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June 27, 2002 Arizona Corporation Commission

DOCKETED

JUN 27 2002

DOCKETED BY *CHL*

Commissioner Marc Spitzer
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2996

Re: Eschelon's June 24, 2002 Letter to Commissioner Marc Spitzer;
AZ Docket Nos. RT-00000F-02-0271, T-00000A-97-0238

Dear Commissioner Spitzer:

We have received Eschelon's letter of June 24, 2002 (the "Letter") addressed to Commissioner Spitzer concerning "Eschelon's perspective" on the November 2002 agreement between Eschelon and Qwest. Much of the Eschelon letter is only rhetoric.¹ The letter does not answer the question before this Commission: Did the agreement between Qwest and Eschelon prevent any issue from being presented to and addressed by this Commission in the 271 process? Also, the Letter does **not** identify any specific terms or issues that were not raised or addressed in the 271 workshop process.

Nothing in the Letter suggests that the course adopted by the Commission on June 19, 2002 should not be completed. Staff has undertaken to determine whether the agreements that were not filed by Qwest with the Commission have had any impact on the 271 process. The Staff will receive answers to data requests and comments from the CLECs and Qwest on June 27, 2002. Staff will then assimilate this information and prepare a report to the Commission recommending what should be done in the 271 docket, if anything, and in the 252(e) docket with respect to the unfiled agreements. Rather than short-circuiting that process or preempting it based on unverified rhetoric or assertions from Eschelon, the Commission should permit Staff to complete its analysis and then, with the advantage of the factual record developed by Staff, make its decision on the future course of proceedings on this issue.

¹ For example, Eschelon makes gratuitous references to Mr. Naccho's "brashness" and city of birth (quoted from the Wall Street Journal), which need not and should not be dignified by a response.

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While many of the points raised by Eschelon will be addressed in Qwest's comments and answers to data requests filed on June 27, 2002, Qwest does wish to respond to some of Eschelon's comments. Eschelon suggests that (1) the agreement did not resolve the pending issues between Qwest and Eschelon, and (2) Qwest prevented Eschelon from participating in the 271 process. While Eschelon implies that it had no choice in this matter, one thing should be completely clear. Eschelon, of its own free will, decided to work with Qwest to resolve the business issues between them. Eschelon could have decided at any point in the negotiation process that it did not wish to enter into agreement with Qwest and, instead wished to pursue its claims through the regulatory process including 271. Indeed, throughout the negotiation process and afterward, Eschelon evidenced a continuing awareness of its ability to go to the regulators if its concerns were not addressed. After the agreement was signed, if Eschelon believed that Qwest was not living up to its commitments in the Agreement, Eschelon could have sought redress through regulatory or legal avenues. Any suggestion by Eschelon that Qwest could, or did, prevent Eschelon from participating in the 271 process is simply baseless.

Similarly, although Eschelon contends that the Agreement was nothing more than an agreement to agree, the purpose of the Agreement was, in fact, to develop an implementation plan that would address the issues raised by Eschelon and improve the provisioning process for Eschelon (and incidentally for other CLECs). It was the creation of this implementation process to address interconnection issues that was the basis of Eschelon's agreement not to raise its implementation issues further in the 271 process. Personnel from both Qwest and Eschelon devoted significant efforts to the development of this process and its performance. Although Eschelon expresses unhappiness with the results of the process, Eschelon and Qwest agreed in good faith to work toward a negotiated business-to-business solution to these problems and to forgo the use of the regulatory process.

Importantly, the Agreement, including any agreement not to oppose Qwest's application for relief under Section 271, was terminated in February of 2002. To the extent that Eschelon decided not to participate fully in the 271 process after that termination, it was Eschelon's internal business decision that mandated the result, not the Agreement.

Eschelon quarrels with Qwest's characterization of Eschelon's participation in the CMP Process and argues that Qwest prevented Eschelon's full participation in that process. Eschelon claims Qwest "reviewed but did not disclose" Eschelon's written comments regarding a Qwest status report. In fact, Eschelon only submitted specific comments regarding Qwest's monthly CMP redesign status reports on a single occasion. While Qwest did not incorporate all of Eschelon's comments in the body of the status report, Qwest did attach Eschelon's redlined version of the status report as an exhibit to the report. This report and the attached Eschelon redlined version were submitted as part of the record in 271. On one other occasion, Eschelon submitted what it described as "high level" comments by email, stating that it generally disagreed with Qwest's status report. In that email, Eschelon also voiced disagreement with the

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process that was initially suggested by WorldCom and ultimately adopted by the redesign team for identifying and resolving the issues most important to CLECs. This email did not suggest any specific changes to the status report. If these are the comments to which Eschelon refers, its statement that Qwest "reviewed but did not disclose" these comments is also incorrect. Eschelon implies that Qwest somehow attempted to limit the distribution of Eschelon's comments. That is not true. In fact, Eschelon's email was sent to the entire redesign team, including representatives from CGE&Y and KPMG who were evaluating the redesign process for third party OSS tests. Qwest in no way attempted to limit the distribution or use of Eschelon's comments.

Eschelon also claims that Qwest somehow affected Eschelon's ability to participate in CMP by requiring Eschelon to withdraw a Change Request before it was distributed to other CLECs. The Change Request to which Eschelon refers related to Eschelon's claim that a Qwest employee had made negative comments regarding Eschelon. Indeed, the title of the Change Request was "Process to ensure Qwest employees do not comment on a CLEC." When it received this Change Request, Qwest explained to Eschelon that this issue related to employee performance, rather than a systemic process issue that is appropriately addressed through CMP. Qwest asked Eschelon to withdraw the Change Request. This single instance in no way impaired Eschelon's ability to participate in Qwest's CMP.

Eschelon's own record of participation belies its claims. Eschelon has been one of the most active and vocal participants in both the redesign meetings and the monthly CMP meetings. Eschelon representatives have also attended 41 of the 46 days of meetings held by the redesign team. No redesign participant, including Eschelon, has ever been prevented from raising any issue during that process. Further, Eschelon representatives have attended every monthly CMP meeting since at least January 2001. Eschelon's record of submitting Change Requests is perhaps the most accurate indicator of Eschelon's ability to participate in CMP. Eschelon has submitted more systems and product/process Change Requests than any other CLEC. In fact, Eschelon submitted 34% of the systems Changes Requests submitted by CLECs -- more than AT&T and WorldCom combined -- and a full 50% of the product/process Change Requests submitted by CLECs. The record demonstrates Eschelon's full and active participation in CMP and the CMP redesign effort.

Eschelon complains that Qwest Executive Vice-President, Gordon Martin, failed to attend certain CMP meetings despite requests by Eschelon that he do so. Contrary to Eschelon's suggestions, Mr. Martin's decisions were not an attempt to pressure, disadvantage or snub Eschelon or the other participants in the CMP process. Many of the participants in that process did not have representatives at the CEO or Executive Vice President level. Rather, they sent the person or persons best able to address the problem. There was nothing wrong with Qwest's selecting its representatives who had knowledge about the detail at issue at CMP meetings.

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In footnote 7 of the letter, Eschelon suggests that the Commission should investigate whether there are other agreements besides those discussed in Commissioner Spitzer's letter that may have affected participation by parties in the 271 docket or other regulatory proceedings. This is exactly the process that Staff has undertaken.

In footnote 14, Eschelon makes vague and non-specific allegations that Qwest has refused to make payments due to Eschelon as a means of impeding Eschelon's ability to participate in the CMP process or to persuade Eschelon not to participate in that process. It also implies, without any factual support, that Qwest made payments to other CLECs to keep them from participating in the CMP process. These allegations are simply untrue. Although it is, of course, very difficult to respond to the sort of vague allegations made by Eschelon in this footnote, it is indisputable that while the CMP process was ongoing, Qwest made payments to Eschelon despite the existence of billing disputes between Qwest and Eschelon. There is no factual basis to assume that Qwest discontinued payments to Eschelon as additional pressure to prevent Eschelon's participation in the CMP process. Indeed, Eschelon's extensive participation in that process belies this claim. Nor has Eschelon produced any evidence (as opposed to innuendo) that Qwest paid other CLECs to keep them from participating in the CMP process. Qwest's and Eschelon's billing disputes are wholly unrelated to the 271 process. Those disputes existed before 271, continued throughout the 271 process, and continue today. As Qwest verifies amounts that are due to Eschelon, it pays those amounts. Eschelon has no evidentiary basis to support its claims in footnote 14.

In the final analysis, Eschelon seeks to derail the process currently underway whereby Staff can investigate whether the unfiled agreements had any impact on the 271 process and determine what if any steps are appropriate to deal with those issues in the 271 and 252(e) dockets. Qwest believes that the investigation will conclude that these agreements did not prevent any substantive issue from being raised and addressed in the 271 docket, and that any remaining issues related to these agreements should be addressed in the 252(e) docket. As Qwest made clear at the prehearing conference on June 19, 2002, Qwest has committed to file all agreements with the parameters set by Staff for Commission approval on a going forward basis. This represents compliance with any reasonable standard under Section 252, triggering the processes under Sections 252(e) and 252(i) for Commission review and allowing CLECs to pick and choose to the extent permitted under Section 252(i). CLECs thus have the full protection of Section 252 to access interconnection services and unbundled network elements under Section 251, thus satisfying all obligations that Qwest may have under Section 271.

In any event, in light of the short period of time remaining in the process of Staff gathering and analyzing information on the impact of the unfiled agreements, the Commission should permit that process to be completed before making a decision on any appropriate further actions in the 271 and 252(e) dockets.

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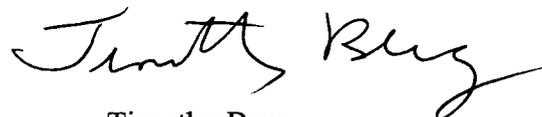
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If you have any questions or require any further information, we would be pleased to provide it to you.

Very truly yours,

FENNEMORE CRAIG

A handwritten signature in cursive script that reads "Timothy Berg". The signature is written in dark ink and is positioned above the printed name.

Timothy Berg

QWEST CORPORATION

Todd Lundy

TB/jmw

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