



Christine O. Gregoire

# ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

October 28, 2004

Ann E. Rendahl, Administrative Law Judge  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, Washington 98504-7250

RECEIVED  
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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

Re: *WUTC v. AdvancedTelecom Group, Inc., et al.*  
Docket No. UT-033011

Dear Judge Rendahl:

This letter is for the purpose of documenting Staff's position with regard to location of the depositions of the McLeodUSA and Eschelon witnesses and Order No. 16 addressing the issues surrounding these depositions. This issue was raised in a conference call relating to motions for protective orders of McLeodUSA and Eschelon.

Staff supports the depositions taking place in Iowa and/or Minnesota as appropriate. Staff notes that paragraph 42 of Order No. 16, in this matter includes a conclusion of law that the Commission's procedural rules provide that depositions will be held in Olympia unless the parties and the presiding officer agree to a different location. Staff does not read the current rules that way since a "deposition conference" as provided for in the current rules appears to relate to resolving procedural issues rather than including the deposition itself as was the case in the former rules. Compare WAC 480-07-410(1) with (2) and WAC 480-09-480(6)(b). In fact, Staff notes that WAC 480-07-410(3) refers to the civil rules as *guidance* for depositions. Under the civil rules depositions are generally held in the location of the witness. See Washington Practice,



Volume 15A, Washington Handbook on Civil Procedure, section 44.3. Therefore, Staff believes setting the location of the deposition is within the discretion of the presiding officer and that Minnesota and/or Iowa are appropriate locations for the depositions in this case for the reasons stated in the Eschelon and McLeodUSA motions.

With regard to the setting the deadline for reply testimony, Staff does not object to the December 6, 2004, date, but does object to the parsing of the reply testimony dates as it may prejudice Staff as the party with the burden of proof. Since Staff was not able to weigh in on this issue because it was formally raised as part of a Qwest pleading to which Staff did not have the opportunity to respond (the concept of parsing the dates was not contained in any party's pleading) and was discussed in a conference call to which counsel for Staff did not receive notice because counsel was attending a meeting with regard to another case and did not have access to his email setting the conference time (the emails related to this issue were sent just prior to the time the conference was set), Staff will be filing a motion to continue the reply testimony date for replying to *all* response testimony in this matter in the next few days, if such a motion is necessary.

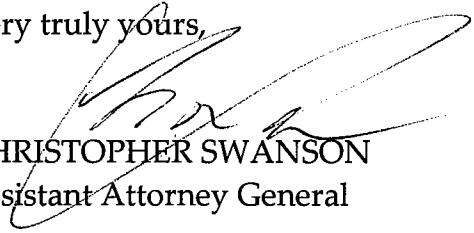
Staff will request a finding that there exists good cause to modify the reply testimony dates consistent with the prior requests of a number of different parties requesting modification of the dates based on various reasons and because Staff believes that the failure to grant such a request may prejudice Staff's case. Staff also believes that continuing the date will prevent additional litigation (by way of motions to strike) in the unlikely event that Qwest were to file testimony that responds not only to the Eschelon and McLeodUSA testimony, but also responds to Staff's "final word" in its reply testimony. Finally, Staff believes that its role as representative of the Commission in complaint cases carries with it the same rights as any other private party with the burden of proof in a Commission proceeding – Staff procedural rights must be protected so that it may properly carry out its responsibility to prosecute potentially unlawful conduct. Staff will request an expedited resolution of this matter since the deadline is fast approaching. **Staff requests a conference call as soon as possible between Staff, Qwest and the presiding officer if the presiding officer feels such a call would be necessary.**

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Staff notes that Qwest proposed this very solution in its pleading on this issue. See Qwest Corporation's Response to Motions of Eschelon Telecom and McLeodUSA for Protective Order, paragraph 16. Qwest was contacted about this issue and indicated it would support the December 6, 2004, deadline for *all* reply testimony. Staff requests an order of the Commission granting this request without motion since all affected parties agree, but will file a motion if necessary.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



CHRISTOPHER SWANSON  
Assistant Attorney General

CS:kl  
Enclosures  
cc: Parties