IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

**RULE 16 [PROPOSED] SCHEDULING ORDER**

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 June 13, 2008 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 July 11, 2008.

3. **Motion to Dismiss.** Pursuant to the Court's Order on October 5, 2008, Defendants' Motion to Dismiss Plaintiff's Complaint (D.I. 10) was automatically renewed when the Court denied Defendants' Motion to Continue Stay (D.I. 41), and is therefore pending. Defendants respectfully request oral argument on their Motion to Dismiss. Defendants' Answer shall not be due until 14 days after the Court enters an Order on the Motion to Dismiss.

4. **Settlement Conference.** Pursuant to 28 U.S.C. §636, this matter is referred to Magistrate Judge Thynge for the purposes of exploring the possibility of a settlement. If the parties agree that they would benefit from a

settlement conference, the parties shall contact the Magistrate Judge to schedule a settlement conference so as to be completed no later than the Pretrial Conference or a date ordered by the Court.

**5. Discovery**

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by November 17, 2008. All fact discovery to be completed by December 15, 2008.

(b) Maximum of 35 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 35 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 5(a, b and c) is completed.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2), and proposed dates for their depositions to be taken in the 30 days after the service of rebuttal expert reports, are due from the party with the burden of proof on the issue on which the expert is offered thirty (30) days after the issuance of the Court's Markman decision, or on January 15, 2009 if no Markman decision is requested. Rebuttal expert reports are due thirty (30) days after service of the opening reports. Reply expert reports, limited in scope to rebutting answering expert reports on matters that could not have been anticipated in opening expert reports, are due twenty-one (21) days after service of the rebuttal expert reports.

(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.

**6. Non-Case Dispositive Motions.**

(a) Any non-case dispositive motion, 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 hearing date selected shall allow time for filing of the motion, allow for briefing in accordance with the Federal and Local Rules, and shall permit all briefing to be filed no later than 12:00 noon the Friday before the motion day on which it is to be heard. Available motion dates will be posted on the Court's website at http://www.ded.uscourts.gov/JJFmain.htm .

(b) At the motion hearing, each side will be allocated ten (10) 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 .

**7. Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before February 15, 2009.

**8. Case Dispositive Motions.** Any case dispositive motions 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 March 10, 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 parties shall follow the Court's procedures for summary judgment motions which is available on the Court's website at:

http://www.ded.uscourts.gov/JJFmain.htm .

**9. Markman.** 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 October 3, 2008, 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 October 17, 2008. 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 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 November 14, 2008. Issues of claim construction shall be submitted to the Court by each party filing an opening brief on December 5, 2008, and a responsive brief on January 9, 2009.]

**10. 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 June 30, 2007). 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 February 1, 2008 order on procedures for filing non-dispositive motions in patent cases. Briefs shall be limited to no more than ten (10) pages. 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.**

**(a)** A pretrial conference will be held at 1:00pm on May 7, 2009.

**(b)** A 5-day jury trial will commence at 9:30 a.m. on June 1, 2009.

June 16, 2008
Date

Joseph J. Farnan, Jr.
United States District Judge