

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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
)
)

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.

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 11th day of September, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#58910