

Qwest

1600 7th Avenue, Room 3206
Seattle, Washington 98191
Phone: (206) 398-2502
Facsimile (206) 343-4040

Adam L. Sherr

Senior Attorney
Regulatory Law

August 24, 2004

***Via E-mail and
Overnight Mail***

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-033011 - Unfiled Agreements
Request to Reschedule Response and Reply Testimony

Dear Ms. Washburn:

By this letter, Qwest requests that the ALJ further extend (by two weeks) the deadlines for all parties to file response and reply testimony in this docket. Qwest has conferred with Staff, but Staff would not agree to the two week extension.

On August 13, the Commission issued a notice extending the deadlines for filing response testimony in this case from August 16 to August 30 and filing reply testimony from October 4 to 25. That extension was precipitated by the August 12 request by Staff to extend the response testimony deadline to accommodate Staff's August 12 settlement agreement with Eschelon. Under that settlement agreement – which Staff explicitly asked not be considered for approval until after August 30 – Eschelon is to file “response” testimony on August 30. On August 20, Staff filed a virtually-identical settlement agreement with McLeod. Again, under the current schedule, McLeod will file “response” testimony on August 30.

Qwest logically assumes that the testimony to be filed by Eschelon and McLeod on August 30 will be supportive of Staff, adverse to Qwest and in the nature of additional direct evidence that should have been filed on June 8, the deadline for filing direct testimony. Qwest filed a response regarding the Staff-Eschelon settlement on August 19. Qwest objects to the portions of that agreement and the McLeod agreement¹ which aim to preserve

¹ By this letter, Qwest asks that the Commission consider Qwest's August 19 response to extend to both the Staff-Eschelon and the Staff-McLeod settlement agreements.

Ms. Carole J. Washburn
Washington Utilities and
Transportation Commission
August 24, 2004
Page 2

Eschelon's and McLeod's party status (despite that no claims remain in this docket by or against those parties) and to facilitate those parties' filing of additional direct evidence supportive of Staff's complaint and adverse to Qwest's defense of this case.

Qwest believes it is critical that the Commission have an opportunity to rule on Qwest's objection to the Eschelon and McLeod settlement agreements prior to the time those parties file the testimony described generally in the settlement agreements. It is Staff's explicit desire that those parties file the testimony prior to the Commissioners' consideration of the settlement agreement that call for such testimony to be filed. Such a tactic is wholly inappropriate and has not been justified by Staff. Qwest understands that the Commissioners are unavailable to rule on Qwest's objection and the settlement agreements until after August 30. A two week extension would hopefully provide the Commissioners adequate time to review the settlement agreements and the objection(s) thereto and to issue a ruling. It should also give Eschelon and McLeod a fair opportunity to conform their testimony – if any is permitted – to any limitations or guidance provided in the Commissioners' ruling on the settlement agreements.

It does not appear to Qwest that there is any rational or legitimate basis for Staff's request that the Eschelon and McLeod testimony be filed before the underlying settlement agreements are considered for approval. Given that the Commissioners may prevent or in some way limit the testimony to be filed by Eschelon and McLeod, it will be a waste of the parties' and the Commission's resources to have those parties file testimony on August 30 and then re-file conforming testimony thereafter. It would be far more prudent to allow the Commission to rule on Qwest's objection and the settlement agreements and then to permit the filing of whatever is deemed permissible following such ruling. Staff's explicit request to have the Commission preview Eschelon's and McLeod's testimony before ruling on the settlement agreements and on those parties' ability to file testimony is a rather transparent effort to influence the Commissioners' decisions and their consideration of the evidence in this case. A two week extension should accommodate Qwest's concerns without any prejudice to Staff, Eschelon or McLeod.

Sincerely,

Adam L. Sherr

ALS/llw

cc: Service List (*via e-mail and U.S. Mail*)
ALJ Rendahl