

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC.,
et al.,

Respondents.

DOCKET NO. UT-033011

ESCHELON SETTLEMENT
AGREEMENT

PARTIES

1 The Parties to this Settlement Agreement are Commission Staff (Staff), and
Eschelon Telecom of Washington, Inc. (ESCHELON).

INTRODUCTION

2 The Parties stipulate to this Settlement Agreement to resolve all matters in
dispute between them regarding the Washington Utilities and Transportation
Commission (Commission or WUTC) Complaint and Amended Complaint in this
docket and to do so while preserving the status of ESCHELON as a party to this
proceeding for the limited purpose of providing information to the Commission on

remaining disputed issues regarding other respondents. The Parties request a Commission order approving this Settlement Agreement after August 30, 2004.

DEFINITIONS

3 The term “Interconnection Agreement” as used in this Settlement Agreement shall include any agreement required to be filed and/or approved by the Commission pursuant to RCW 80.36.150 and 47 U.S.C. § 252. “Interconnection Agreement” shall also include any future agreement required to be filed and/or approved by then existing law.

PROCEDURAL HISTORY

4 On August 13, 2003, and August 15, 2003, respectively, the Commission issued a complaint and an amended complaint against ESCHELON and several other telecommunications companies. The Commission alleged that ESCHELON failed to file and seek Commission approval for the following Interconnection Agreements:

- 1A, dated February 28, 2002;
- 2A, dated July 21, 2000;
- 3A, dated November 15, 2000;
- 4A, dated November 15, 2000;
- 5A, dated July 3, 2001;

- 6A, dated July 31, 2001;
- 11A, dated February 29, 2000;
- 12A, dated March 3, 2002
- 17A, dated November 14, 2000;
- 18A, dated November 15, 2000;
- 19A, dated November 15, 2000;
- 20A, dated August 1, 2001;
- 21A, dated November 15, 2000;
- 22A, dated November 15, 2000; and,
- 23A, dated March 31, 2001;
- 24A, dated February 22, 2002

("Agreements"), between ESCHELON and Qwest Corporation, an incumbent local exchange carrier, as required by 47 U.S.C. § 252(a)(1), (e), and RCW 80.36.150. On November 7, 2003, Staff and ESCHELON filed opposing Motions for Summary Determination. Staff argued CLECs, including ESCHELON, are legally obligated to file and seek Commission approval for Interconnection Agreements, while ESCHELON argued Staff had no cause of action against it. Order Number 5 granted Staff's Motion for Partial Summary Determination and granted in part and denied in part ESCHELON's Motion for Summary Determination. Agreements 11A, 22A, and 24A

were dismissed by the Commission's Order No. 05.

SPECIFIC TERMS

5 Staff and ESCHELON agree to the following terms and conditions:

6 1. ESCHELON accepts and agrees to be bound by the terms of
Commission Order Number 05.

7 2. Staff and ESCHELON agree that Agreements 17A (Ex. TLW-16), 18A
(Ex. TLW-17), 20A (Ex. TLW-19), and 23A (Ex. TLW-21) between ESCHELON and
U S WEST Communications, Inc. are not Interconnection Agreements. Because
Agreements 17A (Ex. TLW-16), 18A (Ex. TLW-17), 20A (Ex. TLW-19), and 23A (Ex.
TLW-21) are not Interconnection Agreements, Staff agrees to bring a motion to
dismiss these agreements from the complaint at the time this Settlement Agreement
is filed.

8 3. For the purposes of this Settlement Agreement only and in the
interests of settling the disputes between the Parties, ESCHELON admits that
Agreements

- 1A, dated February 28, 2002;
- 2A, dated July 21, 2000;
- 3A, dated November 15, 2000;
- 4A, dated November 15, 2000;

- 5A, dated July 3, 2001;
- 6A, dated July 31, 2001;
- 12A, dated March 3, 2002
- 19A, dated November 15, 2000;
- 21A, dated November 15, 2000;

between it and Qwest constitute Interconnection Agreements under current FCC and WUTC rules and orders. ESCHELON emphasizes that at the time it entered into each Agreement it believed, based on the law in existence at the time, that the Agreements did not constitute Interconnection Agreements. ESCHELON also believed that Qwest was the only party obligated to file Interconnection Agreements.

9 4. ESCHELON admits that under current WUTC rules and orders it shares a legal obligation to file and seek Commission approval for all Interconnection Agreements.

10 5. ESCHELON accepts its shared obligation to file and seek Commission approval for all future Interconnection Agreements in compliance with this Settlement Agreement and then existing law. ESCHELON agrees that all Interconnection Agreements shall be filed within thirty (30) days of execution.

11 6. ESCHELON agrees that if an Interconnection Agreement is presently
in existence and not yet filed for approval, the Interconnection Agreement will be
filed within forty-five (45) days of approval of this Settlement Agreement by the
Commission.

12 7. ESCHELON agrees that if a conflict arises between the law in
existence in the future and the terms of this Settlement Agreement, the stricter
obligation shall control, unless complying with the stricter obligation would result
in a violation of the law, in which case the then existing law would control. Either
party may give the other party written notice of its belief that a change in the law
has affected this Settlement Agreement. The parties agree to meet and negotiate in
good faith to bring this Settlement Agreement into compliance with existing law. If
the parties cannot reach agreement within sixty (60) days of the date notice was
given that a change in the law has occurred, either party may petition any state or
federal court in Washington State for appropriate relief.

13 8. ESCHELON agrees to pay the Commission twenty-five thousand
dollars (\$25,000) in settlement in this proceeding.

14 9. ESCHELON agrees that, notwithstanding the resolution through this
stipulation of all claims against ESCHELON in this proceeding, it will remain a
party in this proceeding and will sponsor and provide expert testimony and

exhibits related to the remaining disputed issues involving other respondents.

ESCHELON specifically agrees that it will sponsor reply testimony of Richard

Smith,¹ the president and chief executive officer of ESCHELON. ESCHELON will

submit prefiled responsive testimony and supporting exhibits on August 30, 2004.

Mr. Smith will appear for direct and cross-examination of his testimony at a hearing

date to be determined by the Commission. Mr. Smith's testimony will, at a

minimum, address the following topics:

- (1) An account of the circumstances in which ESCHELON entered into each of the Agreements and agreed to the confidential treatment of the Agreements, including any statements, positions, or requirements by Qwest that are not reflected in the written terms of the Agreements.
- (2) The reasons for ESCHELON's decision to enter into the Agreements with Qwest, including any problems or concerns with Qwest's

¹ **Richard Smith** serves as Eschelon's President and Chief Executive Officer. Smith joined Eschelon in October, 1998 as the Chief Financial Officer, was appointed to the Company's Board of Directors in July 2000, served as the Company's Chief Operating Officer from March 1999 through July 2003 and was elected President in April 2000. From April 1997 to October 1998, Mr. Smith served as Vice President of Financial Management for Frontier Corp. where he had been employed since 1972. Prior to serving in this role at Frontier, Mr. Smith held various positions including Controller, Chief Information Officer and President of Frontier Information Technologies, Vice President of Midwest Telephone Operations, Network Plant Operations Director and Director of Business Development. He also was a member of the Board of Directors of the Upstate Cellular Network - a joint venture between Frontier and NYNEX. Mr. Smith holds degrees in Electrical Technology from the Rochester Institute of Technology, Electrical Engineering from the State University of New York at Buffalo, Mathematics from the State University of New York at Brockport, and Business from the University of Rochester's Simon School. Smith has also published books on deregulation strategies and productivity for telecommunications companies.
<<http://www.eschelon.com/about/management.asp>>

performance of its obligations as an incumbent local exchange company;

- (3) The nature of the business relationships among ESCHELON, Qwest, McLeodUSA, and other respondents during the time the agreements were negotiated and entered into;
- (4) The effect on ESCHELON and its success as a competitive local exchange company of the practices of Qwest, McLeodUSA, and other respondents with regard to entering into interconnection agreements that were not filed and made available to ESCHELON pursuant to 47 USC 252(i);
- (5) ESCHELON will provide exhibits in support of Mr. Smith's testimony, consisting of business records of the company documenting the facts and opinions presented in testimony.

Staff agrees that ESCHELON will not file a brief in this proceeding.

GENERAL TERMS

15 The Parties stipulate to the following general terms of the Settlement Agreement:

16 1. The Parties agree to use their best efforts to secure the approval by the Commission and, as necessary, other parties to this proceeding, of the Specific

Terms of this Settlement Agreement. The Parties understand that the Specific Terms listed do not apply unless approved by the Commission.

17 2. The Specific Terms of the Settlement Agreement represent an integrated resolution of issues. Accordingly, the Parties recommend that the Commission adopt the Specific Terms of this Settlement Agreement in its entirety. Each party reserves the right to withdraw from the Settlement Agreement if the Commission does not approve the Specific Terms of the Settlement Agreement in its entirety or conditions approval of the Specific Terms of the Settlement Agreement on material revisions to its terms and conditions.

18 3. The Parties agree to cooperate to assure compliance with WAC 480-07-730 – 750, including providing at least one witness at the time the Settlement Agreement is presented to the Commission to provide testimony in support of the Settlement Agreement and answer any questions the Commission may have. The Parties agree to cooperate, in good faith, in the development of such other information as may be necessary to support and explain the basis of this Settlement Agreement, and to supplement the record accordingly.

19 4. The Parties enter into this Settlement Agreement to avoid further expense, uncertainty, and delay in resolving the issues between them in this docket. By executing this Settlement Agreement, the Parties shall not be deemed to have

accepted or consented to the facts, principles, methods, or theories employed in arriving at the Settlement Agreement. The Parties shall not use, advocate or otherwise employ—itsself or in conjunction with any other individual or entity—this Settlement Agreement for disputing, arguing, or resolving any issues in any other proceeding.

REQUEST FOR APPROVAL

20 This Settlement Agreement and the attachments are presented to the Commission under WAC 480-07-730 - 750 for the Commission's approval. If this Settlement Agreement is approved, it would constitute a full settlement of all issues raised against ESCHELON in the Complaint and Amended Complaint by the Commission. ESCHELON would remain a party to the proceeding for the limited purpose of fulfilling its obligation to sponsor and provide testimony and evidence as provided in this Settlement Agreement.

DATED this 6th day of August, 2004.

CHRISTINE O. GREGOIRE
Attorney General

GRAHAM & DUNN PC

CHRISTOPHER G. SWANSON
Assistant Attorney General
Washington Utilities and
Transportation Commission
(360) 664-1220

Judith A. Endejan
Attorneys for ESCHELON

