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

2 JUDGE CLARK: Good afternoon. It's  
3 approximately 1:40 p.m., November 6th, 2006, in the  
4 Commission's hearing room in Olympia, Washington. This  
5 is the time and the place set for a prehearing  
6 conference in the matter of the petition for  
7 arbitration of an interconnection agreement between  
8 Qwest Corporation and Eschelon Telecom, Incorporated,  
9 pursuant to 47 United States Code, Section 252(b),  
10 given Docket Number UT-063061, Patricia Clark,  
11 administrative law judge for the Commission presiding.

12 This matter came before the Commission on  
13 petition by Qwest for arbitration of an interconnection  
14 agreement pursuant to the Telecommunications Act of  
15 1996. The prehearing conference in this matter was  
16 scheduled by Order No. 5 in this proceeding served on  
17 October 11th, 2006.

18 I'll take appearances on behalf of the  
19 parties. Appearing on behalf of Qwest?

20 MR. TOPP: Jason Topp, T-o-p-p.

21 JUDGE CLARK: I need you to do a full  
22 appearance, if you would, Mr. Topp, including your  
23 address, phone, fax, and e-mail.

24 MR. TOPP: 200 South 5th Street, Minneapolis,  
25 Minnesota, 55402; phone number, (612) 672-8905; fax

0028

1 number, (612) 672-8911, and e-mail address is  
2 jason.topp@qwest.com.

3 JUDGE CLARK: Appearing on behalf of  
4 Eschelon?

5 MR. KOPTA: Gregory Kopta of the law firm  
6 Davis, Wright, Tremaine, LLP, on behalf of Eschelon.

7 JUDGE CLARK: And address, phone number?

8 MR. KOPTA: 2600 Century Square, 1501 Fourth  
9 Avenue, Seattle, Washington, 98101-1688; phone, (206)  
10 628-7692; fax, (206) 628-7699; e-mail,  
11 gregkopta@dwt.com.

12 JUDGE CLARK: Thank you.

13 MR. MERZ: And this is Greg Merz of the law  
14 firm Gray, Plant and Mooty law firm. Our address is  
15 500 IDF Center, 80 South Eighth Street in Minneapolis,  
16 Minnesota, 55402. My telephone number is (612)  
17 632-3257. My fax number is (612) 632-4257, and my  
18 e-mail address is gregory.merz@gpm law.com.

19 JUDGE CLARK: Everyone is appearing  
20 telephonically for this afternoon's prehearing  
21 conference, so I just want to remind you to state your  
22 name before you speak so that the court reporter will  
23 be able to get an accurate transcript.

24 The sole purpose of this afternoon's  
25 prehearing conference is to establish further

0029

1 procedural deadlines. In this matter, the Commission  
2 issued Order No. 5 granting parties' request for  
3 continuance of certain deadlines, and at the time this  
4 request was filed, the parties were mostly concerned  
5 with a deadline for submission of certain prefiled  
6 testimony. That deadline, of course, has been  
7 extended, but we need to fill in the other blanks.

8           The first thing I want to bring to the  
9 parties' attention is I'm a little concerned about the  
10 time frame between rebuttal testimony and the  
11 evidentiary hearing. There are approximately 11 days  
12 in between rebuttal testimony and the evidentiary  
13 hearings, and I'm a little concerned that that may not  
14 be sufficient time for the parties to adequately review  
15 all of the prefiled rebuttal and prepare for hearing.

16           So I'm interested first of all in knowing if  
17 the parties want to retain that particular filing  
18 schedule.

19           MR. MERZ: This is Greg Merz with Eschelon,  
20 and we are comfortable with that schedule. It's  
21 somewhat compressed, but we are dealing with a similar  
22 schedule here in Minnesota, so I don't know that it  
23 presents a problem, at least from our perspective.

24           MR. TOPP: We did work with a similar set of  
25 time lines in Minnesota, so I think that we can work

0030

1 with it. Obviously, a difference in Washington is  
2 having to file cross-examination exhibits, but at least  
3 we have been through that process one time before.

4 One suggestion I might make is in Minnesota,  
5 we did complete the hearing in five days, and one way  
6 to add a little bit of time might be to start the  
7 hearing on the 29th, and that would give us a little  
8 bit more time to fit things in between.

9 JUDGE CLARK: We certainly have that time  
10 available in the Commission schedule.

11 MR. TOPP: I haven't talked with Mr. Merz or  
12 Mr. Kopta about that, but that is a possibility.

13 MR. MERZ: We think that would be a pretty  
14 good suggestion, and I don't see any reason why we  
15 wouldn't finish in five days in this case as well.

16 JUDGE CLARK: My suggestion, because I'm also  
17 concerned about the amount of time I have to review the  
18 rebuttal testimony and prepare for hearing, so I would  
19 feel a lot more comfortable with extending the hearing  
20 to January 29th, 2007, and then continue until we've  
21 completed the hearing.

22 MS. ANDERL: Excuse me. This is Lisa Anderl  
23 joining late. My apologies.

24 JUDGE CLARK: Ms. Anderl, what we are  
25 discussing now is the length of time between rebuttal

0031

1 testimony and the evidentiary hearing. The suggestion  
2 is that in Minnesota, the parties were able to complete  
3 the hearing in five days and anticipate needing a  
4 similar amount of time for hearing in the Washington  
5 proceeding. So rather than starting on January 23rd,  
6 the evidentiary hearing would commence on January 29th.  
7 Do you have an opinion regarding that?

8 MR. TOPP: Lisa, this is Jason Topp.

9 MS. ANDERL: I hoped that Qwest wasn't  
10 completely unrepresented. I had an unusual for me  
11 scheduling glitch. Jason, I'm going to defer to you.  
12 I don't think I would have anything in particular to  
13 add.

14 JUDGE CLARK: Then I'm going to reschedule  
15 the hearing to begin on January 29th. If it turns out  
16 we need additional days, we can work that out as the  
17 hearing proceeds.

18 The second thing I have on my agenda for this  
19 afternoon is the disputed issue matrix that will  
20 separate the legal and factual issues, and during a  
21 previous prehearing conference, the parties expressed  
22 an interest in not having to do this until after  
23 responsive testimony had been prepared. That  
24 responsive testimony is due on December 4th, 2006, so I  
25 need the parties to come up with a deadline for the

0032

1 preparation of that matrix.

2 MR. MERZ: I'm just looking at some of the  
3 other dates that we have in December in some of these  
4 other cases, and as it turns out, the month of December  
5 is one of the lighter months in terms of deadlines, and  
6 Your Honor, I don't know if you have any particular  
7 preference.

8 JUDGE CLARK: No, actually, I don't. What  
9 I'm concerned is the amount of time the parties feel  
10 that they will need to complete the matrix. I have  
11 been reviewing the direct testimony that the parties  
12 presented, and it does appear that there are a number  
13 of issues that are actually legal issues as opposed to  
14 factual issues that might be better segregated in this  
15 type of matrix.

16 MR. KOPTA: One of the things that I know we  
17 had talked about as a possibility was having some  
18 discussion with Your Honor based on an evaluation of  
19 the parties as to which issues are which, and there was  
20 some mixed questions -- so I'm not sure there has been  
21 more discussion along those lines, if this is something  
22 being done in other states, but I'm just wondering  
23 which is the chicken and which is the egg here as to  
24 whether we need to have that discussion before we file  
25 a list or try to file some preliminary list and have

0033

1 discussion afterwards.

2 JUDGE CLARK: I think it would be helpful to  
3 file the preliminary matrix and then have that  
4 discussion if necessary. I think it's going to be  
5 pretty apparent when you sit down to prepare the matrix  
6 about the segregation of these issues. I don't think  
7 it's going to end up being as complicated as everyone  
8 thinks just because you haven't done it in other  
9 jurisdictions. Some of the issues are very  
10 straightforward, I think, if you take a look at the  
11 matrix the parties have agreed upon thus far and the  
12 testimony itself.

13 So why don't we establish a deadline today,  
14 at least for a preliminary matrix, and then if you feel  
15 the need to discuss that further with me, I can  
16 certainly make arrangements to have another prehearing  
17 conference on relatively short notice, unless you want  
18 to build one in today.

19 MR. KOPTA: I will defer to those who had the  
20 experience in Minnesota as to what the need might be  
21 for further discussion. My understanding is that not  
22 every issue that was on the matrix was addressed in the  
23 hearing, and that might be a starting place in terms of  
24 identifying issues that the parties believe the hearing  
25 time would be beneficial.

0034

1           MR. MERZ: Here's what I would suggest: We  
2 have had discussions kind of all along about the fact  
3 that some of these issues are more susceptible to  
4 briefing, that they represent more legal issues than  
5 factual issues, and what I would propose is we are  
6 going to be filing our responsive testimony on December  
7 14th. If we commit to filing this revised matrix the  
8 18th, or at least during the week of the 18th, that  
9 gives us enough time I think to accomplish that.  
10 Between now and then, I'm sure the parties will have  
11 some discussion about how we can further sharpen issues  
12 that identify those that really are legal issues that  
13 won't require more than briefing.

14           JUDGE CLARK: All right.

15           MR. TOPP: I'm thinking December 20th might  
16 be a perfect day. It's in the middle of the week and  
17 will give us some time after the deadline.

18           MR. MERZ: That would be fine with us.

19           JUDGE CLARK: Don't forget to identify  
20 yourselves for the record. Just one little correction.  
21 Your responsive testimony is due on the 4th, not the  
22 14th.

23           MR. MERZ: Yes, that's correct.

24           JUDGE CLARK: Then we have prefiled rebuttal  
25 testimony on January 12th, 2007. We need a deadline,

0035

1 and it should be the same deadline for the parties to  
2 e-mail their estimated cross-examination times,  
3 preferred order of witnesses, and list of  
4 cross-examination exhibits as well as distribution of  
5 paper copies of those exhibits.

6 MR. MERZ: As I was looking at the schedule,  
7 and if I would try to keep the intervals essentially  
8 the same, the date that I come up with is January 16th  
9 for both of those things, and that is the date too that  
10 I think works out reasonably well with the schedule  
11 that we have in some of the other states.

12 MR. TOPP: I would suggest given that we are  
13 bumping back the hearing starting day, and if we are  
14 going to provide copies on the same date that we  
15 provide the list, I would suggest that we make that  
16 date the 23rd or else at the end of the week prior.  
17 That gives us a little more time in between the  
18 surrebuttal testimony being filed on the 12th and us  
19 needing to have our cross-examination exhibits  
20 together, which I could imagine could be a fair amount  
21 of work depending on what sort of new testimony is put  
22 in.

23 MR. MERZ: And that would be acceptable to  
24 Eschelon as well.

25 JUDGE CLARK: All right, January 23rd. We

0036

1 need a prehearing conference to mark exhibits. This is  
2 an exercise I have to warn you you may not need a  
3 hearing conference for. I will try to prepare the  
4 exhibit list in advance of the arbitration and e-mail  
5 it to all the parties, and so to the extent there  
6 aren't any corrections or any other matters that we  
7 need to address, that prehearing conference could be  
8 vacated. However, it is very helpful to have one built  
9 into the schedule in the event we need it. Do the  
10 parties have a suggestion for that date? I would be  
11 inclined to pick one of the dates we formerly had set  
12 aside for hearing.

13 MR. TOPP: That makes sense to me.

14 JUDGE CLARK: How about January 25th for the  
15 prehearing, if necessary?

16 MR. MERZ: That would be fine with us.

17 JUDGE CLARK: January 25th then. We need a  
18 deadline for simultaneous initial briefing after the  
19 arbitration has been concluded.

20 MR. MERZ: I was going to propose March 6th  
21 as the date for that, which keeps us again fairly close  
22 to the intervals we had before.

23 JUDGE CLARK: To the extent we can keep with  
24 those intervals, that would be very helpful. Is a date  
25 of March 6th objectionable.

0037

1 MR. TOPP: That's fine from the perspective  
2 of Qwest.

3 JUDGE CLARK: And then we need a deadline for  
4 simultaneous responsive briefs.

5 MR. MERZ: I was going to propose April 3rd  
6 for that, which is a little bit quicker than would have  
7 been under our previous interval, but just to kind of  
8 make it work with some of the other deadlines we have,  
9 April 3rd is a date that works out better.

10 JUDGE CLARK: Is there any objection to April  
11 3rd?

12 MR. TOPP: No objection.

13 JUDGE CLARK: Then keeping with the same  
14 interval, the arbitrator's report and order would be  
15 due 90 days after the brief, so that would be July.  
16 Petitions for review of the arbitrator's report and  
17 order keeping with the same order would be 30 days  
18 after the report, which would bring us to approximately  
19 August 3rd.

20 MR. TOPP: That looks all right.

21 JUDGE CLARK: Then proposed interconnection  
22 agreement as well as answers to petitions for review of  
23 the arbitrator's report and order, and what we have is  
24 approximately another 30 days. Is that acceptable?

25 MR. MERZ: That would be fine for us.

0038

1           JUDGE CLARK: Do the parties at this juncture  
2 want to build in dates for oral argument before the  
3 Commissioners and the Commission decision, or should  
4 those be remained open to be determined at a later  
5 time?

6           MR. MERZ: I think under the previous  
7 schedule we left those open, and I would be comfortable  
8 with that too.

9           MR. TOPP: I would be comfortable with that  
10 approach as well, Your Honor.

11           JUDGE CLARK: I think that might be the most  
12 beneficial way to go unless we wait and see what  
13 happens with the report and the post-interconnection  
14 agreement as well as the answers to any petitions.

15           That is everything I have on my agenda for  
16 this afternoon. Are there any other matters that the  
17 parties feel they need to address?

18           MR. MERZ: Nothing from our perspective.

19           MR. TOPP: Nothing from our perspective.

20           JUDGE CLARK: Will either of the parties be  
21 ordering a transcript of this afternoon's proceeding?

22           MR. MERZ: We will.

23           MR. TOPP: I'll defer to Lisa if she decides  
24 otherwise, but I see no need for a transcript.

25           MS. ANDERL: We'll pass on this one.

0039

1                   JUDGE CLARK:  If there is nothing further to  
2 consider this afternoon, we are adjourned.

3                   (Prehearing conference adjourned at 2:00 p.m.)

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