

**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

**ESCHELON TELECOM OF
WASHINGTON, INC.'S RESPONSE TO
QWEST'S MOTION TO STRIKE**

1. Eschelon Telecom of Washington, Inc. ("Eschelon") respectfully submits this response to Qwest's motion to strike Attachment 2 to Eschelon's post-hearing brief.

2. Attachment 2 is a chart that reflects Eschelon's proposed language relating to jeopardies (Issue Nos. 12-71, 12-72, and 12-73) and citations to where in the record evidence supporting that language can be found. Attachment 2 is similar to Attachment 1 to Eschelon's post-hearing brief (to which Qwest has not objected) in that its purpose is to assist the ALJ and the Commission in navigating the extensive record in this case. While Attachment 1 provides a roadmap to the overall case, Attachment 2 similarly provides a roadmap to one of the most fact-intensive issues in this case. It is formatted in a way that makes the relevant evidence easily accessible.

3. WAC 480-07-395(1)(b) provides that briefs may not exceed sixty pages "exclusive of exhibits, appended authorities, supporting affidavits, *and other documents*"¹ (emphasis added). Eschelon has complied with this rule. The plain language of the rule permits parties to attach "other documents" to briefs and allows the ALJ to consider such

¹ The Washington Rules of Civil Procedure define "document" broadly, to include: "writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form." Wash. R. Civ. Pro. 34(a).

documents to the extent she finds them helpful in her review and evaluation of the evidence. In not objecting to Attachment 1, Qwest recognizes as much.

4. Qwest incorrectly suggests that Attachment 2 was prepared for the purpose of circumventing the ALJ's prior order regarding page limits for briefs. Eschelon's Minnesota brief was 152 pages long and included one attachment, its Colorado brief was 153 pages long and included three attachments, and its Arizona brief was 191 pages long and included seven attachments.² Qwest cannot claim surprise that Eschelon's brief included attachments, when all of its arbitration briefs to date have included attachments. Eschelon worked diligently and in good faith to reduce the length of its brief in order to comply with the 60 page limit in Washington. Eschelon, having shortened its brief by as much as 130 pages to comply with the rule and the ALJ's order, did not then act to circumvent that order by attaching a twelve page document that it has submitted in three previous cases.³

5. The Attachment was not created for the purpose of the Brief. As Eschelon's filing letter indicates, Eschelon has filed a substantially similar⁴ attachment in previous arbitrations with Qwest in other states where the same page limits did not apply. Thus, Eschelon filed the attachment with its post-hearing briefs in Arizona and Colorado. Earlier, Eschelon filed it as an attachment to its response to Qwest's motion for reconsideration in the Minnesota arbitration. Therefore, this is not, as Qwest seems to suggest, a situation in which a party moved information from a brief to an attachment to

² By way of comparison, Qwest's briefs were 122 pages (Minnesota), 92 pages (Colorado), and 112 pages (Arizona).

³ Although Qwest is a large company, Mr. Topp and Mr. Devaney also represented Qwest in all three of those arbitrations and were therefore personally in receipt of that document.

⁴ Except for changes to the citations and footnotes (to conform the format and to be consistent with the WA record), the Attachment is the same. For example, a citation to page 5 of Albershiem's direct in CO may have needed to be changed to page 6 in WA.

get around the page limit. The document has always been an attachment, as is appropriate for a chart identifying data in the record for the ALJ's and Commission's ease of reference.

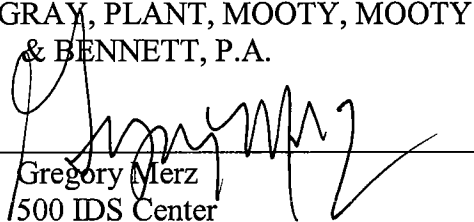
6. Qwest cannot reasonably claim that it was surprised by the information reflected on the Attachment. The Attachment was first provided to Qwest on April 30, 2007 in Minnesota. Thus, Qwest had the document before the hearing and could have examined Eschelon's witnesses about it and before the filing deadline for the Brief and could have addressed information contained in it (which is in the record) in its Brief.

7. Accordingly, Eschelon respectfully requests that Qwest's motion to strike be denied.

Dated: July 26, 2007

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& BENNETT, P.A.

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