

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**Docket No. UT-063061**

**EXHIBIT BJJ-17**

**TO**

**REBUTTAL TESTIMONY OF**

**BONNIE J. JOHNSON**

**ON BEHALF OF ESCHELON TELECOM, INC.**

**DECEMBER 4, 2006**

Larry Christensen  
Director – Interconnection Agreements  
1801 California, Room 2430  
Denver, CO 80202  
303-896-4686

email redacted

October 17, 2003

*By email & Certified Mail*  
Karen Clauson  
Sr. Director of Interconnection  
730 Second Ave South Suite 1200  
Minneapolis, MN 55402

Dear Ms. Clauson:

I am in receipt of your October 9, 2003 letter concerning the implementation of changes in law related to the Triennial Review Order ("TRO") and other issues relating to the negotiation of interconnection agreements.

I understand from your letter that Eschelon wishes further clarification of our waiver proposal of the 30-day negotiation period under section 7.3 of the Colorado interconnection agreement between the parties. Toward that end, I hope this letter provides you with the information you need.

The purpose for which Qwest is seeking the waiver of the 30-day negotiation period is in order to have enough time to interpret, design and develop contract language and processes that will implement the TRO in an efficient manner and yet have time to negotiate the Amendment to comply with the changes of law. As my previous letter indicated, Qwest is working diligently toward having a contract amendment proposal relating to TRO changes available in the very near future. Given the scope of the changes to the law and to Qwest's internal processes, it was not possible to commit to providing and negotiating a comprehensive proposal to CLECs in the 30-day negotiation period for changes of law that some Interconnection Agreements dictate. Qwest sent the waiver request with the hope that it would prevent having to address piecemeal proposals or to make proposals that were not fully formed and thought through. Under the process contemplated by Qwest, Qwest will provide proposed contract language in the next few weeks to all CLECs. Negotiations of the Amendment would take place between Qwest and Eschelon's designated contract negotiators. The negotiations would not extend beyond the negotiation time limits set forth in section 252(b) of the Telecommunication Act, i.e., 135-160 days from the effective date of the TRO (October 2) unless jointly agreed to by both parties. After 135 days of negotiation, either party may request resolution pursuant to the individual interconnection agreement provisions. Qwest believes that this is consistent with the FCC's instructions in the TRO itself to use section 252(b) of the Act as a default negotiation timetable (see TRO paragraph 703-704) and with the section 251 obligation to negotiate in good faith. In the case of a party not agreeing to a waiver of the 30-day or other applicable deadline in its interconnection agreement, Qwest will abide by the deadlines imposed by such agreement. As a practical matter, however, Qwest does not believe that this would materially affect how fast the interconnection agreement changes would be finalized and, indeed, could result in the matter being tied up in non-productive dispute resolution proceedings. I hope this adequately explains Qwest's contemplated process of TRO Amendment implementation.

Eschelon also addressed a number of issues in your letter to the interconnection agreement negotiations generally. I have tried to address each one below.

First, regarding Eschelon's question about whether Qwest was proposing to roll together the Colorado negotiations and the TRO change negotiations and extend the negotiations window to March 10, 2004, that was not part of Qwest's proposal; and Qwest does not agree to do so. Because of the timeframe of negotiations in Colorado, Qwest believes it would be most appropriate to amend the agreement with TRO language upon its execution. As you know, many of Eschelon's interconnection agreements have long ago expired and have been on a month-to-month basis ever since; it is Qwest's priority to renegotiate these old agreements so that we can bring a good framework to our business relationship. We should be able to include TRO language in the Washington and Minnesota agreements because of the timing of those negotiating windows. The October 2 letter was not intended to change any agreement negotiations timeframe.

Second, Eschelon has asked Qwest to reveal names of other CLEC parties that are re-negotiating or renewing their interconnection agreements. Qwest considers this information to be confidential. If Eschelon wishes to coordinate its positions with other CLECs that is Eschelon's prerogative, as long as it does not violate any non-disclosure agreement. For its part, Qwest will not facilitate those communications.

Finally, your letter raised several issues concerning the coordination of the negotiation process and initiating contact with Linda Miles. Qwest provided its multi-state template proposal to Eschelon just prior to the commencement of the negotiation window in Colorado. It was only natural that we would wait to hear from Eschelon concerning its interest in that proposal or to continue negotiating from the SGATs. I understand that you have since been in contact with Linda on the scheduling of the negotiations and are reviewing Qwest's contract template for negotiation, so I hope these issues are now settled. In any event, the negotiation process is governed by the duties and timelines set forth in sections 251 and 252 of the Act, and it is each party's obligation to follow them. Qwest is happy to entertain proposals concerning a multi-state negotiation, but barring a written understanding, we will continue to treat each state negotiation on a separate track and timeline based on the written communications initiating those negotiations.

I hope this information has been useful.

L T Christensen

cc: Linda Miles  
Jean Novak  
Blair Rosenthal



October 9, 2003

*By email & U.S. mail*

Larry Christensen  
Director – Interconnection Agreements  
1801 California, Room 2430  
Denver, CO 80202

Re: Triennial Review Order and Interconnection Agreement Negotiations;  
Commencement of Negotiations in Minnesota

Dear Mr. Christensen:

Eschelon received your letters dated October 2, 2003 and October 7, 2003, and will respond to both in this letter.

**Triennial Review Order & Qwest Waiver Request**

In your October 2, 2003 letter, Qwest requests a waiver of the 30-day time period in Part A, Section 7.3 of the Qwest-Eschelon Colorado Interconnection Agreement (“ICA”). Before Eschelon will be in a position to respond, Eschelon needs two items from Qwest: (1) a copy of Qwest’s proposed “Triennial Review Order Amendment” mentioned in the second to last paragraph of your letter; and (2) clarification of Qwest’s position as to the ICA negotiations and the affect of the waiver. With respect to the first item, we have requested a copy from our Qwest Service Manager. The second item is discussed in the next paragraph. For both items, we need a prompt response, given the short time frame involved.

With respect to the second item, Qwest’s letters of October 2, 2003 and October 7, 2003 appear contradictory. In your October 2<sup>nd</sup> letter, Qwest does not recognize that any ICA negotiations have commenced. Qwest states that it will contact Eschelon “after Qwest develops a proposed amendment covering *all* the new requirements of the Order” to “initiate” negotiations. *See* 10/2/03 Letter (emphasis added). In contrast, in your October 7<sup>th</sup> letter, Qwest claims that it commenced negotiations in Colorado on August 4, 2003 and wants to commence negotiations effective October 7, 2003 in Washington. Qwest also states that Qwest is working on Triennial Review proposals “on those *parts* of the Triennial Review Order that can be implemented as part of the negotiations.” *See* 10/7/03 Letter (emphasis added). Please clarify Qwest’s proposal.

In your October 2<sup>nd</sup> letter, Qwest also states: “Under this waiver, Qwest anticipates the Parties will meet their change of law obligations prior to March 10, 2004.” It appears that Qwest may be indicating that, if Eschelon agrees to waive the 30-day time



period in Part A, Section 7.3 of the Qwest-Eschelon Colorado ICA, Qwest will agree to extend its proposed negotiation time frame for Colorado from an end date of December 17, 2003 (per Qwest's August 4, 2003 letter) to March 10, 2004 (per Qwest's October 2, 2003 letter). If the Parties can agree on issues before then, they may implement them earlier, but if not, they may negotiate up to March 10, 2004. Is this Qwest's proposal? If so, Eschelon may be able to agree to this. Naturally, we want to understand the proposal before committing to it.

With respect to your October 2, 2003 letter, as well as any future communications from Qwest, please note that Eschelon does not provide consent by silence. If you want an agreement with Eschelon, you need to reach the appropriate personnel at Eschelon and receive an affirmative response. The following sentence in your letter has no legal effect: "If you do not notify me to reject this waiver or otherwise initiate a negotiations request by October 13, it will be Qwest's understanding and expectation that you have agreed to waive the start date of the negotiation period." Qwest has no legal authority to act unilaterally based on silence, and Eschelon does not agree to your doing so (regardless of whether Qwest sets an arbitrary and meaningless deadline for receiving a response) in this or any other matter. The understanding stated in your letter is incorrect. We are willing to discuss a waiver, but we need additional information, as described in this letter, before agreeing on that approach.

### ICA Negotiations Generally

Qwest makes a number of additional points in your October 7, 2003 letter. Although it purports to be a response to my September 23, 2003 letter, Qwest does not respond to the single question that Eschelon posed at that time. Eschelon asked Qwest to "reserve a block of time in late October" for negotiations and to "let me know what dates work for you." Your letter is silent on this issue, and Qwest has not otherwise responded to this request. Eschelon would appreciate a response to its express request for dates from Qwest for ICA negotiations.

In the first paragraph of Qwest's October 7, 2003 letter, it appears that Qwest missed the point Eschelon made in its letter. Qwest notified Eschelon that it was "commencing" negotiations but did nothing to facilitate negotiations or suggest how they should proceed. Instead, Qwest placed the burden on Eschelon to initiate contact with Qwest. Telling a party that you are commencing negotiations by asking them to commence the discussions provides no guidance on how you would like to proceed. In the absence of such guidance, Eschelon has put a lot of time and effort in to the approach that it has deemed best. Eschelon's point, therefore, is that Qwest should show some flexibility in adopting Eschelon's approach, given that Qwest left the task to Eschelon.

In the second paragraph of Qwest's October 7, 2003 letter, Qwest states that it "has initiated negotiations under Section 252 with other CLECs." Eschelon suggested coordinating with other parties on common issues. For example, as you may know,



AT&T and MCI negotiated many issues jointly in the first round of negotiations/arbitrations with Qwest. To do so, we would need to know with which CLECs Qwest is currently negotiating. We do not believe this information is confidential. If Qwest disagrees, however, please ask the CLECs if they have any objection to your disclosing this information and let us know. Or, please ask them to contact me directly.

The third paragraph of Qwest's October 7, 2003 letter is discussed above. Additionally, Qwest refers to its "multi-state template." As indicated in my October 6, 2003 email to Linda Miles: "We reviewed the template in several ways, including doing comparisons with the SGAT and inserting the state-specific language to identify the state differences. In the end, we found it pretty confusing, because we weren't sure what all changed, and we didn't know why things did change. So, as I indicated in my earlier note, we are using a combination of sources, including primarily the CO SGAT, the CO AT&T-Qwest ICA, and the Eschelon-Qwest negotiated language to date." Please be sure to provide your proposed language in a manner that allows for easy identification of the issues. We are not working from the multi-state template, and Qwest should not impose the burden on CLECs to identify where Qwest is proposing changes.

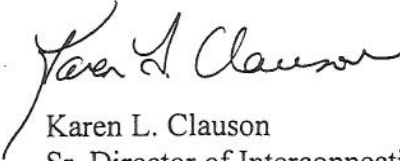
In the fourth paragraph of Qwest's October 7, 2003 letter, Qwest again asks us to contact Linda Miles to set up a negotiations meeting as though the burden belongs solely to Eschelon. Eschelon's email of September 22, 2003 (which was also sent to you by letter dated September 23, 2003) was also addressed to Linda Miles. As discussed, Eschelon asked Qwest to "reserve a block of time in late October" for negotiations and to "let me know what dates work for you." The ball for setting up negotiations is in Qwest's court. You indicated in your letter that Qwest will require some time to review Eschelon's redline before responding. Eschelon asks Qwest to remember that this works both ways. Although Qwest was intimately familiar with its own SGATs (unlike Eschelon, which could not participate in the SGAT proceedings), Qwest took approximately six months to develop its multi-state template based on the SGATs. In contrast, Eschelon has had a very short time to review that template, determine that it does not meet our needs, and begin to respond with our own proposals. Both Parties will need to allow the other party the time needed to address the issues.

In the final paragraph of Qwest's October 7, 2003 letter, Qwest sets forth its proposal for negotiations in other states. Eschelon will have input into that issue as well, particularly as Eschelon believes that it is the CLEC (not the ILEC) which may initiate negotiations under Section 252 of the Act. *With this letter and pursuant to Section 252, Eschelon notifies Qwest that Eschelon is initiating negotiations in the state of Minnesota effective October 9, 2003.* To the extent that Qwest now desires to negotiate multiple states at once, Qwest should propose a schedule which reasonably reflects that desire. Obviously, the Parties cannot address all of our states, for example, by mid-December. Eschelon is open to discussing this issue at the first negotiations session. Qwest needs to respond to Eschelon's September 22, 2003 request for proposed dates for

negotiation sessions. As discussed in the previous paragraph, Eschelon anticipates that the actual dates of the negotiation and arbitration time periods will depend on the time needed by the Parties to address the issues and the progress being made in negotiations.

Please call me if you have questions.

Sincerely,



Karen L. Clauson  
Sr. Director of Interconnection

cc: Linda Miles, Qwest (by email)  
Jean Novak, Qwest (by email)  
J. Jeffery Oxley, Eschelon  
Dennis Ahlers, Eschelon  
Bonnie Johnson, Eschelon



September 23, 2003

**By email and U.S. Mail**

Mr. Larry Christensen  
Director – Interconnection Agreements  
Qwest  
1801 California, Room 2430  
Denver, CO 80202

Re: Interconnection Negotiations

Dear Mr. Christensen:

Eschelon received your letter initiating the negotiations time frame for Colorado and indicating that Qwest asks to commence negotiations. Since then, Qwest has not commenced anything. Therefore, Eschelon is proceeding with putting together its proposed language and an initial issues list. Eschelon is including, for example, the language from Sections 7 and 8 that the parties have negotiated to date and identifying open issues. We are also reviewing the ICA, CO SGAT, AT&T negotiations language, amendments, etc., for proposed language. Eschelon does not know what Qwest meant when it said in its letter that it plans to include language regarding the Triennial Review Order, given that the proceedings will still be pending. The AT&T ICA includes paragraph 2.2.1. Eschelon is willing to agree to the language of 2.2.1 as well.

Eschelon did not know that Qwest had intended to start the time frame. The last discussions we had with Linda Miles were that Qwest was working on a 14-state template and that discussions would resume after that date. Qwest did not initiate the time clock previously, and the discussions took place over many months. Please let us know if Qwest has initiated the time frame for other CLECs as well. Perhaps there can be some resource savings in coordinating with others on common issues. In any event, we will do the best we can in working this in with the other commitments that exist for the same time period and will get a draft to you when we can.

Please reserve a block of time in late October. Depending on when you get the draft and how much time you need, we may even be able to start earlier. But, we should at least



get some time set aside in the end of October for talks. Let me know what dates work for you. Once we've talked, we can then schedule more time in November and December as needed. Thanks,

Sincerely,



Karen Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.

phone number redacted

cc: Linda Miles (by email)