

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: June 28, 2004
CASE NO.: UT-033011
REQUESTER: Eschelon

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

REQUEST NO. 3:

For each agreement identified in response to Data Request No. 2, please state whether Mr. Wilson compared the terms of the identified agreement against any Eschelon interconnection agreement and identify each agreement compared with an Eschelon agreement. Please produce any analysis or documentation of the comparison made by Mr. Wilson between an Eschelon interconnection agreement and any of the interconnection agreements identified in Exhibit TLW-74.

RESPONSE:

Mr. Wilson did not compare the terms of each properly filed interconnection agreement identified in response to Data Request No. 2 against any secret Eschelon interconnection agreements.

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REQUEST NO. 4:

Please produce all documents that refer or relate to communications from any of the carriers identified in Exhibit TLW-74 regarding such carrier's inability to obtain any service, rates, term or condition contained in any of the Eschelon interconnection agreements at issue in this docket.

RESPONSE:

Please see opening argument at page 3 of Time Warner's September 8, 2003 petition to intervene:

"In this proceeding, the Amended Complaint alleges that Qwest has entered into a number of agreements that make available interconnection, services, or network elements to certain CLECs that were not filed or not timely filed. TWTC may wish to take advantage of the terms of those agreements. The Amended Complaint also alleges that Qwest has entered into a number of agreements with certain CLECs that contain terms and conditions that create an undue or unreasonable prejudice or disadvantage or undue discrimination. TWTC has an interest in ensuring that it is able to take advantage of contract terms and conditions that are the same or substantially the same as those offered by Qwest to similarly situated telecommunications companies, and that it is not subjected to undue or unreasonable prejudice or disadvantage or undue discrimination in gaining access to or pricing of interconnection, services, or unbundled network elements." (Emphasis Added)

Also, because all of Eschelon's secret interconnection agreements were kept a secret until they were filed as Exhibits attached to Mr. Wilson's testimony in this docket on June 8, 2004, none of the carriers identified in Exhibit TLW-74 had access to any of the secret interconnection agreements with Eschelon with the exception of 12A* which was filed on June 7, 2002. It is Mr. Wilson's belief that because the Eschelon secret interconnection agreements at issue were secret, there are no other documents that refer to or relate to communications from any of the carriers identified in Exhibit TLW-74 regarding such carrier's inability to obtain any service, rates, term or condition contained in any of the Eschelon secret interconnection agreements at issue in this docket.

Please see Exhibit No. ___ (TLW-76) at page 12 (response to 1-2). It is speculative to consider the effects on other CLECs who did not have access to the secret interconnection agreements

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with Eschelon because they were not afforded the opportunity to review the secret Eschelon interconnection agreements to determine whether to opt-in, and therefore they also did not have grounds to try to adopt or opt-in.

Please see Exhibit No. ___ (TLW-79), at page 3 (response to 1-3) wherein Worldcom indicates that any secret interconnection agreement providing better pricing of any services, including UNE-P, through discounts or take-or-pay provisions, for example, or shorter intervals for provisioning of services or more attention to the provisioning of service should have been available for adoption. The response continues with the statement that pricing and provisioning are critical to entry into the local market and any improvement in prices and provisioning would have made entry easier for CLECs.

Please also see Exhibit No. ___ (TLW-80) at page 6, response to 1-2: "agreements which provide for discounts, accelerated complaint resolution, special attention, "take or pay" arrangements, "consulting," or other incentives or privileges, or advantages, all would have made entry into the local market [easier] . . ." The secret interconnection agreements with Eschelon include provisions for discounts, accelerated complaint resolution, special attention, consulting and other incentives, privileges and advantages, therefore Staff concludes that CLECs such as AT&T might have possibly attempted to seek to have the agreements made available for adoption. Because they were secret, however, it is speculative to say anything other than apparently AT&T and other CLECs were not able to enjoy the opportunity that the request seems to imagine or presume may have occurred.

On this basis, Staff reasonably assumes that, had the secret interconnection agreements with Eschelon been filed and made available for adoption, it is entirely possible other CLECs would have reviewed and possibly adopted various elements in the hopes of improving pricing and provisioning.

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REQUEST NO. 7:

On page 9 lines 15-17 and page 10 lines 1 – 3, Mr. Wilson states another definition of an interconnection agreement. Please explain the difference, if any, between this definition and that of the FCC as set forth in Data Request No. 6.

RESPONSE:

Mr. Wilson would respond the same as he does to Eschelon Data Request to Staff No. 6 – that is to say: Mr. Wilson does not see any difference, nor does he intend to imply that there is any difference, he is simply attempting to offer a description of how his training as a telecommunications economist assigned to work on implementation of the Commission's review and approval of interconnection agreements provides additional insight into what constitutes an interconnection agreement and/or an amendment to an interconnection agreement.

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REQUEST NO. 13:

Please explain how other CLECs or competitors are disadvantaged, prejudiced or harmed in any way from an inability to opt into those Eschelon agreements that were terminated as reflected on Exhibit TLW-71.

RESPONSE:

Mr. Wilson assumes the question references the time period between execution and termination of the secret Eschelon interconnection agreements. Please see the following 18 pages of Exhibit No. ____ (TLW-T-1) at:

- page 7 line 8 through page 8 line 16,
- page 10 line 12 through page 11 line 4,
- page 77 line 7 through line 18,
- page 79 line 13 through line 16,
- page 80 line 11 through page 86 line 11,
- page 87 line 1 through line 18,
- page 88 line 10 through page 89 line 7,
- page 98 line 15 through page 99 line 8 including footnote 38,
- also, please see Mr. Wilson's analysis of payments under the terminated Eschelon secret interconnection agreements under the Sixth Cause of Action beginning on page 102.

Also, please see response to No. 4 above.

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REQUEST NO. 18:

Please produce any analysis performed by Commission Staff of any competitive harm suffered by any CLEC over a failure to obtain any term or condition of any of the Eschelon agreements at issue in this docket.

RESPONSE:

Please see response to Eschelon Data Request to Staff No. 13 because the answer would be the same.