

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 775

In the Matter of)	
)	
ESCHELON TELECOM OF OREGON, INC.)	
)	RULING
Petition for Arbitration of an Interconnection)	
Agreement with QWEST CORPORATION,)	
Pursuant to Section 252(b) of the Telecom-)	
munications Act.)	

**DISPOSITION: JOINT MOTION FOR SINGLE COMPLIANCE
FILING AND REVISION OF SCHEDULE
GRANTED**

On June 20, 2007, Qwest Corporation and Eschelon Telecom, Inc. (jointly, “the Parties”), filed a joint motion in connection with Issue Nos. 9-37 – 9-42 in this proceeding. Issue Nos. 9-37 – 9-42 relate to implementation of criteria for determining impairment for DS1 and DS3 loop and dedicated transport UNEs and Dark Fiber pursuant to the Federal Communications Commission’s (FCC) *Triennial Review Remand Order* (“TRRO”),¹ and are generally referred to as the “wire center” issues. The Public Utility Commission of Oregon (Commission) addressed wire center related issues in Order No. 07-109 entered in docket UM 1251 (hereafter the “Wire Center docket”).

Qwest and Eschelon have executed a multi-state settlement agreement (“Settlement Agreement”) regarding the wire center issues that includes language to be included in the proposed interconnection agreement (ICA). The Settlement Agreement, if approved, will resolve all open language encompassed by Arbitration Issue Nos. 9-37 – 9-42. The compromise ICA language on these issues that will be added to the ICA if the Settlement Agreement is approved and not terminated is set forth in Attachment C to

¹ In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, 20 FCC Rcd. 2533 (2005) (“TRRO”). The TRRO established impairment criteria based on the number of business lines and/or fiber based collocators in a particular wire center. See ¶¶ 146, 155, 166, 174, 178, 182, and 195. See also 47 CFR § 51.319(a)(4) – (5) and (e)(2)(ii) – (iv) and (e)(3).

the Settlement Agreement. Qwest and the Joint CLECs participating in the Wire Center docket, including Eschelon, are submitting the fully executed Settlement Agreement, with attachments, to the Commission for approval in that docket.

Qwest and Eschelon have agreed to a single compliance filing of the ICA to implement both the Commission's eventual arbitration order in this proceeding and the resolution of the wire center issues. Through this filing, the Parties are asking the Commission to approve this approach of submitting a single compliance filing. Specifically, the Parties request that they be permitted to submit a proposed ICA for approval after the Commission has issued orders that resolve all of the arbitration issues, including the wire center issues (as opposed to, for example, a contract and a later amendment).

If the single compliance filing approach is not acceptable, the Parties have not agreed to any joint request to revise the schedule in this arbitration proceeding.² If the Commission approves a single compliance filing, however, Qwest and Eschelon request the modifications to the arbitration schedule described below. These modifications will give the Commission time to consider the Settlement Agreement in the Wire Center Docket and potentially will eliminate the need for supplemental testimony on Arbitration Issue Nos. 9-37 – 9-42 in this proceeding. Accordingly, if the Commission permits a single compliance filing, Qwest and Eschelon jointly seek the following modifications to the arbitration schedule:

- Modify the schedule to allow two rounds of supplemental testimony and a single round of briefing that will address any open issues involving the ICA language regarding Arbitration Issue Nos. 9-37 – 9-42.³ This modification will be needed only in the event the Settlement Agreement is not approved or is terminated pursuant to paragraph VII(C) of the Settlement Agreement, with the dates for filing testimony and briefs to be set after the Commission's ruling on the Settlement Agreement in the Wire Center docket. This testimony will be unnecessary if the Commission approves the Settlement Agreement and it is not terminated under paragraph VII(C) of the Settlement Agreement. If it is necessary to file supplemental testimony on Issue Nos. 9-37 – 9-42, Qwest and Eschelon agree, subject to approval of the ALJ or the Commission, that a hearing is not needed on Issue Nos. 9-37 – 9-42, which can be decided on the written testimony and briefing. This would mean that the wire center issues would not be addressed at the hearing currently scheduled for August 14-16, 2007.

² If the Commission does not permit a single compliance filing, the Parties reserve their respective rights to file separate requests or filings opposing such requests with the Commission.

³ In the unforeseen event that the Settlement Agreement is not approved or is terminated and the Commission issues an order on the merits of the issues in the Wire Center docket, the Parties may be able to agree upon language reflecting the Commission's order in that docket. If not, any remaining open language issues would need to be resolved in this proceeding. Such remaining open language issues would be the subject of any supplemental testimony and briefing.

- Schedule a single compliance filing of the ICA after resolution of both the wire center issues (either via approval of the Settlement Agreement or, if none, via an arbitration order based upon the supplemental testimony and briefing in this case described immediately above) and the other arbitration issues, with a specific date for filing of the ICA to be scheduled after both resolutions occur.

As noted above, if the Commission approves the Settlement Agreement, the language of Attachment C will be added to the ICA before the compliance filing under this approach, and no supplemental testimony on the wire center issues will be needed.

For the reasons set forth above, the joint motion filed by Eschelon and Qwest is granted.

Dated at Salem, Oregon, this 13th day of July, 2007.

Samuel J. Petrillo
Administrative Law Judge

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