

Decision No. R04-0377-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
GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL RESPONSE TO DISCOVERY,
GRANTING UNOPPOSED MOTION FOR
ENLARGEMENT OF TIME, AND WAIVING
RESPONSE TIME TO UNOPPOSED MOTION**

Mailed Date: April 12, 2004

I. STATEMENT

1. On September 16, 2003, Eschelon Telecom of Colorado, Inc. (Eschelon or Complainant), filed an Accelerated Formal Complaint (Complaint) against Qwest Corporation (Qwest or 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 case at issue.

4. On January 22, 2004, by Decision No. R04-0083-I, the ALJ established the procedural schedule and set hearing dates for this proceeding. As pertinent here, the direct testimony and exhibits of both Complainant and Respondent are due on April 12, 2004.

5. On March 23, 2004, Complainant filed a Motion to Compel Complete Responses to Second Set of Data Requests, Numbers 1, 2, 3, 5, 8, 9, 10, 14, and 15 (Discovery Motion). By Decision No. R04-0302-I, the ALJ shortened response time to the Discovery Motion and scheduled argument on the Discovery Motion for March 30, 2004. Respondent filed its Response to the Discovery Motion on March 29, 2004.

6. On March 30, 2004, the ALJ heard oral argument on the Discovery Motion. Following the oral argument, the ALJ made rulings on each of the nine data requests. This Order memorializes the rulings.

7. With respect to Data Requests No. 1, No. 2, and No. 3, the ALJ finds that the response is incomplete and will order Qwest to supplement its response.

8. With respect to Data Request No. 5, the ALJ finds that the response is incomplete and will order Qwest to supplement its response by producing a list of terms and conditions.

9. With respect to Data Request No. 8, the ALJ finds that the response is incomplete and will order Qwest to supplement its response.

10. With respect to Data Request No. 9, the ALJ finds that no supplemental response is necessary as there will be question-and-answer testimony produced by Qwest in this

proceeding. The subject matter of Data Request No. 9 should be addressed in the Qwest testimony and, to the extent that Eschelon believes that it is not addressed adequately, Eschelon has the opportunity to conduct discovery.

11. With respect to Data Request No. 10, the ALJ finds that the response is incomplete and will order Qwest to supplement its response (at least to the extent of having a witness adopt page 6 of the Response to the Discovery Motion).

12. With respect to Data Request No. 14, the ALJ finds that the response is incomplete and will order Qwest to supplement its response.

13. With respect to Data Request No. 15, the ALJ finds that the response is adequate and meets the requirements of Colo.R.Civ.P. 36(a) (requests for admissions). The ALJ will deny the request that Qwest supplement its response.

14. Qwest shall provide its supplemental responses to Eschelon on or before close of business on April 2, 2004, by electronic service. Service of a paper copy of the supplemental responses is required pursuant to Decision No. R04-0083-I.

15. On April 12, 2004, Complainant filed an Unopposed Motion for Enlargement of Time to File Direct Testimony and Exhibits (Testimony Motion). As grounds for this motion, Eschelon states that, due to scheduling conflicts, it needs additional time (to and including April 16, 2004) to file its direct testimony and exhibits. No other deadline established in this proceeding will be affected by this change. Eschelon requests that the enlargement of time, if granted, apply to all parties. Qwest does not oppose the Testimony Motion. The Testimony Motion states good cause, and granting the motion will not prejudice any party. The Testimony Motion will be granted.

16. As Qwest is aware of, and does not oppose, the Testimony Motion, the ALJ will waive response time to the Testimony Motion.

II. ORDER

A. It Is Ordered That:

1. The Motion to Compel Complete Responses to Second Set of Data Requests, Numbers 1, 2, 3, 5, 8, 9, 10, 14, and 15 is granted in part and denied in part, as set forth above.

2. Qwest Corporation shall serve, by electronic service, its supplemental responses to Data Requests 1, 2, 3, 5, 8, 10, and 14 on or before close of business on April 2, 2004.

3. The Unopposed Motion for Enlargement of Time to File Testimony and Exhibits is granted.

4. On or before April 16, 2004, Eschelon Telecom of Colorado, Inc., and Qwest Corporation shall file and serve their direct testimony and exhibits.

5. Except as modified by this Order, the provisions and requirements of Decision No. R04-0083-I shall apply and govern this proceeding.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge