

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for	)	DOCKET UT-063061
Arbitration of an Interconnection	)	
Agreement between	)	
	)	ORDER 10
QWEST CORPORATION,	)	
	)	
and	)	ORDER DENYING MOTION TO
	)	DISMISS ISSUES
ESCHELON TELECOM, INC.	)	
	)	
Pursuant to 47 U.S.C. Section 252(b).	)	
	)	
.....	)	

**MEMORANDUM**

- 1 **NATURE OF PROCEEDING:** Docket UT-063061 involves Qwest Corporation’s (Qwest) request for arbitration of an interconnection agreement with Eschelon Telecom, Inc., (Eschelon) pursuant to 47 U.S.C. §252(b) of the Telecommunications Act of 1996 (The Act).
- 2 **PROCEDURAL BACKGROUND:** On April 6, 2007, Qwest filed a motion to dismiss issues from this arbitration that relate to Eschelon’s request for the Commission to set interim rates for multiple interconnection services and elements. On April 13, 2007, Eschelon filed its response opposing the motion.
- 3 **MOTION TO DISMISS ISSUES:** Qwest argues that the issues related to the establishment of wholesale rates should be dismissed because these rates would ultimately apply to multiple carriers and an interconnection arbitration between two carriers is not the appropriate forum to address such issues. Qwest also argues that that Eschelon’s attempt to raise these issues in the arbitration violates an agreed provision in the parties’ interconnection agreement establishing a specific process for

setting rates. Finally, Qwest contends that setting rates in this proceeding will create the risk of inconsistent rulings and will result in administrative efficiencies.

4 In response, Eschelon opposes dismissing these issues from the arbitration. Eschelon argues that Qwest's motion is untimely because it was not brought within 20 days of the pleading that is sought to be dismissed. Eschelon further argues that Qwest's argument is contrary to the Telecommunications Act of 1996 which expressly provides for issues regarding rates to be determined in arbitration proceedings. In addition, Eschelon contends that both parties have proposed interim rates.

5 **COMMISSION DECISION:** According to WAC 480-07-380(a), a party may move to dismiss another party's claim on the asserted basis that the opposing party's pleading fails to state a claim on which the Commission may grant relief.<sup>1</sup> In essence, Qwest's request is such a motion. Qwest argues that an interconnection arbitration between two carriers is not the appropriate forum to address the issue of rates for interconnection services and elements.

6 Qwest initiated this proceeding under 47 U.S.C. 252(b) of the Telecommunications Act of 1996 (The Act). It is this statute that governs the appropriate scope of this proceeding. According to 47 U.S.C. §252(4)(C), "[T]he State commission *shall* resolve each issue set forth in the petition and the response . . . ."<sup>2</sup> The statute is mandatory, not discretionary. The issue of the appropriate rate to serve as an interim rate was raised in the petition for arbitration and response.<sup>3</sup>

7 The Act also sets forth the standards for arbitration by providing that the Commission *shall* "establish any rates for interconnection, services, or network elements according to subsection (d) of this section."<sup>4</sup> Again, the statute is mandatory and not only requires the Commission to establish rates but sets forth the standard by which those rates must be established.

8 In this proceeding, both parties proposed rates that would serve as interim rates. There is considerable disparity between those rates so there are clearly disputed issues

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<sup>1</sup> Given the ruling on the motion, it is unnecessary to address the issue of whether the motion was timely filed.

<sup>2</sup> Emphasis supplied.

<sup>3</sup> Qwest Petition for Arbitration filed August 9, 2006 (Disputed Issue List as revised December 20, 2006.) Eschelon Response, Exhibit 1, filed September 5, 2006.

<sup>4</sup> 47 U.S.C. §252(c)(2)

of material fact. Accordingly, interim rates for interconnection, services, or network elements will be established after considering the evidence adduced at hearing.

9 The Commission denies the motion to dismiss issues.

DATED at Olympia, Washington, and effective April 19, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK  
Administrative Law Judge