

ORIGINAL

OPEN MEETING ITEM



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



Executive Director

22

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

AUG 25 2006

DATE: August 25, 2006
DOCKET NO.: T-03406A-06-0260
TO ALL PARTIES:

DOCKETED BY	<i>nr</i>
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Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ESCHELON TELECOM OF ARIZONA, INC.

(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9
10 IN THE MATTER OF THE APPLICATION OF
11 ESCHELON TELECOM OF ARIZONA, INC. FOR
12 APPROVAL OF ENCUMBRANCE OF ASSETS.

DOCKET NO. T-03406A-06-0260

DECISION NO. _____

11 ORDER

12 Open Meeting
13 September 19 and 20, 2006
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 FINDINGS OF FACT

19 1. Eschelon Telecom of Arizona, Inc. ("Eschelon Arizona") is a Minnesota corporation
20 that is a subsidiary of Eschelon Operating Company ("Eschelon Operating"), also a corporation
21 organized and existing under the laws of Minnesota. Eschelon Operating, in turn, is a direct, wholly-
22 owned subsidiary of Eschelon Telecom, Inc. ("Eschelon Telecom").

23 2. On April 19, 2006, Eschelon Arizona filed an application with the Commission
24 requesting authorization to pledge assets to secure debt obtained by its parent company, Eschelon
25 Operating, not to exceed \$48 million of Senior Second Secured Notes due in 2010. The Commission
26 already approved a pledge of assets by Eschelon Operating of \$165 million. Eschelon Operating
27 issued \$165 million, then redeemed \$40 million, and subsequently issued another \$48 million. With
28 approval of the current request, Eschelon Arizona would have approval to pledge assets to secure a
total of \$173 million of Eschelon Operating indebtedness.

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3. Eschelon Arizona provided the Commission's Utilities Division Staff ("Staff") an affidavit of publication verifying that it published notice of its application in *The Arizona Republic*, a newspaper of general circulation in Maricopa County, on May 8, 2006.

4. On July 18, 2006, Staff filed a Staff Report recommending conditional approval of the application.

5. In this docket, Eschelon Arizona seeks to specify the amount of debt for which Arizona assets are pledged. Previous decisions have required the procurement and maintenance of a performance bond secured by assets not otherwise encumbered.

6. The Commission previously authorized Eschelon Arizona in Decision No. 67977 (July 18, 2005) and Decision No. 67885 (June 1, 2005) to pledge its assets to secure the debt of Eschelon Operating in the amount of \$100 million and \$65 million, respectively, provided that Eschelon Arizona obtain a performance bond and that the assets used to collateralize the bond are to remain unencumbered. Staff states that Eschelon Arizona's management represents that Eschelon Arizona is in compliance with this requirement; Eschelon Arizona management also represents that the Arizona assets represent less than ten percent of the collateral being pledged for this debt. Previous rate cases indicate the value of Arizona assets to be approximately \$4,400,000 (Decision No. 67885), as compared with the \$48 million of debt requested for approval and to be issued by Eschelon Operating. The obligations of the notes will be guaranteed by operating subsidiaries of each state, including Eschelon Arizona, and each subsidiary wishes to grant a security interest in its plant and equipment.

7. Eschelon Operating states that it will use the proceeds of this transaction for general corporate purposes, which may include repaying indebtedness, increasing working capital, funding future acquisitions or any other purpose deemed appropriate by Eschelon Operating. Eschelon Arizona states in its application that this transaction will help Eschelon Arizona to continue to offer competitive services in Arizona and that it may allow Eschelon Arizona to expand its service offering and facilities in Arizona.

8. The Staff Report states that Staff's review of the transaction indicates that it would not

1 impair the financial status of Eschelon Arizona, would not impair its ability to attract capital, nor
2 would it impair the ability of Eschelon Arizona to provide safe, reliable, and adequate service.

3 9. Staff states that Eschelon Arizona's customers have alternative service providers and
4 would not experience significant harm in the event that the parent has financial difficulties.

5 10. Staff states that Eschelon Arizona has no outstanding compliance issues.

6 11. Staff concludes that approval of this application assists Eschelon Arizona and
7 Eschelon Operating to maintain and improve its Arizona operations and to serve Arizona ratepayers.
8 Staff further concludes that granting authorization to collateralize the debt is beneficial as it reduces
9 borrowing costs and does not impair Eschelon Operating's ability to attract capital or Eschelon
10 Arizona's ability to serve its customers.

11 12. Staff recommends:

12 (a) approval of the application provided that Eschelon Operating is in full conformity
13 with the performance bond requirements established by Decision No. 67885;

14 (b) authorizing Eschelon Arizona to engage in any transactions and to execute any
15 documents necessary to effectuate the authorizations granted; and

16 (c) that the Commission order Eschelon Arizona to file, as a compliance item in this
17 docket, any available proof of the existence of performance bonds within 90 days of the Decision in
18 this matter.

19 **CONCLUSIONS OF LAW**

20 1. Eschelon Arizona is a public service corporation within the meaning of Article XV of
21 the Arizona Constitution, A.R.S. §§ 40-285, 40-301, 40-302, and A.A.C. R14-2-804.

22 2. The Commission has jurisdiction over Eschelon Arizona and the subject matter of the
23 application.

24 3. Authorization of Eschelon Arizona's pledge of its assets in support of its parent's debt
25 issuance is compatible with the public interest.

26 4. The transaction approved herein will not impair the financial status of the public
27 utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability
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1 of the public utility to provide safe, reasonable and adequate service.

2 5. The guarantee authority approved herein is for lawful purposes within Eschelon
3 Arizona's corporate powers, is compatible with the public interest, with sound financial practices,
4 and with the proper performance by Eschelon Arizona of service as a public service corporation will
5 not impair Eschelon Arizona's ability to perform that service.

6 6. Staff's recommendations are reasonable and should be adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that pursuant to A.R.S. §§ 40-285, 40-301, and AAC R14-2-
9 804, Eschelon Telecom of Arizona, Inc.'s application for approval to guarantee the debt of Eschelon
10 Operating Company as set forth in the April 19, 2006 application, and as conditioned herein, is
11 hereby granted.

12 IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc. is hereby authorized to
13 engage in any transactions and/or execute any documents necessary to effectuate the authorization as
14 granted herein, except that Eschelon Telecom of Arizona, Inc. shall remain in full conformity with
15 the requirements of Decision No. 67885.

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1 IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc. shall file proof of the
2 existence of performance bonds with Docket Control, as a compliance item in this docket, within 90
3 days of the effective date of this Decision.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

11 COMMISSIONER

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2006.

18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____

24 AB:mj
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1 SERVICE LIST FOR:

ESCHELON TELECOM OF ARIZONA, INC.

2 DOCKET NO.:

T-03406A-06-0260

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