IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RATES TECHNOLOGY INC., Plaintiff, v. QWEST COMMUNICATIONS CORPORATION AND QWEST COMMUNICATIONS INTERNATIONAL, INC., Defendants	Civil Action No. 07-442 (JJF)

RULE 16 [PROPOSED] SCHEDULING ORDER[1]

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties will exchange by October 18, 2007, the information required by Fed. R. Civ. P. 26(x)(1) and D. Del. LR 16.2.

2. **Joinder of other Parties.** All motions to join other parties shall be filed on or before November 19, 2007.

3. **[DEFENDANTS:** ***Summary Judgment on Non-Infringement and Invalidity and Related Discovery.***

Under circumstances specific to this case, the following procedure shall apply to summary judgment on non-infringement and invalidity:

(a) Defendants shall file their motion for summary judgment, noticed to be heard on January [between January 21 and February 1], 2008, with their opening brief on or before November 5, 2007;

[1] Defendants have moved to dismiss or, in the alternative, stay this action (D.I. 10, 11 and 12) and propose the below-listed schedule only in the event that relief is denied.

(b) Written discovery, if any, limited to issues contained in Defendants' summary judgment motion, and included in the maximums recited in paragraph 3 must be served by November 12, 2007 and shall be answered on an expedited basis;

(c) Depositions, if any, limited to the issues contained in Defendants' summary judgment motion shall be taken between December 3 and December 14, 2007;

(d) Plaintiff shall file its answering brief on or before December 28, 2007.

(e) Defendants shall file their reply brief on or before January 14, 2008.]

3. Additional Discovery.

(a) **[PLAINTIFF:** *Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by March 15, 2008.*]

[DEFENDANTS: *The exchange and completion of all contention interrogatories, identification of fact witnesses and document production, except as provided in paragraph 5 above, shall be commenced no earlier than May 1, so as to be completed by September 15, 2008 .*]

(b) Maximum of [PLAINTIFF: 50][DEFENDANTS: 25] interrogatories, including contention interrogatories, for each side.

(c) Maximum of [PLAINTIFF: 50][DEFENDANTS: 25] requests for admission by each side.

(d) Maximum of 10 depositions by plaintiff and 10 by defendants. Depositions shall not commence until the discovery required by Paragraph 3(a, b and c) is

completed.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the plaintiff by [**PLAINTIFF**: *April 15, 2008*] [**DEFENDANTS**: *January 30, 2009*]; from the defendants by [**PLAINTIFF**: *May 15, 2008*] [**DEFENDANTS**: *March 15, 2009*]. [PLAINTIFF: Reply expert reports are due from the plaintiff by [**PLAINTIFF**: June 15, 2008] [**DEFENDANTS**: *Reply expert reports, limited in scope to rebutting answering expert reports on matters that could not have been anticipated in opening reports, are due March 30, 2009.*]

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties or ordered by the Court. All expert discovery shall be completed within 45 days after the deadline for reply reports, [PLAINTIFF: July 30, 2008] [DEFENDANTS: May 15, 2009.]

5. Non-Case Dispositive Motions.

(a) Any non-case dispositive motions other than as provided for in paragraph 3, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The date selected shall be within 30 days of the filing of the motion and allow for briefing in accordance with the Federal and Local Rules. Available motion dates will be posted on the Court's website at www.ded.uscourts.gov.

(b) At the motion hearing, each side will be allocated twenty (20) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be

sent to Chambers by-email at:

jjf_civil@ded.uscourts.gov

6. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before February 15, 2008.

7. **Case Dispositive Motions.** Any case dispositive motions [DEFENDANTS:*other than that identified in paragraph 3*,] pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before [PLAINTIFF: *April 15, 2008*][DEFENDANTS: *June 15, 2009*]. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions other than the motion contemplated in paragraph 3.

8. **Markman.** A Markman hearing will be [**PLAINTIFF:** *scheduled at the request of the parties*] [**DEFENDANTS:** *held on [mid-August 2009]*]. Briefing on the claim construction issues shall be completed at least ten (10) business days prior to the hearing. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

[**DEFENDANTS**: *If the Court is amenable, the parties propose a schedule for claim construction and related briefing prior to the Markman hearing:*

The parties shall, on or before April 15, 2009, exchange a list of those claim term(s)/phrase(s) that they believe need construction. The parties shall exchange proposed constructions for terms in dispute on or before April 30, 2009. These exchanges shall not be filed with the Court. Subsequent to making the exchanges, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted to the Court. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) at issue,

and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) at issue and those portions of the intrinsic record and/or and extrinsic evidence relied upon are to be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument. The Joint Claim Construction Chart shall be submitted to the Court on June 20, 2009. Issues of claim construction shall be submitted to the Court by each party filing an opening brief on June 30, 2009, and a responsive brief on July 30, 2009.]

9. Applications by Motion.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1 and be made in accordance with the Court's December 15, 2006 Order on Procedures for Filing Non-dispositive motions in Patent Cases. Parties may file stipulated and unopposed orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.U3courts.gov. The e-mail shall provide a short statement describing the emergency.

10. Pretrial Conference and Trial. After reviewing the parties' Proposed

Scheduling Order, the Court will schedule a Pretrial Conference.

The Court will determine whether the trial date should be scheduled when the Scheduling Order is entered or at the Pretrial Conference. If scheduling of the trial date is deferred until the Pretrial Conference, the parties and counsel shall anticipate and prepare for a trial to be held within sixty (60) to ninety (90) days of the Pretrial Conference.

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Date United States District Judge