

Decision No. R04-0083-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03F-405T

ESCHELON TELECOM OF COLORADO, INC.,

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SETTING HEARING DATES
AND ESTABLISHING
PROCEDURAL SCHEDULE**

Mailed Date: January 22, 2004

I. STATEMENT

1. On September 16, 2003, Eschelon Telecom of Colorado, Inc. (Complainant), filed an Accelerated Formal Complaint (Complaint) against Qwest Corporation (Respondent). The Complaint commenced this proceeding.

2. On January 7, 2004, for the reasons set out in Decision No. R04-0021-I, the undersigned Administrative Law Judge (ALJ) denied cross-motions for summary judgment. In that order the ALJ also determined that this proceeding is no longer an accelerated complaint case and scheduled a prehearing conference.

3. On January 20, 2004, Respondent filed its Answer to the Complaint. The Answer puts the Complaint at issue.

4. On January 21, 2004, pursuant to Decision No. R04-0021-I, the ALJ held a prehearing conference in this proceeding. Both parties were represented and participated actively. The parties agreed to the procedural schedule and requirements set out in this Order.

5. The following procedural schedule and hearing dates were proposed: (a) on or before **April 12, 2004**, Complainant and Respondent shall each file its direct testimony and copies of exhibits; (b) on or before **May 28, 2004**, Complainant and Respondent shall each file its prehearing motions; (c) on or before **June 1, 2004**, Complainant and Respondent shall each file its answer testimony and copies of exhibits; (d) on or before **June 1, 2004**, Complainant and Respondent shall file any stipulation reached; (e) hearing will be held on **June 8 and 9, 2004**, and Complainant and Respondent will be permitted to present oral rebuttal testimony and to present rebuttal exhibits at the hearing; (f) on or before **July 2, 2004**, Complainant and Respondent shall each file its post-hearing statement of position; and (g) on or before **July 16, 2004**, Complainant and Respondent shall each file its response to the statement of position filed by the other.

6. This schedule allows sufficient time for a final Commission decision in this matter within the parameters established in § 40-6-108(4), C.R.S. (*i.e.*, within 210 days following the date on which a complainant files its testimony and exhibits). In addition, the schedule, while somewhat attenuated, permits the parties to participate in the Commission's proceeding regarding the unbundling obligations of some carriers pursuant to the Federal Communications Commission's Triennial Review Order. *See* Docket No. 03I-478T. Finally, as Complainant agrees with the proposed schedule, there is no prejudice to Complainant from adoption of the proposed schedule. The procedural schedule and hearing dates set out above will be adopted.

7. Testimony, exhibits, motions, responses to motions, statements of position, and responses to statements of position shall be served on the dates stated in ¶ 5, *supra*, on all parties either by electronic means (*e.g.*, by electronic mail, by facsimile) with paper copy to follow or by in-hand delivery to counsel.

8. For prehearing motions, responses to prehearing motions, motions to compel, and responses to motions to compel, each party shall deliver a copy of the filing directly to the ALJ. This will not reduce the number of copies required to be filed with the Commission under the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

9. This Order and Rule 4 CCR 723-1-77 shall govern discovery in this proceeding.

10. The cut-off date shall be **April 2, 2004**, for propounding discovery not addressed to prefiled testimony and exhibits. After receiving direct testimony, each party may conduct discovery limited to the prefiled direct testimony and exhibits of the other. Similarly, after receiving answer testimony, each party may conduct discovery limited to the prefiled answer testimony and exhibits of the other.

11. For service of discovery and for service of response to discovery, the following procedures govern: (a) discovery shall be served either electronically (with paper copy to follow) or by in-hand delivery to counsel for the responding party; (b) responses shall be served either electronically (with paper copy to follow) or by in-hand delivery to counsel for the requesting party; and (c) copies of all discovery requests and of all responses must be served on all counsel. For discovery requests and responses served electronically (*e.g.*, by electronic mail, by facsimile), a paper copy must follow the electronic service for service to be effected and

effective. The paper copy may be mailed or hand-delivered, provided the mailing or hand-delivery occurs on the same day as the electronic service.

12. Except in testimony or as necessary to support a motion, parties shall not file discovery requests and responses with the Commission.

13. In direct examination, in cross-examination, and in filings (*e.g.*, motions, statements of position), reference to page and line of testimony and exhibits shall be to the page and line as shown in the paper copy.

14. Rule 4 CCR 723-1-22(d)(3) states: “If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading.” If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide copies of that cited authority.

15. The parties must provide the decision number when referring to a Commission decision.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule set out above is adopted.

2. Hearing in this matter shall be conducted at the following dates, time, and place:

DATES: June 8 and 9, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL-2
Denver, Colorado

3. The parties shall follow the procedures and shall make the filings set forth above.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge