unless maybe we  
24 see a negotiated agreement before the end of the month.  
25 We'll see how that all turns out, but look for something

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1 in the next couple of days coming from me both  
2 electronically and then hard copy will be served the  
3 next day I imagine.

4 Mr. Reichman, anything else for us this  
5 morning?

6 MR. REICHMAN: No, I think that's it, Your  
7 Honor.

8 JUDGE TOREM: Ms. Anderl?

9 MS. ANDERL: No, thank you, Your Honor.

10 JUDGE TOREM: Okay, well, we have a schedule,  
11 let's see if we can stick to it.

12 MS. ANDERL: Thank you.

13 MR. REICHMAN: Thanks very much, Your Honor.

14 (Hearing adjourned at 9:10 a.m.)

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