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Carla M. Butler
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May 13, 2008

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: ARB 775

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Comments Relating to Eschelon's Alternative Rate Proposal in Response to the Arbitrator's Decision, along with a certificate of service.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

Carla

Carla M. Butler

CMB:
Enclosure
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 775

In the Matter of ESCHELON TELECOM OF OREGON, INC. Petition for Arbitration of an Interconnection Agreement with Qwest Corporation	**QWEST CORPORATION'S COMMENTS RELATING TO ESCHELON'S ALTERNATIVE RATE PROPOSAL IN RESPONSE TO THE ARBITRATOR'S DECISION**

INTRODUCTION

In its "Comments on Arbitrator's Decision," Eschelon Telecom ("Eschelon") presented objections to the Arbitrator's Decision relating to interim rates for rate elements (Issue 22-90(b)-(a-e)) and, as part of its objections, proposed an alternative methodology for establishing interim rates. Pursuant to the parties' procedural agreement set forth in Qwest's email to the Arbitrator of May 9, 2008, Qwest Corporation ("Qwest") submits this response to Eschelon's proposal. For the reasons described below, the Commission should reject Eschelon's proposal and adopt the Arbitrator's Decision and methodology for establishing interim rates.

DISCUSSION

This issue involves the parties' dispute concerning the interim rates the Commission should adopt for the significant number of services and elements for which there are not Commission-approved permanent rates. In Oregon, this issue has more significance than in the other states in which the parties have conducted arbitrations, since Oregon has not completed a wholesale cost docket proceeding in recent years. In comparison to the approximately 20 rates that have been disputed in the other states, there are more than 100 disputed rates in this proceeding. The majority of these rates relate to collocation services, interconnection services, and services associated with Eschelon's access to unbundled network elements.

As described in the Arbitrator's Decision, the parties presented sharply divergent proposals relating to this issue. Seeking a unified set of rates that would be based on a consistent methodology and would comply with the FCC's TELRIC ("total element long run incremental cost") pricing requirements, Qwest proposed using rates established by the New Mexico Commission in its 2005 wholesale cost docket. However, where Qwest's Oregon cost studies produce a rate lower than the New Mexico rate, Qwest proposed using the lower Oregon rates, and it also proposed using the Oregon rate, minus 30%, in the circumstance where the New Mexico Commission did not set a rate. By contrast, Eschelon proposed a collection of rates based upon multiple different methodologies and an overall approach that, as described by the Arbitrator, "suggests a methodological bias in favor of lower rates." Arbitrator's Decision, p. 81.

The Arbitrator resolved this dispute through a compromise approach that addressed each party's concerns about the other's proposal. Specifically, the Arbitrator ruled that rates should be developed for each rate element by averaging the commission-approved rates from all other states in Qwest's region, while excluding the highest and the lowest rates from the calculations. Under the ruling, if fewer than two states have established a rate for a particular element, the parties are to use the New Mexico rate. As the Arbitrator explained, this compromise solution addresses Eschelon's concern about basing rates on just one state – New Mexico – that it claimed is dissimilar to Oregon and also addresses Qwest's concern about the selective averaging of rates that was built into Eschelon's proposal. Arbitrator's Decision, p. 82.

In response to the Arbitrator's ruling, Eschelon has presented a new proposal that, once again, bespeaks a bias in favor of lower rates and a disregard for methodological consistency. Under this proposal, Qwest's proposed New Mexico rates would serve as a price cap on the ALJ's methodology, meaning that no rate could exceed the New Mexico rate, even if the region-wide average were substantially in excess of the New Mexico rate. Based on this methodology, Eschelon is now apparently proposing that dozens of rates – nearly half of all the rates – would be based upon New Mexico. This is indeed ironic, since it was Eschelon who loudly protested during the arbitration that no rates should be based upon New Mexico. According to Eschelon, it would be improper to base rates on one state, particularly a state like New Mexico that, according to Eschelon, bears no similarity to Oregon.

It is obvious why Eschelon has abandoned the principles it espoused in challenging Qwest's New Mexico proposal. In many cases, the New Mexico rates are lower than the region-wide averages (reflecting the reasonableness of Qwest's original proposal), and Eschelon is willing now to adopt those rates because it is more interested in the lowest possible rates than in pricing principles and consistency of methodology. Eschelon, of course, knows that its proposal would be a non-starter without some concession, so it couples its price cap proposal with the suggestion that its proposed rates will serve as a price floor if the rate produced by the Arbitrator's methodology is less than Eschelon's proposal. Thus, in contrast to the approximately 63 rate elements for which the New Mexico rate would serve as a price ceiling, Eschelon's proposed rates would serve as a price floor for only 16 rates. In other words, Eschelon's proposal would result in 47 rates (63 minus 16) that are lower than those ordered by the Arbitrator. *See* Eschelon's Comments, at pp. 29-31.

In making this proposal, Eschelon again returns to its practice of relying on inconsistent pricing methodologies that have no unifying principle. The prices that would result from its proposal would be based upon an amalgam of inconsistent methodologies. In some cases, as discussed above, the prices would be based on New Mexico; in other cases, the prices would be based upon Eschelon's selective averaging that the Arbitrator found to be improper; and, in still other cases, the rates would be based upon region-wide averages.

Qwest objects strongly to this "mix and match" approach to developing rates, which focuses only on results and not consistency of methodology. In contrast to Eschelon's proposal, the Arbitrator's ruling results in a consistent methodology that is not at all result-oriented. And, by basing rates on the prices that multiple other state commissions have approved in cost dockets, the Arbitrator's approach ensures compliance with the Act's pricing requirements and the FCC's TELRIC methodology. Further, the Arbitrator's ruling as described in the Decision, produces a "smoothing effect" that benefits both parties by eliminating the highest and the lowest of the region-wide rates from the rate calculations.

CONCLUSION

For the reasons stated, Qwest respectfully submits that the Commission should approve the Arbitrator's Decision relating to Issue Issue 22-90(b)-(a-e), and further, that it should reject Eschelon's new proposal.

DATED: May 13, 2008

Respectfully submitted,

QWEST CORPORATION

By:__________________________________

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CERTIFICATE OF SERVICE

ARB 775

I hereby certify that on the 13th day of May 2008, I served the foregoing **QWEST CORPORATION'S COMMENTS RELATING TO ESCHELON'S ALTERNATIVE RATE PROPOSAL IN RESPONSE TO THE ARBITRATOR'S DECISION** in the above entitled docket on the following persons via means of e-mail transmission to the e-mail addresses listed below, and via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 13th day of May, 2008.

QWEST CORPORATION

By: ______________________________

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