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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

COMMISSIONERS

**DOCKETED**

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

SEP 21 2006

DOCKETED BY	nr
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IN THE MATTER OF THE APPLICATION OF  
ESCHELON TELECOM OF ARIZONA, INC. FOR  
APPROVAL OF ENCUMBRANCE OF ASSETS.

DOCKET NO. T-03406A-06-0260

DECISION NO. 68955

**ORDER**

Open Meeting  
September 19 and 20, 2006  
Phoenix, Arizona

**BY THE COMMISSION:**

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

**FINDINGS OF FACT**

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

2. On April 19, 2006, Eschelon Arizona filed an application with the Commission requesting authorization to pledge assets to secure debt obtained by its parent company, Eschelon Operating, not to exceed \$48 million of Senior Second Secured Notes due in 2010. The Commission already approved a pledge of assets by Eschelon Operating of \$165 million. Eschelon Operating issued \$165 million, then redeemed \$40 million, and subsequently issued another \$48 million. With 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.

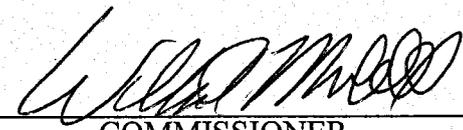
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1 IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc. shall file proof of the  
2 existence of performance bonds with Docket Control, as a compliance item in this docket, within 90  
3 days of the effective date of this Decision.

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

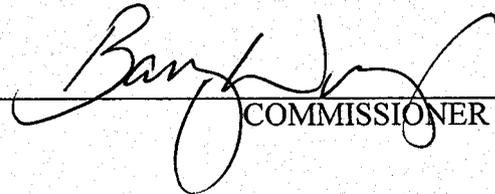
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

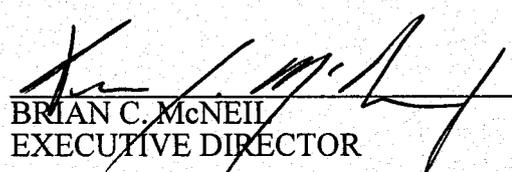
  
COMMISSIONER

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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 21<sup>st</sup> day of Sept., 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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