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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the TRRO/Request for Commission Review and Approval of Wire Center Lists	Docket No. 07-049-30 ESCHELON COMMENTS ON JOINT QWEST AND CLEC MOTION AND SETTLEMENT AGREEMENT

Eschelon Telecom of Utah, Inc. ("Eschelon"), submits these Comments in response to the Commission's June 29, 2007 Notice of Request for Comments on Joint Qwest and CLEC Motion and Settlement Agreement ("Notice of Request for Comments").[1] In particular, Eschelon responds to Qwest statements reflected in the Notice of Request for Comments from a Qwest filing that was superseded and replaced by a later joint filing. Because a statement reflecting those comments appears in the

[1] Eschelon also submitted two filings today in Docket No. 07-049-30 (In re. Qwest's Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List and Motion for Expedited Issuance of Protective Order). One is Eschelon's Motion for a Standing Protective Order Based on Model Order, and the other is Eschelon's Objections Regarding Qwest's Petition for Approval of 2007 Additions to Non-Impaired Wire Center List. Eschelon incorporates by reference those filings in these Comments.

Notice of Request for Comments and is attributed to Competitive Local Exchange Carriers ("CLECs"), including Eschelon, clarification is needed so that there is not a misimpression that Eschelon agrees with those comments and so that the Qwest request for an order regarding superseding other orders or parts of previous orders (which request has since been replaced) is not mistakenly adopted.

On June 22, 2007, Qwest filed a motion for approval of the proposed settlement agreement ("Initial Qwest Motion"). Qwest's styled its June 22nd Initial Motion as a "Joint Motion" and stated in the Initial Motion that the requests in the motion were being made jointly by Qwest and a number of CLECs, including Eschelon. Eschelon, however, had not seen the June 22nd filing (which Qwest made in several states) before Qwest filed it and, when Eschelon did receive a copy, did not agree with its contents. Eschelon offered Qwest an opportunity to correct. On June 27, 2007, Qwest filed a revised filing that replaced the earlier filing in its entirety ("Amended Joint Motion"). The June 27, 2007 filing states: "This Amended Request supersedes and replaces the Joint Motion filed in this matter on June 22, 2007." The only joint motion in the record, therefore, should be the Amended Joint Motion filed by Qwest on June 27, 2007. That motion was filed by Qwest on behalf of Qwest and certain CLECs known as the Joint CLECs[2] (i.e., parties to the proposed Settlement Agreement).

A key difference between the Initial Qwest Motion and the actual Amended Joint Motion is that Qwest had included in the Initial Qwest Motion references to an allegedly joint request that "the Commission's order approving the Settlement supersede any

[2] "Joint CLECs" is a defined term in the proposed Settlement Agreement, which provides in the definitions (Section II) that "'Joint CLECs' refers collectively to Covad Communications Company and DIECA Communications, Inc. (Covad), Eschelon Telecom, Inc. (Eschelon), Integra Telecom Holdings, Inc. (Integra), McLeodUSA Telecommunications Services, Inc. (McLeod), Onvoy, POPP.Com (POPP), US Link, Inc. d/b/a TDS Metrocom, Inc. (TDSM), and XO Communications Services, Inc. (XO)."

previous Commission order to the extent any part of a previous order is inconsistent with the settlement." Unfortunately, the Notice of Request for Comments contains language similar to this quoted language on page 2 of the notice and states that the "Parties" make this request. Eschelon did not, and does not, make this request. And, all references to this request have been deleted from the Amended Joint Motion of Qwest and the Joint CLECs. The now defunct request was very broad. It stated no limitation to any docket, to any type of proceeding, to the parties to the proposed settlement agreement, etc. If Qwest had a particular provision of any order that it believes will be superseded as to the parties to the proposed Settlement Agreement (or any other entity), Qwest should have identified the specific provision(s) in its own filing so carriers would have had an opportunity to comment. A vague, broad statement of the nature then requested by Qwest would allow Qwest to unilaterally claim that parts of orders were superseded without a Commission finding identifying the specific orders or parts of orders to verify that claim.

Moreover, Qwest included in the Initial Qwest Motion a statement that it does "not believe there are any issues in the settlement that are inconsistent with the Commission's September 11, 2006 Report and Order in this docket." Therefore, Qwest provided no basis even with respect to the Commission orders in this docket[3] to supersede any "part of a previous order."

Eschelon believes the proposed Settlement Agreement is consistent with the Commission's orders in this docket[4] and has joined in filing of the proposed Settlement

[3] Qwest only limited its statements to "this docket" in one of the three places in the Initial Qwest Motion where it stated this request.

[4] Utah Commission Orders dated November 3, 2006 and September 11, 2006 in docket 06-049-40, *In the Matter of the Investigation into Qwest Wire Center Data* addressing Qwest's wire center designations and a

Agreement to request its approval as between Qwest and the Joint CLECs. The filing presents an opportunity for the Commission to determine for itself if Eschelon's belief is correct. While there are additional provisions in the proposed Settlement Agreement that are not addressed in those orders (such as the non-recurring charge[5]), they do not appear to Eschelon to be inconsistent with the Commission's orders in this docket when applied to the parties to the proposed agreement.

Another difference between the Initial Qwest Motion and the Amended Joint Motion is that Qwest referred to all disputed issues to resolve the docket, rather than disputed issues between Qwest and the Joint CLECs. When combined with Qwest's statements about superseding any part of any previous Commission order, these statements appear to go to Qwest's litigation position that it wanted an order that binds all CLECs.[6] There is no provision in the proposed Settlement Agreement stating that it binds all CLECs. Instead, it expressly states (on page 1) that the proposed agreement is entered into between Qwest and a list of CLECs named in the proposed agreement. The named CLECs are then referred to as "Joint CLECs," which is a defined term that identifies them specifically.[7] Perhaps Qwest will continue to argue that the proposed agreement should bind all CLECs, but if it does, it may not legitimately claim that Eschelon joins in that position. The compromise non-recurring charge in the proposed settlement agreement is an example. For the parties to the proposed agreement, it is a negotiated rate. The federal Act allows carriers to negotiate a rate but, if they do not

process for future additions to the wire center list. Documents related to this order, including the order are available at: http://www.psc.state.ut.us/telecom/Indexes/0604940Indx.htm

[5] See Proposed Settlement Agreement ¶IV(A).

[6] See proposed Settlement Agreement (fifth "Whereas" clause, stating Qwest's positions from its petition for a Commission investigation).

[7] See definition in above footnote.

agree to a rate, the rate must meet the standards of 47 U.S.C. §252(d)(1)(A).[8] If another CLEC prefers to seek a rate from the Commission in arbitration or a cost docket, Eschelon is not seeking to prevent the CLEC from doing so. Eschelon has simply agreed to the compromise non-recurring charge per the terms of the proposed agreement in this case to avoid further litigation on its part of that rate.

The request formerly made by Qwest that is reflected in the Notice of Request for Comments has been superseded. Eschelon continues to request approval of the proposed Settlement Agreement as between Qwest and the Joint CLECs.

Dated this 27th day of July, 2007.

DAVIS WRIGHT TREMAINE LLP

By: _____
Gregory J. Kopta

[8] *Compare* 47 U.S.C. §252(a)(1) (voluntary negotiations may result in an agreement "without regard" to certain standards in §252) *with* 47 U.S.C. §252(b) and (d)(1)(A) (agreements arrived at through compulsory arbitration).