

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Eschelon  
Telecom, Inc., for Arbitration with Qwest  
Corporation, Pursuant to 47 U.S.C. § 252  
of the Communications Act of 1996

ORDER ON MOTION TO COMPEL

This matter came before Administrative Law Judges Kathleen D. Sheehy and Steve M. Mihalchick on Qwest's Motion to Compel Production of Documents and Interrogatory Responses from Eschelon. The motion record closed on September 21, 2006.

Gregory Merz, Esq., Gray, Plant, Mooty, Mooty & Bennett, PA, 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-3796, and Karen L. Clauson, Associate General Counsel, 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, appeared on behalf of Eschelon Telecom, Inc. (Eschelon). Jason D. Topp, Corporate Counsel, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared on behalf of Qwest.

Based on the memoranda and file herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED:

1. That Qwest's Motion to Compel Discovery is GRANTED in part and DENIED in part, as more fully described below; and
2. Eschelon shall provide responses to Data Requests 1.1, 1.4, 1.5, 1.8, 1.11, 1.23, 1.26, 2.7 and 2.9 as modified, and 2.53 within five business days hereof.

Dated: September 28, 2006.

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

s/Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

## **MEMORANDUM**

Qwest served its First Set of Data Requests on July 13, 2006; Eschelon responded on July 25, 2006. Eschelon objected to Data Requests 1.1 through 1.11, 1.23, and 1.26. Qwest moves to compel Eschelon to respond to these data requests.

Qwest served its Second Set of Data Requests on August 3, 2006; Eschelon responded on August 21, 2006. Eschelon objected to Data Requests 2.7, 2.9, and 2.53. Qwest moves to compel Eschelon to respond to these data requests as well.

### **Legal Standard**

Minn. R. 1400.6700, subp. 2, allows a party to pursue any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of Minnesota. The civil rules permit discovery of information that is reasonably calculated to lead to the discovery of admissible evidence. Discovery may be limited if it is unreasonably cumulative or duplicative or is obtainable from another source that is more convenient, less burdensome, or less expensive; or if the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. See Minn. R. Civ. P. 26.02(a).

### **Data Requests 1.1 through 1.11**

The parties disagree about the appropriate language that should be included in their new interconnection agreement to address issues related to unpaid bills. Specifically, the parties disagree about whether and when Qwest may discontinue processing Eschelon's orders if Eschelon has failed to timely pay amounts due (Issue 5-6) and under what circumstances Qwest should be allowed to require Eschelon to make a deposit to secure payment of future charges (Issues 5-8, 5-9, 5-11, 5-12, and 5-13). Qwest made a series of data requests to Eschelon asking for disclosure of Eschelon's policies and practices concerning bill collection from its own customers. Eschelon argues that Qwest's data requests are overbroad, burdensome, and irrelevant to this dispute because Eschelon is a wholesale customer of Qwest's, not a retail customer. Retail customers could conceivably go elsewhere for service if Eschelon discontinues it or refuses to provide it, whereas Eschelon has no option to seek interconnection with a different ILEC.

Data Request 1.1 seeks a description of all of Eschelon's policies and procedures that take effect after an Eschelon customer fails to pay a bill in a timely manner. This request is reasonably calculated to lead to the discovery of admissible evidence. Eschelon should describe its policies and procedures as requested.

Data Request 1.2 seeks the production of “all documents” that reflect, describe, or relate to Eschelon’s policies and procedures that apply when an Eschelon customer fails to pay a bill in a timely manner. This request is overbroad and burdensome considering the issues in dispute. Eschelon is not required to respond further to it.

Data Request 1.3 asks Eschelon to describe all circumstances that cause Eschelon to discontinue a customer’s service, including, for example, discontinuance of service based on a customer’s failure to pay a bill in a timely manner. This request seeks essentially the same information as Data Request 1.1. Eschelon is not required to respond further to this request.

Data Request 1.4 asks Eschelon to describe whether Eschelon reserves the right to discontinue service to a customer if a bill goes unpaid for a certain number of days. This request is reasonably calculated to lead to the discovery of admissible evidence. Eschelon shall answer the question as requested.

Data Request 1.5 asks Eschelon to describe any other steps it takes or remedies it pursues when a customer fails to pay a bill. This request is reasonably calculated to lead to the discovery of admissible evidence. Eschelon shall answer the question as requested.

Data Request 1.6 asks Eschelon to identify, for each Minnesota customer for which Eschelon discontinued service between January 1, 2004, and the present, based on failure to pay a bill, the reason for the discontinuance, the number of days by which the bill was overdue, and the date Eschelon discontinued service. This request is overbroad and burdensome considering the issues in dispute. Eschelon is not required to respond further to it.

Data Request 1.7 asks Eschelon to describe, for each Minnesota customer for which Eschelon implemented a remedy other than discontinuance of service between January 1, 2004, and the present, the remedy implemented, the reason for implementing the remedy, the number of days by which the bill was overdue at the time the remedy was implemented, and the date on which Eschelon implemented the remedy. This request is overbroad and burdensome considering the issues in dispute. Eschelon is not required to respond further to it.

Data Request 1.8 asks Eschelon to describe Eschelon’s policies and procedures relating to the circumstances under which it requires customers to provide security deposits and the amounts required for security deposits. This request is reasonably calculated to lead to the discovery of admissible evidence, and Eschelon should describe its policies and procedures as requested.

Data Request 1.9 asks Eschelon to describe or list the data and reason for each occasion on which Eschelon required a security deposit from a Minnesota customer from January 2004 to the present. This request is overbroad and burdensome considering the issues in dispute. Eschelon is not required to respond further to it.

Data Request 1.10 asks Eschelon to explain its understanding of when it must seek Commission approval to implement policies or procedures related to customer deposits and the discontinuance of customer service as the result of a customer failure to pay a bill. Eschelon's understanding of and compliance with Commission rules concerning disconnection of retail customers is not at issue here. Eschelon is not required to respond further to this request.

Data Request No. 1.11 asks Eschelon to describe the circumstances under which Eschelon requires a credit check or reviews a customer's credit history as a condition of providing service. There is a dispute concerning language in Issues 5-12 and 5-13 as to whether Qwest may review Eschelon's credit reports, such as Dun and Bradstreet, and require a deposit based on credit status. This data request is reasonably calculated to lead to the discovery of admissible evidence. Eschelon should answer it as requested.

### **Data Requests 1.23 and 1.26**

Data Request No. 1.23 asks Eschelon to identify all occasions on which it has requested that Qwest perform cross-connects for Eschelon in Minnesota or in any other state in Qwest's region. Data Request No. 1.26 seeks the same information concerning unbundled customer controlled rearrangement service (UCCRE). Qwest maintains that no CLEC orders these services and that contract language in interconnection agreements with other CLECs, which permits the ordering of these services, is outdated and should be eliminated. Eschelon maintains it is irrelevant whether it orders these services or not, because Qwest is obligated to provide them if the services are available to other CLECs. These data requests are reasonably calculated to lead to the discovery of admissible evidence, and Eschelon should answer them as requested.

### **Data Request 2.7**

The parties disagree about proposed language concerning jeopardy notices. Eschelon has proposed language that would require Qwest not to characterize a jeopardy as customer-not-ready (CNR) under certain circumstances, but to characterize it instead as Qwest-caused. Qwest maintains that the Commission's performance indicator definitions (PIDs) define jeopardies and that individual interconnection agreements should not define them differently. See Issue Nos. 12-71, 12-72, and 12-73.

Data Request 2.7 asks Eschelon to state whether Eschelon believes that Qwest-caused jeopardies are addressed by or included in any way in the current performance indicator definitions (PIDs). If it does not believe Qwest-caused jeopardies are included in the current PIDs, Qwest asks Eschelon to describe additional information it desires within the PIDs relating to this issue and whether Eschelon has raised these requests in the Change Management Process (CMP) or before the Regional Oversight Committee (ROC). If Eschelon believes that Qwest-caused jeopardies are addressed in the current PIDs, Qwest asks Eschelon to state whether its proposed language is simply aimed at memorializing the current process. Eschelon answered the data request by saying that

whether the PIDs address Qwest-caused jeopardies or not is not the issue; the issue presented is whether a jeopardy is properly classified as either Qwest-caused or CNR. Eschelon further stated that the PIDs do not measure Qwest-caused jeopardies when jeopardies are incorrectly classified as CNR.

Eschelon has not answered the main question in dispute, which is whether its definition of a Qwest-caused jeopardy is consistent or not with the definition of a Qwest-caused jeopardy in the PIDs. This information might be relevant in assessing the impact of the differences in proposed language. Eschelon should answer the question as limited herein.

### **Data Request 2.9**

Qwest has proposed language that requires Qwest Maintenance and Repair to be in compliance with Qwest's Technical Publications and with ANSI standards, among others, so long as they are not in conflict with Qwest's Technical Publications. Eschelon has proposed language that requires Qwest's Maintenance and Repair and routine test parameters to conform with industry standards and, to the extent not inconsistent with those standards, Qwest's Technical Publications. In other words, Qwest maintains that its own technical publications can set Maintenance and Repair standards that could be inconsistent with ANSI standards; Eschelon wants language making industry standards applicable.

In Data Request No. 2.9, Qwest has asked Eschelon to identify any Qwest Technical Publication that differs or deviates from ANSI standards, and to describe in detail such differences and how they have adversely affected Eschelon and whether Eschelon has taken any such concerns to the Change Management Process. Eschelon objected to the request on the grounds that it seeks information that is irrelevant and would be burdensome. The request is burdensome in that it would require Eschelon to conduct a review and analysis of all of Qwest's Technical Publications. The request does seek some information that might be relevant, however, to assessing the impact of the differences in proposed language; Eschelon should describe whether it has any existing knowledge that any Qwest Technical Publication does not comply with ANSI standards. With this limitation, Eschelon should respond to the data request.

### **Data Request 2.53**

Eschelon has proposed language regarding Issue 8-24 that would require Qwest to review any collocation application from Eschelon and inform Eschelon within ten days of any NEBS Level 1 safety issues that might arise. Qwest opposes this language, maintaining that since the collocated equipment is Eschelon's, Eschelon should be responsible for determining whether it meets safety standards.

In Data Request 2.53, Qwest asks Eschelon to describe each instance in the last five years in Minnesota and in any other state in Qwest's region in which Qwest has requested that Eschelon remove equipment from its collocation space because of NEBS or other safety-related concerns. It also asks Eschelon to provide all related

documents. Eschelon objected to the request on relevance grounds, arguing that Qwest's past conduct is irrelevant to Eschelon's need for the language it proposes. This request seeks information that might be relevant to assessing the impact of the differences in proposed language. Eschelon should answer it as requested.

**K.D.S., S.M.M.**