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BEFORE THE ARIZONA CORPORATION COM

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Arizona Corporation Commission 30nr

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COMMISSIONERS

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

2005 APR 25 P 3:19
AZ CORP COMMISSION
DOCUMENT CONTROL

UTILITIES DIVISION STAFF,

Complainant,

v.

ESCHELON TELECOM OF ARIZONA, INC.

Respondent.

Docket No. T-03406A-03-0888

**NOTICE OF FILING
SETTLEMENT AGREEMENT
AND
STAFF'S DIRECT TESTIMONY**

The Staff of the Arizona Corporation Commission ("Staff") hereby provides notice that it is filing the attached Settlement Agreement between Staff and Eschelon Telecom of Arizona, Inc., dated April 22, 2005, and Staff's Direct Testimony of Elijah Abinah.

RESPECTFULLY SUBMITTED this 25th day of April, 2005.

ARIZONA CORPORATION COMMISSION

By: David Ronald

David M. Ronald
Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-6026

Original and 13 copies of the foregoing filed this 25th day of April, 2005, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

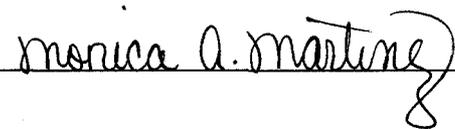
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1 Copy of the foregoing mailed this 25th day
2 of April, 2005, to:

3 Jane Rodda
4 Administrative Law Judge
5 Arizona Corporation Commission
6 400 W. Congress Street
7 Tucson, AZ 85701

8 Thomas H. Campbell
9 Michael T. Hallam
10 Lewis and Roca, LLP
11 40 North Central Avenue
12 Phoenix, AZ 85004
13 Attorneys for Eschelon Telecom of Arizona, Inc.

14 Dennis D. Ahlers
15 Senior Attorney
16 Eschelon Telecom of Arizona, Inc.
17 730 Second Avenue South, Suite 90
18 Minneapolis, MN 55402-2456

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
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UTILITIES DIVISION STAFF,

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ESCHELON TELECOM OF ARIZONA, INC.

Respondent.

Docket No. T-03406A-03-0888

SETTLEMENT AGREEMENT

PARTIES

The Parties to this Settlement Agreement are the Arizona Corporation Commission Staff (“Staff”) and Eschelon Telecom of Arizona, Inc. (Eschelon).

INTRODUCTION

The Parties stipulate to this Settlement Agreement to resolve all matters in dispute between them regarding the Arizona Corporation Commission (“Commission”) Complaint in this docket, including all claims, whether known or unknown, related to the subject of or arising from the Complaint with respect to interconnection agreements between Eschelon and Qwest entered into between February 28, 2000 and July 31, 2001. The Parties request a Commission order approving this Settlement Agreement as soon as possible.

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DEFINITIONS

The term "Interconnection Agreement" as used in this Settlement Agreement shall include any agreement required to be filed and/or approved by the Commission pursuant to 47 U.S.C. § 252(e) of the Telecommunications Act of 1996 ("the 1996 act") and A.A.C. Rule R14-2-1506.

"Eschelon" includes Eschelon, its officers, directors, employees and agents and its parent company.

PROCEDURAL HISTORY

On December 9, 2003, Staff filed a Complaint against Eschelon. Staff alleged that Eschelon failed, in violation of state and federal law, to file and seek Commission approval for the following Agreements:

- a. Confidential/Trade Secret Stipulation dated 2/28/00
- b. Trial Agreement dated 7/21/00
- c. Confidential Purchase Agreement dated 11/15/00
- d. Confidential Amendment to Confidential/ Trade Secret Stipulation (Amending 2/28/00 agreement) dated 11/15/00
- e. Escalation Procedures Letter from Qwest dated 11/15/00
- f. Daily Usage Information Letter from Qwest dated 11/15/00
- g. Features Letter from Qwest dated 11/15/00
- h. Confidential Billing Settlement Agreement dated 11/15/00
- i. Status of Switched Access Minute Reporting Letter from Qwest dated 7/3/01
- j. Implementation Plan dated 7/31/01

between Eschelon and Qwest Corporation ("Qwest"), an incumbent local exchange carrier ("ILEC"), as required by 47 U.S.C. § 252(a)(1) and (e), and A.A.C. Rule R14-2-1506. On May 20, 2004, Eschelon filed a Motion to Dismiss and Answer to the Complaint. Eschelon argued that Staff had no cause of action against it. On August 20, 2004, Eschelon filed a Brief in support of the above argument.

1 **SPECIFIC TERMS**

2 Staff and Eschelon agree to the following terms and conditions:

3 1. For the purposes of this Settlement Agreement only and in the interests of settling the
4 disputes between the Parties, Eschelon stipulates that agreements:

- 5 a. Confidential/Trade Secret Stipulation dated 2/28/00
- 6 b. Trial Agreement dated 7/21/00
- 7 c. Confidential Purchase Agreement dated 11/15/00
- 8 d. Confidential Amendment to Confidential/Trade Secret Stipulation (Amending
9 2/28/00 agreement) dated 11/15/00
- 10 e. Escalation Procedures Letter from Qwest dated 11/15/00
- 11 f. Daily Usage Information Letter from Qwest dated 11/15/00
- 12 g. Features Letter from Qwest dated 11/15/00
- 13 h. Confidential Billing Settlement Agreement dated 11/15/00
- 14 i. Status of Switched Access Minute Reporting Letter from Qwest dated 7/3/01
- 15 j. Implementation Plan dated 7/31/01

16 between it and Qwest constitute Interconnection Agreements under current Federal Communications
17 Commission ("FCC") and Commission rules and orders.

18 2. Staff's position is that federal law and Commission rules and orders require CLEC's to
19 file and seek Commission approval for all Interconnection Agreements, whether written or oral. At
20 this time, both Staff and Eschelon agree that the FCC has not issued a definitive ruling on whether
21 CLEC's have the above obligation under federal law. Eschelon is aware of Staff's position regarding
22 the filing obligations of CLEC's under federal law. Eschelon admits that Commission rules and
23 orders require it to file and seek Commission approval for all Interconnection Agreements, whether
24 written or oral, and Eschelon will do so for all future Interconnection Agreements.

25 3. Eschelon accepts its shared obligation to file and seek Commission approval for all
26 future Interconnection Agreements, whether written or oral, in compliance with this Settlement
27 Agreement and existing law. Eschelon agrees that all Interconnection Agreements, whether written
28 or oral, shall be filed within thirty (30) days of execution.

1 2. The Specific Terms of the Settlement Agreement represent an integrated resolution of
2 issues. Accordingly, the Parties recommend that the Commission adopt the Specific Terms of this
3 Settlement Agreement in their entirety. Each party reserves the right to withdraw from the
4 Settlement Agreement if the Commission does not approve the Specific Terms of the Settlement
5 Agreement in their entirety or conditions approval of the Specific Terms of the Settlement Agreement
6 on material revisions to their terms and conditions.

7 3. The Parties agree to provide at least one witness at the time the Settlement Agreement
8 is presented to the Commission to provide testimony in support of the Settlement Agreement and
9 answer any questions the Commission may have. The Parties agree to cooperate, in good faith, in the
10 development of such other information as may be necessary to support and explain the basis of this
11 Settlement Agreement, and to supplement the record accordingly.

12 4. The Parties enter into this Settlement Agreement to avoid further expense, uncertainty,
13 and delay in resolving the issues between them in this docket. By executing this Settlement
14 Agreement, the Parties shall not be deemed to have accepted or consented to the facts, principles,
15 methods, or theories employed in arriving at the Settlement Agreement. The Parties shall not use,
16 advocate or otherwise employ—*itself or in conjunction with any other individual or entity*—this
17 Settlement Agreement for disputing, arguing, or resolving any issues in any other proceeding.

18 5. All negotiations relating to or leading to this Agreement are privileged and
19 confidential, and no party is bound by any position asserted in negotiations, except to the extent
20 expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of
21 negotiation of this Agreement are not admissible as evidence in any proceeding before the
22 Commission, any other regulatory agency or any court.

23 6. This Agreement represents the complete agreement of the Parties. There are no
24 understandings or commitments other than those specifically set forth herein. The Parties
25 acknowledge that this Agreement resolves all issues that were raised in the Complaint and is a
26 complete and total settlement between the Parties.

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REQUEST FOR APPROVAL

This Settlement Agreement is presented to the Commission for the Commission's approval. If this Settlement Agreement is approved, it would constitute a full settlement of all issues raised against Eschelon in the Complaint by the Staff with respect to the aforementioned interconnection agreements between Qwest and Eschelon that were entered into between February 28, 2000 and July 31, 2001 and not filed with the Commission.

Dated this 22 day of April, 2005.

ARIZONA CORPORATION COMMISSION

BY: E. G. [Signature]

ESCHELON TELECOM OF ARIZONA, INC.

BY: [Signature] 4/18/05
Richard A. Smith