

**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 DD-18

TO THE

REBUTTAL TESTIMONY OF DOUGLAS DENNEY

ON BEHALF OF ESCHELON TELECOM, INC.

DECEMBER 4, 2006

5.3.2 The Parties shall make POAs available to each other upon request in the event of an allegation of an unauthorized change in accordance with all Applicable Laws and rules and shall be subject to any penalties contained therein.

5.4 Payment

5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment ~~Due Date~~due date). If the payment ~~Due Date~~due date is not a business day, the payment shall be due the next business day.⁵

5.4.1.1 Qwest may send bills to CLEC or CLEC may send bills to Qwest, containing amounts found to be unbilled or underbilled ("Backbill(s)"), as follows:

5.4.1.1.1 Except as provided in Section 5.4.1.1.5 below, for erroneous failure to bill or underbilling of any charges incurred by the billed Party under this Agreement, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120) Days prior to the Backbill Date. For the purposes of this Section 5.4.1.1, charges shall be deemed incurred (i) for services charged on a usage-sensitive basis, upon the recording of such usage and (ii) for all other services, upon the first day of the Billing cycle in which the Billed Party used such service; or

5.4.1.1.2 For failure to bill or underbilling where data exchange with third party Carriers is required, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120)Days prior to the Backbill Date; or

5.4.1.1.3 Where Qwest or CLEC is required by regulatory agencies, arbitrators, courts, or legislatures to implement new pricing structures, Qwest may submit to CLEC, or CLEC may submit to Qwest, up to one hundred twenty (120) Days after the later of the implementation date required in the regulatory action, the date of the final, non-appealable arbitration or order, or the effective date of the legislation or Tariff (each such date hereinafter referred to as a "Governmental Requirement Date"), a Backbill for charges incurred by CLEC, or incurred by Qwest, as a result of, and since the applicable Governmental Requirement Date; or

5.4.1.1.4 Qwest and CLEC will exert commercially reasonable efforts not to send Backbills from their Billing systems outside the time periods defined in Section 5.4.1.1.1 through 5.4.1.1.3, above. In any event, except as provided in Section 5.4.1.1.5 below, neither CLEC nor Qwest will be liable for charges contained in Backbills that are sent outside the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3.

5.4.1.1.5 The Billing Party may send Backbills outside of the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3, but otherwise subject to

⁵ Ordered by the Washington Commission in Docket No. UT-043045, Order No. 04, (¶ 104) and Order No. 06 (¶101).

the limitations in this Agreement applicable to Billing disputes, for charges incurred by the billed Party where the failure to bill or underbilling is caused solely by the acts, failure or refusal to act, errors or omissions of the billed Party, and the billed Party shall be liable for such Backbilled charges. Where such failure to bill or underbilling is caused in part by the billed Party and in part by the Billing Party, the Parties may agree upon other time periods for Backbilling.

5.4.2 One Party may discontinue processing orders for the failure of the other ~~party~~**Party** to make full payment for the relevant ~~service~~**services**, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30)⁶ calendar Days following the payment ~~Due Date~~**due date**. The Billing Party will notify the other Party in writing ~~and the Commission on a confidential basis~~ at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief,⁷ including injunctive relief and specific performance.

5.4.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60)⁷ calendar Days following the payment ~~Due Date~~**due date**. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party ~~in writing and the Commission on a confidential basis~~ at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant ~~service~~**services**. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be

⁶Ordered by the Washington Commission in Docket No. UT-043045, Order No. 04, (¶ 110) and Order No. 06, (¶108).

⁷Ordered by the Washington Commission in Docket No. UT-043045, Order No. 04, (¶ 110) and Order No. 06, (¶

available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the nonrecurring charges or monthly Billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar Days following the payment ~~Due Date~~due date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies. To the extent that either Party disputes any charges or monthly billing pursuant to this Section 5.4.4, the Party's withholding of such disputed charges pursuant to this Section 5.4.4 shall not constitute a default under Section 5.13 until such dispute is resolved. Nothing in this Section shall be construed to restrict the Parties' right to recover amounts paid in excess of lawful charges, which shall be subject to the time limits set forth in Section 5.18.5.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment ~~Due Date~~due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the Billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second Bill Date following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the Billing Party shall credit the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the Billing Party, no further action is required.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, and the dispute is resolved in favor of the disputing Party, the Billing Party shall, no later than the second Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in section 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state ~~statues~~statutes or Commission rules.

5.4.5 Each Party will determine the other Party's credit status based on previous payment history or credit reports such as Dun and Bradstreet. If a Party has not established satisfactory credit with the other Party according to ~~the above provisions~~this Section 5.4 or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous nonpayment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned

and completed or before reconnection of service. "Repeatedly delinquent" means any payment of undisputed amounts received thirty (30) calendar Days or more after the payment ~~Due~~ Due Date ~~due date~~, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) calendar Days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission~~7~~ regulations. Cash deposits and accrued interest will be credited to the billed Party's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with the Billing Party, which will generally be one full year of timely payments of undisputed amounts in full by the billed Party. Upon a material change in financial standing, the billed Party may request and the Billing Party will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 The Billing Party may review the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 Each Party shall be responsible for notifying its End User Customers of any pending disconnection of a non-paid service by the billed Party, if necessary, to allow those Customers to make other arrangements for such non-paid services.

5.5 Taxes

5.5.1 Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges~~4~~ from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.