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April 1, 2003

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Arizona Corporation Commission

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APR 04 2003

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, Arizona 85007

RT-00000F-02-0271
T-00000A-97-0238

DOCKETED BY	<i>mac</i>
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Re: Informational Filing Regarding Agreement between Qwest Corporation and Eschelon Telecom, Inc.

Dear Sir/Madam:

Enclosed is a copy of an Agreement between Qwest Corporation (“Qwest”) and Eschelon Telecom, Inc. (“Eschelon”), dated April 1, 2003. As indicated in paragraph 2 of the Agreement, a Dispute arose between the parties from a disagreement over appropriate billing treatment of certain UNE loop installations requested by Eschelon and installed by Qwest. Qwest interpreted a previous interconnection agreement Amendment to apply to two Universal Service Ordering Codes (“USOCs”) for certain UNE loop installations. Eschelon interpreted the Amendment to apply to UNE loop installations associated with additional USOCs. (A courtesy copy of the previous interconnection agreement Amendment is also enclosed.) The parties have reached an agreement to resolve the Dispute between Eschelon and Qwest. The Agreement is not confidential. Pursuant to paragraph 8 of the Agreement, Eschelon provides a copy of the Agreement to the Commission.

Although Eschelon would have preferred that Qwest file the Agreement with the Commission for guidance and a determination of any filing obligation (instead of agreeing to an “informational” filing), Qwest’s position is that Qwest’s internal committee makes this determination. In paragraph 8 of the Agreement, Qwest “accepts responsibility to ascertain subsequent filing obligations under §252 of the Telecommunications Act of 1996 and state rules.” As a CLEC without access to all information available to Qwest, Eschelon does not have all of the information necessary to determine whether a §252 filing is necessary (such as whether any other CLEC is similarly situated and desires essentially the same Agreement). Therefore, Eschelon has taken no position as to the proper characterization of the Agreement (*e.g.*, as a “settlement” agreement or otherwise).

Eschelon also has no visibility into the Qwest committee described in paragraph 8 as the “internal committee established for the specific purpose of ascertaining filing obligations.” Eschelon does not know, for example, the identity of the committee

Arizona Corporation Commission

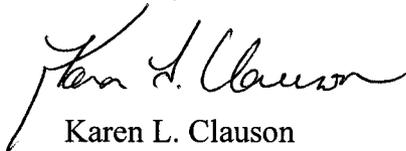
April 1, 2003

Page 2

members, when the committee will decide the filing obligation, and whether or when Eschelon will be notified of the committee's decision. This Agreement may be provided to the Commission, however, so the Commission may make inquiries of the Qwest committee, if so desired. Eschelon has informed Qwest that, if any determination is made (by Qwest or this Commission) that Qwest should file the Agreement under §252 or state rules, Eschelon is certainly willing to amend its interconnection agreement.

Please contact me if you have any questions for Eschelon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen L. Clauson".

Karen L. Clauson
Senior Director of Interconnection

cc: Attached Service List
Blair Rosenthal, Qwest

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AGREEMENT

This Agreement ("Agreement") is made and entered into by and between Eschelon Telecom, Inc. ("Eschelon") and Qwest Corporation ("Qwest") (individually, a "Party," and collectively, the "Parties") on this 1st day of ~~March~~ ^{April} 2003.

1. On July 3, 2001, the Parties entered into a Bulk Loop Purchase Amendment ("Bulk Loop Amendment") to their interconnection agreements concerning Unbundled Network Element Loop ("UNE loop") installations to be completed during the period of June 2001 through December 31, 2001 ("the Contract Period"). The Bulk Loop Amendment was filed with applicable state utilities commissions.

2. A dispute has arisen between the Parties as to the application of the Bulk Loop Amendment to various UNE loop installations during the Contract Period ("the Dispute"). The Dispute arose from a disagreement over appropriate billing treatment of certain UNE loop installations requested by Eschelon and installed by Qwest. Qwest interpreted the Bulk Loop Amendment to apply to two Universal Service Ordering Codes ("USOCs") for certain UNE loop installations. Eschelon interpreted the Bulk Loop Amendment to apply to UNE loop installations associated with additional USOCs.

3. Neither Party agrees with the other's interpretation of the Bulk Loop Amendment's applicability to particular UNE loop installations during the Contract Period.

4. The Parties expressly deny any wrongdoing or liability, and expressly agree that this Agreement cannot be used against the other Party in any manner or in any forum (except for claims related to breaches of this Agreement). The Parties agree that their entering into this Agreement is without prejudice to, and does not waive, any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial, or other forum.

5. The Parties acknowledge that the resolution reflected in this Agreement represents a compromise of their respective positions.

6. To fully and finally resolve the Dispute, the Parties have agreed to the following economic exchange:

a. On December 9, 2002, Qwest issued credits to Eschelon in the amount of \$201,767.87 and allocated that amount to certain billing account numbers ("BANs").

b. Qwest agrees that Eschelon may allocate these credits to different BANs for accounting purposes. If Eschelon allocates the credits to BANs different from those to which Qwest initially applied the credits, Eschelon will notify Qwest in writing of Eschelon's allocation. Within 60 days of receipt of such notice, Qwest's billing group will make appropriate debit adjustments or

credit adjustments to the affected accounts, if necessary, and will provide written notice of the adjustments to Eschelon. Qwest's notice will specify that the adjustments relate to this Dispute. Qwest's adjustments and notice will apply solely to this Dispute and shall not be combined with any other adjustments or amounts. After any adjustments are completed, the amount of the credit to Eschelon will equate to the amount stated in paragraph 6.a.

c. Eschelon will pay to Qwest the amount of \$54,664.22, by wire transfer, within five business days of execution of this written Agreement by authorized representatives of the Parties.

7. The economic exchange described in Paragraph 6 will effectively end the Dispute over the "Bulk Loop Amendments" in every state in which Qwest and Eschelon do business. The economic exchange reflected in this Agreement is intended to resolve fully and finally any and all claims, actions, causes of action, suits, debts, demands, damages, judgments, executions, costs, expenses, liabilities, duties, amounts, accounts, reckonings, indemnities, covenants, contracts, controversies, agreements, promises, doings, offsets, debts, liens, omissions, losses, exposures and obligations of any kind whatsoever, whether known or unknown, whether in law or in equity, including any related interest expenses which may have accrued in connection therewith, which the Parties have, had, may have, or claim to have had arising out of the Dispute.

8. This Agreement is not confidential, and either Party may provide a complete copy of this Agreement to a state utilities commission for informational purposes. In addition, Qwest accepts responsibility to ascertain subsequent filing obligations under §252 of the Telecommunications Act of 1996 and state rules. Qwest's internal committee established for the specific purpose of ascertaining filing obligations will review the Agreement to determine any formal filing obligations with the various state commissions. If the Qwest committee determines that filings pursuant to §252 of the Telecommunications Act of 1996 or state rules are necessary, Qwest will accomplish such filings within 30 days of the committee's determination.

a. If any state commission disapproves this Agreement, the Parties will refund the portion of amounts identified in paragraph 6 applicable to that state. To accomplish this, Qwest would debit the bill by the amount of the credit allocated to BANs applicable to that state and refund to Eschelon, by wire transfer, the applicable portion of the amount specified in paragraph 6.c (according to the BANs that Eschelon designated pursuant to paragraph 6.b). This transaction would occur within five business days of such a commission order. If any such state commission disapproves this Agreement, the Agreement is also null and void in that state.

9. Each Party covenants and warrants that it has not and shall not assign or transfer to any person any claim, or portion of any claim, relating to the Dispute. Further, the Parties agree that the terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the respective successors and affiliates of the Parties.

10. This Agreement constitutes the entire agreement between the Parties, and shall be deemed to supercede any other understandings or agreements, whether written or oral, express or implied, relating to the Dispute. This Agreement can only be amended or changed in a writing or writings executed by all of the Parties.

11. This Agreement, which was jointly drafted by the Parties, shall not be interpreted in favor or against any Party as a result of which Party may or may not have had primary responsibility for the initial preparation of this Agreement.

12. This Agreement does not constitute an admission by either Party of the truth or merit of any fact, any asserted principle of law, any matter, claim, or cause of action alleged or asserted in any legal regulatory or other forum, past, present or future, relating to the matters addressed in this Agreement. This Agreement also does not constitute an admission with respect to the appropriateness or legality of any charges, billed or unbilled, whether paid or unpaid.

13. This Agreement may be executed by facsimile and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed as of this day 1st of ~~March~~ April 2003.

Eschelon Telecom, Inc.

By: J. Odey

Name (Print): J. Jeffrey Odey

Title: V.P. General Counsel

Date: 4/1/03

Qwest Corporation

By: Deborah L. Petrie

Name (Print): DEBORAH L. PETRIE

Title: VICE PRESIDENT

Date: 3/24/03

**Amendment No. _____ to the Interconnection Agreement
Between Eschelon Telecom, Inc.
and Qwest Corporation
in the State of ARIZONA**

This Amendment No. ("Amendment") is made and entered into by and between Eschelon Telecom, Inc. ("Eschelon") and Qwest Corporation, formerly U S WEST Communications, Inc. ("Qwest"). Eschelon and Qwest may be referenced through this Amendment as the "Parties."

Recitals

WHEREAS, Eschelon and Qwest entered into that certain Interconnection Agreement for service in the state of Arizona, which was approved by Commission on 4-28-00 (the "Agreement"); and

WHEREAS, Eschelon and Qwest wish to amend the Agreement under the terms and conditions contained herein.

NOW THEREFORE, the Parties agree to the following:

1. Amendment Purpose.

This Amendment is for the purpose of setting the parties' agreed terms and conditions for Eschelon's purchase of Unbundled Network Element Loop ("UNE loop") installations through December 31, 2001.

2. Amendment Terms

Bulk Loop Purchase. Attachment 1, Rates and Charges, to the underlying Agreement is revised to add a new subsection 8.4.3 to Section 8 as follows:

Bulk Loop Installations.

1. Qwest will invoice Eschelon for \$1.05 million for payment of UNE loop installations, upon receipt of which Eschelon will promptly pay Qwest the full amount by wire transfer. In consideration for Eschelon's pre-payment in this amount, on or before December 31, 2001, Eschelon may order up to a total of 15,000 coordinated loop installations (without additional testing) from Qwest in all states where Eschelon has an interconnection agreement with Qwest. The 15,000 installations are calculated on an aggregate basis of all orders placed in all states.

2. The prepayment amount is for the purchase of UNE loop installations ordered by Eschelon from June 1, 2001 through December 31, 2001. Eschelon may order up to a total of 15,000 loop installations and will not be charged a non-recurring loop installation charge for such orders. After 15,000, the rate approved by the state commission in a Cost Docket will apply to all such orders.

3. In the event that Eschelon is unable to order 15,000 or more UNE loop installations prior to December 31, 2001 due to technical, provisioning, or other material factors that impede commercially reasonable efforts to complete installation of these loops in a timely manner, the Parties will meet to negotiate a reasonable extension of this date.

4. Qwest's agreement to the bulk purchase of loops is based on Eschelon's forecasts and Eschelon's estimates that 70 percent of the customers, which are small to medium businesses, will have more than one line at the same location. In addition, Eschelon is separately paying Qwest for a dedicated provisioning team, whose efforts increase efficiencies and reduce costs to Qwest, when processing these installations.

3. Effective Date

This Amendment shall be deemed effective upon approval by the Arizona Corporation Commission; however, the Parties agree to implement the provisions of this Amendment upon execution.

4. Further Amendments

Except as provided in this Amendment, the provisions of the Agreement (as previously amended) shall remain in full force and effect. Except as provided in the Agreement this Amendment may be further amended or altered only by a written instrument executed by an authorized representative of both Parties.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Eschelon Telecom, Inc.

Qwest Corporation

[Signature]
Signature

[Signature]
Signature

Richard A Smith
Name Printed/Typed

Audrey McKenney
Name Printed/Typed

President and CEO
Title

SVP Wholesale Mkts
Title

7/3/01
Date

7/3/01
Date