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April 28, 2008

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
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Salem, OR 97301

Re: ARB 775

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Comments Relating to Arbitrator's Decision, along with a certificate of service.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

Carla M. Butler

CMB:
Enclosure
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 775

In the Matter of ESCHELON TELECOM OF OREGON, INC. Petition for Arbitration of an Interconnection Agreement with Qwest Corporation	**QWEST CORPORATION'S COMMENTS RELATING TO ARBITRATOR'S DECISION**

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INTRODUCTION

Qwest Corporation ("Qwest") submits these exceptions to the Arbitrator's Decision ("Arbitrator's Decision") issued on March 26, 2008 and served on March 27, 2008.

This proceeding involves an interconnection arbitration between Qwest and Eschelon Telecom, Inc., conducted pursuant to Section 252 of the Telecommunications Act of 1996 ("the Act"). After extensive negotiations that spanned multiple states within Qwest's region, Qwest and Eschelon were unable to resolve approximately 30 issues relating to the terms and conditions of the interconnection agreement ("ICA") that was the subject of their negotiations. On October 10, 2006, Eschelon filed a petition for arbitration with the Commission, requesting resolution of the unresolved issues pursuant to the arbitration authority granted to state commissions in Section 252(b)(4). This arbitration is one of six interconnection arbitrations between the parties, with the other proceedings taking place in Arizona, Colorado, Minnesota, Utah, and Washington.

As Qwest explained in its response to Eschelon's petition and in its testimony, many of the issues the parties were unable to resolve through negotiations involved Eschelon's insistence upon terms and conditions that would have fundamentally altered how Qwest manages and operates its wholesale business. Since passage of the Act in 1996, Qwest has worked cooperatively with competitive local exchange carriers ("CLECs") in workshops and other proceedings to develop efficient and non-discriminatory processes for providing the wholesale services it is obligated to provide under Section 251. Qwest has invested large amounts of time and resources to implement those processes and now has many years of experience to show that they work. Eschelon demanded far-reaching changes to those processes and without any demonstration of need or offer to reimburse Qwest for the substantial costs the changes would impose.

Viewed as a whole, the rulings in the Arbitrator's Decision properly protect Qwest from having to implement unnecessary, costly changes to its wholesale processes. While there are several rulings in the Decision that Qwest believes should have been decided differently, these comments are limited to just three of those rulings that are of particular importance.

First, in a departure from the existing standard that Qwest and CLECs developed in the workshops that state commissions conducted relating to Qwest's applications for entry into long distance markets under Section 271 of the Act, the Arbitrator adopted a new definition of "repeatedly delinquent" that compromises Qwest's ability to collect *undisputed* bills from Eschelon. Under the existing standard in Oregon and other states, Qwest may demand a security deposit from a CLEC that fails to pay three undisputed bills over a period of 12 months. The Arbitrator rejected this standard, choosing instead to adopt Eschelon's ICA language that would allow Qwest to demand a deposit only if Eschelon fails to pay undisputed bills for three *consecutive* months. As Qwest describes below, the Arbitrator's proposed deviation from the existing standard produces a result that is commercially unreasonable, particularly for a CLEC like Eschelon that has a long history of late and slow payments.

Second, the Arbitrator's Decision finds that Qwest should be required to provide Eschelon with an arrangement of network elements referred to as "loop-multiplexing combinations" (LMC"). However, neither LMC nor the multiplexing component of LMC is an unbundled network element ("UNE") under Section 251 of the Act. Because the arbitration authority of state commissions is limited to resolving open issues relating to the duties imposed by Section 251, the Commission has no authority to require Qwest to provide LMC – a non-251 service – to Eschelon. Further, Eschelon does not have a legitimate need to obtain this product from Qwest, since it has the ability to provision LMC on its own.

Third, the Arbitrator recommends adoption of Eschelon's proposal under which Qwest would be deemed to have missed an order delivery commitment even where Qwest ultimately makes the delivery of service on time. As explained below, this recommended ruling is premised upon the Arbitrator's assumption that Qwest made a commitment in the Qwest-CLEC "Change Management Process" ("CMP") that dictates this result. However, the Arbitrator's assumption is factually incorrect and produces a result that is not commercially reasonable.

For these reasons and those set forth below, Qwest respectfully requests that the Commission modify the Arbitrator's Decision as set forth herein.

COMMENTS

Issues 5-9, 5-10: Definition of Repeatedly Delinquent (Section 5.4.5)

In the evidence it submitted in the arbitration, Qwest established the importance of collecting undisputed bills. (Qwest/33, Easton Rebuttal/12:22 – 13:15, 14:15 – 15:1.) For the most part, the Arbitrator's rulings relating to these collection issues leave Qwest with the tools it currently has in place to collect debts. With respect to Qwest's right to collect a deposit when Eschelon repeatedly fails to make timely payments, however, the Arbitrator rejected a standard that exists in Qwest's Oregon SGAT as well as in numerous Oregon interconnection agreements.

On this issue, the parties agree that Qwest should have the right to demand a deposit when Eschelon is "repeatedly delinquent" in paying its bills. The dispute is over the definition of that term. Qwest proposed the definition that is included in its SGAT, and has been included in Oregon interconnection agreements for years. Under that definition, a customer is repeatedly delinquent if it fails to pay undisputed bills three times within a 12-month period.

The Arbitrator rejected the Section 271 Workshop definition of "repeatedly delinquent" and, instead, adopted Eschelon's first proposal which prohibits Qwest from demanding a deposit unless Eschelon, or any other CLEC that adopts this agreement or negotiates a future agreement requesting these same proposed terms and conditions, fails to pay its undisputed bills for three *consecutive* months. The Arbitrator adopted the proposal based on a belief that Qwest's proposal is designed to prevent slow payment rather than non-payment. Arbitrator's Decision, p. 27. The Arbitrator cited no record evidence for this point.

The record demonstrates that Eschelon's proposal is inadequate. Eschelon testified it pays Qwest approximately $55 million per year (in all states). (Eschelon/133, Denney Surrebuttal/46:11.) Thus, each week of delay in enforcing Qwest's collection rights would cost Qwest over one million dollars. Furthermore, Qwest provided testimony that "Eschelon has a history of late and slow payment with Qwest" (Qwest/33, Easton Rebuttal/33:8 – 33:10), thereby demonstrating that deposit language for Eschelon should be more stringent than other CLECs, rather than less stringent, as the Arbitrator recommends.

In reviewing this recommendation, the Commission should keep in mind that the deposit right only is triggered for failure to pay *undisputed* bills. (Qwest/33, Easton Rebuttal/33:18 – 33:21.) A customer failing to make payments for undisputed bills over three consecutive months is an extremely high standard – one that is so high that, if the situation arose, Qwest would likely be forced to seek disconnection rather than take the more intermediate and less drastic step of demanding a deposit. The Commission should reject the Arbitrator's language and adopt Qwest's proposed definition of "repeatedly delinquent."

Issue 9-61 (a, b, c): Loop-Mux Combinations (Sections 9.23.2, 9.23.4.4.3, 9.23.6.2, 9.23.9)

The disputes encompassed by Issue 9-61 and the related sub-issues involve whether Qwest should be required to provide an arrangement comprised of an unbundled loop that would be commingled with – or attached to – multiplexing equipment. This arrangement is referred to as a "loop-mux combination," or "LMC." Eschelon contends that the multiplexing used with LMC is either an unbundled network element ("UNE"), as that term is defined in Section 251(d)(2)(B), or is a feature or function of the unbundled loop UNE that Qwest is required to provide under Section 251. As such, Eschelon's argument goes, Qwest should be required to include LMC, including the multiplexing component of LMC, in the ICA at rates established pursuant to the FCC's pricing methodology – the "total element long run incremental cost" (TELRIC") methodology – that is used to set rates for Section 251 UNEs and other services that ILECs are required to provide under Section 251.

Although the Arbitrator did not adopt Eschelon's position that the multiplexing used with LMC is a Section 251 UNE or a feature or function of the unbundled loop, he nevertheless ruled that Qwest should be required to include LMC in the ICA and to provide it – including the multiplexing component – at a TELRIC rate. Arbitrator's Decision, p. 59. The Arbitrator based his ruling on the conclusion that it would be unfair, from a procedural perspective, to rule in an arbitration between only two parties that Qwest may stop offering LMC, since other CLECs with LMC in their existing ICAs should be permitted "to weigh in on the matter." *Id.* On the merits,

the Arbitrator observed that, in his view, the FCC's statements with respect to multiplexing "are susceptible to different interpretation," and therefore the Commission cannot make "a fully informed decision on this matter" without a "more extensive factual and legal examination." *Id.* Qwest respectfully submits that neither of these conclusions is correct and that, accordingly, the Commission should reject the Arbitrator's ruling on this issue. As discussed below, the FCC does not require ILECs to provide multiplexing as a Section 251 UNE, and does not deem it to be a feature or function of the loop. The Commission therefore cannot compel Qwest to provide the multiplexing component of LMC in the ICA at all, much less at a TELRIC rate. Because the Commission does not have that authority, the Arbitrator's procedural concerns are not relevant.

Before addressing the specific flaws in the Arbitrator's ruling on this issue, some additional background relating to LMC may provide helpful context. The multiplexers used with LMC are electronic equipment that allows two or more signals to pass over a single circuit. When used with LMC, multiplexing allows the traffic from several individual loops to be carried over a single, higher bandwidth facility. (Qwest/37, Stewart Rebuttal/66.) For example, through multiplexing, the multiple circuits that are part of a DS1 loop can be "muxed up" or, in effect, aggregated and connected to a DS3 transport trunk. A CLEC leasing an unbundled DS1 loop from Qwest could run the loop into its collocation space in a Qwest central office where, through the use of LMC, the circuits on the DS1 loop could be muxed up and connected to the DS3 transport trunk. (Qwest/37, Stewart Rebuttal/68.)

It is undisputed that Eschelon and other CLECs are able to provision multiplexing on their own and do not need to obtain it from Qwest. (Qwest/14, Stewart Direct/84.) The administrative law judge in the Arizona arbitration cited this fact in rejecting Eschelon's demand to include LMC in the parties' Arizona ICA. *In the Matter of Petition of Eschelon for Arbitration with Qwest*, Docket Nos. T-03406A-06-0572, T-0105B-06-0572 Opinion and Order at 72 (Ariz. Commission, Feb. 22, 2008) ("*Arizona Arbitration Order*").[1]

[1] Reflecting a split on this issue, the Minnesota Commission and an administrative law judge in Washington have ruled that Qwest should be required to provide LMC. *See In the Matter of Petition of Eschelon for Arbitration with Qwest*, MPUC No. P-5340,421/IC-06-768, Arbitrator's Report at ¶ 199 (Minn. Commission, Jan.

There has never been a legal requirement for ILECs to provide LMC. Without LMC, however, CLECs that elected not to self-provision had no readily available mechanism for "handing off" UNE loops to their collocation spaces to connect the loops to the higher bandwidth transport facilities. To address this situation, Qwest began *voluntarily* providing LMC to CLECs, thereby allowing them to connect or hand off their loops to those transport facilities. As a result, LMC is included in the existing ICAs of Eschelon and other Oregon CLECs. Importantly, Qwest included LMC in those ICAs solely because of its decision to offer it voluntarily, not because of any legal obligation. (Qwest/37, Stewart Rebuttal/69.)

Any CLEC need for LMC ended when the FCC ruled in the *Triennial Review Order* that ILECs are required to provide commingled arrangements, which are defined as arrangements comprised of a UNE (or combination of UNEs) that is "connect[ed], attach[ed], or otherwise link[ed]" to a facility or service that a CLEC "has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3)." *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 F.C.C.R. 16978 at ¶ 579 (August 21, 2003) ("*TRO*"). With the ability to purchase these commingled arrangements, CLECs now have legally-mandated access to a complete service that includes a UNE, a higher-bandwidth tariffed transport facility, and the multiplexing needed to connect the facilities. As a result, CLECs no longer need LMC to connect loops in their collocation spaces to transport facilities. (Qwest/37, Stewart Rebuttal/68-69.)

Significantly, in ruling that ILECs are required to provide commingled arrangements, the FCC made it clear that the multiplexing provided with these arrangements is not a UNE with

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16, 2006). Notably, the Minnesota Commission's ruling on this issue – which adopted an ALJ's ruling – did not find that LMC is a UNE or a feature or function of the unbundled loop. On the contrary, the Minnesota Commission recognized that the FCC has ruled that multiplexing is not a stand-alone UNE, and that "there may be some merit to Qwest's contention that the multiplexing at issue here should not be considered a feature or function of a loop." *Id.* at ¶¶ 196, 198. Notwithstanding the absence of any clear legal obligation to provide LMC, the Minnesota Commission ordered Qwest to provide the service because it had voluntarily provided it in the past. *Id.* Similarly, the ALJ in the Washington arbitration did not find that Qwest has a legal obligation to provide LMC under the FCC's unbundling rules. Instead, like the Minnesota Commission, the Washington ALJ ordered Qwest to provide LMC because it had provided the service in the past and continuing the offering would "retain[] the status quo." *In the Matter of Petition of Eschelon for Arbitration with Qwest*, Docket UT-063061, Arbitrator's Report and Decision, Order 16 at ¶ 135 (Wash. Commission, Jan. 18, 2008).

TELRIC-based rates but, instead, is an "interstate" tariffed service that ILECs are to provide at the rates established in their respective tariffs. Specifically, the FCC stated that "commingling allows a competitive LEC to connect or attach a UNE or UNE combination with an *interstate access service, such as high-capacity multiplexing* or transport services." *TRO*, at ¶ 583. In the very next sentence, the FCC emphasized that "*commingling will not enable a competitive LEC to obtain reduced or discounted prices on tariffed special access services . . . .*" (Qwest/37, Stewart Rebuttal/69 (emphasis added).) The FCC's description of the multiplexing used with commingling as "a tariffed special access service" leaves no doubt that the multiplexing is to be provided at a tariffed rate, not as UNE at a TELRIC rate.

Eschelon's demand that the ICA include access to LMC at TELRIC rates is a transparent attempt to avoid paying the tariffed rate for multiplexing that, per the *TRO*, Qwest is entitled to receive when it provides a commingled arrangement. If LMC is included in the ICA, Eschelon will simply order LMC – an unbundled loop with multiplexing at a TELRIC rate – and connect the LMC to a higher-bandwidth circuit, thereby avoiding paying the higher, tariffed rate for multiplexing that the FCC intended for CLECs to pay. The end result is that by denying Qwest the revenues to which it is entitled under the FCC's order, Eschelon will have Qwest, in effect, subsidize Eschelon's service.

In its attempt to carry out this plan, Eschelon offers three arguments, none of which has merit. First, Eschelon has asserted that multiplexing is itself a UNE, with the inference being that Qwest must therefore provide it at a TELRIC rate. For example, Eschelon witness Michael Starkey testified that LMC is a "UNE combination" -- an unbundled loop combined with unbundled multiplexing. (Eschelon/1, Starkey Direct/228.) However, the only network elements that ILECs are required to provide as UNEs at TELRIC rates are those for which the FCC has made fact-based findings of competitive impairment pursuant to Section 251(d)(2)(B). The FCC has never made a finding of impairment for multiplexing and indisputably has not found that multiplexing is a UNE. As a result, the FCC rule that lists all the UNEs that ILECs are required to provide – 47 C.F.R. § 51.319 – does not include multiplexing.

Accordingly, in rejecting Eschelon's demand for LMC in the Arizona arbitration, the ALJ there ruled that there is "no FCC designation of this type of multiplexing to be a UNE." *Arizona Arbitration Order*, at 72. Based in part on this finding, the ALJ ruled that "Qwest should not be required to provide multiplexing at TELRIC prices," and that Qwest's ICA language for this issue, therefore, "best reflects the current state of the law on this issue . . . ." *Id.*, at 73. The Arizona ruling is consistent with the finding of the FCC's Wireline Competition Bureau in the *Verizon-Virginia Arbitration*. In that proceeding, the Bureau rejected WorldCom's proposed language that would have established multiplexing as an independent network element, stating that the FCC has never ruled that multiplexing is such an element:

> We thus reject WorldCom's proposed contract language because it defines the "Loop Concentrator/Multiplexer" as a network element, which the Commission has never done.

In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039 at ¶ 491 (FCC Wireline Competition Bureau, July 17, 2002). State commissions have consistently reached the same conclusion, ruling that multiplexing is not a UNE and is not governed by the FCC's TELRIC rate scheme. See e.g., *Re BellSouth Telecommunications, Inc.*, Docket No. P-55, Sub 1549, 2006 WL 2360893 (N.C.U.C. July 10, 2006) (when multiplexing equipment is attached to a commingled arrangement, the multiplexing equipment will be billed from the same agreement or tariff as the higher bandwidth circuit); *Re Momentum Telecom, Inc.*, Docket No. 29543, 2006 WL 1752312 at *31 (Ala. P.S.C. Apr. 20, 2006) (same); *In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecommunications, Inc.*, 041269-TP, 2006 WL 1085095 (Fla. P.S.C., Apr. 17, 2006) (same) (page citation available from PSC website); *Re BellSouth Telecommunications, Inc.*, Docket No. 2004-316-C, Order No. 2006-136, 2006 WL 2388163 (S.C.P.S.C., Mar. 10, 2006) (same); *Re Consider Change-of-Law to Existing Interconnection Agreements*, Docket No. 2005-AD-1139, 2005 WL 4673626 (Miss. P.S.C., Dec. 2, 2005) (same);

Re MCImetro Access Transmission Services, LLC, 2002 WL 535139 at *8-9 (Mo. P.S.C., Feb. 28, 2002) (ruling that multiplexing is not an unbundled network element).

Second, as a fallback position, Eschelon argues that multiplexing is a feature or function of the unbundled loop and, hence, is governed by UNE rates, terms, and conditions. This argument is directly refuted by the FCC unbundling rule, FCC Rule 51.319(a)(1), that defines the local loop as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premise." The rule provides further that the loop "includes all features, functions, and capabilities of such transmission facility." In other words, to qualify as a "feature or function" of the loop, a piece of equipment must be located with or a part of the "transmission facility" that runs between a distribution frame or equivalent frame and a customer's premise. The multiplexing equipment used to commingle a UNE loop and tariffed transport is *not* located between a distribution frame or equivalent frame and a customer premise. Instead, it is located on the transport or central office side of a frame in a central office and thus is not part of the loop transmission facility. Therefore, per the FCC's definition, multiplexing is not a "feature, function, or capability" of the loop. (Qwest/37, Stewart Rebuttal/70.)

Eschelon attempts to support its position by pointing to various statements from the FCC that describes *a different form of multiplexing* as a feature or function of the unbundled loop. (Eschelon/1, Starkey/229-230.) In those statements, the FCC is being clear that to the extent any type of multiplexing (such as digital loop carrier systems, which are often viewed as a form of multiplexing) between the end user premises and the Main Distribution Frame ("MDF") in the central office is required, the ILEC must "de-mux" the loop so it can be handed off to the CLEC in the central office. By contrast, the multiplexing that is in dispute between Qwest and Eschelon is transport multiplexing that takes place not between a customer's premises and the MDF, but after a fully functional loop has been provided to the CLEC. (Qwest/37, Stewart Rebuttal/72.) Accordingly, the FCC's statements have no relevance to the type of multiplexing at issue here.

Third, Eschelon also echoes the Arbitrator's finding that it would somehow be procedurally improper to rule in this arbitration between only two parties that Qwest is permitted to stop offering a product that it has been offering to other CLECs that are not parties in this proceeding. The implicit assumption in this contention is that the Commission can compel Qwest to continue its previously voluntary offering of LMC even though LMC is not among the UNEs or other services that ILECs are required to provide under Section 251. This assumption is wrong, however, since the provisions of the Act that define the arbitration authority of state commissions limit that authority to imposing the terms and conditions necessary to implement the obligations of Section 251.

Section 252(b)(4)(C), the provision that authorizes state commissions to serve as arbitrators, requires commissions to resolve open issues by imposing conditions "required to implement subsection [252](c)." In turn, Section 252(c), which sets forth "standards for arbitration," expressly directs state commissions to resolve "open issues" by imposing "conditions [that] *meet the requirements of section 251*." (Emphasis added.) Thus, the open issues that state commissions are authorized to resolve are only those relating to the duties imposed by Section 251. As one federal court recently stated based upon its analysis of these provisions, "*state commissions are explicitly limited to implementing ¶ 251 . . . .*" *BellSouth Telecommunications, Inc. v. Georgia Pub. Service Comm'n*, No. 1:06-CV-00162-CC, slip op. at 10 (N.D. Ga., Jan. 3, 2008). (Emphasis added.)

The limitation of state arbitration authority to the matters addressed in Section 251 means that a state commission serving as an arbitrator is prohibited from imposing upon an ILEC a duty to provide a service that is not required by Section 251. The United States Court of Appeals for the Tenth Circuit emphasized this very point when, upon analyzing the arbitration authority granted by Section 252, it concluded that the power of state commissions "*cannot extend beyond the four corners of § 251*." *Qwest v. Public Utilities Comm'n of Colorado*, 479 F.3d 1184, 1197 (10th Cir. 2007). (Emphasis added.) Because that is the case, the Tenth Circuit determined, a state commission "*cannot create a duty to provide services not required by the statute*." *Id.*

(Emphasis added.) The Arbitrator's ruling that would require Qwest to provide LMC would do precisely what the Tenth Circuit has stated state commissions cannot do, as it would impose upon Qwest a duty to provide a service "not required by [Section 251]."

There is thus no merit to the conclusion that other CLECs will be prejudiced if a determination is made in this proceeding that Qwest is not required to provide LMC. As a matter of law, state commissions have no legal authority to compel Qwest to provide LMC, and permitting other CLECs to "weigh in on the issue" will not change this jurisdictional fact.

In sum, the Commission should reject the Arbitrator's recommended ruing on this issue because Qwest has no legal obligation to provide LMC, the Commission is without authority to compel Qwest to provide LMC, and Eschelon is able to self-provision this service.

Issues 12-71 to 12-73: Jeopardy Notices, Jeopardy Classification; and Jeopardy Correction

This issue relates to situations where Qwest issues a jeopardy notice to Eschelon, fixes the problem, and attempts to deliver the circuit on time. In the arbitration, Qwest and Eschelon disputed whether contract language should address the issue at all. As a part of its case, Qwest also criticized Eschelon's proposed language as being inconsistent with Qwest's current processes. In particular, Eschelon's proposed language requires that Qwest record the order as a missed commitment, and therefore a miss for service quality performance recording purposes, if Qwest fails to deliver a firm order confirmation ("FOC") at least a day before it attempts to deliver service and Eschelon is unable to accept the circuit.

Qwest respectfully suggests that the Arbitrator was incorrect on this issue when he concluded that "Eschelon has presented substantial evidence demonstrating that Qwest has already committed in the CMP to provide a FOC one day in advance of service delivery." In fact, under the CMP, the timing of an FOC is irrelevant to whether a service Qwest delivered is classified as "customer not ready." Qwest never committed to such a standard.[2]

[2] Eschelon has claimed that it is implementing Qwest's existing process, or at least a process that Qwest committed to perform. Qwest has testified that Eschelon's proposed language does not reflect Qwest's practices (Qwest/18, Albersheim Rebuttal/58:15 – 58:16) and that the record does not reflect Qwest committing to such a process in CMP (*id.*, 52:11 – 52-14).

Qwest suggests that the Commission alter the Arbitrator's recommendation on this issue to reflect Qwest's current processes. Such a change requires deletion of four words from the Arbitrator's recommendation:

JEOPARDIES

12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR). Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Attachments 1 and 2 to Exhibit K of this Agreement.

12.2.7.2.4.4.1 There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or service order is not accepted by the CLEC (when Qwest has tested the service to meet all testing requirements.); and (2) End User Customer access was not provided. For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs but ~~at least the day~~ before Qwest attempts to deliver the service. CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.

12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy.

CONCLUSION

For the reasons stated, Qwest respectfully submits that the Commission should modify the Arbitrator's Decision as described herein.

DATED: April 28, 2008

Respectfully submitted,

QWEST CORPORATION

By:_____

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CERTIFICATE OF SERVICE

ARB 775

I hereby certify that on the 28th day of April 2008, I served the foregoing QWEST CORPORATION'S COMMENTS RELATING TO ARBITRATOR'S DECISION in the above entitled docket on the following persons via means of e-mail transmission to the e-mail addresses listed below, and via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 28th day of April, 2008.

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