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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

QWEST'S NOTICE OF FILING

Qwest Corporation ("Qwest") hereby provides Andrew Crain's December 16, 2002 letter to Maureen Scott regarding Eschelon Telecom, Inc.'s November 26, 2002 letter.

RESPECTFULLY SUBMITTED this 20th day of December, 2002.

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December 16, 2002

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**Re: Eschelon Telecom, Inc.'s November 26, 2002
Letter submitted in Docket No. T-00000A-97-0238**

Dear Maureen:

Eschelon Telecom, Inc. ("Eschelon") submitted a letter dated November 26, 2002 to you in which it claimed that it wants "assurance that Qwest is not retaliating against Eschelon for its opposition to Qwest before this Commission and the Federal Communications Commission ("FCC")." Please be assured that Qwest has not taken any retaliating measures against Eschelon as Eschelon suggests.

While Qwest acknowledges legitimate disputes have arisen between Qwest and Eschelon, Qwest has worked with Eschelon on a regular basis to attempt to resolve as many disputes as possible. Nevertheless, when companies such as Qwest and Eschelon do business on a regular basis, it is not always possible to amicably resolve all issues. As the FCC has held, Section 271 cases are not proper forums to resolve inter-carrier disputes. *See, e.g., New Jersey 271 Order* at App. C ¶ 4; *see also, e.g., Georgia/Louisiana 271 Order* at ¶ 222 ("a section 271 application is not an appropriate forum for the resolution of . . . inter-carrier disputes"); *cf., New Jersey 271 Order* at ¶ 159 ("As we have stated in prior section 271 orders, 'section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions.'") (quoting *Pennsylvania 271 Order*, 16 FCC Rcd at 17484, ¶ 118).

Eschelon's letter paints an inaccurate picture of Qwest. In the end, Eschelon itself does not affirmatively claim that Qwest is retaliating, but has only offered its view of a few isolated issues. As explained below, some of these issues have no basis in fact and the others represent legitimate disputes the parties have been working through appropriate business channels. Qwest has acted and will continue to act in the spirit of cooperation in finding solutions to Eschelon's issues.

1. **UNE-P Interconnection Agreement Amendment**

Eschelon has taken statements out of context and mischaracterized recent correspondence as evidence of a change in Qwest's position.

UNE-P Amendment. The record in this proceeding is clear: Qwest has consistently explained that it will not refuse to provision Eschelon's UNE-P orders on the basis that Eschelon's interconnection contract has not been amended to include provisions that specifically address UNE-P. At the same time, however, Qwest believes that an amendment is desirable because it would fully address the terms and conditions for UNE-P provisioning, thus eliminating many of the current disputes between the parties, including those relating to billing.

Qwest explained this position in the proceeding to which Eschelon cites. Eschelon points to the October 10, 2000 workshop transcript, which reflects Andy Crain's explanation that Qwest would provide to CLECs at cost-based rates combined network elements to create both UNE-P and EEL. Eschelon did not, however, cite to Qwest witness Karen Stewart's clarification in that same discussion, just a few pages later in the transcript, where Ms. Stewart stated that "the expectation is that -- or the recommendation, of course, would be that you really tighten up and have an actual interconnection agreement amendment eventually that would capture all of the details."¹

This recommendation is based on the very practical benefits that both Eschelon and Qwest would enjoy with the clarity of an amendment specifically addressing UNE-P. Indeed, as part of the same discussion in the October 2000 workshop, WorldCom witness Michael Beach confirmed that WorldCom intended to proceed with contract amendments to specifically address combinations because WorldCom "think[s] it's useful to have additional detail."²

Thus, Qwest's position has been consistent for well over two years. Qwest will provision UNE-P orders without requiring an amendment, but strongly prefers to negotiate an amendment to fully address the terms and conditions, including rates.

Nothing in the letter to which Eschelon points is inconsistent with Qwest's long-established position or with any rulings by the Commission. Instead, Qwest only renewed its request for Eschelon to negotiate an amendment to avoid the continuing disputes between the parties that have arisen because Eschelon's interconnection agreement does not fully address UNE-P provisioning.

UNE-P Rates. This issue is a result of Eschelon's refusal to negotiate a UNE-P amendment. Eschelon is attempting to obtain things for free. It refuses to negotiate an agreement to cover things not covered in its agreement, and then Eschelon claims Qwest should not be able to bill for things not in its contract. Because Eschelon does not agree with Qwest on UNE-P rates, the parties have been locked in continuous billing disputes.

Qwest has explained how it determines Eschelon's UNE-P rates, most recently in a letter dated November 26, 2002 from Scott Martin of Qwest to Bill Markert of Eschelon, as follows:

¹ Tr. Vol. I (Oct. 10, 2000), p. 39, lines 17-21.

² Tr. Vol. I (Oct. 10, 2000), p. 36, lines 1-5.

As Qwest has stated on numerous occasions, Eschelon does not get Qwest's service/products for free simply because certain rate elements are not covered by the ICA or a commission order - Qwest is entitled to some remuneration. Consequently, absent other appropriate benchmarks, Qwest has billed such rate elements using SGAT rates.

This practice complies with the Commission's order in Phase II of the Cost Docket. In that order, the Commission stated as follows:

[T]o the extent that issues are not addressed by the Decision, such issues are deferred to Phase III of this proceeding. For issues that are deferred to Phase III, if the service is currently being offered, and the rates have previously been reviewed and approved by the Commission, the current rates will continue in effect until different rates are established in Phase III. These rates are not subject to refund, since they are the continuation of the existing rates previously approved by us. *For new services proposed by Qwest with a new rate that has not been reviewed and approved by the Commission, the interim rate shall be not more than the rate Qwest has proposed.* Such "interim rates" shall be subject to a "true-up" and refund once permanent rates are established in Phase III.³

Thus, the Commission recognizes that CLECs must pay for the services they order, even if there is no Commission-approved rate. In that case, Qwest is to charge a rate no more than its proposed rate.

Qwest's proposed SGAT rates are will be considered in Phase III of the cost docket. In accordance with the Commission's order, where the rate has not yet been approved, Qwest is appropriately charging the proposed SGAT rate, which will be subject to true-up once permanent rates are established.

2. **Amendment Required for Access to Special Request Process**

Need for Amendment. Because Eschelon refuses to pay for anything not set forth in an agreement, Qwest needs to insist that it amend its contract to add the Special Request Process ("SRP"). The SRP must be in place in the requester's interconnection agreement for a cost quote to be provided. For Eschelon, this requires an amendment to their existing interconnection agreement.

Response to Request for Information. Eschelon asks Staff to require Qwest to respond to Eschelon's request for a list of switches in which Remote Access Forwarding is activated. Eschelon re-raises an issue where none exists. Qwest responded to this request in Qwest's Late Filed Exhibit G, dated October 23, 2002. In that filing, Qwest stated:

³ Phase II Opinion and Order, Docket No. T-00000A-00-0194, Decision No. 64922, dated June 12, 2002, at 81.

In response to the take back as provided by Eschelon, Remote Access Forwarding as a switch based feature is not activated on any of Qwest's switches. Remote Access Forwarding is loaded on the Nortel DMS100, however since it has never been offered as a switched based feature by Qwest it has not been activated or tested. Remote Access Forwarding is not loaded on the Lucent 5ESS switches.

Request for Staff to Revisit Commission Order. Eschelon requests Staff to recommend that Remote Access Forwarding should be available with UNE-P. The Commission has already decided this issue.

In the UNE Remand Order,⁴ the FCC determined that an ILEC's AIN products are not subject to unbundling requirements when ILECs make the AIN platform or database, Service Creation Environment ("SCE"), SMS, and STPs available for CLECs to develop their own AIN products. The Commission has already determined that Qwest was meeting its obligations by making available its AIN platform or database, SCE, SMS and STPs.⁵ Eschelon has provided no valid basis for revisiting that decision.

3. **UNE-E Mechanization and Accurate Billing**

Eschelon's description of this issue confuses the mechanized billing of UNE-E orders with conversion of the embedded base of accounts. Qwest's commitment at the July 2002 Eschelon Workshop was to provide mechanized billing for UNE-E orders by the end of this year. Qwest has fulfilled that commitment and will begin mechanized processing of bills for new orders, adds, and changes on December 20, 2002.

Converting the embedded base of accounts is a separate issue with an involved history. Initially, Qwest planned to convert Eschelon's accounts with another provider's accounts using a mechanized process due to the combined volume of accounts. Ultimately, the timing for the other CLEC's conversions was delayed, and mechanical conversion of only Eschelon's accounts was not economically feasible because those accounts amounted to only about 2% of the combined total. Qwest offered Eschelon a solution for converting Eschelon's orders, but Eschelon directed Qwest not to proceed because Eschelon claims that the impacts were too great. But those impacts are not a result of the solution Qwest has proposed. The systems Eschelon claims would be impacted by Qwest's conversion solution are systems that would need to be updated by Eschelon regardless of whether the conversion is mechanized or manual. Thus, the impacts Eschelon identified are the impacts that arise from the act of conversion itself. Accordingly, these impacts are reasonably expected from any conversion activity and are not specific to Qwest's proposed solution.

⁴ Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999), para. 412.

⁵ In the Matter of U.S. West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. T-00000A-97-0238, Decision No. 64214 (Ariz Corp Comm'n Nov. 20, 2001) at para. 26.

The bottom line is that Qwest has fulfilled its commitment to mechanize UNE-E billing and has offered a solution for converting the embedded base of accounts.

4. Qwest's Collection Attempts

Qwest objects to Eschelon's characterization of Qwest's collection letters as "threats to disrupt and disconnect service." Qwest is only asserting its right to take steps to secure payment from customers, including CLECs, who have failed to pay for services provided, and to explain in its standard collection letters to such customers the potential consequences of continued non-payment. In short, those consequences represent appropriate and available remedies necessary for Qwest to enforce its right to be compensated for the services it provides.

Qwest follows essentially the same collection practice, using standardized letters, for all its retail and wholesale customers. Qwest's collection practice follows those used throughout the industry – practices that have been in use for retail customers for decades and for wholesale customers since divestiture of the Bell System in 1984. If a customer's non-payment has persisted to the point where collection actions are required, Qwest provides appropriate notice of the potential consequences of continued non-payment. On the wholesale side, Qwest's collection letters are intended to convey a serious message from one business partner to another about the consequences of continued non-payment.

Qwest is deeply concerned about Eschelon's practice of slow-paying its invoices with the explanation that their accuracy is under investigation, when it has not raised a bona fide dispute about the invoice in question.

5. Request to Opt-in to McLeod 2002 Rates.

Eschelon has mischaracterized the statements in Qwest's letter to Eschelon dated November 8, 2002, attached to Eschelon's letter in Exhibit E-R. Qwest did not deny Eschelon's request. Rather Qwest noted that the opt-in would have to comply with the applicable law. Eschelon has neither responded to Qwest's letter nor taken Qwest up on its offer to discuss this issue with its chief negotiator, Larry Christensen. This offer still stands.

6. The Business Relationship

Eschelon has taken one specific situation and considers it a matter of Qwest policy. Qwest does not agree with Eschelon's account of the conversation between Eschelon and Qwest's senior service manager. When Eschelon presented the list of circuits for root cause analysis the service manager expressed that these were the same circuits Eschelon had filed as exhibits with the FCC and that Qwest had already responded to this request in its response filing in October. There was no refusal to discuss the issue and no mention of section 271. The Qwest representative only intended to clarify that that Qwest had already responded to this request. Qwest has not broadly refused to discuss issues that have been raised in a regulatory proceeding.

For these reasons, Qwest believes that the allegations in Eschelon's letter are either baseless or constitute legitimate business issues that are being addressed and require no Commission intervention.

Maureen A. Scott
December 16, 2002
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Very truly yours,

A handwritten signature in black ink, appearing to read 'Andrew D. Crain', with a long horizontal flourish extending to the right.

Andrew D. Crain