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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2007 JUL 30 A 11:43
AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF)	DOCKET NO. T-03632A-06-0091
DIECA COMMUNICATIONS DBA COVAD)	T-03406A-06-0091
COMMUNICATIONS COMPANY, ESCHELON)	T-03267A-06-0091
TELECOM OF ARIZONA, INC., MCLEODUSA)	T-03432A-06-0091
TELECOMMUNICATIONS SERVICES, INC.,)	T-04302A-06-0091
MOUNTAIN TELECOMMUNICATIONS, INC.,)	T-01051B-06-0091
XO COMMUNICATIONS SERVICES, INC AND)	
QWEST CORPORATION REQUEST FOR)	
COMMISSION PROCESS TO ADDRESS KEY)	
UNE ISSUES ARISING FROM TRIENNIAL)	
REVIEW REMAND ORDER, INCLUDING)	
APPROVAL OF QWEST WIRE CENTER LISTS.)	
)	
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Arizona Corporation Commission
DOCKETED

JUL 30 2007

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COMMENTS OF ESCHELON TELECOM OF ARIZONA, INC.

Eschelon Telecom of Arizona, Inc. (Eschelon) files these objections to Qwest Corporation's (Qwest's) June 22, 2007 Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List. Eschelon asks the Arizona Corporation Commission (Commission) to recognize that the Commission has not yet considered or approved the proposed settlement agreement between Qwest and certain competitive local exchange carriers (the Joint CLECs¹) that describes a process by which they will review Qwest's filing, and that the proposed settlement agreement's process deadlines should therefore not apply unless and until approved.

¹ "Joint CLECs" is a defined term in the "Proposed Settlement Agreement," which provides in the definitions (Section II) that "'Joint CLECs' refers collectively to Covad Communications Company and DIECA Communications, Inc. (Covad), Eschelon Telecom, Inc. (Eschelon), Integra Telecom Holdings, Inc. (Integra), McLeodUSA Telecommunications Services, Inc. (McLeod), Onvoy, POPP.Com (POPP), US Link, Inc. d/b/a TDS Metrocom, Inc. (TDSM), and XO Communications Services, Inc. (XO)."

1 Additionally, not all CLECs are party to the proposed settlement agreement, and it is premature to
2 foreclose any party's participation in this docket. In the event that the Commission requires that
3 parties to the proposed settlement agreement hold to process deadlines in the proposed settlement
4 agreement at this time, however, Eschelon lodges an objection to Qwest's requests in its petition
5 filing.

6 I. BACKGROUND

7 On June 27, 2007, Qwest filed a proposed settlement agreement (the *Proposed Settlement*
8 *Agreement*) in this docket. The same document was filed on or about the same date in Minnesota,
9 Washington, Colorado, Oregon, and Utah. In the *Proposed Settlement Agreement*, the parties
10 documented their agreement on, among other things:

- 11 • an initial state commission-approved wire center list that the parties believed satisfied the
12 non-impairment criteria of the Federal Communications Commission's Triennial Review
13 Remand Order; and
- 14 • a process for addressing future Qwest filings to request state commission approval of
15 additions to the initially approved wire center list, including, among other provisions, a
16 30-day timeline for CLECs to raise objections to Qwest's petition, with a Non-
17 Impairment Designation if no objection is submitted unless the Commission otherwise
18 orders.

19 On June 22, 2007, Qwest filed the petition that is the subject of the above-captioned
20 docket, requesting Commission approval of proposed additions to the non-impaired wire center list
21 that is proffered in the *Proposed Settlement Agreement*, and a proposed standing protective
22 agreement.

23 II. COMMENTS AND OBJECTION TO FILING

24 A. **The *Proposed Settlement Agreement* is not yet approved and therefore should 25 not trigger filing deadlines in this proceeding.**

26 As previously noted, Qwest filed the *Proposed Settlement Agreement* for Commission
27 approval in the initial wire center docket on June 27, 2007. At this point, the Commission has

1 held a July 19 pre-hearing conference to commence its consideration of the merits of the proposed
2 agreement, and tentatively set responses to the proposal for the Fall.

3 The *Proposed Settlement Agreement* clearly contemplates that it will go into effect in each
4 state upon state commission order granting approval: “Effective Date of this Settlement
5 Agreement’ is the effective date of the Commission order approving this Settlement Agreement.”
6 *Proposed Settlement Agreement* at II. “If, prior to approval, any Commission modifies any portion
7 of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this
8 Settlement Agreement as to that particular state.” *Proposed Settlement Agreement* at VII
9 (A)(4)(C).

10 The *Proposed Settlement Agreement* keys the participating parties’ prospective actions off
11 the date of Commission approval, e.g.:

12 Qwest, Covad, Integra, POPP.Com, and XO agree to execute the ICA terms in Attachment
13 B within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest
14 agrees to file the executed amendments for Commission approval within thirty (30) days of the
15 Effective Date of this Settlement Agreement.

16 *Proposed Settlement Agreement* at VII (A)(2).

17 McLeod USA and TDSM agree to execute the ICA terms in Attachment D within ten (10)
18 business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the
19 executed amendments for Commission approval within thirty (30) days of the Effective Date of
20 this Settlement Agreement.

21 *Id.*²

22 Under the key principle establishing the effective date of the *Proposed Settlement*
23 *Agreement*, therefore, Qwest’s June 22, 2007 petition proposing additions to the impaired wire
24 center list cannot trigger deadlines in the *Proposed Settlement Agreement* for carriers to file
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27 ² Eschelon and Qwest have an approved *Bridge Agreement* providing that the existing ICA will not be amended on
these issues; rather, terms will be included in the new proposed ICA. The Qwest/Eschelon terms are described in
VII(A)(1)(b).

1 objections to the Qwest filing, because the *Proposed Settlement Agreement* has not been approved.
2 Should the Commission eventually approve the *Proposed Settlement Agreement*, the Commission
3 should ensure that all timelines provided for in the *Proposed Settlement Agreement*—including
4 Joint CLECs’ initial 30-day window to file objections to the petition—are properly based off of the
5 effective date of the *Proposed Settlement Agreement*—that is, the effective date of the Order
6 approving it.

7 **B. Proper application of the *Proposed Settlement Agreement* will require that**
8 **Joint CLECs have 30 days from the point at which they have access to all**
9 **relevant confidential data to register an objection to a petition to add wire**
10 **centers to the non-impaired list; Eschelon files an objection in this docket,**
11 **which in particular requires additional time.**

12 As noted, if the *Proposed Settlement Agreement* were approved, and thus effective, at the
13 time of Qwest’s filing, its terms would require the filing of objections to Qwest’s submission
14 within 30 days of its filing date. *Proposed Settlement Agreement* VI (F)(1). This provision can
15 only logically be interpreted to allow participating CLECs 30 days from the point at which they are
16 able to access the confidential data—which will be required to support the petition (*see, e.g.,*
17 *Proposed Settlement Agreement* V, Methodology) --in order to determine if an objection should be
18 raised. For reasons articulated below, in this docket in particular, more time than the 30 days from
19 Qwest’s filing is necessary to consider Qwest’s supporting data and lodge an objection if
20 necessary.

21 Therefore, in an abundance of caution, even though no timelines should be implemented or
22 enforced prior to the approval date of the *Proposed Settlement Agreement*-- if and when that
23 occurs--Eschelon objects to Qwest’s filing because Qwest has not yet provided parties access to
24 the confidential information necessary to support its petition. Furthermore, Qwest’s voluminous,
25 multi-state filing is particularly inconsistent with the expedited review contemplated in the
26 *Proposed Settlement Agreement*.³

27 ³ See, Direct Testimony of [Qwest witness] Renee Albersheim, Minnesota PUC Docket No. P-5692, 5340, 5323, 465,
6422/M-06-211 and P-999/CI-06-685, OAH Docket No. 11-2500-17274-2 (the Minnesota Qwest/Eschelon
Arbitration Docket), p. 17, lines 19-22 (June 29, 2006): “However, it follows that the transition for additions to the

1 Qwest filed only public data with its July 29 submission of data to support its petition,
2 pending the issuance of a protective order. Parties will require the confidential data that they have
3 obtained in other states in order to analyze the wire center proposals. In other states, Eschelon's
4 initial review of data has shown some discrepancies regarding analyses of line counts, which must
5 be pursued and clarified. Eschelon will also review and analyze data on fiber-based collocators
6 when confidential data is available. None of this can be accomplished without access to the
7 necessary confidential data.

8 When Eschelon does obtain access to the necessary data supporting Qwest's petition, its
9 resources will be particularly stretched (as will those of other CLECs, when they are able to obtain
10 confidential data from Qwest) because Qwest has simultaneously filed petitions for additions to
11 wire centers in at least five other states---Washington, Utah, Oregon, Minnesota and Colorado.
12 Obviously, the effort to analyze data concerning 26 wire center additions is vastly greater than
13 would be required to review data for a single state wire center proceeding (for example, Arizona,
14 which has eight of the 26 proposed wire center additions). By contrast, the initial proceeding
15 focused on 65 proposed wire centers in staggered commission proceedings in the six states.

16 Furthermore, in four of the six wire center states (but not Arizona), Qwest filed proposed
17 protective agreements with its initial filings that diverged from the model protective agreement
18 attached to the *Proposed Settlement Agreement*. Eschelon has therefore been required to address
19 this issue by filing motions to conform the proposed protective agreements in those states into the
20 agreed upon version. The confusion and delay in disseminating confidential data caused by
21 Qwest's filing of protective agreements inconsistent with the *Proposed Settlement Agreement* has
22 compounded the time and resources already necessary to analyze supporting data for 26 wire
23 centers.

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27 non-impaired wire center list should be shorter than the initial transition. Subsequent transitions are likely to be for
only one or two wire-centers at a time."

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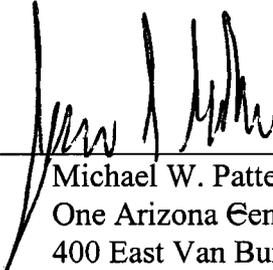
1 **III. CONCLUSION**

2 Qwest's petition should not trigger filing deadlines, in light of the unapproved status of the
3 *Proposed Settlement Agreement*. As a precaution against the possibility of the Commission's
4 enforcing deadlines prior to the *Proposed Settlement Agreement's* effective date, Eschelon files an
5 objection to Qwest's petition for additions to the initial proposed list of unimpaired wire centers.
6 Such an objection is well-founded because Qwest's filing does not include the necessary
7 confidential supportive documentation. Qwest furthermore has caused confusion and delay
8 through its repeated submissions of protective agreements inconsistent with the model agreement
9 attached to the parties' *Proposed Settlement Agreement* in other states. This docket in particular
10 will require full participation by parties who have had an opportunity to examine all relevant data
11 because it is part of a massive multi-state effort by Qwest to remove wire centers from the list
12 available to CLECs as UNEs.

13 Eschelon asks that the Commission refrain from invoking the procedural deadlines from
14 the *Proposed Settlement Agreement* unless and until the agreement is approved and goes into
15 effect. In the alternative, Eschelon files an objection to Qwest's requests in its petition and asks
16 that the Commission allow, at a minimum, 30 days from the date that access to complete
17 confidential data is available to all participating CLECs in order for objections to be filed.

18 RESPECTFULLY SUBMITTED this 30th day of July 2007.

19 ROSHKA DEWULF & PATTEN, PLC

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8 Original and 23 copies of the foregoing
9 filed this 30th day of July 2007 with:

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14 Copy of the foregoing hand-delivered/mailed
15 this 30th day of July 2007 to:

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