

October 11, 2005

VIA EMAIL AND US MAIL

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

Re: UX 29 – Joint Motion to Strike Qwest’s Rebuttal Testimony

Dear Sir or Madam:

Enclosed for filing in the above-named docket is Joint Motion to Strike Qwest’s Rebuttal Testimony or, in the Alternative, Modify the Hearing Schedule and Affidavit of Lisa F. Rackner. Please contact me with any questions.

Very truly yours,



Jessica A. Gorham

Enclosure

cc: UX 29 Service List

CERTIFICATE OF SERVICE
UX 29

I hereby certify that a true and correct copy of **JOINT MOTION TO STRIKE QWEST'S REBUTTAL TESTIMONY OR, IN THE ALTERNATIVE, MODIFY THE HEARING SCHEDULE** was served via U.S. Mail on the following parties on October 11, 2005:

Doug Denney
Eschelon Telecom of Oregon, Inc.
Suite 900
730 Second Avenue South
Minneapolis MN 55402

Alex M. Duarte
Qwest Corporation
Suite 810
421 SW Oak Street
Portland OR 97204

Karen J. Johnson
Integra Telecom of Oregon, Inc.
Suite 500
1201 NE Lloyd Boulevard
Portland OR 97232

Gregory J. Kopta
Davis Wright Tremaine LLP
1501 4th Avenue, Suite 2600
Seattle WA 98101-1688

Mr. Brad Schaffer
Rio Communications Incorporated
520 SE Spruce
Roseburg OR 97470-3134

Michael T. Weirich
Oregon Department of Justice
General Counsel Division
100 Justice Building
1162 Court Street NE
Salem OR 97301

Gregory T. Diamond
Covad Communications Company
Government & External Affairs
7901 Lowry Boulevard
Denver CO 80230-6906

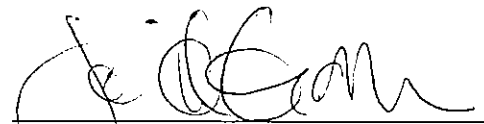
Mr. Dennis Gabriel
Oregon Telecom, Inc.
PO Box 4333
Salem OR 97302-8333

Rex Knowles
XO Oregon, Inc.
111 E Broadway, Suite 1000
Salt Lake City UT 84111

Lawrence H. Reichman
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland OR 97209-4128

Brian D. Thomas
Time Warner Telecom
223 Taylor Avenue North
Seattle WA 98109-5017

ATER WYNNE, LLP



Jessica A. Gorham

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UX 29**

4
5 In the Matter of
6 **QWEST CORPORATION**
7
8 Petition to Exempt from Regulation Qwest's
9 Switched Business Services

**JOINT MOTION TO STRIKE QWEST'S
REBUTTAL TESTIMONY OR, IN THE
ALTERNATIVE, MODIFY THE HEARING
SCHEDULE**

**EXPEDITED CONSIDERATION
REQUESTED**

10 **MOTION**

11 The Telecommunications Ratepayers Association for Cost-based and Equitable Rates
12 ("TRACER"), Time Warner Telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., and XO
13 Communications Services, Inc. (collectively "Joint Movants"), respectfully move for an order
14 striking the Rebuttal Testimony of Robert H. Brigham on Behalf of Qwest Corporation and the
15 Rebuttal Testimony of William Fitzsimmons on Behalf of Qwest Corporation (collectively
16 "Qwest's Rebuttal Testimony"), filed October 7, 2005. OAR 860-014-0045(1)(c). The
17 probative value of Qwest's Rebuttal Testimony is outweighed by the unfair prejudice caused by
18 Qwest's failure to serve the parties in a timely manner and limit the testimony to rebutting the
19 evidence set forth in the Staff and intervenor's direct testimony filed September 9, 2005. In the
20 alternative, the Joint Movants request that the Commission strike the confidential and highly
21 confidential portions of Qwest's rebuttal testimony, or continue the hearing, currently set for
22 October 18, 19, and 20, to allow the Joint Movants adequate time to analyze Qwest's Rebuttal
23 Testimony, conduct any necessary discovery, and to prepare for cross-examination on the new
24 material presented in the testimony. Because the hearing begins in seven days, the Joint
25 Movants request expedited consideration of this Motion.

1 **BACKGROUND**

2 On September 16, 2005, Qwest’s attorney, Alex Duarte, sent an electronic mail to the
3 service list this in this docket requesting that the parties consent to allowing Qwest an additional
4 five business days to submit rebuttal testimony (from September 30, 2005, to October 7, 2005).
5 *See Affidavit of Lisa F. Rackner in Support of Motion to Strike (“Rackner Affidavit”), Exhibit A*
6 (filed herewith). In response, the parties expressed concern that they would not be able to
7 propound discovery requests addressing Qwest’s rebuttal testimony in such a short timeframe
8 before the hearing. *Id.* Qwest then stated that it would respond to any data requests received by
9 2:00 pm on October 10, 2005, by 2:00 p.m. October 17, 2005. *Id.* Qwest submitted a formal
10 motion to modify the procedural schedule on September 19, 2005. Staff sent a letter to the
11 Administrative Law Judge agreeing to the extension so long as Qwest agreed to respond to data
12 requests received by October 10, 2005, within five business days.

13 On September 20, 2005, the Administrative Law Judge’s granted Qwest’s motion and
14 modified the schedule. *In the Matter of Qwest Corporation Petition to Exempt from Regulation*
15 *Qwest’s Switched Business Services, Docket UX 29, Ruling Denying Request for Access Line*
16 *Information for Facilities-Based CLECs and Modifying Schedule, dated September 20, 2005.*

17 Qwest electronically filed its Rebuttal Testimony on October 7, 2005, with electronic
18 copies to all parties on the service list. Consistent with the administrative rules, Qwest did not
19 include a copy of the confidential portions of its testimony in the electronic filing, but sent copies
20 to the parties via U.S. Mail. Although the Commission received a copy (via UPS delivery) on
21 October 10, 2005, none of the Joint Movants received copies of the confidential portions of
22 Qwest’s Rebuttal Testimony until October 11, 2005. *Rackner Affidavit* at ¶¶ 3-4. October 10
23 was a postal holiday.

24 When it became clear to TRACER that it would not be receiving a copy of the
25 confidential portions of Qwest’s Rebuttal Testimony by mail on October 10, TRACER’s

1 attorneys attempted to contact Qwest to arrange to pick up the confidential material in order to
2 prepare any relevant data requests by the end of the day. *See Rackner Affidavit*, Exhibit B. As
3 the series of electronic emails in Exhibit B show, there is no dispute about the basic course of
4 events on October 10. On behalf of TRACER, Jessica Gorham¹ placed a call to Mr. Duarte's
5 assistant, Carla Butler, and requested that Qwest provide a copy of the confidential materials to
6 be picked up by a messenger at Qwest's offices at TRACER's expense. *Id.*; *Rackner Affidavit* at
7 ¶5. In addition, TRACER's attorney, Lisa Rackner, left a message for Mr. Duarte about
8 arranging for a pick up of the materials. *Rackner Affidavit* at ¶5. Ms. Butler responded that she
9 did not have the time to prepare a copy of the confidential materials because it would take
10 approximately thirty minutes and she was busy preparing for hearings. *Rackner Affidavit*,
11 Exhibit B. The confidential material in Qwest's Rebuttal Testimony consists of 33 pages of
12 confidential information and 1 page of highly confidential information.

13 Because TRACER would be unable to review the confidential information before the
14 deadline for submitting data requests had passed, TRACER's attorney, Sarah Wallace, sent an
15 electronic mail to Mr. Duarte requesting that Qwest agree to respond to any data requests
16 received before 5:00 p.m. on October 11, 2005, by 5:00 p.m. on October 17, 2005 (four business
17 days). *Id.* Qwest refused to agree, stating that it was the parties' responsibility, not Qwest's, to
18 arrange to obtain a copy of the confidential information earlier than it would otherwise be
19 received under the administrative rules governing service on parties. *Id.* When TRACER's
20 counsel responded that she had, in fact, attempted to arrange to pick up a copy at Qwest's offices
21 and was rebuffed, Qwest's counsel responded that "it is not [Qwest's paralegal's] job" to provide
22 the materials for TRACER "simply because you want to get the information faster than you
23 otherwise would get it, or because you didn't make arrangements to have your copy of it picked
24 up." *Id.*

25 ¹ Ms. Gorham is the legal assistant to TRACER's attorneys, Lisa Rackner and Sarah Wallace.

1 **ARGUMENT**

2 Under the administrative rules, a party filing a document with the Commission must
3 serve copies of the document on all other parties on the Commission’s official service list. OAR
4 860-013-0070. Qwest served an electronic copy of the non-confidential testimony and mailed a
5 copy of the confidential material to the parties. Such service was insufficient under the
6 circumstances presented here. Qwest was fully aware that, due to its request to extend the due
7 date for rebuttal testimony, the parties had only *one business day* from the due date (October 7,
8 2005) to review the testimony and submit data requests. Qwest was aware that the parties were
9 concerned about being able to propound data requests before the hearing, and that the
10 Administrative Law Judge only granted the extension because Qwest’s agreement to respond to
11 data requests by October 17, 2005 (if served by October 10, 2005) resulted in no harm to the
12 parties. *ALJ Ruling at 2-3, Rackner Affidavit, Exhibit A.* Implicit in the Administrative Law
13 Judge’s Ruling is the assumption that the parties would receive copies of Qwest’s confidential
14 testimony in time to be able to review the testimony and prepare data requests by October 10,
15 2005. Qwest’s failure to provide the parties with copies of the confidential portions of Qwest’s
16 Rebuttal Testimony by that date severely prejudiced the parties by making it impossible for them
17 to receive responses to data requests regarding the confidential material before the first day of
18 the hearing. The parties thus will suffer substantial harm from the extension granted to Qwest if
19 Qwest is permitted to introduce this material into the record and the hearing takes place as
20 scheduled.

21 In addition, Qwest’s Rebuttal Testimony is prejudicial to the other parties in this docket
22 because consists of much more than merely a response to the direct testimony submitted by Staff
23 and the intervenors. Qwest introduces a new expert economist as a witness on rebuttal,
24 Dr. William Fitzsimmons. Given Qwest’s experience with deregulation dockets throughout its
25 service territory and the nature of this docket, Qwest was aware that economic testimony would
26

1 be critical to Qwest's case and should have presented the vast majority of Dr. Fitzsimmons'
2 testimony with its case on direct. For example, Dr. Fitzsimmons introduces a new argument
3 about relative expenditures that was not presented in Qwest's direct testimony and is not
4 responsive to the direct testimony submitted by Staff and intervenors. Qwest/51,
5 Fitzsimmons/30. Dr. Fitzsimmons also cites to numerous articles and several studies that require
6 quite a bit of time to review and analyze. *See, e.g., id.* at 29-30. These articles and studies were
7 not provided as exhibits. The parties need more time in order to analyze the testimony and
8 prepare for cross-examination.

9 The rebuttal testimony of Robert Brigham also includes evidence that should have been
10 presented in direct testimony. For example, Mr. Brigham includes a discussion of the relevant
11 product market that is more appropriate for direct testimony. Although there are a few
12 references to Staff and intervenor testimony, Mr. Brigham's testimony describes the nature of
13 Qwest's business service offerings and how they are defined by other carriers, which is
14 information that Qwest should have provided to support its direct case. Qwest/50, Brigham/10-
15 26. Further, Mr. Brigham's includes testimony on the substitutability of wireless services for
16 more than basic business exchange service should have been part of Qwest's direct testimony.
17 *Id.* at 44-49. Given the fact that the hearing begins in just one week, the parties simply do not
18 have enough time to analyze Qwest's extensive Rebuttal Testimony and prepare for cross-
19 examination.

20 Moreover, Mr. Brigham's confidential testimony includes entirely new market share
21 calculations that need to be thoroughly analyzed by TRACER's expert witness, Dr. Richard
22 Cabe. Dr. Cabe has expressed concern that he will not be able to examine these new calculations
23 completely without being able to serve data requests upon Qwest. *Rackner Affidavit* at ¶ 7.
24 Because Dr. Cabe did not receive the confidential testimony until today, TRACER will be unable
25 to receive responses to data requests before the hearing begins on October 18, 2005, leaving
26

1 Dr. Cabe no time to analyze the responses and assist TRACER in preparing for cross-
2 examination of Qwest's witnesses.

3 **CONCLUSION**

4 For the above reasons, the Joint Movants respectfully request that the Commission strike
5 Qwest's Rebuttal Testimony in its entirety. In the alternative, the Joint Movants request that the
6 Commission strike the confidential and highly confidential portions of Qwest's Rebuttal
7 Testimony, or continue the hearing to allow the parties adequate time to analyze the testimony,
8 submit data requests and receive responses, and prepare cross-examination.

9 Respectfully submitted this 11th day of October, 2005.

10 ATER WYNNE LLP

11
12 By: /s/ Sarah K. Wallace
13 Lisa F. Rackner
14 Sarah K. Wallace
15 222 SW Columbia, Suite 1800
16 Portland, Oregon 97201
17 E-mail: lfr@aterwynne.com
18 sek@aterwynne.com
19 Attorneys for TRACER

17 DAVIS WRIGHT TREMAINE LLP
18 Gregory J. Kopta
19 1501 4th Avenue, Suite 2600
20 Seattle, WA 98101-1688
21 E-mail: gregkopta@dwt.com
22 Attorney for Time Warner Telecom of Oregon,
23 LLC, and XO Communications Services, Inc.

22 INTEGRA TELECOM OF OREGON, INC.
23 Karen J. Johnson
24 Corporate Regulatory Attorney
25 1201 NE Lloyd Boulevard, Suite 500
26 Portland, OR 97232
E-mail: Karen.johnson@integratelecom.com

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UX 29**

4 In the Matter of

5 QWEST CORPORATION

6 Petition to Exempt from Regulation Qwest's
7 Switched Business Services

AFFIDAVIT OF LISA F. RACKNER IN
SUPPORT OF JOINT MOTION TO STRIKE
QWEST'S REBUTTAL TESTIMONY

8
9
10 I, Lisa F. Rackner, do depose and say:

11 1. I am one of the attorneys representing the Telecommunications Ratepayers
12 Association for Cost-based and Equitable Rates ("TRACER") in the above-referenced docket.

13 2. Attached as Exhibit A to this affidavit is a true and correct copy of an electronic
14 mail exchange between the parties to this docket regarding Qwest's request that the parties
15 consent to allowing Qwest an additional five business days to submit rebuttal testimony.

16 3. TRACER did not receive a copy of the confidential and highly confidential
17 portions of Qwest's Rebuttal Testimony until October 11, 2005.

18 4. On October 11, 2005, I spoke with Gregory Kopta, attorney for Time Warner
19 Telecom of Oregon, LLC, and XO Communications Services, Inc. Mr. Kopta indicated that he
20 did not receive a copy of the confidential portions of Qwest's Rebuttal Testimony before
21 October 11, 2005.


22 5. When it became clear that TRACER would not be receiving a copy of the
23 confidential and highly confidential portions of Qwest's Rebuttal Testimony before the close of
24 business on October 10, I instructed my legal assistant to call Carla Butler, a paralegal at Qwest
25 and assistant to Qwest's counsel, Alex Duarte, to arrange to pick up a copy of the materials at
26

1 Qwest's offices at TRACER's expense. I also personally left a message for Mr. Duarte to try to
2 arrange to pick up the materials.

3 6. The substance of the conversations between my assistant, Jessica Gorham, and
4 Ms. Butler is set forth in Exhibit B to this affidavit. Exhibit B is a true and correct copy of a
5 series of electronic mails between Mr. Duarte and another attorney in my office, Sarah Wallace.
6 These electronic mails detail the events of October 10, 2005.

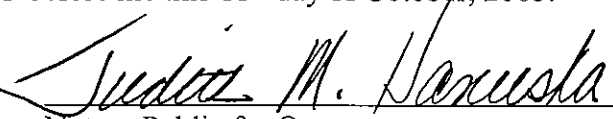
7 7. On October 10 and 11, I had several telephone conversations with Dr. Richard
8 Cabe, TRACER's expert witness. Dr. Cabe indicated that he would not be able to analyze
9 Qwest's Rebuttal Testimony without issuing data requests to Qwest regarding the new market
10 share calculations used by Mr. Brigham in his confidential rebuttal testimony.

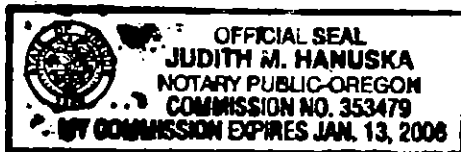
11 DATED this 11th day of October, 2005.

12 

13
14 Lisa F. Rackner
15 Attorney
16 Ater Wynne LLP

17 SUBSCRIBED AND SWORN TO before me this 11th day of October, 2005.

18 
19 Notary Public for Oregon
20 My commission expires: 01/13/2006



23
24
25
26 PAGE 2 – JOINT MOTION TO STRIKE QWEST'S REBUTTAL
TESTIMONY OR, IN THE ALTERNATIVE, MODIFY THE
HEARING SCHEDULE

(UX 29)
296050_1.DOC

ATER WYNNE LLP
222 SW COLUMBIA, SUITE 1800
PORTLAND, OR 97201-6618
(503) 226-1191

Jessica Gorham

From: Duarte, Alex [Alex.Duarte@qwest.com]
Sent: Monday, September 19, 2005 3:47 PM
To: Duarte, Alex; Andrus Stephanie; Lisa Rackner; Kopta, Greg; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; Jessica Gorham
Cc: Brigham, Robert; Mason, Don; Harris, Sheila; CONWAY Bryan
Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

Stephanie-

I apologize, but I misspoke when I said no problem.

In my haste, I thought you were asking whether Qwest could respond within 5 **business** days, and that so long as the data requests were served by 2 p.m., could Qwest respond by 2 p.m. when they were due. However, I am reminded that the example you use is not 5 business days, it is **3 business days**, with a weekend in between. This is no different than the proposal you made earlier regarding a three-day turnaround, which I said would be too difficult for Qwest because 5 Commission/business days (half of the normal turnaround) is already pushing it.

So, I apologize for not reading your email carefully. However, to be clear, Qwest is willing to respond by 2 p.m. on the due date if we receive a data request by 2 p.m., but it still would need **5 Commission/business days** in order to respond. Thus, your example would not apply because it is 5 calendar days, and only 3 business days. If, however, your example is a data request on October 10, by 2 p.m., then Qwest could respond by October 17, by 2 p.m.

Again, I apologize for my quick response after not having reviewed the actual dates of your example.

Alex

Alex M. Duarte

Corporate Counsel

Qwest

421 SW Oak Street, Suite 810

Portland, OR 97204

503-242-5623

503-242-8589 (facsimile)

Alex.Duarte@qwest.com

10/11/2005

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: Duarte, Alex

Sent: Monday, September 19, 2005 3:16 PM

To: 'Andrus Stephanie'; Lisa Rackner; Kopta, Greg; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; Jessica Gorham

Cc: Brigham, Robert; Mason, Don; Harris, Sheila; CONWAY Bryan

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

No problem. Alex

Alex M. Duarte

Corporate Counsel

Qwest

421 SW Oak Street, Suite 810

Portland, OR 97204

503-242-5623

503-242-8589 (facsimile)

Alex.Duarte@qwest.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: Andrus Stephanie [<mailto:stephanie.andrus@doj.state.or.us>]

Sent: Monday, September 19, 2005 3:02 PM

To: Duarte, Alex; Lisa Rackner; Kopta, Greg; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; Jessica Gorham

Cc: Brigham, Robert; Mason, Don; Harris, Sheila; CONWAY Bryan

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

Here's a slight modification to your request to ensure parties have opportunity for one round of discovery. Could Qwest agree that for every data request that it receives by 2 p.m. on October 12th, that it will respond by 2 p.m. on October 17th? This is a five-day turnaround, but ensures the responses will be received prior to the start of the hearing.

Stephanie Andrus

-----Original Message-----

From: Duarte, Alex [<mailto:Alex.Duarte@qwest.com>]

Sent: Monday, September 19, 2005 2:51 PM

To: Andrus Stephanie; Lisa Rackner; Kopta, Greg; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; Jessica Gorham

10/11/2005

Cc: Brigham, Robert; Mason, Don; Harris, Sheila

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

Stephanie-

No, we don't have an alternative proposal. Five days is already pushing it, and thus four or three days would be even worse. However, the point I have made is that under the discovery rules, there would be no difference here. That is, using your example, but assuming the normal 10-day response period, and the current schedule (i.e., with no extension, and thus the data requests are issued on October 4), the responses would still be due on the same day they would otherwise be due. Our proposal is truly a no harm/no foul proposition because any data requests would be due on the same date they would have normally been due.

Thanks. Alex

Alex M. Duarte
Corporate Counsel
Qwest
421 SW Oak Street, Suite 810
Portland, OR 97204
503-242-5623
503-242-8589 (facsimile)
Alex.Duarte@qwest.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: Andrus Stephanie [<mailto:stephanie.andrus@doj.state.or.us>]

Sent: Monday, September 19, 2005 1:27 PM

To: Duarte, Alex; Lisa Rackner; Kopta, Greg; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; Jessica Gorham

Cc: Brigham, Robert; Mason, Don; Harris, Sheila

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

Alex,

Staff is sympathetic to your need for an extension, but is not sure that a 5-day turnaround alleviates concerns re: discovery prior to hearings. If the filing comes in at 5pm on Friday October 7th and parties read it on Monday October 10th and get data requests out on the 11th, they would not responses back until 10/18, the day of the hearings. Do you have an alternate proposal, e.g., a four business day extension on testimony or a three-day turn around on data requests?

Stephanie Andrus

-----Original Message-----

From: Duarte, Alex [<mailto:Alex.Duarte@qwest.com>]

Sent: Monday, September 19, 2005 12:06 PM

10/11/2005

To: Andrus Stephanie; Lisa Rackner; Kopta, Greg; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; Jessica Gorham

Cc: Brigham, Robert; Mason, Don; Harris, Sheila

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

As of noon today, we have heard from a number of parties who have expressed a concern about not having enough time to conduct discovery (presumably about matters raised in the rebuttal testimony), and thus requesting that any change to the rebuttal testimony dates be reflected in a change of the hearing dates. In light of those concerns, and to alleviate such concerns, Qwest would agree to a five business-day turnaround to respond to data requests (five business days fewer than the applicable 10 business day response time under OAR 860-014-0070) to respond to data requests that pertain to Qwest's rebuttal testimony. This would mean that the parties would still end up receiving data request responses on the same date as if the current September 30th rebuttal testimony deadline had not been changed, while keeping the current October 18-20 hearing dates. Thus, there would continue to be no harm or prejudice to any party to have this one-week extension of the rebuttal testimony date.

Several parties have also suggested they would be willing to agree to a week's extension of the rebuttal testimony date if the hearing dates were also extended a week. Experience, however, shows that when multi-day hearing dates are changed or modified, there are invariably parties who protest about specific proposed dates because of their own particular unavailability, especially when the proposed change or modification occurs close to the originally-scheduled dates. Thus, rather than risk having parties complain about not being available the week of October 24th, or October 31st, or later, and especially with the Thanksgiving and December holidays approaching thereafter, Qwest believes that there is no harm or prejudice to any party by keeping the current hearing dates of October 18-20, and extending the rebuttal testimony from September 30 to October 7, with an agreed five business day turnaround on data requests that pertain to rebuttal testimony.

Thank you for your attention to this matter and your prompt responses.

Alex

Alex M. Duarte
Corporate Counsel
Qwest
421 SW Oak Street, Suite 810
Portland, OR 97204
503-242-5623
503-242-8589 (facsimile)
Alex.Duarte@qwest.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: Andrus Stephanie [<mailto:stephanie.andrus@doj.state.or.us>]

Sent: Monday, September 19, 2005 10:02 AM

To: Lisa Rackner; Kopta, Greg; Duarte, Alex; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace

Cc: Sarah Wallace; Jessica Gorham

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

10/11/2005

Staff has no objection to an extension provided that there is at least a seven-day postponement of the hearing date.

Thanks,

Stephanie Andrus

-----Original Message-----

From: Lisa Rackner [mailto:lfr@aterwynne.com]

Sent: Monday, September 19, 2005 9:02 AM

To: Kopta, Greg; Duarte, Alex; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace

Cc: Sarah Wallace; Jessica Gorham

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

TRACER has the same concerns, and would be happy to discuss extending the hearing date, provided we can accomodate the Commission, witness and lawyer schedules.

From: Kopta, Greg [mailto:GregKopta@DWT.COM]

Sent: Sunday, September 18, 2005 9:57 AM

To: Duarte, Alex; stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; Lisa Rackner; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

Alex --

My clients' concern is that we will not have time to propound and receive responses to discovery on Qwest's reply testimony if it is filed only 11 calendar days before the hearings. We are willing to discuss moving the date on which Qwest files its reply testimony but only if the hearing dates are moved back by a comparable period of time.

Greg

Gregory J. Kopta
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
(206) 628-7692

-----Original Message-----

From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]

Sent: Friday, September 16, 2005 1:30 PM

To: stephanie.andrus@state.or.us; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; Kopta, Greg; lfr@aterwynne.com; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; sek@aterwynne.com

10/11/2005

Subject: RE: UX 29- Request for an Extension of Qwest Reply Testimony date

My apologies that I sent this email without identifying the topic in the subject matter line. I hit send before I added a subject line. Please let me know as soon as possible, but no later than noon on Monday, whether you have any objections to this request. Thanks. Alex

Alex M. Duarte

Corporate Counsel

Qwest

421 SW Oak Street, Suite 810

Portland, OR 97204

503-242-5623

503-242-8589 (facsimile)

Alex.Duarte@qwest.com

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From: Duarte, Alex

Sent: Friday, September 16, 2005 1:27 PM

To: 'stephanie.andrus@state.or.us'; 'richard@salidamillwork.com'; 'dkdenney@eschelon.com'; 'gdiamond@covad.com'; Duarte, Alex; 'dgabriel@oregontelecom.com'; 'karen.johnson@integratelecom.com'; 'rex.knowles@xo.com'; 'gregkopta@dwt.com'; 'lfr@aterwynne.com'; 'reichman@perkinscoie.com'; 'brad@rio.com'; 'brian.thomas@twtelecom.com'; 'sek@aterwynne.com'

Subject:

As you know, the hearing in this matter is scheduled for October 18-20, 2005, and Qwest's reply testimony to five witnesses' testimony is due in two weeks, on Friday, September 30, 2005. Unfortunately, for various reasons, including that (1) Qwest is still seeking certain (non-1FB) aggregated pricing information from Staff along the lines of Exhibit Staff/112, (2) we still do not know how Judge Arlow will rule about the disaggregated facilities-based access line data issue, (3) Qwest has only three weeks to respond to five pieces of testimony, totaling more than 170 pages (while all other parties had five weeks to respond to one witness' testimony), and (4) the turnaround time for certain data requests that Qwest issued this week to various testifying parties does not allow Qwest to adequately incorporate the responses in its reply testimony, Qwest needs an additional week in order to adequately prepare its reply testimony.

Accordingly, Qwest asks whether any party has any objection to Qwest's request for an additional five business days, until Friday, October 7, 2005, in which to file its reply testimony. An October 7th date would still be 11 days before the October 18, 2005 hearing date. In addition, Qwest notes that Commission proceedings often have the hearing dates in less time after the filing of reply testimony than in this case. Indeed, the parties had originally planned for a hearing date earlier than October 18th, but Qwest agreed to push back the hearing date to accommodate religious observances during that time. Thus, Qwest does not believe that any party would be

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prejudiced by such an extension.

Please let us know if you have any objections to this request by **noon on Monday**, September 19th, because we intend to promptly request Judge Arlow for this one-week extension.

Thank you for your anticipated cooperation.

Alex

Alex M. Duarte

Corporate Counsel

Qwest

421 SW Oak Street, Suite 810

Portland, OR 97204

503-242-5623

503-242-8589 (facsimile)

Alex.Duarte@qwest.com

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applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

Sarah Wallace

From: Sarah Wallace
Sent: Monday, October 10, 2005 4:27 PM
To: Duarte, Alex; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; gregkopta@dwt.com; Lisa Rackner; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; michael.weirich@state.or.us
Cc: Jessica Gorham
Subject: RE: UX 29: Data Requests

Alex -

I did not intend to portray you or your office as failing to cooperate with my office. My statements were not an attack, they were simply a statement of fact about today's events in response to your statement that it was the parties' responsibility to obtain a copy of the confidential testimony in a timely manner.

As for the remainder of your email, as I said earlier I do not see the need to argue about this further. This may not even be an issue. If it is, we will ask the ALJ to address the issue.

Just for clarification, I asked you to respond in 4, not 3, business days.

Sarah K. Wallace
 Ater Wynne LLP
 (503) 226-8486

From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Monday, October 10, 2005 4:01 PM
To: Sarah Wallace; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; gregkopta@dwt.com; Lisa Rackner; lreichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; michael.weirich@state.or.us
Cc: Jessica Gorham
Subject: RE: UX 29: Data Requests

Sarah-

I agree with some of what you said. However, we did timely file our testimony. We also electronically served it. We were not under any obligation to hand-deliver anything to any party. Please let me know why you believe we did not serve our testimony in a timely manner.

Also, as to the shortened time being due to our moving back the testimony, that is true, and that is what we agreed to, 5 business days, and not 3 business days simply because you don't have the confidential information right now.

Further, as to your request today, as was explained to you, it would take our paralegal at least a half hour to put together a package of material for you because of all of the confidential information. It is not her job to do that to you, or any other party, simply because you want to get the information faster than you otherwise would get it, or because you didn't make arrangements to have your copy of it picked up

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instead of our (me personally) having to take a box with 12 voluminous packages to the post office. Also, as for the call from Lisa, we had already responded with Carla, at my direction, notifying you of why we could not accommodate your request. Moreover, I have been out of the office during the middle part of the day. (I also note that there are times when your office does not return calls to me for days, or at all, but I haven't advertised that to all parties in a case.)

So, I believe your remarks are eminently unfair, and it is inappropriate for you to portray to all of the recipients on this email that our office refuses to cooperate with you, or that we don't return calls.

As I mentioned, Qwest will oppose any attempts to use the fact that you don't have the confidential information today because of the holiday as a basis to shorten Qwest's time to respond to data requests.

Alex

Alex M. Duarte
Corporate Counsel
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Alex.Duarte@qwest.com

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From: Sarah Wallace [<mailto:sek@aterwynne.com>]

Sent: Monday, October 10, 2005 3:34 PM

To: Duarte, Alex; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; gregkopta@dwt.com; Lisa Rackner; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; michael.weirich@state.or.us

Cc: Jessica Gorham

Subject: RE: UX 29: Data Requests

Alex -

Thanks for your quick response. However, I would like to note that the shortened time for responses is due to Qwest's own request to file and serve testimony a week later than the original due date. In addition, it is Qwest's responsibility to serve the parties with a complete copy of the testimony in a timely manner and not the other parties' responsibility to pick one up from your offices. ORS 860-013-0070.

Furthermore, my assistant called your assistant, Carla, earlier today and asked if we could pick up a copy of the confidential testimony. Carla said no. Lisa Rackner then called you directly to try to find a way to get a copy of the testimony today, and you have not returned her call.

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I see no need to continue to argue about this until we actually see Qwest's confidential testimony. If we do end up having data requests related to that testimony, we will bring this matter to the ALJ's attention.

Thank you,

Sarah K. Wallace
Ater Wynne LLP
(503) 226-8486

From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Monday, October 10, 2005 3:17 PM
To: Sarah Wallace; richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; gregkopta@dwt.com; Lisa Rackner; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; michael.weirich@state.or.us
Cc: Jessica Gorham
Subject: RE: UX 29: Data Requests

Sarah-

We are not willing to stipulate to that. This is especially so because we have already agreed to five business days to respond, which is half of the amount of time under OAR 860-014-0070, and we are in the midst of preparing for the hearing, which is difficult enough. Moreover, the fact that the parties may not have contemplated a national holiday today, or that they did not make arrangements for having a messenger pick up the voluminous packet that we put together for the filing (a total of 12 packets by my count) is not Qwest's fault. Further, there is no reason why the parties cannot use the data responses at the hearing or as exhibits, and we don't have objections to responses to data requests being part of the record, and the record won't close until after the hearing. Finally, the confidential numbers are what they are, and thus we are willing to have such confidential data be part of the record, but it is not like one of Qwest's witnesses is going to be able to do much more than to confirm that these are the numbers that Qwest calculated or derived.

I am certain that there are probably other good reasons why such a shortened time frame, especially on the eve of the preparation for the hearing, is neither warranted or advisable, but at the moment, these are the ones I can think of.

So, Qwest will vigorously oppose any such request. Thanks.

Alex

Alex M. Duarte
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10/11/2005

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From: Sarah Wallace [mailto:sek@aterwynne.com]

Sent: Monday, October 10, 2005 2:49 PM

To: richard@salidamillwork.com; dkdenney@eschelon.com; gdiamond@covad.com; Duarte, Alex; dgabriel@oregontelecom.com; karen.johnson@integratelecom.com; rex.knowles@xo.com; gregkopta@dwt.com; Lisa Rackner; Ireichman@perkinscoie.com; brad@rio.com; brian.thomas@twtelecom.com; Sarah Wallace; michael.weirich@state.or.us

Cc: Jessica Gorham

Subject: UX 29: Data Requests

Alex -

As you know, today is the last day to serve data requests in UX 29 in order to receive a response before the hearing. Because the parties have not yet received the confidential portions of Qwest's rebuttal testimony, we are unable to draft data requests regarding those portions. Accordingly, we may be asking the ALJ to require Qwest to respond to any data requests received by 5:00 pm tomorrow (assuming we received the confidential testimony tomorrow morning) by 5:00 pm on October 17, 2005. Please let me know if Qwest is willing to stipulate to this arrangement.

Thank you,

Sarah K. Wallace
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Telephone: (503) 226-8486
Facsimile: (503) 226-0079

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