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October 5, 2007

Carole J. Washburn  
Washington Utilities and Transportation  
Commission  
1300 South Evergreen Park Drive SW  
P.O. Box 47520  
Olympia, WA 98504

*Via FedEx & E-File*

Re: In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom of Washington, Inc. Pursuant to 47 U.S.C. § 252 of the Federal Telecommunications Act of 1996  
Docket No. UT-063061

Dear Ms. Washburn:

Enclosed for filing are the original and five copies of a Corrected Page of Qwest Attachment 2, along with the same page from Qwest's Attachment 2 filing and Eschelon's Attachment 2 filing ("Evidence in the Record Supporting Eschelon's Jeopardy Proposals – Issues 12-71, 12-72, & 12-73"). The corrected information is key Eschelon language that was included in Eschelon's Attachment 2 to its Brief but omitted from the Eschelon Language column of Qwest's Attachment 2, even though Qwest did not mention any changes to that column.

By order dated July 27, 2007, Qwest was granted leave to file a response to Attachment 2 to Eschelon's post hearing brief concerning the "jeopardies" issue (Issue Nos. 12-71, 12-72, and 12-73), such response to be limited to citations to the record supporting Qwest's position regarding the issues addressed in Attachment 2. See Order 13. On August 6, Qwest filed its response, attaching Qwest's responses to Eschelon's Attachment 2.

There was no reply opportunity in Washington but, since then, Eschelon has reviewed "Qwest Responses to Attachment 2 to Eschelon's Post-Hearing Brief" in connection with preparing briefing in another pending arbitration matter. As a result, Eschelon has identified an error in that document that, due to the Qwest deletion of language critical to Eschelon's jeopardy proposal, Eschelon has corrected in the enclosed Eschelon Language column of Qwest's Attachment 2 on the Corrected Page. In describing its Attachment 2, Qwest identified what appeared to be the only changes that Qwest made to Eschelon's Attachment 2:

In order to set forth its position on these issues clearly, Qwest has attached a revised version of Eschelon's Attachment 2 entitled Qwest's Response to Attachment 2 to Eschelon's Post-Hearing Brief. Qwest has revised Attachment 2 to delete Eschelon's characterization of Qwest's position and, via underlined text, to set forth Qwest's comments and record evidence in response to Eschelon's claims.

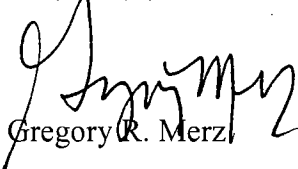
Qwest Corporation's Response to Eschelon's Post-Hearing Brief at ¶ 6. Because Qwest identified no other changes, it appeared that the first two columns ("Eschelon Language" and "Evidence Supporting Eschelon Language – Including Qwest Documents & Admissions") were unchanged.<sup>1</sup>

In addition to the changes it identified, however, Qwest also deleted a key portion of Eschelon's proposed language from the matrix. A comparison of page 10 of Eschelon's matrix with page 9 of the Qwest matrix shows that Qwest has deleted from the first column (titled "Eschelon's Language") the following Eschelon proposed language: "12.2.7.2.4.4.1 . . . CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day". Qwest then inserted, in its new "Qwest's Evidence" column, its argument referring to delay, without showing Eschelon's corresponding language in the same Row stating delay will be avoided under Eschelon's proposal by allowing a new appointment time on the same day. For the Commission's and ALJ's convenience, Eschelon's original Attachment 2, page 10, Qwest's original Attachment 2, page 9, and a corrected version of Qwest's Attachment 2, page 9, which restores the omitted language, accompany this letter.

The language omitted by Qwest responds to Qwest's claim that Eschelon's proposal with respect to jeopardies would result in delay when Qwest fails to provide an FOC before delivery by providing that, even when an FOC is not provided the parties' will use their best efforts to accept the service. Without this language, Qwest's Attachment 2 fails to accurately reflect Eschelon's proposal. Accordingly, Eschelon requests that the accompanying corrected page 9 be substituted for the page 9 that is included in Qwest's Attachment 2.

Thank you for your consideration of this matter.

Very truly yours,

  
Gregory R. Merz

GRM/jlp

Enclosures

cc: hard copy & email

[PClark@wutc.wa.gov](mailto:PClark@wutc.wa.gov) (w/encls.)

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<sup>1</sup> Due to the matrix format, an electronic comparison of the two documents is difficult. It is unclear whether Qwest made any other changes that it did not mention. Making changes without highlighting and describing them imposes an unnecessary burden on the other party to find the needle in the haystack.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF HENNEPIN    )

Joyce Pedersen, being first duly sworn, deposes and says on oath that on the 5th day of October, 2007, she served the attached:

*Letter to Washington Utilities and Transportation Commission, dated October 5, 2007*

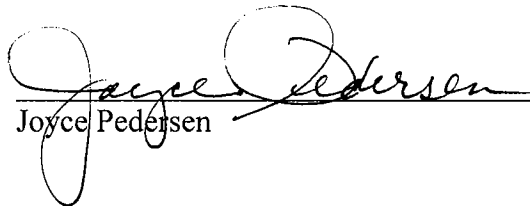
Re:    In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon, Inc.  
      Pursuant to 47 U.S.C. § 252 of the Federal Telecommunications Act of 1996  
      Docket No. UT-063061

upon the following:

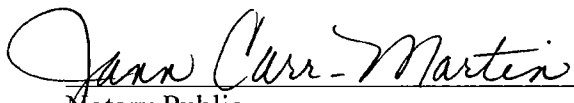
Lisa A. Anderl  
Associate General Counsel  
Qwest Services Corporation  
1600 17th Avenue  
Room 3206  
Seattle, WA 98191

by arranging for the deposit of a true and correct copy thereof in a sealed envelope duly addressed to the above, prepaid, via FedEx overnight delivery and via e-mail; and upon the following via e-mail only:.

Maura.Peterson@qwest.com  
Mark.Reynolds3@qwest.com  
Mary.Neill@qwest.com  
Jason.Topp@qwest.com  
Dianne.Barthel@qwest.com  
JDevaney@perkinscoie.com

  
\_\_\_\_\_  
Joyce Pedersen

Subscribed and sworn to before me this  
5th day of October, 2007.

  
\_\_\_\_\_  
Notary Public  
GP:2272586 v1



QWEST RESPONSES TO ATTACHMENT 2 TO ESCHELON POST-HEARING BRIEFEVIDENCE IN THE RECORD SUPPORTING ESCHELON'S JEOPARDY PROPOSALS – ISSUES 12-71, 12-72 & 12-73  
(Qwest comments underlined)

ESCHELON LANGUAGE <sup>1</sup>	EVIDENCE SUPPORTING ESCHELON LANGUAGE – INCLUDING QWEST DOCUMENTS & ADMISSIONS	<u>QWEST'S EVIDENCE*</u>
<p>12.2.7.2.4.4.1 . . . CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day</p>	<p>Chronology (pages 1-17 of Eschelon Exhibit BJJ-5) based on Ms. Johnson's personal knowledge of the facts.<sup>33</sup></p> <p>Johnson Exh. No. 117 contains more than one hundred examples of orders for which Qwest did not send any FOC after a Qwest facility jeopardy, and for which Eschelon nevertheless not only used best efforts to accept the circuit but also succeeded in doing so.<sup>34</sup></p> <p>Qwest admitted, if Qwest classifies a delay as Eschelon-caused (CNR), this pushes out the due date for loop orders at least three days.<sup>35</sup> In other words, the Parties cannot "set a new appointment time on the same day" if Qwest erroneously classifies a jeopardy as CNR because Qwest then requires CLEC to request a due date three days later.</p> <p>Qwest testified this Eschelon language is Qwest's current process;<sup>36</sup> therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them.</p>	<p>Qwest discussed this exhibit extensively in its testimony. <u>Exhibit 117 demonstrates that 80% of the time, Eschelon is able to accept service on time without an FOC. The exhibit also demonstrates that Eschelon's claimed concern about delayed due dates is illusory because Qwest and Eschelon technicians work hard to deliver circuits as soon as possible and could not have delivered earlier even if an earlier due date had been set.</u></p>

<sup>34</sup> Exh. No. 117. See Starkey, Exh. No. 71, pp. 219-222. Eschelon seeks no delay. Eschelon commits in the ICA to use its best efforts to accept service at the time of attempted delivery or on the same day, even when Qwest sends no FOC (see 12.2.7.2.4.4.1 – "nonetheless"), and Eschelon provided evidence in Exh. No. 117 that Eschelon does accept service when it is able to do so despite Qwest's failure to provide an FOC.

<sup>35</sup> Starkey Exh. No. 71 223:2-8. When a jeopardy is classified as a CLEC-caused (CNR) jeopardy for unbundled loop orders, the CLEC is required to supplement its order by requesting a new due date that is at least *three days after* the date of the supplemental order. Albersheim, Exh. No. 73, Vol. 1, 36:20 – 37:2. A jeopardy properly classified as caused by Qwest does not require the CLEC to supplement the due date and does not build in this three day delay. Starkey, Exh. No. 71, p. 223:6-8.

<sup>36</sup> Albersheim, Exh. No. 73, MN TR Vol. 1, 34:16-23 [quoted at Starkey, Exh. No. 71, 224:note 734; see *id.* pp. 222-224].

**QWEST RESPONSES TO ATTACHMENT 2 TO ESCHELON POST-HEARING BRIEF**

**(Qwest comments underlined)**

EVIDENCE IN THE RECORD SUPPORTING ESCHELON'S JEOPARDY PROPOSALS – ISSUES 12-71, 12-72 & 12-73

ESCHELON LANGUAGE <sup>1</sup>	EVIDENCE SUPPORTING ESCHELON LANGUAGE – INCLUDING QWEST DOCUMENTS & ADMISSIONS	QWEST'S EVIDENCE*
	Chronology (pages 1-17 of Eschelon Exhibit BJJ-5) based on Ms. Johnson's personal knowledge of the facts. <sup>33</sup>	
<p>Johnson Exh. No. 117 contains more than one hundred examples of orders for which Qwest did not send any FOC after a Qwest facility jeopardy, and for which Eschelon nevertheless not only used best efforts to accept the circuit but also succeeded in doing so.<sup>34</sup></p> <p>Qwest admitted, if Qwest classifies a delay as Eschelon-caused (CNR), this pushes out the due date for loop orders at least three days.<sup>35</sup> In other words, the Parties cannot "set a new appointment time on the same day" if Qwest erroneously classifies a jeopardy as CNR because Qwest then requires CLEC to request a due date three days later.</p> <p>Qwest testified this Eschelon language is Qwest's current process;<sup>36</sup> therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them.</p>		<p>Qwest discussed this exhibit extensively in its testimony. Exhibit 117 demonstrates that 80% of the time, Eschelon is able to accept service on time without an FOC. The exhibit also demonstrates that Eschelon's claimed concern about delayed due dates is illusory because Qwest and Eschelon technicians work hard to deliver circuits as soon as possible and could not have delivered earlier even if an earlier due date had been set.</p>

<sup>34</sup> Exh. No.117. See Starkey, Exh.No. 71, pp. 219-222. Eschelon seeks no delay. Eschelon commits in the ICA to use its best efforts to accept service at the time of attempted delivery or on the same day, even when Qwest sends no FOC (see 12.2.7.2.4.4.1 – "nonetheless"), and Eschelon provided evidence in Exh. No. 117 that Eschelon does accept service when it is able to do so despite Qwest's failure to provide an FOC.

<sup>35</sup> Starkey Exh. No. 71 223:2-8. When a jeopardy is classified as a CLEC-caused (CNR) jeopardy for unbundled loop orders, the CLEC is required to supplement its order by requesting a new due date that is at least *three days after* the date of the supplemental order. Albersheim, Exh. No. 73, Vol. 1, 36:20 – 37:2. A jeopardy properly classified as caused by Qwest does not require the CLEC to supplement the due date and does not build in this three day delay. Starkey, Exh. No. 71, p. 223:6-8.

<sup>36</sup> Albersheim, Exh. No. 73, MN TR Vol. 1, 34:16-23 [quoted at Starkey, Exh. No. 71, 224:note 734; see *id.* pp. 222-224].

ATTACHMENT 2 TO ESCHELON POST-HEARING BRIEF EVIDENCE IN THE RECORD SUPPORTING ESCHELON'S JEOPARDY PROPOSALS – ISSUES 12-71, 12-72 & 12-73		
ESCHELON LANGUAGE <sup>1</sup>	EVIDENCE SUPPORTING ESCHELON LANGUAGE – INCLUDING QWEST DOCUMENTS & ADMISSIONS	QWEST EVIDENCE THAT THE PIDS/PAP PROVIDE SOMETHING DIFFERENT
12.2.7.2.4.4.1 . . . CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day	<p>management on these issues;<sup>31</sup> Ms. Renee Albersheim of Qwest did not.<sup>32</sup> Ms. Johnson prepared the jeopardies Chronology (pages 1-17 of Eschelon Exhibit BJJ-5) based on Ms. Johnson's personal knowledge of the facts.<sup>33</sup></p> <p>Johnson Exh. No. 117 contains more than one hundred examples of orders for which Qwest did not send any FOC after a Qwest facility jeopardy, and for which Eschelon nevertheless not only used best efforts to accept the circuit but also succeeded in doing so.<sup>34</sup></p> <p>Qwest admitted, if Qwest classifies a delay as Eschelon-caused (CNR), this pushes out the due date for loop orders at least three days.<sup>35</sup> In other words, the Parties cannot "set a new appointment time on the same day" if Qwest erroneously classifies a jeopardy as CNR because Qwest then requires CLEC to request a due date three days later.</p>	None

<sup>34</sup> Exh. No.117. See Starkey, Exh.No. 71, pp. 219-222. Eschelon seeks no delay. Eschelon commits in the ICA to use its best efforts to accept service at the time of attempted delivery or on the same day, even when Qwest sends no FOC (see 12.2.7.2.4.4.1 – "nonetheless"), and Eschelon provided evidence in Exh. No. 117 that Eschelon does accept service when it is able to do so despite Qwest's failure to provide an FOC.

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<sup>36</sup> Albersheim, Exh. No. 73, MN TR Vol. 1, 34:16-23 [quoted at Starkey, Exh. No. 71, 224:note 734; see *id.* pp. 222-224].