



RECEIVED

2006 JUN -9 P 3: 13

AZ CORP COMMISSION  
DOCUMENT CONTROL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS:**

**JEFF HATCH-MILLER – Chairman**  
**WILLIAM A. MUNDELL**  
**MARK SPITZER**  
**MIKE GLEASON**  
**KRISTIN K. MAYES**

**IN THE MATTER OF THE COMPLAINT  
OF ESCHELON TELECOM OF  
ARIZONA, INC. AGAINST QWEST  
CORPORATION**

**DOCKET NO. T-03406A-06-0257**  
**DOCKET NO. T-01051B-06-0257**

**MOTION TO RECONSIDER THE  
HEARING SCHEDULE**

During the Procedural Conference and again in its Recommended Schedule, Qwest informed the Administrative Law Judge (ALJ) that its lead hearing counsel, Charles W. Steese, had trials set in existing proceedings that would preclude a hearing before January 2007. As a result, Qwest offered to provision unbundled loops to Eschelon using an interim process through the hearing date when expedited due dates were requested to ensure Eschelon was not prejudiced. The ALJ ordered the interim solution, but still scheduled the hearing such that there is a conflict with Mr. Steese's trial schedule. Qwest respectfully requests that the ALJ promptly reconsider her schedule. To the extent the ALJ does not modify the schedule, Qwest will be forced to retain different outside counsel to replace Mr. Steese thereby prejudicing Qwest and depriving it of its counsel of choice.

1 **I. RELEVANT FACTS**

2 At its core, this case concerns the applicability of the Commission approved Change  
3 Management Process. Qwest retained Charles W. Steese as lead hearing counsel in this matter.  
4 Mr. Steese was formerly Qwest's lead hearing counsel on Section 271 throughout Qwest's 14 state  
5 region including in Arizona, and is intimately familiar with Change Management. Indeed, Qwest is  
6 currently involved in the Section 252 arbitration process with Eschelon, and Qwest retained Mr.  
7 Steese to manage the approximately 20 issues relating to Section 12 of the contract, most of which  
8 concern Change Management. One of the issues is the arbitration is the appropriate contract  
9 language for expediting due dates, the very issue involved in this proceeding. Thus, Qwest  
10 considers Mr. Steese an integral component to this dispute.

11 During the Procedural Conference, Mr. Steese informed the Administrative Law Judge that  
12 he already had the following trial dates set: (1) July 10, 2006, a six to seven day jury trial in federal  
13 court in Sioux City, Iowa; (2) September 25, 2006, a 5-7 day AAA arbitration proceeding in  
14 Denver, Colorado; and, (3) October 30, 2006, a six-week jury trial in federal court in Boston,  
15 Massachusetts (in a case that has been pending since October 2002). As a result, Qwest requested  
16 the following schedule:

- 17 1. August 15, 2006: Eschelon's Direct Testimony
- 18 2. October 17, 2006: Qwest's Responsive Testimony
- 19 3. December 1, 2006: Eschelon's Rebuttal Testimony
- 20 4. December 31, 2006: Discovery Deadline
- 21 5. January 29-31, 2007: Hearing

22 *See Exhibit 2* (Affidavit of Charles W. Steese). This schedule would not prejudice Eschelon  
23 because the Commission ordered an interim solution through hearing for expediting orders for  
24 unbundled loops.

25  
26

1            *Moreover, the aforementioned schedule is especially important because Eschelon has*  
2 *requested four depositions, and Qwest has requested five depositions in this case. See Exhibit 1.*  
3 Thus, it would be a virtual impossibility to get to hearing by the end of September even if the  
4 hearing date did not conflict with Mr. Steese's schedule, and even if Qwest obtains a second  
5 counsel for this proceeding.

6 **II. GOOD CAUSE EXISTS TO RESCHEDULE THE HEARING, BECAUSE THE CURRENT**  
7 **SCHEDULE UNFAIRLY PREJUDICES QWEST BY REQUIRING IT TO RETAIN NEW COUNSEL.**

8            The ALJ recently set hearing in this matter for October 2-4, 2006. To the extent the  
9 Commission schedules a hearing before January 2007, Mr. Steese will be forced to withdraw from  
10 this case, and Qwest forced to retain separate counsel. *See Exhibit 2* (Affidavit of Charles W.  
11 Steese). This will unfairly prejudice Qwest and deprive it of its counsel of choice.

12            *"[M]otions for continuances should be freely granted."* *PMC Powdered Metals Corp. v.*  
13 *Industrial Comm'n*, 489 P.2d 718, 721 (Ariz. Ct. App. 1971) (emphasis added). A continuance is  
14 appropriate, meaning good cause is shown, when the current schedule would cause prejudice to a  
15 party to the litigation. A.A.C. § R14-3-109(Q) ("Either prior to hearing or during a hearing, and  
16 on a showing of good cause, a matter may be continued by the Commission or the presiding  
17 officer for submission of further or additional evidence or for any other proper purpose."). Courts  
18 follow the same good cause standard as in the Commission's rule, and consider:

- 19            (1) when the request for continuance was filed; (2) the nature of the reasons offered to  
20 support the continuance, particularly where there is reason to believe that those reasons  
21 are either less than candid or offered in bad faith; (3) the length of the requested delay; (4)  
the number of continuances previously granted; and, the great catch-all, (5) the general  
balance of convenience to the parties and the court.

22            *United States v. Hughey*, 147 F.3d 423, 431-432 (5th Cir. 1998). Attorney schedule conflicts  
23 timely brought to the tribunal's attention are a proper grounds for a continuance:

24            where counsel's busy trial schedule is the primary reason for a delay in trial preparation, a  
25 continuance should generally not be denied in the absence of a prior warning, an  
26 exploration of the legitimacy of counsel's conflicting engagements and the extent to which  
an accommodation of counsel's schedule would prejudice the opposing party or

1 inconvenience the court, and consideration of alternative solutions.

2 *Martel*, 34 F.3d at 735. Accord, *In re Marriage of Perkal*, 77 Cal. App. 3d 413, 418 (Cal. Ct.  
3 App. 1978). Here, Qwest has brought the issue to the ALJ's attention immediately, so that  
4 neither the ALJ nor the parties will incur any burden or prejudice.

5 Qwest realizes that the ALJ's schedule is intended to obtain a prompt decision. Qwest too  
6 seeks a prompt decision. "Delay should be avoided to the extent that it is unnecessary or  
7 unreasonable but adequate time must be allowed for discovery of the facts and assembly of the  
8 proof." *Martel v. County of Los Angeles*, 34 F.3d 731, 735-736 (9th Cir. 1994) (overruled on  
9 other grounds, on rehearing en banc, 56 F.3d 993, 994 (9th Cir. 1995)). See also, *United States v.*  
10 *Garrett*, 179 F.3d 1143, 1144-1145 (9th Cir. 1999) (citing *Morris v. Slappy*, 461 U.S. 1, 11-12  
11 (1983)). Here, the matter was just filed; discovery has just begun; and the parties have  
12 collectively identified 9 persons to be deposed. There is simply insufficient time to conduct a  
13 September hearing even if new counsel is retained.

14 "Courts are much more reluctant to hold that the granting of a continuance was error than  
15 that the refusal to do so was, for a refusal to grant a continuance may frequently work a serious  
16 injustice to one party or the other, while the granting of it will do so only in rare cases." *Everett*  
17 *v. State*, 88 Ariz. 293, 295 (Ariz. 1960). Indeed, the Arizona Rules of Civil Procedure contemplate  
18 that upon notice of a scheduling conflict, a state court judge would confer with the other tribunal to  
19 resolve the conflict. Ariz. R. Civ. P. 38.1(k)(2) ("Upon being advised of a scheduling conflict, the  
20 judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the  
21 conflict," considering in part the relative age of the cases in question, and whether facts led to  
22 urgency). See also, A.A.C. § R14-3-106(K) ("Motions shall conform insofar as practicable with  
23 the Rules of Civil Procedure for the Superior Court of the state of Arizona.").

24 Here, good cause for resetting the hearing date exists because the current schedule will  
25 deprive Qwest of its counsel of choice and impose substantial, unfair prejudice to Qwest. "[I]t has  
26

1 ... been long recognized that ... every litigant has the right to the counsel of its choice.” *Security*  
2 *Gen. Life Ins. Co. v. Superior Court*, 149 Ariz. 332, 335 (Ariz. 1986). Qwest brought the schedule  
3 conflict to the ALJ’s and opposing party’s attention at its first opportunity to do so, before the ALJ  
4 set the hearing date. The schedule conflict arises because this proceeding will require substantial  
5 attorney time for discovery (as noted above), and the current hearing conflicts with trials in other  
6 cases each of which has been pending for some time (in one case, for four years by the time of the  
7 scheduled trial), and some of which have already been continued and reset for various reasons not  
8 due to counsel.

9 Moreover, the current schedule will force Qwest to retain two separate lawyers to manage  
10 the exact same issues, because Mr. Steese has been retained as outside counsel on all issues relating  
11 to Section 12 of the new interconnection agreement, which contains the process for expediting  
12 orders for unbundled loops. Thus, because Mr. Steese will represent Qwest on these issues in other  
13 proceedings, the current schedule will also require Qwest to pay two different lawyers to get up to  
14 speed on the exact same issues. This would work yet another substantial prejudice to Qwest.

15 In stark contrast, moving the hearing date to January 2007 does not cause Eschelon any  
16 prejudice whatsoever. The ALJ has set an interim process that will allow Eschelon to obtain  
17 expedited due dates for unbundled loops without an amendment to its ICA. Hence, there is no  
18 urgency to try this proceeding in September as opposed to a few months later, to accommodate the  
19 substantial discovery which this proceeding will require, and the trial schedule of Qwest’s lead  
20 counsel. Qwest does not seek the rescheduling for purposes of delay, but only so that Qwest is able  
21 to retain uniquely experienced trial counsel, that justice may be done. See, Ariz. R. Civ. P. 38.1 (i).  
22 Under these circumstances, particularly given that Qwest has informed the ALJ of its counsel’s  
23 trial schedule conflicts at the first opportunity to do so, to require the hearing prior to January  
24 2007 would be “an unreasoning and arbitrary insistence upon the expeditiousness in the face of a  
25 justifiable request for delay,” which under *Morris*, would constitute an abuse of discretion.  
26 *Morris*, 461 U.S. at 11-12.

1 **III. CONCLUSION**

2 The ALJ has set a hearing date for October 2-4, 2006. This date causes Qwest undue  
3 prejudice because it will require Qwest's counsel of choice to withdraw from the case due to  
4 irreconcilable conflicts. Moving the hearing date to January 2007 is fair, will not prejudice any  
5 party, and will still ensure the matter is tried very promptly.

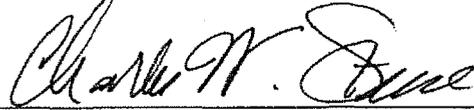
6 WHEREFORE, Qwest respectfully, requests that the Commission reconsider the current  
7 schedule, and adopt Qwest's schedule which allows for a hearing in January 2007. Qwest also  
8 respectfully requests that the ALJ make this decision promptly so, if a change of counsel is  
9 required, that Qwest can promptly make the change.

10 ///  
11 ///  
12 ///  
13 ///  
14 ///  
15 ///  
16 ///  
17 ///  
18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY SUBMITTED this 9th day of June, 2006.

Attorneys for Defendant



Charles W. Steese (Arizona Bar No. 012901)  
STEESE & EVANS, P.C.  
6400 South Fiddlers Green Circle, Suite 1820  
Denver, Colorado 80111  
Tel: (720) 200-0676  
Fax: (720) 200-0679  
Email: csteese@s-elaw.com

Norman G. Curtright (Arizona Bar No. 022848)  
Qwest Corporate Counsel  
Qwest Corporation  
20 E. Thomas Rd., 16<sup>th</sup> Floor  
Phoenix, Arizona 85012  
Tel: (602) 630-2187  
Fax: (303) 383-8484  
Email: norm.curtright@qwest.com

Melissa K. Thompson (Pro Hac Motion Approved)  
Qwest Services Corporation  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
Voice: 303-383-6728  
Fax: 303-896-3132  
Email: melissa.thompson@qwest.com

Attorneys for Qwest Corporation

1 ORIGINAL and 13 copies hand-delivered  
2 for filing this 9th day of June, 2006, to:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 Copy of the foregoing hand-delivered  
8 this 9th day of June, 2006 to:

9 The Honorable Lyn Farmer  
10 Chief Administrative Law Judge  
11 Hearing Division  
12 Arizona Corporation Commission  
13 1200 West Washington  
14 Phoenix, Arizona 85007

15 Christopher C. Kempley, Esq.  
16 Chief Counsel, Legal Division  
17 Arizona Corporation Commission  
18 1200 West Washington  
19 Phoenix, Arizona 85007

20 Ernest G. Johnson, Esq.  
21 Director, Utilities Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, Arizona 85007

25 Copy of the foregoing mailed  
26 this 9th day of June, 2006 to:

Michael W. Patten  
J. Matthew Derstine  
ROSHKA DEWULF & PATTEN, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004  
Email: mpatten@rdp-law.com  
mderstine@rdp-law.com

1 Karen L. Clauson  
2 Senior Director of Interconnection/  
3 Senior Attorney  
4 Eschelon Telecom, Inc.  
5 730 2<sup>nd</sup> Avenue South, Suite 900  
6 Minneapolis, Minnesota 55402  
7 Email: klclauson@eschelon.com

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  


---

# **EXHIBIT 1**

# ROSHKA DEWULF & PATTEN

ROSHKA DEWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

May 31, 2006

## Via Email and Federal Express

Charles W. Steese  
STEESE & EVANS, P.C.  
6400 South Fiddlers Green Circle, Suite 1820  
Denver, Colorado 80111  
[csteese@s-elaw.com](mailto:csteese@s-elaw.com)

Norman G. Curtright  
Qwest Corporation  
20 East Thomas Road, 16<sup>th</sup> Floor  
Phoenix, Arizona 85012  
[norm.curtright@qwest.com](mailto:norm.curtright@qwest.com)

***Re: In the Matter of the Complaint of Eschelon Telecom, Inc. v. Qwest Corporation – Docket Nos. T-03406A-06-0257/T-01051B-06-0257***

Dear Mr. Steese and Mr. Curtright:

Eschelon Telecom of Arizona, Inc. ("Eschelon") has enclosed its first set of Data Requests and Requests for Production to Qwest Corporation. Please provide Qwest's responses within ten (10) business days of receipt.

Eschelon also informs Qwest of Eschelon's intent to depose witnesses as part of this proceeding. At a minimum, Eschelon intends to take four (4) depositions in this case:

1. Loretta Huff<sup>1</sup>
2. Jean Novak
3. Jill Martain
4. Christine Siewert

---

<sup>1</sup> There are two Loretta Huffs employed by Qwest. The above Loretta Huff was the Director of CMP during the year 2005.

ROSHKA DEWULF & PATTEN

Mr. Charles Steese  
Mr. Norman Curtright  
May 31, 2006  
Page 2

Eschelon is providing these names so the Parties can begin the process of scheduling a mutually convenient day and time for the depositions. Eschelon expects the depositions to take approximately up to eight (8) hours for each person.

Sincerely,



Michael W. Patten

and

Karen L. Clauson  
Senior Director of Interconnection/Senior Attorney  
Eschelon Telecom, Inc.  
730 2<sup>nd</sup> Avenue South, Suite 900  
Minneapolis, Minnesota 55402

MWP:mi  
Enclosure

A copy of the foregoing  
was emailed this 31<sup>st</sup> Day of May, 2006 to:

Melissa K. Thompson  
Qwest Services Corporation  
1801 California Street, 10<sup>th</sup> Floor  
Denver, Colorado 80202  
[melissa.thompson@qwest.com](mailto:melissa.thompson@qwest.com)

**STEESE & EVANS, P.C.**

6400 South Fiddlers Green Circle, Suite 1820  
Denver, Colorado 80111  
(720) 200-0676  
Fax: (720) 200-0679  
www.s-elaw.com

Chuck Steese: (720) 200-0677  
csteese@s-elaw.com

May 30, 2006

**VIA Email and Federal Express**

Michael W. Patten  
J. Matthew Derstine  
ROSHKA DEWULF & PATTEN, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

***Re: In the Matter of the Complaint of Eschelon Telecom v. Qwest Corporation***

Dear Messrs. Patton and Derstine:

Attached to this letter, please find Qwest Corporation's first set of Data Requests, Requests for Production and Requests for Admission. Per Commission practice, we expect Eschelon will respond to these requests within two weeks of receipt, or June 2, 2006. If this is a problem, please let me know.

The purpose of this letter is also to inform you of the depositions Qwest Corporation intends to take as part of this Complaint. We inform you about these depositions now, so we can begin the process of scheduling them to the mutual convenience of all parties. At a minimum, Qwest intends to take three depositions in this case:

1. Ronda Knudson (4 hours);
2. The employee submitting the disconnect notice for the Marc Center (2 hours); and
3. 30(b)(6) deposition of Eschelon (8 hours).

The 30(b)(6) will cover the following categories:<sup>1</sup>

- a. The terms of Eschelon's interconnection agreement relating or otherwise impacting requests for expedited orders for unbundled loops;
- b. The terms of Qwest's SGAT relating to or otherwise impacting requests for expedited orders for unbundled loops;
- c. Discussions in the Change Management Process (CMP) relating to expedites, including but not limited to, the process change about which Eschelon complains;

---

<sup>1</sup>This list may expand based on discovery.

- d. Qwest's process for provisioning expedites and how it evolved over time;
- e. The purpose of the CMP and Eschelon's involvement in the CMP;
- f. The terms of the document governing CMP (attached as Exhibit G to the August 29, 2003, Arizona SGAT);
- g. Rates applicable to requests for expedites;
- h. Communications between with Qwest and Eschelon concerning expedites;
- i. Eschelon's requests for expedites to Qwest between January 2003 and the present; and,
- j. Eschelon's customer, the Marc Center ("Center"), including, but not limited to, (i) Eschelon's service at the Center; (ii) Eschelon's plans to disconnect an unbundled loop; (iii) Eschelon's disconnection of a DS1 Capable Loop; (iv) 911 service capability at the Center; (v) temporary 911 protections used by Eschelon at the Center from March 15, 2006-March 20, 2006; (vi) the Center's need for 911 service; (vii) the reasons why expediting the DS1 Capable Loop at the Center presented a "medical emergency"; (viii) all communications with the Marc Center; and (viii) telecommunications facilities/capabilities at the Center.

Please let us know in advance the number of people who will be designated to cover these ten 30(b)(6) categories. The number of corporate representatives may affect the length of time for the anticipated deposition. Finally, please be advised that Qwest anticipates it would move to bar any 30(b)(6) witness from also being hearing counsel.

Respectfully,



Charles W. Steese

cc: Melissa Thompson, Esq.  
Norm Curtright, Esq.

**STEESE & EVANS, P.C.**

6400 South Fiddlers Green Circle, Suite 1820  
Denver, Colorado 80111  
(720) 200-0676  
Fax: (720) 200-0679  
www.s-elaw.com

Chuck Steese: (720) 200-0677  
csteese@s-elaw.com

June 9, 2006

**Via Email and U.S. Mail**

Michael W. Patten  
ROSHKA DEWULF & PATTEN, PLC  
One Arizona Center  
400 E. Van Buren Street  
Suite 800  
Phoenix, Arizona 85004

***Re: In the Matter of the Complaint of Eschelon Telecom v. Qwest  
Corporation***

Dear Mr. Patten:

My May 30, 2006 letter to you listed three depositions that Qwest Corporation intends to take as part of this Complaint. Qwest would like to add Bonnie Johnson and Jacob Colby to the list of people it intends to depose.

Thank you very much.

Sincerely,



Charles W. Steese

cc: Melissa Thompson, Esq.  
Norm Curtright, Esq.

# **EXHIBIT 2**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS:**

**JEFF HATCH-MILLER – Chairman**

**WILLIAM A. MUNDELL**

**MARK SPITZER**

**MIKE GLEASON**

**KRISTIN K. MAYES**

**IN THE MATTER OF THE  
COMPLAINT OF ESCHELON  
TELECOM OF ARIZONA, INC.  
AGAINST QWEST CORPORATION**

**DOCKET NO. T-03406A-06-0257**

**DOCKET NO. T-01051B-06-0257**

**AFFIDAVIT OF CHARLES W. STEESE  
IN SUPPORT OF QWEST'S MOTION TO  
RECONSIDER HEARING SCHEDULE**

I, Charles W. Steese, declare:

1. I am a partner in the law firm of Steese and Evans, P.C., am over the age of 18 years, and have personal knowledge of the facts set forth in this affidavit. I am a member of the Arizona and Colorado Bars. If called to testify, I could competently testify to the facts and circumstances set forth herein.

2. I am lead hearing counsel representing Qwest Corporation in this action. I was retained at the outset of this matter in April 2006. I am not submitting this affidavit for purposes of delay.

3. This case involves whether the process set in the Commission approved Change Management Process for expediting orders for unbundled loops governs Qwest's relationship with Eschelon in Arizona. I was formerly Qwest's lead hearing counsel on Section 271 matters throughout Qwest's 14 states including in Arizona. I am very familiar with the Change Management Process, which the Commission approved as part of the 271 process.

4. Qwest is currently involved in the 252 arbitration process with Eschelon, and I have been retained to manage the approximately 20 issues relating to Section 12 of the contract, most of which concern Change Management. One of the issues in Section 12 arbitrations is the appropriate contract language for expediting due dates, the very issue involved in this proceeding.

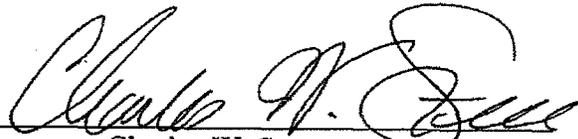
5. I currently am set for trial in several matters over the remainder of this year; specifically:

- a. From July 10, 2006 to approximately July 18, 2006, I am lead trial counsel representing Qwest Corporation in a matter concerning transit traffic. The docket concerns whether Qwest, when acting as a transit carrier for CMRS providers and CLECs, must pay access charges to terminating LECs. The matter, titled *Northwest Iowa Telephone Company et al v. Qwest*, 04-CV-4053, is pending in Federal District Court for the Northern District of Iowa before the Honorable Donald E. O'Brien. This case has been pending since 2004.
- b. From September 25-29, 2006 (there are also various pre-hearing matters set the week before) and then continuing for two days yet unset but potentially carrying over on October 2-3, I am lead hearing counsel representing Qwest Corporation in a AAA arbitration challenging Qwest's signaling charges contained in nine different state access tariffs. T-Mobile seeks damages of approximately \$7.9 million for signaling charges billed between 2000 and 2004. The matter, titled *T-Mobile v. Qwest*, AAA 77 181 0289 05 MAVI, is pending before the Honorable Robert E. Hinerfeld, and has been pending since August 2005.
- c. From October 30, 2006 to approximately December 20, 2006, I am lead trial counsel representing StorageTek, a wholly owned subsidiary of Sun

Microsystems, in a patent, copyright, trade secret and antitrust action. This case is highly complex; the parties have exchanged well over one million pages of material; it is a case of first impression; and involves over 30 different causes of action and scores of witnesses. The matter, titled *Storage Technology Corp. v. Custom Hardware Engineering & Consulting, Inc., et al.*, 02-12102 RWZ, is pending in Federal District Court for the District of Massachusetts before the Honorable Rya Zobel. This case has been pending since October 2002.

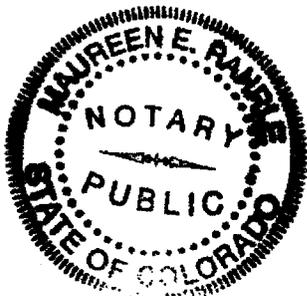
6. If the hearing in this action is set before January 2007, I will be forced to withdraw from the representation thereby depriving Qwest of its counsel of choice. Moreover, if hearing is set before January 2007, Qwest will be forced to pay two different lawyers to get up to speed on the same issues. As I stated above, I have been retained to manage the portion of the arbitrations with Eschelon concerning Section 12 issues, which concerns (among other things) the issue at the heart of this dispute. Thus, scheduling a hearing date before January 2007 will cause substantial prejudice to Qwest.

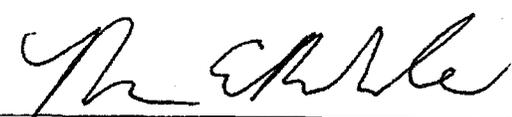
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Charles W. Steese

SUBSCRIBED AND SWORN TO before me this 9<sup>th</sup> day of June, 2006.

My Commission expires: 1/13/08



  
\_\_\_\_\_  
Notary Public