

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**PAC-WEST TELECOMM, INC.**

Case No. 1:10-cv-01051-OWW-GSA

Plaintiff,

ORDER ON PAC-WEST'S MOTION FOR  
PRIMARY JURISDICTION REFERRAL AND  
STAY PENDING FCC RULING

v.

(DOC. 32)

MCI COMMUNICATIONS SERVICES,  
INC. d/b/a VERIZON BUSINESS  
SERVICES

Defendant.

Upon consideration of Plaintiff Pac-West Telecomm, Inc.'s Motion for Primary Jurisdiction Referral and Stay Pending FCC Ruling (Doc. 32), memoranda in support, and the opposition of Defendant MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") thereto, all matters of which the Court may take judicial notice, and the reasons stated in court on March 14, 2011 and the Memorandum Decision of March 23, 2011 (Doc. 48):

IT IS ORDERED THAT Pac-West's Motion is GRANTED to stay the case for six months, including the entire case schedule and trial date;

FURTHER ORDERED THAT Pac-West shall immediately, on or before ten (10) days following date of service of this Order, initiate administrative proceedings and for declaratory relief before the Federal Communications Commission ("FCC") to address

1 the federal tariff and billing issues presented in this dispute,  
2 including: (1) the lawfulness and validity of Pac-West's federal  
3 tariffs; (2) whether Pac-West's tariffed rates can be applied to  
4 traffic that originates or terminates in Internet Protocol format  
5 ("VoIP"); (3) whether Pac-West's federal tariffs and its invoices  
6 to Verizon comply with the FCC's "Benchmark Rules," 47 C.F.R. §  
7 61.26; (4) whether Pac-West's federal tariff's omission of listed  
8 rates for switched access rates invalidates the tariff; and (5)  
9 the meaning of relevant disputed terms in Pac-West's tariffs,  
10 including but not limited to "end user," "customer," and  
11 "carrier."

13 FURTHER ORDERED THAT the parties shall submit a report to  
14 the Court within 120 days following March 23, 2011, the date of  
15 the Court's Memorandum Decision and Order (Doc. 48), apprising  
16 the Court of the status of the FCC proceedings;

18 FURTHER ORDERED THAT, the stay shall not affect outstanding  
19 discovery requests pending before Magistrate Judge Austin, to the  
20 extent that Magistrate Judge Austin deems it appropriate to  
21 resolve such outstanding discovery requests. Discovery shall  
22 continue as to state claims, unless amounts claimed will be  
23 entirely decided by FCC review.

25 || DATE: April 8, 2011

/s/ Oliver W. Wanger

Oliver W. Wanger  
United States District Judge