

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

ESCHELON TELECOM OF)	
WASHINGTON, INC.,)	DOCKET NO. UT-033039
)	
Petitioner/Complainant,)	ORDER NO. 05
)	
v.)	
)	
QWEST CORPORATION,)	ORDER DENYING
)	RECONSIDERATION
Respondent.)	
.....)	

1 **SYNOPSIS:** *This order considers and denies Eschelon’s request for reconsideration of Order No. 03, which granted, in part, Eschelon’s request for rebilling of services it purchased from Qwest under an interconnection agreement that was the subject of an enforcement dispute.*

2 **Proceedings.** Docket No. UT-033039 involves a petition by Eschelon Telecom of Washington, Inc. (Eschelon) for enforcement of its interconnection agreement with Qwest Corporation (Qwest) pursuant to Section 252(i) of the Federal Telecommunications Act of 1996 and a complaint against Qwest pursuant to the Commission's Interpretive and Policy Statement in Docket No. UT-990355 and WAC 480-09-530.

3 **Parties.** Dennis D. Ahlers, attorney, Minneapolis, Minnesota, represented Eschelon before the Administrative Law Judge and on reconsideration; Judith Endejan, attorney, Seattle, Washington, represented Eschelon at oral argument on review. Lisa Anderl, attorney, Seattle, Washington represented Qwest.

I. BACKGROUND

4 **Petition.** Eschelon petitioned on September 12, 2003, for enforcement of its interconnection agreement with Qwest, alleging that Qwest improperly refused

5 Eschelon's request to opt-in to the UNE-Star¹ rates contained in an amendment to
McLeodUSA's (McLeod's) interconnection agreement unless Eschelon agreed to
all other terms and conditions of the McLeod agreement, including volume
requirements and termination date.

6 On September 27, 2003, Qwest and Eschelon amended their agreement to
incorporate the McLeod UNE-Star rate and the expiration date for that rate—
December 31, 2003. The Commission approved the amendment on November
13, 2003.

7 The Commission convened a hearing before Administrative Law Judge Theodora
Mace on October 7, 2003. The judge entered an initial order on January 9, 2004.
Eschelon petitioned for administrative review, and Qwest answered the petition.
The parties presented oral argument on the petition on January 21, 2004. In
Order No. 04 in this docket, served on February 6, 2004, the Commission
resolved the issues in dispute by ruling on Eschelon's petition for administrative
review.

8 The Commission determined that Eschelon was entitled to the McLeod rate prior
to the November 12, 2003 date upon which the Commission approved the
Eschelon-Qwest amendment; that the Commission has the authority to direct
that Qwest refund the amounts improperly over collected from the date of a
proper opt-in request; and that in this matter a proper request was first made on
August 14, 2003, when Eschelon first articulated its opt-in request clearly and
specifically.

9 **Post-order process.** Eschelon sought reconsideration of the order, arguing that
the Commission erred in its evaluation of the evidence and that its opt-in request
was clear, and its entitlement to the lower opt-in rate began, earlier than the
Commission's decision allowed. Qwest answered the petition.

¹ UNE-Star, UNE-Eschelon (UNE-E), and UNE-McLeod (UNE-M), are names for the provision of
the unbundled network element-platform (UNE-P) by which a competitive local exchange carrier
(CLEC) purchases from Qwest, on a wholesale basis, unbundled network elements (a loop,
transport and termination), thus enabling the CLEC to provide a complete retail
telecommunications service to the CLEC's customer. The terms are referred to in this order as
UNE-Star.

II. DISCUSSION

- 10 The essence of Eschelon's argument is that the Commission was wrong in deciding, based on its review of a number of documents whose import was both briefed and argued to the Administrative Law Judge and to the Commission, that Eschelon's entitlement to a reduced opt-in rate beginning with a letter to Qwest of August 14, 2003.
- 11 Eschelon discusses other communications and argues that its view of the facts should prevail, that Qwest failed to act properly, and that the Commission should change its decision to be more favorable to Eschelon.
- 12 Qwest responds with a review of Eschelon's contentions and the pertinent documents, opposing the requested result on reconsideration.
- 13 We understand that the parties have differing views of the evidence. After reviewing all of the evidence of record and having the benefit of arguments to the ALJ and to us, the Commission exercised its judgment and determined that Eschelon's opt-in request for Washington service became effective with the August 14 letter. Qwest's response to the petition clearly reflects the Commission's process and its decision. Eschelon's arguments that we revise our view of the evidence to be consistent with Eschelon's position are not persuasive.
- 14 Consequently, the Commission denies the relief requested in the petition for reconsideration and reaffirms the decision reached in the Commission's Order No.04 in this docket.
- 15 The Commission denies the petition for reconsideration.

V. ORDER

16 The Commission denies Eschelon's petition for reconsideration.

DATED at Olympia, Washington, and effective this 15th day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner