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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of the Petition of Eschelon Telecom of Utah, Inc., for Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996</p>	<p>Docket No. 07-2263-03</p> <p>PETITION OF QWEST CORPORATION FOR RECONSIDERATION, REVIEW OR REHEARING</p>
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Qwest Corporation (“Qwest” or the “Company”), pursuant to Utah Code Annotated §§ 54-7-15 and 63G-4-301 and Utah Administrative Code R746-100-11.F, respectfully requests the Commission to reconsider, review or rehear the Commission’s Order (“Order”) issued July 11, 2008. Qwest seeks reconsideration of the Order with respect to three issues:

First, Qwest asks that the Commission change its decision with respect to the standard giving Qwest the authority to demand a deposit from Eschelon. In most Qwest interconnection agreements (“ICAs”), Qwest has the right to demand a deposit if the CLEC fails to pay undisputed bills three times in a twelve month period. The Order inserts language in Section

5.4.5 of the ICA that limits Qwest's right to demand a deposit to situations where Eschelon has failed to pay undisputed bills for three consecutive months.

Second, Qwest asks for reconsideration of language ordered in Section 9.1.9 of the ICA related to network maintenance and modernization activities. The Order deviates from decisions in other states by requiring Qwest to restore service to previous levels. Qwest's primary concern is that the purpose of many network changes is to modify transmission quality, usually by improving its network through the addition of new technology. An inflexible obligation to restore service to "previous levels" could prevent Qwest from implementing improvements, which would be to the detriment of Eschelon and its customers.

Third, Qwest asks the Commission to reconsider its decision to change the application of Qwest Performance Assurance Plan ("PAP") measurements in situations where Qwest provides Eschelon with a jeopardy notice that it clears. In those circumstances, if Qwest is unable to deliver service because Eschelon cannot make itself available to accept service, Qwest asks that the order be excluded from performance calculations rather than included as a Qwest miss.

PROCEDURAL BACKGROUND

Eschelon Telecom of Utah, Inc. ("Eschelon") filed a Petition for Arbitration of Intercarrier Negotiations with Qwest Corporation under the Telecommunications Act of 1996 ("Petition") seeking Commission arbitration pursuant to 47 U.S.C. § 252(b) of the unresolved issues between Eschelon and Qwest Corporation ("Qwest"). On May 22, 2007 Qwest filed its response to the Petition. On August 27, 2007 the Division of Public Utilities ("Division") filed a Utah disputed issues list ("Issues List") detailing the issues remaining for arbitration. The ALJ convened a hearing on September 12, 2007 and the parties filed one round of post hearing briefs on November 20, 2007. On July 11, 2008, the Commission issued its Report and Order on

Arbitration of Interconnection Agreement (“Order”). Qwest files this motion for reconsideration of that Order.

ARGUMENT

I. THE ORDER ERRED IN LIMITING QWEST’S RIGHT TO DEMAND A DEPOSIT TO SITUATIONS WHERE ESCHELON HAS FAILED TO PAY UNDISPUTED AMOUNTS BILLED FOR THREE CONSECUTIVE MONTHS

Section 5.4.5 of the ICA gives Qwest the right to demand a deposit when Eschelon is “repeatedly delinquent” in paying undisputed bills. Qwest’s proposed language is part of Qwest’s Utah SGAT and Qwest’s recently-approved ICAs with Covad and AT&T. (Qwest/2R, Easton Rebuttal/10:10 - 10:13.) Qwest witness William Easton has provided testimony that Qwest’s proposed language was developed as a part of the Section 271 workshop process. (Qwest/2R, Easton Rebuttal/25:11 - 25:12.)

The Order adopts Eschelon’s proposal that it only be considered repeatedly delinquent if it fails to make timely payment for three consecutive months. Under this standard, Eschelon could miss payments in January, February, April, and May. July, August, October and November (8 out of 12 months) and still not be considered “repeatedly delinquent.” (Qwest/2SR, Easton Rebuttal/14:1 – 14:5.)

The order relies in part on the existence of the three consecutive months standard in other Utah agreements. (Order, p. 27). However, the majority of the Qwest ICAs use the definition that Qwest is proposing here, a definition identical to the "repeatedly delinquent" definition that was reviewed and agreed to in the Section 271 workshops by Qwest and participating CLECs. (Qwest/2SR, Easton Rebuttal/14:5 – 14:13.)

This Commission has already approved Qwest's proposed standard as a part of the Section 271 process. There is no need to change course here. Qwest respectfully requests reconsideration.

II. THE ORDER ERRED IN ADOPTING AN UNREASONABLY BURDENSOME STANDARD FOR SERVICE RESTORATION AFTER NETWORK MAINTENANCE AND MODERNIZATION ACTIVITIES

Issue 9-33 involves the activities Qwest regularly undertakes to maintain and modernize its Utah telecommunications network.¹ As technologies evolve and improve, Qwest routinely upgrades its network to ensure that its retail and wholesale customers receive state-of-the-art service. These changes can affect the transmission quality of the services that Qwest provides, usually in a manner that is positive for customers.

It is essential that Qwest have the ability to modernize its network as technologies improve, and the Qwest-Eschelon ICA therefore recognizes that Qwest has the right to perform the activities necessary for maintenance and modernization. Eschelon is concerned, however, that the changes Qwest makes to its network could negatively affect the transmission quality it provides to its customers. To address this concern, Qwest agreed to language in Section 9.1.9 of the ICA providing that “[n]etwork maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by the CLEC.”

Despite this language and other ICA language that protects it from the very small chance of negative consequences arising from Qwest's network activities, Eschelon demanded additional language. Specifically, it prepared vaguely worded ICA provisions that would have prohibited Qwest from engaging in activities that “adversely affect” service to its customers or that result in “unacceptable changes” in transmission quality. Based on Qwest's concern that the

¹ This issue is addressed beginning at page 34 of the Order.

ambiguity of this language and the failure of Eschelon to tie the language to defined network standards could interfere with Qwest's ability to make network changes, the Order properly rejected these proposals. In their place, the Order adopted compromise language that was also ordered in the Arizona and Oregon arbitrations between Qwest and Eschelon.

Under the compromise language, the network activities that require Qwest to take cooperative steps with Eschelon to remedy service that has been affected are limited to those that produce "a degradation in the transmission quality of voice and data, such that CLEC's End User Customer loses functionality or suffers material impairment." However, the Order then deviated from the Arizona and Oregon arbitration decisions in addressing the level of service that Qwest must provide upon correcting "degradation" in "transmission quality." Under the Order, Qwest must take corrective action to restore the service to "previous levels," meaning the same transmission levels that existed before the network change.

Qwest's exception relates to the adoption of "previous levels" in place of Eschelon's language that would require Qwest to restore services to "an acceptable level." While Qwest has been concerned about the potential vagueness of the term "acceptable level," it has significantly greater concern about the use of "previous levels."

Qwest's primary concern is that the purpose of many network changes is to modify transmission quality, usually by improving its network through the addition of new technology. An inflexible obligation to restore service to "previous levels" would prevent Qwest from implementing improvements, which would be to the detriment of Eschelon and its customers. Indeed, the nature of many network changes is such that it is not possible to return service to "previous levels," since the new technologies or equipment added to the network will provide a level of transmission and quality different from what previously existed. In fact, some network

changes are specifically intended to change the transmission parameters that previously existed, which is in the interests of Utah consumers.

Another concern that Qwest has about the use of “previously levels” is the inconsistency between that standard and the “acceptable level” standard adopted in Arizona and Oregon. It is challenging and inefficient from both an administrative and network management perspective to be required to implement different network standards across multiple states. The imposition of different standards imposes added costs and multiple administrative challenges relating to tracking the requirements of the different standards and monitoring compliance with them. It would thus be significantly more efficient and manageable for Qwest to have the same “acceptable level” standard in Utah that it has in Arizona and Oregon.

Finally, adoption of the “acceptable level” standard is supported by the fact that Eschelon itself proposed the standard. Qwest suspects the Order deviated from that standard in an attempt to strike a compromise. But, in fact, the parties are both apparently supportive of the language that Qwest is seeking here. The apparent agreement of the arbitrating parties – the parties who will live with this contract – should prevail.

For these reasons, Qwest requests that the Commission modify the Arbitrator’s ruling with respect to Issue 9-33 by replacing “previous levels” with “acceptable level.”

III. THE ORDER ERRED IN ORDERING LANGUAGE THAT REQUIRES QWEST TO COUNT A MISSED INSTALLATION COMMITMENT AS A MISS WHEN QWEST IS READY AND ABLE TO DELIVER A CIRCUIT ON TIME (ISSUES 12-71, 12-72 AND 12-73)

These issues relate to the treatment of orders for which Qwest provides a jeopardy notice indicating that the due date may be missed for a particular order. When Qwest attempts to provide service, but has been unable to provide a firm order confirmation a day in advance, the parties dispute whether the order should be classified through performance measurements as a

missed commitment (Eschelon's position) or exclude the order from service order provisioning standards (Qwest's position).

Qwest argues first that such decisions should be handled through procedures that apply for all CLECs to Qwest's performance assurance plan. Such measurements should be identical for all CLECs and should not be altered through individual ICAs. PAP measurements have been handled in the past through Qwest's change management processes.

The Order adopts Eschelon's position and the following language:

12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR). Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Appendices A and B to Exhibit K of this Agreement.

12.2.7.2.4.4.1 There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or service order is not accepted by the CLEC (when Qwest has tested the service to meet all testing requirements.); and (2) End User Customer access was not provided. For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs but at least the day before Qwest attempts to deliver the service. CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.

12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy.

In support of the language, the Order concludes that “[t]his is a reasonable proposal since the ICA obligates Qwest to provide an FOC and one day’s notice is not unreasonable to ensure Eschelon adequate time to accept service.” (Order at 89.)

Qwest respectfully suggests that this analysis should be approached from the opposite direction. Classifying an order as “customer not ready” has no adverse impact on Eschelon.

Instead the record evidence establishes:

- Eschelon’s proposal will do nothing to speed up service. Qwest provides the FOC as soon as possible, and often is able to deliver service on the same day it issues the FOC. This viewpoint is confirmed by Eschelon’s own exhibit in this case.²
- Eschelon is usually able to accept service without an FOC because informal communications between technicians help make the provision of service possible. Again, this Eschelon exhibit demonstrates that Eschelon is usually able to accept circuits absent an FOC.³
- While Qwest recognizes that there will be situations where a jeopardy is classified as customer not ready, when in fact Eschelon had no opportunity to be ready to deliver service, those situations are rare. In many instances, Eschelon has adequate opportunity to provide service.⁴
- The financial impact on Eschelon is extremely small. The impact on Qwest, by contrast could be significant. (Qwest/1R, Albersheim Rebuttal/62:4 - 62:7.)

Qwest respectfully requests that the Commission reconsider its decision on this issue and adopt Qwest’s proposed language.

CONCLUSION

Based on the foregoing, Qwest respectfully requests that the Commission grant reconsideration of the Order and make the following changes:

² See Eschelon/3.75, 3.76, Qwest/1R.1, 1R.2, 1R.3, 1R.4, 1R.5, 1R.9 and Qwest/1R, Albersheim Rebuttal/59:4 - 59:17, 64:16 - 62:20, 67:4 - 67:10. (These exhibits and testimony relate to the same set of orders and shows the communication that took place between Qwest and Eschelon technicians in jeopardy situations. These records demonstrate extensive efforts to resolve issues quickly. In many instances, Qwest delivered service on the original due date). Eschelon/3.75 (provides over a hundred examples of situations where Eschelon received no FOC. In 76% of these examples, Qwest delivered and Eschelon accepted service on the due date. In several additional instances, Eschelon accepted service before the due date.)

³ Eschelon/3.75.

⁴ *Id.*; Qwest/1R.9; Qwest/1R, Albersheim Rebuttal/59:4 - 59:7

- In Section 5.4.5 of the ICA, change the definition of “Repeatedly Delinquent” from “three consecutive months” to:

“Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, three (3) or more times during a twelve (12) month period on the same Billing account number. . . .;

- In section 9.1.9 it replace the term “previous levels” with the term “acceptable level;” and
- In Section 12.2.7.2.4.4.1, change the adopted language as follows:

For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC. ~~after the Qwest jeopardy occurs but at least the day before Qwest attempts to deliver the service.~~

RESPECTFULLY SUBMITTED: August 11, 2008.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PETITION OF QWEST CORPORATION FOR RECONSIDERATION, REVIEW OR REHEARING** was served upon the following persons by email on August 11, 2008:

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