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Federal Communications Commission  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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Federal Communication Commission  
Bureau / Office

In the Matter of )  
 )  
Application for Acquisition of Assets )  
of Allegiance Telecom, Inc. by )  
Qwest Communications International Inc. )

WC Docket No. 04-13  
IB File No. ITC-ASG-20040112-00012

To Chief, Wireline Competition Bureau  
Chief, International Bureau

**MOTION TO EXTEND OR POSTPONE COMMENT PERIOD**

Eschelon Telecom, Inc. ("Eschelon"), by its attorneys and pursuant to Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, respectfully moves the Commission to extend or postpone the comment period on the above-referenced Joint Application of Allegiance Telecom, Inc. and Qwest Communications International, Inc. for Consent to Assignment of Assets Under Section 214 ("the "Application") until such time as procedures by which the bankruptcy court of the Southern District of New York approving a buyer for the assets of Allegiance Telecom, Inc. and its affiliates (some of which are the subject of the Application) shall have been completed. Those procedures may or may not result in a bankruptcy court order approving Qwest Communications International Inc ("Qwest") as the buyer. In any event, it is premature at this time for Qwest to seek approval for, and for the Commission and interested third parties to comment on, a transaction that may not occur.

In the Application, Qwest and Allegiance note that Allegiance is operating its business as a debtor-in-possession under the protection of the Bankruptcy Code and the jurisdiction of the

Bankruptcy Court for the Southern District of New York.<sup>1</sup> They state that prompt consideration “is important because Allegiance currently is operating under the protection of the United States Bankruptcy Code and Allegiance is limited in its ability to expand its services or its geographic reach.”<sup>2</sup> They also assert that the proposed transaction “will promote the policies underlying the Bankruptcy Code by facilitating the orderly discharge by Allegiance of its obligations to its creditors.”<sup>3</sup> However, they concede that currently there is no approved transaction. Rather, Qwest has merely been approved as a “stalking horse” bidder. As the designated “stalking horse,” Qwest has merely established the opening bid and proposed terms.<sup>4</sup> The Bankruptcy Court will accept additional bids on February 9, 2004,<sup>5</sup> and Eschelon has reason to believe that other bidders in fact will submit bids on February 9. The Bankruptcy Court then will hold an auction on February 12, 2004, and will confirm the winning bidder on February 19, 2004.<sup>6</sup> At this time there is no way to predict whether Qwest, or another entity, ultimately will be the highest bidder.

The Commission’s Public Notice, dated January 21, 2004, informing the public about the Application, set comment and reply comment deadlines of February 4 and February 11,

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<sup>1</sup> Application at 6-7

<sup>2</sup> Application at 4.

<sup>3</sup> Application at 5.

<sup>4</sup> As the stalking horse bidder, Qwest has entered into the proposed transaction subject to court approval and in accordance with bidding procedures approved by the court, on an interim basis and subject to higher and better offers. If higher bids are submitted in accordance with the bidding procedures order, an auction will be conducted, in which Qwest may participate. *In re Allegiance Telecom, Inc , et al.*, Chap. 11 Case No. 03-13057 (RDD) Order (A) Establishing Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Assets of the Debtors, (B) Approving the Form and Manner of Notices and (C) Setting a Sale Hearing Date (Bankr. S.D.N.Y. Jan 15, 2004) at 8.

<sup>5</sup> *Id* at 6-7.

<sup>6</sup> *Id* at 8-10

respectively.<sup>7</sup> These deadlines precede the key above-mentioned Bankruptcy Court procedural dates that may result in another entity being selected as the winning bidder, and the filing by that entity for approval of Commission approval to acquire the Allegiance assets that are the subject of the Application. Should another entity be approved as the successful bidder, the Application would be moot, and the comment period established by the January 21 Public Notice will have resulted in an unnecessary expenditure of resources by the Commission and interested parties.

Eschelon also notes that Qwest and Allegiance only submitted applications for approval of their proposed transaction by state public utility commissions on or about January 20, 2004.<sup>8</sup> The state regulatory bodies have established or will establish proceedings to determine whether the proposed portion of the transaction involving Allegiance's intrastate assets is in the public interest. Those proceedings will not be completed until after (in some cases, well after) this Commission's February 11 deadline for reply comments.

In sum, no party will be prejudiced by an extension or postponement of the comment and reply comments. Eschelon does not object to an abbreviated comment cycle following the Bankruptcy Court's selection of the winning bidder, and suggests a revised comment date of February 20, 2004 and a revised reply comment date of February 27, 2004, should Qwest ultimately be the winning bidder. In the event another entity becomes the winning bidder, the Commission should postpone any comment cycle involving the Allegiance assets that are subject

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<sup>7</sup> *Public Notice*, DA 04-136 (Jan. 21, 2004).

<sup>8</sup> *See, e.g., Joint Application of Allegiance Telecom, Inc. and Qwest Communications International, Inc. for Approval of the Assignment of Assets*, Minnesota Public Utilities Commission, P5880/PA-04-93 (Jan. 20, 2004); *Transfer of Assets from Allegiance Telecom of Colorado Inc. to Qwest Corporation and Qwest Communications Corporation and a Request for Waivers*, Notice of Application Filed, Docket No. 04A-034T (Jan. 21, 2004).

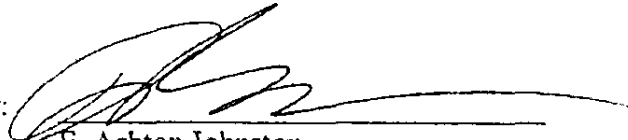
to Commission jurisdiction pending the filing by that entity of an application for Commission approval.

WHEREFORE, for all of the foregoing reasons, Eschelon requests that the Commission extend or postpone the comment period.

Respectfully submitted,

**ESCHELON TELECOM, INC.**

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February 2, 2004

**CERTIFICATE OF SERVICE**

I, Evelyn Opany, certify that I have on this 2<sup>nd</sup> day of February, 2004, caused a true and correct copy of the foregoing Motion to Extend or Postpone Comment Cycle, to be sent by first-class United States mail, postage prepaid, to each of the following:

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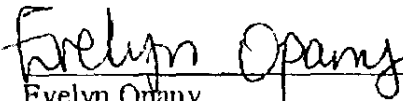
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