

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

NARRATIVE (ESCHELON
TELECOM OF WASHINGTON,
INC., SETTLEMENT
AGREEMENT)

Parties to the Settlement Agreement

1 The Parties to this Settlement Agreement are Commission Staff (“Staff”), and
Eschelon Telecom of Washington, Inc., (“ESCHELON”) (collectively “Parties” or
individually “Party”).

Scope of the Underlying Dispute

2 On August 13, 2003, and August 15, 2003, respectively, the Washington
Utilities and Transportation Commission (“Commission”) issued a complaint and
an amended complaint against ESCHOLON and several other telecommunication
companies. The Commission alleged that ESCHOLON failed to file and seek
Commission approval for sixteen agreements (“Agreement”) between ESCHOLON
and Qwest Corporation (“Qwest”), an incumbent local exchange carrier, on the

basis that the Agreements are Interconnection Agreements that must be filed with, and approved by, the Commission as required by 47 U.S.C. § 252(a)(1), (e), and RCW 80.36.150. Agreements 11A, 22A, and 24A were dismissed by the Commission's Order No. 05.

Scope of the Settlement and its Principal Aspects

3 Staff and ESCHELON agree that Agreements 17A, 18A, 20A, and 23A are not Interconnection Agreements for the reasons stated in Staff's motion to dismiss the agreements. For purposes of this Settlement Agreement only and in the interests of settling the disputes between the Parties, ESCHELON admits that nine of the Agreements constitute Interconnection Agreements under current law. ESCHELON, however, emphasizes that at the time it entered into the Agreements, ESCHELON believed, based on the law in existence at the time, that the Agreements did not constitute Interconnection Agreements and that Qwest was the only party obligated to file Interconnection Agreements.

4 In order to ensure an understanding of any future obligations with regard to Interconnection Agreements, ESCHELON admits it currently has a legal obligation to file and seek Commission approval for all Interconnection Agreements, agrees to file and seek Commission approval for all future Interconnection Agreements within thirty days of execution, and agrees to be bound by the obligations of the Settlement Agreement or future obligations imposed by statute or rule, whichever

are stricter. ESCHELON also agrees to file any unfiled Interconnection Agreements.

The Settlement Serves the Interests of the Parties and the Public Interest

5 Order Number 05 in this docket fairly lays out the obligations of both Qwest and competitive local exchange carriers regarding the filing of Interconnection Agreements for approval by the Commission. In this Settlement Agreement, ESCHELON accepts the terms of Order Number 05 and agrees to be bound by strict obligations with regard to filing Interconnection Agreements for approval with the Commission.

6 The terms of the Settlement Agreement serve the public interest, the interests of Commission Staff, and the interests of ESCHELON by providing a mechanism by which all parties understand future obligations under the law. Although the payment provided is small in proportion to the overall harm that may have been caused by the failure to file the agreements between Qwest and all the competitive local exchange carriers identified in the Complaint and Amended Complaint, the settlement is in the interest of all parties and the public considering the willingness of ESCHELON to own up to its obligation, the acknowledgment of ESCHELON of its duty to file, the strong deterrent effect of the payment when it is coupled with the other terms of the Settlement Agreement, ESCHELON's bargaining position in relation to Qwest, and ESCHELON's willingness to provide testimony and exhibits

describing the circumstances surrounding the execution of the Agreements.

This evidence will prove valuable to the Commission as it considers the merits of the allegations against Qwest, McLeod, and any other remaining respondent in this proceeding.

7 This Settlement Agreement recognizes that while ESCHELON may have simply misunderstood its obligation to file Interconnection Agreements, the broad consequences of ESCHELON's and other companies' failure to file agreements could have damaged the telecommunications marketplace in Washington and frustrated the purposes of the Telecommunications Act of 1996. The Settlement Agreement also recognizes that competitive local exchange carriers like ESCHELON are at a disadvantage when negotiating agreements with an incumbent local exchange carrier with the market share, power and resources of Qwest, and that such competitive local exchange carriers' culpability is commensurately lower. The scope of ESCHELON's obligations under the Settlement Agreement coupled with the payment ensures that any future agreements will be filed in compliance with the law.

Legal Points

8 Pursuant to Order Number 05, the only issue remaining to be litigated with regard to ESCHELON is the second cause of action to the Amended Complaint in which the Commission alleges that 47 U.S.C. § 252(e) requires state commission

approval of agreements between incumbent local exchange carriers and other telecommunications companies for interconnection, services, or network elements. Under RCW 80.04.380 the Commission may issue penalties of up to one thousand dollars (\$1000) per violation of 47 U.S.C. § 252(e) with each day of a continuing violation constituting a separate and distinct offense. Rather than litigate this matter, the parties agree to the Settlement Agreement for the reasons discussed above.

DATED this 12th day of August, 2004.

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