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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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

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

ESCHELON TELECOM OF
ARIZONA, INC.'S NOTICE OF
OPT-OUT AND REQUEST
FOR PROCEDURAL
CONFERENCE

On February 14, 2007, the Administrative Law Judge ("ALJ") issued a Procedural Order in this matter that directed Eschelon Telecom of Arizona, Inc. ("Eschelon") and Qwest Corporation ("Qwest") to file a settlement agreement or request a procedural conference by February 23, 2007. The ALJ also established a deadline of March 9, 2007 for the Commission's Utilities Division Staff ("Staff") to file a response to the proposed settlement agreement.

On February 23, 2007, Eschelon and Qwest filed a conditional settlement agreement that was contingent upon comments to be filed by Staff. The conditional settlement agreement allows either Qwest or Eschelon (or both) to opt out of the conditional settlement agreement within 10 calendar days of receipt of Staff's comments and proceed forward with the hearing on the merits in this case.

On March 9, 2007, Staff filed its Comments on the conditional settlement agreement. One of the six Staff recommendations on pages 4-5 of the Staff March 9, 2007 Comments specifically requires action (*i.e.*, refresher training) by Eschelon.¹ As indicated by Mr. Denney, Eschelon wants to make clear that it will act in accordance with this recommendation.² Eschelon has already scheduled mandatory training to commence in April. Eschelon is willing to work with Staff to ensure the training meets Staff's expectations. The other five of the six Staff recommendations on pages 4-5 of the Staff March 9, 2007 Comments require action by Qwest.

With this filing, Eschelon opts out of the settlement agreement. As the terms of the *conditional* settlement agreement show, Eschelon desired Staff input *before* committing to the agreement on a non-conditional basis. In light of input received by Staff in its Comments, Eschelon cannot commit to the terms of the proposed conditional settlement agreement. Eschelon's intent is to be party to a settlement agreement in this matter *only if* the resolution is in the public interest.

In Eschelon's Complaint, Eschelon requested an order providing any relief that this Commission deems to be proper and just.³ The Staff, on page 4 of its March 9, 2007 Comments, said that it "believes the Settlement Agreement could be in the public interest if it includes" the Staff's recommendations. As indicated in Mr. Denney's testimony, Eschelon agrees with these Staff conclusions (which also appear in the Executive

¹ As indicated by Mr. Denney, the cause of the disconnect in error was not a disputed issue in this case. Denney Rebuttal, p. 5, footnote 3. When Eschelon learned of its error, it acknowledged the mistake to its Customer (*see* Eschelon Chronology, Attachment 1 to Staff Testimony, ¶7), and Eschelon admitted it in the Complaint in this proceeding (p. 2, lines 3-4 & p. 9, ¶26, lines 20-22). Because accuracy is important, however, Eschelon has no objection to conducting this additional training.

² Denney Rebuttal, pp. 5-6.

³ Complaint, p. 14, ¶K; *see also id.* pp. 13-14 ¶¶ A, B, H, I, & J; *see also id.* ¶4, citing 47 U.S.C. § 251(c)(2)(D) and (3) and §252, 47 C.F.R. § 51.313, and Arizona Revised Statutes §§ 40-424, 40-246, 40-248, 40-249, 40-334 and 40-361.

Summary to Staff Testimony).⁴ As there is currently no agreement of all parties to those terms to resolve the matter, however, Eschelon requests a procedural conference.

Regarding scheduling of the procedural conference, Eschelon and Qwest have a separate hearing the week of March 19, 2007. Counsel for Qwest has indicated that he is on vacation the following week. Therefore, Eschelon requests that a procedural conference be scheduled during or after the week of April 2, 2007. Eschelon also requests the opportunity for the Parties to participate in the conference by telephone.

RESPECTFULLY SUBMITTED THIS 16th day of March, 2007

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⁴ Denney Rebuttal, p. 4, lines 17-19.

Original and 15 copies of the foregoing
filed this 16th day of March 2007 with:

Docket Control
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Copy of the foregoing hand-delivered/mailed
this 16th day of March 2007 to:

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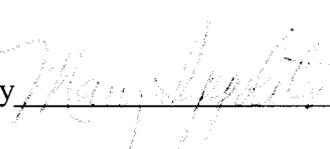
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