

**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-37

TO THE

SURREBUTTAL TESTIMONY OF DOUGLAS DENNEY

ON BEHALF OF ESCHELON TELECOM, INC.

APRIL 3, 2007



March 21, 2006
By Overnight Express delivery

Kenneth Beck
Regional Vice President
Qwest Communications, Inc.
1801 California St, Floor 24
Denver, CO 80202

Qwest Communications, Inc.
Director—Interconnection Compliance
1801 California Street, Room 2410
Denver, CO 80202

Qwest Communications, Inc.
General Counsel, Law Department
1801 California Street, 49th Floor
Denver, CO 80202

Re: Escalation and Request for Dispute Resolution pursuant to the
Interconnection Agreements; LSR #17114755 (#D49232945); LSR #17192206
(#N49828418; PON #AZ657718T1FAC); ASR #0607700072 (#C50456587;
PON # AZ657718T1FAC)

Dear Mr. Beck, Director of Interconnection, and General Counsel:

Eschelon asks Qwest to work with Eschelon to resolve the dispute described below both for this particular occurrence and on a going forward basis for the term of the interconnection agreements ("ICAs") between the parties. This issue needs to be addressed promptly, before another such situation arises. Enclosed is a document, which is incorporated by reference, quoting Arizona ICA provisions relating to this dispute and citing similar provisions in Colorado, Minnesota, Oregon, Utah and Washington. If Eschelon and Qwest are unable to agree on a resolution, Eschelon reserves its right to ask the Arizona Commission to arbitrate the dispute pursuant to Section 27.2 of Part A of the Arizona ICA, as well as submit the dispute to the other state commissions pursuant to the dispute resolution provisions of the ICAs in our other states.

Last week, in violation of the ICA, Qwest refused Eschelon's requests for both a repair and an expedite to restore service to an Arizona Eschelon End User Customer who was unexpectedly out of service, without dial tone. As a result of Qwest's violation of the ICA, the End User Customer was out of service for a delayed period of time -- from Thursday of last week until Monday of this week. (The outage would have continued

Exhibit Page No.
1 of 10

730 Second Avenue South • Suite 900 • Minneapolis, MN 55402 • Voice (612) 376-4400 • Facsimile (612) 376-4411

www.eschelon.com

even longer pursuant to Qwest's approach, if Eschelon had not ordered special access, instead of the unbundled product to which it was entitled, to ensure this customer received service.) The Eschelon End User Customer in this case is a private not-for-profit corporation that provides therapeutic, rehabilitation, and social services to children and adults with developmental, therapeutic, physical, and mental disabilities. Such an organization, in particular, needs telephone service, including the ability to dial 911 from each room, to serve its clientele. The center is open 24X7, 365 Days a year. Eschelon provided Qwest's escalations group with a letter from the End User Customer documenting that the customer provides critical health care services to individuals with high level and urgent care needs. Eschelon also informed Qwest's Regional Director of Service Management, Jean Novak (who is assigned at Qwest to handle Eschelon's service issues), of the letter and that Eschelon had provided it to that group. Qwest knew the importance of restoring dial tone. Nonetheless, Qwest both rejected the trouble report (refusing to open a ticket) and refused to expedite an order to restore service.

Eschelon's End User Customer contacted Eschelon repair to report a trouble when the End User Customer lost dial tone. Eschelon reported trouble to Qwest (both through CEMR and by phone). It was determined that the outage resulted from an Eschelon disconnect in error (i.e., due to a typo in the circuit ID number, a disconnect intended for a different line was completed instead for the facility serving the individual rooms). Eschelon accepted responsibility for that error and informed the customer that it was an Eschelon error. Regardless of who caused the error, a customer's service should be restored when an error occurs and a customer with medical and emergency needs loses dial tone. When Qwest retail disconnects its own End User Customer in error, Qwest restores service. In such a situation, the Qwest End User Customer calls Qwest retail repair. It is unlikely that Qwest retail requires its retail End User Customer to then call the Qwest retail business office to order new service and wait for the entire new service interval for service restoration. Even assuming a new order were required, the order would not be delayed for days while the Qwest retail End User Customer had no dial tone. Regardless of the service provider, the End User Customer's service should be promptly restored. (*See, e.g.*, 31.1 of Part A – "carrier-neutral" and "nondiscriminatory.")

Qwest's only stated basis for refusing to promptly restore dial tone to this organization for persons with disabilities is that Qwest requires an ICA amendment to do so. Qwest and Eschelon have discussed on previous occasions that Qwest needs to know and review the provisions of the existing ICA between the parties to ensure that the existing terms are not sufficient before indicating that an amendment is required and, in the meantime, Qwest should not withhold service. In this case, the existing amendment clearly required Qwest to restore service. (*See, e.g.*, Sections 3.3.4.4 & 6.2.1.1 of Attachment 5.) Although Qwest claimed it had no basis to obtain payment (even after Eschelon clearly stated it would pay), the ICA clearly provides that "expedite charges may apply" and authorizes Qwest to charge Eschelon. (*See, e.g.*, Sections 3.1 & 3.3.4.4 of Attachment 5 & Section 1.2 of Attachment 1.) In addition, there are Commission approved rates in Arizona, such as for installation. Therefore, no amendment was

required, and Qwest had no basis to refuse to promptly restore service under the existing ICA. These ICA provisions have been in place for a long time. Qwest has recently changed when it claims that CLEC expedite requests require approval (i.e., are "chargeable") and did so over CLECs' objections. No corresponding change in the ICA has occurred, and Qwest has no basis for unilaterally imposing such changes on Eschelon.¹

Qwest provided no business, operational, or technical feasibility reason for refusing to help to promptly restore dial tone to this facility for persons with disabilities. *To the contrary, Qwest confirmed that the same unbundled facilities (i.e., the facilities from the disconnect order) remained available.* Although the facilities were available and the End User Customer had no dial tone, Qwest said it would not promptly restore service because of its unnecessary amendment issue. Qwest knew at the time, however, that Eschelon's existing long-standing ICA allows Qwest to charge for expedite charges, without an amendment. Also, Eschelon (Rhonda Knudson) clearly told Qwest (Jean Novak) that Eschelon would pay expedite charges if that is what it took to get the customer in service. Qwest still refused to help restore service. Qwest said that it required Eschelon to sign an ICA amendment before Qwest would proceed with restoring service (e.g., expediting the order). Qwest said that, without an amendment, Qwest would not provide facilities until at least Thursday of this week (a full week after the End User Customer lost dial tone). Eschelon finally had to order a Qwest tariffed product to ensure its End User Customer's service was restored earlier.²

Eschelon's approach is consistent with the ICA's provisions requiring the parties to process orders and repairs and leave billing disputes, if any, for later. Qwest's approach was inconsistent with those provisions. Qwest held restoration of the End User Customer's service hostage pending Eschelon's meeting Qwest's demand for an unnecessary amendment. The ICA, however, clearly provides that Qwest is to first perform the requested service (including expedites) and then, if there is a rate issue, address that issue through the billing and dispute resolution provisions of the ICA. (See, e.g., Section 1.2 of Attachment 1; Section 4.1.18 of Attachment 5.) Qwest refused to proceed instead of pursuing any rate issue under the billing and dispute resolution provisions of the ICA. Qwest has not even established that there is a rate issue. The ICA allows Qwest to charge for installation and expedites, and Eschelon told Qwest at the time that it would pay to expedite the order.

¹ If Qwest desires a voluntary amendment, please negotiate with us and begin by providing cost studies supporting Qwest's proposed rate for each state to Eschelon pursuant to Section 252(d) of the Act, 47 CRF § 51.301, and paragraph 155 of the FCC's First Report and Order. Eschelon has signed a confidentiality agreement and requested cost studies for all unapproved rates in the new ICA negotiations, but Qwest has not yet provided a cost study for its proposed expedite rate. While Eschelon is reviewing those cost studies, however, Qwest needs to process expedites pursuant to the existing ICAs.

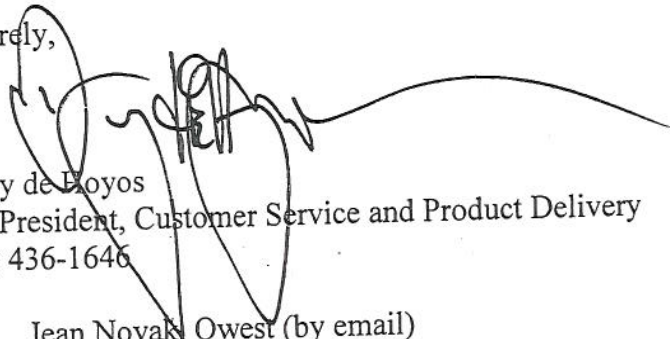
² The Qwest tariffed product has the same per day expedite NRCs as Qwest's proposed expedite amendment. Qwest charged Eschelon approximately \$1,800 because the NRC of \$200 per day applies to the tariffed product's 9-day interval. The unbundled interval is 5 days. Even assuming the \$200 per day rate applied, this NRC would have been approximately \$800 less if Qwest had proceeded with the unbundled product.

Qwest's Regional Director of Service Management is or should be familiar with the existing ICA provisions (particularly because Eschelon has asked her and Qwest on past occasions to review the ICA provisions before requesting an amendment), knew of the medical nature of the facility and its need for dial tone, and knew from her previous conversation with Ms. Knudson that Eschelon was willing to pay for the expedite. She nonetheless incorrectly indicated to the Qwest Senior Manager of the Minneapolis center that Eschelon was not willing to pay charges, and she told the Senior Manager of the Minneapolis center that it was ok to stop working toward restoring dial tone. The Qwest Regional Director of Service Management is supposed to be the advocate for this account at Qwest.

Qwest needs to remedy both the immediate situation and the issue on a going forward basis. With respect to the rehabilitation center in Arizona, Qwest needs to provide the facility on an unbundled basis (which may require a record work change) and credit Eschelon any difference in cost. With respect to future issues under the existing ICAs (until new ICAs are in place),³ Qwest needs to confirm in writing that it will restore service in such situations (pursuant to the applicable repair and/or expedite provisions of the existing ICAs in each state) without requiring an amendment.

I suggest we have a conference call next week to negotiate these issues and attempt to resolve them pursuant to the dispute resolution provisions of our ICAs. Eschelon will have legal counsel for the negotiations and anticipates that Qwest will as well. Please let me know what dates and times next week work for Qwest.

Sincerely,



Danny de Hoyos
Vice President, Customer Service and Product Delivery
(612) 436-1646

cc: Jean Novak, Qwest (by email)
Harisha Bastiampillai, Qwest (by email)
Christine Siewert, Qwest (by email)
Doug Denney, Eschelon (by email)
Bonnie Johnson, Eschelon (by email)
Karen L. Clauson, Eschelon (by email)
Jeff Oxley, Eschelon (by email)

³ Negotiation of new ICAs is well underway and, if any issues need to be addressed in those negotiations, Eschelon will also work with Qwest in that context for events that will occur after the Effective Date of the new ICAs.

ICA PROVISIONS - ARIZONA
(See footnotes for CO/MN/OR/UT/WA)

EXCERPTS FROM ATTACHMENT 5 (BUSINESS PROCESS REQUIREMENTS)

3.2.2 Service Migrations and New Customer Additions¹

3.2.2.12 Expedite Process: U S WEST and CO-PROVIDER shall mutually develop expedite procedures to be followed when CO-PROVIDER determines an expedite is required to meet subscriber service needs.

3.2.2.13 Expedites: U S WEST shall provide CO-PROVIDER the capability to expedite a service order. Within two (2) business hours after a request from CO-PROVIDER for an expedited order, U S WEST shall notify COPROVIDER of U S WEST's confirmation to complete, or not complete, the order within the expedited interval.

3.2.4 Due Date²

3.2.4.2 For those services and circumstances that U S WEST and COPROVIDER agree shall be handled by the standard interval process, U S WEST shall supply CO-PROVIDER with standard due date intervals on a nondiscriminatory basis to be used by CO-PROVIDER personnel to determine service installation dates. Under those circumstances U S WEST shall complete the provisioning within the standard interval.

3.2.4.2.1 If CO-PROVIDER requests a due date earlier than the standard due date interval, then expedite charges may apply.

3.2.4.3 For those services and circumstances that U S WEST and COPROVIDER agree shall be handled by the requested/committed due date process, CO-PROVIDER may request a due date on each order. U S WEST will provide an offered due date on a nondiscriminatory basis. If CO-PROVIDER accepts the offered due date then such date shall become the committed due date. U S WEST will complete the order on the committed due date unless otherwise authorized by CO-PROVIDER.

3.2.4.3.1 If CO-PROVIDER requires a due date earlier than the U S WEST offered due date and U S WEST agrees to meet the COPROVIDER required due date, then that required due date becomes the committed due date and expedite charges may apply.

3.2.4.4 Subsequent to an initial order submission, CO-PROVIDER may request a new/revised due date that is earlier than the committed due date. If U S WEST agrees to meet that new/revised due date, then that new/revised due date becomes the committed due date and expedite charges may apply.

SEE ALSO –

¹ See Colorado ICA Attachment 8 Business Processes Sections: 2.1.17, 2.2.13, Minnesota ICA Attachment -5 Section 7.4.2 and Section 9.2, Oregon ICA Attachment 5 Section 7.4.2 and Section 9.2, Utah ICA Attachment 5 Sections 3.2.2.12 and 3.2.2.13, Washington ICA Attachment 5 Sections 3.2.2.12 and 3.2.2.13

² See Colorado ICA Attachment 8 Business Processes Section: 2.2.2.1.6, Minnesota ICA Attachment 5 Section 9.1 and Section 9.3, Oregon ICA Attachment 5 Section 9.1 and Section 9.3, Utah ICA Attachment -5 Section 3.2.4, Washington ICA Attachment 5 Section 3.2.4

2.1 General Business Requirements³

2.1.4.7 U S WEST shall provide provisioning support outside of scheduled work hours on a nondiscriminatory exception basis as requested by COPROVIDER. Such support may be subject to a minimum labor charge.

4. Connectivity Billing and Recording⁴

This Section 4 describes the requirements for U S WEST to bill and record all charges CO-PROVIDER incurs for purchasing services under this Agreement.

4.1.2 U S WEST shall record and bill in accordance with this Agreement those charges COPROVIDER incurs as a result of CO-PROVIDER purchasing from U S WEST services, as set forth in this Agreement (hereinafter "Connectivity Charges").

4.1.18 Bill Reconciliation⁵

4.1.18.4 If the dispute is not resolved within the allotted time frame, the following resolution procedure shall begin:

4.1.18.4.1 If the dispute is not resolved within sixty (60) days of the Notice of Discrepancy, the dispute shall be escalated to the second level of management for resolution.

4.1.18.4.2 If the dispute is not resolved within ninety (90) days of Notice of Discrepancy, the dispute shall be escalated to the third level of management for resolution.

4.1.18.4.3 If the dispute is not resolved within one hundred and twenty (120) days of the Notice of Discrepancy, upon the written request of either Party within such one hundred and twenty (120) day period, the dispute may be resolved pursuant to the dispute resolution provision set forth in Part A of this Agreement.

6.2 General Requirements⁶

6.2.1 U S WEST shall provide repair, maintenance, testing, and surveillance for all Telecommunications Services and unbundled Network Elements and Combinations in accordance with the terms and conditions of this Agreement.

6.2.1.1 U S WEST shall provide CO-PROVIDER with the same level of maintenance support as U S WEST provides itself in accordance with standards and performance measurements that U S WEST uses and/or which are required by law, regulatory agency, or by U S WEST's own internal procedures, whichever are the most rigorous. These

³ See Colorado ICA Attachment 8 Business Processes Section: 2.1.2.4, Minnesota ICA Attachment 5 Section 2.4, Oregon ICA Attachment 5 Section 2.4, Utah ICA Attachment 5 Section 2.1.4.7, Washington ICA Attachment 5 Section 2.1.4.7

⁴ See Colorado ICA Attachment 8 Business Processes Section 3.1.2, Minnesota ICA Attachment 7 Section 2.1, Oregon ICA Attachment 7 Section 2.1, Utah ICA Attachment 5 Section 4.1.2, Washington ICA Attachment 5 Section 4.1.2

⁵ See Colorado ICA Attachment 8 Business Processes Section 3.1.18.4, Minnesota ICA Attachment 7 Section 14, Oregon ICA Attachment 7 Section 14, Utah ICA Attachment 5 Section 4.1.18.4, Washington ICA Section 4.1.18.4

⁶ See Colorado ICA Attachment 8 Business Processes Section 5.1.2, See Minnesota ICA Attachment 6 Section 1, Oregon ICA Attachment 6 Section 4, Utah ICA Attachment 5 Section 6.2.1, Washington ICA Attachment 5 Section 6.2.1

standards shall apply to the quality of the technology, equipment, facilities, processes, and techniques (including, but not limited to, such new architecture, equipment, facilities, and interfaces as U S WEST may deploy) that U S WEST provides to CO-PROVIDER under this Agreement.

EXCERPTS FROM PART A (TERMS AND CONDITIONS)

3. Payment⁷

3.1 In consideration of the services provided by U S WEST under this Agreement, COPROVIDER shall pay the charges set forth in Attachment 1 to this Agreement. The billing procedures for charges incurred by CO-PROVIDER hereunder are set forth in Attachment 5 to this Agreement.

3.2 Amounts payable under this Agreement, unless reasonably disputed, are due and payable within thirty (30) days after the date of U S WEST's invoice or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day.

27. Dispute Resolution⁸

27.2¹⁴ In the event CO-PROVIDER and U S WEST are unable to agree on certain issues during the term of this Agreement, the Parties may identify such issues for arbitration before the Commission. Only those points identified by the Parties for arbitration will be submitted.

31. Warranties⁹

31.1 U S WEST shall conduct all activities and interfaces which are provided for under this Agreement with CO-PROVIDER Customers in a carrier-neutral, nondiscriminatory manner.

EXCERPT FROM ATTACHMENT 1 (RATES AND CHARGES)

1. General Principles¹⁰

1.2 Except as otherwise specified in this Agreement, as approved or ordered by the Commission, or as agreed to by the Parties through good faith negotiations, nothing in this Agreement shall prevent a Party through the dispute resolution process described in this Agreement from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

⁷ See Colorado ICA Part A Section 5.1, Minnesota ICA Part A Section: 2.1, Oregon ICA Part A Section 2.1, Utah ICA Part A Section 3.1 and Section 3.2, Washington ICA Part A Section 3.1 and Section 3.2

⁸ See Colorado ICA Part A Section 24.1, Minnesota ICA Part A Section 11, Oregon ICA Part A Section 11, Utah ICA Part A Section 27.2, Washington ICA Part A Section 27.2

⁹ See Colorado ICA Part A Section 14.1, Minnesota ICA Part A Section 9.2, Oregon ICA Part A Section 9.2, Utah ICA Part A Section 31.1, Washington ICA Part A Section 31.1

¹⁰ Utah ICA Attachment 1 Section 1.2, Washington ICA Attachment 1 Section 1.2



April 3, 2006
By Overnight Express delivery

Kenneth Beck
Regional Vice President
Qwest Communications, Inc.
1801 California St, Floor 24
Denver, CO 80202

Qwest Communications, Inc.
Director—Interconnection Compliance
1801 California Street, Room 2410
Denver, CO 80202

Qwest Communications, Inc.
General Counsel, Law Department
1801 California Street, 49th Floor
Denver, CO 80202

Re: Escalation and Request for Dispute Resolution pursuant to the
Interconnection Agreements; LSR #17114755 (#D49232945); LSR #17192206
(#N49828418; PON #AZ657718T1FAC); ASR #0607700072 (#C50456587;
PON # AZ657718T1FAC); Joint McLeod-Eschelon Escalation #39 Re.
PROS.09.12.05.F.03242.Expedites_Escalations_V27 – Denied by Qwest 11/4/05;
Eschelon 11/3/05 objections to PROS.10.19.05.F.03380.ExpeditesEscalationsV30

Dear Mr. Beck, Director of Interconnection, and General Counsel:

Attempts to resolve this issue have been unsuccessful. On the call on Friday, Qwest repeated its intent to continue to refuse to comply with the repair and expedite provisions of the current interconnection agreements between the parties for unbundled loops in these types of situations. (For further description of the facts, see my letter to Qwest dated March 21, 2006.)

Qwest also indicated that it had not received assurances that Eschelon is willing to pay charges to Qwest when this type of situation occurs. That is incorrect. Eschelon has previously made those assurances and makes them again in this letter. As we discussed on the call, from the end user customer's perspective, an out of service condition caused by a disconnect in error is a repair, as the end user customer did not request any change in service and yet is out of service. Eschelon said it was willing to pay maintenance and repair charges pursuant to the interconnection agreements (including those approved by the state commissions, which Qwest already routinely charges Eschelon for other types of repairs) to re-establish service. Qwest indicated that it disagrees that repair terms apply

Exhibit Page No.
8 of 10

and said that Eschelon must submit and expedite an order and pay associated charges to re-establish service.

Therefore, as indicated on Friday's call, whenever Eschelon requests an expedite for an unbundled loop order and Qwest grants the request, Eschelon will pay the charges pursuant to the current interconnection agreements associated with installation, dispatch, and expedites. Qwest will not deny the expedite requests for any product based on an alleged need for a contract amendment or other arbitrary or discriminatory reason. The charges Eschelon will pay includes the installation charge for the order requesting the expedite. Installation charges cover the costs of the work activities to process the order. (In an expedite situation, the same work activities take place; they simply occur earlier.) Although the installation charges generally also include the cost of a dispatch, if Qwest dispatches a technician to complete an expedite, Eschelon will also pay the dispatch charge. (When the dispatch cost is included in the installation charge, this is a double recovery by Qwest.) If Qwest spends additional time due to the expedite itself, Eschelon will also pay the half hourly labor rate (which in Arizona is the same rate whether billed as repair or additional labor, other) for that time. Payment of these charges is provided for under the current interconnection agreements, and no amendment is necessary.

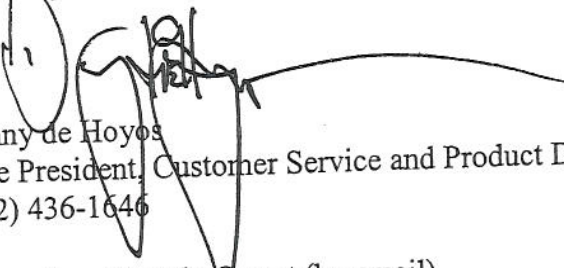
Eschelon understands that Qwest reserves its rights to argue different terms should apply under the new interconnection agreements. (For example, by charging such terms under the current interconnection agreements, Qwest said it is not conceding that such charges are 251/252 charges, and Qwest may take a different position in arbitration of the new interconnection agreements.) Eschelon also reserves all of its rights with respect to negotiation and arbitration of the new interconnection agreements. Eschelon asks Qwest to proceed as described in this letter to allow all of the parties to focus on completing those new agreements, which will resolve this issue going forward under the new agreements.

If, however, Qwest continues to refuse to provide expedites under the current interconnection agreements without amendment, Eschelon reserves its right to ask the commissions to find that it pay no charge pursuant to the nondiscrimination provisions of the interconnection agreements in those situations in which Qwest does not charge itself and its end user customers, including disconnects in error and conditions that Qwest has identified in its Expedites Requiring Approval process. This applies to unbundled loops as well as other products.

Eschelon is represented by counsel in this matter. Please direct all further communications regarding this matter to Jeff Oxley and Karen Clauson. They may also identify outside counsel.

Mr. Beck, Director of Interconnection, General Counsel
April 3, 2006
Page 3 of 3

Sincerely,



Danny de Hoyos
Vice President, Customer Service and Product Delivery
(612) 436-1646

cc: Jean Novak, Qwest (by email)
Harisha Bastiampillai, Qwest attorney (by email)
Christine Siewert, Qwest (by email)
Larry Christensen, Qwest (by email)
Mike Henderson (by email)
Ronda Knudson (by email)
Bill Markert (by email)
Doug Denney, Eschelon (by email)
Bonnie Johnson, Eschelon (by email)
Karen L. Clauson, Eschelon (by email)
J. Jeffery Oxley, Eschelon (by email)

Exhibit Page No.
10 of 10