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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 ESCHELON TELECOM OF) DOCKET NO. UT-033039
4 WASHINGTON, INC.,)
5 Petitioner,) Volume I
6 vs.) Pages 1 to 11
7 QWEST CORPORATION,)
8 Respondent.)
9 _____)

10 A hearing in the above matter was held on
11 October 7, 2003, from 9:30 a.m to 9:55 a.m., at 1300
12 South Evergreen Park Drive Southwest, Room 206, Olympia,
13 Washington, before Administrative Law Judge THEODORA
14 MACE.

15
16 The parties were present as follows:

17 QWEST CORPORATION, by LISA ANDERL, Attorney
18 at Law, 1600 Seventh Avenue, Suite 3206, Seattle,
19 Washington 98191, Telephone (206) 345-1574, Fax (206)
20 343-4040, E-Mail lisa.anderl@qwest.com; and via bridge
21 line by ADAM SHERR, Attorney at Law, 1600 Seventh
22 Avenue, Suite 3206, Seattle, Washington 98191, Telephone
23 (206) 345-1574, Fax (206) 343-4040, E-mail
24 asherr@qwest.com.

25 ESCHELON TELECOM OF WASHINGTON, INC., via
26 bridge line by DENNIS D. AHLERS, Attorney at Law,
27 Eschelon Telecom, Inc., 730 Second Avenue South, Suite
28 1200, Minneapolis, Minnesota 55402, Telephone (612)
29 436-6249, Fax (612) 436-6349, E-mail
30 ddahlers@eschelon.com.
31 Joan E. Kinn, CCR, RPR
32 Court Reporter

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

2 JUDGE MACE: Let's be on the record in the
3 petition of Eschelon Telecom of Washington, Inc., versus
4 Qwest Corporation. This is Docket Number UT-033039. We
5 are convened today, October the 7th, 2003, in the
6 offices of the Washington Utilities and Transportation
7 Commission in Olympia, Washington. My name is Theodora
8 Mace, I'm the Administrative Law Judge who has been
9 assigned to hold hearings in this case.

10 I would like to have the oral appearances of
11 counsel now beginning with the petitioner, and I need to
12 have the long form of your appearance, Mr. Ahlers.

13 MR. AHLERS: Thank you, Dennis Ahlers spelled
14 A-H-L-E-R-S. I'm with Eschelon Telecom, Inc., 730
15 Second Avenue South, Suite 1200, Minneapolis, Minnesota
16 55402, and the E-mail address is ddahlers@eschelon.com.

17 JUDGE MACE: Let me indicate that Mr. Ahlers
18 is appearing by telephone today.

19 Ms. Anderl.

20 MS. ANDERL: Thank you, Your Honor. Lisa
21 Anderl representing Qwest. My business address is 1600
22 Seventh Avenue, Room 3206, Seattle, Washington 98191.
23 My telephone is (206) 345-1574, my fax is (206)
24 343-4040, and my E-mail is lisa.anderl@qwest.com.

25 And it may be that Mr. Sherr is also on the

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1 bridge line.

2 JUDGE MACE: Mr. Sherr.

3 MS. ANDERL: Which is why I said may be.

4 JUDGE MACE: Yes, I'm glad that you told me
5 your E-mail, because I just received an E-mail from Lisa
6 Watson in another case, and somehow the message that I
7 replied to her got bounced back, so thank you.

8 I was advised by Simon ffitch, Assistant
9 Attorney General for Public Counsel, that he will not be
10 at the pre-hearing today. Apparently Public Counsel
11 will be making some determination of what level of
12 participation they will be having in this case and will
13 send a letter to that effect shortly.

14 May I ask now if Mr. Sherr is on the line.

15 MR. SHERR: Yes, this is Adam Sherr.

16 JUDGE MACE: Thank you.

17 The first item that I have on the agenda for
18 the pre-hearing conference is whether or not the
19 discovery rule would be invoked in this proceeding.
20 Have the parties talked about that, or do you have
21 positions on it?

22 MS. ANDERL: Your Honor, this is Lisa Anderl,
23 Mr. Ahlers and I had a brief opportunity to chat
24 somewhat about the procedural schedule and what might or
25 might not be necessary in this docket. We didn't talk

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1 specifically about discovery, we did talk though about
2 going forward on a paper record, and I don't believe
3 that Qwest thinks that it needs discovery, and I'm just
4 not sure what Eschelon's position is. We don't object
5 to the discovery rule being invoked, we're just not sure
6 of the need for it.

7 JUDGE MACE: Mr. Ahlers.

8 MR. AHLERS: Yes, that's correct. I think if
9 there was a need for discovery it would be very limited,
10 because the issues, some of the issues have to do with
11 documents that went back and forth, letters, and I don't
12 think, you know, they're really in question that those
13 letters were sent and so forth. So, you know, to the
14 extent that those could be agreed upon as being exhibits
15 or whatever, we can probably work that out.

16 I would say that we in a similar complaint in
17 Minnesota, we did a limited amount of discovery, and,
18 you know, one thing we could talk about is simply
19 importing that discovery into this case. Both sides did
20 a little bit of discovery.

21 JUDGE MACE: Well, why don't I just indicate
22 that the discovery rule will be invoked or is invoked,
23 and then if it becomes necessary you have it, it's on
24 the record, and there isn't any problem. And otherwise
25 you're free to work out any procedures that you want to

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1 with regard to that other proceeding, and that way we're
2 all covered.

3 How about a protective order, anyone feel the
4 need for a protective order in this proceeding?

5 MS. ANDERL: Qwest is not aware of any
6 confidential documents or information.

7 JUDGE MACE: Mr. Ahlers.

8 MR. AHLERS: Eschelon is not either. Again,
9 I would think if it does come to that we could come up
10 with a motion or something.

11 JUDGE MACE: Very well, why don't we proceed
12 on that basis then.

13 Turning next to the issues in the case, I
14 read through both your petition and the answer to the
15 petition. What I gleaned from that is that really the
16 only, I could be wrong about this, that the only item in
17 dispute at this point is the term of the availability of
18 the lower price for UNE-Star and also the possibility of
19 a refund or damages. Well, I don't know about damages,
20 but a refund. So is that where things stand right now,
21 or are there more issues than that?

22 MR. AHLERS: This is Dennis Ahlers, I would
23 say that's pretty much it. Since the complaint was
24 filed, Qwest and Eschelon have reached an agreement on
25 an amendment that deals with the issues going forward.

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1 So really, I think Lisa would agree with this, really
2 the only issue left is when does the -- when were we
3 entitled to a lower rate, if at all.

4 MS. ANDERL: Yes, I do agree that that does
5 appear to be the only issue left, although I do think
6 that the complaint kind of squarely raises the question
7 of is Eschelon entitled to this lower rate past the
8 termination date of the McLeod Amendment. My original
9 understanding was that Eschelon was claiming that it was
10 entitled to the rate through 2005, and if that is
11 clearly no longer an issue as far as Eschelon is
12 concerned, I would just ask that Eschelon make a clear
13 statement to that effect on the record so that we're not
14 later surprised by an issue that we thought had gone
15 away but really hadn't.

16 JUDGE MACE: Mr. Ahlers.

17 MR. AHLERS: That's correct, and I think the
18 amendment has addressed that. That is correct, we're
19 not claiming the McLeod rate beyond the McLeod
20 termination date.

21 JUDGE MACE: Very well.

22 Ms. Anderl, you indicated that you wanted to
23 address this by making a paper if not record at least
24 dealing with it on paper. Have you discussed with
25 Mr. Ahlers what a possible schedule might be? And

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1 before you even say anything, let me just indicate I
2 myself have some time constraints considering the fact
3 that this is brought under Rule 530, and so I'm a little
4 concerned about what kind of schedule you might be
5 thinking of lest it have an impact on some other work
6 that I need to get done. I realize we all have a lot of
7 other work to get done, so I'm not whining, but I just
8 wanted to -- I'm a little cautious about it.

9 MS. ANDERL: Sure, Your Honor. I think as I
10 recall the rule requires you to issue an order on the
11 80th day after the complaint is filed. Is that right?

12 JUDGE MACE: I thought that the order had to
13 be issued 90 days from the filing of the complaint
14 depending on what intervening events there are. Like a
15 submission of a filing by you of a brief, for example,
16 that would trigger some delay in that 90 days. I think
17 the order says 21 days from the last filing or the last
18 event in the case.

19 MS. ANDERL: You know, Mr. Ahlers and I did
20 not talk specifically about timing, but I think we could
21 quickly come to an agreement on a reasonable schedule.
22 As he pointed out, this complaint was filed in
23 Minnesota, and so a lot of the work is substantially
24 done, it just needs to be modified. There were not
25 really different facts between the negotiations that

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1 happened in Minnesota or lack thereof and the
2 discussions that happened in connection with Washington.
3 Eschelon's request was really regional, and so, you
4 know, I think just what would be the real question would
5 be do we file simultaneous kind of opening papers and
6 then simultaneous reply, or do we do it in three rounds.
7 And I think we can do it on fairly short turnaround as I
8 said since we won't be raising new issues.

9 JUDGE MACE: Well, I can give you some time
10 to discuss scheduling. My primary concern is the period
11 from October 28th when final briefs are filed in the
12 competitive classification case through probably the
13 first three to four weeks after that. Which is not to
14 say that I couldn't write something in this case, but
15 I'm just concerned about that. So I can give you time
16 to talk more about the schedule and then come back and
17 see if that works.

18 MS. ANDERL: Sure. Does Your Honor have a
19 preference in terms of how the pleading cycle would come
20 in?

21 JUDGE MACE: I don't.

22 MS. ANDERL: Okay.

23 JUDGE MACE: At least not in this instance.

24 MS. ANDERL: I mean in terms of whether they
25 be simultaneous or, you know, having Eschelon go first

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1 with Qwest answering and Eschelon replying.

2 JUDGE MACE: What suits the parties is fine
3 with me in this case unless it drags it out too long.

4 MS. ANDERL: Right.

5 JUDGE MACE: Mr. Ahlers, you're trying to say
6 something?

7 MR. AHLERS: Yes, I just wanted to check with
8 you, certainly given that our concern about ongoing
9 rates has been addressed, we can certainly agree to an
10 extension of time beyond what the statute allows if
11 that's permissible in Washington.

12 JUDGE MACE: I think that it's permissible,
13 and also as I read the rule, there's some leeway for the
14 Commission itself to say that it needs more time, so I
15 think there's plenty of leeway here.

16 MR. AHLERS: Okay. Yeah, I would like to
17 discuss it with Ms. Anderl.

18 JUDGE MACE: All right, how about ten
19 minutes?

20 MS. ANDERL: Ten minutes should be fine.

21 JUDGE MACE: All right, I will be back in ten
22 minutes.

23 MS. ANDERL: Thank you.

24 JUDGE MACE: Then we're off the record.

25 (Discussion off the record.)

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1 JUDGE MACE: Ms. Anderl or Mr. Ahlers, do you
2 want to let me know what you talked about in terms of
3 scheduling.

4 MS. ANDERL: Sure, Your Honor, this is Lisa
5 Anderl. We decided that we ought to file simultaneous
6 opening and simultaneous reply pleadings. I don't know
7 whether we clarified whether those should be briefs or
8 kind of cross motions for summary determination. I
9 don't know that it matters what we call them at this
10 point. But the opening would be on Wednesday, November
11 12th, and reply two weeks later, November 26th, which is
12 the day before Thanksgiving, but we figured it would be
13 workable.

14 JUDGE MACE: That's fine, I appreciate that.

15 MS. ANDERL: We also talked briefly about
16 whether we should pick December 3rd instead but decided
17 we would go with the 26th, and if there were a need for
18 additional time, we would deal with that when it came
19 up.

20 JUDGE MACE: This looks like it should be
21 very workable.

22 I will be issuing a pre-hearing conference
23 order that will confirm some of the items that we have
24 discussed today and also the scheduling and will also
25 talk about the requirements for filing documents with

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1 the Commission.

2 Is there anything else we need to address at
3 this point?

4 MR. AHLERS: I don't think so.

5 JUDGE MACE: Then we are done for today.

6 (Hearing adjourned at 9:55 a.m.)

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