

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	
)	DOCKET NO. UT-073033
QWEST CORPORATION)	DOCKET NO. UT-073035
)	
Petition for Commission Approval of)	OBJECTION OF ESCHELON TELECOM
2007 Additions to Non-Impaired Wire)	OF WASHINGTON, INC. TO QWEST'S
Center List)	PETITION FOR APPROVAL OF 2007
)	ADDITIONS TO NON-IMPAIRED WIRE
)	CENTER LIST
In the Matter of)	
)	
QWEST CORPORATION)	
)	
For Investigation Concerning the Status)	
of Competition and Impact of the FCC's)	
Triennial Review Remand Order on the)	
Competitive Telecommunications)	
Environment in Washington State)	

1 Eschelon Telecom, Inc. (Eschelon) files these objections to Qwest Corporation's (Qwest's) June 22, 2007 Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List. Eschelon asks the Washington State Utilities and Transportation Commission (Commission) to recognize that the Commission has not yet considered or approved the proposed settlement agreement between Qwest and certain competitive local exchange carriers (the Joint CLECs¹) that describes a process by which they will review Qwest's filing, and that the proposed settlement agreement's process deadlines should therefore not apply unless and until approved. Additionally, not all CLECs are party to the proposed settlement agreement, and it is premature to foreclose any party's participation in this docket. In the event that the Commission requires that

¹ "Joint CLECs" is a defined term in the "Proposed Settlement Agreement," which provides in the definitions (Section II) that "'Joint CLECs' refers collectively to Covad Communications Company and DIECA Communications, Inc. (Covad), Eschelon Telecom, Inc. (Eschelon), Integra Telecom Holdings, Inc. (Integra), McLeodUSA Telecommunications Services, Inc. (McLeod), Onvoy, POPP.Com (POPP), US Link, Inc. d/b/a TDS Metrocom, Inc. (TDSM), and XO Communications Services, Inc. (XO)."

parties to the proposed settlement agreement hold to process deadlines in the proposed settlement agreement at this time, however, Eschelon lodges an objection to Qwest's requests in its petition filing.

I. BACKGROUND

2. On June 29, 2007, Qwest filed a proposed settlement agreement (the *Proposed Settlement Agreement*) in Washington. The same document was filed on or about the same date in Minnesota, Arizona, Colorado, Oregon, and Utah. In the *Proposed Settlement Agreement*, the parties documented their agreement on, among other things:

- an initial state commission-approved wire center list that the parties believed satisfied the non-impairment criteria of the Federal Communications Commission's Triennial Review Remand Order; and
- a process for addressing future Qwest filings to request state commission approval of additions to the initially approved wire center list, including, among other provisions, a 30-day timeline for CLECs to raise objections to Qwest's petition, with an automatic Non-Impairment Designation if no objection is submitted

In Washington, the *Proposed Settlement Agreement* was filed for Commission consideration in Docket No. UT-073035.

3. On June 22, 2007, Qwest filed the petition that is the subject of Docket No. UT-073033, requesting Commission approval of proposed additions to the non-impaired wire center list that is proffered in the *Proposed Settlement Agreement*, and a proposed standing protective agreement.

II. COMMENTS AND OBJECTION TO FILING

A. The *Proposed Settlement Agreement* is not yet approved and therefore should not trigger filing deadlines in this proceeding.

4. As previously noted, Qwest filed the *Proposed Settlement Agreement* for Commission approval in the initial wire center docket on June 29, 2007. At this point,

the Commission has only set the initial pre-hearing conference in its consideration of the merits of the proposed agreement. The *Proposed Settlement Agreement* clearly contemplates that it will go into effect in each state upon state commission order granting approval: "'Effective Date of this Settlement Agreement' is the effective date of the Commission order approving this Settlement Agreement." *Proposed Settlement Agreement* at II. "If, prior to approval, any Commission modifies any portion of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this Settlement Agreement as to that particular state." *Proposed Settlement Agreement* at VII (A)(4)(C).

5. The *Proposed Settlement Agreement* keys the participating parties' prospective actions off the date of Commission approval, e.g.:

Qwest, Covad, Integra, POPP.Com, and XO agree to execute the ICA terms in Attachment B within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.

Proposed Settlement Agreement at VII (A)(2).

McLeod USA and TDSM agree to execute the ICA terms in Attachment D within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.

*Id.*²

6. Under the key principle establishing the effective date of the *Proposed Settlement Agreement*, therefore, Qwest's June 22, 2007 petition proposing additions to the impaired wire center list cannot trigger deadlines in the *Proposed Settlement Agreement* for carriers

² Eschelon and Qwest have an approved *Bridge Agreement* providing that the existing ICA will not be amended on these issues; rather, terms will be included in the new proposed ICA. The Qwest/Eschelon terms are described in VII(A)(1)(b).

to file objections to the Qwest filing, because the *Proposed Settlement Agreement* has not been approved. Should the Commission eventually approve the *Proposed Settlement Agreement*, the Commission should ensure that all timelines provided for in the *Proposed Settlement Agreement*—including CLECs’ initial 30-day window to file objections to the petition—are properly based off of the effective date of the *Proposed Settlement Agreement*--that is, the effective date of the Order approving it.

- B. Proper application of the *Proposed Settlement Agreement* will require that Joint CLECs have 30 days from the point at which they have access to all relevant confidential data to register an objection to a petition to add wire centers to the non-impaired list; Eschelon files an objection in this docket, which in particular requires additional time.**

7 As noted, if the *Proposed Settlement Agreement* were approved, and thus effective, at the time of Qwest’s filing, its terms would require the filing of objections to Qwest’s submission within 30 days of its filing date. *Proposed Settlement Agreement* VI (F)(1). This provision can only logically be interpreted to allow participating CLECs 30 days from the point at which they are able to access the confidential data--which will be required to support the petition (*see, e.g., Proposed Settlement Agreement* V, Methodology) --in order to determine if an objection should be raised. For reasons articulated below, in this docket in particular, more time than the 30 days from Qwest’s filing is necessary to consider Qwest’s supporting data and lodge an objection if necessary.

8 Therefore, in an abundance of caution, even though no timelines should be implemented or enforced prior to the approval date of the *Proposed Settlement Agreement*- if and when that occurs--Eschelon objects to Qwest’s filing because Qwest did not provide parties access to supporting information until well after the filing date.

Furthermore, no deadlines should be imposed at this time because Qwest has repeatedly incorrectly submitted the proposed protective orders that Joint CLECs need to readily participate in the examination of supporting data. Finally, Qwest's voluminous, multi-state filing is particularly inconsistent with the expedited review contemplated in the *Proposed Settlement Agreement*.³

9 To obtain data from Qwest in this docket has been an ordeal. Qwest provided some information to Eschelon on July 2, but failed to include proprietary data. On July 6, Qwest provided proprietary line counts, but did not provide the codes to unmask the data to obtain Eschelon information. After being requested to provide the necessary codes, Qwest responded by providing paper copies of what it had sent previously. Qwest next claimed that Eschelon needed to sign Exhibit C to the protective order to obtain Eschelon's own data.⁴ Eschelon did not receive the complete supporting information from Qwest until July 11. Upon reviewing the confidential data, Eschelon sent initial data requests to Qwest on July 19.

10 Eschelon is proceeding as expeditiously as possible with its analysis of Qwest's confidential data and forthcoming responses to data requests. Eschelon's initial review of data has shown some discrepancies regarding analyses of line counts, which must be pursued and clarified. Eschelon is also in the process of reviewing and analyzing the data on fiber-based collocators. But Eschelon's resources are particularly stretched (as

³ See, Direct Testimony of [Qwest witness] Renee Albersheim, Minnesota PUC Docket No. P-5692, 5340, 5323, 465, 6422/M-06-211 and P-999/CI-06-685, OAH Docket No. 11-2500-17274-2 (the Minnesota Qwest/Eschelon Arbitration Docket), p. 17, lines 19-22 (June 29, 2006): "However, it follows that the transition for additions to the non-impaired wire center list should be shorter than the initial transition. Subsequent transitions are likely to be for only one or two wire-centers at a time."

⁴ Note that Mr. Denney of Eschelon, who requested the data, had already signed Exhibit C.

will be those of other CLECs, if they have been able to obtain confidential data from Qwest) because Qwest has simultaneously filed petitions for additions to wire centers in at least five other states---Arizona, Utah, Oregon, Minnesota and Colorado. Obviously, the effort to analyze data concerning 26 wire center additions is vastly greater than would be required to review data for a single state wire center proceeding (for example, Washington, which has four of the 26 proposed wire center additions). By contrast, the initial proceeding focused on 65 proposed wire centers in staggered commission proceedings in the six states.

11 Furthermore, as noted briefly above, in Washington as well as three other states, Qwest filed proposed protective agreements with its initial filings that diverged from the model protective agreement attached to the *Proposed Settlement Agreement*. Eschelon has therefore been required to address this issue by filing motions to conform the proposed protective agreements in those states into the agreed upon version. *See, Eschelon's Motion for a Standing Protective Order Based on Model Order*, contemporaneously filed in these dockets. The confusion and delay in disseminating confidential data caused by Qwest's filing of protective agreements inconsistent with the *Proposed Settlement Agreement* will compound the time and resources already necessary to analyze supporting data for 26 wire centers.

III. CONCLUSION

12 Qwest's petition should not trigger filing deadlines, in light of the unapproved status of the *Proposed Settlement Agreement*. As a precaution against the possibility of the Commission's enforcing deadlines prior to the *Proposed Settlement Agreement's* effective date, Eschelon files an objection to Qwest's petition for additions to the initial proposed

list of unimpaired wire centers. Such an objection is well-founded because Qwest's original filing was devoid of supportive documentation and Qwest has only on July 11 made available necessary documentation to Eschelon. Judging from the difficulty that Eschelon experienced in obtaining meaningful data, other carriers may well have not yet obtained data at all. Qwest furthermore has caused confusion and delay through its repeated submissions of protective agreements inconsistent with the model agreement attached to the parties' *Proposed Settlement Agreement*. This docket in particular will require full participation by parties who have had an opportunity to examine all relevant data because it is part of a massive multi-state effort by Qwest to remove wire centers from the list available to CLECs as UNEs.

13 Eschelon asks that the Commission refrain from invoking the procedural deadlines from the *Proposed Settlement Agreement* unless and until the agreement is approved and goes into effect. In the alternative, Eschelon files an objection to Qwest's requests in its petition and asks that the Commission allow, at a minimum, 30 days from the date that access to complete confidential data is available to all participating CLECs in order for objections to be filed.

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Dated: _____

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