

ORIGINAL



0000003439

BEFORE THE ARIZONA CORPORATION COMMISSION

255P

COMMISSIONERS

RECEIVED

Arizona Corporation Commission

DOCKETED

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

2004 JUL -7 P 1: 16

JUL - 7 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY [Signature]

UTILITIES DIVISION STAFF,

DOCKET NO. T-03406A-03-0888

Complainant,

v.

ESCHALON TELECOM OF ARIZONA, INC.

Respondent.

PROCEDURAL ORDER

BY THE COMMISSION:

On December 8, 2003, the Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") filed a Complaint against Eschelon Telecom of Arizona, Inc. ("Eschelon"). On December 16, 2003, Staff filed an Errata to the Staff Complaint. The Staff Complaint alleges that Eschelon violated 47 U.S.C. § 252(e) of the Telecommunications Act of 1996 (the "Act") and A.A.C. R14-2-1506(A) and (C) by failing to file certain documents with the Commission that Staff alleges are interconnection agreements between Eschelon and Qwest Corporation ("Qwest").

On December 24, 2003, Staff and Eschelon filed a Stipulation to extend the time for Eschelon to answer the Complaint.

On May 20, 2004, Eschelon filed a Motion to Dismiss and Answer. Eschelon argues that neither Section 252(e) of the Act or A.A.C. R14-2-1506 explicitly requires that CLECs, like Eschelon, file such agreements, and further that some of the documents identified by Staff are not interconnection agreements and thus not subject to filing requirements.

On June 7, 2004, Staff filed a Response to Eschelon's Motion. Staff argues that Eschelon is mistaken as to its obligation to file interconnection agreements and that the question of which documents meet the definition of an interconnection agreement is a mixed question of fact and law.

Eschelon did not file a Reply to Staff's Response. It appear the Commission has jurisdiction to determine Eschelon's filing requirements. To resolve the issues raised in the Complaint, the

1 Commission must engage in statutory interpretation of Section 252(e) and A.A.C. R14-2-1506, as
2 well as a factual determination of whether the documents identified by Staff meet the legal definition
3 of interconnection agreement.

4 IT IS THEREFORE ORDERED that a Procedural Conference to discuss setting the matter for
5 hearing and the procedures that should govern this matter shall commence on July 20, 2004 at 2:00
6 p.m. at the Commission's Phoenix offices, 1200 West Washington, Phoenix, Arizona.

7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthenticated
8 Communications) applies to this proceeding as the matter is now set for public hearing.

9 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
10 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

11 DATED this 2nd day of July, 2004.

12
13
14 
15 JANE L. RODDA
16 ADMINISTRATIVE LAW JUDGE
17

18 Copies of the foregoing mailed/delivered
19 This 2nd day of July, 2004 to:

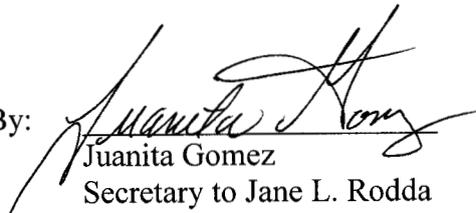
20 Thomas Campbell
21 Michael T. Hallam
22 Lewis and Roca, LLP
23 40 North Central Avenue
24 Phoenix, AZ 85004
25 Attorneys for Eschelon

26 Dennis D. Ahlers
27 Senior Attorney
28 Eschelon Telecom of Arizona, Inc.
730 second Avenue South, Suite 90
Minneapolis, MN 55402-2456

Christopher Kempley, Chief Counsel
Gary Horton
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

1 Ernest Johnson, Director
Utilities Division
2 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
3 Phoenix, Arizona 85007

4 ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Suite Three
5 Phoenix, Arizona 85004-1104

6
7 By: 
8 Juanita Gomez
Secretary to Jane L. Rodda
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28