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IDAHO PUBLIC
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

APPLICATION OF ESCHELON FOR
APPROVAL OF A WIRELINE
INTERCONNECTION AGREEMENT
PURSUANT TO 47 U.S.C. §252(e)

(Replacement) **Docket No. USW-T-98-22**
**APPLICATION FOR APPROVAL OF
INTERCONNECTION AGREEMENT**

Pursuant to 47 U.S.C § 252(e)(1) and IDAPA 31.01.01 Rule 135, Eschelon Telecom, Inc., Eschelon Telecom of Idaho, Inc. and Advanced TelCom, Inc. (collectively "Eschelon") file the enclosed documents between Qwest Corporation ("Qwest") and Eschelon¹ for approval by the Commission of any documents that the Commission finds are interconnection agreements, or an amendment to the existing interconnection agreement previously approved by this Commission. The enclosed documents include: Qwest Master Services Agreement (MSA) (with its exhibits: Service Exhibit 1 – Qwest Platform Plus Service; Attachment A to Service Exhibit 1 – Performance Targets for Qwest QPP Service; Qwest Platform Plus (QPP) Rate Sheet; and Qwest Platform Plus (QPP) Rate Page – Port Rate Increases) and Amendment to Interconnection Agreement

¹ The "QPP" documents were signed by Eschelon Telecom Inc. on behalf of itself and its affiliates, and the documents entitled "Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts" were signed separately by Eschelon Telecom of Idaho, Inc. and Advanced TelCom, Inc. Copies of these documents accompany this filing.

for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts (collectively “QPP” documents or agreements).²

Similar QPP documents were recently filed in several states by Qwest and MCImetro Access Transmission Services, LLC (“MCI”). In those proceedings, MCI and AT&T described reasons why the QPP agreements may be subject to the federal Act’s Section 252 filing requirement. Enclosed, for example, is an Order of the Washington State Utilities and Transportation Commission³ in which the Commission summarizes such arguments and finds the agreements need to be filed for approval.⁴ Eschelon will not repeat those arguments here. In addition to the arguments previously made by other parties, Eschelon notes that the enclosed QPP documents address the transition, over the ongoing period of time extending until April 1, 2005, of UNE-E to QPP.⁵ UNE-E was previously available to Eschelon pursuant to filed interconnection agreement amendments. From January 1, 2005 through April 1, 2005, its availability on a limited basis for the base of customers, during the transition, is governed by the QPP documents.

Eschelon intends to abide by any filing requirements and accordingly files the enclosed documents, all of which are public (non-confidential). Eschelon agrees with the

² Although Qwest may have separately filed at least one of these documents (entitled “Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts”) for approval as an amendment to the previously approved interconnection agreement between the parties, the enclosed documents are inter-related, and therefore Eschelon files all of them for the Commission’s consideration.

³ See Order Approving Negotiated Interconnection Agreement in its Entirety, *In re. MCImetro Access Transmission Services, LLC and Qwest Corporation for Approval of Negotiated Interconnection Agreement, in its Entirety, Under the Telecommunications Act of 1996*, Docket Nos. UT-960310 & UT-043084, Order No. 01 (Oct. 20, 2004). See Exhibit 1. To Eschelon’s knowledge, Qwest has not appealed this Order.

⁴ Also enclosed are informal copies (print outs) of decisions from Colorado, Iowa, Minnesota, Oregon, and Utah, as well as Arizona Staff comments, for the Commission’s convenience. See Exhibit 1. (There may be other decisions, or later motions for reconsideration or appeals, that Eschelon did not locate, but as Eschelon was not a party to those proceedings, it has not received copies of all of them.) In Arizona, the Staff argues that all of the agreements are subject to the filing requirement and review process, but the Commission has not yet ruled on the issue. In all of the other of these states, the state commissions found that the agreements are interconnection agreements subject to the requirement to file them for approval by the commissions. See Exhibit 1.

arguments asserted by other parties in favor of the Section 252 filing requirement,⁶ but in any case will abide by the Commission's ruling on the status of the enclosed documents. To the extent that the Commission finds that any or all of the enclosed documents fall under the Section 252 filing requirements, Eschelon asks the Commission to approve those agreements, for the reasons stated by MCI and the other Commissions that have approved them.

The QPP MSA, which is based on the Qwest template, provides: "In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement and any interconnection agreement amendment executed concurrently with this Agreement." Given this language and the FCC's recent ruling on the status of UNE-P, modifying or rejecting the agreements (which now provide the only alternative platform product to UNE-P)⁷ would impose a hardship on Eschelon. Therefore, if the Commission may modify the documents or reject any document that it finds requires filing pursuant to

⁵ See ¶3.9.2 of Service Exhibit 1.

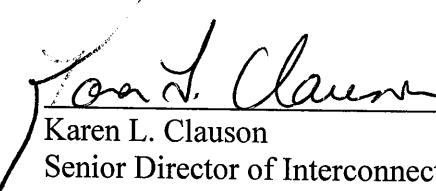
⁶ The QPP MSA, at paragraph 23, provides: "Each party reserves its rights with respect to whether this Agreement is subject to Sections 251 and 252 of the Act."

⁷ On or after January 4, 2005, Qwest distributed a letter to CLECs in which Qwest stated that it may withdraw QPP after January 31, 2005. See Exhibit 2. In later Emails to Eschelon, Qwest confirmed that it would withdraw QPP after that date and would not make the Qwest-MCI QPP agreement available for opt-in, as Qwest claimed the underlying interconnection agreement had expired. See *id.*

Section 252 and/or state rules, Eschelon respectfully requests an opportunity to be heard on the issue before the Commission rules.

Respectfully submitted,

Dated: February 10, 2005



A handwritten signature in cursive script, reading "Karen L. Clauson", is written over a horizontal line. The signature is positioned to the left of the typed name and contact information.

Karen L. Clauson
Senior Director of Interconnection/Attorney
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klclauson@eschelon.com

QWEST MASTER SERVICES AGREEMENT

This Master Services Agreement, which includes this signature page, the subsequent general terms and conditions, the Rate Sheet for each applicable state, Exhibit 1 (Qwest Platform Plus Service), and Attachment A to Exhibit 1 (Performance Metrics) attached hereto or incorporated herein by reference (collectively the "Agreement") is entered into between Qwest Corporation ("Qwest") and Eschelon Telecom, Inc. on behalf of its affiliates ("CLEC") (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties"), on behalf of itself and its Affiliates. This Agreement may be executed in counterparts. This Agreement shall become effective on the Effective Date. The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement.

QWEST CORPORATION:

ESCHELON TELECOM, INC. on behalf of its affiliates:

By: _____
 [Name]: Kevin Armitage
 [Title]: VP
 Date: 1-25-05

By: _____
 [Name]: Richard A. Smith
 [Title]: CEO/President
 Date: 1/25/05



NOTICE INFORMATION: All written notices required under the Agreement shall be sent to the following:

To Qwest Corp.:
 1801 California Street, Suite 2420
 Denver, CO 80202
 Phone #: 303-965-3029
 Facsimile #: 303-896-7077
 E-mail: Intagree@qwest.com
 Attention: Manager-Interconnection

To Eschelon Telecom, Inc.:
 730 Second Avenue, Suite 900
 Minneapolis, MN 55402
 Phone #: 612-436-6692
 Facsimile #: 612-436-6816
 E-mail: qppnotices@eschelon.com
 Attention: J. Jeffrey Oxley

With copy to: Qwest
 c/o 1801 California Street, 10th floor
 Denver, Colorado 80202
 Attention: Corporate Counsel, Wholesale
 Reference: MSA for Qwest Platform Plus Service

Eschelon Telecom, Inc.
 Office of General Counsel and Sr. Director of Interconnection
 730 Second Avenue South, Suite 900
 Minneapolis, MN 55402

APPLICABLE SERVICES:

APPLICABLE STATES:

Qwest agrees to offer and CLEC intends to purchase the Services indicated below by CLEC's signatory initialing on the applicable blanks:

Qwest agrees to offer and CLEC intends to purchase Qwest Platform Plus ("QPP") service in the states indicated below by CLEC's signatory initialing on the applicable blanks:

 x Exhibit 1 - Qwest Platform Plus Service

- AS Arizona
 - TC Colorado
 - X Idaho *hr*
 - Iowa
 - AS Minnesota
 - Montana
 - Nebraska
 - X New Mexico *hr*
 - North Dakota
 - AS Oregon
 - South Dakota
 - AS Utah
 - AS Washington
 - Wyoming
- per fax authorization from Eschelon 1-27-05*

The Parties may amend the Qwest Master Services Agreement in writing from time to time to include additional products and services.

January 24, 2005/pjd/Eschelon
 AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007
 CO Agreement No. CDS-050124-0005 UT Agreement No. CDS-050124-0008
 MN Agreement No. CDS-050124-0006 WA Agreement No. CDS-050124-0009
 Qwest MSA

QWEST MASTER SERVICES AGREEMENT

GENERAL TERMS AND CONDITIONS

WHEREAS, CLEC previously purchased on an unbundled basis from Qwest certain combinations of network elements, ancillary functions, and additional features, including without limitation the local loop, port, switching, and shared transport combination commonly known as unbundled network element platform ("UNE-P"). For purposes of this Agreement, UNE-P includes the product purchased by Eschelon under its Interconnection Agreement which is sometimes referred to as "UNE-E" (Unbundled Network Element – Eschelon);

WHEREAS such UNE-P arrangements were previously obtained by CLEC under the terms and conditions of certain interconnection agreements ("ICA"), including without limitation in certain states Qwest's statement of generally available terms ("SGAT");

WHEREAS both CLEC and Qwest acknowledge certain regulatory uncertainty in light of the DC Circuit Court's decision in United States Telecom Association v. FCC, 359 F.3d 554 (March 2, 2004) ("DC Circuit Mandate"), with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under the Communications Act (the "Act"); and

WHEREAS to address such uncertainty and to create a stable arrangement for the continued availability to CLEC from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements the parties have contemporaneously entered into ICA amendments;

Now, therefore, in consideration of the terms and conditions contained herein, CLEC and Qwest hereby mutually agree as follows:

1. **Definitions.** Capitalized terms used herein are defined in Addendum 1.

2. **Effective Date.** This Amendment shall become effective upon the latest execution date by the Parties. ("Effective Date").

3. **Term.** The term of this Agreement shall begin on the Effective Date and shall continue through July 31, 2008. At any time within 6 months prior to expiration of the Agreement, either Party may provide notice of renegotiation. The Parties shall meet and negotiate in good faith a transition of existing customers. Upon mutual agreement, the term of the Agreement may be extended upon the same terms and conditions for no more than one (1) extension period, and such extension period shall not exceed six (6) months to allow CLEC to transition its customers to other services. In the event that at the expiration of the Agreement or of the extension period, as the case may be, CLEC has any remaining customers served under this Agreement, Qwest may immediately convert CLEC to an equivalent alternative service at market-based wholesale rates.

4. **Scope of Agreement; Service Provisioning; Controlling Documents; Change of Law; Eligibility for Services under this Agreement; Non-Applicability of Change Management Process.**

4.1 The services described in this Agreement will only be provided in Qwest's incumbent LEC service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

4.2 Each of the Services shall be provided pursuant to the terms and conditions of this Agreement. In the event of a conflict between the terms of any Service Exhibit attached hereto and these General Terms and Conditions, the Service Exhibit shall control. The terms of this Agreement, including any Annex or Service Exhibit, shall supersede any inconsistent terms and conditions contained in an Order Form. CLEC acknowledges and agrees that the Services shall be offered by Qwest pursuant to this Agreement and are subject to (i) compliance with all applicable laws and regulations; and (ii) obtaining any domestic or foreign approvals and authorizations required or advisable.

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of the Effective Date regarding January 24, 2005/pjd/Eschelon

AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007
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Qwest MSA

Qwest's obligation under Section 271 of the Act to continue to provide certain Network Elements ("Existing Rules"). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

4.4 If a change in law, rule, or regulation materially impairs a Party's ability to perform or obtain a benefit under this Agreement, both Parties agree to negotiate in good faith such changes as may be necessary to address such material impairment.

4.5 To receive services under this Agreement, CLEC must be a certified CLEC under applicable state rules. CLEC may not purchase or utilize services or Network Elements covered under this Agreement for its own administrative use or for the use by an Affiliate.

4.6 Except as otherwise provided in this Agreement, the Parties agree that Network Elements and services provided under this Agreement are not subject to the Qwest Wholesale Change Management Process ("CMP") requirements, Qwest's Performance Indicators (PID), Performance Assurance Plan (PAP), or any other wholesale service quality standards, liquidated damages, and remedies. Except as otherwise provided, CLEC hereby waives any rights it may have under the PID, PAP and all other wholesale service quality standards, liquidated damages, and remedies with respect to Network Elements and services provided pursuant to this Agreement. Notwithstanding the foregoing, CLEC proposed changes to QPP attributes and process enhancements will be communicated through the standard account interfaces. Change requests common to shared systems and processes subject to CMP will continue to be addressed via the CMP procedures.

5. **CLEC Information.** CLEC agrees to work with Qwest in good faith to promptly complete or update, as applicable, Qwest's "New Customer Questionnaire" to the extent that CLEC has not already done so, and CLEC shall hold Qwest harmless for any damages to or claims from CLEC caused by CLEC's failure to complete or update the questionnaire.

QWEST MASTER SERVICES AGREEMENT

6. Financial Terms.

Rates and Terms

6.1 Each attached Service Exhibit specifies the description, terms, and conditions specific to that Network Element or service. The applicable rates for each Network Element or service contained in a Service Exhibit shall be contained in the applicable Rate Sheets, the contents of which are incorporated into this Agreement by reference. The Parties agree that the rates set forth in the Rate Sheet are just and reasonable. The Parties agree that no rates, charges, costs, or fees shall apply to the Network Elements or services provided under this Agreement other than as is set forth in the Rate Sheets. The rates will not necessarily include Taxes, fees, or surcharges. No Taxes, fees, or surcharges shall apply to the QPP™ service except such Taxes, fees, and surcharges as apply to the UNE-P service as of June 14, 2004, unless a subsequent change in applicable law requires the applicability of new or additional Taxes, fees, or surcharges to the QPP™ service.

Taxes, Fees, and other Governmental Impositions

6.2 All charges for Services provided herein are exclusive of any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges ("Tax" or "Taxes"). Taxes resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such Taxes is placed upon the other Party. However, where the selling Party is specifically permitted by an Applicable Law to collect such Taxes from the purchasing Party, such Taxes shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Taxes shall be billed as a separate item on the invoice in accordance with Applicable Law. The Party billing such Taxes shall, at the written request of the Party billed, provide the billed Party with detailed information regarding billed Taxes, including the applicable Tax jurisdiction, rate, and base upon which the Tax is applied. If either Party (the Contesting Party) contests the application of any Tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any reasonable costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party has paid the Tax contested. If the purchasing Party provides the selling Party with a resale or other exemption certificate, the selling Party shall exempt the purchasing Party if the purchasing Party accepts the certificate in good faith. If a Party becomes aware that any Tax is incorrectly or erroneously collected by that Party from the other Party or paid by the other Party to that Party, that Party shall refund the incorrectly or erroneously collected Tax or paid Tax to the other Party.

6.3 Each Party shall be solely responsible for all taxes on its own business, the measure of which is its own net income or net worth and shall be responsible for any related tax filings, payment, protest, audit and litigation. Each Party shall be solely responsible for the billing, collection and proper remittance of all applicable Taxes relating to its own services provided to its own customers.

7. Intellectual Property.

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal rules and regulations relating to the Network Elements or service provided under

this Agreement, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

7.2 Subject to the general Indemnity provisions of this Agreement, each Party (an Indemnifying Party) shall indemnify and hold the other Party (an Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriate or otherwise violate the intellectual property rights of any third party. The obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or is not reasonably necessary to CLEC's use of the Network Elements and services offered by Qwest under this Agreement or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of, or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

7.3 To the extent required under applicable federal and state law, Qwest shall use commercially reasonable efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its commercially reasonable efforts to obtain such rights, but has been unsuccessful in obtaining such rights. Nothing in this subsection shall be construed in any way to condition, limit, or alter a Party's indemnification obligations under Section 7.2, preceding.

7.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights

January 24, 2005/pjd/Eschelon

AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007
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Qwest MSA

QWEST MASTER SERVICES AGREEMENT

of the other Party or its Affiliates without execution of a separate agreement between the Parties.

7.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the services are in any way associated with or originated from the other Party or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements and services it uses to provide service to its End User Customers, provided it does not represent the Network Elements and services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates.

7.6 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective owners. The Parties shall comply with all Applicable Law governing Marks worldwide and neither Party will infringe the Marks of the other.

7.7 Since a breach of the material provisions of this Section 7 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

8. Financial Responsibility, Payment and Security.

8.1 Payment Obligation. Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice (payment due date). If the payment due date is a Saturday, the payment shall be due on the previous Friday; if the payment due date is otherwise not a business day, the payment shall be due the next business day. Invoices shall be sent electronically, and shall bear the date on which they are sent, except that invoices sent on a day other than a business day shall be dated on the next business day.

8.2 Cessation of Order Processing. Qwest may discontinue processing orders for Network Elements and services provided pursuant to this Agreement for the failure of CLEC to make full payment for the relevant services, less any good faith disputed amount as provided for in this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date provided that Qwest has first notified CLEC in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If Qwest does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders for the relevant services from CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past-due charges for the relevant services not disputed in good faith under this Agreement, and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law

or equity, CLEC reserves the right to seek equitable relief including injunctive relief and specific performance.

8.3 Disconnection. Qwest may disconnect any and all relevant Network Elements and services provided under this Agreement for failure by CLEC to make full payment for such Network Elements or services, less any disputed amount as provided for in this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar Days following the payment due date provided that Qwest has first notified CLEC in writing at least thirty (30) days prior to disconnecting the relevant services. CLEC will pay the applicable reconnect charge set forth in the Rate Sheet required to reconnect Network Elements and services for each End User Customer disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If Qwest does not disconnect CLEC's service(s) on the date specified in the thirty (30) day notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all relevant services of the non-complying Party without further notice. Qwest shall provide a subsequent written notice at least two (2) business days prior to disconnecting service. Disconnect of certain Network Elements or services under this Agreement with respect to which CLEC has failed to pay undisputed charges shall not trigger the disconnection of Network Elements or services for which CLEC has paid all undisputed charges, and Qwest shall be permitted to disconnect under this section only those Network Elements or services for which CLEC fails to pay all undisputed charges prior to the expiration of the applicable thirty-day or two business day notice period. For reconnection of the non-paid service to occur, CLEC will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. Both Parties agree, however, that the application of this Section 8.3 will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, Qwest shall not effect a disconnection pursuant to this section in such manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC's reasonable diligence in effecting such compliance.

8.4 Billing Disputes. Should either Party dispute, in good faith, and withhold payment on any portion of the nonrecurring charges or monthly Billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar days following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, each Party shall pay all undisputed amounts due to the other Party. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies.

8.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of Qwest, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the next Bill Date following the resolution. The withholding Party may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, Qwest shall credit

January 24, 2005/pjd/Eschelon

AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007

CO Agreement No. CDS-050124-0005 UT Agreement No. CDS-050124-0008

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Qwest MSA

QWEST MASTER SERVICES AGREEMENT

the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of Qwest, no further action is required.

8.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 8.4.3, and the dispute is resolved in favor of the disputing Party Qwest shall, no later than the next Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

8.4.3 If a Party fails to bill a charge or discovers an error on a bill it has already provided to the other Party, or if a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in Section 8.4, the Party may dispute the bill at a later time through an informal process notwithstanding the requirements of Section 8.4, but subject to the Dispute Resolution provision of this Agreement, and Applicable Law.

8.5 **Security Deposits.** In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date, Qwest may request a security deposit. A "material adverse change in financial condition" shall mean a Party is a new CLEC with no established credit history, or is a CLEC that has not established satisfactory credit with Qwest, or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous undisputed nonpayment situation. The Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly delinquent" means any payment of a material amount of total monthly billing under the Agreement received thirty (30) calendar Days or more after the payment due date, three (3) or more times during a twelve (12) month period. The INITIAL deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by the billing party's actual monthly average charges, payment history under this agreement, or other relevant factors, but in no event shall the security deposit exceed five million dollars (\$5,000,000.00). Required deposits are due and payable within thirty (30) calendar Days after demand and non-payment shall be subject to 8.2 and 8.3 of this Section.

8.6 **Interest on Deposits.** Any interest earned on cash deposits shall be credited to CLEC in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits shall not be deemed subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of

satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, CLEC may request and Qwest will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

8.7 **Late Payment Penalty.** If any portion of the payment is received by Qwest after the payment due date as set forth above, or if any portion of the payment is received by Qwest in funds that are not immediately available, then a late payment penalty shall be due to Qwest. The late payment penalty shall be the portion of the payment not received by the payment due date multiplied by a late factor. The late factor shall be the lesser of: (1) The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the CLEC actually makes the payment to the Company, or (2) 0.000407 per day, compounded daily for the number of days from the payment due date to and including the date that the CLEC actually makes the payment to Qwest.

8.8 **Notice to End User Customers.** CLEC shall be responsible for notifying its End User Customers of any pending disconnection of a non-paid service by CLEC, if necessary, to allow those End User Customers to make other arrangements for such non-paid services.

9. **Conversions/Terminations.** If CLEC is obtaining services from Qwest under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if CLEC wishes to convert such services to a service under this Agreement, the conversion of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement. Nothing herein shall be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

9.1 In the event Qwest terminates the Provisioning of any service to CLEC for any reason, CLEC shall be responsible for providing any and all necessary notice to its End User Customers of the termination. In no case shall Qwest be responsible for providing such notice to CLEC's End User Customers. Qwest shall only be required to notify CLEC of Qwest's termination of the service on a timely basis consistent with FCC rules and notice requirements.

10. **Customer Contacts.** CLEC, or CLEC's authorized agent, shall act as the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC shall inform its End User Customers that they are End User Customers of CLEC. CLEC's End User Customers contacting Qwest will be instructed to contact CLEC, and Qwest's End User Customers contacting CLEC will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

11. **Default and Breach**

January 24, 2005/pjd/Eschelon
AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007
CO Agreement No. CDS-050124-0005 UT Agreement No. CDS-050124-0008
MN Agreement No. CDS-050124-0006 WA Agreement No. CDS-050124-0009
Qwest MSA

