

**Qwest**  
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**Adam L. Sherr**  
Attorney  
Policy and Law Department

August 21, 2002

Ms. Carole J. Washburn, Secretary  
Washington Utilities and  
Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7254

Re: Docket No. UT-990385  
Request for approval of negotiated agreement between Qwest Corporation  
and Eschelon Telecom, Inc.

Dear Ms. Washburn:

In accordance with the Interpretive and Policy Statement issued on June 28, 1996 in Docket No. UT-960269, please find enclosed three (3) copies of the negotiated Settlement Agreement between Qwest and Eschelon Telecom, Inc. for filing with the Commission. Qwest seeks approval of the bracketed language in the enclosed agreement.

Qwest has previously submitted hundreds of agreements with CLECs in Washington for approval by the Commission under Section 252(e)(1). In addition to the filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252 of the Telecommunications Act of 1996.

As the Commission is aware, earlier this year questions were raised regarding Qwest's decisions about these other, unfiled agreements. Notably, a complaint was filed by the Minnesota Department of Commerce alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. The Commission addressed this issue in the 39th Supplemental Order in Docket Nos. UT-003022/003040, paragraphs 289-95. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

Qwest has at all times operated in good faith in filing with the Commission interconnection agreements and amendments, and is committed to full compliance with the Act. After this issue arose Qwest modified its processes and standards for all new agreements with CLECs. Qwest advised the Commission of this policy by letter on May 9, 2002. Under this policy Qwest is filing all new contracts, agreements or letters of understanding between Qwest Corporation and

CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. Qwest believes that this commitment goes well beyond the requirements of Section 252(a). For example, this policy reaches details of business-to-business carrier relations that Qwest does not think the Act requires to be filed with state commissions for approval. However, Qwest is committed to follow this standard until the FCC issues a decision on the appropriate standard in this area. (Unless requested by the Commission, Qwest has not been filing routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.)

Older agreements provide a more complicated case. Qwest naturally has been concerned about any potential penalty liability with regard to "second-guessing" of its past filing decisions, especially in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of good faith. Specifically, Qwest has reviewed its currently effective agreements with CLECs in Washington that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, commission order, or otherwise. These agreements have previously been provided in response to the Commission Bench Request in Docket Nos. UT-003022/003040. Qwest has applied its broad new review standard to all such agreements and as a result is now filing those agreements for approval under Section 252 of the Act. The agreement attached to this letter for filing is one of those agreements.

Qwest asks the Commission to approve the attached agreement such that, to the extent any active provisions of such agreements relate to Section 251(b) or (c), they are formally available to other CLECs under Section 252(i). For ease of review, Qwest has bracketed those terms and provisions in the agreement which arguably relate to Section 251(b) or (c) services, and which have not otherwise been terminated or superseded by agreement or Commission order. Qwest will make the bracketed provisions available under Section 251(i).

As noted above, Qwest has not been and is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services provided in approved interconnection agreements, such as signaling and call-related databases. The parties may execute a form contract memorializing the provision of such services offered and described in the interconnection agreement. Upon the Commission's request, Qwest can provide examples of routine paperwork, order documents, or form contracts for its review.

Qwest realizes that its voluntary decision to submit the attached agreement does not bind the Commission with respect to the question of Qwest's past compliance. However, Qwest submits that it has acted in good faith. In any event, Qwest's actions here should remove any argument with respect to Qwest's compliance with Section 252 now and going forward.

Qwest requests that the Commission approve the bracketed portion of this agreement as soon as reasonably practicable. Qwest reserves its rights to demonstrate that the agreement need not

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have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any bracketed terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i).

Qwest will also be posting the agreement on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Washington of the bracketed terms and conditions. This will facilitate the ability of CLECs to request terms and conditions, subject to the Commission's decision approving the bracketed provisions of the agreement filed here.

Given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential, Qwest has redacted those terms, such as confidential settlement amounts relating to settlement of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers and facility locations, which relate solely to the specific CLEC and do not relate to Section 251(b) or (c) services.

The enclosed agreement does not discriminate against non-party carriers. It is consistent with the public interest, convenience, and necessity. It is also consistent with applicable state law requirements, including Commission orders regarding interconnection issues.

The Order on Arbitration Procedure also requests that a proposed order accompany the filing. Qwest requests a waiver of that requirement, and is not providing one with this filing, as the Commission has, in the past, used its own format for Orders. If this is not satisfactory to the Commission, please contact me and I will forward a proposed order immediately.

Sincerely,

Adam L. Sherr

ALS/llw

Enclosures

cc: Dennis Ahlers, Eschelon Telecommunications

## Settlement Agreement

This Settlement Agreement (this "Agreement") is dated March 1, 2002 (the "Effective Date"), and is between Qwest Corporation, a Colorado corporation ("Qwest"), and Eschelon Telecom, Inc., a Delaware corporation ("Eschelon"). Qwest and Eschelon are referred to collectively as the "Parties" and individually as the "Party."

Whereas, Qwest is an incumbent local exchange carrier operating in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming;

Whereas, Eschelon is a competitive local exchange carrier operating in the states of Arizona, Colorado, Minnesota, Oregon, Utah, and Washington, as well as Nevada;

Whereas, each of the Parties seeks to avoid delay and costly litigation and to resolve certain issues in dispute.

Qwest and Eschelon therefore agree as follows:

1. Definitions. When used in this Agreement, the following terms have the following meanings:

"Act" means the Telecommunications Act of 1996.

"CABS" means carrier access billing system.

"Claims" means, individually and collectively, each and every claim, action, causes of action, suit, demand, damage, judgment, execution, cost, expense, liability, controversy, setoff, omission, and loss of any kind whatsoever, whether known or unknown, whether in law or in equity, including any related interest expenses that may have accrued in connection therewith, from the beginning of time through February 28, 2002, that Eschelon or Qwest has, had or may have against the other Party arising out of the Disputes through February 28, 2002.

"Disputes" means, for the time period through February 28, 2002: (1) disputes concerning service credits; (2) disputes concerning consulting and network-related services provided by Eschelon to Qwest; (3) CABS disputes concerning switched access minutes of use; (4) disputes concerning payment of UNE-E line and UNE-E Non-Recurring Charge credits; and (5) disputes concerning Eschelon's claims of anti-competitive conduct and unfair competition.

"Interconnection Agreement" means the interconnection agreements and all amendments thereto filed with the PUC in each state in which Eschelon obtains services and facilities from Qwest.

"PUC" means state public utility commission.

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"Terminated Agreements" has the meaning set forth in paragraph 3(b) below.

"UNE-E" means Unbundled Network Element – Eschelon, a product purchased by Eschelon under its Interconnection Agreement, as amended in November of 2000 and July and August of 2001.

"UNE-P" means Unbundled Network Element – Platform.

2. Release of Claims. (a) For valuable consideration to be paid by Qwest to Eschelon as provided in Paragraph 3(a) below, Eschelon hereby fully waives, releases, acquits, and discharges Qwest and its associates, owners, stockholders, successors, assigns, partners, parents, insurance carriers, bonding companies, affiliates and subsidiaries, and each of their respective directors, officers, agents, employees and representatives from any and all Claims arising out of the Disputes through February 28, 2002.

(b) In consideration of the waiver and release described in Paragraph 2(a) above, Qwest hereby fully waives, releases, acquits, and discharges Eschelon and its associates, owners, stockholders, successors, assigns, partners, parents, insurance carriers, bonding companies, affiliates and subsidiaries, and each of their respective directors, officers, agents, employees and representatives from any and all Claims arising out of the Disputes through February 28, 2002.

3. Actions to be Taken. The Parties shall undertake the following actions:

(a) On the Effective Date, Qwest shall provide payment, using credits, to Eschelon in an amount equal to [REDACTED] with offsets as follows: (i) apply [REDACTED] against UNE-E charges and associated charges that are not disputed by the Parties as of February 28, 2002; and (ii) apply and credit [REDACTED] — which sum represents [REDACTED] less [REDACTED] against all current and non-disputed invoices that are payable by Eschelon to Qwest. Eschelon shall determine how the offset amounts in each of clauses (i) and (ii) will be applied and shall so designate in writing to Qwest within ten days of the Effective Date.

(b) For convenience and various reasons, the Parties hereby terminate the following agreements ("Terminated Agreements"), as of the Effective Date:

- (1) Feature Letter dated November 15, 2000;
- (2) Implementation Plan Letter dated November 15, 2000;
- (3) Escalation procedures and business solution letter dated November 15, 2000;
- (4) Confidential Purchase Agreement dated November 15, 2000;
- (5) Confidential Amendment to Confidential/Trade Secret Stipulation dated November 15, 2000;
- (6) Third Amendment to Confidential/Trade Secret Agreement dated July 3, 2001;
- (7) Status of switched access minute reporting letter dated July 3, 2001; and
- (8) Implementation Plan dated July 31, 2001/August 1, 2001.

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(c) Attachment 3 to the Implementation Plan dated July 31, 2001/August 1, 2001 relating to UNE-E will continue to bind the Parties unless the Parties agree otherwise in a writing executed by both Parties. Eschelon agrees that Qwest will file this Attachment 3 as an amendment to the Interconnection Agreement.

(d) The Billing/Usage letter dated November 15, 2000 will be terminated when the Parties agree the manual process is terminated and Eschelon moves to the mechanized process described in Paragraph 3(g) below.

(e) Qwest shall make the UNE-E offering and existing business processes related to the UNE-E offering available to Eschelon through the current term of the Interconnection Agreement Amendment Terms dated November 15, 2000.

(f) Within ten days of the Effective Date, the Parties shall form a joint team. The purpose of the joint team shall be to develop a mutually acceptable plan (the "Plan") to convert UNE-E lines to UNE - P. Qwest and Eschelon shall use best efforts to cooperate in converting UNE-E lines to UNE-P in accordance with the Plan.

(g) Qwest and Eschelon shall work closely together in moving Eschelon from a manual to a mechanized process so that Eschelon can bill for access on UNE-P. The Parties shall work closely for 60 days to validate working telephone numbers and associated minutes of use, and will terminate the manual process after these 60 days with the consent of both Parties. If the parties are unable to agree on the date of the termination of the manual process, then the Parties shall follow the procedures described in paragraph 8 below.

(h) Level 3 Escalation. Upon execution of this Agreement, Eschelon's February 8, 2002 request for a Level 3 escalation will be deemed permanently withdrawn.

4. Successors and Assigns. The terms and conditions contained in this Agreement shall inure to the benefit of and be binding upon, the respective successors, affiliates and assigns of the Parties.

5. Assignment of Claims. No Party has assigned or transferred to any person any Claim, or portion of any Claim, released or discharged by this Agreement.

6. Filing of Agreement. The Parties agree that negotiation of this Agreement is subject to Rule 408 of the Federal Rules of Evidence, and similar rules at the state level. Notwithstanding the foregoing, nothing in this Agreement shall prevent a Party from asserting a claim against the other Party to enforce this Agreement and nothing herein shall bar a Party from filing this Agreement as it deems necessary and appropriate in order to comply with state or federal law, or in connection with a relevant legal or regulatory proceeding in which Qwest or Eschelon is a party. Qwest and Eschelon expressly contemplate that this Agreement will be filed

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with the PUCs in its region in states where Eschelon is certified and has an interconnection agreement.

7. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties. This Agreement can be amended or changed only in a writing or writings executed by both of the Parties, except that this Agreement must not be amended or modified in any way by electronic message or e-mail communications.

8. Dispute Resolution. Each Party reserves its rights to resort to all remedies, including seeking resolution by a PUC or a court, agency, arbitrator, or regulatory authority of competent jurisdiction.

9. Notices. Except as otherwise provided in this Agreement, every notice or other communication to a Party required, permitted or contemplated under this Agreement must be in writing and (a) served personally, in which case delivery will be deemed to occur at the time and on the day of delivery; (b) delivered by certified mail or registered mail, postage prepaid, return receipt requested, in which case delivery will be deemed to occur the day it is officially recorded by the U.S. Postal Service as delivered to the intended recipient; or (c) delivered by next-day delivery to a U.S. address by recognized overnight delivery service such as Federal Express, in which case delivery will be deemed to occur upon receipt. Upon prior agreement of the Parties' designated recipients identified below, notice may also be provided by facsimile. Except as otherwise provided in this Agreement, every notice or other communication must be delivered using one of the alternatives mentioned in this paragraph and must be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving written notice in compliance with this paragraph:

If to Qwest:

Qwest Corporation  
Attention: General Counsel  
1801 California Street, Suite 5200  
Denver, Colorado 80202  
Tel: (303) 672-2700  
Fax: (303) 295-7046

If to Eschelon:

Eschelon Telecom, Inc.  
Attention: General Counsel  
730 2<sup>nd</sup> Avenue, Suite 1200  
Minneapolis, MN 55402  
Tel: (612) 436-6692  
Fax: (612) 436-6792

10. No Waiver. The Parties agree that their entering into this Agreement is without prejudice to, and does not waive, any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial, or other forum addressing any matters other than the Claims.

11. No Admission. The Parties acknowledge and agree that they have legitimate disputes relating to the issues described in this Agreement, and that the resolution reached in this Agreement represents a compromise of the Parties' positions. Therefore, the Parties deny any wrongdoing or liability and expressly agree that resolution of the issues

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contained in this Agreement cannot be used against the other Party in any manner or in any forum (except for claims related to breaches of this Agreement).

12. Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which is an original and all of which together constitute one and the same instrument.

**EXECUTION PAGE FOLLOWS**

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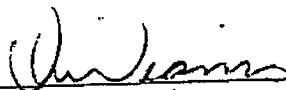
**Counterpart Execution Page**  
**Settlement Agreement**

The undersigned are executing this Settlement Agreement on the date stated in the introductory clause.

**QWEST CORPORATION**

By:   
Name: Dana Filip  
Title: Senior Vice President

**ESCHELON TELECOM, INC.**

By:   
Name: Clifford D. Williams  
Title: Chief Executive Officer

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