

ORIGINAL FORMAL COMPLAINT



0000049114

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
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MIKE GLEASON
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AZ CORP COMMISSION
DOCUMENT CONTROL

T-01051B-06-0257
T-03406A-06-0257

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

DOCKET NO. T-03406A-06-_____
DOCKET NO. T-01051B-06-_____

COMPLAINT

Eschelon Telecom of Arizona, Inc. (“Eschelon”) brings this Complaint to the Arizona Corporation Commission (the “Commission”) against Qwest Corporation (“Qwest”) to obtain immediate relief from Qwest’s refusal to honor its contractual and statutory obligations to Eschelon. Specifically, Qwest has refused to provide both repairs for disconnects in errors and the capability to expedite orders for unbundled loops under the repair and expedite language of the Qwest-Eschelon Interconnection Agreement (“ICA”) approved by this Commission. Qwest, which previously provided such expedite capability pursuant to the same ICA, suddenly refuses to provide such expedited orders unless Eschelon signs an amendment that both (i) alters Eschelon’s right to expedite loop orders under the Parties’ approved ICA and (ii) imposes a higher charge to expedite loop orders that is contrary to the ICA, discriminatory, and not approved by this Commission. Qwest has engaged in self-help by demanding such an amendment while customers are out of service, including a customer serving individuals with disabilities, and using such customer outages as leverage to force Eschelon to sign the discriminatory, anti-competitive Qwest amendment.

Qwest’s breach of the ICA and its discriminatory conduct with respect to expediting unbundled loop orders has severe consequences for Eschelon, its customers, and competition. Qwest recently attempted to enforce its unilateral requirement to alter the Commission approved

1 Qwest-Eschelon ICA by taking advantage of a customer outage. This outage was experienced by
2 an Eschelon customer that provides rehabilitation services to children and adults with disabilities
3 and which requires 24-hour 911 service ("Customer"). In this instance, there was an Eschelon
4 disconnect of a service in error and Qwest refused to expedite the order (i.e, meet a due date earlier
5 than the standard interval) to correct the error and re-establish service pursuant to the approved
6 ICA's expedite provisions. While the Customer was out of service, Qwest demanded that Eschelon
7 sign a new ICA amendment imposing a charge of \$200 per each day expedited, totaling
8 approximately \$1,000 (in addition to the Commission approved installation charge associated with
9 the correcting order), even though the facilities were still in place and little, if any, additional work
10 was required. Pursuant to the ICA, Qwest should have restored the Customer's service (either by
11 repair or granting an expedited order), billed any applicable charges and then, if Eschelon disputed
12 any charges, pursued any dispute pursuant to the dispute resolution provisions of the approved
13 ICA. Because Qwest did not do so, the Customer was out of service for a delayed period of time
14 and Eschelon was forced to order a special access private line circuit. Eschelon had to pay the
15 higher Qwest FCC tariffed rate for installation of that circuit, instead of obtaining restoration of
16 service under the terms of the ICA approved by this Commission.

17 Qwest claims that it may ignore its obligation to expedite unbundled loop orders under the
18 Commission approved ICA because Qwest, through its Change Management Process ("CMP"),
19 changed its generic wholesale product catalog ("PCAT"), over the objection of multiple CLECs.
20 Qwest changed the PCAT to indicate that Qwest need not provide expedited orders for any
21 unbundled loops, even when the CLEC's ICA has language supporting expedites. Although the
22 Commission has approved rates that are structured as hourly and non-recurring charges, Qwest's
23 revised PCAT provides that the rate must be structured as a per day charge for each day the order
24 is expedited. Because Qwest has not brought any such per day charge to the Commission for
25 approval, Qwest requires an ICA amendment to charge such a rate. Qwest neither obtained
26 Eschelon's consent to such an amendment nor attempted to request approval from this
27 Commission.

1 Eschelon's right to obtain expedites under the Commission approved ICA at Commission
2 approved rates and under nondiscriminatory terms cannot be modified or changed by Qwest's
3 unfiled PCAT. Qwest ignores this Commission's authority to approve ICA terms and its authority
4 to set and approve rates and charges. The Commission approved ICA controls, and Qwest must
5 expedite unbundled loop orders and perform repairs for Eschelon pursuant to the ICA and in a
6 nondiscriminatory manner.

7 THE PARTIES

8 1. Eschelon is a Minnesota corporation registered and qualified to do business in the
9 State of Arizona. Eschelon is certified to provide local exchange service in Arizona pursuant to
10 orders of the Commission granted July 25, 2000 in Docket No.T-03406A-99-0742, Decision No.
11 62751.

12 2. Eschelon is a facilities-based competitive local exchange carrier ("CLEC")
13 providing local and resold long distance telecommunications services in Qwest's service territory
14 in Arizona, primarily serving small and medium business customers. Eschelon uses a combination
15 of its own facilities and equipment and Qwest bottleneck network elements to provide services to
16 its customers.

17 3. Qwest is a Colorado corporation with offices and operations in Arizona. Qwest is
18 an incumbent local exchange carrier ("ILEC") within the meaning of Section 251(h) of the
19 Telecommunications Act of 1996 (the "Act"), and provides local exchange, exchange access and
20 interexchange services in Arizona subject to the Commission's regulatory authority. Qwest is the
21 dominant monopoly provider of local exchange service in Arizona.

22 JURISDICTION

23 4. The Commission has jurisdiction over this Complaint pursuant to 47 U.S.C. §
24 251(c)(2)(D) and (3) and §252, 47 C.F.R. § 51.313, and Arizona Revised Statutes §§ 40-424, 40-
25 246, 40-248, 40-249, 40-334 and 40-361.

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FACTUAL BACKGROUND

A. The Qwest-Eschelon ICA and the ICA's Repair and Expedite Provisions.

5. The Eschelon-Qwest ICA is the original ICA negotiated, in part, and arbitrated, in part, by Qwest (then US WEST) and AT&T following the passage of the Act. Eschelon opted into the original AT&T ICA, and the Eschelon-Qwest ICA was approved by the Commission on April 28, 2000. It has remained in place since then.

6. The ICA mandates that Qwest provide Eschelon with the capability to order expedites for any product or service offered under the ICA, including all unbundled loops. [See, e.g. excerpts from ICA ("ICA Excerpts"), Att. 5, Sections 3.2.2.12, 3.2.2.13, 3.2.4.2, 3.2.4.3 and 3.2.4.4 at Exhibit 1]. The ICA also mandates that Qwest perform repairs in compliance with the law and the ICA's terms. [See, e.g., ICA Excerpts, Att. 5, Sections 6.2.1 and 6.2.1.1 at Exhibit 1] The ICA also mandates that Qwest conduct all activities under the Agreement in a carrier-neutral and nondiscriminatory manner. [See, e.g., ICA Excerpts, Part A, Section 31.1 at Exhibit 1.]

7. The ICA also contains dispute resolution provisions for disputes that, if properly invoked and applied, avoid disruption to customers' service until disputes are resolved. [See, e.g., ICA Excerpts, Att. 1, Section 1.2 and ICA Excerpts, Att. 5, Section 4.1.18. at Exhibit 1.]

8. Pursuant to the Qwest-Eschelon ICA approved by this Commission in Arizona, Qwest had previously granted Eschelon requests for expedited treatment of unbundled loop orders in Arizona. Consistent with the ICA's provision that expedite charges *may* apply when CLEC requires a due date earlier than the Qwest offered due date (i.e., an expedited order), Qwest did not always apply expedite charges. [See ICA Excerpts, Att. 5, Sections 3.2.2.12 and 3.2.4.3.1, Exhibit 1 (emphasis added)]. Importantly, Qwest recognized the inappropriateness of applying an additional charge for either its own or CLEC customers in certain outage and emergency situations ("Emergencies"), such as the type of emergency situation that occurred for the Customer in the incident described below. The Commission approved ICA has not changed in any relevant respect since Qwest formerly granted such expedite requests pursuant to the ICA.

1 **B. Qwest's Attempt to Modify ICA Expedite Rights Without Eschelon**
2 **Concurrence or Commission Approval Through PCAT Changes that Conflict**
3 **with the ICA.**

4 9. Eschelon must use Qwest's processes and systems to order Qwest's products and
5 conduct business with Qwest. Qwest's CMP is often the only means through which information
6 about system and process changes is obtained. Therefore, Eschelon receives CMP and PCAT
7 notices and participates in CMP meetings.

8 10. Neither the CMP documentation nor the PCAT are an exhibit to the ICA. Neither
9 are mentioned or incorporated by reference into the ICA.

10 11. Eschelon's right to order expedites under its Commission approved ICA cannot be
11 altered or amended by changes Qwest makes to its PCAT. This fact is confirmed by the ICA and
12 other documents:

13 A. The Commission approved ICA states that it may not be amended or any provision
14 waived "unless the same is in writing and signed by an officer of the Party against whom such
15 amendment, waiver or consent is claimed." [See ICA, Part A, Section 17.1]. The ICA further
16 provides that, if the Parties are unable to agree on the terms of the amendment, the party requesting
17 the amendment may invoke the dispute resolution process under the ICA to determine the terms of
18 any amendment to the ICA. [See *id.*] The ICA states that it "constitutes the entire agreement
19 between the Parties." [See ICA, Part A, Section 53.1.] It provides that, if a provision contained in
20 any Qwest "tariff conflicts with any provision of this Agreement, the provision of this Agreement
21 shall control, unless otherwise ordered by the FCC or the Commission." [See ICA, Part A,
22 Section 53.2.]

23 B. Qwest's Arizona Statement of Generally Available Terms ("SGAT"), in both
24 Sections 4.156 and 7.4.7, provides: "Qwest agrees that CLEC shall not be held to the
25 requirements of the PCAT."

26 C. The Qwest CMP document (Exhibit G to the SGAT), in Section 1.0 ("Introduction
27 and Scope"), provides: "In cases of conflict between the changes implemented through this CMP
 and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates,

1 terms and conditions of such interconnection agreement shall prevail as between Qwest and the
2 CLEC party to such interconnection agreement. In addition, if changes implemented through this
3 CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but
4 would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of
5 such interconnection agreement shall prevail as between Qwest and the CLEC party to such
6 agreement.” Qwest also repeats this language on many of its CMP/PCAT notices.

7 D. Qwest’s Arizona SGAT similarly provides, in Section 2.3, that: “[u]nless
8 otherwise specifically determined by the Commission, in cases of conflict between the SGAT and
9 Qwest’s Tariffs, PCAT, methods and procedures, technical publications, policies, product
10 notifications or other Qwest documentation relating to Qwest’s or CLEC’s rights or obligations
11 under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent
12 another document abridges or expands the rights or obligations of either Party under this
13 Agreement, the rates, terms and conditions of this Agreement shall prevail.”

14 12. Together, these provisions of the ICA, CMP Document, PCAT notices, and SGAT
15 collectively show a regulatory regime designed to ensure that Qwest cannot undermine
16 Commission approved ICA terms by unilaterally altering them through its own PCAT.

17 13. Nonetheless, that is exactly what Qwest has done here, without any attempt to seek
18 prior Commission approval.¹

19 14. After years of granting expedite requests in Emergency and other customer
20 affecting situations for all types of unbundled loops, at no additional charge, pursuant to the ICA,
21 Qwest distributed notices to CLECs that it would no longer do so pursuant to the approved ICAs
22 (See, e.g., Qwest notices PROS.09.12.05.F.03242 Expedites_Escalations_V27 and
23 PROS.10.19.05.F.03380. ExpeditesEscalationsV30). After both of these notices became effective
24

25 _____
26 ¹ This is not the first time Qwest has done so. Its actions here, for example, are similar to those rejected by this
27 Commission in the Qwest 271 proceeding. Qwest is on notice through these documents and that proceeding that it
should not have implemented such a change without first seeking Commission approval. See, *In re. US West
Communication, Inc.’s, Compliance with Section 271 of the Telecommunications Act of 1996*, ACC Docket No. T-
00000A-97-0238, Decision No. 66242, ¶109 (Sept. 16, 2003).

1 (January 3, 2006), Qwest no longer granted such requests pursuant to existing ICAs, even when
2 the approved ICA contained expedite language.

3 15. Through one of these notices (*see* Qwest notice PROS.10.19.05.F.03380.
4 ExpeditesEscalationsV30), Qwest changed its PCAT to delete the phrase that requesting an
5 expedite follows one of two processes depending on “the language in your Interconnection
6 Agreement (“ICA”).” Through the same notice, Qwest added language that the ICA “must
7 contain” language supporting expedited requests with a per day expedite rate.

8 16. The Commission has approved rates that are structured as hourly and non-recurring
9 charges. Qwest said in its notice that the ICA must contain a per day charge for each day the order
10 is expedited. Qwest has not submitted any such per day charge to the Commission for approval.
11 Instead, Qwest requires an ICA amendment that contains a rate of \$200 per each day expedited
12 (i.e., per each day that is less than the applicable due date interval). Pursuant to the Qwest ICA
13 amendment, these charges apply to all expedites for unbundled loops even if, in the absence of an
14 expedite amendment, such expedite otherwise would have qualified for an expedite at no
15 additional charge in Emergency situations under the terms previously provided under the
16 Commission approved ICA.

17 17. Qwest refuses to act upon expedite requests for unbundled loops under the
18 Commission approved ICA. Qwest requires Eschelon to agree to and sign its amendment. At the
19 same time, Qwest continues to grant CLEC expedite requests at no additional charge in the
20 Emergency situations to CLECs that use exclusively Qwest facilities via QPP or resale without
21 amendment of their ICAs. Therefore, while a facilities-based CLEC such as Eschelon uses a loop
22 to provide the same functionality and service as a CLEC ordering resale voice or QPP, Eschelon
23 and other facilities-based CLECs would have to pay \$200 per each day expedited to expedite the
24 loop order pursuant to Qwest’s proposed ICA amendment, while the CLEC using only Qwest
25 facilities receives the expedite in such situations for no additional charge.

26 18. Further, based on information and belief, Qwest continues to grant expedite
27 requests at no additional charge in the Emergency situations to its own retail customers. On

1 information and belief, Qwest either does not charge, or charges and then credits, its retail
2 customers the expedite fee. Qwest has a Universal Service Ordering Code (“USOC”) that is
3 designed specifically to credit such charges at least in some cases.

4 **C. Qwest’s Amendment and Refusal to Expedite Violates Qwest-Eschelon ICA.**

5 19. By requiring Eschelon and other CLECs to sign a new ICA amendment before
6 Qwest will restore service (via repair or granting an expedite request) and refusing to provide the
7 capability under the ICA to expedite orders, Qwest has unilaterally altered and eliminated
8 Eschelon’s right to obtain unbundled loop expedites under the ICA.

9 20. Further, by refusing to grant expedite requests for all unbundled loop orders, Qwest
10 is also engaging in a self-help remedy in violation of the billing and dispute resolution provisions
11 of the ICA.

12 **D. Qwest’s Amendment and Refusal to Expedite Violates State and Federal Law.**

13 21. Section 251(c)(3) of the Act requires that Qwest provide access to unbundled
14 network elements (“UNEs”), including unbundled local loops, on just, reasonable and non-
15 discriminatory terms. With respect to the non-discrimination requirement, Qwest must provide
16 access to UNEs on nondiscriminatory terms for all CLECs (facility-based and non-facility based),
17 as well as for Qwest itself. *See* 47 C.F.R. 51.313. Qwest has violated the Act’s non-
18 discrimination requirement by implementing and enforcing the changes described herein. Qwest’s
19 conduct is anti-competitive in violation of state and federal law and the public interest. *See* A.R.S.
20 §40-334.

21 **E. Qwest’s Recent Refusal to Grant Eschelon’s Expedite Request Results in End
22 User Customer Harm in Violation of the ICA and State and Federal Law.**

23 22. Qwest’s conduct has resulted in end user customer harm in Arizona. One of
24 Eschelon’s Arizona customers is a non-profit community rehabilitation organization that provides,
25 on both in-patient and outpatient bases, therapeutic, rehabilitative and social services to children
26 and adults with developmental, therapeutic, physical and/or mental disabilities (“Customer”).
27

1 23. Customer operates 24 hours per day, seven days a week, 365 days a year for the
2 purpose of providing critical health care services to all of these groups of individuals with
3 disabilities, and in particular to those individuals with high level medical and urgent care needs
4 residing in Customer's physical facilities.

5 24. Because of the nature of the services that Customer provides to its clients, it is
6 imperative that it have telephone service in each and every one of its rooms, including the ability
7 to dial 911 from each and every one of its rooms.

8 25. Absent dial tone and the ability to reach emergency services within the Customer
9 facility and through 911 in each and every room, as documented by Customer, its clients "are in
10 jeopardy and could be at great risk ... [if unable] to communicate healthcare, urgent care and
11 programmatic needs." Due to their disabilities, Customer's clients cannot all access lines outside
12 of their rooms.

13 26. On March 8, 2006, Eschelon began working on the Customer's request to keep the
14 telephone number that was currently associated with its analog 2-wire unbundled loop but point
15 the number instead (using a DID number) to the Customer's DS1 capable loop to allow the End
16 User Customer's analog 2-wire unbundled loop to be disconnected. As part of processing this
17 request, Eschelon submitted a Local Service Request (LSR) intended to disconnect the Customer's
18 analog 2-wire unbundled loop. In fact, however, Eschelon erred and populated the LSR with the
19 wrong circuit identification ("ID"), which resulted in a disconnect in error of the Customer's DS1
20 capable loop.

21 27. Disconnects in error are not unique. Qwest's own PCAT process recognizes that
22 Qwest disconnects services in error that then Qwest expedites orders to re-establish service.

23 28. On March 15, 2006, the disconnect order completed in Qwest's systems. Qwest
24 provided a completion notice to Eschelon for the disconnect order at or about 10:02 a.m. on
25 March 15, 2006. When notified by Customer shortly thereafter that Customer did not have
26 telephone service to the individual client rooms, Eschelon opened a trouble ticket advising Qwest
27 repair of the need to promptly restore service to Customer and asking Qwest to repair the trouble.

1 29. Later that same day, Qwest repair informed Eschelon that there was a missing cross
2 connect in the central office. At this time, Eschelon still believed that the order disconnected the
3 analog loop, as intended, and was unaware of its inadvertent error leading to disconnection of the
4 DS1 capable loop instead. Qwest, however, had completed the disconnect in error in its systems
5 for the DS1 capable loop. Qwest did not say whether the cross connect was missing as a result of
6 the disconnect order that completed in Qwest's systems that morning. Qwest said it repaired the
7 disconnected cross connect, so that the DS1 circuit was functioning again. Customer confirmed
8 that it had working telephone service, including 911 service in the individual rooms.

9 30. On March 16, 2006, Customer called Eschelon because its service provided by the
10 DS1 capable was again out of service. In response, Eschelon reported the trouble to Qwest and
11 attempted to open a trouble ticket (both through Qwest's repair system and by telephone) with
12 Qwest to resolve the service outage.

13 31. Rather than restore Customer's telephone service as it did the day before, Qwest
14 rejected the Eschelon trouble reports. Qwest refused to repair the trouble and said that Eschelon
15 must submit an order to re-establish service for Customer.

16 32. As set forth in Qwest's publicly available service interval guide,
17 <http://www.qwest.com/wholesale/downloads/2006/060410/InterconnSIGV66.doc>, the interval for
18 repair of a DS1 capable loop is 4 hours. The interval for the installation of a DS1 capable loop is
19 five (5) business days. Therefore, submission of an order (unless expedited) requires a
20 significantly longer interval before service is re-established than a repair.

21 33. Because Qwest would not repair Customer's telephone service as it did the day
22 before, on March 16, 2006, Eschelon capitulated to Qwest's demand and submitted an order for a
23 new DS1 capable loop for Customer. Per Qwest's process, Eschelon requested the standard 5-day
24 interval for loops when placing the order and then contacted Qwest to request an expedite of the
25 due date so that Customer would have the necessary dial tone and 911 services as soon as possible.
26 Eschelon provided to Qwest a letter from Customer documenting the nature of its critical health
27

1 care services and stating that its clients with disabilities were in jeopardy without properly working
2 service .

3 34. After Qwest received the letter, Qwest told Eschelon that the facilities were still
4 available to re-use from the disconnect but Qwest was officially denying the expedite request
5 because Eschelon had not signed the Qwest expedite ICA amendment. Qwest made no claim that
6 resources were unavailable or that there was any operational, technical or other business reason for
7 the denial. Although facilities were available, Qwest would not re-use them to re-establish service
8 pursuant to either the repair or expedite provisions of the ICA.

9 35. Pursuant to the ICA, Qwest should have restored the Customer's service (either by
10 repair or expedited order) under the ICA, billed any applicable charges and then, if Eschelon
11 disputed any charges, pursued any dispute pursuant to the Dispute Resolution provisions of the
12 approved ICA.

13 36. Because Qwest did not do so, the Customer was out of service for a delayed period
14 of time and Eschelon was forced to order a special access private line circuit. Eschelon had to step
15 in to re-establish service to the Customer when Qwest would not, even though Eschelon should
16 not have had to take this step under the Commission approved ICA. Eschelon also had to pay the
17 higher FCC Qwest tariffed rate for installation of that circuit, instead of obtaining restoration of
18 service under the terms of the ICA approved by this Commission.

19 37. Because special access private lines have a 9-day standard interval, Qwest's \$200
20 per day expedited charge resulted in an additional approximately \$1,800 non-recurring charge. The
21 charge is not based on costs incurred by Qwest.

22 38. Eschelon understood that it would pay the standard, Commission approved
23 installation charge for the order to correct the disconnect in error and re-establish service.
24 Particularly as this was an Eschelon disconnect in error, Eschelon was willing to pay Commission
25 approved rates to correct the error through repair or installation charges or through dispatch or
26 hourly rates if additional work was required to complete the expedite. Regarding an additional
27 expedite charge, however, Qwest previously did not impose such a charge when the Emergency

1 criteria were met. Qwest recovered its costs through the Commission approved charges, because
2 with an expedite Qwest performs the same work (as the work included in the standard charge), but
3 Qwest just performs that work earlier. If, however, additional work were required and applied on
4 a nondiscriminatory basis, the ICA provides that charges may apply. [See ICA Excerpts, Att. 5,
5 Section 3.2.4.2.1 at Exhibit 1] Eschelon was willing to pay such charges but Qwest refused to
6 provide an expedite pursuant to this ICA provision. Eschelon told Qwest that it was willing to
7 pay. That Eschelon paid the much higher special access private line charge to get service for
8 Customer demonstrated this willingness. Because special access private lines have a 9-day
9 interval, Qwest's \$200 per day expedited charge resulted in an additional approximately \$1,800
10 charge.

11 39. On Saturday, Qwest agreed to provision the more expensive, special access circuit.
12 Given that Qwest had confirmed that the facilities were still available to re-use from the
13 disconnect, Qwest could have provisioned the service over the very same facilities that would have
14 been used to provision an unbundled DS1 loop to Customer.

15 40. However, Qwest said that it did not have a Qwest Service order typist that could
16 manually type the service order for the special access private line Access Service Request
17 ("ASR"). Although Eschelon's DS1 capable loop order was still pending in Qwest's systems and
18 did not require manual order typing at this point, Qwest would not process that order. Instead,
19 Qwest waited to type the special access service order and install the service until the following
20 Monday, March 20, 2006. This left the rehabilitation center for children and adults with
21 disabilities without the ability to dial 911 from the clients' rooms for the remainder of Saturday
22 and all of the following day.

23 41. In the end, Customer was without fully working telephone service and the ability to
24 dial 911 from individual client rooms for five days after the second outage.. If Qwest had repaired
25 the service and later corrected records, this would have been an approximately four-hour time
26 period. If Qwest had granted the expedite request, this would have been an approximately 24-hour
27 time period. Qwest intentionally and unnecessarily delayed curing the service problem.

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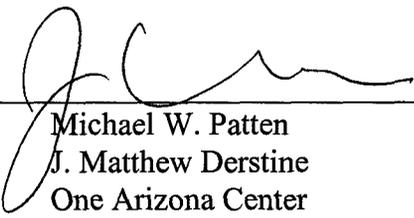
I. An order enforcing the Commission approved ICA to require Qwest to provide such capability to expedite orders at Commission approved rates and, when applicable outage and Emergency conditions exist, at no additional charge;

J. An order, with respect to the Customer incident, requiring Qwest to refund Eschelon any over-charges and considering, in determining the amount, that if Qwest had applied the Emergency criteria that it applied to past loop orders under the ICA, Eschelon would have paid no additional charge because the Customer incident met those Emergency conditions; and

K. An order providing such other and further relief as deemed to be proper and just.

RESPECTFULLY SUBMITTED this 14th day of April 2006.

ROSHKA DEWULF & PATTEN, PLC

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1 Original and 15 copies of the foregoing
2 filed this 14th day of April 2006 with:

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4 Arizona Corporation Commission
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7 Copy of the foregoing hand-delivered/mailed
8 this 14th day of April 2006 to:

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EXHIBIT

1

ICA PROVISIONS - ARIZONA
(See footnotes for CO/MN/OR/UT/WA)

EXCERPTS FROM ATTACHMENT 5 (BUSINESS PROCESS REQUIREMENTS)

3.2.2 Service Migrations and New Customer Additions¹

3.2.2.12 Expedite Process: U S WEST and CO-PROVIDER shall mutually develop expedite procedures to be followed when CO-PROVIDER determines an expedite is required to meet subscriber service needs.

3.2.2.13 Expedites: U S WEST shall provide CO-PROVIDER the capability to expedite a service order. Within two (2) business hours after a request from CO-PROVIDER for an expedited order, U S WEST shall notify COPROVIDER of U S WEST's confirmation to complete, or not complete, the order within the expedited interval.

3.2.4 Due Date²

3.2.4.2 For those services and circumstances that U S WEST and COPROVIDER agree shall be handled by the standard interval process, U S WEST shall supply CO-PROVIDER with standard due date intervals on a nondiscriminatory basis to be used by CO-PROVIDER personnel to determine service installation dates. Under those circumstances U S WEST shall complete the provisioning within the standard interval.

3.2.4.2.1 If CO-PROVIDER requests a due date earlier than the standard due date interval, then expedite charges may apply.

3.2.4.3 For those services and circumstances that U S WEST and COPROVIDER agree shall be handled by the requested/committed due date process, CO-PROVIDER may request a due date on each order. U S WEST will provide an offered due date on a nondiscriminatory basis. If CO-PROVIDER accepts the offered due date then such date shall become the committed due date. U S WEST will complete the order on the committed due date unless otherwise authorized by CO-PROVIDER.

3.2.4.3.1 If CO-PROVIDER requires a due date earlier than the U S WEST offered due date and U S WEST agrees to meet the COPROVIDER required due date, then that required due date becomes the committed due date and expedite charges may apply.

3.2.4.4 Subsequent to an initial order submission, CO-PROVIDER may request a new/revised due date that is earlier than the committed due date. If U S WEST agrees to meet that new/revised due date, then that new/revised due date becomes the committed due date and expedite charges may apply.

SEE ALSO –

¹ See Colorado ICA Attachment 8 Business Processes Sections: 2.1.17, 2.2.13, Minnesota ICA Attachment -5 Section 7.4.2 and Section 9.2, Oregon ICA Attachment 5 Section 7.4.2 and Section 9.2, Utah ICA Attachment 5 Sections 3.2.2.12 and 3.2.2.13, Washington ICA Attachment 5 Sections 3.2.2.12 and 3.2.2.13

² See Colorado ICA Attachment 8 Business Processes Section: 2.2.2.1.6, Minnesota ICA Attachment 5 Section 9.1 and Section 9.3, Oregon ICA Attachment 5 Section 9.1 and Section 9.3, Utah ICA Attachment -5 Section 3.2.4, Washington ICA Attachment 5 Section 3.2.4

2.1 General Business Requirements³

2.1.4.7 U S WEST shall provide provisioning support outside of scheduled work hours on a nondiscriminatory exception basis as requested by COPROVIDER. Such support may be subject to a minimum labor charge.

4. Connectivity Billing and Recording⁴

This Section 4 describes the requirements for U S WEST to bill and record all charges CO-PROVIDER incurs for purchasing services under this Agreement.

4.1.2 U S WEST shall record and bill in accordance with this Agreement those charges COPROVIDER incurs as a result of CO-PROVIDER purchasing from U S WEST services, as set forth in this Agreement (hereinafter "Connectivity Charges").

4.1.18 Bill Reconciliation⁵

4.1.18.4 If the dispute is not resolved within the allotted time frame, the following resolution procedure shall begin:

4.1.18.4.1 If the dispute is not resolved within sixty (60) days of the Notice of Discrepancy, the dispute shall be escalated to the second level of management for resolution.

4.1.18.4.2 If the dispute is not resolved within ninety (90) days of Notice of Discrepancy, the dispute shall be escalated to the third level of management for resolution.

4.1.18.4.3 If the dispute is not resolved within one hundred and twenty (120) days of the Notice of Discrepancy, upon the written request of either Party within such one hundred and twenty (120) day period, the dispute may be resolved pursuant to the dispute resolution provision set forth in Part A of this Agreement.

6.2 General Requirements⁶

6.2.1 U S WEST shall provide repair, maintenance, testing, and surveillance for all Telecommunications Services and unbundled Network Elements and Combinations in accordance with the terms and conditions of this Agreement.

6.2.1.1 U S WEST shall provide CO-PROVIDER with the same level of maintenance support as U S WEST provides itself in accordance with standards and performance measurements that U S WEST uses and/or which are required by law, regulatory agency, or by U S WEST's own internal procedures, whichever are the most rigorous. These

³ See Colorado ICA Attachment 8 Business Processes Section: 2.1.2.4, Minnesota ICA Attachment 5 Section 2.4, Oregon ICA Attachment 5 Section 2.4, Utah ICA Attachment 5 Section 2.1.4.7, Washington ICA Attachment 5 Section 2.1.4.7

⁴ See Colorado ICA Attachment 8 Business Processes Section 3.1.2, Minnesota ICA Attachment 7 Section 2.1, Oregon ICA Attachment 7 Section 2.1, Utah ICA Attachment 5 Section 4.1.2, Washington ICA Attachment 5 Section 4.1.2

⁵ See Colorado ICA Attachment 8 Business Processes Section 3.1.18.4, Minnesota ICA Attachment 7 Section 14, Oregon ICA Attachment 7 Section 14, Utah ICA Attachment 5 Section 4.1.18.4, Washington ICA Section 4.1.18.4

⁶ See Colorado ICA Attachment 8 Business Processes Section 5.1.2, See Minnesota ICA Attachment 6 Section 1, Oregon ICA Attachment 6 Section 4, Utah ICA Attachment 5 Section 6.2.1, Washington ICA Attachment 5 Section 6.2.1

standards shall apply to the quality of the technology, equipment, facilities, processes, and techniques (including, but not limited to, such new architecture, equipment, facilities, and interfaces as U S WEST may deploy) that U S WEST provides to CO-PROVIDER under this Agreement.

EXCERPTS FROM PART A (TERMS AND CONDITIONS)

3. Payment⁷

3.1 In consideration of the services provided by U S WEST under this Agreement, COPROVIDER shall pay the charges set forth in Attachment 1 to this Agreement. The billing procedures for charges incurred by CO-PROVIDER hereunder are set forth in Attachment 5 to this Agreement.

3.2 Amounts payable under this Agreement, unless reasonably disputed, are due and payable within thirty (30) days after the date of U S WEST's invoice or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day.

27. Dispute Resolution⁸

27.2¹⁴ In the event CO-PROVIDER and U S WEST are unable to agree on certain issues during the term of this Agreement, the Parties may identify such issues for arbitration before the Commission. Only those points identified by the Parties for arbitration will be submitted.

31. Warranties⁹

31.1 U S WEST shall conduct all activities and interfaces which are provided for under this Agreement with CO-PROVIDER Customers in a carrier-neutral, nondiscriminatory manner.

EXCERPT FROM ATTACHMENT 1 (RATES AND CHARGES)

1. General Principles¹⁰

1.2 Except as otherwise specified in this Agreement, as approved or ordered by the Commission, or as agreed to by the Parties through good faith negotiations, nothing in this Agreement shall prevent a Party through the dispute resolution process described in this Agreement from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

⁷ See Colorado ICA Part A Section 5.1, Minnesota ICA Part A Section: 2.1, Oregon ICA Part A Section 2.1, Utah ICA Part A Section 3.1 and Section 3.2, Washington ICA Part A Section 3.1 and Section 3.2

⁸ See Colorado ICA Part A Section 24.1, Minnesota ICA Part A Section 11, Oregon ICA Part A Section 11, Utah ICA Part A Section 27.2, Washington ICA Part A Section 27.2

⁹ See Colorado ICA Part A Section 14.1, Minnesota ICA Part A Section 9.2, Oregon ICA Part A Section 9.2, Utah ICA Part A Section 31.1, Washington ICA Part A Section 31.1

¹⁰ Utah ICA Attachment 1 Section 1.2, Washington ICA Attachment 1 Section 1.2