

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Petition of Qwest
Corporation for Arbitration with Eschelon
Telecom, Inc. Pursuant to 47 U.S.C. Section
252 of the Federal Telecommunications Act of
1996**

Docket No. UT-063061

EXHIBIT BJJ-2

TO THE

DIRECT TESTIMONY OF BONNIE J. JOHNSON

ON BEHALF OF ESCHELON TELECOM, INC.

SEPTEMBER 29, 2006

NO BUILD HELD ORDER CHRONOLOGY

- **12/01/00** - Eschelon submitted Change Request (“CR”) Number 5263637 entitled “Installation of adequate facilities and reduction in number of held orders” (See http://www.qwest.com/wholesale/cmp/archive/CR_5263637.htm). In its CR, Eschelon included the following description of the change it was requesting:

“Modify Qwest’s processes to ensure installation of adequate facilities and reduction in the number of held orders. Through recurring rates, Qwest is being compensated for expanding its network to account for new growth. Qwest will build facilities for its own retail customers. (In Arizona arbitration’s, for example, Qwest reported that it installs 3 lines per customer to anticipate growth.) However, Qwest will not do so for CLECs in similar situations. Qwest has rejected orders from Eschelon for the stated reason that “no jobs planned in the near future for this area.” (Examples of such rejections were provided to Eschelon’s account team on August 30, 2000.) The orders are placed in held status indefinitely, with no date for completion. When asked about these rejections, Qwest indicated it believes it has no obligation to build. At the last CICMP meeting, Qwest again confirmed that it is Qwest’s policy not to build additional UNE’s when Qwest is out of capacity, but Qwest will build for a retail customer’s order. As indicated, however, Qwest is being compensated for such growth and would build for its own retail customer in the same situation. Please modify Qwest’s practices to build in these situations and to provide notice to CLECs as to when held orders will be completed. In the meantime, until such processes are in place, please institute a process to provide to CLECs (perhaps through a website) a list of those areas for which Qwest has jobs planned, a list of areas for which no jobs are planned, and a description of the nature of the jobs planned. Because Qwest has access to this information for its planning purposes, parity requires that CLECs also have access to the same information for their planning purposes.”

- **January – July 2001** – CR under review. The CR Status History includes descriptions such as “documentation currently being created by Qwest personnel”; “currently under review”; “Some additional work is necessary to determine if precedent has been set due to past actions or previous sideline agreements”; “due date changed due to corporate strategy involvement”; “document complete pending approval by Legal,” *etc.*
- **August 2001** – Qwest distributed a CR response, which was not accepted by Eschelon. In its 8/9/01 CR response, Qwest said:

...” When the CLEC submits a request for a Secondary DS0-Analog (voice grade) line, DSL, ISDN, DS1 or DS3 service, the normal assignment process will be followed in its entirety. If no facilities can be found, and there is No Planned Engineering Job, the LSR will be rejected

(the CLEC will receive a Reject Notice) and the Order will be cancelled. The CLEC now has the opportunity to request construction by filing the proper request through their Account Team.’

In this Statement, Qwest agrees to ensure adequate facilities to support Primary DS0-Analog (voice grade) requests only.

The second issue in this Change Request deals with Held Orders. In various sections of the Request, Eschelon requires Qwest to reduce the number of held orders, not leave held orders in held status indefinitely, with no date for completion and to provide notice to CLECs as to when held orders will be completed.

As Qwest believes the ILECs are not obligated to provide more than the existing network for the CLECs, it follows that the ILECs are not obligated to hold and review old CLEC requests on a regular basis. Therefore, Qwest’s implementation of the Network Build Position for the Unbundled Loop (UBL) Product ensured that all operational work groups were in alignment not to hold requests where facilities are not currently available. . . .”

- **October 18, 2001** – Qwest distributed an amended CR response, stating:

“As discussed earlier, currently Qwest has no plans to modify the existing policy or processes regarding Qwest’s obligation to build new facilities. The issues addressed in your CR have been discussed in workshops. Some of the issues have been resolved. Rulings have been received in 10 of the 12 workshops to date. In each ruling, the Commissions support the Qwest position that the ILEC is not required to build additional facilities to deliver to a CLEC. . . .

Finally, between the August 7th reply, the August 9th reply, and the attached, Qwest believes we have addressed the issues associated with this CR and we need to let the regulatory process determine the next steps.”
- **Nov./Dec. 2001** – Requests for clarification addressed
- **12/12/01** – CR placed in development status
- **March & April 2001** – Qwest provides ICA negotiations template to Eschelon as part of Qwest-Eschelon interconnection agreement negotiations; parties begin negotiations with Sections 8 (Collocation) and 7 (Interconnection). [Held order issue is in Section 9 (UNEs), which was not yet under discussion in negotiations.]
- **Jan./Feb. 2002** – Qwest developing its Special Construction process
- **2/01/02** – Qwest issued its Special Construction Process

- **2/20/02** – Qwest denied Eschelon’s CR, after attempting to close it as completed. The CR Status History states:

“CMP Meeting - Qwest reviewed the two additional questions raised at last month's CMP meeting that were incorporated into Qwest's Special Construction Process. Qwest advised that the Special Construction PCAT language would be issued April 5, 2002. Qwest requested that the CR be closed. Eschelon advised that they felt the CR should be denied because Qwest isn't reducing the number of held orders, but rather canceling them. It was agreed that the CR would be stasured as Denied. Meeting discussions will be set forth in the Product/Process Draft Meeting Minutes contained in the Product/Process CMP Meeting Distribution Package 03/20/02.”

- **3/20/02** – Qwest added closed to the denied status of Eschelon’s CR. The CR Status History states:

“CR Open/Closed Status changed to Closed per agreement at 03/20/02 Monthly CMP Meeting that CRs having Denied status should also reflect Closed Status”

- **11/02/02** – CMP Document adopted in CMP. The adopted CMP Document included the following language in Section 15.0: “A party may pursue the dispute resolution processes set forth below. . . . This process does not limit any party’s right to seek remedies in a regulatory or legal arena at any time.”
- **10/20/03** – ICA negotiations continuing, with Qwest and Eschelon discussing Sections 1-7 of the ICA. [The held order issue appears in Section 9 (UNEs), which was not yet under discussion in negotiations.]
- **5/22/04**: ICA negotiations move to additional sections of the ICA, including Section 9 (UNEs), which addresses held orders. Eschelon sent Qwest a markup of Sections 9.1 and 9.2 that included the following proposal (though Qwest did not update the draft till later to reflect this proposal):

9.2.2.3.2 If CLEC orders a 2/4 wire non loaded or ADSL compatible Unbundled Loop for an End User Customer served by a digital ~~l~~oop carrier system Qwest will conduct an assignment process which considers the potential for a LST or alternative copper facility. If a LST is not available, Qwest may also seek alternatives such as Integrated Network Access (INA), hair pinning, or placement of a Central Office terminal, to permit CLEC to obtain an Unbundled Loop. (See Section 12.) If no such facilities are available, Qwest will make every feasible effort to unbundle the IDLC in order to provide the Unbundled Loop for CLEC. If no copper facility capable of supporting the requested service is available, ~~then Qwest will reject the order~~the order will remain open, pending

availability of facilities at Parity with Qwest retail End User Customer orders, unless CLEC cancels the order.-

- **3/29/05** - On the Eschelon/Qwest ICA negotiations call, as a compromise Eschelon provided Qwest with 2 alternative proposals to its original proposal: (1) 90 days instead of 30 days; and (2) Eschelon would resubmit the order but Eschelon would maintain its place in queue
- **6/10/05** – Eschelon sent Qwest a revised version of Sections 9.1 through 9.7, which documented the two additional held order proposals that Eschelon made verbally on the 3/29/05 call.
- **3/21/06** – Eschelon provided Qwest with its fourth held order proposal (CLEC submits a supplemental order before the due date).
- **5/26/06** – Eschelon files Qwest-Eschelon ICA arbitration petition in Minnesota, including Issue 9-32 (“Delayed Orders When Facilities Are Not Available”), including the 4 Eschelon options/proposals for alternative language, one of which is changing only the time frame before the order is canceled (from 30 days to 90 days).

At this time (and during the preceding ICA negotiations), the Qwest CMP Document, §15.0, provides that a CLEC “may” pursue the outlined dispute resolution but that “process does not limit any party’s right to seek remedies in a regulatory or legal arena at any time.” There is no exclusion for the regulatory arenas for ICA negotiation and arbitration.

- **6/01/06**: Qwest negotiations team sent the Eschelon negotiations team an email with the following subject line: “Qwest initiated CMP actions relating to ICA negotiations.” The enclosed document listed this notice as a “Level 3” notice. Qwest’s memo described this notice as a “CMP notice” and said:

“Level 3 CMP notices initiated by Qwest today to propose a 90 day hold for facilities.

PROD.06.01.06.F.03973 Updates are associated with a modification/change to an existing manual process. To better accommodate completion of CLEC UNE orders, Qwest will change the 30 business days your service request is held when no facilities are available to 90 business days

PROD.06.01.06.F.03974

To better accommodate completion of CLEC UNE orders, Qwest will change the 30 business days your service request is held when no facilities are available to 90 business days.

PROD.06.01.06.F.03975 (no level listed)

To better accommodate completion of CLEC UNE orders, Qwest will change the 30 business days your service request is held when no facilities are available to 90 business days.”

- **6/01/06**: Qwest sent a Level 3 CMP product and process change notification, proposing a change to Qwest’s process to cancel a request in 90 days instead of

30 days (*see* Eschelon held order proposal #2). *See* <http://www.qwest.com/wholesale/cnla/uploads/PROD%2E06%2E01%2E06%2E%2E03974%2EHeld%5FOrder%5F30%5Fto%5F90%5FDay%2Edoc>. The only redlined change was from 30 to 90 days. Qwest did *not* change “not available” to “in the ground” through CMP. The Qwest CMP redlined documents simply provided:

“When you submit your service request and facilities are not available, your request may be held for ~~30~~90 business days.”

Qwest proposed the same change from 30 to 90 days in multiple PCATs. The links to the red lined Qwest PCAT changes are:

http://www.qwest.com/wholesale/downloads/2006/060531/PCAT_EnhancedExtendedLoop-EEL_V43.doc

http://www.qwest.com/wholesale/downloads/2006/060531/PCAT_LoopMUXCombination-LMC_V37.doc

http://www.qwest.com/wholesale/downloads/2006/060531/PCAT_SubLoop_V25.doc

http://www.qwest.com/wholesale/downloads/2006/060531/PCAT_UnbundledDarkFiber-UDF_V26.doc

http://www.qwest.com/wholesale/downloads/2006/060531/PCAT_UnbundledDedicatedInterofficeTransport_UDIT_V28.doc

http://www.qwest.com/wholesale/downloads/2006/060531/PCAT_UBL-Gen_Info_V67.doc

- **6/07/06:** Eschelon provided the following comments through CMP (*See* http://www.qwest.com/wholesale/downloads/2006/060629/Qwest_Resp_Comment_PROD_06_29_06_F_04050_REV_FNL_Held_Order_30_90.doc):

“In the email below Qwest indicates that this change may impact the arbitration of Eschelon’s Interconnection Agreement. If Qwest is serious about dealing with the issue of orders held for no local facilities in CMP, Eschelon believes that Qwest should provide the CLEC community the opportunity to have meaningful dialogue on this topic. Qwest said in the Minnesota arbitration that: “The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes.” If so, Qwest should include in its proposal, at least, the following 4 options to facilitate a full discussion with the CLEC community.

Option 1: The current Washington held order process
Option 2: Hold for 90 business days versus 30 business days
Option 3: CLEC resubmits the request.

Option 4: CLEC supplements the request.

Details of each option:

Option 1: Qwest will send CLEC an indication that there is a lack of available facilities and the order will be delayed. The delayed order will remain open, pending availability of facilities at Parity with retail End User Customer orders. In the event that an engineering job is completed that would allow

delivery of the UNEs requested, or Qwest completes construction of facilities for delivery of UNEs for CLEC pursuant to a request to build the UNEs, and this occurs after Qwest sends the delayed order notification, CLEC will receive a new FOC identifying a new Due Date when the UNEs will be available for installation.

Option 2: For UNEs that meet the POLR/ETC requirements, CLEC will receive a jeopardy notice indicating that no facilities are available. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. Once the engineering job is initiated, the CLEC's order will be assigned to it. The CLEC's order will remain open from the time of initial submission until the engineering job is completed. When the engineering job is completed, CLEC will receive a FOC identifying a Due Date when the UNEs will be ready for installation. In response to such FOCs, CLEC can request a different Due Date by submitting a supplemental order to change the Due Date to a later date.

For UNEs that do not meet the POLR/ETC requirements, Qwest shall send CLEC a jeopardy notice indicating that facilities are not available, however, Qwest shall maintain the order as pending for a period of ninety (90) business days. Qwest shall send such jeopardy notice to CLEC as soon as possible, but in no event less than forty-eight (48) hours prior to the CLEC requested Due Date

- (i) If facilities become available to fill the order within that ninety (90) business day period, Qwest shall notify the CLEC of such availability. CLEC and Qwest acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any facility orders placed by any other provider, including Qwest, which predate CLEC's order shall have priority in any facilities made available under the terms of this Section.
- (ii) If facilities do not become available to fill the order within that ninety (90) business day period, Qwest will send CLEC a rejection notice for the LSR or ASR and cancel the Service Order.

(iii) Upon receipt of the rejection notice, or at any time after receipt of the jeopardy notice, CLEC may:

- (a) submit a request to build UNEs or
- (b) while a UNE order is in Jeopardy Status, CLEC may cancel its UNE order at any time at no charge.

Option 3: If Qwest rejects the order after thirty (30) business days, CLEC may re-submit the order. If CLEC re-submits the order within three (3) business days of receipt of the rejection notice, CLEC maintains its position in queue for the facilities if they become available. CLEC's maintaining of its position in queue does not affect the application of the PIDs or PAP (as described in Exhibits B and K), but ensures that CLEC maintains its first come, first served status.

Option 4: CLEC can submit a supplement to its existing service request to identify a Due Date that is up to thirty (30) business days later than the previously requested Due Date. If CLEC submits such a supplemental request, the CLEC service order will remain open until the requested Due Date or until CLEC submits another supplemental request. Qwest will not reject CLEC's supplemental requests based on the Due Date change. If

facilities become available, Qwest will send CLEC another FOC with a new Due Date.”

- **6/29/06:** Qwest did not present the other three held order options/proposals in CMP as suggested by Eschelon. Instead, Qwest provided the following non-response to Eschelon (*See* http://www.qwest.com/wholesale/downloads/2006/060629/Qwest_Resp_Comment_PROD_06_29_06_F_04050_REV_FNL_Held_Order_30_90.doc):

“Qwest initiated this CMP Level 3 “change in process” to move from 30 business days to 90 business days if there are no facilities available. With a Change Management Process level 3 change, Qwest is utilizing the formal comment process which is what is required.

Qwest acknowledges this comment.”

- **7/14/06:** Effective Date of Qwest’s Level 3 CMP notice (*See* <http://www.qwest.com/wholesale/cnla/uploads/PROD%2E06%2E01%2E06%2EF%2E03974%2EHeld%5FOrder%5F30%5Fto%5F90%5FDay%2Edoc>)
- **7/25/06:** Qwest for the first time in the ICA negotiations proposed new language to replace “available” with “in the ground.” Qwest provided no basis for the proposal other than to say: “For clarity if Qwest has copper in the ground, Qwest will hold the order for 90 Days. If there is no copper in the ground, Qwest will NOT hold the order, it will reject the order.” Qwest said:

“9.2.2.3.2 Qwest Proposed Modifications_7-25-06 to Eschelon’s MN ICA Draft dated in error as 8-1-06. Please advise if Eschelon agrees or if the parties are at impasse. If at impasse we will need to add to the MN matrix. WA this is NOT an issue.

- If CLEC orders a 2/4 wire non loaded or ADSL compatible Unbundled Loop for an End User Customer served by a Digital Loop Carrier System Qwest will conduct an assignment process which considers the potential for a LST or alternative copper facility. If a LST is not available, Qwest may also seek alternatives such as Integrated Network Access (INA), hair pinning, or placement of a Central Office terminal, to permit CLEC to obtain an Unbundled Loop. If no such facilities are available, Qwest will make every feasible effort to unbundle the IDLC in order to provide the Unbundled Loop for CLEC. If copper facilities are in the ground than Qwest will hold the order for 90 Days. If no copper facility capable of supporting the requested service is available- in the ground, Qwest will reject the order. Qwest will hold the order pending availability of facilities.”

- **Currently:** Qwest’s current PCAT provides for 90 rather than 30 days for held orders in no build situations. It continues to refer to whether facilities are “available” and *not* whether they are “in the ground.” *See, e.g.*, the updated PCAT for Unbundled Loops (Unbundled Local Loop - General Information - V68.0) at <http://www.qwest.com/wholesale/pcat/unloop.html>:

“If facilities can not be located and there is No Planned Engineering Job, your service request will be held for 90 business days. Availability of facilities is on first come, first served basis. If spare facilities become available, a Firm Order Confirmation (FOC) is generated and sent to you in response to your original service request. If at the conclusion of the 90-business day hold, facilities are still unavailable, your service request will be rejected.”

Time to complete Eschelon CR #5263637 versus Qwest Level 3 Held Order Notice:

	Date Submitted	Date CR Denied or Date CR Completed	Total Duration in Days
Eschelon Change Request : 5263637 Installation of adequate facilities and reduction in number of held orders	12/1/2000	Closed 3/20/2002	469 Days
Eschelon proposed language the order will remain open for 90 days instead of 30 days in Eschelon/Qwest ICA negotiations	3/29/2005	N/A	
Qwest Product and Process Notice: PROD.06.01.06.F.03974.Held_Order_30_to_90_Day	6/1/2006	Completed 7/14/2006	43 Days