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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

2002 DEC 19 P 4:55

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DEC 19 2002

DOCKETED BY *CR*

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996.

Docket No. RT-00000F-02-0271

**RUCO'S REPLY TO QWEST CORPORATION'S RESPONSE TO MOTION TO COMPEL**

The Residential Utility Consumer Office ("RUCO") respectfully replies to Qwest Corporation's response to RUCO's Motion to Compel as follows. This reply is limited to the issue of whether the fraud exception to the attorney-client privilege applies which would require Qwest to disclose otherwise privileged information<sup>1</sup>. For the following reasons, RUCO believes that the fraud exception applies and that Qwest should be ordered to make the disclosures<sup>2</sup>.

RUCO is requesting this information to determine why Qwest did not file the agreements as required under §252 of the Telecom Act ("Act"). As RUCO has shown in its report of August 28, 2002, Qwest, along with Eschelon and McLeod, participated in a scheme to discriminate against other CLECs and undermine competition. RUCO wants to know why Qwest's attorneys permitted such a scheme to take place. A lawyer's ethical obligations should serve as a check to assure that illegal activity contemplated by its client before this Commission does not take place. When an attorney foregoes his/her ethical obligation, the integrity of the whole process of filing interconnection agreements for Commission review is compromised. Where, as here, there is a question as to why lawyers allowed the law to be broken, this Commission has a duty to

<sup>1</sup> RUCO is still awaiting Qwest's supplemental responses. RUCO does not waive its right to argue any ancillary issues that may arise after its analysis of Qwest's responses.

<sup>2</sup> RUCO is requesting the communications between Qwest's lawyers and their client and vice a versa. RUCO is not requesting the mental impressions of the attorneys or other instances of work product.

1 investigate the communications that took place between the lawyers and their client. Of equal  
2 concern are the remedial considerations that need to be explored to make sure that this conduct is  
3 not repeated and that lawyers are fulfilling their ethical obligations. RUCO intends to make  
4 recommendations as to remedial measures in its forthcoming testimony.

5 To gain access to communications that would otherwise be protected by the attorney-client  
6 privilege, RUCO must show prima facie evidence of an attorney's participation in a fraudulent  
7 scheme in which Qwest participated. Qwest argues that RUCO has failed to meet its burden to  
8 produce sufficient evidence to support such a threshold finding. Response at 7-8. According to  
9 Qwest:

10 "In its August 29, 2002 comments, RUCO proffers its theories behind  
11 the negotiation and execution of the agreements at issue. Contained  
12 in those comments is but a veiled reference to the possible  
13 involvement of one Qwest attorney in the events described in  
14 RUCO's allegations. In footnote 7 of RUCO's August 29 report,  
15 RUCO states:

16 The draft [of an interconnection agreement amendment with McLeod]  
17 apparently was attached to an email from a sender identified as "RR."  
18 The e-mail does not identify the recipient; although a note in the body  
19 of the document addresses "Jim" on page 2, paragraph 1.8.2 (Id.) RR  
20 might refer to a McLeod attorney, Randy Rings. "Jim" might mean  
21 Jim Gallegos, a Qwest attorney. [Audrey] McKenney [Qwest's Senior  
22 Vice President of Wholesale Markets Business Development]  
23 identified Gallegos and Rings as attorneys who participated in  
24 contract discussions.

RUCO Report at 9 (emphasis added). The footnote relates to a draft  
amendment to the McLeod/Qwest interconnection agreement.

RUCO's comments regarding the draft amendment conclude by  
stating, "further investigation is necessary to determine the context,

1 stating, "further investigation is necessary to determine the context,  
2 author and recipient of the draft." Id.

3 RUCO's identification of these individuals based on the  
4 information in one corporate communication is speculative at best.  
5 This speculation could not be construed as "evidence" of Qwest's  
6 attorney(s) involvement in the communication, much less as  
7 evidence of attorneys being retained for the express purpose of  
8 promoting intended fraud."

8 Response at 7-8

9 Qwest's comments on the evidence are misplaced. RUCO, in its Motion to Compel  
10 specifically refers to the Minnesota findings to support its allegations. Paragraph 95 of said  
11 Findings reads as follows:

12 "Trial Exhibits 227 and 228 establish that Qwest took affirmative action specifically for the  
13 purpose of keeping Eschelon Agreement III from being filed with the Commission." Findings of  
14 Fact, Conclusion, Recommendation and Memorandum of the Administrative Law Judge at 18  
15 (September 20, 2002).

16 Eschelon Agreement III is one of the core agreements at issue in this case and is Exhibit  
17 Number 19 in RUCO's report of August 29, 2002. (Exhibit 1) Trial Exhibit 227 in the Minnesota  
18 docket is an email dated November 12, 2000 from Qwest's attorney, Laurie Korneffel<sup>3</sup> to  
19 Eschelon's attorney Jeff Oxley<sup>4</sup> with a copy of a draft of Eschelon Agreement III. (Exhibit 2) Ms.  
20 Korneffel notes that she has "... removed the redlines and incorporated all of the changes we  
21 discussed on Friday's conference call." The draft of Eschelon Agreement III is attached to Ms.  
22 Korneffel's email. Exhibit 228 is an email dated November 13, 2000 from Eschelon's attorney

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23 <sup>3</sup>In response to RUCO's DR 19.1 Qwest admitted that Laurie Korneffel was an in house attorney during 2000  
and 2001.

24 <sup>4</sup> In response to RUCO's DR 17.1 Eschelon stated that Jeff Oxley was an attorney for Eschelon who  
negotiated the core agreements at issue.

1 Karen Clauson<sup>5</sup> to Laurie Korneffel which appears to be a "follow up" to Ms. Korneffel's email from  
2 the preceding day. (Exhibit 3) In relevant part, Ms. Clauson states:

3 "Note: I just noticed that the escalation process letter has  
4 been modified to state: "and the Interconnection Agreements are  
5 hereby amended accordingly." This would defeat the confidentiality  
6 of the letter. For example, the MN PUC has specifically ordered that  
7 amendments must be filed with, and approved by, the PUC. In any  
8 event, this would be the result under the Act. Is that the intent here?  
9 If not, may want to re-think this."

10 The final signed version of the Eschelon Agreement III did not include the provision in the  
11 draft about amending the interconnection agreements. See attached Exhibit 1 at the bottom of  
12 page 2. The exclusion of that provision is no coincidence. Its omission establishes the true intent  
13 of the lawyers' to not file the agreement. Further, the email and the resulting agreement establish  
14 the lawyers' involvement in the scheme.

15 If this evidence, as compelling as it is, is still not enough to satisfy the Commission, then  
16 RUCO's Exhibit Number 15 of its August 29, 2000 report should be considered. Exhibit 15 is an  
17 unsigned copy of a letter from Richard Smith to Qwest's attorney, Jim Gallegos<sup>6</sup> (and copied to  
18 Laurie Korneffel). The letter starts out noting that Eschelon has "...reviewed the documents that  
19 Ms. Korneffel/Mr. Gallegos forwarded to us over the past two (2) weeks and there are numerous  
20 revisions that our respective legal teams can bring to conclusion," Exhibit 4 at page 1. This  
21 statement is especially disturbing because, according to Qwest's response to RUCO's Data  
22 Request 17.1 (as noted by Qwest in its Response to Motion to Compel at page 5), its attorneys did  
23 not negotiate the agreements with Eschelon. See Qwest's Response at page 5. The Commission

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23 <sup>5</sup> In response to RUCO's DR 17.1 Eschelon stated that Karen Clauson was an attorney for Eschelon who  
24 negotiated the core agreements at issue

<sup>6</sup> In response to RUCO's DR 19.1 Qwest admitted that Jim Gallegos was an in house attorney during 2000  
and 2001.

1 cannot deny the evidence that Qwest's attorneys did in fact participate in negotiating these  
2 agreements.<sup>7</sup>

3 RUCO has established a prima facie case that not only was Qwest involved in the scheme,  
4 its attorneys were also. RUCO intends to depose Laurie Korneffel to ascertain the particulars of  
5 her involvement in the scheme, as well as her client's, and Eschelon's. See Notice of Deposition,  
6 Exhibit 5. RUCO has not noticed Ms. Korneffel for deposition earlier because of its belief that it  
7 would have been unproductive due to the attorney-client objections.

8 **CONCLUSION**

9 RUCO requests a finding that compels Qwest to disclose communications made between  
10 its lawyers and client and vice a versa in response to RUCO's seventeenth and eighteenth set of  
11 data requests.

12 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of December, 2002.

13   
14 Daniel W. Pozefsky  
15 Attorney

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22  
23 <sup>7</sup> It is also noteworthy that on page 2 of this letter Mr. Smith points out the need to partner on process  
24 improvements so that Qwest and Eschelon may have a "...mechanism that makes it more difficult for any  
party to opt into our agreements." Exhibit 4 at 2 It is not a great leap to infer that Mr. Gallegos was aware of  
the intent of the parties.

1 AN ORIGINAL AND THIRTEEN COPIES  
of the foregoing filed this 19th day  
2 of December, 2002 with:

3 Docket Control  
Arizona Corporation Commission  
1200 West Washington  
4 Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/  
mailed this 19th day of December, 2002 to:

6 Jane L. Rodda  
Administrative Law Judge  
7 Hearing Division  
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23

24

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3	Charles Kallenbach American Communications Services, Inc. 131 National Business Parkway Annapolis Junction, Maryland 20701	Mark N. Rogers Excell Agent Services, L.L.C. PO Box 52092 Phoenix, Arizona 85072-2092
6	Thomas F. Dixon Worldcom, Inc. 707 17th Street, Suite 3900 Denver, Colorado 80202	Traci Grundon Davis Wright Tremaine, LLP 1300 S.W. Fifth Ave., Suite 2300 Portland, Oregon 97201
8	Richard S. Wolters AT&T & TCG 1875 Lawrence Street, Suite 1575 Denver, Colorado 80202	Lyndall Nipps Director, Regulatory Allegiance Telecom, Inc. 845 Camino Sure Palm Springs, California 92262
11	Joyce Hundley U.S. Department of Justice Antitrust Division 1401 H St., NW, Suite 8000 Washington, DC 20530	M. Andrew Andrade 5261 S. Quebec Street, Suite 150 Greenwood Village, Colorado 80111
13	Joan Burke Osborn Maledon 2929 North Central Ave., 21st Fl. P.O. Box 36379 Phoenix, Arizona 85067-6379	Megan Doberneck Senior Counsel Covad Communications Company 7901 Lowry Blvd. Denver, Colorado 80230
16	Gregory Hoffman AT&T 795 Folsom Street, Room 2159 San Francisco, California 94107-1243	Al Sterman Arizona Consumers Council 2849 East 8th Street Tucson, Arizona 85716
18	Daniel Waggoner Davis Wright Tremaine 2600 Century Square 1501 Fourth Ave. Seattle, Washington 98101-1688	Brian Thomas Time Warner Telecom, Inc. 223 Taylor Avenue North Seattle, WA 98109
20	Douglas Hsiao Jim Scheltema Blumenfeld & Cohen 1625 Massachusetts Ave., N.W. Suite 300 Washington, DC 20036	Jon Poston Arizonans for Competition in Telephone Service 6733 East Dale Lane Cave Creek, Arizona 85331-6561

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2		
3	Philip Doherty 545 S. Prospect St., Suite 22 Burlington, VA 05401	Frederick Joyce Alston & Bird, LLP 601 Pennsylvania Ave., NW Washington, DC 20004-2601
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5	Andrea Harris Allegiance Telecom Inc of Arizona 2101 Webster, Suite 1580 Oakland, CA 94612	John Munger Munger Chadwick 333 North Willmot #300 Tucson, AZ 85711
6		
7	Kevin Chapman SBC Telecom 300 Convent St., Room 13-Q-40 San Antonio, TX 78205	Deborah Harwood Integra Telecom of Arizona 19545 NW Von Newman Dr., Suite 200 Beaverton, OR 97006
8		
9	Richard Sampson Z-Tel Communications 601 S. Harbour Island, Suite 220 Tampa, FL 33602	Bob McCoy William Local Network 4100 One Williams Center Tulsa, OK 74172
10		
11	Gary L. Lane 6902 E. First St., Suite 201 Scottsdale, AZ 85251	Teresa Tan Worldcom, Inc. 201 Spear St., 9 <sup>th</sup> Floor San Francisco, CA 94105
12		
13	Steven Strickland SBC Telecom 5800 Northwest Parkway, Room 1T40 San Antonio, TX 78249	Rodney Joyce Shook Hardy & Bacon, LLP 600 14 <sup>th</sup> St., NW, Suite 800 Washington, DC 20005-2004
14		
15	Richard Kolb One Point Communications 150 Field Dr., Suite 300 Lake Forest, IL 60045	Diane Peters Global Crossing 180 South Clinton Ave Rochester, NY 14646
16		
17	Steven Duffy Ridge & Isaacson 3101 N. Central Ave., Suite 1090 Phoenix, AZ 85012	Gerry Morrison Map Mobile Communications 840 Greenbrier Circle Chesapeake, VA 23320
18		
19	Dennis Ahlers Eschelon Telecom 730 Second Ave South, Suite 1200 Minneapolis, MN 55402	Metrocall, Inc. 6677 Richmond Highway Alexandria, VA 22306
20		
21	Dennis Doyle Arch Communications Group 1800 West Park Dr., Suite 250 Westborough, MA 01581-3912	Paul Masters Ernest Communications 6475 Jimmy Carter Blvd, Suite 300 Norcross, GA 30071
22		
23		
24		

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- 3 Teresa Ono  
AT&T
- 4 795 Folsom St., Room 2159  
San Francisco, CA 94107-1243
- 5 Penny Bewick  
New Edge Networks
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- 7 David Kaufman  
E.Spire Communications
- 8 343 W. Manhattan St.  
Santa Fe, NM 87501
- 9 Bob Edgerly  
Nextel West Corporation
- 10 2001 Edmund Halley Dr.  
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- 11 McLeodUSA Telecommunications Services  
Attention: Law Group
- 12 P.O. Box 3177  
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- 13 Steven Sager  
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- 14 215 S. State St.  
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- 15 Gary Kopta  
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- 17 Thomas H. Campbell  
Lewis & Roca
- 18 40 North Central Avenue  
Suite 1900
- 19 Phoenix, AZ 85004
- 20 Harry Pliskin  
Senior Counsel
- 21 Covad Communications Company  
7901 Lowry Blvd.
- 22 Denver, CO 80230

23 By   
24 Jennifer Rumph

# **EXHIBIT 1**

RECEIVED  
ESCHELON



Qwest  
1801 California Street  
Suite 5200  
Denver, CO 80202  
Telephone: 303-992-2787  
Facsimile: 303-992-2789

Greg Casey  
Executive Vice President  
Wholesale Markets

November 15, 2000

CONFIDENTIAL AGREEMENT

VIA ELECTRONIC MAIL AND FACSIMILE

Richard A. Smith  
President and Chief Operating Officer  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, Minnesota 55402

Re: Escalation procedures and business solutions

Dear Rick:

As a result of ongoing discussions between Eschelon and Qwest in recent days, the parties have addressed numerous proposals intended to better the parties' business relationship. In principle, the parties have agreed to: (1) develop an implementation plan by which to mutually improve the companies' business relations and to develop a multi-state interconnection agreement; (2) arrange quarterly meetings between executives of each company to address unresolved and/or anticipated business issues; and (3) establish and follow escalation procedures designed to facilitate and expedite business-to-business dispute solutions.

1. IMPLEMENTATION PLAN

By no later than December 31, 2000, the parties agree to meet together (via telephone, live conference or otherwise), and as necessary thereafter, to develop an Implementation Plan. The purpose of the Implementation Plan ("Plan") will be to establish processes and procedures to mutually improve the companies' business relations and to develop a multi-state interconnection agreement. Both parties agree to participate in good faith and dedicate the necessary time and resources to the development of the Implementation Plan, and to finalize an Implementation Plan by no later than April 30, 2001. Any necessary escalation and arbitration of issues arising during development of the Plan must also be completed by April 30, 2001.

During development of the Plan, and thereafter, if an agreed upon Plan is in place by April 30, 2001, Eschelon agrees to not oppose Qwest's efforts regarding Section 271 approval or to file complaints before any regulatory body concerning issues arising out of the Parties' Interconnection Agreements. Both before and after April 30, 2001, Eschelon reserves the right, after notice to Qwest, to participate in regulatory cost proceedings or dockets regarding the establishment of rates. Notwithstanding any other provision of this agreement, if no Plan is agreed upon by April 30, 2001, the Parties will have all remedies available at law and equity in any forum.

## 2. QUARTERLY MEETINGS

Beginning in 2001 and continuing through the end of 2005, the parties agree to attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve unresolved business issues and disputes, anticipated business issues, and issues related to the Parties' Interconnection Agreements, Implementation Plan, and other agreements. The meetings will be attended by executives from both companies at the vice-president and/or above level.

## 3. ESCALATION PROCEDURES

The parties wish to establish a business-to-business relationship and agree that they will resolve any and all business issues that may arise between them, including but not limited to, their Interconnection Agreements and Amendments, in accordance with the escalation procedures set forth herein. The parties agree, subject to any subsequent written agreement between the parties, to: (1) utilize the following escalation process and time frames to resolve such disputes; (2) commit the time, resources and good faith necessary to meaningful dispute resolution; (3) not proceed to a higher level of dispute resolution until either a response is received or expiration of the time frame for the prior level of dispute resolution; (4) grant to one another, at the request of the other party, reasonable extensions of time at Levels 1 and 2 of the dispute resolution process to facilitate a business resolution; and (5) complete Levels 1, 2 and 3 of dispute resolution before seeking resolution through arbitration or the courts.

<u>Level</u>	<u>Participants</u>	<u>Time frame for discussions</u>
LEVEL 1	Vice Presidents (Judy Tinkham/Dave Kunde, Lynne Powers, Bill Markert, or successors)	10 business days
LEVEL 2	Senior Vice Presidents (Greg Casey/Rick Smith, or successors)	10 business days
LEVEL 3	CEOs (Joe Nacchio/Rick Smith, or successors)	10 business days
LEVEL 4	Arbitration according to the provisions of the Parties' Interconnection Agreements and/or other agreements (to be expedited and completed within 90 days, upon request of one of the Parties)	
LEVEL 5	CEOs (Joe Nacchio/Rick Smith, or successors)	10 business days

LEVEL 6 If a dispute is not resolved in Levels 1 through 5, either party may initiate litigation in federal or state court, with all questions of fact and law to be submitted for determination to the judge, not a jury. The parties agree that the exclusive venues for civil court actions initiated by Eschelon are the United States District Court for the District of Minnesota or a court of the State of Minnesota and the exclusive venues for civil court actions initiated by Qwest are the United States District Court for the Districts of Minnesota or Colorado or the courts of the State of Minnesota or Colorado. When a court issues a final order, no longer subject to appeal, the prevailing party shall be awarded reasonable attorneys' fees and expenses. In the event that either party files an action in court, the parties waive: (a) primary jurisdiction in any state utility or service commission; and (b) any tariff limitations on damages or other limitation on actual damages, to the extent that such damages are reasonably foreseeable and acknowledging each party's duty to mitigate damages.

If the parties agree with the terms set forth above, they will each execute a copy of this letter in the signature spaces provided on the last page. Upon signature of both parties, the parties will be bound by the terms set forth herein. This letter agreement may be executed in counterparts and by facsimile.

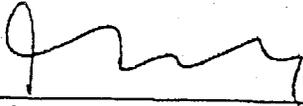
Very truly yours,



Greg Casey  
Executive Vice President  
Wholesale Markets

TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST CORPORATION



[name]

*VP*

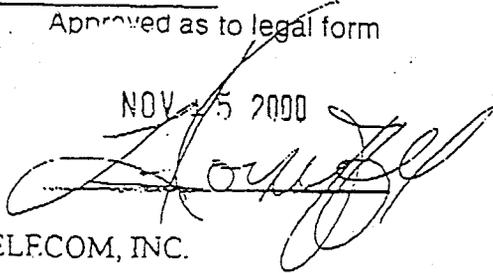
[title]

*11-15-00*

[date]

Approved as to legal form

NOV 15 2000



ESCHELON TELECOM, INC.

[name]

[title]

[date]

TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST CORPORATION

\_\_\_\_\_  
[name]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[date]

ESCHELON TELECOM, INC.

  
\_\_\_\_\_  
[name]

*President - CCO*  
\_\_\_\_\_  
[title]

*11/15/00*  
\_\_\_\_\_  
[date]

# **EXHIBIT 2**

DOC Exhibit 227

Laurie Korneffel  
11/12/2000 11:12 AM

To: jjoyley@eschelon.com  
cc: Jim Gallegos/PublicPolicy/USWEST/US@USWEST, axmcken@uswest.com, Judy  
Rixe/DNVRULNS10/USWEST/US@USWEST, Freddi  
Pennington/GROUPWARE/USWEST/US@USWEST, jimgallego@aol.com

[Trade Secret Data Begins

Subject: CONFIDENTIAL--Eschelon/Qwest document

CONFIDENTIAL

Attached please find the latest draft of the escalation letter. I've removed the redlines and incorporated all of the changes we discussed on Friday's conference call. Please e-mail me or call me at (303) 672-1780 with your comments and/or questions.

Trade Secret Data Ends]

  
ltreschelon4b.do

NONPUBLIC DOCUMENT  
CONTAINS TRADE SECRET DATA



Qwest  
1801 California Street  
Suite 5200  
Denver, CO 80202  
Telephone: 303-992-2787  
Facsimile: 303-992-2789

Greg Casey  
Executive Vice President  
Wholesale Markets

November 13, 2000

[Trade Secret Data Begins

**CONFIDENTIAL AGREEMENT**

VIA ELECTRONIC MAIL AND FACSIMILE

Richard A. Smith  
President and Chief Operating Officer  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, Minnesota 55402

DRAFT 11/12/00 11:00 a.m.

Re: Escalation procedures and business solutions

Dear Rick:

As a result of ongoing discussions between Eschelon and Qwest in recent days, the parties have addressed numerous proposals intended to better the parties' business relationship. In principle, the parties have agreed to: (1) develop an implementation plan by which to mutually improve the companies' business relations and to develop a multi-state interconnection agreement; (2) arrange quarterly meetings between executives of each company to address unresolved and/or anticipated business issues; and (3) establish and follow escalation procedures designed to facilitate and expedite business-to-business dispute solutions.

**NONPUBLIC DOCUMENT**

1. IMPLEMENTATION PLAN

**CONTAINS TRADE SECRET DATA**

By no later than December 31, 2000, the parties agree to meet together (via telephone, live conference or otherwise), and as necessary thereafter, to develop an Implementation Plan. The purpose of the Implementation Plan ("Plan") will be to establish processes and procedures to mutually improve the companies' business relations and to develop a multi-state interconnection agreement. Both parties agree to participate in good faith and dedicate the necessary time and resources to the development of the Implementation Plan, and to finalize an Implementation Plan by no later than April 30, 2001. Any necessary escalation and arbitration of issues arising during development of the Plan must also be completed by April 30, 2001.

During development of the Plan, and thereafter, if an agreed upon Plan is in place by April 30, 2001, Eschelon agrees to not oppose Qwest's efforts regarding Section 271 approval or to file complaints before any regulatory body concerning issues arising out of the Parties' Interconnection Agreements. Both before and after April 30, 2001, Eschelon reserves the right, after notice to Qwest, to participate in regulatory cost proceedings or dockets regarding the establishment of rates. Notwithstanding any other provision of this agreement, if no Plan is agreed upon by April 30, 2001, the Parties will have all remedies available at law and equity in any forum.

2. QUARTERLY MEETINGS

Beginning in 2001 and continuing through the end of 2005, the parties agree to attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve unresolved business issues and disputes, anticipated business issues, and issues related to the Parties' Interconnection Agreements, Implementation Plan, and other agreements. The meetings will be attended by executives from both companies at the vice-president and/or above level.

3. ESCALATION PROCEDURES

The parties wish to establish a business-to-business relationship and agree that they will resolve any and all business issues that may arise between them, including but not limited to, their Interconnection Agreements and Amendments, in accordance with the escalation procedures set forth herein. The parties agree, subject to any subsequent written agreement between the parties, to: (1) utilize the following escalation process and time frames to resolve such disputes; (2) commit the time, resources and good faith necessary to meaningful dispute resolution; (3) not proceed to a higher level of dispute resolution until either a response is received or expiration of the time frame for the prior level of dispute resolution; (4) grant to one another, at the request of the other party, reasonable extensions of time at Levels 1 and 2 of the dispute resolution process to facilitate a business resolution; and (5) complete Levels 1, 2 and 3 of dispute resolution before seeking resolution through arbitration or the courts.

<u>Level</u>	<u>Participants</u>	<u>Time frame for discussions</u>
LEVEL 1	Vice Presidents (Judy Tinkham/Dave Kunde, Lynne Powers, Bill Markert or successors)	10 business days
LEVEL 2	Senior Vice Presidents (Greg Casey/Rick Smith or successors)	10 business days
LEVEL 3	CEOs (Joe Nacchio/Rick Smith or successors)	10 business days

LEVEL 4 Arbitration according to the provisions of the Parties' Interconnection Agreements and/or other agreements (to be expedited and completed within 90 days, upon request of one of the Parties)

**NONPUBLIC DOCUMENT**

LEVEL 5 CEOs **CONTAINS TRADE SECRET DATA** 10 business days  
(Joe Nacchio/Rick Smith or successors)

LEVEL 6 If a dispute is not resolved in Levels 1 through 5, either party may initiate litigation in federal court, with all questions of fact and law to be submitted for determination to the judge, not a jury. The parties agree that the exclusive venue for civil court actions initiated by Eschelon is the United States District Court for the District of Colorado and the exclusive venue for civil court actions initiated by Qwest is the United States District Court for the District of Minnesota. If a court issues a final order of dismissal or summary judgment, and such order is not dismissed on appeal, then the party bringing the action, (in the case of dismissal) or the party that did not prevail on summary judgment shall be responsible for reimbursement to the other party of the reasonable attorneys' fees incurred by the other party. In the event that either party files an action in court, the parties waive: (a) primary jurisdiction in any state utility or service commission; and (b) any tariff limitations on damages or other limitation on actual damages, to the extent that such damages are

reasonably foreseeable and acknowledging each party's duty to mitigate damages; and the Interconnection Agreements are hereby amended accordingly.

If the parties agree with the terms set forth above, they will each execute a copy of this letter in the signature spaces provided on the last page. Upon signature of both parties, the parties will be bound by the terms set forth herein.

**Trade Secret Data Ends]**

Very truly yours,

Greg Casey  
Executive Vice President  
Wholesale Markets

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TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST COMMUNICATIONS INTERNATIONAL, INC.

\_\_\_\_\_  
[name]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[date]

ESCHELON TELECOM, INC.

\_\_\_\_\_  
[name]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[date]

# **EXHIBIT 3**

"Clauson, Karen L." <klclauson@eschelon.com> on 11/13/2000 12:26:46 PM



To: "Korneffel, Laurie" <lkornef@uswest.com>  
cc: "Oxley, J. Jeffery" <jjoxley@eschelon.com>

Subject: language/outstanding info/confidential

**Trade Secret Data Begins**

Here's the follow up to the questions Jeff asked me to give to you that we discussed:

The language from the escalation agreement that is to be moved to the trade secret agreement is:

"The Parties will address (in their Quarterly meetings) appropriate price adjustments for the telecommunications services and products purchased by Eschelon in the preceding quarter." [I added "in their Quarterly meetings," because this was clear from the placement in the escalation letter, but would need to be added to the trade secret agreement to make it clear.

Here is proposed language for the escalation letter (to replace the sentence now that starts with "If a court issues a final order . . ."):

"When a court issues a final and nonappealable order, the prevailing party shall be awarded reasonable attorneys fees and expenses."

NOTE: I just noticed that the escalation process letter has been modified to state: "and the Interconnection Agreements are hereby amended accordingly." This would defeat the confidentiality of the letter. For example, the MN PUC has specifically ordered that amendments must be filed with, and approved by, the PUC. In any event, this would be the result under the Act. Is that the intent here? If not, may want to re-think this.

The items that I do not believe we have received yet, which we need before

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agreements can be executed, are (1) Freddie's letter regarding billing issues (including the \$13.00 and the interim and final processes), (2) the prices (for the features), and (3) the letter from Judy regarding the issues for the Implementation Plan (including, I believe, our list of issues that was removed from the escalation process letter).

I did catch Jeff between meetings, and he said that he doesn't have any more issues on the other agreements. I believe this is what I said that I would send to you. If I missed anything, please let me know. **Trade Secret Data Ends]**

Karen L. Clauson  
Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

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# **EXHIBIT 4**

November 5, 2000

Mr. Jim Gallegos  
Corporate Counsel  
Qwest  
1801 California Street, Room 3800  
Denver, CO 80202

Ms. Audrey McKenney  
Vice President - Wholesale Markets Finance  
Qwest  
1801 California Street, Room 2350  
Denver, CO 80202

Ms. Judy Tinkham  
Vice President - Wholesale and Diversified Markets  
Qwest  
200 South 5<sup>th</sup> Street, Room 2400  
Minneapolis, MN 55402

Confidential - Subject to Federal Rule of Evidence 408

Dear Mr. Gallegos, Ms. McKenney, and Ms. Tinkham:

**Trade Secret Data Begins**

The purpose of this letter is to communicate the key business issues associated with our work on the business to business relationship that Eschelon/Qwest are attempting to construct on UNE-P and operating performance.

We have reviewed the documents that Ms. Komeffel/Mr. Gallegos forwarded to us over the past two (2) weeks and there are numerous revisions that our respective legal teams can bring to conclusion, but the following business issues will take some discussion which I would like to conclude over the next two (2) business days (by EOD on Tuesday, November 7, 2000):

1. The volume discount of 10% that we agreed to on Saturday, October 21<sup>st</sup>, has not been explicitly stated in the purchase agreement.
2. The \$13.00 per month per resale line payment that Qwest was to make to Eschelon effective October 1, 2000 if accurate switched access records are not delivered each month has not been included as we agreed to on Saturday, October 21, 2000. Sub issues/questions are provided as follows:
  - a) Can Qwest provide these records to Eschelon in the industry standard format? Our redline of the interconnection agreement amendment contemplates that by January 1, 2001, Qwest will be able to do this.
  - b) Does Eschelon have to provide daily resale line telephone number data to Qwest given that Qwest already has this information?

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**CONTAINS TRADE SECRET DATA**

- c) Would Qwest be willing to bill the interexchange carriers for switched access for resale/UNE-P lines and remit their payments to Eschelon instead of delivering the raw records? This may be simpler for both parties.
3. Because our interconnection agreements start to expire soon, and because they are becoming dated, Eschelon requires the ability to continue to negotiate new agreements or to opt into the interconnection agreements of others.
4. We need to confirm that Qwest will make DSL available to Eschelon at the wholesale discount, contrary to the language in the interconnection agreement amendment we received. We also need to confirm that we will be able to provide voice mail to our platform customers. We understand that we will not receive the wholesale discount for voice mail.
5. Qwest needs to provide a list of features and Qwest's proposed TELRIC pricing of those features that are not included in Attachment 3.2 of the proposed Interconnection Agreement Amendment Terms.
6. Eschelon will give up regulatory dispute remedies only if we can continue to have all legal remedies available to us as agreed to on Saturday, October 21, 2000. Binding arbitration is acceptable as long as both parties agree.
7. The operating agreement/implementation plan is critical to establishing a solid business to business relationship with Qwest as "good economics" represent only part of a positive relationship. Without an improved level of service from Qwest - the economics do not matter. To accomplish this - we need to have a date certain (April 30, 2001) in which we will have an operating agreement/implementation plan agreed to including any necessary arbitration of issues. If we do not have this agreement, both parties should revert back to any/all legal remedies or regulatory remedies.

Regarding the last issue noted above (Item #7), we have ongoing concerns about Qwest's ability to improve service levels given the recent analysis completed by our Provisioning team for the period of October 17, 2000 to November 1, 2000. During this time, 42.7% of the migrations/hot cuts completed by Qwest had customer effecting problems. I understand and appreciate the recent activity and resource that Qwest has recently put on these issues, but they are not fixed and without a solid operating/implementation plan agreed to by both parties by April 30, 2001, the only effective alternative for Eschelon is to retain our regulatory remedies. If this plan is in place, Eschelon will be a vocal proponent of Qwest's Section 271 filings in all your jurisdictions.

The best and most enduring partnerships are those in which both sides help each other. So far we have concentrated on setting out how Qwest helps Eschelon economically and how Eschelon assists Qwest in achieving its 271 goals. I think we need to consider how we might help each other become more productive. Eschelon has a solid provisioning staff. Recently, in the context of preparing for 271, we've been using our best peoples' efforts to document problems with Qwest's wholesale service. What we would really like to do is use these people to analyze, document, and team with Qwest employees to improve our joint provisioning processes. I feel there is an opportunity to partner on process improvements. If we can develop this idea, put some teeth into it and incorporate it into our interconnection agreement and/or purchase agreement, we may also have a mechanism that makes it more difficult for any party to opt into our agreements.

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At our meeting on Thursday, October 12, 2000, in Denver, we agreed to complete negotiations and have definitive agreements signed by EOD Sunday, October 22, 2000. We did not meet that commitment - would suggest that we set another one for EOD Sunday, November 12, 2000 and make that one, i.e. have definitive agreements executed by both parties. Once again, suggest that we sit face to face for one (1) day --believe that we can drive this to conclusion if we completed that session. Will call you tomorrow morning to establish another negotiating session.

Very truly yours,

Richard A. Smith  
President and Chief Operating Officer

RAS:lw

xc: L. Komeffel - Qwest  
xc: J. Rixe - Qwest  
xc: J. Oxley - Eschelon  
xc: File - Qwest

Trade Secret Data Ends}

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# **EXHIBIT 5**

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
3 CHAIRMAN  
4 JIM IRVIN  
5 COMMISSIONER  
6 MARC SPITZER  
7 COMMISSIONER

8 IN THE MATTER OF QWEST  
9 CORPORATION'S COMPLIANCE WITH  
10 SECTION 252(e) OF THE  
11 TELECOMMUNICATIONS ACT OF 1996.

Docket No. RT-00000F-02-0271

**NOTICE OF DEPOSITION**

12 YOU ARE HEREBY NOTIFIED that, pursuant to RCP 26 and 30, the deposition will be  
13 taken upon oral examination of the persons whose names and addresses are stated below at the time and  
14 place stated below before an officer authorized by law to administer oaths. If the names are not known,  
15 a general description sufficient to identify those persons or the particular classes or groups to which  
16 those persons belong is given below.

17 PERSONS TO BE EXAMINED:

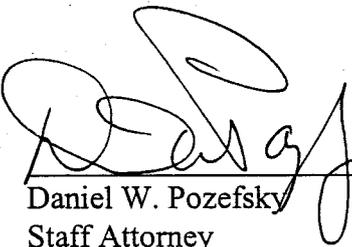
Laurie Korneffel

18 DATE AND TIME OF DEPOSITION:

January 3, 2003 at 9 AM

19 PLACE OF DEPOSITION:

20 Residential Utility Consumer Office,  
21 1110 West Washington, Suite 220  
22 Phoenix, AZ 85007

23  
24  
25   
Daniel W. Pozefsky  
Staff Attorney

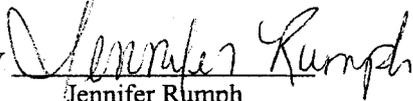
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AN ORIGINAL AND THIRTEEN COPIES  
of the foregoing filed this 19th day  
of December, 2002 with:

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

COPIES of the foregoing hand delivered/  
mailed this 19th day of December, 2002 to:

All parties of record

BY   
Jennifer Rumph