

ORIGINAL



BEFORE THE ARIZONA CORPORAT.

RECEIVED

MARC SPITZER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF THE  
COMPLAINT OF ESCHELON  
TELECOM OF ARIZONA, INC.  
AGAINST QWEST CORPORATION

Docket No.: T-01051B-03-0668

QWEST CORPORATION'S MOTION  
TO DISMISS AND ANSWER TO  
COMPLAINT

I. INTRODUCTION

1. Qwest Corporation ("Qwest") hereby files its motion to dismiss and answer to Eschelon Telecom of Arizona, Inc.'s ("Eschelon") September 11, 2003 Complaint. The Complaint contains a claim pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 252(i), and a claim of discriminatory rates. Both claims are without merit.

2. In its first claim Eschelon alleges that Qwest refused to provide Eschelon with the same pricing that Qwest has given to McLeod and that such refusal violated Section 252(i), which allows a carrier to opt into the terms and conditions in another carrier's interconnection agreement provided certain conditions are met. Eschelon makes this allegation in complete disregard of the factual record, which establishes that (1) Qwest did not refuse to provide McLeod pricing to Eschelon; (2) Eschelon purchases a product that contains different features, is offered pursuant to a contract applying to a different time period, and applies for different volumes from the product McLeod purchases; and (3) Eschelon has made no attempt to negotiate an interconnection agreement amendment consistent with its pricing request.

3. In its second claim, Eschelon alleges that Qwest engaged in discriminatory pricing as to Eschelon. Qwest denies this claim. Qwest's obligation under federal and

1 state law is to charge Eschelon the rates in the interconnection agreement in effect  
2 between the parties. At all times relevant to this proceeding, Qwest has charged Eschelon  
3 lawful rates as contained in the interconnection agreement between the parties. Eschelon  
4 did not properly avail itself of its right to negotiate a new agreement despite repeated  
5 attempts by Qwest to engage Eschelon in negotiations. Thus, Qwest has charged  
6 Eschelon lawful, non-discriminatory rates.

## 7 II. MOTION TO DISMISS

8 4. Pursuant to Arizona Administrative Code R14-3-101 *et seq.* and Arizona  
9 Rules of Civil Procedure 12(b)(1) and (6), Qwest moves to dismiss the above-captioned  
10 complaint on the grounds that (a) Eschelon has failed to allege any factual basis for  
11 invoking the Commission's jurisdiction to resolve rate disputes, and (b) Eschelon has  
12 failed to state a claim on which relief can be granted.

13 5. The first allegation in Eschelon's Complaint is that Qwest has refused to  
14 give Eschelon the same rate for UNE-Star that it agreed to provide McLeod. A simple  
15 review of the documents relied upon by Eschelon in making its allegations reveals that  
16 Qwest never refused to amend Eschelon's pricing. Eschelon cites November 8, 2002 and  
17 February 14, 2003 letters from Qwest to Eschelon as support for the allegation that  
18 "Qwest has repeatedly refused to [offer the McLeod prices] unless Eschelon agrees to all  
19 other terms and conditions of the Qwest/McLeod USA Amendment . . . ." Complaint,  
20 ¶ 18.

21 6. Even a cursory reading of these letters makes it clear that Qwest has never  
22 refused to modify its interconnection agreement with Eschelon. Instead, Qwest raised  
23 some valid concerns related to Eschelon's purported opt-in request and asked Eschelon to  
24 negotiate an interconnection agreement amendment. For example, the November 8, 2002  
25 letter from Qwest states clearly that Qwest believes Eschelon has not properly requested  
26 an opt-in and describes certain related terms and conditions that would be included in an  
27 opt into the McLeod pricing. After recounting these concerns, Qwest states in that letter:  
28

1 We are unable to ascertain from your letter (a) whether  
2 Eschelon understands that the service it would be receiving if  
3 it chose to opt-in to the McLeod agreement would differ from  
4 the service it is receiving today, and (b) whether Eschelon  
5 would agree to the same terms and conditions to which  
6 McLeod has agreed. If so, please contact Larry Christensen,  
7 at 303-896-4686, to initiate the necessary arrangements,  
8 including appropriate contractual amendments.

9 7. This response is in substance identical to the response Qwest has given  
10 Eschelon every time Eschelon has made such a request. There has never been any follow-  
11 up by Eschelon to initiate negotiations to alter its interconnection agreement, other than a  
12 phone call by Mr. Dennis Ahlers to Larry Christensen on April 4, 2003, in which Mr.  
13 Ahlers asked some general questions about Qwest's opt-in policy and on the issues raised  
14 by Qwest and promised to follow up with Mr. Christensen. See Affidavit of Larry  
15 Christensen, attached as Exhibit A. Mr. Ahlers did not follow up, and instead Eschelon  
16 filed this Complaint.

17 8. Qwest has told Eschelon that there were a number of issues associated with  
18 Eschelon's opt-in request. For example, the McLeod agreement provides for modified  
19 pricing through December 31, 2003, at which point the pricing agreement terminates.  
20 Eschelon asserts in its Complaint that the effective dates of the agreement are irrelevant,  
21 and that it should be able to obtain pricing for the term of its own contract. Eschelon cites  
22 no law, policy, or precedent in support of this position. Additionally, as Eschelon's  
23 Complaint acknowledges, the features purchased by Eschelon vary from the features  
24 sought by McLeod, resulting in an incremental difference of \$0.35 per UNE-P more for  
25 Eschelon than McLeod. It was not until August 14, 2003 that Eschelon agreed to pay the  
26 incremental amount, as opposed to simply demanding the McLeod rates. See, Letter from  
27 Dennis D. Ahlers to Qwest Corporation, August 14, 2003, attached as Exhibit B. Third,  
28 McLeod made volume purchase commitments that Eschelon has not made. In order to  
amend Eschelon's interconnection agreement to reflect Eschelon's requested pricing,  
Qwest explained to Eschelon that each of these issues needed to be resolved through

1 negotiation. Eschelon did not attempt to engage in such negotiations, despite Qwest's  
2 express willingness to do so.

3 9. The Act sets forth a specific process for addressing such issues.  
4 Specifically, a CLEC may request to opt into an existing interconnection agreement  
5 pursuant to Section 252(i) or the CLEC may request to negotiate an amendment to its  
6 interconnection agreement pursuant to Section 251(c)(1).

7 10. Eschelon has not taken either step. While it purports to want to opt into  
8 McLeod pricing provisions, Qwest has reasonably pointed out that the McLeod prices do  
9 not apply to the service that Eschelon orders. As the Complaint acknowledges, Eschelon  
10 receives and pays for certain features beyond those purchased by McLeod and for which  
11 the McLeod pricing applies. Until August 14, 2003, Eschelon never clarified whether it  
12 was requesting McLeod pricing for all of the features it currently receives (a request  
13 Qwest would reject) or is requesting some sort of hybrid pricing (a request that is not  
14 really an opt-in, but rather a request for an amendment to the Eschelon interconnection  
15 agreement). Had Qwest accepted the opt-in request, the resulting amendment would have  
16 altered the Eschelon service package, and Qwest would no longer have provided the  
17 additional features and listings for which Eschelon had previously negotiated.

18 11. In its Complaint, Eschelon now asserts that it wishes to obtain the McLeod  
19 price, adjusted by \$0.35 to reflect differences in the products Eschelon and McLeod  
20 purchase. This is not an opt-in request pursuant to 252(i), but rather a request for an  
21 amendment to the Eschelon interconnection agreement that clearly should be negotiated.  
22 The record establishes that Qwest is willing to negotiate an appropriate amendment.  
23 Eschelon has simply never followed up on Qwest's repeated invitations to enter into such  
24 negotiations.

25 12. As set forth in the attached Declaration of Larry Christensen, Qwest has  
26 recently offered and Eschelon accepted an amendment that incorporates the McLeod  
27 pricing. *See* Unbundled Network Element Platform Pricing Agreement, Sept. 26, 2003,  
28 attached as Exhibit C. This offer also includes the \$0.35 increment for additional services

1 that Eschelon has acknowledged it desires to maintain. Thus, it appears as though the  
2 issues in dispute here have been narrowed to a single question – whether Eschelon is  
3 entitled to receive the McLeod pricing for a term longer than the term contained in the  
4 McLeod agreement. The answer is no.<sup>1</sup>

5 13. The expiration date of an agreement is clearly a related term to the pricing  
6 portion of the agreement. This is consistent with what Qwest has told Eschelon since  
7 February 2002, and Eschelon’s position to the contrary is unsupported by fact or law.

8 14. Eschelon claims that the term of the agreement cannot be related to price  
9 because both Eschelon and McLeod started out with identical prices but different  
10 expiration dates. Eschelon’s logic does not hold. While Qwest was willing to agree to a  
11 termination date of December 2003 with McLeod and December 2005 with Eschelon  
12 when rates were \$30.80, it does not follow that Qwest would or should be willing to agree  
13 to a price reduction for Eschelon that lasts two years longer than the reduction extended to  
14 McLeod. Thus, Qwest’s willingness to negotiate a rate of \$20.61 with McLeod was  
15 integrally related to the fact that this rate would expire on December 31, 2003. It does not  
16 follow that Qwest would be willing to extend this rate for two additional years, which  
17 indeed it is not. Eschelon is entitled to the McLeod rates, if at all, only until December  
18 31, 2003.

19 15. Common sense dictates that the term of the agreement must be integrally  
20 related to the prices contained in the agreement. If it were not, absurd results would  
21 follow. For example, in this case, if Eschelon were permitted to extend the McLeod

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22  
23 <sup>1</sup> Qwest does not believe Eschelon’s request for a “backdated” effective date and refund is  
24 properly before this Commission, and therefore believes that only the expiration date is  
25 properly at issue. Eschelon has demonstrated no legal or equitable right to a retroactive  
26 change to the agreement because it has not even attempted to properly opt-in or negotiate  
27 an amendment. To the extent Eschelon’s claim is for money damages, the Commission  
28 has no independent judicial authority to render such a judgment. *See Trico Electric  
Cooperative, Inc. v. Ralston*, 67 Ariz. 358, 363, 196 P.2d 470, 473 (1948) (“No judicial  
power is vested in or can be exercised by the corporation commission unless that power is  
expressly granted by the constitution.”).

1 pricing until 2005, another carrier could negotiate an interconnection agreement with an  
2 expiration of 2008, then opt into the Eschelon pricing that would expire in 2005, and  
3 effectively extend it for another three years. A third carrier could later negotiate different  
4 prices to expire in 2010, and in 2007 could opt into the Eschelon pricing. It is easy to see  
5 how carriers could “leap frog” the expiration dates and essentially preserve these rates in  
6 perpetuity. Qwest does not believe that is consistent with the opt-in provisions of the Act,  
7 or with the Commission’s policy. That strategy should not be condoned by allowing  
8 Eschelon to extend the McLeod pricing beyond December 31, 2003.

9 16. The Parties do not disagree that an amendment is required to change the  
10 rates for Eschelon’s UNE-Star service. The Act imposes an obligation on Qwest to  
11 negotiate with CLECs regarding amendments to interconnection agreements. Qwest has  
12 indicated repeatedly it is ready and willing to engage in negotiations. Qwest welcomes an  
13 effort on the part of Eschelon to engage in such negotiation. However, Eschelon should  
14 not be permitted to use a regulatory complaint to usurp the negotiation process and Qwest  
15 urges this Commission to dismiss Eschelon’s Complaint as not ripe and without merit.

16 WHEREFORE, Qwest Corporation moves to dismiss the Complaint pursuant to  
17 Arizona Rules of Civil Procedure 12(b)(1) and (6), and requests that the Complaint be  
18 dismissed with prejudice.

### 19 III. ANSWER

20 Qwest responds to the specific allegations in the Complaint as follows:

#### 21 Introduction and Parties

22 17. Qwest denies the allegations in paragraph 1 of the Complaint, and  
23 specifically denies that it was obligated to charge Eschelon different rates than are  
24 contained in the parties’ interconnection agreement.

25 18. The allegations of paragraphs 2 and 3 of the Complaint consist primarily of  
26 legal conclusions, and therefore no response is necessary beyond the general discussion in  
27 Qwest’s Motion to Dismiss. If any response is required, Qwest denies these allegations.  
28



1 Eschelon has not alleged a violation of any provisions within the interconnection  
2 agreement.

3 24. Qwest admits the allegations in paragraphs 13 through 17 with respect to the  
4 existence of amendments and approvals by the Commission, and Qwest affirmatively  
5 states that these documents speak for themselves. Qwest disagrees with, and therefore  
6 denies the descriptions of the agreements and the implications urged by Eschelon. For  
7 example, in paragraph 15 Eschelon implies that pricing and termination dates as between  
8 McLeod and Qwest and Echelon and Qwest must necessarily always be parallel. For  
9 reasons explained herein, that is simply not accurate. A rate that Qwest was willing to  
10 agree to through December 31, 2003 is not the same as a rate that Qwest would  
11 necessarily be willing to agree to for two additional years.

12 25. Answering paragraph 18, Qwest admits that Eschelon has made inquiries  
13 regarding UNE-Star rates offered to McLeod. Qwest denies that it has refused to provide  
14 those rates to Eschelon and denies that it would only agree to such rates in the event  
15 Eschelon agreed to *all* terms and conditions in the McLeod amendment. To the contrary,  
16 Qwest has raised legitimate questions regarding Eschelon's requests and expressed a  
17 willingness to negotiate. Eschelon by contrast has failed to specify the precise terms it is  
18 seeking from Qwest, has refused to respond to questions from Qwest, and has refused to  
19 negotiate. Instead of following the opt-in or negotiation procedures set forth in the Act,  
20 Eschelon seeks a retroactive, Commission-imposed change to the rates contained in its  
21 interconnection agreement, which is improper.

22 **Claim Pursuant to Section 252(i) of the Act**

23 26. With respect to the allegations in paragraphs 19 through 21, Qwest states  
24 that Section 252(i), 47 C.F.R. 51.809, and the cited Supreme Court decision speak for  
25 themselves. Qwest denies any suggestion that Eschelon properly attempted to avail itself  
26 of any rights it might have under applicable law, and denies any implication that Qwest  
27 acted improperly.

1           27. Qwest denies the allegations in paragraph 22, and specifically denies that  
2 the volume, term, and services requested under the agreement are not related to the pricing  
3 provisions.

4           28. Qwest denies the allegations in paragraph 23. The rates in the McLeod  
5 agreement are and were related to the volume commitments contained therein.  
6 Nevertheless, as set forth in the Declaration of Larry Christensen, Qwest has determined  
7 that for purposes of compromise and to resolve the disputes herein, it is willing to offer  
8 the McLeod pricing to Eschelon without the volume commitments.

9           29. Qwest denies the allegations in paragraph 24. As set forth in paragraphs 13  
10 through 15 above, the termination date of the McLeod agreement was integrally related to  
11 Qwest's agreement to reduce McLeod's rates. Obviously, an agreement to accept lower  
12 rates for 15 months is far different from an agreement to do so for 39 months, and an  
13 agreement to the former does not mandate acceptance of the latter.

14           30. Qwest denies the allegations in paragraph 25. Eschelon did not  
15 acknowledge the difference in services or the \$0.35 rate difference when it made the  
16 request to opt into the McLeod prices.

17           31. Qwest admits the allegations in paragraph 26.

18           32. Qwest denies the allegations in paragraph 29, except that Qwest agrees that  
19 Section 252(i) of the Act imposes certain opt-in requirements. Qwest states that Section  
20 252(i) and the correspondence exchanged between the parties speak for themselves.  
21 Qwest specifically denies that Eschelon ever attempted to properly opt into the McLeod  
22 agreement, or that Qwest was obligated to offer Eschelon terms and conditions from the  
23 McLeod agreement without including legitimately related terms. Eschelon's actions  
24 establish that it did not want to opt-in to the McLeod rates with the McLeod set of features  
25 and listing options. Under those circumstances, it was appropriate for Qwest to request  
26 negotiations, which Eschelon refused to enter into.



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**VI. REQUESTED RELIEF**

Qwest respectfully requests that this Commission:

39. Dismiss Eschelon's Complaint for failure to state a claim upon which relief can be granted.

40. Dismiss Eschelon's Complaint based on lack of jurisdiction.

41. Deny Eschelon's other claims for relief.

42. Grant such further relief as it deems reasonable and necessary.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of October, 2003.

  
\_\_\_\_\_  
Timothy Berg, Esq.  
Theresa Dwyer, Esq.  
FENNEMORE CRAIG

-and-

Todd L. Lundy  
QWEST CORPORATION  
1801 California Street, Suite 4900  
Denver, Colorado 80202

*Attorneys for Qwest Corporation*

ORIGINAL +15 copies filed this  
9<sup>th</sup> day of October, 2003:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ 85007

COPY hand-delivered this 10<sup>th</sup> day of October, 2003:

Chris Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ 85007

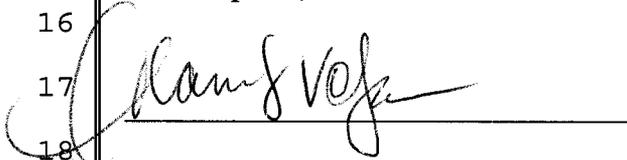
1 Lyn Farmer, Chief Administrative Law Judge  
2 Hearing Division  
3 ARIZONA CORPORATION COMMISSION  
4 1200 West Washington  
5 Phoenix, AZ 85007

5 Ernest Johnson, Director  
6 Utilities Division  
7 ARIZONA CORPORATION COMMISSION  
8 1200 West Washington  
9 Phoenix, AZ 85007

8 COPY mailed this 10<sup>th</sup> day of October, 2003:  
9

10 Thomas H. Campbell  
11 Michael T. Hallam  
12 LEWIS AND ROCA LLP  
13 40 N. Central Avenue  
14 Phoenix, Arizona 85004

13 Dennis D. Ahlers  
14 ESCHELON TELECOM, INC.  
15 730 Second Avenue South, Suite 1200  
16 Minneapolis, MN 55402-2456

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18 1466730.1/67817.354

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# **EXHIBIT**

**A**

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE )  
COMPLAINT OF ESCHELON ) DOCKET NO. T-01051B-03-0668  
TELECOM OF ARIZONA, INC. )  
AGAINST QWEST CORPORATION )  
ESCHELON TELECOM OF ARIZONA, ) Declaration of Larry Christensen  
INC., )  
..... )  
)  
)  
)  
)

1. My name is Larry Christensen. I am employed by Qwest and my title is Director – Interconnection Agreements. I make this declaration based on my own personal knowledge.
2. I have read Qwest’s Answer to Eschelon’s Complaint and the factual allegations contained therein are true and correct to the best of my knowledge.
3. I have been a party to internal discussions with regard to Eschelon’s request to opt-in to the McLeod rates. Qwest had a number of questions concerning Eschelon’s October 29, 2002 letter requesting to opt-in to McLeod’s rate amendment. The letter was not clear about the service package Eschelon expected or that Eschelon would accept legitimately related terms and conditions. Because Eschelon had feature and listing options in its agreement that were absent from the McLeod agreement, Eschelon would lose those additional options at a flat rate if it had simply opted-in to the McLeod agreement. Moreover, by opting-in to the McLeod agreement, their agreement would terminate two years sooner than its current agreement. The subsequent correspondence from Qwest to Eschelon was intended to determine whether Eschelon truly wanted to opt-in to the McLeod agreement or whether Eschelon wanted some combination of the terms and conditions of the McLeod agreement and the Eschelon agreement. The former would be a significant change to the Eschelon agreement in effect but could be accomplished through a simple opt-in while the latter would require negotiations. Qwest felt it was in the best interest of both parties to discuss and negotiate the request.
4. Although each letter from Qwest to Eschelon regarding the issue in this case directed Eschelon to contact me to initiate a meeting to discuss Eschelon’s opt-in request, my only direct contact with Eschelon on this issue was one twenty minute telephone call on April 4, 2003 with

Mr. Ahlers and Mr. Corbetta, outside counsel for Qwest, during which Mr. Ahlers sought clarification regarding Qwest's general position on opt-in requirements and the concerns that Qwest had raised in its prior correspondence. During the call, I expressed a willingness to negotiate the issues discussed. Again, at the close of the call, I stressed the need to negotiate the issues of the Eschelon request. Mr. Ahlers indicated that he needed to discuss the matter with his client and that he would get back to us. However, no negotiations were ever requested as a result of that call and the next communication from Eschelon on this issue was the filing of a complaint by Eschelon with the Minnesota Commission.

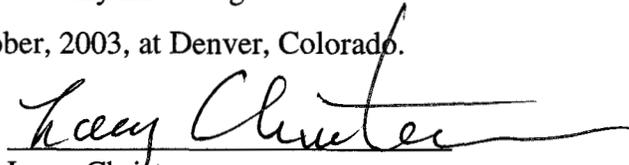
5. Eschelon is familiar with the negotiation process, and has previously negotiated interconnection agreements and amendments with Qwest on numerous other issues.

6. Eschelon never directly communicated to Qwest that it was willing to accept any terms related to the pricing in the McLeod agreement as part of its opt-in demand. These terms include the feature and listing options in the McLeod Agreement which are different than the Eschelon Agreement, as well as the expiration date of December 31, 2003. Eschelon's communication to Qwest of what it really wanted came through the Minnesota complaint. That information made it clear that Qwest was correct in its opinion that Eschelon did not want to opt-in to the McLeod amendment but wanted only limited terms and conditions offered in that amendment, thus requiring negotiations.

7. Since the filing of the Petition, Qwest has offered Eschelon an amendment to its interconnection agreement reflecting the McLeod UNE-P pricing (\$20.61 for Arizona, plus a \$0.35 increment for AIN and listing services). That amended rate expires on December 31, 2003, the same date as the McLeod expiration date. The proposed amendment does not require changes to Eschelon's volume commitments. Eschelon and Qwest executed the amendment and it is effective as of September 26, 2003.

I hereby declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct to the best of my knowledge.

Dated and signed this 3d day of October, 2003, at Denver, Colorado.

A handwritten signature in cursive script, appearing to read "Larry Christensen", written in black ink. The signature is fluid and extends to the right with a long horizontal stroke.

Larry Christensen

Director – Interconnection Agreements, Qwest

**EXHIBIT**

**B**



August 14, 2003

Qwest Corporation  
Director - Interconnection Compliance  
1801 California, Room 2410  
Denver, CO 80202

Qwest  
Law Department - General Counsel  
Interconnection  
1801 California, 49<sup>th</sup> Floor  
Denver, CO 80202

Lisa Anderl  
General Counsel - Interconnection  
Qwest Corporation  
Law Department  
1600 Seventh Avenue, Room 3206  
Seattle, WA 98191-0002

Re: Notice of Intent to File Petition with the Washington Utilities and Transportation  
Commission, Pursuant to WAC 480-09-530

Dear Director-Interconnection Compliance, Law Department-General Counsel and Ms. Anderl:

Please take Notice that Eschelon Telecom of Washington, Inc., (hereinafter "Eschelon"), intends to file a petition, no sooner than ten (10) days from the date of this Notice, pursuant to WAC 480-09-530(1)(c), with the Washington Utilities and Transportation Commission for enforcement of Eschelon's right to pick-and-choose a portion of an arrangement in another interconnection agreement under Section 252(i) of the Telecommunications Act of 1996. (the Act), and for enforcement of the Interconnection Agreement and the non-discrimination provisions of the Act and of state law.

Specifically, Eschelon will seek to enforce Qwest's obligation to comply with Section 252(i) of the Act and allow Eschelon to opt-in to the same rate for UNE-Star that is available in McLeodUSA's interconnection agreement. Furthermore, and in the alternative, Eschelon's petition will seek to enforce the non-discrimination provisions of the Interconnection Agreement

Director-Interconnection Compliance  
Law Department - General Counsel  
Lisa Anderl  
August 14, 2003  
Page Two

as well as Sections 251 and 252 of the Act and RCW 80.36.180, 186 and 170. Among the portions of the Interconnection Agreement Eschelon seeks to enforce are Part A, Sections 21.1, 23.3, 24.1, 24.3, and Attachment 3, Section 2.1.

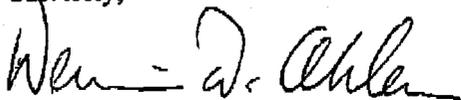
In October of 2002, Qwest and McLeodUSA entered into an amendment to their Interconnection Agreement that lowered the monthly recurring rate for UNE-Star from \$24.00 to \$21.16 in the State of Washington. Prior to that amendment both Eschelon and McLeod were paying \$24.00. Immediately thereafter, Eschelon requested that it be allowed to purchase UNE-Star at the same rate. Qwest has refused to do so unless Eschelon agrees to the other conditions included in the McLeod agreement including the termination date and eliminates provisions from the existing Eschelon agreement. Eschelon contends that the rate charged to McLeod is not legitimately related to the other aspects of the McLeod agreement cited by Qwest.

Eschelon requests that it be allowed to opt-in to the UNE-Star price that is included in McLeodUSA's Interconnection Agreement or that it otherwise be provided the equivalent price as McLeodUSA<sup>1</sup>, effective as of the date of Eschelon's initial request.

If Qwest continues to refuse to comply with its obligations under the Act and the Interconnection Agreement, Eschelon will file a petition with the Washington Commission seeking an order that Qwest provide UNE-Star to Eschelon at the same base rate that it is provided to McLeodUSA effective from the date of Eschelon's initial request, in addition to penalties, costs and other remedies.

Please contact me if you wish to discuss the matter prior to the filing of a Petition.

Sincerely,



Dennis D. Ahlers  
Senior Attorney  
Eschelon Telecom, Inc.  
612.436.6249 (direct)  
612.436.6349 (fax)  
ddahlers@eschelon.com

cc: Jason Topp, Qwest  
Jeff Oxley, Eschelon

<sup>1</sup> Eschelon acknowledges that it has an amendment that requires an additional charge of \$.35 per month. Eschelon would concede that if the McLeodUSA rate were imported into the Eschelon agreement, as it currently exists, the rate would be \$.35 higher than that charged to McLeodUSA.

**EXHIBIT**

**C**

**Unbundled Network Element Platform Pricing Amendment  
to the  
Interconnection Agreement  
between  
Qwest Corporation  
and  
Eschelon Telecom of Arizona, Inc.  
for the State of Arizona**

This Amendment ("Amendment") is to the Interconnection Agreement between Qwest Corporation (f/k/a U S WEST Communications, Inc.) ("Qwest"), a Colorado corporation, and Eschelon Telecom of Arizona, Inc. ("CLEC"), a Minnesota corporation.

**RECITALS**

WHEREAS, the Parties entered into an Interconnection Agreement, for service in the State of Arizona, that was approved by the Arizona Corporation Commission on April 28, 2000, as referenced in Docket No. 62489 ("Agreement");

WHEREAS, the Parties amended the Agreement on November 15, 2000 to include, among other provisions, rates for the Unbundled Network Element Platform (UNE-P) and the features available on a flat-rated basis offering;

WHEREAS, the Parties further amended the Agreement effective July 1, 2001 to update the rates for the UNE-P and the features available on a flat-rated basis offering; and

WHEREAS, the Parties agreed in the Settlement Agreement dated March 3, 2002, that the product purchased by Eschelon pursuant to the November 15, 2000 and July 1, 2001 Amendments was "UNE-E" rather than "UNE-P", and

WHEREAS, the Parties wish to further amend the Agreement by updating the rates for UNE-E contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Amendment Terms**

This Amendment is for the purpose of amending the monthly recurring charges for UNE-E, as set forth in Attachment 1, attached hereto and incorporated herein.

**2. Effective Date**

This Amendment shall be deemed effective upon Commission approval; however, the Parties agree to implement the provisions of this Amendment upon execution.

To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

**3. Amendments; Waivers**

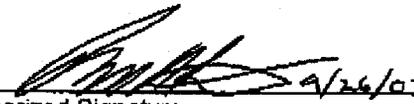
The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**4. Entire Agreement**

Except as provided in this Amendment, the provisions of the Agreement (as previously amended) shall remain in full force and effect. Other than the publicly filed Agreement and its Amendments, Qwest and Eschelon have no agreement or understanding, written or oral, relating to the terms and conditions for the monthly recurring charges for UNE-E, as set forth in Attachment 1. Nothing in this Amendment shall be deemed a settlement of or admission by either party concerning Eschelon's claim that it is entitled to the rates contained in this Amendment for periods prior to the date of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Eschelon Telecom of Arizona, Inc.**

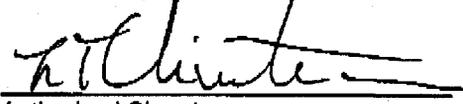
  
Authorized Signature

Richard A. Smith  
Name Printed/Typed

President and CEO  
Title

September 26, 2003  
Date

**Qwest Corporation**

  
Authorized Signature

L. T. Christensen  
Name Printed/Typed

Director – Business Policy  
Title

9/29/03  
Date

**ATTACHMENT 1**

The following rates for UNE-E shall apply from the date of execution of this Amendment through December 31, 2003.

	<b>Platform Recurring</b>	<b>Additional Charge for each 50 Minute Increment &gt; 525 Originating Local MOU/Month per Line</b>
<b>AZ</b>	<b>\$ 20.96</b>	<b>\$ 0.280</b>

Beginning January 1, 2004 until termination of the Agreement, the rates for UNE-E will be as follows.

	<b>Platform Recurring</b>	<b>Additional Charge for each 50 Minute Increment &gt; 525 Originating Local MOU/Month per Line</b>
<b>AZ</b>	<b>\$ 31.15</b>	<b>\$ 0.280</b>