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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

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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.

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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

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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

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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

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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

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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

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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

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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?

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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

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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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