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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 199 (3)

In the Matter of the Amendment (No. 7) to the )  
 Wireline Interconnection Agreement Between )  
 ESCHELON TELECOM of WASHINGTON, INC. )  
 (fka AMERICAN TELEPHONE TECHNOLOGY, )  
 INC.), and QWEST CORPORATION, (fka U S )  
 WEST COMMUNICATIONS, INC.), Submitted for )  
 Commission Approval Pursuant to Section 252(e) of )  
 the Telecommunications Act of 1996. )  
 )

ORDER

**DISPOSITION: AMENDMENT APPROVED**

On December 18, 2000, Eschelon Telecom of Washington, Inc., fka American Telephone Technology, Inc. (Eschelon) and Qwest Corporation, fka U S WEST Communications, Inc. (Qwest) filed an amendment (No. 7) to their interconnection agreements, previously acknowledged and approved by the Public Utility Commission of Oregon (Commission).<sup>1</sup> The parties seek approval of this current amendment under Section 252(e) of the Telecommunications Act of 1996.

Under the Act, the Commission must approve or reject an agreement reached through voluntary negotiation within 90 days of filing. The Commission may reject an agreement only if it finds that:

- (1) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

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<sup>1</sup> Initially, the parties adopted the terms of ARB 3, which was acknowledged by letter of the Commission, February 8, 2000. First and second amendments were filed, docketed as ARB 199(1), and approved by Order No. 00-248 issued May 10, 2000. Third and fourth amendments were filed, docketed as ARB 199(2), and approved by Order No. 00-371 issued July 13, 2000. Therefore, this amendment (No. 7) was docketed, noticed, and is recognized in this order as ARB 199(3). To date, an additional amendment, recognized as ARB 199(4), is still pending Commission review.

The Commission provided notice of the request for approval and an opportunity to comment to a list of persons who have participated in arbitrations under the Act. PUC Staff filed comments.

While Staff recommended approval of the amendment, Staff noted that Eschelon and Qwest agreed to allow the amendment to become effective October 1, 2000, which is a date prior to approval or disapproval by the Commission. Staff further noted that Sections 252(a) and 252(e) of the Telecommunications Act of 1996 require parties to an interconnection agreement to submit the agreement to the state commission for approval or rejection and that agreements do not have force or effect until approved by the relevant state commission. Therefore, according to Staff, the provision allowing the amendment to the agreement to become effective upon that date of execution is not enforceable.

Staff concluded that the amendment to the previously filed agreement does not appear to discriminate against telecommunications carriers who are not parties to the agreement and does not appear to be inconsistent with the public interest, convenience, and necessity.

### **OPINION**

The Commission has reviewed the amendment to the previously approved agreement and the comments. No participant in the proceeding has requested that the amendment be rejected or has presented any reason for rejection. The Commission concludes that there is no basis under the Act to reject the amendment and that the amendment should be approved.

### **CONCLUSIONS**

1. There is no basis for finding that the amendment to the previously approved agreement discriminates against any telecommunications carrier not a party to the agreement.
2. There is no basis for finding that implementation of the amended agreement is not consistent with the public interest, convenience, and necessity.
3. The amendment should be approved with the understanding that the provision governing the effective date is unenforceable.

**ORDER**

IT IS ORDERED that the amendment to the previously acknowledged and approved agreement, between Eschelon Telecom of Washington, Inc. and Qwest Corporation, is approved.

Made, entered, and effective \_\_\_\_\_.

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**Phil Nyegaard**  
Acting Director  
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.