

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for)	DOCKET UT-063061
Arbitration of an Interconnection)	
Agreement between)	
)	ORDER 13
QWEST CORPORATION,)	
)	
and)	ORDER DENYING MOTION TO
)	STRIKE AND PERMITTING
ESCHELON TELECOM, INC.)	RESPONSE
)	
)	
Pursuant to 47 U.S.C. Section 252(b).)	
)	
.....)	

MEMORANDUM

- 1 **NATURE OF PROCEEDING:** Docket UT-063061 involves Qwest Corporation’s (Qwest) request for arbitration of an interconnection agreement (ICA) with Eschelon Telecom, Inc., (Eschelon) pursuant to 47 U.S.C. §252(b) of the Telecommunications Act of 1996.
- 2 **PROCEDURAL BACKGROUND:** On July 25, 2007, Qwest filed a motion to enforce page limits on post-hearing briefs and to strike Attachment 2 to Eschelon’s post-hearing brief. Qwest asserted that the attachment violated the Commission’s regulation on page limitations and Order 11 denying Eschelon’s motion for leave to file an over-length brief. In the alternative, Qwest requested permission to file a five page response to Attachment 2.
- 3 On July 26, 2007, Eschelon filed its response to the motion. Eschelon argued that its filing was permitted by regulation and that it was not attempting to circumvent the Order enforcing page limitations on briefing. Eschelon asserted that it had filed comparable attachments to its briefs in other recent arbitration proceedings. Eschelon did not state a position on Qwest’s alternative request to file a response to Attachment 2.

- 4 **COMMISSION DECISION:** The motion to strike Attachment A is denied. WAC 480-07-395(1) (b) provides that “. . . briefs must not exceed sixty pages (**exclusive** of exhibits, appended authorities, supporting affidavits and other documents).”¹ The regulation clearly permits documents to be appended to briefs without violating the page limitation. Thus, the question arises whether Attachment 2 should be characterized as a permitted attachment or a prohibited extension of the brief. Despite the title awarded to the document by a party, one must analyze the character of the document. Typically, briefs contain argument in support of a party’s position. In contrast, documents such as exhibits and affidavits are typically tangible items or recitations of fact. A review of Attachment 2 demonstrates that it is the latter. Attachment 2 is a chart of citations to the record regarding certain contested issues. Accordingly it is not prohibited by WAC 480-07-395(1)(b). Moreover, it appears that the document was not prepared to circumvent the page limitation requirement because a comparable document has been appended to Eschelon’s brief in arbitration proceedings in other jurisdictions in which briefing page limitations are not imposed.
- 5 The alternative request to respond to Attachment 2 is granted. Qwest’s response should be limited to citations to the record that support Qwest’s position regarding the contested issues addressed in Attachment 2. Qwest’s response is not limited to the requested five pages. Qwest should be provided 10 days, or until **August 6, 2007**, to file its response to Attachment 2.

DATED at Olympia, Washington, and effective July 27, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

¹ Emphasis supplied.