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October 21, 2004

VIA ELECTRONIC FILING AND HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-313 and CC Docket No. 01-338, Access to Confidential Materials — Response to Verizon Objection to Karen Clauson

Dear Ms. Dortch:

On behalf of Eschelon Telecom, Inc. ("Eschelon"), I am responding to the objection lodged by counsel for The Verizon Telephone Companies ("Verizon") seeking to bar an Eschelon employee, Karen Clauson, from obtaining access to information that Verizon has designated as confidential pursuant to the Protective Order entered in this proceeding.[1]

By letter dated October 13, 2004, a Request for Access was filed on Ms. Clauson's behalf, certifying that she "falls within the 'Permissible Disclosure' categories described in paragraph 5 of the Protective Order."[2] These categories include "In-House Counsel," which comprises both "attorneys employed by a party" and employees who "are not involved in competitive decision-making."[3] More specifically, party employees who do not "participat[e] in any or all of the client's business decisions made in light of similar or corresponding information about a competitor" fall within the Permissible Disclosure category.[4]

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1 *Access to Unbundled Network Elements*, WC Docket No. 04-313, Order, DA 04-3152 (Sept. 29, 2004).
2 WC Docket No. 04-313, Letter from Stephanie A. Joyce, Esq. to Marlene H. Dortch, Secretary, FCC, at 2 (Oct. 13, 2004).
3 DA 04-3152, Appendix A, Protective Order ¶ 2.
4 *Id.*

As an initial matter, it is important to note that Ms. Clauson is not a member of Eschelon's Executive Council, which is the body that makes all final decisions for the company, competitive and otherwise.

Ms. Clauson is involved in network operations. She does not participate in Eschelon's marketing activities, sales efforts, or pricing decisions. Nor is she a customer service agent, or supervise such personnel. The information that Verizon has deemed confidential thus would not be used by Ms. Clauson to perform "competitive decision-making" in the sense of attracting customers or developing advertising campaigns.Rather, it would be used in furtherance of Eschelon's obtaining the network access to which the Telecommunications Act of 1996 entitles it

Ms. Clauson is a Senior Director of Interconnection for Eschelon. In that role, Ms. Clauson coordinates with incumbent local exchange carriers ("ILECs"), including Verizon, in order to connect with their networks and obtain network facilities. Verizon and other ILECs deal with Ms. Clauson and her staff regularly, sharing information and responding to Eschelon's requests. Ms. Clauson is therefore familiar with the network architecture of ILECs, including Verizon, in order to determine where interconnection and access to facilities is possible. As such, she already has information "about a competitor" — that competitor being Verizon.

To the extent that Ms. Clauson does not have such information, she is entitled to it. As a Senior Director of Interconnection for CLEC, Ms. Clauson is entitled to know where Verizon's facilities lie, and what can be made available to Eschelon. No ILEC, including Verizon, is permitted to hide information about their facilities — those subject to unbundling and access obligations — from a competitor. Accordingly, the information that Verizon has filed in this proceeding about its own network facilities should be made available to Ms. Clauson.

Eschelon further notes that, by Ms. Clauson's request of Verizon, she will not obtain information deemed confidential by another CLEC. As the Commission may be aware, Verizon has enforced a policy in this proceeding whereby no CLEC can see confidential information that Verizon included in its comments if it regards another CLEC. This policy applies even to CLECs that are part of a coalition, for example The Loop and Transport CLEC Coalition of which Eschelon is a member. Verizon therefore should have no concern about Ms. Clauson's viewing information about a fellow CLEC upon which Verizon relies in this proceeding. She seeks only information about Verizon.

Ms. Clauson should be afforded access to Verizon's confidential information in order that she may assist Eschelon in understanding and assimilating the network information upon which Verizon relies to support its positions in this proceeding. Parties must be given adequate opportunity to participate in this case, and Verizon's attempts to shield crucial information from party employees, such as Ms. Clauson, robs them of this opportunity. This is

true especially with regard to the information about Verizon's loop and transport deployment, which is the crux of the Commission's impairment analysis for CLECs operating in Verizon's territory.

The Commission therefore should overrule Verizon's objection, and approve Ms. Clauson's Request for Access to Confidential Materials in WC Docket No. 04-313 and CC Docket No. 01-338.

Sincerely,

Steven A. Augustino

cc: Jeffrey Carlisle, Chief, Wireline Competition Bureau
Russell Hanser, Wireline Competition Bureau
J.C. Rozendaal, Kellogg, Huber, Hansen, Todd & Evans, PLLC
J. Jeffery Oxley, Eschelon Telecom, Inc.