

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

19

JEFF HATCH-MILLER  
Chairman  
WILLIAM MUNDELL  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN MAYES  
Commissioner  
GARY PIERCE  
Commissioner

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AZ CORP COMMISSION  
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Arizona Corporation Commission  
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FEB 23 2007  
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IN THE MATTER OF THE COMPLAINT OF      DOCKET NO. T-03406A-06-0257  
ESCHELON TELECOM OF ARIZONA, INC.      DOCKET NO. T-01051B-06-0257  
AGAINST QWEST CORPORATION

**JOINT MOTION SUBMITTING SETTLEMENT AGREEMENT**

Eschelon Telecom of Arizona, Inc. and Qwest Corporation (collectively "the Parties") jointly submit the attached Settlement Agreement reached between the Parties conditionally resolving the matter. *See Attachment 1.* This Settlement Agreement is submitted pursuant to Procedural Order issued by the Administrative Law Judge on February 14, 2007. That same Procedural Order gives the Commission's Utility Division Staff until March 9, 2007 to comment on the attached Settlement Agreement. The Settlement Agreement expressly provides the Parties with the right to alter or opt out of the settlement, depending on the content of the comments, if any, filed by the Commission Staff. *See Attachment 1, at § B(2).*

Although this pleading is being executed by counsel for Eschelon, counsel has been authorized by counsel for Qwest to execute the pleading on behalf of both Parties.

Respectfully submitted this 23<sup>rd</sup> day of February, 2007.

By 

Michael W. Patten  
J. Matthew Derstine  
Roshka, DeWulf & Patten, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

Gregory Merz  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(admitted pro hac vice)

Karen L. Clauson  
Senior Director of Interconnection/ Associate  
General Counsel  
Eschelon Telecom, Inc.  
730 2<sup>nd</sup> Ave. South, Suite 900  
Minneapolis, MN 55402  
(admitted pro hac vice)

COUNSEL FOR ESCHELON TELECOM OF  
ARIZONA, INC.

Original and 15 copies of the foregoing  
filed this 23<sup>rd</sup> day of February 2007 with:

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

Copy of the foregoing hand-delivered/mailed  
this 23<sup>rd</sup> day of February 2007 to:

Teena Wolfe, Esq.  
Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Maureen A. Scott  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Ernest G. Johnson, Esq.  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Norman G. Curtright  
Corporate Counsel  
Qwest Corporation  
20 East Thomas Road, 16<sup>th</sup> Floor  
Phoenix, Arizona 85012

Melissa Kay Thompson  
Qwest Services Corporation  
1801 California Street, 10<sup>th</sup> Floor  
Denver, Colorado 80202

Charles W. Steese  
Steese & Evans, P.C.  
6400 South Fiddlers Green Circle, Ste 1820  
Denver, Colorado 80111

By: \_\_\_\_\_



# ATTACHMENT

"1"

## SETTLEMENT AGREEMENT

This Settlement Agreement (this "Settlement Agreement" or "Agreement") between Qwest Corporation ("Qwest"), a Delaware corporation, and Eschelon Telecom of Arizona, Inc. ("Eschelon"), a Minnesota corporation, (collectively referred to as the "Parties") is entered into as of the date of the last signature affixed hereto.

### WITNESSETH:

WHEREAS, Eschelon brought a complaint action against Qwest before the Arizona Corporation Commission, Docket Nos. T-01051B-06-0257 and T-03406A-06-0257, relating to expedited delivery of unbundled loops and other products.

WHEREAS, Qwest has denied the allegations in the complaint.

WHEREAS, Qwest and Eschelon desire to settle the complaint action brought by Eschelon before the Arizona Corporation Commission, Docket Nos. T-01051B-06-0257 and T-03406A-06-0257.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Qwest and Eschelon agree as follows:

#### **A. Obligations of the Parties:**

A.1. For the length of time that the current interconnection agreement between Qwest and Eschelon (approved by the Arizona Corporation Commission on or about April 28, 2000) remains the binding interconnection agreement between the parties in Arizona, Qwest agrees to interpret the expedite provisions of the Parties' current interconnection agreement to allow Eschelon in the state of Arizona to obtain expedited due dates on all products, including unbundled loops and other products categorized by Qwest as "designed services" according to the Expedites Requiring Approval process, pursuant to which Qwest will grant Eschelon's requests for an expedite, at no non-recurring charge (other than any applicable installation charge), under the following conditions:

- Fire;
- Flood;
- Medical emergency;
- National emergency;
- Conditions where Eschelon's end-user is completely out of service (primary line);

- Disconnect in error by Qwest;
  - Requested service necessary for Eschelon's end-user's grand opening delayed for facilities or equipment reasons with a future RFS date;
  - Delayed orders with a future RFS date that meets any of the above-mentioned conditions;
  - National security;
  - Business classes of service are unable to dial 911 due to previous order activity;
  - Business classes of service where hunting, call forwarding, or voice mail features are not working correctly due to previous order activity where the end-user's business is being critically affected.
- A.2. Qwest and Eschelon agree that this Settlement Agreement is not intended to alter or amend the existing April 28, 2000 interconnection agreement between Qwest and Eschelon. Nothing in this paragraph affects the obligations of the Parties under this Agreement and, specifically, under paragraph A.1 of this Agreement.
- A.3. Qwest and Eschelon currently have an arbitration proceeding pending before the Arizona Corporation Commission (Docket Nos. T-03406A-06-0572; T-0105B-06-0572) to arbitrate the disputed terms of a new interconnection agreement between the Parties in Arizona. Once that new interconnection agreement becomes effective, Eschelon shall no longer be able to rely upon this Settlement Agreement to request expedited due dates.
- A.4. In exchange for Qwest's agreement to act in accordance with paragraphs A.1 and A.2 of this Agreement, Eschelon agrees to dismiss its complaint (Docket Nos. T-01051B-06-0257 and T-03406A-06-0257) against Qwest with prejudice.
- A.5. The Parties will file Joint Motion to Voluntarily Dismiss this Case pursuant to Rule 41(a), *Ariz. R. Civ. Pro.* This Settlement Agreement shall be submitted to the Arizona Corporation Commission as an attachment to the Joint Motion to Voluntarily Dismiss this Case. Other than this Settlement Agreement and the publicly-filed interconnection agreement and its amendments, Qwest and Eschelon have no agreement or understanding, written or oral, relating to the terms and conditions for expedited orders.

**B. Conditions to Settlement**

- B.1. Staff to the Arizona Corporation Commission intervened in the complaint case brought by Eschelon (Docket Nos. T-01051-06-0257 and T-03406A-06-0257) and filed written testimony. Staff has reserved the right to review the Joint Motion to Voluntarily Dismiss this Case and provide comments about the proposed settlement.

B.2. Qwest and Eschelon's settlement is contingent upon the comments filed by Staff.

B.2.1. If the Staff does not file any comments, this Settlement Agreement is binding on Qwest and Eschelon so long as the Arizona Corporation Commission allows the case to be dismissed with prejudice, subject to the terms of this Settlement Agreement.

B.2.2. If the Staff files comments that recommend additional conditions, Qwest and Eschelon may modify the Settlement Agreement, retain all aspects of the Settlement Agreement, or may opt out of the Settlement Agreement and proceed forward with a hearing on the merits in this case. Qwest and Eschelon shall have 10 calendar days after receipt of Staff's comments to state whether they will opt out of or otherwise modify the Settlement Agreement. If Qwest or Eschelon indicates a desire to amend the Settlement Agreement, the Parties are not required to extend the 10-day period but may agree to do so to allow time for discussion of the terms of a potential amendment. If neither Qwest nor Eschelon opts out of the Settlement Agreement or indicates a desire to amend it within 10 calendar days, this Settlement Agreement is deemed binding on the Parties, again subject to the Arizona Corporation Commission dismissing the case with prejudice subject to the terms of this Settlement Agreement.

### **General Provisions**

B.3. Confidential Documents: Within sixty (60) days of dismissal of the case with prejudice, Qwest and Eschelon shall certify in writing to the producing party that all confidential documents produced in this complaint case have been destroyed. Outside counsel for Qwest and Eschelon shall be permitted to retain a copy of any documents containing confidential information that were submitted to the Arizona Corporation Commission during the course of the Complaint proceeding (either attached to motions or attached to pre-filed testimony); however, these confidential documents must be maintained according to the terms of the Confidentiality Agreement issued in the complaint proceeding.

B.4. Release: Qwest and Eschelon shall fully, finally and irrevocably release and discharge each other as well as each party's shareholders, directors, officers, employees, representatives, agents, attorneys, parents, subsidiaries and affiliated entities, with respect to all claims, demands, damages or remedies arising from the allegations contained in the Complaint proceeding (Docket Nos. T-01051B-06-0257 and T-03406A-06-0257). Qwest and Eschelon currently have an arbitration proceeding pending before the Arizona Corporation Commission (Docket Nos. T-030406A-06-0572; T-01051B-06-0572), as well as five other states. This Release does not prevent the Parties from addressing expedited orders in those interconnection agreement arbitration cases, subject to paragraphs B.5 and B.10 of this Agreement.

B.5. Notice: All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand (with receipt of delivery) or mailed, certified or

registered mail with postage prepaid, or by facsimile or other electronic transmission (such mailed or electronic notice to be effective on the date receipt of such is acknowledged in a manner customary for communications of such respective type):

If to Eschelon:

J. Jeffery Oxley  
Eschelon  
730 2<sup>nd</sup> Avenue, Suite 900  
Minneapolis, Minnesota 55402

If to Qwest:

Norman G. Curtright  
Qwest Services Corporation  
20 E. Thomas Road, 16<sup>th</sup> Floor  
Phoenix, Arizona 85012

- B.6. Non-Admission: Qwest and Eschelon each continue to maintain their positions with respect to the allegations in the Complaint and Answer but have agreed to resolve this dispute to avoid further litigation expense in this matter. Neither this Settlement Agreement, nor anything contained herein, is to be construed as an admission by any Party of any liability, wrongdoing or unlawful conduct whatsoever. Moreover, this Settlement Agreement shall not be construed as a waiver of any position to be taken by Qwest or Eschelon in this or any other proceeding.
- B.7. Governing Law: The Parties agree that all disputes and controversies arising out of this Agreement, and any claim for relief or other legal proceeding to interpret or enforce the respective rights of the parties to this Agreement, shall be administered by the Arizona Corporation Commission under the laws of the state of Arizona.
- B.8. Binding: This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their parents, subsidiaries, affiliates, divisions and all those acting in concert or participation with them or under their direction or control, and upon their successors and assigns.
- B.9. Joint Drafting: This Agreement shall be deemed to have been jointly drafted by the Parties for all purposes involving its construction and enforcement.
- B.10. Entire Agreement: This Agreement contains the entire understanding and agreement between the Parties and shall not be modified or superseded except upon express written consent of both parties to this Agreement.

- B.11. Agreement Not to be Used as Evidence: This Agreement shall not be admissible as evidence in any proceeding except where one of the Parties to this Agreement seeks to enforce this Agreement or alleges this Agreement has been breached.
- B.12. Authorization: The undersigned individually warrant and represent that they are authorized to execute this Agreement and, if applicable, that all necessary corporate action has been taken to authorize execution of this Agreement.
- B.13. Execution in Counterparts; Facsimile Signature: This Agreement may be executed in counterparts, each of which taken together shall constitute one and the same Agreement. This Agreement may be executed by facsimile signature and any such facsimile signature shall be deemed an original.

IN WITNESS WHEREOF, the parties by their duly authorized officers, have executed this Agreement as of the date(s) indicated below.

Qwest Corporation

\_\_\_\_\_  
By:

Title:

Date: February \_\_\_\_, 2007

Eschelon Telecom of Arizona, Inc.

\_\_\_\_\_  
By:

Title:

Date: February \_\_\_\_, 2007