

0041

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

2 JUDGE CLARK: It's approximately 9:30,
3 January 12th, 2007, in the Commission's hearing room in
4 Olympia, Washington. This is the time and place set
5 for a prehearing conference in the matter of the
6 petition for arbitration of an interconnection
7 agreement between Qwest Corporation and Eschelon
8 Telecom Incorporated pursuant to 47 USC, Section
9 252(b), given Docket UT-063061, Patricia Clark,
10 administrative law judge for the Commission, presiding.

11 Notice of this prehearing conference was
12 issued on January 5th, 2007, scheduling the prehearing
13 conference for this date and time to establish a new
14 procedural schedule. At this time, I'll take
15 appearances on behalf of the parties. Appearing on
16 behalf of Qwest Corporation?

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

18 JUDGE CLARK: Thank you, Mr. Topp. Appearing
19 on behalf of Eschelon Telecom, Incorporated?

20 MR. KOPTA: Gregory J. Kopta of the law firm
21 Davis, Wright, Tremaine, LLC.

22 MR. MERZ: Greg Merz, M-e-r-z, with the Gray,
23 Plant, Mooty, Mooty, and Bennett Law Firm in
24 Minneapolis.

25 JUDGE CLARK: Thank you. I did receive an

0043

1 e-mail from Mr. Merz yesterday indicating that the
2 parties have reached agreement regarding two of the
3 deadlines in the procedural schedule, and that is the
4 parties have agreed that the hearing in this
5 arbitration would convene on May 7th and continue
6 thereafter as necessary through the 11th of May, 2007.

7 That week was available on the Commission's
8 calendar, and I actually reserved that week yesterday
9 to insure that we will have those dates for hearing,
10 and the second deadline I have that the parties agreed
11 to was the deadline for the submission of prefiled
12 rebuttal testimony and exhibits, and for that date, the
13 parties agreed on April 3rd, 2007.

14 So what we need to do this morning is just
15 fill in the remaining blanks, and I'm going to use as
16 my little cheat sheet for this the last procedural
17 order establishing the procedural schedule. The next
18 deadline that we have is a deadline for the parties to
19 e-mail to me their estimated cross-examination times,
20 preferred order of witnesses, and list of any
21 cross-examination exhibits, and if I keep the time
22 interval approximately the same as what it was in the
23 schedule we vacated, that would fall approximately
24 April 17th. Are the parties amenable to that?

25 MR. MERZ: I'm just looking at my schedule

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1 now. We actually have a hearing that's to begin in
2 Colorado on April 17th, and I sent to Mr. Topp
3 yesterday and e-mail proposing April 12th for that
4 date.

5 JUDGE CLARK: That's all right with you,
6 Mr. Topp?

7 MR. TOPP: That's okay with me. April 12
8 would be fine. I didn't see that e-mail.

9 JUDGE CLARK: Are the parties amenable to
10 distributing their cross-examination exhibits on the
11 same date?

12 MR. MERZ: That would be fine.

13 MR. TOPP: That's acceptable to me as well.

14 JUDGE CLARK: The next deadline we need is a
15 prehearing conference to mark exhibits. That is a
16 prehearing conference that we actually may not need,
17 because what I will attempt to do is update the exhibit
18 list that I prepared and e-mail it to all the parties,
19 and hopefully, we can work out any glitches in the
20 marking of exhibits in advance, but I would like to
21 reserve a date for that in the event that we need it.
22 That would be a prehearing conference where the parties
23 could also appear telephonically, and I was going to
24 suggest about a week before the hearing, which would
25 fall on May 1st.

0045

1 MR. MERZ: That date would be fine with
2 Eschelon for that.

3 MR. TOPP: That's fine with Qwest.

4 JUDGE CLARK: Then following the same kind of
5 intervals that we had in the previous schedule for the
6 submission of simultaneous initial briefs, that would
7 follow approximately a month after hearing on June
8 11th, 2007.

9 MR. MERZ: Eschelon was going to propose
10 something a little bit different here. In Minnesota,
11 we only filed one round of briefs. Now, if you feel
12 like two rounds would be preferable, obviously that
13 would be fine with us, but our preference would be to
14 have one round of briefing and that the briefs be due
15 on June 26th.

16 JUDGE CLARK: Any comments on that?

17 MR. TOPP: From Qwest's perspective, it would
18 be whatever Your Honor would like. We are fine going
19 in either direction on that issue.

20 JUDGE CLARK: I think it might be helpful to
21 build in a deadline for both initial and responsive
22 briefs. Depending on what we see in the initial
23 briefs, it might be possible to vacate that second
24 deadline, but typically, we do have two rounds of
25 briefing, and I'm a little hesitant to vacate that

0046

1 second round of briefing without seeing what comes in,
2 but we can certainly schedule the initial briefs for
3 the 26th, if that deadline work for everyone, 26th of
4 June?

5 MR. MERZ: Yes.

6 MR. TOPP: That's fine.

7 JUDGE CLARK: Then I would like to build in a
8 deadline for responsive briefs, and that again may be
9 one we vacate depending on the content of the initial
10 briefs. If you could explain to me a little bit more
11 about your experience in Minnesota, perhaps that will
12 ease any concern I have.

13 MR. MERZ: The only explanation I could give
14 is there has been a lot of paper filed in this case,
15 and there will yet be more paper, and from our
16 perspective, we were trying to reduce the amount of
17 resources and also reduce the amount of work the Court
18 has to do, and I think both parties were able to file
19 pretty thorough briefs. I know from our perspective,
20 we felt we were able to adequately address the issues
21 in those briefs. I will say the briefs did tend to be
22 on the longer side, as you might expect, given the
23 number of the issues that we have.

24 I guess we will find out today. The proof is
25 in the pudding. We are supposed to be getting our

0047

1 decision in Minnesota today, so we will find out how
2 effective those briefs were.

3 MR. TOPP: We did get an e-mail that that was
4 going to be delayed somewhat.

5 MR. MERZ: We will see.

6 JUDGE CLARK: But you are anticipating
7 somewhat lengthy, perhaps more comprehensive briefing,
8 but just one round.

9 MR. MERZ: We did that in Minnesota, and I
10 think that would work here as well, but it's up to you
11 because you're the one that has to make the decision.

12 JUDGE CLARK: Actually, after listening to
13 you discuss this just a little bit, I think I'm
14 comfortable with that, so why don't we just set one
15 deadline for simultaneous briefing and make that on the
16 26th of June. If after reading those, I think I need
17 some further clarification on particular issues, we can
18 certainly cross that bridge, but I think at this
19 juncture, I'm comfortable with that.

20 So the following deadline would be a date for
21 the arbitrator's report and order, and again, following
22 sort of the intervals we've had initially, looking at
23 my calendar now for dates, it would be at the end of
24 October, October 26th, and then petitions for review of
25 that report and order, another 30 days would bring us

0048

1 to November 26th. That's immediately following the
2 Thanksgiving holiday.

3 MR. MERZ: We just get done with Christmas
4 and we have to start talking about Thanksgiving next
5 year, huh?

6 JUDGE CLARK: It's depressing, isn't it?
7 It's hard to think that far in advance, but I'm
8 wondering if the parties want to schedule the petitions
9 for review the first workday after the holiday.

10 MR. MERZ: Is that deadline statutorily
11 imposed within 30 days?

12 JUDGE CLARK: No.

13 MR. MERZ: Is there the ability to make the
14 response a little late?

15 JUDGE CLARK: Absolutely.

16 MR. MERZ: My view is it would be better to
17 do it on the end of that week rather than the
18 beginning.

19 JUDGE CLARK: That would be the 30th. No, it
20 doesn't have to be on the 26th. That's why I was
21 asking. When I saw what it turned out to be, I said,
22 do you really want that, the first workday afterwards.
23 So then the proposed interconnection agreement, answers
24 to petitions for review, that deadline would fall at
25 the end of December, which is, of course, also sort of

0049

1 bad timing. That would be New Year's Eve.

2 MR. TOPP: Let's move that back a week as
3 well.

4 JUDGE CLARK: Do you want a date in January,
5 2008?

6 MR. TOPP: Yes.

7 JUDGE CLARK: I didn't even bring a calendar
8 that went that far, optimist that I am, so I'm going to
9 assume it's the first week of January.

10 MR. MERZ: Monday is the 7th.

11 JUDGE CLARK: So if you want to select a date
12 in that time period, whatever works for the parties.

13 MR. TOPP: The 4th or the 7th, it doesn't
14 matter.

15 JUDGE CLARK: Let's go with the 7th. That's
16 so far in advance that if there is a need to shift
17 these deadlines, we have a lot of wiggle room.

18 I think those are all the deadlines we need
19 to establish today. We had not previously set
20 deadlines for oral argument before the commissioners or
21 a Commission decision, I think just sort of waiting to
22 see whether or not the parties felt oral argument was
23 necessary and that kind of stuff, so I think those
24 would probably be left as to be determined unless the
25 parties want to set deadlines.

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1 MR. TOPP: I prefer to leave those to be
2 determined. One additional deadline that does make
3 sense to add is a deadline for an updated matrix that
4 contains the positions that the parties will advocate
5 at the hearing.

6 JUDGE CLARK: Would you anticipate that being
7 after rebuttal?

8 MR. TOPP: Yes. Sometime in between April
9 3rd and May 7th.

10 JUDGE CLARK: So we are going to build in a
11 deadline for an updated disputed issue matrix, and
12 that's certainly a deadline that I think should be
13 within the discretion of the parties, how much time
14 they think they will need after reviewing the rebuttal
15 testimony of the other side.

16 MR. MERZ: I don't know if we would
17 necessarily need this amount of time, but we already
18 have a date of May 1st. If that gives you enough time,
19 maybe that would be a date that makes sense.

20 JUDGE CLARK: It's available, but I'm a
21 little bit concerned because you have two other
22 deadlines in there on April 12th. I think that your
23 cross-examination exhibits might be dictated somewhat
24 by that.

25 MR. TOPP: Although the contravailing

0051

1 consideration is we are going to have a hearing in
2 April in another state. The potential exists,
3 certainly at least in Minnesota, that positions shifted
4 and things are resolved as that hearing took place, and
5 so it may be useful to wait until that hearing is over
6 to take advantage of that work.

7 JUDGE CLARK: Is that hearing the one on the
8 17th of April?

9 MR. MERZ: Yes. That's the one in Colorado.

10 JUDGE CLARK: Then perhaps we should move
11 it -- and is that scheduled for one week?

12 MR. MERZ: It's scheduled for two, although I
13 think that's just the time reserved on the calendar.

14 JUDGE CLARK: So if we were to build in a
15 disputed issue matrix at the end of that week, would
16 that work?

17 MR. TOPP: I think it would need to be a week
18 after the hearing, so I would put it at the end of the
19 second week.

20 JUDGE CLARK: That's what I'm talking about,
21 the 26th or the 27th of April?

22 MR. TOPP: That makes sense to me.

23 MR. MERZ: Yes, I think that would be fine.

24 JUDGE CLARK: Then April 27th. Let's give it
25 the maximum amount of time we can. Given that

0052

1 additional issue matrix, do you want to juggle these
2 deadlines for cross-examination times and exhibits?

3 MR. TOPP: That makes sense, I think.

4 JUDGE CLARK: We can certainly do that. We
5 could move the prehearing conference to mark exhibits
6 to later. I would be fine moving that to the 3rd of
7 May, closer to hearing, so that we can give you some
8 more time to come up with those documents, and then
9 maybe move cross-examination exhibits and those lists
10 to May 1st?

11 MR. MERZ: I think that would be fine.

12 MR. TOPP: Yes, I do too.

13 JUDGE CLARK: Is that enough time? Do you
14 need more time?

15 MR. MERZ: I think May 1st is adequate.

16 MR. TOPP: I think so too.

17 JUDGE CLARK: Then we will just move the
18 prehearing and we will move those two deadlines. That
19 was an excellent suggestion to have the updated issue
20 matrix. I think that will be very helpful for the
21 hearing. Do you have any other wonderful suggestions
22 we should take into consideration?

23 MR. TOPP: I think that's the limit.

24 JUDGE CLARK: I'm glad I got advantage of it.
25 Are there any other adjustments to the schedule?

0053

1 MR. MERZ: I don't have anything further.

2 MR. TOPP: No further changes from me either.

3 JUDGE CLARK: Do you need me to run through
4 that real quickly, or have you been jotting these down?

5 MR. TOPP: I've been jotting them down.

6 MR. MERZ: I've got it.

7 JUDGE CLARK: Are there any other matters
8 that we should consider at this morning's prehearing
9 conference?

10 MR. MERZ: Nothing from Eschelon's
11 perspective.

12 MR. TOPP: Nothing from Qwest.

13 JUDGE CLARK: I have just one minor
14 procedural matter. This is just to give you a heads-up
15 that I will be e-mailing you regarding some of the
16 testimony that was submitted as responsive testimony.
17 Some of it is not paginated, and in updating my exhibit
18 list a couple of weeks ago, I noticed there were a very
19 few exhibits but they weren't paginated, and I thought
20 it would be helpful for the hearing.

21 Of course, it doesn't impair my ability to
22 review it in any way, but it would slow things down in
23 the hearing if we had to sort of juggle and figure out
24 what pages we were on, but regrettably, I don't have
25 that with me at the time, so I'm just going to e-mail

0054

1 to you, but I do have a list of the specific witnesses
2 and exhibits that we will need to have you refile.

3 MR. TOPP: That would be fine.

4 JUDGE CLARK: I don't anything further. Do
5 the parties have anything further?

6 MR. MERZ: No, Your Honor.

7 MR. TOPP: No, Your Honor.

8 JUDGE CLARK: I want to thank you again for
9 being willing to move the procedural schedule in this
10 proceeding. It does help the Commission's workload to
11 be able to modify the schedule, and the Commission does
12 appreciate that. So if there is nothing further, we
13 are adjourned.

14 (Prehearing conference adjourned at 9:59 a.m.)

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