

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  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PAC-WEST TELECOMM, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MCI COMMUNICATIONS SERVICES, )  
INC. d/b/a VERIZON BUSINESS )  
SERVICES, )  
 )  
Defendant. )  
 )

1:10-cv-1051 OWW GSA  
AMENDED SCHEDULING  
CONFERENCE ORDER  
Mid-Discovery Status  
Reports Due: 2/14/11  
Mid-Discovery Hearing:  
2/25/11 8:15 Ctrm. 3  
Discovery Cut-Off: 4/11/11  
Non-Dispositive Motion  
Filing Deadline: 7/20/11  
Non-Dispositive Motion  
Hearing Date: 8/26/11 9:00  
Ctrm. 10  
Dispositive Motion Filing  
Deadline: 8/1/11  
Dispositive Motion Hearing  
Date: 9/26/11 10:00 Ctrm. 3  
Settlement Conference Date:  
7/5/11 10:00 Ctrm. 10  
Pre-Trial Conference Date:  
10/31/11 11:00 Ctrm. 3  
Trial Date: 12/13/11 9:00  
Ctrm. 3 (CT-3 days)

I. Date of Scheduling Conference.

1 October 7, 2010.

2 II. Appearances Of Counsel.

3 Arent Fox LLP by Joseph P. Bowser, Esq., appeared on behalf  
4 of Plaintiff.

5 Kellogg Huber Hansen Todd Evans and Figel, P.L.L.C., by  
6 Scott H. Angstreich, Esq., and Andrew M. Hetherington, Esq.,  
7 appeared on behalf of Defendant MCI Communications Services, Inc.  
8 d/b/a Verizon Business Services.

9 Tobin Law Group by August O. Stofferahn, Esq., also appeared  
10 on behalf of Plaintiff Pac-West Telecomm, Inc.

11 III. Summary of Pleadings.

12 1. Pac-West filed its complaint in response to Verizon's  
13 unlawful refusal to pay Pac-West for the work Pac-West has  
14 performed and continues to perform as an input to Verizon's  
15 provision of long-distance calling services to Verizon's  
16 customers.

17 2. Both parties are telecommunications carriers. By way  
18 of background, there are two types of telecommunications carriers  
19 at issue in this case: local exchange carriers ("LECs") and  
20 interexchange carriers ("IXCs"), also known as long-distance  
21 carriers. Under both federal and state regulations, IXCs are  
22 required to pay LECs' "access charges" for the input access  
23 services the LECs provide in carrying the calls that enable an  
24 IXC to offer its for-profit long-distance service. These access  
25 charges are set forth in regulated price lists, known as tariffs,  
26 filed with the Federal Communications Commission ("FCC") and  
27 state public service commissions. The FCC has jurisdiction over  
28 telecommunications traffic between calling and called parties in

1 different states, while state public service commissions have  
2 jurisdiction over telecommunications traffic between callers in  
3 the same state.

4 3. Plaintiff is a certificated local exchange carrier and  
5 has tariffs on file with the FCC and the public service  
6 commissions in the States of Arizona, California, Colorado,  
7 Idaho, Nevada, Oregon, Texas, Utah, and Washington. These  
8 tariffs describe the rates, terms, and conditions under which  
9 Pac-West provides its access services to IXCs, Verizon included.  
10 Pac-West has provided Verizon the tariffed services for which it  
11 has billed Verizon. But Verizon now refuses to pay Pac-West's  
12 lawfully assessed access charges for the work Plaintiff performs  
13 for Verizon's benefit. Prior to June 2009, Verizon paid Pac-  
14 West's invoices at Pac-West's tariffed rates, but after June 2009  
15 Verizon ceased paying for the services it takes from Pac-West.  
16 Verizon has no basis for withholding any of Pac-West's charges.  
17 Pac-West therefore seeks an order compelling Verizon to pay the  
18 amounts it has withheld from Pac-West since June 2009 and to pay  
19 Pac-West's invoices going forward.

20 4. Verizon Business seeks relief from Pac-West's  
21 persistent billing and past collection of unlawful charges  
22 allegedly authorized by its federal and state tariffs. Since at  
23 least August 2008, Pac-West has sent Verizon Business monthly  
24 invoices that included charges that Verizon Business did not owe  
25 and that Pac-West was not entitled to collect.

26 5. In the course of its operations, Verizon Business has  
27 carried interstate and intrastate long-distance calls that routed  
28 through Pac-West's network, either because those calls are

1 destined to (or were originated by) customers who purchased local  
2 telephone service from Pac-West or because Pac-West entered into  
3 an arrangement with another company (often a wireless carrier or  
4 a Voice over Internet Protocol ("VoIP") provider) pursuant to  
5 which long-distance calls to (or by) that company's customers  
6 (who are not themselves customers of Pac-West) are routed through  
7 Pac-West's network.

8         6. Pac-West has submitted invoices to Verizon Business for  
9 tariffed services that Pac-West claims to have provided to  
10 Verizon Business in the course of handling those long-distance  
11 calls. Those invoices contain errors that make it impossible for  
12 Verizon Business to validate the charges therein, and include  
13 millions of dollars of charges that Verizon Business does not  
14 owe, including (a) charges for services that Pac-West did not in  
15 fact provide, (b) charges that were not authorized by any valid  
16 federal or state tariff, and (c) charges that exceed the maximum  
17 rates permitted to be imposed by tariff under applicable federal  
18 law.

19         7. Before becoming aware of the numerous defects and  
20 improprieties in Pac-West's invoices, Verizon Business paid Pac-  
21 West substantial amounts of money that it did not owe. Verizon  
22 Business now seeks to recover that money and to obtain  
23 declaratory relief to compel Pac-West to cease its unlawful  
24 practices.

#### 25 IV. Orders Re Amendments To Pleadings.

26         1. The Complaint has been amended to designate the correct  
27 Defendant entity, MCI Communications Services, Inc. d/b/a Verizon  
28 Business Services, the real Defendant-party in interest. The

1 parties do not currently contemplate the need for amending the  
2 pleadings.

3 V. Factual Summary.

4 A. Admitted Facts Which Are Deemed Proven Without Further  
5 Proceedings.

6 1. Plaintiff, Pac-West Telecomm, Inc. is a  
7 corporation incorporated under the laws of the State of  
8 California that operates as a competitive local exchange carrier  
9 ("CLEC") that operates primarily in Arizona, California,  
10 Colorado, Idaho, Nevada, Oregon, Texas, Utah and Washington.

11 2. Defendant, MCI Communications Services, Inc. d/b/a  
12 Verizon Business Services, is a corporation incorporated under  
13 the laws of the State of Delaware that operates as an  
14 interexchange carrier that provides interstate and intrastate  
15 interexchange service throughout the United States.

16 3. Commencing in July 2009, Defendant disputes  
17 Plaintiff's current and past invoices and has withheld payments  
18 of disputed amounts invoiced from June 2009 through the present.

19 B. Contested Facts.

20 1. Pac-West submits that its invoices to Verizon  
21 accurately reflect the tariffed services it provides to Verizon,  
22 and have always done so. As an accommodation to Verizon, Pac-  
23 West has agreed to reformat and make other cosmetic changes to  
24 its invoices at Verizon's request to enable Verizon to (re)verify  
25 that Pac-West is indeed providing Verizon the services for which  
26 it bills Verizon. By these actions, however, Pac-West does not  
27 admit that its invoices, as previously formatted, were in any way  
28 deficient or did not provide Verizon with sufficient information

1 to calculate the charges owed to Pac-West for the services Pac-  
2 West has performed for Verizon pursuant to the terms and  
3 conditions of Pac-West's tariffs.

4 2. The nature of the telecommunications traffic for  
5 which Pac-West has billed Verizon.

6 3. The amount of the traffic for which Pac-West has  
7 billed Verizon that is jurisdictionally interstate and  
8 intrastate.

9 4. The amount of the traffic for which Pac-West has  
10 billed Verizon that is originated by or delivered to customers of  
11 wireless carriers.

12 5. The amount of the traffic for which Pac-West has  
13 billed Verizon that is originated by or delivered to customers of  
14 Voice over Internet Protocol ("VoIP") providers.

15 6. Whether the entities to (or from) which Pac-West  
16 delivered (or received) the traffic for which it billed Verizon  
17 are *bona fide* end-user customers of Pac-West.

18 7. The facilities Pac-West uses in carrying the  
19 traffic for which it billed Verizon.

20 8. The number of minutes of traffic for which Pac-  
21 West billed Verizon that Pac-West actually routed over its CLEC  
22 network.

23 9. The central offices used by Pac-West or other  
24 carriers to switch the traffic for which Pac-West billed Verizon.

## 25 VI. Legal Issues.

### 26 A. Uncontested.

27 1. Jurisdiction exists under 28 U.S.C. § 1331 and 47  
28 U.S.C. §§ 151, et seq. Jurisdiction is also invoked under 28

1 U.S.C. § 1367.

2 2. Venue is proper under 28 U.S.C. § 1391.

3 3. The parties agree that for supplemental claims  
4 where applicable tariffs apply, the substantive law of the State  
5 of Arizona, California, Colorado, Idaho, Nevada, Oregon, Texas,  
6 Utah and Washington will provide the rule of decision.

7 4. The parties are regulated telecommunications  
8 carriers. As regulated telecommunications carriers, the parties  
9 are subject to the Communications Act of 1934, 47 U.S.C. §§ 151,  
10 et seq., as amended by the Telecommunications Act of 1996. CLECs  
11 such as Plaintiff are generally required or permitted to file  
12 access service tariffs with the FCC and state public service  
13 commissions to set forth the rates, terms and conditions of the  
14 access services CLECs provide to IXCs.

15 5. The FCC and state public service commissions have  
16 jurisdiction over the access charges that apply to any given  
17 interexchange call, depending upon whether the call is interstate  
18 (FCC) or intrastate (state public service commission). With  
19 regard to access services provided to IXCs for interstate  
20 traffic, in 2001, the FCC issued its *CLEC Access Charge Order I*,  
21 in which it modified its existing access charge rules to regulate  
22 CLEC access rates by more closely aligning CLEC access rates with  
23 those of the ILECs. The FCC established a "benchmark" or "safe  
24 harbor" at or under which CLEC access rates are presumed just and  
25 reasonable as a matter of law. Under the FCC's regulations, the  
26 benchmark declined over a three-year period until it reached the  
27 competing ILEC's rate. CLECs need not, however, mirror the  
28 ILECs' rate structures. In two subsequent orders issued in 2004

1 and 2008 - the *CLEC Access Charge Order II and III* - the FCC  
2 amended and clarified its "benchmark" rules.

3           6. This Court has jurisdiction over the claims  
4 asserted in Pac-West's First Amended Complaint and over the  
5 counterclaims asserted in Verizon's Answer to Complaint and  
6 Counterclaims.

7           B. Contested.

8           1. Verizon has asserted various legal arguments to  
9 excuse its unlawful refusal to pay Pac-West's tariffed access  
10 charges as invoiced. Verizon's first argument is that Pac-West's  
11 tariffs are void because they contain cross-references to other  
12 carriers' tariffs. Pac-West submits that Verizon's argument in  
13 this regard is without merit, as it ignores the applicable FCC  
14 tariffing regulations for non-dominant carriers that expressly  
15 permit carriers like Pac-West to cross-reference dominant  
16 carriers' tariffs, and further ignores controlling precedent  
17 holding that Verizon does not have a private right of action to  
18 seek relief from this Court based on the (inapposite) tariffing  
19 regulations on which Verizon relies. In any case, Pac-West's  
20 tariffs, and the rates, terms and conditions contained in those  
21 tariffs, comply with all applicable federal and state  
22 regulations.

23           2. Verizon further asserts that Plaintiff is not  
24 properly jurisdictionalizing the traffic that Pac-West carries  
25 for Defendant, and as a result Pac-West is purportedly applying  
26 one of Pac-West's intrastate tariffs when Plaintiff's interstate  
27 tariff allegedly should apply. Pac-West, however, disputes  
28

1 Verizon's submitted Percentage Interstate Usage<sup>1</sup> ("PIU") factor  
2 because it is not based on data from its actual call flows, but  
3 rather on Verizons' erroneous legal conclusions concerning  
4 various "sub-categories" of traffic and/or the protocol in which  
5 a particular call is generated or received by the applicable  
6 caller. Foremost among Defendant's mistaken arguments is that  
7 all traffic carried by Pac-West that is transmitted in Voice-  
8 over-Internet Protocol ("VoIP") is jurisdictionally interstate,  
9 even if the beginning and end points of the call are within the  
10 same state. No FCC order or regulation, however, supports  
11 Verizon's position that a LEC cannot assess originating or  
12 terminating switched access charges for such VoIP traffic  
13 pursuant to a LEC's intrastate access tariff. On the contrary,  
14 Pac-West's position is that VoIP traffic is compensable under its  
15 federal or intrastate tariffs, depending on the end points of the  
16 particular call, just as a call placed in the traditional time  
17 division multiplexing ("TDM") protocol would be.

18 3. Verizon further objects to other artificial  
19 subcategories of traffic that Pac-West handles on behalf of  
20 Verizon, such as toll-free traffic that is initiated by wireless  
21 carriers' customers. But much like Verizon's arguments  
22

---

23 <sup>1</sup> It is a common practice in the telecommunications industry  
24 that in lieu of submitting call detail records that measure with  
25 certainty the beginning and end points for each call - which will  
26 thus enable an accurate determination of the jurisdiction of each  
27 call, but which is extremely costly to do - carriers instead  
28 submit a PIU as a good faith approximation of the jurisdictional  
breakdown or traffic. As an example, if a carrier submits a PIU  
of 60, 60% of the traffic will be billed at the interstate rate,  
while 40% will be billed at the intrastate rate.

1 concerning VoIP traffic, Verizon relies upon distinctions without  
2 a difference in terms of whether a particular subset of  
3 telecommunications traffic is compensable under Pac-West's  
4 applicable tariff.

5 4. Verizon, moreover, has refused to abide by the  
6 dispute-resolution provisions of Pac-West's tariffs. For  
7 example, Pac-West's California intrastate access tariff requires  
8 a carrier-customer to dispute any charges billed pursuant to that  
9 tariff within ninety days, which Verizon failed to do.

10 5. Equally irrelevant is Verizon's characterization  
11 of Pac-West's commercial relationships with some of its  
12 customers. Verizon asserts that Pac-West treats certain of its  
13 customers, such as VoIP providers, as business partners rather  
14 than as bona fide customers, which, according to Verizon,  
15 disqualifies these entities as "end-users" under Pac-West's  
16 tariffs. Pac-West's contracts with these customers, however,  
17 comply with federal and state regulations, and in no way alter or  
18 affect the access services that Pac-West provides to Verizon.  
19 This is but another example of Verizon attempting to obfuscate  
20 the simple fact that Pac-West has provided, and continues to  
21 provide, Verizon with the switched access services, as defined in  
22 Plaintiff's tariffs, that enable Verizon to provide its for-  
23 profit long-distance services, and that Verizon is improperly  
24 trying to co-opt those services without due compensation.

25 6. The rates, terms, and conditions contained within  
26 Pac-West's federal and state tariffs for interstate and  
27 intrastate switched access services Pac-West provided to IXCs  
28 pursuant to those tariffs during the periods for which Pac-West

1 is seeking to collect amounts allegedly due from Verizon.

2           7. Whether Pac-West's federal and state tariffs were  
3 void *ab initio* or otherwise invalid.

4           8. Whether the terms of Pac-West's tariffs were  
5 consistent with applicable federal and state regulations.

6           9. Whether Pac-West's interstate tariffed access  
7 charge rates exceeded the rates permitted to be tariffed under  
8 the FCC's benchmark rules.

9           10. Whether Pac-West's invoiced charges to Verizon  
10 were consistent with the terms of its tariffs.

11           11. Whether the services described in its federal and  
12 state tariffs for which Pac-West invoiced Verizon are the  
13 services Pac-West provided to Verizon.

14           12. Whether, if the entities to (or from) which Pac-  
15 West delivered (or received) the traffic for which it billed  
16 Verizon were not *bona fide* end-user customers of Pac-West, Pac-  
17 West was entitled to bill Verizon pursuant to the terms of its  
18 federal and state access charge tariffs for traffic Pac-West  
19 delivered to (or received from) those customers.

20           13. Whether, if Pac-West billed Verizon for minutes of  
21 traffic that Pac-West did not route over its CLEC network, Pac-  
22 West is entitled to recover the amounts it billed for that  
23 traffic.

24           14. Whether Pac-West complied with the applicable  
25 provisions of its federal and state tariffs regarding the use of  
26 a Percentage Interstate Usage factor to invoice Verizon.

27           15. Whether Pac-West would be unjustly enriched by  
28 retaining amounts it has received from Verizon to which it was

1 not entitled.

2 16. Damages for any issue on which a party is held  
3 liable.

4 17. Attorneys' fees that either party is entitled to  
5 recover, if any.

6 VII. Consent to Magistrate Judge Jurisdiction.

7 1. The parties have not consented to transfer the  
8 case to the Magistrate Judge for all purposes, including trial.

9 VIII. Corporate Identification Statement.

10 1. Any nongovernmental corporate party to any action in  
11 this court shall file a statement identifying all its parent  
12 corporations and listing any entity that owns 10% or more of the  
13 party's equity securities. A party shall file the statement with  
14 its initial pleading filed in this court and shall supplement the  
15 statement within a reasonable time of any change in the  
16 information.

17 IX. Discovery Plan and Cut-Off Date.

18 A. Discovery Relating to Electronic, Digital, and/or  
19 Magnetic Data.

20 1. Notification of Intent to Seek Electronically  
21 Stored Information.

22 a. Each party expressed its intent to seek  
23 electronically stored information, as well as to identify the  
24 categories of such information.

25 b. Plaintiff intends to seek the following  
26 categories of electronically stored information:

27 i. Electronically stored documents and  
28 information, as defined in Fed. R. Civ. P. 34(a)(1)(A),

1 including, without limitation, e-mails, word processing  
2 documents, spreadsheets, databases and PDFs;

3           ii. Exchange Message Interface ("EMI")  
4 records, Call Detail Records ("CDRs"), and any electronically  
5 stored documents, data, or information derived from such records;

6           iii. Electronically stored data or other  
7 information used in the course of calculating or creating  
8 invoices;

9           iv. Electronically stored data or other  
10 information used in the course of calculating or creating  
11 invoices;

12           v. Electronically stored financial and  
13 accounting data or other information relevant to the revenues and  
14 profits Verizon earns for the traffic at issue in this case;

15           vi. Electronically stored financial and  
16 accounting data or other information relevant to the rates paid  
17 by Verizon to other carriers for services comparable to those  
18 Pac-West provides to Verizon.

19           c. Defendant intends to seek the following  
20 categories of electronically stored information:

21           i. Electronically stored documents and  
22 information, as defined in Fed. R. Civ. P. 34(a)(1)(A), including  
23 without limitation, emails, word processing documents,  
24 spreadsheets, databases, and PDFs;

25           ii. Exchange Message Interface ("EMI")  
26 records, Call Detail Records ("CDRs"), and any electronically  
27 stored documents, data, or information derived from such records;

28           iii. Electronically stored data or other

1 information used in the course of calculating or creating  
2 invoices;

3 iv. Electronically stored financial and  
4 accounting data or other information relevant to the damages  
5 claimed by Pac-West in this litigation.

6 2. Conferral Regarding Electronically Stored  
7 Information.

8 a. Computer-based information.

9 i. The parties have conferred and  
10 represented to each other that litigation hold notices have been  
11 sent to the appropriate officers and employees within their  
12 respective organizations, which the parties have agreed will be  
13 sufficient to avoid accusations of spoliation.

14 ii. E-mail information: The parties have  
15 conferred regarding e-mail relevant to claims and defenses at  
16 issue in this litigation and have agreed to work together to  
17 develop mutually agreeable search terms to capture such  
18 information.

19 iii. Deleted information: The parties do  
20 not anticipate the need to restore deleted information, except  
21 for information that is readily accessible, such as from a  
22 "Recycle Bin," "Deleted Items" folder, or comparable location on  
23 a user's computer.

24 iv. Back-up data: The parties do not  
25 anticipate the need for discovery of any back-up data.

26 B. The Court orders:

27 1. The parties have exchanged their Rule 26(a)(1)  
28 initial disclosures.

1           2.     The parties are ordered to file mid-discovery  
2 status reports on or before February 14, 2011.

3           3.     February 25, 2011 at 8:15 a.m. in Courtroom 3 is  
4 the date scheduled for a mid-discovery status conference. The  
5 parties are authorized to appear telephonically.

6           4.     The parties are ordered to complete all non-expert  
7 discovery on or before April 11, 2011.

8           5.     The parties are directed to disclose all expert  
9 witnesses, in writing, on or before May 9, 2011. Any rebuttal or  
10 supplemental expert disclosures will be made on or before June 6,  
11 2011. The parties will comply with the provisions of Federal  
12 Rule of Civil Procedure 26(a) (2) regarding their expert  
13 designations. Local Rule 16-240(a) notwithstanding, the written  
14 designation of experts shall be made pursuant to F. R. Civ. P.  
15 Rule 26(a) (2), (A) and (B) and shall include all information  
16 required thereunder. Failure to designate experts in compliance  
17 with this order may result in the Court excluding the testimony  
18 or other evidence offered through such experts that are not  
19 disclosed pursuant to this order.

20           6.     The parties are ordered to complete all discovery,  
21 including experts, on or before July 1, 2011.

22           7.     The provisions of F. R. Civ. P. 26(b) (4) shall  
23 apply to all discovery relating to experts and their opinions.  
24 Experts may be fully prepared to be examined on all subjects and  
25 opinions included in the designation. Failure to comply will  
26 result in the imposition of sanctions.

27           8.     The parties have agreed to limit the number of  
28 sets of requests for production propounded by each party to three

1 sets, but otherwise the parties do not propose further changes in  
2 the limits on discovery imposed by the Federal Rules of Civil  
3 Procedure. The parties do not anticipate the need to take  
4 discovery outside of the United States, nor do the parties  
5 anticipate utilizing video and/or sound recording of depositions.  
6 The parties will negotiate and agree upon an appropriate  
7 protective order for the discovery materials that will be  
8 produced and exchanged in this case.

9 X. Pre-Trial Motion Schedule.

10 1. All Non-Dispositive Pre-Trial Motions, including any  
11 discovery motions, will be filed on or before July 20, 2011, and  
12 heard on August 26, 2011, at 9:00 a.m. before Magistrate Judge  
13 Gary S. Austin in Courtroom 10.

14 2. In scheduling such motions, the Magistrate  
15 Judge may grant applications for an order shortening time  
16 pursuant to Local Rule 142(d). However, if counsel does not  
17 obtain an order shortening time, the notice of motion must comply  
18 with Local Rule 251.

19 3. All Dispositive Pre-Trial Motions are to be  
20 filed no later than August 1, 2011, and will be heard on  
21 September 26, 2011, at 10:00 a.m. before the Honorable Oliver W.  
22 Wanger, United States District Judge, in Courtroom 3, 7th Floor.  
23 In scheduling such motions, counsel shall comply with Local Rule  
24 230.

25 XI. Pre-Trial Conference Date.

26 1. October 31, 2011, at 11:00 a.m. in Courtroom 3, 7th  
27 Floor, before the Honorable Oliver W. Wanger, United States  
28 District Judge.

1           2.     The parties are ordered to file a Joint Pre-  
2 Trial Statement pursuant to Local Rule 281(a)(2).

3           3.     Counsel's attention is directed to Rules 281  
4 and 282 of the Local Rules of Practice for the Eastern District  
5 of California, as to the obligations of counsel in preparing for  
6 the pre-trial conference. The Court will insist upon strict  
7 compliance with those rules.

8 XII. Motions - Hard Copy.

9           1.     The parties shall submit one (1) courtesy paper copy to  
10 the Court of any motions filed. Exhibits shall be marked with  
11 protruding numbered or lettered tabs so that the Court can easily  
12 identify such exhibits.

13 XIII. Trial Date.

14           1.     December 13, 2011, at the hour of 9:00 a.m. in  
15 Courtroom 3, 7th Floor, before the Honorable Oliver W. Wanger,  
16 United States District Judge.

17           2.     This is a non-jury trial.

18           3.     Counsels' Estimate Of Trial Time:

19               a.    Three days.

20           4.     Counsels' attention is directed to Local Rules  
21 of Practice for the Eastern District of California, Rule 285.

22 XIV. Settlement Conference.

23           1.     A Settlement Conference is scheduled for July 5, 2011,  
24 at 10:00 a.m. in Courtroom 10 before the Honorable Gary S.  
25 Austin, United States Magistrate Judge.

26           2.     Unless otherwise permitted in advance by the  
27 Court, the attorneys who will try the case shall appear at the  
28 Settlement Conference with the parties and the person or persons

1 having full authority to negotiate and settle the case on any  
2 terms at the conference.

3 3. Permission for a party [not attorney] to attend  
4 by telephone may be granted upon request, by letter, with a copy  
5 to the other parties, if the party [not attorney] lives and works  
6 outside the Eastern District of California, and attendance in  
7 person would constitute a hardship. If telephone attendance is  
8 allowed, the party must be immediately available throughout the  
9 conference until excused regardless of time zone differences.  
10 Any other special arrangements desired in cases where settlement  
11 authority rests with a governing body, shall also be proposed in  
12 advance by letter copied to all other parties.

13 4. Confidential Settlement Conference Statement.  
14 At least five (5) days prior to the Settlement Conference the  
15 parties shall submit, directly to the Magistrate Judge's  
16 chambers, a confidential settlement conference statement. The  
17 statement should not be filed with the Clerk of the Court nor  
18 served on any other party. Each statement shall be clearly  
19 marked "confidential" with the date and time of the Settlement  
20 Conference indicated prominently thereon. Counsel are urged to  
21 request the return of their statements if settlement is not  
22 achieved and if such a request is not made the Court will dispose  
23 of the statement.

24 5. The Confidential Settlement Conference  
25 Statement shall include the following:

26 a. A brief statement of the facts of the  
27 case.

28 b. A brief statement of the claims and

1 defenses, i.e., statutory or other grounds upon which the claims  
2 are founded; a forthright evaluation of the parties' likelihood  
3 of prevailing on the claims and defenses; and a description of  
4 the major issues in dispute.

5 c. A summary of the proceedings to date.

6 d. An estimate of the cost and time to be  
7 expended for further discovery, pre-trial and trial.

8 e. The relief sought.

9 f. The parties' position on settlement,  
10 including present demands and offers and a history of past  
11 settlement discussions, offers and demands.

12 XV. Request For Bifurcation, Appointment Of Special Master,  
13 Or Other Techniques To Shorten Trial.

14 A. Stipulation to Consolidated Discovery: The parties  
15 agree that discovery may be consolidated with discovery in the  
16 related case *Pac-West Telecomm, Inc. v. AT&T Communications*  
17 *California, Inc.*, 1:10-cv-0968 OWW GSA. The parties further  
18 agree that discovery taken in each of the cases may be used  
19 reciprocally in the other case without the necessity for motion  
20 or other Court order.

21 B. The parties do not suggest bifurcation or phasing, but  
22 reserve the right to determine whether a consolidated  
23 presentation of the Plaintiff's evidence, or any other party's  
24 evidence, would serve the interests of the parties and justice.

25 XVI. Related Matters Pending.

26 1. *Pac-West Telecomm, Inc. v. AT&T Communications of*  
27 *California, Inc.*, 1:10-cv-0968 OWW GSA.

28 ///

1 XVII. Compliance With Federal Procedure.

2 1. The Court requires compliance with the Federal  
3 Rules of Civil Procedure and the Local Rules of Practice for the  
4 Eastern District of California. To aid the court in the  
5 efficient administration of this case, all counsel are directed  
6 to familiarize themselves with the Federal Rules of Civil  
7 Procedure and the Local Rules of Practice of the Eastern District  
8 of California, and keep abreast of any amendments thereto.

9 XVIII. Effect Of This Order.

10 1. The foregoing order represents the best  
11 estimate of the court and counsel as to the agenda most suitable  
12 to bring this case to resolution. The trial date reserved is  
13 specifically reserved for this case. If the parties determine at  
14 any time that the schedule outlined in this order cannot be met,  
15 counsel are ordered to notify the court immediately of that fact  
16 so that adjustments may be made, either by stipulation or by  
17 subsequent scheduling conference.

18 2. Stipulations extending the deadlines contained  
19 herein will not be considered unless they are accompanied by  
20 affidavits or declarations, and where appropriate attached  
21 exhibits, which establish good cause for granting the relief  
22 requested.

23 3. Failure to comply with this order may result in  
24 the imposition of sanctions.

25 IT IS SO ORDERED.

26 Dated: October 8, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE