

WCD-4

SUBJECT TO RULE OF EVIDENCE 408

CONFIDENTIAL AMENDMENT TO  
CONFIDENTIAL/TRADE SECRET STIPULATION

This Amendment to the Confidential/Trade Secret Stipulation Between ATI and U S WEST ("Agreement"), is hereby entered into by Qwest Corporation ("Qwest"), formerly known as U S WEST, Inc., and Eschelon Telecom, Inc. ("Eschelon"), formerly known as Advanced Telecommunications, Inc., d/b/a Cady Communications, Inc., Cady Telemanagement, Inc., American Telephone Technology, Inc., Electro-Tel, Inc., and Intellicom, Inc., (hereinafter referred to as the "Parties" when referred to jointly) on this 15th day of November, 2000. This Amendment adds terms to the Confidential/Trade Secret Stipulation Between ATI and U S WEST dated February 28, 2000. The Parties acknowledge the recitals and terms contained in the Confidential/Trade Secret Stipulation Between ATI and U S WEST and seek to resolve differences which existed between the Parties as of that date, and continue as of the date of this Agreement, including differences relating to service quality.

ADDITIONAL RECITALS

1. Disputes have arisen between the Parties as to the effective date of Eschelon's ability to provide services through the unbundled network element ("UNE") platform. Eschelon claims that it was eligible to receive platform rates as of March 1, 2000.
2. Qwest believes that Eschelon was unable to provide services through the unbundled network element platform as of March 1, 2000.
3. In an attempt to finally resolve the issues in dispute and to avoid delay and costly litigation, the Parties voluntarily enter into this Confidential Agreement to resolve all disputes, claims and controversies between the Parties, as of the date of this Confidential Agreement that relate to the matters addressed herein, and Eschelon releases Qwest from any claims regarding the issue as described herein.

CONFIDENTIAL AGREEMENT

1. The Parties enter into this Agreement in consideration for the terms described below, and Eschelon's release of any claims that can or could have been brought against Qwest because Eschelon was providing services through resale of finished services instead of providing service through unbundled network elements. Eschelon claims that it had the right to elect platform prices as of March 1, 2000, while Qwest disagrees with Eschelon's claim, as described above.

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2. Eschelon agrees to purchase from Qwest, under this agreement or any other agreement between the parties, at least \$15 million (fifteen million dollars) of telecommunication services and products between October 1, 2000 and September 30, 2001. In consideration for Eschelon's agreement to make such purchases and for such other good and valuable consideration set forth in this agreement and documented in Qwest's November 15, 2000 letter, Qwest agrees to pay Eschelon \$10 million by no later than November 17, 2000 to resolve all issues, outstanding through the date of execution of this agreement, related to the UNE platform and switched access. Further, Qwest will pay to Eschelon the revenue Qwest billed to IXCs at Qwest's established switched access rates for Eschelon platform end users for usage for the month of October 2000. Qwest will pay this amount to Eschelon within 30 days of the date Qwest receives WTN information for Eschelon for all of October 2000. For any month (or partial month), from November 1, 2000 until the mechanized process is in place, during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access, Qwest will credit Eschelon \$13.00 (or pro rata portion thereof) per Platform line per month as long as Eschelon has provided the WTN information to Qwest. After the mechanized process is in place, Eschelon and Qwest will use the established escalation procedures if a dispute arises. Qwest will credit the IXC and other companies for daily usage traffic that Qwest provides to Eschelon to bill to the IXC (to eliminate double billing).

In the event that Eschelon does not purchase, under this agreement or any other agreement, \$15,000,000.00 (fifteen million dollars) in telecommunications services and/or products within the time frame set forth above, Eschelon shall, by December 31, 2001, make a pro rata refund of the payment received from Qwest.

3. Eschelon shall provide to Qwest consulting and network-related services, including but not limited to processes and procedures relating to wholesale service quality for local exchange service ("Services"). These Services will address numerous items, including loop cutover and conversion, repair, billing and other items agreed upon by the Parties. The Services may include all lines of business and methods of local market entry used by Eschelon. Eschelon agrees to utilize knowledgeable and experienced personnel for the Services. Eschelon further agrees to assign, upon request, up to two full time representatives dedicated to working with the Qwest account team or other Qwest organizations to facilitate handling of provisioning issues. The Parties agree to meet together (via telephone, live conference, or otherwise) as necessary to facilitate provisioning of the Services. Executives from both companies agree to address and discuss the progress of the Services at quarterly meetings to begin in 2001 and continue through the end of 2005. In consideration of Eschelon's agreement to provide Services and for such good and valuable consideration set forth in this agreement, Qwest agrees to pay

Eschelon an amount that is ten percent (10%) of the aggregate billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005. Eschelon will invoice Qwest annually. Payment is due within 30 days of the invoice date. In the event that the Confidential Purchase Agreement between Eschelon and Qwest (as of the same date as this Agreement) is terminated, this paragraph of this Agreement also terminates simultaneously with termination of that Confidential Purchase Agreement and any payments made pursuant to this paragraph as of the date of termination will be promptly returned to Qwest. In addition, if Eschelon fails to meet its purchase commitments under sections 2, 2.1, 2.2, 2.3, 2.4 or 2.5 of the Confidential Purchase Agreement, Eschelon will promptly return to Qwest any payments made pursuant to this section.

4. If the Parties fail to finalize the Implementation Plan by April 30, 2001, as required by the Parties' Escalation Procedures Agreement, they agree to immediately terminate the Purchase Agreement, the Confidential Billing Settlement Agreement, this Amendment to the Confidential/Trade Secret Stipulation, the Escalation Procedures Agreement, and the Interconnection Agreement Amendment, all dated November 15, 2000, and cooperate in good faith to determine and promptly return to each other all of the economic benefits each received from the other in consequence of those Agreements. Moreover, all of the claims, whether in law or in equity, that either Party released or discharged in those Agreements shall be restored to them.

5. The Parties will address in their quarterly meetings appropriate price adjustments for the telecommunications services and products purchased by Eschelon and Qwest in the preceding quarter.

6. For valuable consideration mentioned above, the receipt and sufficiency of which are hereby acknowledged, Eschelon does hereby release and forever discharge Qwest and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liabilities, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the disputes/matters addressed in "Additional Recitals" paragraphs 1 and 2 above, including all disputes related to the UNE platform and switched access.

7. The terms and conditions contained in this Confidential Agreement shall inure to the benefit of, and be binding upon, the respective successors, affiliates and assigns of the Parties.

8. Eschelon hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claims which is released or discharged by this Confidential Agreement.

9. The Parties agree that they will keep the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Confidential Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will: (1) first notify Qwest of any obligation to disclose some or all of this Confidential Agreement; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this Confidential Agreement; and (3) apply for confidential treatment of the Confidential Agreement. It is expressly agreed that this confidentiality provision is an essential element of this Confidential Agreement and negotiations, and all matters related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

10. In the event either Party initiates arbitration or litigation regarding the terms of this agreement or has a legal obligation which requires disclosure of the terms and conditions of this Confidential Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided in this Agreement.

11. This Confidential Agreement constitutes an agreement between the Parties and can only be changed in a writing or writings executed by both Parties. Each of the Parties forever waives all right to assert that this Confidential Agreement was the result of a mistake in law or in fact.

12. This Confidential Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota, and shall not be interpreted in favor or against any Party to this Agreement.

13. The Parties have entered into this Confidential Agreement after conferring with legal counsel.

14. In the event that any provision of this Confidential Agreement should be declared to be unenforceable by any administrative agency or court of law, either Party may initiate an arbitration under the provisions of section 14 below within 90 days of such declaration, to determine the impact of such declaration on the remainder of this Confidential Billing Settlement Agreement. The arbitrator shall have the authority to determine the materiality of the provision and any appropriate remedies, including voiding the agreement in its entirety. If neither Party initiates such an arbitration within 90 days, the remainder of the Confidential Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provisions were not part of this Confidential Agreement.

15. Any claim, controversy or dispute between the Parties in connection with this Confidential Agreement shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. The arbitration shall be conducted in Minneapolis, Minnesota. Each Party shall have the right to seek from a court of appropriate jurisdiction equitable or provisional remedies (such as temporary restraining orders, temporary injunctions, and the like) before arbitration proceedings have been commenced and an arbitrator has been selected. Once an arbitrator has been selected and the arbitration proceedings are continuing, thereafter the sole jurisdiction with respect to equitable or provisional remedies shall be remanded to the arbitrator. Any arbitrator shall be a retired judge or an attorney who has been licensed to practice for at least ten (10) years and is currently licensed to practice in the state of Minnesota. The arbitrator shall be selected by the Parties within fifteen (15) business days after a request for arbitration has been made by one of the Parties hereto. If the Parties are unable to agree among themselves, the Parties shall ask for a panel of arbitrators to be selected by the American Arbitration Association. If the Parties are unable to select a sole arbitrator from the panel supplied by the American Arbitration Association within ten (10) business days after such submission, the American Arbitration Association shall select the sole arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement and award appropriate damages, but the arbitrator shall not have authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator, except that the arbitrator shall have the discretion award reasonable attorneys' fees and costs in favor of a Party if, in the opinion of the arbitrator, the dispute arose because the other Party was not acting in good faith.

16. The Parties acknowledge and agree that they have a legitimate billing dispute about the issues described in this Confidential Agreement and that the resolution reached in this Agreement represents a compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement cannot be used against the other Party, including but not limited to admissions.

17. This Confidential Agreement may be executed in counterparts and by facsimile.

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15<sup>th</sup> day of November 2000.

Eschelon Telecom, Inc.

By: [Signature]

Title: President - CEO

Date: 11/15/00

Qwest Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15<sup>th</sup> day of November, 2000.


Eschelon Telecom, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Qwest Corporation

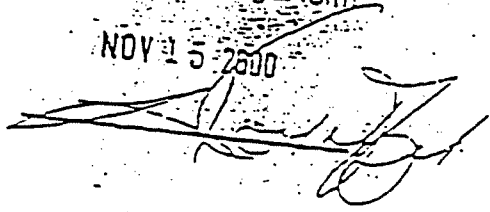
By:  \_\_\_\_\_

Title: EVP \_\_\_\_\_

Date: 11-15-00 \_\_\_\_\_

Approved as to legal form

NOV 15 2000





SUBJECT TO RULE OF EVIDENCE 408

WCD-15

Confidential Purchase Agreement

This Purchase Agreement ("PA") is made and entered into by and between Escheion Telecom, Inc. and its subsidiaries and affiliates ("Eschelon") and Qwest Corporation and its subsidiaries ("Qwest") (collectively, the "Parties") effective on the 1st day of October, 2000.

The Parties have entered in to enter into this PA to facilitate and improve their business and operational activities, agreements and relationships. In consideration of the covenants, agreements and promises contained below the Parties agree to the following:

1. This PA is entered into between the Parties based on the following conditions, which are a material part of this agreement:
  - 1.1 This PA shall be binding on Qwest and Eschelon and each of their respective subsidiaries, affiliated corporations, successors and assigns.
  - 1.2 This PA may be amended or altered only by written instrument executed by an authorized representative of both Parties.
  - 1.3 The Parties, intending to be legally bound, have executed this PA effective as of October 1, 2000, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.
  - 1.4 Unless terminated as provided in this section, the initial term of this PA is from October 1, 2000 until December 31, 2005 ("Initial Term") and this PA shall thereafter automatically continue until either Party gives at least six (6) months advance written notice of termination. This is PA can only be terminated during the term of the agreement in the event of a material breach of the terms of this Amendment which remains unresolved and uncompensated following application of the dispute resolution provisions of this agreement.
  - 1.5 All factual preconditions and duties set forth in this PA are intended to be, and are considered by the Parties to be, reasonably related to, and dependent upon each other.
  - 1.6 If either Party's performance of this PA or any obligation under this PA is prevented, restricted or interfered with by causes beyond such Parties' reasonable control, including but not limited to acts of God, fire, explosion, vandalism which reasonable precautions could not protect against, storm or other similar occurrence, any law, order, regulation, direction, action or request of any unit of federal, state or local government, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, strike or work stoppage or material vendor failures, or cable cuts, then such Party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference (a "Force Majeure").
  - 1.7 The Parties agree that they will keep the substance of the negotiations and/or conditions of this PA and the terms or substance of this PA strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the

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substance of the negotiations and/or conditions of this settlement and the terms or substance of this PA to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will: (1) first notify Qwest of any obligation to disclose some or all of this PA; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this PA; and (3) apply for confidential treatment of the PA. It is expressly agreed that this confidentiality provision is an essential element of this PA and negotiations, and all matters related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

In the event either Party initiates arbitration or litigation regarding the terms of this agreement or has a legal obligation which requires disclosure of the terms and conditions of this PA, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided in this PA.

1.8 Neither Party will present itself as representing or jointly marketing services with the other, or market its services using the name of the other Party, without the prior written consent of the other Party.

1.9 Any claim, controversy or dispute between the Parties in connection with this PA shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. Each Party shall have the right to seek from a court of appropriate jurisdiction equitable or provisional remedies (such as temporary restraining orders, temporary injunctions and the like) before arbitration proceedings have been commenced and an arbitrator has been selected. Once an arbitrator has been selected and the arbitration proceedings are continuing, thereafter the sole jurisdiction with respect to equitable or provisional remedies shall be remanded to the arbitrator. Any arbitrator shall be a retired judge or an attorney who has been licensed to practice for at least ten (10) years and is currently licensed to practice in the state of Colorado. The arbitrator shall be selected by the parties within fifteen (15) business days after a request for arbitration has been made by one of the Parties hereto. If the Parties are unable to agree among themselves, the Parties shall ask for a panel of arbitrators to be selected by the American Arbitration Association. If the parties are unable to select a sole arbitrator from the panel supplied by the American Arbitration Association within ten (10) business days after such submission, the American Arbitration Association shall select the sole arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement and award appropriate damages, but the arbitrator shall not have the authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator, except that the arbitrator shall have the discretion to award reasonable attorneys' fees and costs in favor of a Party if, in the

opinion of the arbitrator, the dispute arose because the other Party was not acting in good faith.

1.10 This PA shall be interpreted and construed in accordance with the laws of the State of Colorado, and shall not be interpreted in favor or against any Party to this Agreement.

1.11 This PA constitutes an agreement between the Parties and can only be changed in a writing or writings executed by both Parties. Each of the Parties forever waives all right to assert that this agreement was the result of a mistake in law or in fact.

1.12 This PA may be executed in counterparts and by facsimile.

2. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 3, Eschelon agrees to purchase from Qwest, or one of its affiliates, during the Initial Term of this PA, at least \$150 million worth of telecommunications, enhanced or information services, network elements, interconnection or collocation services or elements, capacity, termination or origination services, switching or fiber rights (the "Products"). If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a \$10 million penalty.

2.1 Subject to the provisions of this section 2, from January 1, 2001 to December 31, 2001, Eschelon will purchase, under this agreement or any other agreement between the parties, a minimum of \$16 million of Products and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2002, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 63% of its 2001 annual revenue commitment to Qwest.

2.2 Subject to the provisions of this section 2, from January 1, 2002 through December 31, 2002, Eschelon will purchase a minimum of \$24 million of Products, and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2003, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 42% of its 2002 annual revenue commitment to Qwest.

2.3 Subject to the provisions of this section 2, from January 1, 2003 through December 31, 2003, Eschelon will purchase a minimum of \$31 million of Products, and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2004, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 32% of its 2003 annual revenue commitment to Qwest.

2.4 Subject to the provisions of this section 2, from January 1, 2004 through December 31, 2004, Eschelon will purchase a minimum of \$37 million of Products, and in the

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event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2005, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 27% of its 2004 annual revenue commitment of Qwest.

2.5 Subject to the provisions of this section 2, from January 1, 2005 through December 31, 2005, Eschelon will purchase a minimum of \$42 million of Products, and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2006, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 24% of its 2005 annual revenue commitment to Qwest.

Eschelon's annual and contract term purchase commitments will be reduced proportionally in the event Qwest sells any exchanges where it is currently the incumbent local exchange service provider, but only to the extent that any such sale materially impacts Eschelon's purchases from Qwest.

Eschelon's annual and contract term purchase commitments will be adjusted proportionally and/or appropriately in the event Eschelon acquires, or merges with, or divests to, another company where such acquisition, merger or divestiture materially changes Eschelon's market capitalization, size, markets or other similar measure, as mutually agreed.

2.6 The Parties will resolve any disputes pursuant to Escalation Procedures to be developed by the Parties.

3. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 2, all taken as a whole, with such consideration only being adequate if all such agreements and covenants are made and are enforceable, Qwest agrees to make the Products available for purchase by Eschelon at such rates and on such terms and conditions as agreed.

[Remainder of page intentionally blank]

SUBJECT TO RULE OF EVIDENCE 408

Made and entered into on the effective date written above by Eschelon and Qwest.

Eschelon Telecom, Inc.

Qwest Corporation

\_\_\_\_\_  
Authorized Signature

  
\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

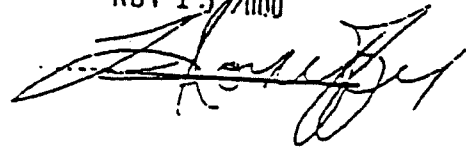
EVP  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

11-15-00  
\_\_\_\_\_  
Date

Approved as to legal form

NOV 15 2000




H:Qwest/MTOP102500

SUBJECT TO RULE OF EVIDENCE 40S

Made and entered into on the effective date written above by Eschelon and Qwest.

Eschelon Telecom, Inc.

Qwest Corporation

  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Richard A. Smith  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

President - CEO  
Title

\_\_\_\_\_  
Title

11/17/00  
Date

\_\_\_\_\_  
Date

WCO - 16

To: "Jim Gallegos (Qwest)" <jhgalle@uswest.com>, "Judy Tinkham" <jtinkha@uswest.com>,  
"Audrey McKenney (Qwest)" <axmcken@uswest.com>, "Laurie Korneffel"  
<lkornef@uswest.com>, "Judith Rixe" <jrix@uswest.com>  
cc: "Oxley, J. Jeffery" <jjoxley@eschelon.com>

Subject: Letter from Richard A. Smith - Subject to Federal Rule of Evidence 408 (Confidential)

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See attached letter from Richard A. Smith on Subject to Federal Rule of Evidence 408.

<<Qwest Agreement - 11-5-00.doc>>

Original copy of the letter will be mailed to you:  
Jim Gallegos, Laurie Korneffel and Audrey McKenney (Fedx overnight)  
Judy Tinkham and Judy Rixe (U.S. mail)

If you do not receive the original letters, please notify Richard Smith at (612) 436-6626.

Thank you.

Lori Wagner  
Eschelon Telecom, Inc.  
Business No. (612) 436-6492  
E-mail: lmwagner@eschelon.com



- Qwest Agreement - 11-5-00.doc

November 5, 2000

Mr. Jim Gallegos  
Corporate Counsel  
Qwest  
1801 California Street, Room 3800  
Denver, CO 80202

Ms. Audrey McKenney  
Vice President – Wholesale Markets Finance  
Qwest  
1801 California Street, Room 2350  
Denver, CO 80202

Ms. Judy Tinkham  
Vice President – Wholesale and Diversified Markets  
Qwest  
200 South 5<sup>th</sup> Street, Room 2400  
Minneapolis, MN 55402

**Confidential - Subject to Federal Rule of Evidence 408**

Dear Mr. Gallegos, Ms. McKenney, and Ms. Tinkham:

**[Trade Secret Data Begins**

The purpose of this letter is to communicate the key business issues associated with our work on the business to business relationship that Eschelon/Qwest are attempting to construct on UNE-P and operating performance.

We have reviewed the documents that Ms. Korneffel/Mr. Gallegos forwarded to us over the past two (2) weeks and there are numerous revisions that our respective legal teams can bring to conclusion, but the following business issues will take some discussion which I would like to conclude over the next two (2) business days (by EOD on Tuesday, November 7, 2000):

1. The volume discount of 10% that we agreed to on Saturday, October 21<sup>st</sup>, has not been explicitly stated in the purchase agreement.
2. The \$13.00 per month per resale line payment that Qwest was to make to Eschelon effective October 1, 2000 if accurate switched access records are not delivered each month has not been included as we agreed to on Saturday, October 21, 2000. Sub issues/questions are provided as follows:
  - a) Can Qwest provide these records to Eschelon in the industry standard format? Our redline of the interconnection agreement amendment contemplates that by January 1, 2001, Qwest will be able to do this.
  - b) Does Eschelon have to provide daily resale line telephone number data to Qwest given that Qwest already has this information?

**NONPUBLIC DOCUMENT**

**CONTAINS TRADE SECRET DATA**



- c) Would Qwest be willing to bill the interexchange carriers for switched access for resale/UNE-P lines and remit their payments to Eschelon instead of delivering the raw records? This may be simpler for both parties.
3. Because our interconnection agreements start to expire soon, and because they are becoming dated, Eschelon requires the ability to continue to negotiate new agreements or to opt into the interconnection agreements of others.
  4. We need to confirm that Qwest will make DSL available to Eschelon at the wholesale discount, contrary to the language in the interconnection agreement amendment we received. We also need to confirm that we will be able to provide voice mail to our platform customers. We understand that we will not receive the wholesale discount for voice mail.
  5. Qwest needs to provide a list of features and Qwest's proposed TELRIC pricing of those features that are not included in Attachment 3.2 of the proposed Interconnection Agreement Amendment Terms.
  6. Eschelon will give up regulatory dispute remedies only if we can continue to have all legal remedies available to us as agreed to on Saturday, October 21, 2000. Binding arbitration is acceptable as long as both parties agree.
  7. The operating agreement/implementation plan is critical to establishing a solid business to business relationship with Qwest as "good economics" represent only part of a positive relationship. Without an improved level of service from Qwest – the economics do not matter. To accomplish this – we need to have a date certain (April 30, 2001) in which we will have an operating agreement/implementation plan agreed to including any necessary arbitration of issues. If we do not have this agreement, both parties should revert back to any/all legal remedies or regulatory remedies.

Regarding the last issue noted above (Item #7), we have ongoing concerns about Qwest's ability to improve service levels given the recent analysis completed by our Provisioning team for the period of October 17, 2000 to November 1, 2000. During this time, 42.7% of the migrations/hot cuts completed by Qwest had customer effecting problems. I understand and appreciate the recent activity and resource that Qwest has recently put on these issues, but they are not fixed and without a solid operating/implementation plan agreed to by both parties by April 30, 2001, the only effective alternative for Eschelon is to retain our regulatory remedies. If this plan is in place, Eschelon will be a vocal proponent of Qwest's Section 271 filings in all your jurisdictions.

The best and most enduring partnerships are those in which both sides help each other. So far we have concentrated on setting out how Qwest helps Eschelon economically and how Eschelon assists Qwest in achieving its 271 goals. I think we need to consider how we might help each other become more productive. Eschelon has a solid provisioning staff. Recently, in the context of preparing for 271, we've been using our best peoples' efforts to document problems with Qwest's wholesale service. What we would really like to do is use these people to analyze, document, and team with Qwest employees to improve our joint provisioning processes. I feel there is an opportunity to partner on process improvements. If we can develop this idea, put some teeth into it and incorporate it into our interconnection agreement and/or purchase agreement, we may also have a mechanism that makes it more difficult for any party to opt into our agreements.

NONPUBLIC DOCUMENT

CONTAINS TRADE SECRET DATA

At our meeting on Thursday, October 12, 2000, in Denver, we agreed to complete negotiations and have definitive agreements signed by EOD Sunday, October 22, 2000. We did not meet that commitment – would suggest that we set another one for EOD Sunday, November 12, 2000 and make that one, i.e. have definitive agreements executed by both parties. Once again, suggest that we sit face to face for one (1) day –believe that we can drive this to conclusion if we completed that session. Will call you tomorrow morning to establish another negotiating session.

Very truly yours,

Richard A. Smith  
President and Chief Operating Officer

RAS:lw

**Trade Secret Data Ends]**

xc: L. Komeffel – Qwest  
xc: J. Rixe - Qwest  
xc: J. Oxley – Eschelon  
xc: File - Qwest

**NONPUBLIC DOCUMENT  
CONTAINS TRADE SECRET DATA**

WCO-18

## —Original Message—

From: Clauson, Karen L.  
 Sent: Friday, December 08, 2000 4:35 PM  
 To: 'jrix@uswest.com'; 'Kevin Saville'  
 Subject: Escheion Implementation Teams/Issues

Enclosed is a revised version of the list that you requested of Escheion's team members with their titles and departments. All of the teams have met internally and are preparing for their first meetings with Qwest. If we find that some issues are not being covered by any team, we could add teams later. But, this appears to be a good start. It would be great if you could provide to us, at our meeting at 9am on Dec. 12th, a list of team members for Qwest's corresponding teams.

Also, in addition to the titles/departments, I have listed below some of the issues that the teams may address. While these are just examples, the issues should give you an idea of the expertise needed for the various teams. With the right people, the teams can reach business solutions to problems that can then be translated to an Implementation Plan and, ultimately, interconnection agreements.

When reading the issues below, a few themes re-occur as to Escheion's needs:

Vendor-customer relationship, with Qwest explaining and supporting its products fully.  
 Better access to more knowledgeable contacts for obtaining information and resolving issues.

Regular communication between both companies.  
 Common sense, practical solutions.  
 Streamlined, known, and reliable processes and procedures.  
 Timeliness and accuracy.  
 Project management for resolving large or one-time issues.

## ISSUES:

Examples of issues that we would anticipate that the teams (including appropriate subject matter experts from both companies) address would include, for example:

## BILLING (CONNECTIVITY BILLING)

**DISCONTINUING CERTAIN BILLING:** Our understanding of the agreement is that Qwest is not going to bill us for recip comp (local termination usage on UNE lines) and termination liability as of October 1, 2000. Has, or will, Qwest simply turn off the recip comp and termination liability so that we no longer get bills? This seems like a simple thing that could be done immediately, even before our first meetings. (For example, Bill Markert has already asked his group to turn off CABs billing for this usage.) Please confirm if that is your understanding as well and if this has/will be done.

**CREDIT:** With respect to the credit back to October 1, does Qwest have a plan as to how it will do this. If so, when will this payment show up and in what form? (We hope to receive it soon and by BAN, etc.). Are there issues we need to discuss about how this will work before we will see a credit?

**SYSTEM & PROCESS CHANGES:** The issues raised by Bill Markert in CICMP need to be resolved. Can the companies address those issues here (or can Qwest do so more quickly in CICMP)? The change requests are on Qwest's CICMP web site, at <http://www.uswest.com/wholesale/cicmp/changerequest.html>, and include:

CR#5043134 Populate all Billmate fields/columns  
 CR#5043176 Better explanations of OCCs on invoices  
 CR#5043187 Payment history information on invoices

CR#5043197 Identification of PIC code in Billmate  
 CR#5043226 UNE invoice detail  
 CR#5110474 Provide calculation description of each termination penalty levied  
 CR# 5043086 Treatment of administrative lines/features/voicemail  
 CR#5043149 Billmate uniformity  
 CR#5043233 Continuing changes to rules  
 CR# 5043204 Rate change notification  
 CR# 5043162 Calling Plans  
 CR#5043209 Single billing platform  
 CR#5043125 Knowledge of bill inquiry staff

**SUPPORT:** We would like to establish a better process for using knowledgeable contacts at Qwest. Currently, the billing points of contact do not even have access to, or not familiar with, Eschelon-specific information (e.g., tariffs, bills). We need dedicated, knowledgeable Qwest contacts/ reps for: (1) daily usage feeds from Qwest (that we use to bill our customer); and (2) monthly bills from Qwest (that we pay to Qwest). For the first category, there is currently no Qwest rep. Eschelon must call a help desk, at which the people are unfamiliar with the issues and Eschelon-specific information. For the second category, Qwest has designated rep(s), but they are not knowledgeable and do not have access to, or not familiar with, Eschelon-specific information (e.g., invoices). The Qwest reps who deal with us need to be able to access Eschelon-specific information and understand it.

**ADJUSTMENTS:** Improved process for billing adjustments

**TERMINATION LIABILITY:** We want to go over the agreement reach and confirm that our understanding is the same as Qwest's. With respect to customer termination liability penalties, they are too high.

**SERVICE LEVELS, REMEDIES:** In our last meeting with Perry Hooks, we proposed that, at least until other service level guarantees and remedies are available post-Qwest's interLATA entry, at least the metrics and remedies relating to provisioning, billing, and repair that we agreed to in the MN merger case should apply in all states. After Qwest's interLATA entry, other metrics and remedies may be available, perhaps on an opt-in basis. At that time, Qwest could not agree to this proposal. We would like to re-visit this issue. We need guarantees relating to service in all of our states in the interim, as well as after Qwest enters the interLATA market.

## COLLOCATION

**TIME INTERVALS/AUGMENTS:** We have signed an amendment for 30-day intervals for augments, and Qwest has indicated it will adopt the 90-day intervals for collocation (though it is asking for some exceptions). We are willing to work on reasonable exceptions. In many routine cases, however, collocations are taking too long. This is particularly true with respect to augments. Qwest is requiring a 45-day feasibility period and has forecasting requirements even for the simplest of augments. We need shorter time intervals (upon which we can depend). Perhaps the teams can identify different kinds of augments that do not require the longer time frames (or, conversely, shorten the time intervals and identify exceptions). Either way, simple augments should not take 45 + 30 days or more.

**EXAMPLE:** We would like to bring more reality/practicality/flexibility to the collocation process. (If 45 days isn't needed, don't take 45 days, etc.) For example, we asked Qwest to apply the 30-day augment interval to 4 applications that were submitted on 10/19, after we signed the 30-day amendment but before Qwest signed it. (The applications are for Seattle Mutual for APOT; Seattle Mutual for cage; Tacoma Fawcett for power and APOT; and Vancouver North for power.) We've been told that this augment will take 120 days, even though Qwest then signed the amendment. Given that everyone recognizes that an augment can be done in 30 days

or less, why can't these applications be processed earlier? If it is a forecasting issue, we can sit down and talk about needs and priorities.

**PROJECT MANAGEMENT:** After a time, the 30-day interval process should work better (because some of the pre-requisites will be met, etc.). Once it is working more smoothly, some of the concerns about delay should be reduced. Eschelon cannot afford to wait, however, until then for existing collocation requests. Perhaps the issue of existing collocations can be taken aside and assigned to a knowledgeable Qwest project manager to work on these issues. Eschelon would sit down with the project manager with a list of existing projects, their status, and priorities, and work through the best way to address these collocations. Then, the teams could work out any adjustments to the process that may be needed on a going-forward basis (without bogging down the teams in the specifics of each collocation). Bill Fellman is helpful, but we are unclear whether he has the decision making authority to act as a project manager in this sense. He has also indicated that his job responsibilities may change after the first of the year.

**CLEC-TO-CLEC:** For CLEC-to-CLEC collocations, we understand (from the presentations in Denver) that Qwest has a new "product." We would like Qwest to explain this option (how it works, what it costs, etc.). In the meantime, Qwest had indicated that we had to order channel terminations on the ICDF instead of doing a CLEC-to-CLEC collo or ordering less expensive cross connections. Bill Markert has been following up on getting a bill adjustment for this. Going forward, we need to know the best, most cost effective method for these types of collocations. For that, we need an understanding of the different products/options that Qwest offers. The information on the website is inadequate. Other vendors give us presentations and work with/train us on using their products. We would like to work toward that kind of vendor-customer relationship with Qwest.

**ICDF/ALTERNATIVES:** More generally, we would like Qwest to explain use of the ICDF and other alternatives to the ICDF, such as going to the MDF or COSMIC. We understand that use of the ICDF is optional and would like to better understand Qwest's other offerings (including cost).

**QUALITY:** Quality issues (wiring problems, etc.): Improve the process to avoid, or better respond to, quality issues.

**SERVICE LEVELS, REMEDIES:** see above

## CUTOVERS

**TRIAL/PROCESS:** Qwest and Eschelon are conducting a trial to address several issues raised by Eschelon that generally fall into five categories: 1) Loop problems (e.g., no dial tone at customer premise after cut); 2) Cuts appear successful on the day of cut, but troubles occur the next day or two; 3) Cuts are scheduled, but Qwest cancels them on the scheduled date (often without notice to Eschelon); 4) Cuts are held by Qwest for facilities, but Qwest performs the translations disconnect anyway and customer goes out of service. Much time and effort is wasted restoring service; 5) Repairs are not performed or not performed adequately or in a timely manner. The teams will need to monitor the cutover trial and adjust, if needed, to issues that may arise. Initially, we need to resolve the issue that we have been discussing relating to our ability to contact the Implementer directly (for the trial). We agreed to accept the orders at a certain point based on the understanding that we could call the Implementer directly. Rather than re-visiting whether we should accept the orders, perhaps we can work something out with respect to Qwest's need for a ticket while still contacting the Implementer. The normal process isn't working, and we've had serious problems again this week. So, we hope to resolve this issue soon. Ultimately, we need to assess whether the trial was successful and should be incorporated into the Implementation Plan (and interconnection agreements). If not, we'll need to develop alternative processes.

**NON-TRIAL:** The trial focuses, in many respects, on the day of cut. Therefore, it may not capture some of the problems that actually occur before the day of cut. If problems are occurring that are not being captured by the trial, they need to be identified and addressed.

**INTERVALS/OBJECTIVE:** Although improving the process is critical, it is not an end in itself. We need to agree upon achievable objectives, such as no more than 5 minutes per line of service disruption (including not only lack of dial tone but also an inability to receive inbound calls); on-time performance at rates at or above 90 percent; fewer than five percent of hot cuts resulting in service outages; and fewer than two percent of lines with reported installation troubles. Whatever the process, such goals need to be met so that we can rely on the process when dealing with our own customers.

**SERVICE LEVELS, REMEDIES:** see above

#### DSL

**UNE-E WITH DSL:** Eschelon and Qwest have started discussions of specific issues that will allow Eschelon to evaluate Qwest's UNE-E product (essentially the same as UNE-P, except for price and availability of DSL and voice mail with the platform) (as a potential alternative to COVAD). As with any vendor attempting to market its product to a customer, Qwest should provide enough information and training so that Eschelon can properly evaluate, order, and use this product. The list of issues from yesterday's meeting is enclosed. (Although the title refers to "Resale DSL," the references to resale should be references to "UNE-E" or "Platform," because we would be ordering per the agreement.) These are the types of issues that the teams will need to work through with respect to use of platform with DSL.

**PROJECT MANAGEMENT:** Platform with DSL may be another area for which a project manager would be useful to assist with actually transitioning to using Qwest as a provider. The teams could work on the higher-level process issues for going forward, and the project manager could work through the day-to-day issues of the transition.

**ON NET:** Eschelon will continue to provide on-net DSL (with Eschelon providing its own switching). Issues include better training for ordering and provisioning. When a loop is installed and the Qwest tester and technician are on the line, they often do not seem to know what information needs to be communicated. We need to know what information is required for a basic install with performance testing. Qwest should provide methods and procedures that all can follow consistently, including procedures for when test results are provided and which tests should be performed. One area of inconsistency is verbal acceptance. Some reps require it and others do not. This can affect whether Eschelon receives test results or not. Eschelon also needs loop make up information. These are the types of issues that the teams will need to work through with respect to use of DSL for on-net customers.

**OTHER PRODUCTS:** Eschelon would like product information training as to other Qwest products, such as IDSL and SDSL. If Eschelon is interested in other products, processes would be needed to order them, etc.

**SERVICE LEVELS, REMEDIES:** see above

#### HELD ORDERS (LACK OR RE-USE OF FACILITIES)

**PROCESS:** Eschelon and Qwest have been discussing held order issues, including issues relating to lack or re-use of facilities, for some time. A copy of a letter discussing these issues is enclosed. Also, Eschelon has recently submitted four Change Requests under the new "process" segment of CICMP relating to this subject. Can the companies address those issues here (or can Qwest do so more quickly in CICMP)? Please identify the decision maker with respect to these issues.

The four CRs (which may not yet have been assigned CR numbers), plus one to be submitted for next month, are:

#### CLEC-to-CLEC:

Qwest should change its process so that Qwest will re-use facilities for CLEC-to-CLEC carrier changes. When an end-user customer changes carriers from one CLEC to another, Qwest has indicated to Eschelon that CLECs must order new facilities, because Qwest does not allow a CLEC to request re-use of the same facilities used by the other CLEC to serve the same customer. In one situation, for example, Eschelon placed an order to change an end-user customer from the on-net facilities of another CLEC to the on-net facilities of Eschelon. Qwest indicated that Eschelon must order new facilities and, when Eschelon did so, Qwest placed the order in held status. The other CLEC provided its PONs to Eschelon for that CLEC's disconnect of its loops. Eschelon re-submitted the order, identified the PONs, and requested re-use of those facilities. Qwest responded that CLECs are not allowed to request re-use of CLEC facilities. Eschelon cancelled the order and resubmitted it later. The order again went in held status. The order is still in held status. (Eschelon has provided the specific information for this and other situations to its account manager.) Ordering new facilities, instead of re-using facilities, can result in delay, additional costs, and service disruption or downtime. Please modify Qwest's processes so that Qwest will re-use facilities for CLEC-to-CLEC carrier changes.

#### LOOP RECLAMATION:

Perform loop reclamation for CLECs and provide prior notice of Qwest's loop reclamation. Qwest has indicated that it will not perform loop reclamation to prevent a CLEC order from going into held status. In contrast, when Qwest "winsback" a customer from a CLEC, Qwest will perform loop reclamation and will do so without prior notice to the CLEC. For example, as shown in the example below, when Eschelon has placed a disconnect order on a UNE loop, Eschelon has received a rejection notice from Qwest indicating that Qwest has already disconnected the loop as a result of loop reclamation. Qwest disconnected the loop without prior notice to Eschelon. Because of this practice, an order will be processed (and not go into held status) for a Qwest retail customer, whereas a CLEC order would go into held status. The CLEC end-user customer would experience a delay (and possibly additional costs and service disruption), whereas the Qwest end-user would not. Please modify Qwest's processes to perform loop reclamation for CLECs and provide prior notice of Qwest's loop reclamation.

#### INSTALLATION OF ADEQUATE FACILITIES AND REDUCTION IN NUMBER OF HELD ORDERS:

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 arbitrations, 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 that it believes it has no obligation to build. (This policy was confirmed by Qwest at the last CICMP meeting.) 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.

#### FACILITIES AND PROCESS WHEN QWEST USES IDLC:

Modify Qwest's processes to provide facilities, despite Qwest's use of integrated pair gain (IDLC). Currently, Qwest's IRRG states:

Unbundled Loops can only be established on copper or Universal Digital Loop Carrier (UDLC). Integrated Digital Loop Carrier (IDLC) cannot be used for an Unbundled Loop service at this time. *Qwest has chosen not to unbundle IDLC because of the expense of providing equipment to "groom" the DS0 lines.* During the Unbundled Loop facility assignment, an attempt will be made to Line and Station Transfer (LST) the IDLC loop to UDLC or copper. If there are no facilities available to complete the LST, the Co-Provider will be notified that the order has been placed into a held status. (Emphasis added.)

The FCC has said that "[t]he BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses [IDLC] technology . . ." (BellSouth Second Louisiana 271 Order, ¶187 and SBC Texas 271 Order, ¶248.) The processes outlined in Qwest's IRRG are not consistent with this requirement. In some cases, Qwest does not identify that IDLC is being used until the day of cut. When the discovery is made, Qwest may not dispatch a technician. Instead, Qwest delays the order or places it in held status. Qwest does so for all lines, even though facilities may be available for some of the lines. Please modify Qwest's processes to be consistent with the FCC's order. Also, please modify Qwest's processes to identify earlier (before the day of cut) that IDLC is being used. If use of IDLC is not identified until the day of cut, ensure that a technician is available to resolve the issue that day (rather than delaying the order). If Qwest indicates that it does not have facilities for all lines, change Qwest's processes so that the lines for which facilities are available may be installed (when the line configuration supports doing so).

#### UNIVERSAL DIGITAL CHANNELS ("UDCs") (to be submitted):

Eschelon will submit a process CR to CICMP asking Qwest to establish and distribute a process for UDC, including a process for using UDS as an alternative when Qwest asserts lack of facilities. Eschelon will ask that Qwest ensure that, if UDC is used, the customer will not experience a degradation in quality of service. If degradation in quality does occur, a process for removing the UDC and installing facilities is needed.

SERVICE LEVELS, REMEDIES: see above

#### INTERCONNECTION TRUNKING/NETWORK:

##### CAPACITY SHORTAGES

ORDERING: Qwest cancels an order if the order form contains a minor problem instead of working out this issue.

SUPPORT: The Qwest network planner is spread too thin and appears insufficiently knowledgeable about the network. Website information is often out-dated and incorrect. A website can be a helpful tool but it cannot replace product training and support. Qwest needs to provide sufficient information to allow Eschelon to make informed purchasing decisions.



SPOP: Eschelon and Qwest are attempting to resolve an issue in Bellevue. If resolved satisfactorily, the teams may be able to work out procedures to avoid this issue going forward.

SERVICE LEVELS, REMEDIES: see above

#### OPERATIONS SUPPORT SYSTEMS (OSS)

The teams may need to discuss whether some OSS issues can not be dealt with on a company-to-company basis because, for example, region-wide system changes are needed. In such cases, perhaps interim solutions can be worked out. OSS issues include, for example:

IMA-GUI UPTIME: Unplanned system outages and IMA downtime need to be addressed.

IMA-GUI TRAINING: Training has been inadequate. Perhaps training tailored for Eschelon's needs could be arranged.

IMA-GUI FUNCTIONALITY: Some of these issues have been raised in CICMP. They are listed in the CICMP Change Request log at <http://www.uswest.com/wholesale/cicmp/changerequest.html>.

EDI: Some of these issues have been raised in CICMP. They are listed in the CICMP Change Request log at <http://www.uswest.com/wholesale/cicmp/changerequest.html>. Also, the process is too manual, even when an EDI system will be in place.

OTHER QWEST SYSTEMS: These include issues relating to unplanned system outages (such as of LSMS) and access to information in Qwest's systems.

TROUBLE ADMINISTRATION/REPAIR: Database accuracy is a concern.

LOOP DATABASE: Better loop make up information is needed (and needed in bulk form, not line-by-line).

SERVICE LEVELS, REMEDIES: see above

#### REPAIR

CONVERSIONS/MIGRATIONS: Many repair issues carry over from conversions/migrations (e.g., conversions to Eschelon on-net). If these problems are resolved earlier, they should not reach repair.

POST-CUT: Post-cut issues include problems dealing with issues such as pair gain or the distribution frame. Some post-cut issues are related to modems, fax machines, or credit cards. Eschelon needs to know the cause of these problems. For example, have pair gain levels not been adjusted or was the testing improper?

SUPPORT: In addition to physical troubles, issues can relate to communication gaps. Eschelon needs access to knowledgeable contacts. If Qwest has a large project (such as a big switch conversion), Qwest should notify Eschelon and provide a special point of contact for that project. We need to know who to call and how to escalate issues.

TOO MANUAL: Please provide information about electronic tools for repair. For example, if Eschelon could access information electronically, some calls and communication gaps could be avoided. If other CLECs are using less manual processes, please provide Eschelon information about such options.

**TIMELINESS:** Timeliness is a critical issue in repair, and improvement is needed.

**SERVICE LEVELS, REMEDIES:** see above

UNE-P (NOW UNE-E)

**AGREEMENT:** Because the companies have only recently reached agreement, Eschelon believes it would be useful to get together and confirm our understanding of how the agreement works. For example, will we be assigned a different USOC for ordering, or will ordering be the same as for resale, etc. We are developing and rolling out products based on our understanding of the agreement, and we need Qwest to inform us if it has a different view. An early meeting should be scheduled to walk through the specifics of the agreement (ordering, pricing, billing, etc.), with subject matter people who can address the nuts and bolts of ordering, provisioning, and billing UNE-E.

**AIN:** At that meeting, Qwest could address AIN features under the new agreement. For the AIN features that Eschelon orders now with resale (such as Remote Access Forwarding), will Qwest make them available with UNE-E and at what price. If not, how will AIN features be addressed for existing orders and on a going forward basis?

**SERVICE LEVELS, REMEDIES:** see above

**SUMMARY:** These are just examples of issues. They should give you a better idea, however, of the types of expertise needed for the various teams. See you on Tuesday morning.



Implementation phone

list.doc



DSL Questions.doc



heldord.doc

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Eschelon/Quest Implementation Teams

**Billing (Connectivity Billing) Team**

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Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6625
Honnila	Kay Honnila	CABS Manager	Accounting Department	(612) 436-6014
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	* Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	Management Information Systems	(612) 436-6616

**Collocation Team**

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Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Hanser	* Paul Hanser	Director of Switch Engineering	Engineering & Network Implementation	(612) 436-6405
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Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukaruppan	Renga Muthukaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

**Cutover (Loop Cutovers/Hotcuts) Team**

Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Schiller	* Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

\* Team Leader

\*\* Team Leader for EDI

\*\*\* Team Leader for GUI/Provisioning

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Eschelon/Qwest Implementation Teams

DSL Team

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Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Kolar	Steve Kolar	VP of Technology IP Services	Network Operations	(612) 436-6478
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Solbrack	Steve Solbrack	Executive Vice President	Administration	(612) 436-6452
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Provisioning	(612) 436-6453

Held Orders (Lack or Reuse of Facilities) Team

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Johnson	* Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

Interconnection Trunking Team

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hal Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Florek	Bruce Florek	Operations Manager, PHX/SLC	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	* Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

OSS Team

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Goldberg	* Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	** Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

\* Team Leader \*\* Team Leader for EDI

\*\*\* Team Leader for GUI/Provisioning

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Eschelon/Quest I Implementation Teams

Repair Team

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Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Chuck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685

UNE-P Team

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Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secrest	* Jonathan Secrest	Director of Product Marketing	Marketing	(612) 436-6049

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WCD-19

DOO 06730

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

## REQUEST:

In agreement paragraph 3 of the "Confidential Amendment to Confidential/Trade Secret Stipulation" between Eschelon and Qwest (Q110041 - Q110046), Eschelon agrees to provide "consulting and network services" to Qwest in exchange for "an amount that is ten percent (10 percent) of the aggregated billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005." Please answer the following with respect to this agreement:

- a. Describe in detail the nature of the consulting services actually provided by Eschelon, including whether those services relate to issues outside of the provisioning of telecommunication services to Eschelon.
- b. Identify any other CLEC to which Qwest has offered the opportunity to provide consulting services in exchange for billing refunds in Minnesota.
- c. Identify, by name and title, the consultants Eschelon has provided for Qwest.
- d. Identify, by name and title, the person at Qwest charged with responsibility for the Eschelon consulting relationship.
- e. Identify the amount of money paid to Eschelon by Qwest to date under the terms of this agreement.
- f. Identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with billing refunds in exchange for services provided by the CLEC to Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

## RESPONSE:

Please see Response to Request 66. In addition and in response to the particular questions of Request 67:

- a. Eschelon has provided wide ranging consulting services with respect to the creation of a UNE Star product reflected in its interconnection amendment dated November 15, 2001. Development of this product involved substantial effort by Qwest, and Qwest has used consulting services from Eschelon in an effort to make this product useful to CLEC customers and to improve Qwest's delivery of this product. UNE Star is something that is included in Qwest's interconnection agreement with Eschelon and is available to any CLEC wishing to opt-in to all of its terms. Attached as Trade Secret Attachment C is a list of consulting teams from Eschelon that performed work from Qwest. Those teams include:

1. OSS Team -- Responsible for evaluating and suggesting modification to operational support systems in connection with UNE Star.
  2. UNE-P Team - Assisted and made recommendations for delivery and determining USOCs for features associated with UNE Star.
  3. Billing Team - Assists and makes recommendations to Qwest regarding appropriate billing for UNE Star products given applicable Commission orders and decisions in multiple states and assisting in resolving issues associated with billing for UNE Star.
  4. Collocation Team - Assists and suggests modifications for processes for addressing collocation issues in order to improve those processes.
  5. Cutover Team - Studied and suggested changes to customer processes in order to decrease Qwest cutover times.
  6. DSL Team - Assists Qwest in developing processes and methods for providing re-sale of DSL.
  7. Held Order Team - Worked with Qwest in an effort to evaluate Qwest processes to reduce held orders.
  8. Network/Interconnection Tracking Team - Assisted in working with Qwest on issues regarding how traffic is routed in the Seattle and Portland markets.
- b. See the McLeod Agreement.
  - c. Please see Attachment C.
  - d. Kevin Saville and Steve Sheenan
  - e. Qwest is gathering this information and will provide it as soon as it is available.
  - f. The consulting arrangement with Eschelon uses bill refunds as a surrogate for hourly or other payments that might otherwise be paid to a consultant entering into an arrangement with Qwest. Accordingly, this agreement is not an exchange of a billing refund for services provided by the CLEC. Because this involves consulting services as opposed to an interconnection arrangement, this agreement term has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 65.

**SUPPLEMENTAL RESPONSE 12/20/01:**

For the period of 11/19/00 through 03/31/01, the amount due to Eschelon is \$2,540,017.

**Eschebon Implementation and Consulting Teams**

Docket No. P421/D1-01-B1  
DOC-04-06  
Attachment

<b>Billing (Connectivity Billing) Team</b>			
Ahlers	Dennis Ahlers	Senior Attorney	(612) 436-6249
Clauson	Karen Clauson	Director of Interconnection	(612) 436-6026
Copley	Ellen Copley	Cost & Revenue Analysis Manager	(612) 436-6625
Honnilla	Kay Honnilla	CABS Manager	(612) 436-6014
Markert	Bill Markert	Director of COA & Network Economics	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	(612) 436-6616

<b>Collocation Team</b>			
Ahlers	Dennis Ahlers	Senior Attorney	(612) 436-6249
Boeke	Gerry Boeke	Director of Switch Operations	(612) 436-6614
Clauson	Karen Clauson	Director of Interconnection	(612) 436-6026
Gavin	Ellen Gavin	Outside Counsel	(612) 866-7876
Hanser	Paul Hanser	Director of Switch Engineering	(612) 436-6405
Kunde	Dave Kunde	EVP of Operations & Engineering	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	(612) 436-6223
Muthukaruppan	Renga Muthukaruppan	Network Engineer	(612) 436-6226
Tiwari	Satish Tiwari	Vice President	(612) 436-6669

<b>Cutover (Loop Cutovers/Hotcuts) Team</b>			
Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	(612) 436-6223
Schiller	Tina Schiller	Manager of Test & Turn Up	(612) 436-6401

• Team Leader for EOI      •• Team Leader for EOI      ••• Team Leader for CUI/Provisioning



## Eschelon Implementation and Consulting Teams

### DSL Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Fleming	• Steve Fleming	Product Manager	Marketing	(612) 436-6450
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Kolar	Steve Kolar	VP of Technology IP Services	Network Operations	(612) 436-6478
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Solbrack	Steve Solbrack	Executive Vice President	Administration	(612) 436-6452
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Provisioning	(612) 436-6453

### Held Orders (Lack or Reuse of Facilities) Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	• Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

### Network (Interconnection, Trunking, etc.) Team

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hal Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Florek	Bruce Florek	Operations Manager, PIIX/SLC	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukaruppan	Renga Muthukaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	• Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

• Team Leader

•• Team Leader for FDI

••• Team Leader for Call/Provisioning

## Fishelem Implementation and Consulting Teams

### OSS Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Goldberg	•• Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	••• Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

### Repair Team

Brolsma	• Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Chuck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685

### UNE-P Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secrest	• Jonathan Secrest	Director of Product Marketing	Marketing	(612) 436-6049

• Team Leader

•• Team Leader for ITD

••• Team Leader for CRM/Provisioning



C  
TS  
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De  
Tel  
Facsimile  
Greg Casey  
Executive Vice President  
Wholesale Markets

WCD-3

November 15, 2000

CONFIDENTIAL AGREEMENT

VIA ELECTRONIC MAIL AND FACSIMILE

Richard A. Smith  
President and Chief Operating Officer  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, Minnesota 55402

Re: Escalation procedures and business solutions

Dear Rick:  
[Trade Secret Data Begins]

As a result of ongoing discussions between Eschelon and Qwest in recent days, the parties have addressed numerous proposals intended to better the parties' business relationship. In principle, the parties have agreed to: (1) develop an implementation plan by which to mutually improve the companies' business relations and to develop a multi-state interconnection agreement; (2) arrange quarterly meetings between executives of each company to address unresolved and/or anticipated business issues; and (3) establish and follow escalation procedures designed to facilitate and expedite business-to-business dispute solutions.

1. IMPLEMENTATION PLAN

By no later than December 31, 2000, the parties agree to meet together (via telephone, live conference or otherwise), and as necessary thereafter, to develop an Implementation Plan. The purpose of the Implementation Plan ("Plan") will be to establish processes and procedures to mutually improve the companies' business relations and to develop a multi-state interconnection agreement. Both parties agree to participate in good faith and dedicate the necessary time and resources to the development of the Implementation Plan, and to finalize an Implementation Plan by no later than April 30, 2001. Any necessary escalation and arbitration of issues arising during development of the Plan must also be completed by April 30, 2001.

During development of the Plan, and thereafter, if an agreed upon Plan is in place by April 30, 2001, Eschelon agrees to not oppose Qwest's efforts regarding Section 271 approval or to file complaints before any regulatory body concerning issues arising out of the Parties' Interconnection Agreements. Both before and after April 30, 2001, Eschelon reserves the right, after notice to Qwest, to participate in regulatory cost proceedings or dockets regarding the establishment of rates. Notwithstanding any other provision of this agreement, if no Plan is agreed upon by April 30, 2001, the Parties will have all remedies available at law and equity in any forum.

Q110036

## QUARTERLY MEETINGS

Beginning in 2001 and continuing through the end of 2005, the parties agree to attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve unresolved business issues and disputes, anticipated business issues, and issues related to the Parties' Interconnection Agreements, Implementation Plan, and other agreements. The meetings will be attended by executives from both companies at the vice-president and/or above level.

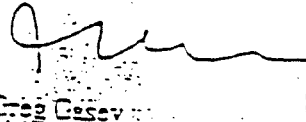
## 3. ESCALATION PROCEDURES

The parties wish to establish a business-to-business relationship and agree that they will resolve any and all business issues that may arise between them, including but not limited to, their Interconnection Agreements and Amendments, in accordance with the escalation procedures set forth herein. The parties agree, subject to any subsequent written agreement between the parties, to: (1) utilize the following escalation process and time frames to resolve such disputes; (2) commit the time, resources and good faith necessary to meaningful dispute resolution; (3) not proceed to a higher level of dispute resolution until either a response is received or expiration of the time frame for the prior level of dispute resolution; (4) grant to one another, at the request of the other party, reasonable extensions of time at Levels 1 and 2 of the dispute resolution process to facilitate a business resolution; and (5) complete Levels 1, 2 and 3 of dispute resolution before seeking resolution through arbitration or the courts.

<u>Level</u>	<u>Participants</u>	<u>Time frame for discussions</u>
LEVEL 1	Vice Presidents (Judy Tinkham/Dave Kunde, Lynne Powers, Bill Markert, or successors)	10 business days
LEVEL 2	Senior Vice Presidents (Greg Casey/Rick Smith, or successors)	10 business days
LEVEL 3	CEOs (Joe Nacchio/Rick Smith, or successors)	10 business days
LEVEL 4	Arbitration according to the provisions of the Parties' Interconnection Agreements and/or other agreements (to be expedited and completed within 90 days, upon request of one of the Parties)	
LEVEL 5	CEOs (Joe Nacchio/Rick Smith, or successors)	10 business days
LEVEL 6	If a dispute is not resolved in Levels 1 through 5, either party may initiate litigation in federal or state court, with all questions of fact and law to be submitted for determination to the judge, not a jury. The parties agree that the exclusive venues for civil court actions initiated by Eschelon are the United States District Court for the District of Minnesota or a court of the State of Minnesota and the exclusive venues for civil court actions initiated by Qwest are the United States District Court for the Districts of Minnesota or Colorado or the courts of the State of Minnesota or Colorado. When a court issues a final order, no longer subject to appeal, the prevailing party shall be awarded reasonable attorneys' fees and expenses. In the event that either party files an action in court, the parties waive: (a) primary jurisdiction in any state utility or service commission; and (b) any tariff limitations on damages or other limitation on actual damages, to the extent that such damages are reasonably foreseeable and acknowledge each party's duty to mitigate damages.	

If the parties agree with the terms set forth above, they will each execute a copy of this letter in the signature spaces provided on the last page. Upon signature of both parties, the parties will be bound by the terms set forth herein. This letter agreement may be executed in counterparts and by facsimile.

Very truly yours,



Greg Casey  
Executive Vice President  
Wholesale Markets

TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST CORPORATION

*[Handwritten Signature]*

[name]

*[Handwritten Title]*

[title]

*11-15-06*

[date]

Approved as to legal form

NOV 25 2006

*[Handwritten Signature]*

ESCHELON TELECOM, INC

[name]

[title]

[date]

TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST CORPORATION

[name]

[title]

[date]

ESCHELON TELECOM, INC.

[name]

[title]

[date]

Q110040

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 06/20/2001  
Date Response Due: 07/02/2001

REQUEST:

- a. Provide a list of every written contract, agreement or letter of understanding between Qwest and a CLEC that operates or has operated in MN in the last five years. However, do not include any agreement, etc. filed with the Minnesota Public Utilities Commission. Include each agreement, etc. entered into, whether or not it is still in effect.
- b. Provide a copy of the items listed in part a.

RESPONSE:

Qwest objects to this IR because it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of relevant information, and seeks the disclosure of confidential agreements. Qwest resolves numerous issues with CLECs on a daily basis and to provide every written memorialization of such agreements would require a review of all company interactions with each CLEC in the last five years. Furthermore, requiring Qwest to disclose this information would discourage resolution of disputes on an informal basis and would be, therefore, contrary to public policy. To the extent agreements have been reached that impact interconnection terms, those agreements have been filed with the MPUC. Further answering, Qwest objects that the request is beyond the scope of the investigation the DOC explained to the Commission it was engaging: "there were five issues that were set out that we're concerned about. I think it's page 10 of the staff briefing papers. That's the direction we're going. We're not asking for this to be a general fishing expedition, we're looking at those five issues, we think that that sets it out." (VOL II p. 35-36)

Respondent: Legal



State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to provide 90 percent of Covad's Firm Order Confirmation (FOC) dates within 48 hours of receipt of a properly completed service request for POTS unbundled loop services. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to provide 90 percent of the CLEC's FOC dates within 48 hours of receipt of a properly completed service request for POTS unbundled loop services. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

As stated in the agreement that is the subject of this Request, Qwest's predecessor, U S WEST Communications, and Covad Communications Company agreed to a settlement of Covad's intervention and adversarial position to the Qwest/U S WEST merger in 2000. (See page Q110107: "Based on U S WEST's commitment to meet these service performance standards, Covad commits to withdrawing its opposition to the U S WEST/Qwest merger."). This agreement therefore stands as a settlement and business compromise of pre-existing disputes and of pending litigated actions. Sections 251 and 252 do not include within their scope agreements in which a settlement of pre-existing litigated positions is the primary bargained-for term or condition. Further, the provision that is the subject of this Request is integrated with all of its other terms and conditions, including the withdrawal of Covad's opposition of the merger. And, due to the integrated nature of and all of the agreement's covenants, the agreement is unique to Covad and Qwest.

Without waiving any of its positions, including those addressed above, Qwest states in Response to this Request No. 44 that the Eschelon and FirstCom interconnection agreements filed with and approved by the Minnesota Commission contain the following provisions:

Eschelon - approved by the Minnesota Commission on June 26, 2000:

2.4 U S WEST will provide FOCs (Firm Order Commitments) to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders. The FOC assumes that there is sufficient network capacity to meet the request in the standard interval. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB orders will reflect an ICB FOC date.

FirstCom - approved by the Minnesota Commission on April 20, 2001:

1.3.4 Qwest will provide FOCs to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders for Regular POTS or Simple Business end-users. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB orders will reflect an ICB FOC date.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "US WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to notify Covad of any facilities shortage issues for DSL capable, ISDN capable and DS1 capable services within 48 hours. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to notify the CLEC of any facilities shortage issues for DSL capable, ISDN capable and DS1 capable services within 48 hours. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to provide 90 percent of Covad's FOC dates within 72 hours of receipt of a properly completed service request for DSL capable, ISDN capable and DS1 capable unbundled loop services. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to provide 90 percent of the CLEC's FOC dates within 72 hours of receipt of a properly completed service request for DSL capable, ISDN capable and DS1 capable unbundled loop services. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, as part of the 72 hour FOC commitment referred to in the previous RFI, to dispatch a technician to verify the existence of suitable facilities prior to providing Covad with an FOC date. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to dispatch a technician to verify the existence of suitable facilities prior to providing the CLEC with an FOC date. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

In addition, the Fourth Amendment to the interconnection agreement with New Edge Networks, filed with the Minnesota Commission on November 20, 2000 and approved on December 22, 2000, states the following:

Section 1, part C, para.6. As part of the FOC process for 2-wire non loaded unbundled loop service where CLEC indicates that they intend to use the 2-wire non loaded unbundled loop for the provision of SDSL service, ISDN-, DS 1- or DSL-capable (excluding ADSL-capable) unbundled loop services, when requested to do so by CLEC, Qwest will dispatch a technician to verify the existence of suitable facilities prior to providing CLEC an FOC date.

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CLEC is willing to limit the above provision to the following market areas: Vancouver, WA; Tucson; Omaha; Cedar Rapids; Albuquerque; Colorado Springs; Minneapolis; Boise; Salt Lake City (Ogden); Eugene; Salem; Spokane, and Des Moines.

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P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 3 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to reduce the incidence of failure on new Covad circuits to less than 10 percent failure within the first 30 calendar days following installation. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to reduce the incidence of failure on new CLEC circuits to less than 10 percent failure within the first 30 calendar days following installation. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - 0110107), U S WEST agrees to complete line conditioning paid for by Covad within 24 days or less 90 percent of the time. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to complete line conditioning paid for by the CLEC within 24 days or less 90 percent of the time. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, in those situations where the end-user customer is served by digital loop carrier or pair gain, to notify Covad and provide it with the option of submitting a service request for an ISDN capable loop compliant with TR-393 standards and U S WEST Technical Publication 77399. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees, in those situations where the CLEC's end-user customer is served by digital loop carrier or pair gain, to notify the CLEC and provide it with the option of submitting a service request for an ISDN capable loop compliant with TR-393 standards and U S WEST Technical Publication 17399. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

In addition, the Fourth Amendment to the interconnection agreement with New Edge Networks, filed with the Minnesota Commission on November 20, 2000 and approved on December 22, 2000, states the following:

Section 1, part C, para.5. In those situations where the end user customer is served by digital loop carrier or by pair gain, Qwest will notify CLEC of that situation and provide it the option of submitting a service request for an ISDN capable loop compliant with TR-303 standards and Qwest Technical Publication 77399. Qwest will, where technically feasible, either install an appropriate ISDN card for those end user customers served by digital loop carrier, or provide another ISDN option for those served off of pair gain. Where it would not impact a current customer, Qwest will perform a line station transfer in order to provision a CLEC service request.



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Information Requested By: Ferguson, Sharon

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REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, in those situations where the end-user customer is served by digital loop carrier or pair gain, and where it is technically feasible, to either install an appropriate ISDN card for those end-user customers served by digital loop carrier or provide another ISDN option for those served off pair gain in 10 days or less 90 percent of the time. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees, in those situations where the end-user customer is served by digital loop carrier or pair gain, and where it is technically feasible, to either install an appropriate ISDN card for those end-user customers served by digital loop carrier or provide another ISDN option for those served off pair gain in 10 days or less 90 percent of the time. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

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Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, where it would not impact a current end-user customer, to perform a line and station transfer in order to provision a Covad service request in 10 days or less 90 percent of the time. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees, where it would not impact a current end-user customer, to perform a line and station transfer in order to provision a CLEC's service request in 10 days or less 90 percent of the time. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

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INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 7 of the "Confidential/Trade Secret Stipulation Between ATI and U S WEST" (Q110035), U S WEST/Qwest agrees that reciprocal compensation for terminating internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed by USWC as of the date of that agreement. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest ad a CLEC in which Qwest agrees that reciprocal compensation for terminating Internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed by U S WEST/Qwest. Please provide a copy of the relevant pages(s) from the identified ICA.

RESPONSE:

The entire provision referenced in this data requests is as follows:

Cady has asserted that USWC must pay reciprocal compensation for internet related terminating traffic under its Interconnection Agreements and under applicable state and federal law, USWC has asserted that it has no legal obligation to pay reciprocal compensation for such traffic. Notwithstanding these differences and without waiving their positions, the parties agree for settlement purposes that reciprocal compensation for terminating internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed to date by USWC. The parties will develop a full implementation plan of these reciprocal compensation issues by March 31, 2000. Further, the parties agree that for purposes of applying these rates and terms and conditions they will work cooperatively to develop a means of by which ISP traffic will be broken out in the least costly manner practicable.

Thus, the provision referenced in the Request is one dependent part of several compromises of legitimate legal and factual disputes between the parties, including disputes referenced throughout the agreement. It is also part of a settlement of past disputes relating to the delivery of internet related traffic, and Qwest submits that it is not within the scope of sections 251 and 252 of the Telecommunications Act, as addressed in Qwest's Responses to Request No. 40 and 44.

Without waiving Qwest's positions on this matter as stated above in this Responds, Qwest answers this Request by stating that ATI and US West never reached agreement regarding the percent internet usage discussed in this agreement and therefore did not resolve this issue until a full implementation plan and interconnection agreement amendment were reached on November 13, 2000.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraphs 11 and 12 of the "Confidential/Trade Secret Stipulation Between ATI and U S WEST" (Q110029 - Q110035), U S WEST/Qwest agrees to provide ATI with a dedicated provisioning team, located at ATI, to assist in solving provisioning problems. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to provide a dedicated provisioning team to the CLEC under the same terms. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The dedicated provisioning team clause is integrated with the other covenants contained in this settlement agreement. Thus, please see Response to Requests 54 and 55.

Without waiving Qwest's positions on these matters as addressed above, Qwest responds to this Request by referencing the Minnesota DOC to the Eschelon amendment dated November 15, 2000 (Attachment B to Information Request No. 56), which states:

2.10 For at least a one-year period, Eschelon agrees to pay Qwest for the services of a Qwest dedicated provisioning team to work on Eschelon's premises.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 14 of the "Confidential/Trade Secret Stipulation Between ATI and U S WEST" (Q110035), U S WEST/Qwest agrees to dispute resolution terms that are "in addition to the dispute resolution mechanism provided under the Interconnection Agreement." Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to the same dispute resolution mechanism as set forth in paragraph 14. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The dispute resolution provisions of the ATI/Qwest settlement agreement apply to non-251 or 252 business disputes that arise between the parties. And, this dispute resolution procedure is "in addition to the one that applies under the Interconnection Agreement." Accordingly, this provision is not applicable to interconnection services and network elements, because the Interconnection Agreement applies to such disputes.

This dispute resolution provision is tailored to the specific corporate structures and business interests of ATI and Qwest. That is, the procedures match the corporate structures and hierarchies of the companies and the methods by which they wish to resolve disputes among themselves.

Further, a dispute resolution clause is not the provision of interconnection services or network elements. It necessarily follows that this clause is not subject to Sections 251 and 252 of the federal Communications Act ("Act"). And, Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and ATI's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to

the settling parties. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs. And, CLECs should have the ability to determine whether such an agreement would be of greater benefit to their business interests. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such agreements to allow Qwest to resolve such matters amicably and cooperatively with its wholesale customers.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In Section 2 of the "Confidential Agreement" set forth in a November 15, 2000 letter from Greg Casey at Qwest to Richard Smith at Eschelon Telecom, Inc. (Q110038), Qwest and Eschelon agree to hold quarterly executive meetings to be attended by representatives at the Vice-President or above levels. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to hold quarterly executive meetings, to be attended by representative at the Vice-President or above levels, with the CLEC. Please provide a copy of the relevant pages from the identified ICA.

RESPONSE:

The November 15, 2000 letter from Greg Casey to Richard Smith was created in the context of addressing "numerous proposals intended to better the parties' business relationship." These include "an implementation plan by which to mutually improve the companies' business relations."

The clause that is the subject of this Request, an agreement to arrange quarterly meetings to be attended by representatives at the Vice President or above levels, applies to business dispute that arise between the parties. This dispute resolution provision is tailored to the specific corporate structures and business interests of ATI and Qwest. That is, the procedures parallel the corporate structures and hierarchies of the companies and the methods by which they wish to resolve disputes among themselves.

Further, a dispute resolution clause is not the provision of interconnection services or network elements. It necessarily follows that this clause is not subject to Sections 251 and 252 of the federal Communications Act ("Act"). And, Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide

an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the parties. Further, an inability to resolve matters that frequently arise and that are far removed from sections 251 and 252, such as dispute resolution provisions for non-251 items, would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

In any event, the November 15, 2000 letter agreement arose in the context of interconnection amendments that were filed for approval with the Minnesota Commission. The interconnection amendments allowed for combinations of network elements that were new Qwest wholesale products. Qwest agreed to develop a new UNE platform product, referred to as UNE Star, in order to provide an alternative to Eschelon. The terms and conditions of that new product were set forth in an amendment to the interconnection agreement signed on November 15 and filed with the Commission on December 6, 2000.

Importantly, Section 1.3 of the amendment filed with the Commission set forth an understanding that the companies would work together on a business-to-business basis and develop escalation procedures.



State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In Section 3 of the "Confidential Agreement" set forth in a November 15, 2000 letter from Greg Casey at Qwest to Richard Smith at Eschelon Telecom, Inc. (Q110036 - Q110038), Qwest and Eschelon agree to new, six-level escalation procedures to resolve any and all issues between them. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to the same, six-level escalation procedures to resolve any and all issues between it and the CLEC. Please provide a copy of the relevant pages from the identified ICA.

RESPONSE:

Please See Response to Request 62.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In Section 3 of the "Confidential Agreement" set forth in a November 15, 2000 letter from Greg Casey at Qwest to Richard Smith at Eschelon Telecom, Inc. (Q110038), Qwest and Eschelon agree, as part of Level 6 of new escalation procedures, to waive "any tariff limitations on damages or any other limitation on actual damages." Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to waive "any tariff limitations on damages or any other limitation on actual damages." Please provide a copy of the relevant pages from the identified ICA.

RESPONSE:

Please See Response to Request 62.

Further, the clause referenced in the Request, a waiver of tariff limitations as part of Level 6 of the escalation procedures, reflects the specific corporate structures and business interests of Eschelon and Qwest. That is, the procedures match the corporate structures and hierarchies of the companies and the methods by which they wish to resolve disputes among themselves.

State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
 Information Requested By: Ferguson, Sharon  
 Date Requested: 11/27/2001  
 Date Response Due: 12/17/2001

REQUEST:

In agreement paragraph 3 of the "Confidential Amendment to Confidential/Trade Secret Stipulation" between Eschelon and Qwest (Q110041 - Q110048), Eschelon agrees to provide "consulting and network services" to Qwest in exchange for "an amount that is ten percent (10 percent) of the aggregated billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005." Please answer the following with respect to this agreement:

- a. Describe in detail the nature of the consulting services actually provided by Eschelon, including whether those services relate to issues outside of the provisioning of telecommunication services to Eschelon.
- b. Identify any other CLEC to which Qwest has offered the opportunity to provide consulting services in exchange for billing refunds in Minnesota.
- c. Identify, by name and title, the consultants Eschelon has provided for Qwest.
- d. Identify, by name and title, the person at Qwest charged with responsibility for the Eschelon consulting relationship.
- e. Identify the amount of money paid to Eschelon by Qwest to date under the terms of this agreement.
- f. Identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with billing refunds in exchange for services provided by the CLEC to Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please see Response to Request 66. In addition and in response to the particular questions of Request 67:

- a. Eschelon has provided wide ranging consulting services with respect to the creation of a UNE Star product reflected in its interconnection amendment dated November 15, 2001. Development of this product involved substantial effort by Qwest, and Qwest has used consulting services from Eschelon in an effort to make this product useful to CLEC customers and to improve Qwest's delivery of this product. UNE Star is something that is included in Qwest's interconnection agreement with Eschelon and is available to any CLEC wishing to opt-in to all of its terms. Attached as Trade Secret Attachment C is a list of consulting teams from Eschelon that performed work from Qwest. Those teams include:

1. OSS Team -- Responsible for evaluating and suggesting modification to operational support systems in connection with UNE Star.
  2. UNE-P Team - Assisted and made recommendations for delivery and determining USOCs for features associated with UNE Star.
  3. Billing Team - Assists and makes recommendations to Qwest regarding appropriate billing for UNE Star products given applicable Commission orders and decisions in multiple states and assisting in resolving issues associated with billing for UNE Star.
  4. Collocation Team - Assists and suggests modifications for processes for addressing collocation issues in order to improve those processes.
  5. Cutover Team - Studied and suggested changes to customer processes in order to decrease Qwest cutover times.
  6. DSL Team - Assists Qwest in developing processes and methods for providing re-sale of DSL.
  7. Held Order Team - Worked with Qwest in an effort to evaluate Qwest processes to reduce held orders.
  8. Network/Interconnection Tracking Team - Assisted in working with Qwest on issues regarding how traffic is routed in the Seattle and Portland markets.
- b. See the McLeod Agreement.
  - c. Please see Attachment C.
  - d. Kevin Saville and Steve Sheahan
  - e. Qwest is gathering this information and will provide it as soon as it is available.
  - f. The consulting arrangement with Eschelon uses bill refunds as a surrogate for hourly or other payments that might otherwise be paid to a consultant entering into an arrangement with Qwest. Accordingly, this agreement is not an exchange of a billing refund for services provided by the CLEC. Because this involves consulting services as opposed to an interconnection arrangement, this agreement term has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 66.

**SUPPLEMENTAL RESPONSE 12/20/01:**

For the period of 11/15/00 through 08/31/01, the amount due to Eschelon is \$2,540,017.

**Eschelon Implementation and Consulting Teams**

Volume:  
Docket No. P421/DI-01-1  
DOC-01-1  
Attachment

**Billing (Connectivity Billing) Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6241
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6021
Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6621
Honnilla	Kay Honnilla	CABS Manager	Accounting Department	(612) 436-6011
Markert	Bill Markert	Director of COA & Network Economics	Regulatory, Law & Policy Department	(612) 436-6223
Morrisette	* Garth Morrisette	Regulatory Compliance Manager	Management Information Systems	(612) 436-6616
Tomlinson	Melissa Tomlinson	Network Services Billing Manager		

**Collocation Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Gavin	Ellen Gavin	Outside Counsel	Engineering & Network Implementation	(612) 436-6405
Hanser	* Paul Hanser	Director of Switch Engineering	Regulatory, Law & Policy Department	(612) 436-6691
Kunde	Dave Kunde	EVP of Operations & Engineering	Engineering & Network Implementation	(612) 436-6223
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Engineering & Network Implementation	(612) 436-6226
Muthukaruppan	Renga Muthukaruppan	Network Engineer		
Tiwari	Satish Tiwari	Vice President		

**Cutover (Loop Cutovers/Hotcuts) Team**

Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Schiller	* Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

\* Team Leader

\*\* Team Leader for FDI

\*\*\* Team Leader for GIUP/Provisioning

## Eschelon Implementation and Consulting Teams

### DSL Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Fleming	* Steve Fleming	Product Manager	Marketing	(612) 436-6450
Gavin	Ellen Gavin	Outside Counsel		
Kolar	Steve Kolar	VP of Technology IP Services	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Network Operations	(612) 436-6478
Solbrack	Steve Solbrack	Executive Vice President	Regulatory, Law & Policy Department	(612) 436-6223
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Administration	(612) 436-6452
			Provisioning	(612) 436-6453

### Held Orders (Lack or Reuse of Facilities) Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	* Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

### Network (Interconnection Trunking, etc.) Team

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hal Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Florek	Bruce Florek	Operations Manager, PHX/SLC	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	* Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

\* Team Leader

\*\* Team Leader for EDI

\*\*\* Team Leader for GI/Provisioning

## Eschelon Implementation and Consulting Teams

### OSS Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Goldberg	** Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	*** Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

### Repair Team

Brolsma	* Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Chuck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685

### UNE-P Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secrest	* Jonathan Secrest	Director of Product Marketing	Marketing	(612) 436-6049

\* Team Leader

\*\* Team Leader for EID

\*\*\* Team Leader for GIU/Provisioning

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152), Qwest and Eschelon agree to an audit of the switched access minutes reported by Qwest and Eschelon to determine whether Qwest accurately recorded switched access minutes on UNE-P lines leased by Eschelon. Please answer the following with respect to this agreement:

a. Identify at least one ICA approved by the MPUC between Qwest and a CLEC that permits the CLEC to request the same type of audit. Please provide a copy of the relevant page(s) from the identified ICA.

b. According to the letter, the parties agreed to use the results of the audit to negotiate the terms and conditions of any subsequent analysis or procedures to be followed and for resolution of future discrepancies in the switched access minutes reported by Qwest. Please provide copies of any terms and conditions negotiated by the parties in accord [sic] with this agreement.

c. Identify at least one ICA approved by the MPUC between Qwest and a CLEC that contains the same terms and conditions, if any, as agreed to by Qwest and Eschelon for resolution of discrepancies in the switched access minutes reported by Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

a. The contractual provision that is the subject of this data request is one of the integrated covenants of an agreement the purpose of which was to settle potential litigation over alleged measuring discrepancies and underpayments, and similar matters that are not subject to Sections 251 and 252 of the federal Communications Act ("Act"). The provision for an audit of switched access minutes arose because of a dispute between the parties to determine the accuracy of recorded switched access minutes.

The agreement is integrated; in other words, all of the terms of the agreement, such as the audit and Qwest's agreement to pay an interim amount, were necessary and inextricable parts of the bargained-for exchange. The agreement is unique to Eschelon and Qwest given their business relationship under the particular circumstances existing at the time of the agreement. Further, the agreement, including the contractual provisions containing the audit commitment, represents compromises of legitimate legal and factual disputes and a resolution of the parties' respective negotiating positions regarding those billing disputes.

This is a settlement of the calculation of switched access minutes, which relates to interexchange services, not local exchange services. Also, a



compromise of the parties' positions of a past billing dispute in the context of a unique business relationship does not constitute terms or conditions for the provisioning of an interconnection service or network element within the scope of sections 251 and 252. It necessarily follows that the audit provisions and the agreement as a whole are not subject to Sections 251 and 252 of the Telecommunications Act. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the settling parties. Further, an inability to resolve disputes that frequently arise and that are far removed from sections 251 and 252, such as audits of a pending dispute, would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. And, CLECs should have the ability to determine whether an expeditious settlement would be of greater benefit to their business interests than a potentially lengthy litigation before a judicial or regulatory tribunal. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

- b. Qwest and Eschelon have not reached a final resolution of the issue addressed by this agreement.
- c. See Response to B.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152, Qwest states that it has been paying Eschelon an interim amount equal to the difference between \$13.00 per line per month and the amount Eschelon was able to bill IXCs for switched access, per line, based upon the switched access minutes reported to Eschelon by Qwest. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to make payments of the same kind and amount to the CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request 74.

In addition, this agreement was a temporary resolution of a billing issue, not an interconnection agreement term, and it was subject to a true-up once the audit was completed. Therefore, the Request's characterization of this provision is not complete or accurate. This provision has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 74(A).

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152), Qwest agrees to increase the amount it will pay Eschelon to the difference between \$16.00 per line per month and the amount Eschelon was able to bill IXCs for switched access, per line, based upon the switched access minutes reported to Eschelon by Qwest. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to make payments of the same kind and amount to the CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Responses to Requests 74 and 75.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152), Qwest identifies an issue relating to access records for Qwest's intraLATA toll traffic terminating to customers served by an Eschelon switch and agrees that, until the issue is resolved, Qwest will pay Eschelon \$2.00 per line per month for such traffic. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Responses to Requests 74 and 75.

Further, this letter is a temporary resolution of a dispute that is ongoing between the parties regarding switched access billing. The parties are continuing to negotiate in an attempt to resolve this issue. The temporary agreement has not been filed for the reasons set forth in response to 74(a).

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

Please identify at least one ICA approved by the MPUC between Qwest and a CLEC containing the same terms as the Trial Agreement between Qwest and Eschelon (Q110153 - Q110166). Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Section 2.10 of the Interconnection Agreement Amendment signed on November 15, 2000 and filed with the Commission on December 6, 2000.

State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
 Information Requested By: Ferguson, Sharon  
 Date Requested: 11/27/2001  
 Date Response Due: 12/17/2001

REQUEST:

In paragraph 2.1 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees to establish a service account team for Eschelon. Please identify at least one ICA approved by the MPUC between Qwest and CLEC in which Qwest agrees to provide a service account team with the same obligations described in paragraph 2.1. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The agreement referenced in this data request includes the implementation of service account teams for a wholesale customer. This agreement reflects the individual business practices of Eschelon and Qwest and is unique to their cooperate structures and their business relationships. It is standard operating procedure for Qwest to establish some form of a service account team for customers. An agreement to provide a service account team is not a term or condition for the provisioning of an interconnection service or a network element. It necessarily follows that the agreement is not subject to Sections 251 and 252 of the Telecommunications Act. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements for the provision of "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that it is in the public interest to allow companies such as Qwest and Eschelon to confer and agree on establishing business relationships that suit the particular needs and structures of their respective companies. Any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of matters that are unique to the parties. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs. Qwest suggests that the Minnesota DOC should encourage, not discourage, the

use of such arrangements to allow Qwest to work cooperatively with its  
wholesale customers.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

Paragraph 2.2 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353) refers to an escalation chart and escalation process set forth in Attachment 2 to the Implementation Plan. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest provides the same escalation chart and process to a CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Section 1.3 of the amendment to the interconnection agreement executed on November 15, 2000 and submitted for approval by the Minnesota Commission provides for the parties to develop an escalation process. It says:

1.3 The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the Parties.

The letter that is the subject of this Request letter sets forth the specifics associated with that process.



State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

Please identify Dana Filip (referred to in paragraph 2.3 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353)).

RESPONSE:

Dana Filip is a Senior Vice President at Qwest.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 2.3 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees that Dana Filip and/or her designee will meet with Rick Smith of Eschelon on a Quarterly basis to review the status of Eschelon's service-related issues. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide a person of equal or greater title to meet with the CLEC on a quarterly basis to review the status of service-related issues. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

This provision refers to an agreement to meet on a regular basis with the customer to confer about service-related issues. It serves the same purposes and is subject to the same analysis as the meetings addressed in Qwest's Response to Request 62. Therefore, please see Request 62.

State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 3.1 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees to calculate local usage charges associated with UNE-P switching in accordance with the procedures set forth in Attachment 3 to the Implementation Plan. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The contractual provision that is the subject of this data request is one of the integrated covenants of an agreement the purpose of which was to settle potential litigation over possible billing discrepancies. Furthermore, Attachment 3 constitutes a formula for implementing a process for measuring switched access minutes based on Eschelon's particular traffic characteristics. Such a calculation is unique to the business interests of Eschelon.

Qwest has not submitted this agreement to the MPUC because the Telecommunications Act does not require Qwest to do so. Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements for the provision of "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). In contrast, Attachment 3 to this agreement address the procedures for calculation of access services, not local exchange services. The FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Not only is there no statutory requirement that Qwest submit such settlement agreements for the MPUC's approval and make them available to other carriers, but imposing such a requirement would be contrary to public policy. Such a requirement would make it difficult or impossible for Qwest to reach settlements of such matters and would lead to unnecessary litigation before the federal or state courts or before the MPUC. Qwest is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such agreements to resolve disputes amicably and to address the CLEC's specific and unique business interests.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraphs 4.1 through 4.3 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest and Eschelon agree to track and report performance measures designed to monitor Qwest's levels of service; hold monthly meetings to review and discuss the measurements; and develop a joint action plan to facilitate improvements in service. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the same level of performance measurement-related services to a CLEC. Please provide a copy of the relevant page(s) for the identified ICA.

RESPONSE:

Qwest provides the same performance measurement related services to CLECs in connection with the performance indicator definitions it has developed through the Regional Oversight Committee process. Those materials are available by web and available for anyone.

Qwest is willing to meet with any customer regarding performance measurements and to facilitate improvements in service. Such willingness is not a term or condition of interconnection and has not been included in an interconnection agreement amendment. See generally, Response to Request 62.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to track the same performance measurements that were developed as described in paragraph 4.1 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353). Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Response to Request 92.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 8 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees to coordinate UNE-P conversions with Eschelon. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with the same services for coordination of UNE-P conversions. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The agreement referenced in this data request includes Qwest's practice to coordinate UNE-P conversions with CLEC customers. It is a coordinated plan in accordance with the specific needs of the CLEC. This procedure is not a term or condition for the provisioning of an interconnection service or a network element. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements for the provision of "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that it is in the public interest to allow companies such as Qwest and Eschelon to coordinate business relationships that suit the particular needs and structures of their respective companies. Any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of matters that are unique to the parties. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such arrangements to allow Qwest to work cooperatively with its wholesale customers.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraphs 3, 3.a, 3.b, 3.c, and 3.d of the "Confidential Stipulation Between Small CLECs and U S WEST" (Q110022 - Q110027), Qwest sets forth terms and conditions pursuant to which it will permit the small CLEC parties to opt into the terms of any effective ICAs that were voluntarily negotiated and entered into by U S WEST and CLECs in any other state in U S WEST's operating territory. Qwest and the small CLECs further agree to implement these terms in ICA amendments to be filed on March 17, 2002. Please answer the following with respect to this agreement:

- a. Why do the terms of these paragraphs not become effective until March 17, 2002?
- b. Have any ICAs between Qwest and any of the small CLECs that are parties to this agreement been amended to incorporate these pick and choose terms to date?
- c. Identify any ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with the same pick and choose provisions as set forth in this agreement. Please provide a copy of the relevant page(s) from the identified ICA.
- d. Please produce any documents in which Qwest agrees to provide, to a CLEC operating in Minnesota (other than the small CLECs that are party to this agreement), immediately or in the future, the same pick and choose provisions as set forth in this agreement.

RESPONSE:

- a. The terms of this paragraph become effective on March 17, 2002, because that is the date that the current AT&T interconnection agreement will expire.
- b. No.
- c. Please see Responses to Request 99(A) and (B). Pursuant to agreement of the small CLECs and Qwest, such amendments will be effective on March 17, 2002, and will be filed with the Minnesota Commission on March 17, 2002. Further, this is a settlement agreement arising out of the parties' adversarial positions relating to the Qwest/U S WEST merger. Provisions agreeing to enter into an interconnection agreement on a future date and to settle pre-existing litigation are not terms or conditions for the provision of an interconnection service or network element and therefore not subject to sections 251 and 252 of the Telecommunications Act. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and the small CLECs unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the settling parties. Further, an inability to resolve disputes that frequently arise and that are far removed from sections 251 and 252 would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. And, CLECs should have the ability to determine whether an expeditious settlement would be of greater benefit to their business interests than a potentially lengthy litigation before a judicial or regulatory tribunal. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

d. None.



State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
 Information Requested By: Ferguson, Sharon  
 Date Requested: 12/03/2001  
 Date Response Due: 12/14/2001

REQUEST:

In paragraph 1.d of the "Confidential Settlement Document" dated April 25, 2000 between US WEST and McLeodUSA (Q110100-Q110104), US WEST and McLeodUSA agree that all interim rates, except reciprocal compensation rates, will be treated as final; that any final commission orders will be applied prospectively and not retroactively, and that neither party will not bill each other for any true-ups between interim prices and those ordered as final by a commission. Please identify at least one ICA approved by the MPUC between US WEST/Qwest and a CLEC in which Qwest agrees that all interim rates, except reciprocal compensation rates, will be treated as final; that any final commission orders will be applied prospectively and not retroactively, and that neither party will not bill each other for any true-ups between interim prices and those ordered as final by a commission. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

As stated in the agreement that is the subject of this Request, Qwest's predecessor, U S WEST Communications, and McLeod USA agreed to a settlement of a myriad of billing disputes as well as McLeod's intervention and adversarial position to the Qwest/U S WEST merger in 2000.

This agreement therefore stands as a settlement and business compromise of pre-existing disputes and of pending litigated actions. Sections 251 and 252 do not include within their scope agreements in which a settlement of pre-existing litigated positions is the primary bargained-for term or condition. Further, the provision that is the subject of this Request is integrated with all of its other terms and conditions, including the withdrawal of McLeod's opposition of the merger. And, due to the integrated nature of and all of the agreement's covenants, the agreement is unique to McLeod and Qwest.

Additionally, the agreement is unique to McLeod and U S WEST given their business relationship under the particular circumstances existing at the time of the agreement. Further, the agreement represents compromises of legitimate legal and factual disputes and a resolution of the parties' respective negotiating positions regarding various billing disputes.

Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so. Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well

as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and McLeod's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the settling parties. Further, an inability to resolve disputes that frequently arise and that are far removed from sections 251 and 252, such as billing disputes, would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. And, CLECs should have the ability to determine whether an expeditious settlement would be of greater benefit to their business interests than a potentially lengthy litigation before a judicial or regulatory tribunal. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

Without waiving its objections, Qwest states the parties filed the first amendment to their ICA on June 30, 2000 and the MPUC approved the amendment on September 13, 2000.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendraye

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Merger of the Parent  
Corporations of Qwest Communications  
Corporation, LCI International Telecom  
Corp., USLD Communications, Inc., Phoenix  
Network, Inc. and U S WEST  
Communications, Inc.

ISSUE DATE: April 28, 2000

DOCKET NO. P 3009, 3052, 5096, 421,  
3017/PA-99-1192

ORDER AFTER RECONSIDERATION  
WITHDRAWING REFERRAL FOR  
CONTESTED CASE PROCEEDINGS

**PROCEDURAL HISTORY**

On March 7, 2000, the Commission issued a Notice and Order for Hearing referring this merger petition to the Office of Administrative Hearings for contested case proceedings.

The parties at that time were the petitioners (U S WEST/Qwest), the Minnesota Department of Commerce (the Department), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), the Northwestern Bell/U S WEST Retiree Association (the Retiree Association), AT&T Communications of the Midwest (AT&T), Rhythms Links, Inc., Covad Communications Company (Covad), Cady Telemanagement, Inc. (Cady), McLeodUSA Telecommunication Services, Inc. (McLeod), and ten competitive local exchange carriers appearing jointly as "Small CLECs."

On March 17, 2000, U S WEST Qwest filed a request for reconsideration, arguing that the issues in the case could be resolved without evidentiary hearings. Reconsideration was opposed by the Department, the Small CLECs, the Retiree Association, McLeod, Covad, AT&T, and the RUD-OAG.

On March 22, April 5, and April 11, 2000, the Administrative Law Judge issued scheduling and prehearing orders setting filing deadlines, hearing dates, and discovery procedures.

Between March 2, 2000 and April 25, 2000, U S WEST/Qwest reached settlement agreements with all parties to the case except the Retiree Association. The Department, the RUD-OAG, and the petitioners reached a comprehensive joint settlement agreement.

On April 25, 2000, U S WEST/Qwest's petition for reconsideration came before the Commission. At that time the only party still opposing reconsideration was the Retiree Association. The other parties urged the Commission to reconsider and reverse its decision sending the case to the Office of Administrative Hearings for evidentiary proceedings.

### FINDINGS AND CONCLUSIONS

The Commission finds that there is no current need for evidentiary hearings on the issues outlined in the March 7 Notice and Order for Hearing.

As the record of this case has developed, all 15 intervening telecommunications carriers have found common ground with U S WEST/Qwest. They have stipulated to the facts relevant to their claims and have negotiated outcomes acceptable both to themselves and to U S WEST/Qwest. One of the main purposes of the evidentiary hearings – to probe these parties' claims that the merger might impair their ability to compete – is therefore gone.

Even more significantly, the two public agencies charged with representing the public interest and consumers' interests in utility matters have negotiated a comprehensive settlement with U S WEST/Qwest. The agencies state that this settlement adequately protects and affirmatively promotes the public interest, consumers' interests, and the interests of the competitive market. These agencies, too, have stipulated (with U S WEST/Qwest) to the facts relevant to their claims.

Finally, at hearing the Retiree Association clarified that its claims, although linked with the proposed merger in a practical sense, do not depend upon the merger for their validity or enforceability. Should Commission jurisdiction over these claims be established, it is possible that an independent inquiry would be a better procedural vehicle for resolving them than this docket. That issue will be examined after the final comment period referred to below.

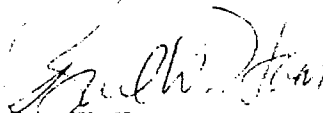
For all these reasons, the Commission reconsiders and rescinds its March 7, 2000 Order referring this case for contested case proceedings. Before deciding the merits of this merger application, the Commission will solicit, by separate notice, a final round of comments from parties and interested persons.

The Commission will so order.

ORDER

1. The Commission hereby reconsiders its Order of March 7, 2000, withdraws its referral of this case to the Office of Administrative Hearings for contested case proceedings, and rescinds its Notice and Order for Hearing.
2. By separate notice the Commission will establish a final comment period on the merits of the merger application.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burt W. Haar  
Executive Secretary

(S E A L)

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