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April 24, 2003

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

APR 24 2003

Re: Qwest - § 252(e)
Docket No. RT-00000F-02-0271



Dear Sir/Madam:

Qwest submits this letter in response to Eschelon's "Informational Filing Regarding Agreement between Qwest Corporation and Eschelon Telecom, Inc." in which Eschelon provided the Commission with a recent settlement Agreement between Qwest and Eschelon. In that filing, Eschelon indicated that it would have preferred to have "Qwest file the Agreement with the Commission for guidance and a determination of any filing obligation," rather than having Qwest determine whether Section 252 dictates that Agreement be filed. Eschelon also indicated that it "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)."

Qwest doubts that the various state commissions in its region would favor a policy whereby Qwest perfunctorily provides all agreements to the state commissions for their "guidance and determination of any filing obligation," regardless of whether the agreements meet the filing standard of Section 252. To the contrary, in both informal and formal discussions with the states, commissions have indicated that Qwest should not abdicate its responsibility to determine whether a filing under Section 252 is required, but should exercise its judgment in applying the standards of Section 252. Consistent with Qwest's understanding of the states' expectations and the terms of the Agreements itself, Qwest accepts this responsibility.

Moreover, a filing requirement is not dictated—as Eschelon asserts—by whether another "CLEC is similarly situated and desires the same Agreement;" rather, the filing obligation of Section 252 depends upon whether the agreements creates "ongoing obligation[s] pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation,

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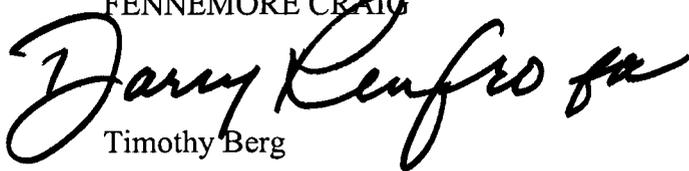
interconnection, unbundled network elements, or collocation."¹ Indeed, the FCC specifically rejected the notion that "all agreements between an incumbent LEC and a requesting carrier" must be filed, or that agreements entered into as "settlements of disputes" must be filed, with the terms made "generally available" to all CLECs.²

Applying the appropriate Section 252 standard to the recent Agreement between Qwest and Eschelon, Qwest's internal Wholesale Agreement Review Committee determined on April 8, 2003 that the Agreement did not create an ongoing term of interconnection, and accordingly did not require filing as a Section 252 agreement. The Committee decided that, by its terms, the Agreement compromised a billing dispute between the parties over the applicability of the Bulk Loop Amendment³ to certain loop installations during the contract period—which ended over a year ago. Because the Agreement is a backward-looking settlement of a dispute arising out of an expired agreement, Qwest determined that no ongoing obligations were created, and thus Section 252 did not require that the Agreement be filed.

To avoid even the appearance of impropriety, however, Qwest explicitly agreed that that Agreement was not confidential, and that either party could submit it to the state commissions for informational purposes. Consistent with its obligations under the Act (and what Qwest believes are the expectations of the state commissions), Qwest determined that it need not file the Agreement for approval under Section 252. Of course, if the Commission does wish to discuss further the application of the filing standard to this Agreement, please contact the undersigned.

Sincerely,

FENNEMORE CRAIG



Timothy Berg

TB/clv

cc: Karen Clauson
All Parties on Service List

¹ *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, *Memorandum Opinion and Order*, FCC 02-276, ¶ 8 (rel. Oct. 4, 2002) (emphasis in original).

² *Id.* at n. 26 (emphasis in original).

³ This amendment was previously filed with the state commissions.

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Original +15 copies filed
this 24 day of April, 2003 to:

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