

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

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UT-033011
)	
Complainant,)	
)	ORDER NO. 17
v.)	
)	
ADVANCED TELECOM GROUP,)	ORDER DENYING MOTIONS OF
INC., et al.)	ESCHELON AND McLEODUSA
)	REQUESTING CHANGE IN
Respondents.)	LOCATION OF DEPOSITIONS
)	
.....)	

1 **Synopsis.** *This Order denies that portion of Eschelon and McLeodUSA’s motions for protective order against depositions requesting that the depositions of Mr. Smith and Mr. Gray be taken in Minneapolis, Minnesota, and Cedar Rapids, Iowa. This Order requires that the depositions of Mr. Smith and Mr. Gray be held in Olympia or Seattle, Washington.*

2 **Nature Of The Proceeding.** This is a complaint proceeding brought by the Washington Utilities and Transportation Commission (Commission), through its staff, against Qwest Corporation (Qwest) and 13 other telecommunications companies alleging that the companies entered into certain interconnection agreements identified in Exhibit A to the Amended Complaint,¹ and failed to file, or timely file, the agreements with the Commission as required by state and federal law. The complaint also alleges that the companies entered into certain agreements to resolve disputes, but that the agreements violated federal and state law by failing to make terms and conditions available to other requesting

¹ The Commission issued a Complaint against the parties on August 14, 2003, and issued an Amended Complaint on August 15, 2003 to include Exhibits A and B to the Complaint.

carriers, providing unreasonable preferences, and engaging in rate discrimination.

- 3 **Appearances.** Christopher Swanson, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Daniel Waggoner, Davis Wright Tremaine, LLP, Seattle, Washington, and Gary Witt, AT&T Law Department, Denver, Colorado, represent AT&T Communications of the Pacific Northwest and TCG Seattle (AT&T). Karen S. Frame, Senior Counsel, Denver, Colorado, represents Covad Communications Company. Charles L. Best, attorney, Vancouver, WA, represents Electric Lightwave, LLC. Judith A. Endejan, Graham & Dunn, PC, Seattle, Washington, and Dennis J. Ahlers, Senior Attorney, Minneapolis, Minnesota, represent Eschelon Telecom of Washington, Inc. (Eschelon). Richard A. Finnigan, Law Office of Richard A. Finnigan, Olympia, Washington, represents Fairpoint Carrier Services, Inc., f/k/a Fairpoint Communications Solutions, Corp., Integra Telecom of Washington, Inc., and SBC Telecom, Inc. Greg Kopta, Davis Wright Tremaine, LLP, Seattle, Washington represents Global Crossing Local Services, Inc., and XO Washington, Inc. Dan Lipschultz, Moss & Barnett, Minneapolis, Minnesota, represents McLeodUSA Telecommunications Services, Inc. (McLeodUSA). Arthur A. Butler, Ater Wynne, LLP, Seattle, Washington, and Michel Singer Nelson, Regulatory Attorney, Denver, Colorado, represent WorldCom, Inc. and its subsidiaries doing business in Washington (n/k/a MCI, Inc.). Arthur A. Butler, Ater Wynne, LLP, Seattle, Washington, represents Time Warner Telecom of Washington, LLC (TWTC). Lisa A. Anderl, Associate General Counsel, and Adam Sherr, Senior Attorney, Seattle, Washington, Todd Lundy, Associate General Counsel, Denver, Colorado, and Peter S. Spivak and Douglas R. M. Nazarian, Hogan & Hartson, Washington, D.C., represent Qwest. Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents Public Counsel.

4 **Procedural History.** On August 14, 2003, the Commission issued a Complaint in this proceeding against Qwest and 13 other telecommunications companies. The Commission issued an Amended Complaint on August 15, 2003, attaching Exhibits A and B, which were omitted from the original complaint. Exhibit A to the Amended Complaint identifies 52 agreements that Qwest and the 13 competitive local exchange carriers (CLECs) allegedly failed to file, or timely file, with the Commission. Exhibit B identifies 25 additional agreements with CLECs that Qwest allegedly failed to file with the Commission, and which allegedly violated federal and state law by failing to make terms and conditions available to other requesting carriers, providing unreasonable preferences, and engaging in rate discrimination.

5 On August 13, 2004, Commission Staff filed with the Commission a settlement agreement and narrative between Staff and Eschelon, requesting an order approving the settlement agreement. The settlement agreement provided that Eschelon would file responsive testimony in this proceeding.

6 On September 1, 2004, Eschelon filed with the Commission the prefiled responsive testimony of Richard A. Smith. On September 16, 2004, Qwest filed with the Commission a Motion to Strike Testimony of Stephen C. Gray and Richard A. Smith.

7 On October 20, 2004, Qwest served on counsel for Eschelon a notice of the deposition of Mr. Smith for October 28, 2004. On October 21, 2004, Qwest served on counsel for McLeodUSA a notice of the deposition of Mr. Gray for October 29, 2004.

8 On October 22, 2004, the presiding officer, Administrative Law Judge Ann E. Rendahl, entered Order No. 1 in this proceeding, granting, in part, Qwest's motion to strike the testimony of Mr. Smith and Mr. Gray.

- 9 Also on October 22, 2004, Eschelon submitted electronically to the Commission the Motion of Eschelon Telecom of Washington, Inc. for Protective Order Against Deposition, attaching the Declaration of Dennis Ahlers in Support of Motion for Protective Order. On the same day, McLeodUSA submitted electronically to the Commission the Motion of McLeodUSA Telecommunications Service, Inc., for Protective Order Against Deposition.
- 10 By notices dated October 22, 2004, and October 25, 2004, the Commission required responses to Eschelon and McLeodUSA's motions to be filed with the Commission by Noon on Tuesday, October 26, 2004. On October 26, 2004, Qwest filed a response to Eschelon and McLeodUSA's motions. No other party filed a response.
- 11 On October 26, 2004, Administrative Law Judge Rendahl entered Order No. 16 in this proceeding, an order granting in part and denying in part the motions of Eschelon and McLeodUSA, requiring the depositions of Mr. Smith and Mr. Gray, and granting the request to rescheduled the depositions. The Order directed the parties to further discuss the location of the depositions.
- 12 On the afternoon of October 26, 2004, counsel for Eschelon requested a conference call with the Administrative Law Judge and other parties to discuss the scheduling and location of the depositions. Present on the call were counsel for Eschelon, McLeodUSA, and Qwest. Counsel for Staff was not available to participate in the conference call. During the call, the parties agreed that Mr. Smith would be made available for deposition on November 22, 2004, and that Mr. Gray would be made available for deposition on November 19, 2004. The parties remain in dispute concerning the location of the depositions.

- 13 On October 28, 2004, Staff submitted a letter to the Commission indicating that Staff supports holding the depositions of Mr. Smith and Mr. Gray in Minneapolis and Cedar Rapids, respectively.
- 14 **Location of the Depositions.** Order No. 16 in this proceeding resolved two of three issues presented in the motions of Eschelon and McLeodUSA for protective orders against deposition: The Order denied the motions to quash the depositions of Mr. Smith and Mr. Gray, but granted the request to reschedule the depositions. The remaining issue, the proper location of the depositions, was discussed in the motions and Qwest's response, in Order No. 16, and again during the conference call on October 26, 2004.
- 15 Eschelon and McLeodUSA assert that the depositions of Mr. Smith and Mr. Gray should be held in the location where the presidents of the two companies reside, Minneapolis and Cedar Rapids. *Eschelon Motion at 3; see also Ahlers Declaration, ¶ 5; McLeodUSA Motion at 3.* McLeodUSA noted that corporate officers are generally entitled to having depositions taken in the place in which the officer resides. *McLeodUSA Motion at 3.* Eschelon notes that the prior two depositions were held in Minneapolis, and that Qwest's counsel could just as easily travel to Minneapolis, Minnesota, as to Olympia, Washington. *Eschelon Motion at 3.*
- 16 Qwest objects to the companies' requests for a change of location of the depositions. *Qwest Response at 6.* Qwest asserts that the Commission's rules require depositions to be held in Olympia unless the parties and the presiding officer agree to another location. *Id., citing WAC 480-07-410(2).* Qwest argues that there would be a burden on Qwest's Washington-based attorneys should they be required to travel to Minneapolis or Cedar Rapids. *Id. at 6.*

- 17 **Discussion and Decision.** Order No. 16 in this proceeding resolved two of the three issues presented in the Eschelon and McLeodUSA's motions, and requested that the parties continue discussions concerning the location of the depositions. *Order No. 16, ¶¶ 25-26.*
- 18 The depositions of Mr. Smith and Mr. Gray must be held in Olympia, or upon agreement of the parties, in Seattle, Washington, pursuant to WAC 480-07-410(2). Although Mr. Smith prior depositions have been taken in Minneapolis, those depositions were taken under the rules of the Arizona Commission and under the Civil Rules. The procedural rules for this Commission, require depositions to be taken in Olympia, unless the parties agree to a different location. The parties have not, and cannot agree to a location for the depositions, so by default, the depositions of Mr. Smith and Mr. Gray must take place in Olympia. Should the parties agree to taking the depositions in Seattle, rather than Olympia, the parties will be in compliance with the Commission's rules and this Order.

ORDER

THE COMMISSION ORDERS:

- 19 (1) The remaining portion of the Motion of Eschelon Telecom of Washington, Inc., for Protective Order Against Deposition and the Declaration of Dennis Ahlers in Support of Motion for Protective Order seeking a change in location of the deposition is denied.
- 20 (2) The remaining portion of the Motion of McLeodUSA Telecommunications Service, Inc. for Protective Order Against Deposition seeking a change in location of the deposition is denied.
- 21 (3) The depositions of Mr. Smith and Mr. Gray must be taken in Olympia, or if the parties agree, in Seattle, Washington.

Dated at Olympia, Washington, and effective this 28th day of October 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810(3).