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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

Arizona Corporation Commission

**DOCKETED**

MAY 16 2008

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY ne

IN THE MATTER OF THE PETITION OF  
ESCHELON TELECOM, INC. FOR  
ARBITRATION WITH QWEST CORPORATION  
PURSUANT TO 47 USC SECTION 252(b) OF THE  
FEDERAL TELECOMMUNICATIONS ACT OF  
1996.

DOCKET NO. T-03406A-06-0572

DOCKET NO. T-01051B-06-0572

DECISION NO. 70356

**OPINION AND ORDER**

DATE OF ARBITRATION:

March 19 & 20, 2007

PLACE OF ARBITRATION:

Phoenix, Arizona

ARBITRATOR:

Jane L. Rodda

APPEARANCES:

Mr. Jason Topp and Mr. Norman Curtright, Qwest Corporation Legal Department; Mr. Philip Roselli, Kamlet, Shepard & Reichert, LLP, and Mr. John Devaney, Perkins Coie, LLP, on behalf of Qwest Corporation; and

Mr. Gregory Merz, Gray Plant Mooty, on behalf of Eschelon Telecom of Arizona.

**BY THE COMMISSION:**

**Procedural Background**

On September 8, 2006, Eschelon Telecom of Arizona, Inc. ("Eschelon") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration of an interconnection agreement ("Petition") with Qwest Corporation ("Qwest") pursuant to A.A.C. R14-2-1505 and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the 1996 Act").

On October 3, 2006, Qwest filed its Response to the Petition.

By Procedural Order dated October 6, 2006, the Commission established procedural guidelines

1 make that intent clear.

2 Qwest claims that with the information concerning the locations of network changes that  
3 Qwest routinely provides in its notices, Eschelon can readily identify its customers who may be  
4 affected by a network change and obtain their addresses and circuit IDs. Qwest believes that even  
5 Eschelon's final alternative, although an improvement, still improperly shifts the burden of  
6 determining circuit IDs from Eschelon to Qwest.

7 Finally, Qwest argues that the Eschelon proposal is inconsistent with the Commission's  
8 Decision in the Qwest-Covad arbitration concerning notices of network changes. Qwest states that in  
9 that arbitration, the Commission rejected Covad's demand that Qwest should provide CLEC customer  
10 addresses in notices relating to Qwest's retirement of copper loops.<sup>53</sup> Qwest argues its obligation is  
11 not to provide Eschelon with the addresses of its customers that could be affected by network changes,  
12 but to provide Eschelon with sufficient information about where a network change is taking place so  
13 that Eschelon, not Qwest, can identify the addresses of any of its customers that could be affected by  
14 the change.

15 **Resolution**

16 We believe that if a network change causes an Eschelon end user to suffer loss of service or  
17 impairment in the quality of service, it is reasonable that Qwest should assist Eschelon in determining  
18 a resolution. Because Qwest would be responsible for making the network modifications, Qwest  
19 would likely have the best information on the cause of a problem and how to rectify it. The evidence  
20 presented in the arbitration indicates that while network modifications may cause problems for  
21 Eschelon end users, the number of instances has not been substantial. Consequently, we will adopt  
22 Eschelon's alternative proposal, with some modification in an attempt to address Qwest's concerns  
23 concerning ambiguity. We acknowledge that the language does not eliminate the potential for future  
24 disputes, but fairness dictates that Qwest assist in restoring an end user's functionality in the event a  
25 network modification caused a degradation of service. Thus, we adopt the following language for  
26 Section 9.1.9 in resolution of Issue 9-33:

27

28 <sup>53</sup> See Decision No. 68440 at 11 (February 2, 2006).

1  
2 If such changes result in the CLEC's End User Customer experiencing a  
3 degradation in the transmission quality of voice or data, such that CLEC's  
4 End User Customer loses functionality or suffers material impairment,  
5 Qwest will assist the CLEC in determining the source and will take the  
6 necessary corrective action to restore the transmission quality to an  
7 acceptable level if it was caused by the network changes.

8 With respect to Issue 9-34 regarding providing notice of network changes, we find that  
9 Qwest's proposed notices of network changes would provide sufficient information to Eschelon to  
10 allow Eschelon to determine the address and circuit ID of Eschelon's affected end users. Qwest may  
11 or may not have easy access to the information Eschelon seeks, but we find Eschelon's proposal would  
12 unnecessarily, and without good reason, shift responsibility from Eschelon to Qwest.

13 **Issues 9-37 – 9-42: Unimpaired Wire Centers**

14 On June 14, 2007, in Docket Nos. T-03632A-06-0091, T-03226A-06-0091, T-04202A-06-  
15 0091, T-03406-06-0091, T-03432A-06-0091, and T-01051B-06-0091, Qwest and Eschelon, along  
16 with several other CLECs, filed a proposed settlement agreement that would resolve issues related to  
17 the designation of Qwest wire centers as unimpaired. The Commission held a hearing on the  
18 settlement agreement on October 30, 2007. In the settlement agreement, Qwest and Eschelon agree on  
19 contract language which if approved by the Commission, would be incorporated in the ICA that is the  
20 subject of this arbitration. In the current docket, Qwest and Eschelon propose that if the settlement  
21 agreement is approved, that the Commission approve a single compliance filing of the ICA to  
22 implement both the Commission's order in this arbitration proceeding and the resolution of the wire  
23 center issues. If the settlement agreement is not approved in the wire center dockets, then Qwest and  
24 Eschelon request a modification of the arbitration schedule to allow two rounds of supplemental  
25 testimony and a round of briefing for the open wire center issues.

26 The parties' proposal is reasonable. The settlement agreement presents a resolution of the wire  
27 center issues for a number of larger CLECs and it makes sense to have a universal resolution of those  
28 issues. If the wire center settlement is approved, it is appropriate to include the relevant language in  
29 Eschelon's ICA with Qwest. If the settlement agreement is not approved, then the current arbitration  
30 would need to be re-opened for additional testimony and argument in order to resolve the issues  
31 related to wire centers that had been raised in the Petition. In any case, for a complete ICA, it would

OAH 3-2500-17369-2  
MPUC No. P-5340,421/IC-06-768

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Eschelon  
Telecom, Inc., for Arbitration of an  
Interconnection Agreement with Qwest  
Corporation Pursuant to  
47 U.S.C. § 252 (b) of the Federal  
Telecommunications Act of 1996

**ARBITRATORS' REPORT**

This matter was arbitrated by Administrative Law Judges Kathleen D. Sheehy and Steve M. Mihalchick on October 16-20, 2006, in the Small Hearing Room of the Public Utilities Commission in St. Paul, Minnesota. The record closed on November 17, 2006, upon receipt of post-hearing briefs.

Jason Topp, Esq., 200 South Fifth Street, Room 2200, Minneapolis, MN 55402; Melissa Thompson, Esq., 1801 California Street, 10<sup>th</sup> Floor, Denver, CO 80202; Philip J. Roselli, Esq., Kamlet, Shepherd & Reichert, LLP, 1515 Arapahoe Street, Tower 1, Suite 1600, Denver, CO 80202; and John Devaney, Esq., Perkins Coie, 607 14<sup>th</sup> Street NW, Washington, DC 20005, appeared for Qwest Corporation (Qwest).

Greg Merz, Esq., Gray, Plant, Mooty, 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, appeared for Eschelon Telecom, Inc. (Eschelon).

Julia Anderson, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, appeared for the Department of Commerce (Department).

Kevin O'Grady appeared for the staff of the Public Utilities Commission.

**Procedural History**

1. Eschelon and Qwest began negotiating this interconnection agreement some time ago. For purposes of this arbitration they have agreed that the window for requesting arbitration was between May 9, 2006, and June 5,

139. Eschelon further argues that its terminology is no different than the language of 47 C.F.R. § 51.316(b), which requires ILECs, when converting wholesale services to UNEs or to a combination of UNEs, to do so “without adversely affecting the service quality perceived by the requesting telecommunications carrier’s end-user customer.”

140. The Department agrees that the Eschelon language is vague and would create the potential for future litigation over whether a violation occurred, and if so, whether damages are warranted. The Department recommends the following language in lieu of Eschelon’s proposals:

If such changes result in the CLEC’s End User Customer experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes.<sup>98</sup>

141. The Department contends that this language would not disadvantage either company and would assure Eschelon of being able to get its end user customer back in service, while focusing Qwest’s responsibilities on fixing any problems caused by necessary changes to its network.<sup>99</sup>

### **C. Decision**

142. The Department’s recommended language should be adopted. It appears to balance the reasonable needs of both parties in an even-handed manner. Contrary to Eschelon’s argument, the process of converting a service to a UNE is not necessarily the same as the process of modernizing or maintaining the network; accordingly, the “adversely affecting” language of 47 C.F.R. § 51.316(b) does not provide the guidance needed to make this section of the ICA free from ambiguity. The reference to correcting transmission quality to “an acceptable level” does not, as Qwest argues, make this language unacceptably vague. The language merely commits Qwest to taking action to restore transmission quality to that which existed before the network change.

## **Issue 9-33(a): Relationship Between Section 9.1.9 and Copper Retirement**

### **A. The Dispute**

143. The parties had previously agreed upon language in Section 9.1.9 that said “(for retirement of copper loops, see section 9.2.1.2.3).” Because of

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<sup>98</sup> Department’s Post-Hearing Brief at 17; Ex. 50 (Schneider Reply) at 3-6; Ex. 51 (Schneider Surreply) at 3.

<sup>99</sup> By letter dated December 19, 2006, Qwest objected to the Department’s proposal, arguing that its language is just as undefined as Eschelon’s and that the Department’s suggestions are untimely. The Department has agreed that Qwest’s letter of objection should be included in the record.

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

ARB 775

In the Matter of )  
 )  
ESCHELON TELECOM OF OREGON, INC. )  
 )  
Petition for Arbitration of an Interconnection )  
Agreement with QWEST CORPORATION, )  
Pursuant to Section 252(b) of the Telecom- )  
munications Act. )

ORDER

DISPOSITION: ARBITRATOR'S DECISION APPROVED WITH  
MODIFICATIONS

**Procedural History**

On October 10, 2006, Eschelon Telecom of Oregon, Inc. (Eschelon), filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an interconnection agreement (ICA or agreement) with Qwest Corporation (Qwest), pursuant to the Telecommunications Act of 1996 (Act). The parties agreed to waive the statutory timeline due to the number of arbitrations pending in different states. Pursuant to a revised schedule proposed by the parties and approved by the Arbitrator, Qwest responded to the petition on April 23, 2007.

Telephone conferences were held in this matter in April and June, 2007, to discuss various procedural matters. Standard Protective Order No. 07-178 was issued on July 7, 2007.

The arbitration hearing was rescheduled twice at the request of the parties. Rounds of testimony were filed on May 11, May 25, and June 8, 2007. The hearing was held on August 14, 2007, in Salem, Oregon. Post-hearing briefs were filed by the parties on October 26, 2007.

On March 26, 2008, the Arbitrator issued a decision, attached to this order as Appendix A. Eschelon and Qwest filed exceptions to the Arbitrator's Decision on April 29, 2008.

Section 251 obligation. Moreover, the ICA confirms that Qwest is entitled to recover the costs it incurs to provide access to UNEs.

In the Minnesota arbitration, the Arbitrators concluded that Qwest's proposed language "is in fact more ambiguous than Eschelon's, because it would leave unanswered the question of whether routine changes in the provision of a UNE would be priced at TELRIC or at some other 'applicable rate.'"<sup>96</sup> I agree with this finding. In fact, the record demonstrates that this is more than a hypothetical concern, because Qwest has already attempted to impose tariff rates for activities that arguably constitute access to UNEs.<sup>97</sup>

Although Qwest has overstated the potential for future disputes, there remains the possibility that the parties will someday disagree over whether certain activities constitute "access to UNEs." The parties are not without recourse in such an event, as they can always seek resolution from the Commission through the dispute resolution process in the ICA. It is reasonable to expect that the Commission would take an active interest in any dispute regarding the obligation to provide nondiscriminatory access under the Act. Eschelon's first proposal for Section 9.1.2 is adopted.

**Issues 9-33 -- Network Maintenance and Modernization/Adverse Effects:**

In Section 9.1.9 of the ICA, the parties agree that Qwest may make necessary modifications and changes to UNEs in order to properly maintain and modernize its network. The parties disagree over Eschelon's proposal to insert language relating to the impact of such modifications on end user customers.

Qwest proposes the following language in Section 9.1.9:

In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters.

Eschelon proposes two alternatives for Section 9.1.9. The first adds the following language to the end of the last sentence quoted above:

but the changes to transmission parameters will not adversely affect service to any CLEC End User Customers (other than a reasonably anticipated temporary service

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<sup>96</sup> MN Arb Report at ¶31; Eschelon/29, Denney/32.

<sup>97</sup> Eschelon/9, Denney/35-38.

interruption, if any, needed to performance the work). (In addition, in the event of emergency, see Section 9.1.9.1).<sup>98</sup>

Eschelon's second alternative mirrors language adopted by the Minnesota Commission and adds the following sentence after the last Qwest-proposed sentence noted above:

If such changes result in the CLEC's End User Customer experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes.

Qwest argues that it must have the ability to maintain and modernize its telecommunications network without unnecessary interference while also providing Eschelon with the UNE transmission quality required by law. Toward this end, Qwest affirms that its maintenance and modernization activities will "result in UNE transmission parameters that are within the transmission limits of the UNE ordered by Eschelon."<sup>99</sup> Qwest also commits to other provisions designed to ensure that its activities do not improperly interfere with Eschelon's operations, including certain advance notice and informational requirements.

Qwest contends that the "no adverse affect" and "unacceptable changes" terminology used by Eschelon is ambiguous and unrelated to any measurable industry standard.<sup>100</sup> Effectively, this language "would leave Qwest guessing" concerning whether a particular network change is permitted under the ICA. This risk of exposure would discourage maintenance and modernization activities contrary to the Act's goal of fostering the deployment of new, advanced technologies.

Eschelon observes that its proposed terminology is consistent with the approach taken by the FCC in 47 C.F.R. 51.316. That rule requires ILECs to convert wholesale services to UNEs or UNE combinations "without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer."

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<sup>98</sup> This language was modified from Eschelon's initial proposal. Eschelon continues to offer its initial language proposal which reads: "but will not adversely affect service to any End User Customers. (In the event of emergency, however, see Section 9.1.9.1)." Disputed Issues List at 37.

<sup>99</sup> Qwest Brief at 22.

<sup>100</sup> Qwest also contends that the "no adverse affect" language improperly focuses on the service provided by Eschelon to its end-user customers when the appropriate focus should be upon the UNEs and service that Qwest provides to Eschelon. Qwest Brief at 24.



Eschelon also denies that its proposed language will discourage network changes or expose Qwest to risk of undefined consequences when such changes occur. It contends that its proposals merely ensure that end user customers will not suffer significant service disruptions because of minor changes in transmission parameters. If a network modernization or maintenance activity causes this sort of interference, Qwest's sole obligation is to remedy the problem.

Eschelon emphasizes that it is possible for a maintenance or modernization activity to adversely affect customer service even though the change in transmission parameters resulting from the activity remains within specified limits. This situation occurred when Qwest, in furtherance of a network plan to change the default dB loss setting, instructed its technicians to re-set the dB loss to -7.5 whenever they performed a repair. Although the new dB setting was within the standard range, a number of Eschelon circuits were rendered inoperative and Eschelon customers could not use their telephones.

**Decision.** The problems experienced by Eschelon as a result of Qwest's plan to reset the dB loss parameter demonstrate that Qwest's commitment to comply with industry standards does not always guarantee that Eschelon's end user customers will be protected from significant service disruptions as a result of Qwest's network maintenance or modernization activities. These events may be infrequent, but when they occur, it is reasonable to expect Qwest to assist Eschelon in restoring customer service. Accordingly, additional language should be added to Section 9.1.9 to address this concern.

Of the two proposals offered by Eschelon, the second more clearly delineates the extent of Qwest's obligation to provide assistance in the event of a service interruption. Objective measures of service quality exist, and in most cases it should be relatively easy to determine if service has degraded to a point where a customer has experienced "unacceptable changes." Nevertheless, there is merit to Qwest's concern that this term could be subject to misinterpretation. Language proposed in the recent Arizona arbitration proceeding minimizes that possibility and should be included in the ICA as follows:

If such changes result in the CLECs End User Customer experiencing a degradation in the transmission quality of voice or data, such that CLEC's End User Customer loses functionality or suffers material impairment, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes.

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petition of Eschelon )  
Telecom of Utah, Inc., for Arbitration with ) DOCKET NO. 07-2263-03  
Qwest Corporation, Pursuant to 47 U.S.C. )  
Section 252 of the Federal )  
Telecommunications Act of 1996 ) ORDER ON PETITIONS FOR  
 ) RECONSIDERATION, REVIEW OR  
 ) REHEARING  
 )  
 )  
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ISSUED: September 11, 2008

By The Commission:

**PROCEDURAL HISTORY**

On August 11, 2008, Qwest Corporation (“Qwest”) filed a Petition for Reconsideration, Review or Rehearing of our Order of July 11, 2008, (“July 2008 Order”) seeking: (1) That the Commission change its decision with respect to the standard giving Qwest the authority to demand a deposit from Eschelon. (2) Reconsideration of language ordered in Section 9.1.9 of the ICA related to network maintenance and modernization activities. (3) Reconsideration of the decision to apply the Qwest Performance Assurance Plan measurements in situations where Qwest provides Eschelon with a jeopardy notice that it clears. Also on July 11, 2008 Eschelon filed a Petition for Reconsideration, Review or Rehearing seeking: (1) Reconsideration of the decisions regarding Intervals (Issue 1-1 and subparts). (2) Reconsideration of the decision regarding contract language for Unapproved Rates (Issue 22-90). Qwest and Eschelon both responded to the other party’s petition arguing that the opposing party’s petition should be denied. Eschelon further provided alternative contract language for Qwest’s second issue in the event the petition was granted.

DOCKET NO. 07-2263-03

-2-

**DISCUSSION AND CONCLUSION**

The Commission grants reconsideration of Qwest's second issue (the language ordered in Section 9.1.9 of the ICA related to network maintenance and modernization activities) and directs the parties to use Eschelon's suggested alternative language by adding the phrase "or other mutually agreeable levels," to Section 9.1.9 as shown below. Specifically the Section shall now read as follows (in underline or strike out format as compared to the original language):

9.1.9 . . . If such changes result in the CLEC's End User Customer experiencing ~~unacceptable changes~~ a degradation in the transmission quality of voice or data, such that CLEC's End User Customer loses functionality or suffers material impairment, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to ~~an acceptable level~~ previous levels, or other mutually agreeable levels, if it was caused by the network changes....

As both parties have noted in either their original petition or reply, network modernizations should be beneficial in nature. The result of network modernization for customers (either retail or wholesale) should be either better or the same level of service, modernization should not cause a customer's service to cease to function, or to degrade such that the customer can not use the service in the same manner. Adding the phrase to the contract allows Qwest the flexibility in proposing various ways a problem could be addressed, but also clearly identifies that Qwest has a responsibility to fix the problem its own actions created.

Wherefore, having reconsidered this matter and for good cause appearing, the Commission issues this Order amending the July 2008 Order, changing Section 9.1.9 as shown above. We further direct the parties to submit an interconnection agreement consistent with the

DOCKET NO. 07-2263-03

-3-

Commission's resolution of the disputed issue relating to Section 9.1.9 above and our July 2008 Order as modified by this Order.

DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of September, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#58910

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -  
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In the Matter of the Petition of Eschelon	)	
Telecom of Utah, Inc., for Arbitration with	)	<u>DOCKET NO. 07-2263-03</u>
Qwest Corporation, Pursuant to 47 U.S.C.	)	
Section 252 of the Federal	)	<u>REPORT AND ORDER</u>
Telecommunications Act of 1996	)	<u>ON ARBITRATION OF</u>
	)	<u>INTERCONNECTION AGREEMENT</u>
	)	

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ISSUED: July 11, 2008

SYNOPSIS

Having reviewed the evidence presented, as well as the arguments of the parties, the Commission directs the parties to submit an interconnection agreement that includes the terms and conditions reflecting their mutual agreement and the Commission's resolution of the disputed issues discussed and resolved herein.

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DOCKET NO. 07-2263-03

-40-

in its notices, Eschelon can readily identify its customers who may be affected by a network change and obtain their addresses and circuit IDs through its electronic database.

Eschelon asserts its language is not intended to have such a broad effect, since the language limits the requirement to provide circuit identifications and customer addresses to changes that are “End-User Customer specific.”<sup>7</sup> However, Eschelon fails to define the term “End-User Customer specific,” leaving the provision open to the interpretation that Qwest must provide circuit identifications and customer addresses for any change that affects any “End-User Customer.” If Eschelon’s intent is to limit its proposed notice requirement to network changes that take place at a specifically identified customer premise, it should modify its language to make that intent clear.

While Eschelon’s alternative proposal is an improvement, it still improperly attempts to shift the burden of determining circuit IDs from Eschelon to Qwest. Because Eschelon has access to circuit IDs in its own records and Qwest has neither ready access to those IDs nor a legal obligation to provide them, Eschelon’s alternative proposal is improper and should be rejected.

**Decision**

Regarding Issue 9-33, the ALJ agrees Qwest must have the ability to both maintain and modernize its telecommunications network without unnecessary interference and restriction. However, Qwest is also obligated to ensure maintenance and modernization activities do not result in significant service disruptions to Eschelon’s end user customers. That

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<sup>7</sup>Qwest also points out Eschelon’s use of the term “End-User Customer” in connection with Qwest’s notices of network changes is improper since the defined term includes customers of carriers other than Eschelon.

DOCKET NO. 07-2263-03

-41-

significant, albeit unintended, disruptions can occur is evidenced by Qwest's efforts to reset its dB loss parameter. When such disruptions occur, it is reasonable to expect Qwest to assist Eschelon in restoring service. Eschelon's alternate proposal for Section 9.1.9 is a reasonable approach to requiring Qwest to provide such assistance.

However, Qwest rightly points out that Eschelon's language regarding "unacceptable changes" in transmission quality is unnecessarily vague and potentially burdensome. Language adopted in the Oregon and Arizona arbitrations corrects this ambiguity by replacing "unacceptable changes in the transmission of voice and data" with "a degradation in the transmission quality of voice and data, such that CLEC's End User Customer loses functionality or suffers material impairment." In order to address Qwest's similar concern regarding Eschelon's proposed language that would require Qwest to return service to an "acceptable level," while recognizing that Qwest's maintenance and modernization activities should not have the effect of reducing the transmission quality offered to CLEC end users, "an acceptable level" should be replaced with "previous levels." The ALJ therefore recommends the Commission adopt Eschelon's alternate proposed language, with the modifications outlined above, for this Issue.

Likewise, for Issue 9-34, the ALJ concludes that Eschelon's alternative proposal requiring Qwest to provide the circuit ID if the changes are specific to a CLEC End User Customer and if the circuit ID information is "readily available" best balances Eschelon's desire to obtain, and Qwest's obligation to provide, meaningful network change location information with Qwest's concern that requiring Qwest to provide the circuit ID in all cases would be overly

DOCKET NO. 07-2263-03

-42-

burdensome. The ALJ therefore recommends the Commission adopt Eschelon's alternate proposed language for Issue 9-34.

**J. Circuit IDs Relating to Conversions – Issues 9-43 and 9-44**

In order to ensure that Eschelon end user customers are not adversely affected by the conversion of circuits from UNEs to non-UNE wholesale arrangements, Eschelon has proposed adding the following ICA Section 9.1.15.2.3 providing that the circuit ID will not change as a result of the conversion:

9.1.15.2.3 The circuit identification (“circuit ID”) will not change. After the conversion, the Qwest alternative service arrangement will have the same circuit ID as formerly assigned to the high capacity UNE.

In addition, Eschelon proposes a new Section 9.1.15.3 that would require the conversion be handled as a price change rather than as a physical change:

9.1.15.3 If Qwest converts a facility to an analogous or alternative service arrangement pursuant to Section 9.1.15, the conversion will be in the manner of a price change on the existing records and not a physical conversion. Qwest will re-price the facility by application of a new rate.

**Eschelon Position**

Eschelon argues that, rather than negotiate with Eschelon and other CLECs, Qwest has chosen to act on its own in erecting a process that involves personnel in three different functional areas; multiple databases and systems; orders to “disconnect” and “connect” service; and much “reviewing,” “confirming,” “assuring,” “verifying” and “validating,” all to the end of changing what the UNE is called and how much Qwest will charge. Qwest chose to



[Service Date January 18, 2008]

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for	)	DOCKET UT-063061
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	ORDER 16
QWEST CORPORATION	)	
	)	
and	)	ARBITRATOR’S REPORT AND
	)	DECISION
ESCHELON TELECOM, INC.	)	
	)	
Pursuant to 47 U.S.C. Section 252(b).	)	
	)	
	)	
.....	)	

1 **Synopsis.** *The Arbitrator recommends resolution of the 67 disputed issues as set forth in the attached Appendix A. Given the number of disputed issues, they will not be set forth in summary fashion in this synopsis. This Report and Decision does not address wire centers issues because they are the topic of a separate proceeding.<sup>1</sup>*

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<sup>1</sup> Docket UT-073035, *In the Matter of the Petition of Qwest Corporation For Investigation Concerning the Status of Competition and Impact of the FCC’s Triennial Review Remand Order On the Competitive Telecommunications Environment in Washington.*

**b. Position of the Parties**

- 80 In the normal course of business, Qwest makes changes to modernize and upgrade its network. The parties have agreed that Qwest will ensure that its network modernization and maintenance activities result in transmission parameters that are within the transmission limits of the UNEs Eschelon orders.<sup>85</sup>
- 81 Qwest opposes including the term “adverse affect” because the term is vague and undefined, and if adopted, would have a chilling effect on Qwest’s modernization and maintenance of its network.<sup>86</sup> Qwest asserts that it would face substantial risk whenever it made network changes because there are undefined consequences.<sup>87</sup>
- 82 Eschelon argues that minor changes to transmission facilities should not result in service disruptions to its customers.<sup>88</sup> Eschelon presents two options to resolve this issue: (1) changes to transmission parameters will not adversely affect service to end user customers; or (2) if such changes result in end user customers experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes.

**c. Decision**

- 83 The Arbitrator recommends adoption of Eschelon’s second proposal. This proposal balances Qwest’s need to be able to modernize and maintain its network while maintaining acceptable transmission quality for Eschelon’s end user customers. While Qwest should have the discretion to modernize and maintain its own network, it should be apparent that “modernization” and “maintenance” efforts should enhance or maintain, not diminish, transmission quality. Adoption of Eschelon’s second proposal requires Qwest to assume responsibility and take corrective action to restore network quality only if the transmission quality was reduced as a result of network changes.

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<sup>84</sup> *Id.* at 20-21.

<sup>85</sup> Section 9.1.9 of the ICA.

<sup>86</sup> Stewart, Exh. No. 57 at 27.

<sup>87</sup> Stewart, Exh. No. 61 at 28.

<sup>88</sup> Webber, Exh. No. 172 at 12.