



December 23, 2008  
Via Email and Overnight Delivery  
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David W. Danner, Executive Director and Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

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

Dear Mr. Danner:

Enclosed as supplemental authority are an original and eight copies of the recent Order of the Minnesota Administrative Law Judge in Minnesota Docket Number P-421/C-07-370 & P-421/C-07-371 (“MN Order”). The docket was established to consider conversions (arbitration issues 9-43 & 9-44) and commingled arrangements (arbitration issues 9-58-9-59). The electronic copy is being provided by e-mail.

The MN Order addresses the very same issues as presented in this docket. It states (at pages 7-8): “Qwest’s argument that the Commission lacks authority is based more on semantics than on any substantive analysis of a state commission’s legal authority to address the terms and conditions under which an ILEC is obligated to provide commingled facilities. It does not appear to the ALJ that Integra has advocated contract language that would impermissibly require Qwest to provide transport or any other non-251 facility as a UNE or at a TELRIC rate.<sup>1</sup> What Integra has disputed are the duplicative operational processes involved in ordering, provisioning, billing, and

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<sup>1</sup> See Integra Memorandum at 6 (UNE component of a commingled EEL is priced at TELRIC; the non-UNE may be priced at a tariffed or other non-UNE rate). See also *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Arbitrator’s Report at PP 46, 48 (Dec. 15, 2004), adopted by Minnesota Public Utilities Commission, Docket No. P-5692, 421/IC-04-549 (Mar. 14, 2005) (declining to characterize non-251 elements and services as UNEs or to require their provision at TELRIC rates); *Qwest Corp. v. Arizona Corporation Commission*, 496 F.Supp.2d 1069 (D. Ariz. 2007) (state commission cannot require unbundling of non-251 elements or require their provision at TELRIC rates as a matter of state law); *Bellsouth Telecommunications, Inc., v. Kentucky Public Service Commission*, 2007 WL 2736544 (E.D. Ky.) (state commission cannot arbitrate rates for switching, a non-251 element).

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repairing UNEs separately from interstate access services, maintaining these processes constitute an operational barrier to obtaining access to a UNE. The FCC has clearly stated that these are the types of issues to be addressed in interconnection agreements, and the Administrative Law Judge accordingly concludes the Commission has the legal authority under §252 to resolve issues in this docket relating to the terms and conditions under which Qwest provides commingled elements and services.”

Sincerely,



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Enclosures

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