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BEFORE THE ARIZONA CORPORATION COMMISSION

254D

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

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AZ CORP COMMISSION  
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Arizona Corporation Commission  
DOCKETED

JUL 28 2006

DOCKETED BY [initials]

DOCKET NO. T-03406A-06-0257  
DOCKET NO. T-01051B-06-0257

IN THE MATTER OF:  
ESCHELON TELECOM OF ARIZONA, INC.  
  
Complainant,  
  
vs  
  
QWEST CORPORATION,  
  
Respondent.

PROCEDURAL ORDER

BY THE COMMISSION:

On April 14, 2006, Eschelon Telecom of Arizona, Inc. ("Eschelon") filed with the Arizona Corporation Commission ("Commission") a complaint against Qwest Corporation ("Qwest") stating that Qwest has refused to provide both repairs for disconnects in error and the capability to expedite orders for unbundled loops under the repair and expedite language of the Qwest-Eschelon Interconnection Agreement ("ICA").

On April 27, 2006, Qwest and Eschelon filed an Agreement of Parties for Extension of Time to Answer the Complaint in this matter, giving Qwest until May 12, 2006 to file its Answer.

On May 12, 2006, Qwest filed its Answer to Eschelon's Complaint.

On May 16, 2006, by Procedural Order, a procedural conference was scheduled for May 24, 2006.

On May 19, 2006, at the request of the parties, the procedural conference originally set for May 24, 2006, was rescheduled for May 23, 2006.

At the procedural conference on May 23, 2006, counsel for the parties appeared and discussed their desire to implement an interim resolution regarding repairs and the capability to expedite orders for unbundled loops through the resolution of this proceeding. Each party agreed that an accounting

1 and a “true-up” to settle outstanding financial matters would be made based upon any decision issued  
2 in this matter. The parties were not in agreement regarding the particulars of the interim resolution,  
3 and were therefore ordered to file proposed schedules and interim resolutions for the consideration of  
4 the Administrative Law Judge by procedural order issued on May 23, 2006.

5 On June 2, 2006, both Eschelon and Qwest filed their proposed schedules and interim  
6 resolutions. By procedural order issued on June 6, 2006, Eschelon’s interim proposal was adopted  
7 and procedural deadlines and a hearing date were established.

8 On June 26, 2006, Eschelon filed a Motion for Leave to Obtain Responses to Requests for  
9 Admissions and Accompanying Data Request. Eschelon stated that Qwest notified Eschelon by letter  
10 dated June 15, 2006, that Eschelon had exceeded the number of Requests for Production (“RFPs”)  
11 and Data Requests (“DRs”), and asked Eschelon to identify 25 requests to which it would like  
12 responses. Eschelon stated that it identified DR 1-17 and the first 25 RFAs as those to which it  
13 would like responses. Eschelon stated that by e-mail on June 20, 2006, Qwest sent Objections to  
14 Eschelon’s Second Set of Data Requests and Requests for Admission to Qwest, objecting to the  
15 number of requests. Eschelon argued that the issues presented in this docket warrant the service of  
16 additional requests; that additional requests are a practical and less burdensome method of narrowing  
17 the issues to be resolved at hearing; and that good cause exists to warrant the service of additional  
18 requests.

19 On July 7, 2006, Qwest filed a response to Eschelon’s Motion for Leave to Obtain Responses  
20 to Requests for Admissions and Accompanying Data Request. Qwest argued that much of  
21 Eschelon’s discovery requests range far from the issues at hand, the number of requests total more  
22 than three times the presumptive limits, and that Eschelon has not shown good cause to grant its  
23 motion.

24 On July 14, 2006, by Procedural Order, a procedural conference was scheduled for July 27,  
25 2006. On this date, Eschelon filed its direct testimony and a Motion for Summary Judgment.

26 On July 27, 2006, the procedural conference was held as scheduled. Each party was  
27 represented by counsel, and counsel for the Commission’s Utilities Division (“Staff”) appeared.  
28 Qwest urged the Administrative Law Judge to lengthen the hearing schedule to accommodate the

1 discovery necessary to properly develop the issues as well as to accommodate the schedule of  
2 Qwest's counsel. Qwest further stated that it had not retained substitute counsel in this matter  
3 because it believed that the Administrative Law Judge had not ruled on its June 9, 2006, Motion to  
4 Reconsider Hearing Schedule. Eschelon stated that it would limit its Requests for Admission to RFA  
5 1-15, 1-16, and 1-21 but urged the Administrative Law Judge to retain the current hearing schedule.  
6 Eschelon stated that harm would accrue to it in the event that the hearing schedule is lengthened in  
7 that it has only one attorney to represent it, and in that it has already filed its Direct Testimony, and  
8 any extension would give Qwest an unfair advantage in filing its Testimony. Counsel for Staff urged  
9 the Administrative Law Judge to consider the hearing schedule in light of the discovery necessary to  
10 properly develop the issues as well as to accommodate the schedule of Qwest's counsel. Staff stated  
11 that it opposes any limitation on discovery.

12       The June 6, 2006, procedural order setting forth the hearing schedule stated that "any motions  
13 which are filed in this matter and which are not ruled upon by the Commission within 20 days of the  
14 filing date of the motion shall be deemed denied." Under this framework, Qwest's June 9, 2006  
15 filing was deemed denied on June 29, 2006, and due to Qwest's counsel's schedule, a substitute  
16 attorney would have been retained to represent Qwest in this matter. However, Qwest stated at the  
17 July 27, 2006 procedural conference that it had not taken the denial by operation of the procedural  
18 order into account, whether due to a misunderstanding or oversight. Regardless of the reason, Qwest  
19 has not, to date, engaged substitute counsel.

20       In addition to the matter of Qwest retaining counsel who can appropriately represent Qwest in  
21 this matter given the current hearing schedule, there is the issue of broader discovery than originally  
22 contemplated, which, it now seems, is necessary to resolution of this matter.

23       Based on all of the above, the parties should work together to provide the Commission with a  
24 procedural schedule that they both agree to, taking into account the schedule of counsel for both  
25 Qwest and Eschelon. However, Qwest shall file its Direct Testimony by April 28, 2006, unless the  
26 parties come to mutual agreement regarding a different date.

27       IT IS THEREFORE ORDERED that the parties shall file a joint proposed procedural  
28 schedule no later than August 7, 2006.

1 IT IS FURTHER ORDERED that Qwest's response to Eschelon's Motion for Summary  
2 judgment shall be filed no later than August 18, 2006.

3 IT IS FURTHER ORDERED that there shall be no limitation on discovery imposed by either  
4 party.

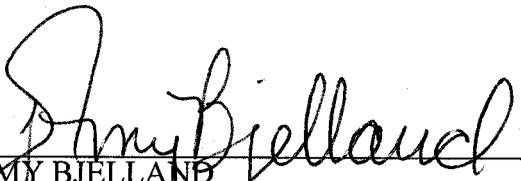
5 IT IS FURTHER ORDERED that all parties must comply with Rule 38 (a) of the Rules of the  
6 Arizona Supreme Court with respect to practice of law and admission *pro hac vice*.

7 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
8 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
9 Arizona Supreme Court). Representation before the Commission includes the obligation to appear at  
10 all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
11 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
12 Administrative Law Judge or the Commission.

13 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
14 Communications) applies to this proceeding and shall remain in effect until the Commission's  
15 Decision in this matter is final and non-appeable.

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

18 Dated this 28 day of July, 2006

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21   
22 AMY BJELLAND  
ADMINISTRATIVE LAW JUDGE

23 Copies of the foregoing mailed/delivered  
24 this 28 day of July, 2006 to:

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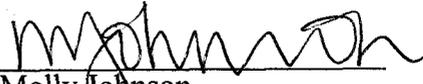
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20 Secretary to Amy Bjelland

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