

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the TRRO/Request for Commission Review and Approval of Wire Center Lists))))))	<u>DOCKET NO. 06-049-40</u> <u>REPORT AND ORDER APPROVING SETTLEMENT AGREEMENT</u>
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ISSUED: July 31, 2007

By The Commission:

I. PROCEDURAL HISTORY

On September 11, 2006, the Commission issued its Report and Order (“September 2006 Order”) in the above-entitled matter resolving various disputes between Covad Communications Company; Eschelon Telecom of Utah, Inc. (“Eschelon”); Integra Telecom of Utah, Inc.; McLeodUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. (hereinafter jointly referred to as “Joint CLECs”) and Qwest Corporation (“Qwest”) (together with the Joint CLECs hereinafter referred to as the “Parties”).

On June 22, 2007, following negotiations intended to resolve the remaining issues in this docket, Qwest filed a Joint Motion for Approval of Settlement Agreement and Narrative Supporting Agreement (“Qwest Filing”) seeking Commission approval of a Multi-State Settlement Agreement Regarding Wire Center Designations and Related Issues (“Settlement Agreement”) between Qwest and the Joint CLECs, as well as Commission recognition that the terms of said Settlement Agreement supersede any previous Commission order in this matter to the extent said order is inconsistent with the Parties’ settlement.

On June 27, 2007, the Parties filed a Notice of Joint Filing and Amended Request for Order Approving Settlement Agreement (“Amended Request”), indicating the Amended Request is intended to supersede and replace the Qwest Filing, and requesting the Commission approve the Settlement Agreement¹ attached to the Amended Request. In contrast to the Qwest Filing, the Amended Request contains no request that the Commission recognize that the terms of the Settlement Agreement supersede any previous Commission order in this matter.

On June 29, 2007, the Commission issued its Notice of Request for Comments on Joint Qwest and CLEC Motion and Settlement Agreement (“Notice”) noting the Parties have represented that said Settlement Agreement resolves disputed issues between the Parties while providing definitions of key terms; the Parties’ agreement concerning Qwest wire centers that are considered initial non-impaired wire centers, and the associated tier levels and effective dates; the Parties’ agreement regarding a nonrecurring charge (“NRC”) for conversions of unbundled network elements (“UNEs”) to alternative services or products, including an agreed-upon NRC rate and length of term, how credits may be made for those competitive local exchange carriers (“CLECs”) which have already paid a higher NRC rate and the status of the rate after three years; explains a methodology that the Parties have agreed to, for purposes of non-impaired facilities, to determine non-impairment and/or tier designations, including how to count “business lines” and “fiber-based collocators;” and the Parties’ agreement regarding how Qwest can request Commission approval of non-impairment designations and additions to the Commission-approved non-impaired wire center list in the future (i.e., future additions to the

¹As referenced and approved herein, the Settlement Agreement consists of 18 pages plus four substantive attachments, the fifth attachment filed along with the Settlement Agreement being a proposed protective order.

initial Commission-approved list). Said Notice provided that comments on whether the Commission should or should not approve the Settlement Agreement should be filed on or before July 30, 2007.

On July 10, 2007, in response to a request filed by Qwest on June 22, 2007, the Commission issued a Protective Order to govern the disclosure and protection of information disclosed in this docket.

On July 27, 2007, the Division of Public Utilities (“Division”) filed its analysis of the Settlement Agreement, recommending approval of the same.

On July 30, 2007, Eschelon filed its Comments on Joint Qwest and CLEC Motion and Settlement Agreement stating that the Qwest Filing, while styled a “Joint Motion” had not been reviewed by Eschelon prior to filing and that the only joint motion in the record is the Amended Request filed by the Parties on June 27, 2007. Eschelon points out that the key difference between these two filings is that the Qwest Filing requested the Commission’s order approving the Settlement Agreement supersede any previous Commission order to the extent any part of a previous order in this docket is inconsistent with the terms of the Settlement Agreement. The Parties’ Amended Request, which explicitly supersedes the Qwest Filing, does not contain this request. Having noted this difference, Eschelon continues to request approval of the Settlement Agreement.

II. BACKGROUND, DISCUSSION, FINDINGS, AND CONCLUSIONS

Settlement of matters before the Commission is encouraged at any stage of proceedings.² However, parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose the stipulation.³ No party has done so in this case. The Commission may approve a stipulation or settlement if the Commission finds on the basis of the evidence presented that the settlement proposal is just and reasonable in result and is in the public interest.⁴

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Annotated* § 63-46b-5 when the Commission “determines that the matter can reasonably be expected to be unopposed and uncontested.” Only Eschelon has filed comments in response to the Commission’s Notice, and Eschelon’s comments go not to the substance of the Settlement Agreement but merely point out differences between the Qwest Filing and the superseding Amended Request. Therefore, no opposition appearing, we determine it is in the public interest to convert this matter to an informal proceeding, pursuant to §63-46b-4(3), UCA 1953, as amended, and proceed accordingly without hearing. Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

² Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Comm’n*, 658 P.2d 601, 613-14 (Utah 1983).

³ Utah Code Ann. § 54-7-1(3)(e)(ii).

⁴ Utah Code Ann. § 54-7-1.

Having reviewed the terms of the Settlement Agreement, as well as the Division's recommendation, we find and conclude that said terms are in substantial accord with the terms of our September 2006 Order and that said Settlement Agreement is just and reasonable in providing a global resolution of the issues raised in this docket. We therefore conclude that approval of said Settlement Agreement is in the public interest and approve the same as a just and reasonable settlement of the issues in this docket. However, as we have indicated in previous cases, said approval is not intended to alter any existing Commission policy or to establish any precedent by the Commission.

Wherefore, based upon the foregoing information, and for good cause appearing, the Commission enters the following:

III. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The Multi-State Settlement Agreement Regarding Wire Center Designations and Related Issues filed June 27, 2007, and, by this reference, made a part of this Report and Order, is approved.
3. The approval granted herein is effective as of the date of this Order.

Pursuant to *Utah Code Ann.* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency

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review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Ann.* §§ 63-46b-14 and 63-46b-16 and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah, this 31st day of July, 2007.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#54094