

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996

Docket No. UT-063061

QWEST CORPORATION'S MOTION TO ENFORCE PAGE LIMITS ON POST-HEARING BRIEFS AND TO STRIKE ATTACHMENT 2 OF ESCHELON TELECOM'S POST-HEARING BRIEF

- 1 Qwest Corporation ("Qwest") submits this motion to enforce the page limits ordered in this proceeding for the parties' post-hearing briefs and, relatedly, to strike "Attachment 2" of Eschelon Telecom, Inc.'s ("Eschelon") post-hearing brief. As described below, Attachment 2 to Eschelon's brief is nothing more than a recitation of evidence and an assertion of arguments that should have been included in Eschelon's post-hearing brief. As such, the attachment is a transparent and improper attempt to circumvent the Administrative Law Judge's order that denied Eschelon's motion to extend the 60-page limit on the parties' post-hearing briefs contained in WAC 480-07-395. Because the attachment violates the ALJ's order and the governing rule, it should be stricken from Eschelon's brief.
- 2 In the arbitrations between Qwest and Eschelon in other states that have involved the

same issues presented in this case, Eschelon has typically filed post-hearing briefs of 150 pages or more. Consistent with that practice, at the conclusion of the arbitration hearing in this case, Eschelon asked the ALJ to consider permitting more than 60 pages for the parties' briefs. The ALJ responded that because the extensive written record already adequately describes the parties' positions, it was "very unlikely" that the page limit would be extended.¹ The ALJ told Eschelon that if it filed a motion seeking additional pages, it would have to demonstrate "why it's absolutely necessary to extend the briefing page limit."²

3 Notwithstanding this response to its request, on May 21, 2007, Eschelon filed a motion seeking to extend the page limit from 60 pages to 150 pages. It did not cite any extraordinary circumstances but, instead, argued that the extension was necessary because of the size of the record and the complexity of the issues. In an order issued May 24, 2007, the ALJ denied Eschelon's motion, ruling that an extension of the page limitation was not warranted given the parties' extensive pre-filed testimony and the brevity of the hearing. Accordingly, the order established that the parties were bound by the 60-page limitation set forth in WAC 480-07-395.³

4 In accordance with the order, Qwest submitted a post-hearing brief on July 21, 2007 that adhered to the 60-page limit. By contrast, Eschelon submitted a 60-page brief, *plus* a 12-page, single-spaced document titled "Evidence in the Record Supporting Eschelon's Jeopardy Proposals – Issues 12-71, 12-72 & 12-73." The document describes and quotes evidence in the record and presents arguments in support of Eschelon's positions with

¹ TR. 291:7-22.

² *Id.*

³ WAC 480-07-395(1)(b) provides that “[p]leadings, motions, and briefs must not exceed sixty pages (exclusive of exhibits, appended authorities, supporting affidavits and other documents).” Although Eschelon may argue that its attachment is an “exhibit” or “other document” that falls within the exception to the rule, that plainly cannot be the case, or the rule would be meaningless, and subject to circumvention by simply making part of the brief into an attachment in any instance where page limitations are implicated.

respect to these three issues. As such, the document is nothing more than an unauthorized extension of Eschelon's brief.

5 Because the document plainly violates the ALJ's order that the parties are limited to 60 pages for their post-hearing briefs, Qwest respectfully requests that it be stricken from the record and not considered. Qwest notes that it will be prejudiced if the document is allowed to remain in the record, since Qwest, unlike Eschelon, complied with the 60-page limit. While Qwest believes strongly that Eschelon's filing is improper, if the document is not stricken, Qwest requests in the alternative that it be permitted to file a response to the document that would not exceed five pages.

DATED this 25th day of July, 2007.

Respectfully submitted,

QWEST CORPORATION

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