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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| <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>RESPONSE OF QWEST CORPORATION TO ESCHELON TELECOM OF UTAH, INC.'S PETITION FOR RECONSIDERATION, REVIEW, OR REHEARING</p> |
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INTRODUCTION

Qwest Corporation (“Qwest”) submits this response to Eschelon Telecom of Utah Inc.’s (“Eschelon”) Petition for Reconsideration, Review or Rehearing of the Report and Order on Arbitration of Interconnection Agreement issued July 11 in this matter (the “Report and Order”). Eschelon presents no evidence or arguments that have not been considered and rejected by the Commission already. Furthermore, Eschelon’s effort to misconstrue the Report and Order should be rejected.

Qwest does agree with Eschelon's suggestion that a compliance filing be required 30 days after the final order in this matter.

I. Intervals: Issue 1-1 and subparts

This issue boils down to one question – should intervals for the services Qwest provides to Eschelon continue to be addressed in the change management process (“CMP”), as Qwest suggests, or should the interconnection agreement dictate the process for changing intervals.

A. Eschelon's arguments about the burdens and benefits associated with its proposals were properly rejected

In seeking reconsideration, Eschelon makes the identical arguments that were rejected by this Commission. Eschelon does not seek to change any of Qwest's current intervals, but it does seek to hamstring any potential changes to intervals in its interconnection agreements by having intervals placed as an exhibit to the agreement. (Qwest/1, Albersheim Direct/34:27 - 35:5.)

Qwest argued and the Commission agreed that Eschelon should be required to demonstrate that a change in the current procedures is necessary before changing it. One would expect Eschelon to have presented evidence that the current approach has proven problematic. In fact, the record demonstrates the opposite. Since its creation, this issue has been handled in CMP. (Qwest/1, Albersheim Direct/29:25 - 30:5.) As the Commission found, there is no evidence of abuse associated with the current procedure. No disputes have arisen out of CMP handling of this issue. (*See id.*; Tr. 69:13 - 69:22.) Eschelon has not presented one example of Qwest abusing the CMP process to change intervals in the past (Qwest/1R, Albersheim Rebuttal/27:11 - 27:18) or any indication that such a problem will occur in the future. In the highly unlikely event Qwest were to abuse the process in the future, Commission rules permit Eschelon to bring an expedited complaint addressing such issues. (*See* Qwest/1, Albersheim Direct/29:7 – 29:17. 30:25 -

30:29; Qwest/1R, Albersheim Rebuttal/27:23 - 28:5) (discussing availability of commission procedures in the event of a dispute.)

The Commission is also correct in rejecting Eschelon's proposal to impose significant administrative burdens on Qwest. Eschelon's proposals either require interconnection agreement amendments or adoption letters with every CLEC in the event of an interval change. (Qwest/1, Albersheim Direct/30:5 - 30:10; Qwest/1R, Albersheim Rebuttal/29:9 - 29:19.) Such a burden should only be imposed if there is a significant justification for doing so. As the Commission has found, no such justification exists here.

B. Eschelon's efforts to recast its loss on this issue from a defeat to a victory should be rejected

After losing the issue in Utah and Oregon, Eschelon is now attempting a novel approach. Eschelon interprets the following language as requiring an amendment to the interconnection agreement before any intervals included in Exhibit C to the agreement are changed:

1.7.2 Notwithstanding any other provision in this Agreement, the attached Exhibit C will be modified pursuant to the Change Management Process ("CMP") without requiring the execution of an amendment.

Eschelon's position is silly. Language allowing intervals to be modified "without requiring the execution of an amendment" cannot be read to mean precisely the opposite of what it says. Eschelon attempts to support its position by relying on language from Section 1.0 of Qwest's change management process ("CMP") that states in relevant part "In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement, . . . the rates terms and conditions of the interconnection agreement shall prevail . . ." ¹ Under the ordered language, there is no conflict between the CMP and the interconnection agreement. The ordered language defers intervals to the

¹ The CMP Document, Qwest Exhibit 1.1, § 1.0; see also §5.4 that Eschelon cites in footnote 20 of its Petition and discusses an actual conflict between the CMP and interconnection agreement language. None exists here.

Change Management Process. Accordingly, Section 1.0 of the CMP does not require an amendment.²

It is clear that the Commission's Report and Order reaches the same conclusion. In support of its decision, the order provides "it would not be reasonable to impose significant administrative burdens on Qwest by moving the interval change process from the CMP which is open to all CLECs to individual ICA's"³

It is not necessary for this Commission to take any action on this interpretation from Eschelon. The order is clear enough on its face.

C. Eschelon's Reconsideration Motion still fails to identify any evidence that the current process needs reform

The Report and Order found "no evidence [] that Qwest abused the CMP with regard to interval changes or might do so in the future." Eschelon's Petition points to no such evidence now. The original reasoning of the Commission is sound and Eschelon's motion should be denied.

II. Unapproved Rates (Issue 22-90 and subparts)

This issue deals with the process for handling rates that have not been approved by the Commission. The Report and Order correctly concludes that Eschelon's proposed language is "unnecessary and potentially confusing and conflicting with established Commission procedures."⁴ The Report and Order notes that Qwest has obligations to both provide the elements at issue and to "seek approval for new UNEs and UNEs previously offered without charge."⁵ The Report and Order correctly notes that Eschelon

² Oregon ordered the same language as Utah. Eschelon takes stray language out of the Commission's order in an attempt to try and recaracterize the result in Oregon as a victory for Eschelon. Such a characterization is false. If it were otherwise, one would have expected Eschelon to simply accept Qwest's proposed language and close the issue in all states.

³ Report and Order, p. 9.

⁴ Report and Order, p. 97.

⁵ Report and Order, p. 98.

has a remedy if Qwest fails to live up to its obligations – “Eschelon may petition the Commission to take appropriate action.”⁶”

Eschelon’s exceptions appear to assume that the Commission did not know what it was doing when it issued its order. Eschelon first emphasizes that it sought an order addressing situations where Qwest had previously offered a service for free. Clearly, the Commission was aware of that position because it specifically addressed it at page 98 of its Order. Eschelon next proposes language that attempts to define the specific procedures to be followed in the event Qwest seeks to charge for an element it previously offered for free.

Eschelon’s newly proposed language presents the same problems that caused its original language to be rejected. It is potentially confusing because it could be inconsistent with current procedures or could become inconsistent with procedures that may be adopted in the future. It locks this Commission into Eschelon’s interpretation of its current procedures and makes any future changes to those procedures more difficult.

The Commission correctly concluded that Eschelon’s proposed changes create more problems than they solve. Eschelon’s petition for reconsideration should be rejected.

III. Qwest has no objection to Eschelon’s proposal for a compliance filing

Qwest agrees with Eschelon’s suggestion that the parties make one compliance filing within 30 days after the issuance of a final order. Such an approach prevents unnecessary duplication of effort.

CONCLUSION

Qwest respectfully requests that the Commission deny Eschelon’s petitions for reconsideration, review or rehearing on all issues. Qwest support’s Eschelon’s

⁶ *Id.*

suggestion that the parties be directed to file one compliance filing 30 days after the final order in this case.

RESPECTFULLY SUBMITTED: August __, 2008.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **RESPONSE OF QWEST CORPORATION TO ESCHELON TELECOM OF UTAH, INC.'S PETITION FOR RECONSIDERATION, REVIEW, OR REHEARING** was served upon the following persons by email on August 25, 2008:

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