

ORIGINAL

THIS AMENDMENT:

____ Passed _____ Passed as amended by _____
____ Failed _____ Not Offered



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HEARING DIVISION PROPOSED AMENDMENT # 2

TIME/DATE PREPARED April 30, 2008/3:00 pm

COMPANY: Eschelon Telecom, Inc. and Qwest Corporation

AGENDA ITEM NO. U- 18

DOCKET NO. T-03406A-06-0572 and T-01051B-06-0572

OPEN MEETING DATE: May 6 and 7, 2008

Arizona Corporation Commission

DOCKETED

APR 30 2008

DOCKETED BY NR

AZ CORP COMMISSION
DOCKET CONTROL

2008 APR 30 P 4: 01

RECEIVED

Page 21, line 18

After "alternative proposal":

DELETE "will"

INSERT ", if not modified, would"

Page 21, line 26

After "pre-approval in all cases." INSERT:

"Because of the nature of disconnection, we also believe the proposed notice language of Section 5.4.3 should be revised so that there is a meaningful opportunity before disconnection to request the Commission prevent disconnection."

Page 22, line 4

DELETE "..."

After "Commission orders otherwise." INSERT:

"In case of such disconnection all applicable undisputed charges, including termination charges, if any, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the

Billing Party's right to discontinue any or all relevant services of the non-complying Party after an additional at least ten (10) business days notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services . . ."

Page 22, line 5

After "Section 5.13.1" INSERT: "(regarding disputed amounts)"

Page 22, line 7

After "respect to remedies" INSERT: "regarding undisputed amounts"

Page 22, line 23

After "reasonable compromise." INSERT footnote "Joint Matrix at 25 (Eschelon Proposal #2)."

Page 23, line 1

After "5.4.5" INSERT new footnote "Ex E-13, Denney Direct at 80 (Eschelon Proposal #2)."

Page 23, line 16

After "also affects" DELETE "the deposit requirement"

INSERT: "when a deposit required pursuant to Section 5.4.5 is due and payable"

Page 23, line 17

After "worthiness," INSERT: "as described in Section 5.4.5"

Page 23, line 20

After "We find Qwest's" DELETE "proposed language"

INSERT "proposal of 30 days"

Page 23, line 22

INSERT new paragraph:

“Thus, for the pertinent parts of Section 5.4.5 we adopt the following:

“5.4.5 . . . If a Party . . . is Repeatedly Delinquent in making its payments. . . , the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, three (3) or more times during a six (6) month period on the same Billing account number. . . Required deposits are due and payable within thirty (30) Days after demand and conditions being met, unless the billed Party challenges the amount of the deposit requirement (e.g., because delay in submitting disputes or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.”

Page 23, line 22

After “Issue 5-13 addresses” DELETE “circumstances” and after “when” DELETE “an existing” INSERT “a”

After the resulting sentence “Issue 5-13 addresses when a deposit may be increased.” INSERT:

“Although on first blush Section 5.4.7 appears to address when an existing deposit may be increased, it could also be read to apply to situations where the parties have an existing relationship, but have heretofore not required a deposit.”

Page 23, line 24

After “by the Commission.³⁴” INSERT:

“Qwest proposed language whereby the Billing Party could review the other’s credit standing and increase the amount of the deposit required.”

Page 23, line 26

After "pursuant to Section 5.4.5," INSERT: "or has not yet required a deposit,"

After "increase that deposit" INSERT: ", or require a deposit,"

Page 24, line 2

After "on a whim" INSERT "or without good cause"

Page 24, line 6

After "the increased deposit." INSERT

"Neither would Eschelon's proposed language allow Qwest to impose a deposit unless Eschelon were "Repeatedly Delinquent" because the Parties have an existing relationship. It is not unheard of that an entity's financial condition may have substantially and materially deteriorated such that payment of its bills may be in serious doubt, but the entity not be "Repeatedly Delinquent" according to Section 5.4.5."

Page 24, lines 10-14

DELETE indented language and REPLACE with:

The Billing Party may review the other Party's credit standing and request a deposit or increase the amount of deposit required if circumstances warrant a reasonable belief that payment is in serious doubt, such as, but not limited to, increased or greater delinquencies in undisputed amounts or significant and material adverse changes appearing in the billed Party's credit reports, such as Dun and Bradstreet, but in no event will the maximum amount exceed the amount in Section 5.4.5. Unless the Billed Party challenges the amount of the deposit or increase in deposit, by filing a dispute with the Commission, the increased deposit shall be due as provided in Section 5.4.5 concerning initial deposits.

Page 28, line 15 - 20:

DELETE lines 15 through 20

INSERT:

“Consequently, we adopt Eschelon’s proposed language for Section 7.6.3.1. We find, however, that Eschelon’s proposed Section 7.6.4 creates confusion as to what records Qwest must provide and we cannot reconcile it with our intent Qwest not have to provide more information than the records currently contain. Thus, we do not accept Eschelon’s proposed Section 7.6.4.”

Page 68, line 10

After “for ordering” INSERT “(Issue No. 9-58)”

After “circuit IDs” INSERT “(Issue No. 9-58(a))”

After “billing” INSERT “(Issue No. 9-58(b))”

Page 68, line 14

After “proposed language for” REPLACE “issue” with “issues” and after “9-58.” INSERT “, 9-58(a) and 9-58(b). Our approval, however, does not preclude either party from requesting that the Commission address these issues in a separate docket.”

continue with a new paragraph:

“In its Exceptions to the Recommended Opinion and Order, filed March 7, 2008, Eschelon proposed alternative language concerning billing in the event Qwest’s position is accepted rejecting a single BAN (Issue No. 9-58(c)).^{FNx} Eschelon proposes the following for Section 9.23.4.6.7.1:

For Commingled EELs, if Qwest relates the components of the Commingled EEL for itself, Qwest will relate the components of the Commingled EEL for CLEC for billing purposes, including bill validation. If Qwest separately tracks the special access component of EELs for other special access products for itself, Qwest will use that information to assist in relating the components of the Commingled EEL for CLEC for billing and bill validation purposes. The Parties will work together to address billing

issues to prevent adverse impacts to the End User Customer. For Commingling See Section 24.

We find Eschelon's revised alternative language to be reasonable. It does not require Qwest to provide information that it does not already provide for its own use, and having identifying components on bills provides Eschelon with important information used to validate and verify its bills. Consequently, we adopt Eschelon's proposal for Section 9.23.4.6.7.1 as set forth above."

"FNx Eschelon's Exceptions to Recommended Opinion and Order, Attachment 3, filed March 7, 2008."

Page 68, line 14-15

Start new paragraph with "Qwest's proposed procedures"

Page 68, line 15

After "for repairs" INSERT "(Issue No. 9-59)"

Page 68, line 24

After "with Qwest." INSERT footnote:

"In its Exceptions to the Recommended Opinion and Order filed on March 7, 2008, Eschelon proposed language for Section 9.23.4.7, Maintenance and Repair for UNE Component of Commingled EELs. Although Qwest has not responded to Eschelon's proposal in this proceeding, the proffered language appears to be a reasonable effort and good starting point to devise specific contract language. If the parties remain unable to negotiate final contract language concerning repair and maintenance of commingled EELs, as part of their compliance filing, they should request final resolution of this issue.

Page 72, line 15

After "at TELRIC rates.⁸⁷" INSERT:

"Qwest argues, however, that because multiplexing is not a UNE, and because the FCC has allowed commingling of UNEs and non-UNEs under the *TRO*, CLECs no longer need access to multiplexing at TELRIC rates.

Page 72, line 16

After “stand alone UNE” INSERT “, but as an optional feature or function of the unbundled loop.”

Page 72, line 17 - Page 73, line 5

Beginning page 72, line 17 DELETE through Page 73, line 5

INSERT

“Loop MUX combinations are available under Qwest’s SGAT and the Commission approved a cost-based rate for the loop MUX combination as part of Phase II of the Cost Docket.^{FNx} Qwest has argued that there has been a change of law regarding this product. Eschelon disputes Qwest’s interpretation of the FCC’s orders. Because Qwest currently offers this product at TELRIC rates through its SGAT, and perhaps through other individual ICAs, we do not believe that it is appropriate to change that pricing in this arbitration. Rather, if Qwest seeks to modify the pricing of this product it should make such application in a generic docket. Thus, we adopt Eschelon’s position and maintain the status quo concerning the terms of availability of the loop MUX combination.”

“FNx See Qwest SGAT Exhibit A §9.23.6.”

Page 83, lines 11 – 17

Commencing with “By providing expedites . . .” DELETE through line 17

INSERT

Qwest distinguishes between design and non-design services to justify not providing expedites to Eschelon in an emergency at a cost-based rate. We do not dispute here that there may be technical differences between unbundled loops (design) and retail POTS (non-design), but we do not find that the distinctions between the services are material when determining whether Eschelon has access to the loop and a meaningful opportunity to compete. If a Qwest customer is able to receive expedited service in a defined emergency (fire, flood, national emergency, etc.) without having a \$200 per day charge, then Eschelon should be entitled to receive the same level and quality of service. The fact that Eschelon uses an unbundled loop to provide the service to its customer is not a

meaningful distinction. For this reason, we adopt Eschelon's proposal no. 2, except that we do not adopt that portion of Eschelon's proposal that adopts a \$100 flat rate fee. Pursuant to our procedures for establishing rates, we will continue to approve the ICB rate, as an Interim Rate subject to true-up after our review of this rate in Phase III of the Cost Docket.

Page 87, line 4.5

After "Customer Not Ready (CNR)." INSERT "Except as set forth in Section 12.2.7.2.4.4.1," and REPLACE "Nothing" WITH "nothing"

Page 87, line 12.5

After "new Due Date." INSERT "If Qwest is able to deliver the service on the original delivery date, it will not count as a Qwest miss pursuant to Qwest's Performance Assurance Plan."