

May 25, 2007



Filed electronically and via overnight Federal Express

Public Utility Commission of Oregon
ATTN: Filing Center
550 Capitol Street NE, Suite 215
Salem, OR 97308-2148

Re: In the Matter of the Petition of Eschelon Telecom of Oregon, Inc. for Arbitration
with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal
Telecommunications Act of 1996
Docket No. ARB 775

Dear Sir/Madam:

Enclosed for filing are an original and five copies of the Rebuttal Testimony of Douglas Denney, Bonnie J. Johnson, and Michael Starkey with exhibits in the above-referenced matter. Electronic copies of these documents were filed on May 25, 2007.

Also enclosed is a certificate of service. I have also enclosed an additional copy of this letter and request that you date stamp its receipt and return it to me in the enclosed self-addressed, stamped envelope.

Sincerely,

A handwritten signature in blue ink that reads "Tobe L. Goldberg".

Tobe L. Goldberg
Senior Legal Secretary
Eschelon Telecom, Inc.
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tlgoldberg@eschelon.com

Enclosures

cc: Jason Topp, Qwest (email and Federal Express)
Alex Duarte, Qwest (email and Federal Express)

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. ARB 775

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

CERTIFICATE OF SERVICE

I hereby certify that the Rebuttal Testimony of Douglas Denney, Bonnie J. Johnson, and Michael Starkey with exhibits on behalf of Eschelon Telecom of Oregon, Inc. were filed electronically with the Oregon Public Utility Commission on May 25, 2007. The original and five copies were sent via overnight mail on the 25th day of May, 2007 to:

Oregon Public Utility Commission
ATTN: Filing Center
550 Capitol Street N.E.
Suite 215
Salem, Oregon 97301-2551

and true and correct copies were sent via email and overnight delivery on May 25, 2007, to:

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DATED this 25th day of May, 2007.



Tobe L. Goldberg

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

REBUTTAL TESTIMONY
OF
MICHAEL STARKEY
ON BEHALF OF
ESCHELON TELECOM, INC.

May 25, 2007

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**
3 **RECORD.**

4 A. My name is Michael Starkey. My business address is QSI Consulting, Inc., 243
5 Dardenne Farms Drive, Cottleville, Missouri 63304.

6 **Q. ARE YOU THE SAME MICHAEL STARKEY WHO FILED DIRECT**
7 **TESTIMONY IN THIS PROCEEDING ON MAY 11, 2007?**

8 A. Yes.

9 **II. OVERVIEW OF REBUTTAL TESTIMONY**

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A. I will respond to direct testimony of Qwest. I have listed below the issues I
12 address in my rebuttal testimony and the corresponding Qwest witness who
13 addressed that issue in his or her direct testimony.

- 14 • Section III: Contractual Certainty – Interconnection Agreement/Change
15 Management Process – Issues (Qwest witnesses Renee Albersheim¹ and
16 Karen Stewart²);
- 17 • Section IV: Subject Matter 1 (Interval Changes and Placement) – Issue 1-1
18 and subparts (Qwest witness Renee Albersheim);

¹ Direct Testimony of Renee Albersheim on behalf of Qwest Corp., Qwest/1, Oregon Public Utility Commission Docket ARB 775; May 11, 2007.

² Direct Testimony of Karen Stewart on behalf of Qwest Corp., Qwest/14, Oregon Public Utility Commission Docket ARB 775; May 11, 2007.

- 1 • Section V: Subject Matter 11 (Power) – Issue 8-21 and subparts (Qwest
2 witnesses Curtis Ashton³ and Teresa Million⁴);
- 3 • Section VI: Subject Matter 14 (Nondiscriminatory Access to UNEs) – Issue 9-
4 31 (Qwest witness Karen Stewart⁵);
- 5 • Section VII: Subject Matter 16 (Network Maintenance and Modernization) –
6 Issue Nos. 9-33 and 9-34 (Qwest witness Karen Stewart⁶);
- 7 • Section VIII: Subject Matter 18 (Conversion) – Issues 9-43 / 9-44 and
8 subparts (Qwest witness Teresa Million⁷);
- 9 • Section IX: Subject Matter 24 (Loop-Transport Combinations) – Issue 9-55
10 (Qwest witness Karen Stewart⁸); and
- 11 • Section X: Subject Matter 27 (Multiplexing/Loop-Mux Combinations) – Issue
12 9-61 and subparts (Qwest witness Karen Stewart⁹).

13 **Q. HOW IS YOUR REBUTTAL TESTIMONY STRUCTURED?**

14 A. Qwest’s direct testimony includes a general discussion of the Change
15 Management Process or CMP¹⁰ as a basis for excluding terms from the

³ Direct Testimony of Curtis Ashton on behalf of Qwest Corp., Qwest/12, Oregon Public Utility Commission Docket ARB 775; May 11, 2007.

⁴ Direct Testimony of Teresa Million on behalf of Qwest Corp., Qwest/16, Oregon Public Utility Commission Docket ARB 775; May 11, 2007.

⁵ Qwest/14.

⁶ *Id.*

⁷ Qwest/16.

⁸ Qwest/14.

⁹ *Id.*

¹⁰ Qwest/1, Albersheim/4-25.

1 interconnection agreement (which I respond to below in my discussion of the
2 need for contractual certainty), as well as a discussion of the individual issues on
3 the Issues by Subject Matter List¹¹ and Disputed Issues Matrix.¹² Even though a
4 greater number of the topics are not part of the contractual certainty/CMP
5 discussion, I will again (as in my direct testimony) address the contractual
6 certainty debate first to avoid repetitive discussion, as it impacts several issues
7 addressed by Ms. Johnson, Mr. Denney and me. Following the contractual
8 certainty/CMP discussion, I will discuss individual issues by issue number. For
9 the issues listed above, I provide a brief summary of the issue. I then address the
10 arguments Qwest raised in its direct testimony regarding each of these issues,
11 explain the flaws in Qwest's positions and then describe why Eschelon's ICA
12 language should be adopted.

13 **III. THE NEED FOR CONTRACTUAL CERTAINTY**

14 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF EACH COMPANY'S**
15 **POSITION AS IT RELATES TO THE NEED FOR CONTRACTUAL**
16 **CERTAINTY.**

¹¹ The Issues by Subject Matter List was filed as Exhibit 2 to Eschelon's Petition for Arbitration (filed 10/10/06). I provided an annotated, updated Issues by Subject Matter List reflecting the changes that have been made to the list since Eschelon filed its Petition for Arbitration as Eschelon/3, attached to my direct testimony.

¹² The Disputed Issues Matrix (10/10/06) was filed as Exhibit 3 to Eschelon's Petition for Arbitration.

1 A. For several of the arbitration topics,¹³ Eschelon and Qwest disagree as to whether
2 the Eschelon-Qwest ICA should contain language detailing each company's
3 responsibilities, or whether the Commission should simply "pass" on those issues,
4 choosing instead to allow Qwest or Qwest's CMP process to govern the ultimate
5 terms and conditions rather than the certainty afforded by the ICA. It is
6 Eschelon's position that language in the filed and approved ICA is critical so that
7 Eschelon has certainty to plan and conduct its business. However, Eschelon's
8 proposal is not without flexibility as Qwest's testimony indicates.¹⁴ When (or if)
9 mutually agreeable modifications or changes in law occur, Qwest and Eschelon
10 could simply amend the existing ICA. This process provides Eschelon the
11 necessary certainty it requires, and also ensures that other CLECs can opt-in or
12 negotiate similar terms consistent with Section 252 of the Act and Qwest's
13 nondiscrimination obligation.¹⁵ Qwest, on the other hand, proposes to exclude or
14 minimize language on these issues from the ICA and relegate them to a forum in
15 which it has much more control, and there is much less Commission oversight –

¹³ Issue 1-1 (Interval Changes and Placement), Issue 12-64 (Root Cause & Acknowledgement of Mistakes), Issues 12-71 – 12-73 (Jeopardies), Issue 12-67 (Expedited Orders), Issue 12-87 (Controlled Production). Eschelon/1, Starkey/13, footnote 24 (previously, nearly one third of the issues related to this topic, but as discussed above and in direct testimony, several of these issues have since closed).

¹⁴ Qwest/1, Albersheim/32, lines 21-22, regarding Issue 1-1 ("set . . . in stone").

¹⁵ Although the FCC eliminated the pick-and-choose rule in favor of the all-or-nothing rule, when it did so, the FCC clearly stated that doing so did not limit the nondiscrimination provisions of the Act, which remain available to protect CLECs. See Second Report and Order, *In re. Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (Rel. July 13, 2004), at ¶¶20-23.

1 e.g., CMP.¹⁶ For other important business issues, Qwest seeks to simply exclude
2 them from the ICA in favor of Qwest’s own discretion.¹⁷

3 **A. RESPONSE TO QWEST’S PROPOSED NEW STANDARD**

4 **Q. HAS QWEST, AS PART OF ITS CMP ARGUMENT, PROPOSED A NEW**
5 **STANDARD FOR EXCLUDING TERMS FROM THE ICA?**

6 A. Yes. For the first time in these Qwest-Eschelon arbitrations, in Oregon, Qwest
7 alleges that the burden should be on Eschelon to provide a “compelling
8 justification” for allegedly altering “existing processes.”¹⁸ Previously, Qwest
9 argued that processes should not be in the ICA at all (and, in fact, continues to
10 make that argument in Oregon).¹⁹ After closing (with Eschelon’s language)
11 several open issues which Qwest previously argued were process issues that did
12 not belong in an ICA,²⁰ however, Qwest now appears to recognize that terms

¹⁶ Issue 1-1 (Interval Changes and Placement); Issue 12-67 (Expedited Orders); and Issues 12-71 – 12-73 (Jeopardies).

¹⁷ Regarding Issue 12-87 (Controlled Production), Qwest does not even rely upon CMP. As discussed by Ms. Johnson with respect to this issue, Qwest is violating a previously agreed upon requirement to bring its IMA implementation guidelines through CMP. *See also* Eschelon/43, Johnson/100-102. Instead, Qwest wants the ICA to be silent on the issue addressed by Eschelon’s proposal (which reflects Qwest’s current practice), leaving it entirely to Qwest’s discretion to change course. Regarding Issue 12-64 (Root Cause Analysis and Acknowledgement of Mistakes), Qwest did not submit processes ordered by the Minnesota Commission to CMP despite its own claims about CMP, as discussed by Ms. Johnson regarding Issue 12-64.

¹⁸ Qwest/1, Albersheim/8, lines 16-18; *see also id.* p. 24, line 9 & p. 69, line 9..

¹⁹ *See, e.g.,* Qwest/1, Albersheim/24, lines 27-28; Qwest/1, Albersheim/25, lines 1-5; *see also* Qwest/1, Albersheim/69, lines 14-16 (Issues 12-71 – 12-73, Jeopardies).

²⁰ *See, e.g.,* the agreed-upon language in: Sections 9.1.2.1.3.2.1; 9.1.2.1.3.2.2; 9.2.2.3.2 & 9.2.2.16 (Issue 9-32, Delayed Orders): Section 12.1.5.4.7; 12.1.5.5 & 12.1.5.4.8 (Issues 12-65, 12-66 & 12-66(a), Communications with Customers): Section 12.2.3.2 (Issue 12-68 Supplemental Orders): Section 12.2.7.2.3 (Issue 12-70, PSOs): Section 12.2.7.2.6.1 and subpart (Issue 12-74 Fatal Rejection Notices): Sections 12.3.1 and subpart & Section 12.4.3.6.3 (Issue 12-75 & 12-75(a) Tag at Demarcation Point): Sections 12.3.7.1.1, 12.3.7.1.2 (Issues 12-76 & 12-76(a) Loss and Completion

1 which Qwest chooses to characterize as processes may be appropriate for
2 inclusion in an ICA. Qwest suggests that processes may be appropriately
3 included in an ICA upon showing a “compelling justification.”²¹

4 **Q. WHAT BASIS DOES QWEST PROVIDE FOR ITS PROPOSED**
5 **STANDARD?**

6 A. Qwest cites no authority but relies instead upon Ms. Albersheim’s stated belief.
7 Qwest asserts that the basis for shifting the burden to Eschelon to provide a
8 compelling justification is that it “has successfully provided services via that
9 *CMP*.”²² Ms. Albersheim testifies: “*Based on that history*, I believe this
10 Commission should require Eschelon to demonstrate a compelling justification
11 for altering existing processes or before locking processes into interconnection
12 agreement.”²³ In other words, Qwest argues that its track record in CMP justifies
13 shifting the burden to Eschelon before “altering existing processes.”²⁴

14 **Q. HAS ANY COMMISSION REVIEWED QWEST’S TRACK RECORD IN**
15 **CMP AND DISAGREED WITH QWEST’S CONCLUSION ABOUT ITS**
16 **CMP HISTORY?**

Reports: Section 12.4.3.5 (Issue 12-81, Test Parameters): and Sections 12.4.4.1; 12.4.4.2 & 12.4.4.3 (Issue 12-86, Trouble Report Closure).

²¹ Qwest/1, Albersheim/8, lines 18-19.

²² Qwest/1, Albersheim/8, lines 16-17 (emphasis added). Cf. Eschelon/29, Minnesota Arbitrators’ Report, ¶ 22 (quoted in next Q&A regarding Qwest’s unilateral actions in CMP).

²³ Qwest/1, Albersheim/8, lines 17-19 (emphasis added).

²⁴ Qwest/1, Albersheim/8, lines 18-19.

1 A. Yes. In Minnesota, where more of these types of issues were open in that
2 arbitration, the Minnesota Arbitrators, as affirmed by the Minnesota Commission,
3 found that “Eschelon has provided *convincing evidence* that the CMP process
4 does not always provide CLECs with adequate protection from Qwest making
5 *important unilateral changes* in the terms and conditions of interconnection.”²⁵

6 **Q. DO THE COMPANIES AGREE UPON THE EXISTING PROCESS IN**
7 **EVERY CASE, AND CAN QWEST’S PROPOSED TEST BE APPLIED**
8 **WITHOUT THE COMMISSION RESOLVING ANY DISAGREEMENT?**

9 A. No. Although Qwest assumes its claimed processes are existing processes, a
10 process resulting from a Qwest unilateral change on an important issue²⁶ does not
11 properly constitute an existing process. Regarding issues for which the
12 companies currently disagree as to the current process or disagree as to whether it
13 is an existing process (because, for example, it was developed outside of both
14 CMP and ICA negotiations without CLEC input),²⁷ the Commission - to apply
15 Qwest’s proposed new standard - would need to first determine whether there is
16 an existing process and what that process is before determining if the proposed
17 language alters an existing process.

18 The proper inquiry in an ICA arbitration, however, is whether the terms and
19 conditions of the individual ICA meet the requirements of the federal Act,

²⁵ Eschelon/29, Minnesota Arbitrators’ Report, ¶ 22 (emphasis added).

²⁶ Eschelon/29, Minnesota Arbitrators’ Report, ¶ 22.

²⁷ See, e.g., Eschelon/1, Starkey/74-95 & Eschelon/59 (non-CMP secret TRRO PCAT example).

1 applicable FCC regulations, and relevant state law and regulations.²⁸ In
2 Minnesota, for example, the ALJs said they agreed with the Minnesota
3 Department of Commerce (“DOC” or “Department”) “analysis that any
4 negotiated issue that relates to a term and condition of interconnection may
5 properly be included in an ICA, subject to a balancing of the parties’ interests and
6 a determination of what is reasonable, non-discriminatory, and in the public
7 interest.”²⁹ Ms. Stewart testified that individual carrier’s needs are appropriately
8 addressed in ICAs, even when they “may be different from one CLEC to
9 another.”³⁰

10 **Q. WHAT OPEN ISSUES FALL WITHIN THIS CMP AND CONTRACTUAL**
11 **CERTAINTY DEBATE?**

12 A. Ms. Albersheim does not identify each issue in her CMP discussion. In my direct
13 testimony, I attempted to break the issues down by those for which Qwest
14 proposes ICA language (listed on Eschelon/1, Starkey/12-13) and those for which
15 Qwest proposes silence in the ICA³¹ or a reference to Qwest’s CMP, PCAT or

²⁸ Order, *In the Matter of Covad Communications Company, Petition for Arbitration of an Interconnection Agreement with Qwest Corporation*, Docket No. ARB 584, Order No. 05-980, entered Sept. 6, 2005, p. 2.

²⁹ Eschelon/29, Minnesota Arbitrators’ Report, ¶ 22.

³⁰ Qwest/14, Stewart/41, lines 24-29 (“The individual ICA negotiation process was clearly contemplated by the Telecommunications Act. Specifically, the Act requires that ILECs negotiate individually with CLECs and reach agreements that are tailored to each carrier’s needs. While this approach, mandated by the Act results in terms and conditions that may be different from one CLEC to another, those differences are not an illegal or prohibited form of discrimination.”).

³¹ Although Qwest may suggest that Eschelon’s proposed language for Issues 9-33 and 9-34 (Network Maintenance and Modernization) reflects some change in process, Qwest proposes ICA language for these issues (i.e., does not propose either silence in the ICA or a reference to the web), and Qwest’s network notices are not CMP notices. See Eschelon/59, Johnson/9, footnote 5.

1 wholesale web site (listed on Eschelon/1, Starkey/16). Although Qwest proposes
2 its new compelling justification standard based on its CMP history,³² Qwest does
3 not propose use of CMP, or has elected not to use CMP, for several of these
4 issues. Qwest’s proposals for the open issues (for which Qwest proposes no ICA
5 language or references to outside sources) break down as follows:

6 • **INTERVAL CHANGES AND PLACEMENT (1):**

7 Issue No. 1-1 and subparts – Qwest proposes either no language or references
8 to outside sources and proposes use of CMP for all interval changes. Qwest
9 testifies, however, that under its existing process it “has only decreased”
10 intervals.³³ Ms. Albersheim does not explain why, given that lengthening
11 intervals would be a change, Qwest should not have to show a compelling
12 justification for lengthening intervals.

13 • **MANNER OF CONVERSION (18):**

14 Issue Nos. 9-43 and 9-44 and subparts - Qwest proposes to delete Eschelon’s
15 language, but Ms. Million does not mention CMP in her testimony regarding
16 this issue. While both Ms. Albersheim and Ms. Stewart discuss CMP, neither
17 mentions this issue. Qwest claims it has an existing process even though it
18 was developed outside both CMP and ICA negotiations without CLEC
19 input.³⁴

20 • **ROOT CAUSE ANALYSIS AND ACKNOWLEDGEMENT OF**
21 **MISTAKES (29):**

22 Issue No. 12-64 and subparts – Qwest proposes to delete Eschelon’s language,
23 but Qwest also opposes its use of CMP for this use. Qwest chose not to
24 implement the Minnesota Commission-ordered product and process
25 procedures through CMP (for Minnesota or any state) or to inform other
26 CLECs via CMP of the availability of such acknowledgments and how and
27 when to obtain them.³⁵

28 • **EXPEDITED ORDERS (31):**

29 Issue No. 12-67 and subparts – Qwest proposes to include language entitling
30 Qwest to charge Eschelon for expedites but exclude from the ICA the other

³² Qwest/1, Albersheim/8, lines 16-19.

³³ Qwest/1, Albersheim/33, lines 23-26.

³⁴ See my discussion below of the Secret TRRO PCATs Example; *see also* Eschelon/59 (Secret TRRO PCAT Chronology) to the testimony of Ms. Johnson.

³⁵ Eschelon/1, Starkey/69-70 (Minnesota 616 example).

1 terms and conditions and instead refer to its PCAT. Qwest implemented a
2 Qwest-initiated change by CMP notification over the objection of multiple
3 CLECs to deny CLECs the capability to expedite orders for loops and other
4 UNEs using the emergency-based expedites process (or any process) under
5 the same ICA as Eschelon had been receiving expedites, without
6 amendment.³⁶

7 • **JEOPARDIES (33):**

8 Issue Nos. 12-71, 12-72, 12-73 – Qwest proposes to delete Eschelon’s
9 language and replace it with a reference to its website. This issue has already
10 been through CMP, but Qwest now denies that one aspect of Eschelon’s
11 proposal is its current process.³⁷ Because Ms. Albersheim has admitted that
12 the bulk of Eschelon’s jeopardies language is Qwest’s current process,³⁸ her
13 own proposed standard if applied would require Qwest to establish a
14 compelling need to change Eschelon’s language.

15 • **CONTROLLED PRODUCTION (43):**

16 Issue No. 12-87 – Qwest agrees to the controlled production language closed
17 so far but proposes deletion of Eschelon’s proposed language regarding Issue
18 12-87. Qwest does not propose use of CMP. Qwest has testified that the IMA
19 Implementation Guideline documents are not and should not be under the
20 CMP control,³⁹ even though language was specifically added to the Scope
21 section of the CMP Document to ensure that the Implementation Guidelines
22 would be within the scope of CMP.⁴⁰

23 • **TRANSIT RECORD CHARGE AND BILL VALIDATION (9):**

24 Issue Nos. 7-18, 7-19 – Qwest proposes no ICA language, but Mr. Easton
25 does not mention CMP in his testimony regarding these issues. While both
26 Ms. Albersheim and Ms. Stewart discuss CMP, neither mentions these issues.

³⁶ Eschelon/9, Denney/204-206; see also Eschelon/32, Eschelon/93 & Eschelon/94.

³⁷ Eschelon/43, Johnson, 55-91.

³⁸ Eschelon/6, Starkey 6, Minnesota Tr., Vol. I, p. 37, lines 16-23 (Ms. Albersheim) (“Q Other than that phrase, at least a day before, is Eschelon’s proposal consistent with Qwest’s practice? A Current practice, yes, except for that sentence. Q So you agree with me that Qwest’s current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes.”).

³⁹ Minnesota arbitration, MN PUC Docket No. P-5340, 421/IC-06-768, Surrebuttal Testimony of Renee Albersheim, p. 44 lines 4-10.

⁴⁰ See Eschelon/119 to Ms. Johnson’s testimony containing Excerpts from Final Meeting Minutes of CLEC-Qwest Change Management Process Re-design meeting dated March 5-March 7, 2002 (Att. 5, Action Item 143). Eschelon/43, Johnson/100-101.

1 Generally, this issue has not been handled by either company as subject to the
2 CMP debate.⁴¹

3 • **UNBUNDLED CUSTOMER CONTROLLED REARRANGEMENT**
4 **ELEMENT (UCCRE) (22):**

5 Issue No. 9-53 - Qwest proposes no ICA language, but Ms. Stewart does not
6 mention CMP in her testimony regarding this issue. While both Ms.
7 Albersheim and Ms. Stewart discuss CMP, neither mentions this issue in the
8 context of CMP. The UCCRE terms proposed by Eschelon remain in Qwest's
9 PCAT and in the SGAT but Qwest seeks to deny them to Eschelon.

10 • **COMMINGLED EELS/ARRANGEMENTS (26):**

11 Issue Nos. 9-58 and subparts, 9-59 – Qwest proposes to delete Eschelon
12 language, including Eschelon's interval proposal (9.23.4.4.3.1), even though
13 Qwest claims that intervals are a CMP issue (Issue 1-1) and Eschelon's
14 ordering language, even though Qwest claims ordering is a process subject to
15 CMP (9.23.4.5.1.1). Qwest claims it has an existing process even though it
16 was developed outside both CMP and ICA negotiations without CLEC
17 input.⁴² For example, Qwest claims regarding the circuit ID that its non-CMP
18 process requires more than one circuit ID and Eschelon must use CMP if it
19 wants to alter the alleged non-CMP process.⁴³ Although Qwest did not use
20 CMP to develop its alleged process, it says Eschelon must use CMP because
21 the issue "involves processes that affect all CLECs, not just Eschelon."⁴⁴ The
22 issue equally affected all CLECs when Qwest put its own terms into place, but
23 Qwest chose not to use CMP – a choice it does not extend to Eschelon.⁴⁵

24 **Q. PLEASE SUMMARIZE WHAT THE ABOVE LIST INDICATES ABOUT**
25 **THE ISSUES SUBJECT TO THE CMP DEBATE.**

⁴¹ Although Qwest opposes the particular language, Qwest implicitly admits that information needed for bill validation is an appropriate subject matter for inclusion in an ICA, because it has agreed upon other ICA language regarding information needed for bill validation. See, e.g., Section 21.8.4.3 ("Both CLEC and Qwest agree to . . . promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party"). Qwest and Eschelon do not agree that this information falls within this provision (i.e., whether Eschelon's request is reasonable) and thus these specific issues remain open, despite closure of Section 21.8.4.3. Qwest has stated that rates are outside the scope of CMP. See, e.g., Eschelon/102, Johnson 59.

⁴² See my discussion below of the Secret TRRO PCATs Example; see also Eschelon/59 (Secret TRRO PCAT Chronology) to the testimony of Ms. Johnson.

⁴³ Qwest/14, Stewart/64, lines 22-23.

⁴⁴ Qwest/14, Stewart/64, lines 21-22.

⁴⁵ Qwest/14, Stewart/64, lines 22-23.

1 A. The list shows, at a minimum, that Qwest has been inconsistent in its position
2 with respect to use of CMP. There are only three remaining open subject matters
3 for which Qwest proposes replacement of Eschelon's language with language
4 referring to CMP, the PCAT, or its web site: (1) Issue 1-1 (Intervals); (2)
5 Expedites (Issue 12-67); and (3) Issues 12-71 – 12-73 (Jeopardies). Before the
6 Minnesota Arbitrators' Report was issued and Qwest agreed to close some of
7 these issues with Eschelon's language, there were more open subject matters for
8 which Qwest proposed references to outside sources. For most, if not all, of those
9 issues, Qwest agreed that Eschelon's language reflected its current process. At
10 that time, therefore, Qwest relied primarily on an argument that existing processes
11 should not be set in stone. Now that only three such issues remain, Qwest has
12 proposed its new compelling justification standard for changes to existing
13 processes, apparently because Qwest is arguing for all three that Eschelon's
14 language changes existing process at least in some respect. Interestingly, with
15 respect to intervals, Qwest still argues that intervals should not be set in stone,⁴⁶
16 even though Qwest now wants to set in stone its own processes, unless Eschelon
17 shows a compelling justification to change them. More specifically, Qwest wants
18 to set them in stone *for Eschelon*, while allowing itself the flexibility to change
19 them in CMP. Under Qwest's approach, changes to an existing process are fine,
20 so long as Qwest gets to determine whether changes are made.

⁴⁶ Qwest/1, Albersheim/32, lines 21-22.

1 **Q. HAS ESCHELON PROVIDED COMPELLING JUSTIFICATION FOR ITS**
2 **PROPOSALS IN THIS CASE?**

3 A. Yes. Although Eschelon disagrees the Qwest-proposed standard applies,
4 assuming for the sake of argument that it were to be used, Eschelon meets the
5 standard for each issue. As to each issue, Eschelon's evidence is more
6 compelling than Qwest's assertions, which are often unsupported by any data or
7 documentation. In my direct testimony,⁴⁷ I explained the most important
8 justification for including Eschelon's proposals in the ICA – certainty to plan and
9 manage a business – a justification with which the FCC and state commissions
10 have agreed,⁴⁸ and provided examples of the types of problems that can arise if
11 Qwest is successful in punting these issues to CMP.⁴⁹ Furthermore, Eschelon
12 provided for each issue a description of the Eschelon business need related to that
13 issue explaining why each issue was important to Eschelon's business relationship
14 with Qwest, including a description of how these issues affect Eschelon's End
15 User Customers. Qwest has admitted that Eschelon is a very active participant in
16 CMP.⁵⁰ Eschelon has: (i) identified a relatively few issues⁵¹ that are important to
17 Eschelon's business and customers, (ii) crafted specific ICA language that
18 addresses the issue and lets the companies "know what is expected of them under

⁴⁷ Eschelon/1, Starkey/9-10.

⁴⁸ Eschelon/1, Starkey/22-24 and Eschelon/1, Starkey/31-32.

⁴⁹ Eschelon/1, Starkey/49-94.

⁵⁰ Qwest/1, Albersheim/5.

⁵¹ Eschelon/1, Starkey/6-7.

1 the agreement and to avoid or minimize future disputes,”⁵² (iii) brought these
2 issues to the Commission for resolution, and (iv) explained to the Commission
3 why these issues are important to Eschelon and why Eschelon’s language should
4 be adopted to address the issue. Though there is no basis for the burden Qwest is
5 attempting to impose on Eschelon, Eschelon has demonstrated the need for its
6 proposed ICA language.

7 **B. RESPONSE TO QWEST’S OTHER CMP CLAIMS**

8 **Q. YOU EXPLAINED IN YOUR DIRECT TESTIMONY THAT QWEST HAS**
9 **CONFIRMED THE NEED FOR CERTAINTY IN THE ICA SO THAT**
10 **PARTIES KNOW WHAT IS EXPECTED FROM THEM.⁵³ DID QWEST**
11 **CONFIRM THIS POSITION IN ITS DIRECT TESTIMONY?**

12 **A.** Yes. Qwest confirmed in its direct testimony that contractual certainty is
13 important and is a valid basis for deciding to include terms in an interconnection
14 agreement. Specifically, Qwest witness Ms. Stewart testified that “a paramount⁵⁴
15 goal of this arbitration should be to establish clarity concerning the parties’ rights
16 and obligations.”⁵⁵ And perhaps most telling is Ms. Stewart’s testimony that:

⁵² Qwest/14, Stewart/16, lines 1-2.

⁵³ Eschelon/1, Starkey/16-17.

⁵⁴ In the Washington Qwest-Eschelon ICA arbitration, Ms. Stewart described this goal as “critical.” Stewart Washington Direct (Docket No. UT-063061, September 29, 2006), p. 20, lines 6-7.

⁵⁵ Qwest/14, Stewart/15, lines 27-28.

1 a basic purpose of the ICA, as with any contract, is to give the
2 parties certainty about their rights and obligations and to avoid or
3 minimize future disputes about their rights and obligations.⁵⁶

4 She added that “Clear ICA language is necessary so that the parties *know what is*
5 *expected of them* under the agreement and to avoid or minimize future
6 disputes.”⁵⁷ Further, Ms. Stewart has previously testified that it is a “reasonable
7 expectation” that a party’s obligations “should be clearly defined and should not
8 be subject to future interpretations” that a party “develops based on its needs and
9 desires at a given time,” and that contract language should further the “goal of
10 avoiding future disputes under the ICA.”⁵⁸ As I explained in my direct testimony,
11 Eschelon likewise needs this contractual certainty (or what Ms. Stewart identifies
12 as a “basic purpose of the ICA”) and known set of rules, especially for issues that
13 are likely to impact its core business operation and ultimately its ability to
14 effectively service its customers. The Commission should set those rules in an
15 ICA that is filed, approved and amended if changed. Unlike Qwest, Eschelon

⁵⁶ Qwest/14, Stewart/24, lines 20-22.

⁵⁷ Qwest/14, Stewart/15-16 (emphasis added); *see also* Qwest/14, Stewart/24, line 22 (“avoid or minimize future disputes about their rights and obligations”).

⁵⁸ Stewart Washington Direct (Docket No. UT-063061, September 29, 2006), p. 20, lines 12-15. Qwest was specifically referring to itself as the party at the time. *See id.* Eschelon believes the statement applies to Qwest as well, such as Qwest’s position that language should be subject to future interpretations that Qwest develops based on its needs and desires at a given time, through CMP (*see e.g.*, CRUNEC example, Eschelon/56 – 58 & testing charge example, Eschelon/80 – 83); through disregarding CMP results (*see e.g.*, the jeopardies example in Eschelon/110 – 113); and through non-CMP activities (*see e.g.*, Qwest’s recent collocation non-CMP notice discussed with respect to Issue 9-31, access to UNEs, and the non-CMP “TRRO” PCATs, discussed in Eschelon/59 – 62). *See also* Eschelon/77 (list of Qwest non-CMP TRRO PCATs and URLs).

1 asks that the Commission provide that known set of rules for all of the open issues
2 in the arbitration, and not just a subset hand-picked by Qwest.⁵⁹

3 **Q. HAS QWEST RECOGNIZED ESCHELON'S SIGNIFICANT**
4 **KNOWLEDGE OF, AND EXPERIENCE IN, CMP WHICH SUPPORTS**
5 **THE NOTION THAT ESCHELON'S CONCERNS ARE FOUNDED ON**
6 **EXPERIENCE?**

7 A. Yes. Qwest presented information in its testimony showing that Eschelon has
8 been a very active participant in CMP, attending every meeting and taking part in
9 change requests as well as the CMP Oversight Committee⁶⁰ and the CMP
10 Redesign process.⁶¹ Eschelon is a carrier that can speak to Qwest's CMP process
11 through first-hand experience (as also evidenced by the examples provided in my
12 direct testimony and Ms. Johnson's direct testimony).⁶² It is worth noting that it
13 is exactly that experience which brought Eschelon to conclude that certain
14 provisions important to the day-to-day operation of its business must be contained
15 in the ICA if Eschelon is to effectively serve its customers going forward. Plainly

⁵⁹ Eschelon/1, Starkey/17, lines 10-12. *See also* Eschelon/1, Starkey/17-19, where I explain this point in more detail.

⁶⁰ Several matters have been handled through Section 18.0 ("Oversight Review Process") of the CMP Document. Eschelon/84 contains an example of a recent Eschelon request for Oversight Committee review of Qwest's refusal to provide minutes or review of minutes for CMP meetings per the CMP Document as it committed to do in CMP Redesign. Eschelon/48 contains a list of CMP Oversight Committee Meeting Minutes posted on Qwest's wholesale website along with URLs that can be used to access the meeting minutes. The meeting minutes for the Oversight Committee Meetings held on 1/4/05 and 1/10/05 are provided in Eschelon/70 and Eschelon/71, respectively. Eschelon has been actively involved in this process.

⁶¹ Qwest/1, Albersheim/21.

⁶² Eschelon/1, Starkey/50-94; *see also* Eschelon/110 & Eschelon/115 (jeopardies), Eschelon/79 (delayed/held orders), Eschelon/56 – 58 (CRUNEC), Eschelon/59 – 62 (Secret TRRO PCAT); *see also* additional examples in Eschelon/93 & Eschelon/94.

1 Eschelon has been an active participant in CMP⁶³ with a wealth of experience
2 concerning both its benefits and limitations. The Commission can benefit from
3 that experience as it considers the disputed issues in this case.

4 Despite contrary claims by Qwest's witness,⁶⁴ including the relatively few terms
5 and conditions sponsored by Eschelon for incorporation in the ICA via this
6 arbitration will not eliminate the established CMP process or Eschelon's
7 continued CMP participation.⁶⁵ This is demonstrated in part by the agreement of
8 both Eschelon and Qwest to include the CMP Document as an exhibit to the
9 ICA.⁶⁶ Like the CMP Document (Exhibit G) itself,⁶⁷ agreed upon language in the
10 ICA dictates that when differences exist between the ICA and CMP, the ICA
11 "shall prevail as between Qwest and CLEC."⁶⁸ While Eschelon has agreed to,
12 and does actively, participate in CMP, its participation does not diminish its
13 Section 252 rights to negotiate a meaningful ICA that dictates the terms and
14 conditions by which it will do business with Qwest. Eschelon has, once again,⁶⁹

⁶³ Qwest/1, Albersheim/21.

⁶⁴ Qwest/1, Albersheim/24, lines 13-16 ("trying to make systems or product and process changes in an interconnection arbitration subverts the purpose of the CMP. The CMP provides a centralized forum for all CLECs to be informed of, have a say in, and make requests for such changes.")

⁶⁵ Eschelon/1, Starkey/24-26.

⁶⁶ ICA Exhibit G (closed language).

⁶⁷ Eschelon/53 (as well as Qwest/2), §1.0 & §5.4.

⁶⁸ ICA Section 12.1.6.1.4; *see also* ICA Section 2.3.

⁶⁹ *See* discussion below regarding the Gap Analysis in CMP Redesign when Eschelon identified, as a gap, the need for CMP to account for differences in individual CLEC ICAs. *See also* Eschelon/53 (CMP Document), §1.0 & §5.4; and discussion below of Eschelon/54 (CMP Redesign Meeting Minutes, January 22-24, 2002, Att. 9, Gap Analysis Issue #150 & CMP Redesign Meeting Minutes, April 2-4, 2002, p. 15; Att. 6, pp. 167-168, closing action item #227 and Gap Analysis Issue #150). Meeting Minutes for CMP Redesign are also available on Qwest's website, *See*,

1 reserved the right to bring issues to ICA negotiation and arbitration as needed,
2 notwithstanding use of CMP.

3 **Q. MS. ALBERSHEIM ARGUES THAT ESCHELON IS ATTEMPTING TO**
4 **SUBVERT THE CMP AND TO “TURN BACK THE CLOCK” IN SOME**
5 **WAY TO RETURN US ALL TO THE DAYS BEFORE CMP. IS THAT**
6 **TRUE?**

7 A. Of course not. Eschelon is not attempting to eliminate,⁷⁰ undermine,⁷¹ subvert,⁷²
8 circumvent,⁷³ or “turn back the clock”⁷⁴ on the CMP. Eschelon’s position is fully
9 consistent with the terms of the CMP Document and the Act, both of which allow
10 for individual contracts, as I explained on pages 22-36 of my direct testimony
11 (Eschelon/1). CMP is not eliminated or subverted, as shown by the fact that
12 Eschelon has agreed to include CMP provisions in the ICA (see, e.g., Section
13 12.1.6). Ms. Albersheim describes CMP as a method by which Qwest system and
14 process changes are clearly “communicated” to the CLEC community.⁷⁵ That is

http://www.qwest.com/wholesale/downloads/2002/020225/1_CMP_Redesign_Final_Meeting_Minutes_Jan_22-24-02-22-02.doc (January 22-24, 2002) and

http://www.qwest.com/wholesale/downloads/2002/020715/CMP_RedesignMeetingMinutesApril2-4FINAL07-15-02.doc (April 2-4, 2002).

⁷⁰ Qwest/1, Albersheim/3, lines 11-12 (“...eliminating the important role that the CMP plays...”).

⁷¹ Qwest/1, Albersheim/87, lines 5-6.

⁷² Qwest/1, Albersheim/24, line 14; Qwest/1, Albersheim/32, line 9; Qwest/1, Albersheim/69 (Issues 12-71 – 12-73 Jeopardies).

⁷³ Qwest/1, Albersheim/56, line 12 (Issue 12-67, Expedited Orders).

⁷⁴ Qwest/1, Albersheim/3, line 11 (purpose of testimony). Qwest also characterizes Eschelon’s proposals as attempting to “freeze” (Qwest Response to Eschelon’s Petition for Arbitration, p. 43, line 5), “lock in” (Qwest/1, Albersheim/24, line 25), and set “in stone” (Qwest/1, Albersheim/32, line 22) processes in an ICA.

⁷⁵ Qwest/1, Albersheim/4, lines 13-14.

1 often the only way that CLECs receive important information from Qwest
2 regarding Qwest's planned changes and policies. CLECs need to continue to
3 receive that information. Eschelon and other CLECs also need a mechanism to
4 comment on, or object to, proposed Qwest changes and to submit their own
5 requests because Qwest changes are not only internal to Qwest but have an effect
6 on Eschelon and how it may conduct business. Systems are used by both
7 companies and they need to coordinate development and updating of those
8 systems over time. Therefore, it is not accurate to suggest that an effective ICA
9 process negates CMP or vice versa.

10 Additionally, some of Eschelon's proposals, which were made in earlier
11 arbitrations (where Qwest made the same arguments) but have now closed with
12 Eschelon's language, simply reflect and preserve the work that has been achieved
13 through the CMP process over a number of years.⁷⁶ For instance, the amount of
14 time spent in CMP developing the Pending Service Order Notifications
15 ("PSOs") (Issue 12-70)⁷⁷ and Loss and Completion Reports (Issue 12-76)⁷⁸ was
16 nearly as long or longer than the term of the new ICA,⁷⁹ and Eschelon has sought
17 to "reflect these improvements" for these terms that "have proven effective for

⁷⁶ Eschelon/1, Starkey/35-36.

⁷⁷ This issue is now closed.

⁷⁸ This issue is now closed.

⁷⁹ Issues 12-70 and 12-76 are now closed. *See* Eschelon/43, Johnson/109 and 110-111. *See also* Eschelon/43, Johnson/55-90 (jeopardies). Qwest now denies a portion of the jeopardies result in CMP. *See id.*

1 all.”⁸⁰ Consistent with Eschelon’s view of the ICA, Qwest has agreed to inclusion
2 of Eschelon’s language regarding the Pending Service Order Notifications
3 (“PSOs”) (Issue 12-70) and Loss and Completion Reports (Issue 12-76) in the
4 ICA (in all six states). For the remaining issues of this type, Qwest may deny that
5 Eschelon’s language reflects its current practice, but Eschelon will show that it is
6 Qwest’s established practice even though Qwest may deny it in arbitration (see
7 Issue 12-72, Jeopardies & Issue 12-87, Controlled Production) or Qwest has
8 changed it unilaterally over CLEC objection (see Issue 12-67, Expedites) or
9 Qwest has no proper process but instead implemented an alleged process outside
10 of CMP and without CLEC input (see Issue 9-43, Conversions). For other issues,
11 Eschelon will show that its proposal is similar to or incorporates existing Qwest
12 practices (Issue 1-1, Intervals & Issue 12-64 Root Cause Analysis and
13 Acknowledgement of Mistakes). By including the now closed and Eschelon’s
14 proposed language for the remaining open provisions in the interconnection
15 agreement, the Commission will be assuring that terms that Eschelon has come to
16 rely on, and in some cases expended substantial resources helping to develop, will
17 continue to be available.

18 **Q. YOU QUOTE QWEST’S REFERENCE TO INCLUDING**
19 **“IMPROVEMENTS” MADE THROUGH CMP IN AN ICA. PLEASE**
20 **EXPLAIN, AND INDICATE WHETHER QWEST IS ADVOCATING A**
21 **BALANCED APPROACH IN THIS REGARD.**

⁸⁰ Qwest/1, Albersheim/25, lines 21-22 and line 24.

1 A. The difference between my use of Qwest’s language above and Qwest’s use of
2 the same words⁸¹ is that Qwest seeks to retain for itself alone the ability to decide
3 when, whether, and to what extent to “reflect” processes, improvements, or
4 other⁸² changes in an ICA.⁸³ When Qwest deems an issue important, it wants the
5 issue clearly stated in the ICA.⁸⁴ Qwest seeks to deny the same opportunity to
6 Eschelon, even in this arbitration, so its approach is not balanced.

7 **Q. PLEASE PROVIDE AN EXAMPLE OF QWEST SEEKING TO RETAIN**
8 **FOR ITSELF ALONE THE ABILITY TO DECIDE WHEN, WHETHER,**
9 **AND TO WHAT EXTENT TO REFLECT TERMS IN AN ICA.**

10 A. Qwest refers to its own negotiation proposals (which Qwest offers in the form of a
11 “template” proposed agreement or amendments) as “the ICA”⁸⁵ (rather than
12 simply a Qwest proposal). In its “Introduction to Section 12 Issues,”⁸⁶ Qwest
13 points out (erroneously)⁸⁷ that Qwest’s “standard negotiations template”⁸⁸ was not
14 used for the negotiation of Section 12, as though somehow this is a problem.

⁸¹ Qwest/1, Albersheim/25, lines 21-22.

⁸² This includes terms regarding changes of law that are not in Qwest’s template agreement or amendments but do appear in its PCAT, though they have not previously even been through CMP. Eschelon/1, Starkey/74-94; and Eschelon/59 – 62.

⁸³ Eschelon/1, Starkey/44-49.

⁸⁴ Qwest/14, Stewart/15-16.

⁸⁵ Direct Testimony of Philip Linse, Qwest Corp., Minnesota PUC Docket P-5340,421/IC-06-78/OAH Docket 3-2500-17369-2, August 25, 2006 p. 19, line 17.

⁸⁶ Qwest/1, Albersheim/49.

⁸⁷ Eschelon/46.

⁸⁸ Qwest/1, Albersheim/49, line 3.

1 Qwest attaches a draft of the so-called “rewrite”⁸⁹ of Section 12 as Qwest/4.
2 Generally, a company in negotiations does not come to the table and say “let’s
3 start with your language.”⁹⁰ That Qwest finds it worth attaching a lengthy exhibit
4 from 2004 and noting that Eschelon allegedly did not do so in this case (*i.e.*, start
5 with Qwest’s proposed language), however, suggests something about Qwest’s
6 entitlement mentality with respect to its template and its positions. Qwest even
7 took the time to format the language proposals in its testimony differently from
8 the proposed Qwest-Eschelon ICA (which the companies have negotiated from
9 for years) and the Disputed Joint Issues Matrix, to reflect this suggestion by
10 Qwest that its proposals are somehow the baseline (shown in black text) which
11 Eschelon must justify changing (shown in underline/strikeout).

12 Despite objecting to any Eschelon attempt to reflect improvements in ICA
13 language, Qwest suggests that its template has resulted from Qwest exercising its
14 judgment about which “improvements”⁹¹ are best so that Qwest – knowing what
15 is best for Eschelon – has “taken steps”⁹² that should be reflected in “its contract
16 language.”⁹³ Specifically, Qwest states:

17 It is true that there is process language contained in Qwest's
18 interconnection agreements today. Like industry standards for
19 systems and processes, Qwest's contract language has evolved over
20 time. Before the creation of the current CMP, many

⁸⁹ Qwest/1, Albersheim/iii at Qwest/4. *See also* Qwest/1, Albersheim/49, line 9.

⁹⁰ Ironically, however, that is in a sense what Eschelon had to do here, because it used a substantial amount of Qwest’s template language, as well as language from Qwest’s contract with AT&T.

⁹¹ Qwest/1, Albersheim/25, line 22.

⁹² Qwest/1, Albersheim/25, line 21.

⁹³ Qwest/1, Albersheim/25, line 21.

1 interconnection agreements were highly individualized. Through
2 the extensive collaborations in the creation of the CMP, and the
3 section 271 evaluations of Qwest's systems and processes, Qwest
4 and the CLECs have created mechanisms to ensure that Qwest can
5 provide the best service for CLECs. As a result, Qwest has taken
6 steps to try to make its contract language reflect these
7 improvements. While process language still exists, Eschelon
8 should not be allowed to compound the problem and turn back the
9 clock on the processes that have proven effective for all of Qwest's
10 CLEC customers.⁹⁴

11 This language suggests that a true collaborative effort is still going on that then
12 finds its way into Qwest's template and will continue to do so throughout the term
13 of the new ICA. That is not the case. The section 271 evaluations of Qwest's
14 systems and processes ended with Qwest's 271 approvals,⁹⁵ the first of which was
15 in December of 2002 and the last of which was in December of 2003. Before
16 those approvals were granted,⁹⁶ Qwest at least held collaborative sessions and
17 CMP CLEC Forums to discuss contract language changes with CLECs.⁹⁷ Qwest

⁹⁴ Qwest/1, Albersheim/25.

⁹⁵ In its *WA Covad Arbitration Order* (Order No. 4), for example, the Washington commission specifically rejected Qwest's argument that practices that resulted from Qwest's Section 271 proceedings were required to be "uniform" in interconnection agreements that Qwest enters into with individual CLECs. It said: "While Qwest relies heavily on 'consensus' reached in the Section 271 proceeding . . . that argument does not apply to an arbitration proceeding. Parties engage in arbitration to enter into an agreement tailored to the companies' needs, not to adopt a standard agreement." WAUTC Order No. 4 at ¶ 3-4. Regarding Qwest's claims about uniformity (Qwest/1, Albersheim/4, lines 5 and 9; *see also* Qwest/14, Stewart/14, line 19; and Qwest/14, Stewart/87, lines 26-28), *see* Eschelon/1, Starkey/25-28.

⁹⁶ June 16, 2003 Forum (<http://www.qwest.com/wholesale/calendar/eventDetails/1,1456,86,00.html>); Dec. 2003 CMP meeting minutes in which Eschelon asked when the next CLEC Forum would be (<http://www.qwest.com/wholesale/downloads/2004/040116/CMPDistPkg01-21-04.pdf>); Jan. 2003 CMP meeting minutes in which Qwest closed this action item without scheduling another CLEC Forum (<http://www.qwest.com/wholesale/downloads/2004/040119/JanuaryCMPSysDistributionPackage.pdf>).

⁹⁷ Eschelon/49, showing that Qwest did indeed discuss contract language in collaborative sessions and CLEC Forums before it received its 271 approvals. This exhibit shows that Qwest's own website describes the collaborative meetings to discuss the collocation terms as "CLEC Forums."

1 has not held a single similar CLEC Forum since then for this purpose.⁹⁸ Indeed,
2 as discussed below, when Eschelon asked Qwest to use CMP to allow CLECs to
3 have input into development of its new template and for Qwest to provide status
4 information to CLECs about the template, Qwest flatly rejected the offer,
5 indicating that “this is not a CMP issue.”⁹⁹ Further, to the extent that Qwest puts
6 its proposals (*e.g.*, changes to the PCAT) through CMP, it largely does so through
7 notices,¹⁰⁰ not collaboration, and even then Qwest alone selects which language to
8 incorporate in its template and which to place only in its PCAT. Likewise, Qwest
9 includes language in its template over the objection of CLECs to a change on the
10 same issue in CMP,¹⁰¹ and some proposals it does not put through CMP at all.¹⁰²
11 Simply put, Qwest alone is in charge of its template and the Commission should
12 be aware that the template is not arrived at through collaboration with CLECs
13 either in CMP or elsewhere.

⁹⁸ Qwest claimed in other state arbitration proceedings that Qwest held CLEC forums after 2003. The Commission should be aware that, to the extent Qwest makes the same argument in Oregon, Qwest is wrong. Qwest held two identical telephone conference calls (whereas the CLEC Forums were in person) in the Summer of 2005 called "Qwest Wholesale Provisioning Forum." The notice for these conference calls states: "These calls are designed to convey information and insights related to the local service request provisioning process and the calls into the Qwest Call Handling Centers. They are intended for those who perform the work to assist them in their day to day work activities." In other words, these sessions were “how to” training sessions designed to “convey information” from Qwest to CLECs, and were not the back-and-forth discussions that were supposed to be “collaborative” in the previous CLEC Forums. In short, these 2005 conference calls were just training sessions and not collaborative sessions. Perhaps this is why Qwest gave them a different name, recognizing that they were not “Forums” for discussions of CLEC issues. The only other more recent forums listed on the Qwest web page are inapplicable “wireless” forums.

⁹⁹ Eschelon/51 (Qwest Feb. 4, 2003 email).

¹⁰⁰ Eschelon/1, Starkey/45-46.

¹⁰¹ Eschelon/9, Denney/240-241 (Issue 12-67, Expedites) & Eschelon/93 – 97.

¹⁰² Eschelon/1, Starkey/43, lines 4-7 & Eschelon/79 (Qwest selectively putting 90 days but not “in the ground” language through CMP); *see also* Eschelon/59 – 62 (Secret TRRO non-CMP PCAT notices); and discussion regarding Issue 9-31 (access to UNEs).

1 **Q. DOES QWEST BRING ALL PRODUCT AND PROCESS CHANGES**
2 **THROUGH CMP, CONSISTENT WITH ITS ARGUMENT THAT**
3 **“PROCESS DETAIL” BELONGS IN CMP¹⁰³?**

4 A. No As I explained in my discussion of the Secret TRRO non-CMP PCAT
5 example,¹⁰⁴ it is clear that Qwest has unilaterally established its obligations (with
6 terms that, for other issues, it would describe as process issues) related to the
7 TRRO outside of CMP and outside the ICA, and now contends that it is too much
8 work or too costly to change them later when Qwest’s unilaterally-established
9 terms and conditions are called into question.¹⁰⁵ Qwest told CLECs that it was
10 going to update its SGATs and address TRRO issues in CMP after doing so.¹⁰⁶
11 Throughout 2005 and 2006, Qwest told Eschelon (through Qwest’s service
12 management team, in CMP, and in ICA negotiations¹⁰⁷) that Qwest would be
13 updating its SGATs. It did not update the SGATs and then bring the issues
14 through CMP. Qwest now admits that it has not updated its SGATs since 2004¹⁰⁸
15 (before the TRRO was released) and suggested it has no intention to do so.¹⁰⁹

¹⁰³ See, e.g., Qwest/1, Albersheim/69, line 5.

¹⁰⁴ Eschelon/1, Starkey/74-94.

¹⁰⁵ See e.g., discussion of Qwest’s non-CMP, non-ICA APOT procedure for conversions under Issues 9-43 and 9-44.

¹⁰⁶ See Eschelon/59, Johnson/9 (Qwest 6/30/05 CMP adhoc meeting minutes).

¹⁰⁷ Eschelon/1, Starkey/81-82 (quoting Qwest’s commitments to update its SGATs over time).

¹⁰⁸ Qwest 14, Stewart/43-44. As discussed above, after Qwest received 271 approval, it has not held a single CLEC Forum for the purposes of discussing Qwest’s template agreement.

¹⁰⁹ Qwest/14, Stewart/43-44. (Ms. Stewart also made this statement in her rebuttal testimony in Minnesota (at page 36) and in Washington (rebuttal page 26)). Ms. Stewart’s direct testimony in the Colorado arbitration was filed on December 15, 2006. One month later, on January 16, 2007, Qwest filed Advice Letter No. 3058 in Colorado Docket No. 07S-028T and said its purpose was to replace in its entirety the Qwest wholesale tariff filing in Colorado. The Qwest wholesale tariff filing refers

1 Qwest claims that the SGATs are outdated documents,¹¹⁰ but Qwest chose not to
2 update them contrary to its previous statements. The TRRO allowed Qwest to
3 stop offering certain products but did not prohibit Qwest from offering them.

4 **Q. YOU MENTION ABOVE QWEST STATED THAT IT WOULD UPDATE**
5 **ITS SGATS AND DEAL WITH TRO/TRRO ISSUES IN CMP, BUT DID**
6 **NOT DO SO. DOES THIS UNDERSCORE ESCHELON'S CONCERN**
7 **ABOUT PUNTING ISSUES TO QWEST, WHICH MAY OR MAY NOT**
8 **BRING THEM THROUGH CMP?**

9 A. Yes. Now that Qwest has established no fewer than 99 secret TRRO PCAT
10 versions¹¹¹ outside of CMP, outside of negotiation, and without CLEC input, as

to the Colorado SGAT. In her testimony in the Colorado arbitration case filed only a month before, Ms. Stewart did not discuss Qwest's plans with respect to this Advice Letter or how it could relate to her suggestion that a filing with the commission is unnecessary because Qwest now has its own template proposed agreement. (Qwest/14, Stewart/43, line 8 – 44, line 3). Since then, Qwest has withdrawn the Colorado tariff filing. The approval in Colorado PUC Decision No. C07-197, Docket No. 07S-028T, of the withdrawal of the tariff filing to replace the material in the Colorado wholesale tariff filing confirms that the Colorado wholesale tariff filing is still in place. If Qwest had done something along the lines of this filing earlier when the TRRO was issued (as it had suggested it would do), then CLECs would have had an opportunity to comment upon the development of the terms. See Eschelon/59, Johnson/9 (Qwest 6/30/05 CMP adhoc meeting minutes state, with emphasis added, that Cindy Buckmaster of Qwest said "*as SGAT language changes, we will have a comment period* and that the States will engage you when decisions are made. *Cindy also said that PCAT changes will be brought through CMP.*") (emphasis added). As previously mentioned (Eschelon/1, Starkey/89-91), Qwest is trying to conform the SGAT to its own template and its own non-CMP secret PCATs, instead of what should have been the reverse (making changes to the SGAT with Commission and CLEC participation first, and then updating its PCAT). As Qwest did not do so, it should have brought any desired terms to the negotiation for inclusion in the ICA, as consistently maintained by Eschelon. See e.g., Eschelon/59, Johnson/8-9 (6/30/05). To try to avoid Commission scrutiny in this arbitration now, Qwest may belatedly make the promised filing to update the SGAT. That would reward Qwest for its delay and force Eschelon to incur the costs of having negotiated and arbitrated this agreement, only to leave issues open for resolution in a proceeding about an SGAT, when Eschelon is not even opting in to the SGAT.

¹¹⁰ Answer Testimony of Karen Stewart, Colorado Docket No. 06B-497T, p. 31 (3/26/07).

¹¹¹ Eschelon/77.

1 discussed in my direct testimony,¹¹² Qwest indicated in a letter that it would take
2 some (but not all) TRO/TRRO issues to CMP. Then, at the Minnesota hearing,
3 Ms. Stewart testified that Qwest planned on taking all of the secret TRRO PCATs
4 to CMP.¹¹³ But, at the CMP Monthly Meeting held on November 15, 2006,
5 Qwest announced that it was bringing the TRO/TRRO CR (PC102704-1ES)¹¹⁴
6 out of deferred status to address *some* (but not all) TRO/TRRO issues in CMP.¹¹⁵
7 At that time, Qwest was unable to provide any additional information on which
8 PCATs it intended to take to CMP at the following ad hoc call on this issue.

9 Later, Qwest indicated that it will not address issues that are in litigation and
10 asked CLEC CMP participants to sort out what is in litigation and what is not.
11 When re-designing CMP, New Edge pointed out that CLEC CMP participants are
12 operational business people, not attorneys who could address “regulatory, legal
13 type processes” and changes that “impacts an ICA.”¹¹⁶ Qwest replied that CLECs
14 should not be concerned about this because: (1) this has been addressed with
15 language in the CMP Document that states the ICA controls over CMP; and (2)

¹¹² Eschelon/1, Starkey/88-91.

¹¹³ Eschelon/6 [MN ICA Arbitration Transcript, Vol. III, p. 57, line 5- p. 58, line 4 (Oct. 18, 2006) (Ms. Stewart)].

¹¹⁴ Eschelon/72 and Eschelon/73. *See also* Eschelon/70-71, which contain the Oversight Committee Meeting minutes for the 1/4/05 and 1/10/05 meeting in which CR PC102704-1ES was discussed. Eschelon/68-69 contain two Qwest initiated change requests related to Qwest’s attempts to implement TRO/TRRO changes.

¹¹⁵ Qwest stated that “TRRO issues that are being addressed by Qwest and CLECs in arbitrations of their ICAs or items being challenged by law will not immediately be processed through CMP.” (11/15/06 CMP Monthly Meeting Minutes). However, as shown in Eschelon/78, Qwest had indicated its intention to take to CMP issues being addressed between Eschelon and Qwest in this arbitration under Issue 9-58.

¹¹⁶ Transcript of 271 CMP Workshop Number 6, Colorado Public Utilities Commission Docket Number 97I-198T (Aug. 22, 2001), pp. 291-292.

1 "contractual issues, themselves, would not be addressed" in CMP.¹¹⁷

2 Implementation of the TRO/TRRO is a legal and contractual¹¹⁸ issue.

3 Recently, Qwest again asked CLECs to identify and discuss legal issues in CMP
4 relating to the FCC's TRO/TRRO orders.¹¹⁹ CLECs indicated that Qwest's
5 PCAT deals with legal issues (such as when a product is legally available under
6 the FCC's rulings) that should be dealt with in ICAs and negotiation of those
7 agreements. In response, Qwest agreed on a CMP ad hoc call to circulate to
8 CLECs a redlined version of at least one non-CMP TRRO PCAT to show which
9 issues it believed were "process" issues that should be dealt with in CMP and
10 were not redundant of ICA or template ICA terms. At a later monthly CMP
11 meeting, however, Qwest renegeed on that commitment.

12 If Qwest had updated its SGATs with the Commissions before unilaterally
13 implementing changes through non-CMP TRRO PCATs, as it initially committed
14 to do,¹²⁰ the appropriate legal and regulatory personnel would have had an
15 opportunity to be involved. Now that Qwest has unilaterally developed terms
16 outside of ICA negotiations (despite requests by Eschelon and other CLECs),¹²¹

¹¹⁷ Transcript of 271 CMP Workshop Number 6, Colorado Public Utilities Commission Docket Number 97I-198T (Aug. 22, 2001), pp. 291-292 (Andrew Crain of Qwest and Penny Bewick of New Edge); *see id.* p. 292, lines 14-15 (Mr. Crain) ("Contractual issues, themselves, would not be addressed in the Change Management Process.")

¹¹⁸ TRRO ¶196 & note 519 & ¶198.

¹¹⁹ Eschelon/74 – 76.

¹²⁰ Eschelon/59, Johnson/8-9 (6/30/05); *see id.* p. 9 (CMP Minutes quoting Cindy Buckmaster of Qwest stating: "She said that as SGAT language changes, we will have a comment period and that the States will engage you when decisions are made.")

¹²¹ Eschelon/59, Johnson/4 (11/17/04 CMP November monthly meeting minutes).

1 CMP (despite promises by Qwest),¹²² and Commission proceedings (also despite
2 promises by Qwest),¹²³ it is considering these terms and conditions as Qwest’s
3 “existing” terms and conditions. Qwest has repeatedly flip-flopped on whether
4 TRO/TRRO issues belong in CMP, and even if Qwest decides a issue does belong
5 in CMP,¹²⁴ it will have likely already established an “existing” policy without any
6 CLEC or Commission input, and force the CLEC to carry the burden to prove
7 changes to that “existing” policy should be made. Indeed, as discussed above,
8 Qwest changed its direct testimony in Oregon from what it filed in arbitration
9 cases in other states to do just that – i.e., attempt to impose on Eschelon a burden,
10 based on Qwest’s claim that it has “successfully provided services via the CMP,”
11 to provide a “compelling justification” for allegedly altering “existing
12 processes.”¹²⁵ However, Qwest should not be establishing TRO/TRRO terms and
13 conditions unilaterally in the first place. Rather, Qwest should be establishing
14 those terms and conditions in negotiations/arbitrations, as CLECs have repeatedly
15 requested and Qwest refused.

16 **Q. SHOULD EITHER CMP OR QWEST’S ICA TEMPLATE REPLACE**
17 **INDIVIDUALIZED NEGOTIATIONS, CONTRACTS SPECIFIC TO**
18 **INDIVIDUAL CLEC BUSINESS PLANS OR DECISIONS MADE BY THIS**

¹²² Eschelon/59, Johnson/8-9 (6/30/05).

¹²³ Eschelon/59, Johnson/8-9 (6/30/05).

¹²⁴ It remains unclear what issues Qwest will be submitting to CMP.

¹²⁵ Qwest/1, Albersheim/8, lines 16-18.

1 **COMMISSION BASED UPON THE FACTS PRESENTED BY EACH**
2 **COMPANY?**

3 A. No. At pages 23 and 24 my direct testimony,¹²⁶ I explained that the FCC rejected
4 Qwest’s claim that Qwest should be able to post terms on its website in lieu of an
5 ICA, in part, because of the lack of Commission review and avoidance of
6 Congressionally-mandated mechanisms of Section 252(e) of the Act. The FCC
7 came to this conclusion approximately two years *after* the CMP was in place.
8 The creation of the CMP did nothing to change the individualized nature of
9 CLECs’ business plans and did not change the Congressionally-mandated
10 negotiation/arbitration process, which according to the FCC, should be detailed
11 based on the individual needs of CLECs and available on a “permanent”¹²⁷ basis
12 for the life of the contract (subject to ICA amendment).

13 Nonetheless, Qwest attempts to intimate that its template is the predestined ICA
14 with a mantle of authority, so Eschelon should not be deviating from Qwest’s
15 template and, if it does, Qwest attempts to impose a burden on Eschelon for
16 proving Qwest’s template wrong.¹²⁸ The Act does not assign this burden to
17 Eschelon or establish any presumption in Qwest’s favor.

¹²⁶ Eschelon/1, Starkey/23-24.

¹²⁷ *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263, Notice of Apparent Liability for Forfeiture (rel. March 12, 2004) (“*Qwest Forfeiture Order*”), ¶ 32.

¹²⁸ See my discussion of Qwest’s “entitlement mentality” above responding to Qwest/1, Albersheim/49 (discussing Eschelon’s “rewrite” of Qwest’s negotiations template) and Linse Minnesota Direct Testimony, p. 19 (referring to Qwest’s negotiations template as “the ICA”).

1 Q. SINCE THE MERE PRESENCE IN THE PCAT OR QWEST'S
2 TEMPLATE DOES NOT INDICATE WHEN, WHETHER, AND TO
3 WHAT EXTENT TO INCLUDE LANGUAGE IN AN ICA, WHAT
4 FACTORS SHOULD THE COMMISSION CONSIDER?

5 A. I discussed these factors in my direct testimony.¹²⁹ Also, as indicated above,
6 Qwest in its direct testimony recognized the contractual certainty that I discussed
7 as one of these factors, and many of the examples given throughout Eschelon's
8 direct testimony and in its rebuttal testimony support the business and Customer-
9 affecting issues that I raised as additional factors.

10 Q. QWEST ARGUES AGAINST INCLUDING "PROCESSES" IN AN ICA.¹³⁰
11 DO YOU AGREE?

12 A. No. In Qwest's direct testimony, Qwest continues to argue against including
13 "processes" in an interconnection agreement; however, Qwest has already agreed
14 to do just that. Consistent with the FCC's definition of OSS,¹³¹ closed language
15 in ICA Section 12.1.1 states: "This Section describes Qwest's ... *manual*
16 *processes* that Qwest shall provide to CLEC to support Pre-ordering, Ordering,

¹²⁹ Eschelon/1, Starkey/9-10 and Eschelon/1, Starkey/13-19.

¹³⁰ Qwest/1, Albersheim/24, lines 27-28; Qwest/1, Albersheim/25, lines 1-5; *see also* Qwest/1, Albersheim/69, lines 14-16 (Issues 12-71 – 12-73, Jeopardies).

¹³¹ In the Third Report and Order (at ¶ 425), the FCC said: "In the *Local Competition First Report and Order*, the Commission defined OSS as consisting of pre-ordering, ordering, provisioning, maintenance and repair, and billing *functions* supported by an incumbent LEC's databases and information. OSS includes the *manual*, computerized, and automated systems, *together with associated business processes* and the up-to-date data maintained in those systems." (emphasis added)

1 Provisioning, Maintenance and Repair and Billing.”¹³² This is not the first time
2 Qwest has entered into an ICA containing processes either. The existing
3 approved ICAs in Arizona, Colorado, Utah, and Washington specifically identify
4 the attachment containing similar provisions as “Business Processes”¹³³ or
5 “Business Process Requirements.”¹³⁴ Attachments 5 and 6 to the existing Qwest-
6 Eschelon ICAs in Minnesota (which is an opt-in of the AT&T ICA) and Oregon
7 deal with Provisioning and Ordering and Maintenance terms and conditions. In
8 other words, state commissions, including the Oregon Commission, have
9 previously recognized the need to address processes in interconnection
10 agreements. Furthermore, I explained in my direct testimony¹³⁵ that the FCC and
11 the Washington Commission have both found the need for detailed and often
12 complicated ICAs, as the devil is in the details. Most recently, Qwest itself has
13 again recognized this need by agreeing to language in the proposed ICA that
14 Qwest had previously argued contained processes or too much detail.¹³⁶ By
15 addressing terms in the agreement, future potential disputes about those terms can
16 be avoided.

¹³² ICA Section 12.1.1 (emphasis added); *see also* SGAT Section 12.1.1 (“This Section describes the interfaces and *manual processes* that Qwest has developed and shall provide to CLEC.”)

¹³³ CO Qwest-Eschelon ICA, Attachment 8.

¹³⁴ AZ, UT, and WA Qwest-Eschelon ICA, Attachment 5.

¹³⁵ Eschelon/1, Starkey/23-24 and Eschelon/1, Starkey/31-32.

¹³⁶ *See, e.g.*, the agreed-upon language in: Sections 9.1.2.1.3.2.1; 9.1.2.1.3.2.2; 9.2.2.3.2 & 9.2.2.16 (Issue 9-32, Delayed Orders): Section 12.1.5.4.7; 12.1.5.5 & 12.1.5.4.8 (Issues 12-65, 12-66 & 12-66(a), Communications with Customers): Section 12.2.3.2 (Issue 12-68 Supplemental Orders): Section 12.2.7.2.3 (Issue 12-70, PSOns): Section 12.2.7.2.6.1 and subpart (Issue 12-74 Fatal Rejection Notices): Sections 12.3.1 and subpart & Section 12.4.3.6.3 (Issue 12-75 & 12-75(a) Tag at Demarcation Point): Sections 12.3.7.1.1, 12.3.7.1.2 (Issues 12-76 & 12-76(a) Loss and Completion Reports: Section 12.4.3.5 (Issue 12-81, Test Parameters): and Sections 12.4.4.1; 12.4.4.2 & 12.4.4.3 (Issue 12-86, Trouble Report Closure).

1 **Q. HAS QWEST’S ARGUMENTS SUPPORTING ITS NOTION THAT**
2 **“PROCESSES” SHOULD BE EXCLUDED FROM AN ICA AND DEALT**
3 **WITH IN CMP SHIFTED OVER TIME?**

4 A. Yes. Though Qwest has remained consistent in arguing against inclusion of
5 processes in an ICA, its argument has shifted from state to state.¹³⁷ Throughout
6 the joint Disputed Issues Matrix, Qwest argued against inclusion of language that
7 crossed an allegedly bright line that it labeled processes and “PCAT-like process
8 language” generally.¹³⁸ In its testimony in other states, Qwest seemed to
9 recognize that there may be a spectrum or “gray area” in which processes may, or
10 may not, be appropriate content for inclusion in an ICA. Specifically, Qwest said
11 that interconnection agreements should not contain “*such* product, process and
12 systems operational *specifics* that these items cannot be managed via the CMP as
13 intended.”¹³⁹ In other words, Qwest argued there should not be too much
14 detail.¹⁴⁰ Now, as discussed, Qwest modified its argument again in its direct
15 testimony in Oregon, and now claims that processes may be included in an ICA if
16 the Commission adopts a new compelling justification standard for “altering
17 existing processes or before locking processes into interconnection agreement.”¹⁴¹
18 Qwest’s argument should be rejected because it inappropriately shifts the burden

¹³⁷ Oregon is the fifth state in which the companies have filed testimony in these arbitrations. The companies have also filed testimony in Minnesota, Arizona, Washington and Colorado.

¹³⁸ Exhibit 3 to Eschelon’s Petition for Arbitration, Disputed Issues Matrix, Qwest position statement, Issue 1-1, p. 1.

¹³⁹ Direct Testimony of Renee Albersheim, Colorado PUC Docket 06B-497T, p. 7, lines 30-32 (12/15/06) (Albersheim Colorado Direct Testimony). (emphasis added)

¹⁴⁰ Qwest/1, Albersheim/69, lines 14-16 (Issues 12-71 – 12-73, Jeopardies) (“process detail”).

¹⁴¹ Qwest/1, Albersheim/8.

1 to Eschelon to meet a standard different from that established in the federal Act
2 for ICA arbitrations.

3 **Q. PLEASE ELABORATE ON THE DIFFERENCES IN QWEST'S**
4 **TESTIMONY IN THIS REGARD.**

5 A. In Ms. Albersheim's direct testimony in both the Colorado arbitration case
6 (Colorado PUC Docket 06B-497T, filed 12/15/06) and the instant proceeding,
7 Qwest asks the question: "Q. Do changes made via the CMP trump provisions
8 contained in individual CLEC interconnection agreements?"¹⁴² Ms. Albersheim
9 answers this same question differently in Oregon as it did in Colorado.¹⁴³

10 Compare Ms. Albersheim's Oregon response to her Colorado response below:

11 Albersheim Oregon Direct Testimony, p. 8, lines 14-19:
12 None of the parties who participated in the redesign of the CMP in
13 2002 believed that the CMP should be used as a mechanism to
14 subvert commitments established via interconnection agreements.
15 Nonetheless Qwest has successfully provided services via the
16 CMP. Based on that history, I believe this Commission should
17 require Eschelon to demonstrate a compelling justification for
18 altering existing processes or before locking processes into
19 interconnection agreement.

20 Albersheim Colorado Direct Testimony, pp. 7-8:
21 None of the parties who participated in the redesign of the CMP in
22 2002 believed that the CMP should be used as a mechanism to
23 subvert commitments established via interconnection agreements .
24 But it is also true that interconnection agreements should not be
25 used as a mechanism to subvert the CMP. Interconnection
26 agreements should not contain such product, process and systems
27 operational specifics that these items cannot be managed via the
28 CMP as intended. Such provisions in an interconnection agreement

¹⁴² Qwest/1, Albersheim/7. See also Albersheim Colorado Direct Testimony, p. 7.

¹⁴³ Ms. Albersheim quotes the CMP scope provision in her responses in both Colorado and Oregon.

1 make it impossible for the CMP participants to implement changes
2 without first obtaining an amendment (and agreement from the
3 parties) to that interconnection agreement. This goes to the core of
4 the issues covered in this testimony. Many of Eschelon's proposals
5 contain such specific operational detail that they effectively lock in
6 the processes, and if adopted by this Commission, will prevent
7 Qwest or any other CMP participant from requesting a change to
8 the process that can be implemented efficiently through the CMP.
9 This eliminates the purpose and effectiveness of the CMP
10 altogether.

11 Ms. Albersheim does not make the claims in Oregon, like she did in Colorado
12 (and other states), that the CMP was “intended” to manage product, process and
13 systems instead of an ICA and that Eschelon’s proposal “eliminates the purpose
14 and effectiveness of the CMP altogether.”¹⁴⁴ This comparison shows Qwest’s
15 reasoning for excluding terms from an ICA and relegating to CMP is a moving
16 target.

17 **Q. YOU STATE THAT QWEST HAS CLAIMED THAT EXCLUDING**
18 **TERMS FROM THE ICA IN FAVOR OF CMP WAS “INTENDED.”¹⁴⁵ DO**
19 **YOU AGREE THAT THE CMP DOCUMENT AND ITS DEVELOPMENT**
20 **REFLECT SUCH INTENT?**

¹⁴⁴ Since Qwest first made this argument, Eschelon has provided in evidence the Qwest-prepared CMP Redesign materials that show this was not the intent. *See, e.g.*, Eschelon/1, Starkey/26-27, citing Eschelon/54, Johnson/2-3 (Gap Analysis #150) (CMP redesign meeting minutes addressing CMP in relation to ICAs).

¹⁴⁵ Albersheim Colorado Direct Testimony, pp. 7-8 (“Interconnection agreements should not contain such product, process and systems operational specifics that these items cannot be managed via the CMP as intended.”); *see also* Qwest/1, Albersheim/87, line 5-6 (“undermine the CMP”); and Albersheim Colorado Direct Testimony, p. 8, line 8 (“This eliminates the purpose and effectiveness of the CMP altogether.”)

1 A. No. Qwest admits that the proceedings, meetings, and history of CMP culminated
2 in creation of the CMP Document (Exhibit G to the ICA). Qwest specifically
3 testified that, after the CMP Re-Design meetings, the “end result was the
4 Wholesale Change Management Process Document that governs CMP today.”¹⁴⁶
5 The language of the CMP Document is very clear that interconnection agreement
6 terms can conflict with activities in CMP and the PCAT and, when they do, the
7 ICA governs:

8 In cases of conflict between the changes implemented through this
9 CMP and any CLEC interconnection agreement (whether based on
10 the Qwest SGAT or not), the rates, terms and conditions of such
11 interconnection agreement shall prevail as between Qwest and the
12 CLEC party...

13 Ms. Albersheim quotes this very language from the Scope section of the CMP
14 Document in her direct testimony,¹⁴⁷ and states that changes made via the CMP
15 do not “trump”¹⁴⁸ provisions contained in individual CLEC interconnection
16 agreements. Ms. Albersheim has testified that the “converse should also be
17 true,”¹⁴⁹ and she states that “interconnection agreements should not be used as a
18 mechanism to subvert the CMP.”¹⁵⁰ Given the very clear directive in the CMP
19 Document that ICAs govern in cases of conflict with CMP, the converse – *i.e.*, in
20 cases of conflict between an ICA and the CMP, the CMP governs – cannot also be

¹⁴⁶ Qwest/1, Albersheim/5, lines 4-6.

¹⁴⁷ Qwest/1, Albersheim/8, lines 3-12.

¹⁴⁸ Qwest/1, Albersheim/7-8.

¹⁴⁹ Albersheim Washington Direct Testimony (Docket No. UT-063061, September 29, 2006), p. 9, lines 3-4. Ms. Albersheim’s use of “should” suggests that, while Qwest may believe the converse “should” be true, it recognizes that it is not, in fact, true.

¹⁵⁰ Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 7, lines 30-31 (emphasis added).

1 true. It would directly contradict the express provision found in the CMP
2 Document (which is both Exhibit G to the ICA and is also posted on Qwest's
3 website),¹⁵¹ the SGAT,¹⁵² and the ICA.¹⁵³ Simply put, there can be only one
4 "trump," and consistent with the very foundation of CMP (*i.e.*, the CMP
5 Document), that trump is the ICA.

6 Also, that the converse was not intended is shown by the CMP Redesign
7 documentation leading to adoption of the scope language, quoted above. That
8 documentation, which is attached to the testimony of Ms. Johnson,¹⁵⁴ indicates
9 that the parties to the CMP Redesign identified gaps in Qwest's CMP that needed
10 to be corrected to meet Qwest's obligation to provide CMP before obtaining 271
11 approval. Qwest created a "Gap Analysis" matrix listing these gaps and assigning
12 them gap analysis numbers.¹⁵⁵ Eschelon identified, as a gap, the need for CMP to
13 account for differences in individual CLEC ICAs. It appears as gap analysis
14 number 150 in the posted CMP Redesign matrix:

15 Qwest needs to establish and document a process to account for
16 individual interconnection agreements ("ICAs") when
17 implementing changes and using the Change Management Process
18 ("CMP"). Qwest needs to ensure that ICAs are not unilaterally
19 modified.

¹⁵¹ Eschelon/53 (CMP Document), §1.0 and §5.4.

¹⁵² SGAT, §2.3 & Exhibit G, §1.0 & §5.4.

¹⁵³ ICA §2.3 & Exhibit G, §1.0 & §5.4.

¹⁵⁴ Eschelon/54 (January 22-24, 2002 CMP Redesign Minutes) (Att. 9 to the Minutes, excerpt from Gap Analysis matrix).

¹⁵⁵ Eschelon/54 (January 22-24, 2002 CMP Redesign Minutes) (Att. 9 to the Minutes, excerpt from Gap Analysis matrix). Meeting Minutes also available on Qwest's website, *see*,

http://www.qwest.com/wholesale/downloads/2002/020225/1_CMP_Redesign_Final_Meeting_Minutes_Jan_22-24-02-22-02.doc

1 In Colorado, Qwest said:

2 'First of all, it has been addressed in these workshops by inserting
3 language into the SGAT that indicated that the contract language
4 controls over anything that could come out of the Change
5 Management Process -- a contract is a contract, and I believe that's
6 the same for any other ICA, as well.'¹⁵⁶

7 The CMP Redesign Gap Analysis quoted this Qwest commitment and identified
8 the gap to be addressed in CMP Redesign as follows:

9 Qwest needs documented processes and checks and balances in
10 place to ensure that Qwest can implement this concept and account
11 for differences in ICAs (including ICAs not based on SGATs).
12 The experience to date shows that Qwest's structure anticipates
13 making global changes and steps need to be developed to account
14 for individual differences before implementation.¹⁵⁷

15 On April 4, 2002, Gap Analysis Issue #150 and related Action Item #227 (to
16 "clarify SGAT language on CMP in sections 2.3.1 and 12.2.6, in addition, add
17 language that states that CMP will not supersede an ICA") were closed in CMP
18 Redesign because the above quoted language (from Section 1 of the CMP
19 Document) was "inserted into the Scope section" of the CMP Document.¹⁵⁸

20 These documents show that, contrary to Qwest's claim,¹⁵⁹ the CMP was created in

¹⁵⁶ Transcript of 271 CMP Workshop Number 6, Colorado Public Utilities Commission Docket Number 97I-198T (Aug. 22, 2001), p. 292, lines 8-13 (Andrew Crain of Qwest) (quoted in Eschelon/54).

¹⁵⁷ Eschelon/54, Johnson/1-3 (Att. 9 to CMP Redesign Minutes, pp. 99-100 (Gap Analysis issue #150) (the CO 271 CMP transcript is cited in a footnote in the CMP Redesign Gap Analysis).

¹⁵⁸ Eschelon/54, Johnson/4-8 (April 2-4, 2002 CMP Redesign Minutes), p. 15; Att. 6 (Action Items Log, #227, pp. 167-168 & Att. 12). Meeting Minutes available on Qwest's website, *see*, http://www.qwest.com/wholesale/downloads/2002/020715/CMP_RedesignMeetingMinutesApril2-4FINAL07-15-02.doc

¹⁵⁹ *i.e.*, Qwest's claim that the "entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs." This claim is repeated throughout Qwest's position statements in the joint Disputed Issues Matrix, *See*; *e.g.*, Exhibit 3 to Eschelon's Petition for Arbitration, Issue 1-1, p. 1.

1 a manner to ensure that unwanted global (*i.e.*, uniform) changes would not be
2 forced on CLECs, and that CLECs retained their Section 252 right to negotiate
3 and arbitrate individual contracts with individual differences. Qwest obtained 271
4 approvals after closing this “gap” by providing these assurances to CLECs, and
5 Qwest should not be allowed to backslide on this commitment now.

6 **Q. MS. ALBERSHEIM CLAIMS THAT UNIFORM PROCESSES ARE**
7 **NEEDED SO THAT QWEST CAN TRAIN ITS EMPLOYEES ON ONE**
8 **SET OF PROCESSES AND CONSISTENTLY PERFORM AT A HIGH**
9 **LEVEL OF QUALITY SERVICE FOR QWEST’S WHOLESALE**
10 **CUSTOMERS.¹⁶⁰ DOES MS. ALBERSHEIM’S CLAIM HOLD UP TO**
11 **SCRUTINY?**

12 A. No. ICAs are not uniform among CLECs today and have not been in the past.
13 Therefore, it is not uniform processes that have led to the service Qwest provides
14 its wholesale customers. Eschelon/47 shows some of the differences between the
15 Eschelon ICA and Covad ICA. Ms. Johnson also describes more differences
16 between the ICAs of various CLECs in her direct testimony.¹⁶¹ This shows that
17 processes are not uniform today and have not been in the past, yet Ms.
18 Albersheim’s testimony claims that consistent, high quality of service depends on
19 uniform processes and procedures. Given that Ms. Albersheim has referred to the
20 service quality Qwest has provided its wholesale customers in the past as

¹⁶⁰ Qwest/1, Albersheim/4, lines 5-7.

¹⁶¹ Eschelon/43, Johnson/16-18.

1 “outstanding,”¹⁶² Ms. Albersheim has therefore acknowledged that Qwest does
2 not depend on uniform processes and procedures in ICAs in order to provide high
3 quality of service to wholesale customers. If Ms. Albersheim’s claim was true
4 that terms need to be uniform in order for Qwest to provide the service quality it
5 has provided in the past, then CLEC ICAs would have had to been uniform in the
6 past. But that is not the case. ICAs have not been uniform in the past and are not
7 uniform today.

8 **Q. WITH RESPECT TO THE SCOPE OF CMP, DOES QWEST**
9 **RECOGNIZE THAT RATES AND THE APPLICATION OF RATES ARE**
10 **OUTSIDE THE SCOPE OF CMP?**

11 A. Yes, at least to some degree. Qwest admits that CMP does not “manage” rate
12 changes and states that “Rate management is product specific and not a CMP
13 activity.”¹⁶³ As indicated in my direct testimony,¹⁶⁴ rates and the application of
14 rates are outside the scope of Qwest’s CMP. However, the Commission must be
15 aware that certain terms and conditions that Qwest insists should be decided in
16 CMP (rather than in an ICA) have the affect of changing rates, applying rates in
17 situations when the recurring rate already covers the activity (*i.e.*, double
18 recovery), or at a minimum, requiring CLECs to pay rates that they may not have
19 been required to pay in the past. Eschelon opposes those types of CMP changes

¹⁶² Albersheim Washington Response Testimony (UT-063061, 12/4/06), p. 14, line 18.

¹⁶³ Qwest/1, Albersheim/7, line 20.

¹⁶⁴ Eschelon/1, Starkey/55, lines 7-8.

1 even though Qwest may call them something other than a rate change. One
2 example is the CRUNEC example I discussed in my direct testimony.¹⁶⁵

3 **Q. IN ADDITION TO DISCUSSING THE SCOPE OF CMP, QWEST**
4 **DESCRIBES THE VOTING, POSTPONEMENT, AND DISPUTE**
5 **RESOLUTION PROVISIONS OF THE CMP DOCUMENT. WILL YOU**
6 **COMMENT ON THESE PROVISIONS?**

7 A. Yes, I'll address voting first. Ms. Albersheim indicates that voting procedures are
8 described in Section 17 of the CMP Document.¹⁶⁶ She does not, however,
9 describe when voting in CMP occurs and, more importantly, when it does not. As
10 I explained in my direct testimony, there is some ranking for systems changes and
11 voting on issues of CMP procedure. However, for product and process changes
12 (which are different from "systems" changes), Qwest does not need any kind of
13 vote on adoption of, or consent to, its notification or change "request" before
14 implementing it, provided that Qwest follows the applicable time periods.¹⁶⁷ In
15 other words, Qwest is able to, and does, deny a CLEC product and process change
16 request without a vote. Further, Qwest can, and does, implement its own
17 sponsored product and process changes without the need for a vote. I mention
18 that here because without this background, the reader may get an inaccurate

¹⁶⁵ Eschelon/1, Starkey/50-60; and Eschelon/56.

¹⁶⁶ Qwest/1, Albersheim/23, lines 9-11; *see also* Qwest/1, Albersheim/14, lines 27-29 (referring to a vote on the procedure of changing the disposition and not the substance of the underlying request); Qwest/1, Albersheim/23, lines 5-7 (referring to a vote on the procedure of making an exception request and not the substance of the underlying request).

¹⁶⁷ Eschelon/1, Starkey/37, lines 12-14.

1 impression from Qwest’s testimony about the significance of CMP’s voting
2 procedures which states: “Key to this section is the provision that every carrier
3 (including Qwest) has one vote in the CMP.”¹⁶⁸ Rather than being “key” to the
4 issues in this case (which would almost without exception entail no vote),¹⁶⁹
5 voting is insignificant due to Qwest’s inherent ability in CMP to deny these types
6 of proposals without a vote.

7 **Q. DOES THE CMP DOCUMENT PROVIDE A CLEC WITH AN OPTION**
8 **TO REQUEST POSTPONEMENT OF A CHANGE WITH WHICH IT**
9 **DISAGREES?**

10 A. Yes, Ms. Albersheim discusses those provisions in her direct testimony.¹⁷⁰ The
11 option to seek a postponement,¹⁷¹ however, offers very little protection to CLECs.

12 **Q. WHY DO YOU SAY THAT?**

13 A. First, the decision of whether to grant a CLEC’s request for postponement of a
14 change is left solely up to Qwest.¹⁷² Second, even if Qwest grants a
15 postponement, that postponement may be for as few as thirty days.¹⁷³ This means

¹⁶⁸ Qwest/1, Albersheim/23, lines 10-11.

¹⁶⁹ Changes, if any, related to Eschelon’s proposals would largely be identified as product or process, not system, changes in CMP and, for any issue that Qwest would claim requires system changes, Eschelon is not requesting any change to the status quo that would require a change.

¹⁷⁰ Qwest/1, Albersheim/15-17.

¹⁷¹ A CLEC “may” make an optional postponement request (Section 5.5.2.1.1 of the Qwest CMP Document, Eschelon/53), but whether it does so does not affect the CLEC’s right to “seek remedies in a legal or regulatory arena at any time” (Section 15.0 of the Qwest CMP Document, Eschelon/53).

¹⁷² Eschelon/1, Starkey/45, lines 6-8. *See also* Sections 5.5.3.2 and 5.5.3.3 of the Qwest CMP Document (Eschelon/53).

¹⁷³ Qwest CMP Document (Eschelon/53), Section 5.5.3.2.

1 that if a CLEC needs to prevent a change from going into effect, it may have only
2 thirty days in which to bring a complaint in each state in which Qwest intends to
3 make the change and secure at least a preliminary ruling preventing Qwest from
4 going forward with the change. It is for this reason that the CMP postponement
5 criteria makes it very likely that important issues can come before the
6 Commission in “crisis mode” in which a CLEC is asking the Commission, on a
7 very short timetable, to prohibit Qwest from making a change that will adversely
8 impact the CLEC’s business. In these types of situations, given the leeway for a
9 modest postponement window, it is likely that the Commission will be called
10 upon to decide these types of issues on very limited record development.

11 **Q. QWEST REFERS NUMEROUS TIMES TO THE CMP’S DISPUTE**
12 **RESOLUTION PROCESS.¹⁷⁴ PLEASE DESCRIBE THE DISPUTE**
13 **RESOLUTION PROCESS IN THE CMP.**

14 A. The dispute resolution process of the CMP Document sets forth certain terms that
15 a CLEC may pursue if the CLEC “does not agree with Qwest’s reply or a CR
16 [change request] is rejected.”¹⁷⁵ Although the CMP Document provides that
17 Qwest may also use the dispute resolution procedures, such a circumstance will
18 “probably never”¹⁷⁶ occur because Qwest determines whether notifications are

¹⁷⁴ Qwest/1, Albersheim/10, 14, 19, 23, 28 and 63.

¹⁷⁵ Eschelon/55 (October 2-3, 2001 CMP Redesign Meeting Minutes, Att. 4, p. 34, Action Item #72). Meeting Minutes available on Qwest’s website, *see*,

http://www.qwest.com/wholesale/downloads/2001/011114/CMP_Redesign_Meeting_October_2_3_Final_Minutes.doc

¹⁷⁶ When asked in CMP why Qwest would ever invoke the dispute resolution process, Qwest could not “think of anything” but wanted to “leave it in anyway.” Eschelon/55 (October 2-3, 2001 CMP

1 implemented and change requests are completed or denied.¹⁷⁷ In other words,
2 since Qwest can unilaterally choose what it will, and will not, implement within
3 CMP, it seems unlikely that Qwest would ever need to dispute its own decision.
4 This type of circumstance has an important impact on Qwest's willingness to
5 "negotiate" any disputed changes, and also on the cost of bringing litigation that
6 are necessarily borne by the CLEC. There is also an escalation process, but it is
7 not a prerequisite to dispute resolution.¹⁷⁸

8 **Q. PLEASE EXPLAIN YOUR LAST POINT MORE FULLY.**

9 A. The dispute resolution process of the CMP Document (Section 15) states that: "In
10 the event that an impasse issue develops, **a party may** pursue the dispute
11 resolution processes set forth below" (emphasis added). Those dispute resolution
12 processes include the following:¹⁷⁹ (i) "Qwest or **any CLEC may** suggest that the
13 issue be resolved through an Alternative Dispute Resolution (ADR) process, such
14 as arbitration or mediation using the American Arbitration Association (AAA) or
15 other rules." (emphasis added); (2) "Without the necessity for a prior ADR
16 Process, Qwest or **any CLEC may submit the issue, following the commission's**

Redesign Meeting Minutes, Att. 4, p. 36, Action Item #86). The issue was closed with the notation to "keep in mind that Qwest will **probably never** use it." *Id.* (emphasis added).

¹⁷⁷ For system changes, although there is ranking, Qwest determines the amount of resources that it will devote, which ultimately limits the number or size of changes that can be made.

¹⁷⁸ Eschelon/55 (October 2-3, 2001 CMP Redesign Meeting Minutes, Att. 4, pp. 35-36, Action Item #83). Meeting Minutes available on Qwest's website, *see*,

http://www.qwest.com/wholesale/downloads/2001/011114/CMP_Redesign_Meeting_October_2_3_Final_Minutes.doc

¹⁷⁹ Section 15 (Dispute Resolution) also sets forth the process for identifying a dispute in CMP and the format and content of these notices and timeframes.

1 established procedures, with the appropriate regulatory agency requesting
2 resolution of the dispute. This provision is not intended to change the scope of
3 any regulatory agency's authority with regard to Qwest or the CLECs.”
4 Importantly, the dispute resolution process includes this express provision: “This
5 process does not limit any party’s right to seek remedies in a regulatory or legal
6 arena at any time.” Therefore, the term “may” in the earlier provision is clearly
7 permissive, and a CLEC may choose not to use the CMP Document’s dispute
8 resolution procedures and may seek other remedies, including, but not limited to,
9 raising issues through Section 252 arbitration. That is the forum Eschelon has
10 chosen for these various topics and its choice is fully consistent with CMP.

11 The dispute resolution process of the CMP Document expressly allows for an
12 individual CLEC to file for resolution of a CMP impasse issue at the state
13 commission, and does not limit any party from seeking commission relief at any
14 time.

15 **Q. QWEST HAS ACKNOWLEDGED THAT THE CMP DISPUTE**
16 **RESOLUTION PROCESS ALLOWS FOR CMP ISSUES TO BE**
17 **ADDRESSED IN AN ARBITRATION AT THE STATE COMMISSION,**
18 **BUT HAS CLAIMED THAT THE ARBITRATION SHOULD INVOLVE**
19 **ALL CLEC PARTICIPANTS FROM CMP.¹⁸⁰ IS THIS CORRECT?**

¹⁸⁰ Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 24.

1 A. No. This is another example of Ms. Albersheim changing her testimony in
2 Oregon from what she filed in prior arbitration proceedings. For instance, in her
3 direct testimony in the Colorado proceeding, Ms. Albersheim testified:

4 As noted above, the CMP Document provides for arbitration of
5 unresolved CMP disputes. All parties to the CMP should be
6 permitted to participate in such arbitrations. The results of such
7 arbitrations impact all parties to the CMP. This arbitration is
8 between Qwest and Eschelon. It is not appropriate to bring a CMP
9 dispute into an Interconnection Arbitration between two parties
10 when the end result has an impact on all members of the CMP.¹⁸¹

11 However, Ms. Albersheim omits this Q&A from her direct testimony in Oregon.
12 Nonetheless, as explained in my direct testimony,¹⁸² both the dispute resolution
13 process of CMP and the typical state commission complaint case allow for a
14 single CLEC to dispute an issue with Qwest, as well as CLECs to intervene in, or
15 jointly bring, disputes against Qwest. Further, an ICA is necessarily an agreement
16 between two parties, in this case Qwest and Eschelon, and established
17 Commission procedures govern arbitration of ICA issues. So, despite Qwest's
18 prior unsubstantiated assertion that it is "not appropriate"¹⁸³ to raise a CMP
19 dispute in an arbitration between two parties, the CMP Document expressly
20 recognizes the right of a single CLEC to pursue remedies in any appropriate
21 forum, including with the Commission, at any appropriate time. Qwest's prior
22 appeal for multiple-party arbitrations is just a re-hashing of Qwest's argument that

¹⁸¹ Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 24. This was Ms. Albersheim's response to the question: "Eschelon states in its issue matrix position statements that it wishes to bring certain request denials before this Commission in this arbitration, is that appropriate?"

¹⁸² Eschelon/1, Starkey/49.

¹⁸³ Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 24, lines 10-12.

1 CMP must be used so as to ensure homogenous terms and conditions among
2 carriers – an argument the FCC and state commissions have already refuted.
3 Further, even the existing CMP documentation does not support Qwest’s
4 assertions as to the proper method of dealing with these types of disputes. The
5 highlighted (bolded) language in the Q&A above shows that the CMP dispute
6 resolution process refers to Qwest and one CLEC (in the singular) pursuing
7 remedies. There is no basis for Qwest’s prior statement that disagreements
8 should¹⁸⁴ be addressed at the state commission only in proceedings involving all
9 CLEC CMP participants.¹⁸⁵

10 **Q. MS. STEWART ACCUSES ESCHELON OF IGNORING THE CMP AND**
11 **SUGGESTS THAT QWEST WOULD PREFER TO PROVIDE “THE**
12 **OPPORTUNITY FOR INPUT FROM ALL INTERESTED CARRIERS**
13 **WHO WOULD BE AFFECTED BY THE CHANGES.”¹⁸⁶ IS THERE ANY**
14 **EVIDENCE TO SUGGEST THAT QWEST’S STATED PREFERENCE**
15 **FOR INPUT FROM ALL INTERESTED CARRIERS IS LESS THAN**
16 **GENUINE?**

¹⁸⁴ Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 24, line 8. Ms. Albersheim’s use of “should” suggests that, while Qwest may claim that a multiple CLEC arbitration “should” be permitted, it recognizes that it is not, in fact, required.

¹⁸⁵ In addition, all CLEC CMP participants may not be certified in a particular state, may not be affected by an issue, or may not have the resources to pursue regulatory relief. In any event, in this arbitration, most of these issues raised by Eschelon (some of which have recently closed with Eschelon’s language), there is or was no CMP dispute as Eschelon has simply been seeking to preserve work already completed in CMP. Eschelon/1, Starkey/35-36.

¹⁸⁶ Qwest/14, Stewart/14, lines 6-7.

1 A. Yes.¹⁸⁷ Qwest soundly rejected two opportunities for input from all interested
2 carriers in this very negotiation and arbitration as well as in CMP. First, Eschelon
3 asked Qwest to agree to coordination and participation of other CLECs in these
4 ICA negotiations, but Qwest said no.¹⁸⁸ Second, Eschelon asked Qwest to use
5 CMP to allow CLECs to have input into development of its new template and for
6 Qwest to provide status information to CLECs about the template, but Qwest also
7 flatly rejected the offer, indicating that “this is not a CMP issue.”¹⁸⁹ Both of these
8 offers show that Eschelon welcomed multiple CLEC participation. In contrast,
9 despite Qwest’s many claims of concern about other CLECs,¹⁹⁰ Qwest would not
10 agree to participation of other CLECs regardless of the context – negotiation,
11 arbitration, or CMP.

¹⁸⁷ As indicated by the preceding discussion of the CMP Document’s scope and dispute resolution provisions, Qwest is the party ignoring the CMP Document’s express requirements.

¹⁸⁸ Eschelon/52 (Qwest-Eschelon letter exchange dated Sept. 23, 2003; Oct. 9, 2003; and Oct. 17, 2003).

¹⁸⁹ Eschelon/51 (Qwest Feb. 4, 2003 email).

¹⁹⁰ The Commission should be extremely skeptical of Qwest’s implication that it is acting out of a desire to somehow “protect” other CLECs. As the FCC has observed:

Incumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them and, thus have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete. We are also cognizant of the fact that incumbent LECs have the incentive and the ability to engage in many kinds of discrimination. For example, incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants at a degraded level of quality. FCC *First Report and Order*, ¶ 307.

1 Q. QWEST TESTIFIES THAT NO CHANGE REQUESTS DEVELOPED
2 THROUGH CMP CONFLICTED WITH INTERCONNECTION
3 AGREEMENTS.¹⁹¹ DO YOU AGREE WITH QWEST'S SUGGESTION?

4 A. No. Significantly, Qwest did not testify that no Qwest *notification* has conflicted
5 with interconnection agreements and that is an important distinction. As indicated
6 in my direct testimony, a vast majority of Qwest-initiated product and process
7 CMP changes are accomplished through Level 0-3 email notifications,¹⁹² and it is
8 telling that Qwest carefully limited its testimony to change requests. All requests
9 by CLECs are change requests, as only Qwest can implement changes by email
10 notifications in CMP. Naturally, a CLEC is unlikely to submit a change request
11 that conflicts with its own ICA. Completed CLEC change requests are unlikely to
12 result in conflicts with ICAs.

13 To the extent Qwest is suggesting that its own CMP activity, including its many
14 notifications, has not resulted in conflicts with interconnection agreements,
15 Eschelon disagrees. In the CRUNEC example in my direct testimony, Qwest
16 created a conflict with CLEC ICAs by issuing a CMP notification containing a
17 one-word change that was very business-affecting.¹⁹³ Issue 12-67 (expedites),
18 which is discussed by Mr. Denney, is another example. Given that Eschelon has a

¹⁹¹ Qwest/1, Albersheim/20, lines 26-29.

¹⁹² Eschelon/1, Starkey/45-46.

¹⁹³ Eschelon/1, Starkey/50-60 and Eschelon/56.

1 pending complaint against Qwest related to expedites,¹⁹⁴ it is pretty obvious that
2 Qwest is not taking into account the perspective of CLECs¹⁹⁵ when making this
3 unsupported suggestion.

4 **Q. MS. ALBERSHEIM STATES THAT QWEST CANNOT ACT**
5 **ARBITRARILY “AT ALL”¹⁹⁶ IN THE CMP. WOULD YOU LIKE TO**
6 **RESPOND?**

7 A. The question is not whether Qwest can act “arbitrarily.” The more pertinent
8 question is whether Qwest can act in support of its own self interest at the expense
9 of the CLECs. The answer to that question is “yes.”

10 **Q. BUT MS. ALBERSHEIM CLAIMS THAT CLECS CAN PREVENT**
11 **QWEST FROM “UNILATERALLY MAKING CHANGES VIA THE**
12 **CMP”¹⁹⁷ AND PROVIDES DATA PURPORTING TO SHOW THAT**

¹⁹⁴ Complaint, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (April 14, 2006) [“Arizona Complaint Docket”]. The Staff’s conclusions in the Arizona Complaint Docket are provided in Eschelon/33, and the order establishing interim relief in the Arizona Complaint Docket is provided in Eschelon/109.

¹⁹⁵ Eschelon/94, Johnson/3, row 10 (Integra’s CMP comments).

¹⁹⁶ Qwest/1, Albersheim/22, lines 18-20.

¹⁹⁷ Qwest/1, Albersheim/20, lines 16-18. In Arizona, as an example that CLECs can “prevent” Qwest proposed changes, Ms. Albersheim pointed to a Level 1 CMP notice Qwest issued on September 27, 2006, regarding maintenance and repair documentation, and stated that Qwest retracted the notice and withdrew the documentation changes based on CLECs’ concerns. (See Qwest-Eschelon ICA Arizona Arbitration, Albersheim AZ Rebuttal (ACC Docket No. T-03406A-06-0572/T-01051B-06-0572, 2/9/07), pp. 8-9.) Eschelon/85 consists of meeting minutes, CMP notices, comments and emails related to that issue. Eschelon/85 shows, for example, that there are internal inconsistencies in the PCATs, and PCAT changes may differ markedly from what Qwest describes as Qwest’s existing process. While Qwest has since agreed to submit a Level 4 change request regarding that issue, this situation is not evidence that CLECs may “prevent” Qwest from making changes. For Qwest-initiated changes (including Level 4 – change requests), after Qwest abides by the time frames in the CMP document, it may implement changes over CLEC objection (as it did in the CRUNEC example). See Eschelon/1, Starkey/50-60.

1 **QWEST WITHDREW 99 CHANGE REQUESTS EITHER BECAUSE**
2 **CLECS VOCALLY OPPOSED THE CHANGES OR BECAUSE, IN THE**
3 **CASE OF SYSTEMS REQUESTS, THEY WERE GIVEN SUCH A LOW**
4 **PRIORITY.¹⁹⁸ IS MS. ALBERSHEIM’S TESTIMONY ON THIS POINT**
5 **MISLEADING?**

6 A. Yes. Ms. Albersheim claims that Qwest has withdrawn 99 change requests for
7 one of two reasons: (1) CLECs have vocally opposed the changes, or (2) in the
8 case of a systems change, the request was given a low priority. Given that Ms.
9 Albersheim admits that the systems CRs were not withdrawn due to CLEC
10 objection, what she is claiming is that all of the product and process CRs that
11 were withdrawn by Qwest were withdrawn because CLECs vocally opposed
12 them. Ms. Johnson provides Eschelon/50, which shows that between 2001 and
13 September 2006, Qwest withdrew 14 of the total 114 Qwest product and process
14 CRs. Importantly, this exhibit shows that, contrary to Ms. Albersheim’s claim,
15 none of these CRs were withdrawn solely because of CLEC objection.¹⁹⁹ In fact,
16 there was no CLEC objection at all to 12 of these.²⁰⁰ And though Ms.

¹⁹⁸ Qwest/1, Albersheim/20, lines 16-24.

¹⁹⁹ Eschelon/50, columns entitled “Did Qwest Withdraw the CR Due to CLEC Objection?” and “CR Information on Reason for Withdraw.” These columns show that none of the 14 product and process CRs in question were withdrawn because of CLEC opposition. For CR entries 7/22/04 and 3/6/06, it was jointly decided among Qwest and CLECs to withdraw them for good reason – not solely because CLECs objected. Qwest withdrew the 7/22/04 CR because Covad prevailed on the issue in an arbitration case and as explained in Eschelon/50, Qwest withdrew the 3/6/06 CR because CLEC volume was very small and because it was pointed out that the change conflicted with Qwest’s SGAT. Though CLECs objected to these two CRs, Qwest agreed to withdraw them because CLECs provided a valid reason for withdrawal, so Qwest should not have introduced the CRs in the first place. Qwest’s withdrawal of these change requests is not evidence of voluntary responsiveness to CLEC business concerns, as Ms. Albersheim insinuates.

²⁰⁰ Eschelon/50.

1 Albersheim’s testimony may leave the impression that 25% of Qwest’s changes
2 (99 CRs out of a total 397 CRs) were withdrawn because of CLEC opposition in
3 CMP, even under Qwest’s misguided logic, this would only apply to the 14
4 product and process CRs that were withdrawn since 2001 – or 3.5% of total CRs.
5 Ms. Albersheim’s claim that Qwest has withdrawn CRs – all of the product and
6 process CRs that have been withdrawn – because of CLEC opposition is not
7 supported by the facts.

8 In any event, there is nothing in the CMP Document that requires Qwest to
9 withdraw a notice or change request due to CLEC opposition (verbal or written),
10 so despite Qwest’s claims, CLEC opposition cannot prevent Qwest from
11 unilaterally pursuing its own interests in CMP.²⁰¹ Further, the examples I
12 provided in my Direct Testimony show that when the issue is in Qwest’s interest,
13 it will implement changes despite vociferous CLEC objections – and that is the
14 problem. Ms. Albersheim’s statistics do nothing to refute the fact that Qwest has
15 the ability within CMP to implement important changes despite CLEC objections,
16 and that is why the certainty of an arbitrated ICA is so important. Ms.
17 Albersheim points to a “number of procedures detailed in the CMP Document that
18 prevent Qwest from acting arbitrarily in the CMP.”²⁰² However, those procedures

²⁰¹ For example, although Section 5.3.1 of the CMP Document (Eschelon/53) provides that “the CR will be closed when CLECs determine that no further action is required for that CR,” Section 5.3 applies only to CLEC-initiated change requests. In addition, under Section 5.3, Qwest first has an opportunity to deny the CLEC-initiated change request, so the language of 5.3.1 only applies to those CLEC-initiated change requests that Qwest does not deny and chooses to implement. Section 5.4 applies to Qwest-initiated changes, and it does not contain language similar to the quoted language from Section 5.3.1.

²⁰² Qwest/1, Albersheim/22, lines 18-20.

1 only go so far. Because of the extent of Qwest's control over CMP and Qwest's
2 potential ability to adversely affect a CLECs' business,²⁰³ Qwest can choose to
3 follow those procedures or not, despite its earlier commitment to adhere to
4 them.²⁰⁴ The jeopardies situation described in Ms. Johnson's testimony²⁰⁵ is an
5 excellent example of this. Despite all of Eschelon's efforts in CMP, and Qwest's
6 completion of the change request, Qwest has elected to disregard the terms
7 developed in CMP.²⁰⁶ Ms. Albersheim also points to the dispute resolution
8 provisions of the CMP document,²⁰⁷ but they apply only to disputes and impasse
9 issues. In the jeopardies example, there is no impasse issue in CMP because on
10 paper Qwest completed the change request and agreed with Eschelon.

11 The bottom line is this: when a company expends the substantial resources
12 necessary to bring issues properly before the Commission under Section 252,
13 nothing in the CMP Document allows CMP to prevent resolution of the
14 substantive issues in arbitration. Eschelon has identified specific contract
15 language about important business and Customer-affecting issues that comports

²⁰³ Almost immediately after the effective date of Qwest's unilateral email notification implementing a one-word PCAT change in the CRUNEC example discussed in my direct testimony (Eschelon/1, Starkey/50-53), Eschelon began experiencing a dramatic spike in the number of held orders relative to DS1 loops ordered from Qwest. Qwest's position as the monopoly provider of facilities ordered under the ICA places it in a position of control.

²⁰⁴ Eschelon/120 (excerpts from CMP Redesign meeting minutes regarding Qwest's commitment that implementation guidelines would be within the scope of CMP) (discussed below regarding Issue 12-87, Controlled Production); Eschelon/84 (excerpts from CMP Redesign meeting minutes regarding Qwest's commitment to provide meeting minutes and review of those minutes for ad hoc calls and Qwest's email indicating Qwest took the position it did not have to provide them).

²⁰⁵ Eschelon/43, Johnson/70-71. *see also* Eschelon/110-113 (Issues 12-71 – 12-73).

²⁰⁶ *See id.*

²⁰⁷ Qwest/1, Albersheim/23, lines 1-3.

1 with existing law and underlying public policy. Despite Qwest’s arguments to the
2 contrary, it is the Commission in this forum, and not Qwest via CMP, which
3 should make the final decision as to which language should govern the
4 relationship between the companies through the term of the ICA.

5 **IV. SUBJECT MATTER NO. 1. INTERVAL CHANGES AND PLACEMENT**

6 Issue No. 1-1 and subparts: ICA Sections 1.7.2; 7.4.7, 9.23.9.4.3, Exhibit C
7 (Group 2.0 & Group 9.0), Exhibit I (Section 3), Exhibit N, Exhibit O

8 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 1-1 AND SUBPARTS**
9 **RELATING TO INTERVALS.**

10 A. Issue 1-1 and subparts deals with whether service intervals should be in the ICA
11 and changed (lengthened) via a streamlined ICA amendment, as proposed by
12 Eschelon, or whether intervals should be excluded from the ICA and instead
13 governed and changed by non-contractual sources, as proposed by Qwest.²⁰⁸

14 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON’S POSITION**
15 **REGARDING INTERVALS “SUBVERTS THE CMP PROCESS.”²⁰⁹ DO**
16 **YOU AGREE?**

17 A. No. It bears repeating²¹⁰ that this same issue was examined in Minnesota and the
18 Minnesota Arbitrators’ Report²¹¹ (which was affirmed by a 4-0 vote of the

²⁰⁸ The contract language is found, by Issue number, in the Disputed Issues Matrix (Exhibit 3 to Eschelon’s Petition for Arbitration).

²⁰⁹ Qwest/1, Albersheim/32. Ms. Albersheim also claimed in her Colorado direct testimony that “CMP would be undermined” by adopting Eschelon’s proposal on Issues 1-1 and subparts (*see* Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 28, line 7).

1 Minnesota commission)²¹² ruled in favor of Eschelon on Issues 1-1 and subparts,
2 finding that:

3 22. Eschelon has provided convincing evidence that the CMP
4 process does not always provide CLECs with adequate
5 protection from Qwest making important unilateral changes in
6 the terms and conditions of interconnection. Service intervals
7 are critically important to CLECs, and Qwest has only
8 shortened them in the last four years. Qwest has identified no
9 compelling reason why inclusion of the current intervals in the
10 ICA would harm the effectiveness of the CMP process or
11 impair Qwest's ability to respond to industry changes. The
12 Administrative Law Judges recommend that Eschelon's first
13 proposal for Issue 1-1 be adopted and that its language for
14 Issues 1-1(a)-(e) also be adopted.²¹³

15 The Minnesota ALJs, as affirmed by the Minnesota Commission, agreed with
16 Eschelon that Qwest can make unilateral changes, and that adopting Eschelon's
17 proposal (the same proposal Eschelon has offered in this proceeding for Issues 1-1
18 and subparts) would not harm the effectiveness of CMP or Qwest's ability to
19 respond to industry changes.

20 **Q. WHAT REASON DOES QWEST PROVIDE TO SUPPORT ITS**
21 **CONTENTION THAT ITS PROPOSAL ON ISSUE 1-1 AND SUBPARTS**
22 **IS SUPERIOR TO ESCHELON'S?**

23 A. Qwest rests its proposal for Issues 1-1 and subparts largely on its view that
24 requiring intervals to be included in the ICA and changed via ICA amendment

²¹⁰ Eschelon/1, Starkey/112-114.

²¹¹ Eschelon/29.

²¹² Eschelon/30.

²¹³ Eschelon/29 (Minnesota Arbitrators' Report) as affirmed by the Minnesota PUC (Eschelon/30).

1 gives Eschelon control over service interval management, and takes it away from
2 CMP.²¹⁴ Qwest expresses this concern about both Eschelon’s primary proposal
3 (*i.e.*, ICA amendments required for lengthening service intervals only) as well as
4 Eschelon’s alternative proposal (*i.e.*, ICA amendments required for all service
5 interval changes).²¹⁵

6 **Q. IS QWEST’S ASSUMPTION THAT INTERVALS ARE MEANT TO BE**
7 **WITHIN CMP’S CONTROL CORRECT?**

8 A. No. The CMP Document states that it governs changes to intervals “in Qwest’s
9 Service Interval Guide (“SIG”).”²¹⁶ Significantly, it does not refer to intervals in
10 a company’s interconnection agreement because the ICA controls when those
11 intervals change.²¹⁷ In a puzzling piece of testimony, Ms. Albersheim testifies
12 that “Qwest’s Service Interval Guide” is “attached to the proposed contract as
13 Exhibit C.”²¹⁸ Exhibit C (Service Interval Tables) is *not* the SIG. Qwest and
14 Eschelon are at impasse on Issue 1-1(e) because Eschelon believes the interval
15 should appear in Exhibit C and be part of the ICA and, as stated in its position
16 statement in the joint Disputed Issues Matrix for Issue 1-1(e), Qwest’s position is:
17 “For the reasons stated above, intervals belong in the Service Interval Guide
18 (SIG).” With this position statement, Qwest recognizes that Exhibit C and the

²¹⁴ Qwest/1, Albersheim/26, lines 12-15; Qwest/1, Albersheim/32, lines 28-29; with respect to Qwest’s CMP argument generally, see above discussion.

²¹⁵ Qwest/1, Albersheim/29.

²¹⁶ Eschelon/53 (CMP Document) at Section 5.4.5 (increases to SIG intervals; Level 4 change); *see also* Section 5.4.3 (decreases to SIG intervals; Level 2 change).

²¹⁷ Eschelon/53 (CMP Document) at Sections 1.0 & 5.4; *see also* ICA/CMP discussion above.

²¹⁸ Qwest/1, Albersheim/26, lines 5-6.

1 SIG are distinct.²¹⁹ Exhibit C contains contractual terms. The SIG, which
2 contains intervals for additional products and services that Eschelon did not
3 request be included in its ICA, is a web posting of intervals for Qwest's offerings.

4 **Q. WOULD ESCHELON'S PROPOSAL INAPPROPRIATELY TAKE**
5 **CONTROL OVER SERVICE INTERVAL MANAGEMENT AS QWEST**
6 **CLAIMS?**

7 A. No. First of all, the intervals proposed by Eschelon are the same intervals that are
8 in place today, and Eschelon has proposed no changes to those intervals.
9 Eschelon is not attempting to take control over the intervals, which are already
10 established. Rather, Eschelon is attempting to provide certainty with respect to
11 these intervals over the life of the ICA based on existing intervals, while at the
12 same time allowing those intervals to be amended via a simple, streamlined ICA
13 amendment.

14 **Q. WHY DO YOU CLAIM THAT THE AMENDMENT WOULD BE**
15 **STREAMLINED WHEN QWEST CLAIMS IT IS CUMBERSOME²²⁰ AND**
16 **WILL REQUIRE MICRO-MANAGEMENT²²¹ BY THE COMMISSION?**

17 A. Eschelon proposes to use, for lengthening intervals, the identical, agreed-to,
18 streamlined vehicle that is in place today for new products under Section 1.7.1 of

²¹⁹ Ms. Stewart contradicts Ms. Albersheim on this point, where she testifies: "the proper placement of service intervals should be in the Qwest Service Interval Guide and not in Exhibit C." (Qwest/14, Stewart/85, lines 21-23).

²²⁰ Qwest Response to Eschelon's Petition for Arbitration, p. 41, line 22. *See also* Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 28, lines 16 and 18.

²²¹ Qwest/1, Albersheim/29, lines 1-3; Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 28, line 24.

1 the SGAT and other approved interconnection agreements.²²² This makes use of
2 simple advice adoption letters.²²³ The advice adoption letters under Section 1.7.2
3 of the proposed ICA are not forms merely of Eschelon's creation but rather reflect
4 minor edits of the existing advice adoption letters used for new products under
5 Section 1.7.1 of the SGAT.²²⁴ The body of Exhibit N (like the first paragraph of
6 Exhibit L) is four lines long. Exhibit O (like Exhibit M) is a one page letter.
7 These are not complex or entirely new forms or procedures.

²²² Nonetheless, Qwest has recently removed these exhibits from its negotiations template. Qwest implemented this change with a non-CMP notice effective the next business day. *See* Eschelon/128. These exhibits are closed in the Eschelon-Qwest proposed ICA. Eschelon requested their inclusion because Eschelon values the streamlined process and intends to use it. As this language is closed, it will be in Eschelon's ICA and the ICA of any CLEC which opts into the ICA. CLECs that may be unaware of these terms in Eschelon's ICA and use the negotiations template will not have the streamlined process available to them. Through Qwest's notice, therefore, it is creating the type of "one-off" process that it has claimed it opposes. *See, e.g.,* Albersheim Colorado Rebuttal, p. 6, lines 3-7 ("Eschelon seeks to expand Qwest's obligations and create **one-off, unique processes** for CMP-related ICA issues in dispute: Issue 1-1: service intervals, Issues 12-71 through 12-73: jeopardy notices, and Issue 12-67: expedited orders.") (emphasis added).

²²³ Eschelon and Qwest agree that Advice Adoption Letters identified as Exhibits L and M (also SGAT exhibits) should be used for new products. Both Exhibits are attached to the proposed ICA, with closed language that is the same as the language of these same exhibits to the SGAT. Eschelon proposes that Advice Adoption Letters identified as Exhibits N and O should be used for intervals, which are nearly identical to Exhibits L and M in format and substance (though they apply to intervals instead of products) and would be used to amend the ICA in the same way. Because an interval is simply a time period as opposed to a new product (which would have a description and other requirements), language from Exhibits L and M referring to other requirements on Qwest's web site has been omitted from Exhibits N and O. (Because the interval, unlike all of the terms associated with a new product, is repeated in the Advice Adoption Letter, the interval-related exhibits do not need the additional language about terms found in the website but not the letter. The interval is in the letter.)

²²⁴ Compare closed Exhibits L (Advice Adoption Letter) and M (Interim Advice Adoption Letter) that apply to new products to Eschelon-proposed Exhibits N (Interval Advice Adoption Letter) and O (Interval Interim Advice Adoption Letter) that apply to new intervals. Differences between the agreed-to Advice Adoption Letters and the Eschelon-proposed Advice Adoption Letters is that Eschelon's proposed Advice Adoption Letters use the term "new interval for product/service" instead of the term "new product" (with a few additional textual changes to refer to intervals instead of "rates, terms and conditions" for a new product). The agreed-to Advice Adoption Letters also require the rates, terms and conditions related to the new product be attached to the Letter, whereas the Eschelon-proposed Letter would refer to the new interval in the body of the Letter.

1 If a CLEC is prepared to accept Qwest's terms, the CLEC signs the letter (in the
2 form attached to the ICA) and sends the letter to the Commission for approval.
3 There are also interim terms for when the parties do not agree to all the terms (as
4 in Section 1.7.1.2 for new products). This "letter" that is also available for new
5 products under the SGAT, is not cumbersome and does not require micro-
6 management. It is designed to be easier than administering other ICA agreements
7 or amendments that come before the Commission for approval. The presence of
8 the virtually identical, agreed-to amendment for new products in the SGAT also
9 demonstrates that this is not unique to Eschelon's proposal, as Qwest claims.
10 Qwest routinely manages other ICA amendments and may manage these in the
11 same way.

12 **Q. WHAT IF QWEST WANTS TO LENGTHEN ONE OF THESE**
13 **INTERVALS IN THE SIG, WOULD IT BE PREVENTED FROM DOING**
14 **SO BECAUSE INTERVALS ARE IN THE ESCHELON/QWEST ICA?**

15 A. No. Qwest has the opportunity to propose a lengthened SIG interval via the CMP
16 process, and if it chooses, also seek a change to that interval in Eschelon's ICA
17 via an advice letter amendment to the ICA. Qwest's view of the interplay
18 between CMP/SIG and ICAs is incorrect. For the reasons I discussed above with
19 respect to the scope of the CMP, Qwest has it backwards. Qwest claims that
20 terms and conditions established in CMP/SIG should govern the ICA, when the
21 CMP Document recognizes individual ICA differences and states that they
22 govern.

1 **Q. IF THE COMMISSION ADOPTS ESCHELON’S PROPOSAL AND**
2 **INCLUDES EXISTING SERVICE INTERVALS IN THE ICA, DOES THIS**
3 **MEAN THAT QWEST’S SERVICE INTERVALS ARE SET IN STONE,**
4 **AS QWEST CLAIMS?²²⁵**

5 A. No. Eschelon’s primary proposal would allow intervals to be shortened without
6 ICA amendment, which means that based on past experience, a vast majority (if
7 not all) interval changes could be modified without ICA amendment. The only
8 way an amendment would be necessary is if Qwest departs from past practice and
9 pursues lengthened intervals – something that Qwest testified it has not done
10 before²²⁶ and a strategy that could harm Eschelon and its customers who rely on
11 those intervals. The fact that Qwest will not agree to Eschelon’s language
12 suggests to me that it may attempt to pursue such a strategy if the Commission
13 adopts Qwest’s proposal.

14 Regarding Ms. Albersheim’s characterizations of Eschelon’s proposal as
15 “locking” terms in place²²⁷ and setting them in “stone” in the contract,²²⁸ the FCC
16 had a related characterization of its own – permanence. When rejecting Qwest’s
17 contention that information posted on its website need not be contained in a
18 publicly-filed interconnection agreement, the FCC stated that “[a] ‘web-posting
19 exception’ would render [Section 252(a)(1)] meaningless, since CLECs could not

²²⁵ Qwest/1, Albersheim/32, lines 21-22 (“...all of these changes are Eschelon’s attempt to set current intervals in stone in its contract...”)

²²⁶ Qwest/1, Albersheim/33, line 23 (“so far, Qwest has only decreased intervals.”)

²²⁷ e.g., Qwest/1, Albersheim/25, line 3.

²²⁸ Qwest/1, Albersheim/32, lines 21-22.

1 rely on a website to contain all agreements *on a permanent basis*.”²²⁹ While the
2 interconnection agreement can be amended and therefore is not “permanent” in
3 the sense that it is frozen in time, set in stone, locked in place, *etc.*, the FCC
4 recognized that permanency, or certainty, is needed for the term of the contract
5 when not amended. Eschelon should be able to rely on the terms and conditions
6 for intervals, to make them useful and meaningful, during the term of the
7 agreement.

8 **Q. QWEST POINTS TO REQUESTS MADE BY A NUMBER OF CLECS TO**
9 **CHANGE EXISTING SERVICE INTERVALS.²³⁰ DOES THIS**
10 **OBSERVATION SUPPORT QWEST’S PROPOSAL ON ISSUE 1-1?**

11 A. No, Qwest’s observation supports Eschelon’s proposal. Ms. Albersheim points to
12 interval change requests (“CRs”) submitted in CMP by AT&T, Eschelon,
13 Comcast, Covad and Qwest, presumably to support the point made in her previous
14 Q&A that Eschelon’s language would somehow prevent other CLECs from
15 requesting changes to Qwest’s intervals. All of the CLEC-requested changes,
16 however, were to shorten intervals, which are allowed under Eschelon’s proposal
17 without an ICA amendment.²³¹ And, again, Qwest could pursue a lengthened
18 interval in CMP independent of the interval in Eschelon’s contract or could
19 negotiate with Eschelon to include a similar lengthened interval in the ICA.

²²⁹ *Qwest Forfeiture Order* at ¶32 (emphasis added).

²³⁰ Qwest/1, Albersheim/33, lines 13-21.

²³¹ Eschelon’s primary proposal would require an interconnection agreement amendment using a streamlined process for lengthening intervals but not shortened intervals. Under Eschelon’s first proposal, no amendment is required for decreased intervals.

1 Therefore, contrary to Qwest’s assertion, Eschelon’s language would not prevent
2 CLECs from requesting interval changes via CMP or somehow set existing
3 intervals “in stone.” Only Qwest may unilaterally prevent CLECs from obtaining
4 interval changes via CMP. For example, of those CLEC change requests referred
5 to by Ms. Albersheim, Qwest denied seven of them.²³²

6 **Q. QWEST DISCUSSES THE NEED FOR “FLEXIBILITY”²³³ IN**
7 **LENGTHENING SERVICE INTERVALS WITHOUT ICA AMENDMENT.**
8 **WOULD YOU LIKE TO RESPOND?**

9 A. Yes. Ms. Albersheim testifies that a decreased (or shortened) interval for one
10 product could result in an increased (or lengthened) interval for another product,
11 as Qwest diverts resources from the former product to the latter.²³⁴ According to
12 Qwest, it “need[s] the flexibility to be able to respond to such industry changes in
13 this way via the CMP.”²³⁵ However, the data does not support Qwest’s assertion.
14 There have been many shortened intervals implemented through CMP, and
15 according to Qwest’s own testimony, there have been no lengthened intervals.²³⁶

²³² Following are the URLs for the seven (7) CLEC change requests asking for reductions to provisioning and repair intervals that Qwest denied:

http://www.qwest.com/wholesale/cmp/archive/CR_PC110303-1.htm;
http://www.qwest.com/wholesale/cmp/archive/CR_5608142.htm;
http://www.qwest.com/wholesale/cmp/archive/CR_PC010705-1.htm;
http://www.qwest.com/wholesale/cmp/archive/CR_PC072604-1.htm;
http://www.qwest.com/wholesale/cmp/archive/CR_PC012703-1.htm;
http://www.qwest.com/wholesale/cmp/archive/CR_5371475.htm;
http://www.qwest.com/wholesale/cmp/archive/CR_PC031804-1.htm

²³³ Qwest/1, Albersheim/34, lines 3-4.

²³⁴ Qwest/1, Albersheim/33-34.

²³⁵ Qwest/1, Albersheim/34, lines 3-4.

²³⁶ Qwest/1, Albersheim/33, line 23 [“So far, Qwest has only decreased intervals.”]

1 If Qwest actually needed the flexibility that it claims it does to lengthen intervals
2 in response to shortened intervals, the data should show lengthened intervals
3 corresponding to at least some of these shortened intervals – but that is not the
4 case.

5 Qwest implies that changes to ILEC obligations like the ones that occurred in the
6 TRO and TRRO could result in the tradeoff between shortened and lengthened
7 intervals explained above, but Qwest then goes on to admit that “these changes
8 have not resulted in the service interval trade-off...”²³⁷ These so-called examples
9 do not support Qwest’s point at all. When changes in law such as TRO/TRRO
10 occur, a contract amendment is needed anyway. Qwest’s choice of the TRO and
11 TRRO as an example of when CMP might be used is particularly off base, given
12 that Qwest is attempting to implement its TRO/TRRO changes unilaterally
13 without using its own CMP.²³⁸

14 **Q. MS. ALBERSHEIM HAS CLAIMED THAT ESCHELON IS NOT**
15 **OPPOSED TO THE USE OF CMP WHEN IT BENEFITS ESCHELON.**²³⁹
16 **IS MS. ALBERSHEIM’S CHARACTERIZATION OF ESCHELON’S**
17 **POSITION ACCURATE?**

²³⁷ Qwest/1, Albersheim/34, lines 13-14.

²³⁸ Eschelon/1, Starkey/74-94 (Secret TRRO PCAT example). *See also* Eschelon/59 (Secret TRRO PCAT Chronology).

²³⁹ Albersheim Colorado Direct Testimony (Docket 06B-497T, 12/15/06), p. 30, lines 10-12 (“Q. But isn’t Eschelon opposed to the use of the CMP for changes in service intervals? A. No, not when it benefits Eschelon.”) Ms. Albersheim omitted this Q&A from her testimony in Oregon, so it is unclear if she has changed her opinion. I address the issue here in case Ms. Albersheim raises it later in this proceeding.

1 A. No. Ms. Albersheim has insinuated that Eschelon would garner some special
2 benefit from there being a provision in the ICA requiring Commission approval
3 for lengthened intervals, but not for shortened intervals. This is not the case and
4 the two situations are not comparable. Qwest ignores one key piece of
5 information: if a CLEC submits a request for a shortened interval in CMP, Qwest
6 could ultimately reject it, forcing the CLEC to drop its request or pursue dispute
7 resolution.²⁴⁰ But if Qwest submits a change request to lengthen an interval in
8 CMP – an action that is likely to trigger CLEC disagreement – Qwest can
9 implement that change over CLEC objections. CLECs do not have the same
10 luxury as Qwest does when it comes to implementing changes in CMP – *i.e.*, the
11 ability to implement a change over the objections of others. Eschelon is seeking
12 approval of its language that allows shortened intervals in CMP without
13 Commission approval not to advantage Eschelon, but because there would be
14 agreement among CLECs and Qwest for this change (unlike a lengthened
15 interval), and therefore, no need for Commission intervention.

16 **Q. DOES MS. ALBERSHEIM MAKE OTHER ASSERTIONS THAT ARE**
17 **NOT SUPPORTED?**

18 A. Yes. Ms. Albersheim claims that Qwest needs the flexibility to increase intervals
19 without Commission approval because:

20 [T]he telecommunications industry in general and technology in
21 particular, change rapidly. There are times when Qwest and

²⁴⁰ Qwest can also submit a notice for a shortened interval, but likely would not pursue it if Qwest thought that its competitors would garner a competitive advantage.

1 CLECs should be able to flexibly and efficiently move forward
2 with changes to service intervals.²⁴¹

3 First, there have unarguably been substantial changes in the telecommunications
4 industry and technology in general in past years, but Qwest has testified that to
5 date it never found the need to increase service intervals.²⁴² There is no reason to
6 believe (and Ms. Albersheim does not provide a reason) that the changes to the
7 industry and technology that will occur in the future would trigger the need for the
8 ability for Qwest to impose longer intervals on CLECs without Commission
9 approval, especially when improvements in technology and systems should herald
10 reduced intervals based upon increased efficiencies.

11 For the most part, I agree with Ms. Albersheim's statement that there are times
12 that Qwest and CLECs should be able to flexibly and efficiently move forward
13 with changes to service intervals. Those times are when there is agreement about
14 the change, and I have shown that this has happened 39 times since 2002 (all
15 reductions), but no times at which increased intervals were needed.²⁴³ If
16 disagreement will result (as in the case of increased intervals, as Ms. Albersheim
17 has acknowledged²⁴⁴), particularly when the change can have anticompetitive
18 effects, it is not "efficient" to require the parties to negotiate/arbitrate an ICA,
19 have Qwest lengthen an interval in CMP, potentially follow the dispute resolution

²⁴¹ Qwest/1, Albersheim/29, lines 11-13.

²⁴² Qwest/1, Albersheim/33, line 23 ("so far, Qwest has only decreased intervals.")

²⁴³ Eschelon/1, Starkey/105-106.

²⁴⁴ Ms. Albersheim testified in the Eschelon-Qwest Minnesota arbitration proceeding: "It is likely that there will be disputes any time Qwest attempts to lengthen an interval." (Albersheim Minnesota Rebuttal in Minnesota Docket P-5340, 421/IC-06-768, September 22, 2006, p. 35, lines 6-7).

1 process of CMP, only to later come to the Commission for resolution. It would be
2 more efficient to require Commission approval in the first instance for
3 lengthening intervals.

4 **Q. DOES MS. ALBERSHEIM MAKE ANY MORE UNSUPPORTED**
5 **ASSERTIONS REGARDING ESHELON’S PROPOSAL?**

6 A. Yes. Ms. Albersheim also makes the unsupported assertion that Qwest’s service
7 quality would be “hamstrung”²⁴⁵ by requiring Commission approval for
8 lengthened intervals. Not only is this assertion unsupported (*i.e.*, Ms. Albersheim
9 does not describe how it would be hamstrung), it also doesn’t make sense. The
10 result of a lengthened provisioning interval of the variety discussed in Issue 1-1 is
11 that Eschelon and its customers wait longer for service. Accordingly, it would be
12 Eschelon’s – not Qwest’s – service quality that would be “hamstrung” if Qwest’s
13 proposal is adopted. Even if there was a concern about Qwest’s service quality,
14 Qwest could make that case to the state commission when it requests the
15 lengthened interval.

16 **V. SUBJECT MATTER NO. 11: POWER**

17 Issue No. 8-21 and subparts: ICA Sections 8.2.1.29.2.1; 8.2.1.29.2.2; 8.3.1.6;
18 8.3.1.6.1; and 8.3.1.6.2 and subparts; and Exhibit A Sections 8.1.4 and 8.6.1.3

19 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 8-21 AND**
20 **SUBPARTS.**

²⁴⁵ Qwest/1, Albersheim/29, lines 16-18.

1 A. Issue 8-21 and subparts all relate to DC power Eschelon purchases from Qwest to
2 electrify equipment in Eschelon’s collocation arrangements. Eschelon purchases
3 DC power through two separate rate elements, *i.e.*, a rate for the equipment that
4 turns AC [Alternating Current] into DC [Direct Current] – power plant – and rates
5 meant to compensate Qwest for the AC power it purchases from the electric
6 utility for conversion to DC power (usage). The debate stems from the fact that
7 Eschelon believes it should pay charges associated with both rate elements, based
8 upon the amount of power it actually uses (via Qwest’s power measuring
9 offering) while Qwest believes only the “usage” element should be measured,
10 with the “power plant” element being fixed based upon the size of the feeder
11 cables Eschelon uses to electrify its collocation.

12 **Q. MR. ASHTON TESTIFIES THAT ESCHELON ORDERS A CERTAIN**
13 **AMOUNT OF POWER PLANT AND AS SUCH, ESCHELON SHOULD BE**
14 **REQUIRED TO PAY FOR IT REGARDLESS OF HOW MUCH POWER**
15 **IT USES.²⁴⁶ IS HE RIGHT?**

16 A. No. A key point in this disagreement relates to Qwest’s erroneous claim that
17 when a CLEC orders power cables (*e.g.*, 180 amp power cables), the CLEC is
18 simultaneously placing an order for 180 amps of power plant capacity. Though
19 Mr. Ashton attempts time and again in his testimony to tie the power feeder cable
20 order to an order for power plant capacity,²⁴⁷ he fails to cite any documentation or

²⁴⁶ Qwest/12, Ashton/10.

²⁴⁷ Qwest/12, Ashton/8, lines 12-13 and line 16; Qwest/12, Ashton/9, lines 7 and 23; Qwest/12, Ashton/10, line 4; and Qwest/12, Ashton/14, lines 7-8.

1 any authority at all that supports his point. And as I explained in my direct
2 testimony,²⁴⁸ Qwest's own technical documentation dictating the manner by
3 which it engineers power cables and power plant capacity belie Mr. Ashton's
4 testimony. Yet, it is this claim that serves as the fundamental premise for Qwest's
5 position that applying the Power Plant rate element on a measured basis would
6 allow a CLEC to pay for less power plant capacity than it ordered.

7 The bottom line is this: CLECs do not order power plant capacity from Qwest.
8 Instead, CLECs order power feeder cables from Qwest, who then purportedly –
9 and in violation of its own Technical Publications – engineers its power plant
10 facilities to match the size of the CLEC's feeder cable order. Unfortunately, the
11 available evidence shows that Qwest attributes a far larger portion of the cost of
12 its power plant facilities to CLECs than it does to itself for the same level of
13 power usage, resulting in a highly discriminatory rate structure. This causes
14 CLECs to pay for substantially more of Qwest's power plant investment relative
15 to their power usage, than does Qwest.

16 **Q. PLEASE EXPLAIN WHY MR. ASHTON IS WRONG WHEN HE CLAIMS**
17 **THAT A POWER CABLE ORDER IS EQUIVALENT TO AN ORDER**
18 **FOR POWER PLANT CAPACITY.**

19 A. First and foremost, power plant and power cables are required, by safety
20 requirements and Qwest's own Technical Publications, to be sized based on two
21 different standards. Power cables are required to be sized based on List 2 drain

²⁴⁸ Eschelon/1, Starkey/132-137.

1 (or “worst case scenario” drain) while power plant is required to be sized based on
2 a lower List 1 drain (or peak drain under normal operating conditions).²⁴⁹ If
3 Qwest actually sized its power plant based on List 2 drain (recall that Qwest
4 assumes that a power cable order is equivalent to List 2 drain), Qwest’s Technical
5 Publications indicate that such a practice would result in Qwest “severely
6 oversizing” the power plant.²⁵⁰ And for Qwest to size power plant based on List 2
7 drain for CLECs, Qwest would have to assume that CLECs would be using
8 “worst case scenario” drain at all times – a nonsensical assumption. CLECs
9 would not draw power under these circumstances, nor would a reasonable
10 engineer make such an assumption.

11 In addition, Qwest’s collocation application asks CLECs for their requested
12 *power cable size* – there is no place on the Qwest collocation application that asks
13 the CLEC for their requested *power plant capacity*, nor does Qwest inform
14 CLECs that it equates the power cable order with an order for power plant
15 capacity. Qwest fails to provide any Qwest documentation which supports Mr.
16 Ashton’s contention that Qwest sizes power plant based on the size of power
17 cables (or List 2 drain), even though Qwest has a plethora of technical
18 documentation describing in detail the manner by which it engineers its power
19 plant facilities, including detailed descriptions of how it sizes those facilities and
20 the information it uses. Nowhere within that documentation do Qwest’s actual

²⁴⁹ Eschelon/1, Starkey/132-137.

²⁵⁰ Eschelon/1, Starkey/135, citing Qwest Technical Document REGN 790-100-655G, dated February 2006.

1 power engineers equate a CLEC order for power feeder cables with an order for
2 power plant capacity.

3 **Q. PLEASE RECAP WHY THE SIZING OF POWER PLANT IS**
4 **IMPORTANT TO ISSUE 8-21.**

5 A. The issue of how the shared central office power plant is sized by Qwest is
6 relevant to Issue 8-21 because Qwest is attempting to assess a charge to recover
7 the investment in that power plant based on the size of the CLEC power cables.
8 However, all information points to Qwest actually sizing (or investing in) power
9 plant based on the peak *usage* of the power plant.²⁵¹ Given that power cables are
10 sized larger (by design) than the peak usage that will be carried by the power
11 cables, Qwest's attempt to charge for power plant based on the size of the power
12 cable, but size power plant based on usage, results in Qwest overcharging
13 Eschelon for power plant as well as Qwest discriminating against Eschelon.
14 Qwest discriminates against Eschelon by forcing Eschelon to pay more for power
15 to serve its customers than Qwest "pays" to serve its customers.²⁵² I provided an
16 example of this discrimination at page 136 of my direct testimony.²⁵³

17 **Q. MR. ASHTON DISCUSSES THE AMOUNT OF POWER PLANT**
18 **CAPACITY "QWEST MAKES AVAILABLE FOR THE CLEC'S USE."²⁵⁴**

²⁵¹ Eschelon/1, Starkey/132-137.

²⁵² Eschelon/1, Starkey/115, lines 15-16; Eschelon/1, Starkey/126, lines 6-8; and example at Eschelon/1, Starkey/136.

²⁵³ Eschelon/1, Albersheim/136.

²⁵⁴ Qwest/12, Ashton/8, lines 13-14.

1 **DOES QWEST NEED TO KNOW HOW MUCH POWER PLANT**
2 **CAPACITY TO MAKE AVAILABLE SPECIFICALLY FOR**
3 **ESCHELON’S USE, OR FOR THAT MATTER, THE SPECIFIC USE OF**
4 **ANY CLEC?**

5 A. No, and that’s why Qwest’s claim that CLECs order power plant capacity makes
6 little sense. The power plant in a Qwest central office is a shared resource among
7 all power users in that central office, and is sized to accommodate the aggregate
8 demand of all power users in the office. To be more precise, Qwest’s engineering
9 documents describe the process by which Qwest uses the peak usage at the “busy
10 hour” for all users in the office as the yardstick by which it measures its need for
11 power plant capacity. Accordingly, Qwest does not need to know the individual
12 usage amounts for Eschelon or other CLECs; rather, it observes the aggregate
13 usage for the entire central office (including Qwest’s power usage) at the busy
14 hour and sizes to this amount. See pages 132-133 of my direct testimony for
15 additional detail on how Qwest sizes power plant.²⁵⁵

16 Furthermore, assuming for the sake of argument that Qwest does need to know
17 how much power plant capacity to make available for an individual CLEC’s use,
18 the information Qwest would need to know to size its power plant in accordance
19 with its own Technical Publications and in a nondiscriminatory fashion would be
20 the CLEC’s List 1 drain. Qwest has ample opportunity to request List 1 drain
21 information from the CLEC if it needed it. For example, Qwest could ask for the

²⁵⁵ Eschelon/1, Starkey/132-133.

1 CLEC's List 1 drain requirement on its collocation application form – but it does
2 not. Qwest also recently issued a non CMP notice
3 (FORE.11.20.06.B.002090.Qtr_Collo_Fore_2006)²⁵⁶ which requests CLECs to
4 submit quarterly forecasts to Qwest for interconnection products CLECs purchase
5 from Qwest,²⁵⁷ and this includes forecasting collocation power. Qwest's
6 collocation Forecasting Form²⁵⁸ asks CLECs to provide Qwest “the number of
7 Amps for Power required by the CLEC for each quarter,” but because Qwest
8 requires this data to be reported in increments of 20 amps (an increment far too
9 large to gauge power plant capacity used by the CLEC), Qwest is apparently
10 asking for the CLEC's power cable size (in amps). However, the way in which
11 Qwest asks for this appears to be worded so as to be specifically ambiguous. This
12 would be a prime opportunity for Qwest, if it needs the information (*i.e.*, CLEC's
13 forecasted energy usage), to ask CLECs for List 1 drain requirements – but again,
14 Qwest chooses not to. Qwest could also simply pick up the phone and call the
15 CLEC if it had any questions about the CLEC's needs for power. Though Qwest
16 claims that it does not have the information it needs to size power plant the same
17 for CLECs as it does itself, I have shown that Qwest, if it needed additional
18 information, has various avenues available to it to obtain that information. Qwest
19 chooses not to obtain that information from CLECs and chooses instead to claim
20 ignorance about the CLEC power usage and treat CLECs differently than Qwest

²⁵⁶ http://www.qwest.com/wholesale/cnla/uploads/FORE.11.20.06.B.002090.Qtr_Collo_Fore_2006.doc
; announcement date: 11/20/06, effective date: 12/29/06.

²⁵⁷ <http://www.uswest.com/wholesale/guides/forecasting.html>

²⁵⁸ http://www.uswest.com/wholesale/downloads/2006/060301/Collocation_Forecasting_Form.xls

1 treats itself – allowing it to assess rates wherein CLECs pay for substantially more
2 of the power plant investment than they use, effectively giving Qwest a free ride.

3 **Q. MR. ASHTON NEVERTHELESS CLAIMS THAT QWEST ASSUMES**
4 **THE POWER CABLE ORDER IS AN ORDER FOR POWER PLANT**
5 **CAPACITY AND THEREAFTER MAKES THIS AMOUNT OF POWER**
6 **PLANT CAPACITY AVAILABLE FOR THE CLEC’S USE.²⁵⁹ IS THIS**
7 **TRUE?**

8 A. No, and I’m surprised that Mr. Ashton would make such a claim given that the
9 testimony Qwest witness Robert J. Hubbard filed in an Iowa proceeding was
10 shown to be wrong. In Iowa Docket FCU-06-20, Mr. Hubbard claimed that
11 Qwest makes the amount of power plant capacity available to CLECs that is
12 reflected in their order for power cables, and that Qwest “definitely” builds power
13 plant capacity in response to a CLEC power cable order of 175 amps or greater.²⁶⁰
14 However, on cross examination, Mr. Hubbard’s claim was shown to be incorrect.
15 I have provided an excerpt from Mr. Hubbard’s cross examination in the Iowa
16 proceeding below:²⁶¹

17 Q. I think that gets us through all seven jobs listed on the front
18 page of [Mr. Hubbard’s Iowa Exhibit] RJH-3, Mr.
19 Hubbard, and we have identified one of those that your
20 exhibits show involve the additional – addition of capacity

²⁵⁹ Qwest/12, Ashton/8, lines 13-16.

²⁶⁰ Rebuttal Testimony of Robert Hubbard, Iowa Utilities Board Docket No. FCU-06-20, page 8, lines 12-14. [“When McLeod submits orders asking for large amounts of power such as 425 amps, 300 amps, 225 amps, or even 175 amps, this will definitely trigger a power plant capacity growth job.”]

²⁶¹ Iowa Utilities Board Docket No. FCU-06-20, transcript, pages 621 – 622.

1 in response to a [CLEC] job, correct, that being Mason City
2 522?

3 A. That [CLEC] was mentioned, yes, but they were serving
4 collocation.

5 Q. And, again, [Mr. Hubbard's Iowa Exhibit] RJH-1 lists 54
6 [CLEC] collocations, correct?

7 A. Correct.

8 Q. Seventeen of which involve cable sized for 175 amps or
9 more, correct?

10 A. Correct.

11 Q. And in fact that Mason City plant would have to be
12 replaced anyway because it was 30 years old, manufacturer
13 discontinued, and no parts were available, correct?

14 A. Well, the growth rate that was required caused it to be
15 replaced. Just because it was manufacturer discontinued, if
16 the equipment was still operating normally and in good
17 shape and didn't need to grow, then it may not have been
18 replaced at that time.

19 As the above excerpt of Mr. Hubbard's cross examination shows, out of the 54
20 CLEC collocations examined in Iowa, the CLEC had, for 17 of those locations,
21 ordered power cables of 175 amps or larger (up to 425 amp power cables in some
22 cases). Yet, even via Mr. Hubbard's own admission, Qwest augmented existing
23 power plant capacity to meet only seven of those orders,²⁶² and even then, Mr.
24 Hubbard was forced to admit under cross-examination that six of these jobs did
25 not even relate to the CLEC's order, and the seventh power plant job was related
26 to old, antiquated equipment that lacked replacement parts. In other words,
27 Qwest had not, in Iowa (nor does it in Oregon or anywhere else), used the
28 CLEC's power feeder order to size its power plant capacity. It is for this reason
29 that Mr. Ashton is unable to find any Qwest technical documentation that

²⁶² The fact that Qwest only claimed seven jobs were related to CLEC's power cable orders, despite the CLEC having seventeen collocations with power cables of 175 amps or greater exposes as false Qwest's claim that a power cable order of 175 amps or greater would "definitely" trigger a power plant growth job.

1 supports his contention (indeed, all such documentation contradicts his contention
2 – *see* my direct testimony at pages 132-137²⁶³).

3 **Q. YOU HAVE SHOWN THAT QWEST DOES NOT BUILD POWER PLANT**
4 **CAPACITY TO MEET CLEC POWER CABLE ORDERS. CAN QWEST**
5 **APPORTION SET AMOUNTS OF POWER CAPACITY TO CLECS AS**
6 **MR. ASHTON CLAIMS?²⁶⁴**

7 A. No. Power plant is a shared resource between all power users, and Qwest cannot,
8 and does not, dedicate or partition a certain allotment of power plant capacity to
9 any user. Rather, power plant is sized to the peak drain of all equipment in the
10 central office and all power users draw power from that shared resource as
11 needed. At most times, power plant capacity in the amount of any individual
12 CLEC power cable will be available to the CLEC simply because the power plant
13 is built for the peak usage of the entire central office at the busy hour, and at times
14 other than the busy hour, spare power plant capacity representing the total
15 capacity minus average usage load is available to any power user, including
16 Qwest. Accordingly, the cost of that spare capacity must be shared equally by all
17 power users. However, under the approach advocated by Mr. Ashton, the CLECs
18 end up paying for far more of the spare capacity than does Qwest (because
19 CLECs pay for the maximum amount their feeder cables would theoretically

²⁶³ Eschelon/1, Starkey/132-137.

²⁶⁴ Qwest/12, Ashton/8, lines 15-16 (“Qwest will design the power plant to ensure that the ordered amount of power...is available to Eschelon.”); and Qwest/12, Ashton/8, lines 13-14 (“this is also the amount of power plant capacity that Qwest makes available for the CLEC’s use.”)

1 accommodate, while Qwest “pays” only for the remainder). This is exactly the
2 type of discriminatory treatment the Telecommunications Act and FCC rules were
3 attempting to prohibit. I explained at pages 126-127 of my direct testimony²⁶⁵
4 that this different treatment is prohibited by the parties’ ICA as well as Section
5 251 of the Act. And it is this same discriminatory treatment that Eschelon’s
6 proposed language is attempting to address.

7 **Q. MR. ASHTON STATES “FOR ANY PARTICULAR POWER USER, THE**
8 **QUESTION IS WHETHER THERE IS SUFFICIENT CAPACITY IN THE**
9 **POWER PLANT AVAILABLE TO CONVERT AND DELIVER THE**
10 **ELECTRIC CURRENT ITS TELECOMMUNICATIONS EQUIPMENT**
11 **WILL CONSUME.”²⁶⁶ IS THIS THE RELEVANT QUESTION?**

12 A. No. The relevant question to be asked when sizing power plant should not focus
13 on “any particular power user” as Mr. Ashton claims. Rather, the pertinent
14 question (consistent with the direction of Qwest’s Technical Publications on the
15 matter)²⁶⁷ is whether there is sufficient power plant capacity to deliver the current
16 demanded by *all* power users – not just one power user. By focusing only on one
17 power user, Mr. Ashton attempts to make it appear as if Qwest must size its
18 power plant to accommodate Eschelon in isolation. This is not the way power
19 plant is sized according to Qwest’s Technical Publications. Qwest sizes power

²⁶⁵ Eschelon/1, Starkey/126-127.

²⁶⁶ Qwest/12, Ashton/8, lines 25-27.

²⁶⁷ Eschelon/1, Starkey/132-137.

1 plant to accommodate the peak usage of all users in the central office, and
2 Eschelon's peak usage is just one small component of that aggregate total.

3 **Q. MR. ASHTON TESTIFIES THAT POWER PLANT IS A FIXED**
4 **INVESTMENT AND "IS NOT AMENABLE TO MEASUREMENT."**²⁶⁸
5 **WOULD YOU LIKE TO RESPOND?**

6 A. Yes. Though I am afraid Mr. Ashton's argument in this regard is largely an issue
7 of semantics, the fact of the matter is that he is wrong. Under the Total Element
8 Long Run Incremental Cost (TELRIC) pricing principles, assets that are shared
9 among users and have a finite capacity (like power plant facilities), are often
10 recovered via measured usage rates (*e.g.*, a local switching machine). Mr. Ashton
11 tries to suggest that because the power plant itself (*i.e.*, the facilities)²⁶⁹ is not
12 actually "consumed," it should not be based upon a measure of its usage. He
13 misses the point. While the actual facilities might be of a fixed capacity, the finite
14 capacity available is consumed such that if one user (*e.g.*, Qwest) is using it,
15 another cannot. Therefore, when more DC power usage is required from the
16 power plant in a central office, the power plant facilities and, in turn, investment
17 in the office must be augmented to accommodate it. That increase in investment
18 is directly incremental to the increase in usage. Therefore, by definition and
19 consistent with incremental costing standards, investment in power plant facilities
20 is incremental to power usage and should be recovered based upon the relative

²⁶⁸ Qwest/12, Ashton/9, lines 12-13.

²⁶⁹ Qwest/12, Ashton/8, line 23 ("durable pieces of equipment.")

1 usage of that capacity by various carriers. Eschelon’s proposal to recover power
2 plant investments based upon a measured usage rate is perfectly consistent with
3 this requirement, and this is how Qwest structured its cost study for the power
4 plant rate.

5 **Q. PLEASE ELABORATE ON YOUR POINT THAT QWEST DEVELOPS**
6 **ITS POWER PLANT RATE BASED ON USAGE.**

7 A. Based on my experience analyzing Qwest’s cost studies on Power Plant rate
8 elements, Qwest calculates Power Plant rates using the following simplified
9 equation:

$$\frac{\text{Power Plant Investment}}{\text{Power Usage}} = \text{Investment per Amp} \times \text{Cost Factors} = \text{Rate per Amp}$$

10

11 Note that Qwest calculates the “Rate per Amp” for Power Plant by dividing the
12 total power plant investment by power usage – not by some measure of CLEC
13 power feeder cable size (these are the terms Qwest uses in its cost study, *i.e.*,
14 “usage”). To further illustrate this point, the table below is excerpted directly
15 from Qwest’s cost study at tab E.1.4 entitled “Power Equipment”:

	A	B	C	D	E
1	POWER EQUIPMENT				
2	Investment				
3				Version 1.0 Created 6/21/01, 3:26:59 PM	
4	Equipment			Arizona	
5	DC Plant	\$325,036			
6	Engine/Alternators	\$81,999			
7	Commercial AC	\$40,835			
8	Total	\$447,869			
9					
10	DC Power Usage	1000			
11	Equipment Cost Per Amp	\$447.87			

1

2 This tab shows that Qwest developed its “per amp” power plant rate by dividing
 3 the total power plant investment (line 8) by “DC Power Usage” (line 10) to derive
 4 the investment per amp. Though this is an excerpt from Qwest’s Arizona power
 5 plant cost study, Qwest calculates the power plant rate the same way in all Qwest
 6 states, so this is representative of how Qwest would calculate the power plant rate
 7 in Oregon.

8 **Q. WHY IS THIS IMPORTANT?**

9 A. Fundamental cost study construction principles require rates to be assessed
 10 consistent with the manner in which they are developed, with the overarching
 11 objective being the ultimate recovery of total investment. This requires that the
 12 application of the rates must be consistent with the manner by which total
 13 investment, in the cost study, is ultimately divided into “chargeable units.” In this
 14 way, the total investment can be recovered in full through selling the anticipated
 15 number of “chargeable units.” Therefore:

16 **If** the Power Plant investment is divided by DC power *usage* to
 17 derive a per amp Power Plant cost, and if Qwest is to recover the
 18 total Power Plant cost (no more, no less), **then** Qwest must apply

1 the resulting Power Plant rate to the amount of power *usage* it
2 produces (and ultimately sells or uses itself).

3 In the case of Qwest's cost study, this can be expressed as a common
4 mathematical corollary as follows: $A = (A/B) * B$. By substituting A with *Power*
5 *Plant Investment* and B with *DC Power Usage (in Amps)*, you quickly see that if
6 you originally divide the power plant investment by *DC Power Usage (in Amps)*
7 to arrive at a per Amp cost, *i.e.*, B, you must also multiply the cost-based rate
8 times the number of Amps *used* so as to recover your intended investment – *i.e.*,
9 A (described mathematically below):

$$\frac{\text{Power Plant Investment}}{\text{DC Power Usage (in Amps)}} \times \text{DC Power Usage (in Amps)} = \text{Power Plant Investment}$$

10

11 By developing a Power Plant rate based on usage, and applying that rate based on
12 a higher power cable order, Qwest would recover more from CLECs than the
13 original total investment (*i.e.*, Qwest would double-recover its power plant costs).

14 **Q. MR. ASHTON MENTIONS THE POWER REDUCTION OFFERING AND**
15 **STATES THAT ESCHELON CAN USE THIS OFFERING TO REDUCE**
16 **THE AMOUNT OF POWER AVAILABLE TO IT “IF IT DETERMINES**

1 **THAT IT DOES NOT REQUIRE AS MUCH POWER AS ORIGINALLY**
2 **ANTICIPATED.’’²⁷⁰ DO YOU AGREE?**

3 A. No. Mr. Ashton misses the point. First, as I have explained, power cables are
4 sized differently than power plant capacity, so an order for power cables is not an
5 indicator of how much power Eschelon anticipates on drawing. In addition,
6 CLECs are required by manufacturer’s recommendations and safety standards to
7 size power cables to handle larger amounts of power than the user will actually
8 draw. Therefore, contrary to Mr. Ashton’s assertion, Eschelon was not
9 anticipating drawing the full amount of power that its power cables could carry
10 when it ordered them. More to the point, Qwest’s Power Reduction offering
11 addresses the ability of changing fuses at the BDFB, changing breakers at the
12 power plant, or potentially re-engineering smaller power cables aimed at re-
13 engineering a CLEC’s power *distribution* infrastructure. I illustrate and explain
14 the various components of the central office power system at pages 123-125 of
15 my direct testimony.²⁷¹ As I explain there, power plant (*e.g.*, rectifiers) and power
16 distribution (*e.g.*, power cables) are two separate components of the central office
17 power system, and as explained at pages 130-131 of my direct testimony,²⁷² are
18 sized in two different ways –with power plant being sized based on List 1 drain
19 (or the peak usage of the central office at the busy hour) and power distribution

²⁷⁰ Qwest/12, Ashton/9, lines 16-17.

²⁷¹ Eschelon/1, Starkey/123-125.

²⁷² Eschelon/1, Starkey/130-131.

1 being sized based on a larger List 2 drain (or a “worst case scenario” power
2 drain).²⁷³

3 **Q. YOU EXPLAIN ABOVE THAT QWEST’S POWER REDUCTION**
4 **OFFERING CONCERNS RESIZING DC POWER *DISTRIBUTION***
5 **INFRASTRUCTURE. DOESN’T THE DISAGREEMENT UNDER ISSUE**
6 **8-21 ADDRESS QWEST’S RATES RELATED TO POWER *PLANT* – NOT**
7 **DISTRIBUTION?**

8 A. Yes, and this underscores the inapplicability of the Power Reduction Amendment
9 to this issue. That is, Qwest is apparently attempting to resolve an issue
10 concerning its billing of DC power *plant* charges through a process (and a costly
11 one at that) for the CLEC to resize its DC power *distribution* infrastructure. DC
12 power distribution capacity (which is sized on List 2 drain) and DC power plant
13 capacity (which is sized on a lower List 1 drain) are engineered, for good reason,
14 based upon different standards, an important point that Qwest’s Power Reduction
15 offering ignores, resulting in CLEC’s continuing (even under the Power
16 Reduction Offering) to pay for more power than they actually use.

17 **Q. UNDER ISSUE 8-21(A), MR. ASHTON ARGUES THAT EVEN THOUGH**
18 **ESCHELON’S POWER DRAW WILL BE ZERO UNTIL EQUIPMENT IS**
19 **COLLOCATED, QWEST HAS MADE POWER PLANT CAPACITY**

²⁷³ I described List 1 drain and List 2 drain in my direct testimony. Eschelon/1, Starkey/132-137.

1 **AVAILABLE FOR ESCHELON AND ESCHELON SHOULD PAY FOR**
2 **IT.²⁷⁴ DO YOU AGREE?**

3 A. No. As I explain above, Qwest does not add power plant capacity based on a
4 CLEC's order for power cables, rather power plant capacity is determined by the
5 busy hour load (or usage) of all equipment in the central office. Therefore, Qwest
6 would not build (or make available) additional power plant capacity based solely
7 on an Eschelon power cable order. This means that Mr. Aston's insinuation that
8 there is some power plant investment that would go unrecovered unless Qwest is
9 allowed to charge Eschelon for power plant before Eschelon starts drawing power
10 is false. In addition, I explained that power plant is a shared resource that is
11 available as needed to all power users in the central office (including Qwest) and
12 that power plant capacity cannot be made available (or dedicated) to any one
13 power user. Therefore, Mr. Ashton's claim that "Qwest will have made power
14 plant capacity available to Eschelon"²⁷⁵ is misleading, as power plant capacity, by
15 its very nature, cannot be made available to any one power user in a collocation
16 environment – any power plant capacity is equally available to Qwest and its
17 collocators. Given that Qwest would not add power plant capacity for an
18 Eschelon power cable order and Qwest cannot dedicate power plant capacity for
19 Eschelon's use, Qwest will not make power plant capacity available to Eschelon
20 until Eschelon begins drawing power from the power plant. Therefore, Qwest
21 should not begin charging for power plant until Eschelon begins drawing power

²⁷⁴ Qwest/12, Ashton/12-13.

²⁷⁵ Qwest/12, Ashton/13, lines 1-2.

1 (when power measurement applies). Furthermore, Mr. Ashton notes that “this
2 issue serves to underscore the nature of the difference between power plant and
3 power usage,”²⁷⁶ but fails to acknowledge that prior to Qwest’s power
4 measurement offering, Qwest applied both the power usage and power plant rate
5 elements on the size of the CLEC power cable. If there was such a fundamental
6 difference between power plant and power usage rate elements as Mr. Ashton
7 claims, then it would not have been appropriate for Qwest to apply them in the
8 same manner originally. Qwest has never been able to reconcile the fact that
9 Qwest applied the two rate elements in the same manner originally with its
10 position that power measurement should impact one of those rates (usage) but not
11 the other (power plant).

12 **Q. QWEST CLAIMS THAT THE DISAGREEMENTS UNDER ISSUE 8-21**
13 **ARE BETTER ADDRESSED IN A COST PROCEEDING WHERE ALL**
14 **INTERESTED PARTIES CAN BE REPRESENTED.²⁷⁷ WOULD YOU**
15 **LIKE TO COMMENT?**

16 A. Yes. I find it ironic that Qwest would make such a claim given that Qwest
17 originally established its power rates (usage and power plant) in Commission cost
18 dockets, then changed the application of one of those rates²⁷⁸ – usage – outside of

²⁷⁶ Qwest/12, Ashton/12.

²⁷⁷ Qwest/16, Million/9.

²⁷⁸ At least one CLEC who signed Qwest’s Power Measuring Amendment contends that Qwest’s DC Power Measuring Amendment should result in both power rate elements (power plant and power usage) being billed based on measured usage.

1 Commission cost proceedings through an ICA amendment.²⁷⁹ Qwest believes it is
2 acceptable for Qwest to change the application of rate elements outside of
3 Commission cost dockets when it serves Qwest's purposes, but adamantly
4 opposes such a move when it does not serve Qwest's purpose.²⁸⁰ Furthermore,
5 this issue has been negotiated by the parties and properly brought to the
6 Commission for resolution in this arbitration and should be decided on its merits
7 here. I have provided ample information showing that Qwest's application forces
8 Eschelon to pay more for power than does Qwest, and Qwest's admission that it
9 sizes power plant differently for CLECs than it does for itself (which results in
10 higher power charges for Eschelon) should be sufficient evidence to find Qwest's
11 rate application discriminatory.

²⁷⁹ Eschelon/1, Starkey/128-129.

²⁸⁰ Ms. Million testifies that the "problem with Eschelon's position is that it ignores the fact that the *rate* for an element and its *application* on a unitized basis result in the amount of TELRIC cost recovery awarded to Qwest by a Commission." (Qwest/16, Million/8, lines 18-20). Ms. Million goes on to provide an analogy of a gas station owner charging per gallon versus per vehicle. Qwest/16, Million/8-9. Eschelon does not ignore the relationship between the rate and its application and the importance of this to proper cost recovery, and I actually agree with Ms. Million that the way the rate is developed is important to its application. That is why in my rebuttal testimony, I explain that Qwest developed its cost study for the power plant rate based on *usage* – the same way that Eschelon wants Qwest to apply the power plant rate. There is nothing in the development of Qwest's power plant rate to suggest that it is based on CLEC power cable orders, as Qwest wants to apply the rate. To Ms. Million's gas station analogy, what Qwest is attempting to do with regard to its Power Plant rate is charge Eschelon "per gallon" and charge itself "per vehicle" (Qwest/16, Million/8, lines 21-23) so that Eschelon is forced to pay more for power.

1 **VI. SUBJECT MATTER NO. 14: NONDISCRIMINATORY ACCESS TO**
2 **UNES**

3 *Issue No. 9-31: ICA Section 9.1.2*

4 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 9-31**
5 **(NONDISCRIMINATORY ACCESS TO UNES).**

6 A. If Eschelon is unable to obtain access to UNES on reasonable terms and
7 conditions and at cost based rates, Eschelon will be competitively disadvantaged
8 vis-à-vis Qwest. Eschelon proposes that the ICA language expressly state that
9 “access to” UNES includes “moving, adding to, repairing, and changing”²⁸¹
10 UNES. Qwest makes four arguments against Eschelon’s proposed language: (1)
11 the closed ICA language fully captures Qwest’s legal obligations so no additional
12 language is needed to ensure nondiscriminatory access to UNES;²⁸² (2)
13 nondiscriminatory access to UNES does not include moving, adding to, repairing,
14 and changing UNES, because these are part of a yet unbuilt superior network, and
15 therefore TELRIC rates do not apply;²⁸³ (3) Eschelon seeks to impose obligations

²⁸¹ Proposed ICA Section 9.1.2 (closed language); Eschelon/1, Starkey/150. *See also* Eschelon/29 [MN Arbitrators’ Report ¶132 (“Federal law requires that when a CLEC leases a UNE, the ILEC remains obligated to maintain, repair, or replace it. Unless and until the Commission or other authority determines to the contrary, these types of routine changes to UNES should be provided at TELRIC rates. Eschelon’s language should be adopted for this section.”) (citing 47 C.F. R. §51.309(c) & TRO, ¶639)].

²⁸² Qwest/14, Stewart/13, lines 13-24; Qwest/14, Stewart/14, lines 13-15; and Qwest/14, Stewart/18, lines 10-12.

²⁸³ Qwest/14, Stewart/13, lines 25-26; Qwest/14, Stewart/16, lines 16-18 and 20-22. *See also* Stewart Washington Direct Testimony (UT-063061; Sept. 29, 2006), p. 21, lines 12-15 [“Qwest is also concerned through this proposal, Eschelon may be attempting to obtain modifications to UNES without paying for them or by seeking TELRIC (‘Total Element Long Run Incremental Costs’) rates for services not within Section 251 of the Act and for which TELRIC rates do not apply.”].

1 without agreeing to compensate Qwest;²⁸⁴ and (4) Eschelon’s proposal is vague
2 and undefined.²⁸⁵ None of these claims has merit, which is evident by the fact
3 that Qwest’s own language includes these same terms, but identifies them as
4 “available” for UNEs at “applicable rates” instead of as “access to” UNEs at
5 TELRIC rates– meaning that Qwest has no problem with these terms being
6 identified in the contract so long as Qwest can assess tariff charges or other non-
7 TELRIC rates for them.

8 **Q. PLEASE ADDRESS THE CONCERNS QWEST RAISES WITH**
9 **ESCHELON’S PROPOSED LANGUAGE.**

10 A. First, Qwest has made it clear that it does not view these functions as related to
11 “access” to UNEs under Section 251 of the Act and argued that cost based rates
12 do not apply to them.²⁸⁶ However, Qwest is mistaken in that regard. And because
13 Qwest disagrees that these functions are governed by Section 251, specific
14 contract language is needed to make that obligation²⁸⁷ clear, or Qwest will
15 unilaterally impose its judgment (resulting in less UNE “access” and higher tariff
16 rates).²⁸⁸ The fact that Qwest refuses to acknowledge that “access to UNEs”

²⁸⁴ Qwest/14, Stewart/13, line 28 – 14, line 2. *See also* Stewart Washington Direct Testimony (UT-063061; Sept. 29, 2006), p. 21, lines 12-20.

²⁸⁵ Qwest/14, Stewart/13, lines 27-28; Qwest/14, Stewart/15, lines 4-5; Qwest/14, Stewart/16, lines 2-4; and Qwest/14, Stewart/18, line 13.

²⁸⁶ Qwest/14, Stewart/16, lines 16-18; *see also* Stewart Washington Direct Testimony (UT-063061; Sept. 29, 2006), p. 21, lines 12-15 (quoted in above footnote).

²⁸⁷ As discussed in my direct testimony (Eschelon/1, Starkey/151-154) and in the discussion below, Qwest is required to provide nondiscriminatory access to the UNEs themselves as well as to the means of obtaining the UNEs, repairing the UNEs, and modifying the UNEs.

²⁸⁸ Qwest/14, Stewart/15, lines 18-21.

1 includes “moving, adding to, repairing and changing” UNEs shows that the
2 general prescription to provide nondiscriminatory access to UNEs is not enough.

3 Second, Eschelon’s proposal, on its face, refutes Qwest’s assertion that Eschelon
4 is seeking to require Qwest to provide a “superior” network. Eschelon’s language
5 requires only “non-discriminatory access,” meaning that Qwest will provide
6 Eschelon with the same access that it provides to itself and its retail customers.
7 For instance, Qwest obviously performs maintenance of service for all customers
8 – one of the listed activities in Eschelon’s language – and must provide it for
9 UNEs on a nondiscriminatory basis. Qwest also cancels orders when requested –
10 another listed activity in Eschelon’s language – and there is no basis for Qwest to
11 claim that it need not do this for Eschelon’s UNEs. There is no legitimate claim
12 here that “moving, adding to, repairing, and changing” UNEs would require
13 Qwest to do something for Eschelon that it does not do for itself.

14 Third, Qwest states that Eschelon, through its proposed language in Section 9.1.2,
15 is attempting to obtain modifications to UNEs “without paying anything
16 additional for them,”²⁸⁹ which “could deny Qwest the cost recovery it is entitled
17 to under the Act for providing access to UNEs and services related to such
18 access.”²⁹⁰ Qwest’s concern is unfounded, and indeed, Qwest does not explain

²⁸⁹ Qwest/14, Stewart/15, lines 20-21; and Qwest/14, Stewart/15, lines 25-26 “without paying any additional compensation for them”.

²⁹⁰ Qwest/14, Stewart/17, lines 7-9; *see also* Stewart Washington Direct Testimony (UT-063061; Sept. 29, 2006), p. 21, lines 18-20 (“That result would clearly violate Qwest’s legal right to recover the costs it incurs to provide access to UNEs and interconnection, since UNE rates do not include the costs of these activities.”)

1 why Eschelon’s proposal contains this implication but other language in the same
2 paragraph that is agreed upon and closed²⁹¹ – which Qwest itself relies upon²⁹² -
3 does not. Qwest’s argument is simply contrary to the manner in which the
4 contract is organized. In the ICA overall, general terms and conditions are laid
5 out first and then rate elements are discussed in separate sections, with the prices
6 appearing in Exhibit A. Qwest’s concern is already addressed in the general
7 Terms and Conditions section (Section 5) of the ICA. Specifically, Section 5.1.6
8 of the ICA provides in closed language: “Nothing in this Agreement shall prevent
9 either Party from seeking to recover the costs and expenses, if any, it may incur in
10 (a) complying with and implementing its obligations under this Agreement, the
11 Act, and the rules, regulations and orders of the FCC and the Commission. . . .”
12 When Section 5.1.6 is read together with the remainder of the contract,²⁹³
13 including Eschelon’s proposed language for Section 9.1.2, there is no reasonable
14 inference that Qwest will not recover its costs. However, the Commission should
15 be aware that the primary point is whether Qwest will be allowed to recover the
16 costs it incurs (*i.e.*, Eschelon’s proposal), or whether Qwest will be allowed to
17 assess higher, non cost-based rates for more and more of the standard activities

²⁹¹ Qwest/14, Stewart/14, lines 9-12. Later on page 14 of Ms. Stewart’s Direct Testimony (Qwest/14), she erroneously shows the entire sentence as open (when presenting Eschelon’s proposal). *See* Qwest/14, Stewart/14, lines 21-24. Qwest’s presentation of the language (and Ms. Stewart’s description of Eschelon’s language as a new “addition,” *see* Qwest/14, Stewart/14, line 19, even though most of the sentence also appears in Qwest’s proposal) causes unnecessary confusion.

²⁹² Qwest/14, Stewart/17.

²⁹³ In addition, if the rates are approved, they are reflected in Exhibit A or will be pursuant to Section 2.2 when approved. If the rates are unapproved, Section 22.6 provides a mechanism for Qwest to recover its costs. If Qwest seeks a right to charge a non-cost based rate in some other proceeding and prevails, then the change in law provisions of the ICA will apply.

1 required to provide UNEs and/or finished services. In other words, Eschelon is
2 not trying to get something for free; rather it is simply trying to assure that it pays
3 cost based rates while being provided nondiscriminatory treatment with respect to
4 the activities Qwest regularly undertakes in servicing its own customers.

5 Finally, Qwest is left with its argument that Eschelon’s proposed phrase “moving,
6 adding to, repairing, and changing”²⁹⁴ is vague and undefined.²⁹⁵ Qwest’s
7 vagueness argument ignores the fact that *this very language appears in Qwest’s*
8 *own proposal as well.*²⁹⁶ The companies have agreed to identical language for the
9 phrase “moving, adding to, repairing, and changing.”²⁹⁷ Qwest does not explain
10 how the same phrase can be vague and undefined when proposed by Eschelon but
11 not when proposed by Qwest. Instead, Qwest recognizes that “Qwest’s
12 alternative proposal still uses Eschelon’s undefined terms – ‘change,’ ‘add to’ and
13 ‘move,’” but claims that Qwest’s “proposal provides some assurance that Qwest
14 will not have to provide the multiple activities that potentially fall within these

²⁹⁴ Proposed ICA Section 9.1.2 (closed language); Eschelon/1, Starkey/150.

²⁹⁵ Qwest/14, Stewart/15, lines 4-5; Qwest/14, Stewart/16, line 3; Qwest/14, Stewart/16, line 27; and Qwest/14, Stewart/17, line 7.

²⁹⁶ Qwest/14, Stewart/14, lines 9-12 (showing Qwest’s proposal, including the language “moving, adding to, repairing and changing the UNE,” which Ms. Stewart correctly shows as agreed upon and closed language because this same language is also in Eschelon’s proposal). As I indicated in my direct testimony (Eschelon/1, Starkey/150), Qwest has proposed the following language: (“Additional activities for Access to Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through *e.g.*, design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) at the applicable rate.”). See E-mail of Qwest negotiations team (K. Salverda) to Eschelon negotiations team (Sept. 22, 2006) (p. 1 of enclosure); Qwest (Ms. Stewart) Minnesota Rebuttal, p. 15, lines 1-5 (Sept. 22, 2006); Multi-State ICA Draft (showing Qwest’s multi-state proposal for all six states, including Oregon, for Section 9.1.2 (April 25, 2007), p. 200.

²⁹⁷ *See id.*

1 terms without being compensated for them.”²⁹⁸ This shows that Qwest has no
2 difficulty deciphering what “moving, adding to, repairing, and changing” require
3 it to do, so long as it can charge a tariffed or other non-TELRIC based rate to do
4 those things. If Qwest is willing to charge TELRIC rates, then Qwest’s proposed
5 language would state that these activities are available at “TELRIC” or “cost-
6 based” rates. Qwest has specifically chosen to delete the reference to “access” to
7 UNEs and describe the rates as “applicable” rates to allow it to charge tariff or
8 other rates that are not cost based.

9 Given that the phrase moving, adding to, repairing, and changing is actually
10 agreed upon between the companies, the issue is not what these activities consist
11 of, but whether Qwest is required to perform them pursuant to Section 251(c)(3)
12 of the Act at cost-based rates. With respect to this issue, Qwest said: “Clear ICA
13 language is necessary so that the parties know what is expected of them under the
14 agreement and to avoid or minimize future disputes.”²⁹⁹ Eschelon asks the
15 Commission to address this issue so that the companies have a clear decision on
16 whether Qwest can charge non-TELRIC prices for these functions, which Qwest
17 has previously provided and provides today at TELRIC-based rates.

18 **Q. PLEASE ELABORATE ON THE FLAWS IN MS. STEWART’S**
19 **“SUPERIOR NETWORK” ARGUMENT.**

²⁹⁸ Qwest/14, Stewart/17, line 27 – 18, line 1.

²⁹⁹ Qwest/14, Stewart/15-16.

1 A. The FCC analyzed this “superior network” issue in its *TRO* Order. The FCC
2 found that incumbent LECs can be required to modify their facilities “to the
3 extent necessary to accommodate interconnection or access to network elements,”
4 but cannot be required “to *alter substantially* their networks in order to provide
5 *superior* quality interconnection and unbundled access.”³⁰⁰ Ms. Stewart contends
6 that Eschelon’s language, specifically the reference to “adding to” and “changing”
7 the UNE, could be read to require Qwest to alter substantially its network and
8 build a superior network. This claim does not square with the FCC’s discussion
9 on the matter. The FCC has determined that “adding to” and “changing UNEs”
10 are activities that do not render the modification a substantial alteration or
11 constitute the provision of a superior un-built network. *See TRO*, ¶¶ 634 and 635.

12 The FCC also stated:

13 Verizon contends that the Commission cannot require incumbent
14 LECs to *add* capacity or circuits, including constructing and
15 modifying loops by adding electronics, where these facilities do
16 not already exist. That is, Verizon argues that these modifications
17 are not necessary to provide access to existing UNEs, they are the
18 “creation of *new or improved UNEs*” that would unlawfully force
19 an incumbent LEC to provide superior quality access. In
20 particular, Verizon claims that the Commission is barred from
21 requiring incumbent LECs to build a new loop, place new line
22 cards or electronics on a circuit, and provide line conditioning,
23 because these are all “substantial alterations to an ILEC’s existing
24 network.” We disagree and, with the exception of constructing an
25 altogether new local loop, we find that requiring an incumbent
26 LEC to modify an existing transmission facility in the same
27 manner it does so for its own customers provides competitors
28 access only to a functionally equivalent network, rather than one of

³⁰⁰ *TRO*, ¶ 34 (emphasis in original).

1 superior quality. Indeed, incumbent LECs routinely add a drop for
2 a second line without objection...³⁰¹

3 There is nothing in Eschelon's language that would require Qwest to build an
4 altogether new loop for Eschelon. Rather, Eschelon's language simply requires
5 Qwest to provide a "functionally equivalent network," as required by the FCC.

6 In the Minnesota arbitration, the ALJs agreed with Eschelon. They said:

7 It is difficult to understand Qwest's position that Eschelon's
8 language might require Qwest to provide access to an "as yet
9 unbuilt, superior network" or that it might mean Qwest would be
10 unable to charge at all for making such changes. It is a real stretch
11 to find this kind of ambiguity in Eschelon's language. Qwest has
12 pointed to nothing in the language that would require it to perform
13 an activity that is obviously outside of its existing § 251
14 obligations.³⁰²

15 **Q. YOU MENTIONED A TARIFFED RATE. DOES QWEST'S LANGUAGE**
16 **ALLOW IT TO APPLY NON-TELRIC RATES, INCLUDING TARIFF**
17 **RATES, TO SERVICES NECESSARY FOR ACCESS TO UNES?**

18 A. Yes. As I described above, Qwest proposes to delete the reference to "access" to
19 UNEs and describe the rates as "applicable" rates to allow it to charge tariff or
20 other rates that are not cost based. Qwest's proposal confirms its previously
21 stated position³⁰³ that these services are not UNEs (*i.e.*, not within Section 251 of

³⁰¹ TRO, ¶ 639.

³⁰² Eschelon/29 [MN Arbitrators' Report, ¶130], affirmed by the Minnesota PUC (Eschelon/30).

³⁰³ Eschelon/1, Starkey/143-146; *see also*, Eschelon/93, Denney/11 [quoting Qwest's 11/18/05 CMP response indicating that Qwest claims expedites are not a UNE (*i.e.*, "Qwest does not sell Unbundled Loops to its end user customers. . . . so it is not appropriate to make a comparison to retail in this situation.")].

1 the Act)³⁰⁴ so Qwest believes it may apply tariff and other non-TELRIC rates,
2 which Qwest refers to in its proposal as “applicable” rates.³⁰⁵ This position was
3 further memorialized in Qwest’s non-CMP notice issued on 8/31/06
4 (PROS.08.31.06.F.04159.Amendments.ComlAgree.SGAT), in which Qwest
5 added a tariff reference for the following rate elements: Additional Dispatch,
6 Trouble Isolation Charge, Design Change Charge, Expedite Charge, Cancellation
7 Charge, and Maintenance of Service Charge.³⁰⁶ Since these are the same
8 activities in Eschelon’s language for Issue 9-31,³⁰⁷ Qwest’s plan to charge tariff
9 rates with regard to these UNE related activities is crystal clear.

10 By asking the Commission to reject Eschelon’s proposed language, Qwest is
11 attempting to avoid altogether a determination of the issue of what constitutes
12 nondiscriminatory access to UNEs in this arbitration under the Commission’s
13 jurisdiction, while at the same time maintaining its tariff rate position outside of
14 arbitration (and outside of CMP). Qwest has already started to charge CLECs for
15 design changes for unbundled loops when it previously did not do so under the
16 ICA,³⁰⁸ even though it has admitted that it has no basis in the ICA (or even the

³⁰⁴ Stewart WA Direct (UT-063061; Sept. 29, 2006), p. 21, lines 14-15 [“services not within Section 251 of the Act”].

³⁰⁵ Qwest/14, Stewart/14, line 12; and Qwest/14, Stewart/14, lines 13-18.

³⁰⁶ Process Notification PROS.08.31.06.F.04159.Amendments.ComlAgree.SGAT. I discussed this non-CMP notice at pages 145-146 of my direct testimony (Eschelon/1, Starkey/145-146).

³⁰⁷ Qwest/14, Stewart/14, lines 9-12 (showing Qwest’s proposal, including the language “moving, adding to, repairing and changing the UNE,” which Ms. Stewart correctly shows as agreed upon and closed language because this same language is also in Eschelon’s proposal, see Eschelon/1, Starkey/150).

³⁰⁸ Eschelon/9, Denney/40 & Eschelon/10.

1 SGAT) to charge CLECs.³⁰⁹ Although Qwest currently does not appear to be
2 charging a tariffed rate for these design changes for loops, Qwest’s negotiating
3 template indicates Qwest “uses rates from Qwest’s Tariff FCC No. 1 Section 5,”
4 clearly opening the door for Qwest to attempt to apply tariff rates for these
5 activities.³¹⁰ Qwest’s suggestion that it does not intend to apply tariff rates for
6 design changes is belied by its own negotiations template. Similarly, in states
7 other than Washington, and applying one of the same legal theories as it asserts in
8 this arbitration and through its new negotiations template, Qwest has already
9 eliminated the availability of expedites for loop orders under the existing Qwest-
10 Eschelon ICA in 13 states by denying expedites of UNE orders to Eschelon
11 despite: (1) the presence of expedite language in the existing approved ICA,³¹¹ (2)
12 years of Qwest having provided expedited UNE loop orders to Eschelon under the
13 ICA,³¹² and (3) the absence of any change in that same ICA language allowing
14 Qwest to stop providing this service.³¹³ In other words, Qwest has substantially

³⁰⁹ Stewart Minnesota Rebuttal Testimony (PUC Docket P-5340, 421/IC-06-768/OAH Docket 3-2500-17369-2, 9/22/06), p. 6, lines 27-28 (“Mr. Denney is correct in stating that neither Qwest’s SGAT nor the parties’ current ICA includes a design change charge for loops.”) (Sept. 22, 2006).

³¹⁰ Eschelon/28, Denney/14, at Exhibit A, § 9.20.11.

³¹¹ See, e.g., Qwest-Eschelon existing approved Oregon ICA, Attachment 5, Section 2.9 (“... ILEC and CLEC shall in good faith develop a mutually agreeable escalation and expedite process by which service ordering and provisioning can be provided.”); Section 7.4.2 (“Expedite: This will apply when the provisioning activity is required to be completed in less time than stipulated by the minimum element intervals as defined in Section 9.1 of this Attachment 5. The Desired Due Date category will reflect the date the activity needs to be completed.”); 9.1 (“CLEC will specify on each order its Desired Due Date (DDD) for completion of that particular order. Standard intervals do not apply to orders under this Agreement. ILEC will not complete the order prior to DDD or later than DDD unless authorized by CLEC. If the DDD is less than the following element intervals, the order will be considered an expedited order.”)

³¹² Eschelon/93, Johnson/8 (citing PON MN510386TIFAC, completed on July 6, 2005).

³¹³ See discussion of expedites (Issue 12-67) in Eschelon’s Direct Testimony (Eschelon/9, Denney/200-241).

1 altered the manner by which it provides access to the UNE in question in Oregon
2 and other states without having made any change in the ICA terms or having
3 requested any commission review or approval of that change. That is why
4 language specifically addressing this issue is so important in this ICA – so as to
5 answer the issue and avoid future disputes.

6 It seems clear that Additional Dispatches, Trouble Isolation, Design Changes,
7 Cancellations, and Maintenance of Service are next on the agenda, if this
8 Commission does not expressly rule otherwise. As important as the capability to
9 expedite loop orders is to the ability to compete meaningfully, the elimination by
10 Qwest of these other services under the ICA would effectively eliminate any
11 useful purpose of the UNE and threaten the ability of a CLEC to conduct
12 business. If Qwest is successful in excluding Eschelon's proposed language from
13 Section 9.1.2 and if Qwest employs the same strategy as it has for expedites, it
14 will stop providing these other services to Eschelon under the ICA (Section 251),
15 even though these services have also long been available as part of access to
16 UNEs.

17 Although there is other language in the ICA addressing availability of these
18 services that logic would dictate means that Qwest must continue to provide them,
19 the same is true of expedited orders for loops. In Arizona, for example, despite
20 the clarity of the ICA's intent to allow Eschelon to order expedites for UNE

1 loops, Qwest denies³¹⁴ that the following contract provision entitles Eschelon to
2 receive expedites for UNE loops: Qwest “shall provide CO-PROVIDER the
3 capability to expedite a service order.”³¹⁵ Qwest has indicated that it will charge
4 non-UNE rates to undertake such an expedite, even though the expedite is
5 specifically undertaken when accessing a UNE loop, and currently denies orders
6 for expedites on loop orders to any CLEC that will not pay that tariff rate.³¹⁶
7 Therefore, Eschelon takes little comfort that equally clear provisions in the
8 contract relating to the other services would stop Qwest from following through
9 with its plans to alter its access to those UNEs. Qwest’s position illustrates that
10 describing each of these services in other sections of the ICA is insufficient to
11 protect their availability pursuant to this Commission’s jurisdiction without
12 express language in Section 9.1.2 making clear that they are part of
13 nondiscriminatory access to UNEs.

14 **Q. HOW DOES QWEST’S NOTICE REGARDING CHANGES TO ITS**
15 **NEGOTIATIONS TEMPLATE IMPACT ESCHELON’S ICA WITH**
16 **QWEST?**

17 A. It would be extremely unfair and harmful to Eschelon’s business to come to the
18 conclusion of this arbitration having obtained an approved ICA that contains
19 language relating to Additional Dispatches, Trouble Isolation, Design Changes,

³¹⁴ Qwest Answer in Arizona Complaint Docket.

³¹⁵ AZ Qwest-Eschelon ICA, Att. 5, §3.2.2.13 (Eschelon/93, Johnson/4, footnote 9); *see also* Issue 12-67 in Eschelon’s Direct testimony regarding Issue 12-67.

³¹⁶ Eschelon/9, Denney/200-241.

1 Cancellations, Expedites, and Maintenance of Service (and other terms for which
2 Qwest has not yet deployed this strategy but later decides to do so), only to find
3 that Qwest will not make those services available pursuant to the Commission-
4 approved ICA without an amendment containing rates based on Qwest's tariff
5 (*i.e.*, as Qwest has done with expedites for loops).

6 Qwest will have then accomplished to effectively change its nondiscrimination
7 obligations under the Act, undermine the work done to ensure nondiscriminatory
8 access to UNEs in the 271 review proceedings,³¹⁷ and increase its competitors'
9 costs – all without negotiating or arbitrating its tariff rate proposal, let alone the
10 rates themselves. Eschelon therefore proposes language in Section 9.1.2 relating
11 to nondiscriminatory access to UNEs that places the issue squarely before the
12 Commission. While Eschelon strongly opposes Qwest's intentions to assess tariff
13 rates for these types of services that clearly fall within Qwest's non-
14 discriminatory obligations regarding access to UNEs, Eschelon objects as well to
15 the manner by which Qwest is attempting to effectuate such a change (*i.e.*,
16 through silence in this proceeding and unilateral efforts elsewhere). As indicated
17 by the ALJs in Minnesota, "Qwest's proposed language is in fact more ambiguous
18 than Eschelon's, because it would leave unanswered the question whether routine

³¹⁷ Although since the 271 proceedings the FCC, in the TRO/TRRO, may have allowed less regulation for elements that ILECs no longer must offer on an unbundled basis, the reverse is also true. The FCC denied the ILECs' request for less regulation for elements that ILECs must continue to offer on an unbundled basis through filed and approved ICAs. The FCC's rejection of the ILECs' request means that UNE terms (including provisioning of UNEs "in a way that would make them useful" pursuant to the First Report and Order at ¶268) belong in an ICA and remain subject to regulation and Commission oversight.

1 changes in the provision of a UNE would be priced at TELRIC or at some other
2 ‘applicable rate.’”³¹⁸ If Qwest intends to charge Eschelon non-TELRIC rates to
3 access UNEs via these, or other, means (*e.g.*, Additional Dispatches, Trouble
4 Isolation, Design Changes, Cancellations, Expedites, and Maintenance of
5 Service), then it must request and gain approval from the Commission to do so,³¹⁹
6 and terms and conditions to that effect must be included in the companies’ ICA.
7 The Commission should not accept Qwest’s invitation to leave the issue
8 unresolved, allowing Qwest to later implement its view unilaterally using the
9 ambiguity in its language to its own advantage.

10 **Q. QWEST TESTIFIES THAT “CONSISTENT WITH APPLICABLE LEGAL**
11 **REQUIREMENTS” QWEST WILL PROVIDE NONDISCRIMINATORY**
12 **ACCESS TO UNES.³²⁰ ARE YOU AWARE OF ANY RECENT EXAMPLE**
13 **TO THE CONTRARY?**

14 A. Yes. However, before I describe specific examples, it is important to note that an
15 ICA is meant to include specific terms and conditions, not only overarching
16 promises regarding Qwest’s intentions. Eschelon’s language puts meaning to
17 Qwest’s promise. Leaving for another day the issue of whether these particular
18 terms are required by the non-discriminatory treatment Qwest promises (*i.e.*,
19 Qwest’s position), will definitely lead to future disputes and problems. Given that

³¹⁸ Eschelon/29 [MN Arbitrators’ Report, ¶131], as affirmed by the Minnesota PUC (Eschelon/30).

³¹⁹ Eschelon/29 [MN Arbitrators’ Report, ¶134], as affirmed by the Minnesota PUC (Eschelon/30) (“Qwest should not be permitted to charge non-TELRIC rates for these activities without the express approval of the Commission.”)

³²⁰ Qwest/14, Stewart/13, lines 13-15.

1 Eschelon has expended the necessary resources to arbitrate this dispute in this
2 proceeding, the issue should be resolved here.

3 **Q. ARE QWEST'S PROMISES AND ITS ACTIONS TWO DIFFERENT**
4 **THINGS?**

5 A. Yes. I explained in my direct testimony at pages 148-149³²¹ that Qwest issued a
6 Level 3 CMP change that restricted the verbal CFA changes (or same day pair
7 changes) to one change on the due date.
8 (PROS.09.11.06.F.04161.P_&_I_Overview_V91, effective October 26, 2006).
9 With this notice, Qwest was creating a fallback position for itself, outside of the
10 Commission's scrutiny in this arbitration, in the event Qwest does not prevail on
11 its proposals for Issue 4-5 (and subparts). That is, Qwest's notice showed that if
12 Qwest did not get the rate it wants (or apparently even if it does), it would simply
13 stop providing, or severely restrict, the service (in this instance, same day pair
14 changes). For same day pair changes, Qwest and Eschelon are already in contact
15 and coordinating the cutover, and the Qwest central office technician is already
16 *standing at the frame*.³²² The Qwest central office technician simply removes the
17 jumper from the bad CFA and reattaches to the new CFA.³²³ In these situations,
18 the Qwest CO technician is already available and working on the cutover, and it
19 requires little, if any, additional time to switch CFAs.³²⁴ Despite these facts,

³²¹ Eschelon/1, Starkey/148-149.

³²² Eschelon/9, Denney/50.

³²³ *Id.*

³²⁴ *Id.*

1 Qwest’s notice indicated that Qwest planned on making life difficult for CLECs
2 by requiring the Qwest central office technician who is already standing at the
3 frame (while Qwest is being paid for coordination)³²⁵ to refuse to take any
4 “further action” that day, requiring CLECs to submit a supplemental order for a
5 later due date, requiring the CLEC’s Customer to experience a delay while
6 waiting for that later due date, and imposing “additional charges” on CLECs,
7 including Eschelon – charges to pay Qwest for sending the technician back to the
8 frame to complete what he/she could have completed with very little effort during
9 the original dispatch.³²⁶

10 While Qwest later retracted this CMP notice,³²⁷ on October 26, 2006, Qwest
11 issued an internal notification (MCC) that it distributed to CLECs which again
12 limits CFA changes to one per circuit on the day of the cut, but directs Qwest
13 testers to use their “best judgment to determine if it is reasonable to expect the
14 next CFA change to resolve the issue” and if Qwest’s tester decides that this
15 expectation is not reasonable, the “CFA change should be refused and the CLEC
16 should be pointed to the supplemental process.” Qwest’s 10/26/06 document also
17 states that “If Qwest receives frequent attempts from a CLEC to verbally request
18 numerous changes on DD before a good CFA is found, the Tester should post a
19 Customer Jeopardy to the order and contact the CLEC’s Service Manager to

³²⁵ Eschelon/9, Denney/50, lines 3-4. *See also* Eschelon/9, Denney/51, footnote 58.

³²⁶ PROS.09.11.06.F.04161.P_&_I_Overview_V91.

³²⁷ Qwest filed a notice on 10/20/06 (PROS.10.20.06.F.04281.Retract_CFA_P&I_OvrvwV91) to retract PROS.09.11.06.F.04161.P_&_I_Overview_v91.

1 inform them of the situation.” Qwest claims (incorrectly) that it has always been
2 Qwest’s intent to limit CFA changes to one per circuit on the day to the cut, and
3 that this MCC notice only reiterates the current practice. Eschelon asked Qwest
4 to retract this MCC notice,³²⁸ explaining that this is a change in process and
5 should be issued as a Level 4 CMP change request, and that limiting CFA
6 changes on the day of the cut to one per circuit was not Qwest’s intent and that
7 Qwest has been performing multiple CFA changes for four years.³²⁹ The intent to
8 apply to multiple CFA changes is evident on the face of the change request. It
9 provides examples to illustrate the request, and one of those examples includes
10 multiple changes to one CFA. Qwest then issued a Qwest-originated Charge
11 Request limiting CFA changes on the day of the cut to one per circuit and
12 implemented it over Eschelon’s objection.³³⁰ Qwest’s actions with regard to its
13 CFA change notices is further proof that Qwest’s promises regarding
14 nondiscriminatory access to UNEs and its actions are two different things and that
15 the Commission should remedy this situation by making Qwest’s obligations clear
16 in the contract under Issue 9-31.

17 **Q. PLEASE ELABORATE ON THE FLAWS IN QWEST’S CLAIM THAT**
18 **ESCHELON SEEKS TO IMPOSE OBLIGATIONS WITHOUT**
19 **AGREEING TO COMPENSATE QWEST.**

³²⁸ Eschelon made this request in October, and Qwest has not responded.

³²⁹ Mr. Denney provides a CFA Change Chronology as Eschelon/27. This exhibit also includes Qwest’s CMP and MCC CFA change notices, Eschelon’s request for Qwest to retract those notices and Qwest’s 10/26/06 retraction notice. Qwest has not retracted its 10/26/06 MCC notice.

³³⁰ Eschelon/129.

1 A. As I mentioned in my summary of this issue, the ICA contains provisions that
2 allow Qwest to recover its costs. I also explained in my direct testimony that
3 these are activities necessary for nondiscriminatory access to UNEs and are,
4 therefore, governed by Section 251 and should be priced at TELRIC.³³¹ Qwest
5 has not provided any indication that it does not provide these same activities for
6 its own retail customers, and as explained above, these activities simply provide
7 Eschelon with a functionally equivalent network. If Qwest were able to price
8 these activities at rates that exceed their underlying costs, Qwest would
9 undermine the FCC's requirement to provide access to UNEs on terms, rates and
10 conditions that are nondiscriminatory. Finally, regarding Qwest's claim that
11 Eschelon is attempting to avoid paying Qwest, one only need to examine
12 Eschelon's position on Issue 4-5 (Design Changes for UNE loops) – one of the
13 “activities” in question – to understand that Eschelon is not attempting to avoid
14 compensating Qwest for these activities. Ms. Stewart is simply attempting to
15 raise a “red herring” issue in arguing that Eschelon is trying to get something for
16 nothing. Eschelon has more than demonstrated its willingness to pay cost-based
17 rates.

18 **Q. PLEASE ELABORATE ON THE FLAWS IN QWEST'S ARGUMENT**
19 **THAT ESCHELON'S PROPOSAL IS VAGUE AND UNDEFINED.**

³³¹ Eschelon/1, Starkey/143-146.

1 A. Qwest complains that Eschelon’s language is “broad,” “undefined” and
2 “vague,”³³² which it claims leads to two problems: First, Qwest argues that by
3 including a non-exhaustive list of UNE-related activities, the language could lead
4 to future disputes. Second, according to Qwest, Eschelon seeks to use vague terms
5 to circumvent the *TRO*. Both claims are invalid, and I discuss them separately
6 below.

7 **Q. DO YOU TAKE ISSUE WITH QWEST’S CLAIM THAT THE LIST OF**
8 **EXAMPLES SHOULD BE EXHAUSTIVE?**

9 A. Yes. Contrary to Qwest’s claim, Eschelon’s language is very specific about the
10 activities covered by Eschelon’s language. Eschelon’s language spells out
11 categories of activities that are necessary for access to UNEs [“moving, adding to,
12 repairing and changing the UNE”] and then goes on to provide a list of specific
13 examples of these activities [“design changes, maintenance of serving including
14 trouble isolation, additional dispatches, and cancellation of orders”]. This list of
15 examples should address concerns about Eschelon’s language being overly broad
16 or vague, but it appears that the “e.g.” concerns Qwest because it indicates that
17 the list is non-exhaustive. Qwest does not object to “e.g.” being used dozens of
18 other times in the ICA to refer to a non-exhaustive list, and there is no reason that
19 the inclusion of “e.g.” in Eschelon’s 9.1.2 would lead to any more disputes than

³³² Qwest/14, Stewart/16, lines 2-9. *See also* Qwest/14, Stewart/13, lines 27-28; Qwest/14, Stewart/15, lines 4-5; Qwest/14, Stewart/17, line 7; Qwest/14, Stewart/17, line 27; and Qwest/14, Stewart/18, line 3 (where Ms. Stewart states that Eschelon’s proposal is “open-ended,” and “undefined.”)

1 use of the same mechanism in other parts of the contract. The examples provide
2 clarifying information as to the meaning of the language.

3 Further, an exhaustive list is unnecessary and opens the door to Qwest arguing
4 that other services that are routinely provided today as part of access to UNEs
5 need not be provided because they are not on the list. Importantly, the FCC when
6 defining Qwest's obligations regarding non-discriminatory access specifically
7 refused to prepare an exhaustive list of all such activities such an obligation
8 would entail.³³³ The fact that Eschelon identifies a few specific examples here,
9 while maintaining the overarching principle of non-discriminatory treatment, is
10 perfectly consistent with the FCC's approach in this regard.

11 That all said, the real problem with trying to identify every particular activity that
12 might fall within Qwest's obligation to provide non-discriminatory access is that
13 Eschelon cannot predict where Qwest might try to shirk this responsibility in the
14 future. Prior to having witnessed Qwest's actions regarding loop design changes
15 and expedites, Eschelon would not have anticipated that Qwest would suddenly
16 claim that either design changes for loops or expedites, which Qwest had
17 routinely provided as part of access to UNEs under the existing ICA, were not
18 UNEs but instead, subject to non-cost based rates. If it had to compile an
19 exhaustive list beforehand, Eschelon would not have known to include these
20 services. Similarly, Eschelon cannot anticipate what Qwest may be planning

³³³ TRO, ¶ 634.

1 next. Instead, as demonstrated by the FCC on this point, the language should set
2 forth the rule, with examples to help clarify the rule.

3 **Q. DO YOU ALSO DISAGREE WITH QWEST’S CLAIM THAT ESCHELON**
4 **SEEKS TO USE ALLEGEDLY VAGUE LANGUAGE TO CIRCUMVENT**
5 **THE *TRO*?**

6 A. Yes. Qwest alleges that, by using the term “add to,” Eschelon is seeking to
7 include installing “new cables and wires” to “violate the *TRO*.”³³⁴ Like Qwest’s
8 claim that Eschelon seeks to impose obligations without agreeing to compensate
9 Qwest, Qwest’s claim that Eschelon seeks to violate the *TRO* is shown to be false
10 by the closed language in the contract itself. Qwest cites paragraph 632 of the
11 *TRO* to support its claim.³³⁵ A simple comparison of the language of paragraph
12 632 of the *TRO* with closed ICA language shows that Qwest’s allegations about
13 Eschelon’s motives and the meaning of Section 9.1.2 are completely unfounded:

14 **Paragraph 632 of the *TRO*:**³³⁶

15 “By ‘routine network modifications’ we mean that incumbent LECs must
16 perform those activities that incumbent LECs regularly undertake for their
17 own customers. Routine modifications, however, do not include the
18 construction of new wires (i.e., installation of new or buried cable) for a
19 requesting carrier.”

20 **ICA Section 4.0, Definition of “Routine Network Modification(s)”:**

21 “‘Routine Network Modification(s)’ means those activities of the type that
22 Qwest regularly undertakes for its own End User Customers. Routine

³³⁴ Qwest/14, Stewart/16, lines 27-28 and Qwest/14, Stewart/17, line 2. Ms. Stewart has also alleged that Eschelon may be “seeking to require Qwest to ‘add to’ a UNE by digging a trench and installing additional facilities.” Stewart Washington Direct Testimony (UT-063061; Sept. 29, 2006), p. 22, lines 1-2.

³³⁵ Qwest/14, Stewart/16, line 26.

³³⁶ See also *TRO*, ¶636 (“We do not find, however, that incumbent LECs are required to trench or place new cables for a requesting carrier.”)

1 Network Modifications include . . . attachment of electronics (*except for*
2 building a Loop from scratch *by trenching* or pulling cable). . . . Routine
3 Network Modifications *do not include the installation of new aerial or*
4 *new buried cable for CLEC.*³³⁷

5 Qwest is well aware of this ICA provision, which Eschelon and Qwest agreed
6 upon and closed some time ago, after the FCC issued the *TRO*. Yet, Qwest
7 affirmatively represents to the Commission that there “is no restriction in
8 [Eschelon’s] proposed language that would prohibit this type of demand even
9 though the demand would violate the *TRO*,”³³⁸ without mentioning that there *is*
10 such a restriction *in the ICA*, and Eschelon has agreed to it.

11 **Q. IF QWEST’S STATED CONCERNS ABOUT ESCHELON DEMANDING**
12 **THE CONSTRUCTION OF NEW CABLES ARE ALREADY ADDRESSED**
13 **BY AGREED UPON LANGUAGE, WHAT, IN YOUR OPINION, IS THE**
14 **ACTUAL REASON QWEST IS SO OPPOSED TO ESCHELON’S**
15 **PROPOSED LANGUAGE?**

16 A. Qwest wants the contract language to be as vague as possible on this point
17 because Qwest wants the ability, after this arbitration is over and an ICA is
18 signed, to continue to scale back existing UNE activities based solely on its
19 discretion. It is for this reason that Qwest is stretching for any reason to oppose
20 Eschelon’s proposed language without being obvious that it wants no language at
21 all. However, Eschelon’s language should not be rejected for a false reason.

³³⁷ Proposed ICA Section 4.0 (definition of Routine Network Modification(s)) (closed language) (emphasis added).

³³⁸ Qwest/14, Stewart/16, line 28 – 17, line 2.

1 Even if the Commission ultimately decides that Qwest somehow has the ability to
2 severely restrict activities it undertakes for UNEs (*i.e.*, the same activities it
3 undertakes to support its retail services), then a specific and determinative
4 decision should be made on that issue and the ICA should specifically reflect that
5 decision. The Commission must reject Qwest's invitation to simply reject
6 Eschelon's proposed language without adding any additional specificity. Qwest's
7 arguments completely ignore the entire structure, content, and context of the ICA
8 so as to read Eschelon's proposal for Section 9.1.2 in isolation and find that it
9 means something it does not.

10 Contrary to Qwest's assertions that Eschelon's request is "undefined,"³³⁹
11 Eschelon has been very up-front that it is seeking to continue to receive these
12 functions as part of access to UNEs at TELRIC-based rates, just as it has received
13 them as part of access to UNEs under the existing ICA.³⁴⁰

14 **VII. SUBJECT MATTER NO. 16. NETWORK MAINTENANCE AND**
15 **MODERNIZATION**

16 *Issues Nos. 9-33 and 9-34: ICA Section 9.1.9*

17 **Q. PLEASE BRIEFLY SUMMARIZE THE NETWORK MAINTENANCE**
18 **AND MODERNIZATION ISSUES (ISSUES 9-33 AND 9-34).**

19 **A.** The two network maintenance and modernization issues are (1) whether minor
20 changes in transmission parameters include changes that adversely affect the End

³³⁹ Qwest/14, Stewart/16, line 20.

³⁴⁰ Regarding design changes, please refer to Mr. Denney's discussion of Issue 4-5.

1 User Customer's service on more than a temporary or emergency basis [Issue 9-
2 33] and (2) whether, in situations when Qwest makes changes that are specific to
3 an End User Customer, Qwest should include certain customer specific
4 information in the notice [Issue 9-34].

5 Regarding Issue 9-33, the ICA should make clear that the SGAT term "minor"
6 actually means minor by providing that "minor changes to transmission
7 parameters" should not adversely affect service to Eschelon's End User
8 Customers. The customer's service worked before Qwest makes a minor change,
9 and it should work after Qwest makes a minor change. "Minor changes" to
10 transmission parameters should not degrade or disrupt a customer's service on an
11 ongoing basis. Qwest's suggestion in negotiations that "minor changes" may
12 include ongoing service disruption,³⁴¹ combined with Qwest's continued refusal
13 to agree to Eschelon's language or the Minnesota Department of Commerce's
14 alternative language, however, indicates that specific language in the ICA is
15 needed on this point to avoid future disputes. Eschelon's proposal for Issue 9-33
16 is reasonable and is not an attempt to hold Qwest to a zero outage standard when
17 making changes in its network. Eschelon's proposed language specifically states
18 that there may be "a reasonably anticipated temporary service interruption" when
19 "needed to perform the work," and it also recognizes that emergencies may occur
20 and addresses restoration of service in those situations. Qwest has identified only
21 two situations when Qwest claims that it may legitimately disrupt the customer's

³⁴¹ Eschelon/1, Starkey/171, lines 6-11.

1 service with more than minor changes to transmission parameters in non-
2 temporary or non-emergency situations: (1) copper retirement;³⁴² and (2) a single
3 situation in which a CLEC intends to use a loop outside of the parameters of the
4 loop ordered by CLEC.³⁴³ Eschelon's proposed language takes care of both.
5 First, copper retirement is already addressed in closed language. Second, closed
6 language in Section 9.1.9 already states that "Network maintenance and
7 modernization activities will result in UNE transmission parameters that are
8 within transmission limits of the UNE ordered by CLEC." Ms. Stewart's example
9 contradicts this language, to which Qwest has agreed, because it assumes that the
10 transmission limits will be outside of the UNE ordered by CLEC.³⁴⁴ Qwest is
11 protected from improper use of UNEs by this language, as well as other contract
12 provisions defining the UNEs.³⁴⁵

13 Regarding Issue 9-34, when Qwest makes changes that are specific to an
14 Eschelon End User Customer, Qwest should provide sufficient information to
15 inform Eschelon where the changes will occur so that Eschelon may better assist
16 Eschelon customers in Oregon adversely affected by Qwest network changes.
17 This is particularly true when the information is readily available, as provided in
18 the approved Minnesota language that Eschelon has offered in Oregon as well.
19 The ALJs in the Minnesota arbitration proceeding found (as upheld by the

³⁴² See closed language for Issue 9-33(a) in Section 9.1.9.

³⁴³ Qwest/14, Stewart/23-24 ("If the CLEC had ordered the proper loop").

³⁴⁴ Ms. Stewart's example is addressed in more detail below.

³⁴⁵ See e.g., ICA Section 9.2.2.2 (Analog (voice grade) Unbundled Loops are available as a two-wire or four-wire voice grade, point-to-point configuration "suitable for local exchange type services").

1 Minnesota Commission) that “if this information is readily available, Qwest
2 should provide it”³⁴⁶ and Eschelon has shown that Qwest provides the information
3 Eschelon is requesting to itself.³⁴⁷ This Commission should likewise find that
4 Qwest should provide this information to Eschelon.

5 **Q. DOES QWEST ACCURATELY REPRESENT ESCHELON’S**
6 **PROPOSALS IN ITS DIRECT TESTIMONY?**

7 A. No. Before the filing of direct testimony in this matter, Eschelon modified its
8 multi-state proposals in an attempt to be responsive to concerns stated by Qwest
9 at the Minnesota hearing during the week of October 16-20, 2006.³⁴⁸ On October
10 31, 2006, Eschelon provided an alternative proposal to Qwest for Issue 9-33
11 (adding a parenthetical that states: “other than a reasonably anticipated service
12 interruption, if any, needed to perform the work”). In its direct testimony on May
13 11, 2007, however, Qwest addresses only Eschelon’s earlier proposal without any
14 discussion of its alternative proposal for Issue 9-33.³⁴⁹ On October 25, 2006,
15 Eschelon provided modified language (replacing “if End User Customer specific”
16 with “if the changes are specific to an End User Customer”) for Issue 9-34.³⁵⁰

³⁴⁶ Eschelon/29 and Eschelon/30.

³⁴⁷ Eschelon/4.

³⁴⁸ Eschelon’s proposals, as modified, appear in Eschelon’s direct testimony (Eschelon/1, Starkey/162-163) regarding Issues 9-33 and 9-34.

³⁴⁹ Qwest/14, Stewart/21, lines 19-20.

³⁵⁰ With respect to this language, Eschelon said to Qwest on October 25, 2006: “Regarding our discussion of ‘if End User Customer specific’ on 1/16/06 and at the hearing, we revised the phrase to make the intent that we discussed in negotiations even more clear. . . . If you have a phrase that you prefer which you are authorized to offer, please send us a counter proposal.” Qwest has not countered with any allegedly better way to limit the provision to situations that are specific to an individual End User Customer.

1 Nonetheless, Qwest quotes the old language in its direct testimony without any
2 recognition that Eschelon has compromised to address Qwest’s stated concern.³⁵¹
3 Despite Eschelon’s express use in its new language of “an” before the *singular*
4 use of “End User Customer,” for example, Qwest continues to argue that
5 “Eschelon’s proposed language apparently would require Qwest to provide to
6 Eschelon a list of every Eschelon customer address and every circuit that is used
7 by Eschelon to serve its *customers for an entire exchange*. . . .”³⁵² Qwest has not
8 countered with any allegedly better way to limit the provision to situations that
9 are specific to an individual End User Customer. And, it has not pointed to any
10 reason to reject such a limited provision. Instead, Qwest chooses to ignore
11 Eschelon’s reasonable proposal and make the same old arguments, which do not
12 even apply to the current proposed language.

13 As a result, Qwest testifies against something that Eschelon has clearly indicated
14 to Qwest it is not even requesting. Qwest’s approach provides no incentive to
15 compromise and shifts the focus away from the real issue. This is not an isolated
16 incident. Ignoring the language of Eschelon’s proposal is a trend in Qwest’s
17 testimony. Therefore, when analyzing Qwest’s arguments, each claim made by
18 Qwest should be compared to the actual language of each Eschelon proposal.

19 **Issue 9-33: Affect on End User Customers - Section 9.1.9**

³⁵¹ Qwest/14, Stewart/28, lines 3-6.

³⁵² Qwest/14, Stewart/18, lines 9-12 (emphasis added).

1 **Q. QWEST CLAIMS THAT ESCHELON’S LANGUAGE FOR ISSUE 9-33**
2 **COULD IMPEDE QWEST’S ABILITY TO MODERNIZE AND**
3 **MAINTAIN ITS NETWORK.³⁵³ IS THIS AN ACCURATE**
4 **CHARACTERIZATION OF ESCHELON’S LANGUAGE?**

5 A. No. Ms. Stewart misconstrues Eschelon’s proposal. First, the agreed to language
6 in Section 9.1.9 expressly allows Qwest to perform network maintenance and
7 modernization activities [“In order to maintain and modernize the network
8 properly, Qwest may make necessary modifications and changes to the UNEs in
9 its network on an as needed basis”]. The agreed to language also provides that
10 such changes “may result in minor changes to transmission parameters,” but does
11 not define minor. Eschelon’s proposal reasonably states that changes to
12 transmission parameters will not either adversely affect end user customers on a
13 non-temporary basis (proposal #1) or result in unacceptable changes on a non-
14 temporary basis (proposal #2). In addition, Eschelon’s modified proposal for
15 Issue 9-33 clarifies that an anticipated temporary service interruption needed to
16 perform that work would not be considered “adversely affecting” under Section
17 9.1.9. Furthermore, Eschelon’s language carves out copper loop retirement and
18 emergencies – two instances in which the network change could have an adverse
19 effect on End User Customers – and refers to terms governing those changes in
20 other sections of the ICA.

³⁵³ Qwest/14, Stewart/16, lines 8-9 (“Eschelon’s proposed language...could effectively prohibit Qwest from upgrading its network...”).

1 The key is that the agreed to Section 9.1.9 states that “such changes may result in
2 *minor* changes to transmission parameters”³⁵⁴ and Eschelon’s proposal recognizes
3 that “minor” changes to transmission parameters should by definition not result in
4 adverse effects on End User Customers. Whatever else “minor” may be, a change
5 is certainly not minor if it causes a permanent customer outage. Therefore,
6 Eschelon’s proposal expressly allows Qwest to maintain or modernize its network
7 (even when these activities may cause a temporary service interruption needed to
8 perform the work), and even recognizes that certain maintenance and
9 modernization activities could have an adverse effect on End User Customers.
10 Therefore, Ms. Stewart is incorrect when she states that, “Under Eschelon’s
11 proposed language, Qwest could only upgrade its network if Qwest was certain
12 that the upgrade would have no impact on Eschelon end users.”³⁵⁵

13 **Q. DOES MS. STEWART AGREE THAT NETWORK MAINTENANCE AND**
14 **MODERNIZATION ACTIVITIES SHOULD BE PERFORMED**
15 **WITHOUT ADVERSELY AFFECTING END USER CUSTOMERS?**

16 A. It appears so. She explains that Qwest will “maintain and update its network in a
17 *seamless* manner for its millions of customers.”³⁵⁶ If Qwest performs these
18 activities in a “seamless” manner, as Ms. Stewart testifies, Qwest should have no
19 problem with putting this commitment in the ICA relating to changes in
20 transmission parameters. That Qwest will not agree to this language raises

³⁵⁴ Emphasis added.

³⁵⁵ Qwest/14, Stewart/26, lines 10-12.

³⁵⁶ Qwest/14, Stewart/22, lines 2-3 (emphasis added).

1 serious questions as to whether Qwest’s network maintenance and modernization
2 activities will be seamless to End User Customers in the future.

3 **Q. DOES MS. STEWART RAISE ANY OTHER CONCERNS ABOUT**
4 **ESCHELON’S LANGUAGE FOR SECTION 9.1.9 (ISSUE 9-33)?**

5 A. Yes. Ms. Stewart states that Eschelon’s “adversely affect” language is not tied to
6 ANSI standards and is vague.³⁵⁷ Qwest’s position is that, so long as Qwest meets
7 ANSI standards, the Commission and Eschelon need not worry about whether
8 Eschelon’s End User Customers actually have working service over Qwest’s
9 UNEs.

10 **Q. PLEASE ADDRESS MS. STEWART’S CLAIM THAT THE TERM**
11 **“ADVERSELY AFFECT” IS NOT TIED TO INDUSTRY STANDARDS**
12 **AND IS VAGUE.**

13 A. Ms. Stewart is wrong. Eschelon explained in its direct testimony that Eschelon’s
14 proposal is grounded in the FCC rules.³⁵⁸ Specifically, 47 CFR § 51.319(a)(8)
15 states:

16 (8) *Engineering policies, practices, and procedures.* An incumbent
17 LEC shall not engineer the transmission capabilities of its network
18 in a manner, or engage in any policy, practice, or procedure, that
19 *disrupts or degrades* access to a local loop...

20 As explained in Eschelon’s direct testimony, the FCC’s rule prohibits Qwest from
21 making a change to transmission parameters that “disrupts” or “degrades” access

³⁵⁷ Qwest/14, Stewart/22, lines 4-6. *See also* Qwest/14, Stewart/24.

³⁵⁸ Eschelon/1, Starkey/166-168.

1 to the loop over which a CLEC provides service to its End User Customer. Note
2 that this FCC rule is not tied to ANSI standards and does not delineate the degree
3 of degradation that would be prohibited – it simply prohibits degradation and
4 disruption. Eschelon’s language requires the same.

5 Furthermore, 47 CFR § 51.316(b), entitled “conversion of unbundled network
6 elements and services,” states:

7 (b) An incumbent LEC shall perform any conversion from a
8 wholesale service or group of wholesale services to an unbundled
9 network element or combination of unbundled network elements
10 without *adversely affecting* the service quality perceived by the
11 requesting telecommunications carrier's end-user customer.
12 (emphasis added)

13 As explained in Eschelon’s direct testimony, the FCC uses the term “adversely
14 affecting” in FCC Rule 51.316(b) to describe the ILECs’ obligations regarding
15 performing conversions of the CLEC’s UNEs the same way Eschelon’s proposal
16 uses the term to describe Qwest’s obligation regarding Qwest performing network
17 maintenance and modernization activities on Eschelon’s UNEs.

18 **Q. MS. STEWART CLAIMS³⁵⁹ THAT ESCHELON’S LANGUAGE HAS THE**
19 **WRONG FOCUS. ACCORDING TO HER, THE PROPER FOCUS IS ON**
20 **THE SERVICE QWEST PROVIDES TO ESCHELON, NOT THE**
21 **SERVICE THAT ESCHELON’S END USER CUSTOMERS**
22 **EXPERIENCE. IS SHE CORRECT?**

³⁵⁹ Qwest/14, Stewart/22-23.

1 A. No. This is a situation in which Eschelon's end user customer's service is
2 working just fine until Qwest makes a network change, so the end user customer's
3 perception is clearly relevant. As mentioned above, FCC Rule 51.316(c) focuses
4 directly on the "service quality perceived by the requesting telecommunications
5 carrier's end-user customer." Therefore, the FCC's rules focus on service quality
6 perceived by the end user when the ILEC performs activities on the CLEC's
7 UNEs, and Eschelon's proposal reflects this approach.³⁶⁰

8 **Q. QWEST CLAIMS THAT THE CLOSED LANGUAGE EXPLAINS THAT**
9 **QWEST'S ACTIVITIES WILL RESULT IN UNE TRANSMISSION**
10 **PARAMETERS THAT ARE WITHIN THE TRANSMISSION LIMITS OF**
11 **THE UNE ORDERED BY ESCHELON, AND THAT THIS SHOULD**
12 **ALLAY ESCHELON'S CONCERNS. WHY DOESN'T THIS CLOSED**
13 **LANGUAGE ADEQUATELY ADDRESS ESCHELON'S CONCERNS?**

14 A. As Eschelon explained in its direct testimony in the discussion of the dB loss
15 example,³⁶¹ Qwest has previously taken the position in that example and in
16 negotiations that it meets its obligations under this language if it provides a UNE
17 within transmission parameters, even though the circuit is *not operational* and

³⁶⁰ Ms. Stewart's claim that Qwest will perform maintenance and modernization activities in a seamless manner is instructive because "seamless" is the exact same word that the FCC used to describe the manner in which conversions should be performed by ILECs on CLEC UNEs. (*TRO*, ¶ 586) When codifying the "seamless" conversion requirement in 47 CFR § 51.316(b), the FCC made clear that "seamless" meant "without *adversely affecting* the service quality perceived by the requesting telecommunications carrier's end-user customer." Therefore, if Qwest performs maintenance and modernization in a "seamless" manner, it should have no problem agreeing that they should not adversely affect the service quality perceived by Eschelon's End User Customers.

³⁶¹ Eschelon/1, Starkey/171-175.

1 there is a way to provision an operational circuit that is within transmission
2 parameters. The dB loss example shows that Eschelon’s concern is real and is not
3 accounted for under Qwest’s proposal.

4 **Q. THOUGH MS. STEWART IGNORES THE FCC RULES YOU DISCUSS**
5 **ABOVE, SHE DOES TESTIFY THAT THE TELECOMMUNICATIONS**
6 **ACT AND FCC RULES ANTICIPATE CHANGES THAT COULD**
7 **AFFECT OTHER CARRIERS.³⁶² DOES HER TESTIMONY TELL THE**
8 **WHOLE STORY?**

9 A. No. The rules on which Ms. Stewart relies are not on point. Ms. Stewart points
10 to the “Notice of Changes” language of Section 251(c)(5) of the Act and 47 CFR
11 § 51.325, and claims that this language anticipates network changes that “affects
12 other carriers.”³⁶³ But this language only addresses the ILECs’ obligation to
13 notify carriers of changes that could affect the interoperability of the networks of
14 the ILEC and CLEC so that steps can be taken to avoid adverse effects on End
15 User Customers. In addition, this language applies to all network changes – not
16 just “minor” changes – and the agreed language in Section 9.1.9 under Issue 9-33
17 is limited only to “minor” changes to “transmission parameters.” Ms. Stewart is
18 attempting to compare apples and oranges.

19 **Q. MS. STEWART TESTIFIES THAT QWEST’S MODERNIZATION**
20 **ACTIVITIES COULD AFFECT A CLEC CUSTOMER BECAUSE OF**

³⁶² Qwest/14, Stewart/19-20.

³⁶³ Qwest/14, Stewart/20, lines 12-13.

1 **THE FACILITIES THE CLEC IS USING.³⁶⁴ PLEASE RESPOND.**

2 A. Ms. Stewart hypothesizes that a CLEC could be providing DSL service to an end
3 user over a 2 wire analog loop instead of a data-capable digital loop, which could
4 cause CLEC’s DSL equipment to cease working if Qwest replaces the copper
5 loop with a hybrid (copper/fiber) loop. Ms. Stewart hypothesizes that in this
6 instance, the CLEC’s decision to use a 2 wire loop instead of a data-capable
7 digital loop led to the adverse impacts on the customer’s service. It is my
8 understanding that Eschelon does not use 2 wire *analog* loops to provide DSL
9 service, and therefore, Ms. Stewart presents a solution in search of a problem. If a
10 carrier does attempt this hypothetical practice, it likely will not be around long
11 enough to be a problem. Ms. Stewart provides no details on this hypothetical
12 example, and does not even claim that this problem has occurred.³⁶⁵ If a problem
13 does arise, Qwest needs to pursue that carrier and not “make a rule out of the
14 exception,” as Qwest has been known to argue.³⁶⁶

15 Moreover, the larger point is that under Qwest’s scenario the End User Customer
16 had a working circuit prior to Qwest’s maintenance or modernization activities
17 and has a non-working circuit after Qwest’s activities. This would not be a
18 “minor” change, as discussed in Section 9.1.9, and is therefore, not applicable to
19 the disagreement under Issue 9-33. In addition, Ms. Stewart makes no mention of

³⁶⁴ Qwest/14, Stewart/23-24.

³⁶⁵ Qwest/14, Stewart/23-24.

³⁶⁶ See Qwest (Linse) Washington Direct (WUTC Docket No. UT-063061, Sept. 29, 2006), p. 33, line 15. See also *id.*, p. 44, line 4.

1 whether the change Qwest made in her scenario (*i.e.*, replacing copper loop with
2 hybrid loop) was “necessary” as required by Section 9.1.9.³⁶⁷

3 **Q. MS. STEWART STATES THAT ESCHELON’S USE OF THE TERM**
4 **“END-USER CUSTOMER” IN ITS PROPOSED LANGUAGE FOR**
5 **SECTION 9.1.9 CREATES CONCERNS FOR QWEST. WOULD YOU**
6 **LIKE TO RESPOND?**

7 A. Yes. Ms. Stewart states that Eschelon’s use of the term “end-user customer”
8 raises 2 concerns: (1) it expands the prohibition against changes that have an
9 “adverse effect” to all third party retail customers – not just Eschelon’s customers
10 and (2) attempts to regulate Qwest’s relationship with other CLECs.³⁶⁸ This is,
11 according to Ms. Stewart, because the term “end-user customer” is defined in
12 Section 4.0 of the ICA to include customers other than Eschelon’s customers.³⁶⁹

13 Ms. Stewart’s complaint in a nutshell is that Eschelon’s language makes clear that
14 minor changes in transmission parameters should not adversely affect any end
15 user customers, regardless of which carrier the customer uses. However, if
16 Eschelon would have drafted this language to be specific only to Eschelon’s end
17 user customers, Qwest would have likely argued that Eschelon was seeking

³⁶⁷ The closed language of 9.1.9 shows that Qwest does not have unlimited discretion in modifying and changing UNEs. Rather, according to Section 9.1.9, the modifications/changes must be “necessary.” Ms. Stewart makes it appear that Qwest has unlimited discretion in making these changes, which is not the case. *See e.g.*, Qwest/14, Stewart/18, lines 21-24 (“It is of course essential that Qwest have the ability to both maintain and modernize its telecommunications network without unnecessary interference and restriction. The need for this flexibility is particularly important in this era of rapidly changing technologies.”)

³⁶⁸ Qwest/14, Stewart/25-26.

³⁶⁹ Qwest/14, Stewart/26, lines 2-4.

1 special treatment or a competitive advantage over other carriers. Eschelon is not
2 attempting to expand Qwest's obligations with regard to other carriers or their
3 customers in Eschelon's ICA, as Ms. Stewart claims. Rather, Eschelon's
4 language recognizes a basic principle: minor changes in transmission parameters
5 should not adversely affect end user customers.

6 In any event, Eschelon's Option #2 for Issue 9-33 (shown in my direct testimony
7 at page 163³⁷⁰), which is based on the Department of Commerce's
8 recommendation in Minnesota and has been proposed by Eschelon in the spirit of
9 compromise, modifies "any End User Customers" (the term used in Eschelon's
10 other options), to read: "CLEC's End User Customer." Therefore, Eschelon's
11 Option #2 clarifies that the end user referred to in 9.1.9 is the end user of the
12 CLEC – or in this instance, Eschelon. This should allay Ms. Stewart's concerns.

13 **Issue 9-34: Notices - Location at Which Changes Occur - Sections 9.1.9**

14 **Q. WHAT CONCERNS HAS QWEST STATED ABOUT ESCHELON'S**
15 **PROPOSAL FOR ISSUE 9-34?**

16 A. Ms. Stewart claims that Eschelon's language is not practical and is overly
17 burdensome.³⁷¹

18 **Q. ARE MS. STEWART'S CONCERNS WARRANTED?**

³⁷⁰ Eschelon/1, Starkey/163.

³⁷¹ Qwest/14, Stewart/27, lines 26-28. Regarding Ms. Stewart's claim that Eschelon's language exceeds the FCC's requirements (Qwest/14, Stewart/27, lines 9-10), *see* Eschelon's direct testimony regarding Issue 9-34 (Eschelon/1, Starkey/175-181).

1 A. No. In an attempt to poke holes in Eschelon's proposal for Issue 9-34, Ms.
2 Stewart points to changes in dialing plans and switch software upgrades and
3 claims that Eschelon's proposal for Qwest to provide circuit ID and customer
4 address information for these changes would be impractical and burdensome
5 because these changes would either affect a large geographic region or would not
6 impact CLEC customers at all.³⁷² This is a red herring. Eschelon's language
7 requires circuit ID (and customer address information for one alternative) only if
8 the change is specific to an End User Customer.³⁷³ The changes that Ms. Stewart
9 points to (dialing plan changes and switch software upgrades) are not specific to
10 an End User Customer, so Qwest would not be required to provide the circuit ID
11 (and customer address) information. I described changes that are specific to an
12 end user customer and provided an example in my direct testimony.³⁷⁴

13 **Q. IS THERE EVIDENCE DEMONSTRATING THAT QWEST CAN**
14 **IDENTIFY CHANGES THAT ARE SPECIFIC TO AN END USER**
15 **CUSTOMER AND PROVIDE CIRCUIT ID AND CUSTOMER ADDRESS**
16 **INFORMATION TO ESCHELON?**

17 A. Yes. Eschelon provided this information in its direct testimony.³⁷⁵

³⁷² Qwest/14, Stewart/27-28.

³⁷³ Because Eschelon's language is limited to changes specific to an End User Customer, Ms. Stewart misses the point when she complains that Eschelon's proposal would require Qwest to provide this information regardless if "the Qwest network change would actually have a noticeable impact to either Eschelon or its customer." (Qwest/14, Stewart/27, lines 30-31).

³⁷⁴ Eschelon/1, Starkey/181.

³⁷⁵ See Eschelon/1, Starkey/178-180 and Eschelon/4.

1 **Q. PLEASE SUMMARIZE THE NETWORK MAINTENANCE AND**
2 **MODERNIZATION ISSUES (ISSUES 9-33 AND 9-34).**

3 A. First, minor changes to transmission parameters should not disrupt service for End
4 User Customers on a non-temporary basis. Eschelon's Customers' service should
5 not be adversely affected, especially when there are special exceptions when
6 service may be disrupted temporarily when needed to perform the work and
7 during emergencies, with disruptions that may not be temporary being addressed
8 separately in Section 9.2.1.2.3 relating to copper retirement. Finally, when Qwest
9 makes a change that is specific to an End User Customer, Qwest should be
10 required to provide readily available information to allow Eschelon to identify
11 and provide quality service to the affected Customer. For all of the reasons
12 discussed with respect to Eschelon's business need and in these responses, the
13 Commission should adopt Eschelon's language for Issues 9-33 and 9-34.

14 **VIII. SUBJECT MATTER NO. 18. CONVERSIONS**

15 *Issue Nos. 9-43 and 9-44 and subparts: ICA Sections 9.1.15.2.3; 9.1.15.3 and*
16 *subparts; 9.1.15.3.1; 9.1.15.3.1.1; 9.1.15.3.1.2*

17 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THE CONVERSIONS**
18 **ISSUES 9-43 AND 9-44 AND SUBPARTS.**

19 A. These issues relate to the conversions of UNE facilities to analogous or alternative
20 service arrangements due to a finding of non-impairment – an activity that is

1 within the scope of Section 251/252 of the Act.³⁷⁶ Issue 9-43 addresses whether
2 Qwest should be allowed to change the circuit identification information assigned
3 to the facility providing Eschelon's UNE service when converting that facility to a
4 non-UNE analogous or alternative service arrangement. Issue 9-44 addresses
5 whether conversions should be achieved through a billing change (*i.e.*, application
6 of a new rate) and not a network change (*i.e.*, switching the customer to a new
7 facility) to avoid customer disruption and unnecessary work for both parties.
8 Issues 9-44(a) through 9-44(c) describes an option that would be available to
9 Qwest in order to implement the billing change that takes place during a
10 conversion.

11 **Q. MS. MILLION STATES THAT CLECS HAVE A CHOICE OTHER THAN**
12 **TO CONVERT THEIR UNE CIRCUITS TO QWEST PRIVATE LINE**
13 **SERVICES.³⁷⁷ HOW IS THE EXISTENCE OF SUCH A CHOICE**
14 **RELEVANT TO THE DISCUSSION OF CONVERSIONS?**

15 A. It isn't relevant at all. The ability to convert a circuit from a UNE to a non-UNE
16 is a critical aspect of the FCC's transition plan when a facility that was formerly
17 available as a UNE, as a result of the *TRRO*, no longer is. In the *TRO*, the FCC
18 stated that such conversions should be accomplished seamlessly, in order to avoid
19 customer disruption and minimize any anticompetitive impact. Ms. Million's
20 suggestion that Eschelon has a choice, rather than converting its existing UNE

³⁷⁶ See *e.g.*, Eschelon/1, Starkey/192, lines 1-2, citing Washington ALJ Report (Order No. 17 in Verizon/CLEC arbitration), ¶ 150.

³⁷⁷ Qwest/16, Million/13-14.

1 circuits, of obtaining the necessary facilities from a source other than Qwest,
2 really offers no choice at all.

3 **Q. DOES MS. MILLION’S TESTIMONY SQUARE WITH THE FCC’S**
4 **RULES ON CONVERSIONS?**

5 A. No. Ms. Million’s testimony exposes a fundamental flaw in Qwest’s position on
6 conversions and a flaw in Qwest’s proposals for Issues 9-43 and 9-44 to omit any
7 conversion language from the ICA: Qwest ignores the FCC’s rules and orders.

8 **Q. PLEASE ELABORATE.**

9 A. I addressed the FCC’s rules and orders on this topic at pages 193-194 and 200-
10 202 of my direct testimony,³⁷⁸ citing *e.g.*, 47 CFR §51.316 and TRO, ¶¶ 586-588.

11 I will not repeat the entirety of those rules and explanatory text here, but to recap:

- 12 • The FCC requires conversions to be a “seamless process that does not affect the
13 customer’s perception of service quality.”³⁷⁹
- 14 • The FCC expects conversions to be largely a billing function, noting that one
15 way to effectuate a conversion is to establish a mechanism providing that any
16 pricing changes start the next billing cycle following the conversion request.³⁸⁰

³⁷⁸ Eschelon/1, Starkey/193-194 and Eschelon/1, Starkey/200-202.

³⁷⁹ 47 CFR § 51.316(b). *See also* TRO, ¶ 586.

³⁸⁰ TRO, ¶ 588. The fact that the FCC mentioned the ability for billing changes to take place by the start of the next billing cycle following the conversion request is significant because Qwest’s original non-CMP APOTS notice contained a 45 day conversion interval. *See* Eschelon/1, Starkey/187, lines 11-12. This supports the notion that the process that Qwest is attempting to impose through non-CMP, non-ICA means is not what the FCC was expecting when it established its conversion rules.

- 1 • The FCC prohibited ILECs from imposing conversion charges on CLECs
2 because “incumbent LECs are never required to perform a conversion in order to
3 continue serving their own customers...”³⁸¹

4 The FCC’s rules and orders make clear that Ms. Million is incorrect. First, the
5 FCC explains that conversions should be largely a billing change that can be
6 effectuated in a “seamless” fashion to the End User Customer and in an
7 “expeditious manner.”³⁸² This means that the costs Ms. Million claims Qwest
8 incurs are likely related to work that should not be performed for conversions
9 under the FCC’s rules and orders – but work that Qwest is attempting to require
10 outside the ICA or CMP, nonetheless. Second, the FCC’s rules find that
11 conversion charges are discriminatory. So, any claim by Qwest that it should be
12 allowed to assess a conversion charge other than the TELRIC-based UNE-to-
13 private line rate discussed in the Commission’s Wire Center Docket (UM 1251) is
14 incorrect and should be rejected.

15 **Q. DOES MS. MILLION EVER ADDRESS THESE FCC RULES AND**
16 **ORDERS RELATING TO CONVERSIONS IN HER DIRECT**
17 **TESTIMONY?**

18 **A.** No. Ms. Million fails to even mention the rules and orders that apply directly to
19 the issue in dispute under Issues 9-43 and 9-44, *i.e.*, conversions.

³⁸¹ 47 CFR § 51.316(c). See also *TRO*, ¶ 587.

³⁸² When addressing conversions in ¶ 588 of the *TRO*, the FCC focused on minimizing the risk of incorrect payment because it found that a conversion is “largely a billing function.” Therefore, the FCC concluded that a conversion (or the act of applying a different rate to the same facility) “should be performed in an expeditious manner.”

1 **Q. MS. MILLION TESTIFIES ABOUT THE QWEST PERSONNEL AND**
2 **WORK INVOLVED IN CONVERSIONS.³⁸³ IS THIS ANOTHER**
3 **EXAMPLE OF QWEST IGNORING THE FCC RULES AND ORDERS ON**
4 **CONVERSIONS?**

5 A. Yes. Though Ms. Million does describe some billing functions in her
6 testimony,³⁸⁴ she also describes activities that are not indicative of a seamless
7 process and are much more involved than what the FCC requires. For instance,
8 Ms. Million describes a situation in which the Designer is to review the order to
9 make sure that “no physical changes to the circuit are needed.”³⁸⁵ Ms. Million
10 chooses her words wisely by not affirmatively stating that physical changes will
11 be needed, but if the Designer is to make sure that physical changes are *not*
12 needed, obviously Qwest believes that such changes *will be* needed in at least
13 some instances under its proposed process. And Qwest has confirmed that it
14 intends to require physical changes for conversions. In its Response to
15 Eschelon’s Petition for Arbitration, Qwest said “Eschelon’s proposal ignores the
16 nature of conversions from UNEs to alternative tariffed services.”³⁸⁶ Qwest has
17 also previously specifically alleged that “conversions from UNEs to tariffed
18 services can involve physical activities.”³⁸⁷ However, “physical changes” are not

³⁸³ Qwest/16, Million/15-17.

³⁸⁴ Recall that the FCC stated that conversions are largely a billing function. *TRO*, ¶588.

³⁸⁵ Qwest/16, Million/16, line 15 – p. 17, line 1.

³⁸⁶ Qwest’s Response to Eschelon’s Petition for Arbitration, p. 27, lines 22-23.

³⁸⁷ Qwest’s Petition for Arbitration in Colorado Docket No. 06B-497T, ¶ 101. *See also* Qwest/16, Million/16, line 15 – 17, line 1.

1 billing functions, and making physical changes leads to increased risk of service
2 disruption to the End User Customer. This would not be a seamless conversion,
3 as required by the FCC.³⁸⁸ My concern about Ms. Million’s testimony in this
4 regard is only heightened by a mention of reviewing the circuit inventory in the
5 TIRKS database to “ensure accuracy and database integrity.”³⁸⁹ Again, while Ms.
6 Million chooses her words wisely so as not to admit that Qwest intends to
7 physically move the CLEC’s End User Customer from one circuit to another
8 during the conversion, she certainly suggests as much by discussing a review of
9 circuit availability. The CLEC’s End User Customer is already on a circuit that is
10 available, so there is no reason for Qwest to be checking for circuit availability.
11 This is perhaps why Ms. Million discusses the potential for a “service interruption
12 for the CLEC’s end-user customer”³⁹⁰ in relation to this work. Again, this would
13 not be a seamless conversion, as required by the FCC, and indicates strongly that
14 Qwest is envisioning a process whereby converting circuits actually means
15 ordering new circuits wherein the CLEC is placed, potentially, on different
16 facilities than they currently use.

17 In a confusing piece of testimony, Ms. Million explains that “to ensure that the
18 conversion process is transparent to the CLEC and its customers’ services, Qwest

³⁸⁸ Eschelon/1, Starkey/193-194. *TRO*, ¶¶586 & 588.

³⁸⁹ Qwest/16, Million/17, lines 2-3.

³⁹⁰ Qwest/16, Million/17, lines 4-5. Ms. Million again chooses her words wisely by stating that this work is done to “ensure that there is no service interruption for the CLEC’s end-user customer.” However, if Qwest needs to confirm that Eschelon’s end user customers will not have their service interrupted, that means that service interruption may occur in at least some instances. This is contrary to the FCC’s requirement for conversions to be “seamless,” and there is no reason for a billing change to interrupt service to Eschelon’s End User Customers.

1 interjects a number of manual activities into the process...”³⁹¹ This testimony is
2 interesting for two reasons. First, it shows that it is Qwest who is interjecting this
3 manual work into conversions rather than this work being required to accomplish
4 a conversion consistent with the FCC rules. Second, these manual activities
5 should not be necessary for something that should largely amount to a records
6 change in Qwest’s systems. It appears to me that the manual work that Ms.
7 Million discusses is work created by Qwest related to Qwest making physical
8 changes during the conversion – physical changes that Eschelon does not want
9 Qwest to make. After all, if the End User Customer is on the same facility after
10 the conversion as it was before the conversion, what manual work should be
11 involved other than keystrokes to change the rate applied to that facility?

12 What Ms. Million’s testimony illustrates is that Qwest envisions dictating a
13 physical, network-impacting conversion process whereby existing Eschelon
14 circuits will be cancelled and new circuits ordered and provisioned, all in an effort
15 simply to effectuate a different price. If so, Qwest has essentially ignored the
16 FCC’s requirement for seamless, expeditious conversions that amount to largely a
17 billing change, and the Commission must intervene.

18 **Q. MS. MILLION SUGGESTS THAT QWEST “MUST”³⁹² CHANGE THE**
19 **CIRCUIT IDS DURING CONVERSION TO, AMONG OTHER THINGS,**

³⁹¹ Qwest/16, Million/18, lines 19-20.

³⁹² Qwest/16, Million/16, line 10 and Qwest/16, Million/20, line 21.

1 **PROPERLY TRACK CIRCUITS AND AVOID SPENDING MORE**
2 **MONEY.³⁹³ DO YOU AGREE?**

3 A. No. Ms. Million’s own admission³⁹⁴ that Qwest has already performed
4 conversions without changing circuit IDs, shows that her claim that Qwest “must”
5 change circuit IDs is false. Furthermore, Ms. Million’s claim of additional costs
6 needs to be viewed in light of Qwest’s proposal. Though Qwest wants to remain
7 silent on this issue in the ICA, it wants to push through a manually-intensive
8 conversion procedure (APOT) in a non-CMP, non-ICA notice that imposes
9 substantial additional work and expense on both Qwest and CLEC, increases the
10 risk of service disruption, and freezes ordering activity for the CLEC³⁹⁵ – and to
11 top it all off, Qwest wants to charge the CLECs for it.³⁹⁶ And if Qwest would not
12 have pursued terms and conditions unilaterally that did not comply with FCC’s
13 requirements in the first place, the costs Ms. Million bemoans that are involved in
14 changing those terms so that they do comply with the FCC’s rules and orders,

³⁹³ Qwest/16, Million/20.

³⁹⁴ Direct Testimony of Teresa Million, Colorado PUC Docket 06B-497T, p. 16 (12/15/06) (Q. Is it true that when Qwest originally converted CLECs’ private line circuits to UNEs, they were allowed to keep their private line circuit IDs? A. Yes...”) Ms. Million omitted this same testimony from her direct testimony in Oregon.

³⁹⁵ Eschelon/1, Starkey/86 and 185-186.

³⁹⁶ For a discussion of Qwest’s APOT non-CMP notice (PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1), *see* Eschelon/1, Starkey/183-189; Eschelon/59-62 and Eschelon/64. Note: Ms. Million also refers to more than 1000 conversions that were performed with a circuit ID change and that she is not aware of any complaints from CLECs. (Qwest/16, Million/18, line 24). However, these conversions have not been implemented using the APOT procedure that Qwest recently announced in its non-CMP notice. Based on the problems with Qwest’s APOT procedure, there is a greater likelihood of disruption and complaints. Furthermore, Qwest has to date refused to negotiate the APOT procedure (Eschelon/1, Starkey/188-189 and Eschelon/64 (Email from Kathleen Salverda (Qwest), dated 9/6/06)).

1 would not have arisen.³⁹⁷ When put in proper context, it becomes clear that the
2 costs to which Ms. Million refers are costs Qwest has generated itself by
3 attempting to impose in the first instance, without agreement from the CLECs or
4 state commissions, a process that does not comply with the FCC's requirements.

5 **Q. ARE THERE OTHER PROBLEMS WITH QWEST'S PROPOSAL?**

6 A. Yes. Qwest defines conversions in terms of circuit ID changes, and then claims
7 that it "must" change circuit IDs when performing conversions. For example, Ms.
8 Million claims that re-pricing QPP is different than a conversion³⁹⁸ because there
9 is no circuit ID change involved in re-pricing QPP, and therefore "no conversion
10 of the UNE loop occurs."³⁹⁹ This appears to be a case of the "tail wagging the

³⁹⁷ For example, on October 16, 2006, Qwest sent Eschelon a letter advising Eschelon of "a policy-related decision Qwest has reached" to take the issue discussion under Issue 9-58 in the Washington arbitration to CMP "within the next two months" (*see* testimony of Mr. Denney for Issue 9-58). Qwest's 10/16/06 letter and Eschelon's 10/17/06 response letter are Eschelon/78. Now that Qwest has unilaterally developed processes outside of ICA negotiations (despite requests by Eschelon and other CLECs, *see e.g.*, Eschelon/59, Johnson/4 (11/17/04 CMP November monthly meeting minutes)), CMP (despite promises by Qwest, *see e.g.*, Eschelon/59, Johnson/8-9 (6/30/05)), and Commission proceedings (also despite promises by Qwest, *see* Eschelon/59, Johnson/8-9 (6/30/05)), it is considering this process as Qwest's "existing" process and is attempting to avoid modifications to this "existing" process in CMP. Qwest is trying to get all of its TRRO PCATs implemented without scrutiny (through CMP or otherwise) and then later claim that the processes are already in place and it will be too costly or time-consuming to change them. However, Qwest should not be implementing them unilaterally in the first place. If it ultimately incurs costs in changing processes that it should not have put in place unilaterally and over Eschelon's objections, Qwest is the cost causer and should bear those alleged costs. Qwest has implemented no fewer than 99 non-CMP TRRO PCAT versions. *See* Eschelon/77 (list of Qwest non-CMP TRRO PCATs) and Eschelon/1, Starkey/91, footnote 207.

³⁹⁸ Qwest/16, Million/19-20. Though Ms. Million criticizes the comparison of QPP to conversions, it should be noted that Eschelon has offered language that would allow Qwest as an option to perform conversions similar to how it re-prices for QPP. If there is another means by which this can be accomplished that meets the requirements of the ICA language and FCC requirements, Qwest can use that process. [Eschelon's proposed language for 9-44(a) states: Qwest *may* perform the re-pricing through use of an "adder" or "surcharge" used for Billing the difference between the previous UNE rate and the new rate for the analogous or alternative service arrangement...] emphasis added

³⁹⁹ Qwest/16, Million/19, line 23.

1 dog.” Qwest has arbitrarily established a self-serving definition of conversions
2 that “must” include circuit ID changes (despite evidence showing that these
3 changes are not required to perform a conversion), and therefore, Qwest has
4 created a conversion procedure (outside negotiation/arbitration and CMP) that is
5 manually-intensive, risky, and costly to the CLEC. Instead, Qwest’s conversion
6 procedure should adhere to the FCC’s rules and orders to be seamless and largely
7 a billing change, which it will not be if Qwest’s non-ICA, non-CMP conversion
8 procedure is imposed on Eschelon. That is why it is critical to establish the terms
9 and conditions for conversions in this arbitration, rather than omitting those terms
10 and conditions from the ICA and inviting future dispute.

11 **Q. MS. MILLION MENTIONS THE TRRO TRANSITION PERIOD**
12 **EXPIRING AND IMPLIES THAT THIS MEANS THAT QWEST DOES**
13 **NOT HAVE TO PROVIDE CONVERSIONS AS A BILLING CHANGE.⁴⁰⁰**
14 **WOULD YOU LIKE TO RESPOND?**

15 A. Yes. I’m not sure what point Ms. Million is attempting to make. Ms. Million
16 poses the question: “Is Eschelon correct that Qwest’s conversion of UNEs to
17 private line circuits should be a billing change only?” Her answer points out the
18 following:

- 19 • the *TRRO*’s transition period for UNEs has expired;⁴⁰¹

⁴⁰⁰ Qwest/16, Million/14-15.

⁴⁰¹ Qwest/16, Million/14, lines 19-20.

- 1 • for non-impaired wire centers, Qwest is no longer required to provide UNE
2 loops and transport at TELRIC prices;⁴⁰²
- 3 • Qwest must convert from UNEs to private line services to apply non-TELRIC
4 rates as permitted;⁴⁰³ and
- 5 • if Qwest was not able to convert circuits, the TRRO would be given no
6 meaning.⁴⁰⁴

7 However, Ms. Million does not explain why this reasoning leads her to conclude
8 that conversions are more involved than billing changes. I do not take issue with
9 the reason why conversions are necessary, I do, however, take issue with Qwest’s
10 plan for accomplishing those conversions. In addition, if expiration of the
11 transition period in the TRRO has any bearing, as Ms. Million seems to suggest,
12 the Commission should be aware that Eschelon and Qwest operate under a
13 “bridge agreement” that has extended this transition period pending a new ICA.⁴⁰⁵

14 Accordingly, not only is Ms. Million’s point in this regard confusing, but it is
15 irrelevant to the situation that exists between Qwest and Eschelon – the only two
16 parties in this proceeding.

⁴⁰² Qwest/16, Million/15, line 1.

⁴⁰³ Qwest/16, Million/15, lines 4-6.

⁴⁰⁴ Qwest/16, Million/15, lines 10-12.

⁴⁰⁵ Eschelon/37.

1 **IX. SUBJECT MATTER NO. 24. LOOP-TRANSPORT COMBINATIONS**

2 Issue No. 9-55: ICA Sections 9.23.4; 9.23.4.4; 9.23.4.4.1; 9.23.4.5; 9.23.4.6;
3 9.23.4.5.4

4 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 9-55.**

5 A. Eschelon proposes to include in Section 9.23 the term “Loop-Transport
6 Combinations” to collectively refer to the various types of combinations involving
7 a loop and transport and to expressly provide in the ICA that the UNE piece of the
8 Loop-Transport Combination should continue to be governed by the ICA. This
9 language is needed to ensure that Qwest cannot position one type of Loop-
10 Transport combination, in particular – a commingled EEL – so the terms
11 governing the non-UNE will dictate how the UNE portion of the combination is
12 ordered, provisioned, and repaired. In his testimony regarding Issue 9-58 and
13 Issue 9-59, Mr. Denney describes how ordering and repair of UNEs are impacted
14 by Qwest’s non-ICA, non-CMP PCAT terms. Qwest proposes deletion of
15 Eschelon’s language.

16 **Q. IS ESCHELON ATTEMPTING TO CREATE A NEW LOOP
17 TRANSPORT PRODUCT AS MS. STEWART INSINUATES?⁴⁰⁶**

18 A. No. Contrary to Ms. Stewart’s assertion, Eschelon’s proposal does not create a
19 new loop transport product. I explained in my direct testimony (see pages 213-
20 214)⁴⁰⁷ that Eschelon uses the term “loop transport combination” precisely how
21 the FCC uses it – to refer to a group of offerings that combine loop and transport

⁴⁰⁶ Qwest/14, Stewart/50, lines 26-27.

⁴⁰⁷ Eschelon/1, Starkey/213-214.

1 facilities, including commingled EELs.⁴⁰⁸ Eschelon’s definition makes clear that
2 the term Loop Transport Combination is not a Qwest product offering, but
3 collectively refers to a group of offerings that Qwest is already required to
4 provide. To address Qwest’s concern, Eschelon’s proposal for ICA Section
5 9.23.4 expressly provides: “At least as of the Effective Date of this Agreement,
6 “Loop-Transport Combination” is not the name of a particular Qwest product.
7 “Loop-Transport Combination” includes Enhanced Extended Links (“EELs”),
8 Commingled EELs, and High Capacity EELs.” This language alone should be
9 sufficient for rejecting Qwest’s complaint.

10 **Q. DOES QWEST HAVE OTHER CONCERNS ABOUT ESCHELON’S**
11 **PROPOSAL FOR ISSUE 9-55?**

12 A. Qwest claims that Eschelon’s language is an attempt to eliminate the distinctions
13 between UNE combinations and commingled arrangements so that the non-UNE
14 components of a commingled arrangement are governed by the ICA.⁴⁰⁹

15 **Q. IS QWEST’S CONCERN LEGITIMATE?**

16 A. No. Ms. Stewart testifies that “Eschelon’s proposal is particularly troubling given
17 that Eschelon’s definition of Loop-Transport Combinations includes commingled
18 arrangements where UNE and non-UNE circuits are combined.”⁴¹⁰ But there is

⁴⁰⁸ Ms. Stewart acknowledges this point [“The FCC uses the term ‘loop-transport’ to generally describe varieties of EELs...” Qwest/14, Stewart/50, line 18]. One of the EELs described by the FCC is a commingled EEL.

⁴⁰⁹ Qwest/14, Stewart/48, lines 29-30; and pp. 48-49 and 56-57.

⁴¹⁰ Qwest/14, Stewart/46, lines 14-16.

1 no basis to find Eschelon’s definition troubling because the FCC uses the term
2 Loop Transport Combination to refer to a commingled arrangement as well. *See*
3 page 214 of my direct testimony, citing ¶¶ 584, 593 and 594 of the *TRO*.⁴¹¹
4 Further, nothing in Eschelon’s language suggests that the non-UNE piece of the
5 commingled arrangement would be governed by the ICA, and in fact, Eschelon
6 included language in its proposal that should easily dispel this claim. To address
7 Qwest’s concern, Eschelon’s proposal for ICA Section 9.23.4 expressly provides:
8 “If no component of the Loop-Transport Combination is a UNE, however, the
9 Loop-Transport Combination is not addressed in this Agreement. The UNE
10 components of any Loop-Transport Combinations are governed by this
11 Agreement and the other component(s) of any Loop-Transport Combinations are
12 governed by the terms of an alternative service arrangement, as further described
13 in Section 24.1.2.1.”⁴¹² Eschelon’s language does not subject the non-UNE piece
14 of a commingled Loop-Transport combination to the ICA. Rather, Eschelon’s
15 concern is that the UNE piece of the Loop-Transport Combination should
16 continue to be governed by the ICA – as is required by the FCC. Eschelon’s
17 concern is valid, as illustrated by the impact of Qwest’s non-ICA, non-CMP
18 PCAT terms on ordering and repair that is discussed in Mr. Denney’s
19 testimony.⁴¹³

⁴¹¹ Eschelon/1, Starkey/214.

⁴¹² Eschelon/1, Starkey/209.

⁴¹³ Mr. Denney addresses Ms. Stewart’s claims regarding LSR and CRIS. Qwest/14, Stewart/49, lines 1-6.

1 **Q. DOES ESCHELON’S PROPOSED LANGUAGE IMPLY THAT THE NON-**
2 **UNE COMPONENT IN THIS ARRANGEMENT WOULD BE**
3 **GOVERNED BY THE ICA?**

4 A. No. Eschelon previously made this clear in Section 24.1.2.1 and now Eschelon
5 has modified its language to make this point even clearer. Ms. Stewart claims that
6 the language in 9.23.4 implies an attempt by Eschelon to govern non-UNE
7 components via the ICA, and she ignores agreed upon language in 24.1.2.1 –
8 language that Ms. Stewart identifies at page 50 of her direct testimony⁴¹⁴ – that
9 makes clear that the non-UNE portion of the commingled arrangement is
10 governed by the alternative arrangement by which that non-UNE component is
11 offered. Therefore, Ms. Stewart’s narrow focus on only one section of the ICA in
12 isolation leads her to the wrong conclusion. Mr. Stewart also ignores the
13 modified language Eschelon has proposed to Section 9.23.4 to make this point
14 even clearer.

15 **Q. QWEST MODIFIED ITS PROPOSAL FOR ISSUE 9-55. WAS THIS**
16 **MODIFIED QWEST LANGUAGE REFLECTED IN YOUR DIRECT**
17 **TESTIMONY?**

18 A. No. Qwest previously proposed deletion of Eschelon’s language, which is what is
19 shown in my direct testimony.⁴¹⁵ Qwest modified its proposal for Section 9.23.4
20 to replace Eschelon’s language with the following counter proposal:

⁴¹⁴ Qwest/14, Stewart/50.

⁴¹⁵ Eschelon/1, Starkey/211.

1 When a UNE circuit is commingled with a non-UNE circuit, the
2 rates, terms and conditions of the ICA will apply to the UNE
3 circuit (including the Commission jurisdiction) and the non-UNE
4 circuit will be governed by the rates, terms and conditions of the
5 appropriate Tariff.

6 **Q. IS QWEST’S MODIFIED LANGUAGE ACCEPTABLE TO ESCHELON?**

7 A. No. Qwest’s counterproposal conflicts with closed language in the agreement.
8 Qwest’s proposed paragraph, which deals specifically with a Commingled EEL,
9 refers to the non-UNE portion of a Commingled EEL being governed only by the
10 “appropriate Tariff.” The non-UNE portion of a Commingled EEL, even though
11 not subject to the ICA, will not necessarily be covered by a tariff, however. The
12 non-UNE portion of the circuit could be covered by something such as an order or
13 rule or other legal requirement that is neither a “tariff” nor an “agreement.”

14 Qwest has *already agreed* that the non-UNE portion of a commingled EEL could
15 be governed by something other than an agreement or tariff. The agreed upon and
16 closed language in Section 24.1.2.1, which was discussed above, provides (with
17 emphasis added) that:

18 The UNE component(s) of any Commingled arrangement is
19 governed by the applicable terms of this Agreement. The other
20 component(s) of any Commingled arrangement is governed by the
21 terms of the *alternative service arrangement* pursuant to which
22 that component is offered (*e.g., Qwest’s applicable Tariffs, prices*
23 *lists, catalogs, or commercial agreements*).⁴¹⁶

⁴¹⁶ The agreement also provides, in agreed upon and closed language in Section 24.1.1.1: “Except as provided herein, and notwithstanding anything to the contrary in the definition of Commingling in Section 4 of this Agreement, Qwest shall permit CLEC to Commingle a UNE or Combination of UNEs with other wholesale facilities and services obtained from Qwest pursuant to any method other than unbundling under section 251(c)(3) of the Act, including any services offered for resale.”

1 Section 24.1.2.1 makes clear that the non-UNE components of a commingled
2 arrangement will be covered by the applicable alternative service arrangement,
3 which may be something other than a “tariff” or an “agreement.” Qwest proposed
4 language excludes these other alternatives and thus conflicts with this agreed
5 upon language. Even assuming that the language of Section 24.1.2.1 were used in
6 Section 9.23.4, Qwest’s proposal is still incomplete and fails to address the
7 remaining issues that are more clearly and fully dealt with in Eschelon’s proposed
8 language for 9.23.4.

9 **Q. HAS QWEST ATTEMPTED TO GOVERN UNES WITH NON-UNE**
10 **SOURCES, SUCH AS TARIFFS?**

11 A. Yes. Mr. Denney discusses examples of this under Issues 9-58 and 9-59,⁴¹⁷ and
12 as I discuss under Issue 9-31, Qwest is attempting to do just that by applying tariff
13 rates to design changes and other UNE related activities. In addition, as I explain
14 under Issues 9-43 and 9-44 and the Secret TRRO PCAT example, Qwest is
15 attempting to subject UNES to non-ICA sources by requiring the APOT procedure
16 for conversions, which affects UNES but was issued as a non-CMP notice.

17 **Q. IS MS. STEWART’S TESTIMONY ON “COSTLY MODIFICATIONS”⁴¹⁸**
18 **RELEVANT?**

19 A. No. Ms. Stewart testifies that Qwest “is under no legal requirement to implement
20 costly modifications to provide Eschelon’s proposed ‘loop-transport’ product.”⁴¹⁹

⁴¹⁷ Issues 9-58 and 9-59 are addressed in the testimony of Mr. Denney (Eschelon/9, Denney/169-199).

⁴¹⁸ Qwest/14, Stewart/50.

1 However, as shown by Eschelon’s express language and as explained above,
2 Eschelon is not proposing a new Loop-Transport product – rather Eschelon’s
3 language simply defines this term to collectively refer to Loop-Transport
4 Combinations that Qwest is already required to provide, as the FCC has done.
5 Therefore, no modifications would be necessary. Once again, Ms. Stewart is
6 simply falling on a tired, and erroneous argument that somehow Eschelon is
7 trying to get something for nothing. The “distinct systems, procedures and
8 provisioning intervals for EELs, UNEs and tariffed services” referred to by Ms.
9 Stewart⁴²⁰ that exist today would continue to be used and would not change
10 simply because the term Loop-Transport Combination is defined in the ICA.

11 **Q. QWEST CLAIMS THAT CONFUSION WOULD RESULT BY DEFINING**
12 **THE TERM “LOOP-TRANSPORT COMBINATION” TO INCLUDE**
13 **THREE OFFERINGS.⁴²¹ IS QWEST’S PURPORTED CONCERN ABOUT**
14 **CONFUSION WARRANTED?**

15 **A.** No. Ms. Stewart provides no substance to back up these claims and ignores
16 Eschelon’s proposed language. Ms. Stewart testifies that “it is Eschelon’s
17 proposed melding of EELs, Commingled EEL circuits and High-Capacity EELs
18 into a single umbrella product that creates the confusion regarding this issue.”⁴²²

⁴¹⁹ Qwest/14, Stewart/50, lines 25-27.

⁴²⁰ Qwest/14, Stewart/50, lines 24-25.

⁴²¹ Qwest/14, Stewart/50, lines 12-14.

⁴²² Qwest/14, Stewart/50.

1 However, Ms. Stewart ignores Eschelon’s language which clearly explains how
2 each component of a Loop Transport Combination will be treated:

3 “Loop-Transport Combination” is not the name of a particular
4 Qwest product. “Loop-Transport Combination” includes Enhanced
5 Extended Links (“EELs”), Commingled EELs, and High Capacity
6 EELs. If no component of the Loop-transport Combination is a
7 UNE, however, the Loop-Transport Combination is not addressed
8 in this Agreement. The UNE components of any Loop-Transport
9 Combinations are governed by this Agreement and the other
10 component(s) of any Loop-Transport Combinations are governed
11 by the terms of an alternative service arrangement, as further
12 described in Section 24.1.2.1.

13 The fact that Eschelon’s proposed definition of Loop Transport includes EELs,
14 commingled EELs and High-Capacity EELs does not cause confusion because
15 Eschelon’s language explains how each component of those Loop Transport
16 Combinations should be treated. Ms. Stewart points to no examples in the ICA
17 where Eschelon uses the term Loop Transport Combination and Qwest is
18 confused as to what type of Loop Transport Combination Eschelon is referring to,
19 or how to treat the components of the Loop Transport Combination. Therefore,
20 Ms. Stewart does not support her claim that Qwest’s alleged confusion stems
21 from the definition of Loop-Transport Combination identifying EELs,
22 Commingled EELs, and High Capacity EELs.⁴²³ Instead, it appears her
23 “confusion” is actually a restatement of her original concern, *i.e.*, the extent to
24 which non-UNEs will be governed by the ICA given Eschelon’s proposed

⁴²³ Qwest/14, Stewart/50, lines 12-14.

1 language⁴²⁴ – an issue already addressed in agreed upon language and further
2 addressed by Eschelon’s proposed language on this issue.

3 **X. SUBJECT MATTER NO. 27: MULTIPLEXING (LOOP-MUX**
4 **COMBINATIONS)**

5 Issue No. 9-61 and subparts: ICA Sections 9.23.9 and subparts; 24.4 and
6 subparts; 9.23.2; 9.23.4.4.3; 9.23.6.2; 9.23.9.4.3; 9.23.4.4.3; 9.23.6.2; Exhibit C;
7 24.4.4.3; Exhibit A; Section 9.23.6.6 and subparts

8 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 9-61 AND**
9 **SUBPARTS.**

10 A. When evaluating Qwest’s arguments regarding Issue 9-61, it is important to note
11 both what Issue 9-61 does address and what it does not. Starting with the latter
12 first, Issue 9-61 does *not* deal with transport. Qwest’s arguments based on
13 transport are red herrings. Eschelon’s proposed definition of Loop-Mux
14 Combination does not include transport.⁴²⁵ This is a combination of unbundled
15 loop and multiplexing that *terminates at a collocation*. The companies have
16 agreed to the following language (with emphasis added):

17 24.2.1.1 A multiplexed facility will be ordered and billed at
18 the rate in Exhibit A if all circuits entering the multiplexer are
19 UNEs *or the UNE Combination terminates at a Collocation, as*
20 *described in Section 9.23*. In all other situations when CLEC
21 orders multiplexing with a UNE (e.g., CLEC orders a UNE Loop
22 in combination with Qwest special access transport), the
23 multiplexed facility will be ordered and billed pursuant to the
24 applicable Tariff.

⁴²⁴ Ms. Stewart discusses her alleged confusion in response to the question: “Q. Does Qwest commit in the ICA that the UNE circuit will be governed by the terms and conditions in the ICA?”

⁴²⁵ See, e.g., closed language in Section 9.23.9.1.2 stating: “There is no interoffice transport between the multiplexer and CLEC’s Collocation.”

1 As this closed language demonstrates, Eschelon has also already agreed that when
2 it “orders a UNE Loops in combination with Qwest special access transport,” the
3 “applicable Tariff” rate will apply. Multiplexing in combination with transport is
4 a closed issue and is *not* the subject of Issue 9-61.

5 Regarding the real issues, Issue 9-61 addresses whether the Loop Mux
6 Combination (“LMC”) should be included in Section 9 of the ICA as a UNE
7 combination (Eschelon proposes that it should be, and Qwest disagrees); Issue 9-
8 61(a) addresses the proper definition of an LMC, either as a UNE combination (as
9 proposed by Eschelon) or a commingled arrangement (as proposed by Qwest);
10 Issue 9-61(b) addresses whether service intervals for LMCs should be included in
11 the ICA and changed via ICA amendment (as proposed by Eschelon) or excluded
12 from the ICA and established via CMP (as proposed by Qwest); and Issue 9-61(c)
13 addresses whether rates for LMC Multiplexing should be included in the ICA (as
14 proposed by Eschelon) or excluded from the ICA (as proposed by Qwest).

15 **Q. DOES QWEST CAST THE DISAGREEMENT FOR ISSUE 9-61 IN THE**
16 **PROPER LIGHT?**

17 A. No. The overarching disagreement between Eschelon and Qwest on Issue 9-61
18 and subparts revolves around Qwest’s obligation to provide access to
19 multiplexing in combination with UNEs. Qwest repeatedly states that Eschelon’s
20 language would require Qwest to provide multiplexing as a “stand alone” UNE

1 and that Qwest is under no obligation to do so.⁴²⁶ This is inaccurate and
2 misleading. Eschelon’s proposal would not require Qwest to provide
3 multiplexing as a “stand alone” UNE. Rather, as explained at page 232 of my
4 direct testimony,⁴²⁷ Eschelon’s proposed language would require that access to
5 multiplexing be provided as a “feature, function and capability” of the loop in two
6 distinct scenarios – a multiplexed EEL and a Loop Mux Combination – both of
7 which involve providing access to multiplexing in conjunction with a UNE loop
8 (*i.e.*, not on a stand alone UNE basis). Eschelon’s position is supported by the
9 nondiscriminatory provisions of the Act, the FCC’s rules and orders, the agreed to
10 ICA language on routine network modifications, and past practice.⁴²⁸

11 **Q. MS. STEWART CLAIMS THAT MULTIPLEXING IS NOT A FEATURE**
12 **OR FUNCTION OF THE LOOP.⁴²⁹ IS SHE CORRECT?**

13 A. No. My direct testimony at pages 229-231 explains why Ms. Stewart is incorrect
14 on this point.⁴³⁰

15 **Q. MS. STEWART POINTS TO THE FCC’S WIRELINE COMPETITION**
16 **BUREAU’S (“WCB”) DECISION IN THE VERIZON VIRGINIA**

⁴²⁶ Qwest/14, Stewart/81, lines 11 and 25, p. 82, lines 21 and 23, p. 85, lines 7 and 9, and p. 87, line 3.

⁴²⁷ Eschelon/1, Starkey/232.

⁴²⁸ Eschelon/1, Starkey/228-231.

⁴²⁹ Qwest/14, Stewart/87, line 4.

⁴³⁰ Eschelon/1, Starkey/229-231.

1 **ARBITRATION AS ALLEGED SUPPORT FOR QWEST’S POSITION.**⁴³¹
2 **IS QWEST’S RELIANCE ON THIS DECISION MISPLACED?**

3 A. Yes. First, Qwest’s argument ignores the procedural posture of the Virginia
4 Arbitration Order. This decision was the result of an arbitration of the FCC’s
5 Common Carrier Bureau, acting in the stead of the Virginia state commission, in
6 which the state commission did not carry out its responsibilities. Accordingly,
7 this decision is no more binding on the Oregon Commission than any other state
8 commission decision. Second, the Bureau emphasized that its decision should not
9 be interpreted as an endorsement of the Verizon position regarding the availability
10 of unbundled multiplexing associated with Loop-Mux combinations [“We
11 emphasize that our adoption of Verizon’s proposed contract language on this
12 issue should not be interpreted as an endorsement of Verizon’s substantive
13 positions expressed in this proceeding regarding its multiplexing obligations
14 under applicable law.”]⁴³²

15 **Q. IS THERE ANY OTHER REASON WHY QWEST’S RELIANCE ON THE**
16 **BUREAU’S DECISION IS MISPLACED?**

17 A. Yes. Importantly, this decision actually undermines Qwest’s position on this
18 issue. Ms. Stewart points out that this decision declined to require multiplexing
19 as a stand alone UNE, however, this point is moot because Eschelon is not

⁴³¹ Qwest/14, Stewart/82-83.

⁴³² *In the Matter of Petition of WorldCom, Inc., at 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 (“Virginia Arbitration Order”), ¶ 490.

1 seeking multiplexing as a stand alone UNE. What Ms. Stewart fails to recognize
2 is that the decision does suggest multiplexing should be provided as a feature and
3 function of a UNE (in that case, UNE transport) in the same manner that Eschelon
4 is requesting it here. This undermines her claim that multiplexing is not a feature
5 or function of the UNE loop.⁴³³ The WCB stated as follows:

6 We agree with WorldCom that Verizon must provide multiplexing
7 “together with dedicated transport” and “Contrary to Verizon’s
8 argument..., the modified WorldCom language we adopt correctly
9 states that DCS and multiplexing are features of UNE dedicated
10 transport, but does not establish multiplexing equipment as a
11 separate UNE. Therefore, it is irrelevant that the Commission has
12 not performed “necessary” or “impair” analysis for multiplexers.
13 Rather, the multiplexer is a feature, function, or capability of
14 dedicated transport, for which the Commission has performed the
15 requisite analysis.”⁴³⁴

16 I explained at pages 229-231 of my direct testimony⁴³⁵ that the FCC has indicated
17 that multiplexing is also a feature or function of a UNE loop. If Qwest disagrees,
18 the proper procedure is to seek resolution of the issue from the Commission and
19 not to unilaterally impose a higher non-TELRIC rate. For example, in Minnesota,
20 the ALJs said: “Given that Qwest has previously provided multiplexing as a UNE
21 when it is provided in conjunction with a UNE loop, as well as when it is
22 provided in conjunction with transport, the Administrative Law Judges agree with
23 the Department’s recommendation that Eschelon’s language be adopted in the
24 ICA. If Qwest wishes to withdraw or limit multiplexing in the manner it proposes
25 here, it should file a petition with the Commission to modify all ICAs that

⁴³³ Qwest/14, Stewart/87, line 4.

⁴³⁴ Virginia Arbitration Order, ¶¶ 499-500.

⁴³⁵ Eschelon/1, Starkey/229-231.

1 currently provide for UNE pricing of the multiplexing of a UNE loop into non-
2 UNE transport within a central office.”⁴³⁶

3 **Q. MS. STEWART ALSO CLAIMS THAT CLECS HAVE THE ABILITY TO**
4 **PROVIDE THEIR OWN MULTIPLEXING WITHIN THEIR**
5 **COLLOCATION SPACES.⁴³⁷ SHOULD THIS FACTOR INTO THE**
6 **COMMISSION’S DECISION ON ISSUE 9-61?**

7 A. No. The ability for a carrier to self provision a facility is a determination that
8 must be made when conducting a “necessary” and “impair” analysis for UNE
9 unbundling. *See* 47 CFR § 51.317. Since Eschelon is not seeking access to
10 multiplexing as a stand alone UNE, this determination need not be made. As
11 noted by the WCB in the above excerpt, the lack of a necessary and impair
12 analysis for multiplexing – which would include an examination of a CLEC’s
13 ability to self provision multiplexing – is relevant only when the FCC evaluates a
14 given facility or feature as a stand alone UNE. This is not the case in Eschelon’s
15 proposal.

16 **Q. WHAT SUPPORT DOES MS. STEWART PROVIDE TO BACK HER**
17 **STATEMENT THAT “MULTIPLEXING IS NOT A FEATURE OR**
18 **FUNCTION OF THE LOOP”?**⁴³⁸

⁴³⁶ Eschelon/9 [MN Arbitrators’ Report ¶ 199]. Regarding Issue 9-61(b), the ALJs, as affirmed by the Minnesota PUC (Eschelon/30), also adopted Eschelon’s language, in association with their findings in Eschelon’s favor regarding Issues 1-1 (intervals) and Section 12/CMP. *See id.*

⁴³⁷ Qwest/14, Stewart/84, lines 9-12.

⁴³⁸ Qwest/14, Stewart/87, line 4.

1 A. Though this is, in my opinion, the most important aspect of this issue, Ms. Stewart
2 does not provide any support for her statement. She does not cite to any FCC
3 rules or order that supports her claim and she does not attempt to address the
4 numerous sources to which I cite in my direct testimony that supports the notion
5 that multiplexing is a feature or function of a UNE loop. I suspect that Ms.
6 Stewart may attempt to address these sources in her rebuttal testimony, but I find
7 it telling that Ms. Stewart would make the claim that Eschelon’s proposal would
8 require Qwest to provide access to multiplexing on a stand alone UNE basis no
9 fewer than seven times in her testimony – a claim which is simply not true – but
10 would only dedicate one short phrase (*i.e.*, ten words) to the issue of multiplexing
11 as a feature and function of a UNE loop.⁴³⁹

12 **Q. HAVE YOU ALREADY ADDRESSED THE POINTS MS. STEWART**
13 **RAISES ABOUT INTERVALS (ISSUE 9-61(b)) AND RATES FOR LMC**
14 **MULTIPLEXING?**⁴⁴⁰

15 A. Yes. The benefits of including intervals in the ICA are explained under Issue 1-
16 1.⁴⁴¹ With regard to the “product specific dispute”⁴⁴² mentioned by Ms. Stewart, I
17 have explained why the LMC is properly viewed as a UNE combination.
18 Regarding Ms. Stewart’s claim that tariff rates should apply to multiplexing
19 because multiplexing is not a UNE, I have explained, for example, that Qwest has

⁴³⁹ Qwest/14, Stewart/87, line 4 [“Multiplexing is not a feature or function of the loop...”]

⁴⁴⁰ Qwest/14, Stewart/85-87.

⁴⁴¹ *See also* Eschelon/29 [MN Arbitrators’ Report, ¶22] (quoted above with respect to Issue 1-1); *id.* footnote 149 to ¶199 (adopted Eschelon’s language for Issue 9-61(b)).

⁴⁴² Qwest/14, Stewart/85, line 20.

1 previously provided a Commission approved LMC product at TELRIC rates and
2 has not received Commission approval to charge a higher non-TELRIC rate.

3 **Q. DO YOU HAVE ANY ADDITIONAL OBSERVATIONS ABOUT MS.**
4 **STEWART’S DIRECT TESTIMONY ON ISSUE 9-61?**

5 A. Yes. The crux of this disagreement is whether the multiplexing component of the
6 LMC should be provided at TELRIC rates when combined with a UNE loop (if
7 defined as an UNE combination), or whether multiplexing should be purchased
8 from Qwest’s tariff at tariff rates (if defined as a Commingled Arrangement).
9 Despite the companies’ asking the Commission to resolve this issue in this
10 proceeding, Qwest makes it appear as if this question has already been answered
11 in favor of Qwest.

12 In the very first Q&A in Ms. Stewart’s testimony on this issue, she testifies:
13 “Accordingly, a CLEC *must* order the multiplexed facility used for LMCs
14 *through the applicable tariff.*”⁴⁴³ Ms. Stewart repeats this mantra several more
15 times in her direct testimony on Issue 9-61, claiming that, “LMC is comprised of
16 an unbundled loop...combined with a DS1 or DS3 multiplexed facility...that a
17 CLEC obtains from a tariff.”⁴⁴⁴ Ms. Stewart couches her direct testimony as if
18 Qwest’s position on multiplexing is fact, but it is not a fact, and the treatment of
19 multiplexing is at issue in this arbitration for the Commission to decide. That

⁴⁴³ Qwest/14, Stewart/81, lines 15-16 (emphasis added)

⁴⁴⁴ Qwest/14, Stewart/81, lines 7-10. *See also* Qwest/14, Stewart/82 (“...because an LMC is a combination of a UNE and a tariffed multiplexing service, it is not a UNE combination.”)

1 Qwest has provided multiplexing in three other ways (*i.e.*, (1) as part of a
2 multiplexed EEL, (2) as part of a Loop-Mux Combination, and (3) as a stand
3 alone UNE), shows that Ms. Stewart is wrong when she claims that a CLEC
4 “must” obtain multiplexing from a tariff.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

EXHIBIT 124

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DOCKET NO. 06B-497T

VOLUME I

IN THE MATTER OF THE PETITION OF QWEST CORPORATION FOR
ARBITRATION WITH ESCHELON TELECOM, INC. PURSUANT TO
47 U.S.C. SECTION 252 OF THE FEDERAL TELECOMMUNICATIONS
ACT OF 1996.

PURSUANT TO NOTICE to all parties in
interest, the above-titled matter came on for hearing
before MANA L. JENNINGS-FADER, Administrative Law Judge
of the Public Utilities Commission, on April 17, 2007,
9:01 a.m., at 1560 Broadway, Suite 250, Denver,
Colorado, said proceedings having been reported in
shorthand by Robin M. McGee, Registered Professional
Reporter.

WHEREUPON, the following proceedings were
had:

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<p>1 the wire center proceeding?</p> <p>2 MR. TOPP: Filed in this proceeding --</p> <p>3 A.L.J. JENNINGS-FADER: Thank you.</p> <p>4 MR. TOPP: -- address those issues. And --</p> <p>5 and none of Qwest's testimony addressed those issues.</p> <p>6 Eschelon does contain some reference in Mr. Denney's</p> <p>7 last round of testimony in which he makes some</p> <p>8 suggestions procedurally on how to handle that.</p> <p>9 It's Qwest's position that these issues</p> <p>10 should be decided once and should be decided as a part</p> <p>11 of the generic proceeding addressing these issue. And</p> <p>12 Eschelon has -- has taken the position that -- that sort</p> <p>13 of -- and that is our position, and the question for the</p> <p>14 Court is how you mesh those together.</p> <p>15 Do you keep this proceeding open and</p> <p>16 incorporate the results of that proceeding in order to</p> <p>17 reach a decision, or close this at the end, enter an</p> <p>18 interconnection agreement, and reopen the -- and have</p> <p>19 the parties amend their interconnection agreement to</p> <p>20 reflect the results of that proceeding?</p> <p>21 It's very possible that we won't need to come</p> <p>22 to that point because of sort of the parallel nature of</p> <p>23 these two proceedings that are taking place, but it is</p> <p>24 sort of a procedural nuance that we need to figure out</p> <p>25 how to address.</p>	<p>1 proceeding open until the wire center case has been</p> <p>2 resolved to wait and see whether there are still</p> <p>3 language issues that have yet to be resolved.</p> <p>4 In the meantime, the issues that the parties</p> <p>5 have more thoroughly provided a record on can be</p> <p>6 determined. I would say that we have, as part of our</p> <p>7 testimony, put in orders from three other commissions</p> <p>8 that address these issues. And we think that, if it</p> <p>9 were necessary to decide the issues on the record that</p> <p>10 we have now, you have enough in front of you to do that.</p> <p>11 But to the extent we agree with Qwest, we</p> <p>12 agree that we really shouldn't be doing things twice,</p> <p>13 and so let's wait and see what happens in the wire</p> <p>14 center proceedings, but don't call this proceeding done</p> <p>15 until those issues are done. And part of the concern</p> <p>16 that we have is that there's closed language in this ICA</p> <p>17 that is interdependent with these wire center issues.</p> <p>18 And so if you have -- if you say that we've</p> <p>19 got a contract that will be amended to include those</p> <p>20 other issues, the wire center issues, you really have a</p> <p>21 contract that's got some pretty big holes in it. So it</p> <p>22 really would end up being a document that is ultimately</p> <p>23 unworkable. Rather than have a document that is</p> <p>24 unworkable, let's wait until we get to the end, have one</p> <p>25 compliance filing that does everything, resolves all of</p>
Page 15	Page 17
<p>1 A.L.J. JENNINGS-FADER: Eschelon?</p> <p>2 MR. MERZ: Our position is what we are</p> <p>3 seeking in this arbitration is an ICA that addresses all</p> <p>4 of the issues. And the issues that are the subject of</p> <p>5 the wire impairment or the impairment proceeding, the</p> <p>6 wire center proceeding, are really critical issues for</p> <p>7 the parties' agreement.</p> <p>8 And our proposal is that you should defer any</p> <p>9 ruling as to those issues pending some result in the</p> <p>10 wire center proceeding. Once that proceeding has</p> <p>11 concluded, there will be presumably negotiation between</p> <p>12 the parties about how the results of that proceeding</p> <p>13 ought to be reflected in contract language.</p> <p>14 To the extent that there are disputes about</p> <p>15 how the results of that proceeding should be reflected</p> <p>16 in contract language, then we would hope to come before</p> <p>17 you again to have those disputes resolved, although at</p> <p>18 this point, we can't tell what those disputes might be</p> <p>19 or whether there even will be any.</p> <p>20 But the result that we hope doesn't occur is</p> <p>21 that we finish this arbitration, that there's a final</p> <p>22 ruling that doesn't resolve these issues.</p> <p>23 In Minnesota, what the ALJs did and what the</p> <p>24 Commission did is exactly what we're suggesting; and</p> <p>25 that is, defer considering the issues, keep the</p>	<p>1 the issues.</p> <p>2 A.L.J. JENNINGS-FADER: Mr. Topp or</p> <p>3 Mr. McGann, do you have any estimation as to when the</p> <p>4 wire center proceeding might be concluded with a final</p> <p>5 Commission decision sufficient to implement, if the</p> <p>6 Commission were so inclined, Eschelon's suggestion?</p> <p>7 MR. MCGANN: My recollection of the</p> <p>8 procedural schedule in that docket is that essentially,</p> <p>9 the docket was submitted on the papers. We have, I</p> <p>10 believe, initial statements of position due at the</p> <p>11 beginning of May, reply statements of position due, I</p> <p>12 believe, at the beginning of June and, obviously, an</p> <p>13 order and perhaps exceptions thereafter, so ...</p> <p>14 A.L.J. JENNINGS-FADER: Excuse me. So it's a</p> <p>15 recommended decision, not a Commission initial decision?</p> <p>16 MR. MCGANN: That is correct, because it is</p> <p>17 in front of A.L.J. Adams at this point. So obviously,</p> <p>18 it's difficult to say. I would anticipate we would have</p> <p>19 an order, let's say, four weeks after that those rounds</p> <p>20 of brief are submitted -- briefs are submitted and</p> <p>21 exceptions after that.</p> <p>22 So trying to do a rough calculation, I'm</p> <p>23 assuming sometime, perhaps at the end of July, beginning</p> <p>24 of August, we might have an order coming out of that</p> <p>25 docket. I think that's an ambitious schedule, but we</p>

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1 are hoping that we would have something around that
 2 period of time.
 3 A.L.J. JENNINGS-FADER: Mr. Merz? Merz
 4 (pronouncing)?
 5 MR. MERZ: Merz, like Fred and Ethel.
 6 A.L.J. JENNINGS-FADER: I know you're tired
 7 of using that line, and I apologize for forcing you to,
 8 Mr. Merz.
 9 If we were to -- if the Commission were to
 10 accept Eschelon's proposal in the intervening time
 11 between now and, let's say -- September is ambitious --
 12 so let's be, perhaps, more realistic and say October,
 13 November, what will Eschelon and Qwest do with respect
 14 to the interconnection agreement?
 15 MR. MERZ: The parties have a bridge
 16 agreement that they've been operating under for quite a
 17 while now. The negotiations in these various
 18 arbitration proceedings have been going on literally for
 19 years. The end now, we believe, is in sight, but at the
 20 same time, given the history we have and the amount of
 21 evidence gone into negotiating these issues, we don't
 22 want to end up at the end of the day with something less
 23 than a complete contract.
 24 So we would continue to operate under the
 25 bridge agreement that's been in place between the

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1 parties.
 2 A.L.J. JENNINGS-FADER: If the Commission
 3 were not to accept Eschelon's proposal, what, then,
 4 would happen from Eschelon's perspective? And I
 5 don't -- I wish you not to provide your arguments again,
 6 but procedurally, what would happen? Would it require a
 7 second arbitration? If there were disagreements,
 8 what -- procedurally, how would Eschelon see this going
 9 forward?
 10 MR. MERZ: There would have to be some forum
 11 for the parties to resolve any disputes that there might
 12 be over this language, whether it be a second
 13 arbitration or some other similar kind of proceeding.
 14 But we'd have to end up with a -- with contract language
 15 that -- that both parties either agree or the Commission
 16 says appropriately incorporates the decisions that are
 17 made in that wire center proceeding. So there would
 18 have to be some kind of hearing if the parties weren't
 19 able to come to agreement on that language.
 20 A.L.J. JENNINGS-FADER: Thank you.
 21 Mr. Topp, could you respond to Eschelon's
 22 statements with respect to both additional proceedings
 23 that may be necessary if the decision is to accept
 24 Qwest's proposal and also the applicability of a bridge
 25 agreement if Eschelon's proposal were to be accepted?

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1 MR. TOPP: I -- there's no disagreement that
 2 the parties would operate under the bridge agreement
 3 until we have a new contract in place. That doesn't
 4 govern all issues. There's also an interconnection
 5 agreement that is out there that would -- that would be
 6 governing, in part, as well.
 7 But with respect to the proceedings that
 8 would be necessary, we would agree that it would be
 9 necessary to resolve disputed issues related to contract
 10 language potentially, but we would suggest that
 11 Eschelon's not alone in having those potential disputed
 12 issues and that efficiency would suggest that having
 13 those resolved in a forum where they can be resolved for
 14 all parties is the best approach.
 15 A.L.J. JENNINGS-FADER: And what would that
 16 forum be, in Qwest's opinion?
 17 MR. TOPP: I'm not sure of precisely how that
 18 would be set up, but I think that would come out of the
 19 wire center proceeding or ...
 20 MR. MERZ: And, Your Honor, the parties have
 21 filed their evidence, as Mr. McGann has indicated, and I
 22 don't believe any party has filed specific language. So
 23 at least in the procedural posture that the wire center
 24 case is now, there's not going to be any language that's
 25 produced as a result of that proceeding.

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1 A.L.J. JENNINGS-FADER: Let me understand
 2 what you're saying, Mr. Merz. No specific
 3 interconnection agreement language is proposed as a
 4 result -- or expected to be determined as a result of
 5 the current wire center proceeding in Colorado?
 6 MR. MERZ: Yes. And the issues in front of
 7 the Commission in the wire center proceeding are issues
 8 of general policy, if you will, that the parties will
 9 then have to kind of use the results of that to come up
 10 with language. But no party has proposed specific ICA
 11 language in the wire center proceeding, and specific ICA
 12 language really has always been something that's dealt
 13 with in arbitrations.
 14 A.L.J. JENNINGS-FADER: Qwest, on that point,
 15 please?
 16 MR. MCGANN: I do. I believe Mr. Merz is
 17 correct that there has not been specific interconnection
 18 agreement language proposed in the wire center docket.
 19 I suppose the parties have a disagreement as to whether
 20 or not they will be able to proceed based upon a ruling
 21 in the wire center docket without that contract
 22 language.
 23 I think we would I assert that essentially,
 24 we should be able to take the Commission's decision in
 25 the wire center docket and be able to proceed and adopt

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1 because I'm not sure how many allies there will be in
2 that proceeding. I think it's certainly conceivable
3 that we might be the ones there, too, that are -- if not
4 the only ones, at least, carrying the laboring oar on
5 these issues.
6 A.L.J. JENNINGS-FADER: And with respect to
7 the second type, services and processes for which --
8 which Qwest has offered but which have no Commission
9 approved rate, first of all, as to those, why would --
10 is this the first time Eschelon has seen those rates?
11 I'm trying to understand how -- I understand
12 from your new products how the issue comes up: New
13 product, got to charge something, here it is. Now we're
14 talking about product has been in existence, has
15 Eschelon been paying something and now the rates are
16 changing? I mean, how has this issue come up?
17 MR. MERZ: I'm looking to my --
18 A.L.J. JENNINGS-FADER: Ms. Clauson, you
19 certainly may speak if you wish.
20 MS. CLAUSON: Thank you. The category of
21 rates that you're asking about, I want to be sure to
22 answer the question, is things that they have been
23 offering, not new products, correct?
24 A.L.J. JENNINGS-FADER: Correct. I'm
25 differentiating it: new products.

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1 MS. CLAUSON: And so for the second category,
2 a couple of situations may have occurred. First of all,
3 keep in mind, for all -- for -- in either case, we have
4 been negotiating this contract since before March of
5 2001. So we have been raising this issue of how to
6 handle unapproved rates with Qwest in negotiations for
7 literally years. So what to do about those rates and to
8 cure this situation where an unapproved rate could go
9 out there indefinitely has been a negotiated issue
10 during that time. We've been raising it with Qwest all
11 of that time.
12 During the meantime, a couple of situations
13 arise. One is that we -- it's a product we plan to
14 offer in the -- or have the ability to offer going
15 forward and don't currently or it's a price where Qwest
16 imposes its proposed rate. And our objection there is,
17 we don't think the rate they're applying is cost based.
18 Does that answer your question?
19 A.L.J. JENNINGS-FADER: As to the service or
20 product which Eschelon has -- an existing service or
21 product for which Qwest has been charging something but
22 which Eschelon has not in the past purchased, taking
23 that category, okay, that rate, then in your view, is a
24 rate which the Commission needs to deal with in this
25 arbitration because Eschelon has not in the past had an

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1 opportunity to raise the issue of the rate? I mean,
2 that -- I'm trying to understand how it came to be in
3 this arbitration as opposed to ...
4 MS. CLAUSON: Because that's where we've
5 raised the issue, is in negotiations and arbitration,
6 and the arbitration just took a lot longer to get to
7 than we envisioned.
8 A.L.J. JENNINGS-FADER: As to services and
9 products which Qwest -- for which Qwest has been
10 charging in the past which Eschelon has been purchasing
11 and Eschelon believes to have been -- to have been an
12 inflated charge, that's another category, yes?
13 MS. CLAUSON: Yes.
14 A.L.J. JENNINGS-FADER: As to those, why has
15 Eschelon waited until the arbitration to deal with this?
16 Why didn't it deal with it by a complaint case or some
17 other mechanism?
18 MS. CLAUSON: Again, that goes to this whole
19 argument of efficiency. Should we -- we raise the issue
20 and litigate the rate in one arbitration and do them all
21 together? If you look at how many rates are at issue,
22 we have to have individual cases for each one. If you
23 look at one of the other open issues, Qwest opposes our
24 language.
25 Is that Colorado state specific language on

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1 that, our language -- our right to request a cost case?
2 (Discussion off the record.)
3 MS. CLAUSON: That is an open issue in
4 Colorado. So we have an open issue in the negotiations
5 in arbitration as to whether they agree we even have a
6 right to try to get a cost case. And we would have to
7 litigate individually every time that rate.
8 The burden is not, to our understanding, in a
9 cost case to establish rates on the CLEC. The ILEC has
10 the obligation to show that their rates are cost based,
11 and in the meantime, we've tried to negotiate with them
12 knowing that if we couldn't reach agreement, we would
13 arbitrate it.
14 Let me clarify, because apparently, I didn't
15 state it -- all these things I'm talking about are
16 unapproved rates. If they're approved rates, we've paid
17 the approved rate.
18 A.L.J. JENNINGS-FADER: Right. I got that.
19 I understand that. I understand that these are all
20 subcategories and subcategories of unapproved rates.
21 With respect to the efficiencies argument,
22 Eschelon, is it not the case that Eschelon has had to
23 arbitrate an interconnection agreement with Qwest in
24 each jurisdiction in which Eschelon does business with
25 Qwest?

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1 A.L.J. JENNINGS-FADER: That would be fine.
 2 Q (By Mr. Merz) And actually, your testimony
 3 refers to BJJ 36, but I -- I wonder if maybe you didn't
 4 intend to refer to BJJ 39, which is the one that I just
 5 handed to you.
 6 A Yes, that's correct.
 7 Q Now, in your rebuttal testimony at Page 20,
 8 you say that Eschelon had asked Qwest to expend
 9 resources on root-cause analysis based on a process that
 10 is not Qwest's current practice and that Qwest is not
 11 required to follow. Is that right?
 12 A It is not Qwest's practice that the FOC must
 13 be delivered at least a day before, but the date
 14 Eschelon had been providing to its service manager was
 15 based on that assumption, and therefore, we were talking
 16 past each other in trying to go through the data that
 17 Eschelon was providing.
 18 Q BJJ 39 contains some e-mail correspondence
 19 between Qwest and Eschelon. Is that right?
 20 A Yes.
 21 Q And that correspondence concerns data that
 22 Eschelon was providing to Qwest regarding its jeopardy
 23 and held-order process?
 24 A That's correct. And I spoke to Jean Novak,
 25 who was Eschelon's service manager at the time, about

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1 that data and why Qwest was having difficulty analyzing
 2 Eschelon's data.
 3 Q Now, if you would go to Page 8 of Exhibit
 4 BJJ 39.
 5 A Yes.
 6 Q There are two e-mails on Page 8, correct?
 7 A Yes.
 8 Q The e-mail -- the first e-mail on the page is
 9 from Jean Novak to Bonnie Johnson, correct?
 10 A Yes.
 11 Q That is an e-mail dated August 25th of 2004.
 12 Is that right?
 13 A Yes.
 14 Q In that e-mail, Ms. Novak is responding to,
 15 apparently, a prior e-mail from Ms. Johnson regarding
 16 this data that we've been talking about concerning the
 17 jeopardy process. Is that right?
 18 A Are we looking at the one at 244 or the one
 19 at 404?
 20 Q I'm looking at the one at the top of the page
 21 from Ms. Novak to Bonnie Johnson.
 22 A Okay.
 23 Q And that is an e-mail in which Ms. Novak is
 24 responding to a prior e-mail from Ms. Johnson that
 25 provided certain data to get regarding the jeopardy

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1 notification process. Is that right?
 2 A Yes.
 3 Q So we know that at least as of August of
 4 2004, Eschelon was providing this -- this data. Is that
 5 right?
 6 A Yes. And Qwest endeavored to respond, yes.
 7 Q And you talk about the response, and the
 8 response to the e-mail at the top of the page is found
 9 there at the bottom of the same page. Is that right?
 10 A Yes. This is Eschelon's response to Qwest's
 11 e-mail.
 12 Q Correct.
 13 A Yes.
 14 Q Now, if you go to the next page, there are
 15 references there in the middle of the page to something
 16 called Eschelon issues logs for service managers
 17 meetings. Do you see that?
 18 A Oh, yes.
 19 Q And you were aware that Eschelon prepared
 20 issues logs to provide information to Qwest regarding
 21 compliance with certain ordering processes. Is that
 22 right?
 23 A Yes.
 24 Q And what we have here on Page 9 and also
 25 Page 10 of BJJ 39 are excerpts from those issues logs,

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1 correct?
 2 A That's my understanding from what Ms. Johnson
 3 identifies these as.
 4 Q And you also talked with Ms. Novak about this
 5 issue. Is that right?
 6 A Yes.
 7 Q Now, it says here at the bottom of the
 8 page -- there's a reference to an August 3, '05 team
 9 meeting. Do you see that?
 10 A Yes.
 11 Q And it says there, I believe it's the third
 12 sentence, "Jean once again stated that Qwest disagrees
 13 that it's Qwest process to send the releasing FOC 24
 14 hours prior to the FOC due date." Is that right?
 15 A Yes.
 16 Q And then if you go to the next page, there's
 17 another reference to one of these issues logs that's
 18 dated October 5th of 2005. Do you see that?
 19 A Yes.
 20 Q And it says on the second page, "Bonnie asked
 21 if Eschelon should continue to send the delayed data to
 22 Qwest. Jean said yes." Do you see that?
 23 A Yes.
 24 Q And Eschelon does continue to send the data
 25 that it began sending in 2004. Is that right?

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1 Q We've talked about this issue in a couple of
 2 other cases, and you would agree with me that Qwest does
 3 provide expedites to its retail customers?
 4 A Yes, it does.
 5 Q And it does that as a matter of course as
 6 part of its regular business practice?
 7 A And we offer expedites to all of our
 8 customers, retail and CLECs, at the same terms and
 9 conditions.
 10 Q You are aware that Eschelon brought a
 11 complaint in Arizona relating to expedites under its
 12 current interconnection agreement, correct?
 13 A Yes. The old interconnection agreement,
 14 that's correct.
 15 Q You're aware that that complaint is now
 16 pending?
 17 A Yes.
 18 Q And you are in fact a witness for Qwest in
 19 that case, correct?
 20 A Yes, I am.
 21 Q And the Arizona Commission staff has filed
 22 testimony in that case. You're aware of that?
 23 A Yes.
 24 Q And in fact, you refer to that Arizona staff
 25 testimony in your own testimony. Is that right?

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1 A That's correct.
 2 Q The Arizona staff has concluded that Qwest
 3 had breached the terms of its interconnection agreement
 4 with Eschelon by failing to provide Eschelon with the
 5 capability to expedite orders. Is that right?
 6 A Yes. And I believe in my testimony, I
 7 explained that Qwest believes that the staff has erred
 8 in that conclusion.
 9 Q And the Arizona staff has concluded that
 10 Qwest is required to provide expedites to Eschelon on
 11 cost-based rates, correct?
 12 A Yes.
 13 Q In the Minnesota arbitration, the A.L.J.s
 14 also concluded that Qwest is required to provide
 15 expedites at cost-based rates, correct?
 16 A I know that they require that it be dealt
 17 with in a cost docket. I don't recall if they actually
 18 concluded it was cost based.
 19 Q No. I think my question's different.
 20 A Okay.
 21 Q You are aware that the Minnesota A.L.J.s said
 22 that Qwest should provide expedites to Eschelon at
 23 cost-based rates?
 24 A I'd have to look at what they -- what -- the
 25 A.L.J.s' order.

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1 Q You just don't recall that?
 2 A I'm not sure that's exactly what they said.
 3 Q Do you recall that the Minnesota Commission
 4 also found that Qwest was required to provide expedites
 5 to Eschelon at cost-based rates?
 6 A Well, what I understand is that they required
 7 that the expedite rate be dealt with in the cost docket.
 8 That would presume it's cost based, but ...
 9 Q You are aware that in the Minnesota
 10 arbitration case, Eschelon proposed an interim rate for
 11 expedites, right?
 12 A Yes.
 13 Q And you're aware that that interim rate is a
 14 hundred-dollar per order charge?
 15 A I believe it's a hundred dollars per order
 16 per day.
 17 Q Well, it is what it is, but you're aware that
 18 it's a hundred-dollar charge that's been proposed by
 19 Eschelon?
 20 A Yes.
 21 Q And you are aware as well that in Minnesota,
 22 the Commission ordered that Eschelon's proposed interim
 23 rate for expedites be adopted?
 24 A Yes. But I, again, believe that's until it
 25 has been resolved in the cost docket, so it's an interim

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1 rate.
 2 MR. MERZ: I don't have anything further.
 3 Thank you, Ms. Albersheim.
 4 A.L.J. JENNINGS-FADER: Redirect?
 5 I'm sorry. Before you do that, I'd like to
 6 tell the parties how I proceed in this matter.
 7 We'll do redirect. Then I will have
 8 questions for Ms. Albersheim following which parties in
 9 the -- Eschelon, you'll have an opportunity to ask
 10 questions based on what I ask, and then Qwest, you'll
 11 have an opportunity to do whatever redirect or cleanup
 12 that you think may be necessary as a result of the
 13 questions
 14 MR. TOPP: Okay. Thank you.
 15 REDIRECT EXAMINATION
 16 BY MR. TOPP:
 17 Q Ms. Albersheim, I'd have you refer to
 18 Exhibit RA 17 to your rebuttal testimony.
 19 A My answer?
 20 Q The answer testimony, excuse me, that you
 21 were discussing with Mr. Merz earlier.
 22 A Yes.
 23 Q And Mr. Merz asked you a series of questions
 24 about a March 4th meeting at -- and some of the entries
 25 on Page 5 of that meeting. Is that correct?

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1 MR. TOPP: I have no further questions.
 2 EXAMINATION
 3 BY A.L.J. JENNINGS-FADER:
 4 Q I have a number of questions, but let me
 5 start with a general question about your involvement and
 6 background with the change management process.
 7 What is that? What is your involvement and
 8 background specifically in actually working in the
 9 change management process?
 10 A I'm not part of the change management team
 11 itself. As a witness, I obtain information from the
 12 change management record as my primary source, but then
 13 I also speak to the members of the change management
 14 team if I need additional information, as sometimes
 15 occurred in this case.
 16 I was involved in the development of the
 17 change management as support staff for the people who
 18 were negotiating the change management redesign, but I
 19 do not work as a change management team member.
 20 Q So if I -- am I correct to take from that
 21 that to the extent you talk about -- either in your
 22 written testimony or in response to counsel's questions,
 23 the reasons things happened, for instance, with respect
 24 to the changes that are reflected in Exhibit BJJ 39 --
 25 A Yes.

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1 Q -- that those -- that discussion is based
 2 either on your reading documents or discussions you have
 3 with persons who did participate in that process?
 4 A Yes. So for that exhibit, I spoke directly
 5 with Jean Novak.
 6 Q Is that also true with respect to changes or
 7 implementation through the product -- I'm sorry. That
 8 was a terrible question.
 9 Could you explain, for the Commission's
 10 information, what your involvement is as a matter of
 11 daily work with the product catalog, which is referred
 12 to sometimes as the PCAT?
 13 A I do not participate in the changes to the
 14 PCAT itself. That is handled by our process personnel
 15 and usually takes place as a result of change management
 16 change requests. I get involved if those become an
 17 issue in litigation, and then I must investigate what
 18 took place when that change request was implemented.
 19 Q And so taking your previous answer with
 20 respect to the change management process, may the
 21 Commission take from your answer with respect to the
 22 product catalog that you used the same process for your
 23 investigation; that is, you read whatever documentation
 24 may be available, and you'd speak to interested -- or,
 25 excuse me -- involved persons and obtain your

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1 information that way?
 2 A Yes.
 3 Q Do you have the same -- do you have a
 4 procedural -- excuse me -- an operations involvement
 5 with the service interval guides, sometimes referred to
 6 as the SIGs?
 7 A No, I do not.
 8 Q And working back to the testimony you've
 9 given previously about your work with the change
 10 management process and the product catalog, is that --
 11 your involvement at that same level to the extent you
 12 discuss SIG in your testimony?
 13 A Yes. For the history of service interval
 14 changes, I went to the change management team and
 15 discussed with them how interval changes are implemented
 16 through the SIG.
 17 Q I understand one of the major issues in this
 18 arbitration to be a fundamental disagreement between
 19 Qwest and Eschelon as to the degree of specificity which
 20 must be in an interconnection agreement with respect to
 21 processes and procedures.
 22 Is my understanding correct?
 23 A That's correct.
 24 Q And it's Qwest's position, if I understand it
 25 correctly, that reference to documents such as the

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1 product category or the service interval guide and
 2 reference to processes such as the change management
 3 process suffice to address a wide variety of issues
 4 at -- that are subject to arbitration.
 5 A Yes. It is our belief that the processes and
 6 procedures were not intended to be part of the
 7 interconnection agreement. Those were for terms and
 8 conditions, what products the CLECs would buy from
 9 Qwest, on what terms. But the details regarding how
 10 projects -- products would be proficient should be
 11 according to Qwest's internal procedures, which are
 12 managed through the SIG.
 13 Q I'm sorry. When I was listing all the
 14 various kinds of places one might go for information, I
 15 forgot Qwest's implementation guide.
 16 Are you familiar with that?
 17 A Yes.
 18 Q And referring back to our discussion having
 19 to do with the change management process, the product
 20 catalog and the service interval guide, is your
 21 relationship or your operational understanding of
 22 Qwest's implementation guide based on the same kind of
 23 investigation?
 24 A Yes, though a little more detailed there,
 25 because I used to be in the information technologies

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1 department and had more familiarity with our IT
 2 processes, so I was already pretty familiar with those
 3 documents. But still, as part of my investigation, I
 4 did go to the implementation team at Qwest to discuss
 5 the terms and the implementation guide.
 6 Q Now, getting -- I'm sorry for that diversion.
 7 Let's -- getting back to our discussion about
 8 fundamental areas of disagreement, now, when you
 9 testify, Ms. Albersheim, regarding the use of the change
 10 management process instead of including processes in the
 11 interconnection agreement --
 12 A Yes.
 13 Q -- could you explain for the record
 14 briefly --
 15 Let me start again. If I understand
 16 correctly, there are two types of processes within
 17 change management or -- one of which is a process that
 18 directly relates to service -- to products and
 19 processes. Is that correct? And there's a notification
 20 process and an entire process to deal with Qwest's
 21 implementation of product and process changes, correct?
 22 A Yes, that's correct.
 23 Q And there is a separate process within the
 24 change management process for dealing with changes
 25 having to do with operational systems. Is that correct?

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1 A That's correct.
 2 Q And in fact, referred to as product and
 3 process and systems, correct?
 4 A That's correct.
 5 Q Now, when Qwest talks about referring
 6 product -- process issues to the change management
 7 process, it's referring to using the process related to
 8 products and processes, is that correct, as opposed to
 9 the systems process?
 10 A Well, yes, unless the change involves the
 11 system change. Sometimes they are submitted as one, as
 12 a product and process, but in -- Qwest determines that
 13 the change actually involves systems, so they are moved
 14 over into the systems category.
 15 Q So if when Qwest -- when you testified -- not
 16 Qwest. When you testify that an issue ought to be
 17 referred to the change management process, then what --
 18 to which piece of the change management process are you
 19 suggesting the issue be referred?
 20 A Well, that depends on what change the CLEC
 21 requires, and if what they require is a change to our
 22 procedures, then it would be a product and process
 23 change. But if it requires a change to our systems, it
 24 would be a systems change.
 25 Q In your testimony, do you identify to which

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1 piece of the change management process various issues
 2 ought to be referred, or is this just a general concept?
 3 A It's a general concept, because I don't
 4 believe any were dealt with that way, if that makes any
 5 sense.
 6 Q With that degree of specificity?
 7 A Yes.
 8 Q And if I am putting words in your mouth, stop
 9 me immediately.
 10 A It's okay. I believe that's the case.
 11 Q I understand from the testimony of
 12 Mr. Starkey, his direct testimony, which in this
 13 proceeding is Exhibit No. -- Hearing Exhibit No. 18,
 14 that in approximately mid November of 2006, Qwest
 15 determined that it would begin using a negotiations
 16 template agreement. Is that correct?
 17 A I think it's been longer than that.
 18 Q Well, to the --
 19 A To use a negotiations template, yes.
 20 Q And it did occur at some point during the --
 21 during the negotiations between Eschelon and Qwest that
 22 led to this arbitration?
 23 A Well, Eschelon's negotiations started before
 24 we started using the negotiations template, so they've
 25 been going on a long time.

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1 Q They have been, yes.
 2 A So several intervening events.
 3 Q Sure. And the switch from using the
 4 statement of generally accepted terms and conditions to
 5 using the negotiations template agreement occurred at
 6 some point during that negotiation process between Qwest
 7 and Eschelon?
 8 A I believe that's correct, yes.
 9 Q Do you disagree -- are you familiar with
 10 Mr. Starkey's direct testimony? I believe you are,
 11 because I think you responded to it.
 12 A I responded to it, yes.
 13 Q And do you disagree with his representation
 14 that Qwest issued this notice of change from the SGAT to
 15 the negotiations template agreement by a Level 1 notice?
 16 A I'm not certain.
 17 Q That's to say, you don't recall what the
 18 level --
 19 A Yeah. I don't recall how that was
 20 communicated.
 21 Q In the course of your investigation into the
 22 issues involving change management and referring some of
 23 these issues to change management process, what was the
 24 basis for the change from using -- first of all, what
 25 are statements of generally accepted terms and

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1 A I don't know. At this point I would be
2 guessing.
3 Q Do you know -- do you know -- Ms. Albersheim,
4 please don't do that. Thank you.
5 Ms. Albersheim, do you know whether the
6 negotiations template agreement contains all the
7 provisions that are contained within the Colorado
8 Commission approved SGAT as modified?
9 A I would be guessing.
10 Q So you haven't done a side-by-side
11 comparison?
12 A I have not done a side-by-side. I believe it
13 contains more, but I would be guessing at that.
14 Q Did Qwest prior to switching from the SGAT to
15 the negotiations template agreement seek Commission
16 approval or notify the Commission before it made that
17 change?
18 A I don't believe it has. The thing is, while
19 it has published this negotiations template, I don't
20 believe the SGAT is not in effect. The thing is is that
21 the language in the SGAT is significantly out of date,
22 so I don't believe Qwest has initiated formal
23 proceedings with regard to the SGAT at this time.
24 Q By "formal proceedings," you mean formal
25 proceedings to somehow -- what do you mean by "formal

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1 proceedings"?
2 A Where it is to change the SGAT, withdraw the
3 SGAT, place the negotiations template in their place, I
4 don't know what Qwest's plans are there, but I don't
5 believe that has taken place yet. So the SGAT isn't
6 void, but it is significantly out of date.
7 Q And so that it leads me, actually, to kind of
8 where I was going with this whole -- I just needed to
9 set the stage.
10 A Yes.
11 Q If there is a dispute between the language in
12 an SGAT, just for example, and the language in the
13 negotiations template agreement, which document governs?
14 A That's hard to answer because I feel like
15 that's a legal question.
16 Q Well, I understand you're a lawyer, but I'm
17 not asking you a legal question. I'm asking you a
18 question based on -- first of all, you're a lawyer?
19 A I'm a lawyer but not for Qwest.
20 Q I understand that, and I'm not asking you a
21 legal question. I am asking you a question based on
22 your understanding and investigation and Qwest's
23 position about things going to CMP and other -- other
24 relevant processes.
25 A Well, you see, I don't believe Qwest

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1 approaches it quite the way you frame the question,
2 because the negotiations template is a starting point
3 for negotiations. It's the starting point for coming up
4 with an interconnection agreement.
5 If the terms in the SGAT and the terms of the
6 negotiation template don't agree, the CLEC is certainly
7 free to bring that to Qwest's attention during the
8 negotiations. And Qwest can address that in the
9 negotiations and determine whether or not the CLEC is
10 correct, change the negotiations template, or come up
11 with some alternative for that CLEC's contract.
12 Q So I gather from that that the negotiations
13 template agreement is not a take-it-or-leave-it
14 proposition.
15 A No, no. It's a starting point.
16 Q Let's move back -- and thank you for that.
17 A Sure.
18 Q It helps me understand a little bit about
19 Qwest's view about the template negotiations template.
20 A Sure.
21 A.L.J. JENNINGS-FADER: I think we're pretty
22 much finished with the -- Mr. Starkey's testimony.
23 Thank you, Counsel, for letting me -- for letting us use
24 that.
25 Q (By A.L.J. Jennings-Fader) Now, Qwest's

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1 view, I believe, in this case is that certain process
2 issues belong in the CMP for a variety of reasons, all
3 of which are discussed in detail in your testimony.
4 Is my understanding correct?
5 A Yes.
6 Q If an issue belongs in CMP and if the issue
7 is a product and process, correctly labeled a product
8 and process issue, what is the process by which the
9 CLEC, in this case Eschelon, can bring the issue to CMP
10 to assure that the issue is addressed with the CMP?
11 A They can submit a change request to have that
12 particular change made to the product or process.
13 Q Now, are change requests for product and
14 process subject to review by all -- all of the CLECs
15 that may participate in the change management process?
16 A They all have the opportunity to review and
17 comment on all change requests, yes.
18 Q Does Qwest under the change management
19 process -- are change requests for product and processes
20 subject to any sort of vote by anyone?
21 A No, but I'd like to clarify what voting
22 means.
23 Q Please do.
24 A Because it is not whether or not a change
25 request is accepted or denied. The voting is to

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1 Q If, taking the exhibit -- the example of the
2 firm order commitment following a jeopardy and the date
3 on which it is to be provided -- let's get the whole
4 deal out there.
5 A Yes.
6 Q Let's assume that Eschelon had never -- had
7 never raised the issue, goes to the CMP, goes to the
8 process and -- product and process portion of the CMP,
9 goes through the whole nine yards and CMP, at the end of
10 the day Qwest says no, okay, which is pretty much what
11 they're saying now --
12 A Right.
13 Q -- okay? How has going through the CMP
14 process done anything for Eschelon other than delay a
15 third party's resolution of the dispute?
16 A It might give Eschelon allies in the argument
17 if other CLECs agree that this change should be made to
18 Qwest's process. So I believe there's a benefit in
19 finding consensus on what this change should be and what
20 the CMP is for. So it does delay, but Qwest could
21 discover that that is important to all of the CLECs and
22 isn't just a process change that Eschelon wanted.
23 Q Now, we'll talk about all -- and you have
24 blended in, then, the reason, among others, that Qwest
25 wants to go for certain of these issues, among them the

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1 FOC following jeopardy has to do with the fact that it
2 wants input from all of the competitive local exchange
3 carriers that participate in the change management
4 process?
5 A That is one, and the other overriding concern
6 for Qwest is to have one set of processes and procedures
7 for everybody.
8 Q So, now, Qwest gets the input, decides not to
9 proceed. What value is it to Eschelon to have had that
10 input from other CLECs, aside from the allies?
11 A Well, if -- if Qwest does not change its
12 mind, then Eschelon has not received any benefit, no.
13 It hasn't gotten that change made. But I don't believe
14 it's appropriate for that change to be made through
15 contract terms.
16 Q Now, you mentioned the word "consensus" in
17 your answer a moment ago.
18 A Um-hum.
19 Q Which consensus? Are change management --
20 excuse me. Are change requests on product and process
21 resolved by consensus?
22 A I'm not sure I would put it that way. Qwest
23 does listen to the input it receives from CLECs when
24 Qwest submits its own change requests and doesn't always
25 implement them. Likewise, it gets input from CLECs on

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1 change requests submitted by other CLECs.
2 So, you know, Qwest doesn't implement change
3 requests in a vacuum. The input from the CLEC community
4 is an important aspect of implementing change requests.
5 Q And now I'd like to talk about -- a little
6 bit about Issue 12-64, which is the root-cause analysis
7 and commission of error, if you will.
8 A Okay.
9 Q I don't know how --
10 A Acknowledgment of mistakes.
11 Q Acknowledgment of mistakes. Thank you. I'll
12 write that down. I want to be sure to use that right.
13 A.L.J. JENNINGS-FADER: And again, Counsel, I
14 apologize. Does someone have Mr. Webber's direct
15 testimony, which will be Exhibit No. 19?
16 MR. MERZ: Yes.
17 A.L.J. JENNINGS-FADER: Thank you.
18 Q (By A.L.J. Jennings-Fader) Could you turn to
19 Page 43.
20 A I'm there.
21 Q And specifically, if you would take a moment.
22 Are you familiar with Mr. Webber's testimony?
23 A Yes. I've read it.
24 Q And there is a long quotation there from
25 Qwest's product catalog at Lines 12 to about 26 --

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1 A Yes.
2 Q -- having to do with postmortems under
3 specific circumstances.
4 A Yes.
5 Q And postmortems are what?
6 A Analysis of mistakes.
7 Q And are they the functional equivalent of
8 root-cause analysis?
9 A Yes, yes. You could call it that, yes. And
10 I'd point out that I believe I reference the same PCAT
11 in my testimony. I just didn't quote it.
12 Q You may, but the quote happened to be here,
13 so --
14 A Yes.
15 Q Okay. Now, did this process that's shown
16 here on Page 43, Lines 12 to 26 result from a change
17 management process?
18 A I couldn't say how all of the changes that
19 might have been made to this would have resulted. It
20 has a history of changes, some probably through the CMP.
21 Q I'm sorry. I should say -- I'm sorry. Does
22 the original concept of doing the root-cause analysis or
23 postmortem referenced in this testimony arise -- did it
24 come through CMP or was it --
25 A Its origin, I don't know.

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1 Q I'm sorry. I should have been clearer.
 2 A That's okay.
 3 Q While I understand -- well, the process
 4 that's referenced on Page 43 -- 43, Lines 12 to 26 of
 5 Mr. Webber's direct testimony, that process is limited
 6 to a particular circumstance. Is that correct?
 7 A Yes. This appears to be limited. This quote
 8 limits the process to repair circumstances, yes.
 9 Q And further, if I'm reading this correctly, a
 10 repair or circumstance met -- excuse me -- maintenance
 11 and repair circumstance on an unusual event, for
 12 example, an event lasting over eight hours, in other
 13 words, it's quite specific, quite directed. Is that
 14 correct?
 15 A Well, that's an example. Another unusual
 16 repair event could be an error, if you will, that occurs
 17 many times or isn't resolved on the first try. I
 18 believe that's just exhibited as an example.
 19 Q So this process may be available for more
 20 than one -- more than the one event referenced,
 21 specifically referenced?
 22 A Yes.
 23 Q Is this process still operational --
 24 A Yes.
 25 Q -- operative?

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1 A Yes, it is.
 2 Q Taking this -- let's assume that there's a
 3 postmortem or root-cause analysis, which is also
 4 referenced in this same quotation, completed.
 5 What happens as a result of that root-cause
 6 analysis? Qwest does one, and then what?
 7 A It provides the results to the CLEC.
 8 Q Anything else?
 9 A That depends on what the CLEC wants to
 10 happen. It's entirely circumstance specific.
 11 Q Does -- do you know whether Qwest charges for
 12 a postmortem or a root-cause analysis which is done
 13 pursuant to this provision?
 14 A No. I don't believe there's a charge for
 15 this.
 16 Q I understand that Qwest's concern in part
 17 about the root-cause analysis -- correct me if I'm
 18 wrong, please -- is that this may result -- may be a
 19 change in Qwest's current process or procedures, is that
 20 correct, or may cause a result in a change to the
 21 current process or procedures?
 22 A I don't think that's our primary concern with
 23 this issue, though that's a possibility. I don't think
 24 that's mainly what our concern is here.
 25 Q To the extent that Qwest has a -- has stated

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1 a concern about Issue 12-64, Eschelon's proposals,
 2 because it might have that effect of changing a process
 3 or procedure, is what is described in Mr. Webber's
 4 testimony on Page 43 a process or procedure that could
 5 be adapted to a broader -- to encompass a broader scope?
 6 A It could. I just have to --
 7 Q I want you to give a complete answer, so if
 8 you have some reservations, please, I'd like to hear
 9 them. I'm not --
 10 A I'd rather be looking at the entire PCAT,
 11 because I believe this is only a portion of what is
 12 available. I believe more's already available from the
 13 account manager PCAT; plus, there is a root-cause
 14 analysis of this kind specific to repair issues.
 15 So we offer them more than this already.
 16 It's possible it could be adapted to do even more than
 17 what is already offered. It depends on the
 18 circumstances, what is asked to be offered.
 19 Q Is part of Qwest's concern about Issue 12-64
 20 that it might be overused, if there were such a -- if
 21 there were a provision in the interconnection agreement,
 22 that it might be overused by Eschelon and cause
 23 increased costs to Qwest as a result?
 24 A I believe that potential exists, yes.
 25 Q And is that one of the concerns that you've

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1 articulated or that's been -- with respect to this
 2 issue?
 3 A That's just my opinion. I haven't really
 4 stated that in my testimony. I believe that their
 5 request is significantly broad and creates that
 6 potential.
 7 Q To address that potential, would a -- would a
 8 provision which limits the number of such requests made
 9 within some period of time address that concern? Yes or
 10 no. And I'll ask you to explain your answer, but I
 11 just ...
 12 A Yes. It would help.
 13 Q And because?
 14 A Well, because then it would limit the amount
 15 of resources spent on those efforts by Qwest, yes, and
 16 might help to limit Eschelon's use of that provision,
 17 you know, and make it use it when it's needed. But
 18 right now, this isn't there. There's no limitation at
 19 this point.
 20 Q And I know we're running into the lunch hour,
 21 but I really just have one more specific issue that I'd
 22 like to talk about with you, and it's not nearly, I
 23 think, as detailed as we have been up to this point.
 24 A Okay. Do I still need this (indicating)?
 25 Q Oh, I think not. Thank you. There's just a

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1 A Yes, it does.
 2 Q Let's assume for purposes of my -- of our
 3 discussion the following: Qwest's proposal has been
 4 accepted. Eschelon brings a complaint, formal complaint
 5 before the Commission, claiming that Qwest has not
 6 fulfilled its interconnection duties or obligations.
 7 The interconnection duties or obligations to which the
 8 complaint refers have to do with something to which one
 9 must -- for which one must refer to the PCAT in order to
 10 determine what those duties or obligations are.
 11 With me so far?
 12 A Yes.
 13 Q Okay?
 14 A Okay.
 15 Q All right. What PCAT does the Commission
 16 look to to determine the duties and obligations of
 17 Qwest? And I'll give you some options. The PCAT -- at
 18 what point in time? Is it the PCAT in existence on the
 19 day that the ICA was filed with the Commission? Is it
 20 the PCAT that was in effect on the day in which the
 21 alleged failure occurred? Is it the PCAT which -- which
 22 was in existence on the date the complaint was filed, or
 23 is it the PCAT which is in existence on the date of the
 24 hearing before the Commission?
 25 A If I understand you correctly, it would be

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1 the PCAT that was in effect the date the alleged
 2 infraction occurred that the complaint is filed about.
 3 That would have to be, because that would be the
 4 procedure in effect at that point.
 5 Q And that was just an example.
 6 A Okay.
 7 Q If Qwest's -- let's assume now following the
 8 additional fact that the PCAT to which the ICA -- to
 9 which one would look in the event of a complaint that we
 10 discussed earlier is the PCAT in effect on the date of
 11 the alleged failure.
 12 If subsequent to the event of the alleged
 13 failure Qwest has changed its PCAT, what impact does
 14 that have based -- I mean, from a process view, from the
 15 Commission's perspective, trying to -- trying to deal
 16 with the complaint, how does the Commission deal with
 17 something?
 18 A That's already changed?
 19 Q That's already changed.
 20 A I'm afraid that would really depend on the
 21 circumstances. I'm not sure I could answer that
 22 globally, because it would depend on if the change may
 23 have improved the situation that caused the problem in
 24 the first place or if had made the process so different
 25 that it's hard to address in that forum. I can't really

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1 guess how that would be affected.
 2 Q Thank you so much.
 3 A Sure.
 4 Q My apologies for my inartfully worded
 5 questions, but thank you for your responses.
 6 A Sure.
 7 A.L.J. JENNINGS-FADER: Mr. Merz.
 8 MR. MERZ: Thank you, Your Honor.
 9 RE CROSS-EXAMINATION
 10 BY MR. MERZ:
 11 Q The judge had some questions for you this
 12 morning about the substitution of a negotiation template
 13 for the PCAT. Do you recall that?
 14 A Yes. As a starting point for negotiations,
 15 yes.
 16 MR. MERZ: And, Your Honor, I have a document
 17 that I'd like to get marked.
 18 A.L.J. JENNINGS-FADER: Exhibit No. 29 for
 19 identification.
 20 (Exhibit 29 marked for identification.)
 21 A Is this different?
 22 Q (By Mr. Merz) You have there what's marked
 23 as Exhibit 29, is that correct, for identification?
 24 A Yes.
 25 Q And you recognize Exhibit 29 as the CMP

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1 notice relating to the substitution of the negotiation
 2 template for the PCAT. Is that right?
 3 A It appears to be part of it, yes.
 4 MR. MERZ: Your Honor, Eschelon offers --
 5 A.L.J. JENNINGS-FADER: I'm sorry. Could you
 6 give me the date of the letter?
 7 MR. MERZ: It is dated November 15, 2006.
 8 It's a notice that went to Kim Isaacs, who's an Eschelon
 9 employee. It's a notice -- a CMP notice from Qwest.
 10 A.L.J. JENNINGS-FADER: And the subject is
 11 CMP getting started as a CLEC B-21.
 12 MR. MERZ: If you read down --
 13 A.L.J. JENNINGS-FADER: No. I'm sorry. Is
 14 that just the subject -- one of the lines --
 15 MR. MERZ: That's the subject line, yes.
 16 A.L.J. JENNINGS-FADER: That's all I wanted,
 17 to make sure you were talking about the same document.
 18 MR. MERZ: I understand, Your Honor.
 19 Eschelon offers Exhibit 29.
 20 A.L.J. JENNINGS-FADER: Exhibit offered.
 21 Objection or voir dire?
 22 MR. TOPP: No objection.
 23 A.L.J. JENNINGS-FADER: Exhibit 29 is
 24 admitted.
 25 (Exhibit 29 admitted.)

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1 Q (By Mr. Merz) You see here, Ms. Albersheim,
2 this notice identifies the change was in fact a Level I
3 change?
4 A Yes, I see that.
5 Q There was also a question this morning about
6 whether the SGAT would continue to be available for
7 opt-in after the negotiation templates were put in
8 place, and you see that this issue was addressed here on
9 this notice that we've now admitted as Hearing
10 Exhibit 29?
11 A Yes, I see that.
12 Q And you see that the notice from Qwest says
13 that the SGATs are no longer available to opt in and
14 have been replaced by the negotiation templates. Is
15 that right?
16 A See that, yes.
17 Q Now, Mr. Topp had some questions for you this
18 morning regarding --
19 A.L.J. JENNINGS-FADER: I'm sorry.
20 MR. MERZ: I'm sorry?
21 A.L.J. JENNINGS-FADER: Only questions that I
22 asked.
23 MR. MERZ: Only your questions. All right.
24 A.L.J. JENNINGS-FADER: Yes.
25 MR. MERZ: That's it.

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1 A.L.J. JENNINGS-FADER: Thank you.
2 Mr. Topp, any redirect based on my questions?
3 MR. TOPP: Just one short one, maybe two.
4 A.L.J. JENNINGS-FADER: As many as you need,
5 Counsel.
6 REDIRECT EXAMINATION
7 BY MR. TOPP:
8 Q Ms. Albersheim, you were asked some questions
9 about whether processes vary between states. Do you
10 recall that?
11 A Yes.
12 Q Generally, does Qwest attempt to make
13 processes consistent?
14 A Yes, Qwest does.
15 Q And where there is a difference in processes
16 between states, is there any general cause for those
17 changes?
18 A Well, that can be as a result of an order in
19 that state that requires us to do things in a different
20 way, yes. I -- I was getting confused a little by the
21 judge's question, because I was hearing the question
22 about rates, and rates will vary across states. But in
23 terms of processes, we try to make them the same, but
24 sometimes we have no choice.
25 MR. TOPP: No further questions.

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1 A.L.J. JENNINGS-FADER: Thank you.
2 Ms. Albersheim, thank you so much for your
3 testimony, both written and oral, and it's very helpful
4 to the Commission. Thank you, ma'am. You're excused.
5 Qwest, prepared for your next witness?
6 MR. TOPP: At this point, Qwest will call
7 Teresa K. Million, which is a little out of order, which
8 we apologize for.
9 THE WITNESS: Do you mind if I get a copy of
10 my --
11 A.L.J. JENNINGS-FADER: You certainly may,
12 but I'll give you the official version.
13 THE WITNESS: All right. Thank you.
14 A.L.J. JENNINGS-FADER: Actually, while
15 we're -- while I'm thumbing through these documents,
16 what -- have we proceeded with respect to Mr. Easton?
17 Is he available?
18 MR. TOPP: Mr. Easton is arriving tonight, so
19 he will be available tomorrow.
20 A.L.J. JENNINGS-FADER: That's fine. Thank
21 you. I should have asked earlier. My apologies,
22 Counsel.
23 MR. TOPP: And when would you like me to
24 offer Mr. Hubbard's testimony?
25 A.L.J. JENNINGS-FADER: At any time that's

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1 convenient, close of business today or whenever you
2 think. Obviously, at some point before you close the
3 case.
4 Ms. Million.
5 TERESA MILLION,
6 being first duly sworn in the above cause, was examined
7 and testified as follows:
8 A.L.J. JENNINGS-FADER: Thank you, ma'am.
9 Please state your name, spell your last name for the
10 record.
11 THE WITNESS: My name is Teresa Million,
12 M-i-l-l-i-o-n, just like the number.
13 A.L.J. JENNINGS-FADER: Thank you very much,
14 ma'am.
15 Mr. Topp.
16 DIRECT EXAMINATION
17 BY MR. TOPP:
18 Q Good afternoon, Ms. Million.
19 A Good afternoon.
20 Q You've submitted testimony in this case. Is
21 that correct?
22 A Yes, I have.
23 Q And I have direct testimony dated
24 December 15th marked for identification as Exhibit 12,
25 answer testimony with exhibits dated March 26th of 2007

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1 questions about design changes, and particularly of
 2 the -- part of the design-change issue that relates to
 3 the rate for loops and connecting facility assignments.
 4 You're familiar with those issues, correct?
 5 A Yes.
 6 Q Now, the parties have a dispute about whether
 7 the design-change rate of \$73.93 applies only to design
 8 changes for unbundled transport or whether it applies to
 9 both transport and loops. Is that right?
 10 A Yes.
 11 Q And it's Eschelon's position that that rate
 12 was approved only with respect to transport, and it's
 13 Qwest's position that it was approved with respect to
 14 both unbundled loops and unbundled transports. Is that
 15 right?
 16 A Yes.
 17 Q Now, that rate, the \$73.93 rate, was set back
 18 in a cost case in 2001 in Colorado. Is that right?
 19 A I don't have the year memorized, but it was
 20 in a prior cost case, yes.
 21 Q And do you believe -- does 2001 sound about
 22 right to you?
 23 A Yes.
 24 Q And Qwest began charging for design changes
 25 for unbundled transports shortly after that rate was

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1 approved in 2001. Is that right?
 2 A That's my understanding.
 3 Q Qwest did not begin charging for design
 4 changes to loops until October of 2005. Is that right?
 5 A That's my understanding.
 6 Q And before October of 2005, Qwest was
 7 providing CLECs with loop design changes at no
 8 additional charge, correct?
 9 A I think it would have depended on the type of
 10 change, whether it took a reorder of the circuit or not,
 11 but as it relates to the design changes, the specific
 12 \$73 charge, no.
 13 Q And I want to make sure I'm clear. I'm
 14 talking about the kind of design changes that are the
 15 subject of the parties' dispute.
 16 Prior to October 2005, Qwest was providing
 17 those kinds of design changes for loops to CLECs at no
 18 additional charge, correct?
 19 A My only qualification was, as I indicated,
 20 whether or not some changes would have required a change
 21 in service-order processing which I would not have known
 22 about, like an order had been cancelled and resubmitted.
 23 Q And that would be subject to some separate
 24 rate --
 25 A Yes.

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1 Q -- that had been determined by the
 2 Commission?
 3 A Yes.
 4 Q And specified in the parties' contract?
 5 A Yes.
 6 Q Now, one of the things that Mr. Denney has
 7 said in this case in his testimony is that the section
 8 of the SGAT that concerns unbundled transport references
 9 the charge for design changes but that the section
 10 concerning unbundled loops does not.
 11 Are you familiar with that testimony?
 12 A Yes.
 13 Q And you don't dispute that that's the case,
 14 do you?
 15 A No.
 16 Q You agree that the SGAT sets out a
 17 design-change charge relating to transport in the body
 18 of the contract referring to transport?
 19 A There is some discussion of design changes
 20 there. However, design changes themselves are listed in
 21 9.20 of the miscellaneous charges, meaning that it's
 22 applicable to both transport loops and perhaps other
 23 services and UNES.
 24 Q And 9.20, you're referring to a section of
 25 Exhibit A to the SGAT, correct?

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1 A Correct, miscellaneous services.
 2 Q And I'm focusing now on the body of the
 3 contract, the part of the contract that comes before
 4 Exhibit A. Are you with me?
 5 A Yes, I am.
 6 Q And that sets out the terms and conditions
 7 under which Qwest will provide Eschelon with unbundled
 8 net -- I'm sorry -- which Qwest is offering as part of
 9 its SGAT to provide unbundled network elements, correct?
 10 A So you're asking specifically about the
 11 SGAT --
 12 Q Yes.
 13 A -- not the ICA under arbitration?
 14 Q Yes. I'm focusing specifically now on the
 15 SGAT.
 16 A Yes.
 17 Q And the SGAT contains provisions that
 18 describe terms and conditions under which Qwest is
 19 offering to provide unbundled transport.
 20 A Correct.
 21 Q And in the section related to unbundled
 22 transport, there's reference specifically to design
 23 changes.
 24 A I believe so in the SGAT. I'm sorry. We
 25 seem to have changed from the ICA to the SGAT. I just

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1 the design-change rate that has been approved by the
 2 Colorado Commission is an average for design changes?
 3 A It's a reflection of all the design-change
 4 orders that Qwest might perform, yes.
 5 Q And so it's Qwest's position that it includes
 6 design changes for transport, and it includes design
 7 changes for loops, and it includes CFA changes. Isn't
 8 that right?
 9 A Yes.
 10 Q Now, since there's averaging going on, you
 11 would agree that the cost to perform all three of those
 12 kinds of design changes isn't exactly the same, is it?
 13 A Well, although Ms. Million would probably be
 14 the best one to respond to this, but my understanding in
 15 the Minnesota cost docket where we looked specifically
 16 at the process flow for unbundled loops and for
 17 transport, there was only like a three-minute difference
 18 in the processing of a design change. So in that case,
 19 while there may have been a difference, it was not
 20 significant.
 21 Q For averaging to be going on, there has to be
 22 some above the average and some below the average.
 23 You'd agree with that in all events, correct?
 24 A I would agree the definition of an average is
 25 that, yes.

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1 Q And you will agree with me that on average,
 2 it costs Qwest more to perform a design change for an
 3 unbundled transport circuit than it does for a loop,
 4 correct?
 5 A Well, based on that three-minute difference,
 6 then, yes, I would say that there's a slight difference
 7 in transport.
 8 Q And in fact, you are aware that Ms. Million
 9 makes the point that Eschelon has received an advantage
 10 as a result of paying a lower design-change charge for
 11 units than would have been the case had that charge been
 12 calculated on a standalone basis?
 13 A Yes.
 14 Q You're familiar with that testimony --
 15 A Yes.
 16 Q -- of Ms. Million?
 17 A Yes.
 18 Q Now, if the standalone cost for a unit-design
 19 change is higher than the average, you would agree with
 20 me, would you not, that the standalone cost of a loop
 21 design change must be lower than the average?
 22 A I'm just saying theoretically, on average --
 23 I just want to be very cautious here. I am not a cost
 24 witness for Qwest, and I do not represent the cost for
 25 design changes, that that was extensively in the

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1 testimony of Ms. Million. So I'm -- I'm with you here
 2 as far as my understanding of the design changes, but I
 3 am not representing the cost in this proceeding.
 4 Q And I'm referring to your direct testimony at
 5 Page 10, and I'm focusing specifically on the testimony
 6 that begins at Line 20.
 7 The question there is, "Is there merit to
 8 Eschelon's claim that the cost of design changes for
 9 loops are less than those for design changes for UDITs?"
 10 Do you see that?
 11 A Yes.
 12 Q And then you testified that there's no basis
 13 for this assumption.
 14 A Yes.
 15 Q Do you see that?
 16 A Yes.
 17 Q And that was your testimony?
 18 A Yes.
 19 Q You would agree that Ms. Million's testimony
 20 actually provides a basis for that assumption, does it
 21 not?
 22 A Yes, it does.
 23 Q Now, you in your testimony refer to the
 24 non-recurring cost study and -- is that right?
 25 MR. DEVANEY: Your Honor, is it possible to

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1 get a page reference?
 2 MR. MERZ: I didn't really have a specific
 3 one in mind, because I think it's something she talked
 4 about in a number of places. But I can probably find
 5 one here.
 6 A What I discuss, which is actually on the next
 7 page, Page 11, is a reference to the Colorado proceeding
 8 that put the Exhibit A of the SGAT in place, that that's
 9 not, I believe, the actual cost docket order.
 10 Q (By Mr. Merz) And my question is whether you
 11 refer in your testimony to the non-recurring cost study
 12 relating to design changes.
 13 Do you recall making reference to that cost
 14 study in your testimony?
 15 A I would have to look. I absolutely know I
 16 make reference to the Commission proceeding that put the
 17 Exhibit A in place of the SGAT that put the \$73
 18 charge -- and 93 cents charge in place. I am not a
 19 hundred percent sure if I actually referred to the cost
 20 docket itself.
 21 Q Go to your rebuttal testimony at Page 7. And
 22 I'm looking at Line -- the testimony that begins at the
 23 very end of Line 13, where you say, "The non-recurring
 24 cost study on which the rate is based estimates the
 25 amount of time on average that it will take to perform

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DOCKET NO. 06B-497T

VOLUME II

IN THE MATTER OF THE PETITION OF QWEST CORPORATION FOR
ARBITRATION WITH ESCHELON TELECOM, INC. PURSUANT TO
47 U.S.C. SECTION 252 OF THE FEDERAL TELECOMMUNICATIONS
ACT OF 1996.

PURSUANT TO NOTICE to all parties in
interest, the above-titled matter continued in hearing
before MANA L. JENNINGS-FADER, Administrative Law Judge
of the Public Utilities Commission, on April 18, 2007,
9:02 a.m., at 1560 Broadway, Suite 250, Denver,
Colorado, said proceedings having been reported in
shorthand by Robin M. McGee, Registered Professional
Reporter.

WHEREUPON, the following proceedings were
had:

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1 been shared with Eschelon in this case, with any party
 2 with which Qwest is negotiating.
 3 Q But I believe the record states that the
 4 Commission doesn't have those rates, correct? We
 5 don't -- I'm sorry. We have the rates. We don't have
 6 the cost support.
 7 A Well, Ms. Million would be able to tell you
 8 whether the specific studies that underlie these rates
 9 have ever been shared with the Commission. I don't know
 10 that.
 11 Q If I represent to you that her testimony or
 12 the testimony of Qwest is that those rates -- those cost
 13 studies are not in the record in these proceedings, will
 14 you accept that?
 15 A Yes.
 16 Q What is the basis, then, for -- so, then,
 17 Qwest's -- I'm sorry. Let me ask you this: If the
 18 Commission does not approve or address interim rates in
 19 this proceeding, then in an interim period between now
 20 and the time that -- never mind. I got it. I'm sorry.
 21 If I understand, then, Qwest wants the
 22 Commission, in essence, to approve the process for --
 23 that would allow the Commission in the future to look at
 24 the rates contained in Exhibit A which have not been
 25 subject to prior Commission approval.

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1 A That's correct.
 2 Q And in doing so, the Commission, in your
 3 view, does or does not express any view with respect to
 4 whether the rates in Exhibit A are cost based? In other
 5 words, are you -- it's just, Approve the process. Does
 6 it say anything about the rates in making that
 7 approve-the-process decision?
 8 A Well, in approving the process, a part of
 9 that process, again, is that before Qwest would charge
 10 these rates, they would file the rate and the cost
 11 support with the Commission. The Commission at that
 12 time could look at it, make sure that they are
 13 comfortable with the rate that Qwest is charging.
 14 Q Process is, in Section 22-6 -- excuse me --
 15 6.1. Is that correct?
 16 A That's correct.
 17 Q Forgive me. Does that -- if you recall, does
 18 that envision a full-blown examination of the rates by
 19 the Commission?
 20 A All 22.6.1 states is that a copy of the rate
 21 and the cost study which underlies the rate will be
 22 provided to the Commission.
 23 Q And would it then be, in your understanding,
 24 left to the Commission to determine what to do, that is
 25 to say, whether to start a case or not?

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1 A That would be my understanding. And, you
 2 know, I guess the way I would envision it, and I'm sure
 3 it would differ from commission to commission, but a
 4 staff person could look at the cost study. They could
 5 decide that they felt it was generally supportive of the
 6 rate, and the rate would go forward. They could decide,
 7 Gee, there's something here that -- that bears further
 8 examination, and they could suggest the Commission open
 9 a docket on that.
 10 You know, a lot of it would depend on what
 11 cost dockets are on the horizon with the Commission as
 12 well. The intent is to have some process in the
 13 interim. As you're aware, you know, we don't undertake
 14 the cost docket, you know, every month or even every
 15 year. So there needs to be some process so that in the
 16 interim, parties such as Eschelon can receive new
 17 services and Qwest can charge for those services.
 18 A.L.J. JENNINGS-FADER: Thank you,
 19 Mr. Easton. I appreciate that.
 20 Mr. Merz?
 21 And by that I mean all of your testimony.
 22 Thank you.
 23 CROSS-EXAMINATION
 24 BY MR. MERZ:
 25 Q Good morning, Mr. Easton.

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1 A Good morning.
 2 Q I just really had one area that I wanted to
 3 talk with you about, and that concerns Issue 5-16,
 4 the -- whether or not nondisclosure agreements will be
 5 provided to Eschelon.
 6 And you refer in your testimony to the audit
 7 provision that is at 18.3.1 as the reason why Eschelon
 8 doesn't need these nondisclosure agreements because
 9 they'll have the opportunity to audit under that
 10 provision, correct?
 11 A That was one of the reasons I cite. In
 12 addition, the language is specific about which
 13 organization or groups within an organization would have
 14 access to the information. So there's some protections
 15 built in there as well.
 16 Q Audit, as used in 18.3.1, is a defined term.
 17 Is that correct?
 18 A I would need to borrow the book again.
 19 A.L.J. JENNINGS-FADER: I'll be happy to do
 20 so, sir. It's on Page -- the discussion, I think, is on
 21 320 and 321. I don't know. Somewhere in that vicinity.
 22 A It is a capitalized term, so I would assume
 23 it is a defined term.
 24 Q (By Mr. Merz) Then if you refer to
 25 Section 18.1.1, that's where we find the definition of

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1 audit as it's used in 18.3.1. Is that correct?
 2 A Yes.
 3 Q And you see there that "audit" is defined to
 4 mean the comprehensive review of books, records and
 5 other documents used in the billing process for services
 6 performed, including, without limitation, reciprocal
 7 compensation and facilities provided under this
 8 agreement.
 9 Do you see that?
 10 A Yes.
 11 Q Now, the nondisclosure agreements that we're
 12 talking about are not documents used in the billing
 13 process for services performed, are they?
 14 A No.
 15 Q So --
 16 A They are forecasting. It's forecasting
 17 information.
 18 Q So in fact, the audit provision would not
 19 protect Eschelon in the event that the nondisclosure
 20 agreements aren't provided.
 21 Do you agree with me there?
 22 A No, I wouldn't agree with you there. And the
 23 reason I say that, again, going back to 18.3.1, it says,
 24 "Either party may request an audit of the other party's
 25 compliance with this agreement, measures and

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1 requirements applicable to limitations on the
 2 distribution, maintenance and use of proprietary or
 3 other protected information that the requesting party
 4 has provided to the other."
 5 And to me, that specifically gets at
 6 information such as the forecasting information we're
 7 talking about here.
 8 Q But an audit is limited to certain kinds of
 9 documents. An audit as defined in Section 18 is limited
 10 to certain kinds of documents, correct?
 11 A Now, you're referring back to 18.1.1?
 12 Q I am.
 13 A And I, to be honest with you, sir, cannot
 14 explain why they refer to billing process here when the
 15 language in 18.3.1 clearly is -- goes beyond the scope
 16 of billing issues.
 17 Q You would agree with me that if the audit
 18 right under 18.3.1 is limited to the documents that are
 19 described in 18.1.1, the nondisclosure agreements that
 20 we're talking about fall outside the scope of that
 21 audit, right?
 22 A They are not documents that -- related to the
 23 billing process.
 24 Q And so they fall outside the scope of that
 25 audit right, correct?

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1 A Well, they fall outside of the language in
 2 18.1.1.
 3 MR. MERZ: I have no further questions, Your
 4 Honor.
 5 Thank you, sir.
 6 A.L.J. JENNINGS-FADER: Mr. Topp?
 7 MR. TOPP: Thank you.
 8 REDIRECT EXAMINATION
 9 BY MR. TOPP:
 10 Q Mr. Merz, with respect to the -- or, excuse
 11 me -- Mr. Easton, with respect to the --
 12 A Thank you.
 13 MR. MERZ: I can answer too. I don't mind.
 14 Q (By Mr. Topp) The issue that Mr. Merz just
 15 raised, would you see any problem from Qwest's
 16 perspective if the word "audit" was not capitalized in
 17 that section to get rid of any confusion as to whether
 18 the definition appearing earlier --
 19 A I think that suggestion makes sense.
 20 Q Now, the judge asked you some questions about
 21 the dispute on Issue 2-3. And if we need to pull the
 22 matrix, we can do so. But there was a lot of discussion
 23 about the language in the nature that -- isn't it also
 24 true that there's an issue related to placement of the
 25 rate language?

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1 A Well, Qwest has its language in Section 2.
 2 Eschelon has proposed adding its language. They've got
 3 some clarifying language in Section 2 but want to add
 4 some additional language to Section 22.
 5 Q So that is also a part of that dispute?
 6 A That's correct.
 7 Q We also talked about nondisclosure
 8 agreements. You were asked some questions associated
 9 with that and its relationship to audit rights. And
 10 I've tried to come up with a situation where maybe
 11 Eschelon would have cause to consider an audit, such as
 12 a bunch of Qwest retail marketing activity targeted at
 13 areas where Eschelon has forecasted growth.
 14 Theoretically, that could happen.
 15 Are nondisclosure agreements going to impact
 16 Eschelon's ability to establish good cause or not?
 17 A No.
 18 Q Now, moving to the issue of transit records,
 19 which is Issue 7-18 and 19. You were asked some
 20 questions about what information Qwest is able to
 21 provide or what is contained in transit records.
 22 Is that the -- beyond the information
 23 contained in the records, does Qwest also have other
 24 significant concerns associated with providing those
 25 records?

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1 documentation --

2 Q Okay. Thank you.

3 A -- and process.

4 Q If the Commission accepts Qwest's position

5 that these matter -- the matters -- first of all, let me

6 start -- let me start again. Do you agree with Qwest

7 that there is no definition of "process" in the CMP

8 document?

9 A I've been unable to find one.

10 Q What is Eschelon's operational definition,

11 for purposes of your testimony, of "process"?

12 A And I had a conversation with Ms. Johnson

13 about this yesterday. My preference would be to sort of

14 let her tell you that. I mean, I could give you the

15 recount of that.

16 Q Well, but for purposes of your testimony, I

17 mean, you talk extensively in your testimony about

18 process.

19 When you were discussing that, what had you

20 in mind?

21 A And it comes down to what Ms. Johnson

22 yesterday -- it really comes down to functionally, there

23 are changes that impact systems, and those are fairly

24 easy many times to define because it's going to impact a

25 particular system in a particular way. And then there's

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1 everything else.

2 And I think everything else is the sort of

3 product, slash, process; or process, slash, product

4 changes. They're varied. They cover a number of

5 different sort of areas and topics. But I think a

6 working definition is, if it doesn't impact a system

7 directly, then it's a process or product change.

8 I would just add a little bit, that the CMP

9 document does talk about separate sort of meetings that

10 happen for systems versus product or process.

11 Ms. Johnson informs me that they're often done at the

12 same time. But I think functionally, the folks who work

13 at CMP have this understanding of which is which and

14 have to sort of deal with the different ways in which

15 they're both handled in the document.

16 Q Broadly stated, I believe Eschelon's

17 principal concern discussed in your testimony with

18 respect to referring matters to other processes rather

19 than including them within the contract itself is the

20 lack of certainty from Eschelon's perspective.

21 A Yes. I think that's fair.

22 Q Is there -- that's wrong. Is the issue for

23 Eschelon the degree to which, from Eschelon's

24 perspective, Qwest controls the process to which the

25 issues would be referred as opposed to the issue being

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1 the fact that it is another process to which Eschelon

2 would have to look to determine the contract terms?

3 A It's the first of those.

4 Q Short of a -- short of the Commission's

5 writing a provision that said something to the effect

6 that we're -- these issues in dispute having to do with

7 process, the contractual certainty issues, as you refer

8 to them, short of a decision that says those contractual

9 certainty issues are referred to the CMP but no CMP

10 or -- or service interval guide or product category

11 change will be effective unless agreed to by Eschelon,

12 short of language to that degree, is there something

13 that will -- would Eschelon find acceptable some -- a

14 Commission decision which accepts Qwest's proposals?

15 Personal opinion or not.

16 A I think the way I'm going to answer that is

17 that -- let me just take the scenario you described,

18 which is, assume the Commission has issued an order that

19 said, these things get kicked to CMP but can't be

20 changed unless Eschelon agrees.

21 I don't think that would be acceptable to

22 Eschelon for, I think, at least two reasons. One, I

23 think the intention of Eschelon in this entire section

24 of the case is that it's entitled to under Section 2-51

25 a contract that spells out the relationship between it

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1 and Qwest, an enforceable contract under Sections 2-51

2 and 2-52 of the act that it can point to and that it can

3 further negotiate with Qwest if Qwest wants to make

4 changes.

5 CMP -- and -- and I think I say that in the

6 testimony. CMP is a good mechanism by which information

7 can be exchanged between the parties and can be a good

8 mechanism when agreement is reached by all the parties.

9 But it has serious flaws, not only in terms of requiring

10 Eschelon's agreement, but also in terms of -- of the

11 notice process, how Qwest can implement things quickly

12 over Eschelon's objections or not, those kinds of

13 shortcomings when you deal with ICA language between the

14 two companies.

15 So I do not think Eschelon would find it

16 acceptable to kick things to CMP even if they had to

17 agree, because what they're really trying to do is

18 effectuate their rights under Section 2-51 for an ICA

19 that's meaningful and complete and a four-corners

20 document.

21 Q And just so we kind of tie that into access

22 to UNEs and that discussion, I think, and -- actually,

23 no. And so Qwest's position is that one need not have

24 that detail in the interconnection agreement because the

25 interconnection agreement is not for the purpose of nits

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1 definitive list.
 2 A I think that's fair, and I think there is a
 3 good reason for that.
 4 Q There very well may be, and I believe you
 5 actually gave that reason to Mr. Devaney, but I just
 6 wanted to be sure that I understood that the -- the --
 7 if, as you said earlier, the parties, in your -- I think
 8 you said you think the parties pretty much understand
 9 what these -- what the activities are.
 10 What, then, is the harm in listing along with
 11 the specificity objective of the contract those
 12 activities here as opposed to leaving it with simply a
 13 list of examples?
 14 A I think there are two reasons. The first is,
 15 there literally would be thousands of them. I mean, it
 16 literally could be as -- as easy as changing an
 17 interconnection tie pair in an FDI from one block to
 18 another. It could be as much as repairing a bad pair,
 19 doing a transfer to a new pair. There are just
 20 literally hundreds, potentially thousands, of these
 21 individual activities that happen on a day-to-day basis
 22 to provide a working facility that Qwest does for its
 23 retail customers that it also should do for Eschelon.
 24 So, one, it's just not probably very
 25 efficient to list them here, but more importantly, I

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1 think, if you listed 100 and you forgot the 101st, that
 2 shouldn't remove Qwest from the obligation just because
 3 you weren't able to list all 175 or 200, or however many
 4 of these there were.
 5 That's really the point the FCC makes in the
 6 TRO at about -- starting at about Paragraph 632, when it
 7 talks about network modifications, because Verizon
 8 pushed it to say, List all the activities that we have
 9 to do, and the FCC said, No, that's not the right way to
 10 do this, because the standard is nondiscrimination. And
 11 it's necessary to understand what you do for your retail
 12 in these various circumstances to understand what you
 13 have to do for the CLEC.
 14 Q And actually, that leads me to another point.
 15 In your testimony with respect to this issue,
 16 in discussion with Mr. Devaney, you talked about if
 17 Qwest does X activity for itself, then it would be
 18 included in this list for -- it would be considered
 19 included, and that's a non -- because of the
 20 nondiscrimination --
 21 A Yes.
 22 Q -- as you just testified. With respect to
 23 "for itself," you mean for its retail customers?
 24 A I mean for its retail customers, also for its
 25 affiliates. I think the FCC really gives a three-prong

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1 for itself, for its affiliates or for any customer,
 2 whether that be a retail or wholesale customer. It
 3 doesn't limit discrimination to just among CLECs, for
 4 example. It includes the activities Qwest does for its
 5 own retail customers.
 6 Q Right. And I appreciate that. I was trying
 7 to figure out what -- for itself. I mean, I understand
 8 that's a term of art. I wanted to be sure I understood
 9 what you were talking about.
 10 If you know, Mr. Starkey, is the language for
 11 Issue 9-31 drawn from any source; meaning, is it part
 12 of -- or was it part of the original statement of
 13 generally acceptable terms and conditions? Is it
 14 something that's developed over time from other
 15 interconnection agreements?
 16 A Do you mean the entirety of the language,
 17 including the agreed-upon section?
 18 Q I'm talking about all the agreed-upon
 19 language, the agreed-upon language, the e.g. language,
 20 moving, adding to, repairing language.
 21 A I don't know the answer to that question. I
 22 don't know where it was taken from.
 23 I can tell you that "moves, adds, changes" is
 24 a term of art in the industry. It's something that
 25 engineers understand as the necessity of going out to

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1 the network to rearrange it to provide service. MAC,
 2 M-A-C, moves, adds and changes, is a generally used
 3 term.
 4 Q If that's true, sir, then what's the
 5 necessity of the parenthetical language?
 6 A I believe that was specifically put in
 7 there -- and Mr. Denney may be able to give you more
 8 insight into this. But I believe that was specifically
 9 put in there because of the concerns of Eschelon that
 10 they had gotten notice that Qwest was going to start
 11 charging tariffed rates for certain of these particular
 12 activities which Eschelon believed to be encompassed
 13 within access to UNEs.
 14 And so they wanted to make sure that one of
 15 the issues debated in this proceeding was the extent to
 16 which those were access to UNEs that would likewise be
 17 applied via TELRIC-based rates.
 18 I note that Qwest's counterproposal before
 19 this was -- well, let me take that back. Qwest's
 20 counterproposal "at applicable rates" indicates that
 21 they'll charge potentially tariffed rates for these
 22 things. So Eschelon wanted to be very specific that
 23 these particular things that they had understood would
 24 be charged tariffed rates were included in here to be
 25 debated rather than ignored and then later Qwest file a

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1 accurate to the best of your knowledge?
 2 A Yes.
 3 MR. MERZ: Your Honor, Eschelon offers
 4 Hearing Exhibits 22, 23 and 24.
 5 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 6 Exhibit 22 is offered. Voir dire or objection?
 7 MR. DEVANEY: No objection.
 8 A.L.J. JENNINGS-FADER: Exhibit 23 is
 9 offered. Voir dire or objection?
 10 MR. DEVANEY: No objection.
 11 A.L.J. JENNINGS-FADER: Exhibit 23 is
 12 offered. Voir dire or objection?
 13 MR. DEVANEY: No objection.
 14 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 15 Exhibits 22, 23 and 24 are admitted.
 16 MR. MERZ: Your Honor, Ms. Johnson's
 17 available for cross-examination.
 18 A.L.J. JENNINGS-FADER: Thank you, sir.
 19 CROSS-EXAMINATION
 20 BY MR. DEVANEY:
 21 Q Hello, Ms. Johnson.
 22 A Good afternoon.
 23 Q I actually just have one question for you.
 24 When I was cross-examining Mr. Starkey, he asked you a
 25 question about whether Eschelon has access to its

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1 customers' circuit IDs and addresses, and he volunteered
 2 you for that answer, I think. And he said he thought
 3 that Eschelon did, and I want to ask you that question.
 4 Does Eschelon have access to its customer IDs
 5 and addresses?
 6 A We have that information in our systems.
 7 What I don't know is what specific electronic reporting
 8 capabilities we have, but we do have access to it.
 9 Q And that would be circuit ID and customer
 10 addresses in your --
 11 A That is correct.
 12 Q And that information is in some electronic
 13 database?
 14 A That is correct.
 15 Q And it can be retrieved in one form or
 16 another. You're just not sure how you would go about
 17 retrieving it. Is that correct?
 18 A That is correct.
 19 Q And I take it you've not had occasion to do
 20 that yourself, then?
 21 A That is correct.
 22 MR. DEVANEY: Okay. That's all I have.
 23 Thank you.
 24 A.L.J. JENNINGS-FADER: Thank you.
 25 Ms. Johnson -- let me ask first, Mr. Merz, do

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1 you have any cross-examination based on that -- redirect
 2 excuse me -- based on that?
 3 MR. MERZ: I do not.
 4 EXAMINATION
 5 BY A.L.J. JENNINGS-FADER:
 6 Q Ms. Johnson, were you here during
 7 Mr. Starkey's testimony this morning and this afternoon?
 8 A I was.
 9 Q And then you're aware that, a couple of
 10 things he said, perhaps you'll be able to give me more
 11 information?
 12 A Yes.
 13 Q Let me start with what I think may be the
 14 easier of the two, and that has to do with Issue 12-64,
 15 which is root-cause analysis and acknowledgment of
 16 mistakes.
 17 And I asked him whether he had any sense of
 18 the relative expense, Qwest's and Eschelon's, for --
 19 first he said that Eschelon would have some expense
 20 associated with the root-cause analysis. Do you recall
 21 that?
 22 A Yes, I do.
 23 Q And is that accurate?
 24 A That is -- is accurate, time spent to
 25 root-cause it ourself and make certain that the -- the

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1 issue or the problem lies with Qwest.
 2 Q And then Qwest will have some expense with
 3 respect to its investigation. Is that correct?
 4 A I would assume that Qwest would have some
 5 expense.
 6 Q Some time?
 7 A Some time or expense. The language does read
 8 that we agreed that it was a Qwest issue, so it's our
 9 belief that Qwest should incur the cost for their error,
 10 and then they also reap the benefits, you know, to any
 11 changes that they may make to help prevent that in the
 12 future as well.
 13 Q And do you agree with Mr. Starkey that the
 14 expense borne by Eschelon and also the expense by Qwest
 15 will vary based on the circumstances of the situation?
 16 A I would agree with that.
 17 Q I asked -- now, with respect to Issue 12-87,
 18 having to do with controlled production testing, I was
 19 going through some questions with Mr. Starkey with
 20 respect to current practice with respect to whether
 21 Qwest at present has control over determining when
 22 recertification is done and by whom it is done, meaning
 23 by -- is it all CLECs? Is it only a particular subset?
 24 Do you recall that?
 25 A I do recall that.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

REBUTTAL TESTIMONY
OF
DOUGLAS DENNEY
ON BEHALF OF
ESCHELON TELECOM, INC.

May 25, 2007

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Douglas Denney. I work at 730 2nd Avenue South, Suite 900, in
4 Minneapolis, Minnesota.

5 **Q. ARE YOU THE SAME DOUGLAS DENNEY WHO FILED DIRECT**
6 **TESTIMONY IN THIS PROCEEDING ON MAY 11, 2007?**

7 A. Yes.

8 **Q. PLEASE DESCRIBE HOW THE REMAINDER OF YOUR TESTIMONY**
9 **IS ORGANIZED.**

10 A. My testimony is organized by subject matter number in the same manner my
11 Direct Testimony is organized. Each subject matter heading may contain one or
12 more disputed issues from the interconnection agreement. For each subject
13 matter, I briefly summarize the issue. In addition, I summarize Qwest's position,
14 as put forth by its respective witness on the subject matter. I also explain the
15 flaws in Qwest's position.

16 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

17 A. Yes.

18 **Exhibit DD-126** Qwest's TRO/TRRO Amendment taken from Qwest's website
19 (<http://www.qwest.com/wholesale/downloads/2006/060629/TRO-TRRO->
20 [Amendment-6-22-06.doc](http://www.qwest.com/wholesale/downloads/2006/060629/TRO-TRRO-)) demonstrating that Qwest did not remove
21 UCCRE from carriers' interconnection agreements as a result of
22 TRO/TRRO (see Issue 9-53)

23

1 **II. CHANGE IN LAW (SUBJECT MATTER NOS. 2 AND 3)**

2 **SUBJECT MATTER NO. 2. RATE APPLICATION & SUBJECT MATTER NO.**
3 **3. EFFECTIVE DATE OF LEGALLY BINDING CHANGES**

4 *Issue Nos. 2-3 and 2-4: ICA Sections 2.2 (two issues in Section 2.2) & 22.4.1.2*

5 **Q. PLEASE PROVIDE A SUMMARY OF ISSUE NOS. 2-3 AND 2-4 AND**
6 **THE COMPANIES' PROPOSALS FOR THESE ISSUES.**

7 A. Issue 2-3 (Application of Rates) and Issue 2-4 (Effective Date of Legally Binding
8 Changes) relate to two open provisions in Section 2.2, which is within Section 2.0
9 (“Interpretation and Construction”) of the ICA.¹ There is some overlap in these
10 issues, so I will discuss them together as I did in my direct testimony. Eschelon
11 has offered two alternate language proposals to resolve Issues 2-3 and 2-4, which
12 are shown in my direct testimony.²

13 Issue 2-3 (the first open provision in Section 2.2 of the ICA) is specific to rates
14 and concerns when Commission-ordered rate changes will take effect. Issue 2-4
15 is similar to Issue 2-3 in that it concerns when changes of law will take effect (but
16 it is not limited to rates). Eschelon’s first proposal to address Issues 2-3 and 2-4
17 is to leave the portion of 2.2 that is from the SGAT language (and language from
18 the Commission-approved Qwest/AT&T ICA) unchanged (*i.e.*, strike Qwest’s
19 proposed additions). Specifically, for Issues 2-3 and 2-4, Eschelon’s proposal
20 includes the following sentence from the SGAT: “Any amendment shall be

¹ Eschelon’s proposal #2 includes a component that appears in Section 22.4.1.2, within Section 22 (“Pricing”), of the ICA.

² Eschelon/9, Denney/10-13.

1 deemed effective on the effective date of the legally binding change or
2 modification of the Existing Rules for rates, and to the extent practicable for other
3 terms and conditions, unless otherwise ordered.” This language respects the
4 authority of the relevant body to determine, at the time it issues an order changing
5 law, when that ruling will take effect. Eschelon has also offered to add the
6 following sentence to address Qwest’s stated concerns: “The rates in Exhibit A
7 and when they apply are addressed in Section 22.”³ Section 22 is entitled
8 “Pricing” and lays out the general principles applicable to pricing. It contains a
9 subsection entitled “Interim Rates” (Section 22.4). Closed language in Section
10 22.4.1 provides that unapproved rates “are Interim Rates under this Agreement.”

11 Eschelon’s second, alternative proposal for Issues 2-3 and 2-4 is to add three
12 provisions to Section 2.2 (shown in underlining in my direct testimony)⁴ to clean
13 up the distinction that Qwest appears to desire between an “implementation” date
14 and an “effective” date, as well as to supplement the language of Section 22.4.1.2
15 reserving each company’s rights with respect to a true-up of interim rates, and
16 clarifying that if a Commission order is silent with respect to the issue of true-up,
17 the rates will be implemented and applied on a prospective basis.

18 The first provision of Eschelon’s alternate proposal confirms that each party has
19 an obligation to ensure the agreement is amended. Eschelon added this sentence

³ Eschelon has also indicated (Eschelon/9, Denney/14, footnote 10) that it would agree to add the word “further” to this sentence to recognize that Section 22 (Pricing) is in addition to Section 2.2, as follows: “The rates in Exhibit A and when they apply are *further* addressed in Section 22.”

⁴ Eschelon/9, Denney/12-13.

1 in response to Qwest’s allegations that, despite use of the word “shall” in the
2 previous sentence,⁵ a party to the ICA could avoid or delay amending it when the
3 law changes.⁶ The second provision adds clarification as to the relationship
4 between Section 2.2 and Section 22 (Pricing). Eschelon added this sentence in
5 response to observations made by the witness for the Minnesota Department of
6 Commerce in the Minnesota arbitration proceeding regarding the utility of
7 distinguishing between changes to prices that had been previously approved by
8 the Commission and changes to prices not previously approved.⁷ The third
9 provision recognizes that the effective date and implementation date may (or may
10 not) be different and establishes that the burden is on the companies (*i.e.*, not the
11 Commission) to identify when they are different and, if a different date is desired,
12 to request a date different from the effective date for implementation of a ruling.
13 To address Qwest’s stated concerns that a presumption is needed in cases when
14 the order is silent on the issue, Eschelon’s proposal provides, when the order is
15 silent, the implementation date and effective date are the same, unless the
16 Commission orders otherwise or, if allowed by the order, the parties to the ICA
17 agree otherwise.⁸ Eschelon’s second, alternative proposal also includes the
18 addition of two sentences to Section 22.4.1.2. In response to Qwest’s proposal,

⁵ The parties have agreed that the ICA in Section 2.2 states “this Agreement shall be amended to reflect such legally binding modification or change.”

⁶ Eschelon/9, Denney/20-21.

⁷ Eschelon/9, Denney/21. In the sentence which states “Rates in Exhibit A will reflect legally binding decision of the Commission,” Qwest proposes to change “will reflect” to “include.” (Eschelon/9, Denney/16). Section 4.0 of the ICA defines “include” to mean “including but not limited to.”

⁸ Eschelon/9, Denney/13.

1 Eschelon has proposed two sentences which expressly state the companies reserve
2 their rights with respect to a true-up. Though Qwest previously argued in the
3 Qwest-AT&T arbitrations that an arbitration was not the appropriate forum to
4 argue true-ups of interim rates,⁹ Qwest is making the opposite argument here and
5 now wants to set a default with respect to a true-up for interim rates. If the
6 Commission goes that route, Eschelon's proposal number two provides that, if an
7 order is silent as to a true-up, Qwest gets the default provision it seeks, indicating
8 rates will be applied and implemented on a prospective basis (except for new
9 products when Section 1.7.1.2 is used).

10 **Q. REGARDING A TRUE-UP, MR. EASTON TESTIFIES THAT "QWEST IS**
11 **ATTEMPTING TO AVOID AMBIGUITY IN SITUATIONS WHERE A**
12 **COMMISSION ORDER DOES NOT SPECIFICALLY STATE A TRUE-UP**
13 **REQUIREMENT AS PART OF A COST DOCKET ORDER."¹⁰ DOES**
14 **QWEST'S PROPOSAL EXPRESSLY ADDRESS A TRUE-UP**
15 **REQUIREMENT?**

16 A. No. Qwest ignores the language of its own proposal. Ironically, although Mr.
17 Easton claims that its proposed language "avoids ambiguity" in cases when the
18 Commission does not specify a true-up requirement,¹¹ Qwest's proposed language

⁹ Initial Commission Decision, *In the Matter of Petition of Qwest Corporation for Arbitration of an Interconnection Agreement with AT&T Communications of the Mountain States, Inc. and TCG-Colorado Pursuant to 47 U.S.C. §252(b)*, Decision No. C03-1189, CPUC Docket No. 03B-287T (Oct. 14, 2003) ("Qwest-AT&T Colorado Arbitration Order"), p. 91. *Compare* Qwest-AT&T Colorado Arbitration Order, p. 91 *with* Qwest/13, Easton/3, lines 17-22.

¹⁰ Qwest/13, Easton/3, lines 18-19.

¹¹ Qwest/13, Easton/3, line 18.

1 for Sections 2.2 and 22 *does not even mention* the term “true-up.” If Qwest’s goal
2 is to avoid ambiguity about a true-up, language expressly referring to a true-up
3 (*i.e.*, Eschelon’s proposed language above) is less ambiguous than language that
4 does not even use the term (*i.e.* Qwest’s proposed language). Mr. Easton testifies
5 that “Under Qwest’s proposal, one looks first to the commission order to
6 determine when a rate applies. If the commission order fails to address the issue,
7 a rate change is applied prospectively.”¹² In fact, the actual language of Qwest’s
8 proposal does the opposite. Under Qwest’s proposal, one first looks to the
9 presumption in the ICA (that changes in law “shall be applied on a prospective
10 basis”) and *then* consults the commission order (“unless otherwise ordered by the
11 Commission.”). Eschelon’s language better captures the sequence of events as
12 described by Mr. Easton himself. Yet, even though Eschelon’s proposal has been
13 provided to Qwest in other states, Mr. Easton has not identified why Eschelon’s
14 proposed language does not satisfy Qwest.

15 Qwest also ignores other closed language in the ICA as well as Eschelon’s
16 alternative proposed language, which specifically addresses the situation Qwest
17 raises. The *closed* Oregon language in Section 22.4.1 specifically states: “The
18 parties acknowledge that only some of the prices contained in Exhibit A have
19 been approved by the Commission in a cost case. Prices that have not been
20 approved by the Commission shall be considered interim and subject to the
21 following provisions.” One of those provisions is Eschelon’s proposed 22.4.1.2,

¹² Qwest/13, Easton/5-6. *See also* Easton Arizona Rebuttal Testimony (ACC Docket Nos. T-03406A-06-0572/T-01051B-06-0572, 2/9/07), p. 3, lines 2-4.

1 which states, “Each Party reserves its rights with respect to whether Interim Rates
2 are subject to true-up. If, however, the Commission issues an order with respect
3 to rates that is silent on the issue of a true-up, the rates shall be implemented and
4 applied on a prospective basis from the effective date of the legally binding
5 Commission decision as described in Section 2.2.” So, if Qwest’s concern comes
6 to pass and the commission issues an order that is silent on a true-up for interim
7 rates, Eschelon’s alternative proposal (which contains a component in Section
8 22.4.1.2) will provide the clarity that Qwest apparently seeks. In addition, *closed*
9 language in Section 1.7.1.2 (mirroring the SGAT language) provides regarding
10 new products under an interim advice letter: “The rates, and to the extent
11 practicable, other terms and conditions contained in the final amendment will
12 relate back to the date the Interim Advice Adoption Letter was executed.”
13 Qwest’s suggestion that true-up requirements are not addressed adequately in the
14 ICA without its proposed language is inaccurate. Eschelon has believed, based on
15 the ICA language, that a Commission order would not be silent on the issue of a
16 true-up in the case of new products. Given Qwest’s claimed desire to avoid
17 ambiguity, perhaps the last sentence of Section 22.4.1.2 should end with the
18 clause “except for new products as described in Section 1.7.1.2.”

19 **Q. DO YOU AGREE WITH MR. EASTON’S ASSERTION THAT**
20 **PROSPECTIVE APPLICATION OF RATES IS THE MORE**
21 **APPROPRIATE PROCESS?**¹³

¹³ Qwest/13, Easton/3.

1 A. Not necessarily. The argument that Mr. Easton makes about the need for
2 predictability in order to make informed business decisions¹⁴ is more
3 appropriately made to the Commission in the context of a particular rate issue,
4 rather than in the abstract. In the Qwest-AT&T arbitrations, Qwest made this
5 very argument. For instance, Qwest's position on true-up for interim rates in the
6 Colorado Qwest-AT&T arbitration was described by the Colorado Commission as
7 follows: "Qwest argues that the Commission's generic proceedings, whether a
8 cost proceeding or other proceeding, provide the appropriate forum for
9 consideration of the propriety of true-ups of interim rates."¹⁵ Commissions have
10 recognized that there are circumstances when it is appropriate for rates to be made
11 subject to true-up. The contract should not create a presumption to the contrary.
12 Nonetheless, in the interest of resolving this issue, if Eschelon's second, alternate
13 proposal is adopted, Qwest will receive the default presumption it seeks, but with
14 language that clearly and expressly addresses the true-up requirement.

15 **Q. MR. EASTON STATES THAT QWEST'S PROPOSED LANGUAGE FOR**
16 **SECTION 2.2: (1) REMOVES THE INCENTIVE FOR EITHER PARTY**
17 **TO DELAY NEGOTIATIONS OF A CHANGE IN LAW; AND (2)**
18 **ELIMINATES THE POSSIBILITY, AND SUBSEQUENT SIGNIFICANT**
19 **FINANCIAL IMPACT, OF EITHER PARTY ATTEMPTING TO APPLY**

¹⁴ Qwest/13, Easton/4.

¹⁵ Qwest-AT&T Colorado Arbitration Order, p. 90.

1 **CHANGE IN LAW RETROACTIVELY OVER A LONG PERIOD OF**
2 **TIME.¹⁶ DO YOU AGREE?**

3 A. No. This was addressed in my Direct Testimony.¹⁷ Under Qwest's language
4 Qwest would have the opportunity to ignore changes in law that Qwest does not
5 like, while embracing changes in law that work to Qwest's advantage. Because
6 Qwest has greater regulatory resources than Eschelon and is more likely to know
7 of all such changes, Qwest's language places Eschelon at a clear disadvantage in
8 implementing changes in law. Further, if Qwest is truly concerned about
9 incentives to delay changes in law, then it should embrace Eschelon's alternative
10 proposal placing the obligation on both parties to amend the contract when there
11 are changes in law.

12 **Q. QWEST PROPOSES THAT PARTIES WOULD BE REQUIRED TO**
13 **PROVIDE NOTICE WITHIN THIRTY (30) DAYS OF A LEGALLY**
14 **BINDING CHANGE IMPACTING THE INTERCONNECTION**
15 **AGREEMENT IN ORDER FOR AN AMENDMENT TO THE**
16 **AGREEMENT TO HAVE AN EFFECTIVE DATE CONSISTENT WITH**
17 **THE CHANGE IN LAW. WOULD A LONGER NOTICE PERIOD**
18 **ELIMINATE THE PROBLEMS WITH QWEST'S PROPOSAL?**

19 A. No, it would not eliminate them. As explained in my Direct Testimony,¹⁸
20 Qwest's notice requirement is problematic because it allows a party to delay an

¹⁶ Qwest/13, Easton/8.

¹⁷ Eschelon/9, Denney/23-25.

¹⁸ Eschelon/9, Denney/24-25.

1 adverse change in law by remaining silent in hopes that the other party missed the
2 change. Since Qwest is significantly bigger than Eschelon (and small CLECs that
3 may opt into the ICA) and is involved in more proceedings than Eschelon, Qwest
4 is likely to know about changes in law of which Eschelon is unaware. While a
5 longer notice period is an improvement over Qwest's proposal, it does nothing to
6 eliminate the asymmetry of information available to Qwest and CLECs. Further,
7 a longer notice period does nothing to address the ambiguity in Qwest's language
8 between the implementation date and effective date of an order.

9 **Q. WILL THE QWEST PROPOSED LANGUAGE FOR ISSUE 2-4 REDUCE**
10 **LITIGATION BETWEEN THE COMPANIES?**¹⁹

11 A. No. By creating a distinction between an order's effective date and
12 implementation date but not defining that distinction, Qwest has created
13 ambiguity that will likely lead to future disputes regarding the amendments to the
14 interconnection agreement. Eschelon's language makes clear that the effective
15 date of a legally binding change will be the date of the legally binding change
16 unless otherwise ordered.

17 **Q. DOES ESCHELON'S ALTERNATE PROPOSAL FOR ISSUE 2-4 SIMPLY**
18 **DELAY DISPUTES FOR ANOTHER DAY?**²⁰

19 A. No. Eschelon's proposal #2 simply states that, if a party wishes that an
20 implementation date of an order regarding a legally binding modification or

¹⁹ Qwest/13, Easton/8.

²⁰ Qwest/13, Easton/9.

1 change to existing rules is something other than the effective date of that order,
2 then the party should obtain a ruling from the Commission to that effect.
3 Eschelon's alternative would avoid future disputes such as occurred in the
4 Arizona UNE cost case²¹ by clarifying that it is a party's obligation, rather than a
5 party's discretion, to implement a legally binding modification or change to
6 existing rules consistent with the effective date of the order causing the
7 modification or change, unless otherwise ordered by the Commission.

8 **III. DESIGN CHANGES (SUBJECT MATTER NO. 4)**

9 **SUBJECT MATTER NO. 4. DESIGN CHANGES**

10 Issue Nos. 4-5, 4-5(a), and 4-5(c): ICA Sections 9.2.3.8, 9.2.3.9 and Exhibit A
11 Section 9.20.11

12 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 4-5 AND SUBPARTS**
13 **(DESIGN CHANGES).**

14 A. Issues 4-5, 4-5(a), 4-5(b) and 4-5(c) apply to design changes for loops, CFA
15 changes, unbundled dedicated interoffice transport ("UDIT") and charges for
16 design changes in Exhibit A, respectively. Issue 4-5(b) relating to design changes
17 for UDIT is closed.

²¹ Eschelon/9, Denney/25-27.

1 **Q. QWEST INDICATES THAT THE ONLY ISSUE IN DISPUTE WITH**
2 **RESPECT TO DESIGN CHANGES SHOULD BE THE RATES.²² IS THIS**
3 **ACCURATE?**

4 A. No. The issue with regard to the proper rates for design changes for loops and
5 CFA changes can not be separated from the issue with regard to the proper
6 language describing design changes and CFA changes in the contract. By
7 agreeing to some, but not all, of Eschelon's language, Qwest would have the ICA
8 require Eschelon to pay a separate non-recurring charge for design changes for
9 loops and CFAs without providing the requisite showing that these costs are not
10 recovered elsewhere or that the separate non-recurring rate Qwest proposes to
11 charge for these activities is cost-based. Qwest's proposal would circumvent the
12 Commission's review and authority of the rates it charges its CLEC wholesale
13 customers. This is especially objectionable given that Qwest provided design
14 changes for loops and CFA for years without assessing separate non-recurring
15 charges and has not attempted to establish a cost-based rate for these activities in
16 any of its cost dockets.²³ It is important to consider Eschelon's proposals for
17 Issues 4-5 and subparts together so that the ICA is clear as to if and when
18 Eschelon would pay separate non-recurring rates for these design changes and
19 what that rate will be. That is, Eschelon should not be required to pay a separate
20 non-recurring charge for design changes for loops and CFAs unless and until
21 Qwest shows that the costs are not recovered in other rates. Eschelon is willing to

²² Qwest/14, Stewart/7.

²³ Eschelon/9, Denney/29-30.

1 pay the interim rates it proposes until such time as Qwest files and the
2 Commission approves an appropriate separate TELRIC-based rate, if any, for
3 these activities.

4 To this end, there are three open issues for resolution: (1) whether Qwest may
5 charge a separate charge for design changes for unbundled loops even though
6 Qwest has not done so in the past and the Commission has not approved such a
7 rate through a UNE cost case (ICA Section 9.2.3.8; Issue 4-5); (2) if so, whether
8 Qwest may charge the same rate it proposes to charge to perform design changes
9 for UDITs to design changes for all loops and certain Connecting Facility
10 Assignment (“CFA”) changes that are relatively common, require very little time,
11 and are performed on the day of cut during the loop installation process when
12 Eschelon is already paying for coordination (ICA Section 9.2.3.9; Issue 4-5(a));
13 and (3) what is the appropriate rate (Exhibit A Section 9.20.11; Issue 4-5(c)).
14 Specifically with respect to the rate: (a) what rate Qwest may charge for design
15 changes for UDIT (Exhibit A Section 9.20.11.1), (b) what rate Qwest may charge
16 for design changes for loops (Exhibit A Section 9.20.11.2); (c) what rate Qwest
17 may charge for certain CFA changes (Exhibit A Section 9.20.11.3).

18 **Q. QWEST CLAIMS THAT ESCHELON’S PROPOSALS ON DESIGN**
19 **CHANGES REFLECT AN EFFORT TO PREVENT QWEST FROM**
20 **RECOVERING ITS COSTS OR TO LIMIT QWEST’S ABILITY IN THIS**

1 **REGARD.²⁴ IS THIS AN ACCURATE CHARACTERIZATION OF**
2 **ESCHELON’S PROPOSAL FOR ISSUES 4-5 AND SUBPARTS?**

3 A. No. Eschelon’s position statement, testimony and, most importantly, contract
4 language make very clear that Eschelon is not attempting to prevent or limit
5 Qwest from recovering its costs. Eschelon only wants to ensure that Qwest does
6 not double recover its costs or assess charges for design changes that in no way
7 reflect the underlying costs of performing the design change.²⁵ That is why
8 Eschelon has proposed interim rates for UDIT, loops and CFAs so that Qwest is
9 allowed to recover its costs for design changes unless and until Qwest seeks, and
10 the Commission approves, different rates. Eschelon’s proposal is imminently
11 reasonable, particularly given that there is no basis in the current ICA or SGAT
12 for design change charges for loops²⁶ and Qwest has not attempted to file for
13 Commission approval of a rate related to loops.

14 **ISSUE 4-5**

15 **Q. MS. STEWART IMPLIES THAT ESCHELON’S INITIAL POSITION**
16 **WAS THAT QWEST SHOULD NOT BE ALLOWED TO RECOVER**
17 **COSTS FOR DESIGN CHANGES FOR LOOPS.²⁷ IS THIS ACCURATE?**

18 A. No. Eschelon has always maintained that Qwest is entitled to recover its costs.
19 However, Qwest simply announced one day that it was going to begin charging

²⁴ Qwest/14, Stewart/6 and Qwest/14, Stewart/13-14.

²⁵ Performing design changes are part and parcel of Qwest’s obligation under Section 251/252 of the Act to provide nondiscriminatory access to UNEs and should, therefore, be cost-based. *See* Eschelon/9, Denney/29-30; Eschelon/9, Denney/47; and Mr. Starkey’s discussion of Issue 9-31.

²⁶ Eschelon/9, Denney/30 and Eschelon/9, Denney/43.

²⁷ Qwest/14, Stewart/6 and Qwest/14, Stewart/13-14.

1 for design changes for loops, which it had never done before. The fact that Qwest
2 had never before assessed separate charges for design changes for loops and was
3 not pursuing recovery of design change costs via separate design change rates in
4 UNE rate cases, suggested to Eschelon that Qwest already recovers these costs
5 elsewhere and should therefore not recover them again in separate charges.
6 Accordingly, Eschelon objected to Qwest's unilateral determination to begin
7 imposing design change charges on loops without any basis for doing so in
8 Eschelon's ICA or the SGAT. This in no way was an attack on Qwest's right to
9 recover its costs. Qwest has admitted in sworn testimony that there is no basis in
10 the SGAT or the ICA for Qwest to assess design change charges for loops²⁸ (nor
11 was there when Qwest made its unilateral announcement) and Qwest has made no
12 attempt to develop a rate for design changes for loops. Accordingly, it was (and
13 still is) reasonable for Eschelon to disagree with Qwest's decision in September of
14 2005 to unilaterally begin assessing charges for an activity with no basis in the
15 companies' contract, and want Qwest to substantiate costs related to these charges
16 – the position Eschelon has always held.

17 **Q. YOU MENTIONED ABOVE THAT QWEST ADMITTED IN SWORN**
18 **TESTIMONY THAT THERE WAS NO BASIS IN THE SGAT OR ICA**
19 **FOR QWEST TO ASSESS A DESIGN CHANGE CHARGE FOR LOOPS.**
20 **PLEASE ELABORATE.**

²⁸ Minnesota Rebuttal Testimony of Karen Stewart (MN PUC Docket P-5340, 421/IC06-768, 9/22/06), pp. 6-7.

1 A. As indicated in my direct testimony,²⁹ on September 1, 2005, Qwest sent an
2 unexpected letter to CLECs stating that “Qwest will commence billing CLECs
3 non-recurring charges for design changes to Unbundled Loop circuits” beginning
4 on Oct. 1, 2005.³⁰ In that notice, Qwest stated no basis for the charges, but
5 indicated that it would bill CLECs, including Eschelon, “at the rate found in the
6 miscellaneous elements of Exhibit A or the specific rate sheet in your
7 Interconnection agreement.”³¹ Qwest’s reference to the ICA in the letter
8 suggested, therefore, that Qwest was claiming it had some contractual right to bill
9 these rates. However, in the Eschelon-Qwest Minnesota arbitration proceeding,
10 Ms. Stewart testified that “Mr. Denney is correct in stating that neither Qwest's
11 SGAT nor the parties' current ICA includes a design change charge for loops.”³²
12 Based on this admission (a clear contradiction with Qwest’s 9/1/05 letter), Qwest
13 should credit CLECs, including Eschelon, for the rates it has billed to date and not
14 bill additional charges for design charges for loops (including CFA changes)
15 unless and until it obtains an ICA that allows it to charge for design changes.

16 **ISSUE 4-5(a)**

17 **Q. DOES MS. STEWART MISCHARACTERIZE ESCHELON’S PROPOSAL**
18 **WITH REGARD TO ISSUE 4-5(A) “CFA CHANGE”?**

²⁹ Eschelon/9, Denney/35-37.

³⁰ Eschelon/10 (September 1, 2005 letter from Qwest with the subject line “Billing for design changes on Unbundled Loop.”) Document No. PROS.09.01.05.F.03204.Design_Chgs_Unbundld_Loop.

³¹ *See id.*

³² Minnesota Rebuttal Testimony of Karen Stewart (MN PUC Docket P-5340, 421/IC06-768, 9/22/06), pp. 6-7.

1 A. Yes. Ms. Stewart incorrectly states that Eschelon’s proposal would “not permit
2 Qwest to recover the costs it incurs.”³³ To the contrary, Eschelon’s language does
3 in fact allow Qwest to assess a CFA design change charge in these circumstances
4 – an interim rate, pending Qwest requesting and obtaining approval of a different
5 rate. Eschelon’s language for 4-5(a) is found in Section 9.2.3.9 – a subsection of
6 9.2.3 (Unbundled Loop Rate Elements). Section 9.2.3 is a list of rate elements for
7 unbundled loops that are set forth in Exhibit A to the ICA, and 9.2.3.9 (CFA
8 Change – 2/4 Wire Loop Cutovers) is the ninth rate element on this list. And as
9 shown in Eschelon’s proposed language for Issue 4-5(c), Eschelon is proposing an
10 **interim rate** of \$5.00 to be included in Exhibit A for these same day pair changes
11 until the Commission approves a different rate. Furthermore, Eschelon’s
12 language in 9.2.3.9 states that “When this charge applies, the Design Change rate
13 for Unbundled Loops does not apply.” “This charge” referred to in Eschelon’s
14 language is the “CFA Change – 2/4 Wire Loop Cutover” Charge found in Exhibit
15 A mentioned above under Eschelon’s proposal. Eschelon’s proposal identifies a
16 specific charge to apply to CFA changes during a coordinated cut in the ICA and
17 includes a specific interim rate for that rate element in Exhibit A (interim rate of
18 \$5.00).

19 Eschelon’s proposal for design changes is reasonable; Eschelon wants the ICA to
20 be clear on Qwest’s obligation to perform design changes so that Qwest cannot

³³ Qwest/14, Stewart/6.

1 stop providing them or substantially alter the rates, terms and conditions without
2 an ICA amendment, and Eschelon wants the rates to be TELRIC-based.

3 **Q. MS. STEWART IMPLIES THAT CFA CHANGES ARE COMPLEX AND**
4 **REQUIRES A “SIGNIFICANT” AMOUNT OF TIME.³⁴ WHAT IS THE**
5 **PURPOSE OF THIS TESTIMONY?**

6 A. Ms. Stewart is attempting to build upon her incorrect notion that Eschelon’s
7 language would prevent Qwest from assessing an appropriate charge for this type
8 of CFA design change by referring to costs that would purportedly go un-
9 recovered if Qwest were not allowed to assess a charge in these instances.
10 However, Ms. Stewart’s notion is incorrect, as under Eschelon’s proposal Qwest
11 has the opportunity to charge an interim rate and to substantiate its costs regarding
12 these design changes at the Commission in order to obtain Commission approval
13 for a different rate. The actual design change work of the central office technician
14 to perform a CFA design change in this scenario would take a matter of seconds
15 or minutes.³⁵ A few minutes of the central office technician’s time should not
16 amount to a charge of \$103.10, which is Qwest’s proposed rate.³⁶

17 Recently, on May 18, 2007 in Depositions in the Minnesota UNE Cost case,
18 Qwest’s subject matter expert with regard to the central office technician times

³⁴ Qwest/14, Stewart/12.

³⁵ Eschelon/9, Denney/48-52.

³⁶ Oregon Exhibit A, Section 9.20.11. *See also* Eschelon/9, Denney/34. Qwest proposes this rate for all design changes – i.e., UDIT, loops and CFAs.

1 verified that on the day of cut a CFA change was a fairly simple process.³⁷ Mr.
2 Jenson, testified that CFA changes usually occur at a single location. He also
3 noted that the extent of the central office technician's work was to obtain the new
4 CFA, go to the ICDF and move the jumper cable. Mr. Jenson supported times of
5 four minutes to perform the cross connect.

6 In addition, Eschelon is already separately paying for coordination during these
7 coordinated cuts, and this coordination should cover the types of activities that
8 serve as the basis for Ms. Stewart's erroneous claim that a CFA change turns "a
9 standard installation into a coordinated installation without additional coordinated
10 installation cost recovery by Qwest."³⁸ She fails to recognize that Eschelon's
11 proposed CFA change language only applies to coordinated installations.

12 **Q. QWEST CLAIMS THAT YOU HAVE NOT ACCURATELY DESCRIBED**
13 **THE WORK REQUIRED FOR CFAS AND THE COSTS ASSOCIATED**
14 **WITH THEM.³⁹ WOULD YOU LIKE TO RESPOND?**

15 A. Yes. Ms. Stewart claims that Eschelon improperly focuses on only one step of the
16 CFA change (*i.e.*, the lift & lay) and ignores the involvement of other departments

³⁷ Deposition of Jerry Jenson of Qwest, *In the Matter of Qwest Corporation's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. § 251* MPUC Docket No. P-421/AM-06-713; OAH Docket No. 3-2500-17511-2, May 18, 2007. Mr. Jenson is not a Qwest cost witness, but is an internal Qwest employee who supplied the times for central office work for loop installations that are used by Qwest in its cost studies. The transcripts of the Deposition of Mr. Jenson are not yet available; the relevant portions of the transcript will be provided when they are available. I was present during the deposition and the information presented is accurate to the best of my knowledge based upon my recollection of his testimony.

³⁸ Qwest/14, Stewart/11.

³⁹ Qwest/14, Stewart/11-12.

1 required to accomplish the CFA change.⁴⁰ Ms. Stewart points to other activities
2 involved: testing personnel needed to coordinate this effort⁴¹ (*i.e.*, coordination
3 with the Central Office technician to confirm the new CFA is viable,⁴² provision
4 of the CFA information to the Service Delivery Coordinator to supplement the
5 order,⁴³ confirmation with the CLEC testing personnel that the circuit is
6 operational⁴⁴) and a Designer to redesign of the circuit with the new CFA.⁴⁵

7 Ms. Stewart is wrong, however, to suggest that I have ignored these activities
8 involved in a CFA change. I explained in my direct testimony⁴⁶ that the Qwest
9 CLEC Coordination Center (QCCC) coordinates the cutover with both the Qwest
10 central office technician and Eschelon personnel in much the same way that Ms.
11 Stewart describes. And I also explained that this is part of the coordinated
12 installation – which Eschelon pays for separately. Because Eschelon separately
13 pays for the coordination activities and because Eschelon’s language for 9.2.3.9
14 limits the CFA change option to coordinated installations, none of the activities
15 that Ms. Stewart claims I ignore should factor in to the appropriate rate for a CFA
16 design change because they are already being recovered elsewhere. Allowing
17 Qwest to recover costs related to the above-mentioned activities through the

⁴⁰ Qwest/14, Stewart/11.

⁴¹ Qwest/14, Stewart/11.

⁴² Qwest/14, Stewart/11.

⁴³ Qwest/14, Stewart/11.

⁴⁴ Qwest/14, Stewart/11.

⁴⁵ Qwest/14, Stewart/11.

⁴⁶ Eschelon/9, Denney/51.

1 coordinated installation rate as well as through the CFA design change charge
2 would amount to double-recovery.

3 **Q. DOES QWEST ATTEMPT TO MAKE A CFA CHANGE APPEAR MORE**
4 **COMPLEX THAN IT ACTUALLY IS?**

5 A. Yes. Ms. Stewart refers to “The Designer”⁴⁷ and the need to “potentially redesign
6 the circuit with the new CFA.”⁴⁸ This testimony may lead the reader to believe
7 that engineers are involved in designing a new circuit from scratch. This is not
8 the case. Because parties (*i.e.*, CLEC personnel, QCCC and central office
9 technician) are in communication with each other during the coordinated cut, the
10 effort involved to make a CFA change during the cut is minor. The “engineering”
11 to which Ms. Stewart refers really amounts to a records change for Qwest. More
12 importantly, the costs for a CFA change during test and turn up are what they are,
13 but clearly they are not so similar to the cost of a design change for UDIT that the
14 same rate should apply, and that is the key to the proper resolution of Issue 4-5.
15 That is, any rate for a CFA change (or any design change, for that matter) should
16 be TELRIC-based and should not allow double-recovery.

17 **Q. QWEST INSINUATES THAT ESCHELON HAS A QUALITY CONTROL**
18 **PROBLEM WITH REGARD TO CFA INVENTORY.⁴⁹ IS THIS TRUE?**

19 A. No. Again, Qwest raises a red herring, as this issue is irrelevant to determining
20 the proper interim rate to apply to CFA design changes. Nevertheless, the

⁴⁷ Qwest/14, Stewart/11.

⁴⁸ Qwest/14, Stewart/11, lines 13-14.

⁴⁹ Qwest/14, Stewart/12.

1 Commission should be aware of the fact that Eschelon does indeed have a quality
2 control process (or “CFA Validation” process) to ensure that the CFA information
3 in its systems is accurate so that multiple CFA changes can be minimized. If a
4 bad CFA is discovered during the conversion process, Eschelon will block the use
5 of that CFA until it can be confirmed working or is repaired. In addition,
6 Eschelon periodically undertakes a CFA audit clean up project. During this
7 project, Eschelon reconciles differences in the CFA status by reviewing CFA
8 records. If the status of a CFA can not be determined through a review of the
9 records, then an Eschelon Central Office technician visits the collocation to
10 determine the appropriate status of the CFA.

11 Not all CFA changes are Eschelon’s “fault.” In some cases, the need for a CFA
12 change is brought about by Qwest’s failure to properly disconnect an order. An
13 example of this scenario is: Customer A wants to disconnect Eschelon’s service,
14 so Eschelon processes the disconnect order in Eschelon’s system and sends a
15 disconnect order to Qwest to be processed. Customer B subsequently wants to
16 become an Eschelon customer, and Eschelon assigns Customer B to the CFA
17 which Customer A previously used – which is now vacant in Eschelon’s systems.
18 However, if Qwest has not processed the disconnect order, the CFA shows up as
19 occupied in Qwest’s systems, necessitating a CFA change at the time of the
20 coordinated cut. If Qwest fails to remove wiring associated with the disconnect,
21 the CFA may show available in both the Eschelon and Qwest systems, but appear
22 unavailable when Qwest attempts the wiring for customer B. In these instances,

1 the reason that a CFA change is needed (*i.e.*, Qwest has not properly processed
2 the disconnect order) is under Qwest’s control – not Eschelon’s.

3 **ISSUE 4-5(c)**

4 **Q. QWEST STATES THE EXHIBIT A IN OREGON CONTAINED THE**
5 **DESIGN CHANGE CHARGE IN THE “MISCELLANEOUS CHARGES”**
6 **SECTION AND, THEREFORE, IT APPLIES TO ALL UNES – NOT JUST**
7 **TRANSPORT.⁵⁰ IS THIS CORRECT?**

8 A. No. Ms. Million’s testimony is factually incorrect in this regard. Ms. Million
9 states regarding the design change charge, “the design change element in Oregon
10 is contained within the ‘Miscellaneous Changes’ section of its Exhibit A and not
11 in the section where the rates pertaining specifically to UDIT are contained.”⁵¹
12 Qwest has previously testified that because the design change rate element resides
13 in the “Miscellaneous Charges” section of the ICA, this “mean[s] they are
14 applicable to all UNEs in the ICA.”⁵² The contract determines if and when
15 miscellaneous charges apply and the fact that a charge is listed in the
16 miscellaneous section of Exhibit A does not provide Qwest unlimited ability to
17 apply that rate to any UNE in the contract. The contract points to the specific
18 situations in which the charges in Exhibit A apply, including miscellaneous
19 charges. Importantly, the only mention of a design change charge in Qwest’s
20 SGAT was found in the ordering section for transport. Therefore, for the

⁵⁰ Qwest/16, Million/6-7.

⁵¹ Qwest/16, Million/6.

⁵² Colorado Direct Testimony of Karen Stewart (Docket 06B-497T, 12/15/06), p. 8. *See id.*, p. 7.

1 associated rate in Exhibit A to make any sense, it would apply only to transport.
2 It makes no sense for a rate element listed in the SGAT only for transport to also
3 apply to loops, but that is what Qwest argues. The fact that Qwest placed the
4 design change charge in the “Miscellaneous Charges” section of Exhibit A⁵³
5 should have no bearing on the element or elements to which it applies. The
6 SGAT describes the rates found in Exhibit A and how they should be applied, and
7 the relevant point is that Qwest’s SGAT to which the Exhibit A is associated,
8 references the design change charge only with respect to transport. One would
9 have to ignore the SGAT and the description of the design change charge
10 contained therein to claim that the design change charge should apply to all
11 UNEs. Furthermore, contrary to Qwest’s assertion that a charge in the
12 Miscellaneous Charge section should apply to all UNEs, there are numerous other
13 miscellaneous charges that do not apply to all UNEs. For example, the
14 miscellaneous charge Additional Engineering, 9.20.1 of Exhibit A, applies to
15 collocation, but has nothing to do with loops, while the miscellaneous charge
16 Additional Labor Installation, section 9.20.2 of Exhibit A, applies to out of hours
17 work for loops and UDIT rearrangements, but has nothing to do with collocation.
18 The fact that a rate is listed as a miscellaneous charge does not imply that the rate
19 applies to any and every rate element in Exhibit A.

20 **Q. MS. MILLION TESTIFIES THAT THERE HAS NEVER BEEN A**
21 **DISPUTE ABOUT THE FACT THAT QWEST’S MISCELLANEOUS**

⁵³ Qwest/16, Million/6.

1 **CHARGES APPLY IN A VARIETY OF CIRCUMSTANCES AND TO A**
2 **VARIETY OF PRODUCTS.⁵⁴ IS THIS ACCURATE?**

3 A. No. There have been long standing disputes regarding Qwest's application of
4 miscellaneous charges. In the Minnesota UNE cost docket the Minnesota ALJs
5 ruled (and the Commission upheld) that miscellaneous charges should be set to
6 zero. Paragraph 196 of the ALJs' order reads:

7 **MISCELLANEOUS CHARGES (9.20)**

8 Qwest has identified a number of miscellaneous charges (in half-
9 hour increments, as opposed to quarter-hour increments approved in
10 the Generic Cost Case) relating to additional engineering, labor,
11 testing, and maintenance. Some, but not all, are listed for pricing in
12 the Second UNE Pricing Prehearing Order. Many of these charges
13 relate to troubles on the line. Qwest's list is modeled on its FCC
14 tariff charges, as opposed to any cost study based on TELRIC
15 methodology. **Qwest has failed to explain how these charges**
16 **would be applied, such as how it would distinguish between**
17 **situations when such costs are already included in element**
18 **prices, or when "additional" engineering, labor, testing, or**
19 **maintenance justifiably would be required.** Qwest has clarified
20 only that none of these charges would apply if trouble were found
21 on Qwest's side of the network. **Qwest has failed to adequately**
22 **explain the application of these charges, and they should be**
23 **deleted from its SGAT.⁵⁵**

24 Page 10 of the Minnesota Commission order states:

25 The Commission appreciates the concerns raised by the CLECs.
26 The ALJ Report noted the need for clarity when discussing
27 miscellaneous charges (ALJ Report ¶ 196), category 11
28 mechanized charges (¶ 208), and the charges listed in Qwest's
29 Statement of Generally Available Terms (SGAT) (¶ 223). But the
30 principle applies more broadly. **There is little point in**
31 **establishing costs related to mere labels;** costs must correspond

⁵⁴ Qwest/16, Million/6-7.

⁵⁵ Emphasis added, footnotes deleted. August 2, 2002 ALJs' Report in MN PUC Docket CI-01-1375.

1 to real world phenomena. **If Qwest intends to charge a CLEC for**
2 **an element or a service, Qwest should be able to say what the**
3 **charge is for.** The description should conform to how an element
4 is used in the relevant cost model, and provide sufficient
5 information to let purchasers determine what they want to buy and
6 whether they have received it.⁵⁶

7 **Q. IS MS. MILLION’S TESTIMONY THAT MISCELLANEOUS CHARGES**
8 **“APPLY IN A VARIETY OF CIRCUMSTANCES AND TO A VARIETY**
9 **OF PRODUCTS”⁵⁷ CONSISTENT WITH QWEST’S OWN ACTIONS**
10 **REGARDING MISCELLANEOUS CHARGES?**

11 A. No. For example, in the state of Washington the Commission approved
12 miscellaneous charges for additional labor installation which applies to out of
13 hours installations. Despite the Commission approved rate, Qwest forced
14 Eschelon to sign a contract amendment in order to obtain out of hours
15 installations for EELs. Qwest was unwilling to apply this miscellaneous charge to
16 EELs without specific language in the contract allowing this charge. In this case
17 Eschelon communicated to Qwest that it was clear this rate applied to both out of
18 hour loop and EEL installations, yet Qwest demanded a contract amendment.⁵⁸

19 For design changes, where companies disagree on the rate application, Qwest has
20 implemented this charge across its states (except Minnesota) without contract
21 amendments, via a simple email notice.⁵⁹ When convenient Qwest applies

⁵⁶ Emphasis added, footnotes deleted. October 2, 2002 Order in MN PUC Docket CI-01-1375 (“MN 271 Cost Order”).

⁵⁷ Qwest/16, Million/7, lines 1-2.

⁵⁸ Eschelon was forced to sign a similar Amendment in Oregon.

⁵⁹ Eschelon/10.

1 miscellaneous charges at will, as with design changes, but in other circumstances
2 Qwest demands a contract amendment to clarify when miscellaneous charges
3 apply.

4 **Q. MS. MILLION DISAGREES WITH YOUR SUGGESTION THAT IT IS**
5 **NECESSARY TO DEVELOP SEPARATE RATES FOR DESIGN**
6 **CHANGES FOR LOOPS AND CFAS.⁶⁰ WOULD YOU LIKE TO**
7 **RESPOND?**

8 A. Yes. Ms. Million implies that Eschelon's proposal would require Qwest to
9 develop a rate to accommodate "every possible nuance of every possible way that
10 every possible product might be provisioned by Qwest for the CLECs."⁶¹ Ms.
11 Million's claim is misleading and exaggerated. Eschelon's position is simple: if
12 Qwest is not already recovering the costs of design changes for loops and CFAs
13 (something for which Qwest did not previously assess an additional charge prior
14 to its unilateral September 2005 notification), it should be required to show that
15 the costs for these are sufficiently similar to that of UDIT before being allowed to
16 charge that rate. If Qwest is able to make this showing, then it would be allowed
17 to charge the same rate for each. However, I have shown that the costs for design
18 changes for loops and CFAs are *not* similar to that of design changes for UDIT,
19 and therefore, a proper TELRIC-based rate should reflect the costs for that
20 activity – otherwise the rate developed will not reflect the underlying costs for
21 loops and CFAs (charges that a CLEC will face more frequently than the UDIT

⁶⁰ Qwest/16, Million/7.

⁶¹ Qwest/16, Million/7, lines 10-11.

1 design change charge).

2 Though Ms. Million attempts to confuse the issue by referring to “every possible
3 nuance” and “every possible ‘flavor,’” the fact of the matter is that the
4 Commission has required separate TELRIC-based charges for many different
5 “nuances” or “flavors” of a particular product. For example, the Commission has
6 required Qwest to provide separate rates for various types (or “flavors”) of loops
7 (*e.g.*, analog and digital, 2 wire and 4 wire, etc.). Likewise, Qwest has developed
8 separate non-recurring installation charges for loops of various types (*e.g.*, 2 wire,
9 DS1 and DS3). Qwest has even proposed different non-recurring charges for
10 conversions for loops versus UDIT, which shows that even Qwest understands
11 that when costs for products are not the same, separate rates should be established
12 based on the underlying costs for each. Taking Ms. Million’s argument to its
13 logical conclusion, Qwest could develop just one rate element to apply to all loops
14 or installation of all loops. However, the reason for different TELRIC-based rates
15 for different products is that the underlying costs for each of the products is
16 different, and therefore, applying a rate to a product that has no relationship to its
17 underlying cost would violate the TELRIC-based pricing principles required by
18 the Act.

19 **Q. PLEASE ADDRESS MS. MILLION’S TESTIMONY THAT THE**
20 **DESCRIPTION OF THE DESIGN CHANGE ELEMENT IN THE**
21 **EXECUTIVE SUMMARY OF QWEST’S NONRECURRING COST**

1 **STUDY SHOWS THAT IT WAS DEVELOPED TO APPLY TO ALL**
2 **UNES.**⁶²

3 A. Ms. Million relies on the description of the rate element in the Executive
4 Summary of Qwest’s compliance filing, which refers to “end user premises” and
5 “channel interface,” and claims that this terminology supports the application of
6 this charge to loops and CFAs.⁶³ First of all, Ms. Million’s claim does not
7 comport with the cost study information explained in my direct testimony,
8 showing that the design change charge was developed specifically to apply to
9 UDIT and not loops or CFA. Second, contrary to Ms. Million’s testimony, the
10 description of the rate element in the Executive Summary (and the use of the
11 phrase “type of channel interface”) does not specifically contemplate situations
12 involving the CFA changes (or same day pair changes) described in Eschelon’s
13 language for 9.2.3.9. A change to the type of channel interface means a change to
14 the NC/NCI code, which a same day pair change does not require (a same day
15 pair change does not require a redesign of the circuit; rather the circuit is
16 terminated to a different slot, and the circuit ID may or may not change).
17 Therefore, Qwest’s own Executive Summary clearly shows that the rate does not
18 apply to CFA changes discussed in Section 9.2.3.9 of the ICA.

19 **Q. QWEST CLAIMS THAT YOUR TESTIMONY “FAILS TO ACCOUNT**
20 **FOR THE RE-DESIGN WORK THAT MAY BE REQUIRED BECAUSE**

⁶² Qwest/16, Million/6.

⁶³ Qwest/16, Million/6, lines 14-22.

1 **OF THE USE OF FIBER MUXING EQUIPMENT.”⁶⁴ DOES THIS**
2 **SUPPORT QWEST’S POSITION?**

3 A. No. Qwest’s lone example regarding the use of muxing equipment shows the
4 danger in relying on Qwest’s conjecture about costs, rather than requiring Qwest
5 to file cost studies to support its claim that the costs of design changes for loops
6 and CFA (to the extent that they are not already recovered) are sufficiently similar
7 to design changes for UDIT that applying the same rate for all is appropriate. Ms.
8 Stewart provides no detail about this example, and she admits that use of fiber
9 muxing equipment “may be required,”⁶⁵ which also means that it may *not* be
10 required. Ms. Stewart’s testimony is too speculative to establish one rate for all
11 different types of design changes, when there has been considerable information
12 provided showing that the costs are not similar.

13 Furthermore, while Qwest argues that Ms. Stewart’s lone example regarding
14 muxing equipment “may” apply to loops, Qwest cannot even speculate that it
15 always applies to the CFA changes that are subject to Eschelon’s section 9.2.3.9.
16 Fiber muxing equipment is not used in these same day pair changes. Given that
17 Qwest’s testimony suggests that use of fiber muxing equipment is part of the basis
18 for Qwest’s proposal to apply the same rate to all design changes, Qwest’s
19 example is additional information supporting the notion that Qwest’s rate is
20 inappropriate for CFA changes.

⁶⁴ Qwest/14, Stewart/10, lines 21-23.

⁶⁵ Qwest/14, Stewart/10, line 22.

1 **Q. IS APPLYING THE SAME, EXPENSIVE DESIGN CHANGE CHARGE**
2 **TO ALL UNES CONSISTENT WITH HOW THE COST STUDY WAS**
3 **CONSTRUCTED, AS MS. MILLION CLAIMS?⁶⁶**

4 A. No. I demonstrated in my direct testimony that her understanding is incorrect. I
5 showed that the cost study for Qwest's design change charge is designed based on
6 ASRs (specific to transport) instead of LSRs (specific to loops), and is based on
7 transport-specific systems and processes, which are more manually-intensive and
8 complex.⁶⁷ In sum, Qwest's cost development for its design change charges is
9 transport-specific and the only language found in the SGAT that mentions such a
10 charge is in the UDIT section, and nothing in the SGAT suggests that it should
11 apply to UNEs other than Transport. This shows that Qwest's attempt to apply
12 this same, expensive⁶⁸ rate to all UNEs is inappropriate and should be rejected.

13 Furthermore, the only mention of a design change charge in Qwest's SGAT was
14 found in the ordering section for transport. Therefore, for the associated rate in
15 Exhibit A to make any sense, it would apply only to transport. It makes no sense
16 for a rate element listed in the SGAT only for transport to also apply to loops, but
17 that is what Qwest argues. The fact that Qwest placed the design change charge in
18 the Miscellaneous section of Exhibit A should have no bearing on the element or
19 elements to which it applies. The SGAT describes the rates found in Exhibit A

⁶⁶ Qwest/16, Million/6.

⁶⁷ Eschelon/9, Denney/53-54.

⁶⁸ Eschelon/9, Denney/44-45. Qwest's proposed rate for Design Change charge in Oregon exceeds the installation rate for a UNE loop. It defies logic for the design change charge to exceed the installation rate. Eschelon/9, Denney/44-45.

1 and how they should be applied, and the relevant point is that Qwest's SGAT to
2 which the Exhibit A is associated, references the design change charge only with
3 respect to transport. One would have to ignore the SGAT and the description of
4 the design change charge contained therein to claim that the design change charge
5 should apply to all UNEs.

6 **Q. MS. STEWART STATES THAT ESCHELON HAS NOT PROVIDED**
7 **COST STUDIES TO SUPPORT PROPOSED RATES FOR DESIGN**
8 **CHANGES.⁶⁹ IS IT ESCHELON'S RESPONSIBILITY TO SUBMIT COST**
9 **STUDIES?**

10 A. No. The FCC rules require ILECs – not CLECs – to file cost studies to
11 substantiate cost-based rates for UNEs. 47 CFR § 51.505 (e) states:

12 e) *Cost study requirements.* An incumbent LEC must prove to the
13 state commission that the rates for each element it offers do not
14 exceed the forward-looking economic cost per unit of providing
15 the element, using a cost study that complies with the methodology
16 set forth in this section and §51.511.⁷⁰

17 The FCC also explains in the Local Competition Order (¶ 680) that:

18 ...[I]ncumbent LECs have greater access to the cost information
19 necessary to calculate the incremental cost of the unbundled
20 elements of the network. Given this asymmetric access to cost
21 data, we find that incumbent LECs must prove to the state
22 commission the nature and magnitude of any forward-looking cost

⁶⁹ Qwest/14, Stewart/8.

⁷⁰ 47 CFR §51.511 “Forward-looking economic cost per unit” requires UNE rates to be calculated on total demand. [“the forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in §51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.”]

1 that it seeks to recover in the prices of interconnection and
2 unbundled network elements.

3 These passages are clear in requiring Qwest to prove that its rates for UNEs
4 comply with applicable standards by submitting cost studies. Nothing in the
5 FCC's rules or orders require CLECs to file cost studies to prove the ILEC's
6 charges. Qwest has made no attempt to substantiate the costs related to design
7 changes for loops or CFAs, as required by the FCC's rules, and its attempts to
8 shift this obligation to Eschelon is completely inappropriate. That is not to say,
9 however, that Eschelon did not provide any support for its proposed interim rates,
10 and in fact, Eschelon provided substantial information explaining its interim rate
11 proposals.⁷¹ Furthermore, Qwest recently changed its PCAT via a non-CMP
12 notice to apply tariff rates to design changes (and other activities).⁷² Unless the
13 Commission adopts Eschelon's proposal and establishes an interim rate for design
14 changes for loops and CFAs (as described in Section 9.2.3.9) until Qwest files
15 cost studies and substantiates different rates, Qwest will never prove its costs
16 related to these activities and will move forward with its agenda to apply tariff
17 changes for design changes.

⁷¹ Eschelon/9, Denney 264-284 and Eschelon/25.

⁷² Eschelon/9, Denney/35-37. Qwest's August 31, 2006 non-CMP notice (Process Notification PROS.08.31.06.F.04159.Amendments.ComlAgree.SGAT) is provided as Eschelon/28.

1 **IV. PAYMENT AND DEPOSITS (SUBJECT MATTERS NOS. 5, 6 AND 7)**

2 **SUBJECT MATTER NOS. 5, 6 & 7. DISCONTINUATION OF ORDER**
3 **PROCESSING, DISCONNECTION, DEPOSITS AND REVIEW OF CREDIT**
4 **STANDING**

5 Issue Nos. 5-6, 5-7, 5-7(a) 5-8, 5-9, 5-11, 5-12 and 5-13: ICA Sections 5.4.2,
6 5.4.3, 5.4.5, 5.4.7 and 5.13.1

7 **Q. PLEASE PROVIDE A SUMMARY OF THE PAYMENT AND DEPOSIT**
8 **ISSUES (ISSUES 5-6, 5-7, 5-7(A), 5-8, 5-9, 5-11, 5-12 AND 5-13).**

9 A. Issue 5-6 relates to whether Commission approval should be obtained before
10 Qwest takes the customer impacting action of discontinuing processing
11 Eschelon's orders based on allegations of Eschelon's failure to make timely
12 payment (as proposed by Eschelon), or whether Qwest should be permitted to act
13 unilaterally to discontinue order processing when it alleges failure to pay (as
14 Qwest proposes). Issue 5-7 and subpart address whether Qwest should obtain
15 Commission approval before being allowed to disconnect Eschelon's customers'
16 circuits (as proposed by Eschelon), or whether Qwest can take this serious step
17 unilaterally.

18 Issues 5-8 and 5-9 address the definition of "Repeatedly Delinquent" which is a
19 key term in determining if and when Qwest can require Eschelon to make a
20 deposit. Issue 5-8 relates to whether an amount must be "non de minimus" for
21 that amount to be used in determining whether payment has been Repeatedly
22 Delinquent, as Eschelon proposes, or whether payment may be considered
23 Repeatedly Delinquent based on any late undisputed amount, no matter how small

1 that amount is, as proposed by Qwest. Issue 5-9 relates to whether Repeatedly
2 Delinquent payment should be defined as late payments in three consecutive
3 months (Eschelon's proposal)⁷³ or late payments in three or more months in a 12
4 month period (Qwest's proposal).

5 Issue 5-11 addresses whether a party should be able to seek Commission relief
6 once the other party demands a deposit. Eschelon's proposal would require
7 payment of a deposit within 30 days unless one party challenges the deposit
8 amount at the Commission, in which case the deposit payment due date would be
9 ordered by the Commission. Qwest proposes that a party should pay the deposit
10 within 30 days with no vehicle to challenge this deposit amount at the
11 Commission before making the payment.

12 Eschelon's proposal for Issue 5-12 takes a different approach: instead of relying
13 on the definition of Repeatedly Delinquent as the trigger for a deposit
14 requirement, this proposal would allow the Commission to make this
15 determination based on all relevant circumstances. Qwest does not have an
16 alternative proposal under Issue 5-12.

17 Issue 5-13 relates to whether a separate provision is needed that would allow one
18 party to unilaterally review the other party's credit standing and increase the
19 deposit amount (or, according to Qwest, establish a new deposit requirement)

⁷³ Eschelon has an alternative proposal for Issue 5-9 that would define repeatedly delinquent as three late payments in a six month period.

1 based on this review, as Qwest proposes, or whether deposit requirements are
2 sufficiently addressed elsewhere in the contract, as Eschelon proposes.⁷⁴

3 **Q. IS QWEST’S TESTIMONY PROPERLY FOCUSED ON THE ACTUAL**
4 **ISSUES SURROUNDING THIS DISPUTED ICA LANGUAGE?**

5 A. No. The dispute regarding these provisions is actually about whether Qwest can
6 take unilateral actions, based upon disputed information, that puts customers in
7 this State out of service. These provisions are about Qwest’s ability to hold
8 Eschelon hostage through threats to end user customers. These provisions are
9 about extreme actions that should be taken only as a last resort; therefore,
10 Commission involvement in these actions is entirely appropriate. AT&T
11 concisely summarized the need for Commission oversight as follows:

12 AT&T has from time to time insisted on provisions in its contracts
13 with customers that require security deposits and other provisions
14 that protect against default. The critical difference is that, if the
15 customer is not satisfied with the terms AT&T offers or the deposit
16 that AT&T requires, the customer can seek to obtain services from
17 another provider. The customer of a dominant LEC, by contrast,
18 generally has no such choices – which is why the FCC has always
19 recognized the need for prescription in this context that minimizes
20 dominant ILEC abuse of security deposit, advance payment and
21 termination requirements.⁷⁵

22 Mr. Easton claims that Qwest’s proposals are appropriate because “Qwest is
23 entitled to timely payment for services rendered and to take remedial action *if the*

⁷⁴ Eschelon has an alternative proposal for Issue 5-13 that would allow the review Qwest seeks but would require Commission approval.

⁷⁵ Comments of AT&T Communications of the Midwest, Inc. *In the Matter of the Nebraska Public Service Commission on its own motion, seeking to investigate the impact of telecommunications carrier bankruptcies*, Application No. PI – 62/C-2777/NUSF-29, September 6, 2002; FN 1.

1 *risk of nonpayment is apparent.*⁷⁶ Mr. Easton also claims that the Commission
2 should not get involved in these issues “as a normal course of business.”⁷⁷
3 Qwest’s testimony would lead you to believe that the disputes are about whether
4 Qwest is entitled to timely payment⁷⁸ or whether the Commission should be
5 involved in the day to day business operations between Eschelon and Qwest.⁷⁹
6 Even a casual careful reading of Eschelon’s proposed language, however,
7 demonstrates that Qwest will have protection from untimely payments. It
8 specifically requires timely payment and provides remedies for untimely
9 payment; the Commission would only become involved as a last resort.

10 **ISSUES 5-6 and 5-7**

11 **Q. QWEST CHARACTERIZES ESCHELON’S PROPOSALS FOR ISSUES 5-**
12 **6 AND 5-7 AS REQUIRING UNREASONABLE COMMISSION**
13 **INVOLVEMENT.⁸⁰ IS THIS AN ACCURATE CHARACTERIZATION?**

14 A. No. Mr. Easton downplays the importance of the disagreements under Issues 5-6
15 and 5-7. Mr. Easton testifies: “Qwest believes it serves no useful purpose to have
16 the Commission get involved in collection issues at this stage.”⁸¹ However, while
17 Qwest is opposed to seeking “Commission approval” prior to discontinuing order

⁷⁶ Qwest/13, Easton/14, lines 10-11. (emphasis added)

⁷⁷ Qwest/13, Easton/16.

⁷⁸ Qwest/13, Easton/14; Qwest/13, Easton/18-19; and Qwest/13, Easton/26.

⁷⁹ Qwest/13, Easton/16, lines 1-2; Qwest/13, Easton/29; and Qwest/13, Easton/31.

⁸⁰ Qwest/13, Easton/16, lines 1-2; Qwest/13, Easton/29; and Qwest/13, Easton/31.

⁸¹ Qwest/13, Easton/15, lines 15-17.

1 processing or disconnecting Eschelon's end user customers,⁸² Qwest proposes
2 instead that Eschelon seek Commission protection in cases where it feels Qwest
3 has taken these actions inappropriately.⁸³

4 Issues 5-6 and 5-7 address situations in which Qwest may unilaterally discontinue
5 processing Eschelon's orders or disconnect Eschelon customers even when the
6 basis for doing so is disputed, which is much more serious than a typical payment
7 issue. As I explained in my direct testimony,⁸⁴ Eschelon and Qwest have had
8 disputes concerning the accuracy of Qwest's bills, the timeliness of Qwest's
9 recognition of Eschelon's payments, Qwest's handling of Eschelon payments and
10 Qwest's calculation of disputed amounts. Qwest has threatened, and continues to
11 threaten, to disconnect Eschelon's services and stop processing Eschelon's orders
12 based on an amount Qwest alleges Eschelon owes on a combined six state region
13 without providing sufficient detail to verify this amount – and all the while,
14 Eschelon believes it is current with Qwest. These facts show that Eschelon's
15 concern about Issues 5-6 and 5-7 is real and warranted, and that Commission
16 involvement should be preserved to address any significant disagreements before
17 Qwest ceases accepting Eschelon's orders and begins disconnecting Eschelon's
18 customers.

⁸² Qwest/13, Easton/14 and Qwest/13, Easton/18-19.

⁸³ Qwest/13, Easton/15-16 and Qwest/13, Easton/19.

⁸⁴ Eschelon/12 (Confidential Exhibit).

1 **Q. COULDN'T ESCHELON "SIMPLY PAY ITS BILL"⁸⁵ FOR UNDISPUTED**
2 **AMOUNTS IT OWES QWEST AND AVOID QWEST DISCONNECTING**
3 **CUSTOMERS OR DISRUPTING ORDER PROCESSING?**

4 A. If it were that easy, this would not be an issue. Though Mr. Easton insinuates that
5 this problem is solely within Eschelon's control because Eschelon only need to
6 pay all undisputed amounts to avoid the harm caused by Qwest invoking these
7 actions,⁸⁶ Qwest is wrong. As explained in my direct testimony⁸⁷ there are a
8 number of reasons that are not in Eschelon's control that could cause Eschelon
9 and Qwest to have very different views about amounts that are disputed and
10 undisputed. However, under Qwest's proposal, Qwest could ignore these reasons
11 as well as Eschelon's disagreement with Qwest's view of Eschelon's payment
12 status and invoke these actions. That is why Commission involvement should be
13 preserved.

14 **Q. QWEST OBSERVES THAT "QWEST IS THE ONLY PARTY THAT IS**
15 **PROCESSING ORDERS UNDER THE ICA" SO SECTION 5.4.2**
16 **"RESTRICTS ONLY QWEST'S ABILITY TO DISCONTINUE**
17 **PROCESSING ESCHELON'S ORDERS IF ESCHELON FAILS TO**
18 **PAY."⁸⁸ IS THIS OBSERVATION MEANINGFUL?**

⁸⁵ Qwest/13, Easton/23, line 23. *See also* Qwest/13, Easton/14-15 and Qwest/13, Easton/19.

⁸⁶ Qwest states in its position statements on these issues that "If a bill is undisputed, Eschelon should pay it." *See* Issues 5-7, 5-7(a), 5-8, 5-9, 5-11 and 5-12 in Disputed Issues Matrix, Exhibit 3 to Eschelon's Petition for Arbitration.

⁸⁷ Eschelon/9, Denney/75-78.

⁸⁸ Qwest/13, Easton/14, lines 13-15.

1 A. Yes, but this point actually supports Eschelon's position. Mr. Easton is correct
2 that Qwest is the party processing orders under the ICA, and this means that
3 Eschelon is the only party that could have its ability to conduct business disrupted
4 by the other party. Thus, if Qwest is wrong and there is no payment due, but it
5 discontinues processing orders or disconnects customers anyway, Eschelon's
6 entire business is disrupted for no reason.

7 On the other hand, the risk to Qwest under Eschelon's language, assuming there is
8 an outstanding undisputed amount, is that it may receive its payment after the 30
9 day due date – a risk that is addressed in the Agreement through late-payment
10 charges and interest charges. Therefore, the risks of service disruption facing
11 Eschelon under this scenario are much more serious than the potential risk of late
12 payment facing Qwest. I agree that Qwest should have the ability under the ICA
13 to take these remedial actions *under appropriate circumstances*, but, particularly
14 in light of the extreme consequences of such a step for Eschelon and its
15 Customers, it is critical that there be Commission oversight, especially when there
16 are disagreements about outstanding amounts.

17 **Q. QWEST CLAIMS THAT REQUIRING COMMISSION APPROVAL FOR**
18 **QWEST TO BE ABLE TO DISCONTINUE PROCESSING ESCHELON'S**
19 **ORDERS WOULD ALLOW ESCHELON TO CONTINUE TO INCUR**

1 **DEBT WHILE COMMISSION ACTION IS PENDING.⁸⁹ DOES QWEST’S**
2 **CONCERN MAKE SENSE?**

3 A. No. Because Eschelon would incur costs to dispute that amount at the
4 Commission and Eschelon would still end up having to pay the charges
5 (potentially with interest and late fees) in the event that the Commission ruled in
6 favor of Qwest, Eschelon has a disincentive to mount additional outstanding
7 charges that it has no reason to dispute. Section 5.4.1 of the ICA states when
8 undisputed amounts are due, and this language is closed. Eschelon is not
9 attempting to circumvent its obligation to pay its undisputed bills, rather the
10 companies do not always agree regarding the amounts that are in dispute.

11 **Q. MR. EASTON STATES THAT ESCHELON’S ALTERNATIVE**
12 **PROPOSAL FOR ISSUE 5-6 IS “EQUALLY INEQUITABLE” AS ITS**
13 **PRIMARY PROPOSAL.⁹⁰ IS MR. EASTON’S CRITICISM OF**
14 **ESCHELON’S ALTERNATIVE PROPOSAL WARRANTED?**

15 A. No. Mr. Easton implies that Eschelon’s alternative proposal lowers the bar for
16 Eschelon so that “the simple act of its ‘asking’ the Commission” (instead of
17 Commission approval, as in the first proposal) would prevent Qwest from taking
18 remedial actions. Mr. Easton misses the point of Eschelon’s proposals.
19 Eschelon’s proposals are designed to ensure that, where a dispute exists, Qwest
20 obtains Commission approval *before* taking the serious step of disconnecting
21 customers or rejecting orders. Eschelon’s first proposal is to require Qwest to

⁸⁹ Qwest/13, Easton/14 and Qwest/13, Easton/18-19.

⁹⁰ Qwest/13, Easton/15, line 4.

1 seek the Commission's approval before taking these drastic steps. If that is not
2 accepted, Eschelon's second proposal is designed to assure that the Commission
3 does not have to make a decision on the issue in "crisis mode," with Qwest's
4 action either imminent (note that Qwest's proposal requires that it give only ten
5 days advance notice of its discontinuance of order processing) or perhaps having
6 already taken place. Whether Qwest is required to seek prior Commission
7 approval or Eschelon has the ability to stay Qwest from acting pending the
8 determination of the dispute that it brings to the Commission, both parties would
9 be required to prove their case to the Commission, with the Commission serving
10 as an independent arbiter of the facts.

11 **Q. MR. EASTON CLAIMS THAT ESCHELON'S PROPOSAL IS**
12 **UNNECESSARY BECAUSE ESCHELON CAN INVOKE DISPUTE**
13 **RESOLUTION.⁹¹ HAVE YOU ALREADY ADDRESSED THIS ISSUE?**

14 **A.** Yes. I addressed this in my direct testimony.⁹² Dispute resolution may eventually
15 resolve the issue, but it is unlikely such action will occur before serious damage is
16 done to Eschelon and its end user customers.

17 **Q. IF THE COMMISSION WERE INVOLVED, WHAT STANDARD WOULD**
18 **THE COMMISSION USE TO DETERMINE WHETHER QWEST COULD**
19 **DISCONTINUE ORDER PROCESSING OR DISCONNECT CIRCUITS?**

⁹¹ Qwest/13, Easton/14 and Qwest/13, Easton/19.

⁹² Eschelon/9, Denney/82-83 and Eschelon/9, Denney/78-81.

1 A. Any dispute under the interconnection agreement may come before the
2 Commission pursuant to the closed and agreed upon language in ICA Section
3 5.18 (“Dispute Resolution”), and those standards would apply to this dispute. In
4 addition, standards for use are described in closed language of sections 5.4.2
5 (discontinue order processing) and 5.4.3 (disconnection) of the ICA. Eschelon’s
6 second option for 5.4.2 offers additional guidance. The necessity of Commission
7 oversight derives from the fact that discontinuing order processing and/or
8 disconnection of service is an extreme remedy that impacts customers in Oregon.
9 Section 5.4.2 states that a party may “discontinue processing orders for relevant
10 services for the failure of the other Party to make full payment, less any disputed
11 amount as provided for in Section 21.8 of this Agreement, for the relevant
12 services provided under this Agreement within thirty (30) Days following the
13 Payment Due Date.” Section 5.4.3 states that a party may “disconnect any and all
14 relevant services for failure by the billed Party to make full payment, less any
15 disputed amount as provided for in Section 21.8 of this Agreement, for the
16 relevant services provided under this Agreement within sixty (60) Days following
17 the Payment Due Date.”

18 Because a disruptive customer-impacting situation may occur in cases of
19 disconnection and discontinuation of order processing, specific language is
20 needed (in addition to the dispute resolution provisions of Section 5.18) to address
21 the timing of dispute resolution – *before* customers are impacted. As described in

1 my direct testimony,⁹³ disputes commonly exist regarding whether bills, “less any
2 disputed amount” are properly paid. Before such an extreme customer impacting
3 step such as discontinuing order processing or disconnection of service is taken,
4 Commission review of the facts and approval should be required.

5 **ISSUE 5-8**

6 **Q. FOR ISSUE 5-8, MR. EASTON CLAIMS THAT ESCHELON’S**
7 **INCLUSION OF THE TERM “NON DE MINIMUS” IS VAGUE AND**
8 **WOULD LEAD TO DISPUTES BETWEEN THE PARTIES.⁹⁴ IS HE**
9 **CORRECT?**

10 A. No. I addressed this issue in my direct testimony.⁹⁵ There is no reason to believe
11 that the inclusion of this term will cause any more disputes than inclusion of the
12 term “material,” which Qwest agrees to include in the ICA numerous times.⁹⁶ As
13 indicated in my direct testimony, Eschelon is willing to use the word “material” in
14 place of “non de minimus.”

15 **Q. MR. EASTON CHARACTERIZES ESCHELON’S REASONING FOR**
16 **INCLUDING THE TERM NON DE MINIMUS AS “UNFOUNDED.”⁹⁷**
17 **PLEASE RESPOND.**

⁹³ Eschelon/9, Denney/75-78.

⁹⁴ Qwest/13, Easton/23.

⁹⁵ Eschelon/9, Denney/90-92.

⁹⁶ See ICA Sections, 2.1, 2.2, 5.1.3.1, 5.4.6, 5.6.2, 5.8.4, 5.13.1, 7.2.2.9.6, 8.2.1.29.1, 8.4.1.2, 9.23.4.3.1.3.2, 9.23.4.3.1.3.4, 9.23.4.3.1.3.5, 9.23.4.3.1.4, 9.23.4.3.1.5, 10.6.2.5.1, 10.8.2.18 and 11.13.

⁹⁷ Qwest/13, Easton/23, line 15.

1 A. Mr. Easton states that it is not “Qwest’s practice” to invoke collections actions
2 based on insignificant amounts, nor has Eschelon claimed that Qwest has ever
3 done so.⁹⁸ That being the case, Qwest should have no problem memorializing
4 that in the ICA by including the term “non de minimus.” Though Mr. Easton
5 claims that it is not Qwest’s “practice,” nothing would stop Qwest from changing
6 its practice to invoke collections actions over de minimus amounts except the ICA
7 language Eschelon proposes. Contrary to Mr. Easton’s suggestion, Eschelon does
8 not need to provide a specific example for its proposal to be adopted, and the fact
9 that Qwest will not agree to Eschelon’s proposal raises concerns.

10 Mr. Easton goes on to state that it is not “financially wise or feasible, to take
11 collection action for ‘a few dollars.’”⁹⁹ However, as a competitor of Eschelon as
12 well as a provider of essential, bottleneck inputs to Eschelon’s business, Qwest
13 has the incentive to take collection action – *e.g.*, discontinue processing
14 Eschelon’s orders, disconnect Eschelon’s circuits and demand deposits – in the
15 greatest number of circumstances as possible because these actions make it
16 increasingly difficult for Eschelon to compete with Qwest. Therefore, unless
17 there is specific language included in the ICA that speaks to “non de minimus”
18 amounts, nothing would stop Qwest from following this incentive and invoking
19 collections action for a few dollars.

⁹⁸ Qwest/13, Easton/23, lines 15-18.

⁹⁹ Qwest/13, Easton/24, lines 5-6.

1 **Q. MR. EASTON TESTIFIES THAT ESCHELON’S PAYMENT HISTORY**
2 **DOES NOT REFLECT DE MINIMUS AMOUNTS OF UNDISPUTED**
3 **CHARGES.¹⁰⁰ IS IT ESCHELON’S POSITION THAT THE AMOUNT**
4 **QUOTED BY MR. EASTON IS DE MINIMUS?**

5 A. No. It is not Eschelon’s position that \$3 million is a de minimus amount, as Mr.
6 Easton suggests, nor does Eschelon agree that the undisputed amounts that Qwest
7 quotes are accurate.

8 **ISSUE 5-9**

9 **Q. MR. EASTON CLAIMS THAT ESCHELON’S PROPOSAL FOR ISSUE 5-**
10 **9 (REGARDING REPEATEDLY DELINQUENT) “FAILS TO PROVIDE**
11 **THE PROPER INCENTIVE FOR TIMELY PAYMENT.”¹⁰¹ DID MR.**
12 **EASTON SUPPORT THIS STATEMENT WITH ANY DATA OR REAL**
13 **WORLD EXAMPLES?**

14 A. No. Mr. Easton’s support for this statement is his observation that Eschelon
15 would not be “Repeatedly Delinquent” under Eschelon’s proposal if it paid
16 undisputed amounts late for two months, then made a timely payment in month 3,
17 and then made untimely payments in months 4 and 5.¹⁰² However, as I explained
18 in my direct testimony,¹⁰³ Qwest already has ICAs/service agreements with
19 CLECs and other carriers that contain the three consecutive month standard

¹⁰⁰ Qwest/13, Easton/24.

¹⁰¹ Qwest/13, Easton/25. Mr. Easton expresses the same concerns for Eschelon’s alternative proposal under Issue 5-9 (Qwest/13, Easton/26). I will address them together.

¹⁰² Qwest/13, Easton/25.

¹⁰³ Eschelon/9, Denney/93-94. Eschelon/22.

1 proposed by Eschelon, and Qwest has not provided a single example of this
2 standard failing to provide the proper incentive for timely payment by those
3 companies.

4 More important, the intent of the definition of Repeatedly Delinquent is not meant
5 as an incentive for timely payment, but instead to provide an indication of a
6 company that poses a risk to Qwest of being unable to pay its bills. The
7 consequences of being defined Repeatedly Delinquent is the imposition of a
8 payment deposit. As Mr. Easton acknowledged at the hearing in the Minnesota
9 arbitration, the ICA provisions regarding late payment charges, section 5.4.8, are
10 designed to provide the incentive for timely payment;¹⁰⁴ the deposit provisions,
11 section 5.4.5, are intended to protect against ultimate non-payment.

12 In addition, Mr. Easton has not shown that Qwest's standard of three months in a
13 twelve month period provides a better incentive for timely payment or more
14 reasonably protects Qwest from non-payment than the three consecutive month
15 standard in other carriers' contracts with Qwest. As I explained in my direct
16 testimony,¹⁰⁵ Qwest's proposal would result in Eschelon's payments being
17 deemed "Repeatedly Delinquent" if Eschelon paid a portion, even a de minimus
18 portion, late for two months and made timely payments for 9 consecutive months
19 and then missed an additional month. A carrier making timely payment in 9
20 consecutive months out of ten months does not constitute a legitimate risk about

¹⁰⁴ Eschelon/6 [MN Transcript, Vol. 1 at p. 150, lines 1-13 (testimony of William Easton)].

¹⁰⁵ Eschelon/9, Denney/92-93.

1 future payment or provide evidence of the financial stress that warrants a security
2 deposit.

3 **Q. MR. EASTON CHARACTERIZES ESCHELON'S PROPOSAL AS**
4 **ATTEMPTING TO "CHANGE" THE LANGUAGE AGREED TO IN THE**
5 **SECTION 271 WORKSHOPS "TO GIVE ITSELF ADDITIONAL AND**
6 **UNWARRANTED BUSINESS ADVANTAGE."¹⁰⁶ IS THIS A FAIR**
7 **CHARACTERIZATION OF ESCHELON'S PROPOSAL?**

8 A. No. Mr. Easton assumes that any differences between SGAT language and ICA
9 language should be rejected, and that the ICA should not deviate from the SGAT.
10 This is not the case. When language can be improved upon in an ICA, it certainly
11 should be, even if it differs from other sources. Eschelon's proposed language
12 provides Qwest the opportunity to seek a deposit, when warranted.

13 Further, I explained in my direct testimony¹⁰⁷ that the "3 consecutive month"
14 standard proposed by Eschelon is used by Qwest in its ICAs/service agreements
15 with numerous CLECs and wireless service providers. Therefore, one reason to
16 adopt Eschelon's proposal is to avoid giving those other CLECs the "additional
17 and unwarranted business advantage" over Eschelon that is inherent in Qwest's
18 proposal – *i.e.*, to hold Eschelon to a higher "3 months in a 12 month period"
19 standard, while Eschelon's competitors are held to the "3 consecutive month"
20 standard.

¹⁰⁶ Qwest/13, Easton/25, lines 18-19.

¹⁰⁷ Eschelon/9, Denney/93-94 and Eschelon/22.

1 **ISSUE 5-11**

2 **Q. WHAT IS QWEST'S CONCERN WITH ESCHELON'S PROPOSAL**
3 **UNDER ISSUE 5-11?**

4 A. Mr. Easton states that Eschelon can invoke the dispute resolution process if it
5 disagrees with a deposit amount, so a second opportunity to do so is unnecessary
6 and inequitable.¹⁰⁸ However, in my direct testimony,¹⁰⁹ I explained that the
7 dispute resolution process may not be capable of providing Eschelon with the
8 relief it seeks in time to avoid the damage that could be done if Eschelon is
9 required to pay a deposit. Under Qwest's proposal, Eschelon could be required to
10 pay a deposit on thirty days' notice. If the ICA does not provide a mechanism
11 that stays that requirement if Eschelon seeks Commission review, Eschelon would
12 need to file its complaint with the Commission, get on the Commission's agenda,
13 and obtain an order granting at least interim relief, all within thirty days, and the
14 Commission would, again, be faced with having to deal with an issue in "crisis
15 mode." Therefore, contrary to Mr. Easton's claim, Eschelon's language is
16 necessary. Furthermore, providing an opportunity for Eschelon to seek
17 Commission relief when it disagrees with Qwest's actions in these regards is
18 imminently fair, since Eschelon is the party who is at risk of having its orders
19 rejected, its customers disconnected, or having to pay a deposit.

20 **ISSUE 5-12**

¹⁰⁸ Qwest/13, Easton/27.

¹⁰⁹ Eschelon/9, Denney/95.

1 **Q. UNDER ISSUE 5-12, QWEST STATES THAT ESCHELON’S PROPOSAL**
2 **WOULD RESULT IN THE COMMISSION MICRO-MANAGING THE**
3 **COMPANIES’ RELATIONSHIP AND PROHIBIT QWEST FROM**
4 **UTILIZING REASONABLE BUSINESS PRACTICES.¹¹⁰ IS THIS A FAIR**
5 **CHARACTERIZATION OF ESCHELON’S PROPOSAL?**

6 A. No. I disagree with Mr. Easton’s contention that Commission involvement in
7 significant disagreements between an ILEC provider of wholesale services and a
8 CLEC purchaser of those wholesale services constitutes micro-managing. Indeed,
9 state Commissions are charged with acting as an independent decision-maker
10 when disputes arise between an ILEC and a CLEC concerning the companies’
11 performance of their respective obligations under an ICA. Eschelon’s proposal
12 would not prevent Qwest from employing reasonable business practices, rather it
13 would simply require Qwest – if it wishes to take the extraordinary step of
14 requiring Eschelon to make a payment deposit of as much as \$5 million – to first
15 have its actions approved by the Commission. It is commonplace for state
16 commissions to review an ILEC’s business practices as they relate to their CLEC
17 wholesale customers. And if Qwest’s attempt to collect a deposit from Eschelon
18 is reasonable based on relevant circumstances, then the Commission will approve
19 Qwest’s deposit requirement.

¹¹⁰ Qwest/13, Easton/29.

1 **Q. MR. EASTON TESTIFIES THAT THE CONCERN UNDER ISSUE 5-12 IS**
2 **REAL FOR QWEST.¹¹¹ WOULD YOU LIKE TO RESPOND?**

3 A. Yes. Mr. Easton states that Qwest has “found it necessary on numerous occasions
4 to take action to limit its exposure when a CLEC struggles,”¹¹² but he provides no
5 support to back his claim, nor does he show that the provisions in Eschelon’s
6 proposal for the Payment and Deposits issues would not be sufficient to protect
7 Qwest should such a circumstance arise. And given that Eschelon’s proposal
8 would allow Qwest to demand a deposit for when a legitimate concern about
9 future ability to pay exists – subject to Commission approval when disagreements
10 exist about Eschelon’s payment status – Mr. Easton’s claim that Eschelon’s
11 proposal would not protect Qwest is not supported by the ICA language. Though
12 Mr. Easton complains that Eschelon’s proposal would force Qwest to incur
13 additional debt while the Commission determines whether Qwest’s actions are
14 justified, the fact of the matter is that if Qwest is correct, it would receive
15 payment (albeit potentially later than if Qwest was able to act unilaterally).
16 However, if Qwest’s proposal is adopted, Eschelon would be put in a position
17 where it would be forced to either pay the total amount of charges that Qwest
18 demands – even if Eschelon disagrees with Qwest’s view of Eschelon’s payment
19 status – or be forced to pay a substantial deposit. Again, Qwest’s concern boils
20 down to the timing of payment it will receive, while Eschelon’s concern is
21 whether Eschelon will be able to continue to serve its customers. The

¹¹¹ Qwest/13, Easton/29.

¹¹² Qwest/13, Easton/29.

1 disagreement between Eschelon and Qwest evident in Eschelon/12 (Confidential)
2 shows that Eschelon's concern is real.

3 **ISSUE 5-13**

4 **Q. MR. EASTON TESTIFIES THAT QWEST'S PROPOSAL FOR ISSUE 5-13**
5 **ALLOWS QWEST TO "REVIEW THE OTHER PARTY'S CREDIT**
6 **STANDING AND INCREASE THE AMOUNT OF DEPOSIT".¹¹³ IS MR.**
7 **EASTON'S TESTIMONY MISLEADING?**

8 A. Yes. It is important to note that when Mr. Easton testifies that Qwest would be
9 able to "review a credit report"¹¹⁴ as support for increasing a deposit under its
10 proposed Section 5.4.7, that is not the only information that Qwest could review
11 as support for this action. In fact, under Qwest's proposal for Issue 5-13, the
12 options are almost limitless for Qwest in this regard. During negotiations on this
13 issue, Qwest indicated that, under this provision, it could simply read something
14 in the newspaper that caused it concern and demand a deposit increase based
15 solely on that information. This lack of standards or objectivity greatly concerns
16 Eschelon, especially when other sections of the ICA already provide Qwest with
17 sufficient ability to establish and increase deposits from its customers (See,
18 Sections 5.4.5 and 5.4.6).

¹¹³ Qwest/13, Easton/30, lines 25-26.

¹¹⁴ Qwest/13, Easton/10.

1 Mr. Easton’s testimony is also misleading in stating that its proposal for Issue 5-
2 13 applies to an “increase”¹¹⁵ in the amount of a deposit. This would suggest that
3 Qwest has already demanded a deposit from Eschelon and 5.4.7 would apply to
4 increasing that amount. However, Qwest is actually interpreting this as allowing
5 Qwest to demand an entirely new deposit (*i.e.*, an “increase” from \$0) –
6 something that is already addressed in 5.4.5. To this end, Eschelon offered
7 Option #2 for Issue 5-13,¹¹⁶ which is repeated below.¹¹⁷

8 5.4.7 If a Party has received a deposit pursuant to Section 5.4.5
9 but the amount of the deposit is less than the maximum deposit
10 amount permitted by Section 5.4.5, the Billing Party may review
11 the other Party's credit standing and increase the amount of deposit
12 required, if approved by the Commission, but in no event will the
13 maximum amount exceed the amount stated in Section 5.4.5.
14 Section 5.4 is not intended to change the scope of any regulatory
15 agency's or bankruptcy court's authority with regard to Qwest or
16 CLECs.

17 Eschelon’s Option #2 makes clear that 5.4.7 applies to an increase in an existing
18 deposit established under 5.4.5, rather than a second opportunity for Qwest to
19 demand a deposit based on a complete lack of standards or criteria. Eschelon’s
20 Option #2 would require Commission approval for a change in deposit amount
21 under 5.4.7 in order to ensure that the credit review conducted and the
22 information relied upon justifies the increase in deposit. And because Qwest has
23 indicated that 5.4.7 is needed because of the frequency of CLEC financial troubles

¹¹⁵ Qwest/13, Easton/30, line 26.

¹¹⁶ Eschelon’s Option #1 is for 5.4.7 to be intentionally left blank.

¹¹⁷ Eschelon/9, Denney/97.

1 and bankruptcies,¹¹⁸ Eschelon’s Option #2 makes clear that 5.4.7 does not affect
2 any regulatory agency’s or bankruptcy court’s authority in this regard.

3 **Q. QWEST CLAIMS THAT ITS PROPOSAL FOR ISSUE 5-13 TO REVIEW**
4 **ESCHELON’S CREDIT STANDING AND INCREASE THE DEPOSIT**
5 **AMOUNT OR ESTABLISH A NEW DEPOSIT REQUIREMENT IS A**
6 **“REASONABLE AND CUSTOMARY BUSINESS PRACTICE.”¹¹⁹**
7 **WOULD YOU LIKE TO RESPOND?**

8 A. Yes. Section 5.4.5 permits Qwest to require a deposit on certain conditions. That
9 provision should be adequate to meet Qwest’s business needs. In light of the
10 remedies that Qwest already has available to it, Section 5.4.7 is unnecessary and
11 that is the reason why Eschelon’s first proposal on this issue is that the Section be
12 left intentionally blank. However, assuming that the Commission determines that
13 the ICA should contain some provision that allows Qwest to increase the amount
14 of a payment deposit, I disagree that Qwest should be able to make this
15 determination unilaterally without any objective, quantifiable criteria or
16 procedure. There is no way for Eschelon to know if the actions that Qwest is
17 taking are “reasonable” because Qwest’s decision making under its proposal for
18 Issue 5-13 is not subject to any standard. In other words, there is no limit on the
19 circumstances under which Qwest could demand an entirely new deposit or an
20 increase to an existing deposit, which would render the limitations provided for
21 under Section 5.4.5 meaningless. In fact, Eschelon’s credit standing would not

¹¹⁸ Qwest/13, Easton/31.

¹¹⁹ Qwest/13, Easton/30, line 27.

1 even need to change for Qwest to invoke Section 5.4.7 and demand a deposit or
2 deposit increase. Providing this type of control to an ILEC over its CLEC
3 competitors – to tie its competitor’s financial resources up in potentially frivolous
4 deposits – is not “customary” from a public policy perspective.

5 It is more “reasonable and customary” for the Commission to have a say in these
6 issues between ILEC and CLEC – which is what is called for in Eschelon’s
7 proposal. Though Qwest claims that the need for it to act unilaterally is “acute”¹²⁰
8 due to the “frequency of telecommunications carriers declaring bankruptcy or
9 simply shutting their doors,”¹²¹ again, Qwest provides no information supporting
10 the acuteness of this problem or the frequency of these occurrences. Furthermore,
11 Qwest provides no reason why its ability to demand deposits under 5.4.5 does not
12 already sufficiently protect Qwest’s interest.

13 In addition, as a matter of bankruptcy law, a payment to a creditor for an
14 antecedent debt of the debtor that is made 90 days or less before a filing for
15 bankruptcy is avoidable as a preference.¹²² Such a deposit, to the extent made
16 fewer than 90 days before bankruptcy, would likely not be available, as Qwest
17 appears to assume.

18 **Q. MR. EASTON ATTEMPTS TO CLARIFY QWEST’S POSITION ON**
19 **ISSUE 5-13 BY STATING THAT QWEST’S UNILATERAL CREDIT**

¹²⁰ Qwest/13, Easton/31, line 6.

¹²¹ Qwest/13, Easton/31, lines 3-4.

¹²² 11 U.S.C. § 547(b).

1 **REVIEW IS THE “TRIGGERING EVENT.”¹²³ DOES THIS SATISFY**
2 **THE CONCERN THAT YOU EXPRESSED IN YOUR DIRECT**
3 **TESTIMONY REGARDING THE LACK OF A TRIGGERING EVENT IN**
4 **SECTION 5.4.7?**

5 A. No. Under Qwest’s proposal for Section 5.4.7, the maximum amount of the
6 deposit may not “exceed the amount stated in Section 5.4.5.” The maximum
7 under Section 5.4.5 is determined based on the average two month period from
8 the date of either of two specific, objective, verifiable events: (1) date of the
9 request for reconnection of services or resumption of order processing and (2) the
10 date CLEC is repeatedly delinquent. Therefore, based on the known dates of
11 these triggering events, Eschelon can calculate the potential maximum deposit to
12 which Qwest is entitled under Section 5.4.5 and ensure that Qwest is not
13 exceeding the maximum. Qwest asserts that its decision to review Eschelon’s
14 “credit standing”¹²⁴ is yet another “triggering event” that can be used to determine
15 the amount of the maximum. This concept is nowhere to be found in Qwest’s
16 proposed contract language, however.

17 Furthermore, Eschelon has no control over and no knowledge of the date on
18 which Qwest decided to conduct its unilateral credit review. Qwest could simply
19 select a date at a time in which Eschelon’s monthly charges are the highest so that
20 the deposit is as high as possible (that is, if the deposit required under Qwest’s

¹²³ Qwest/13, Easton/31.

¹²⁴ Qwest/13, Easton/30, line 25.

1 language for Section 5.4.7 is even capped by Section 5.4.5¹²⁵). This type of
2 gamesmanship would not be allowed under the triggering events found in Section
3 5.4.5 because the dates are objective and known by all parties.

4 **V. NON DISCLOSURE AGREEMENTS AND BILL VALIDATION**
5 **(SUBJECT MATTER NOS. 8 & 9)**

6 **SUBJECT MATTER NO. 8. COPY OF NON-DISCLOSURE AGREEMENT**

7 *Issue No. 5-16: ICA Section 5.16.9.1*

8 **Q. PLEASE SUMMARIZE THIS ISSUE.**

9 A. Qwest has agreed that Qwest employees to whom Eschelon's forecasts and
10 forecasting information are disclosed will be required to execute a nondisclosure
11 agreement covering the information. Eschelon's proposed language would
12 require Qwest to provide Eschelon with a signed copy of each non-disclosure
13 agreement within ten days of execution. Qwest proposes to delete Eschelon's
14 proposed language.

15 **Q. WHAT ISSUES DID QWEST RAISE RELATED TO THIS ISSUE?**

16 A. Qwest objects to Eschelon's proposal because it "places an unnecessary
17 administrative burden on Qwest"¹²⁶ and that, "In addition to the stringent
18 requirements set forth in section 5.16.19.1, under section 18, Eschelon has further

¹²⁵ Eschelon/9, Denney/98-100.

¹²⁶ Qwest/13, Easton/34, line 13.

1 protection and recourse if it believes that Qwest has misused confidential
2 information.”¹²⁷

3 **Q. IS IT BURDENSOME TO PROVIDE SIGNED COPIES OF PROTECTIVE**
4 **AGREEMENTS?**

5 A. No. As addressed in my direct testimony, providing copies of signed protective
6 agreements is common practice and can not reasonably be considered a burden.¹²⁸

7 Mr. Easton described the burden as the effort Qwest would have to undertake to
8 put a copy of the agreement in an envelope and drop the envelope in the mail.¹²⁹

9 **Q. DOES SECTION 18 OF THE ICA OFFER THE PROTECTION**
10 **ASSERTED BY MR. EASTON?**

11 A. No. Section 18.0 of the contract is titled “Audit Process.” Section 18.1.1 defines
12 audit as dealing with the Billing process:

13 18.1.1 "Audit" shall mean the comprehensive review of the books,
14 records, and other documents used in the Billing process for
15 services performed, including, without limitation, reciprocal
16 compensation and facilities provided under this Agreement.

17 Qwest refers to section 18.3.1,¹³⁰ stating that it allows Eschelon to audit Qwest’s
18 compliance with this interconnection agreement. Section 18.3.1 reads in its
19 entirety [emphasis added]:

¹²⁷ Qwest/13, Easton/34, lines 18-20.

¹²⁸ Eschelon/9, Denney/105.

¹²⁹ Eschelon/6 [MN Transcript, Vol. 1 at 126-127 (testimony of William Easton)].

¹³⁰ Qwest/13, Easton/34-35.

1 18.3.1 Either Party may request an Audit of the other Party's
2 compliance with this Agreement's measures and requirements
3 applicable to limitations on the distribution, maintenance, and use
4 of proprietary or other protected information that the requesting
5 Party has provided to the other. Those *Audits shall not take place*
6 *more frequently than once in every three (3) years unless cause is*
7 *shown* to support a specifically requested audit that would
8 otherwise violate this frequency restriction. *Examinations will not*
9 *be permitted in connection with investigating or testing such*
10 *compliance.* Other provisions of this Section that are not
11 inconsistent herewith shall apply, except that in the case of audits,
12 the Party to be audited may also request the use of an independent
13 auditor.

14 Section 18.3.1 must be read in the context of section 18.0 and the use of the term
15 “Audit” in section 18.3.1, by virtue of both the capitalized term and the specific
16 statement in 18.1 that “For purposes of this section the following definitions shall
17 apply,” refers audit as defined in 18.1.1. Section 18.0 of the contract deals with
18 audits of the billing process, not Qwest’s use of confidential forecast data
19 provided to Qwest by Eschelon. Mr. Easton agrees that the nondisclosure
20 agreements that are the subject of Section 5.16.9.1 are not documents used in the
21 billing process and, accordingly, would not be covered by the audit provision.¹³¹

22 The most obvious potential cause of non-compliance with the Agreement
23 regarding the handling of Eschelon’s forecast would be the signatories of the
24 protective agreement.¹³² This is precisely the type of information that should be
25 made available to Eschelon to ensure the proper handling of forecasted data.

¹³¹ Eschelon/124 (CO Hearing Transcript at Vol. 2, pp. 276-279).

¹³² Eschelon/9, Denney/105-106.

1 **Q. WHAT HAPPENS IF QWEST DOES NOT PROVIDE A COPY OF THE**
2 **NON-DISCLOSURE AGREEMENT WITHIN TEN DAYS?**

3 A. The closed and agreed upon dispute resolution provisions in Section 5.18 of the
4 interconnection agreement apply to any dispute under the ICA, including this one.
5 If Eschelon requested a copy and did not receive it, or if Eschelon later learned
6 that its confidential information was in the wrong hands and Eschelon had not
7 received a copy of an executed non-disclosure agreement for the person
8 possessing the information, Eschelon could use those procedures to seek redress.
9 Eschelon hopes to avoid such disputes by including a requirement in the contract
10 and asking Qwest to honor that contractual commitment.

11 Other alternatives do not address the problem as well. Confidential information
12 should not be in the wrong hands for a lengthy time period, so increasing the
13 number of days is not a good solution. Also, it is unworkable to change the time
14 period to “upon request,” because Eschelon will not know when an additional
15 person at Qwest is given access to Eschelon’s confidential information and will,
16 therefore, not know when to make such a request.

17 **SUBJECT MATTER NO. 9. TRANSIT RECORD CHARGE AND BILL**
18 **VALIDATION**

19 Issues Nos. 7-18 and 7-19: ICA Sections 7.6.3.1 and 7.6.4

20 **Q. PLEASE SUMMARIZE THIS ISSUE.**

1 A. In order to validate the bills that Qwest provides, Eschelon needs occasional
2 access to a limited number of call records that would allow for bill verification.
3 Eschelon’s language allows for Eschelon to obtain these records from Qwest for
4 the purpose of bill verification.

5 **Q. WHAT ISSUES DID QWEST RAISE RELATED TO THIS ISSUE?**

6 A. Again, the issues raised by Qwest miss the point of the disagreement surrounding
7 this language. Qwest cites an agreement negotiated in connection with the
8 resolution of a complaint proceeding in Minnesota that the “best source of
9 information for determining the source of such calls was the originating
10 switch.”¹³³ Qwest also states that “[r]equiring Qwest to provide Eschelon with
11 detailed records of information it already has and to do so without charge is an
12 unreasonable and inefficient way to determine appropriate *billing by*
13 *Eschelon.*”¹³⁴

14 **Q. WHY ARE QWEST’S ARGUMENTS OFF THE MARK?**

15 A. First, it is crucial to understand that Qwest bills Eschelon for transit when an
16 Eschelon originated call transits the Qwest network and terminates to a third party
17 carrier. Eschelon’s language has nothing to do with **Eschelon’s** billing, but
18 relates to Eschelon’s ability to validate the bills it receives from **Qwest.**¹³⁵
19 Further, Qwest admits that “[t]ransit records are a poor substitute for originating
20 switch records because the purpose of a transit switch is to complete calls, **with**

¹³³ Qwest/13, Easton/36, lines 25-26.

¹³⁴ Qwest/13, Easton/37, lines 8-11 (emphasis added).

¹³⁵ Eschelon/9, Denney/107 and 109.

1 **billing considerations being secondary.**¹³⁶ Yet, Qwest is billing Eschelon for
2 these records and does not provide the call detail information necessary to justify
3 these bills. Eschelon agrees that its switch records information on calls originated
4 by Eschelon's customers, but this is only half of the puzzle. In attempting to
5 verify Qwest's bills for transit traffic, Eschelon needs to be able to reconcile the
6 originating call information collected by Eschelon's switch with the call records
7 Qwest used to generate its transit bill to Eschelon.¹³⁷ Without Qwest's call record
8 data, there is no way to verify Qwest's billing.

9 Finally, Qwest protests that Eschelon asks Qwest to provide this data without
10 charge.¹³⁸ However, Eschelon should not be required to pay in order to receive
11 the details behind the bills Qwest provides to Eschelon. Further, Eschelon's
12 language makes clear that Qwest will provide Eschelon-originated transit records,
13 on a limited basis, only for the purpose of bill verification as part of the category
14 11 records.¹³⁹

15 **VI. WIRE CENTER ISSUES (ISSUE NOS. 9-37, 9-37(A), 9-37(B), 9-38, 9-39**
16 **(EXCEPT CAPS), 9-40, 9-41 AND 9-42)**

17 Issues Nos.9-37, 9-37(a), 9-37(b), 9-38, 9-39 (except caps), 9-40, 9-41 and 9-42:
18 ICA Sections 9.1.13.3, 9.1.14.4, 9.1.14.4.3 (and subparts), 9.1.13.4.1.2, 9.1.13.4,

¹³⁶ Qwest/13, Easton/36-37.

¹³⁷ Eschelon/9, Denney/109.

¹³⁸ Qwest/13, Easton/37. As stated in my direct testimony, Qwest has already agreed to provide reasonably requested documentation that will expedite the resolution of disputes between Eschelon and Qwest under Section 21.8.4.3 of this Interconnection Agreement. (Eschelon/9, Denney/107-108.)

¹³⁹ Eschelon/9, Denney/108.

1 9.1.13.4.2, 9.1.13.4.1.2.1, 9.1.14.4.2, 9.1.13.5.2, 9.1.14.6, 9.1.15.2.1, and
2 9.1.14.4.1 and definitions

3 **Q. PLEASE SUMMARIZE THESE ISSUES.**

4 A. The FCC, in the TRRO, established criteria for determining impairment for DS1
5 and DS3 loop and dedicated transport UNEs and Dark Fiber based on the number
6 of business lines and/or fiber based collocators in a particular wire center.¹⁴⁰ The
7 Oregon PUC interpreted the FCC's wire center related rules in UM 1251.¹⁴¹
8 Eschelon's proposed language for these issues reflects the rulings of the Oregon
9 PUC and the FCC, while Qwest's proposals either conflict with these decisions or
10 ignore them. There are six or seven open wire center issues¹⁴² and they are
11 discussed in more detail below.

12 **Q. WHICH QWEST WITNESSES DISCUSS THE WIRE CENTER ISSUES?**

13 A. Ms. Albersheim discusses Issues 9-37, 9-37(a), and 9-38, and Ms. Stewart
14 discusses Issues 9-39, 9-40 and 9-42. I address the wire center issues in my direct
15 testimony at pages 113-145.¹⁴³

16 **Q. WHAT ARE QWEST'S ARGUMENTS ON THE WIRE CENTER ISSUES?**

17 A. Qwest does not substantively address its proposals on the Wire Center issues and
18 only notes a very few critiques of Eschelon's proposals in its direct testimony.

¹⁴⁰ See, 47 CFR § 51.319(a)(4) – (5) and (e)(2)(ii) – (iv) and (e)(3). See also, TRRO, ¶¶ 146, 155, 166, 174, 178, 182 and 195.

¹⁴¹ See Eschelon/40.

¹⁴² As discussed below, Qwest indicated in testimony that Issue 9-42 has closed. However, it is unclear, based on Ms. Stewart's testimony, whether Qwest has closed the disputes in both 9-41 and 9-42. See also Qwest/14, Stewart/31.

¹⁴³ Eschelon/9, Denney/113-145.

1 Instead Qwest claims generally that, for these issues, the companies are close to
2 settlement and states that Qwest will address these issues in its rebuttal testimony
3 if the issues are not closed at that time.¹⁴⁴

4 Qwest's few arguments are summarized as follows:

- 5 • Issue 9-37 -- High Capacity UNE availability and reference to
6 Commission's wire center docket: Qwest claims that its proposed
7 language adds greater clarity.¹⁴⁵
- 8 • Issue 9-37(a) – additional non-impaired wire centers: Qwest states that
9 Eschelon's proposal is redundant, creates an administrative burden and
10 creates the potential for conflicting requirements between Eschelon's ICA
11 and future changes made to the methodology by the FCC or state
12 commission.¹⁴⁶
- 13 • Issue 9-37(b) – steps for Qwest to challenge a CLEC's access to UNEs:
14 Qwest did not address this issue in its testimony.
- 15 • Issue 9-38 – processing of High Capacity UNE requests: Qwest states that
16 Eschelon's proposal eliminates Eschelon's agreement not to submit orders
17 in non-impaired wire centers and eliminates the possibility that the
18 companies might come to agreement on an order rejection process.¹⁴⁷

¹⁴⁴ Qwest/1, Albersheim/43 (Issue 9-37); Qwest/1, Albersheim/47 (Issue 9-37(a)); Qwest/1, Albersheim/48 (Issue 9-38); Qwest/14, Stewart/40 (Issue 9-39 – except caps); and Qwest/14, Stewart/30 (Issue 9-40).

¹⁴⁵ Qwest/1, Albersheim/43, line 1.

¹⁴⁶ Qwest/1, Albersheim/47.

¹⁴⁷ Qwest/1, Albersheim/48. Note that Ms. Albersheim discusses this as part of her response to 9-

1 Qwest also claims that its previous attempts to implement an automated
2 rejection process for non-impaired UNEs were met with “resistance from
3 CLECs, and unrealistic demands...”¹⁴⁸

4 • Issue 9-39 – data to be provided when Qwest challenges access to
5 UNEs:¹⁴⁹ Qwest states that the Commission determined in UM 1251 what
6 data should be provided to CLEC when Qwest seeks to add additional
7 wire center(s) to the Commission-Approved Wire Center List, and because
8 this information is not CLEC-specific, it should not be included in an
9 individual CLEC ICA.¹⁵⁰

10 • Issue 9-40 – NRCs for conversion: Qwest did not address this issue in its
11 testimony.¹⁵¹

12 • Issue 9-41 – Length of transition period: Qwest does not discuss the
13 substantive disagreement on this issue.¹⁵²

14 • Issue 9-42 -- Rate during transition period: Qwest states that Issue 9-42 is
15 closed.¹⁵³

16 **Q. PLEASE RESPOND TO QWEST’S DECISION NOT TO ADDRESS THE**
17 **WIRE CENTER ISSUES IN DIRECT TESTIMONY.**

37(a).

¹⁴⁸ Qwest/1, Albersheim/45.

¹⁴⁹ The portion of Issue 9-39 relating to caps is closed. The portion of 9-39 addressing review of new Qwest proposed non-impaired wire centers remains open.

¹⁵⁰ Qwest/14, Stewart/29.

¹⁵¹ Note that Ms. Stewart’s testimony under issue 9-40 actually refers to the dispute in issue 9-41.

¹⁵² Qwest/14, Stewart/30.

¹⁵³ Qwest/14, Stewart/31.

1 A. Eschelon encourages closure for all of the open issues, including the wire center
2 issues. The wire center issues are not unique in this respect, as any issue could
3 close. Until then, all open issues should be fully addressed by the companies so
4 the record is complete on these issues. The Commission ordered three rounds of
5 testimony in this matter.¹⁵⁴ Qwest did not seek an exception to that order for
6 these issues or a stay of the wire center issues in this matter.¹⁵⁵ Instead, Qwest
7 granted one to itself, limiting Eschelon's response opportunity if the issues do not
8 settle before the hearing. In the meantime, Eschelon must responsibly and
9 reasonably proceed with its testimony, so the record is complete should settlement
10 not be reached.

11 It is not helpful for Qwest to sit on its language proposals in anticipation of a
12 settlement that may or may not occur, while Eschelon in the meantime must
13 expend resources to address them as they are legitimately a part of this case and
14 Eschelon needs ICA language on these issues in this ICA.¹⁵⁶ There are open
15 issues that could have been resolved in the ICA some time ago, irrespective of
16 any settlement, to at least narrow the disputes. An example is the order rejection
17 issue, which Qwest has *not* closed in ICA language even though it has publicly

¹⁵⁴ ALJ Ruling (April 26, 2007). This order modified the procedural schedule. The earlier procedural schedule also include three rounds of testimony.

¹⁵⁵ Eschelon/9, Denney/114. There is no reason to stay these issues given that the Oregon PUC has issued an order in the Wire Center Docket.

¹⁵⁶ As indicated in Eschelon's Petition (p. 103) on October 10, 2006, Eschelon opposes a result under which "Eschelon would expend the resources on years of negotiation and this entire arbitration only to receive an interconnection agreement that omitted these critical issues. Eschelon would then be left with Qwest either demanding an amendment as to issues already negotiated and raised in arbitration or, worse yet, with Qwest unilaterally imposing its unapproved, non-CMP "TRRO" PCAT terms upon Eschelon, leaving Eschelon to file individual complaints about the very issues that it has already raised in this arbitration."

1 announced it “has agreed” not to reject orders.¹⁵⁷ Contract language is needed
2 for the wire center issues before the contract can be finalized for approval.¹⁵⁸
3 Qwest, however, is holding it open¹⁵⁹ by not updating its old ICA language,¹⁶⁰
4 even though Order Number 07-109 in Docket Number 1251 was issued on March
5 20, 2007¹⁶¹ and Utah issued its wire center order eight months ago.¹⁶² The
6 companies would not have to be in litigation or settlement negotiations over such
7 issues if Qwest had simply updated its contract language earlier.

8 **Q. DOES QWEST’S PROPOSAL FOR ISSUE 9-37 ADD GREATER**
9 **CLARITY THAN DOES ESCHELON’S PROPOSAL?**¹⁶³

10 A. No. I addressed this issue in my direct testimony at pages 117-121.¹⁶⁴ Qwest
11 provides no support for its claim that its proposal for Issue 9-37 is clearer, and
12 does not point to any provision of Eschelon’s language that is unclear. The
13 underlying disagreement for this issue is whether the Commission should
14 determine non-impairment designations for wire centers (as proposed by

¹⁵⁷ Qwest Corporation’s Motion for Reconsideration and/or Clarification Regarding Wire Center Update Data and Regarding Procedures for CLEC Orders in Non-Impaired Wire Centers (“Qwest UM 1251 Reconsideration Request”), *In the Matter of TRRO/Request for Commission Approval of Wire Center Lists submitted on behalf of the Joint CLECs*, Docket No. UM 1251 (May 21, 2007), p. 6.

¹⁵⁸ Eschelon/9, Denney/115.

¹⁵⁹ An exception is Issue 9-42, which Qwest indicated in testimony is closed. Eschelon read this for the first time in Qwest’s testimony, as Qwest did not communicate the closure in negotiations. This left Eschelon to draft direct testimony on an issue that, as it turns out, was closed. On the day before mailing of this testimony (May 24, 2007), late in the day, Qwest provided one additional paragraph to Eschelon, but questions remain as to whether that paragraph is closed. Eschelon provided a response and asked for clarification on May 25, 2007.

¹⁶⁰ Qwest has not updated most of its language since January of 2006.

¹⁶¹ Eschelon/40, Denney/1.

¹⁶² Eschelon/39, Denney/1 (Sept. 11, 2006).

¹⁶³ Qwest/1, Albersheim/43, line 1.

¹⁶⁴ Eschelon/9, Denney/117-121.

1 Eschelon), or whether those designations should be made by Qwest (as proposed
2 by Qwest). This is a very important distinction, so Qwest's belief that the parties'
3 language differences in this section are insignificant¹⁶⁵ is incorrect. Eschelon's
4 proposal reflects the Commission's Order in UM 1251 in that it requires that the
5 Commission make these determinations¹⁶⁶ - an approach with which Qwest did
6 not disagree in the Wire Center docket.¹⁶⁷ Qwest's proposal, on the other hand,
7 makes no reference to the fact that the Commission will approve the non-impaired
8 wire center list and thus Qwest's language should be rejected.¹⁶⁸ Eschelon's
9 language is straightforward and states that: (1) non-impairment designations will
10 be made by the Commission - not Qwest, (2) the companies will follow any
11 procedures established by the Commission regarding confidential information and
12 additions to the Commission-approved Wire Center List, and (3) Eschelon will
13 not order loops or transport which have been determined to be non-impaired
14 based on the initial Commission-approved Wire Center List¹⁶⁹ and will transition
15 UNEs impacted by the Commission-approved Wire Center List. Eschelon also
16 proposes definitions of the terms "Commission-Approved Wire Center List" and
17 "Wire Center Docket" so that the companies understand the meaning of important
18 terms used in Eschelon's proposed language for 9.1.13.3 (and 9.1.14.4).¹⁷⁰ In

¹⁶⁵ Qwest/1, Albersheim/43, lines 9-11.

¹⁶⁶ Eschelon/9, Denney/120.

¹⁶⁷ Eschelon/9, Denney/121.

¹⁶⁸ See Order No. 07-109 in Docket UM 1251, pages 11-14 (Eschelon/40, Denney/11-14).

¹⁶⁹ Section 9.1.14.4 addresses ordering after any additions are made to the initial Commission-approved Wire Center List.

¹⁷⁰ Eschelon/9, Denney/121, lines 3-5.

1 contrast, Qwest's language does not define these important terms and instead uses
2 terms such as "list provided by Qwest" and "the list of Wire Centers" that allow
3 Qwest to use a list different from the Commission-Approved Wire Center list. At
4 a minimum, Qwest's language is unclear on this point. This ambiguity does not
5 provide greater clarity than Eschelon's language, contrary to Qwest's claims.

6 **Q. QWEST STATES THAT ESCHELON'S PROPOSAL UNDER ISSUE 9-**
7 **37(A) IS REDUNDANT, CREATES AN ADMINISTRATIVE BURDEN**
8 **AND CREATES THE POTENTIAL FOR CONFLICTING**
9 **REQUIREMENTS BETWEEN ESCHELON'S ICA AND A CHANGE IN**
10 **METHODOLOGY MADE BY THE FCC OR STATE COMMISSION.¹⁷¹**
11 **ARE QWEST'S STATED CONCERNS WARRANTED?**

12 A. No. First of all, Eschelon's language reflects the FCC's rules and the
13 Commission's order implementing those rules with respect to the methodology,
14 and Qwest has not pointed to a single inconsistency. Second, I explained in my
15 direct testimony why the ICA should contain Eschelon's proposed language.¹⁷²

16 In addition, Qwest's concerns apparently assume that the FCC and/or state
17 commission will be modifying the methodology used to determine wire center
18 non-impairment (*e.g.*, how to calculate business lines and/or fiber-based
19 collocators) frequently, otherwise there would be no administrative burden

¹⁷¹ Qwest/1, Albersheim/47.

¹⁷² Eschelon/9, Denney/125.

1 associated with including Eschelon's language in the ICA.¹⁷³ Contrary to Qwest's
2 assumption here, per Qwest changes in methodology will rarely if ever occur.
3 Ms. Albersheim's testimony in the Wire Center Docket stated that in future
4 proceedings before the Oregon Commission, "Qwest does not believe the CLECs
5 should have the opportunity to re-litigate the methodology set forth by the
6 FCC."¹⁷⁴ On behalf of the Joint CLECs in that case I indicated that future Wire
7 Center proceedings would not be lengthy as "The Commission will already have
8 decided certain disputes regarding the counting of business lines and the
9 sufficiency of fiber-based collocation data."¹⁷⁵ The FCC has established the
10 overall methodology for wire center classifications based on a specific number of
11 business lines and fiber based collocator counts, and has given no indication that
12 it has any intention in revising those business line and/or fiber based collocator
13 thresholds. This Commission just entered an order implementing the FCC's wire
14 center methodology in March 2007,¹⁷⁶ and this language is reflected in Eschelon's
15 proposals.

16 **Q. QWEST STATES THAT IT WAS A "SIGNIFICANT CONCESSION TO**
17 **THE CLECS"¹⁷⁷ TO AGREE NOT TO REJECT CLEC ORDERS FOR**
18 **HIGH CAPACITY LOOPS AND TRANSPORT. DO YOU AGREE?**

¹⁷³ Qwest/1, Albersheim/47. "Any changes made to the methodology by the FCC or this Commission would necessitate amending Eschelon's contract, and the contracts of any CLECs that subsequently choose to opt-in to Eschelon's contract."

¹⁷⁴ Direct Testimony of Renée Albersheim, UM 1251, April 21, 2006, page 16.

¹⁷⁵ Rebuttal Testimony of Douglas Denney, UM 1251, May 19, 2006, page 41, lines 6-8.

¹⁷⁶ Eschelon/40 (Oregon PUC Order No. 07-109 in UM1251 (03/20/07)).

¹⁷⁷ Qwest/1, Albersheim/45, line 12.

1 A. No. Qwest’s *significant concession* was to agree to follow the law as ordered by
2 the FCC and this State Commission. Specifically, Ms. Albersheim states, “in a
3 significant concession to the CLECs, Qwest decided to implement the dispute
4 process *as outlined in paragraph 234 of the TRRO and consistent with this*
5 *Commission’s Order in the TRRO Wire Center docket* in this state.”¹⁷⁸

6 **Q. QWEST COMPLAINS THAT IT “ORIGINALLY” WANTED TO**
7 **ESTABLISH A PROCESS FOR REJECTING ORDERS IN NON-**
8 **IMPAIRED WIRE CENTERS BUT THAT IT “ENCOUNTERED**
9 **SIGNIFICANT RESISTANCE FROM THE CLECS, AND UNREALISTIC**
10 **DEMANDS REGARDING THE AUTOMATION OF THE REJECTION**
11 **PROCESS.”¹⁷⁹ ARE MS. ALBERSHEIM’S CLAIMS COMPLETE AND**
12 **ACCURATE?**

13 A. No. Ms. Albersheim provides no dates, documentation, data, or other specifics to
14 support Qwest’s suggestion that CLECs wanted to “waist [sic] valuable
15 resources” and her claim that CLECs made “unrealistic demands.”¹⁸⁰ On August
16 23, 2005, the FCC released the TRRO in which it said:

17 . . . [A]n incumbent LEC that wishes to challenge the certification *may not*
18 *engage in self-help by withholding the facility in question.* The success
19 of facilities-based competition depends on the ability of competitors to
20 obtain the unbundled facilities for which they are eligible in a timely
21 fashion.¹⁸¹

¹⁷⁸ Qwest/1, Albershiem/45, lines 11-14 (emphasis added).

¹⁷⁹ Qwest/1, Albersheim/45.

¹⁸⁰ Qwest/1, Albersheim/45, lines 5-6 & 10-11.

¹⁸¹ TRO FN 1899 to ¶623 (emphasis added).

1 . . .

2 We recognize that many of our decisions in this Order *will not be self-*
3 *executing*. Indeed, under the statutory construct of the Act, the
4 unbundling provisions of section 251 are implemented to a large extent
5 through interconnection agreements between individual carriers. The
6 negotiation and arbitration of new agreements, and modification of
7 existing agreements to reflect these new rules, *cannot be accomplished*
8 *overnight*. . . . Thus, to the extent our decision in this Order changes
9 carriers' obligations under section 251, *we decline the request of several*
10 *BOCs that we override the section 252 process* and unilaterally change all
11 interconnection agreements to avoid any delay associated with
12 renegotiation of contract provisions. Permitting voluntary negotiations for
13 binding interconnection agreements is the very essence of section 251 and
14 section 252. We do not believe that the lag involved in negotiating and
15 implementing new contract language warrants the extraordinary step of
16 the Commission interfering with the contract process.¹⁸²

17
18 *Within a week* of release of this ruling, on August 30 2005, Qwest initiated a
19 Change Request through its Change Management Process (CMP) to implement a
20 systems change to block CLEC orders, even when CLECs have self-certified, if
21 Qwest unilaterally determines a wire center is non-impaired.¹⁸³ Qwest's
22 classified its systems change request as a "regulatory" change request, which is
23 defined in CMP as "mandated by regulatory or legal entities, such as the Federal
24 Communications Commission (FCC), a state commission/authority, or state and
25 federal courts. Regulatory changes are not voluntary but are requisite to comply
26 with newly passed legislation, regulatory requirements, or court rulings. Either the
27 CLEC or Qwest may originate the Change Request."¹⁸⁴ Classification as a
28 systems change request places the request above the line in terms of

¹⁸² TRO ¶¶700-701 (emphasis added).

¹⁸³ Eschelon/69 (to Ms. Johnson's testimony), CR #SCR083005-01

¹⁸⁴ Qwest/2 (CMP Document), Albersheim/24, Section 4.1.

1 prioritization,¹⁸⁵ so this Qwest change request would leap to top priority over
2 pending CLEC systems change requests. When Ms. Albersheim testifies that
3 “Qwest encountered significant resistance from CLECs,”¹⁸⁶ she neglects to
4 mention these facts and does not indicate that, when Qwest “originally”¹⁸⁷ wanted
5 a process, the primary objection consistent throughout CLEC comments was that
6 Qwest designated its systems change request as a regulatory change. Ironically,
7 Ms. Albersheim now claims that CLECs made “unrealistic demands regarding the
8 automation of the rejection process.”¹⁸⁸

9 When CLECs initiated wire center proceedings in the various states, CLECs
10 objected to the *unilateral* nature of Qwest’s conduct, particularly in light of an
11 FCC order that rejected self-help efforts and required good faith interconnection
12 agreement negotiations,¹⁸⁹ but clearly indicated they were “willing to voluntarily
13 negotiate a process involving appropriate rejection of orders on defined and
14 mutually agreeable terms, provided that it is based upon use of a Commission
15 approved wire center list (including approval of any additions to that list).”¹⁹⁰ In
16 Oregon, as indicated in my rebuttal testimony in the Wire Center docket, despite

¹⁸⁵ Unlike product and process changes, voting occurs to rank change requests to determine which ones will be completed within the resources Qwest chooses to assign to system changes, as further explained by Mr. Starkey. *See* Eschelon/1, Starkey/44-45.

¹⁸⁶ Qwest/1, Albersheim/45, line 10.

¹⁸⁷ Qwest/1, Albersheim/45, lines 3-5.

¹⁸⁸ Qwest/1, Albersheim/45, lines 10-11. Ms. Albersheim refers to “CLECs” generally but cites no CLEC testimony or comments from the wire center docket regarding automation, and there was none.

¹⁸⁹ TRO FN 1899 to ¶¶623 & ¶¶700-701

¹⁹⁰ Joint CLEC Reply Comments, *In the Matter of CLEC Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Minnesota Docket No. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 (March 13, 2006), p. 10.

1 paragraph 234 of the *TRRO* requiring Qwest to immediately process a CLEC's
2 request for high capacity UNEs, the Joint CLECs indicated a willingness to allow
3 Qwest to reject orders for non-impaired facilities under the proper conditions.
4 The Joint CLECs asked that (1) order rejection only take place for facilities
5 designated as non-impaired on a Commission-approved wire center list and (2)
6 the terms, procedures and details of the rejection of such orders are known in
7 advance and mutually agreed upon.¹⁹¹

8 Eschelon's alternative proposal for issue 9-38 outlines a process with reasonable
9 provisions such as (1) limiting order rejection to non-impaired facilities identified
10 by a commission-approved wire center list; (2) order rejection will be electronic
11 and thus will only impact orders for non-impaired facilities and will not impact
12 the flow-through of other orders (with a compromise manual step for dark fiber);
13 (3) a specific electronically provided reject/error code (like codes that exist today
14 for other rejects/errors) to facilitate the ability to track rejected orders; and (4)
15 protection of due date for the end user customer when requests are rejected in
16 error.¹⁹²

17 Since Qwest has finally indicated that it will follow the law and not reject CLEC
18 orders, it is unclear why Qwest has not closed issue 9-38.

19 **Q. DOES ESCHELON'S ICA PROPOSAL ELIMINATE ESCHELON'S**
20 **AGREEMENT NOT TO SUBMIT ORDERS IN NON-IMPAIRED WIRE**

¹⁹¹ Rebuttal Testimony of Douglas Denney, UM 1251, May 19, 2006, page 43, lines 3-9.

¹⁹² See Eschelon/9, Denney/129-131 for Eschelon's alternative proposal.

1 **CENTERS, WHICH QWEST CLAIMS IS A REASON IT HAS NOT**
2 **CLOSED THIS ISSUE?**¹⁹³

3 A. No. Eschelon’s agreement not to submit orders in non-impaired wire centers is
4 clearly memorialized in the ICA. *See* 9.1.13.3, where Eschelon’s proposed
5 language states, “For non-impaired facilities identified using the initial
6 Commission-Approved Wire Center List, CLEC will not order an unbundled DS1
7 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the
8 order would be restricted based on the Wire Center designations identified on the
9 applicable Commission-Approved Wire Center List.” (9.1.13.3) Neither of
10 Eschelon’s proposals for Issue 9-38 says anything about Eschelon’s agreement
11 not to submit orders for high capacity loop and high capacity transport UNEs in
12 the wire centers identified on the Commission-Approved Wire Center List, and
13 Eschelon’s proposed language certainly does not eliminate that agreement. If
14 Qwest believes Eschelon has inappropriately ordered something in violation of
15 that provision, closed language in the ICA states that Qwest may challenge
16 Eschelon’s conduct.¹⁹⁴

17 To the extent that Ms. Albersheim is claiming that Eschelon’s first proposal,
18 requiring Qwest to immediately process a request, is an attempt by Eschelon to
19 not abide by its agreement in 9.1.13.3, she is wrong. Qwest made a similar

¹⁹³ Qwest/1, Albersheim/48; *see also id.* p. 46.

¹⁹⁴ See Section 5.18 (dispute resolution). Also, Section 9.1.13.4.1 provides in agreed upon language: “To the extent that Qwest seeks to challenge access to any such UNE(s), it subsequently can raise that issue through the Dispute resolution procedures in Section 5.18 of this Agreement. Regarding Service Eligibility Criteria for High Capacity EELs, see Sections 9.23.4.2.1.3 and 9.23.4.3.”

1 argument in its arbitration with Level 3 in Washington.¹⁹⁵ The Washington
2 commission rejected it, stating: “Level 3’s language also more appropriately
3 follows the FCC’s requirements in the TRRO. An ILEC is obligated to provide
4 the requested UNEs and then may pursue the dispute resolution process. While it
5 may seem logical that a CLEC should not seek access to UNEs at a wire center
6 that has been found to be non-impaired, the choice is the CLEC’s to make and not
7 the ILEC’s.”¹⁹⁶

8 The FCC’s *TRRO* specifically requires Qwest to “immediately process a
9 request,”¹⁹⁷ so Qwest’s argument that including this requirement in the ICA
10 would eliminate Eschelon’s obligation to abide by the Commission-Approved
11 Wire Center List does not make sense. In other words, if the requirement for the
12 ILEC to immediately process a request allowed CLECs to not abide by the
13 Commission-Approved Wire Center List, the FCC would not have required
14 ILECs to immediately process a request in the first place.

15 Ms. Albersheim notes on page 46 of her direct testimony that Eschelon has agreed
16 in its language not to place orders for UNEs in non-impaired centers, and that any
17 orders made in non-impaired wire centers should be “rare,” “the result of errors,”

¹⁹⁵ Arbitrator’s Report and Decision, In the Matter of the Petition of Level 3 Communications, LLC, For Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, Docket No. UT-063006, Order No. 10 (March 12, 2007), ¶113 (“Qwest asserts that does not make sense for a CLEC to ask for access to a wire center that the Commission has found to be non-impaired.”).

¹⁹⁶ *Id.*

¹⁹⁷ *TRRO*, ¶ 234.

1 and “immediately corrected by Eschelon.”¹⁹⁸ However, just two pages later when
2 arguing against Eschelon’s language for Issue 9-38 that reflects the FCC’s
3 requirement, Ms. Albersheim testifies: “...Eschelon should be willing to make a
4 commitment not to purposely place orders in non-impaired wire centers.”¹⁹⁹ Ms.
5 Albersheim fails to mention the commitment Eschelon has made in its proposed
6 9.1.13.3 – a commitment that Ms. Albersheim acknowledged in her testimony
7 (and used as support for her testimony that the companies should “be able to come
8 to terms on this section of the interconnection agreement.”²⁰⁰)

9 **Q. DOES QWEST HAVE RECOURSE IN THE CASE WHERE AN ORDER**
10 **IS PLACED THAT IS RESTRICTED BY THE COMMISSION-**
11 **APPROVED WIRE CENTER LIST?**

12 A. Yes. First, Eschelon has no incentive to attempt to place orders that are restricted
13 by the Commission-Approved Wire Center List. Besides its commitment in the
14 ICA not to do so,²⁰¹ it does not make sense for Eschelon to attempt to place an
15 order that is on the Commission-Approved Wire Center List knowing full well
16 that Qwest will dispute Eschelon’s right to obtain the facility as a UNE. Closed
17 language in 9.1.13.5 indicates that if Eschelon was not entitled to order a UNE
18 Eschelon will be subject to “back billing for the difference between the rates for

¹⁹⁸ Qwest/1, Albersheim/46.

¹⁹⁹ Qwest/1, Albersheim/48.

²⁰⁰ Qwest/1, Albersheim/45.

²⁰¹ Based on Eschelon’s commitment in 9.1.13.3, Eschelon could not “place as many such orders as it likes....” Qwest/1, Albersheim/48, lines 11-12.

1 UNEs and the rates for the Qwest alternative service arrangements...²⁰² In other
2 words, Eschelon has nothing to gain by placing orders for facilities impacted by
3 the Commission-Approved Wire Center List – especially when it has made a
4 commitment not to do so?²⁰³

5 **Q. WHAT IS QWEST’S STATED CONCERN WITH ESCHELON’S**
6 **PROPOSAL FOR ISSUE 9-39?**

7 A. Qwest voices one concern in its direct testimony: “that the list of required data is
8 not CLEC-specific and should not be included in an individual CLEC’s ICA.”²⁰⁴

9 **Q. IS QWEST’S STATED CONCERN VALID?**

10 A. No. Issue 9-39 is discussed in my direct testimony on pages 133 – 138
11 (Eschelon/9, Denney/133-138) and, as discussed there, Eschelon’s proposal
12 reflects the Commissions findings in the wire center docket. Qwest does not
13 appear to dispute that the Commission ordered Qwest to provide this data as part
14 of its order in the wire center docket.²⁰⁵ Qwest does not take issue with the data
15 Eschelon’s language for Issue 9-39 calls for from Qwest. Ms. Stewart states that
16 “Qwest believes that this Commission addressed in docket UM 1251 the types of
17 data that Qwest is required to provide to CLECs when it requests that an
18 additional wire center be added to the non-impaired wire center list”²⁰⁶ and goes

²⁰² See the closed language of section 9.1.13.5 in the ICA.

²⁰³ Qwest apparently agrees that this does not make sense because it states that “no party should consider this a desirable outcome.” Qwest/1, Albersheim/48, lines 13-14.

²⁰⁴ Qwest/14, Stewart/29.

²⁰⁵ Qwest/14, Stewart/30, lines 1-2.

²⁰⁶ Qwest/14, Stewart/29.

1 on to say that “Eschelon seeks to include the list of specific data that *it* believes
2 Qwest is required to provide to CLECs for a showing of non-impairment.”²⁰⁷
3 Reading this testimony together, one may get the sense that Ms. Stewart is
4 claiming that the data required by Eschelon’s proposal does not reflect the data
5 the Commission required. Despite this insinuation, however, Ms. Stewart does
6 not provide any examples where Eschelon’s language is inconsistent with what
7 the Commission required.

8 Qwest also does dispute that Eschelon would be provided this data when Qwest
9 attempts to add wire centers to the Commission-approved non-impaired wire
10 center list.²⁰⁸ Qwest’s objection to the inclusion of this language makes no sense
11 given Qwest’s assurances that it will provide Eschelon (and other CLECs) with
12 this data when it seeks to add a wire center to the Commission-approved list.

13 Inclusion of this language provides clarification and certainty with regard to
14 Qwest’s obligations when attempting to make updates to the Commission-
15 approved wire center list. As I explained in my direct testimony, Eschelon’s
16 language will facilitate resolution of disputes and allow opt in to these terms by
17 other CLECs.²⁰⁹

18 **Q. QWEST STATES THAT ISSUE 9-42 IS CLOSED, IS THAT THE CASE?**

²⁰⁷ Qwest/14, Stewart/30. (emphasis added)

²⁰⁸ Qwest/14, Stewart/29 lines 24-26 noting that the Commission has ruled on the data that Qwest must provide when Qwest attempts to add wire centers to the list.

²⁰⁹ Eschelon/9, Denney/138.

1 A. Yes. This issue is shown as open in my direct testimony²¹⁰ because at that time
2 Qwest had not informed Eschelon that it was closed. Instead, Eschelon learned
3 that Qwest was closing this issue by reading Qwest's direct testimony in this
4 proceeding. Qwest has now confirmed that this issue is closed in Oregon.²¹¹

5 It is interesting that Qwest chose to close Issue 9-42 (Rate During Time Period) as
6 it is one of a very few issues on which Qwest prevailed in the Oregon Wire Center
7 Docket. Instead of closing all language consistent with the Commission's ruling,
8 Qwest has selectively chosen to close language reflecting the favorable portion of
9 the order. Eschelon's proposals on other Wire Center issues also reflect the
10 Commission's decision.

11 **VII. UNE AVAILABILITY, CERTAIN RATE APPLICATIONS AND**
12 **COMMINGLED EELS (SUBJECT MATTER NOS. 22, 22A, 23, 25 & 26)**

13 **SUBJECT MATTER NO. 22, UNBUNDLED CUSTOMER CONTROLLED**
14 **REARRANGEMENT ELEMENT ("UCCRE")**

15 *Issue No. 9-53: ICA Sections 1.7.3, 9.9 and 9.9.1*

16 **Q. PLEASE SUMMARIZE THIS ISSUE.**

17 A. This issue deals with the circumstances under which Qwest can cease to offer to
18 CLECs products and services that it has previously offered and that have been
19 approved by the Commission. The product that has prompted Eschelon's

²¹⁰ Eschelon/9, Denney/141-145.

²¹¹ As of writing this testimony, It is unclear whether issue 9-41 is closed. Qwest's testimony indicates that issue 9-42 is closed but shows the Eschelon language for both issues 9-41 and 9-42 as closed. Qwest had additional language for Issue 9-41, but does not show it as deleted.

1 proposal is Unbundled Customer Controlled Rearrangement Element (“UCCRE”)
2 (Issue 9-53), because Qwest will not offer it to Eschelon even though this product
3 continues to be offered to other CLECs through Qwest’s SGAT and other CLEC
4 ICAs.²¹² Eschelon’s proposed language would require that the rates and services
5 approved by this Commission related to UCCRE be available to Eschelon so long
6 as they are available to other CLECs.²¹³ In addition, as an alternative, Eschelon
7 has proposed to make a product phase-out process available to Qwest when Qwest
8 desires to cease offering products but does not want to individually obtain ICA
9 amendments from every CLEC. Both proposals address the problem of Qwest
10 offering a product to some CLECs but not others and the need for
11 nondiscriminatory treatment.

12 **Q. DO YOU HAVE ANY CORRECTIONS TO ESCHELON’S PROPOSALS**
13 **AS LISTED IN YOUR DIRECT TESTIMONY?**

14 A. Yes. I incorrectly listed Eschelon’s Proposal #2 for this issue. Proposal #2 came
15 from language proposed by the Department of Commerce in Minnesota and was
16 adopted by the Minnesota Commission.²¹⁴ This proposal is correctly listed in the
17 Multi-state draft ICA and has been Eschelon’s proposal in the other state
18 arbitrations.

²¹² Issue 9-50 (cross connects for CLECs on intrabuilding cable subloops) prompted a similar Eschelon proposal. Issue 9-50 is now closed.

²¹³ Eschelon/9, Denney/145-148.

²¹⁴ See Eschelon/29, Denney/39-41 and Eschelon/30 which are the Minnesota Arbitrators’ Report and the Commission order in the Eschelon-Qwest arbitration.

1 **Proposal #2 (Sections 1.7.3, 9.9 & 9.9.1)**

2 1.7.3 Phase out process. If Qwest desires to phase-out the
3 provision of an element, service or functionality included in this
4 agreement, it must first obtain an Order from the Commission
5 approving its process for withdrawing the element, service or
6 functionality. Obtaining such a Order will not be necessary if
7 Qwest (1) promptly phases-out an element, service or functionality
8 from the agreements of all CLECs in Oregon within a three-month
9 time period when the FCC has ordered that the element, service or
10 functionality does not have to be ordered, or (2) follows a phase-
11 out process ordered by the FCC.

12 9.9 Unbundled Customer Controlled Rearrangement Element
13 (UCCRE)

14
15 9.9.1 Qwest shall provide Unbundled Customer Controlled
16 Rearrangement Element (UCCRE) to CLEC in a non-
17 discriminatory manner according to the terms and
18 conditions of Section 9.9 and subparts of the SGAT, unless
19 Qwest obtains a phase-out order (pursuant to Section 1.7.3)
20 from the Commission within four months from the
21 effective date of this Agreement.

22 **Q. WHAT CONCERNS DID QWEST RAISE RELATED TO THIS ISSUE?**

23 A. Qwest objects to Eschelon’s language based on several arguments, including: (1)
24 although Qwest provided UCCRE to CLECs in the past, it has no legal obligation
25 to provide it;²¹⁵ (2) there is no demand for UCCRE from CLECs, including
26 Eschelon;²¹⁶ (3) “grandfathering” services is a common industry practice and does
27 not amount to discrimination;²¹⁷ (4) Qwest has no processes or systems in place
28 that would permit it to provide notification to Eschelon in the event Qwest offers

²¹⁵ Qwest/14, Stewart/35, lines 10 and 27-28, Qwest/14, Stewart/40, line 27; Qwest/14, Stewart/44, line 6; and Qwest/14, Stewart/45, lines 16-17.

²¹⁶ Qwest/14, Stewart/35, lines 10-11 and 27. *See also* Qwest/14, Stewart/40, lines 26-27.

²¹⁷ Qwest/14, Stewart/42 and Qwest/14, Stewart/44.

1 the service to another CLEC;²¹⁸ and (5) ICAs are publicly filed and Eschelon can
2 review them for itself to determine whether Qwest is offering the service to other
3 CLECs.²¹⁹

4 **Q. DOES QWEST HAVE AN OBLIGATION TO PROVIDE UCCRE TO**
5 **ESCHELON?**

6 A. Yes. I address this issue in my Direct Testimony.²²⁰ Contrary to Ms. Stewart's
7 claim to the contrary, the FCC did not eliminate UCCRE from its network
8 unbundling rules.²²¹ Qwest's own proposed TRO-TRRO interconnection
9 agreement amendment does not eliminate UCCRE from carriers' interconnection
10 agreements.²²²

11 **Q. IS GRANDPARENTING COMMON INDUSTRY PRACTICE, AS**
12 **DESCRIBED BY MS. STEWART?**

13 A. No. Qwest seeks to "grandparent" these services without regulatory approval.
14 This is not common practice. In fact, the example provided by Ms. Stewart
15 regarding "grandparenting" is contrary to Ms. Stewart's claim regarding the
16 "industry practice." To illustrate her grandfathering argument, Ms. Stewart uses
17 the elimination of the high frequency portion of the loop ("HFPL") as an example
18 where pre-TRO rates were no longer available for CLECs that did not have
19 "grandfathered" line sharing arrangements. This example actually shows that

²¹⁸ Qwest/14, Stewart/41.

²¹⁹ Qwest/14, Stewart/41.

²²⁰ Eschelon/9, Denney/160-161.

²²¹ Qwest/14, Stewart/45, lines 6-7.

²²² Qwest's TRO-TRRO Amendment is attached to this testimony as Eschelon/126.

1 regulatory approval was needed before the ILEC could grandparent that service.
2 Qwest can seek that regulatory approval under Eschelon's proposed Section 1.7.3
3 or, if there is a change of law, the ICA will be amended pursuant to Section 2.2.
4 In the *TRO*, rather than allowing the ILEC to eliminate HFPL CLEC-by-CLEC,
5 allowing the ILEC to withdraw the product from some ICAs but not others, as the
6 ILEC saw fit, the FCC ordered a transition plan including a specific
7 grandparenting rule. In contrast, under Qwest's proposed language, Qwest could
8 eliminate services from Eschelon's ICA with a provision that Eschelon can only
9 order that service if Qwest offers it to another CLEC in a newly negotiated
10 agreement. The next day, Qwest could provide the same product to another
11 carrier under the existing SGAT or an existing (*i.e.*, not newly negotiated) ICA,
12 and Eschelon would be precluded from receiving the same service on a
13 nondiscriminatory basis.

14 **Q. IS ESCHELON REQUESTING THAT QWEST PROVIDE NOTICE TO**
15 **ESCHELON EACH TIME QWEST OFFERS THE SERVICE TO**
16 **ANOTHER CLEC?**

17 A. No. Qwest currently offers this product to other CLECs today and will likely
18 continue to do so at the completion of this interconnection agreement. Eschelon's
19 language provides that Qwest must allow Eschelon to obtain this product on
20 nondiscriminatory terms and does not require Qwest to provide notice each time it
21 offers this product to another CLEC. In addition, Qwest regularly provides notice
22 to CLECs through its notification process and places optional contract

1 amendments on its web site. There is no reason Qwest cannot continue to do this
2 going forward.

3 **Q. QWEST ARGUES THAT THERE IS NO DEMAND FOR UCCRE.**
4 **SHOULD DEMAND BE TAKEN INTO ACCOUNT?**

5 A. No. I address this issue in my direct testimony.²²³ “Lack of Demand” does not
6 determine whether Qwest has a legal obligation to offer a product.

7 **Q. DOES QWEST AGREE THAT A PHASE OUT PROCEEDING WOULD**
8 **BE A REASONABLE APPROACH WHEN QWEST WISHES TO**
9 **DISCONTINUE A PRODUCT?**

10 A. This is unclear. Ms. Stewart objects to Eschelon’s phase out proposal, stating,
11 “The proper forum in which to consider an issue with this type of far-reaching
12 effect is one in which all interested CLECs local exchange carriers (sic) can
13 provide input concerning the necessity and contours of such a process. If the
14 Commission were to adopt such a process, the proper method for doing so would
15 be through a generic order that applies to all carriers, not through a single
16 arbitration and ICA between Qwest and Eschelon.”²²⁴ From this testimony, it
17 appears that Qwest agrees that a “generic order” applicable to all carriers would
18 be appropriate before Qwest discontinues a product. The Eschelon Section 1.7.3
19 proposal based on the Minnesota Department of Commerce approach (Proposal
20 #4) responds to this concern. Under Proposal number four, any phase out process

²²³ Eschelon/9, Denney/157-159.

²²⁴ Qwest/14, Stewart/40, lines 12-18.

1 would be adopted by the Commission through a generic order. It specifically
2 requires Qwest to “obtain an order from the Commission adopting a process”
3 before the process would be applicable under the ICA. Eschelon Proposal
4 number four provides that, until a process is adopted, the normal rules governing
5 amendment of agreements apply. If Qwest opposes a process, under Proposal
6 number four, it need not obtain one. If it does not, it must continue to offer
7 products on a nondiscriminatory basis as described in Section 1.7.3.1 of Proposal
8 number four.

9 **Q. WOULD ESCHELON’S PHASE OUT PROPOSAL “REQUIRE A TIME-
10 CONSUMING, RESOURCE-INTENSIVE GENERIC DOCKET
11 RELATING TO PRODUCT WITHDRAWALS IN RESPONSE TO
12 QWEST’S ATTEMPT TO STOP OFFERING PRODUCTS THAT NO
13 CLEC IN COLORADO IS ORDERING AND FOR WHICH THERE IS NO
14 FORESEEABLE DEMAND?”²²⁵**

15 **A.** No. It would make no sense for CLECs to spend the time and resources to argue
16 for products for which they have no use. However, it is important that Qwest not
17 be allowed to be the unilateral decision maker regarding the products and services
18 which Qwest no longer is required to offer.

19 Also, as I indicated in my previous response, under Eschelon Proposal number
20 four, any phase out process would be developed in a proceeding before the

²²⁵ Qwest/14, Stewart/40, lines 23-26.

1 Commission. Therefore, during that proceeding, any concerns by Qwest along
2 these lines could be addressed.

3 **Q. WHAT OTHER OBJECTIONS DOES QWEST RAISE TO ESCHELON'S**
4 **PHASE OUT PROPOSALS?**

5 A. Qwest lists three additional objections to Eschelon's phase out proposals. (1)
6 Qwest argues that Eschelon is attempting "to regulate through the Qwest-
7 Eschelon ICA Qwest's relationships with other CLECs."²²⁶ (2) Qwest argues that
8 because it quit updating its SGAT, "Eschelon's proposal would improperly
9 require Qwest to update its SGAT."²²⁷ (3) Qwest argues that Eschelon's phase
10 out proposals would apply to "a product or service that the FCC has removed
11 from its unbundling rules."²²⁸

12 **Q. IS ESCHELON ATTEMPTING TO REGULATE QWEST'S**
13 **RELATIONSHIPS WITH OTHER CLECS?**

14 A. No. Ms. Stewart argues that Eschelon's phase out proposal "would be triggered
15 by Qwest's decision to stop offering a wholesale product or service to "any"
16 CLEC, not just Eschelon."²²⁹ Ms. Stewart claims that Qwest would have to go
17 through the phase out proposal in the case where Qwest and another CLEC agreed

²²⁶ Qwest/14, Stewart/39, lines 26-27.

²²⁷ Qwest/14, Stewart/43, lines 23-24. Starting at line 28 Ms. Stewart states, "Qwest stopped updating its SGATs and has not made any updates to incorporate changes in law since 2004."

²²⁸ Qwest/14, Stewart/45, lines 8-9.

²²⁹ Qwest/14, Stewart/39, lines 28-30. Note that Ms. Stewart's criticism is specific to Eschelon's proposal #2 (the first phase out proposal) which was incorrectly listed in the Oregon Petition and I have corrected above. I am responding to this critique generally with respect to all of the Eschelon's phase out proposals.

1 to remove a product from its ICA.²³⁰ This is not the case. All of Eschelon's
2 phase out proposals relate to the case where Qwest seeks to phase out or
3 otherwise cease offering a product on a wholesale basis.²³¹ This would not
4 prohibit Qwest and a CLEC from agreeing to remove a product from their
5 interconnection agreement. This is dealt with in varying ways in the alternative
6 proposals and yet Qwest not only does not agree with any of them, it makes no
7 counter proposal to remedy what it claims are problems with the language.

8 **Q. WOULD ESCHELON'S PROPOSAL IMPROPERLY REQUIRE QWEST**
9 **TO UPDATE ITS SGAT?**

10 A. No. As discussed by Mr. Starkey, Qwest's attempt to eliminate the SGAT
11 without Commission involvement is improper.²³² Eschelon is not aware of any
12 state commission eliminating Qwest's SGAT and therefore the SGATs remain
13 available for carriers to opt into, despite Qwest's unilateral notice stating it is
14 not.²³³ The TRO/TRRO allowed ILECs to stop offering certain products under
15 certain conditions, but it did not require ILECs to do so. If Qwest intended to stop
16 offering those products, it could have asked the Commissions to allow it to update
17 its SGATs. Instead, the SGAT remains in place.

²³⁰ Qwest/14, Stewart/40, lines 1-3.

²³¹ See Eschelon/9, Denney/150-153.

²³² See Eschelon/1, Starkey/82-85.

²³³ Eschelon/66, Johnson/1 (Qwest's Level 1 notice) ("The SGATs are no longer available to opt into and have been replaced with the Negotiations Template Agreement (NTA).").

1 **Q. DO ESCHELON'S PHASE OUT PROPOSALS APPLY TO PRODUCTS**
2 **AND SERVICES ELIMINATED FROM THE UNBUNDLING RULES BY**
3 **THE FCC?**

4 A. First, as discussed above and in Direct Testimony, UCCRE was not eliminated by
5 the FCC. Second, Eschelon's phase out proposals exclude products eliminated as
6 a result of a change in law, such as an FCC ruling. Eschelon's proposal #2 (first
7 phase out proposal, based on Minnesota DOC language) contains an explicit
8 exclusion for products eliminated by the FCC as long as Qwest promptly
9 eliminates this product from carriers agreements or follows a phase out process
10 ordered by the FCC. The second sentence from this proposal is copied below:

11 Obtaining such a Order will not be necessary if Qwest (1)
12 promptly phases-out an element, service or functionality from the
13 agreements of all CLECs in Oregon within a three-month time
14 period when the FCC has ordered that the element, service or
15 functionality does not have to be ordered, or (2) follows a phase-
16 out process ordered by the FCC.²³⁴

17 Eschelon's proposal #3 (second phase out proposal) contains language in 1.7.3.1
18 (contained below) noting that if Qwest seeks to remove a product due to a change
19 in the Existing Rules section 2.2 of the interconnection agreement, pertaining to a
20 change in Existing Rules would apply. Section 2.2 requires that parties amend
21 their agreement as a result of a change in Existing Rules.

22 1.7.3.1 If the basis for Qwest's request is that Qwest is no longer
23 required to provide the product or service pursuant to a legally
24 binding modification or change of the Existing Rules, in the cases

²³⁴ This is the second sentence of 1.7.3 in Eschelon's Proposal #2 for issue 9-53. This proposal is listed previously in this testimony.

1 of conflict, the pertinent legal ruling and the terms of Section 2.2
2 of this Agreement govern notwithstanding anything in this Section
3 1.7.3.²³⁵

4 Eschelon’s proposal #4 (third phase out proposal) indicates in section 1.7.3.1 that
5 Qwest can not refuse a product that it offers to other CLECs “on the grounds” that
6 it intends to cease offering the product (see language below). Section 2.2 would
7 continue to apply to changes in Existing Rules (i.e., a product that Qwest does not
8 offer to CLECs on the grounds that the law changed).

9 1.7.3.1 Unless and until a process is approved by the Commission
10 as described in Section 1.7.3, Qwest must continue to offer such
11 products, services, elements, or functionalities on a
12 nondiscriminatory basis, such that Qwest may not refuse to make
13 an offering available to CLEC on the same terms as it is available
14 to other CLECs through their ICAs or the SGAT on the grounds
15 that Qwest , although it has not yet amended those agreements,
16 indicates that it intends to cease offering that product (such as due
17 to lack of demand). If the Commission does not adopt a process as
18 described in Section 1.7.3 or Qwest chooses not to use that
19 process, Qwest may cease a wholesale offering by promptly
20 amending all ICAs containing that offering to remove it.²³⁶

21 **Q. QWEST CLAIMS THAT ESCHELON CAN STILL OBTAIN THE UC CRE**
22 **PRODUCT THROUGH ITS TARIFFED COMMAND-A-LINK**
23 **PRODUCT.²³⁷ DOES THIS ALLEVIATE ESCHELON’S CONCERNS?**

24 A. No. The fact Qwest offers a product that Eschelon purchases through its tariffs as
25 well as at cost based rates does not remove from Qwest the obligation to provide
26 the product at TELRIC rates, nor does it offer protection to Eschelon if it chooses

²³⁵ This is a part of Eschelon Proposal #3 for issue 9-53. See Eschelon/9, Denney/151.

²³⁶ This is a part of Eschelon Proposal #4 for issue 9-53. See Eschelon/9, Denney/152-153.

²³⁷ Qwest/14, Stewart/41, lines 19-20.

1 to utilize this product. First, Qwest's tariffed products are often priced
2 significantly above cost. Second, the FCC in the TRRO specifically determined
3 that an ILEC's offer of a product to CLECs through its special access tariffs was
4 not a basis for removal of a product as a UNE.²³⁸

5 **Q. WHY SHOULD ESCHELON'S LANGUAGE BE APPROVED?**

6 A. Eschelon's proposal is a reasonable compromise to deal with Qwest's claims that
7 it no longer plans to offer this product in the future even though Qwest offers this
8 product in the present. Rather than dispute the availability and Qwest's obligation
9 to provide a product that Eschelon currently does not use, Eschelon's language
10 simply provides that as long as Qwest makes this product available to other
11 CLECs, Eschelon will have the option to amend its interconnection agreement to
12 use this product. In addition, Eschelon is willing to create a process in which
13 Qwest could seek to remove its obligation to provide this product to Eschelon. If
14 Qwest's obligations are removed in the future, then Qwest is under no obligation
15 to offer an amendment for this product to Eschelon.

²³⁸ See *TRRO* ¶46 where the FCC states: "We find that statutory concerns, administrability concerns, and concerns about an anticompetitive price squeeze, preclude a rule that forecloses UNE access upon a finding by the Commission that carriers are potentially able to compete using special access or other tariffed alternatives. We also find that a competitor's current use of special access does not, on its own, demonstrate that that carrier is not impaired without access to UNEs."

1 **SUBJECT MATTER NO. 22A. APPLICATION OF UDF-IOF TERMINATION**
2 **(FIXED) RATE ELEMENT**

3 *Issue No. 9-51: ICA Section 9.7.5.2.1.a*

4 **Q. PLEASE SUMMARIZE THIS ISSUE.**

5 A. The contract contains descriptions of rate elements along with the method in
6 which they are applied. This section of the contract applies to the rate in 9.7.4.1.4
7 and 9.7.5.1.4 of Exhibit A. Eschelon has two proposals for this section of the
8 contract. Eschelon's first proposal is to add clarifying language that is consistent
9 with the SGAT language. Eschelon's second proposal is to use the SGAT
10 language without changes. Qwest has proposed to change the contract terms
11 related to the rate application for this element despite the fact that there has been
12 no change in this rate since the rate was approved and the corresponding SGAT
13 language went into effect. The rate for 9.7.5.1.4 is approved by the Oregon
14 Commission, though the rate for 9.7.4.1.4 is being disputed. Eschelon has
15 requested to review the cost study to determine if the rate application language
16 proposed by Qwest is consistent with the way in which the costs were
17 developed,²³⁹ but Qwest has failed to provide the cost study supporting the change
18 it proposes.²⁴⁰

²³⁹ See Eschelon/9, Denney/163, footnote 134.

²⁴⁰ On May 23, 2007, Qwest provided the cost study from New Mexico used to support Qwest's rate proposal for 9.7.4.1.4. The relevance, or lack of relevance, of the New Mexico rates as they apply to Oregon is discussed in detail in Issue 22-90. Further, Eschelon has not completed its review of this cost study as it pertains to the rate application language in this issue.

1 The FCC's rules recognize that state commissions may set rates in arbitration
2 proceedings and therefore impose a duty to produce in negotiations cost data
3 relevant to setting rates in arbitration.²⁴¹ Consistent with the FCC's rules, Qwest
4 and Eschelon anticipated exchanging cost data in negotiations and executed a
5 confidentiality agreement regarding cost data in their otherwise non-confidential
6 ICA negotiations to address any confidentiality concerns with respect to cost
7 support.²⁴² Nonetheless, Qwest's position since then is that it will not provide
8 cost data for all approved rates, even when the cost studies may have been filed as
9 confidential in earlier proceedings and thus are unavailable for use outside those
10 proceedings.²⁴³ There is no exception in either 47 C.F.R. § 51.301(c)(8)(iii) or the

²⁴¹ 47 C.F.R. § 51.301(c)(8)(iii) ("If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith: . . . (8) Refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to: . . . (ii) Refusal by an incumbent LEC to furnish *cost data* that would be relevant to *setting rates* if the parties were *in arbitration*." (emphasis added).

²⁴² Eschelon/34 contains a copy of the "Confidentiality Agreement for Multiple Cost Studies" dated March 16, 2004. "Other Party" is defined to refer to Eschelon. On page 1, the Confidentiality Agreement states: "This Agreement is made in order for Other Party, in the course of those otherwise non-confidential negotiations, to receive from Qwest that certain costing and business information ('Confidential Information' as defined below) related to the development of costs for Qwest's offering for Collocation Available Inventory and Transfer of Responsibility as required by the Telecommunications Act of 1996 ('Act') and applicable regulations under terms that will protect the confidential and proprietary nature of such Confidential Information. If Other Party asks Qwest to provide additional cost studies for other rates proposed by Qwest, this Agreement will govern the confidentiality of such additional cost studies, provided that Qwest designates the information as Confidential (as provided in paragraph 2 of this Agreement)." Qwest's proposed rate for the rate element in Section 9.7.5.1.4 of Exhibit A is a Commission approved rate, but Qwest has refused to provide the requested cost study to Eschelon in support of Qwest's proposal to change the established language regarding how that Commission approved rate is applied.

²⁴³ Eschelon/34 contains Qwest's March 21, 2006 memorandum regarding Qwest's refusal to provide cost support for approved rates. (Qwest claims that Eschelon provided no cost support, but Eschelon cited 47 C.F.R. § 51.301(c)(8)(iii) to Qwest.) Eschelon/34 also contains an example (dated December 5, 2005) of Eschelon's multiple requests for cost studies. The request included cost support for all rates with which Qwest disagreed (regardless of whether approved). Eschelon later asked Qwest, as a starting point, if Qwest would agree to provide cost support for even one approved rate in one state to determine if doing so would be useful to resolution of

1 Confidentiality Agreement for approved rates. Qwest will not provide cost data
2 for approved rates, even if the companies now disagree as to the application of
3 those rates so the cost studies are needed to resolve the disagreement. In addition
4 to being inconsistent with the FCC's rules and the Confidentiality Agreement,
5 Qwest's position is also impractical, as it impedes resolution of issues
6 (presumably a reason for the FCC's rule). I offered in negotiations to consider
7 agreeing to Qwest's proposed language on this issue, even though it differs from
8 the language used in the SGAT and other ICAs since the rates were approved, if
9 Qwest would provide cost data to support its claim that it is applying the rates
10 consistent with the cost study (albeit differently from the SGAT language). Even
11 though providing the cost study could possibly have resolved the issue, Qwest
12 nonetheless refused to provide Oregon specific any cost support.

13 **Q. MS. STEWART CLAIMS THAT ESCHELON IS ATTEMPTING TO**
14 **CHANGE THE DEFINITION OF THIS RATE ELEMENT. IS THIS**
15 **ACCURATE?**

16 A. No. Ms. Stewart states, "Eschelon has proposed changes to the definition of this
17 rate element, claiming that the definition requires clarification."²⁴⁴ However,

issues, but Qwest denied even that modest request. Qwest has been resolute in its refusal to provide cost studies for approved rates, even though Eschelon on March 21, 2006 told Qwest: "Eschelon reserves its right to argue in arbitration that the Commission should preclude Qwest from presenting evidence based on its cost studies that it refused to provide here and rule in Eschelon's favor based on Qwest's failure to provide the requested cost data."

²⁴⁴ Qwest/14, Stewart/31.

1 Eschelon's second proposal is the same as Qwest's SGAT language in Oregon.

2 The SGAT language is copied below:²⁴⁵

3 9.7.5.2.1 Unbundled Dark Fiber - IOF Rate Elements

4

5 a) UDF-IOF Termination (Fixed) Rate Element. This rate element
6 is a recurring rate element and provides a termination at the
7 interoffice FDP within the Qwest Wire Center. Two UDF-IOF
8 terminations apply per pair. Termination charges apply for each
9 intermediate office terminating at an FDP or like cross-connect
10 point.

11 Eschelon's first proposal is to add clarifying language to the SGAT language by
12 inserting the parenthetical "(one for each of the two end points in the termination
13 path)" after "Two UDF-IOF terminations apply."

14 It is Qwest that seeks to alter the meaning of 9.7.5.2.1.a by changing the second
15 sentence from "Two UDF-IOF terminations apply per pair," to "Two UDF-IOF
16 terminations apply per cross connect provided on the facility."

17 **Q. MS. STEWART ARGUES THAT THERE CAN BE MORE THAN ONE**
18 **CROSS CONNECT PER CENTRAL OFFICE, THUS QWEST'S**
19 **LANGUAGE CHANGE IS APPROPRIATE.²⁴⁶ IS THIS ARGUMENT**
20 **CONVINCING?**

21 A. No. What really matters is how the costs were developed to create the current
22 rates. If the Commission approved rate already incorporates this possibility that

²⁴⁵ <http://www.qwest.com/about/policy/sgats/SGATSdocs/oregon/OR-SGAT-18th%20Revised-112404.pdf>

²⁴⁶ Qwest/14, Stewart/33.

1 Qwest may perform more than one cross connect per central office, then it would
2 be inappropriate to charge for multiple terminations within the office. As shown
3 in Eschelon/34, Eschelon requested the cost studies from Qwest during
4 negotiations in an attempt to close this issue, but Qwest refused to provide the
5 evidence that might support their language. If the cost studies clearly confirm
6 Qwest's position, there is no reason for Qwest not to have provided them to
7 attempt to resolve this issue. The Commission should not accept unverified
8 Qwest assertions about cost support Qwest refused to provide in negotiations,
9 particularly in light of 47 C.F.R. § 51.301(c)(8)(iii).

10 **Q. MS. STEWART ARGUES THAT QWEST HAS CONSISTENTLY**
11 **APPLIED THIS RATE²⁴⁷ AND HAS MODIFIED ITS DESCRIPTION IN**
12 **ITS LATEST NEGOTIATIONS TEMPLATE. DOES THIS SUPPORT**
13 **QWEST'S CHANGES TO THE SGAT LANGUAGE?**

14 A. No. The fact that Qwest is proposing different language for Eschelon than applies
15 to other CLECs may imply a unique rate application for Eschelon.²⁴⁸ Even if
16 Qwest has consistently applied this rate and does not plan on changing its rate
17 application despite its changes to the SGAT language, it does not mean that
18 Qwest has appropriately applied this rate in the past. Qwest's unwillingness to
19 supply cost studies to support its new language calls into question whether Qwest
20 is appropriately applying this rate. Qwest should not be able to fix its alleged rate

²⁴⁷ Qwest/14, Stewart/33.

²⁴⁸ Eschelon/9, Denney/162.

1 application problem by demanding new rate application language when Qwest is
2 unwilling to support the appropriateness of this language.

3 **SUBJECT MATTER NO. 25. SERVICE ELIGIBILITY CRITERIA**

4 Issue Nos. 9-56 and 9-56(a): ICA Sections 9.23.4.3.1.1 and 9.23.4.3.1.1.1

5 **Q. PLEASE SUMMARIZE THIS ISSUE.**

6 A. Qwest is required by the FCC to have cause before conducting an audit regarding
7 CLEC compliance with service eligibility requirements. Eschelon's proposed
8 language memorializes this requirement and requires Qwest to provide
9 information to Eschelon that Qwest used to support its cause for review.

10 **Q. WHAT ISSUES DID QWEST RAISE RELATED TO THIS ISSUE?**

11 A. Qwest objects to Eschelon's proposed language that Qwest provide support for
12 cause before conducting an audit because: (1) Qwest claims there is no language
13 in the *TRO* or FCC rules requiring Qwest to have cause before conducting an
14 audit; and (2) Eschelon's proposal interferes with and weakens the audit rights
15 Qwest was granted in the *TRO*.²⁴⁹

16 **Q. DO THE FCC RULES SUPPORT ESCHELON'S PROPOSAL THAT**
17 **QWEST SHOULD HAVE CAUSE BEFORE CONDUCTING A SERVICE**
18 **ELIGIBILITY AUDIT?**

²⁴⁹ Qwest/14, Stewart/53.

1 A. Yes, as I testified in my Direct Testimony²⁵⁰ Eschelon’s language is supported by
2 the FCC in the *TRO*. The FCC stated that the auditing procedures it was adopting
3 were “comparable to those established in the *Supplemental Order Clarification*
4 for our service eligibility criteria...”²⁵¹ The FCC specifically noted that these
5 criteria held that:

6 ...audits will not be routine practice, but will **only** be undertaken
7 when the incumbent LEC has a concern that a requesting carrier
8 has not met the criteria for providing a significant amount of local
9 exchange service.²⁵²

10 Further, the FCC recognized “that the details surrounding the implementation of
11 these audits may be specific to related provisions of interconnection agreements
12 or to the facts of a particular audit, and that the states are in a better position to
13 address that implementation.”²⁵³

14 Eschelon’s language is therefore not only reasonable, but consistent with the
15 FCC’s findings in the *TRO*. It only makes sense that Qwest should be required to
16 have at least some reason to believe that there may be noncompliance that will be
17 uncovered by an audit. Otherwise, the audit process becomes a potential tool for
18 bullying rather than a measure for assuring compliance.

²⁵⁰ Eschelon/9, Denney/167-168.

²⁵¹ *TRO*, ¶ 622.

²⁵² *TRO*, ¶ 621, citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification (2000), at ¶¶ 28-33 (emphasis added), *aff’d sub nom. CompTel v. FCC*, 309 F.3d 3 (D.C. Cir. 2002).

²⁵³ *TRO*, ¶ 625.

1 **Q. DOES ESCHELON'S PROPOSAL INTERFERE WITH AND WEAKEN**
2 **QWEST'S AUDIT RIGHTS UNDER THE TRO?**

3 A. No. Eschelon's proposal is consistent with the *TRO* and merely provides that
4 Qwest have a concern that Eschelon has not met the service eligibility
5 requirements and that Qwest share this concern with Eschelon upon notice of an
6 audit. Additionally, Eschelon's language requires Qwest to share information, if
7 it has any, about any circuits where Qwest believes there is non-compliance.
8 Eschelon's language is not only reasonable, but may facilitate the resolution of
9 any concerns by initiating dialog through the exchange of information.

10 **SUBJECT MATTER NO. 26. COMMINGLED EELS/ARRANGEMENTS**

11 Issue Nos. 9-58, 9-58(a), 9-58(b), 9-58(d), 9-58(e) and 9-59: ICA Sections
12 9.23.4.5.1, 9.23.4.5.1.1, 9.23.4.5.4, 9.23.4.6.6 (and subparts), 9.1.1.1.1,
13 9.1.1.1.1.2, and 9.23.4.7

14 **Q. PLEASE SUMMARIZE THESE ISSUES.**

15 A. Qwest attempts to add an operational glue charge in order for Eschelon to
16 purchase a point-to-point commingled EEL. Unlike UNE EELs and the special
17 access equivalent to a UNE EEL, for commingled EELs Qwest proposals will
18 delay installation of commingled EELs, lengthen the repair intervals for these
19 circuits and make bill verification difficult. Qwest accomplishes this task by
20 requiring separate orders, separate trouble tickets and separate bills for each
21 component of the commingled EEL. Qwest's proposal not only diminishes the

1 usefulness of commingled EELs, but impacts the terms and conditions of the
2 UNE component of the commingled circuit.

3 A point-to-point Commingled EEL should be a useful and meaningful alternative
4 for the circumstances when a UNE EEL is no longer available. Because a
5 Commingled EEL is functionally equivalent to a UNE EEL, a Commingled EEL
6 should be put together (ordering, tracking, repair and billing) in a manner similar
7 to a UNE EEL. Eschelon's language accomplishes this task, while Qwest's
8 language allows Qwest to diminish the usefulness of the commingled EEL by
9 delaying provisioning and repair. In addition, Qwest's language allows Qwest to
10 provide bills for the components of the commingled EEL that are not related in
11 any way and thus extremely difficult to review and verify. Eschelon's alternative
12 proposal, in the event its first proposal is rejected, contains modest protections to
13 overcome some of these obstacles.

14 **Q. WHAT ISSUES DID QWEST RAISE RELATED TO THIS ISSUE?**

15 A. Qwest raises a number of generic arguments that Qwest repeats throughout its
16 testimony on this issue. Qwest argues that: (1) Eschelon is seeking to have
17 Qwest's special access and private line circuit's terms and conditions be governed
18 by the ICA ;²⁵⁴ (2) Eschelon should have taken this issue through CMP,²⁵⁵ though
19 Qwest's testimony indicates it would have denied Eschelon's request; (3) other
20 CLECs are already using the commingled EELs differently than the way that

²⁵⁴ Qwest/14, Stewart/48-49 and Qwest/14, Stewart/56-57.

²⁵⁵ Qwest/14, Stewart/62 and Qwest/14, Stewart/69.

1 Eschelon has proposed;²⁵⁶ (4) Qwest is not required by law to modify its systems
2 and Eschelon's proposal would require Qwest to modify its systems at significant
3 costs;²⁵⁷ (5) Qwest would have problems generating proper bills if Eschelon's
4 proposals were implemented;²⁵⁸ and (6) other types of transport-loop
5 combinations require multiple orders and circuit ids.²⁵⁹

6 **Q. IS ESCHELON ATTEMPTING TO ALTER THE TERMS AND**
7 **CONDITIONS OF QWEST'S SPECIAL ACCESS CIRCUITS THROUGH**
8 **ITS LANGUAGE PROPOSALS?**

9 A. No. The purpose of this proceeding is to determine the terms and conditions that
10 apply to UNEs. It is Qwest that is attempting to modify the terms and conditions
11 that apply to the UNE component of commingled EELs. Qwest would
12 accomplish this goal by delaying installation and lengthening the process for
13 repairs. Eschelon's proposal does not seek to alter the terms and conditions of the
14 non-UNE component of the commingled EEL, but instead insures that the
15 commingled facility is sufficiently described such that it can be practically used
16 by Eschelon.

17 Ms. Stewart states that "Eschelon's demands that commingled arrangements be
18 put in place through a single local service request ("LSR") and be billed through
19 the billing system that Qwest uses for UNEs (the "CRIS" system) is a direct

²⁵⁶ Qwest/14, Stewart/64.

²⁵⁷ Qwest/14, Stewart/63; Qwest/14, Stewart/67; and Qwest/14, Stewart/69.

²⁵⁸ Qwest/14, Stewart/67.

²⁵⁹ Qwest/14, Stewart/57.

1 attempt by Eschelon to have this Commission (via an ICA arbitration) force
2 Qwest to change its special access and private line service order process and
3 billing arrangements.”²⁶⁰ The intent of Eschelon’s language is to allow Eschelon
4 to place a single order and receive a single bill for commingled EELs. Eschelon’s
5 language is not intended to dictate the process that Qwest uses. Eschelon is
6 willing to change “LSR” to “Service Order” in 9.23.4.5.1 and 9.23.4.5.4, which
7 should clarify Eschelon’s language and address Qwest’s concern.

8 **Q. WOULD THE TERMS AND CONDITIONS, SUCH AS ORDERING,**
9 **MAINTENANCE AND BILLING, RELATED TO LOOP-TRANSPORT**
10 **COMBINATIONS BE BETTER ADDRESSED IN CMP, RATHER THAN**
11 **THIS ARBITRATION?**

12 A. No. It is surprising that Qwest would make this claim since Qwest has stated that
13 this issue is currently not appropriate for CMP.²⁶¹ Qwest’s proposal to leave key
14 terms of the contract until some undefined later date²⁶² is unreasonable, especially
15 since parties are already before the Commission and Qwest is indicating that
16 Eschelon’s proposals will be rejected in CMP. This issue is addressed in detail in
17 the testimony of Mr. Starkey. Mr. Starkey summarizes the need to address these
18 issues in the Interconnection Agreement rather than CMP.

²⁶⁰ Qwest/14, Stewart/49.

²⁶¹ See email Communications between Eschelon and Qwest attached to the Direct Testimony of Ms. Johnson as Eschelon/63.

²⁶² Note, there is no agreement to address these issues at a later date in CMP while Qwest unilaterally implements changes in the meantime. See Eschelon/1, Starkey/88-93 and Eschelon/59-62.

1 [S]afeguards are needed to protect against the capability that
2 Qwest has to wield CMP as a shield and sword. Section 252
3 affords these safeguards through arbitrated interconnection
4 agreement terms. Eschelon has exercised its right to bring certain
5 terms and conditions to the Commission for review and to obtain a
6 dispositive decision. By dispositive, I mean a decision that meets
7 Eschelon's business need for certainty to plan its business and
8 remain competitive and also helps avoid disputes in the future by
9 providing clear contractual terms on important issues. Relegating
10 those issues to CMP, rather than providing commercial certainty
11 by deciding each issue on the merits of the disputed contract
12 language, would not meet that need.²⁶³

13 **Q. SHOULD THE COMMISSION CONSIDER WHETHER OR NOT OTHER**
14 **CLECS ARE CURRENTLY PURCHASING COMMINGLED EELS**
15 **UNDER QWEST'S ONEROUS TERMS IN DECIDING WHETHER TO**
16 **ADDRESS THIS ISSUE IN ESCHELON'S CONTRACT?**

17 A. No. The fact that other CLECs may have signed Qwest's contract amendments or
18 have begun purchasing commingled EELs under terms dictated by Qwest is not
19 evidence or justification for imposing those terms, without question, on all
20 CLECs. Other CLECs decisions not to litigate onerous terms should not waive
21 Eschelon's rights to raise these issues in its contract negotiations and have the
22 Commission decide these issues on the merits of the proposals. In any event,
23 Qwest provided no evidence to support its unverified suggestion about the alleged
24 success of other CLECs in purchasing commingled EELs. There is nothing in the
25 record to show that the problems Eschelon describes are not being and will not be
26 experienced by those CLECs.

²⁶³ Eschelon/1, Starkey/94.

1 **Q. DOES ESCHELON’S PROPOSAL REQUIRE QWEST TO MODIFY ITS**
2 **SYSTEMS?**

3 A. No. As stated in my direct testimony, Eschelon’s proposals simply “align the
4 ordering, tracking, repair and billing provisions of a point-to-point UNE EEL or
5 point-to-point Special Access circuit with a point-to-point Commingled EEL.”²⁶⁴
6 Further, “Eschelon is not asking Qwest to modify systems and incur costs...”²⁶⁵
7 Qwest already has the systems in place for the Loop-Transport Combination UNE
8 EELs such that a CLEC can place one order, obtain one circuit ID and receive one
9 bill,²⁶⁶ and Qwest need not alter its systems for the Loop-Transport Combination
10 Commingled EELs.

11 Qwest has not explained why it can not do for Commingled EELs what it already
12 does for UNE EELs, other than to make sweeping statements about significant
13 systems changes and the high cost to implement these changes.

14 **Q. SHOULD QWEST HAVE PROBLEMS GENERATING PROPER BILLS**
15 **IF ESCHELON’S PROPOSAL IS IMPLEMENTED?**

16 A. There is no reason why Qwest should not be able to implement the price increases
17 associated with commingled EELs.²⁶⁷ As addressed in my direct testimony,
18 Qwest provides a single bill for UNE EELs today. Qwest claims that if a non-

²⁶⁴ Eschelon/9, Denney/171.

²⁶⁵ Eschelon/9, Denney/183, line 14.

²⁶⁶ Eschelon/9, Denney/184.

²⁶⁷ Eschelon/9, Denney/182-183.

1 UNE circuit is mis-identified as a UNE circuit then billing errors could occur.²⁶⁸
2 However, what Qwest fails to recognize is that in most cases, the necessity of a
3 commingled EEL is driven by the fact that a UNE component of a UNE EEL is
4 no longer available due to a finding of “non-impairment.” All high capacity UNE
5 loops may no longer be available in a wire center, or high capacity UNE transport
6 no longer available between two Qwest offices. Because the UNE component of
7 the Loop-Transport combination is no longer available, there will not be two rates
8 for that component. There will only be the single non-UNE rate, and thus no
9 reason for Qwest to become confused. Qwest’s claims of billing complexity due
10 to multiple rates for the same element are especially incredible given Qwest’s
11 UNE-P substitute products, Qwest Platform Plus (“QPP”) and Qwest’s Local
12 Services Platform products (“QLSP”). QPP circuits are subject to annual rate
13 increases and the rate changes involved with QPP are significantly more complex
14 that the rate change involved in changing from UNE rates to private line rates.
15 Besides changing each year, QPP rates differ depending upon whether the end-
16 user customer is a residential or a business customer and upon whether the CLEC
17 has met certain volume quotas. Qwest’s new QLSP contains twelve different
18 switch port rates, for the same switch port in a single state, depending on whether
19 the end user customer is residence or business and the CLEC’s year over year
20 volume changes.

²⁶⁸ Qwest/14, Stewart/64.

1 Qwest further states that, because a UNE Loop is ordered via LSRs and billed
2 through CRIS and non-UNE transport is ordered via ASRs and billed through
3 IABS, the circuits must be kept separate.²⁶⁹ This claim ignores a number of facts.
4 First, it is Qwest who insisted on separate billing systems, over the protest of
5 AT&T and MCI in the initial arbitrations.²⁷⁰ Second, while UNE Loops are
6 ordered via LSRs and UNE transport is ordered via ASRs, UNE EELs (a
7 combination of UNE Loop and UNE Transport) are ordered on a single order
8 using an LSR and the bill contains both the UNE Loop and UNE Transport on a
9 single bill. Third, conversions from private line to UNE are ordered on a single
10 LSR, but Qwest claims that with this single order it processes changes in its
11 systems dealing with both ASRs and LSRs.²⁷¹ Further, because the same
12 provisioning centers process orders for EELs and Private Lines, Qwest should not
13 have difficulties processing a single order for a commingled EEL.²⁷²

14 **Q. ARE TWO UNIQUE CIRCUIT IDS NECESSARY FOR POINT-TO-POINT**
15 **COMMINGLED EELS?**²⁷³

²⁶⁹ Qwest/14, Stewart/56.

²⁷⁰ See for example, *In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47* Pursuant to 47 U.S.C. § 252 (b) of the Telecommunications Act of 1996, **ARBITRATOR'S DECISION**, Docket No. ARB 3, Issued December 6, 1996, Issues 41 – 45, pages 10 – 12.

²⁷¹ Deposition of Mary Madill, In the Matter of Qwest Corporation's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. § 251 MPUC Docket No.: P-421/AM-06-713; OAH Docket No. 3-2500-17511-2, May 17, 2007. The transcripts of the Deposition of Ms. Madill are not yet available and the relevant portions of the transcript will be provided when they are available. I was present during the deposition and the information presented is accurate to the best of my knowledge based upon my recollection of her testimony.

²⁷² *Id.*

²⁷³ Qwest/14, Stewart/64.

1 A. No. Qwest currently uses a single circuit ID for point-to-point UNE EELs and
2 point-to-point special access circuits and is able to provision, bill and document
3 service quality for these circuits. There is no reason why Qwest can not use a
4 single circuit ID for point-to-point commingled EELs. This is discussed in detail
5 in my direct testimony.²⁷⁴

6 **Q. DO MULTIPLEXED EELS HAVE MULTIPLE CIRCUIT IDS**
7 **ASSOCIATED WITH THE MULTIPLEXED EEL ARRANGEMENT?**

8 A. Yes. Ms. Stewart concludes that because Eschelon has not suggested “that Qwest
9 commingle two separate facilities of different bandwidth/capacity into one order,
10 one bill, and one circuit ID,”²⁷⁵ a single circuit ID is not necessary for point-to-
11 point commingled EELs.

12 First, Ms. Stewart admits that this type of multiplexed arrangement is treated the
13 same whether it is UNE, private line, or commingled arrangement. As a result,
14 we do not have a case where Qwest has made a commingled arrangement more
15 difficult to use than its UNE or special access alternatives as is the case with a
16 point-to-point commingled EEL.

17 Second, because there are multiple customers involved in a multiplexed
18 arrangement, multiple circuit IDs help to identify specific customer’s circuit in
19 this arrangement. For example, in the case where a repair is necessary, the CLEC
20 is generally able to determine whether the problem is on the loop or interoffice

²⁷⁴ Eschelon/9, Denney/179-182.

²⁷⁵ Qwest/14, Stewart/57.

1 part of the multiplexed arrangement based on whether the trouble impacts a single
2 customer (then it is likely the loop) or multiple customers (then it is likely
3 interoffice). There is no way to make this determination with a point-to-point
4 EEL.

5 **Q. DOES QWEST ADMIT THAT ITS PROPOSAL WILL DELAY THE**
6 **INSTALLATION OF COMMINGLED EELS?**

7 A. Yes. Qwest argues that it “must install the tariffed circuit and the UNE circuit
8 separately from each other. In addition, the service orders for each circuit must be
9 complete before Qwest can install either circuit.”²⁷⁶ Qwest states that it must be
10 allowed to “add these intervals together to determine the total time required for
11 installation of commingled EELs.”²⁷⁷ As addressed in my direct testimony,
12 Qwest’s proposal is problematic not only because it delays installation, but also
13 because it makes it impossible for the CLEC to calculate installation intervals for
14 this product and thus the CLEC cannot communicate effectively with its end user
15 customer regarding projected service readiness.²⁷⁸

16 **Q. DOES QWEST’S MODIFIED REPAIR PROCESS²⁷⁹ ADDRESS**
17 **ESCHELON’S CONCERNS RELATED TO DELAY IN THE REPAIR OF**
18 **TROUBLED CIRCUITS?**

²⁷⁶ Qwest/14, Stewart/73.

²⁷⁷ Qwest/14, Stewart/73.

²⁷⁸ Eschelon/9, Denney/194.

²⁷⁹ Qwest/14, Stewart/75-79.

1 A. No, Qwest's proposed language still does not address the underlying concerns
2 related to the repair process that I identify and discuss in my Direct Testimony.²⁸⁰
3 While Qwest acknowledges that no charges should apply in repair situations
4 where the trouble is found to be in Qwest's network, Qwest's proposal still
5 requires sequential, rather than parallel, repair processes, which could cause an
6 overall delay in repairing service to the end user customer. Qwest's newly
7 proposed language also does not address the issue that Qwest would avoid
8 performance requirements as a result of its sequential delay process.²⁸¹ Therefore,
9 Eschelon does not support Qwest's new language.

10 Eschelon's alternative proposal in issue 9-59 allows for Eschelon to open a single
11 trouble report for both of the circuits associated with a commingled EEL.²⁸²

12 **Q. HAS QWEST PROPOSED ADDRESSING THIS ISSUE THROUGH CMP?**

13 A. Qwest's unilateral implementation of processes relating to TRO/TRRO issues is
14 discussed by Mr. Starkey.²⁸³ As Mr. Starkey explains, Qwest has chosen to adopt
15 those policies, including policies relating to commingling, outside of CMP and
16 without CLEC input. However, on the day that the hearing in the Minnesota
17 arbitration commenced, Qwest changed its position, as reflected in a letter that it
18 sent to Eschelon²⁸⁴ in which it stated its intention to address some (but not all) of
19 the *TRO/TRRO* issues in CMP. Since then, however, Qwest has stated that CMP

²⁸⁰ Eschelon/9, Denney/195-197.

²⁸¹ Eschelon/9, Denney/187.

²⁸² Eschelon/9, Denney/195-199.

²⁸³ Eschelon/1, Starkey/88-91.

²⁸⁴ Eschelon/78.

1 will not address issues that are presently the subject of pending arbitrations or
2 legal proceedings. It is now unclear what issues Qwest will be submitting to
3 CMP.²⁸⁵ What is clear, however, is that CLECs, including Eschelon, have made
4 repeated requests to Qwest to negotiate regarding the terms and conditions that
5 would govern the *TRO/TRRO* issues and Qwest consistently refused.

6 **Q. PLEASE SUMMARIZE THESE ISSUES.**

7 A. Commingled EELs should be a useful and meaningful alternative to UNE EELs.
8 Because a Commingled EEL is functionally equivalent to a UNE EEL, a
9 Commingled EEL should be put together (ordering, tracking, repair and billing) in
10 a manner similar to a UNE EEL. Eschelon's language accomplishes this task,
11 while Qwest's language allows Qwest to diminish the usefulness of a commingled
12 EEL by delaying provisioning and repair. In addition, Qwest's language allows
13 Qwest to provide bills for the components of the commingled EEL that are not
14 related in any way and thus extremely difficult to review and verify. Eschelon's
15 language should be adopted for these issues.

²⁸⁵ Ms. Stewart states that "*TRRO*-related systems work has been deferred pending completion of the *TRRO* wire center dockets in Qwest's states." (Qwest/14, Stewart/62) However, the wire center dockets have nothing to do with the issues being discussed here. The wire center dockets will determine when a CLEC no longer has access to a UNE EEL, thus making commingled EELs an alternative, but will not resolve ordering, repair or billing issues related to commingled EELs.

1 **VIII. EXPEDITED ORDERS**

2 **SUBJECT MATTER NO. 31. EXPEDITED ORDERS**

3 **Issues Nos. 12-67 and 12-67(a)-(g)**

4 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-67 AND ITS**
5 **SUBPARTS.**

6 A. The two over-arching questions regarding expedited orders for resolution in this
7 arbitration are: (1) **Interim Wholesale Rate (whether TELRIC)**: At what rate
8 should expedites be provided to a Qwest wholesale customer (*i.e.* Eschelon), at
9 least on an interim basis until a permanent rate is set? and; (2) **Exceptions to**
10 **Charging for Expedites**: Should the circumstances when Qwest provides
11 exception(s) to charging an additional fee for expedites be nondiscriminatory?²⁸⁶

12 Eschelon's proposed interim rate and ICA language²⁸⁷ should be adopted.
13 Although Ms. Albersheim testifies that "Eschelon's language is excerpted almost
14 word-for-word from the section of the Expedite PCAT titled 'Expedites Requiring
15 Approval,'"²⁸⁸ she is referring to Eschelon's proposal #1 for Section 12.2.1.2.1.
16 That section relates only to Issue 12-67(a) (Exceptions to Charging -
17 Emergencies), which I discuss below. Ms. Albersheim complains that Eschelon's
18 language is placed in Section 12, "which is supposed to contain language about
19 Access to OSS."²⁸⁹ This comment assumes that Access to OSS does not include

²⁸⁶ See Eschelon/9, Denney/201-203

²⁸⁷ All of Eschelon's language for Issue 12-67 and subparts should be adopted. See Eschelon/9, Denney/213-223.

²⁸⁸ Qwest/1, p. 61, lines 15-16.

²⁸⁹ Qwest/1, p. 61, lines 17-18.

1 such ordering processes. Placement of these terms in Section 12 is appropriate
2 because the term OSS is much broader than that, as I explained in direct
3 testimony.²⁹⁰ Qwest's ICA proposal states that a "request for an expedite will be
4 allowed *only* when the request meets the criteria outlined in the Pre-Approved
5 Expedite Process in Qwest's Product Catalog for expedite charges at Qwest's
6 wholesale web site."²⁹¹ Qwest's PCAT posted on its web site states: "If the
7 request being expedited is for a product contained in the 'Pre-Approved
8 Expedites' section below, your ICA *must contain* language supporting expedited
9 requests *with a 'per day' expedite rate.*"²⁹² If the Commission disagrees with
10 Qwest that an ICB rate in every case is a "per day" rate, sets a rate that is not a per
11 day rate, and/or adopts Eschelon's proposal of a per order interim rate, Qwest's
12 language is inaccurate and, at a minimum, creates confusion. In contrast,
13 Eschelon's language adds clarity to the ICA and helps avoid future disputes.²⁹³

²⁹⁰ Eschelon/9, Denney/221-222, citing Section 12.1.1 of proposed ICA (closed language) & Third Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (Released Nov. 5, 1999), ¶425 ("OSS includes the *manual*, computerized, and automated systems, *together with associated business processes* and the up-to-date data maintained in those systems") (citing "*Local Competition First Report and Order*, 11 FCC Rcd at 15763-64, paras. 518, 523").

²⁹¹ Qwest proposed language for Section 7.3.5.2.2 (emphasis added); *see also* 9.1.12.1.2 (same except it says "expedites" rather than "expedite charges"). By limiting expedites to the fee-added "Pre-Approved Expedite Process," Qwest is indicating that the emergency-based "Expedites Requiring Approval" process is not available under the ICA at all. *See id.*

²⁹² Qwest/9, Albersheim 1 (Expedites PCAT) (emphasis added).

²⁹³ For example, although in Minnesota Eschelon's pricing proposal was adopted, Qwest's witness disputed this and suggested that all of Qwest's language was adopted in Minnesota (instead of only the portion on discrimination). *See* Colorado arbitration, CO Hearing Exhibit 27 (Denney Surreb.), pp. 103-104. The Minnesota ALJs and Commission adopted a per order rate (rejecting Qwest's per day rate). *See* Eschelon/30, Denney 23, ¶5 (Topic 29) ("On an interim basis, Qwest may charge Eschelon *up to \$100* to expedite an order on behalf of an Eschelon customer.") (emphasis added). As Qwest's proposed ICA language regarding the criteria of the PCAT (quoted in the text) shows, however, only Eschelon's ICA language accurately states the

1 Regarding Qwest’s additional claims, that “the expedite process should be
2 handled in the PCAT rather than the interconnection agreement”²⁹⁴ and “process”
3 is “something properly handled in CMP,”²⁹⁵ Mr. Starkey addresses these issues in
4 his discussion of the need for contractual certainty (Eschelon/1 & Eschelon/123).

5 **1. WHOLESALE ACCESS AT COST-BASED RATES**

6 **Q. MS. ALBERSHEIM STATES THAT QWEST “CHARGES ITS RETAIL
7 CUSTOMERS THE SAME \$200 FEE TO EXPEDITE ORDERS.”²⁹⁶
8 PLEASE RESPOND.**

9 **A.** The mistake Ms. Albersheim makes it to equate providing a retail service *at the*
10 *same price* with providing wholesale service on nondiscriminatory terms. The
11 threshold question to be addressed is whether for itself Qwest provides the service
12 to its retail customers, separate from the question of price. Ms. Albersheim has
13 admitted that Qwest provides expedites for itself.²⁹⁷ Therefore, the analysis
14 moves to another question, which addresses what the wholesale price should be
15 (whether TELRIC-based). Qwest inappropriately collapses these two questions
16 into one, as I described in my direct testimony.²⁹⁸

application of that rate (*see, e.g.*, 12.2.1.2.2 referencing Exhibit A and 12.2.1.2.3 stating the expedite charge is a separate charge), whereas Qwest’s proposed ICA language by reference to the PCAT includes the very term rejected in Minnesota.

²⁹⁴ Qwest/1, p. 61, lines 3-4.

²⁹⁵ Qwest/1, p. 62, lines 12-13.

²⁹⁶ Qwest/1, Albersheim/64, lines 9-10; *id.* lines 16-18.

²⁹⁷ Eschelon/7, AZ Arbitration Transcript, Vol. I, p. 58, lines 19-21 (“Q. Now, you would agree with me that Qwest provides itself with expedites; correct? A. Yes.”).

²⁹⁸ Eschelon/9, Denney/224-226.

1 Ms. Albersheim testifies: “The result of Eschelon’s language is that it gives
2 Eschelon access to expedited orders beyond what anyone else, CLECs or other
3 Qwest customers, has access to.”²⁹⁹ Cost-based pricing for expedites, however,
4 would put Eschelon on equal footing with Qwest when it comes to providing
5 expedites to its end-user customers, because under cost-based pricing both Qwest
6 and Eschelon would face the same economic signals (cost) with regard to
7 expedites. Additionally, CLECs in Oregon would be able to opt into Eschelon’s
8 ICA. To conclude that Eschelon is somehow inappropriately carving itself an
9 Eschelon-only exemption is contrary to the principles of Section 252(i) of the Act,
10 which are discussed in more detail by Mr. Starkey.³⁰⁰

11 **Q. IN SUPPORT OF QWEST’S EXPEDITE CHARGE PROPOSAL, MS.**
12 **ALBERSHEIM ALSO STATES THAT QWEST OFFERS EXPEDITES TO**
13 **CLECS UNDER THE SAME TERMS AND CONDITIONS AS IT OFFERS**
14 **TO ITS RETAIL CUSTOMERS.³⁰¹ IS IT PROPER TO COMPARE**
15 **CHARGES IMPOSED BY QWEST ON CLECS WITH EXPEDITE**
16 **CHARGES IMPOSED BY QWEST ON ITS RETAIL CUSTOMERS?**

17 A. No. The relevant comparison, for purposes of determining whether charges are
18 discriminatory, is between the charges faced by CLECs and the expedite charges
19 Qwest incurs when it expedites service to one of its retail customers (i.e., what
20 Qwest implicitly charges “*itself*”). This is the appropriate comparison because

²⁹⁹ Qwest/1, Albersheim/61, lines 11-13

³⁰⁰ See, e.g, Eschelon/1, Starkey/29-36.

³⁰¹ Qwest/1, Albersheim/64, lines 12-15.

1 Qwest acts in a dual role of the CLECs' provider of bottleneck facilities and the
2 CLECs' competitor in retail markets, and is supported by the following FCC rule:

3 **§ 51.313 Just, reasonable and nondiscriminatory terms and**
4 **conditions for the provision of unbundled network elements.**

5 (b) Where applicable, the terms and conditions pursuant to which
6 an incumbent LEC offers to provide access to unbundled network
7 elements, including but not limited to, the time within which the
8 incumbent LEC provisions such access to unbundled network
9 elements, shall, *at a minimum, be no less favorable to the*
10 *requesting carrier than the terms and conditions under which the*
11 *incumbent LEC provides such elements to itself.*³⁰² (emphasis
12 added)

13 Qwest faces only the cost of an expedite when expediting its own orders, instead
14 of the non-cost-based per day charge that it charges its retail customers. Ms.
15 Albersheim states that this is a \$200 per day advanced rate for Qwest retail
16 customers and CLECs and admits that this rate is not cost-based.³⁰³ UNEs are a
17 wholesale product and the expedite rate for *accessing* UNEs should be cost-based,
18 and not set based on retail tariff offerings.

19 Charging Eschelon a non-cost based, retail price that is higher than Qwest's own
20 expedite costs would violate rule §51.313 because this price constitutes terms that
21 are less favorable than terms faced by Qwest in expediting its own orders.
22 Eschelon and Qwest compete in the retail market and this competition includes an
23 ability to offer expedite service to retail customers "on competitive" terms. This
24 advantage would be the same as the advantage that Qwest would have if it

³⁰² 47 CFR § 51.313.

³⁰³ Qwest/1, Albersheim/64, lines 9-12, 16-18, and footnote 40.

1 charged above-cost rates for UNE loops and other UNE elements – a situation
2 that the unbundling rules and TELRIC pricing are designed to avoid.

3 **Q. MS. ALBERSHEIM CLAIMS THAT EXPEDITE CHARGES OFFERED**
4 **TO ESCHELON AND OTHER CLECS FOR UNE ORDERS SHOULD**
5 **NOT BE COST BASED.³⁰⁴ WHAT BASIS DOES SHE PROVIDE FOR**
6 **THIS CONCLUSION?**

7 A. The key to Ms. Albersheim’s argument is her incorrect assumption that expedites
8 comprise “premium” services so they are “not UNEs.”³⁰⁵

9 **Q. ON WHAT BASIS DOES MS. ALBERSHEIM ASSERT THAT**
10 **EXPEDITES REPRESENT A PREMIUM OR SUPERIOR SERVICE**
11 **THAT IS NOT SUBJECT TO SECTION 252?**

12 A. The basis for this claim is not clear because nowhere in her testimony does Ms.
13 Albersheim define the concept of “premium service.” Ms. Albersheim appears to
14 be claiming that expedited service is a “premium service” because, as stated
15 above, she claims expedites are not UNEs. In other words, Ms. Albersheim
16 seems to argue that expedited service is a “premium” service provided under the
17 regular interval. If this is, in fact, the basis of Qwest’s position, it is incorrect.

18 Qwest witness Ms. Teresa Million cited the Eighth Circuit’s decision in the *Iowa*
19 *Utilities Board* case in her Answer Testimony in Colorado³⁰⁶ for the proposition

³⁰⁴ Qwest/1, Albersheim/64, lines 12-13.

³⁰⁵ *Id.* (In prior testimony, Qwest has used the phrases “superior service” and “premium service” interchangeably.)

1 that nondiscriminatory access does not require the incumbent to provide superior
2 service.³⁰⁷ While Ms. Million parrots the phrase “superior service,” she overlooks
3 that, in discussing what constituted superior service, the Eighth Circuit found that
4 the Act does not require an incumbent to provide service that is superior *to what*
5 *the incumbent provides itself* in connection with providing service to its retail
6 customers.³⁰⁸ Thus, if Qwest provides a particular service – such as expedites – to
7 its retail customers, and therefore to itself, as a matter of course, then that service
8 is not “superior.”

9 Significantly, Ms. Million does *not* argue that expedites are a superior service
10 because Qwest does not expedite orders for its own retail customers. Similarly,
11 Ms. Million does *not* argue that expedites comprise a superior service because
12 customers other than Eschelon (for example, other CLECs or retail customers)
13 cannot request that orders be expedited. Qwest cannot deny that it expedites
14 orders for other CLECs and for itself³⁰⁹ and its own retail customers.³¹⁰
15 Expedited orders are provided to a variety of Qwest’s customers and therefore,
16 they do not comprise a superior service.

³⁰⁶ *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part, rev’d in part*, 525 U.S. 366 (1999) (“*Iowa Utilities Board*”).

³⁰⁷ Colorado Arbitration Million Answer Testimony, p. 29-30.

³⁰⁸ *Iowa Utilities Board*, 120 F.3d at 812 (“Another source of disagreement between the petitioners and the FCC arises over the Agency’s decision to require incumbent LECs to provide interconnection, unbundled network elements, and access to such elements at levels of quality that are superior to levels at which the incumbent LECs provide these services to themselves.”)

³⁰⁹ Eschelon/7, AZ Arbitration Transcript, Vol. I, p. 58, lines 19-21 (“Q. Now, you would agree with me that Qwest provides itself with expedites; correct? A. Yes.”).

³¹⁰ *See, e.g.*, Albersheim Arizona Direct (11/8/06), p. 61, lines 15-16 (“ . . . Qwest offers expedites today to its retail customers. . .”).

1 Further, if the ability to expedite UNE installation, for example, is available as *an*
2 *option*, it does not mean that such expedited access to UNEs should not be subject
3 to cost-based regulation. Indeed, Qwest offers *options*, if you will, for a number
4 of products that constitute access to UNEs. For example, Qwest offers UNE loop
5 installation in different forms – Basic Installation, Basic Installation with
6 Performance Testing, and Coordinated Installation with Cooperative Testing.³¹¹
7 Qwest does not argue that only the Basic Installation option should be priced
8 consistent with cost-based principles, while all other, arguably “superior” options
9 should be based on the price that the market can “bear.”³¹² Similarly, Exhibit A
10 to the parties’ interconnection agreement, which lists the rates applicable to
11 unbundled elements and services to be provided under Section 252, contains the
12 agreed-upon charges for Standard, Overtime and *Premium* Managed Cuts,³¹³ and
13 Overtime and *Premium* Labor.³¹⁴ To the best of my knowledge, Qwest has not
14 argued these options or “premium” access to these products should be subject to a
15 different pricing standard than those standards which are applicable to “basic”
16 access or level of service because these options constitute “superior service.”

³¹¹ See ICA Exhibit A, Section 9.2.4. The notes for these rate elements indicate the rate is a Commission approved rate.

³¹² Colorado Arbitration Million Rebuttal testimony, p. 32.

³¹³ See ICA Exhibit A, Section 10.1.2. The note for this rate indicates it is a Commission approved rate.

³¹⁴ See ICA Exhibit A, Section 9.20.2. The note for this rate indicates it is a Commission approved rate.

1 Finally, that Qwest proposes to provide expedites under an amendment to
2 Eschelon's ICA, rather than pursuant to a commercial agreement, demonstrates
3 that Qwest, itself, recognizes that expedites fall within the scope of Section 252.

4 **Q. COULD QWEST BE CLAIMING THAT THE EXPEDITE SERVICE IT IS**
5 **WILLING TO PROVIDE ESCHELON COULD "BE COMPLETED FOR**
6 **LESS COST" THAN A COMPARABLE RETAIL EXPEDITE?**

7 A. Ms. Albersheim has stated that, because the "standard provisioning interval" for a
8 high-capacity loop is shorter than the comparable retail services, the private line
9 customer would pay more than the UNE customer to have the service delivered in
10 one day.³¹⁵ As discussed above and in my direct testimony,³¹⁶ it is incorrect to
11 equate not providing a wholesale service *at the same price* as a retail service with
12 superior service, because it confuses these concepts and inappropriately collapsed
13 the two questions into one.³¹⁷

14 Ms. Albersheim states that Qwest charges its retail customers the same \$200 fee
15 to expedite orders.³¹⁸ This is an incorrect correlation as retail services are
16 regulated based on a different set of standards than access to UNE markets
17 (network elements *in impaired markets*). The TRRO confirmed the need for a

³¹⁵ Qwest/1, Albersheim/64.

³¹⁶ Eschelon/9, Denney/ 224-226

³¹⁷ At the hearing in the Minnesota arbitration proceeding, Ms. Albersheim admitted that the fact that there's a difference in price between two services does not mean that the lower priced service is a superior service for purposes of determining whether that service is a UNE. *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996*, Minnesota Public Utilities Commission Docket No. P-5340, 421/IC-06-768, Hearing Transcript, Vol. 1 at page 26, lines 14-18.

³¹⁸ Qwest/1, Albersheim/64, lines 9-10

1 different pricing standard in the markets for UNEs than the pricing standard used
2 in the access markets. This fact is captured in the following citation from the
3 FCC TRRO:

4 Here, upon further consideration, we determine that in the local
5 exchange market, the availability of a tariffed alternative should
6 not foreclose unbundled access to a corresponding network
7 element, even where a carrier could, in theory, use that tariffed
8 offering to enter a market.³¹⁹

9 Thus, Congress's enactment of section 251(c)(3), and the
10 associated cost-based pricing standard in section 252(d)(1), at a
11 time when special access services were already available to
12 carriers in the local exchange market indicates that UNEs were
13 intended as an *alternative* to these services, available **at**
14 **alternative pricing**.³²⁰

15 **Q. IS ESCHELON'S \$100 PER EXPEDITE PROPOSAL COST BASED?**

16 A. Eschelon believes its proposed interim rate exceeds costs. Eschelon offers the
17 rate on an interim basis as a compromise in the arbitrations until a cost-based rate
18 is established. Eschelon's arbitration proposed charge is expressly an interim
19 rate. It affords Qwest the opportunity to obtain a higher permanent rate, if Qwest
20 can provide a TELRIC study to support that rate. If Qwest can present a cost
21 study that supports a per-day charge, then it will be permitted to assess such a
22 charge. To date, however, Qwest has provided no cost study and thus made no
23 effort to prove that it incurs additional costs when providing expedites that are not
24 recovered in the installation charge and the \$100 interim additional expedite fee.
25 Although Qwest states that "Eschelon has not provided a cost study to support its

³¹⁹ *TRRO*, ¶ 48.

³²⁰ *TRRO*, ¶ 51 (italicized font is original to the source; bold font added for emphasis).

1 rate either,”³²¹ Eschelon has been straightforward in presenting this as a
2 compromise offer³²² and therefore no adverse inference is warranted. Eschelon is
3 truly interested in establishing a cost-based rate. If the Commission decides to
4 subject the rate to a true-up, then a cost based rate will apply from the time the
5 interim rate is established.

6 Eschelon’s arbitration interim proposal for a flat per order charge is more
7 reasonable than Qwest’s and is not arbitrary. It is a per order charge; not a per
8 day charge. Because the only additional cost that Qwest *may* incur to expedite an
9 order involves the cost of processing the expedite order, this cost will not vary
10 based on the number of days by which service is sought to be expedited.
11 Accordingly, a per day charge is inappropriate.

12 **Q. IS THERE OTHER EVIDENCE THAT A REASONABLE EXPEDITE**
13 **CHARGE WOULD NOT EXCEED THE COST OF INSTALLATION OF**
14 **THE LOOP?**

15 A. Yes. On July 16, 2004, Qwest increased its expedite charge in its special access
16 tariff to reflect a new \$200 per day charge.³²³ Before July 31, 2004, Qwest’s
17 charges for expedited orders better reflected the relationship between installation
18 and the expedite charge. At that time, Qwest’s tariff read, “The Expedited Order

³²¹ Qwest/1, Albersheim/64 at footnote 40.

³²² Eschelon/9, Denney/222.

³²³ Eschelon/36 DD-29, Qwest’s Tariff FCC #1, section 5.2.2.D, 1st Revised Page 5-25. This is also available on the Qwest website at:
http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/fcc1_s005p021.pdf#Page=1&PageMode=bookmarks.

1 Charge is based on the extent to which the Access Order has been processed at the
2 time the Company agrees to the expedited Service Date.”³²⁴ Further, the tariff
3 stated, “*but in no event shall the charge exceed fifty percent (50%) of the total*
4 *nonrecurring charges* associated with the Access Order.”³²⁵ As indicated above,
5 an additional expedite charge that approaches or even exceeds the amount of the
6 charge for all of the activities for an entire installation of a facility should more
7 than amply compensate Qwest for performing the installation activities more
8 quickly. With its former tariff provision, Qwest implicitly recognized that a
9 reasonable charge to expedite an installation would not exceed the charge for all
10 of the work performed in the entire installation; in fact, it would be no more than
11 half. The non-recurring charge for the installation of a DS1 channel termination,
12 the private line equivalent of a loop, at the time was \$313.25.³²⁶

13 **2. EXCEPTIONS TO CHARGING AN ADDITIONAL EXPEDITE**
14 **FEE**

15 **Q. WHAT OBJECTION DOES QWEST MAKE TO SECTION 12.2.1.2.1**
16 **REGARDING ISSUE 12-67(A) (EXCEPTIONS TO CHARGING -**
17 **EMERGENCIES)?**

18 A. Ms. Albersheim complains that Eschelon’s first proposal for Issue-12-67(a) “is
19 excerpted almost word-for-word from the section of the Expedite PCAT titled

³²⁴ Eschelon/36 DD-29, Qwest’s Tariff F.C.C. #1, Original Page 5-25. This is also available on the
FCC website at: http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/ccb/etfs/bin/binary_out.pl?69762

³²⁵ *Id.* (emphasis added).

³²⁶ Eschelon/36, Qwest’s Tariff F.C.C. #1, 1st Revised Page 7-346. This is also available on the
FCC website at:
http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/ccb/etfs/bin/binary_out.pl?69765

1 ‘Expedites Requiring Approval.’”³²⁷ Because Section 12.2.1.2.1 relates to
2 exceptions to charging an additional fee when the emergency-based conditions are
3 met, language regarding Expedites Requiring Approval (i.e., emergency-based
4 expedites) is appropriate in that section. The general rule, requiring payment of a
5 separate expedite fee, is set forth in the other provisions of Section 12.2.1.2.

6 Also, in response to this and other Qwest complaints, Eschelon has offered a
7 second alternative that does not include the itemized emergency conditions from
8 the PCAT. Qwest also opposes Eschelon’s proposal #2. First, Ms. Albersheim
9 states that Eschelon’s proposal #2 for Issue 12-67(a) “still makes no distinction
10 between designed and non-designed service expedites.”³²⁸ Eschelon’s second
11 proposal for Section 12.2.1.2.1 specifically provides, however, that an exception
12 to charging for expedites will only be provided under the same conditions as they
13 are provided to Qwest’s retail customers. Therefore, if Qwest makes a distinction
14 between designed and non-designed service expedites for its retail customers, as
15 Ms. Albersheim claims it does,³²⁹ then Eschelon’s second proposal provides for
16 this. While this proposal offers Eschelon less contractual certainty than the first
17 proposal, it articulates a nondiscrimination standard and limits disputes at least to

³²⁷ Qwest/1, p. 61, lines 15-16. She notes a difference relating to subparagraph (f) of Eschelon’s proposal #1 for Section 12.2.1.2.1. I addressed this issue in my direct testimony. See Eschelon/9, Denney/215 at footnote 191, citing Escheon/93, Johnson/9-10 at Section 5, “Qwest Attempted to Change the Expedites Process to Exclude CLEC-Caused Disconnects in Error, But Retracted its Proposal After Eschelon Objected”, citing Initial “Expedites & Escalation Overview – V29.0.

³²⁸ Qwest/1, p. 62, lines 18-19.

³²⁹ Qwest/1, p. 56, lines 13-16.

1 the extent that the companies agree an exception is allowed.³³⁰ Second, Ms.
2 Albersheim claims Eschelon’s language does not address resource availability. I
3 address this point in my next answer.

4 **Q. QWEST CRITICIZES ESCHELON’S LANGUAGE ON THE GROUNDS**
5 **THAT IT “IMPOSES AN OBLIGATION TO PROVIDE EXPEDITES**
6 **WHETHER OR NOT RESOURCES ARE AVAILABLE.”³³¹ PLEASE**
7 **INDICATE WHETHER QWEST MADE THIS OBJECTION TO THE**
8 **LANGUAGE IN NEGOTIATIONS AND RESPOND REGARDING THE**
9 **PROPOSED LANGUAGE.**

10 A. No. Qwest neither raised it as an objection nor made any counter proposal
11 regarding resource availability in negotiations. And, Qwest’s current proposed
12 ICA language in this case also contains no resource availability language.
13 Despite Qwest’s testimony that “the expedite process should be handled in the
14 PCAT rather than the interconnection agreement,”³³² Qwest appears to suggest
15 now that this particular term should be handled in the ICA. In fact, Qwest points
16 out that its own negotiations template ICA language deals with this issue,³³³ even
17 though Qwest’s ICA language in this case refers to the PCAT instead of
18 addressing the issue in the ICA. Nonetheless, now that Qwest is claiming the ICA

³³⁰ See Qwest (Ms. Martain) Direct (Aug. 28, 2006), Arizona Complaint Docket, p. 39, lines 27-28; see *id.* p. 40, lines 4-10.

³³¹ Qwest/1, Albersheim/61, lines 9-11. See also *id.* Albersheim/62, line 16 – p. 63, line 6; *id.* Albersheim/64, line 8.

³³² Qwest/1, p. 62, lines 22 & 28-30. Although Qwest argues this language applies to resource availability, it does not actually mention resources. See *id.*

³³³ Qwest/1, Albersheim/61, lines 9-11. See also *id.* Albersheim/62, line 16 – p. 63, line 6.

1 proposals should include language regarding resource availability, Eschelon is
2 willing to accommodate Qwest's desire for exceptions to charging an additional
3 fee by providing the following alternative proposals in Oregon (with the
4 modification shown in gray shading):

5 **Issue 12-67(a) – third of four options**³³⁴

6 12.2.1.2.1 Notwithstanding any other provision of this Agreement,
7 for all products and services under this Agreement (except for
8 Collocation pursuant to Section 8), Qwest will grant and process
9 CLEC's expedite request, and expedite charges are not applicable,
10 if resources are available and one or more of the following
11 conditions are met:

12
13 **Issue 12-67(a) – fourth of four options**³³⁵

14 12.2.1.2.1 Notwithstanding any other provision of this Agreement, for
15 all products and services under this Agreement (except for Collocation
16 pursuant to Section 8), Qwest will grant and process CLEC's expedite
17 request, and expedite charges are not applicable, if Qwest does not apply
18 expedite charges to its retail Customers, such as when certain conditions
19 (e.g., fire or flood) are met and the applicable condition is met with
20 respect to CLEC's request for an expedited order. If the conditions are
21 met, but resources are not available, Qwest will grant and process
22 CLEC's expedite request only to the extent that it would grant and
23 process an expedite request for a retail Customer when resources are not
24 available.

25 **Q. YOU INDICATE THAT ESCHELON'S MODIFIED RESOURCE**
26 **AVAILABILITY PROPOSED LANGUAGE APPLIES FOR EXCEPTIONS**
27 **TO CHARGING. IS IT APPROPRIATE TO APPLY THE RESOURCE**
28 **AVAILABILITY LANGUAGE TO EXPEDITES FOR WHICH**
29 **ESCHELON PAYS THE ADDITIONAL EXPEDITE FEE?**

³³⁴ Without the gray shading, this is Eschelon's proposal #1 for Issue 12-67(a).

³³⁵ Without the gray shading, this is Eschelon's proposal #2 for Issue 12-67(a).

1 A. No. What is Qwest charging an expedite fee for, if not to make resources
2 available to expedite the order? If Qwest personnel are readily available, Qwest
3 incurs no cost to add resources for expediting an order. In the case of emergency-
4 based Expedites Requiring Approval, if resources are not available, Qwest simply
5 denies the request.

6 **Q. MS. ALBERSHEIM TESTIFIES THAT QWEST’S “CURRENT**
7 **PRACTICE” IS THAT ALL EXPEDITES (EVEN ALL FEE-ADDED**
8 **EXPEDITES) ARE SUBJECT TO RESOURCE AVAILABILITY.³³⁶ IS**
9 **THIS TESTIMONY ACCURATE?**

10 A. No. Ms. Albersheim’s testimony contradicts both Qwest’s PCAT and
11 documented Qwest statements made in CMP regarding expedites. This testimony
12 highlights one of the problems with relegating issues to CMP or the PCAT, as
13 Qwest may simply deny or re-interpret documented CMP and PCAT provisions
14 later. The terms need to be documented in an enforceable ICA that is subject to
15 Commission approval and oversight.

16 First, Qwest’s PCAT provides that the emergency-based Expedites Requiring
17 Approval (at no additional fee) are subject to resource availability, but the fee-
18 added Pre-Approved Expedites are *not*.³³⁷ Specifically, under the heading
19 “Expedites Requiring Approval” for emergency-based expedites, Qwest’s PCAT
20 states:

³³⁶ Qwest/1, Albersheim/62, lines 19-20 & 22; id. p. 63, lines 4-5.

³³⁷ Qwest’s Escalations and Expedites PCAT is provided as both Qwest/9 and Eschelon/104.

1 Once your expedite request is received, your Wholesale
2 representative will review the request based on the previous list of
3 available expedite scenarios to determine if the request is eligible
4 for an expedite. If approved, the next step is to contact our
5 Network organization to determine *resource availability*.³³⁸

6 In contrast, the fee-added “Pre-Approved Expedites” section of the PCAT does
7 not contain this step or this language.³³⁹ In fact, there is only one narrow
8 exception in the Pre-Approved Expedites section of the PCAT for resource
9 availability, and that applies when Qwest attempts service delivery but the CLEC
10 is not ready, Qwest assigns a Customer Not Ready (“CNR”) jeopardy, and CLEC
11 asks “to expedite the *newly requested* due date.”³⁴⁰ As described by Ms. Johnson,
12 when Qwest assigns a CNR jeopardy, Qwest requires CLECs to submit an order
13 requesting an interval at least three days out. In this narrow exception to the
14 general rule that Pre-Approved Expedites are not subject to resource availability,
15 if the CLEC was not ready and wants Qwest to deliver service earlier than the
16 Qwest-required three-day interval, CLEC may obtain an expedite if both the
17 CLEC pays an additional per day expedite fee³⁴¹ and resources are available.³⁴²
18 Other than this narrow circumstance (which Eschelon is willing to add to its
19 language, though Qwest would likely argue it its too much “detail”), fee-added

³³⁸ Qwest/9, Albersheim/2 (emphasis added). The phrase “if approved” refers to Qwest’s determination that one of the emergency conditions is met.

³³⁹ Qwest/9, Albersheim/3-5.

³⁴⁰ Qwest/9, Albersheim/5 (emphasis added). Regarding CNR jeopardies, see Ms. Johnson’s testimony regarding Issues 12-71 – 12-72.

³⁴¹ Qwest/9, Albersheim 1 (“If the request being expedited is for a product contained in the ‘Pre-Approved Expedites’ section below, your ICA *must contain* language supporting expedited requests *with a ‘per day’ expedite rate.*”) (emphasis added).

³⁴² Qwest/9, Albersheim/5.

1 Pre-Approved Expedites are not subject to resource availability under Qwest's
2 current PCAT process.

3 Second, Qwest confirmed when it initially implemented a fee-added Pre-
4 Approved Expedites process (which was optional at that time)³⁴³ that, *because*
5 *CLECs were paying for the expedites*, the fee-added expedites would not
6 otherwise impact resources.³⁴⁴ This is one of two assurances that Eschelon
7 obtained to determine that there was no impact on the existing emergency-based
8 option to challenge at that time (with the first assurance being that fee-added
9 expedites were optional and did not replace the existing emergency-based process
10 for loops).³⁴⁵ Ironically, this discussion occurred during CMP activity relating to
11 the Covad change request referenced in Ms. Albersheim's testimony.³⁴⁶ Although
12 she suggests there that the "current expedite process" was developed as a result of

³⁴³ A key distinction between the Covad change request and the "current" expedite process implemented by Qwest over CLEC objection is that the earlier fee-added expedites for loops were optional (so Eschelon continued to receive expedites for loops when the emergency conditions were met under the existing ICA) whereas under the more recent Qwest-initiated process, Qwest will no longer provide expedites for loops when the emergency conditions were met under the same existing ICA. *See* Eschelon/32 & Eschelon/93.

³⁴⁴ Eschelon/94, Johnson/59, row 23.

³⁴⁵ In response to Eschelon's CMP comments on the Covad change request, Eschelon obtained two commitments from Qwest (both reflected in Qwest's CMP Response): (1) implementation of the Covad CR would not result in replacement of the existing emergency-based option (*i.e.*, "If a CLEC chooses not to amend their Interconnection Agreement, the current expedite criteria and process will be used") *see* Eschelon/106, Johnson 11; and (2) resources would remain available to process expedite requests under the existing emergency-based option even with the addition of the optional fee-added alternative (*i.e.*, "this will not impact resources"), Eschelon/94, Johnson/59, row 23. Although Qwest criticizes Eschelon for not seeking postponement, oversight committee review, or dispute resolution with respect to Covad's change request (Qwest/1, Albersheim/63), there was no reason to do so, because Qwest made these commitments to Eschelon and, therefore, there was no impact on the existing emergency-based option to challenge at that time. Eschelon continued to receive expedites for loops when the emergency-based conditions were met after implementation of the Covad change request (until Qwest's Version 30 change implemented over CLEC objection). *See* Eschelon/93.

³⁴⁶ Qwest/1, Albersheim 55, line 13.

1 the Covad change request, she ignores these two fundamental premises of that
2 change.

3 Regarding resources, Eschelon made the following comment and Qwest made the
4 following reply in CMP:

5 Eschelon

6 June 18, 2004

7 Comment: Echelon objects to Qwest's premature process change based
8 on the following reasons: . . .

9 3. Qwest will confirm that if a CLEC chooses not to sign the amendment
10 and pay the Qwest approved rates (when Qwest obtains approved rates)
11 how this will impact resources for those CLECs requesting expedites for
12 the 'conditions' listed in Qwest Expedite and Escalation Overview. All
13 CLECs have been on equal footing for expediting approval. This will
14 change those dynamics.

15
16 Qwest Response . . .

17 3. If a CLEC chooses not to sign the amendment and pay the approved
18 rates, this will not impact resources. . . . This comment is accepted.³⁴⁷

19 Note that Qwest does *not* say that resources will not be impacted because Qwest
20 will not perform the expedites if resources will not be available. Qwest relied on
21 the fact that, under the new optional fee-added process, CLECs would pay to
22 make additional resources available so other resources would not be affected. As
23 discussed above, Qwest's current PCAT reflects this understanding. Before the
24 Covad change request, the PCAT reflected only emergency-based expedites (with
25 no optional fee-added process). At that time, the PCAT said: "*All* expedite

³⁴⁷ Qwest Response to Document in Review (July 15, 2004), Product/Process: Expedites
&Escalations Overview V11, Notification Number
PROS.06.29.04.F.01840.ReissueExpeditesV11, at
http://www.qwest.com/wholesale/downloads/2004/040715/DNLD_QwestResponse_Exp_Escl_V11.doc

1 requests require approval to ensure resource availability.”³⁴⁸ When Qwest
2 implemented Version 11 of the PCAT in connection with the Covad change
3 request, *Qwest redlined out and deleted this sentence,*³⁴⁹ *as resource availability*
4 *no longer applied to all expedites.* It has not appeared in the PCAT since then,
5 and it does not appear in the current PCAT.³⁵⁰ Qwest said that, with these
6 changes, CLEC customers and Qwest retail and access customers are bound by
7 the same terms,³⁵¹ which at that time still included emergency-based expedites for
8 loops.

9 **Q. WHEN ASKED HOW QWEST DEVELOPED ITS CURRENT EXPEDITE**
10 **PROCESS, MS. ALBERSHEIM BEGINS WITH A COVAD CHANGE**
11 **REQUEST AND DESCRIBES THE EXPEDITE PROCESS AS HAVING**
12 **BEEN “DEFINED AND CREATED” IN CMP.³⁵² DO YOU AGREE THAT**
13 **MS. ABLERSHEIM ACCURATELY OR COMPLETELY DESCRIBES**
14 **DEVELOPMENT OF THE EXPEDITE PROCESS?**

15 A. No. The expedite process pre-dates CMP. Qwest provided Eschelon with
16 expedite capability at no additional charge for loops and other UNEs when certain

³⁴⁸ Eschelon/101, Johnson/2 (Version 6 of the expedites PCAT) (emphasis added).

³⁴⁹ See Qwest-prepared redline of the PCAT showing deleting of this sentence, at http://www.qwest.com/wholesale/downloads/2004/040629/PCAT_Exp_Escl_V11_0_reissue.doc

³⁵⁰ Qwest/9.

³⁵¹ Qwest Response to Document in Review (July 15, 2004), Product/Process: Expedites & Escalations Overview V11, Notification Number PROS.06.29.04.F.01840.ReissueExpeditesV11, at http://www.qwest.com/wholesale/downloads/2004/040715/DNLD_QwestResponse_Exp_Escl_V11.doc

³⁵² Qwest/1, Albersheim 55-56 & p. 57, lines 5-11. See also Qwest/1, Albersheim/61, lines 6-7.

1 specified emergency conditions were met (“emergency-based expedites”) from
2 the very beginning of the interconnection relationship between Eschelon and
3 Qwest, when Eschelon opted in to the AT&T interconnection agreement in 2000
4 (before Qwest even created the expedites PCAT³⁵³).³⁵⁴ Qwest implemented the
5 process that it claims is the current expedite process via a Qwest-initiated change
6 by CMP notification³⁵⁵ over the objection of multiple CLECs including
7 Eschelon³⁵⁶ to deny CLECs the capability to expedite orders for loops and other
8 UNEs using the emergency-based expedites process (or any process) under the
9 same ICA as Eschelon had been receiving expedites, without amendment.³⁵⁷
10 Despite Qwest’s suggestions that these changes were associated with Covad’s
11 change request,³⁵⁸ Qwest’s objectionable changes were not initiated by Covad or

³⁵³ See Eschelon/96 (Sept. 22, 2001 product notification) (discussed in Eschelon/93, Johnson/5).

³⁵⁴ See, e.g., Eschelon/107 (Examples of Expedite Requests Approved by Qwest for Unbundled Loop Orders); see also Arizona Complaint Docket, at Answer, May 12, 2006, p. 9, ¶ 14, lines 24-25 (“Qwest admits that it previously expedited orders for unbundled loops on an expedited basis for Eschelon. . .”); See also Qwest (Ms. Novak) Direct (July 13, 2006) (Arizona Complaint Docket), p. 5, lines 5-12 & lines 21-22 (Qwest “uniformly followed the process in existence at the time for expediting orders for unbundled loops”).

³⁵⁵ See Eschelon/108 (Qwest notice annotated to highlight information showing it was a Qwest-initiated notice not associated with any change request by Covad or any other CLEC).

³⁵⁶ See Eschelon/93, Johnson/12-15 (summary in Chronology); Eschelon/94, Johnson/1-5 (Rows 2-14); Eschelon/102, Johnson/7-10; Eschelon/103, Johnson/13-18. For example, Integra made the following objection: “Integra objects to Qwest proposed change to remove the existing approval required expedite process for designed products. When Integra signed the Qwest Expedite Amendment we were not advised that by signing the amendment it would change the current Expedites Requiring Approval process. We signed the amendment believing that this would ADD to our options of having an order completed outside the standard interval. When Integra signed the amendment UBL DS0 loops were not included as a product on the list of products in the ‘Pre- Approved Expedites’ list. When the UBL DS0 was added to this list Integra did not comment as at that time we still believed the Expedites Requiring Approval process was in place for our use.”

³⁵⁷ See Eschelon/93 (Chronology) & Eschelon/97/Johnson 1 (Qwest notice effective January 3, 2006).

³⁵⁸ See, e.g., Qwest/1, Albersheim/55, lines 21-22 (“hence, Covad’s change request”).

1 any other CLEC.³⁵⁹ I summarized these events in my direct testimony,³⁶⁰ and
2 they are described in detail by Ms. Johnson in her chronology and the other
3 expedite exhibits that are part of her direct testimony.³⁶¹

4 Expedites, as they should be available today, is provided for in the existing
5 Qwest-Eschelon ICAs, which have not changed since Qwest provided emergency-
6 based expedites to Eschelon under that very same approved ICA.³⁶² In testimony
7 in the pending Arizona Complaint Docket, Arizona Staff concludes regarding
8 expedites that “Qwest did not adhere to the terms and conditions of the current
9 Qwest-Eschelon Interconnection Agreement.”³⁶³

10 **Q. MS. ALBERSHEIM PROVIDES QWEST DEFINITIONS OF DESIGNED**
11 **AND NON-DESIGNED SERVICES.³⁶⁴ DO THESE DEFINITIONS**
12 **APPEAR IN THE PROPOSED ICA?**

13 A. No. In negotiations, Eschelon asked Qwest to include definitions of these terms
14 in the ICA, but Qwest refused to do so. Qwest’s ICA proposal contains no
15 definitions of these terms, and Eschelon has been unable to find the definitions in
16 the PCAT to which Qwest’s ICA proposal refers. Ms. Albersheim admits that,

³⁵⁹ See Eschelon/108 (Qwest notice annotated to highlight information showing it was a Qwest-initiated notice not associated with any change request by Covad or any other CLEC).

³⁶⁰ Eschelon/9, Denney/204-206 & Eschelon/32.

³⁶¹ Eschelon/93 (Chronology) and Eschelon/94 – Eschelon/109.

³⁶² Eschelon/32; Eschelon/9, Denney/204 at footnote 170.

³⁶³ Arizona Staff conclusions are summarized in the Direct Testimony of Pamela Genung, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (“Arizona Complaint Docket”) (Jan. 30, 2007) (“Arizona Staff Expedite Testimony”) at Executive Summary. This Executive Summary was provided as Eschelon/33.

³⁶⁴ Qwest/1, Albersheim/56-57.

1 when in CMP Qwest took away the emergency-based “Expedites Requiring
2 Approval” exception to charging for expedites for loops that it previously
3 provided under the existing ICA for loops (including DS0 loops), it did so based
4 on its distinction between designed and non-designed services.³⁶⁵ Qwest would
5 not, however, agree to define those terms in the ICA. In fact, Qwest’s proposal
6 for the new ICA is to eliminate the emergency-based exceptions to charging an
7 additional expedite fee by limiting availability of expedites under the ICA to those
8 described at any given time in the fee-added “Expedites Requiring Approval” in
9 Qwest’s PCAT.³⁶⁶

10 **Q. PLEASE RESPOND TO MS. ALBERSHEIM’S CLAIM THAT ITS TWO**
11 **DIFFERENT PCAT EXPEDITE OFFERINGS RELATED TO**
12 **DIFFERENCES BETWEEN QWEST’S RETAIL POTS AND DESIGN**
13 **TARIFF PRODUCT OFFERINGS.**³⁶⁷

14 A. Although Qwest claims it makes this differentiation for Qwest retail,³⁶⁸ the terms
15 designed and non-designed are also not clearly defined throughout Qwest’s
16 tariffs. In its testimony in the Arizona Complaint Docket, Arizona Staff said that
17 it could not find the definitions in Qwest’s intrastate tariffs³⁶⁹ and made the
18 following conclusion: “Qwest should include a definition of designed and

³⁶⁵ Qwest/1, Albersheim/56, lines 11-12.

³⁶⁶ Qwest proposed language for Section 7.3.5.2.2 (emphasis added); *see also* 9.1.12.1.2 (same except it says “expedites” rather than “expedite charges”). By limiting expedites to the fee-added “Pre-Approved Expedite Process,” Qwest is indicating that the emergency-based “Expedites Requiring Approval” process is not available under the ICA at all. *See id.*

³⁶⁷ Qwest/1, Albersheim/56, lines 13-16 & p. 57, lines 5-11.

³⁶⁸ Qwest/1, Albersheim/56, lines 13-14.

³⁶⁹ Arizona Staff Testimony (Ms. Genung), p. 23, lines 18-19.

1 nondesigned services in its Arizona tariffs.”³⁷⁰ In that case, Qwest said: “the *only*
2 retail analogue is between *high capacity* loops (DS1 and DS3 Capable Loops) and
3 high-capacity private lines.”³⁷¹ Ms. Albersheim does not explain why she
4 nonetheless refers to the Qwest retail tariff as the comparable comparison for all
5 loops, including DS0 loops, for this purpose.

6 Qwest does not charge its retail customers an additional expedite fee in all cases;
7 rather, Qwest provides exceptions to charging an additional fee for expedites
8 under certain conditions, including retail customers ordering services such as
9 private line that Qwest would designate as a designed service.³⁷² In other words,
10 Ms. Albersheim’s statement that Qwest offers *only* fee-based expedites to its retail
11 design services is not supported by Qwest’s tariffs for designed services.³⁷³
12 Further, Qwest had been offering emergency-based expedite for both design and
13 non-design facilities for many years, up until recently, and the “complexity” of

³⁷⁰ Eschelon/33, Denney 2, Conclusion No. 5.

³⁷¹ Qwest’s Response to Eschelon’s Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, *In the Matter of the Complaint of Eschelon Telecom of Arizona Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (Aug. 18, 2006) [“Arizona Complaint Docket”], p. 17, lines 8-9 (emphasis added).

³⁷² Qwest (Ms. Martain) Direct (Aug. 28, 2006), Arizona Complaint Docket, p. 40, lines 4-10 (“The tariff then goes on to state that if the end user elects to move service to a temporary location (either within the same building, or a different building) that non-recurring charges would apply. This would include the non recurring charge to expedite a design service. However, when the customer moves its service, via a service order, back to the original premise location, if it meets the criteria as outlined in 3.2.2.d included below, the non-recurring charges would be *waived (including the expedite fee)*” (emphasis added)).

³⁷³ Similarly, Ms. Albersheim’s assertion that non-designed expedites “are free” (Qwest/1, Albersheim/61, line 6) is unsupported. For example, Qwest offers an “express service” which essentially is an expedite service offered to residential customers in some states and defined as provisioning of access line dial tone prior to the standard installation service date. Under its express service offering, Qwest offers same-day installation for \$22 flat (per order) fee in Colorado. See Qwest Colorado Services Catalog No. 1, Original Sheet 8 Effective 12-09-05. There is no requirement that emergency conditions be met to obtain express service for this fee. *See id.*

1 design services had not been an issue for all these years. Ms. Albersheim did not
2 explain why *complexity of design facilities* necessarily means *complexity of*
3 *expedites for design facilities*. Finally, Qwest does not explain how these
4 complexities can possibly justify a rate difference of \$200 per day. As I discuss
5 above, Qwest performs the same provisioning work for an expedited order as it
6 does for an order provisioned within normal service intervals -- the only
7 difference is that Qwest performs the function sooner than it would otherwise.

8 **IX. RATES FOR SERVICES, UNAPPROVED RATES AND**
9 **INTERCONNECTION ENTRANCE FACILITIES (SUBJECT MATTER**
10 **NOS. 44, 45 & 46)**

11 **SUBJECT MATTER NO. 44. RATES FOR SERVICES**

12 Issues 22-88, 22-88(a) and 22-89: ICA Sections 22.1.1 and 22.4.1.3, and Exhibit
13 A, Section 7.11.

14 **Q. PLEASE SUMMARIZE ISSUE 22-88 AND ITS SUBPARTS.**

15 A. Issues 22-88 and 22-88(a) deal with the language characterizing rates contained in
16 Exhibit A.³⁷⁴ Eschelon proposes that rates in Exhibit A be referred to in general
17 terms, as “rates for services,” without specifying the provider of services. Qwest
18 proposes that rates in Exhibit A be referred to as Qwest’s rates. As I explained in
19 my direct testimony, a number of rates contained in Exhibit A apply to Eschelon’s
20 charges to Qwest.³⁷⁵ Therefore, the ICA and its Exhibit A should not inaccurately

³⁷⁴ Issue 22-88 deals with the general references to rates in Exhibit A, while Issue 22-88(a) deals with a specific line item in Exhibit A describing rates for IntraLATA toll traffic.

³⁷⁵ See numerous citations from the agreed-upon language of the ICA contained in Denney Direct (Eschelon/9, Denney/244-247).

1 confine rates to “Qwest rates” or misleadingly refer solely to “Qwest tariffs,” as
2 proposed by Qwest. Eschelon’s proposal for Issue 22-89 complements the
3 already agreed-upon portions of the ICA³⁷⁶ that set a process for establishment of
4 interim rates. Eschelon’s proposal for Issue 22-89 clarifies that each company has
5 a right to request a cost proceeding at the Commission to set permanent rates.

6 **Q. WHAT ARGUMENTS DOES QWEST MAKE AGAINST ESCHELON’S**
7 **PROPOSAL IN ITS DIRECT TESTIMONY?**

8 A. Mr. Easton claims that Qwest does not purchase any services from Eschelon, and
9 therefore, rates in Exhibit A apply only to Qwest’s services.³⁷⁷ The various
10 citations to agreed-upon contract language that I refer to in my direct testimony³⁷⁸
11 demonstrate that Mr. Easton is simply incorrect: Qwest does potentially buy
12 services from Eschelon, including those related to transit and exchange of traffic,
13 trouble isolation, managed cuts, and installation of interconnection trunks. Many
14 of these rates are set at the levels specified in Exhibit A. Mr. Easton is also wrong
15 when he claims that Exhibit A need not refer to charges from Eschelon to Qwest
16 because they are “spelled out specifically in the ICA.”³⁷⁹ The citations to the ICA
17 in my direct testimony show that, without Exhibit A, it is often impossible to
18 identify rates that Eschelon would charge. For example, the following provision

³⁷⁶ Section 22.6.1.

³⁷⁷ Qwest/13, Easton/39.

³⁷⁸ Eschelon/9, Denney/244-247.

³⁷⁹ Qwest/13, Easton/39, line 23.

1 is clearly insufficient – *unless Exhibit A is used as the source of Eschelon’s rates*
2 –to determine what rate Eschelon would charge Qwest:

3 **8.2.3 General Terms--Caged and Cageless Physical Collocation**

4 8.2.3.10 ...If, pursuant to the random audit, Qwest does not
5 demonstrate non-compliance, *Qwest shall pay CLEC using the*
6 *rates in Exhibit A for Additional Labor Other, for CLEC time*
7 *spent, if any, as a result of Qwest’s audit...*

8 **Q. REGARDING ISSUE 22-88(A) “RATES FOR INTRA-LATA TOLL**
9 **TRAFFIC,” MR. EASTON CLAIMS THAT A REFERENCE TO QWEST’S**
10 **ACCESS TARIFF (RATHER THAN SIMPLY TO OREGON ACCESS**
11 **TARIFF) IS APPROPRIATE BECAUSE THE CONTRACT ALREADY**
12 **SPELLS OUT WHEN ESCHELON’S ACCESS RATES APPLY. PLEASE**
13 **RESPOND.**

14 A. As I explained above, Exhibit A contains rates charged by both Qwest and
15 Eschelon. Therefore, referring to rates for the mutual exchange of intraLATA toll
16 traffic in Exhibit A as “Qwest’s rates” is misleading. As I explained in my direct
17 testimony,³⁸⁰ comparison of the agreed-upon *contract language* and *Qwest’s*
18 *proposed language for Exhibit A* creates confusion and unnecessary ambiguity.
19 On the one hand, the contract spells out a situation in which the *CLEC charges*
20 *Qwest* for intraLATA toll, and on the other hand, under Qwest’s proposal, Exhibit
21 A would say that rates for intraLATA toll traffic are to be found only in *Qwest’s*
22 Access Tariff. Qwest’s proposed language could lead to the mistaken conclusion

³⁸⁰ Eschelon/9, Denney/249-250.

1 that a CLEC must charge access rates out of Qwest's, rather than the CLEC's
2 own, access tariff.

3 **Q. REGARDING ISSUE 22-89, MR. EASTON STATES THAT ESCHELON'S**
4 **PROPOSED LANGUAGE IS "UNNECESSARY."³⁸¹ PLEASE RESPOND.**

5 A. Mr. Easton testifies that "[g]iven that commission rules and federal law govern a
6 parties' right to initiate a cost proceeding, there is no need to address it in a
7 contract."³⁸² I explained in my direct testimony why Eschelon's proposed
8 language was necessary³⁸³ and that Qwest has agreed to Eschelon's language in
9 Minnesota.³⁸⁴ The above quote from Mr. Easton's testimony confirms my direct
10 testimony that "Qwest does not deny that each party has the right to request a cost
11 proceeding; it simply claims that such a provision is unnecessary in the ICA"³⁸⁵ –
12 and contrary to Qwest's claim, Eschelon's language is necessary due to the
13 relationship this language has with other agreed-to and Eschelon-proposed
14 language in the ICA.³⁸⁶

15 Mr. Easton also warns about potential "danger" that "by including rights such as
16 this one, it could create a risk that other rights not listed are excluded."³⁸⁷

17 Eschelon's language is not about the ICA including or excluding rights, rather it

³⁸¹ Qwest/13, Easton/42, line 10.

³⁸² Qwest/13, Easton/42, lines 10-12.

³⁸³ Eschelon/9, Denney/252.

³⁸⁴ Eschelon/9, Denney/252-253.

³⁸⁵ Eschelon/9, Denney/252.

³⁸⁶ Eschelon/9, Denney/251-252.

³⁸⁷ Qwest/13, Easton/42.

1 simply clarifies that nothing in the ICA is a waiver of rights to seek permanent
2 rates³⁸⁸ – rights that Qwest concedes exist.³⁸⁹ This clarification is appropriate
3 because it ensures that if Qwest files rates and cost support but there is no cost
4 case and full review by the Commission, the interim rates do not remain in effect
5 indefinitely if one of the companies asks the Commission to review them.³⁹⁰

6 What is troubling is that Qwest has argued that arbitrations are not the proper
7 forum to deal with disputes in rates – though it has proposed in this proceeding
8 interim rates from New Mexico.³⁹¹ At the same time Qwest proposes to strike
9 language that would specifically allow Eschelon to raise disputes with regard to
10 cost. In negotiations Qwest told Eschelon that only Qwest could bring a cost case
11 to the Commission. As a result, Eschelon’s language is clearly necessary.

³⁸⁸ Eschelon/9, Denney/251, lines 20-21.

³⁸⁹ Qwest/13, Easton/42, lines 10-11.

³⁹⁰ Eschelon/9, Denney/251-252.

³⁹¹ Qwest/12, Ashton/2 and Qwest/16, Million/4.

1 **SUBJECT MATTER NO. 45. UNAPPROVED RATES**

2 Issue No. 22-90 and Subparts (a)-(ae): ICA Sections 22.6, 22.6.1, 22.4.1.1 and
3 Exhibit A Sections 8.1.1.2, 8.1.2.2, 8.1.2.3, 8.1.2.4, 8.1.5 and subparts, 8.1.8 and
4 subparts, 8.1.9.2, 8.1.12, 8.1.14, 8.1.16, 8.2.1.1, 8.3.1.1, 8.4.1.1, 8.15.4.1,
5 8.15.4.2, 8.4.2.4.1, 8.4.2.4.2, 8.4.2.4.3, 8.4.2.4.4, 8.15.1.2.2, 8.6.1.2, 8.6.1.3.1,
6 8.6.2.2.2, 8.6.2.2.3.1, 8.6.2.2.3.2, 8.7.2.1, 8.7.2.2, 8.7.2.3, 8.7.3.1, 8.7.3.2, 8.7.3.3,
7 8.7.4, 8.8 and subparts, 8.12 and subparts, 8.13 and subparts, 8.15.2 and
8 subparts, 8.16 and subparts, 8.17.1, 8.17.2, 9.2.5.5.1.2, 9.2.5.5.2.2, 9.2.6.5.1.2,
9 9.2.6.5.2.2, 9.2.8, 9.3.3.1.1, 9.3.3.2, 9.3.3.3 and subparts, 9.3.3.4 and subparts,
10 9.6.11 and subparts, 9.6.12, 9.7 and subparts, 9.20 and subparts, 9.23.7,
11 9.23.7.11.1, 9.23.7.11.2 and subparts, 10.7.12, and 10.7.12.1.

12 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 22-90 AND ITS**
13 **SUBPARTS.**

14 A. Issue 22-90 concerns Qwest’s filing with the Commission for the approval of
15 previously unapproved rates for section 251 products. As discussed in my direct
16 testimony, it is important that rates are substantiated and approved in a timely
17 manner.³⁹² In Section 22.6 and subparts of the proposed interconnection
18 agreement (Issue 22-90), Eschelon proposes a process for ensuring that Qwest’s
19 “going-in” positions or “wish-list” rates are not unilaterally implemented and then
20 remain in effect indefinitely. Very often, in cost cases, Qwest does not obtain
21 commission approval, with no modification, of Qwest’s “going-in” position for its
22 desired rate. Commissions often approve something different than any one
23 party’s wish list of desired rates. Certainly, commissions generally do not order
24 rates that are *greater than* Qwest’s own proposed rates (making Qwest’s
25 proposals the highest possible rates to be imposed).

³⁹² Eschelon/9, Denney/254-255.

1 The proposed process explicitly anticipates and allows for Commission
2 establishment of interim rates before or after Qwest files cost support with the
3 Commission.³⁹³ Eschelon’s proposal follows a commission decision in
4 Minnesota.³⁹⁴ Eschelon’s proposal also includes language that was added to
5 confirm that the contract requirements regarding obtaining approval of
6 unapproved rates are the same as those ordered in Minnesota.³⁹⁵

7 Minnesota is currently the only Qwest state in which Exhibit A contains no rates
8 for certain items for which Qwest has neither obtained a Commission-approved
9 rate or filed cost support and complied with that process and yet Qwest must
10 provide the product under the terms of the interconnection agreement. In the
11 other states (including Oregon), Qwest currently may force its wish list rates upon
12 CLECs by refusing to provide the product at all if CLECs do not sign an

³⁹³ Proposed ICA Sections 22.6.1 and 22.6.1.1. Qwest appears to be attempting to interpret the language in a manner that limits establishment of interim rates to a cost proceeding after Qwest files its cost support, but that is not what the language (including the portion agreed upon by Qwest) provides. See 22.6.1.1 (including a scenario under which Qwest has *not* filed cost support but the Commission *has* set interim rates, so the Commission-established interim rates – and not Qwest’s proposed rates – apply).

³⁹⁴ Eschelon/9, Denney/256-257. October 2, 2002 Order in MN PUC Docket CI-01-1375 (“MN 271 Cost” Docket). Specifically, “Summary of the Commission’s findings and conclusions” contains the following provisions on pp. A-6 and A-7: “**Price Under Development:** Qwest shall obtain Commission approval before charging for a UNE or process that it has previously offered without charge. Qwest may negotiate an interim price for a UNE and service not previously offered in Minnesota provided that Qwest file a permanent price, and related cost support, with the Commission within 60 days of offering the UNE or service. ALJ Report p. 64.**New UNE Price:** When offering a new UNE, Qwest shall file a cost-based price, together with an adequate description of the UNE’s application, for Commission review within 60 days of offering. Qwest may charge a negotiated rate immediately if part of an approved interconnection agreement (ICA), provided the ICA is filed for Commission review within 60 days.”

³⁹⁵ Although the companies closed upon different language in Minnesota, the Minnesota order will require adherence to that order in Minnesota. When it became apparent that Qwest was attempting to interpret Eschelon’s proposed language in Minnesota more narrowly – despite Eschelon’s clear indications that the intent is for the result to be the same across states – Eschelon expanded its language in other states to reflect the Minnesota order more fully. Eschelon/9, Denney/258.

1 amendment containing its unapproved rates.³⁹⁶ The result in Minnesota is the
2 appropriate result when Qwest has both not met its burden to show that its rates
3 meet the cost-based standard and not taken reasonable steps to obtain interim or
4 permanent rates from the Commission.

5 Qwest objects to Eschelon's interim rate process³⁹⁷ and instead seeks to maintain
6 the status quo which would allow Qwest to charge its proposed interim rates
7 indefinitely. While, unlike in other states, Qwest agrees to arbitrate interim rates
8 in this arbitration,³⁹⁸ this only solves the problem with unapproved rates that
9 exists today, but does not address how to deal with unapproved rates going
10 forward. Eschelon has proposed language specific language to be included in the
11 ICA to deal with both rates for new products and rates for products or services
12 that Qwest currently offers without additional (or separate) charge. The language
13 further provides that, when the companies are unable to agree on a negotiated
14 rate, the Commission, not Qwest, may establish the interim rate.

15 What Eschelon's proposed language would not permit is what Qwest has
16 historically done in Oregon: simply impose rates that have not been agreed to and
17 that the Commission has not reviewed and leave those rates in place indefinitely.

³⁹⁶ See e.g., Eschelon/33, Direct Testimony of Pamela Genung, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (Jan. 30, 2007) ("Staff Expedite Testimony") at Executive Summary ("CLECs should not be forced into signing" Qwest's expedite amendment with Qwest's \$200 per day rate. Staff Testimony, p. 34, lines 10-11. Staff added that "since CLEC interconnection agreements are voluntarily negotiated or arbitrated," Qwest could have taken the issue to arbitration under the Qwest-Eschelon ICA, "rather than trying to force Eschelon into signing an amendment." *Id.* p. 36, line 21 – p. 37, line 2.).

³⁹⁷ Qwest/13, Easton/43.

³⁹⁸ Qwest/16, Million/23, lines 1-3.

1 **Q. IS ESCHELON PROPOSING THAT THE COMMISSION HAVE A FULL**
2 **COST CASE TO SET PERMANENT RATES IN THIS DOCKET?**

3 A. No. As explained in my direct testimony, there are a number of rates in Exhibit A
4 for which Qwest either lacks cost support, or has proposed rates that are in
5 violation of prior Commission orders. Eschelon's proposals for Issues 22-90(b)
6 through 22-90(ae) would establish **interim rates** for products and services for
7 which the Commission has not established an approved rate. Eschelon's interim
8 rate proposal reflects the rates Eschelon pays to Qwest today, under its current
9 contract, and also more closely aligns interim rates with prior Commission cost
10 case decisions than either of Qwest's interim rate proposals.³⁹⁹ As discussed
11 below, Qwest's new interim rate proposal approach is similar to Eschelon's
12 approach in that it would not require a full cost case. In addition, as discussed in
13 my Direct Testimony, one solution is for this Commission simply to order Qwest
14 to incorporate the Commission's findings in UT 138/139 into its cost studies in
15 order to establish interim rates.⁴⁰⁰

16 **Interim Rate Language Proposals – Issues 22-90 and 22-90(a)**

17 **Q. IN THE ESCHELON-QWEST ARBITRATIONS IN OTHER STATES,**
18 **QWEST RAISED A NUMBER OF CONCERNS REGARDING**
19 **ESCHELON'S PROPOSAL FOR 22-90 AND 22-90 (A). DOES QWEST**

³⁹⁹ Qwest offered a new interim rate proposal in its direct testimony (Qwest/16, Million/22-26). It is unclear whether this replaces or is an alternative to Qwest's prior interim rate proposal.

⁴⁰⁰ Eschelon/9, Denney/274-275.

1 **RAISE THE SAME CONCERNS IN ITS DIRECT TESTIMONY IN**
2 **OREGON?**

3 A. No. Qwest’s arguments and positions on Issues 22-90 and 22-90(a) are different
4 in Oregon than in other states. In his direct testimony in the Colorado Eschelon-
5 Qwest arbitration proceeding for example, Mr. Easton testified that Eschelon’s
6 language for Issue 22-90 would: (i) create “the opportunity to delay or eliminate
7 compensation for services Qwest provides in the time period prior to the
8 Commission making a decision regarding the new rate”;⁴⁰¹ (ii) potentially “apply
9 to pricing beyond Section 251 products and services”⁴⁰²; and (iii) require notice
10 and cost studies even when the rates “will not impact them.”⁴⁰³ Mr. Easton also
11 claimed (erroneously) in his Colorado Direct Testimony that there were three
12 scenarios where Eschelon’s language for 22-90 would result in Eschelon getting
13 services for free.⁴⁰⁴ In contrast, Mr. Easton’s Oregon direct testimony does not
14 make any of these claims.⁴⁰⁵ Instead, Mr. Easton’s argument has been reduced to
15 one sentence describing Qwest’s concern with Eschelon’s proposed ICA language
16 for Issues 22-90 and 22-90(a): “This process is not one that this Commission has
17 deemed to be necessary in the past, and given that Qwest has agreed to litigate
18 disputed rates in this proceeding, such a process is not necessary now.”⁴⁰⁶

⁴⁰¹ Easton Colorado Direct Testimony (06B-497T, 12/15/06), p. 36.

⁴⁰² Easton Colorado Direct Testimony (06B-497T, 12/15/06), p. 36.

⁴⁰³ Easton Colorado Direct Testimony (06B-497T, 12/15/06), p. 37.

⁴⁰⁴ Easton Colorado Direct Testimony (06B-497T, 12/15/06), p. 36.

⁴⁰⁵ I include these examples in my testimony to illustrate how Mr. Easton’s testimony on Issue 22-90 and subparts has changed from state to state. If Mr. Easton makes these arguments later in this proceeding, I will address them then.

⁴⁰⁶ Qwest/13, Easton/43.

1 Contrary to Mr. Easton’s new arguments on this issue, Eschelon’s language for
2 22-90 and 22-90(a) (Sections 22.6.1 and 22.6.1.1) is necessary.

3 **Q. PLEASE ELABORATE ON THE CHANGE IN QWEST’S POSITION ON**
4 **THIS ISSUE FROM PREVIOUS STATES.**

5 A. In other states Qwest has refused to negotiate and has attempted to avoid litigation
6 regarding interim rates in these arbitration cases, claiming that arbitrations are not
7 the appropriate venue to set rates,⁴⁰⁷ while at the same time submitting its own
8 interim rate proposals in the arbitrations and demanding that Eschelon “take it or
9 leave it.”⁴⁰⁸ Unfortunately for Eschelon, the “leave it” alternative entails Qwest
10 refusing to provide the product or service.⁴⁰⁹ In Oregon, however, “Qwest has
11 agreed to litigate disputed rates in this proceeding,”⁴¹⁰ and Mr. Easton argues that
12 because of this, Eschelon’s proposals for 22.6.1 and 22.6.1.1 are unnecessary.

13 **Q. PLEASE RESPOND TO MR. EASTON’S CLAIM THAT ESHELON’S**
14 **LANGUAGE FOR ISSUES 22-90 AND 22-90(A) IS UNNECESSARY.**

⁴⁰⁷ See e.g., Easton Colorado Direct Testimony (06B-497T, 12/15/06), p. 39 (“a cost docket is the most appropriate place to determine rates, not an arbitration between only two parties”).

⁴⁰⁸ Eschelon/9, Denney/277.

⁴⁰⁹ For example, this January in Arizona, Eschelon had to enter into an amendment to its current agreement containing Qwest’s proposed rate before Qwest would provide CLEC-to-CLEC cross connects, even though Eschelon proposed to Qwest rates for this element that are consistent with the Arizona Commission’s prior order. Similarly, Qwest has consistently refused to negotiate a wholesale interim rate for expediting orders (as discussed further regarding Issue 12-67 and subparts). In an Eschelon complaint case against Qwest under the existing ICA, Staff in Arizona concluded that “CLECs should not be forced into signing” the expedite amendment. See Eschelon/33, Direct Testimony of Pamela Genung, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (Jan. 30, 2007) [“Arizona Complaint Docket”], p. 34, lines 10-11. The Staff added that “since CLEC interconnection agreements are voluntarily negotiated or arbitrated,” Qwest “rather than trying to force Eschelon into signing an amendment,” could have taken the issue to arbitration under the Qwest-Eschelon ICA. *Id.* p. 36, line 21 – p. 37, line 2.

⁴¹⁰ Qwest/13, Easton/43.

1 A. Qwest’s new position to agree to litigate rate issues in this arbitration does not
2 change the need to establish a process for dealing with unapproved rates going
3 forward. Without Eschelon’s language for Issues 22-90 and 22-90(a), Qwest
4 would still be allowed to commence billing for a UNE process that it previously
5 offered without a unique charge in Oregon without Commission approval – and
6 because Qwest opposes Eschelon’s language for 22-89, Qwest would be allowed
7 to assess that charge on Eschelon indefinitely. And to Mr. Easton’s point that this
8 Commission has not deemed Eschelon’s language to be necessary in the past, Mr.
9 Easton does not indicate that the Commission has not had the opportunity to
10 address this issue in the past. One only needs to review the impact of Qwest’s
11 September 1, 2005 non-CMP notification on design changes, where Qwest
12 unilaterally began charging CLECs a rate for loop design changes that was not
13 approved by any state commission in every Qwest state except Minnesota,⁴¹¹ to
14 understand that this language, which reflects the requirement in Minnesota, is
15 needed. Eschelon’s language is also needed to avoid putting Eschelon in a Catch
16 22 of being required to intervene in a commission cost case to see Qwest’s cost
17 filing, while Eschelon needs the cost information to decide whether or not to
18 intervene in that Qwest cost case.⁴¹²

19 **Q. MR. EASTON TESTIFIES THAT “QWEST HAS AGREED TO LITIGATE**
20 **DISPUTED ISSUES IN THIS PROCEEDING.”⁴¹³ SHOULD RESOLUTION**

⁴¹¹ See Eschelon/40-44 and 261-262 and Eschelon/10.

⁴¹² Eschelon/9, Denney/263.

⁴¹³ Qwest/13, Easton/43.

1 **OF RATE ISSUES IN AN ARBITRATION DEPEND ON QWEST’S**
2 **AGREEMENT?**

3 A. No. Section 252(b)(4)(c) of the Federal Telecommunications Act (the “Act”)
4 requires the Commission to resolve each issue set forth in the petition.⁴¹⁴ The Act
5 expressly envisions that individual arbitration proceedings may involve rates
6 issues. To that end, Section 252(c) requires that a state commission, “in resolving
7 *by arbitration*” any open issues and imposing conditions upon the parties to the
8 agreement, “*shall establish any rates* for interconnection, services or network
9 elements according to subsection (d) of this section.”⁴¹⁵ The FCC’s rules also
10 recognize that state commissions may set rates in arbitration proceedings and
11 therefore impose a duty to produce in negotiations cost data relevant to setting
12 rates in arbitration.⁴¹⁶ There would be no reason to require that this data be
13 provided if rates were not proper subject for arbitration, and therefore the rule
14 specifically refers to cost data relevant to setting rates “in arbitration.”⁴¹⁷ Qwest’s
15 new position to litigate rate issues in the arbitration is an agreement to do what is
16 already required by the Telecommunications Act. However, as discussed above,
17 there has been no real negotiation of Qwest’s new interim rate proposal.

⁴¹⁴ 47 U.S.C. § 252(b)(4)(c).

⁴¹⁵ 47 U.S.C. § 252(c) (emphasis added). Section 252(d) of the Act sets forth the applicable pricing standards for interconnection, network elements, and resale at wholesale rates of ILEC retail services. It states that rates shall be cost-based and nondiscriminatory. 47 U.S.C. § 252(d)(1)(A)(i) & (ii).

⁴¹⁶ 47 C.F.R. § 51.301(c)(8)(iii) (“If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith: . . . (8) Refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to: . . . (ii) Refusal by an incumbent LEC to furnish *cost data* that would be relevant to *setting rates* if the parties were *in arbitration*.”) (emphasis added).

⁴¹⁷ *Id.*

1 **Interim Rate Proposals – Issues 22-90(b) through 22-90(ae)**

2 **Q. DO YOU HAVE A CORRECTION TO ESCHELON’S INTERIM RATE**
3 **PROPOSAL DESCRIBED IN YOUR DIRECT TESTIMONY?**

4 A. Yes, I have two corrections. First, in my direct testimony on Issues 22-90 and
5 subparts, I explained how Eschelon developed its interim rate proposals for rate
6 elements under Issues 22-90(b) through 2-90(ae).⁴¹⁸ I explained that for some of
7 Eschelon’s interim rates, it adjusted Qwest’s previously-proposed rates to account
8 for prior Oregon decisions on TELRIC rates (*e.g.*, adjustments to reflect
9 Commission-ordered flow through rates). I listed the interim rates for which
10 Eschelon adjusted Qwest’s cost studies at pages 273 and 269-270 and 283-284 of
11 my direct testimony,⁴¹⁹ and I explained Eschelon’s adjustments in more detail in
12 Eschelon/25. When creating Eschelon/25, I discovered an error in my original
13 adjustments to Qwest’s cost study, so I corrected that error and included the
14 corrected results in Eschelon/25. I did not, however, make that correction in the
15 rates shown in my direct testimony at pages 269-270 and 283-284.⁴²⁰ Therefore,
16 the rate elements for Exhibit A Sections 9.6.12 (Private Line/Special Access to
17 UDIT Conversion NRC - \$70.91);⁴²¹ 9.23.6.8.1 (LMC Rearrangement DS0 NRC
18 - \$107.93);⁴²² 9.23.6.8.2 (LMC Rearrangement High Capacity NRC - \$154.25);⁴²³

⁴¹⁸ Eschelon/9, Denney/264-286.

⁴¹⁹ Eschelon/9, Denney/269-270, 273 and 283-284.

⁴²⁰ Eschelon/9, Denney/269-270 and 283-284.

⁴²¹ This rate element is shown as \$66.70 in my direct testimony (Eschelon/9, Denney/270 and 283). This rate should be corrected to reflect the rate in Eschelon/5.

⁴²² This rate element is shown as \$97.21 in my direct testimony (Eschelon/9, Denney/270 and 284). This rate should be corrected to reflect the rate in Eschelon/5.

⁴²³ This rate element is shown as \$97.62 in my direct testimony (Eschelon/9, Denney/270 and 284).

1 9.23.7.7.1 (EEL Rearrangement DS0 NRC - \$107.93);⁴²⁴ and 9.23.7.7.2 (EEL
2 Rearrangement High Capacity NRC - \$154.25)⁴²⁵ shown in Eschelon/25 are
3 correct.⁴²⁶ The for these same rate elements in my direct testimony at pages 270,
4 283 and 284 should be corrected to reflect the rates shown in Eschelon/25.

5 The second correction is to Eschelon's proposal for power plant rate elements
6 8.1.4.1.1 less than 60 Amps and 8.1.4.1.2 greater than or equal to 60 Amps. As
7 discussed in my direct testimony⁴²⁷ and below I attempted to utilize the rates from
8 Eschelon's current interconnection agreement with Qwest. Eschelon's current
9 interconnection agreement with Qwest contains a rate of \$7.52 for power plant
10 and is not dependent on whether Eschelon orders greater than or less than 60
11 Amps. Eschelon's proposal for this rate element should reflect this rate.

12 **Q. REGARDING ISSUE 22-90, MS. MILLION MAKES A NUMBER OF**
13 **INTRODUCTORY STATEMENTS ON PAGE 22 OF HER TESTIMONY.**
14 **WOULD YOU LIKE TO RESPOND?**

15 A. Yes. Ms. Million makes four statements that mix fact with advocacy and
16 misconception that should be clarified. Ms. Million states that "many state
17 commissions believed that it was their duty to adopt rates there were on the low

This rate should be corrected to reflect the rate in Eschelon/5.

⁴²⁴ This rate element is shown as \$97.21 in my direct testimony (Eschelon/9, Denney/270 and 284). This rate should be corrected to reflect the rate in Eschelon/5.

⁴²⁵ This rate element is shown as \$97.62 in my direct testimony (Eschelon/9, Denney/270 and 284).

⁴²⁶ See Eschelon/25, Denney/10 and 14. Rate element 9.6.12 is shown on page 10 of Eschelon/25 and rate elements 9.23.6.8.1, 9.23.6.8.2, 9.23.7.7.1, and 9.23.7.7.2 are shown on page 14 of Eschelon/25.

⁴²⁷ Eschelon/9, Denney/277-278.

1 end of the TELRIC range in order to “jump start” local competition in their
2 states.”⁴²⁸ Eschelon disagrees with this statement. Ms. Million provides no
3 support for this statement, thus it is difficult to know on what basis she makes this
4 claim. Ms. Million’s claim leaves the impression that early on state
5 Commission’s initially low-balled TELRIC rates and this justifies the dramatic
6 rate increases proposed by Qwest. I have been involved in UNE cost dockets
7 across the Qwest territory since 1997 and have followed Commission ordered
8 rates in the Qwest states since that time. The Commissions have indicated that
9 they were setting TELRIC rates, not some policy driven lower version of TELRIC
10 rates. I agree with Ms. Million’s second statement where she states “in many
11 proceeding where commissions reduced the rates proposed by Qwest, they did so
12 on the basis of competing models presented in those proceeding by the CLECs,
13 most often AT&T.”⁴²⁹ AT&T was a major player in most initial cost cases in the
14 Qwest region and continued its involvement in the large states (AZ, CO, OR, UT
15 and WA) in the later rounds of cost cases. AT&T’s competing cost models and
16 deep pockets to provide the support for these models will be sorely missed by the
17 CLEC community. It should also be noted that state Commissions have reduced
18 Qwest’s proposed costs even without competing cost models and the lack of a
19 competing cost model should in no way lead the Commission to default to
20 Qwest’s proposed rates. I also agree in part with Ms. Million’s third statement,
21 “these same commissions rarely adopted the CLEC’s competing models without

⁴²⁸ Qwest/16, Million/22, lines 7-10.

⁴²⁹ Qwest/16, Million/22, lines 10-13.

1 making input adjustments aimed at better reflecting appropriate TELRIC costs.” I
2 agree that commissions, when setting approved rates typically made adjustments
3 to the cost studies, regardless of whose cost study (CLEC or Qwest) the
4 commission was adjusting. I did not always agree with the adjustments made by
5 state Commissions to the CLEC’s cost models,⁴³⁰ just as Qwest may not have
6 agreed with adjustments to its models. The fact that the Commission made
7 adjustments to both supports that the rates are independently developed TELRIC
8 rates. Ms. Million’s fourth statement reads, “contrary to Eschelon’s claims, state
9 commissions have adopted rates that are higher than the rates initially set in
10 earlier cost proceedings in those states, perhaps in recognition that rates no longer
11 need to be held artificially low in order to encourage competition.”⁴³¹ First,
12 Eschelon did not make the claim Ms. Million attributes to Eschelon. We have
13 said that Commission’s set rates lower than Qwest’s proposed rates, but have
14 made no claims regarding changes to approved rates. Second, again Ms. Million
15 offers no support for her speculation about rates being held artificially low. In
16 fact, in the last four UNE cases I was involved in rates typically were lowered and
17 those rates remain in place today. For example, in Arizona the loop rate was
18 reduced from \$21.98 to \$12.12, in Colorado it was reduced from \$18.00 to
19 \$15.87, in Minnesota it was reduced from \$18.02 to \$12.86 and in Utah it was
20 reduced from \$16.64 to \$12.97.⁴³² In Washington Qwest voluntarily reduced its

⁴³⁰ For many years I was AT&T’s witness supporting the HAI Model which was used as the basis to set recurring loop rates in a number of Qwest’s states.

⁴³¹ Qwest/16, Million/22, lines 15-19.

⁴³² These changes reflect changes to statewide average rates.

1 loop rate from \$17.94 to \$14.27 in order to make it TELRIC compliant. These
2 reductions took place in the 2002 – 2003 time frame and none of these states has
3 since increased rates.

4 **Q. PLEASE COMMENT ON QWEST’S MODIFIED INTERIM RATE**
5 **PROPOSAL?**

6 A. Though I disagree with Qwest’s new interim rate proposal, which imports New
7 Mexico rates to Oregon, I do not necessarily disagree with all of the approach Ms.
8 Million is taking in adopting rates from other states. In fact, upon reading
9 Qwest’s justification for its new interim rate proposal, I expected the result to be
10 acceptance of the interim rates proposed by Eschelon. Unfortunately this was not
11 the case.

12 Qwest agrees that in establishing interim rates it can be appropriate to look at the
13 rates in other states that result from a contested cost docket. Ms. Million states,
14 “Qwest believes that the most equitable and efficient approach to setting interim
15 rates in this proceeding is to use rates from another state that are the product of a
16 comprehensive TELRIC cost docket.”⁴³³ Ms. Million continues stating that this
17 approach avoids the “burden of having to present cost studies and other TELRIC
18 evidence in this proceeding.”⁴³⁴ Ms. Million also notes that “rates can vary from

⁴³³ Qwest/16, Million/23, lines 7-10.

⁴³⁴ Qwest/16, Million/23, lines 12-13. Note that Ms. Million uses the phrase “substantial burden.” I started the quote with “burden” in order to avoid having to describe a disagreement regarding what constitutes a substantial burden.

1 one state to another.”⁴³⁵ Qwest’s new proposal actually validates the approach
2 Eschelon has taken in developing its interim rates, but the punch-line is that
3 Qwest is proposing not rates from states similar to Oregon, but surprisingly from
4 New Mexico.

5 **Q. WHAT ARE SOME OF THE ISSUES WITH BASING INTERIM RATES**
6 **UPON RATES ESTABLISHED IN THE NEW MEXICO UNE**
7 **PROCEEDING?**

8 A. First, Eschelon has no relationship to the rates in New Mexico. Eschelon doesn’t
9 do business in New Mexico. Eschelon was not a party in proceeding in New
10 Mexico that set these rates.⁴³⁶ Eschelon has no knowledge of the record in that
11 state, does not have access to the cost studies that set the rates in New Mexico and
12 has no information with regard to how those compliance studies were generated.

13 Second, New Mexico is a small, relatively rural state and likely has a different
14 cost structure than exists in Oregon. The table below shows some basic statistics
15 of the six large Qwest states: Arizona, Colorado, Minnesota, Oregon, Utah and
16 Washington. I have also included the data for New Mexico. As can be seen in
17 the table below, New Mexico has the highest loop rate, the fewest wire centers,

⁴³⁵ Qwest/16, Million/23, lines 20-21.

⁴³⁶ While with AT&T, I did provide some support to MCI Witness Mark Bryant in that docket with regards to the HAI Model, but AT&T was not a party in that case and I have no personal knowledge regarding other aspects of that case.

1 the fewest switched access lines, the lowest levels of competition, and by far the
2 lowest line density in the Qwest service territory.⁴³⁷

Selected State Statistic Comparisons						
State	Statewide Average Loop Rate	Number of Wire Centers	WC Area (sq miles)	Switched Lines	CLEC Market Share	Density (Lines / Sq Mile)
OR	\$ 15.14	79	14,443	977,243	16%	67.7
NM	\$ 21.09	65	31,959	723,337	8%	22.6
AZ	\$ 12.12	138	22,603	1,972,209	30%	87.3
CO	\$ 15.87	166	45,693	2,077,312	19%	45.5
MN	\$ 12.86	155	19,475	1,449,208	23%	74.4
UT	\$ 12.97	69	6,189	803,593	24%	129.8
WA	\$ 14.27	111	12,696	1,835,579	14%	144.6

Sources:

- * Statewide Average Loop Rate comes from data I have collected over the years.
- * Number of Wire Centers comes from Qwest's website (<http://www.qwest.com/wholesale/guides/geozone.html>) showing wire centers by geographic deaveraged zone.
- * WC Area (sq miles) comes from data Qwest provided to the FCC in 1996 in response to data requests.
- * Switched Lines is December 2006 ARMIS data from table 43-08. (<http://svartifoss2.fcc.gov/eafs7/adhoc/MainMenu.cfm>)
- * CLEC Market Share comes from Table 8 of the Local Competition Report and represents data from June 2006. (http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/Icom0107.xls)
- * Density is Switched Lines / WC Area.

3

4 **Q. DOES QWEST'S NEW RATE PROPOSAL TO UTILIZE RATES FROM**
5 **NEW MEXICO CONFLICT WITH MS. MILLION'S TESTIMONY ON**
6 **THESE ISSUES IN OTHER STATES?**

7 A. Yes. In arbitration cases in other states where Eschelon has proposed interim
8 rates based on an average of the commission-approved rates from the states in
9 which Eschelon operates, Qwest criticized Eschelon for not using commission-
10 approved rates from all Qwest states in its average. For example, in the Eschelon-
11 Qwest Arizona arbitration proceeding, Ms. Million stated that Eschelon was
12 "disingenuous" for not including Commission-approved rates from all Qwest

⁴³⁷ Only Qwest's serving territory in Montana, South Dakota and Wyoming is less dense than New Mexico.

1 states in Eschelon's averages that served as the basis for Eschelon's interim rate
2 proposal in that state.⁴³⁸ In Qwest's view then, Eschelon should have used all
3 Commission-approved rates in its average, rather than only rates from states
4 where Eschelon does business.⁴³⁹ However, Qwest now proposes a rate proposal
5 in Oregon that uses rates from a *single* state – and a state in which Eschelon does
6 not operate. Based on Qwest's prior arguments from other states, a rate proposal
7 based on an average of multiple Commission-approved rates (*i.e.*, Eschelon's
8 proposal) is superior to a rate proposal based on rates from one state (*i.e.*, Qwest's
9 new rate proposal in Oregon).

10 **Q. PLEASE SUMMARIZE HOW ESCHELON GENERATED ITS RATE**
11 **PROPOSALS AND HOW QWEST'S NEW INTERIM RATE PROPOSAL,**
12 **BASED ON THE NEW MEXICO RATES, COMPARES TO ESCHELON'S**
13 **RATE PROPOSALS?**

14 A. It is important to note that many of the rates in dispute are currently contained in
15 the current Eschelon-Qwest interconnection agreement.⁴⁴⁰ Qwest has offered no
16 compelling reason why it should be able to increase the rates that Eschelon
17 currently places today without going through a cost case with this Commission.
18 Other Eschelon rate proposals are based upon rates in Qwest's SGAT, rates in
19 Qwest's negotiations template, and rates that Qwest has generally made available

⁴³⁸ Arizona Rebuttal Testimony of Teresa Million (ACC Docket No. T-03406A-06-0572/Docket No. T-01051B-06-0572, 2/9/07), p. 27, line 11.

⁴³⁹ Arizona Rebuttal Testimony of Teresa Million (ACC Docket No. T-03406A-06-0572/Docket No. T-01051B-06-0572, 2/9/07), p. 27, lines, 9-11.

⁴⁴⁰ See Eschelon/9, Denney/277-278. See also Eschelon/25 for a detailed description of all of Eschelon's rate proposals.

1 to CLECs across Qwest's territory.⁴⁴¹ Qwest has offered no reason why these
2 rates should not also be made available to Eschelon. Eschelon also made
3 adjustments to Qwest's cost studies in an attempt to make these studies consistent
4 with prior Commission decisions in UT 138/139.⁴⁴² For a number of rate
5 elements, as discussed previously, Eschelon used an average of the other large
6 states in Qwest's territory (Arizona, Colorado, Minnesota, Utah and
7 Washington).⁴⁴³ Finally, in cases where Qwest offered no cost support and rates
8 had not been approved by Commissions in the other large states in Qwest's
9 territory, Eschelon proposed half of the Qwest proposal.⁴⁴⁴

10 On average the New Mexico rates are significantly greater than the rates proposed
11 by Eschelon. Qwest's new interim rate proposal contains rates that are on average
12 36 percent greater⁴⁴⁵ than the compromise proposal offered by Eschelon. Though
13 Qwest claims to have used the lower of the New Mexico rate or Qwest's old
14 interim rate proposal in Oregon, in at least one case, for rate element 8.12.4 Fiber
15 Entrance Facility the Qwest proposed rates are many times the New Mexico rate
16 and the rate proposed by Eschelon. For example Eschelon proposed a recurring
17 rate of \$7.10 and a non-recurring rate of \$850.15. New Mexico has a rate of
18 \$6.36 recurring and \$656.44 non-recurring. Qwest's first interim rate proposal
19 had rates of \$114.44 recurring and \$8,080.53 non-recurring and Qwest's new

⁴⁴¹ See Eschelon/9, Denney/272-273; Eschelon/9, Denney/278-280; and Eschelon/25.

⁴⁴² See Eschelon/9, Denney/273-275 and Eschelon/25.

⁴⁴³ See Eschelon/9, Denney/272; Eschelon/9, Denney/275-276; and Eschelon/25.

⁴⁴⁴ See Eschelon/9, Denney/273; Eschelon/9, Denney/280-281; and Eschelon/25.

⁴⁴⁵ This is based on a simple average of percentage changes and does not take into account the level of each rate. The percentage was calculated using the rates as contained in Qwest/17.

1 interim rate proposal contains rates of \$71.04 recurring and \$7359.96 non-
2 recurring. The New Mexico rates are less than Eschelon's proposed rates, but
3 Qwest's proposal is about 10 times greater than the rates in New Mexico or those
4 proposed by Eschelon.

5 Qwest's new interim rate proposal is generally significantly greater than the rates
6 proposed by Eschelon, but for about 20 percent of the rates in dispute Qwest's
7 proposal is equal to or less than the Eschelon proposal.⁴⁴⁶ It is unclear to me why
8 Qwest did not close these rate issues. For example, Qwest's new proposed interim
9 rate for rate elements 8.1.8.1.4.1 - .4 dealing with fiber terminations is identical to
10 Eschelon's proposed rate, as is Qwest's new interim rate proposal for 8.1.16, Joint
11 Inventory Visit Fee. Qwest's new interim rate proposal for the quote preparation
12 fees (8.2.1.1, 8.3.1.1, 8.4.1.1, 8.15.4.1 and 8.15.4.2) are 60% less than the rates
13 proposed by Eschelon.⁴⁴⁷ These issues should close.⁴⁴⁸

14 **Q. DO YOU HAVE ANY FINAL COMMENTS ABOUT QWEST'S INTERIM**
15 **RATE PROPOSAL?**

16 A. Yes. Ms. Million refers to Qwest's new interim rate proposal as being offered "in
17 the interest of compromise and in the hope that this Commission can determine
18 interim rates in this arbitration without the need to conduct a complex TELRIC

⁴⁴⁶ See Qwest/17.

⁴⁴⁷ See Qwest/17.

⁴⁴⁸ Another 17% of Qwest's interim rate proposals are within five percent of the rates proposed by Eschelon.

1 cost proceeding.”⁴⁴⁹ Qwest’s new interim rate proposals are on average 19
2 percent less⁴⁵⁰ than what it previously proposed and in that sense Qwest is
3 showing some movement, which Qwest previously has not done. However, it is
4 important to note that Eschelon’s initial proposal was also a compromise.
5 Eschelon did not modify Qwest’s cost studies to represent rates that Eschelon
6 would advocate in full cost case. Thus to compare Qwest’s initial proposal of its
7 advocacy rates with Eschelon’s compromise proposal would leave the wrong
8 impression and Eschelon would be disadvantaged if the Commission simply
9 picked a point in the middle of the two proposals.

10 **X. CONCLUSION**

11 **Q. WHAT ARE YOUR RECOMMENDATIONS TO THE OREGON**
12 **COMMISSION?**

13 A. I recommend that the Commission adopt Eschelon’s proposed Interconnection
14 Agreement language as described in Eschelon’s testimony.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes.

⁴⁴⁹ Qwest/16, Million/25, line 27 through Million/26, line 2.

⁴⁵⁰ This is based on a simple average of percentage changes and does not take into account the level of each rate.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

EXHIBIT 126

**Triennial Review Order and Triennial Review Remand Order
("TRO/TRRO") Amendment
to the Interconnection Agreement between
Qwest Corporation and
COMPANY
for the State of
STATE**

This is an Amendment ("Amendment") to incorporate the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") into the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and COMPANY ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

RECITALS.

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement") for services in the state of STATE which was approved by the STATE Commission ("Commission") ; and

WHEREAS, the Federal Communications Commission ("FCC") promulgated new rules and regulations pertaining to, among other things, the availability of unbundled network elements ("UNEs") pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its Report and Order *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, (effective October 2, 2003) ("TRO"); and

WHEREAS, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (Triennial Review Remand Order)(FCC 04-290) ("TRRO"), effective March 11, 2005, which further modified the rules governing Qwest's obligation to make certain UNEs available under Section 251(c)(3) of the Act; and

WHEREAS, the TRO and TRRO Decision, individually and together ("Decisions") materially modify Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs; and

WHEREAS, the Parties wish to amend the Agreement to comply with the Decisions hereby agree to do so under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Amendment Terms.

To the extent applicable, the Agreement is hereby amended by deleting certain UNEs or by changing or adding terms and conditions for certain UNEs as set forth in Attachment 1 and

Exhibit A to this Amendment, attached hereto and incorporated herein by this reference.

II. Limitations.

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Decisions, nor rules, regulations, interpretations, and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decisions should be changed, vacated, dismissed, stayed or modified.

III. Conflicts.

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

IV. Scope.

This Amendment shall amend, modify and revise the Agreement only to the extent the UNEs listed in Attachment 1 are included in the Agreement and, except to the extent set forth in Section I and Section II of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the execution date.

V. Effective Date.

This Amendment shall be deemed effective upon approval by the Commission, except where the change of law provision in CLEC's Interconnection Agreement specifies a different effective date. The Parties agree to implement the provisions of this Amendment upon execution ("execution date").

VI. Further Amendments.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

VII. Entire Agreement.

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

COMPANY

Qwest Corporation

Signature

Signature

Name Printed/Typed

L.T. Christensen

Name Printed/Typed

Title

Director- Interconnection Agreements

Title

Date

Date

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1.0 Definitions

"Business Line" means a Qwest-owned switched access line used to serve a business customer, whether by Qwest itself or by CLEC that leases the line from Qwest. The number of Business Lines in a Wire Center shall equal the sum of all Qwest business switched access lines, plus the sum of all UNE loops connected to that Wire Center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, Business Line tallies (1) shall include only those access lines connecting End User Customers with Qwest end-offices for switched services; (2) shall not include non-switched special access lines; and (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to twenty-four (24) 64 kbps-equivalents, and therefore to twenty-four (24) Business Lines.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Dark Fiber" is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

"Dedicated Transport" is Qwest transmission facilities between wire centers or switches owned by Qwest, or between wire centers or switches owned by Qwest and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

"Fiber-based Collocator" means any carrier, unaffiliated with Qwest, that maintains a Collocation arrangement in a Qwest Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a Collocation arrangement within the Wire Center; (2) leaves the Qwest Wire Center premises; and (3) is owned by a party other than Qwest or any affiliate of Qwest, except as set forth in this paragraph. Dark fiber obtained from Qwest on an indefeasible right of use basis shall be treated as non-Qwest fiber-optic cable. Two (2) or more affiliated Fiber-based Collocators in a single Wire Center shall collectively be counted as a single Fiber-based Collocator. For purposes of this paragraph, the term "affiliate" is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

"Interexchange Service" means telecommunications service between stations in different exchange areas. *Cf.* Modification of Final Judgment, § IV(K), *reprinted in United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982) (defining "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area").

"Long Distance Service" (see "Interexchange Service").

“Mobile Wireless Service” means all mobile wireless telecommunications services, including commercial mobile radio service (CMRS). CMRS includes paging, air-ground radio, telephone service and offshore radiotelephone services, as well as mobile telephony services, such as the service offerings of carriers using cellular radiotelephone, broadband PCS and SMR licenses.

“Non-impaired Wire Center” – A Non-impaired Wire Center is a Wire Center that meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops and §51.319(a)(5)(i) for DS3 Loops. Non-impaired Wire Centers also include Tier 1 and Tier 2 Wire Centers as defined in §51.319(e)(3) and subject to the limitations of §51.319(e)(2)(ii)(A) for DS1 Dedicated Transport, §51.319(e)(2)(iii)(A) for DS3 Dedicated Transport and §51.319(e)(2)(iv)(A) for Dark Fiber Transport.

“Route” is a transmission path between one of Qwest’s Wire Centers or switches and another of Qwest’s Wire Centers or Switches. A Route between two (2) points (e.g., Wire Center or Switch “A” and Wire Center or Switch “Z”) may pass through one (1) or more intermediate Wire Centers or Switches (e.g., Wire Center or Switch “X”). Transmission paths between identical end points (e.g., Wire Center or Switch “A” and Wire Center or Switch “Z”) are the same “route,” irrespective of whether they pass through the same intermediate Wire Centers or Switches, if any.

“Triennial Review Remand Order” The Triennial Review Remand Order is the Commission’s Order on Remand in CC Docket Nos. 01-338 and 04-313 (released February 4, 2005).

“Unbundled Network Element” (UNE) is a Network Element that has been defined by the FCC as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under CLEC’s Agreement and under this Amendment. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

“Wire center” A wire center is the location of a Qwest local Switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

“Tier 1 Wire Centers” means those Qwest Wire Centers that contain at least four Fiber-based Collocators, at least 38,000 Business Lines, or both. Tier 1 Wire Centers also are those Qwest tandem Switching locations that have no line-side Switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLEC. Once a Wire Center is determined to be a Tier 1 Wire Center, that Wire Center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

“Tier 2 Wire Centers” means those Qwest Wire Centers that are not Tier 1 Wire Centers, but contain at least 3 Fiber-based Collocators, at least 24,000 Business Lines, or both. Once a Wire Center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.

“Tier 3 Wire Centers” means those Qwest Wire Centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

2.0 Unbundled Network Elements (UNE) General

2.1 CLEC's Interconnection Agreement may include terms and conditions for certain Network Elements that Qwest is no longer required to offer on an unbundled basis pursuant to Section 251 of the Act. The FCC determined in its Decisions, that certain Unbundled Network Elements no longer satisfy the FCC's impairment test, and as a result, Qwest is no longer obligated to offer to CLEC those Network Elements on an unbundled basis pursuant to Section 251 of the Act. The FCC also modified certain Terms and Conditions for other Unbundled Network Elements.

2.2 As of the execution date of this Amendment, CLEC shall not order, and Qwest will not provide, the following Network Elements on an unbundled basis pursuant to Section 251 of the Act:

2.2.1 Unbundled Loops

- a) Certain DS1 Loops subject to the requirements of Section 3.0 following
- b) Certain DS3 Loops subject to the requirements of Section 3.0 following
- c) OCn Loops
- d) FTTH & FTTC Loops subject to the requirements of Section 3.1.6 following
- e) Dark Fiber Loops subject to the requirements of Section 3.1.5 following
- f) Hybrid Loops (non-copper distribution Loops) except as identified in Section 3.1.7 following
- g) Line Sharing
- h) Feeder-Sub-Loop
- i) Shared Distribution Loops

2.2.2 Transport

- a) E-UDIT (Extended Unbundled Dedicated Interoffice Transport); Transport from a CLEC's Premises to a Qwest Wire Center;
- b) E-UDF (Extended Unbundled Dark Fiber); Transport from a CLEC's Premises to a Qwest Wire Center;
- c) OCn UDIT; including Remote Node/Remote Port and SONET add/drop multiplexing
- d) UDIT and UDF as a part of a Meet-Point arrangement;
- e) Certain DS1 Transport (UDIT) subject to the requirements of Section 4.0

following

- f) Certain DS3 Transport (UDIT) subject to the requirements of Section 4.0 following
- g) Certain Dark Fiber Transport (UDF-IOF) subject to the requirements of Section 4.1.7 following
- h) Multiplexing associated with UDIT and Loop/Mux Combo

2.2.3 Unbundled Switching

- a) Packet Switching
- b) Tandem Switching
- c) Mass Market Switching, including UNE-P and related services as identified in Section 2.2.3.1
- d) Enterprise Local Switching, including UNE-P and related services as identified in Section 2.2.3.1
- e) Signaling Networks (stand alone)

2.2.3.1 Related services

- a) Customized Routing
- b) Signaling
- c) AIN Database Services
- d) Line Information Database (LIDB)
- e) 8XX Database Services
- f) InterNetwork Calling Name (ICNAM)
- g) Local Number Portability (LNP) Database
- h) Shared Transport

2.2.4 Transition

2.2.4.1 Transition plans for embedded Network Elements identified in the above lists are identified in the following sections.

2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005, for existing Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

2.4 UNEs shall be obtained solely for the provision of Telecommunications Services and only to the extent allowed by law.

2.5 UNEs shall only be obtained for the provision of Telecommunications Services, which do not include telecommunications utilized by CLEC for its own administrative use.

2.6 CLEC may not access UNEs for the exclusive provision of Mobile Wireless Services or Interexchange Services.

2.7 If CLEC accesses and uses a UNE consistently with Sections 2.4, 2.5 and 2.6, CLEC may provide any Telecommunications Services over the same UNE.

2.8 To submit an order to obtain a high-capacity loop or transport UNE, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 3.1.1 and 3.1.2, and that a requested unbundled DS1, DS3 or dark fiber transport circuit is not between Wire Centers identified on the list of Wire Centers that meet the applicable non-impairment threshold specified in Sections 4.1.1, 4.1.2 and 4.1.7.1.1. CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon to support its certification.

2.8.1 Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, Qwest must immediately process the request, if the UNE is in a location that does not meet the applicable non-impairment thresholds referred to in Section 2.8. To the extent that Qwest seeks to challenge any other such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in CLEC's Interconnection Agreement.

2.8.2 If it is determined by CLEC and Qwest that CLEC's access to or use of UNEs is inconsistent with Existing Rules, except due to change in law, CLEC has thirty (30) calendar Days to convert such UNEs to alternate service arrangements and CLEC is subject to back billing for the difference between rates for the UNEs and rates for the Qwest alternate service arrangements. CLEC is also responsible for all non-recurring charges associated with such conversions.

2.8.3 When CLEC submits an order to convert a special access circuit to a UNE and that circuit has previously been exempt from the special access surcharge pursuant to 47 CFR 69.115, CLEC shall document in its certification when and how the circuit was modified to permit interconnection of the circuit with a local exchange subscriber line.

2.8.4 Additional Non-Impaired Wire Centers. If additional Qwest Wire Centers are found to meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order under which Qwest is no longer required to offer Unbundled DS1 or DS3 Loops, and/or if additional Qwest Wire Centers are reclassified as Tiers 1 or 2, thus impacting the availability of Unbundled DS1, DS3, or Dark Fiber transport, Qwest shall provide notice to CLEC. Thirty (30) Days after notification from

Qwest, CLEC will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change. Absent CLEC transition of impacted UNEs within the transition period above, Qwest will convert facilities to month-to-month service arrangements in Qwest's Special Access Tariff or begin the disconnect process of Dark Fiber facilities. CLEC is subject to back billing for the difference between the UNE and Tariff rates beginning on the ninety-first (91st) Day as well as for all applicable nonrecurring charges associated with such conversions.

2.9 Service Eligibility Criteria

2.9.1 The following Service Eligibility Criteria apply to combinations and/or Commingling of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions), or new commingled EELs (e.g., high capacity loops attached to special access transport).

2.9.1.1 Except as otherwise provided in this Section 2.9.1.1, Qwest shall provide access to Unbundled Network Elements and Combinations of Unbundled Network Elements without regard to whether CLEC seeks access to the Unbundled Network Elements to establish a new circuit or to convert an existing circuit from a service to Unbundled Network Elements.

2.9.1.2 CLEC must certify that the following Service Eligibility Criteria are satisfied to: (1) convert a Special Access Circuit to a high capacity EEL, (2) to obtain a new high capacity EEL; or (3) to obtain at UNE pricing any portion of a Commingled circuit that includes a high capacity Loop and transport facility or service. Such certification shall be in accordance with all of the following Sections.

2.9.1.2.1 State Certification. CLEC has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

2.9.1.2.2 Per Circuit Criteria. The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a DS3 EEL:

2.9.1.2.3 Telephone Number Assignment. Each circuit to be provided to each End User Customer will be assigned a local telephone number prior to the provision of service over that circuit. This requires that each DS1 circuit must have at least one (1) local telephone number and each DS3 circuit has at least twenty-eight (28) local telephone numbers. The origination and termination of local voice traffic on each local telephone number assigned to a circuit shall not include a toll charge

and shall not require dialing special digits beyond those normally required for a local voice call.

2.9.1.2.4 911 or E911. Each circuit to be provided to each End User Customer will have 911 or E911 capability prior to the provision of service over that circuit.

2.9.1.2.5 Collocation.

2.9.1.2.5.1 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location;

2.9.1.2.5.2 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is located at the third party's premises within the same LATA as the End User Customer's premises, when Qwest is the collocator; and

2.9.1.2.5.3 When a DS1 or DS3 EEL Loop is connected to a multiplexed facility, the multiplexed facility must be terminated in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location.

2.9.1.2.6 Interconnection Trunking. CLEC must arrange for the meaningful exchange of traffic which must include hand-offs of local voice calls that flow in both directions. Where CLEC does not arrange for a meaningful exchange of traffic, those arrangements cannot be attributed towards satisfaction of this criterion. At a minimum, each DS1 circuit must be served by a DS0 equivalent LIS trunk in the same LATA as the End User Customer served by the circuit. For each twenty-four (24) DS1 circuits, CLEC must maintain at least one (1) active DS1 LIS trunk in the same LATA as the End User Customer served by the circuit.

2.9.1.2.6.1 Calling Party Number. Each circuit to be provided to each End User Customer will be served by an Interconnection trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. For each twenty-four (24) DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one (1) active DS1 LIS trunk over which CLEC will transmit the Calling Party Number in connection with

calls exchanged over the trunk. If the Calling Party Number is not exchanged over an Interconnection trunk, that trunk shall not be counted towards meeting this criteria.

2.9.1.2.7 End Office Switch. Each circuit to be provided to each End User Customer will be served by an End Office Switch capable of Switching local voice traffic. CLEC must certify that the Switching equipment is either registered in the LERG as a Class 5 Switch or that it can switch local voice traffic.

2.9.1.3 CLEC must provide certification to Qwest through a certification letter, or other mutually agreed upon communication, that each individual high capacity loop in combination, or Commingled, with a Qwest-provided high capacity transport facility or service, meets the Service Eligibility Criteria set forth above before Qwest will provision or convert the high capacity facility in combination or Commingled.

2.9.1.4 CLEC's high capacity combination or Commingled facility Service Eligibility shall remain valid only so long as CLEC continues to meet the Service Eligibility Criteria set forth above. If CLEC's Service Eligibility on a given high capacity combination or Commingled facility is no longer valid, CLEC must submit a service order converting the facility to the appropriate Private Line/Special Access service within thirty (30) Days.

2.9.1.5 Service Eligibility Audits. In order to confirm reasonable compliance with these requirements, Qwest may perform Service Eligibility Audits of CLEC's records. Service Eligibility Audits shall be performed in accordance with the following guidelines:

2.9.1.5.1 Qwest may, upon thirty (30) Days written notice to CLEC that has purchased high capacity combination and Commingled facilities, conduct a Service Eligibility Audit to ascertain whether those high capacity facilities were eligible for UNE treatment at the time of Provisioning or conversion and on an ongoing basis thereafter.

2.9.1.5.2 CLEC shall make reasonable efforts to cooperate with any Service Eligibility Audit by Qwest and shall maintain and provide Qwest with relevant records (e.g., network and circuit configuration data, local telephone numbers) which demonstrate that CLEC's high capacity combination and Commingled facilities meet the Service Eligibility Criteria.

2.9.1.5.3 An independent auditor hired and paid for by Qwest shall perform any Service Eligibility Audits, provided, however, that if a Service Eligibility Audit reveals that CLEC's high capacity combination and Commingled facility circuit(s) do not meet or have not met the Service Eligibility Criteria, then CLEC shall reimburse Qwest for the cost of the audit. To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Criteria,

Qwest shall reimburse CLEC for its costs associated with the Service Eligibility Audit.

2.9.1.5.4 An independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) and during normal business hours, unless there is a mutual agreement otherwise.

2.9.1.5.5 Qwest shall not exercise its Service Eligibility Audit rights with respect to CLEC (excluding Affiliates), more than once in any calendar year, unless an audit finds non-compliance. If a Service Eligibility Audit does find non-compliance, Qwest shall not exercise its Service Eligibility Audit rights for sixty (60) Days following that audit, and if any subsequent Service Eligibility Audit does not find non-compliance, then Qwest shall not exercise its Service Eligibility Audit rights for the remainder of the calendar year.

2.9.1.5.6 At the same time that Qwest provides notice of a Service Eligibility Audit to CLEC under this paragraph, Qwest shall send a copy of the notice to the Federal Communications Commission.

2.9.1.5.7 Service Eligibility Audits conducted by Qwest for the purpose of determining compliance with Service Eligibility Criteria shall not effect or in any way limit any audit or Dispute Resolution rights that Qwest may have pursuant to other provisions of this Agreement.

2.9.1.5.8 Qwest shall not use any other audit rights it may have under this Agreement to audit for compliance with the Service Eligibility Criteria of this Section. Qwest shall not require a Service Eligibility Audit as a prior prerequisite to Provisioning combination and Commingled facilities.

2.9.1.5.9 CLEC shall maintain appropriate records to support its Service Eligibility Criteria. However, CLEC has no obligation to keep any records that it does not keep in the ordinary course of its business.

2.9.1.5.10 If a Service Eligibility Audit demonstrates that a high capacity combination and Commingled facilities do not meet the Service Eligibility Criteria above, the CLEC must convert all non-compliant circuits to Private Line/Special Access circuits and CLEC must true-up any difference in payments within thirty (30) days.

3.0 Unbundled Loop

3.1 Unbundled Loops are available pursuant to CLEC's Agreement and the following terms and conditions.

3.1.1 DS1 Unbundled Loops. Subject to the cap described in Section 3.1.1.1, Qwest shall provide CLEC with non-discriminatory access to a DS1 loop on an unbundled basis to any building not served by a Wire Center with at least 60,000

Business Lines and at least four (4) Fiber-based Collocators. Once a Wire Center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that Wire Center.

3.1.1.1 Cap on Unbundled DS1 Loop Circuits. CLEC may obtain a maximum of ten (10) unbundled DS1 Loops to any single building in which DS1 Loops are available as Unbundled Loops.

3.1.1.2 Transition period for DS1 loop circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.1 or 3.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. Where Qwest is not required to provide unbundled DS1 loops pursuant to Sections 3.1.1 or 3.1.1.1, CLEC may not obtain new DS1 loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

3.1.1.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) per Billing Account Number (BAN) with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

3.1.2 DS3 Unbundled Loops. Subject to the cap described in Section 3.1.2.1, Qwest shall provide CLEC with non-discriminatory access to a DS3 loop on an unbundled basis to any building not served by a Wire Center with at least 38,000 Business Lines and at least four (4) Fiber-based Collocators. If a Wire Center exceeds both of these thresholds, no future DS3 Loop unbundling is required in that Wire Center.

3.1.2.1 Cap on Unbundled DS3 Loop Circuits. CLEC may obtain a maximum of a single unbundled DS3 Loop to any single building in which DS3 Loops are available as unbundled loops.

3.1.2.2 Transition period for DS3 loop circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.2 or 3.1.2.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that loop element. Where Qwest is not required to provide unbundled DS3 loops pursuant to Sections 3.1.2 or 3.1.2.1, CLEC may not obtain new DS3

loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

3.1.2.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

3.1.3 Non-Impaired Services – DS1 and DS3 Loops

3.1.3.1 Use after March 10, 2006. For any non-impaired DS1 or DS3 loop leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to the later of March 11, 2006 or the installation date of the loop for the difference between the rate for the UNE and the rate of Qwest's month-to-month alternative service arrangement in Qwest's Special Access Tariff until CLEC transitions the UNE to an alternative service arrangement or disconnects the UNE.

3.1.3.2 Failure To Convert Non-Impaired Services – DS1 and DS3 Loops. Absent CLEC Transition of DS1 and DS3 Loops within ninety (90) Days after the execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

3.1.4 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

3.1.5 Dark Fiber Loops Including Fiber Sub-loop. Qwest is not required to provide CLEC with access to a Dark Fiber Loop on an unbundled basis except for UDF-MTE Subloop below. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

3.1.5.1 Transition period for Dark Fiber Loop circuits. For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any Dark Fiber Loop UNEs that a CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. CLEC may not obtain new Dark Fiber Loops as Unbundled Network Elements. Qwest and CLEC will work together to identify those circuits impacted.

3.1.5.2 Failure To Convert Non-Impaired Network Elements - Dark Fiber Loops including Fiber Sub-loop. Absent CLEC transition of Dark Fiber Loops as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Loops.

3.1.5.3 UDF MTE Subloop begins at or near an MTE to provide access to MTE premises wiring.

3.1.5.3.1 Access to Dark Fiber MTE Subloops at or near an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. The termination and placement of CLEC fiber facilities at an MTE is solely the responsibility of CLEC. CLEC is responsible for all negotiations with the End User Customer and or premises owner for such placement of CLEC facilities.

3.1.5.3.2 Termination at an MTE. CLEC shall access the UDF MTE Subloop on the MTE premises at a technically feasible point if possible. If access is not technically feasible on the MTE premises, then CLEC may request access to UDF MTE Subloop at a technically feasible point near the MTE premises. Qwest will prepare and submit to CLEC a quote along with the original Field Verification Quote Preparation form (FVQP) within the interval set forth in Exhibit C. Quotes are on an Individual Case Basis (ICB) and will include costs and an interval in accordance within the interval set forth in the Agreement.

3.1.5.3.3 A complex IRI is used to determine if a UDF MTE Subloop is available to gain access to network infrastructure within an MTE. Quotes are on an Individual Case Basis (ICB) and may include costs in addition to any installation charges specified in Exhibit A. of your Agreement.

3.1.6 FTTH and FTTC Loops. For purposes of this Section, a Fiber-to-the-Home (FTTH) loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's Premises, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). For purposes of this Section, a Fiber-to-the-Curb (FTTC) loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant loop that is not more than 500 feet from the End User Customer's Premises or, in the case of predominantly residential MDU, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a FTTC must connect to a copper distribution plant loop at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective End User Customer's Premises.

3.1.6.1 FTTH/FTTC New Builds. Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's Premises

that had not previously been served by any loop facility prior to October 2, 2003.

3.1.6.2 FTTH/FTTC Overbuilds. Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH/FTTC loop parallel to, or in replacement of, an existing copper loop facility:

3.1.6.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's Premises after deploying the FTTH/FTTC loop to such Premises, and (ii) upon request provide access to such copper loop as an Unbundled Network Element. Notwithstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition on an Individual Case Basis. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 3.1.6.2.1 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 3.1.6.3 below.

3.1.6.2.2 In the event Qwest, in accordance with the provisions of Section 3.1.6.3 below, retires the existing copper loop connected to the End User Customer's Premises, Qwest shall provide access, as an Unbundled Network Element, over the FTTH/FTTC loop to a 64 kbps transmission path capable of voice grade service.

[The following Section 3.1.6.3 applies in states other than Iowa.]

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Commission notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90th) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9th) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

[The following Section 3.1.6.3 applies in Iowa only.]

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with an FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site (www.qwest.com/disclosures); ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Board notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90th) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9th) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

3.1.6.4 Handling of embedded FTTH/FTTC Loops. All embedded CLEC services over FTTH/FTTC Loops in place prior to the signature on this Amendment will be 'grandfathered' subject to re-classification upon change of service.

3.1.7 Hybrid Loops. A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

3.1.7.1 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services, including DS1 or DS3 capacity, but not DSL, Qwest shall provide CLEC with non-discriminatory access on an unbundled basis to time division multiplexing features, functions, and capabilities of that Hybrid Loop, only where impairment has been found to exist to establish a complete transmission path between Qwest's Central Office and an End User Customer's premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.7.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

3.1.7.2.1 Provide non-discriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or

3.1.7.2.2 Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis.

3.1.8 Subloop Unbundling. An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3.

[The following Section 3.1.8 is applicable in Minnesota only.]

3.1.8 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3. Pursuant to Minnesota Exchange and Network Services Tariff – Section 2.1.1, Minnesota is a Minimum Point of Presence state, and therefore Qwest owns intra-building cable in limited Multi-Tenant Environments (e.g., airports, marinas, and trailer parks). The intra-building cable provisions of this Section 3.1.8 apply only in those limited Multi-Tenant Environments in which Qwest owns the intra-building cable.

[The following Section 3.1.8 is applicable in North Dakota only.]

3.1.8 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's

premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3. Due to the limited number of locations in North Dakota where Qwest owns premises cable, campus cable or inside wiring, Qwest will provide premises cable, campus cable or inside wiring ownership notification at each MTE terminal.

3.1.8.1 Qwest's obligation to construct a Single Point of Interface (SPOI) is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE. In addition, Qwest shall have an obligation to construct a SPOI only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI.

3.1.8.2 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, refers to creation of a cross connect field and does not constitute Collocation. The terms and conditions of Collocation do not apply to Cross-Connect Collocation if required at or near an MTE.

3.1.8.3 Retention of Embedded Services – Feeder Subloops. All embedded CLEC services over Feeder Subloops in place prior to the signature on this Amendment will be "grandfathered" subject to re-classification upon any modification to or disconnection of the service. Recurring charge rates effective prior to the signature on this amendment will remain in place. No new requests will be accepted for Feeder Subloop subsequent to signature on this Amendment.

3.1.9 Line Sharing. Qwest shall not be required to provide Line Sharing unless the Agreement has been amended with a Qwest Commercial Line Sharing Amendment.

3.1.10 Shared Distribution Loop. Qwest shall not be required to provide Shared Distribution Loop unless the Agreement has been amended with a Qwest Commercial Shared Distribution Loop Amendment.

4.0 Unbundled Dedicated Interoffice Transport (UDIT)

4.0.1 Qwest is not obligated to provide CLEC with unbundled access to dedicated transport that does not connect a pair of Qwest Wire Centers.

4.0.2 All transport services, when combined with high capacity Loops, are subject to the Service Eligibility Criteria as outlined in Section 2.9 of this Amendment.

4.1 UDIT is available pursuant to CLEC's Agreement and the following terms and conditions.

4.1.1 DS1 UDIT. Qwest shall unbundle DS1 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are Tier 1 Wire Centers. As such, Qwest must unbundle DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center.

4.1.1.1 On Routes for which no unbundling obligation for DS3 Dedicated Transport circuits exists but for which DS1 Dedicated Transport is available on an unbundled basis, CLEC may obtain a maximum of ten (10) unbundled DS1 Dedicated Transport circuits."

4.1.1.2 Transition period for DS1 transport circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.1 or 4.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS1 transport pursuant to Sections 4.1.1 or 4.1.1.1, CLEC may not obtain new DS1 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

4.1.1.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.2 DS3 UDIT - Qwest shall unbundle DS3 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle DS3 transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.2.1 CLEC may obtain a maximum of twelve (12) unbundled DS3 dedicated transport circuits on each Route where DS3 dedicated transport is

available on an unbundled basis.

4.1.2.2 Transition period for DS3 transport circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.2 or 4.1.2.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS3 transport pursuant to Sections 4.1.2 or 4.1.2.1, CLEC may not obtain new DS3 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

4.1.2.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.3 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

4.1.4 Non-Impaired Services – DS1 and DS3 UDIT

4.1.4.1 Use after March 10, 2006. For any non-impaired DS1 or DS3 UDIT leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to the later of March 11, 2006 or the installation date of the transport for the difference between the rate for the UNE and the rate of Qwest's month-to-month alternative service arrangement in Qwest's Special Access Tariff until CLEC transitions the UNE to an alternative service arrangement or disconnects the UNE.

4.1.4.2 Failure To Convert Non-Impaired Services – DS1 and DS3 UDIT. Absent CLEC transition of DS1 and DS3 Transport within ninety (90) Days after the execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.5 Failure To Convert Non-Impaired Services – OCn UDIT. Absent CLEC transition of OCn Transport within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for

the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.6 Failure To Convert Non-Impaired Services – DS1 and DS3 E-UDIT and M-UDIT. Absent CLEC transition of DS1 and DS3 E-UDIT and M-UDIT within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.7 Unbundled Dark Fiber (UDF) IOF

4.1.7.1 Dedicated dark fiber transport shall be made available to CLEC on an unbundled basis as set forth in the Interconnection Agreement and as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

4.1.7.1.1 Qwest shall unbundle dark fiber transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.7.1.2 **Transition period for dark fiber transport circuits.** For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any dark fiber dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.7.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled dark fiber transport pursuant to Section 4.1.7.1.1, CLEC may not obtain new dark fiber transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

4.1.7.1.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.7.1.4 Qwest shall make available to CLEC a list of those Non-

Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

4.1.7.1.5 Failure To Convert Non-Impaired Services – UDF-IOF. Absent CLEC Transition of UDF, as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Facilities.

4.1.8 E-UDF and M-UDF (Meet Point Billed-UDF) Transition Language. Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, any ASRs for Extended Unbundled Dark Fiber (E-UDF) or M-UDF (Meet Point UDF). Qwest account representatives will work with CLECs on a plan to convert any existing E-UDF or M-UDF to other alternative Qwest products or services, if CLEC so desires.

4.1.8.1 Transition period for dark fiber transport circuits. For an eighteen (18) month period beginning on the effective date of the Triennial Review Remand Order, any E-UDF and M-UDF that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.8, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the E-UDF and M-UDF element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that element. Where Qwest is not required to provide unbundled dark fiber E-UDF and M-UDF pursuant to Section 4.1.8, CLEC may not obtain E-UDF and M-UDF as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted.

4.1.8.2 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.8.3 Failure To Convert Non-Impaired Networks Elements – E-UDF and M-UDF. Absent CLEC Transition E-UDF and M-UDF as of September 10, 2006, Qwest will begin or maintain the right to begin, disconnect process of Dark Fiber Facilities.

5.0 Unbundled Local Switching

5.1 Transition of Unbundled Local circuit Switching, including UNE-P Services

5.1.1 DS0 Capacity (Mass Market)

5.1.1.1 Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.

5.1.1.2 Each requesting telecommunications carrier shall migrate its embedded base of end-user customers off of the unbundled local circuit Switching element to an alternative arrangement within twelve (12) months of the effective date of the Triennial Review Remand Order.

5.1.1.3 Notwithstanding Section 5.1.1.2, for a twelve (12) month period from the effective date of the Triennial Review Remand Order, Qwest shall provide access to local circuit Switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit Switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of: (A) the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or (B) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that combination of network elements, plus one dollar. CLEC may not obtain new local Switching as an unbundled network element. Qwest and CLEC will work together to identify those impacted accounts.

5.1.1.4 Qwest shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit Switching is required to be made available pursuant to Section 5.1.1.3. These elements are defined as follows:

5.1.1.4.1 Signaling networks. Signaling networks include, but are not limited to, signaling links and signaling transfer points.

5.1.1.4.2 Call-related databases.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems

5.1.1.4.3 Shared transport.

5.1.1.5 Use after March 10, 2006 - For any UNE-P POTS or UNE-P Centrex 21 leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month resale service alternatives identified in this Section 5.1.1.6.2. All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX leased by

CLEC from Qwest after March 10, 2006 are subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month Local Exchange Resale service.

5.1.1.6 Failure to Convert Non-Impaired Networks Elements – Mass Market Switching

5.1.1.6.1 Mass Market Unbundled Switching – Stand Alone: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will disconnect any remaining services on or after this date.

5.1.1.6.2 UNE-P POTS & UNE-P Centrex 21: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Business Measured Resale services, e.g. Class of Service (COS) LMB. In the event Measured Services are unavailable, services will be converted to the equivalent Qwest Local Exchange Business Resale services, e.g. COS 1FB. CLEC is subject to back billing for the difference between the rates for the UNE-P and rates for the Qwest Resale Service to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.1.6.3 All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Resale services. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.1.6.4 Any UNE-P services with Line Splitting: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services as described above. Line Splitting will be removed from any UNE-P services with Line Splitting.

5.1.2 Enterprise Switching. DS1 Capacity and above (i.e., enterprise market)

Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops.

5.1.2.1 Transition for DS1 Capacity Unbundled Switching; including UNE-P - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, LSRs for Unbundled Local Switching at the DS1 or above capacity. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Local Switching at the DS1 or above capacity to other available Qwest products or services, if CLEC so desires. CLEC will

submit complete, error-free LSRs to convert or disconnect any existing Unbundled Local Switching at the DS1 or above capacity with Due Dates within ninety (90) Days of the Execution Date of this Amendment.

5.1.2.2 Failure to Convert DS1 Capacity Unbundled Switching: including UNE-P.

5.1.2.2.1 Enterprise Unbundled Switching – Stand Alone: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will disconnect any remaining services on or after this date.

5.1.2.2.2 Enterprise Unbundled Switching purchased as a part of UNE-P: Absent CLEC Transition pursuant to the timeline above in 5.1.2.1, Qwest will convert services to the equivalent month to month Resale arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Resale arrangement to the ninety-first (91st) day. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.3 Signaling Networks

5.1.3.1 Transition for Signaling Networks - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, ASRs for Unbundled Signaling Network Elements. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Signaling Network Elements to other available Qwest products or services. CLEC will submit complete, error-free ASRs to convert or disconnect any existing Unbundled Signaling Network Elements with Due Dates that are within ninety (90) Days of the Execution Date of this Amendment. Qwest and CLEC will work together to identify those network elements.

5.1.3.2 Failure to Convert Non-Impaired Network Elements – Signaling Networks. Absent CLEC Transition of Signaling Networks within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

6.0 Unbundled Network Element Combinations

6.1 Enhanced Extended Loop (EEL)

6.1.1 EEL is available pursuant to CLEC's Agreement, the relevant loop and transport terms and conditions of this amendment and the following terms and conditions.

6.1.1.1 The “Significant Amount of Local Exchange Traffic” eligibility

criteria for EEL is replaced by the Service Eligibility Criteria described in Section 2.9, including the collocation requirement of Section 2.9.1.2.5.

6.1.1.2 CLEC EEL certification process is replaced by the Certification process described in Sections 2.9.1.3.

6.1.1.3 EEL Audit provisions are replaced by the Service Eligibility Audit process described in Sections 2.9.1.5.

6.1.1.4 Service Eligibility Criteria in Section 2.9 apply to combinations of high capacity (DS1 and DS3) loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs (e.g., high capacity loops attached to special access transport). CLEC cannot utilize combinations of Unbundled Network Elements that include DS1 or DS3 Unbundled Loops and DS1 or DS3 unbundled dedicated interoffice transport (UDIT) to create high capacity EELs unless CLEC certifies to Qwest that the EELs meet the Service Eligibility Criteria in Section 2.9.

6.1.1.5 Transition for EEL – CLEC must verify that all embedded EEL meet the new Service Eligibility Criteria. Qwest account representatives will work with CLEC on a plan to convert any non-compliant EEL to other service arrangements.

6.1.1.6 Use after March 10, 2006. For any non-compliant EELs leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing in accordance with the back billing terms for non-impaired DS1 and DS3 loops and UDIT, as applicable, set forth in Sections 3.1.3.1 and 4.1.4.1.

6.1.1.7 Failure to Convert Non-Compliant EEL. Absent CLEC Transition of non-compliant EEL within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

6.2 Loop-Mux Combination (LMC)

6.2.1 Description

6.2.1.1 Loop-mux combination (LMC) is an unbundled Loop, as defined by CLEC's Agreement as amended, (referred to in this Section as an LMC Loop) Commingled with a private line (PLT), or with a special access (SA), Tariffed DS1 or DS3 multiplexed facility with no interoffice transport. The PLT/SA multiplexed facility is provided as either an Interconnection Tie Pair (ITP) or Expanded Interconnection Termination (EICT) from the high side of the multiplexer to CLEC's Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.1.2 LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a PLT/SA DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.

6.2.1.3 Qwest offers the LMC Loop as a billing conversion or as new provisioning.

6.2.2 Terms and conditions

6.2.2.1 An Extended Enhanced Loop (EEL) may be commingled with the PLT/SA multiplexed facility.

6.2.2.2 LMC Loops will be provisioned where existing facilities are available.

6.2.2.3 The PLT/SA DS1 or DS3 multiplexed facility must terminate in a Collocation.

6.2.2.4 The multiplexed facility is subject to all terms and conditions (ordering, provisioning, and billing) of the appropriate Tariff.

6.2.2.5 The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.2.6 A rearrangement nonrecurring charge may be assessed on some requests for work to be performed by Qwest on an existing LMC Loop; or on some Private Line/Special Access circuits when coupled with a Conversion as Specified Request to convert to LMC Loop.

6.2.3 Rate Elements

6.2.3.1 The LMC Loop is the Loop connection between the End User Customer Premises and the multiplexer in the serving Wire Center where CLEC is Collocated. LMC Loop is available in DS0 and DS1. Recurring and non-recurring charges apply

6.2.3.2 DS0 Mux Low Side Channelization. LMC DS0 channel cards are required for each DS0 LMC Loop connected to a 1/0 LMC multiplexer. Channel cards are available for analog loop start, ground start, reverse battery, and no signaling. See channel performance for recurring charges as set forth in Exhibit A.

6.2.3.3 Nonrecurring charges for billing conversions to LMC Loops and Rearrangement of existing LMC Loops are set forth in Exhibit A.

6.2.4 Ordering Process

6.2.4.1 Ordering processes for LMC Loop(s) are contained in this Agreement and in Qwest's Product Catalog (PCAT). The following is a high-level

description of the ordering process:

6.2.4.1.1 Step 1: Complete product questionnaire for LMC Loop(s) with account team representative.

6.2.4.1.2 Step 2: Obtain billing account number (BAN) through account team representative.

6.2.4.1.3 Step 3: Allow two (2) to three (3) weeks from Qwest's receipt of a completed questionnaire for accurate loading of LMC rates to the Qwest billing system.

6.2.4.1.4 Step 4: After account team notification, place LMC Loop orders via an LSR.

6.2.4.2 Prior to placing an order on behalf of each End User Customer, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization (POA) as set forth in this Agreement.

6.2.4.3 Standard service intervals for LMC Loops are in the Service Interval Guide (SIG) available at www.qwest.com/wholesale.

6.2.4.4 Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA or EDI interfaces or through facsimile. For LMC Loops, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Loops, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.

6.2.5 Billing

6.2.5.1 Qwest shall provide CLEC, on a monthly basis, within seven to ten (7 to 10) calendar Days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual End User Customer sub-account information.

6.2.6 Maintenance and Repair

6.2.6.1 Qwest will maintain facilities and equipment for LMC Loops provided under this Agreement. Qwest will maintain the multiplexed facility pursuant to the Tariff. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest.

6.3 Commingling

6.3.1 To the extent it is Technically Feasible, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements. Notwithstanding the foregoing, the following are not available for resale Commingling:

- a) Non-telecommunications services;
- b) Enhanced or Information services;
- c) Network Elements offered pursuant to Section 271.

6.3.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with Access Services.

6.3.3 When a UNE and service are commingled, the service interval for each facility being commingled will apply only as long as a unique provisioning process is not required for the UNE or service due to the commingling. Performance measurements and/or remedies are not applicable to the total commingled arrangement but do apply to each facility or service ordered within the commingled arrangement. Work performed by Qwest to provide Commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled service arrangement. Provisioning intervals applicable to services included within a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

6.3.4 Qwest will not combine or Commingle services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

6.3.5 Services are available for Commingling only in the manner in which they are provided in Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

6.3.6 Entrance Facilities and mid-span meet SPOI obtained pursuant to the Local Interconnection section of the Agreement are not available for Commingling.

6.3.7 CLEC may request Qwest to commingle DS1 or DS0 analog voice grade

unbundled Loops with DS3 or DS1 multiplexed facilities ordered by CLEC from Qwest's special access or private line Tariffs. Terms and conditions for this Commingled arrangement are provided in Section 6.2 of this Amendment.

7.0 Ratcheting

7.1 To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under Section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of UNEs or UNE Combinations involved.

7.2 To the extent a multiplexed facility is included in a Commingled circuit then: (1) the multiplexed facility will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs and (2) in all other situations the multiplexed facility will be ordered and billed pursuant to the appropriate Tariff.

8.0 Routine Network Modifications

8.1 Qwest shall make all routine network modifications to unbundled loop and transport facilities used by CLEC where the requested loop or transport facility has already been constructed. Qwest shall perform these routine network modifications to unbundled loop or transport facilities in a nondiscriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

8.2 A routine network modification is an activity that Qwest regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that Qwest ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable CLEC to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for CLEC.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

REBUTTAL TESTIMONY

OF

BONNIE JOHNSON

ON BEHALF OF

ESCHELON TELECOM, INC.

May 25, 2007

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1 **I. INTRODUCTION AND EXHIBITS**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Bonnie Johnson and my business address is 730 2nd Avenue South,
4 Suite 900, Minneapolis, Minnesota 55402.

5 **Q. ARE YOU THE SAME BONNIE J. JOHNSON WHO FILED DIRECT**
6 **TESTIMONY IN THIS PROCEEDING ON MAY 11, 2007?**

7 A. Yes.

8 **Q. PLEASE IDENTIFY THE EXHIBITS TO YOUR TESTIMONY.**

9 A. As part of my testimony, I have included the following exhibits:

- 10 • Eschelon/128: INTERVALS: Qwest April 27, 2007 notice (Effective
11 April 30, 2007) communicating changes to its Negotiation Template
12 Agreement including removing section 1.7.1; Qwest-prepared May 23,
13 2007 notice (Effective May 24, 2007) announcing Qwest was removing
14 Exhibits L and M from its Negotiations Template Agreement.
- 15 • Eschelon/129: ACCESS TO UNEs: Qwest initiated Change Request
16 PC013007-3; Qwest-prepared March 22, 2007 notice of red line changes
17 to the Provisioning and Installation Overview PCAT; Excerpts of that
18 PCAT showing Qwest's proposed changes; and Eschelon comments and
19 Qwest's response to those changes.
- 20 • Eschelon/130: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest-
21 prepared documentation from the CMP Redesign meetings showing that

1 Qwest developed and documented Qwest Service Center and Management
2 Roles in Relation to CMP in CMP Redesign in response to CLEC
3 concerns.

4 • Eschelon/131: CONTROLLED PRODUCTION: Qwest-prepared April 6,
5 2007 notice (Effective immediately) regarding IMA XML Release 21.0.

6 **Q. DID YOU PREPARE THESE EXHIBITS OR HAVE THEM PREPARED**
7 **UNDER YOUR DIRECTION?**

8 A. All of the documents in these four exhibits were prepared by Qwest. I compiled
9 the exhibits, and they contain true and correct copies of Qwest's documents.

10 **Q. MR. STARKEY REFERS IN HIS TESTIMONY TO YOUR TESTIMONY**
11 **INCLUDING ITS EXHIBITS. HAVE YOU REVIEWED THAT**
12 **TESTIMONY, AND IF SO, DID MR. STARKEY TAKE ANY**
13 **STATEMENT OR EVENT OUT OF CONTEXT?**

14 A. I have reviewed that testimony and, no, Mr. Starkey did not take any statement or
15 event out of context.

16 **Q. MR. DENNEY REFERS IN HIS TESTIMONY TO YOUR TESTIMONY**
17 **INCLUDING ITS EXHIBITS. HAVE YOU REVIEWED THAT**
18 **TESTIMONY, AND IF SO, DID MR. DENNEY TAKE ANY STATEMENT**
19 **OR EVENT OUT OF CONTEXT?**

20 A. I have reviewed that testimony and, no, Mr. Denney did not take any statement or
21 event out of context.

1 **Q. PLEASE DESCRIBE ESCHELON/128 RELATED TO INTERVALS.**

2 A. Eschelon/128 contains two Qwest notices. In the first notice, Qwest announces
3 several changes to its Negotiations Template Agreement. The changes include
4 Qwest removing section 1.7.1, relating to Exhibits L and M. In the second notice,
5 Qwest announces it is removing Exhibits L and M from the Negotiations
6 Template Agreement. Both notices are non-CMP notices that are effective the
7 next business day. Therefore, there is no opportunity to comment on these
8 changes. Mr. Starkey discusses Eschelon/128 in his discussion of Issue 1-1
9 (Intervals).

10 **Q. PLEASE DESCRIBE ESCHELON/129 RELATING TO**
11 **NONDISCRIMINARY ACCESS TO UNES.**

12 A. Eschelon/129 is comprised of 4 separate Qwest-prepared documents. The first
13 document is Qwest initiated CR PC013007-3, which Qwest proposes limiting
14 Connecting Facility Assignment (“CFA”) same day pair changes to one per
15 circuit. The detail of the CR describes Eschelon’s concern that Eschelon had to
16 make CFA changes on the due date even if a Qwest caused problem is creating
17 the need to change the CFA. The second document is Qwest’s March 22, 2007
18 announcement of changes Qwest made to its Provisioning and Installation PCAT.
19 The third document is excerpts showing the Qwest red lined changes to that
20 PCAT. The fourth document contains Eschelon’s objections and Qwest’s
21 response to the objection. Qwest implemented the change over Eschelon’s
22 objection. Mr. Starkey discusses Eschelon/129 in his discussion of Issue 9-31
23 (Nondiscriminatory Access to UNES).

1 The other two exhibits described above are referenced below in my discussion of
2 Section 12 issues.

3 **II. SECTION 12 ISSUES: SUBJECT MATTERS 29, 31, 33, AND 43**

4 **A. SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**
5 **ACKNOWLEDGEMENT OF MISTAKES**

6 *Issues Nos. 12-64, 12-64(a) and 12-64(b): ICA Section 12.1.4 and subparts*

7 **Q. PLEASE RESPOND TO QWEST’S CLAIM THAT ESCHELON’S**
8 **PROPOSED LANGUAGE IS NOT APPROPRIATE OR NECESSARY FOR**
9 **INCLUSION IN AN INTERCONNECTION AGREEMENT (“ICA”).¹**

10 A. Qwest’s proposal in Oregon to remain silent in the ICA on this issue is not
11 consistent with its actions in Minnesota, where Qwest agreed to include virtually
12 all of Eschelon’s proposal for Section 12.1.4 and subparts within the ICA.
13 Eschelon’s need to protect against harm to its business and its reputation is as
14 great in Oregon as it is in Minnesota, as Mr. Starkey indicated in his direct
15 testimony.² Since Qwest attributes its conflicting positions to the fact that
16 Minnesota has issued an order regarding root cause analysis and
17 acknowledgement of mistakes and Oregon has not,³ a Commission order
18 requiring inclusion of the language in the ICA is needed in Oregon to obtain the
19 same terms in the ICA as in Minnesota.

¹ Qwest/1, Albersheim/50, line 11; *id.* Albersheim/51, lines 34-36.

² Eschelon/1, Starkey/66, lines 6-7.

1 Although Qwest points to language in its Product Catalog (“PCAT”) on this
2 point,⁴ the PCAT does not provide contractual certainty because Qwest may
3 easily change the PCAT over CLEC objection.⁵ Also, as I discuss below, Qwest
4 currently interprets its obligations more narrowly than they are described in
5 Qwest’s own posted documentation. This illustrates that Qwest’s obligations
6 should be set forth in the ICA so that they are less subject to Qwest’s discretion
7 and unilateral interpretation. Providing more certainty in the contract will help
8 avoid future disputes, as further described by Mr. Starkey in his direct testimony.⁶

9 While Qwest’s reference to its PCAT to support its position that contract language
10 is unnecessary⁷ suggests that the PCAT already addresses all of Eschelon’s
11 business needs, Qwest specifically told Eschelon that Qwest’s *policy* is that Qwest
12 will *not* provide a written acknowledgement to be provided to the customer, even
13 when the purpose of the acknowledgement is to correct Qwest mis-information
14 provided to an Eschelon customer.⁸ Although the Minnesota commission caused

³ Qwest/1, Albersheim/51, lines 34-37.

⁴ Qwest/1, Albersheim/50, lines 7-8.

⁵ Eschelon/1, Starkey/37-38 & 50-60 (CRUNEC example); Eschelon/9, Denney/204-206 (Expedites). I was involved in Eschelon’s escalation with Qwest in the CRUNEC situation, and I objected on Eschelon’s behalf in the Expedite situation.

⁶ Eschelon/1, Starkey/9-11 & 19-95.

⁷ Qwest/1, Albersheim/50, lines 7-8.

⁸ Eschelon/43, Johnson/42, lines 11-14. Eschelon captured these Qwest statements in an April, 17, 2003 email to Qwest on which I was copied, which stated: “Additionally, this discussion started out with Qwest indicated (as it has in other instances) that its policy is that it does not provide written statements/retractions of the type requested by Eschelon. Eventually, Qwest did provide such information. Qwest needs a policy that recognizes this type of situation and provides a quick method for obtaining such retractions when Qwest misinformation to a customer needs to be corrected. OUTSTANDING.” In Qwest’s email response (April 17, 2003), Qwest (Mr. Jason Topp) attributed this position to “confidentiality concerns.” Eschelon’s ICA language, however, requires an acknowledgement of a Qwest mistake but no disclosure of confidential information in

1 Qwest to reverse that policy in Minnesota, Qwest chose not to make those
2 procedures available in any state where not specifically ordered to do so.⁹
3 Therefore, contract language is necessary and appropriate to effect a change in
4 this Qwest policy and properly require Qwest to provide an acknowledgement of
5 its mistake to correct Qwest mis-information provided to an Eschelon customer
6 while Qwest is performing services for Eschelon at Eschelon's expense.

7 **Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON'S PROPOSED**
8 **LANGUAGE "GOES WELL BEYOND THE SCOPE OF THE**
9 **MINNESOTA COMMISSION'S DECISION."¹⁰ DID THE MINNESOTA**
10 **COMMISSION AGREE WITH HER?**

11 A. No. Ms. Albersheim made the identical claim in the Minnesota Qwest-Eschelon
12 ICA arbitration¹¹ regarding the Minnesota 616 Order.¹² In the arbitration, the
13 Minnesota commission clearly rejected Qwest's argument, saying:

the letter. As the companies were not able to resolve the issue, the Minnesota commission decided the issue and ordered Qwest to implement procedures to acknowledge mistakes. *See* Eschelon/5 (MN 616 Orders), Starkey/4. An order is likewise needed in Oregon to obtain such procedures.

⁹ Qwest did not even inform other CLECs of the availability of the procedures in Minnesota through CMP (even though state-specific changes are made in CMP), as further discussed by Mr. Starkey. Eschelon/1, Starkey/69-70.

¹⁰ Qwest/1, Albersheim/53, line 7.

¹¹ Minnesota arbitration, Albersheim MN Direct (Aug. 25, 2006), p. 46, lines 5-6 ("Eschelon's language is unnecessary and goes well beyond the scope of the Commission's decision."). The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Colorado, 06B-497T ("Colorado arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03; ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration"). Transcript ("Tr.") pages from the arbitration hearings in Minnesota are included as Eschelon/6 and in Arizona as Eschelon/7 to the testimony of Mr. Starkey. Copies of the rulings of the Administrative Law Judges (ALJs) and the commission in Minnesota are included as Eschelon/29 and Eschelon/30 to the testimony of Mr. Denney.

1 The Commission’s concern for the anticompetitive consequences of
2 service quality lapses has *never* been as narrow as Qwest’s language
3 would suggest. The Commission finds it reasonable for Qwest to
4 acknowledge mistakes at any point in processing wholesale orders,
5 including mistakes arising during pre-ordering, ordering, provisioning,
6 maintenance and repair, and billing. In the interest of clarity, the
7 Commission will adopt the arbitrator’s language as modified by
8 Eschelon.¹³

9 The Minnesota commission is in a better position than Qwest to determine the
10 scope of its own orders. The Commission should reject Qwest’s request¹⁴ to rule
11 that Eschelon’s proposed language goes beyond the scope of the Minnesota 616
12 order and adopt Eschelon’s language because of the protections it offers for
13 competition and Oregon consumers. If Qwest can blame Eschelon for errors that
14 Qwest makes while working as Eschelon’s wholesale vendor, as Qwest did in the
15 Minnesota 616 case,¹⁵ Eschelon may wrongly lose customers to Qwest to its
16 disadvantage, as Eschelon did in that example.¹⁶

17 **Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON’S PROPOSAL**
18 **REFLECTS AN “OVERREACTION TO A SINGLE ISOLATED**
19 **INCIDENT”¹⁷ AND THAT ESCHELON HAS NOT REQUESTED**

¹² See discussion of the “Minnesota 616 Order” in Mr. Starkey’s direct testimony. Eschelon/1, Starkey/64-74.

¹³ Eschelon/30, Denney 15; *see also* Eschelon/30, Denney 23 [MN PUC Arbitration Order, p. 15 (emphasis added); *see also id.* p. 23, ¶4 (Topic 27)].

¹⁴ Qwest/1, Albersheim/53, line 7.

¹⁵ Eschelon/5, Starkey/11. The Minnesota Commission specifically found that Qwest Retail’s email to Eschelon’s Customer “was misleading in at least two ways.” *See id.*

¹⁶ Eschelon/5 (MN 616 Orders), Starkey/11 (“Qwest’s retail service representative dealt with the customer, who decided in the course of those dealings to reverse its decision to transfer its service to Eschelon.”).

¹⁷ Qwest/1, Albersheim/50, lines 6-7.

1 **ADDITIONAL ACKNOWLEDGEMENT OF MISTAKE LETTERS.**¹⁸

2 **PLEASE RESPOND.**

3 A. Eschelon provided reasons why such Qwest conduct may occur but remain
4 unknown to Eschelon in Mr. Starkey’s discussion of the rarity of “smoking gun”
5 type of evidence.¹⁹ My experience is consistent with Mr. Starkey’s testimony
6 that, although I sometimes hear of such examples through sales, service delivery,
7 or customers, rarely are contacts between Qwest and Eschelon’s customer in
8 writing (as they were in the Minnesota 616 situation) or, if they are written and
9 provided to customers, the customers may not want to be caught in the middle by
10 providing to Eschelon copies of Qwest communications.²⁰

11 Given that Qwest perceives these as rare events, it cannot claim additional burden.
12 In fact, Qwest has dropped its “additional unnecessary burdens” argument from
13 its direct testimony for Issue 12-64.²¹ The fact that Eschelon *has the ability to*
14 request formal acknowledgment of mistakes may also serve as an additional
15 incentive for Qwest not to create situations in which formal acknowledgment
16 would be requested.

17 **Q. MS. ALBERSHEIM TESTIFIES THAT “QWEST’S PCAT CLEARLY**
18 **ALLOWS CLECs TO OBTAIN ROOT CAUSE ANALYSIS OF UNUSUAL**

¹⁸ Qwest/1, Albersheim/52, lines 7-10.

¹⁹ Eschelon/5, Starkey/66-69.

²⁰ Eschelon/5, Starkey/66-67.

²¹ *Cf.* Minnesota arbitration, Albersheim MN Direct (Aug. 25, 2006), p. 44, lines 7-9 (“Eschelon’s changes . . . impose additional unnecessary burdens on Qwest.”).

1 **QWEST ERRORS”²² AND SHE PROVIDES A REPAIR EXAMPLE.²³**

2 **DOES MS. ALBERSHEIM FULLY DESCRIBE QWEST’S OBLIGATIONS**

3 **REGARDING ROOT CAUSE ANALYSIS?**

4 A. No. Ms. Albersheim’s description, in which she refers only to repair situations
5 and unusual events, is much narrower than the Qwest obligations documented
6 during the CMP Redesign process. With my direct testimony, I provided as
7 Eschelon/92 a copy of the posted “Qwest Service Center and Manager Roles in
8 Relation to CMP” that has been in place since June of 2002. Attached to my
9 testimony as Eschelon/130 is Qwest-prepared documentation from CMP Redesign
10 meetings showing that Qwest developed and documented these roles in CMP
11 Redesign in response to CLEC concerns. Eschelon/92 and Eschelon/130 show
12 that Qwest committed that it would be part of Qwest Service Manager’s Role to
13 provide root cause analysis not only for repair but also in many other areas,
14 including “Requests for Information,” “System Problems,” “Service Order
15 Problems,” “Billing Problems,” “Compliance Issues,” “Network Repair
16 Problems,” “Product Information,” “Chronic Performance Problems,” and
17 “Isolated Personnel Performance Issues.” Qwest states in Eschelon/92 that, in
18 “*all*” of these instances (*i.e.*, whether unusual or not), “*Qwest will conduct a root*

²² Qwest/1, Albersheim/50, lines 7-8.

²³ Qwest/1, Albersheim/50, footnote 34.

1 *cause analysis* of the examples of the problem, and *provide its analysis* to the
2 reporting CLEC in a *timely* manner.”²⁴

3 Despite this documented process requiring Qwest to conduct root cause analysis
4 of CLEC examples, Qwest currently refuses to provide root cause analysis of
5 Eschelon’s examples of jeopardies problems (Issue 12-72) which Eschelon
6 continues to send to Qwest regularly.²⁵ Although Qwest has attempted to justify
7 its conduct by claiming that the examples relate to a disputed issue²⁶ so it is
8 allegedly “pointless” to analyze the examples,²⁷ Eschelon provides examples
9 relating to undisputed issues,²⁸ and Qwest refuses to root cause the undisputed
10 examples. Qwest’s service manager has previously recognized that, while

²⁴ Exhibit BJJ-35, p. 2 (last paragraph). This is Qwest documentation posted on its website which, as discussed previously, Qwest may change unilaterally and, as discussed below (with respect to Qwest’s refusal to provide root cause for jeopardy examples) Qwest is disregarding currently. These facts show that the commitment to perform root cause analysis needs to be in the interconnection agreement.

²⁵ See Eschelon/117.

²⁶ Qwest now disputes that the phrase “the day before” is part of its jeopardies process. I discuss Qwest’s position on this issue below. *See also* Eschelon/43, Johnson/70-71. After Qwest started to dispute this phrase, Eschelon (while reserving its rights) accommodated Qwest by no longer using these examples as examples of non-compliance to Qwest’s process (while continuing to provide the ones involving no FOC as non-compliance examples).

²⁷ Colorado arbitration, Albersheim Surrebuttal (April 10, 2007), p. 32, lines 10-20. *Id.*, p. 32, lines 13-15 (“Eschelon’s service management team at Qwest found it fruitless to continue to respond to Eschelon’s data *because Eschelon presents the data on the premise that FOCs must be sent at least a day before the new due date.*”) (emphasis added). Qwest added that Eschelon’s data “has *always* been presented based on an incorrect premise.” *Id.* p. 32, lines 17-18 (emphasis added). First, that is not the case, because Eschelon’s examples have always also included undisputed examples of non-compliance (involving no FOC) (such as those included in Eschelon/115). Second, if that were the case, then Qwest would have always refused to root cause the examples, instead of changing its conduct after the arbitrations commenced.

²⁸ Eschelon/43, Johnson/66, footnote 86. Eschelon continues to provide examples involving no FOC at all after the Qwest facility jeopardy clears, and Qwest refuses to root cause them, even though it has admitted its process to provide an FOC. *See* Eschelon/6, Starkey 6, Minnesota Tr., Vol. I, p. 37, lines 20-23 (Ms. Albersheim) (“Q So you agree with me that Qwest’s current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes.”).

1 Eschelon continued to provide “misses on FOC 24-hours before due date” in the
2 data, Eschelon also provides other jeopardies examples, which Qwest reviewed.²⁹
3 In addition, before Qwest refused to root cause any of these types of examples,
4 Qwest’s service manager told Eschelon that Qwest reviews “all of the data”
5 (which included misses on FOC 24-hours before due date).³⁰ In the same
6 conversation, I asked if Eschelon should continue to provide this data, and
7 Qwest’s service manager said yes.³¹ I believed then, as I do now, that this
8 indicated that Qwest also found the data useful in resolving issues and attempting
9 to avoid future mistakes. Qwest’s refusal after arbitrations commenced to root
10 cause such examples illustrates that Qwest’s own documentation (even when
11 provided through CMP Redesign) is insufficient and ICA language is needed.
12 Ms. Albersheim testifies that “Qwest’s service managers are willing to work with
13 CLECs where customers have been impacted.”³² Customers are impacted in the
14 jeopardies examples, however, when their due date is missed. Yet, Qwest’s
15 service managers are unwilling to root cause these examples.

16 Although the “Qwest Service Center and Manager Roles in Relation to CMP”
17 document is a Qwest document and I have attached it to my testimony in other

²⁹ Qwest (Jean Novak) Oct. 3, 2005 email to Eschelon (Bonnie Johnson). (This email is captured in the issues log provided regularly to Qwest.) Qwest’s service manager said in this email that, after Qwest eliminated the “missed on FOC 24-hours before due date,” the “difference is 19.84% increase to Eschelon’s calculation of 65.44% met,” leaving Qwest with 14.72% non-compliance.

³⁰ Qwest-Eschelon Oct. 5, 2005 call. (Notes from this call are captured in the issues log provided regularly to Qwest.)

³¹ Qwest-Eschelon Oct. 5, 2005 call. (Notes from this call are captured in the issues log provided regularly to Qwest.)

³² Qwest/1, Albersheim 50, lines 9-10.

1 Qwest arbitration cases,³³ in thirteen previous rounds of testimony in the Qwest-
2 Eschelon arbitration proceedings Ms. Albersheim has never even acknowledged
3 its existence or recognized the work in CMP Redesign to document these
4 responsibilities to ensure that Qwest service managers would continue to perform
5 these responsibilities for CLECs. To the contrary, before Eschelon pointed out
6 these facts, Ms. Albersheim has attempted to portray Qwest's obligation as
7 limited to repair, as she does in her testimony here. Previously, she also tried to
8 down play the obligation to root cause examples in other ways, such as this
9 testimony: "Anecdotal evidence from Qwest's account managers indicates that the
10 *only CLEC* that has expressed a desire for root cause analysis is Eschelon."³⁴
11 Later, after Eschelon quoted the Qwest PCAT regarding repair,³⁵ Ms. Albersheim
12 testified that Qwest "already provides root cause analysis *to all CLECs* for repair
13 issues."³⁶ Silence in the contract on this issue may lead to similarly conflicting
14 results. In my direct testimony, I address Eschelon's concerns regarding Qwest's

³³ See, e.g., BJJ-34, Arizona Rebuttal (Feb. 9, 2007), BJJ-43, Washington Surrebuttal (April 3, 2007).

³⁴ Minnesota arbitration, Albersheim MN Direct (Aug. 25, 2006), p. 40, lines 21-22 (emphasis added). Despite Qwest's previous testimony that no other CLEC has expressed a desire for root cause analysis, a simple search of Qwest's web site for "root case" produced this statement by AT&T: "While the collaborative work from the Documentation Forum has accomplished areas of improvement relative to the content of the event notification, AT&T believes that Qwest does not fulfill the requirement to provide to CLECs detailed root cause analysis of unplanned degradations/outages nor detailed final corrective actions taken as part of the root cause analysis." http://www.qwest.com/wholesale/downloads/2004/040323/SCR111203-01-E22_EscalationResponse-Final.doc. In addition, in the Arizona 271 case Qwest indicated that, even before requested by Eschelon, it provided a mechanism for CLECs to obtain "root cause analysis without a confidentiality footer" to "address CLECs' need for information about an outage." *AZ 271 Staff Report*, ¶ 219. Albersheim did not explain why this need of CLECs (plural) is not an expression of a desire by CLECs for root cause analysis.

³⁵ Minnesota arbitration, Eschelon (Webber) Direct (Aug. 25, 2006), p. 58, lines 6-22 (quoting the same language from the Qwest PCAT as quoted by Ms. Albersheim in footnote 34 of her direct testimony in this matter).

³⁶ Minnesota arbitration, Albersheim MN Reply (Sept. 22, 2006), p. 42, lines 10-15 (emphasis added)

1 ability to make unilateral changes to its Service Management Roles and
2 Responsibilities it posts on its web site³⁷ and how by proposing to exclude the
3 term from the contract, Qwest is attempting to reserve the right to stop providing
4 root cause analysis during the contract term without amending the agreement.³⁸
5 Eschelon needs more certainty that root cause analysis will be performed to help
6 avoid customer impacting, Qwest-caused mistakes in the future. Qwest has
7 admitted that root cause analysis may help “prevent a reoccurrence of the
8 event.”³⁹

9 **Q. MS. ALBERSHEIM CLAIMS THAT ANY LANGUAGE REGARDING**
10 **THE ACKNOWLEDGMENT OF MISTAKES IS UNNECESSARY**
11 **BECAUSE NO OTHER CLECS HAVE EXPRESSED A SIMILAR NEED**
12 **FOR SUCH CONTRACT LANGUAGE, AND THAT QWEST HAS**
13 **RECEIVED NO INDICATION THAT MISTAKES ARE A SIGNIFICANT**
14 **OR ONGOING PROBLEM.⁴⁰ PLEASE RESPOND.**

15 A. First, unlike “other” CLECs, Eschelon has expended the resources to bring this
16 issue to the Commission, and therefore Eschelon’s individual business need is
17 before this Commission in this arbitration. Qwest’s witness testified that

³⁷ Eschelon/43, Johnson/49 footnote 57.

³⁸ Eschelon/43, Johnson/50, lines 6-8.

³⁹ Colorado arbitration, Hearing Exhibit 4 (Albersheim Reb.) at RA-23, p. 3 (sixth bullet point); *See, e.g.*, Eschelon/87, Johnson/7-8 (Example 3) & 30-36 (Example 8) (both examples of root cause analyses that resulted in additional training for the Qwest personnel to prevent a reoccurrence of the event).

⁴⁰ Qwest/1, Albersheim/52, Lines 1-3.

1 individual carrier's needs are appropriately addressed in ICAs.⁴¹ Second, if
2 Qwest refuses to root cause examples provided by CLECs, as it has done with
3 Eschelon's jeopardies examples,⁴² Qwest may claim that there is no ongoing
4 problem when the problem exists but Qwest will not recognize it. Third, Ms.
5 Albersheim's statements are not supported by any evidence, whereas Qwest's
6 own documentation (quoted above) on its web site is contrary to her assertions.
7 The fact that Qwest's own documentation includes a description of procedures by
8 which CLECs can request root cause analyses of examples⁴³ indicates that
9 mistakes may be an ongoing problem, and Qwest is fully aware that CLECs may
10 have a business need for requesting such analyses. Finally, to the extent other
11 CLECs have not requested acknowledgments of mistakes (as opposed to root
12 cause analyses) perhaps this is because, as discussed by Mr. Starkey,⁴⁴ Qwest
13 chose not to implement the Minnesota Commission-ordered procedures through
14 CMP (for Minnesota⁴⁵ or any state) to inform other CLECs of the availability of
15 such acknowledgments and how and when to obtain them. Qwest should not be
16 allowed to defeat Eschelon's proposal on the grounds that other CLECs have
17 allegedly expressed no interest in receiving acknowledgment of mistakes, when

⁴¹ Qwest/14, Stewart/41, lines 24-29 ("The individual ICA negotiation process was clearly contemplated by the Telecommunications Act. Specifically, the Act requires that ILECs negotiate individually with CLECs and reach agreements that are tailored to each carrier's needs. While this approach, mandated by the Act results in terms and conditions that may be different from one CLEC to another, those differences are not an illegal or prohibited form of discrimination.").

⁴² See, e.g., Eschelon/117.

⁴³ Qwest/6; Eschelon/92.

⁴⁴ Eschelon/1, Starkey/69-70.

1 Qwest chose not to inform CLECs through CMP of the availability of such
2 acknowledgments.

3 **Q. IS MS. ALBERSHEIM CORRECT WHEN SHE ARGUES THAT**
4 **ESCHELON’S PROPOSAL TO REQUIRE ROOT CAUSE ANALYSIS IS**
5 **UNNECESSARY BECAUSE OF THE EXISTENCE OF PERFORMANCE**
6 **INDICATORS (“PID”)?⁴⁶**

7 A. No. PIDs do not capture all types of Qwest’s inadequate service. For example, a
8 real life incident described in Eschelon/87 to my direct testimony, in which
9 Qwest’s technician insulted Eschelon’s End User Customer with profanity, would
10 not be captured in PIDs. Similarly, PIDs do not measure the harm to Eschelon’s
11 reputation done by Qwest’s mistakes in situations in which the End User is led to
12 believe that Eschelon was at fault.

13 Even if Qwest must pay under the PAP for a specific instance of inadequate
14 service via PIDs, Qwest may still have incentives to commit a mistake because
15 gains from winning back a large End User Customer may exceed PID penalties.
16 In the Minnesota 616 case, for example, Qwest gained a more than \$460,000 per
17 year customer as a result of a Qwest error that Qwest’s representatives, when
18 dealing with Eschelon’s customer, blamed on Eschelon.⁴⁷ That figure is multiples

⁴⁵ Terms may be implemented in CMP on a state-specific basis. Expedites, for which Qwest offers unique terms in Washington but not its other 13 states (see Eschelon’s discussion of Issue 12-67) is an example.

⁴⁶ Qwest/1, Albersheim/52, lines 17-19.

⁴⁷ Eschelon/5, Starkey/7. See Eschelon/1, Starkey/64-74 (discussing the Minnesota 616 case).

1 greater than the annual amount Qwest pays Eschelon in PAP payments in Oregon
2 for all performance issues that occur throughout the year.

3 **Q. MS. ALBERSHEIM SUGGESTS THAT, IF THE COMMISSION ADOPTS**
4 **ESCHELON'S PROPOSED LANGUAGE REGARDING**
5 **ACKNOWLEDGMENT OF MISTAKES, THIS LANGUAGE SHOULD BE**
6 **RECIPROCAL.⁴⁸ PLEASE RESPOND.**

7 A. Qwest did not request reciprocal language in negotiations for Oregon or any other
8 state or raise the possibility of reciprocity in any of the three rounds of testimony
9 in Minnesota for Issue 12-64. The main problem with Ms. Albersheim's
10 suggestion is that the nature of the relationship is not reciprocal. There is no
11 comparable situation in which Eschelon would make a mistake while acting on
12 Qwest's behalf and at its expense so that an impression is created that Qwest is at
13 fault if a mistake is made. As I explained in direct testimony,⁴⁹ Eschelon pays
14 Qwest to perform activities on Eschelon's behalf, such as installation or repair of
15 loops, but Eschelon does not perform installation and repair activities on behalf of
16 Qwest. The specific language of Eschelon's proposal is drafted to reflect Qwest's
17 unique position and procedures in the wholesale market; many of its specific
18 provisions and terminology would not apply reciprocally. Qwest addresses
19 reciprocity in its direct testimony, which does not include discussion of each
20 provision of the proposed language,⁵⁰ so it is unclear to which portions of the

⁴⁸ Qwest/1, Albersheim/53, lines 15-16.

⁴⁹ Eschelon/43, Johnson/39, lines 3-4.

⁵⁰ Qwest/1, Albersheim/53, lines 17-20.

1 language Qwest is referring and how Qwest would modify the language. As of
2 today, after several years of negotiations and many rounds of testimony in several
3 states, Qwest has not provided a language proposal that captures Ms.
4 Albersheim's suggestion. If Qwest provides proposed language to Eschelon,
5 Eschelon will consider the proposal.⁵¹

6 **B. SUBJECT MATTER NO. 31. EXPEDITED ORDERS**

7 *Issues Nos. 12-67 and 12-67(a)-(g)*

8 **Q. WHERE IS SUBJECT MATTER 31 DISCUSSED IN ESCHELON'S**
9 **REBUTTAL TESTIMONY?**

10 A. Mr. Denney addresses Issue 12-67 and subparts in his testimony. (Expedited
11 orders are also addressed in Eschelon/93 – Eschelon/109 to my direct testimony.)

12 **C. SUBJECT MATTER NO. 33. JEOPARDIES**

13 *Issues Nos. 12-71, 12-72, and 12-73: ICA Section 12.2.7.2.4.4 and subparts*

14 **Q. PLEASE COMMENT ON MS. ALBERSHEIM'S CLAIM THAT**
15 **ESCHELON'S PROPOSAL DOES NOT REFLECT QWEST'S CURRENT**
16 **PRACTICE.**⁵²

⁵¹ Eschelon made this same offer in its rebuttal testimony in Washington on December 4, 2006, but Qwest has not provided any proposal to Eschelon for its consideration.

⁵² Qwest/1, Albersheim/69, lines 2-4.

1 A. When asked if Eschelon’s proposed language reflects Qwest’s current practice,
2 Ms. Albersheim responds “No.”⁵³ In the next two sentences, however, she adds
3 that *one aspect* of Eschelon’s proposal is not Qwest’s current practice: providing
4 the jeopardy notice “at least a day before.”⁵⁴ Only with the latter clarification is
5 Ms. Albersheim’s testimony consistent with her previous testimony that, except
6 for that phrase, Eschelon’s proposed jeopardies language *is* consistent with
7 Qwest’s current practice.⁵⁵

8 Ms. Albersheim argues in favor of a “compelling need” standard for changes to
9 process.⁵⁶ Mr. Starkey discusses the reasons why Eschelon is opposed to Qwest’s
10 attempt to shift the burden to Eschelon and apply this new standard in his
11 testimony (Eschelon/123). Ms. Albersheim states that Eschelon’s ICA language
12 proposal is “incorporating the current PCAT process for Jeopardy Notices into its
13 contract.”⁵⁷ Because Ms. Albersheim has admitted that the bulk of Eschelon’s
14 jeopardies language is Qwest’s current process, her own proposed standard if
15 applied would require Qwest to establish a compelling need to change Eschelon’s
16 language. Eschelon is the company, however, that has established a business
17 need for its jeopardies proposal.

⁵³ Qwest/1, Albersheim/69, lines 2-5.

⁵⁴ Qwest/1, Albersheim/69, lines 4-6.

⁵⁵ Eschelon/6, Starkey 6, Minnesota Tr., Vol. I, p. 37, lines 16-23 (Ms. Albersheim) (“Q Other than that phrase, at least a day before, is Eschelon’s proposal consistent with Qwest’s practice? A Current practice, yes, except for that sentence. Q So you agree with me that Qwest’s current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes.”). *See also* Qwest/1, Albersheim/69, lines 16-17 (referring to Eschelon’s ICA proposal as “incorporating the current PCAT process for Jeopardy Notices into its contract”).

⁵⁶ Qwest/1, Albersheim/69, lines 8-9.

1 With respect to the single phrase Qwest now disputes (“at least the day before”),
2 I quoted in my direct testimony the Qwest-prepared CMP documents that
3 supports this phrase and shows it is part of Qwest’s process,⁵⁸ despite Qwest’s
4 denials in these arbitrations. That documentation provides:

5 Action #1: As you can see receiving the FOC releasing the order
6 on the day the order is due does not provide sufficient time for
7 Eschelon to accept the circuit. Is this a compliance issue,
8 *shouldn’t we have received the releasing FOC the day before the*
9 *order is due?* In this example, should we have received the
10 releasing FOC on 1-27-04?

11 Response #1 *This example is non-compliance to a documented*
12 *process. Yes an FOC should have been sent prior to the Due*
13 *Date.”*⁵⁹

14 “Bonnie confirmed that the *CLEC should always receive the FOC*
15 *before the due date. Phyllis agreed,* and confirmed that Qwest
16 cannot expect the CLEC to be ready for the service if we haven’t
17 notified you.”⁶⁰

18 I participated in the CMP communications that Qwest documented in those
19 materials. When Qwest’s CMP representative committed that in these situations
20 the CLEC should “*always* receive the FOC before the due date,”⁶¹ she made that
21 commitment to me, as well as the other CLECs on the call, in response to
22 questions I asked to confirm the very process described in Eschelon’s proposed
23 language for Issue 12-72, which I helped to develop based on this experience.

⁵⁷ Qwest/1, Albersheim/69, lines 16-17.

⁵⁸ Eschelon/43, Johnson/70, lines 6-18, quoting from Eschelon/113, Johnson/3 & Eschelon 111/Johnson/5.

⁵⁹ Eschelon/113, Johnson/3 (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added).

⁶⁰ Eschelon 111/Johnson/5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest (emphasis added).

1 **Q. IN YOUR PREVIOUS ANSWER, YOU REFER TO QWEST-PREPARED**
2 **DOCUMENTS SHOWING THAT QWEST’S PROCESS INCLUDES**
3 **PROVIDING THE FOC THE DAY BEFORE THE NEW DUE DATE. HAS**
4 **QWEST ATTEMPTED TO RE-DEFINE THOSE CMP STATEMENTS IN**
5 **ARBITRATION?**

6 A. Yes, although only very recently,⁶² and only with respect to the example (i.e., the
7 first of the above two quotations). Qwest’s discussion in the March CMP meeting
8 i.e., the second of the above two quotations) was not limited to that example. In
9 the March CMP meeting, Qwest and CLECs (including myself) addressed the
10 scenario later described in Eschelon’s proposed language, and Qwest’s CMP
11 representative committed that in these situations the CLEC should “*always*
12 receive the FOC before the due date.”⁶³ Although Ms. Albersheim (who was not
13 present) has testified “Qwest never made such a commitment,”⁶⁴ she has not
14 explained how it was documented by Qwest in CMP minutes and why “always”
15 does not mean “always.”

16 With respect to the example, for the first time, on May 8, 2007, during the hearing
17 in the Qwest-Eschelon Washington ICA arbitration, Ms. Albersheim testified as
18 follows:

⁶¹ Eschelon 111/Johnson/5, March 4, 2004 CMP discussions.

⁶² Eschelon has consistently relied upon the same Qwest statements in its arbitration testimony, starting with its direct testimony in Minnesota on August 25, 2006. *See* Minnesota arbitration, Exhibit BJJ-5, p. 4 (containing the example from the Feb. 26, 2004 meeting materials and the March 4, 2004 CMP minutes, stating “the CLEC should always receive the FOC before the due date”).

⁶³ Eschelon 111/Johnson/5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest.

1 Q. And Qwest's response was, this example is noncompliance to a
2 documented process; do you see that?

3 A. Yes, and what Phyllis was speaking of there was a documented internal
4 process. In this example as it turns out the jeopardy cleared two days
5 earlier. It is the internal process of Qwest to send the FOC as soon as the
6 jeopardy clears. That was not done in this case, so it was a violation of our
7 internal documented process.

8 Q. And it goes on to say, yes, an FOC should have been sent prior to the
9 due date; do you see that?

10 A. Yes, because the jeopardy cleared prior to the due date.⁶⁵

11 Ms. Albersheim attempts to make a distinction, but it is a distinction without a
12 difference. Both companies agree that Qwest did not comply with the jeopardy
13 process in this example.⁶⁶ Eschelon has described the non-compliance as not
14 sending the FOC the day before the new due date, consistent with Qwest's
15 separate clear statement in CMP at the time (irrespective of this particular
16 example) that the CLEC should "*always* receive the FOC before the due date."⁶⁷
17 Qwest now characterizes the non-compliance as not sending the FOC as soon as
18 the jeopardy cleared, the end result of which is that Qwest did not send the FOC
19 the day before the new due date. Qwest admits the non-compliance is on Qwest's
20 side. It is out of Eschelon's control (i.e., not caused by Eschelon).

⁶⁴ Minnesota arbitration, Albersheim MN Reply, p. 16, lines 2-3. *See also* Arizona arbitration, Albersheim Rebuttal, p. 21, lines 9-15; *id.* p. 26, line 20.

⁶⁵ Washington arbitration, Transcript (May 8, 2007), p. 162, lines 6-18.

⁶⁶ Eschelon will assume, for the purposes of discussion only, that Ms. Albersheim is correct that in this particular example the jeopardy cleared two days earlier but Qwest neglected to send the FOC (rather than, as happens in other situations, Qwest clears the jeopardy later), although Qwest has not taken that position previously in arbitrations and I do not recall Qwest describing the facts in that manner in CMP at the time.

⁶⁷ Eschelon 111/Johnson/5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest.

1 In the past, Qwest has sometimes provided the reason the FOC was not provided
2 the day before the new due date, but Qwest acknowledged that providing an FOC
3 before the new due date was part of its process. As I explained in my direct
4 testimony, after the Change Request closed subject to compliance issues, Qwest
5 continued to recognize that Qwest's process was to send an FOC before the due
6 date (*i.e.*, a "timely" FOC) and treated Qwest failure to do so in particular cases as
7 non-compliance with its process.⁶⁸ For example, Qwest told Eschelon at that time
8 that, in five examples for which Qwest said "a FOC was not sent ***timely prior to***
9 ***the due date,***" Qwest provided coaching to the non-compliant Qwest employee(s)
10 and indicated Qwest would continue to monitor compliance with the process.⁶⁹
11 Qwest's use of "timely" before "prior to" the due date shows that Qwest also
12 understood that a "timely" FOC is one delivered "prior to" the due date.⁷⁰ For
13 these five examples, unlike Ms. Albersheim's explanation of the above example
14 (when Qwest now says the jeopardy was cleared in a timely manner two days
15 earlier), Qwest explained that the jeopardy was cleared in an untimely manner in
16 the five examples.⁷¹ The jeopardy was cleared too late for Qwest to send a timely

⁶⁸ Eschelon/43, Johnson/76, lines 12-17.

⁶⁹ Eschelon/110, Johnson/ 7-8 (Qwest service manager email dated Aug. 25, 2004) (emphasis added); *id.* p. 7 ("Five of the LSRs in the spreadsheet are where a ***FOC was not sent timely prior to the due date*** Qwest will continue to monitor this") (emphasis added); *id.* p. 8 ("5 were due to the issue described above with resolving the facility really late in the process; 5 of those will be addressed through coaching").

⁷⁰ *See id.* p. 7.

⁷¹ Qwest's service manager said that the Qwest non-compliance (which she referred to as a "breakdown") in these five examples was not in the delayed order process itself (*e.g.*, a jeopardy was cleared but a timely FOC prior to the due date was not sent) but the failure to send a timely FOC was caused by Qwest "resolving the facility issue late in the process and still attempting to meet the customers due date." *See id.*

1 FOC, which Qwest admitted should have been sent “prior to the due date.”⁷²

2 Both the untimely clearing of the jeopardy and the untimely FOC were on
3 Qwest’s side (i.e., not caused by Eschelon).

4 These examples show that the reason Qwest fails to send an FOC prior to the due
5 date may vary, including situations in which the clearing of the jeopardy is timely
6 but Qwest sends no FOC or sends it late, and the clearing of the jeopardy is
7 untimely so the FOC is also untimely. *Regardless of the reason Qwest did not*
8 *comply with its commitment to always send the FOC before the due date, two*
9 *facts remain constant: (1) the non-compliance is on Qwest’s side; and (2) as a*
10 *result of Qwest’s non-compliance, Eschelon does not receive proper notice to*
11 *allow it to prepare to accept service delivery.* Qwest’s conduct places Eschelon is
12 in the same bind whether Qwest did not comply with its commitment to always
13 send the FOC before the due date because it failed to clear the jeopardy in a
14 timely manner or it cleared the jeopardy in a timely manner but failed to send a
15 timely FOC. Qwest committed in CMP to always send the FOC the day before
16 the new due date.⁷³ As reflected in Eschelon’s proposal for Issue 12-72, when
17 Qwest fails to do so for any reason on its side, Qwest may attempt service
18 delivery, but it is unreasonable to designate a failed delivery due to Qwest’s non-
19 compliance on its side as an Eschelon-caused (CNR) jeopardy.

20 **Q. IN HER DIRECT TESTIMONY, MS ALBERSHEIM’S DESCRIBES THE**

⁷² See *id.* p. 7.

⁷³ Eschelon 111/Johnson/5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest.

1 **PHRASE “THE DAY BEFORE” IN ESCHELON’S PROPOSAL AS A**
2 **“REQUIREMENT.”⁷⁴ IS ANY SUGGESTION BY MS. ALBERSHEIM**
3 **THAT QWEST CANNOT PROCEED WITH DELIVERY IF IT FAILS TO**
4 **MEET SUCH A “REQUIREMENT” ACCURATE?**

5 A. No. This is part of Qwest’s claim that Eschelon’s proposal “force[s] extra time”
6 in to the process and causes delay.⁷⁵ In her direct testimony, Ms. Albersheim
7 adds: “That . . . is meaningless in situations where a facility problem is cleared on
8 the same day an order is due.”⁷⁶ Eschelon is *not* proposing that, in any
9 circumstance (with or without an FOC; on the original due date or on another
10 date⁷⁷), Qwest cannot attempt to deliver the circuit or that Qwest must wait to
11 deliver the FOC before attempting delivery. This is self-evident from the
12 language of Eschelon’s proposal (see below). Eschelon wants Qwest to use best
13 efforts to deliver the circuit on the due date, just as Eschelon uses best efforts to

⁷⁴ Qwest/1, Albersheim/69, lines 4-5.

⁷⁵ Washington arbitration (Albersheim Responsive) (Dec. 4, 2006), p. 58, line 21 – p. 59, line 1 (“If a jeopardy situation can be resolved on the original due date, all parties should try to ensure that it is. This is in the best interests of the end-user customer. It makes no business sense to force extra time into the process that could guarantee the original due date is **not** met. But that is exactly what Eschelon’s 24-hour advance notice requirement would do.”). *See* Eschelon/43, Johnson/75.

⁷⁶ Qwest/1, Albersheim/69, lines 6-7.

⁷⁷ The “original” due date means the due date requested by CLEC on its order (*i.e.*, the date in jeopardy). Qwest sometimes refers to the “due date” without distinguishing whether it means the original date, the new due date, or the date of attempted delivery without an FOC identifying the new due date. There is no properly established due date until Qwest sends an FOC with a new due date after the jeopardy is cleared. (*See* ICA Section 9.2.4.4.1) In other words, Qwest is making delivery unexpectedly without properly establishing the due date. (Eschelon may refer to the date of attempted delivery as the new due date for ease of reference, but I wanted to clarify that it is not properly a new due date until an FOC is sent with that date.) In any event, whether the unexpected delivery occurs on the original due date or another date, under Eschelon’s proposed language, Eschelon will use best efforts to accept service delivery.

1 accept the circuit on the due date,⁷⁸ and Eschelon’s language therefore *requires*
2 best efforts. Given Qwest’s claims, the language of Eschelon’s proposed
3 language for Issue 12-72 – showing Eschelon has committed to use best efforts –
4 bears repeating:

5 **Issue 12-72 (with emphasis added):**

6 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these
7 types are: (1) CLEC or CLEC End User Customer is not ready or
8 service order is not accepted by the CLEC (when Qwest has tested
9 the service to meet all testing requirements.); and (2) End User
10 Customer access was not provided. For these two types of
11 jeopardies, Qwest will not characterize a jeopardy as CNR or send
12 a CNR jeopardy to CLEC if a Qwest jeopardy exists, *Qwest*
13 *attempts to deliver the service*, and Qwest has not sent an FOC
14 notice to CLEC after the Qwest jeopardy occurs but at least the day
15 before Qwest attempts to deliver the service. *CLEC will*
16 *nonetheless use its best efforts to accept the service*. If needed,
17 the Parties will attempt to set a new appointment time on the same
18 day and, if unable to do so, Qwest will issue a Qwest Jeopardy
19 notice and a FOC with a new Due Date.

20 Eschelon’s proposed language clearly states that, even when Qwest falls down
21 and does not provide an FOC or provides an untimely FOC, Eschelon “will
22 nonetheless use its best efforts to accept the service.”⁷⁹ The proposal is fully
23 consistent with Qwest’s stated position that “if a jeopardy situation can be
24 resolved on the original due date, all parties should try to ensure that it is.”⁸⁰ In
25 fact, Eschelon’s language shows a commitment to do so. In other words, if “a
26 facility problem is cleared on the same day the order is due,”⁸¹ Eschelon’s

⁷⁸ See, e.g., Eschelon/114 (Examples: No FOC After Qwest Facility Jeopardy yet Eschelon Accepts Circuit).

⁷⁹ Eschelon Proposed ICA Section 12.2.7.2.4.4.1.

⁸⁰ Washington arbitration, Albersheim Responsive, p. 58, lines 21-22.

⁸¹ Qwest/1, Albersheim/69, lines 6-7.

1 language provides that the companies will try to ensure service delivery.
2 Eschelon's language also ensures that when, despite best efforts the circuit cannot
3 be delivered, Qwest does not benefit by blaming Eschelon for its failure to
4 provide proper notice through an erroneous classification of the jeopardy.⁸² **More**
5 **importantly**, Eschelon's language ensures that the end user customer will not
6 experience avoidable delay due to Qwest's failure to provide proper notice,
7 because the language requires the companies to "attempt to set a new appointment
8 time **on the same day**." As discussed,⁸³ if Qwest erroneously classifies the
9 jeopardy as Eschelon-caused (CNR), the appointment is necessarily **three days**
10 out,⁸⁴ instead of the same day.

11 To demonstrate Eschelon's commitment on this point, Eschelon has provided
12 Eschelon/114 comprising a list of more than one hundred examples when, despite
13 the lack of proper notice (i.e., no FOC after a Qwest facility jeopardy), Eschelon
14 uses best efforts to accept the circuit and is successful in doing so when Qwest
15 unexpectedly attempts to deliver service. These are examples of the situations
16 covered by Eschelon's proposed language, in which:

⁸² See Qwest Request for Reconsideration, Minnesota arbitration (April 9, 2007), p. 5 (regarding Qwest's Performance Assurance Plan (PAP): if "the Qwest technician classifies the order as customer not ready, it is excluded from the calculation entirely").

⁸³ Eschelon/43, Johnson/58.

⁸⁴ Eschelon/6, Minnesota arbitration Tr. Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim). See also Qwest Request for Reconsideration, Minnesota Arbitration (Apr. 9, 2007), p. 3 ("Eschelon accurately indicated to the Commission that, when Qwest classifies an order as customer not ready, Eschelon is required to supplement its order to reflect a new due date that at least three days out.").

- 1 • Qwest sends a facility jeopardy indicating Eschelon should not prepare
2 unless Qwest advises Eschelon that the jeopardy condition has been
3 resolved.⁸⁵
- 4 • Qwest fails to send any FOC with a due date after the facility jeopardy
5 (which would have advised Eschelon that the jeopardy condition had been
6 resolved and when to expect delivery, if it had been sent).⁸⁶
- 7 • Qwest unexpectedly attempts to deliver service anyway.

8 Eschelon’s devotion to ensuring the best interests of the End User Customer is
9 evident from these examples: A comparison of the data in the column labeled
10 ‘Eschelon Requested Due Date’ to the data in the column ‘Completion Date,’
11 shows that in the vast majority of these examples, the service was delivered on
12 Eschelon’s original requested due date. In other words, these examples illustrate
13 the point made under Eschelon’s language: That Eschelon would either accept
14 delivery using best efforts or have an opportunity to schedule a new appointment
15 on the *same day*. Under Qwest’s approach (which is apparent from the “Qwest
16 Review” column in Eschelon/115⁸⁷), if despite best efforts the companies are not
17 able to complete delivery, Qwest will assign a CNR jeopardy, and the loop order
18 will be delayed *three days*.⁸⁸

⁸⁵ Eschelon/43, Johnson/56 & footnote 64 (quoting Qwest’s Provisioning and Installation Overview PCAT).

⁸⁶ See ICA Section 9.2.4.4.1: “. . . If Qwest must make changes to the commitment date, Qwest will promptly issue a Qwest Jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also *submit a new Firm Order Confirmation* that will clearly identify the new Due Date.” (emphasis added). This language is not only closed in the proposed ICA, but also it appears in the SGAT and Qwest’s own negotiations template.

⁸⁷ Eschelon/43, Johnson/34-38.

⁸⁸ Eschelon/6, Minnesota arbitration Tr. Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim).

1 Eschelon has committed in its proposed contractual language to continuing to use
2 best efforts in this manner. When, through no fault of its own, it cannot accept
3 the circuit due to Qwest's failure to provide the required advance notice, however,
4 Qwest should not be allowed to force an unnecessary request for a three-day
5 delay.

6 **Q. PLEASE RESPOND TO MS. ALBERSHEIM'S CLAIM THAT**
7 **ESCHELON'S PROPOSED LANGUAGE SHOULD BE HANDLED IN**
8 **THE CMP BECAUSE IT INVOLVES "PROCESS DETAIL."⁸⁹**

9 A. This issue has already been through CMP. In fact, jeopardies have a long history
10 in CMP. That history and later events (which are summarized on pages 76-77 of
11 my direct testimony, Eschelon/43) show that sending this issue back to CMP will
12 only delay resolution of the issue. Qwest is unilaterally disregarding the results of
13 Eschelon's extensive efforts in CMP,⁹⁰ the agreed upon CMP results,⁹¹ and
14 Qwest's own CMP procedures (under which, if Qwest had wanted to properly
15 change those results, it should have submitted a change request at that time
16 instead of unilaterally disregarding the process).⁹² Sending it back to CMP now
17 would allow Qwest to avoid an arbitration decision after Eschelon has expended
18 the resources to bring this issue to the Commission in this arbitration. And, given

⁸⁹ Qwest/1, Albersheim/69, lines 10 & 15-16.

⁹⁰ See references to Eschelon's participation (including my own participation) in Eschelon/111, Eschelon/112 and Eschelon/113.

⁹¹ Eschelon/43, Johnson/70, lines 6-18, quoting from Eschelon/113, Johnson/3 & Eschelon 111/Johnson/5.

⁹² Qwest/2 (CMP Document), Albersheim/42-45.

1 Qwest’s position on this issue, there is no reason to believe that Qwest would
2 suddenly change that position in CMP, which would force Eschelon back before
3 the Commission to request the ruling it seeks here. A Commission decision is
4 needed to resolve the dispute and avoid future additional litigation of the same
5 issue.

6 Ms. Albersheim cites both of Qwest’s proposed criteria or tests (from its position
7 statements) for determining whether an issue allegedly belongs only in CMP so
8 that it must be excluded from the ICA (process detail and multiple CLECs).⁹³ Mr.
9 Starkey explains how labeling an issue as a process or involving process may lead
10 to inconsistent or unjust results because it is fairly circular, with the chosen label
11 often restating the desired result.⁹⁴ He provides examples showing that Qwest’s
12 multiple-CLEC test also leads to inconsistent results.⁹⁵ With respect to jeopardies
13 specifically, Qwest has admitted with respect to key aspects of Eschelon’s
14 proposal that it cannot “imagine any circumstances under which a CLEC might
15 want something different.”⁹⁶

16 **Q. PLEASE RESPOND TO MS. ALBERSHEIM’S “GENERAL OBJECTION”**
17 **THAT ESCHELON’S PROPOSED LANGUAGE PRECLUDES QWEST**
18 **FROM RESPONDING TO CHANGES TO INDUSTRY STANDARDS FOR**

⁹³ Qwest/1, Albersheim/69, lines 12-20.

⁹⁴ Eschelon/1, Starkey/19-20.

⁹⁵ Eschelon/1, Starkey/20-21.

⁹⁶ Arizona arbitration Tr., Vol. 1, p. 64, lines 5-14 (Ms. Albersheim); see also Arizona arbitration Tr. at Vol. 1, p. 64, line 19 – p. 65, line 3 (Ms. Albersheim).

1 **JEOAPRDY NOTICES AND CHANGE REQUESTS SUBMITTED BY**
2 **OTHER CLECs THROUGH CMP.**⁹⁷

3 A. Mr. Starkey addresses Qwest’s general objections to including language in the
4 ICA in the first section of his testimony, dealing with CMP and contractual
5 certainty (Eschelon/1 and Eschelon/123). I will briefly address these two points
6 which Ms. Albersheim addresses with respect to jeopardies.

7 First, while Ms. Albersheim claims that inclusion of Eschelon’s proposed ICA
8 language would preclude Qwest from responding to “changes to industry
9 standards for jeopardy notices,”⁹⁸ she does not name any industry standard that
10 says – or may reasonably be expected to say in the future – “a Qwest-caused
11 jeopardy may be classified as CLEC-caused jeopardy.” It does not make sense.

12 Second, Qwest’s position that if Eschelon obtains its proposed contract language,
13 no other CMP participant will be able to request a change until Qwest first obtains
14 an agreement from Eschelon for contract modification⁹⁹ can be applied equally to
15 other, similar, provisions of the contract to which Qwest made this same argument
16 but later agreed to include in the ICA.¹⁰⁰ This suggests Qwest merely wants the

⁹⁷ Qwest/1, Albersheim/69, lines 12-20.

⁹⁸ Qwest/1, Albersheim/69, lines 17-18.

⁹⁹ Qwest/1, Albersheim/70, lines 7-8.

¹⁰⁰ *See, e.g.*, the agreed-upon language in: Sections 9.1.2.1.3.2.1; 9.1.2.1.3.2.2; 9.2.2.3.2 & 9.2.2.16 (Issue 9-32, Delayed Orders): Section 12.1.5.4.7; 12.1.5.5 & 12.1.5.4.8 (Issues 12-65, 12-66 & 12-66(a), Communications with Customers): Section 12.2.3.2 (Issue 12-68 Supplemental Orders): Section 12.2.7.2.3 (Issue 12-70, PSONs): Section 12.2.7.2.6.1 and subpart (Issue 12-74 Fatal Rejection Notices): Sections 12.3.1 and subpart & Section 12.4.3.6.3 (Issue 12-75 & 12-75(a) Tag at Demarcation Point): Sections 12.3.7.1.1, 12.3.7.1.2 (Issues 12-76 & 12-76(a) Loss and Completion Reports: Section 12.4.3.5 (Issue 12-81, Test Parameters): and Sections 12.4.4.1; 12.4.4.2 & 12.4.4.3 (Issue 12-86, Trouble Report Closure).

1 decision to be made at its discretion rather than by this Commission.
2 Additionally, Qwest's statement assumes incorrectly that ICA provisions may not
3 overlap or conflict with the PCAT so that a change in CMP could not occur
4 without a corresponding change in the ICA. Section 1.0 of the CMP Document
5 (Qwest/2 & Eschelon/53), however, provides that they may conflict and, when
6 they do, Eschelon's ICA controls for Eschelon,¹⁰¹ as further discussed by Mr.
7 Starkey.¹⁰²

8 **Q. PLEASE RESPOND TO QWEST'S STATEMENT THAT OTHER CLECS**
9 **HAVE SUBMITTED CHANGE REQUESTS TO CMP TO CHANGE**
10 **JEOPARDY NOTICES.**¹⁰³

11 A. Ms. Albersheim states that a "review of the CMP change request archives shows
12 that change requests have been submitted by Eschelon, McLeodUSA, MCI,
13 Qwest, and Sprint",¹⁰⁴ She does not provide any additional information, however.
14 Eschelon, therefore, conducted its own review of Qwest's CMP archive and found
15 eleven change requests on this subject.¹⁰⁵ It is not surprising to find that none of
16 these change requests asked Qwest to stop providing CLECs with notice before

¹⁰¹ See also Eschelon/54, Johnson/2-3 (Gap Analysis #150) (CMP redesign meeting minutes addressing CMP in relation to ICAs); Eschelon/29 (Minnesota Arbitrators' Report, ¶ 21).

¹⁰² See, e.g., Eschelon/1, Starkey/26-28.

¹⁰³ Qwest/1, Albersheim/69 line 22 – 70, line 8.

¹⁰⁴ Qwest/1, Albersheim/70, lines 1-2.

¹⁰⁵ See Eschelon/166 to my direct testimony. The change request are numbers SCR021403-1 (MCI); 5097684 (McLeod); 4381492 (Sprint); PC072303-1 (Eschelon); PC081403-1 (Eschelon); PC022105-1 (Eschelon); SCR030204-04 (Eschelon); SCR021904-02 (Eschelon); PC112901-1 (Qwest); 30623 (Qwest). For completeness Eschelon also added change request SCR061405-03ESDR made by VCI Company – a CLEC not named by Ms. Albersheim on this point. Qwest/1, Albersheim/70, line 2.

1 delivering service or change the process to say that Qwest may classify a Qwest-
2 caused jeopardy as CLEC-caused jeopardy. Of the eleven change requests
3 located by Eschelon, four were withdrawn, four were completed, and three were
4 denied. The four completed change requests asked Qwest to send FOCs before
5 sending jeopardies; to not prematurely identify a jeopardy as CNR before 5pm on
6 the due date; to allow the CLEC a designated time frame to respond to a released
7 delayed order after Qwest sends an updated FOC and before Qwest places a CNR
8 jeopardy on the request; and to automate Qwest's internal jeopardy process (a
9 Qwest change request).¹⁰⁶ None of the requested changes (whether completed,
10 withdrawn, or denied) would require a change to the interconnection agreement
11 language proposed by Eschelon. Although Qwest states that CMP is "intended to
12 give all parties equal participation when it comes to changing Qwest's
13 processes,"¹⁰⁷ only Qwest may unilaterally deny a change request in CMP, as
14 Qwest did for three of these eleven change requests.¹⁰⁸

15 **D. SUBJECT MATTER NO. ISSUE 43. CONTROLLED PRODUCTION**

16 **Issue No. 12-87: ICA Section 12.6.9.4**¹⁰⁹

17 **Q. MS. ALBERSHEIM DESCRIBES OPERATIONAL SUPPORT SYSTEMS**

¹⁰⁶ See Eschelon/166.

¹⁰⁷ Qwest/1, Albersheim/69, lines 19-20.

¹⁰⁸ See Eschelon/1, Starekey/44-45 (discussion of voting in CMP).

¹⁰⁹ Throughout discussion of Issue 12-87 there are references to the Implementation Guidelines. Excerpts are included with my testimony as Eschelon/122.

1 **(“OSS”).¹¹⁰ IS HER DESCRIPTION THE SAME AS THE DESCRIPTION**
2 **IN THE PROPOSED ICA OR THE FCC’S DEFINITION?**

3 A. Not to the extent she equates OSS with computer systems.¹¹¹ Although I agree
4 with Ms. Albersheim’s apparent suggestion that, for purposes of Issue 12-87, we
5 are generally discussing systems testing, Ms. Albersheim does not clarify that the
6 definition of the term OSS is broader overall. Closed language in Section 12.1.1
7 of the ICA describes OSS as using both “electronic gateways and manual
8 processes.” Similarly, the FCC has said: “the Commission defined OSS as
9 consisting of pre-ordering, ordering, provisioning, maintenance and repair, and
10 billing functions supported by an incumbent LEC’s databases and information.
11 OSS includes the manual, computerized, and automated systems, together with
12 associated business processes and the up-to-date data maintained in those
13 systems.”¹¹² As this definition is discussed with respect to other issues (such as
14 Issues 12-67(d)-(f) regarding placement of expedite language in Section 12¹¹³),
15 the definition should be clear.

16 **Q. MS. ALBERSHEIM DESCRIBES CERTIFICATION TESTING.¹¹⁴ IS HER**
17 **DESCRIPTION THE SAME AS THE DESCRIPTION IN THE PROPOSED**

¹¹⁰ Qwest/1, Albersheim/78, lines 4-12.

¹¹¹ Ms. Albersheim also uses the phrase “computer system or process” (p. 78, line 6) but she does not use the term “manual process.”

¹¹² *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*. Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, Released 11/5/99, ¶ 425, cited by Mr. Starkey at Eschelon/1, Starkey/44 and Mr. Denney at Eschelon/9, Denney/222.

¹¹³ Eschelon/9, Denney/221-222.

1 **ICA, AND IS IT CONSISTENT WITH QWEST’S OWN**
2 **INTERPRETATION OF THE CMP DOCUMENT OVER TIME?**

3 A. No. Closed language in Section 12.6.8 states that CLEC must perform
4 *certification* testing of exchange protocol “prior to using” an interface. The ICA
5 distinguishes certification testing from re-certification testing. *Re-certification* is
6 defined in the ICA as the process by which CLECs demonstrate the ability to
7 generate correct functional transactions for “enhancements not previously
8 certified.”¹¹⁵ Similarly, the Qwest Implementation Guidelines state:
9 “Recertification is the process by which CLECs demonstrate the ability to
10 correctly generate and accept transactions that were updated for the new
11 release.”¹¹⁶ Qwest’s description of certification testing as ensuring transactions
12 can be processed¹¹⁷ does not make this distinction between certification testing
13 and re-certification testing, even though the distinction is important for Issue 12-
14 87.

15 Under Eschelon’s language, if Eschelon is not certified (*i.e.*, it is *not* a re-
16 certification), controlled production testing will be required. This is the required
17 testing in the CMP Document referenced by Ms. Albersheim.¹¹⁸ Qwest admits

¹¹⁴ Qwest/1, Albersheim/80, lines 22-27.

¹¹⁵ Section 12.6.4 of the proposed ICA (closed language), cited in Eschelon/43, Johnson/92.

¹¹⁶ See Eschelon/122, Johnson/5 (Version 21, p. 41); *id.* Johnson/11 (Version 20, p. 41); *id.* Johnson/19 (Version 19.2, p. 48), cited in Eschelon/43, Johnson/92-93.

¹¹⁷ Qwest/1, Albersheim/80, lines 25-26.

¹¹⁸ Qwest/1, Albersheim/81, lines 20-22, citing Qwest/2 (CMP Document), Chapter 11, p. 84; *see also* Qwest/1, Albersheim/84-85.

1 that it has not required controlled production testing for re-certification.¹¹⁹ The
2 language in the CMP Document has not changed. If it had the meaning Ms.
3 Albersheim now appears to suggest it has, that would mean Qwest was in
4 violation of the CMP Document for the entire time that Qwest admits no
5 controlled production testing was required for re-certification.¹²⁰ Qwest's current
6 reading of the CMP Document is inconsistent with Qwest's own conduct.

7 Additionally, Qwest's reliance on the CMP Document regarding this aspect of the
8 implementation guidelines is inconsistent with Ms. Albersheim's previous
9 testimony that the Implementation guideline documents are not and should not be
10 under the CMP control.¹²¹ Mr. Starkey described how Qwest uses CMP as either
11 a sword or a shield toward furthering its own initiatives.¹²² Qwest is willing to use
12 CMP as a sword to demand controlled production testing, even when Qwest itself
13 has interpreted the terms differently in the past, if Qwest reverses its position. For
14 terms Qwest opposes, Qwest simply unilaterally determines that CMP is
15 inapplicable, even when CMP redesign documentation shows the terms are within
16 the scope of CMP.¹²³

¹¹⁹ See Eschelon/43, Johnson/97, quoting Arizona arbitration, Albersheim Direct, p. 99, line 24 – p. 100, line 4.

¹²⁰ See *id.*

¹²¹ Minnesota arbitration, MN PUC Docket No. P-5340, 421/IC-06-768, Surrebuttal Testimony of Renee Albersheim, p. 44 lines 4-10 (“Q. Mr. Webber states that the IMA implementation guideline document is not under CMP control. Is there any reason that it should be? A. No.”).

¹²² Eschelon/1, Starkey/40.

¹²³ See Eschelon/43, Johnson/100-101. Eschelon/119 to my direct testimony (Eschelon/43) contains Excerpts from Final Meeting Minutes of CLEC-Qwest Change Management Process Re-design meeting dated March 5-March 7, 2002 (Att. 5, Action Item 143).

1 The existing exception to controlled production testing documented in Eschelon's
2 proposed language¹²⁴ applies only to *re*-certification. In other words, in the
3 situation described in Eschelon's proposal, certification testing has been
4 performed (i.e., Eschelon is certified), and re-certification testing will be
5 performed. The issue is whether, in this circumstance (i.e., *not* a new
6 implementation), controlled production testing must *also* be performed.

7 **Q. HAS QWEST RECENTLY CONFIRMED THAT THE LIST OF**
8 **REQUIREMENTS IN THE CMP DOCUMENT APPLIES TO NEW**
9 **IMPLEMENTATION TESTING AND NOT RE-CERTIFICATION?**

10 A. Yes. On April 6, 2007, Qwest issued a notice (effective immediately) regarding
11 IMA XML Release 21.0, which is attached as Eschelon/131. In Eschelon/131,
12 Qwest discusses several scenarios, some of which involve new implementation
13 (for CLECs not yet in production with XML) and others which involve re-
14 certification (for CLECs already in production with XML). For example, a CLEC
15 *on* IMA-EDI with Release 19.0 that is newly implementing IMA-XML either by
16 moving to 20.0 or skipping 20.0 and moving directly to 21.0 must perform
17 controlled production testing because the CLEC is not yet in production *using*
18 IMA-XML. On the other hand, a CLEC which previously used EDI but has
19 already moved to IMA-XML on 20.0 does not have to perform controlled
20 production testing for enhancements in future releases because the CLEC is

¹²⁴ Eschelon/43, Johnson/96-99.

1 already in production using IMA-XML. Qwest summarizes how this works on
2 the last page of that exhibit, stating:

3 At the time a CLEC migrates from IMA XML 20.0 to IMA XML 21.0,
4 any transaction(s) that the CLEC *does not yet have in production using*
5 *IMA XML 20.0* is considered to be a *new implementation* effort. These
6 transactions must be implemented using the *full* initial implementation
7 lifecycle as defined in the Qwest XML Implementation Guidelines.
8

9 *When a CLEC migrates from IMA EDI 19.0 to either IMA XML 20.0 or*
10 *IMA XML 21.0*, all transactions must be implemented using the full initial
11 implementation lifecycle as defined in the *Qwest IMA XML*
12 *Implementation Guidelines* located at:
13 <http://www.qwest.com/wholesale/ima/edi/document.html>. Please note:
14 The *New Implementation* testing minimum *requirements* apply -
15 including Controlled Production testing.¹²⁵

16 Note that the first quoted sentence does *not* say *all* transactions are considered to
17 be a new implementation effort. Only those transactions that the CLEC does not
18 yet have in production *using XML* are “considered to be a new implementation
19 effort.”¹²⁶ If, as in Eschelon’s case, a CLEC has already moved from 19.0 (IMA-
20 EDI) to 20.0 (IMA-XML) for at least some products, then the CLEC will have at
21 least some transactions for which it is already using 20.0 if it then migrates to a
22 later release using XML (such as 21.0). These transactions, which are in
23 production using XML, do *not* require “the full implementation lifecycle”¹²⁷ (e.g.,
24 controlled production testing is not required for re-certifications).

25 This is further clarified in Qwest’s next paragraph, in which Qwest specifically
26 distinguishes new implementations from the discussion in the notice of re-

¹²⁵ Eschelon/131 (emphasis added).

¹²⁶ Eschelon/131.

1 certifications. It is clear that, in the first sentence (of the second above-quoted
2 paragraph), Qwest is discussing only new implementations because the paragraph
3 expressly applies only when a CLEC migrates from IMA-EDI 19.0 to IMA-XML
4 (using either 20.0 or 21.0, as a CLEC may skip 20.0 and go directly to 21.0).
5 Both EDI and XML are application-to-application interfaces. This change in
6 application-to-application interfaces is a new implementation.¹²⁸ Ms. Albersheim
7 references Section 11.1 of the CMP Document.¹²⁹ Section 11 is entitled
8 “Application-to-Application Interface Testing.”¹³⁰ Section 11.1 (“Testing
9 Process”) lists the requirements for new implementation testing for application-to-
10 application interfaces. The requirements for new implementations and re-
11 certifications as to controlled production testing are different. Qwest recognizes
12 this in its notice when it says: “The *New Implementation* testing minimum
13 *requirements* apply – including Controlled Production testing.”¹³¹ Those
14 requirements are described in Section 11.1 of the CMP Document, including the
15 following bullet point: “Controlled Production testing (required).”¹³² In contrast,
16 the re-certification testing requirements do not include controlled production

¹²⁷ Eschelon/131.

¹²⁸ Ms. Albersheim has admitted that Release 20.0 is a “new implementation” (*i.e.*, the term used in Eschelon’s proposed language). *See* Minnesota arbitration, Albersheim MN Surrebuttal, p. 43, lines 13-15 (“The underlying architecture of IMA Release 20 .0 is changing from EDI to XML. This is such a significant change that Qwest is treating this as a new implementation”).

¹²⁹ Qwest/1, Albersheim/81, lines 20-22, citing Qwest/2 (CMP Document), Chapter 11, p. 84; *see also* Qwest/1, Albersheim/84-85.

¹³⁰ Qwest/2, Albersheim/84.

¹³¹ Eschelon/131 (emphasis added).

¹³² Qwest/2, Albersheim/85.

1 testing as CLEC is already in production using XML, as shown by the previous
2 paragraph in Qwest's notice (the first above-quoted paragraph).

3 Consistent with the terms described in this Qwest notice, Eschelon's proposed
4 ICA language requires controlled production testing for new implementations but
5 not for re-certifications. Other testing will be conducted per the closed language
6 of the ICA for re-certifications, but controlled production testing will not *also* be
7 performed, as Eschelon is already in production and certified.

8 **Q. MS. ALBERSHEIM DISCUSSES THE RISK OF INSUFFICIENT**
9 **TESTING.¹³³ DID YOU ADDRESS THIS ISSUE IN YOUR DIRECT**
10 **TESTIMONY?**

11 A. Yes. I discussed Qwest's similar claim regarding a "threat to the industry at
12 large"¹³⁴ on pages 103-104 of my direct testimony (Eschelon/43). As I said there,
13 under Eschelon's proposed language, Qwest and Eschelon may discuss what
14 Qwest perceives as potential harm in any particular case. Eschelon has an
15 incentive to avoid risk and harm as well. In Minnesota, the ALJs specifically
16 found that: "There is no evidence that Eschelon has or would opt out of
17 recertification testing for any improper purpose."¹³⁵

18 **Q. MS. ALBERSHEIM ALSO DISCUSSES UNSPECIFIED COSTS OF**
19 **CONTROLLED PRODUCTION TESTING AND ASSERTS THAT**

¹³³ Qwest/1, Albersheim/82, lines 9-17.

¹³⁴ Qwest Response to the Petition, p. 47, line 15.

¹³⁵ Eschelon/29, Denney/62 (MN Arbitrators' Report, ¶258).

1 **CONTROLLED PRODUCTION TESTING IMPOSES MORE COSTS ON**
2 **QWEST THAN ANY ONE CLEC.¹³⁶ DOES QWEST OVERLOOK ANY**
3 **RESOURCE ISSUE?**

4 A. Yes. Qwest has is much larger and has far more resources than Eschelon, as
5 described by Mr. Denney.¹³⁷ Eschelon's business need is to avoid costly and/or
6 time consuming controlled production testing that is unnecessary because, for re-
7 certifications, the transaction has previously been in production and is simply
8 being enhanced. Qwest's own business need is met by the current process, as
9 shown by Ms. Albersheim's testimony that Qwest has determined that, for Qwest,
10 the benefit of controlled production currently "outweighs the cost of conducting
11 the tests."¹³⁸ Regarding Qwest's claims about the current process, see pages 96-
12 99 of my direct testimony (Eschelon/43).

13 **Q. HAS QWEST'S PROPOSAL¹³⁹ FOR ISSUE 12-87 CHANGED?**

14 A. Yes. Eschelon's presentation of Qwest's counter proposal (provided on page 95
15 of Eschelon/43) accurately reflects the current multi-state proposed ICA draft.
16 Nonetheless, Qwest appears to have withdrawn that counter proposal. Therefore,
17 Qwest's proposal is to delete the underlined language in Eschelon's proposals for
18 Section 12.6.9.4.

19 **Q. MS. ALBERSHEIM STATES THAT THERE IS NO PRACTICAL**

¹³⁶ Qwest/1, Albersheim/82, lines 9-17 & p. 84, lines 22-23.

¹³⁷ See, e.g., Eschelon/29, Denney/64, lines 11-14.

¹³⁸ Qwest/1, Albersheim/82, lines 15-17.

¹³⁹ Qwest/1, Albersheim/82-83.

1 **DIFFERENCE BETWEEN ESCHELON'S TWO ALTERNATE**
2 **PROPOSALS FOR ISSUE 12-87.¹⁴⁰ PLEASE RESPOND.**

3 A. I described Eschelon's proposals on pages 94-95 of my direct testimony
4 (Eschelon/43). If Qwest believes the effect of the two proposals is the same, then
5 per Qwest the Commission could adopt either one with the same effect. Given
6 Qwest's alleged preference for uniformity, Eschelon's proposal #1 may be
7 preferable, as that reflects the language adopted by the Minnesota commission.¹⁴¹

8 **Q. MS. ALBERSHEIM DESCRIBES CONTROLLED PRODUCTION**
9 **TESTING AND ITS RELATIONSHIP TO OSS TESTING.¹⁴² COULD MS.**
10 **ALBERSHEIM'S RESPONSE LEAVE A MIS-IMPRESSION?**

11 A. Yes. In her response, Ms. Albersheim fails to distinguish between new
12 implementations and re-certifications. Ms. Albersheim's response describes
13 controlled production associated with new implementations, but the issue
14 regarding Eschelon's proposal is related to whether controlled production is also
15 required for re-certification. Eschelon's language requires additional testing for
16 new implementations that have not been in production. An example of a new
17 implementation effort was the change from EDI to XML in Release 20.0.
18 Because Release 20.0 is a new implementation, no CLEC had used it in
19 production.¹⁴³ Consistent with its proposed language, Eschelon performed

¹⁴⁰ Qwest/1, Albersheim/84, lines 6-8.

¹⁴¹ Eschelon/29, Denney/62 (MN Arbitrators' Report, ¶258), adopted in Eschelon/30, Denney/22 (MN Order Resolving Arbitration Issues ¶1).

¹⁴² Qwest/1, Albersheim/81-82.

¹⁴³ Eschelon/43, Johnson/106, lines 3-6.

1 controlled production for Release 20.0 (a new implementation). For a re-
2 certification, Eschelon will perform other testing but, consistent with Qwest's
3 process today, will not also perform controlled production testing for re-
4 certifications.

5 **Q. MS. ALBERSHEIM STATES THAT ESCHELON'S PROPOSAL MAKES**
6 **TESTING "NEGOTIABLE"¹⁴⁴ AND CLAIMS THAT QWEST WOULD**
7 **NOT IMPOSE A TESTING OBLIGATION WITHOUT A REASONABLE**
8 **GOOD FAITH BASIS FOR REQUIRING SUCH TESTING.¹⁴⁵ PLEASE**
9 **RESPOND.**

10 A. Ms. Albersheim states that Eschelon's proposal "makes participation in the
11 controlled production phase of application-to-application phase of *certification*
12 testing negotiable."¹⁴⁶ I discussed the difference between certification and re-
13 certification testing under the closed language of the ICA above and under
14 Qwest's current process in my direct testimony.¹⁴⁷ A reading of Eschelon's
15 language shows that Ms. Albersheim's statement is inaccurate. Under either
16 Eschelon alternative,¹⁴⁸ "Qwest and CLEC *will perform controlled production* for
17 new implementations." Although Eschelon's second proposal provides an option
18 for the companies to agree otherwise, the language requires neither company to

¹⁴⁴ Qwest/1, Albersheim/84, lines 18-20.

¹⁴⁵ Qwest/1, Johnson/84, lines 25-26.

¹⁴⁶ Qwest/1, Albersheim/84, lines 13-15 (emphasis added).

¹⁴⁷ Eschelon/43, Johnson/96-99.

¹⁴⁸ Qwest/1, Albersheim/84, lines 6-8 (same practical effect).

1 negotiate or agree. Controlled production testing is no more negotiable under
2 Eschelon's proposed language than it is today.¹⁴⁹

3 As I discussed above regarding risks, Eschelon has a significant incentive to avoid
4 harm, and Qwest has provided no evidence that Eschelon would act with an
5 improper purpose.¹⁵⁰ If Qwest provided a valid reason why Eschelon would need
6 to perform controlled production with re-certification even though it is not
7 required today, Eschelon's proposed language allows the companies to agree to
8 perform that additional testing when in their mutual interest.

9 **Q. MS. ALBERSHEIM ALSO ARGUES THAT ESCHELON'S PROPOSAL**
10 **MAY HAVE NEGATIVE IMPACTS ON OTHER CLECS THAT USE**
11 **OSS.¹⁵¹ PLEASE RESPOND.**

12 A. As explained in direct testimony¹⁵² and as confirmed by Ms. Albersheim until
13 recently,¹⁵³ currently controlled production testing is not required for re-
14 certification. Obviously, Qwest does not consider the fact that some CLECs will
15 forego the test for re-certification as being a threat to other CLECs, or it would
16 not have operated under this term for some time. Ms. Albersheim speculates that
17 in the future Qwest's OSS may require controlled production testing system

¹⁴⁹ Eschelon/43, Johnson/96-99.

¹⁵⁰ See also Eschelon/29, Denney/62 (MN Arbitrators' Report, ¶258).

¹⁵¹ Qwest/1, Albersheim/86, lines 16-17.

¹⁵² Eschelon/43, Johnson/96 and Eschelon/43, Johnson/97 citing Qwest's *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, IMA Release 20.0 and the IMA release 21.0.

¹⁵³ Qwest/1, Albersheim/85, line 18.

1 upgrades.¹⁵⁴ Eschelon's proposed language does not state that Eschelon would
2 never participate in controlled production for re-certification, as the companies
3 may agree to it if it is needed.

4 **Q. IN HER DIRECT TESTIMONY, MS. ALBERSHEIM CLAIMS THAT**
5 **ESCHELON'S LANGUAGE IS NOT ACCURATE WITH REGARD TO**
6 **RE-CERTIFICATION FOR THE CURRENT RELEASE, IMA 20.0.¹⁵⁵ IS**
7 **MS. ALBERSHEIM ACCURATE?**

8 A. No. IMA 20.0 is a new release to XML (*i.e.*, IMA 20.0 is a new implementation).
9 There is no re-certification because no CLEC has ever been certified in XML. I
10 explained the current process under Releases 19.2, 20.0, and 21.0 in my direct
11 testimony and Eschelon/122. Under all three releases, Eschelon's proposed
12 language provides – consistent with current practice – that controlled production
13 testing will be conducted for new implementations but not for re-certifications.
14 Controlled production testing was required for Release 20.0 because it is a new
15 implementation, and not because any change in process occurred.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes.

¹⁵⁴ Qwest/1, Albersheim/86, lines 5-6.

¹⁵⁵ Qwest/1, Albersheim/85, lines 16-19.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

EXHIBIT 128

This exhibit contains documents available on Qwest's website at the following URLs:

Process Notification PROS.04.27.07.F.04652.NegTemplate_Wireless (effective 4/30/07)
<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E04%2E27%2E07%2EF%2E04652%2ENegTemplate%5FWireless%2Edoc>

Process Notification PROS.05.23.07.F.04700.NegTempAgreement (effective 5/24/07)
<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E05%2E23%2E07%2EF%2E04700%2ENegTempAgreement%2Edoc>



April 27, 2007

Announcement Date:
Effective Date: April 30, 2007
Document Number: PROS.04.27.07.F.04652.NegTemplate_Wireless
Notification Category: Process Notification
Target Audience: CLECs, Resellers, Wireless, Paging
Subject: Negotiations Template Agreement and Wireless Agreements

Summary of Change:

On April 30, 2007, Qwest will post updates to its Wholesale Product Catalog that include new/revised documentation for Negotiations Template Agreement and Wireless Agreements. This material becomes effective on April 30, 2007.

Changes are being made to the template documents as appropriate to maintain consistency.

The following updates were made to the **Negotiations Template Agreement:**

- PS/ALI added WY note to language
- Section 9.1.12 to ensure language comports with Exhibit A elements
- Section 9.23.8 Language for Loop/MUX moved to section 9.25.1
- Section 12.2.11 Removing the words "...development, enhancements and ongoing operations..." is being requested to eliminate the concern about which OSS charge elements are applied in various circumstances
- Section 1.7.1 and Exhibit L and M "Removed Section and process as no CLEC has used since offered on 2002 and it is Qwest policy to formally amend CLEC Interconnection Agreements and file with State Commissions."
- Sections 9.1.1 and 9.23.1.2.1 USTA II makes clear that Congress provided under Section 251(d)(2) that only the FCC can decide what network elements must be unbundled. USTA II also made clear that the FCC cannot delegate to state commissions any part of the FCC's statutory obligation to determine UNEs. The D.C. Circuit reiterated this point when upholding the TRRO U.S. App. LEXIS 14826 (D.C. Cir., June 16, 2006.) That decision provides "Congress left to the Commission the choice of elements to be "unbundled"
- Exhibit J corrected references to Exhibit A
- Exhibit As for 14 states updates follow:

STATE	Add	Correct/Revise	Delete	Move
AZ	Note 13 Rate was ordered for a similar element and is being	Elements using phrase "uses rates from"	9.3.7.2 & 9.3.7.3 deleted REC	9.23.6 Loop MUX Combination

	<p>used because the costs for this element are the same. Note 14 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>revised to "see rates in", notes for elements using this phrase, revised to reflect note 13 or 14 8.1.4.2.3 corrected rate. 8.12.5 revised name to include "Gas". 8.15.1.1.1 revised name to include "Terminations"</p>	<p>rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>moved to 9.25 9.23.7 EEL moved to 9.23.2</p>
CO	<p>8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>7.7 Election of Reciprocal Compensation, changed term "SGAT" to "Exhibit" 8.6.3 revised element names in this section to match template naming 8.7.3 revised element name to match template naming 8.12.5 revised name to include "Gas". 9.7.4 revised element name to match template naming</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>
ID	<p>Note 14 Rate was ordered for a similar element and is being used because the costs for this element are the same. Note 15 Rate was previously ordered for this element in a different section of</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 14 or 15</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>

	<p>Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>8.6.3 revised element names in this section to match template naming 8.10 revised service name to match template naming 8.12.5 revised name to include "Gas". 10.7.12.1 revised rate to reflect latest calculation</p>	<p>Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	
IA	<p>Note 14 Rate was ordered for a similar element and is being used because the costs for this element are the same. Note 15 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>
MN	<p>9.25.5.1 DS0 Low Side Channelization</p>	<p>Elements using phrase "uses rates from" revised to "see rates in" 8.6.3.2 revised element name to match template naming 8.12.5 revised name to include "Gas".</p>	<p>NA</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>
MT	<p>Note 14 Rate was ordered for a similar</p>	<p>Elements using phrase "uses</p>	<p>9.3.7.2 & 9.3.7.3</p>	<p>9.23.6 Loop MUX</p>

	<p>element and is being used because the costs for this element are the same. Note 15 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 14 or 15 8.6.3 revised element names in this section to match template naming 8.7.3.4 revised element name to match template naming 8.12.5 revised name to include "Gas".</p>	<p>deleted REC rates & notes, no longer applicable</p>	<p>Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>
NE	<p>Note 14 Rate was ordered for a similar element and is being used because the costs for this element are the same. Note 15 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 14 or 15 8.6.3 revised element names in this section to match template naming 8.7.3.4 revised element name to match template naming 8.12.5 revised name to include "Gas".</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>
NM	<p>Note 18 Rate was ordered for a similar element and is being used because the costs for this element are the same.</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to</p>

	<p>Note 19 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>using this phrase, revised to reflect note 18 or 19 8.6.1 revised service name to match template naming 8.6.3 revised element names in this section to match template naming 8.7.1 revised service name to match template naming 8.7.3.4 revised element name to match template naming 8.12.5 revised name to include "Gas".</p>	<p>applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.2</p>
ND	<p>Note 10 Rate was ordered for a similar element and is being used because the costs for this element are the same. Note 11 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 10 or 11 8.1.15 corrected note to reflect NRC 8.6.3 revised element names in this section to match template naming 8.7.1 revised service name to match template naming 8.12.5 revised name to include "Gas".</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>

OR	<p>Note 14 Rate is from a similar element and is being used because the costs for this element are the same.</p> <p>Note 15 Rate for this element is the same as a rate in a different section of Exhibit A.</p> <p>8.9.1 Additional Labor Other</p> <p>8.9.2 Additional Dispatch</p> <p>9.25.5.1 DS0 Low Side Channelization</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 14 or 15</p> <p>8.6.3 revised element names in this section to match template naming</p> <p>8.12.5 revised name to include "Gas".</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable</p> <p>9.20.9 Cooperative Scheduled Testing, deleted not a UNE service</p> <p>9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.6 Loop MUX Combination moved to 9.25</p> <p>9.23.7 EEL moved to 9.23.2</p>
SD	<p>Note 14 Rate was ordered for a similar element and is being used because the costs for this element are the same.</p> <p>Note 15 Rate was previously ordered for this element in a different section of Exhibit A.</p> <p>8.9.1 Additional Labor Other</p> <p>8.9.2 Additional Dispatch</p> <p>9.25.5.1 DS0 Low Side Channelization</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 14 or 15</p> <p>8.2.7 revised element name to match template naming</p> <p>8.6.3 revised element names in this section to match template naming</p> <p>8.12.5 revised name to include "Gas".</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable</p>	<p>9.23.6 Loop MUX Combination moved to 9.25</p> <p>9.23.7 EEL moved to 9.23.2</p>
UT	<p>Note 14 Rate was ordered for a similar element and is being used because the costs for this element are the same.</p> <p>Note 15 Rate was previously ordered for</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable</p> <p>9.20.9</p>	<p>9.23.6 Loop MUX Combination moved to 9.25</p> <p>9.23.7 EEL moved to 9.23.2</p>

	<p>this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>to reflect note 14 or 15 8.6.3 revised element names in this section to match template naming 8.10 revised service name to match template naming 8.12.5 revised name to include "Gas". 10.7.12.2 revised rate to reflect latest calculation</p>	<p>Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	
WA	<p>Note 11 Rate was ordered for a similar element and is being used because the costs for this element are the same. Note 12 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization</p>	<p>Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 11 or 12 8.6.1.2 revised element name to match template naming 8.6.3 revised element names in this section to match template naming 8.10 revised service name to match template naming 8.12.5 revised name to include "Gas". 8.15.1.1.1 revised element name to match template naming 10.7.12.2</p>	<p>9.3.7.2 & 9.3.7.3 deleted REC rates & notes, no longer applicable 9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service</p>	<p>9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2</p>

		revised rate to reflect latest calculation		
WY	Note 12 Rate was previously ordered for this element in a different section of Exhibit A. 8.9.1 Additional Labor Other 8.9.2 Additional Dispatch 9.25.5.1 DS0 Low Side Channelization	Elements using phrase "uses rates from" revised to "see rates in", notes for elements using this phrase, revised to reflect note 12 8.6.3 revised element names in this section to match template naming 8.7.4 revised element name to match template naming	9.20.9 Cooperative Scheduled Testing, deleted not a UNE service 9.23.10 Manual Scheduled Testing, deleted not a UNE service	9.23.6 Loop MUX Combination moved to 9.25 9.23.7 EEL moved to 9.23.2

Resale Template is being replaced to maintain consistency in template documents.

Wireless Agreements:

- Wireless Interconnection Agreement Type 1 is being replaced maintain consistency in template documents.
- Wireless Interconnection Agreement Type 2 is being replaced to eliminate language that referred to resold services and UNEs, which are not applicable and to maintain consistency in template documents.
- Exhibit J Wireless Reciprocal Compensation is being replaced to correct references to Exhibit A

Paging Agreements:

- Paging T1 and T2 Service connection Agreement is being replaced to maintain consistency in template documents.

Actual updates are found on the Qwest Wholesale Web site at the following URLs:
<http://www.qwest.com/wholesale/clecs/sgatswireline.html>
<http://www.qwest.com/wholesale/clecs/wirelessagreements.html>

If you have any questions or would like to discuss this notice please contact your Qwest Service Manager. Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest Corporation

Note: If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>



May 23,2007

Announcement Date:
Effective Date: May 24, 2007
Document Number: PROS.05.23.07.F.04700.NegTempAgreement
Notification Category: Process Notification
Target Audience: CLECs, Resellers
Subject: Negotiations Template Agreement

Summary of Change:

On May 24, 2007, Qwest will post updates to its Wholesale Product Catalog that include new/revised documentation for Negotiations Template Agreement. This material becomes effective on May 24, 2007.

The Negotiations Template Agreement is being updated to remove Exhibits L and M. The language was removed from the Negotiations Template with the April 30, 2007 publishing and these exhibits are no longer relevant to the document.

Also, in the Resale Business section, Exhibit G – See Appropriate state NTA Exhibit G that is “Intentionally Left Blank” is being removed as it is irrelevant to Resale.

Actual updates are found on the Qwest Wholesale Web site at the following URL:
<http://www.qwest.com/wholesale/clecs/sgatswireline.html>

If you have any questions or would like to discuss this notice please contact your Qwest Service Manager. Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest Corporation

Note: If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

EXHIBIT 129

This exhibit contains documents available on Qwest's website at the following URLs:

CR PC013007-3 Detail

http://www.qwest.com/wholesale/cmp/archive/CR_PC013007-3.htm

PROS.03.22.07.F.04584.P_and_I_CFA_Slot_Chng – Notice of redlined PCAT and request for comments

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E03%2E22%2E07%2EF%2E04584%2EP%5Fand%5FI%5FCFA%5FSlot%5FChng%2Edoc>

Redlined Provisioning and Installation Overview V100.0 (excerpt)

http://www.qwest.com/wholesale/downloads/2007/070321/PCAT_Provisioning_and_Installation_V100_0.doc

PROS.03.22.07.F.04584.P_and_I_CFA_Slot_Chng – Eschelon comments and Qwest response

http://www.qwest.com/wholesale/downloads/2007/070413/Resp_to_Cmmnts_PROS_0416_07_F_04627_FNL_P_and_I_Verbal_CFA.doc

Open Product/Process CR PC013007-3 Detail

Title: Verbal Supp for CFA Change on Due Date

CR Number	Current Status Date	Area Impacted	Products Impacted
PC013007-3	Completed 5/18/2007	Prov & Installation PCAT	Unbundled Loop

Originator: Ocken, Kathy

Originator Company Name: Qwest Corporation

Owner: Buckmaster, Cindy

Director: Campbell, William

CR PM: Stecklein, Lynn

Description Of Change

Process Change to the Provisioning and Installation Overview PCAT language for the existing PIA value of 10 to add the following: Prior to placing a service request, it is the CLEC responsibility to ensure the CFA is working. If it is determined on Due Date that CFA does not work, Qwest will perform additional testing with the CLEC one time. If the CLEC requests the CFA be changed, it is the responsibility of the CLEC to make sure the new CFA works. Qwest will accept only one verbal CFA change on the Due Date. If the new CFA fails to work, Qwest will place the order in jeopardy status (customer jeopardy). No further action will be taken on Qwest's part until Qwest receives a valid supplemental request to change the Due Date and the CFA (if applicable). Additional charges may apply.

Status History

Date	Action	Description
5/2/2007	Status Changed	Status changed to CLEC Test
5/16/2007	Discussed at Monthly CMP Meeting	Discussed at the May CMP Meeting - See Attachment D in the Distribution Package
1/30/2007	CR Submitted	
1/30/2007	CR Acknowledged	
2/21/2007	Discussed at Monthly CMP Meeting	Discussed at the February CMP Product/Process Meeting - See Attachment C in the Distribution Package
3/1/2007	Status	Status changed to Presented

	Changed	
3/21/2007	Status Changed	Status changed to Development
3/21/2007	Discussed at Monthly CMP Meeting	Discussed at the March Product/Process CMP Meeting - See Attachment D in the Distribution Package
4/3/2007	Communicator Issued	PROS.03.22.07.F.04584.P_and_I_CFA_Slot_Chng
4/18/2007	Discussed at Monthly CMP Meeting	Discussed at the April Product/Process CMP Meeting - See Attachment D in the Distribution Package
4/27/2007	Communicator Issued	PROS.04.16.07.F.04627.FNL_P_and_I_Verbal_CFA

Project Meetings

4/21/07 Product/Process CMP Meeting

Mark Coyne-Qwest stated that a notification was sent on 4/6/07 and the final notice on 4/16/07. He said that this CR will become effective on 5/1/07.

3/21/07 Product/Process CMP Meeting

Mark Coyne-Qwest stated that this CR was presented in February and that a Level 4 notice will be sent on 3/22/07 and will be effective 5/1/07

2/21/07 Product/Process CMP Meeting

Lynn Stecklein-Qwest stated in October of 2006, Qwest proposed language to the Provisioning and Installation Overview which was intended to remind CLECs to check their CFAs before assigning them and to clarify that only one verbal supplement for CFA slot change was to be accepted on the Due Date. She said that in discussion with the CLEC community at the October Monthly CMP Meeting, this language was not adopted. She said that instead it was agreed that a MCC would be distributed internally and externally to reiterate the current process. Lynn stated that Eschelon requested that Qwest retract the MCC because this was a change in process and that a Level 4 should be submitted. Lynn reviewed the description of change: This CR is a process change to the Provisioning and Installation Overview PCAT language for the existing PIA value of 10 to add the following: Prior to placing a service request, it is the CLEC responsibility to ensure the CFA is working. If it is determined on the Due Date that the CFA does not work, Qwest will perform additional testing with the CLEC one time. If the CLEC requests the CFA be changed, it is the responsibility of the CLEC to make sure the new CFA works. Qwest will accept only one verbal CFA change on the Due Date. If the new CFA fails to work, Qwest will place the order in a customer jeopardy status. No further action will be taken on Qwest's part until Qwest receives a valid supplemental request to change the Due Date and the CFA (If applicable). Bonnie Johnson-Eschelon asked for further definition around Qwest performing additional testing one time. She said that specifically her question is that the additional testing issue has been brought forward multiple times before. She said that in those instances it is not the CFA, but the problem is on the Qwest side. She asked if the additional testing

means that it would not be a Qwest issue. Lynn Stecklein-Qwest stated that she will contact the SME and provide the response to Bonnie and also include in the minutes.

February 23, 2007 Response Emailed to Bonnie Johnson-Eschelon: This is in response to your question on PC013007-3 -Verbal Supp for CFA Change on the Due Date (DD). The purpose of this CR is to identify that Qwest will not accept more than one verbal CFA change on the DD. Additional testing is always available to a CLEC as long as it is in their contract. Additional Testing will be available on an install if it is in their contract. That testing will occur each and every time it is requested. If it is determined during testing that the problem is on the Qwest side, additional testing would not apply.

February 23, 2007 Emailed Response Received from Bonnie Johnson-Eschelon: Eschelon disagrees. As I have said before, Eschelon should not have to pay additional installation costs so Qwest can find and fix their problems. Please also include my response.

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Announcement Date: March 22, 2007
Proposed Effective Date: May 01, 2007
Document Number: PROS.03.22.07.F.04584.P_and_I_CFA_Slot_Chng
Notification Category: Process Notification
Target Audience: CLECs, Resellers
Subject: CMP - Provisioning and Installation Overview - V100.0
Level of Change: Level 4
Associated CR Number or System Release Number: Qwest CR PC013007-3

Summary of Change:

On March 22, 2007, Qwest will post planned updates to its Wholesale Product Catalog that include new/revised documentation for Provisioning and Installation Overview. These will be posted to the Qwest Wholesale Document Review Site located at <http://www.qwest.com/wholesale/cmp/review.html>

Updates are associated with limiting the availability, applicability or functionality of an existing process to the verbal supplements for CFA slot changed on the due date. In the Provisioning Points of Interface section under Provider Initiated Activity (PIA), Qwest will be providing additional language which describes the Qwest and CLEC responsibilities for CFA or slot changes.

The documentation updates are associated with Qwest CR # PC013007-3. Further information about this Change Request is available on the Wholesale Web site at URL <http://www.qwest.com/wholesale/cmp/changerequest.html>.

Current operational documentation for this product or business procedure is found on the Qwest Wholesale Web Site at this URL: <http://www.qwest.com/wholesale/clecs/provisioning.html>

Comment Cycle:

CLEC customers are encouraged to review these proposed changes and provide comment at any time during the 15-day review period. Qwest will have up to 15 days following the close of the comment review to respond to any CLEC comments. This response will be included as part of the final notification. Qwest will not implement the change sooner than 15 days following the final notification.

Qwest provides an electronic means for CLEC customers to comment on proposed changes. The Document Review Web Site provides a list of all documents that are in the review stage, the process for CLECs to use to comment on documents, the submit comment link, and links to current documentation and past review documents. The Document Review Web Site is found at <http://www.qwest.com/wholesale/cmp/review.html>. Fill in all required fields and be sure to reference the Notification Number listed above.

Timeline:

Planned Updates Posted to Document Review Site	Available March 22, 2007
CLEC Comment Cycle on Documentation Begins	Beginning March 23, 2007
CLEC Comment Cycle Ends	5:00 PM, MT April 06, 2007
Qwest Response to CLEC Comments (if applicable)	Available April 16, 2007 http://www.qwest.com/wholesale/cmp/review_archive.html
Proposed Effective Date	May 01, 2007

If you have any questions on this subject, please submit comments through the following link:
<http://www.qwest.com/wholesale/cmp/comment.html>.

Sincerely

Qwest Corporation

Note: In cases of conflict between the changes implemented through this notification and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement.

The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process. Prior to any modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

Provisioning and Installation Overview – ~~V99.0~~V100.0

[History Log](#) (Link blue text to: [Replace Existing Download With Attached History Log](#))

Description

Provisioning and installing Unbundled Network Elements (UNEs), Resale, and Interconnection products and services require that we each perform various tasks throughout the provisioning and installation cycle. While many of these tasks are unique to individual products and services, as defined in [Wholesale Products and Services](#) documentation, some are constant regardless of the products or services ordered. This document depicts those tasks Qwest commonly performs (such as: issuance/processing of Firm Order Confirmations (FOCs), Pending Service Order Notice(s) (PSOs), Jeopardies, Design Layout Reports/Records (DLR), installation and dispatching, Loss Notifications, Completion Notifications (CNS), and Loss and Completion Reports) during the provisioning and installation of Qwest's Wholesale Products and Services.

Availability

UNE, Resale, and Interconnection products and services are available throughout [Qwest's 14-state local service territory](#) (Link blue text to: <http://www.qwest.com/wholesale/pcat/territory.html>) based on your Qwest Interconnection Agreement. Qwest provides access to existing network elements and facilities when no construction is required and will perform minor modifications (such as running a jumper or clearing a defective pair) to allow you access.

Technical Publications

Complying with Industry Standard Performance and Acceptance Testing, Qwest provisions UNE, Resale, and Interconnection products and services in accordance with Industry specifications, interfaces and parameters. These are described in the appropriate Technical Reference Publications in Qwest's [Technical Publications](#). (Link blue text to: <http://www.qwest.com/techpub/>) For product specific performance and acceptance testing requirements, refer to the web pages for individual [Wholesale Products and Services](#). (Link blue text to: <http://www.qwest.com/wholesale/pcat/index.html>)

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Pricing

Rates

Rates and/or applicable discounts are available in Exhibit A or the specific rate sheet in your Interconnection or Resale Agreement.

Tariffs, Regulations, and Policy

Regulations and policies impacting individual products and services are defined within each product and service found in the Qwest [Wholesale Products and Services](#) web pages. (Link blue text to: <http://www.qwest.com/wholesale/pcat/index.html>)

When you submit a request for Enhanced Extended Loop (EEL), Loop Multiplexer (MUX) Combination (LMC), Sub-Loop (except Shared Distribution Loop), Unbundled Local Loop product family, Unbundled Network Element – Switching (UBS), Unbundled Dark Fiber (UDF), Unbundled Dedicated Interoffice Transport (UDIT) and Unbundled Network Elements-Platform (UNE-P) product family the standard assignment and/or design process will be followed in its entirety. The standard assignment process may

- Individual Case Base (ICB) intervals due to the quantity or type of services or specialized arrangements as listed in state and FCC tariffs
- An independent company's services are involved and Qwest is not the controlling provider
- A premises visit determined by the availability of you or your end-user

Contact your Qwest Service Manager to obtain assistance negotiating intervals. Coordination of premises visits are handled as necessary during the normal provisioning and installation processes.

Provider Initiated Activity (PIA)

The PIA is used to communicate changes Qwest made on the service order that are different from what was requested on the original LSR. These changes are a result of two different conditions:

1. Changes that occurred as a result of a verbal directive from you.
2. Changes due to processing requirements within Qwest.

When the PIA field is marked, the Remarks section of the FOC contains text indicating any deviations from the original request. The following matrix outlines the PIA Reason, PIA values that are available, and a description of when those values are used. LSRs can have multiple PIA values shown on the FOC if more than one condition exists that needs to be communicated to you.

PIA Reason	PIA Value	Description
Exchange Carrier Circuit (ECCKT)	1	Used when: <ul style="list-style-type: none"> • Qwest changes the Circuit Identification (CKTID) on a subsequent FOC from what was provided on the original FOC • The ECCKT on the LSR needs to be reformatted so it can be processed in the Qwest Service Order Processor (SOP) • On a change of loop type, the ECCKT on the FOC will provide the new ECCKT. The ECCKT on the LSR contains the existing ECCKT. The ECCKT on the FOC is the new ECCKT
Verbal Due Date Change Request by you	18	Used when: <ul style="list-style-type: none"> • On the Due Date you called and requested a verbal due date change • Due to system limitations a Supp Type 2 could not be issued and a verbal supplement was accepted <p>NOTE: Qwest preference is a supplement via IMA/Electronic Data Interface (XML)/Fax Gateway). This is an exception handling situation.</p>
Due Date Change by Qwest	2	Used when: <ul style="list-style-type: none"> • Desired Due Date (DDD) on the LSR was shorter than standard interval. Qwest will provide the new DD on the FOC for each applicable LSR version • DDD on the LSR was an invalid DD such as a Sunday or Holiday • When a dispatch was required and the requested DDD on the LSR was not available • When the DDD on the LSR is changed as a result of a Delayed Order Condition

		<ul style="list-style-type: none"> When a Supp Type 3 was submitted where the original DDD on the LSR must be changed (i.e., supp to change from coordinated to basic install requires new standard interval or address changes on Supp Type 3 and DD must be changed)
Other 1	4	<p>Used when:</p> <ul style="list-style-type: none"> No other PIA value is appropriate, i.e., unexpected situations with release activity when manual changes are required Low occurrences of a particular situation do not warrant an individual PIA value, i.e., original FOC did not contain the voice mail retrieval number and a subsequent FOC was issued with the required information or when an subsequent FOC is issued releasing a LSR from a delayed order condition and Qwest is able to meet the original due date A new situation is identified and a new PIA value is not yet available in IMA
Other 2	16	Used where multiple "Other" situations exist. A separate PIA value of Other 1, Other 2, and/or Other 3 are used for each condition
Other 3	17	Used where multiple "Other" situations exist. A separate PIA value of Other 1, Other 2, and/or Other 3 are used for each condition
Service Order Number Change	5	<p>Used when:</p> <ul style="list-style-type: none"> A subsequent FOC is sent advising you that the service order number(s) previously provided on the earlier FOC has changed A change in the Related Purchase Order Number (RPON) or Related Order number was needed on a subsequent FOC
Route Index (RTI) change	6	Used on a subsequent FOC if the information provided on the original FOC was changed (i.e., on New activity the Route Index (RTI) previously provided was changed)
Change to TERS/HID and/or TLI	7	Used on a sub-sequent FOC if the information provided on the original FOC was changed (i.e., on New activity the Telephone Line Identification (TLI) or Terminal (TER) number on the original FOC had a typographical error and was later corrected)
Telephone Number Change	9	<p>Used when:</p> <ul style="list-style-type: none"> During processing of a LSR Qwest determines that the Telephone Number (TN) entered on the LSR is not available. Qwest will provide the new TN on the FOC A typographical error on the original FOC was identified. The correct TN will be provided on a subsequent FOC
Verbal supplement for CFA slot change on the Due Date	10	<p>On the due date the Carrier Facility Assignment (CFA) provided on the LSR needs to be changed and the supplement is not sent prior to order completion</p> <p><u>NOTE: For CFA or slot changes, it is the CLEC responsibility to provide Qwest with a new CFA that will work. Qwest will only accept one verbal CFA change on the due date. If that CFA fails to work, Qwest will place the order in (customer) jeopardy. No further action will be taken on Qwest's part until Qwest receives a valid</u></p>

		<u>supplemental request to change the due date and the CFA (if applicable). Additional charges may apply.</u>
Dispatch Entry not valid	11	Used when: <ul style="list-style-type: none"> The dispatch information on the LSR was invalid, i.e., an invalid appointment reservation was received and Qwest scheduled a new appointment through Appointment Scheduler The LSR requests a dispatch, but a dispatch is not required for provisioning and you have not indicated in the remarks to Tag the Demarcation, Qwest will ignore the dispatch request
AN (SBN/BTN/MAN) Change	12	Used when: <ul style="list-style-type: none"> LSRs with Requisition Type of CB (Local Number Portability (LNP)) and BB (Unbundled Local Loop/LNP) that have the ported TN in the Account Number (AN) field instead of the main AN field on the LSR, Qwest processes the order (porting the requested TN) using the main AN and provides the correct AN on the FOC A LSR requesting a change or conversion from a Centrex account to a Plain Old Telephone Service (POTS) (Resale or UNE-P) account, the FOC will reflect the new POTS AN LSRs requesting a Loop type change and the Billing Telephone Number (BTN) changes. The AN on the FOC reflects the new AN
BAN Change	13	The Summary Billing Account Number (BAN) is incorrect on the LSR and Qwest provides the correct BAN information on the original FOC

NOTE: A subsequent FOC referred to in the above table is an additional FOC that is sent to you on a particular version of a LSR after the original FOC was submitted. It is not a FOC that is submitted as a result of a supplemental request.

Jeopardy Notifications

A jeopardy, caused by either you or Qwest, endangers completing provisioning and/or installation processes and impacts meeting the scheduled due date of your service request. Examples of jeopardy conditions are Customer Not Ready, No Facilities Available, or in the case of an LSR, when an error is identified on your LSR after a FOC has been sent. When your service request is in jeopardy, Qwest notifies you via a status update, email, Jeopardy Notification, telephone call, and/or a FOC. The purpose of the jeopardy notification process is to identify jeopardy conditions to you that impact meeting the scheduled due date of your service requests. The sequence of sending a jeopardy notification and/or a FOC may change depending on when the facility condition is identified.

Local Service Request (LSR)

Jeopardy Resolution Responsibilities

Depending upon the type of service, Non-Designed (POTS) or Designed, jeopardy codes are formatted as follows:

- Jeopardy codes for Non-Designed (POTS) services are one alpha and one alphanumeric character.

Qwest Response to Document In Review

Response Date: April 16, 2007
Document: Process: CMP - Provisioning and Installation Overview - V100.0
Original Notification Date: March 22, 2007
Notification Number: PROS.03.22.07.F.04584.P_and_I_CFA_Slot_Chng
Category of Change: Level 4

Qwest recently posted proposed updates to CMP - Provisioning and Installation Overview - V100.0 CLECs were invited to provide comments to these proposed changes during a Document Review period from March 23, 2007 through April 06, 2007. The information listed below is Qwest's Response to CLEC comments provided during the review/comment cycle.

Resources:

Customer Notice Archive <http://www.qwest.com/wholesale/cnla/>
 Document Review Site <http://www.qwest.com/wholesale/cmp/review.html>

If you have any questions on this subject or there are further details required, please contact Qwest's Change Management Manager at cmpcomm@qwest.com.

Qwest Response to Process CMP - Provisioning and Installation Overview - V100.0 Comments

#	Page/Section	CLEC Comment	Qwest Response
1		<p><i>Eschelon April 06, 2006 Comment: Comment: Eschelon objects to Qwest's notice PROS.03.22.07.F.04584.P_and_I_CFA_Slot_Chng for a number of reasons.</i></p> <p><i>Eschelon objects to Qwest characterizing this notice as an Interconnection Notice. Eschelon's ICA contains specific provisions for Qwest Interconnection notices. Qwest has not followed the process in Eschelon's interconnection agreement.</i></p> <p><i>Eschelon objects to Qwest's red lined language regarding "additional charges." Rates are outside the scope of CMP and therefore Qwest cannot</i></p>	<p>This notice follows the required CMP notification process and is not intended to represent a change in Eschelons Interconnection Agreement.</p> <p>Qwest agrees that rates are outside the scope of CMP. This documentation update is not associated with actual rate updates or a change in how rates are applied. Charges associated with</p>

		<p><i>implement rate changes by adding language to the PCAT. Further, Qwest has performed this function for CLECs without charge for years. Qwest should obtain state Commission approval before implementing a new rate for activities Qwest previously performed. In addition, Qwest's reference to "additional charges" is unclear as to what charges Qwest intends to apply.</i></p> <p><i>Eschelon objects to Qwest's change to limit the availability of day of cut CFA changes to one. Qwest has been performing multiple CFA changes for several years when required. Qwest can be the cause of a CFA change on the day of cut. The cause (Qwest or CLEC) of the CFA change is not always apparent on the day of cut. Limiting verbal CFA changes on the due date to one could end up delaying CLEC customer installation as a result of Qwest's error.</i></p>	<p>design changes such as CFA changes were identified on the non CMP notification PROS.09.01.05.F.03204.Design_Chgs_Unbundld_Loop. Qwest recognizes that the use of the term of "additional charges" may be unclear and will change it to "Applicable charges may apply" with the final posting.</p> <p>Qwest is not limiting your availability to make a CFA change but rather Qwest will accept one verbal CFA change on the Due Date. As identified in the PCAT updates shown below, Qwest will allow you to request additional CFA changes through the supplemental request process.</p> <p><i>NOTE: For CFA or slot changes, it is the CLECs responsibility to provide Qwest with a new CFA that will work. Qwest will only accept one verbal CFA change on the due date. If that CFA fails to work, Qwest will place the order in (customer) jeopardy. No further action will be taken on Qwest's part until Qwest receives a valid supplemental request to change the due date and the CFA (if applicable).</i></p> <p>Qwest makes every effort that is technically reasonable to ensure the circuit is working properly before it is handed over to the CLEC. For example, Qwest has instituted dial tone verification at two intervals prior to due date to identify possible CFA issues. See Unbundled Local Loop - 2-Wire or 4-Wire Analog (Voice Grade) Loop under Provisioning and Installation section, Dial Tone sub-section. CLECs have the ability to receive notification when there is no dial tone. In the case where Qwest may be in error, Qwest will make every effort to correct the problem on the DD. A Qwest error should not result in a requirement for a CLEC CFA change.</p>
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

EXHIBIT 130

This exhibit contains excerpts from documents available on Qwest's website at the following URLs:

Final Meeting Minutes of the CLEC – Qwest Change Management Process Redesign, Monday, December 10 and Tuesday December 11, 2001 Working Session

http://www.qwest.com/wholesale/downloads/2002/020122/CMP_Redesign_Meeting_De c_10-11_Final_Minutes.doc

Final Meeting Minutes of CLEC –Qwest Change Management Process Redesign, Tuesday, April 2 through April 4, 2002 Working Session

http://www.qwest.com/wholesale/downloads/2002/020715/CMP_RedesignMeetingMinutesApril2-4FINAL07-15-02.doc

Draft Meeting Minutes of CLEC – Qwest Change Management Process Redesign, Wednesday, June 5 and Thursday, June 6, 2002 Working Session

http://www.qwest.com/wholesale/downloads/2002/020724/CMPRedesignMeetingMinutes5-6_2002DRAFT7-23-02.doc

Meeting Minutes of CLEC – Qwest Change Management Process Redesign, Wednesday, June 5 and Thursday, June 6, 2002 Working Session

http://www.qwest.com/wholesale/downloads/2002/020924/CMPRedesignMeetingMinutesforJune5-6_2002Final09-24-02.doc

CLEC-Qwest CMP Redesign, Combined Gap Analysis

http://www.qwest.com/wholesale/downloads/2002/021004/CombinedCMPRedesignGapAnalysis_Rev10-01-02.doc

CLEC-Qwest Change Management Re-design Working Sessions, Core Team Issues/Action Items Log—CLOSED

http://www.qwest.com/wholesale/downloads/2002/021015/CLOSED-CMP_RedesignCoreTeamIssuesActionItemsLog-Rev10-09-02.doc

FINAL MEETING MINUTES

CLEC – Qwest Change Management Process Redesign
Monday, December 10 and Tuesday December 11, 2001 Working Session
1801 California Street, 23rd Floor, Executive Conference Room, Denver, CO
Conference Bridge: 877.550.8686, passcode 2213337#

NOTE: These are FINAL meeting minutes Qwest developed following the two day working session. Draft minutes were circulated to the CMP Redesign Core Team Members on Dec. 21, 2001. As of January 21, 2002, no comments were received from the meeting attendees.

INTRODUCTION

The Core Team (Team) and other participants met December 10th and 11th to continue with the Redesign effort of the Change Management Process. Following is the write up of the discussions, action items, and decisions in the working session. The attachments to these meeting minutes are as follow:

ATTACHMENTS

Attachment 1: CMP Re-Design November 27 – 29, 2001 Attendance Record
Attachment 2: CMP Re-Design Meeting December 10-11, 2001 Notice and Agenda
Attachment 3: CMP Redesign Meeting December 11, 2001 Revised Agenda
Attachment 4: Qwest Proposed Production Support Language – Revised 12-06-01
Attachment 5: Qwest CMP Improvement Process - 11-26-01
Attachment 6: AT&T Re-Design Issues List - 11-13-01
Attachment 7: CMP Re-Design Meeting Action Item Discussion List - 11-29-01
Attachment 8: WorldCom Re-Design Issues List - 11-13-01
Attachment 9: Interim Qwest Product/Process Change Management Process – Revised 10-3-01
Attachment 10: Changes That DO NOT Alter CLEC Operating Procedures - 11-26-01
Attachment 11: Schedule of CMP Re-design Working Sessions - Revised 12-11-01
Attachment 12: CMP Redesign Core Team Issues Action Items Log - 12-11-01
Attachment 13: Master Redlined CLEC-Qwest CMP Re-design Framework – Revised 12-10-01

Qwest could do a timeline for systems and product/process CRs. Schultz-Qwest stated that she would try, but that it was complicated when there were systems components to a product/process CR. Clauson-Eschelon stated that Qwest should compose one for a product/process CR without systems components. Van Meter-AT&T asked if Qwest could report on compliance with the process for CRs at the CMP Meeting. Schultz-Qwest stated that she could. Clauson-Eschelon stated that Qwest CRs must be maintained in an identical manner to CLEC CRs. Schultz-Qwest stated that this was the expectation going forward. Menezes-AT&T stated that as the Redesign process continues Qwest should solicit feedback from the CLECs. Schultz-Qwest stated that she already solicited feedback from the CLECs at the conclusion of each CMP Meeting. Clauson-Eschelon stated that was ineffective because no one wants to give bad feedback at the end of a meeting. Menezes-AT&T suggested that the CLECs bring all their feedback to Redesign for review and resolution.

AT&T Issue 5

Menezes-AT&T discussed AT&T issue 5. Schultz-Qwest stated that Qwest would provide the CLECs a list of reasons that Qwest would use to deny CLEC CRs at the next CMP Meeting. Clauson-Eschelon stated that CLECs wanted the ability to deny Qwest CRs. Menezes-AT&T stated that the issue should be added to the running log. Clauson-Eschelon stated that she didn't understand why CLECs couldn't deny Qwest CRs under the interim process. Clauson-Eschelon asked why Qwest even bothered to call a Qwest change a Change Request if it could unilaterally implement it. Crain-Qwest stated that Qwest now used CRs to encourage a discussion for 45 days before implementation. Clauson-Eschelon stated that she wanted to make it clear that Eschelon does not agree with Qwest's interpretation of the interim process, and that the CR process for Qwest Initiated CRs was just a notification process, not a CR process.

AT&T Issue 6

Menezes-AT&T described issue 6. Clauson-Eschelon stated that the concern for walk-ons is that Qwest will try to force Qwest CRs in the CMP agenda as walk-ons. She stated that Qwest would use this as a tool to circumvent the notice rules. Schultz-Qwest clarified that CLECs can, and have, brought walk-ons to the general meetings.

AT&T Issue 7

Menezes-AT&T asked that Qwest add a discussion of the Exception Process to the Action item log. (Action item 215)

AT&T Issue 8

Menezes-AT&T described the issue. Bahner-AT&T asked if Qwest had any guidelines for differentiating account team requirements and CMP issues. Maher-Qwest stated that differentiating criteria was under development. Menezes-AT&T stated that this criteria should outline the specific functions of different Qwest groups who work with the CLECs. Bahner-AT&T stated that the account teams have sometimes told AT&T that when AT&T challenges a Qwest position it should take its complaint to CMP. (Action item 216)

AT&T Issue 9

Menezes-AT&T explained that he felt CLECs needed a way to halt a change that did not use the CMP. Dixon-WorldCom stated that this was the same issue as the Additional Testing escalation. Menezes-AT&T stated that this was for instances where Qwest had not issued a CR. Bahner-AT&T described a problem with customer codes. Crain-Qwest stated that the problem Bahner described may not have been a process change. Clauson-Eschelon asked if there were procedures in place to check CLEC impacts before someone makes a process change at Qwest.

Dixon-WorldCom recommended a CMP Help Desk be staffed. Lee asked if this issue was really a CMP or training issue rather than a Redesign issue.

Van Meter-AT&T stated that she had an issue that applied to AT&T issue 8. She stated that she had submitted several CRs after waiting for a month for the account managers to solve a problem. After a month she was told by her Account Manager to use the CMP. Schultz-Qwest stated that she had targeted modules of CMP training for account and service managers. Menezes-AT&T stated that Qwest needed to develop guidelines for the responsibilities of account and service managers so the CLECs don't waste time going to them for issues that should be submitted to the CMP. Zulevic-Covad stated that a CMP Help Desk could help with this.

Clauson-Eschelon stated that she had an issue that pertained to AT&T issue 4. She stated that Eschelon had submitted a CR in the beginning of November, and that they had not been contacted for a clarification meeting to date. Schultz-Qwest stated that Qwest had sent Eschelon an immediate response to that CR and that the issue was outside of the scope of CMP and being worked elsewhere. Clauson-Eschelon stated the Qwest response did not make those points adequately clear. She stated that regardless of whether the CR was within the scope of CMP it should be posted and have its status reflected as denied. There was further discussion of whether that specific CR was within the scope of CMP. Powers-Eschelon stated that the team needed definition of how the PID/PAP apply to CMP. Crain-Qwest reiterated that the issue was whether or not changes for PID/PAP were up for discussion in CMP. He stated that Qwest's position was that they were not. Powers-Eschelon stated that the question Eschelon had was whether Qwest was within the bounds of a PID. Schultz-Qwest stated that Qwest does not think the forum for PID/PAP is the CMP.

AT&T Issue 9b

Menezes-AT&T described the issue. Bahner-AT&T stated that when Qwest makes a back end systems change that affects CLECs, Qwest should open an ISC ticket that documents a workaround so that AT&T doesn't have to call in 200 tickets for 200 LSRs with the same problem.

AT&T Issue 10

Menezes-AT&T stated that the team should discuss this issue later.

AT&T Issue 11

Menezes-AT&T asked how Qwest reconciles two similar CRs. Schultz-Qwest stated that she could craft language to this issue. She stated that Qwest also had to develop a housekeeping process for old CRs.

AT&T Issue 12

Clauson-Eschelon asked if Qwest could publish the dates for CMP status filings. Crain-Qwest stated that he would try to send out an email with the dates. (Action item 69)

AT&T Issue 13

Menezes-AT&T described the issue. The issue was added to the Issue/Action log and the Running List(See Attachment 7).

AT&T Issue 14

Maher-Qwest stated that the language Menezes was looking for was under CR initiation. He stated that the team should copy this language to changes to existing interfaces, retirement of interfaces, and introduction of interfaces. Menezes-AT&T stated that he wanted language to

FINAL MEETING MINUTES

**CLEC – Qwest Change Management Process Redesign
Tuesday, April 2 through April 4, 2002 Working Session**
1801 California Street, Room 2, 13th floor, Denver, CO
Conference Bridge: 877.550.8686, passcode 2213337#

NOTE: These are FINAL meeting minutes Qwest developed following the working session. Draft minutes were circulated to the CMP Redesign Core Team Members on April 23, 2002. As of July 11, 2002, no comments were received from the meeting attendees.

INTRODUCTION

The Core Team (Team) and other participants met April 2-4 to continue with the Redesign effort of the Change Management Process. Following is the write up of the discussions, action items, and decisions in the working session. The attachments to these meeting minutes are as follow:

ATTACHMENTS

- Attachment 1: CMP Redesign April 2-4 Attendance Record
- Attachment 2: CMP Redesign Meeting April 2-4 Notice and Agenda – Revised 04-01-02
- Attachment 3: Qwest_Proposed_Qwest-Initiated_Product-Process_Changes_Language 04-02-02
- Attachment 4: Master Redlined CLEC-Qwest CMP Redesign Framework - Revised 04-04-02
- Attachment 5: Ranking of ATT Priority List Items Identified as 0's - Revised 04-04-02
- Attachment 6: CMP Redesign Core Team Issues Action Items Log - Revised 04-04-02
- Attachment 7: Qwest Service Center and Manager Roles in Relation to CMP - 04-03-02
- Attachment 8: Qwest Proposed Managing the CMP Language - 04-03-02
- Attachment 9: Interim_EXCEPTION_process - Revised 04-03-02
- Attachment 10: Qwest Proposed TERMS Language - 04-04-02
- Attachment 11: Change_Management_Process_Improvements_11-26-01Rev04-04-02
- Attachment 12: Action Item 227 - ATT Proposed ICA vs CMP Language - 04-04-02
- Attachment 13: Late Adder CR Language - 04-04-02
- Attachment 14: Qwest Proposed OSS Release Calendar Language - Revised 04-04-02
- Attachment 15: Qwest Proposed Production Support - Help Desk Language - Revised 04-04-02

MEETING MINUTES

The meeting began with introductions of the meeting attendees. (Refer to Attachment 1 for attendance record) Judy Lee, the meeting facilitator, reviewed the three-day agenda (Attachment 2).

Qwest-initiated Product/Process Change Request Initiation Process

Level 0

Schultz-Qwest began by stating that several members of the core team reviewed Product/Process notifications issued from 2/1-3/15 at a sub-team conference call meeting on March 28th. She then reviewed the sub-team meeting and discussed that Level 0, Level 1 and Level 2 change categories had been discussed in that meeting. She stated that the team touched on Level 3 and Level 4 change categories, and that the team agreed to work on those levels during the first day of Redesign on April 2. She stated that the team developed a Level 0 list, and that Qwest had additional items to add to the category. Schultz stated that the document had been updated to reflect the changes from the sub-team meeting (Attachment 3). Maher-Qwest stated that Level 0 list of categories was developed from a list sent by Clauson-Eschelon. Travis-WorldCom asked what Level typos in numbers would fall into. Schultz-Qwest stated that typos were Level 0, and that Level 0 changes do not include interval changes. Menezes-AT&T

3) then it would be issued as a Level 3. Dixon-WorldCom stated that at the end of the 15 day comment period for Level 3, the CLEC could request that the change be upgraded to a CR or stay with the level Qwest proposed. Schultz-Qwest stated that the reason Qwest agreed to the exhaustive list was because Qwest could bring forward changes not on the list as Level 3. Meeting adjourned.

Wednesday, April 3, 2002

Lee welcomed the team and reviewed day two agenda. She stated that the team would start with AT&T "0" List items (Attachment 5).

I.A.4

Lee stated that language was already in the Master Redlined Document (Attachment 4) relating to this issue. This issue is closed.

I.A.10

Schultz-Qwest stated that this issue applied to Service Manager vs. CMP language that Qwest proposed in the distribution package (Attachment 7). Menezes-AT&T asked if the language only applied to Service Managers. She stated that if the Service Managers needed additional internal assistance they could bring in a Qwest SME. Clauson-Eschelon stated that Eschelon had a different process for escalation in their contract in comparison to what was listed in the document. She stated that she did not think the document answered all of the questions in I.A.10. She stated that the document assumed that the CLEC already knew who to take the issue to. Bahner-AT&T stated that the Account Team did not know the role of CMP, and that the document needed to be shared with them. Clauson-Eschelon stated that if a Service Manager received the same question from several CLECs, then the issue needed to come to CMP. Schultz-Qwest stated that just because two CLECs bring a similar issue to an Account Manager, does not mean that it's a CMP issue. The issue could be with billing for instance and be specific to those two CLECs. Schultz-Qwest stated that the document (Attachment 7) would be added to the "Getting Started" information on the website and also distributed to everyone. Wicks-Allegiance stated that the role of the Service Manager should also be to bring changes to CMP. He stated that they should analyze all issues they receive from different CLECs, and bring related CMP issues into CMP. Schultz-Qwest stated that if there were an issue with a process the Service Manager would contact the process specialist responsible for that process. The process specialist would then complete a Qwest Product/Process Change Request. Wicks-Allegiance stated that this does not prevent the CLEC from completing a CR. Menezes-AT&T asked who the process specialists are. Schultz-Qwest stated that they are process owners and are responsible for M&Ps. She stated that they are often the SMEs at the CMP Meetings. Clauson-Eschelon stated that taking issues to her service manager to escalate was a process change from what she was currently doing. Schultz-Qwest stated that CLECs initial Qwest point-of-contact is the Service Manager, and if they have additional questions they can go to the Account Manager. Menezes-AT&T stated that the document would give the Service Managers and Account Managers a common understanding of their roles in relationship to CMP. Clauson-Eschelon referenced the escalation process in the document and stated that the team already created language for systems (Attachment 4). She stated that she wanted a link added into the document (Attachment 3). She continued that if CLECs escalated a billing issue they would not go to their Service Manager. Schultz-Qwest stated that a CLEC would escalate through the Billing Escalation Process. She stated that she would confirm the process with Judy Taylor (Qwest Billing) and also identify the Account Manager role. **Action Item #269.** Lee asked if the document (Attachment 7) could be baselined with the action items for Schultz-Qwest to review the Billing Escalation Process and Account Manager role. Schultz-Qwest asked if there was agreement in concept. AT&T, WorldCom, Allegiance, and Eschelon agreed. Issue closed in concept.

Menezes-AT&T asked what would a CLEC do if he/she was improperly directed to CMP by their Service Manager. Schultz-Qwest stated that the CLEC should contact her or the appropriate CMP Manager (Product/Process or Systems). Menezes-AT&T asked how would the CLECs reach Schultz-Qwest or the appropriate CMP Manager. Schultz-Qwest stated that the CLEC

could email their Service Manager with the issue and cc: the cmpcr@qwest.com mailbox. **Action item #271.** Clauson-Eschelon stated that the process says to check the website and then contact your Service Manager if you have additional questions. She stated that the Eschelon contract states that they may go straight to the POC without the extra website step. She stated that Eschelon tries to tell their personnel to check the website first. Schultz-Qwest stated that the document is trying to put a process around the issue.

1.A.4

Thompson-Qwest stated that LOE language was listed on Page 11 of the Master Redline Document (Attachment 4). He stated that on page 15 the document states that LOE is expressed in a range of hours. He continued that in the first LOE that is given to CLECs it is a broad range and the second time it's more defined. He stated that the document needed to state that LOE is always a range of hours and an estimate. He suggested adding information to the Terms document. Lee asked if the WorldCom comment could be taken out of the document and closed in the Gap Analysis. Travis-WorldCom agreed. Lee asked if I.A.4 could be closed. Menezes-AT&T asked if LOE was just a range of hours. Thompson-Qwest stated that Qwest would share any additional information, like having the additional costs of purchasing a software package to make the change. Allegiance, AT&T, WorldCom, and Eschelon agreed to close this issue.

V.e

Lee referred the team to the proposed language section 7.0 Managing the CMP (Attachment 8). Clauson-Eschelon asked about website management. Lee stated that it was covered in 8.3. Menezes-AT&T clarified that the "team representative" was intended to be someone at the CLEC's company. He stated that because there would be Level voting at the CMP Product/Process meeting, the team needed to address authorizing parties to vote. Lee stated that this issue had already been discussed. Wicks-Allegiance stated that a Letter of Agency must be submitted prior to voting. He stated that this was the case for CMP Redesign voting and could be rolled over to CMP. Language was baselined. The team will address responsibilities during a vote after the Voting Process concept is discussed. **Action item #172.**

I.A.5

Wicks-Allegiance stated that the CLECs would prefer to receive the comments through email. Clauson-Eschelon stated that in section 8.3 it states that the comments will also be posted on the website. Schultz-Qwest stated that Qwest would gather all CLEC comments and send a notification, including all comments received, with the Qwest response. Clauson-Eschelon stated that she wanted to see the comments so that she could join in. Schultz-Qwest stated that web posting could take up to 3 days and that every time a comment was received it would have to be updated. If a CLEC wanted another CLEC to view their comments before Qwest sent them out, the CLEC should copy their comments to other CLECs. Menezes-AT&T stated that the team could investigate adding a field where CLECs could add cc:s to the comment website. Clauson-Eschelon stated that this would be acceptable if the submit comment function emailed the comment back to the originating CLEC. The originating CLEC could then forward the comment to whomever they wanted. White-Qwest stated this was possible, and he would investigate the solution. Clauson-Eschelon asked what a CLEC should do if the comment button doesn't work. White-Qwest stated that CLECs could also the comment to cmpcomm@qwest.com. That information was added to the document.

Clauson-Eschelon stated that this did not solve the way CLECs receive notices. Schultz-Qwest stated that Qwest uses the Mailout Tool as a "post-office". She stated that she understood that it was confusing to determine what notifications were related to CMP and which ones were not. She suggested that she would investigate adding "CMP" in the subject line of the notification. **Action item #272.**

Lee moved the team to the related Action Item #156. Menezes-AT&T asked if planned outages were governed under the proposed CMP notice heading. Wicks-Allegiance stated that he did not want planned outages to say CMP, and that he just wanted the heading for items that were being

DRAFT MEETING MINUTES

**CLEC – Qwest Change Management Process Redesign
Wednesday, June 5 and Thursday, June 6, 2002 Working Session**
1801 California Street, 13th Floor, Denver, CO
Conference Bridge: 877.550.8686, passcode 2213337#

NOTE: These are DRAFT meeting minutes Qwest developed following the two day working session. Draft minutes will be circulated to the CMP Redesign Core Team Members on July 23.

INTRODUCTION

The Core Team (Team) and other participants met June 5th and June 6th to continue with the Redesign effort of the Change Management Process. Following is the write up of the discussions, action items, and decisions in the working session. The attachments to these meeting minutes are as follow:

ATTACHMENTS

Attachment 1: CMP Redesign Meeting June 5-6 Notice and Agenda
Attachment 2: CMP Redesign June 5-6 Attendance Record
Attachment 3: Ranking of ATT Priority List Items Identified as 1's - 06-06-02
Attachment 4: Master Redlined CLEC-Qwest CMP Redesign Framework - Revised 06-6-02
Attachment 5: CMP Redesign Core Team Issues Action Items Log - Revised 06-06-02
Attachment 6: CMP Redesign Roadmap to Conclusion - 06-07-02
Attachment 7: Ranking of ATT Priority List Items Identified as 0's -06-06-02
Attachment 8: Change Postponement and Arbitration Language-ATT Comments 6.4.02
Attachment 9: Exception Process 6-6-02
Attachment 10: CR timeline- IMA Software Development Timeline
Attachment 11: Qwest Service Center and Account Manager Roles-6-6-02
Attachment 12: Qwest Proposed Nested CR Process-6-6-02
Attachment 13: Qwest Proposed History Log Addition to Terms-6-6-02

MEETING MINUTES

The meeting began with introductions of the meeting attendees. Judy Lee, the meeting facilitator, then reviewed the two-day agenda. Refer to Attachments 1 and 2. She stated that Menezes-AT&T and Woodcock-Qwest worked off line and closed 1.A.6- PID Administration (Attachment 3) and that the language needed to be added to the Master Redline Document (Attachment 4). She stated that with this language agreed to, action item #262 could also be closed (Attachment 5). Lee then stated that the team needed to review the Roadmap to Conclude (Attachment 6).

Osborne-Miller-AT&T asked if the team could discuss whether the redesigned CMP includes a system change that concerns AT&T. Schultz-Qwest stated that Qwest was working on pulling all of the SMEs together. She stated that the issue related to the process when Qwest is the customer of a CLEC. Lee stated that the issue would be added to the agenda after the review of the Roadmap to Conclude.

Quintana-Colorado PUC stated that when she reviewed the AT&T 1's and 0's list (Attachments 3 and 7) she wanted to make sure that the team had closed on the SGAT issue (V.f.). The team agreed that the issue was closed. Quintana-Colorado PUC then stated that there would be a meeting on June 19th to discuss the inclusion of Qwest Product/Process Change Process into the CPAP. She stated that parties would have one week to comment on the CPAP.

Attachment 11

Qwest Service Center and Manager Roles in Relation to CMP – Revised 06-06-02

As discussed in Section 1.0 of the Qwest Wholesale Change Management Process Document, the purpose of the Qwest Wholesale CMP is to afford Qwest and the CLECs a way of changing, retiring, or providing development input for a Qwest OSS interface, product, or process. The CMP is not a forum to resolve isolated issues or CLEC problems that do not involve a change to the way Qwest does business. The CLEC/Qwest Interconnection Agreement may contain applicable procedures and if so this document will not supercede the Interconnection Agreement. CLECs should pursue resolution of all problems of this nature through the informative materials Qwest provides to the CLECs (e.g., Qwest web sites, Product Catalogues (PCATs), and Technical Publications) and through Qwest's Service Centers and Service Managers, as described below. CLECs should contact their assigned Sales Executive when they want to submit an initial product idea, qualify a new opportunity, and ask questions regarding their contract pricing or want to negotiate contract amendments.

When a Service Manager becomes aware of an issue that should become a CMP change, he/she should contact the appropriate product manager, process specialist, and other Qwest SMEs as appropriate who will address the issue in accordance with the CMP.

- **Requests for Information** - If a CLEC requires information that cannot be found in the appropriate website, PCAT or Technical Publication, the CLEC should contact its Service Manager. The Service manager will contact the Sales Executive to obtain the information if necessary. If the Service Manager is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should escalate the problem through the Service Management Escalation Process (<http://www.qwest.com/wholesale/clecs/exesscover.html>).
- **Systems Problems** - If a CLEC encounters a systems problem, the CLEC should first contact the Wholesale Services Help Desk (WSHD). If the WSHD is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should invoke the escalation process detailed in the Qwest-CLEC Technical Issues Escalation document (<http://www.qwest.com/wholesale/systems/generalinfo.html>).
- **Service Order Problems** - If a CLEC encounters a problem with service orders, the CLEC should first contact the Qwest Interconnect Services Center (ISC) Help Desk. If the ISC Help Desk is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should escalate through the ISC Help Desk. If the center escalation does not resolve the problem to the CLEC's satisfaction the CLEC should contact the CLEC's designated Service Manager.
- **Billing Problems** – If a CLEC encounters a billing problem the CLEC should first contact its designated Qwest Billing Representative. If the Billing Representative is unable to resolve the problem or provide the requested information to the CLEC's satisfaction then the CLEC should escalate through each level of the Qwest billing management organization. Questions concerning the application of the CLEC/Qwest ICA are considered compliance issues.
- **Compliance Issues** – If a CLEC encounters contract compliance issues, the CLEC should contact its Service Manager. If the Service Manager is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC

Attachment 11

should escalate the issue through the Service Management Escalation Process (<http://www.qwest.com/wholesale/clecs/exesscover.html>).

- **Network Repair Problems** – If a CLEC encounters a network repair problem, the CLEC should contact the Network Repair Center. If the CLEC is not satisfied with the Network Repair Center's solution the CLEC should escalate through the Network Repair Center as outlined on the Qwest Business Procedures - Maintenance and Repair Web site, <http://www.qwest.com/wholesale/clecs/maintenance.html>. If, after escalation, the Network Repair Center is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should contact its designated Service Manager.
- **Product Information** - If a CLEC requires product information that cannot be found in the appropriate website or PCAT, the CLEC should contact its designated Service Manager. If the Service Manager is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should escalate the problem through the Service Management Escalation Process (<http://www.qwest.com/wholesale/clecs/exesscover.html>).
- **Chronic Performance Issues** – If a CLEC encounters chronic poor performance from a Qwest division or employee the CLEC should contact its Service Manager. If the Service Manager is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should escalate the problem through the Service Management Escalation Process (<http://www.qwest.com/wholesale/clecs/exesscover.html>).
- **Isolated Personnel Performance Issues** - If a CLEC encounters isolated poor performance by a Qwest employee the CLEC should contact the applicable service center. If the applicable service center is unable to resolve the problem or provide the requested information to the CLEC's satisfaction the CLEC should escalate through the Service Management Escalation Process (<http://www.qwest.com/wholesale/clecs/exesscover.html>).

In all above instances the reporting CLEC should be prepared to discuss the specific details and examples of the issue and all informative documentation researched. Qwest will conduct a root cause analysis of the examples of the problem, and provide its analysis to the reporting CLEC in a timely manner.

MEETING MINUTES

**CLEC – Qwest Change Management Process Redesign
Wednesday, June 5 and Thursday, June 6, 2002 Working Session**
1801 California Street, 13th Floor, Denver, CO
Conference Bridge: 877.550.8686, passcode 2213337#

NOTE: These are FINAL meeting minutes Qwest developed following the working session. Draft minutes were circulated to the CMP Redesign Core Team Members on August 22, 2002. As of September 24, 2002, no comments were received from the meeting attendees.

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Menezes-AT&T asked if Qwest would honor one CLEC's report that a change was cost prohibitive. Schultz-Qwest stated that the team had agreed to work in good faith. She continued that a CLEC could use the Dispute Resolution Process at any time. Language was modified.

Travis-WorldCom asked if all systems were prioritized. Schultz-Qwest stated that only systems with resource constraints were prioritized. Travis-WorldCom asked if a CLEC wanted to expedite a system CR, would it impact the resources available for that particular system. Schultz-Qwest stated that it would depend on where the system was in the development cycle for the next release.

Wicks-Allegiance asked if super majority was 2/3 vote of the CLECs in attendance. Menezes-AT&T stated that AT&T and Eschelon were concerned about the requirements for quorum and stated that he wanted to address the issue in the voting section.

Lee asked how denied exception CRs would be referenced in the database. Schultz-Qwest stated that if the change returned to a CR then the "ex" suffix would be removed. If the requestor wanted to forgo the change, then the CR would be closed under the normal process. The Team completed discussion on language for the Exception Process. Menezes-AT&T requested that the document be e-mailed out to the team after the meeting and the team could complete a final review before baselining the language the next morning.

I.A.1 Section 5.2- IMA Software Development Timeline (Action items #197 and #214)

Lee stated that Jacobs-Qwest would join the team to answer any questions on the language (Attachment 10). Osborne-Miller-AT&T stated that Jacobs presented the timeline several months ago and that the CLECs had additional questions. Lee asked the team if the timeline should be included in the Master Redline. Jacobs-Qwest stated that it should not because the timeline could change. Schultz-Qwest stated that there was a disclaimer at the top of the document addressing the possibility of change. Maher-Qwest stated that the CLECs should not view the timeline as a commitment. He stated that he did not want this illustrative-purpose timeline to cause any confusion with the timelines currently in the Master Redline. Osborne-Miller-AT&T stated that she thought the document was helpful and there would not be confusion. She mentioned that the document stated that the times were approximate. The team agreed to add the IMA Software Development Timeline to the Master Redline.

Schultz-Qwest stated that the team should address I.A.1 on the ATT 1's list. Clauson-Eschelon stated that she thought that there should not be two sections for Qwest and CLEC changes. She stated that it should be one process. Jacobs-Qwest stated that early on in the development of the language there were two sections that addressed the lifecycle and now all the information was in one. Lee asked the team if I.A.1 could be changed to "yes" and if Action items #197 and 214 could be closed. The team agreed.

I.A.10 Qwest Service Center and Account Manager Roles

Schultz-Qwest stated that the language (Attachment 11) included Sales Executive roles and that it would be posted on the CMP Web site, but not in the Master Redline. Zulevic-Covad asked about the referenced Billing Escalation Process. Schultz-Qwest stated that billing is not a Service Manager role and those issues are handled through the billing personnel. Language was modified. Clauson-Eschelon stated that none of the processes listed overruled the individual contracts. Schultz-Qwest agreed and stated that a CLEC could also use the Dispute Resolution Process. Zulevic-Covad stated that a lot of his problems related to the interpretation of the Interconnection Agreement (ICA). The language was modified to add clarification. Van Meter-AT&T asked if all the processes that were listed in the document were ways for the CLECs to address problems outside of CMP. Zulevic-Covad stated that in the past he had many issues with billing. Language was modified. Lee asked if the language could be closed with the pending action item and what the next step was. Schultz-Qwest stated that Qwest would send out a notice of the location of the document on the Web site. Bahner-AT&T stated that AT&T could not

close on the language until the links were included. Lee stated that **Action Item #216 and #269 could be closed** and Schultz-Qwest would provide URLs the next day.

Nested CR

Schultz-Qwest stated that the Nested CR process (Attachment 12) related to systems CRs that needed a manual work around. She stated that the CR would be tracked through the system CR. She stated that the question was on how to track the CR. Bahner-AT&T stated that she was concerned about the manual solution, because if the implementation of system CR resulted in problem she would want the manual solution reopened. Schultz-Qwest stated that the production support process would solve the issue. Lee asked if there were any additional question and stated that the language would be e-mailed out for final review and baseline tomorrow.

Action Item #275 History Log addition to Terms section

Lee asked if the term "History Log" and the definition (Attachment 13) could be added to the Terms. The team agreed. Action item closed.

Thursday, June 6, 2002

The meeting began with introductions of the meeting attendees. Judy Lee, the meeting facilitator, then reviewed the day's agenda.

I.A.10 Qwest Service Center and Account Manager Roles

Lee stated that the team reviewed the language (Attachment 11) the day before and several CLECs asked for the associated URLs be added to the document. Maher-Qwest explained the location of each escalation process. The team made modifications to language. Zulevic-Covad stated that he would like a separate billing process, but that the reference was acceptable. Lee asked if the team could accept the language. She stated that the language would not be part of the Master Redline, but that it would be presented at the CMP meeting for final review. The team agreed to the language and closed I.A.10.

Nested CR

Lee asked if there were any additional questions on the language (Attachment 12). Travis-WorldCom suggested grammatical changes. Lee asked if the team agreed to the language and asked where the document should be placed in the Master Redline. The team stated that they agreed to the language and it should be placed in Section 5.

Issue and Action Log

Lee directed the team to the Issue and Action Log and stated that there were several items that could be closed.

#69- Quintana-Colorado PUC stated that the action item could be closed for Colorado because Woodcock-Qwest was providing the Status Reports. She then stated that Qwest did not need to provide any future Status Report for the state of Colorado. Woodcock-Qwest stated that she would continue providing Status Reports in Arizona and any other state requesting it. Van Meter and Osborne-Miller, both AT&T, asked that this item remain open until Menezes (AT&T) provides his input regarding whether this item should remain open or be closed.

#89- Lee stated that the action item could be closed because the team already decided that there would not be proprietary CRs. She stated that there might be proprietary comments. The team suggested language on addressing proprietary comments. Travis-WorldCom asked if the comments had to be related to a CR. Schultz-Qwest stated that they did not. Travis-WorldCom asked if any comment or question could be sent in marked "proprietary." Schultz-Qwest agreed. Maher-Qwest stated that the language should be listed in section 2.5 under Methods of Communication. Quintana-Colorado PUC asked if Qwest would ever have proprietary comments. Schultz-Qwest stated that she could not think of an example. Clauson-Eschelon

CLEC-Qwest CMP Redesign
Combined Gap Analysis

#	Element/ Topic	Submitter(s)	Gap/Issues/Comments
SCOPE			
1	Scope-Rates	Eschelon	<p><u>Rates:</u> Whether and to what extent/how included in CMP</p> <p>“The extent to which rates are within the Scope of the CMP needs to be addressed and, if part of the Scope, language needs to be developed with respect to this issue. . . . Whether and how either Qwest or CLEC rates may be the subject of CRs has yet to be addressed.” (Eschelon Comments/Nov. Status Report.)</p>
2		AT&T	<p><u>Relationship to interconnection agreements</u></p> <p>Should have a discussion of what a “rate validation” is, how Qwest goes about it and address CLEC concerns raised in CMP. These are changes Qwest makes to rate tables that impact CLECs and there is not enough discussion (and no negotiation) before Qwest unilaterally makes changes to rates. [CLOSED 6/14/02]</p>
3	Scope- Interim Scope of CMP	Eschelon	<p><u>Interim Scope of CMP:</u> “The Parties agreed that the Scope of CMP encompasses changes to products and processes (including manual) and OSS interfaces that affect system functions that support or affect the capabilities for local services provided by CLECs to their end users. Based on discussions since then and the Qwest-initiated CRs submitted (and not submitted) to date, however, the Parties have identified that further discussion is needed as to whether all issues within the Scope of CMP require use of CRs and, if not, the parameters for when CRs are required. The resolution of this issue may ultimately appear in the documentation in another section, such as the types of changes, but the relationship to Scope must be addressed.” (Eschelon Comments/Nov. Status Report.)</p>
4	Scope-Define	WorldCom	<p><u>Scope fully defined when 100% of the processes have been negotiated to determine completeness</u></p>
5	Scope- Production defects	WorldCom	<p>Are production defects included in scope of CMP?</p> <p>[CLOSED 4/4/02: Software defects are included under CMP-Production Support].</p>
6	Scope- Retail	Eschelon	<p><u>Retail:</u> “CLECs have indicated that they interpret the Scope language to include changes to Qwest retail systems or processes when those changes affect CLECs. For example, if a dramatic improvement was made to the raw loop data tool used by Qwest retail, ensuring that CLECs are aware</p>

CLEC-Qwest CMP Redesign
Combined Gap Analysis

#	Element/ Topic	Submitter(s)	Gap/Issues/Comments
	CLEC Comments	Facilitator	[CLOSED 6/6/02: Refer to Master Redlined framework]
164	Misc. - CR vs. Account Team	Eschelon	<p>CR v. Account Team: When an issue is within the Scope of CMP and should be handled by CR versus when an issue should be handled by the Qwest account team for that CLEC.</p> <p>We have had instances where we take an issue to the account team. The account team tells us to go to CMP when we don't think it is a CMP matter. How are account teams informed of the distinctions between their functions and the functions of CMP? (AT&T 11/13 email)</p>
165		Covad	How does our account /service manager fit into the CMP process? Are they going to work with us to get resolution to issues that have become CRs? Will the CMP supplant the account/service manager? ACTION ITEM #216

**CLEC-Qwest Change Management Re-design Working Sessions
Core Team Issues/Action Items Log—CLOSED**

CLOSED ISSUES and ACTION ITEMS

#	Issue/ Action	Originator	Category	Description	Owner	Due Date	Resolution/Remarks
1A	Issue	July 11 Meeting	3 rd Party Provider Role	<p>What role do 3rd Party Providers play in this re-design effort?</p> <p>a) 3rd Party Providers are part of the core team to re-design the process, however no ‘voting’ rights on behalf of themselves or the CLEC-client [Process=Yes, Vote=No]</p> <p>b) 3rd Party Providers are allowed to ‘voice’ and ‘vote’ as any CLEC in this re-design effort [Process and Vote=Yes]</p> <p>c) 3rd Party Providers are excluded from the core team [Process and Vote=No]</p> <p>d) 3rd Party Providers are part of the core team to re-design the process, however no ‘voting’ rights on behalf of themselves, but can vote on behalf of the CLEC client with an LOA [Process=Yes, and Vote=Yes for CLEC client, Vote = No for themselves]</p>	Core Team	CLOSED July 19	<p>DECISION:</p> <p>d) 3rd Party Providers are part of the core team to re-design the process; however no ‘voting’ rights on behalf of themselves, but can vote on behalf of the CLEC client if a Letter of Authorization is in effect. The LOA must be provided to Judy Schultz.</p>
1B	Action	July 11 Meeting	3 rd Party Provider	Core Team to conclude discussion and participants to decide on one of the above scenarios	Core Team	CLOSED July 19	COMPLETED in July 19 meeting.
1C	Issue	July 19 Meeting	Voting	Can a CLEC represent another CLEC on Voting for CMP re-design process?	Core Team	CLOSED July 19	<p>DECISION:</p> <p>Yes, if a Letter of Authorization is in place for a specific session and on specific issues. The LOA must</p>

**CLEC-Qwest Change Management Re-design Working Sessions
Core Team Issues/Action Items Log—CLOSED**

#	Issue/Action	Originator	Category	Description	Owner	Due Date	Resolution/Remarks
216	Action	Dec 11 Meeting	Issue Management	Qwest to outline what the guidelines are for when an issue is appropriate for the CMP vs. when the Account team should handle it.	Qwest— Judy Schultz	CLOSED June 5	GAP ANALYSIS #165 COMPLETED: Qwest to present at upcoming CMP meeting and mail out to entire CLEC community.
217	Action	Dec 11 Meeting	Addendum Documentation and Software (Changes to An Existing OSS Interface)	Qwest to develop language regarding addenda to release software and documentation. How is it done? How is it communicated? How is it documented? Are CLECs ever consulted?	Qwest— Jeff Thompson	CLOSED June 6	01/28: Following is a high level overview of the current disclosure, release and addendum process: <ul style="list-style-type: none"> • Draft Developer Worksheets -- 45 days prior to a release the draft Developer Worksheets are made available to the CLEC's. • Final Disclosure – 5 weeks prior to a release the Final Disclosure documents, including I charts and developer worksheets are made available to the CLECs. • Release Day – On release day only those CLECs using the IMA GUI are required to cut over to the new release. • 1st Addendum – 2 weeks after the release the 1st addendum is sent to the CLECs. • Subsequent Addendum's – Subsequent addendum's are sent to the CLECs after the release as needed. There is no

**CLEC-Qwest Change Management Re-design Working Sessions
Core Team Issues/Action Items Log—CLOSED**

#	Issue/ Action	Originator	Category	Description	Owner	Due Date	Resolution/Remarks
				Wednesday. The actual notices can be found on the web. (Qwest will send out the directions to the location on the web with the original list on Monday)			
268	Action	April 2 Meeting	Product/ Process Level	Qwest to evaluate whether a 25-page limit for a Level 2 when new documentation for an existing process is provided by Qwest.	Qwest— Judy Schultz	CLOSED Apr 16	COMPLETED: Qwest-initiated Product/Process Change Process language baselined—see Master Redlined framework
269	Action	April 3 Meeting	Billing Escalation Process	Confirm Billing Escalation Process and modify document on roles.	Qwest— Judy Schultz	CLOSED June 5	Document modified 04-10-02 COMPLETED: Language included in document.
270	Action	April 3 Meeting	Escalation Web Site	Verify Clausen/Eschelon requests on Escalation web site were implemented	Qwest— Judy Schultz	CLOSED 07-10-02	Verified 04-08-02 Qwest is prepared to discuss and close this Action Item.
271	Action	April 3 Meeting	Comment SUBMIT Button	Create process if comment SUBMIT button does not work—i.e., CLECs may submit comments by email through cmpcomm@qwest.com	Qwest— Judy Schultz	CLOSED June 6	COMPLETED: Language added to web site and web instructions 04-10-02
272	Action	April 3 Meeting	CMP Notice Subject Line	For CMP notices, include “CMP” on subject line	Qwest— Judy Schultz	CLOSED May 15	COMPLETED: Already implemented.
273	Action	April 16 Meeting	Color Coding of changes	Look into whether or not Qwest can color code level changes in the same notifications or just identify them in the history log.	Qwest— Judy Schultz	CLOSED Apr 16	DECISION: Color coding is not a feasible option
274	Action	April 16 Meeting	Rate validation Process	Ask Sue Burson to join the Redesign meeting to provide an overview of the Rate Validation process. Determine if	Qwest— Judy Schultz	CLOSED May 2	DECISION: Discussion rescheduled for the May 15 CMP Product/Process

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of Eschelon)
Telecom of Oregon, Inc. for Arbitration with) **Docket No. ARB 775**
Qwest Corporation, Pursuant to 47 U.S.C.)
Section 252 of the Federal)
Telecommunications Act of 1996)

EXHIBIT 131



Announcement Date: April 6, 2007
Effective Date: Immediately
Document Number: SYST.04.06.07.F.04617.IMAXML21.0RecertMemo
Notification Category: Systems Notification
Target Audience: CLECs, Resellers
Subject: IMA XML Release 21.0 Recertification
Associated CR # or System Name and Number: IMA XML 21.0

Qwest supports a multiple release strategy for its IMA XML Interface, as referred to in the Qwest XML Implementation Guidelines documents located at URL:
<http://www.qwest.com/wholesale/ima/edi/document.html>.

Production and Retirement Dates

The IMA XML 21.0 Release will be available on May 21, 2007. IMA EDI 19.0 is scheduled to retire October 27, 2007. IMA XML 20.0 is scheduled to sunset November 14, 2007.

Testing and Migration Dates

CLECs implementing a new IMA XML 20.0 interface must begin Progression testing in the Qwest Stand Alone Test Environment (SATE) no later than **May 21, 2007** or they will be required to move their implementation plan to IMA XML Release 21.0. These CLECs must be certified and in production with at least one product no later than **July 21, 2007** or they will be required to move their implementation plan to IMA XML Release 21.0. Any IMA XML 20.0 users that have been placed into production by July 21, 2007 may continue certifying additional products and activities until September 21, 2007.

CLECs currently using IMA EDI Release 19.0 that intend to migrate to IMA XML 20.0 must establish an agreed upon 20.0 Migration Project Plan by **April 21, 2007**. Testing for the 20.0 release must begin 30 days prior to the planned Migration date. All 19.0 CLECs wishing to migrate to the 20.0 release must migrate by June 9, 2007 otherwise the CLEC will be required to migrate to 21.0. **NOTE:** Qwest strongly encourages customers to schedule early to ensure the highest degree of success with migrations.

The following are current available Migration Dates from IMA EDI 19.0 to IMA XML 20.0:

- April 14, 2007
- June 9, 2007

CLECs currently using IMA EDI Release 19.0 that intend to skip IMA XML 20.0 and migrate to IMA XML 21.0 must establish an agreed upon 21.0 Migration Project Plan by **July 21, 2007**. Testing for the 21.0 release must begin 30 days prior to the planned Migration date. **NOTE:** Qwest strongly encourages customers to schedule early to ensure the highest degree of success with migrations.

The following are current available Migration Dates from IMA EDI 19.0 to IMA XML 21.0:

- June 9, 2007
- August 11, 2007
- September 29, 2007
- October 20, 2007

CLECs currently using IMA XML Release 20.0 that intend to migrate to IMA XML 21.0 must establish an agreed upon 21.0 Migration Project Plan by **July 21, 2007**. All 20.0 CLECs wishing to migrate to the 21.0 release must migrate by November 3rd. **NOTE:** Qwest strongly encourages customers to schedule early to ensure the highest degree of success with migrations.

The following are current available Migration Dates from IMA XML 20.0 to IMA XML 21.0:

- June 9, 2007
- August 11, 2007
- September 29, 2007
- October 20, 2007
- November 3, 2007

To learn more about these migration dates, contact your Qwest IMA EDI/XML Implementation Representative.

Recertification Testing

Transactions that are required for 20.0 to 21.0 Recertification:

Pre-Order Transactions
Loop Qualification: Where MS = A

Order Transactions	Recommended Activity Type(s)
FBDL (14)	V

Post-Order Transactions
NONE

The following transactions DID NOT change. As a result, CLECs will not be required to re-certify the transactions. However, prior to moving the transactions to the new release, trading partner configuration verification must be performed to ensure proper changes have been made to the trading partner configuration.

Pre-Order Products
Address Validation
Appointment Availability and Selection
Cancellation (TN Reservation Cancellation)
Connecting Facility Assignment

Customer Service Record
Design Layout Record
Facility Availability Query
Meet Point Validation
Raw Loop Data
Service Availability
Telephone Number Availability and Selection
Listings Reconciliation
Order Products
POTS Resale (1)
Private Line (2)
Public Access Line – Co-Providers (3)
Unbundled Loop (4)
LNP (5)
Interim Number Portability (6)
Loop Service w/ Number Portability (7)
ISDN (8)
Centrex Plus/Centron (9)
Centrex 21 (9a)
PBX (10)
Analog Line Side Port (11)
Digital Line Side Port (12)
Listings Only (13)
Frame Relay (15)
DID In Only Trunks (16)
Design Trunk Resale (17)
Analog/DID PBX Trunk Port (18)
DS1 DID/PBX Trunk Port Facility (19)
DS1 DID/PBX Trunk (20)
Qwest DSL (21)
Unbundled Feeder Loop (22)
Unbundled Distribution Loop (23)
Unbundled Distribution Loop with NP (23a)
Shared Loop (24)
UNE-P POTS (25)
EEL/UNE Combination (26)
PRI ISDN Facility (27)
PRI ISDN Trunks (28)
UNE-P BRI ISDN (29)
UNE Centrex (30)
UNE-P Centrex 21 (31)
UNE-P PRI ISDN Facility (32)
UNE-P PRI ISDN Trunk (33)
UNE-P PBX DID Trunk (34)
UNE-P PBX Design Trunk (35)
UNE-P DSS Facility (36)

UNE-P DSS Trunk (37)
UNE POTS (P or STAR) Split (38)
UNE-P PBX Designed Trunk Split (39)
UNE Centrex 21 (P or STAR) Split (40)
UNE Unbundled Loop Split (41)
Unbundled Loop Split with Number Portability (42)

Post-Order Products
Batch Hot Cut
Billing Completion Notice
Completion
Directory Service Request Error Detail (DSRED)
Local Response
Pending Service Order Notification
Provider Notification
Service Order and Status Inquiry Response
Status Update (Auto Push Response)
997 Function Acknowledgment

At the time a CLEC migrates from IMA XML 20.0 to IMA XML 21.0, any transaction(s) that the CLEC does not yet have in production using IMA XML 20.0 is considered to be a new implementation effort. These transactions must be implemented using the full initial implementation lifecycle as defined in the Qwest XML Implementation Guidelines.

When a CLEC migrates from IMA EDI 19.0 to either IMA XML 20.0 or IMA XML 21.0, all transactions must be implemented using the full initial implementation lifecycle as defined in the *Qwest IMA XML Implementation Guidelines* located at: <http://www.qwest.com/wholesale/ima/edi/document.html>. Please note: The New Implementation testing minimum requirements apply - including Controlled Production testing.

If you have any questions or concerns please contact Kimberlie Chambers, Team Lead – Electronic Interface Services, at 720-947-2574 or your Qwest IMA EDI/XML Implementation Representative.

Sincerely

Qwest Corporation

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<http://www.qwest.com/wholesale/notices/cnla/maillist.html>