

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
David Boyd  
Thomas Pugh  
Phyllis Reha

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of Eschelon  
Telecom, Inc. for Arbitration of an  
Interconnection Agreement with Qwest  
Corporation Pursuant to 47 U.S.C. § 252(b)

ISSUE DATE: February 4, 2008

DOCKET NO. P-5340,421/IC-06-768

ORDER CLARIFYING ARBITRATION  
ISSUES AND REQUIRING FILED  
INTERCONNECTION AGREEMENT

**PROCEDURAL HISTORY**

On May 26, 2006, Eschelon Telecom, Inc. (Eschelon) petitioned the Commission to arbitrate revisions to its interconnection agreement (ICA) with Qwest Corporation (Qwest) pursuant to the federal Telecommunications Act of 1996 (the 1996 Act).<sup>1</sup> The Commission referred the matter to the Office of Administrative Hearings (OAH).<sup>2</sup>

On January 16, 2007, the OAH issued its Arbitrators' Report recommending a basis for resolving the arbitrated issues.

On March 30, 2007, the Commission issued its ORDER RESOLVING ARBITRATION ISSUES, REQUIRING FILED INTERCONNECTION AGREEMENT, OPENING INVESTIGATIONS AND REFERRING ISSUE TO CONTESTED CASE PROCEEDING.

On June 2, 2007, Eschelon and Qwest asked the Commission to clarify how best to implement its March 30, 2007 Order with respect to three issues.

On November 9, 2007, these two parties filed comments on the three issues.

On November 16, 2007, the Minnesota Department of Commerce (the Department) filed comments while Eschelon and Qwest filed reply comments.

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<sup>1</sup> Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

<sup>2</sup> ORDER REFERRING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR ARBITRATION, ASSIGNING ARBITRATORS, AND GIVING NOTICE OF FIRST PREHEARING CONFERENCE (June 23, 2006).

The Commission met on December 18, 2007, to consider this matter.

## FINDINGS AND CONCLUSIONS

### I. BACKGROUND

The federal Telecommunications Act of 1996 was designed to open telecommunications markets to competition, including the local exchange market.<sup>3</sup> To this end, the 1996 Act requires each incumbent local exchange carrier (incumbent LEC or ILEC) to enter into an interconnection agreement with any requesting competitive local exchange carrier (CLEC) establishing the terms under which they would connect their networks to permit each carrier's customers to call the other's. An ILEC must do the following:

- Permit CLECs to purchase its services at wholesale prices and resell them to retail customers.
- Permit CLECs to interconnect with its network on just, reasonable and nondiscriminatory terms.
- Offer unbundled network elements (UNEs) – that is, offer to rent certain elements of its network to CLECs without requiring the CLEC to also rent unwanted elements – on just, reasonable, and nondiscriminatory terms,<sup>4</sup> including cost-based rates.<sup>5</sup>

A CLEC desiring to provide local exchange service can seek agreements with an ILEC related to interconnection with the ILEC's network, the purchase of finished services for resale, and the purchase of the ILEC's UNEs and other elements.<sup>6</sup> If the ILEC and the CLEC cannot reach agreement, either party may ask the State commission to arbitrate unresolved issues and to order terms consistent with the 1996 Act.<sup>7</sup> In particular, parties may ask a state Commission to determine the cost of UNEs, interconnection, and methods of obtaining access to UNEs.<sup>8</sup>

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<sup>3</sup> See conference report accompanying S. 652.

<sup>4</sup> 47 U.S.C. § 251(c).

<sup>5</sup> 47 U.S.C. § 252(d)(1)(A)(i); 47 C.F.R. § 51.501 *et seq.*

<sup>6</sup> 47 U.S.C. §§ 251(c), 252(a).

<sup>7</sup> 47 U.S.C. § 252(b).

<sup>8</sup> 47 C.F.R. §§ 51.501, 51.505.

## **II. FUTURE PROCEEDINGS**

The 1996 Act requires parties to submit “any interconnection agreement adopted by negotiation or arbitration . . . for approval to the State commission.”<sup>9</sup> While the 1996 Act requires arbitration decisions to contain a schedule for implementation,<sup>10</sup> the Act does not mandate any specific period for implementation.

The Commission had previously established a deadline for the parties to file their completed agreement,<sup>11</sup> but irreconcilable differences of interpretation prompted the parties to postpone their filing and ultimately to seek Commission clarification on three issues. The parties have, however, agreed upon language governing the rest of the issues in the interconnection agreement.

Given the substantial progress already made, the Commission concludes that the parties should be able to complete their drafting and file a final interconnection agreement containing all arbitrated and negotiated terms within 15 days. The Commission will then review the entire agreement for compliance with the relevant law and consistency with the public interest as required by the 1996 Act.<sup>12</sup>

### **SPECIFIC FINDINGS AND CONCLUSIONS**

#### **I. CONTESTED ISSUES**

Eschelon and Qwest submitted 143 pages of contested issues for the arbitrators’ consideration,<sup>13</sup> addressing 37 topics, including the following:

11. Transit Record: Charge and Bill Validation
22. Cross Connect/Unbundled Customer Controlled Rearrangement Element
29. Expedited Orders

The arbitrators addressed each of these topics in their report. While parties filed exceptions regarding Topics 11 and 29, the Commission adopted the arbitrators’ recommended language regarding these issues. Regarding Topic 22, the arbitrators recommended adopting language proposed by the Department; no party took exception to this recommendation, and the Commission adopted it.

Eschelon and Qwest now ask the Commission to clarify its Order with respect to Topics 11 and 29, and to revise its Order with respect to Topic 22. These issues are addressed below.

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<sup>9</sup> 47 U.S.C. § 252(e)(1).

<sup>10</sup> 47 U.S.C. § 252(c).

<sup>11</sup> March 30, 2007 Order at 6, 24.

<sup>12</sup> See 47 U.S.C. § 252(e).

<sup>13</sup> Revised Minnesota Disputed Issues List (October 31, 2006).

## II. ISSUES

### **Topic 11: When Qwest bills Eschelon for connecting calls from Eschelon's customers to third party carriers, what information does Eschelon have a right to demand of Qwest? (ICA Section 7.6.4)**

#### **A. The Issue**

The interconnection agreement in dispute governs transactions between Eschelon and Qwest. Of necessity, the agreement must also govern how these two parties interact with other telecommunications service providers.

Eschelon's customers will occasionally call someone who receives telecommunications service from a carrier other than Eschelon or Qwest. Qwest has a duty to connect the call ("Transit Traffic"<sup>14</sup>) to the third party carrier. Qwest has the right to bill Eschelon for providing this service. And Eschelon has the right to receive from Qwest certain information ("Category 11-01-XX records") supporting the bill. But the parties disagree about the amount of information Eschelon has the right to receive.

During the arbitration Eschelon proposed the following language:

*7.6.3 If the non-transit provider requests records pursuant to Section 7.6.1 or 7.6.2, the Parties will charge the same rate for Category 11-01-XX records sent in an EMI mechanized format.<sup>15</sup> These records are used to provide information necessary for each Party to bill the Originating Carrier. The charge listed in Exhibit A of this Agreement is applicable to each transit record that meets the definition of a billable record.*

*7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic the billed party may request sample 11-01-XX records for specified offices. These records will be provided by the transit provider in EMI mechanized format to the billed party at no charge, because the records will not be used to bill a Carrier. The billed party will limit requests for sample 11-01-XX data to a maximum of once every six months, provided that Billing is accurate.*

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<sup>14</sup> Proposed Interconnection Agreement § 4 – Definitions.

<sup>15</sup> "EMI" refers to Exchange Message Interface, the approved format for exchanging routing and other information about a call, as defined by the Alliance for Telecommunications Industry Solutions.

*7.6.4 Qwest will provide the non-transit provider, upon request, bill validation detail including but not limited to: originating and terminating CLLI code,<sup>16</sup> originating and terminating Operating Company Number, originating and terminating state jurisdiction, number of minutes being billed, rate elements being billed, and rates applied to each minute.*

Qwest agreed on the language of Section 7.6.3, but disputed the rest.

## **B. The March 30, 2007 Order**

In its March 30, 2007 Order, the Commission adopted the arbitrators' recommendation on this issue.<sup>17</sup> The arbitrators had made the following recommendation:

85. If Qwest provides 11-01-XX records free of charge to CLECs for the purpose of billing originating carriers, it is hard to see why Qwest should not be required to provide sample records free of charge to Eschelon, once every six months, for the purpose of verifying Qwest's bills. Eschelon's language for Section 7.6.3.1 should be adopted.

86. Eschelon has not directly responded to Qwest's assertion that it would have to make programming changes to provide the information Eschelon is requesting for originating carriers in Section 7.6.4, beyond saying it wants the same "type" of information Qwest currently provides. It is not clear whether the 11-01-XX records referenced in Section 7.6.3.1 contain the same information as that required by Eschelon's proposed language for Section 7.6.4. Qwest should provide to Eschelon whatever records are referenced in 7.3.6.1 for the purpose of verifying bills. If something different would be required by Section 7.6.4, it should not be adopted.

## **C. Positions of the Parties**

All parties recognize that the Commission has approved Sections 7.6.3. and 7.6.3.1, and that Qwest now has a duty to provide Eschelon with Category 11-01-XX records for Transit Traffic without charge. But the parties disagree about whether the Commission has approved Section 7.6.4, and about the full extent of Qwest's duty to provide records without charge.

### **1. Qwest**

Qwest argues that the information listed in Section 7.6.4 exceeds what is included in Category 11-01-XX records, citing testimony filed in another jurisdiction. Because the Commission adopted the arbitrators' recommendation that "If something different [than Category 11-01-XX records] would be required by Section 7.6.4, it should not be adopted," Qwest argues that this section should be excluded from the interconnection agreement.

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<sup>16</sup> A Common Language Location Identifier code (CLLI code) identifies a piece of telecommunications equipment's location and type.

<sup>17</sup> March 30, 2007 Order at 6-7.

## **2. Eschelon**

Eschelon opposes this argument on procedural grounds. First, Eschelon argues that the scope of the industry term “Category 11-01-XX records” is a factual question. Qwest bore and still bears the burden of proof regarding factual matters. Qwest failed to make a factual showing regarding the content of Category 11-01-XX records during the evidentiary phase of these proceedings, and should not be permitted to supplement the record now.

Moreover, Eschelon argues, the weakness of Qwest’s interpretation of the arbitrators’ recommendation is demonstrated by the fact that Qwest initially took exception to the very recommendation that Qwest now cites for support. This demonstrates that Qwest believed, as Eschelon still believes, that the effect of the arbitrators’ recommendation was to support the adoption of Section 7.6.4.

Finally Eschelon argues that Qwest’s position on this issue is tantamount to a late-filed petition for reconsideration. Because the time for such petitions has long past, Eschelon asks the Commission to reject it.

## **3. The Department**

The Department largely supports Qwest’s position. But the Department offers a third alternative for the Commission’s consideration: adopt Section 7.6.4 but clarify that the language does not require Qwest to provide any more information than is required by Section 7.6.3.1.

### **D. Commission Decision**

The Commission interprets the arbitrators’ recommendations on this issue in the same manner as the Department and Qwest.

All parties recognized that Qwest should provide some data in support of its bills for Transit Traffic without charge. But during the arbitration Qwest argued, among other things, that collecting and distributing certain data would be burdensome and no party contested this assertion. Consequently the arbitrators focused on issues of burden. Noting that Qwest was already collecting and distributing Category 11-01-XX records to other carriers without charge, the arbitrators concluded that Qwest would bear little additional burden to provide this information to Eschelon as well. But having little evidence regarding whether the data listed in Section 7.6.4 was included in Category 11-01-XX records, or the burden of producing this data otherwise, the arbitrators declined to recommend compelling Qwest to provide any additional information.

Thus, while Eschelon accurately observes that Qwest bore the burden of proof, this is not dispositive of the issue. Qwest did take the initiative to assert that providing certain records would be burdensome, and no party disputed that claim. The arbitrators took that concern into account in limiting Qwest’s burden to providing Category 11-01-XX records – defined in this context as the records “Qwest provides ... free of charge to CLECs for the purpose of billing originating carriers....” Arbitrators’ Report at ¶ 85.

The arbitrators never explicitly recommended adopting the language of Section 7.6.4. To the contrary, they explicitly recommended rejecting it unless it was determined that the language did

not require anything more than was already required by Section 7.3.6.1. In proposing to incorporate that limitation into the language of Section 7.6.4, the Department observed that this change basically rendered Section 7.6.4 superfluous. The Commission agrees.

Rather than approve superfluous language for Section 7.6.4, the Commission will simply decline to approve any language for that section at all. In so deciding, the Commission does not adopt any party's theory about what Category 11-01-XX records entail. The Commission merely decides that, to the extent that Eschelon wants Transit Traffic data beyond the Category 11-01-XX records, Eschelon will need to negotiate for them separately.

**Topic 22: How may Qwest terminate its duty to provide cross-connects to Eschelon? (ICA Section 9.3.3.8.3)**

**A. The Issue**

A "demarcation point" refers to the location where a telecommunications service provider's network "cross-connects" to the property owner's wiring; this location may be distinct from the "minimum point of entry" where a provider's facilities enter the owner's property.

Owners of property serving multiple tenants often have substantial wiring beyond any local service provider's control. If an owner takes control of all the telecommunications facilities on the property, the minimum point of entry becomes the new demarcation point. In this event, providers may desire to move their points of interconnection to that point as well. Past interconnection agreements have imposed upon Qwest the duty to move a CLEC's cross-connections upon request, provided the CLEC pays for the service. But no CLEC has yet requested the service.

During the arbitration Qwest asked to eliminate its obligation to stand ready to provide this service. Eschelon argued that Eschelon should not have to surrender the discretion to order this service while other CLECs retain that discretion as part of their interconnection agreements that have not yet expired. Eschelon and Qwest each proposed language designed to meet their respective concerns.

**B. The March 30, 2007 Order**

Ultimately the Commission adopted compromise language proposed by the Department and recommended by the arbitrators.

**C. Positions of the Parties**

Following the Commission's decision, Qwest and Eschelon agreed to language that would govern this issue in six states, including Minnesota. The language would appear at Section 9.3.3.8.3 as follows:

If CLEC elects to move its service to the new minimum point of entry, CLEC may either perform its own cross-connect or request that Qwest perform the cross-connect. If Qwest performs the cross-connect, appropriate time and material charges are applicable.

The parties ask the Commission to adopt their negotiated language. The Department has no objection to the proposed language.

#### **D. Commission Decision**

The Telecommunications Act of 1996 directs the Commission to approve negotiated terms unless they discriminate against telecommunications carriers who are not party to the agreement, or unless they are inconsistent with the public interest, convenience and necessity.<sup>18</sup> While it is unclear whether this law continues to apply after the Commission has rendered a decision on a provision, the Commission recognizes the merits of deferring to the parties' preferences unless there is a policy reason not to; indeed, the Legislature encourages voluntary resolution of issues between competing providers.<sup>19</sup>

Here no party has alleged that the proposed language would discriminate against any other party, or that it conflicts with the public interest, convenience and necessity. Finding no such defects, the Commission will approve it.

**Topic 29: What terms should govern Qwest's duty to expedite an order on behalf of Eschelon's customer? (ICA Sections 7.3.5.2, 9.1.12.1, 9.23.4.5.6 and 12.2.1.2)**

#### **A. The Issue**

As administrator of its wholesale telecommunications network, Qwest processes orders for UNEs on behalf of CLECs as well as its own retail operations. As part of this process, Qwest must address how to respond to requests to expedite an order. The parties disagree about how to implement the Commission's decisions in this matter.

#### **B. The March 30, 2007 Order**

In its March 30, 2007 Order, the Commission accepted Qwest's offer to expedite the provision of traditional voice-grade local phone service (called "plain old telephone service," "POTS" or "non-design service") for both CLECs and its own retail operations at no additional cost. The Commission authorized Eschelon to demand that Qwest expedite orders for other services ("design services") as well, but directed Eschelon to reimburse Qwest for its costs (or, until the cost figure is established, pay a \$100 fee). This fee would be in addition to the cost for the order itself. Otherwise, the Commission accepted the arbitrators' recommendation.<sup>20</sup>

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<sup>18</sup> 47 U.S.C. § 252(e)(2); see *In the Matter of the Petition of AT&T Communications of the Midwest, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-442, 421/IC-03-759, ORDER RESOLVING ARBITRATION ISSUES AND REQUIRING FILED INTERCONNECTION AGREEMENT (November 18, 2003) at 7; March 30, 2007 Order at 12-13. But see also 47 U.S.C. § 252(e)(3) (in reviewing agreements, states may also establish or enforce other requirements of state law).

<sup>19</sup> Minn. Stat. § 237.011(8).

<sup>20</sup> March 30, 2007 Order at 6-7.



The language of the Arbitrators' Report, however, is subject to differing interpretation. On this issue, the arbitrators stated as follows:

219. The [Change Management Process] by which Qwest reached its current position is not the controlling factor on whether emergency situations should create an exception to charging an additional fee for expedited ordering. The more important question is whether Qwest's process is discriminatory. It appears that it is not.

220. First, an expedite for a non-design service is likely to be less involved than one for a design service, so the charge difference has some justification. Second, in addition to the "design" versus "non-design" services distinction, Qwest services may be classified as wholesale versus retail. Qwest proposes to offer expedites under certain emergency conditions for non-design services for free. This applies to both retail non-design services (POTS) and wholesale non-design services (Resale POTS, QPP<sup>21</sup>). Similarly on the other hand, Qwest would charge the expedite fee, even for emergencies, for both retail design services (Private Lines)<sup>22</sup> and wholesale design services (Unbundled Loops). Thus, for an Eschelon end user POTS customer, Eschelon can obtain an emergency expedite at no charge. And both Eschelon and a Qwest retail customer will pay the expedite charge for any expedite request. There is no discrimination. On this point, Qwest's position and language should be adopted.

221. As to pricing, Eschelon's position should be adopted....

### **C. Positions of the Parties**

#### **1. Qwest**

According to Qwest, the arbitrators addressed two aspects of expedited orders: price terms and non-price terms. Whereas the arbitrators agreed with Eschelon regarding price, Qwest argues that the statement in Paragraph 220 that "On this point, Qwest's position and language should be adopted" demonstrates that the arbitrators sided with Qwest regarding the non-price terms.

Consequently Qwest proposes adopting the following language, based largely on the language Qwest had proposed during the arbitration:

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<sup>21</sup> "QPP" refers to Qwest Platform Plus, a commonly-requested combination of UNEs incorporating the use of 1) a circuit connecting a retail customer's premises to a routing computer ("switch") in Qwest's local office, 2) the switching function, and 3) a circuit to route the signal to other switches, including switches owned by a CLEC.

<sup>22</sup> "Private line" refers to a circuit dedicated to transmitting signals between two points, in contrast to circuits that connect two points via the shared public switched telecommunications network.

7.3.5.2 Expedite requests for LIS trunk<sup>23</sup> orders are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest's Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates.<sup>24</sup> Expedite charges as identified in Exhibit A apply per order for every day that the Due Date interval is shortened, based on the standard interval in the SIG or based on ICB criteria for Due Dates.

7.3.5.2.1 CLEC will request an expedite for LIS trunks, including an expedited due Date, on the Access Service Request (ASR).<sup>25</sup>

7.3.5.2.2 The request for expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedite charges at Qwest's wholesale web site.<sup>26</sup>

9.1.12.1 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest's Service Interval Guide (SIG), Exhibit C or Individual Case Basis (ICB) Due Dates as applicable.

9.1.12.1.1 CLEC will request an expedite for designed Unbundled Network Elements, including an expedited Due Date, on the Local Service Request (LSR)<sup>27</sup> or the Access Service Request (ASR), as appropriate.

9.1.12.1.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedites at Qwest's wholesale web site.

## 2. Eschelon

According to Eschelon, the arbitrators addressed not merely price and non-price terms, but a variety of aspects of expedited orders. In particular, Eschelon argues, the arbitrators addressed

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<sup>23</sup> "Local interconnection service trunk" or "LIS trunk" refers to a main cable connecting the networks of two local service providers.

<sup>24</sup> "Individual Case Basis" refers to contract terms that Qwest would generate upon request as set forth in the proposed interconnection agreement's Exhibit I.

<sup>25</sup> "Access Service Request" refers to the industry guideline forms and documentation that a CLEC uses to request facilities and services to permit the CLEC to access Qwest's network.

<sup>26</sup> See <http://www.qwest.com/wholesale/>

<sup>27</sup> "Local Service Request" refers to industry guideline forms and documentation that a CLEC uses to buy local telecommunications services from Qwest for resale to the CLEC's retail customer.

Eschelon's contention that Qwest discriminated when it expedited orders for POTS without charge while charging to expedite orders for other UNEs. The statement "On this point, Qwest's position and language should be adopted" merely demonstrates that the arbitrators agreed with Qwest that this practice did not represent undue discrimination. Eschelon now concedes this point, but does not concede the merits of the rest of Qwest's proposed language.

Eschelon proposes the following language instead:

*12.2.1.2 Expedites. CLEC may request a Due Date earlier than the applicable Due Date interval for that product or service. Requests for expedites can be made either prior to, or after, submitting CLEC's service request.*

*12.2.1.2.1 Intentionally Left Blank.*

*12.2.1.2.2 Qwest will grant and process CLEC's expedite request, but the expedite charges in Exhibit A will apply, unless the need for the expedite is caused by Qwest.*

*12.2.1.2.3 Nothing in this Section 12.2.1.2 alters whether a non-recurring installation charge in Exhibit A applies to the CLEC order pursuant to the terms of the applicable section of this Agreement. The expedite charge, if applicable, is separate from the installation charge.*

### **3. The Department**

The Department observes that the language proposed by Eschelon and Qwest contain many differences that the arbitrators never addressed. Consequently the Department concludes that neither party can meaningfully claim the arbitrators' endorsement.

That said, the Department identified three points of concern regarding Qwest's proposed language.

First, the Department notes that Qwest's preferred language refers to "the Pre-Approved Expedite Process in Qwest's Product Catalog for expedite charges at Qwest's wholesale web site." See Qwest's proposed Sections 7.3.5.2.2 and 9.1.12.1.2. The arbitrators never discussed Qwest's Product Catalog in the context of expediting orders. Elsewhere in their report, however, the arbitrators recommend that the Commission decline to incorporate references to Qwest's Product Catalog into the interconnection agreement. Qwest can change this catalog without Commission approval simply through use of its Change Management Process, a process that has proven unsatisfactory in the past. Arbitrators' Report at ¶¶ 10-22. Instead, the arbitrators recommended writing any relevant terms from the catalog directly into the interconnection agreement. The Department also notes how past and current provisions in the catalog conflict with Commission-approved interconnection agreement terms.

Second, the Department notes that Qwest's preferred language refers to Qwest's Service Interval Guide, which Qwest also maintains on its wholesale web site.<sup>28</sup> See Qwest's proposed Sections

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<sup>28</sup> See <http://www.qwest.com/wholesale/guides/sig/>

7.3.5.2.2 and 9.1.12.1.2. Again the arbitrators never discussed this guide in the context of expediting orders, but in other contexts the arbitrators recommended writing the relevant terms into the interconnection agreement in lieu of incorporating references to the guide. Arbitrators' Report at ¶¶ 10-22. The Department notes that the relevant service interval terms can instead be found in the proposed interconnection agreement's Service Interval Tables at Exhibit C.

Third, the Department notes that Qwest's proposed language would limit the manner in which Eschelon could ask to expedite an order. Currently Eschelon can ask to expedite an order simply by placing a phone call after submitting an order. In contrast, Qwest would require the use of an Access Service Request or a Local Service Request. See proposed Sections 7.3.5.2.1 and 9.1.12.1.1. The Department can find no justification for such limitations.

In sum, if the Commission were to adopt Qwest's language, the Department would recommend omitting the objectionable language noted above.

#### **D. Commission Decision**

The Commission finds merit in the Department's analysis. The challenges the Department identifies in Qwest's proposed language prompt the Commission to favor Eschelon's language instead.

Eschelon's language better reflects the status quo modified to incorporate the decisions from the May 30, 2007 Order. The language establishes Eschelon's discretion to seek to expedite an order, and preserves Eschelon's discretion to seek to expedite an order that has already been placed. The language clarifies that any applicable charge for expediting an order would be in addition to the charge for the order itself. The language cites to charges set forth in other parts of the interconnection agreement (Exhibit A) that will be subject to Commission review and approval, rather than referring to separate documents that may not be subject to Commission control.

And, perhaps most importantly, the language avoids raising issues not addressed by the arbitrators or the Commission. For these reasons, the Commission will adopt Eschelon's proposed language governing Qwest's duty to expedite orders upon request.

The Commission will so order.

#### **ORDER**

1. The Commission clarifies the arbitrated issues as discussed in the body of this Order and set forth below.
2. *Topic 11*: Eschelon's proposed paragraph 7.6.4 regarding Transmit Traffic data is rejected.
3. *Topic 22*: The following language regarding Qwest's obligation to provide cross-connect service is approved:

*9.3.3.8.3. If CLEC elects to move its service to the new minimum point of entry, CLEC may either perform its own cross-connect or request that Qwest perform the cross-connect. If Qwest performs the cross-connect, appropriate time and material charges are applicable.*

4. *Topic 29: The following language regarding Qwest's duty to provide UNEs on an expedited basis is approved:*

*12.2.1.2 Expedites. CLEC may request a Due Date earlier than the applicable Due Date interval for that product or service. Requests for expedites can be made either prior to, or after, submitting CLEC's service request.*

*12.2.1.2.1 Intentionally Left Blank.*

*12.2.1.2.2 Qwest will grant and process CLEC's expedite request, but the expedite charges in Exhibit A will apply, unless the need for the expedite is caused by Qwest.*

*12.2.1.2.3 Nothing in this Section 12.2.1.2 alters whether a non-recurring installation charge in Exhibit A applies to the CLEC order pursuant to the terms of the applicable section of this Agreement. The expedite charge, if applicable, is separate from the installation charge.*

5. The parties shall submit a final interconnection agreement containing all arbitrated and negotiated terms to the Commission for review pursuant to 47 U.S.C. § 252(e) within 15 days of this Order.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary



(SEAL)

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STATE OF MINNESOTA)  
  )SS  
COUNTY OF RAMSEY )

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 4th day of February, 2008 she served the attached

ORDER CLARIFYING ARBITRATION ISSUES AND REQUIRING FILED INTERCONNECTION AGREEMENT.

MNPUC Docket Number: P-5340,421/IC-06-768

- XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid
- XX By personal service
- XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners  
Carol Casebolt  
Peter Brown  
Marcia Johnson  
Kate Kahlert  
Mark Oberlander  
AG  
Kevin O'Grady  
Linda Chavez - DOC  
Julia Anderson - OAG  
John Lindell - OAG

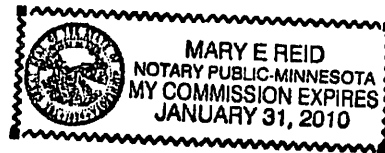
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 4<sup>th</sup> day of

February, 2008

Mary E. Reid  
Notary Public



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