



September 15, 2021

VIA E-File

The Honorable Richard G. Andrews
United States District Judge
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3555

**Re: TQ Delta, LLC v. 2Wire, Inc.
C.A. No. 13-cv-1835-RGA**

Dear Judge Andrews:

Pursuant to the Court's request, the parties submit the following proposals for the remaining liability jury trials for the Family 4 and Family 6 patents.

All outstanding motions (summary judgment, *Daubert*, and motions to strike) regarding the Family 4 and Family 6 patents have been resolved by the Court.

The parties and their witnesses are available for a jury trial or trials during one or more of the weeks beginning on the following dates: March 7, 2022 and March 14, 2022. The parties can provide additional dates to the extent the Court has other conflicting trials or commitments scheduled in this timeframe.

TQ Delta's Position: TQ Delta proposes that the Court hold a combined liability trial for the Family 4 and Family 6 patents. The Court entered summary judgment in TQ Delta's favor for the single Family 6 patent on (1) the issue of infringement and (2) several 35 U.S.C. § 112 defenses, thereby eliminating the need to try these issues to a jury. The Court found that triable issues remain for a jury on infringement and validity issues for Family 4 and certain validity issues for Family 6. Given the summary resolution of the issue of infringement and the substantial narrowing of invalidity defenses for Family 6, TQ Delta believes that a single week would be sufficient time for a combined trial. There will be additional efficiencies given that both patent families name the same single inventor, Mr. Marcos Tzannes, and TQ Delta's expert witness, Dr. Vijay Madiseti, is TQ Delta's primary expert for Family 4 and the only remaining expert for Family 6.

Alternatively, to the extent the Court does not want to hold a combined Family 4 and Family 6 trial, TQ Delta would propose any two of the aforementioned weeks (preferably consecutive weeks) to complete these trials.

2Wire's request that the Court delay any further trials against it until certain trials in the ADTRAN case have been completed. 2Wire's argument about "bellweather" trials, suggest that there would be some efficiency gained by having ADTRAN go first. On the contrary, 2Wire has already lost all issues tried to a jury for two other patent families and, yet, its strategy appears to remain litigating each and every claim and defense to final judgment. 2Wire (and the other defendants) refused the efficiency of joining trials against multiple defendants so it should not be

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allowed to use the existence the related case against ADTRAN as an excuse to delay trials that are ready to be tried. The Family 4 trial against ADTRAN is not ready, and it is uncertain when it will be given a pending claim construction issue and possible further related motion practice. Family 4 and Family 6 should proceed against 2Wire. Further delay of any of these two remaining liability trials against 2Wire will necessarily delay a damages trial and final resolution of this civil action against 2Wire.

2Wire's Position: Initially, 2Wire believes that the Family 4 and Family 6 trials against ADTRAN should proceed first. The Court previously assigned different defendants to do the first bellwether trial for each of the TQ Delta patent families. At this point, 2Wire has already been to trial twice, for the Family 2 and Family 3 patent families. ADTRAN, on the other hand, still has not participated in a single jury trial in this case. It should be required to do so before 2Wire is required to incur the costs of participating in yet another trial. At the very least, the Family 6 trial against ADTRAN should proceed first, given that 2Wire and ADTRAN are identically situated with only invalidity issues remaining for the Family 6 liability trial. TQ Delta opposes having ADTRAN proceed first based on its expressed desire to rush to a final resolution against 2Wire. TQ Delta, however, oversimplifies what remains to be litigated in this case. For example, there is a substantial amount of damages expert discovery to be done, including redoing expert reports and *Daubert* motions for Family 2 and Family 3, as well as doing completely new rounds of damages expert reports and motions for Family 4 and Family 6 (if necessary). 2Wire also has a breach-of-contract counterclaim and a number of affirmative defenses, including implied waiver, that must be litigated before there can be any final judgment.

To the extent the Court intends to schedule trials for 2Wire now, the Court should hold separate jury trials for the Family 4 and Family 6 patents. The technology at issue in the two families of patents is not only complex and but also very different, which is precisely why the Court divided TQ Delta's patent families into separate trials in the first instance. Asking a jury in a week-long trial to understand multicarrier modulation and computing and combining phase shifts as claimed in the Family 4 patents is difficult enough; indeed, TQ Delta requires three separate experts just to put on its infringement case for Family 4. Adding in the invalidity case for Family 6, which separately covers switching of FEC settings based on a flag signal and has nothing to do with phase shifts, would make it extraordinarily difficult for the jury to understand all of the technology at issue and render a proper verdict during a single one-week trial.

TQ Delta's assertion that there would be added efficiencies in a combined trial ignores the different technology in the two cases. For example, although Marcos Tzannes is the same inventor, he would have to provide testimony on completely different technologies; there would be no real overlap in his testimony for Family 4 and Family 6. Furthermore, 2Wire has different technical experts in the two cases—Dr. Len Cimini for Family 4 and Dr. Krista Jacobsen for Family 6. This would add further complexity to a combined trial. Accordingly, the Court should keep the Family 4 and Family 6 trials separate.

If the Court would like to discuss this matter for further clarification, the parties are available for a teleconference at the Court's convenience.

Respectfully submitted,

/s/ Michael J. Farnan

Michael J. Farnan

cc: Counsel of Record (Via (E-File))