

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

**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**

DOCKET NO. UT-063061

**DIRECT TESTIMONY
OF KAREN STEWART
QWEST CORPORATION**

(Disputed Issue Nos. 4-5 (a,b,c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-50, 9-52, 9-53, 9-54, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a,b,c,d,e), 9-59, 9-61,(a,b,c), 24-92.)

SEPTEMBER 29, 2006

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1 **I. Identification of Witness**

2

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Karen A. Stewart. I am a Director in the Qwest Services Corporation
5 Regulatory Compliance Organization. My office is located at 421 SW Oak Street,
6 Portland, Oregon.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **EMPLOYMENT EXPERIENCE.**

9 A. I received a Bachelor of Science degree in Business Administration from Portland
10 State University in 1980, and a Masters degree in Business Administration from
11 the University of Oregon in July 1994. I have been employed by Qwest and its
12 predecessor companies since 1981. I have held a variety of positions in Qwest,
13 including sales, product management, E911 project management and technical
14 design, regulatory affairs manager, and regulatory compliance.

15 I am currently a member of the Qwest Regulatory Compliance organization and
16 have represented Qwest in a number of workshops conducted under Section 271
17 of the Telecommunications Act of 1996 ("the Act") related to Qwest's
18 provisioning of unbundled network elements ("UNEs") region-wide and
19 specifically in the state of Washington.

20 **Q. HAVE YOU TESTIFIED BEFORE THIS COMMISSION BEFORE?**

21 A. Yes.

1 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**
2 **COMMISSIONS?**

3 A. Yes. I have also testified in the states of Arizona, Colorado, Idaho, Iowa,
4 Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah,
5 Washington, and Wyoming.

6 **II. Purpose of Testimony**

7
8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. My testimony addresses the following issues, as they are designated in Eschelon's
10 petition for arbitration: Issue Nos. 4-5 (a,b,c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36,
11 9-39, 9-50, 9-52, 9-53, 9-54, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a,b,c,d,e), 9-59,
12 9-61,(a,b,c), and 24-92. In particular, my testimony focuses on Qwest's and
13 Eschelon's competing interconnection agreement ("ICA") language relating to
14 Sections 9 and 24 of the ICA at issue in this arbitration.

15 **Q. DOES YOUR DISCUSSION OF THE SECTION 9 AND 24 PROVISIONS**
16 **OF THE ICA REVEAL ANY COMMON THEMES ABOUT ESCHELON'S**
17 **ICA DEMANDS AND PROPOSALS?**

18 A. Yes. In general, my testimony highlights three themes common to many of
19 Eschelon's demands and proposals for Sections 9 and 24 of the ICA. First, in the
20 ten years since Congress passed the Act, there have been many orders and
21 decisions from courts and the Federal Communications Commission ("FCC") that

1 have further defined the respective rights and obligations of incumbent local
2 exchange carriers ("ILECs") like Qwest and competitive local exchange carriers
3 ("CLECs") like Eschelon. In multiple cases, Eschelon's proposals in this
4 arbitration fail to give proper effect to these orders and decisions, including, for
5 example the FCC's *Triennial Review Order* ("TRO")¹ and *Triennial Review*
6 *Remand Order* ("TRRO").² I discuss these departures from controlling decisions
7 and orders in my testimony.

8 Second, the decade that has passed since the Act was enacted has resulted in some
9 broad areas of agreement between ILECs and CLECs concerning how to conduct
10 wholesale business with each other. The ILEC and CLEC communities long ago
11 recognized that they have a common interest in having standardized, reliable
12 processes and systems in place for ordering, provisioning, measuring, and billing
13 interconnection services and unbundled network elements ("UNEs"). Qwest, the
14 CLECs, and regulators invested extraordinary amounts of time and resources to
15 develop and implement standardized processes, including, most notably, in the
16 extensive workshop and other proceedings throughout Qwest's region relating to
17 Qwest's applications under Section 271 for entry into the long distance markets in

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *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 Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part, remanded in part*, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

² Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338,

1 its 14-state region. These efforts were quite successful, as demonstrated by the
2 FCC's region-wide approval of Qwest's long distance applications. Despite the
3 success that Qwest, CLECs, and state commissions had in working out and
4 agreeing upon standardized processes, in this arbitration, Eschelon often proposes
5 demands and ICA language that depart in significant ways from these processes.
6 In multiple cases, Eschelon improperly seeks to be treated differently from other
7 CLECs through non-standard processes for ordering, provisioning, measuring,
8 and billing interconnection services and UNEs. While the processes that have
9 resulted from the Section 271 workshops and other proceedings are by no means
10 forever fixed in place, there is an established mechanism for modifying them. It
11 is known as the Change Management Process ("CMP") and has been endorsed by
12 state commissions as a part of Qwest's 271 applications and approved by the FCC
13 as an appropriate vehicle for updating Qwest's processes for handling wholesale
14 orders under the Act.³ Eschelon repeatedly ignores the CMP, choosing instead to
15 attempt to implement process changes in this single arbitration between two

WC Docket No. 04-313 (FCC rel. February 4, 2005) ("*Triennial Review Remand Order*").

³ See *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, Inter-LATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26409-10, at 18-32 (2002); *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, 18 FCC Rcd 7325 at 19-20 (2003); *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323, ¶15 (2003); *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, Memorandum Opinion and Order, 18 FCC Rcd 25504, ¶¶ 20-21 (2003).

1 carriers instead of in a forum that provides the opportunity for input from all
2 interested carriers who would be affected by the changes.

3 Third, in addition to being improper or unnecessary, many of the process and
4 systems changes Eschelon is proposing would impose very substantial costs on
5 Qwest. A basic requirement of the Act is that ILECs like Qwest must be
6 compensated for the costs they incur to provide CLECs with access to UNEs and
7 interconnection services.⁴ Despite this requirement, Eschelon seeks to require
8 Qwest to implement far-reaching process and system changes without agreeing to
9 compensate Qwest for the associated costs. In my discussion of the Section 9 and
10 24 issues that follows, I highlight multiple examples of changes Eschelon is
11 proposing without any accompanying agreement to compensate Qwest.

12 **Q. IN GENERAL, HOW DO QWEST'S PROPOSALS DIFFER FROM**
13 **ESCHELON'S?**

14 A. Qwest's proposals recognize the need for uniformity and standardization in the
15 wholesale processes and systems that Qwest and CLECs rely upon to conduct
16 business with each other. Qwest's proposals also recognize that its wholesale
17 relationships must be consistent with the law as it exists today and as reflected by
18 orders and decisions that include the *TRO* and the *TRRO*. Further, Qwest's
19 proposals are based on the important concept that if wholesale processes and
20 systems are to change, the changes should occur in a forum – the CMP, in

1 particular – that permits all interested carriers and parties to provide input. For
2 these reasons, the Commission should adopt Qwest's ICA proposals.

3 **Q. HOW HAVE YOU ORGANIZED THE FOLLOWING DISCUSSION OF**
4 **THE SECTION 9 AND 24 ICA ISSUES?**

5 A. For each issue, I begin with a general overview of the dispute and either recite or
6 describe the parties' competing ICA proposals. I then discuss the merits of the
7 parties' proposals, demonstrating why the Commission should adopt Qwest's
8 proposals.

9 **III. Disputed Issues**

10 **Issues 4-5 (a, b, c) - Design Changes.**

11 **Q. ISSUE 4-5 AND THE RELATED SUB-ISSUES INVOLVE DISPUTES**
12 **RELATING TO "DESIGN CHANGES." WHAT IS A "DESIGN**
13 **CHANGE?"**

14 A. A “design change” is any change to an order that requires engineering review.
15 When a CLEC has submitted an order for a facility or a service and then submits a
16 change to that order, a Qwest engineer must review the change to determine if the
17 facility or service should be provided in a manner different from that called for by
18 the CLEC's original order. Stated another way, the Qwest engineer must review
19 the changes requested by the CLEC to determine what change in the design, if

⁴ See 47 U.S.C. § 252(d)(1).

1 any, is necessary to meet the changes requested by the CLEC. A design change
2 could include, for example, a change of end user premises within the same
3 serving wire center, or the addition or deletion of optional features or functions.
4 A design change could also include a change in the type of channel interface, the
5 type of interface group or the technical specification of a package. This review of
6 orders by engineers requires time and imposes costs on Qwest. Qwest has a right
7 to recover these costs.

8 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE RELATING TO**
9 **DESIGN CHANGES?**

10 A. The disputes between the parties have included the definition of design changes,
11 the UNEs to which design change charges apply, and the appropriate rates for
12 design changes. In general, these disputes arise because although it is undisputed
13 that Qwest performs design changes for Eschelon and other CLECs, Eschelon is
14 proposing a rate for some design changes that would not permit Qwest to recover
15 the costs it incurs to perform the changes.

16 **Q. IS THE DEFINITION OF DESIGN CHANGES STILL DISPUTED**
17 **BETWEEN THE PARTIES?**

18 A. No. Qwest has agreed to Eschelon's definition of design changes and has
19 included it in the draft ICA between the parties.

1

Issue 4-5

2 **Q. PLEASE DESCRIBE THE NATURE OF THE DESIGN CHANGE**

3 **DISPUTE RELATING TO ISSUE 4-5.**

4 A. Initially, according to Eschelon, Qwest could not assess the design change
5 charges in Exhibit A Miscellaneous Charges section to orders that CLECs
6 submitted for unbundled loops. However, in its most recent position statements,
7 Eschelon does not appear to contest the fact that design changes are sometimes
8 necessary for orders relating to unbundled loops and it now appears that the
9 dispute is more specific to what the rate should be for design changes to orders for
10 unbundled loops. Issue 4-5 is specifically regarding language in the ICA at
11 9.2.3.8 and 9.2.4.4.2 that identifies that there are design change charges for loops
12 in the ICA.

13 **Q. ARE DESIGN CHANGES SOMETIMES NECESSARY FOR**
14 **UNBUNDLED LOOPS?**

15 A. Yes. It should be undisputed that Qwest engineers must review modified orders
16 for unbundled loops to determine if changes in the design of the service are
17 needed. Examples of design changes for unbundled loops that may be caused by
18 a CLEC's submission of a modified order for a loop after submission of the initial
19 order include but are not limited to:

20 1. An address change: facility assignments are specific by address. A
21 change in address on an in-process service order would require a
22 Qwest engineer to redesign the service by assigning a different loop to

1 the order than was assigned to the original order. Accordingly, Qwest
2 engineers must review changes to loop orders for new addresses and
3 possible new facility assignments.

4 2. Technology changes due to:

5 a) A change in address may cause a change in technology. The
6 original address for an order may have been served by direct
7 copper facilities, while the new address may now require an order
8 to be designed using fiber facilities.

9 b) Technology changes are also made for compatibility reasons,
10 protocol and format requirements, and meeting design parameters
11 of the now modified order.

12 3. NI/NCI, meet point, and CFA assignment changes may require a
13 design change.

14
15 In each of these examples, a Qwest engineer would need to review the current
16 order and design, along with the change requested by the CLEC, and make design
17 changes so that the unbundled loop meets the CLEC's expectations. Engineering
18 review of modifications to pending orders is therefore an essential activity in
19 Qwest's provisioning process, including the processes that govern provisioning of
20 unbundled loops.

21 **Q. DO THESE DESIGN CHANGE ACTIVITIES FOR UNBUNDLED LOOPS**
22 **CAUSE QWEST TO INCUR COSTS?**

23 A. Yes. Both the review of changes to pending loop orders and the changes in the
24 design of an order impose costs on Qwest. The activities that impose these costs
25 include processing the supplemental order (the order that would request a design
26 change on a pending service order) in the engineering organization. An engineer
27 must re-process the order to compare the existing order and design with the new
28 order to see if design changes are required. Such order changes are manually
29 processed and may result in activities such as:

- 1 1. Changes in design may require unwiring the existing design and wiring
2 the new design (if wiring has already been completed at the time of the
3 requested change).
- 4 2. Expediting different cards (than originally ordered for carrier systems)
5 may be necessary to meet customer due dates.
- 6 3. A Qwest engineer may have to take steps to recover the equipment and/or
7 facilities that Qwest already installed in response to the first order. These
8 steps could include dispatching a technician to an office where the facility
9 or equipment is housed.
- 10 4. Qwest may incur overtime charges for short interval changes.

11 **Q. IS THERE AN APPROVED RATE FOR DESIGN CHANGES IN**
12 **WASHINGTON?**

13 **A.** Yes. The Washington Commission has approved \$53.65 for manual changes and
14 \$50.45 for mechanized design changes. In Washington, the original Exhibit A
15 contained these rates in the Miscellaneous Charges section meaning they are
16 applicable to all UNEs in the ICA. My understanding is that this is consistent
17 with the cost study for the design change rate element, and therefore, it is
18 appropriate to apply these rates to both unbundled loops and UDIT. As part of
19 this arbitration, Eschelon is proposing to place the qualification of “Transport” to
20 the existing design change rates and is proposing new rates for loop related design
21 changes and yet another rate for CFA changes – 2/4 Wire Loop cutovers.

1 **Q. DOES QWEST OPPOSE THE ESCHELON DESIGN CHANGE**
2 **ADDITIONS TO EXHIBIT A IN THE ICA?**

3 A. Yes. The design change rates were placed in the Miscellaneous Charges section
4 consistent with the cost docket that established them, and Qwest objects to
5 Eschelon's attempt to modify the application of these rates in this arbitration. This
6 issue is described later in my testimony as Issue 4-5(c).

7 **Q. DOES QWEST OPPOSE THE ADDITION OF THE ESCHELON**
8 **PROPOSED LANGUAGE IN THE ICA FOR SECTION 9.2.3.8 AND**
9 **9.2.4.4.2?**

10 A. While Qwest contests and reserves its right to challenge any comments by
11 Eschelon implying that the rate for design changes for unbundled loops should be
12 lower than that for UDIT, Qwest agrees to have the ICA make references in
13 section 9.2 that design change charges for loops are contained in Exhibit A.
14 Qwest believes that the narrow issue of referencing that design change charges for
15 unbundled loops are contained in Exhibit A in section 9.2 can be settled between
16 the parties, once specific language is confirmed.

17 **Issue 4-5(A)**

18 **Q. PLEASE DESCRIBE THE NATURE OF THE DESIGN CHANGE**
19 **DISPUTE RELATING TO ISSUE 4-5(A).**

1 A. This dispute involves Eschelon's proposal in Section 9.2.3.9 of the ICA that
2 would prohibit Qwest from assessing a design change charge for "connecting
3 facility assignment" ("CFA") changes that occur when Qwest and Eschelon install
4 facilities through coordinated installations. A change to a "CFA" involves a
5 change to the location on a frame in a central office where a CLEC will access a
6 UNE. A CLEC provides Qwest with a CFA, which tells a Qwest engineer the
7 location of the "tie-down" or termination point on a frame. In some cases, the
8 CFA the CLEC provides may be incorrect or flawed. This can occur, for
9 example, when the CFA is already in use or is damaged. In these circumstances,
10 Qwest must change the CFA and install a new connection at a different location
11 on the frame. Accordingly to Eschelon, Qwest does not incur any costs
12 associated with CFA changes made during coordinated installations because a
13 Qwest technician is already present in the central office to perform the
14 coordinated installation. The presence of the technician, Eschelon claims, means
15 that Qwest incurs no additional costs for the CFA change.

16 **Q. IS ESCHELON CORRECT IN ASSUMING THAT QWEST INCURS NO**
17 **COSTS FOR CFA CHANGES MADE IN CONJUNCTION WITH**
18 **COORDINATED INSTALLATIONS?**

19 A. No. Regardless whether a Qwest technician is in the central office, Qwest must
20 still re-review the service order to determine if any engineering changes are
21 required. In addition, a Qwest technician often must disconnect the UNE
22 connection from the frame and reconnect it to another location on the frame or

1 another location on an entirely different frame. These activities are not eliminated
2 by the fact that a Qwest technician is already in the central office to complete a
3 coordinated installation with Eschelon. In addition, the presence of a technician
4 in the central office does not eliminate or in any way reduce the work necessary to
5 update downstream operation support systems to reflect the new, corrected CFA
6 information that the CLEC provides so that future repairs can be done correctly.

7 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSED**
8 **LANGUAGE FOR SECTION 9.2.3.9?**

9 A. Eschelon's proposal would prevent Qwest from assessing the appropriate design
10 change charge for CFA changes and would thereby improperly prevent Qwest
11 from recovering costs it incurs responding to flawed or incorrect CFAs that
12 Eschelon submits. As I describe above, Qwest must perform design change
13 activities for CFA changes regardless whether a Qwest technician is already in a
14 central office performing a coordinated installation. The irony of Eschelon's
15 position is that Qwest would be denied cost recovery in these situations even
16 though it is Eschelon's submission of incorrect CFAs that causes the costs.

17 **Q. HAS DOES QWEST RECOMMEND THE COMMISSION RESOLVE**
18 **ISSUE 4-5(A)?**

19 A. The Commission should reject this attempt by Eschelon to avoid CFA related
20 design change charges. The Commission should reject Eschelon's proposed

1 changes to Section 9.2.4.4.2 and confirm Qwest's right to assess a charge for all
2 CFA changes.

3 **Issue 4-5(B)**

4 **Q. PLEASE DESCRIBE THE NATURE OF THE DESIGN CHANGE**
5 **DISPUTE RELATING TO ISSUE 4-5(B).**

6 A. Eschelon proposes a reference to including UDIT design change in the ICA.
7 Specially, Eschelon has proposed:

8 **9.6.3.6 Design Change rates for UDITs are contained in Exhibit A of**
9 **this Agreement.**

10

11 **Q. DOES QWEST STILL OPPOSE THE ADDITION OF THIS LANGUAGE**
12 **IN THE ICA?**

13 A. No. Qwest is willing to accept the Eschelon's proposed language and close Issue
14 4-5(B). However, this does not mean Qwest has agreed that the Commission
15 approved design change charges in Exhibit A only pertain to Transport (i.e.,
16 UDIT) and not to unbundled loops as well.

17 **Issue 4-5(C)**

18 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 4-5(C).**

19 A. This issue resulted from Eschelon's contention that the Commission approved
20 rates for design changes in the Miscellaneous Charges section of Exhibit A only

1 applies to Unbundled Dedicated Interoffice Transport (UDIT) and not to design
2 change charges for unbundled loops. Qwest believes that the design change
3 charges were placed in Exhibit A in the Miscellaneous Charges section because
4 they apply potentially to all UNEs, and not just specifically to transport.

5 **Q. PLEASE DESCRIBE QWEST'S AND ESCHELON'S COMPETING**
6 **PROPOSALS RELATING TO THIS ISSUE.**

7 A. Qwest proposes the following:

8	9.20.13 Design Change		
9	9.20.13.1.1 Manual	\$53.65	E
10			
11	9.29.13.1.2 Mechanized	\$50.45	E
12			

13 By contrast, Eschelon proposes the following language:

14	9.20.13 Design Change (Transport)		
15	9.20.13.1.1 Manual	\$53.65	E
16			
17	9.29.13.1.2 Mechanized	\$50.45	E
18			
19			
20	<u>9.20.13.2 Design Change (Loop)</u>	\$30.00	1
21			
22	<u>9.20 13.3 CFA Change – 2/4 Wire Loop cutovers</u>	\$ 5.00	1

23

24 **Q. HAS ESCHELON PROVIDED COST STUDIES TO SUPPORT THEIR**
25 **PROPOSAL FOR THE LOWER RATES FOR LOOP AND CFA DESIGN**
26 **CHANGES?**

27 A. No, I am not aware that Eschelon had provided any cost support for their lower
28 rates for these types of design changes.

1 **Q. ARE THERE APPROVED RATES FOR DESIGN CHANGES IN**
2 **WASHINGTON?**

3 A. Yes. The Washington Commission approved \$53.65 for manual changes and
4 \$50.45 for mechanized design changes in Docket UT-003013, Part D. The
5 original Exhibit A contained these rates in the Miscellaneous Charges section
6 meaning they are applicable to all UNEs in the ICA. My understanding is that
7 this is consistent with the cost study for the design change rate elements that they
8 were done generic to all design changes and not specific to a single UNE.
9 Therefore, it is appropriate to apply these rates to both unbundled loops and
10 transport (UDIT).

11 **Q. ESCHELON CONTENDS THAT WITH A CFA CHANGE THERE IS**
12 **LITTLE IF ANY EXTRA TIME INVOLVED. IS THIS ACCURATE?**

13 A. No. Just one of the actions by the Central Office Technician is to physically move
14 a jumper from the original CFA to the new one provided by the CLEC during a
15 cutover. There is involvement of several other departments required to
16 accomplish the change properly. Testing personnel are needed to coordinate this
17 entire effort. The Central Office technician is also involved in the coordination.
18 The testing personnel coordinate with the Central Office technician to confirm the
19 new CFA is viable. If viable, the testing personnel provide the Service Delivery
20 Coordinator (SDC) with the CFA information to supplement the order. The
21 Designer must then redesign the circuit with the new CFA. Once the tester has
22 coordinated these efforts the tester will have the CO tech run a jumper from the

1 tie pair to the new CFA per the new design, i.e. the “lift and lay” portion of the
2 effort. The testing personnel may have to re-test to confirm with the CLEC
3 testing personnel that the circuit is operational.

4 **Q. DOES THE COORDINATION AND THE PRESENCE OF ESCHELON**
5 **PERSONNEL DURING THE CUTOVER REDUCE THE WORK THAT IS**
6 **REQUIRED FOR A CFA CHANGE?**

7 A. No it does not. A typical CFA change that occurs during the test and turn up
8 typically takes the same time regardless of what CLEC personnel are present.
9 For example, even though there is CLEC personnel present at the time of the cut,
10 Qwest personnel would still need to validate the availability and viability of the
11 new CFA, confirm the new CFA and to supplement the system records.

12 **Q. CAN A CLEC MINIMIZE THE NUMBER OF CFA CHANGES?**

13 A. Absolutely. CFA assignments are controlled and inventoried by the CLEC. If the
14 CLEC has a quality control process in place for inventorying CFAs then last
15 minute changes would rarely occur. To ask Qwest to deal with these last minute
16 changes at a vastly reduced rate and to continue to have Qwest take the cost and
17 time brunt of poor CLEC inventorying of CFAs is unjustified and inappropriate.

18 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSAL**
19 **AND ADOPT QWEST'S LANGUAGE?**

20 A. For the reasons I identified above, the Commission should reject Eschelon’s
21 attempt to invalidate the exiting rates (and therefore costs) for design changes in

1 the Exhibit A based on Eschelon's theories that are unsupported by any cost data.
2 The Commission should confirm that the design changes charges in Exhibit A
3 apply equally to all design changes, not just for transport, and that regardless of if
4 the design change is requested in advance or at the time of cutover appropriate
5 rates should apply. In fact, at the time of cutover can be more burdensome to
6 Qwest (and potentially to other CLECs) if Qwest technicians involved in the
7 cutover are delayed and are unable to promptly go on to perform cutovers for the
8 next CLEC's order due that day. This type of delay could even result in
9 performance measurement indicator (PIDs) issues and potential payments
10 associated with these missed performance measurements for subsequent orders
11 that day.

12 **Issue 9-31 - Access to UNEs**

13 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE RELATING TO**
14 **ISSUE 9-31.**

15 A. This issue concerns language in Section 9.1.2 of the ICA that defines the access
16 Qwest will provide Eschelon to the UNEs that Qwest makes available under
17 Section 251(c)(3) of the Act. Consistent with applicable legal requirements,
18 Qwest agrees to the following commitments in the undisputed portions of Section
19 9.1.2: (1) It will provide "non-discriminatory access to [UNEs] on rates, terms and
20 conditions that are non-discriminatory, just and reasonable;" (2) The quality of a
21 UNE it provides and the access to the UNE "will be equal between all Carriers

1 requesting access to that element;" (3) It will perform for Eschelon "those Routine
2 Network Modifications that Qwest performs for its own End User Customers;"
3 and (4) It will provide access to UNEs at agreed service performance levels set
4 forth in Section 20 of the ICA.

5 In its proposed Section 9.1.2, Eschelon has added language that would
6 impermissibly expand the access Qwest provides to UNEs. As explained below,
7 Eschelon's proposal would create open-ended, undefined obligations that go
8 beyond the access to UNEs that Qwest is required to provide. Moreover,
9 Eschelon may be attempting to impose these far-reaching obligations without
10 agreeing to compensate Qwest for the costs of complying with them.

11 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
12 **TO ESCHELON'S ISSUE 9-31?**

13 A. Qwest's proposal for Section 9.1.2 is the parties' agreed-upon language that
14 establishes the UNE obligations summarized above and other related obligations.
15 That agreed-upon language fully captures all of the obligations that Qwest has to
16 provide Eschelon with access to UNEs and ensures that Eschelon will have the
17 same access to Qwest's UNEs as other CLECs have.

18 **Q. WHAT IS ESCHELON'S PROPOSED ADDITION TO SECTION 9.1.2?**

19 A. Eschelon proposes to add the following sentence to Section 9.1.2:

20 9.1.2 . . . **Access to Unbundled Network Elements includes moving,**
21 **adding to, repairing and changing the UNE (through, e.g., design**

1 changes, maintenance of service including trouble isolation, additional
2 dispatches, and cancellation of orders). . .

3 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSED**
4 **ADDITION TO THE PARTIES' AGREED LANGUAGE IN SECTION**
5 **9.1.2?**

6 A. There are multiple flaws in Eschelon's proposal. Most fundamentally, a critical
7 goal of this arbitration should be establishing clarity concerning the parties' rights
8 and obligations. Clear ICA language is necessary so that the parties know what is
9 expected of them under the agreement and to avoid or minimize future disputes.
10 Eschelon's proposed Section 9.1.2 conflicts with this goal by broadly and vaguely
11 requiring Qwest to "move," "add to," and "change" UNEs. This vague, undefined
12 language defeats Qwest's reasonable expectation that its obligations under the
13 ICA should be clearly defined and should not be subject to future interpretations
14 that Eschelon develops based on its needs and desires at a given time. The
15 language also undermines the goal of avoiding future disputes under the ICA.

16 **Q. WHAT ARE THE OTHER FLAWS IN ESCHELON'S PROPOSED**
17 **ADDITION TO SECTION 9.1.2?**

18 A. Eschelon's proposed addition also violates the long-established rule that an ILEC
19 is only required to provide access to its existing network, not access to "a yet
20 unbuilt superior one."⁵ Under Eschelon's proposed language, Qwest could be
21 required to build new facilities and to provide access to "a yet unbuilt superior

1 network." For example, the undefined requirement for Qwest to "add to" UNEs
2 could obligate Qwest to build new facilities and to go beyond the routine network
3 maintenance that ILECs must provide. Similarly, Eschelon does not define the
4 meaning of "changing the UNE," thereby leaving the door open to changes that go
5 beyond routine network maintenance. In defining the routine network
6 modifications that ILECs are required to provide for UNEs, the FCC ruled in
7 paragraph 632 of the *TRO* that ILECs are not required to install new cables and
8 wires. Under Eschelon's use of the vague terms "add to" or "change," Eschelon
9 could be seeking to require Qwest to install new cables and wires. There is no
10 restriction in its proposed language that would prohibit this type of demand even
11 though the demand would violate the *TRO*.

12 Qwest is also concerned that through this proposal, Eschelon may be attempting
13 to obtain modifications to UNEs without paying for them or by seeking TELRIC
14 ("Total Element Long Run Incremental Costs") rates for services not within
15 Section 251 of the Act and for which TELRIC rates do not apply. Although it is
16 not clear from the proposed language, Eschelon's proposal also may assume that
17 the price it pays to lease a UNE from Qwest entitles it to changes, additions, and
18 modifications without further payment. That result would clearly violate Qwest's
19 legal right to recover the costs it incurs to provide access to UNEs and
20 interconnection, since UNE rates do not include the costs of these activities. For

⁵*Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997)

1 example, if Eschelon is seeking to require Qwest to "add to" a UNE by digging a
2 trench and installing additional facilities - - an activity not permitted under the
3 *TRO*, Qwest would have a right to recover the costs of that activity.

4 **Q. PLEASE SUMMARIZE QWEST'S POSITION RELATING TO ISSUE 9-**
5 **31.**

6 A. Through the parties' agreed language in Section 9.1.2, Qwest has fully committed
7 to provide Eschelon with the access to UNEs required by the Act and that other
8 CLECs in Washington receive. Eschelon's proposed addition to the parties'
9 agreed language should be rejected because it is overly broad, vague, and would
10 create obligations that the Act does not impose.

11 **Issues 9-33, 9-34, 9-35 and 9-36 – Qwest Network Maintenance and**
12 **Modernization Activities.**

13 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUES 9-33, 9-34, 9-35, 9-36**
14 **AND HOW THEY ARE RELATED.**

15 A. These issues all involve ICA terms and conditions relating to activities Qwest
16 undertakes to maintain and modernize its network. It is of course essential that
17 Qwest have the ability to both maintain and modernize its telecommunications
18 network without unnecessary interference and restriction. The need for this
19 flexibility is particularly important in this era of rapidly changing technologies.
20 Washington consumers deserve – and Qwest strives to provide – the latest state-

1 of-the art telecommunications technologies. In addition, a clear objective of the
2 Telecommunications Act of 1996, as forth in section 706, is to increase the
3 deployment of advanced telecommunications services.

4 As described below, Eschelon's proposals relating to one of these issues could
5 impede Qwest's ability to modernize and maintain its Washington network, and
6 its proposals relating to other related issues would improperly result in processes
7 and procedures for Eschelon different from those that apply to other carriers.

8 **Q. DOES THE TELECOMMUNICATIONS ACT PERMIT ILECS TO MAKE**
9 **CHANGES TO THEIR NETWORKS THAT AFFECT OTHER**
10 **CARRIERS?**

11 A. Yes. For example, Section 251 (c) (5) anticipates network changes that could
12 have an effect on other carriers and that therefore trigger notice requirements.
13 Specifically, Section 251 (c) (5) states:

14 NOTICE OF CHANGES- The duty to provide reasonable public notice of
15 changes in the information necessary for the transmission and routing of
16 services using that local exchange carrier's facilities or networks, as well
17 as of any other *changes that would affect the interoperability of those*
18 *facilities and networks.*
19

20 As this language shows, Congress recognized that with the rapid advancements in
21 telecommunications technology and innovation, ILECs must be permitted to make
22 changes to their networks that affect other carriers, including changes that "affect
23 the interoperability of [the] facilities and networks."

1 **Q. DOES THE FCC RECOGNIZE THAT IT IS NECESSARY FOR ILECS TO**
2 **MAKE NETWORK CHANGES THAT AFFECT OTHER CARRIERS?**

3 A. Yes. The FCC's rules relating to notices of network changes recognize this need.
4 The FCC provides a rule in the Code of Federal Regulations ("CFR") 51.325 that
5 is as follows:

6 PART 51--INTERCONNECTION--Table of Contents

7
8 Subpart D--Additional Obligations of Incumbent Local Exchange Carriers

9
10 Sec. 51.325 Notice of network changes: Public notice requirement.

11
12 (a) An incumbent local exchange carrier ("LEC") must provide
13 public notice regarding any network change that:

- 14 (1) Will affect a competing service provider's performance
15 or ability to provide service;
16 (2) Will affect the incumbent LEC's interoperability with
17 other service providers; or
18 (3) Will affect the manner in which customer premises
19 equipment is attached to the interstate network.
20

21 As this language reflects, the FCC clearly anticipates and expects that ILECs will
22 perform network maintenance and modernization that has effects on other
23 carriers.

24 **Q. PLEASE SUMMARIZE THE OBLIGATIONS QWEST HAS AGREED TO**
25 **ASSUME IN PERFORMING THE ACTIVITIES NEEDED TO MAINTAIN**
26 **AND MODERNIZE ITS NETWORK.**

27 A. In agreed provisions of Section 9.1.9, Qwest commits that in maintaining and
28 modernizing its Washington network, it will: (1) ensure that maintenance and

1 modernization activities "result in UNE transmission parameters that are within
2 transmission limits of the UNE ordered by [Eschelon];" (2) provide Eschelon
3 "advance notice of network changes pursuant to applicable FCC rules," including
4 notice containing "the location(s) at which the changes will occur, and any other
5 information required by applicable FCC rules;" (3) provide Eschelon with e-mail
6 notification "no less than three (3) business days in advance of [a] Qwest
7 dispatch" if Qwest intends to dispatch personnel to the premises of an Eschelon
8 customer; and (4) provide Eschelon with e-mail notification "within three (3)
9 business days after completing the maintenance or modernization activity"
10 involving a Qwest dispatch to the premises of an Eschelon customer.

11 In addition to these obligations, Qwest has also agreed – in language for Section
12 9.1.9 contested by Eschelon – that in the event of an emergency maintenance or
13 modernization activity, it will notify Eschelon of the activity by e-mail within
14 three business days of completing the activity. Qwest's proposal establishes that
15 Qwest is not required to provide Eschelon with notice of an emergency activity in
16 advance of the activity, but Qwest's language does establish that Qwest repair
17 center personnel will provide Eschelon with status reports on the activity "to the
18 extent they are aware of such status in the same manner as would be provided for
19 Qwest's own end users." Qwest's language also confirms Eschelon's right to
20 "contact [its] Service Manager to request additional information so that Eschelon
21 may, for example, communicate with its End User Customer(s)."

1 **Q. WHAT IS THE INTENT OF QWEST'S PROPOSED LANGUAGE FOR**
2 **SECTION 9.1.9?**

3 A. Qwest's intent is to preserve its ability to maintain and modernize its network
4 without undue interference while also ensuring that Eschelon continues to receive
5 the UNE transmission quality it ordered and expects. In addition, Qwest's intent
6 with its proposal is to ensure that Eschelon receives notice of these network
7 activities that is consistent with the FCC's rules relating to notices of network
8 changes.

9 **Issue 9-33**

10 **Q. PLEASE DESCRIBE ESCHELON'S PROPOSAL RELATING TO ISSUE**
11 **9-33.**

12 A. Under Eschelon's proposal for Section 9.1.9, Qwest would be prohibited from
13 making a change to its network for purposes of maintenance or modernization if
14 the change would "adversely affect service to any End User Customers."

15 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S LANGUAGE THAT**
16 **WOULD PROHIBIT CHANGES THAT "ADVERSELY AFFECT**
17 **SERVICE TO ANY END USER CUSTOMERS?"**

18 A. This language is improper for multiple reasons. Most important, the Qwest
19 network is not a fixed static inventory of facilities, but, rather, is a dynamically
20 changing network that is routinely changed and updated to better meet the needs

1 of our retail and wholesale customers. As Qwest maintains and modernizes its
2 network, it does so pursuant to its technical publications, industry standards (*e.g.*,
3 ANSI standards), and consistent with FCC rules. These standards and technical
4 publications allow Qwest to maintain and update its network in a seamless
5 manner for its millions of customers.

6 Eschelon's proposal is not tied to any industry standard, as it does not provide, for
7 example, that changes to Qwest's network must be consistent with ANSI or other
8 accepted industry standards. Instead, Eschelon relies on the entirely vague
9 concept that changes to the network cannot have an "adverse affect" on service.
10 Eschelon does not define the term "adverse affect," leaving a gaping ambiguity in
11 its proposal. If this vague language were adopted, it could have a chilling effect
12 on Qwest's modernization and maintenance of its network. Specifically, with the
13 presence of the undefined terms, "adverse affect" in the ICA, Qwest would be
14 required to perform network changes at the risk of being in violation of the ICA
15 through application of an uncertain, malleable standard. A rational response
16 could be to decide not to perform a maintenance activity.

17 **Q. WHY IS QWEST'S RIGHT TO MODERNIZE ITS NETWORK**
18 **IMPORTANT?**

19 A. The answer is simple -- to promote advances in technology and consumer service.
20 The advancement of technology provides more services, better quality services,
21 more secure services, and often does so at a lower cost. For example, when

1 Qwest has upgraded its analog switches to digital switches, additional services
2 became available, the quality of the services provided by the switches improved,
3 and the security of the network was increased.

4 **Q. IS IT APPROPRIATE TO HAVE A PERFORMANCE STANDARD - -THE**
5 **"NO ADVERSE AFFECT STANDARD" - - THAT FOCUSES ON**
6 **ESCHELON'S SERVICE TO ITS CUSTOMERS INSTEAD OF THE**
7 **SERVICE QWEST PROVIDES TO ESCHELON?**

8 A. No. By proposing a performance standard that focuses on the service it provides
9 to its customers, Eschelon is attempting to hold Qwest accountable to
10 commitments Eschelon may have made to its end users regardless of whether
11 Eschelon itself is complying with industry standards. Eschelon's proposal
12 assumes incorrectly that the service for which quality is to be measured is that
13 which Eschelon provides to its customers. The proper focus for this ICA between
14 Qwest and Eschelon is the service that Qwest provides to Eschelon, not that
15 Eschelon provides to its customers. That is what ANSI and other industry
16 standards measure for ILEC-CLEC interconnection relationships. Indeed, it is
17 Eschelon that ultimately is responsible for the service its customers receive, and
18 Eschelon – not Qwest – has final control over the quality of that service.

19 For example, the service that Eschelon's customers receive could be degraded
20 because of Eschelon's use of outdated technology in its network that is not
21 entirely compatible with more current technology and equipment that Qwest adds

1 to its network. In that circumstance, Qwest of course should not be prohibited or
2 discouraged from modernizing its network because of a potential adverse affect
3 on an Eschelon customer. That approach would improperly impede
4 modernization and maintenance.

5 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SITUATION IN WHICH**
6 **QWEST'S MODERNIZATION OF ITS NETWORK COULD AFFECT A**
7 **CLEC CUSTOMER BECAUSE OF EQUIPMENT OR FACILITIES THE**
8 **CLEC IS USING?**

9 A. Yes. A CLEC could be providing Digital Subscriber Line ("DSL") service to an
10 end user over a two wire analog loop (the actual service the CLEC ordered from
11 Qwest). If the loop is relatively short and completely made of copper, the service
12 would work for the end user, regardless of the fact it was a loop not designed for
13 digital data services. Over time, if Qwest were to perform modernization or
14 growth activities in that area, the two wire analog loop could become a hybrid
15 loop (using both copper and fiber facilities). An end user with basic local phone
16 service would not be affected by this change. In fact, the end user's service could
17 improve. However, this change could cause the CLEC's DSL equipment to cease
18 working, resulting in service problems for the CLEC's customer.

19 In this situation, the failure or omission would not be on Qwest's part. Instead,
20 the responsibility would lie with the CLEC, since the CLEC's decision not to use
21 a data-capable digital loop would lead directly to the customer's service problems.

1 If the CLEC had ordered the proper loop, Qwest would have been able to track
2 the facility in its repair and provisioning systems and could have taken steps to
3 attempt to serve the loop in some other manner. Alternatively, Qwest could have
4 notified the CLEC in advance about the possible negative impact on service.

5 **Q. IS QWEST ALSO CONCERNED ABOUT THE VAGUENESS OF**
6 **ESCHELON'S PROPOSAL?**

7 A. Yes. Eschelon's language that network changes "will not adversely affect service"
8 is so imprecise as to fail to apprise the parties of their rights and obligations.
9 With no definition of "adverse affect" and no tie to industry standards, there
10 would not be a meaningful, reliable way for Qwest to determine whether an
11 activity involving modernization or maintenance is prohibited under the ICA.
12 This lack of definition and vagueness would inevitably lead to disputes between
13 the parties concerning whether a change to the network produced a prohibited
14 effect. As I discuss above, a basic purpose of the ICA, as with any contract, is to
15 give the parties certainty about their rights and obligations and to avoid or
16 minimize future disputes about their rights and obligations. Eschelon's proposal
17 is directly at odds with that purpose.

1 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSED**
2 **LANGUAGE FOR SECTION 9.1.9?**

3 A. Eschelon's proposed language should be rejected because it could effectively
4 prohibit Qwest from upgrading its network to provide better service to all
5 customers including Qwest customers and other CLEC customers. Under
6 Eschelon's proposed language, Qwest could only upgrade its network if Qwest
7 was certain that the upgrade would have no impact on Eschelon end users. This
8 could decrease the availability of newer technologies to Qwest retail and
9 wholesale customers. For the reasons that I have explained above, Eschelon's
10 proposed language should be rejected.

11 **Issue 9-34**

12 **Q. PLEASE DESCRIBE QWEST'S PROPOSAL RELATING TO ISSUE 9-34.**

13 A. This issue involves a dispute concerning the information Qwest will include in the
14 notices that inform Eschelon of changes to Qwest's network resulting from
15 maintenance and modernization. As I describe above, Qwest is committing to
16 provide notices that meet the requirements of the FCC's notice rule relating to
17 network changes, set forth 47 C.F.R. § 51.327. Consistent with the requirements
18 of that rule, Qwest will include in the notice information indicating the location at
19 which the changes will occur.

20 **Q. PLEASE DESCRIBE ESCHELON'S PROPOSAL RELATING TO ISSUE**
21 **9-34.**

1 A. Eschelon proposes the following underlined changes:

2 9.1.9 . . . Such notices will contain the location(s) at which the changes
3 will occur, **including if End User Customer specific, the circuit**
4 **identification and End User Customer address information**, and any
5 other information required by applicable FCC rules. . . .

6 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED**
7 **LANGUAGE RELATING TO NOTICE OF NETWORK CHANGES?**

8 A. Qwest will provide notice of changes to its network, including the location of
9 changes, consistent with the requirements of applicable FCC rules. By attempting
10 to include end-user information in the notice requirement, Eschelon is exceeding
11 the requirements in the FCC's notice rules. In addition, Eschelon's proposal is not
12 practical when considered in the context of all the network modifications
13 anticipated by Section 9.1.9. For example, changes to area codes and 7 to 10 digit
14 dialing would affect telephone numbers that Eschelon could be using only in its
15 own network to provide local exchange service. In this situation, Qwest would
16 have no access to information regarding Eschelon's end-user specific telephone
17 number and/or address.

18 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S**
19 **ADDITIONAL LANGUE IN 9.1.9 FOR CUSTOMER-SPECIFIC**
20 **INFORMATION WHEN EVER QWEST MAKES ANY PUBLIC NOTICE**
21 **REGARDING NETWORK CHANGES AS PROPOSED IN ISSUE 9-34?**

22 A. Eschelon's proposed language inappropriately requires Qwest to provide end user
23 customer specific, circuit identification and end user customer address

1 information in addition to the notice of network change requirements of the FCC.
2 Qwest is willing to provide and does provide public notice of Qwest's network
3 changes and does so pursuant to the FCC's "Notice of Network Changes."
4 Eschelon's proposed language is overly burdensome by requiring Qwest to
5 identify each and every Eschelon customer address and associated customer
6 circuit(s) when Qwest makes a network change. Under Eschelon's proposal,
7 Qwest would be required to provide this information regardless if the Qwest
8 network change would actually have a noticeable impact to either Eschelon or its
9 customer.

10 For example, Qwest provides notice to the industry pursuant to the FCC's Notice
11 of Network Changes when Qwest upgrade's its switch software. Typically, there
12 would be no impact to any CLEC customers. However, Eschelon's proposed
13 language apparently would require Qwest to provide to Eschelon a list of every
14 Eschelon customer address and every circuit that is used by Eschelon to serve its
15 customers for an entire exchange and for each exchange which Qwest plans to
16 upgrade its switch software. In addition, Eschelon's requirement places even
17 more burden on Qwest if Qwest were to modify its dialing plan. Because such
18 changes typically have a LATA-wide affect, Eschelon would require Qwest to
19 identify each and every Eschelon customer address and each and every Eschelon
20 customer circuit for each and every Eschelon customer in the LATA.

1

Issue 9-35

2 **Q. PLEASE DESCRIBE QWEST'S PROPOSAL RELATING TO ISSUE 9-35.**

3 A. This issue, which also relates to Section 9.1.9, involves the notices that Qwest
4 will provide to Eschelon in situations where Qwest is required to perform
5 emergency maintenance or modernization activities. As I describe above, in the
6 event of an emergency maintenance or modernization activity, Qwest will (1)
7 notify Eschelon of the activity by e-mail within three business days of completing
8 the activity, and (2) have its repair center personnel provide Eschelon with status
9 reports on the activity "to the extent they are aware of such status in the same
10 manner as would be provided for Qwest's own end users." In addition, Qwest's
11 language confirms Eschelon's right to "contact [its] Service Manager to request
12 additional information so that Eschelon may, for example, communicate with its
13 End User Customer(s)."

14 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
15 **LANGUAGE?**

16 A. Eschelon proposes adding the following subsection to Section 9.1.9:

17 9.1.9.1 In the event of an emergency (e.g., no dial tone),
18 Qwest need not provide CLEC with advance email notification but
19 shall notify CLEC by email within three (3) business days after
20 completing the emergency maintenance or modernizing activity.
21 In such emergencies, once Qwest personnel involved in the
22 maintenance or modernization activities are aware of an
23 emergency affecting multiple End User Customers, Qwest shall
24 ensure its repair center personnel are informed of the network
25 maintenance and modernization activities issue and their status so

1 that CLEC may obtain information from Qwest so that CLEC may,
2 for example, communicate with its End User Customer(s).

3 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S PROPOSAL TO ADD**
4 **THIS SUBSECTION TO SECTION 9.1.9?**

5 A. When situations arise that require Qwest to perform emergency maintenance or
6 modernization activities, there is usually a compelling interest in completing the
7 activities as soon as possible. This interest requires that the Qwest engineers and
8 technicians who perform the activities must be able to devote their full and
9 immediate attention to completing the emergency activities. Under Eschelon's
10 proposal, the Qwest personnel who perform these activities would be diverted
11 from the activities by being required to provide regular reports to Qwest's repair
12 center on the status of the activities. When there is an emergency in the network,
13 the immediate focus must be on correcting the situation, not on providing status
14 reports.

15 There may be situations in which time permits Qwest personnel in the field to
16 inform the repair center of emergency activities, and Qwest's proposal recognizes
17 that in those situations, the repair personnel will provide Eschelon with status
18 reports on the activity "to the extent they are aware of such status in the same
19 manner as would be provided for Qwest's own end users." However, there also
20 will be situations in which the nature of an emergency does not permit the
21 engineers and technicians in the field to provide the repair center with status
22 reports. To allow these personnel to focus exclusively on addressing the

1 emergencies in these situations, there should not be an inflexible requirement for
2 them to always provide status reports to the repair center. Instead, consistent with
3 the parties' agreed language, the requirement should be for Qwest to always
4 provide notice upon completion of the emergency activities.

5 **Q. IS ESCHELON'S PROPOSED SUBSECTION 9.1.9.1 CONSISTENT WITH**
6 **THE NOTICE OF EMERGENCY ACTIVITIES THAT QWEST**
7 **PROVIDES TO ITS OWN RETAIL CUSTOMERS?**

8 A. No. Eschelon's proposal would require Qwest to provide Eschelon with notices of
9 emergency activities that Qwest does not provide to its own retail customers.
10 Qwest does not commit to providing its retail customers with status reports on the
11 performance of emergency maintenance and modernization activities. Instead, for
12 all customers, Qwest's priority is to take the steps that are necessary to address the
13 emergency and, as a general rule, to provide any notices after the situation has
14 been remedied. In addition, Eschelon's proposed addition to the notice of
15 emergency repairs that Qwest provides would impose costs on Qwest that
16 Eschelon has not agreed to reimburse.

17 **Issue 9-36**

18 **Q. PLEASE DESCRIBE THE NATURE OF THE OTHER DISPUTE**
19 **RELATING TO ESCHELON'S PROPOSED SECTION 9.1.9 AND**
20 **SUBSECTION 9.1.9.1, AS ENCOMPASSED BY ISSUE 9-36.**

1 A. Eschelon is seeking to prevent Qwest from ever recovering the costs it incurs for
2 field dispatches required for maintenance and modernization activities. Thus, it
3 proposes the following language for Section 9.1.9: "No charges apply to
4 dispatches described in this Section 9.1.9 and 9.1.9.1."

5 **Q. IS ESCHELON'S PROPOSED BAR ON THE RECOVERY OF COSTS**
6 **ASSOCIATED WITH DISPATCHES APPROPRIATE?**

7 A. No. In the agreed provisions of Section 9.1.9, Qwest commits that it will not
8 charge Eschelon for dispatches to the premises of an Eschelon customer that are
9 necessary for performing activities required to maintain or modernize the
10 network. The dispatches that are covered by this language are pre-planned
11 dispatches that are needed for maintenance and modernization.

12 Through its proposed language, Eschelon is attempting to expand this "no charge"
13 commitment to circumstances where a dispatch is required because the
14 maintenance or modernization that Qwest performs results in a "repair situation,"
15 such as a situation in which an Eschelon customer loses dial tone. The basic flaw
16 in Eschelon's proposal is that it assumes Qwest is always the cause of repair
17 situations resulting from maintenance and modernization activities. However, as I
18 discuss above in connection with Issue 9-33, there may be situations in which
19 Qwest's maintenance or modernization of its network leads to a disruption in
20 service for an Eschelon customer because of the facilities and technologies
21 Eschelon is using to serve its customers. In those circumstances, Qwest should

1 not be precluded from recovering the costs of dispatches needed to address repair
2 situations.

3 **Q. PLEASE PROVIDE AN EXAMPLE OF A SITUATION IN WHICH**
4 **QWEST SHOULD BE PERMITTED TO RECOVER THE COSTS OF**
5 **DISPATCHES RELATING TO MAINTENANCE OR MODERNIZATION.**

6 A. As I describe in connection with Issue 9-33, Qwest's addition of hybrid copper-
7 fiber loops to its network could cause a CLEC's DSL equipment to cease
8 functioning if the CLEC elected to provide data service over two-wire analog
9 copper loops instead of over data-capable digital loops. This situation could
10 result in a "no dial tone" situation for Voice Over Internet Protocol ("VOIP")
11 voice service. If that were to occur, the fault would not lie with Qwest, as Qwest
12 would have simply provided the two-wire analog loop requested by the CLEC.
13 Instead, the CLEC would be responsible for the no dial tone situation, since it
14 would have chosen to use the two-wire analog loop instead of a data-capable
15 digital loop. If a dispatch were required in this situation, Qwest should be
16 permitted to recover the costs of the dispatch through an appropriate charge.

17 **Q. DOES QWEST HAVE ADDITIONAL CONCERNS WITH ESCHELON'S**
18 **PROPOSED LANGUAGE RELATING TO CHARGES FOR**
19 **DISPATCHES?**

20 A. Yes. There is a significant ambiguity in Eschelon's language that provides an
21 additional ground for rejecting the proposal. Specifically, as noted above,

1 Eschelon's language would bar charges for "dispatches described in this Section
2 9.1.9 and 9.1.9.1." However, Eschelon's proposed Section 9.1.9.1 does not
3 describe or even mention dispatches, so it is entirely unclear how this bar on
4 charges for dispatches would be applied. Qwest's concern is that Eschelon will
5 use this ambiguity to argue that Section 9.1.9.1 prohibits dispatch charges for any
6 emergency in the network, regardless of the nature of the emergency or the cause
7 of it. At a minimum, Eschelon's reference to dispatches "described" in Section
8 9.1.9.1 does not make any sense because dispatches are not mentioned in that
9 section. Even worse, Eschelon could be intending to use this ambiguity to
10 broadly prevent Qwest from charging for dispatches and from recovering costs it
11 is entitled to recover.

12 **Q. PLEASE SUMMARIZE QWEST'S POSITION RELATING TO CHARGES**
13 **FOR DISPATCHES INVOLVING MAINTENANCE AND**
14 **MODERNIZATION ACTIVITIES.**

15 A. Qwest is not seeking the right to charge for dispatches that are required solely
16 because of Qwest's decision to perform maintenance or modernization activities.
17 However, it is important to recognize that Qwest may be required to send
18 dispatches where a CLEC's use of certain facilities or technologies leads to a
19 disruption in service when Qwest maintains or modernizes its network.
20 Accordingly, the absolute bar on dispatch charges that Eschelon proposes is
21 improper. If a network maintenance or modification activity results in a repair
22 situation for the end user, Qwest should be permitted to follow its existing repair

1 guidelines, including the portions of those guidelines addressing the applicability
2 of charges. Finally, Eschelon's proposed bar against charges for dispatches
3 "described" in Section 9.1.9.1 should be rejected, since no dispatches are
4 described or mentioned in that section.

5 **Q. WHY SHOULD QWEST'S LANGUAGE AT 9.1.9 FOR ISSUE 9-36 BE**
6 **ADOPTED?**

7 A. Qwest's proposed language appropriately clarifies that Qwest will not charge
8 Eschelon for dispatches in situations where Qwest causes the dispatch. By
9 contrast, Eschelon's language fails to recognize that Eschelon may be the cause of
10 the dispatch. The ICA should recognize that the party who causes the dispatch
11 must pay for it. Only Qwest's language achieves this proper balancing of the
12 parties' rights. However, this is not a change from the existing terms which
13 Qwest operates with Eschelon or other CLECs. Qwest's language does not
14 expand the limitations associated with Qwest's dispatch charges as does
15 Eschelon's proposed language.

16

17 **Issue 9-39 - Wire Center CAPs on Orders.**

18 **Q. PLEASE SUMMARIZE THE DISPUTE ENCOMPASSED BY ISSUE 9-39.**

19 A. In the *TRRO*, the FCC established a structural framework for determining whether
20 high capacity dedicated transport and high-capacity loops meet the "impairment"

1 requirement for unbundled network elements set forth in Section 251(d)(2) of the
2 Act. The primary significance of these impairment determinations is that they
3 dictate whether high-capacity transport and loops qualify as Section 251(c)(3)
4 UNEs that Qwest must provide to CLECs at rates based on the FCC's TELRIC
5 pricing methodology or whether they are no longer within Section 251(c)(3) and
6 are governed by the non-TELRIC pricing standard in Sections 201 and 202 of the
7 Communications Act of 1934.⁶ In general, the impairment determinations are
8 conducted at the wire center level and focus on the number of business lines and
9 fiber collocators in individual wire centers.

10 Although Eschelon's petition for arbitration included multiple issues relating to
11 implementation of the *TRRO* regulatory framework, Qwest and Eschelon have
12 agreed to stay most of those issues pending potential resolution of them in the
13 Commission's ongoing *TRRO* wire center proceeding.⁷ Accordingly, I will not
14 address those issues in this testimony, but reserve the right to comment if
15 subsequently they become disputed issues in this arbitration. The lone exception

⁶ Under this standard, rates must not be unjust, unreasonable, or unreasonably discriminatory. Responsibility for administering the Section 201-02 pricing standard rests with the FCC. *See, e.g.,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *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 Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 at 664 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part, remanded in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

⁷ *In the Matter of CLEC Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Docket Nos. P5692, et al.

1 to the parties' agreement to stay these *TRRO* issues relates to the "caps" on the
2 number of circuits CLECs are permitted to order in wire centers where there is no
3 impairment and, specifically, the information that Qwest will provide to Eschelon
4 for the purpose of determining the applicability of those caps. That is the issue
5 that is encompassed by Issue 9-39.

6 **Q. PLEASE EXPLAIN THE MEANING OF THE "CAPS" YOU REFER TO**
7 **IN YOUR PRIOR ANSWER.**

8 A. While the FCC found in the *TRRO* that ILECs may be required to provide high-
9 capacity transport as UNEs on certain routes, it limited the number of circuits that
10 CLECs can obtain on individual routes. Thus, the FCC ruled that on routes where
11 there is no unbundling obligation for DS3 transport but for which there is such an
12 obligation for DS1 transport, "we limit the number of DS1 transport circuits that
13 each carrier may obtain on that route to 10 circuits."⁸ On routes for which there is
14 impairment for DS3 transport, the FCC limited CLECs to 12 transport DS3s.⁹
15 With respect to high-capacity loops, where unbundling is required, the FCC
16 established caps of ten DS1 loops per building and one DS3 loop per building.¹⁰
17 In agreed language set forth in Sections 9.2 and 9.6.2.3 of the ICA, Qwest and
18 Eschelon have recognized and established the effect of these caps established by
19 the FCC.

⁸ *TRRO* at ¶ 128.

⁹ *Id.* at ¶ 131.

¹⁰ *Id.* at ¶¶ 177, 181.

1 **Q. WHAT IS ESCHELON DEMANDING WITH RESPECT TO THESE CAPS**
2 **THAT GIVES RISE TO THIS DISPUTED ISSUE?**

3 A. Although Eschelon of course has full access to information relating to the number
4 of transport circuits it has ordered from Qwest on individual point A to B routes
5 and to information concerning the number of high-capacity loops it has ordered in
6 particular buildings, it nevertheless wants Qwest to be required to tell it what it
7 has ordered and obtained from Qwest. Specifically, under Eschelon's proposed
8 Section 9.1.13.4.1.2.2, Qwest would be required to provide "data that allows
9 [Eschelon] to identify all [Eschelon] circuits relating to the applicable Route or
10 Building [including circuit identification (ID), installation purchase order number
11 (PON), Local Service Request identification (LSR ID), Customer Name/Service
12 Name, installation date, and service address including location (LOC)
13 information]." In addition, in Section 9.1.13.4.1.2.3, Eschelon seeks to require
14 Qwest to provide "[o]ther data upon which Qwest relies for its position that
15 [Echelon] may not access the UNE." Eschelon also apparently takes the position
16 that unless Qwest provides this information, Eschelon can continue to order high-
17 capacity transport circuits and high-capacity loops in quantities that exceed the
18 FCC's caps.

19 **Q. WHY DOES QWEST OBJECT TO ESCHELON'S PROPOSAL?**

20 A. Qwest objects to this proposal for several reasons. Most fundamentally, Qwest is
21 concerned that Eschelon may be attempting to use its proposed language to
22 exceed the caps established in the *TRRO*. It appears that under its proposal,

1 Eschelon would continue to place orders in numbers that exceed the FCC's caps if
2 Qwest did not provide all of the information listed in Section 9.1.13.4.1.2.2.1.
3 The FCC's caps are fixed and unambiguous, and Eschelon's obligation to comply
4 with them is not in any way dependent upon Qwest providing information about
5 the facilities Eschelon has previously ordered.

6 Equally important, Eschelon has the information it needs to determine whether it
7 has reached any of the *TRRO* caps. For example, it knows the addresses of the
8 buildings where it has ordered high-capacity loops and therefore can determine on
9 its own whether it has reached the caps of 10 DS1 loops per building and one DS3
10 loop per building. Similarly, Eschelon knows the beginning and end points of the
11 high-capacity transport circuits it has ordered from Qwest and, accordingly, can
12 determine based on its own information whether it has reached the *TRRO* caps for
13 these facilities.

14 **Q. IS ESCHELON'S PROPOSAL CONSISTENT WITH THE FCC'S**
15 **DIRECTIVE IN THE *TRRO* THAT CLECS MUST UNDERTAKE**
16 **DILIGENT INQUIRIES AND PROVIDE SELF-CERTIFICATIONS**
17 **BEFORE ORDERING UNES?**

18 A. No. In paragraph 234 of the *TRRO*, the FCC emphasized that CLECs have an
19 obligation to conduct "reasonably diligent inquiries" and to provide self-
20 certifications that its orders for high-capacity transport and high-capacity loops
21 are consistent with the requirements of the *TRRO*:

1 We recognize that our rules governing access to dedicated transport and
2 high-capacity loops evaluate impairment based upon objective and readily
3 obtainable facts, such as the number of business lines or the number of
4 facilities-based competitors in a particular market. **We therefore hold**
5 **that to submit an order to obtain a high-capacity loop or transport**
6 **UNE, a requesting carrier must undertake a reasonably diligent**
7 **inquiry and, based on that inquiry, self-certify that, to the best of its**
8 **knowledge, its request is consistent with the requirements discussed in**
9 **parts IV, V, and VI above** and that it is therefore entitled to unbundled
10 access to the particular network elements sought pursuant to section
11 251(c)(3). . . .

12 Eschelon's proposal conflicts with this directive. Instead of conducting its own
13 reasonably diligent inquiry based upon readily available information, Eschelon
14 attempts to shift the burden of the inquiry on to Qwest. Under its proposal, it is
15 Qwest that would have to make the inquiry and provide the information to
16 Eschelon. Further, despite the requirement to self-certify that its orders comply
17 with the *TRRO* criteria, Eschelon would apparently place orders in excess of the
18 FCC's caps if Qwest did not provide the information listed in Eschelon's proposal.

19 **Q. IS ESCHELON'S PROPOSAL PROPERLY ADDRESSED IN THIS**
20 **ARBITRATION?**

21 A. No. In addition to being flawed on the merits, Eschelon's proposal should have
22 been presented in the Commission's ongoing *TRRO* wire center proceeding. The
23 proposal potentially affects all CLECs, not just Eschelon, and therefore should
24 have been presented in the generic wire center proceeding. Eschelon is a party to
25 that proceeding and had every opportunity to raise the issue there, but it chose not
26 to do so.

1 **Q. WHAT IS QWEST'S RECOMMENDATION WITH RESPECT TO THIS**
2 **ISSUE?**

3 A. For the reasons set forth above, the Commission should reject Eschelon's
4 proposed Sections 9.1.13.4.1.2.2.1 and 9.1.13.4.1.2.3 and exclude these sections
5 from the ICA.

6 **Issue 9-50 - Subloop Cross-Connect Work.**

7 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 9-50.**

8 A. This issue involves a "cross-connect" service that Qwest had voluntarily offered
9 to CLECs in the past despite the absence of any legal obligation to provide the
10 service. In simple terms, a cross-connect is the connection of one wire to another
11 for the purpose of creating an electrical connection. Qwest had previously offered
12 to perform cross-connects for CLECs on intrabuilding cable subloops. However,
13 there has never been any CLEC demand for this service since Qwest began
14 offering it, and there is no indication that this lack of demand will change in the
15 future. Accordingly, on a going-forward basis, Qwest will no longer offer this
16 service to CLECs.

17 To the best of my knowledge, Eschelon has never ordered this cross-connect
18 service from Qwest. In addition, Eschelon apparently does not dispute that Qwest
19 has no legal obligation to provide the service. Nevertheless, Eschelon has
20 expressed concern that if Qwest decides in the future to resume offering this

1 cross-connect option in interconnection agreements, the offering should be
2 available to Eschelon through its interconnection agreement with Qwest.

3 **Q. HOW HAS QWEST RESPONDED TO ESCHELON'S CONCERN ABOUT**
4 **FUTURE OFFERINGS OF CROSS-CONNECTS?**

5 A. In response to Eschelon's concern, Qwest has proposed the following language:

6 9.3.3.8.3.1 If during the term of this agreement a new negotiated ICA or
7 negotiated amendment has been approved by the Commission that
8 contains the option for Qwest to perform cross connect jumper work for
9 intrabuilding cable, at CLEC's request, Qwest will offer CLEC an
10 amendment to this agreement which will include all the associated rates,
11 terms and conditions as it negotiated.

12 The intent of this proposal is to provide Eschelon with assurance of a contractual
13 right to the cross-connect service in the unlikely event that Qwest resumes
14 offering the service in the future. Thus, under Qwest's proposal, Eschelon will be
15 entitled to amend its ICA to include the service if Qwest enters into a
16 Commission-approved ICA or amendment with another CLEC that includes the
17 service.

18 **Q. WHAT IS ESCHELON'S PROPOSED LANGUAGE?**

19 A. Eschelon proposes the following language for this section:

20 ~~9.3.3.8.3.1 If during the term of this agreement a new negotiated ICA~~
21 ~~or negotiated amendment has been approved by the Commission that~~
22 ~~contains the option for Qwest to perform cross connect jumper work~~
23 ~~for intrabuilding cable, at CLEC's request, Qwest will offer CLEC an~~
24 ~~amendment to this agreement which will include all the associated~~
25 ~~rates, terms and conditions as it negotiated. If Qwest performs or~~

1 **offers to perform the cross-connect for any other CLEC during the**
2 **term of this Agreement, Qwest will notify CLEC and offer CLEC an**
3 **amendment to this Agreement that allows CLEC, at its option, to**
4 **request that Qwest run the jumper for Intrabuilding cable in MTEs**
5 **on nondiscriminatory terms and conditions.**

6 **Q. IN THE ISSUES MATRIX, ESCHELON IMPLIES THAT QWEST**
7 **WITHDRAWING THIS PRODUCT, ON A GOING-FORWARD BASIS,**
8 **AMOUNTS TO DISCRIMINATION, DO YOU AGREE?**

9 **A.** No. The individual ICA negotiation process was clearly contemplated by the
10 Telecommunications Act. Specifically, the Act requires that ILECs negotiate
11 individually with CLECs and reach agreements that are tailored to each carrier's
12 needs. While this approach, mandated by the Act, results in terms and conditions
13 that may be different from CLEC to another, those differences are not an illegal or
14 prohibited form of discrimination.

15 **Q. IN THE TELECOMMUNICATION INDUSTRY, IS THERE A**
16 **TRADITION OF ALLOWING EXISTING CUSTOMERS TO RETAIN A**
17 **SERVICE, WHILE NOT ALLOWING NEW CUSTOMERS TO ORDER**
18 **THE SAME SERVICE?**

19 **A.** Yes. It is standard in the industry that when products, services and/or feature
20 packages are phased out, existing customers are “grandfathered” and can continue
21 to use the service. Qwest's language is consistent with this standard industry
22 practice.

1 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE**
2 **CERTAIN PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED**
3 **THAT THERE MAY BE A PERIOD OF TIME DURING WHICH A**
4 **PRODUCT OR ELEMENT WILL CONTINUE TO BE AVAILABLE TO**
5 **SOME CARRIERS WHILE NOT BEING AVAILABLE TO OTHER**
6 **CARRIERS?**

7 A. Yes. The FCC has used the concept of "grandfathered" service to give carriers
8 that have relied on a product or service time to adjust to the elimination of the
9 product or service. In these circumstances, the FCC has adopted transitional
10 phase-outs for carriers that have previously relied on the product or service, while
11 making the product or service immediately unavailable to carriers that did not
12 previously rely on it. For example, while the FCC eliminated the high frequency
13 portion of the loop ("HFPL") as a UNE in the *TRO*, it permitted CLECs with
14 existing "line sharing arrangements" to continue obtaining the HFPL at whatever
15 rate the ILEC was charging prior to the *TRO*. *TRO* at ¶ 264. However, those pre-
16 *TRO* rates were no longer available for CLECs that did not have "grandfathered"
17 line sharing arrangements. Those CLECs were required to pay different rates that
18 the FCC established as part of its phase-out of the HFPL as a UNE. *TRO* at
19 ¶ 265.

20 As this example shows, the FCC recognizes that there will be timing differences
21 among CLECs in the implementation of its network unbundling orders. These
22 differences do not result in a form of discrimination prohibited by the Act;

1 instead, they are the result of necessary and often unavoidable differences in the
2 timing of implementation of the FCC's orders.

3 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

4 A. Qwest has no legal obligation to perform cross-connect wiring for Eschelon, and
5 Eschelon can and (routinely performs) this function for itself. Qwest has
6 voluntarily offered this service in the past, but CLECs have not ordered it.
7 Eschelon's claims regarding discrimination are unfounded, and frequently
8 products or unique combination of feature packages are grandfathered for existing
9 customers and are unavailable for new customers.

10 Moreover, Eschelon's proposed language would place an unreasonable burden on
11 Qwest. In the unlikely event that Qwest performs a cross-connect for a CLEC
12 based on a unique circumstance or need, Qwest can not reasonably be expected to
13 notify Eschelon that the cross-connect has been performed. Qwest has no
14 processes or systems in place that would permit it to provide this type of
15 notification. However, Eschelon will have notice of cross-connects offerings in
16 any ICAs or amendments that Qwest enters into, since ICAs and amendments are
17 publicly filed with the Commission. Eschelon can easily review all filed ICA
18 agreements and amendments on its own.

19 Under Qwest's proposed language, if Eschelon should ever see the service in an
20 agreement, and desires such an amendment, upon request, Qwest will promptly

1 provide an addendum to Eschelon including all the associated rates, terms and
2 conditions.

3 **Issue 9-52 - Access to 911 Databases.**

4 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-52?**

5 A. Yes. The parties continued their discussions relating to this issue after filing their
6 direct testimony and have reached agreement. Accordingly, this issue is no longer
7 in dispute, and there is no need for the Commission to take any action with
8 respect to it.

9 **Issue 9-53 - Access to UCCRE.**

10 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 9-53.**

11 A. This issue originated from Eschelon's initial request that Qwest place the
12 "Unbundled Customer Controlled Rearrangement Element" ("UCCRE") product
13 in the ICA at 9.9. However, the FCC has removed from its rules the former
14 requirement for ILECs to provide digital cross-connects for the unbundled
15 customer controlled rearrangement element.¹¹ UCCRE was the product Qwest
16 developed to meet the previous FCC requirement. UCCRE was intended to
17 provide the means by which a CLEC could control the configuration of UNEs or
18 ancillary services on a near real time basis through a digital cross-connect device.

¹¹ See and compare former 47 C.F.R. § 51.319(d)(2)(iv) and current 47 C.F.R. § 51.319(d)(2).

1 Although Qwest developed and made UCCRE available to CLECs, there has
2 never been any CLEC demand for this product. Qwest has no information from
3 CLECs suggesting that there will be future demand for UCCRE. Because the
4 FCC has removed UCCRE from its rules and given the absence of demand for it,
5 Qwest has decided to discontinue offering this product on a going-forward basis.

6 Although Eschelon apparently has never ordered UCCRE from Qwest, it has
7 nevertheless expressed a desire to have access to this product if Qwest revives it
8 in the future and provides it in future ICAs. Eschelon apparently does not have
9 any impending need for UCCRE or plans to use it, so its concern relating to this
10 issue is largely hypothetical.

11 **Q. PLEASE DESCRIBE QWEST'S AND ESCHELON'S COMPETING**
12 **PROPOSALS RELATING TO UCCRE.**

13 A. Because there is no legal obligation to offer UCCRE and CLECs have no demand
14 for it, Qwest proposes not to include any reference to the discontinued product in
15 the ICA. It thus proposes the following:

16 9.9 Intentionally Left Blank.

17 By contrast, Eschelon proposes the following language:

18 **9.9.1 If Qwest provides or offers to provide UCCRE to any other**
19 **CLEC during the term of this Agreement, Qwest will notify CLEC**
20 **and offer CLEC an amendment to this Agreement that allows CLEC,**
21 **at its option, to request UCCRE on nondiscriminatory terms and**
22 **conditions.**

1 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSAL**
2 **AND ADOPT QWEST'S LANGUAGE?**

3 A. Eschelon's proposed language would place an unreasonable burden on Qwest. In
4 the highly unlikely event that Qwest offers UCCRE to another CLEC, Qwest can
5 not reasonably be expected to notify Eschelon that the product has been offered.
6 Qwest has no processes or systems in place that would permit it to provide this
7 type of notification. However, Eschelon will have notice of any future UCCRE
8 offerings provided for in any ICAs or amendments that Qwest enters into, since
9 ICAs and amendments are publicly filed with the Commission. Eschelon can
10 easily review all filed ICA agreements and amendments on its own to determine if
11 other CLECs are receiving UCCRE.

12 In addition, there is no reasonable basis for requiring Qwest to maintain external
13 and internal documentation, pricing and ordering information for a service that
14 has never been ordered.

15 **Q. IF ESCHELON DESIRES UCCRE FUNCTIONALITY IN THE FUTURE,**
16 **CAN IT OBTAIN THE PRODUCT THROUGH OTHER MEANS?**

17 A. Yes. In the unlikely event that Eschelon will have a need for a UCCRE service, it
18 can obtain the product through Qwest's retail Command-A- Link tariff.

19 **Q. ESCHELON ASSERTS THAT IF QWEST DOES NOT OFFER UCCRE IN**
20 **THE ICA, ESCHELON WILL EXPERIENCE DISCRIMINATION AND**

1 **BE AT A COMPETITIVE DISADVANTAGE. IS THERE ANY BASIS**
2 **FOR THIS CLAIM?**

3 A. No. As an initial matter, Eschelon (nor any other CLEC) has never ordered
4 CURE service from Qwest in Washington or in any other state. Having never had
5 a need for UCCRE, Eschelon has little basis for complaining that it will be
6 competitively disadvantaged without the service in the future.

7 **Q. GIVEN THAT THE FCC HAS DIRECTED ILECS AND CLECS TO RELY**
8 **ON THE ICA NEGOTIATION PROCESS TO IMPLEMENT CHANGES**
9 **IN UNBUNDLING REQUIREMENTS, IS IT INEVITABLE THAT THE**
10 **TIMING OF NEGOTIATIONS WILL VARY TO SOME EXTENT FROM**
11 **ONE CLEC TO ANOTHER?**

12 A. Yes. Qwest of course cannot renegotiate ICAs with all CLECs at precisely the
13 same time. As a result, it is unavoidable that changes in the FCC's unbundling
14 requirements will be implemented sooner for some CLECs than for others. For
15 example, if Qwest and a CLEC mutually agree upon all the provisions of a re-
16 negotiated ICA implementing the *TRO* and *TRRO*, that agreement likely can be
17 completed and approved in a matter of a few months. By contrast, if Qwest and a
18 CLEC do not agree on the provisions required to implement the *TRO* and the
19 *TRRO* and are required to arbitrate, it will take much longer to complete and have
20 the agreement approved. As a result, for some period of time, one CLEC is likely
21 to have an ICA with different unbundling requirements than are in another
22 CLEC's ICA. The differences in the ICAs are not the result of discrimination, as

1 Eschelon would suggest, but are instead the result of inevitable differences in
2 timing.

3 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE**
4 **CERTAIN PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED**
5 **THAT THERE MAY BE A PERIOD OF TIME DURING WHICH A**
6 **PRODUCT OR ELEMENT WILL CONTINUE TO BE AVAILABLE TO**
7 **SOME CARRIERS WHILE NOT BEING AVAILABLE TO OTHER**
8 **CARRIERS?**

9 A. Yes. As I discuss above in connection with cross-connects, the FCC has used the
10 concept of "grandfathered" service to give carriers that have relied on a product or
11 service time to adjust to the elimination of the product or service. In these
12 circumstances, the FCC has adopted transitional phase-outs for carriers that have
13 previously relied on the product or service, while making the product or service
14 immediately unavailable to carriers that did not previously rely on it. The FCC
15 thus recognizes that there will be timing differences among CLECs in the
16 implementation of its network unbundling orders. These differences do not result
17 in a form of discrimination prohibited by the Act; instead, they are the result of
18 necessary and often unavoidable differences in the timing of implementation of
19 the FCC's orders.

20 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

1 A. The Commission should reject Eschelon's attempt to impose unnecessary
2 administrative and notice requirements for a product that Qwest has no legal
3 obligation to offer and for which CLECs, including Eschelon, have shown no
4 demand. The Commission should approve the Qwest language "9.9 Intentionally
5 Left Blank."

6 **Issue 9-54 - Inclusion of All Components in ICA For Non-Standard UNE**
7 **Combinations**

8 **Q. PLEASE PROVIDE AN OVERVIEW OF THIS ISSUE.**

9 A. Issue 9-54 is one of two issues that arise from Section 9.23.2 of the ICA. For the
10 second issue, which relates to "loop-mux combinations," please see Issue 9-61.
11 The dispute encompassed by Issue 9-54 involves the exact wording to use to
12 capture Qwest's commitment to provide non-standard UNE combinations, which
13 are combinations of UNEs that are not among the defined combination products
14 included in the ICA. Qwest and Eschelon are proposing similar language but with
15 some important differences. In contrast to Eschelon's proposal, Qwest's language
16 captures the critical concept that the non-standard UNE combinations available
17 under the ICA are limited to combinations of those UNEs for which individual
18 rates, terms and conditions are included in the ICA. For example, an ICA could
19 refer to a UNE but not include all the options needed to support an actual new
20 combination using that UNE. If that were the case, an amendment would be
21 necessary to include the additional option and all of its associated rates.
22 Eschelon's position is that if the UNE is contained in the agreement, then Qwest

1 should be required to make all combinations using that UNE, regardless of if all
2 the options (and their associated rates) are included.

3 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
4 **TO ISSUE 9-54?**

5 A. Qwest's proposed language is as follows:

6 9.23.2 UNE Combinations Description and General Terms

7 . . . Qwest will provision UNE Combinations provided that all individual
8 UNE rates, terms and conditions included in the UNE Combination are
9 contained in this Agreement. . . .

10 **Q. WHAT IS ESCHELON'S PROPOSED LANGUAGE?**

11 A. Eschelon proposes the following language for this issue:

12 9.23.2 UNE Combinations Description and General Terms

13 . . . Qwest will provision UNE Combinations ~~provided that all~~
14 ~~individual UNE pursuant to the~~ rates, terms and conditions ~~of this~~
15 ~~Agreement provided that all UNEs making up~~ the UNE Combination
16 are contained in this Agreement. . . .

17 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

18 A. Qwest should not be required to provide a UNE combination unless all terms and
19 conditions, including rates, for the individual UNEs (including any options or
20 individual components) comprising the combination are included in the
21 Agreement. Eschelon's proposed language would put Qwest in the position of
22 having to provide UNE combinations even if all individual components required
23 for the combination are not included in the ICA. This approach would create a

1 lack of clarity about the terms and conditions that apply to non-standard
2 combinations and would inevitably lead to disputes concerning these
3 combinations. Qwest simply does not want to be obligated to provide a product
4 for which the all terms and conditions are not included in the ICA.

5 **Q. IS QWEST ALSO CONCERNED THAT ESCHELON'S PROPOSAL**
6 **COULD PREVENT QWEST FROM RECOVERING THE COSTS IT**
7 **INCURS TO PROVIDE NON-STANDARD UNE COMBINATIONS?**

8 A. Yes. Qwest is concerned that if a rate for a component of a non-standard UNE
9 combination is not included in the ICA, Eschelon may take the position that
10 Qwest either cannot impose a charge for that component or can impose a charge
11 that is insufficient to permit Qwest to recover its costs. If Eschelon were to
12 prevail in taking that position, the result would violate Qwest's right, as set forth
13 in Section 252(d)(1) of the Act, to recover the costs it incurs to provide UNEs. In
14 addition, that result could subject Qwest to charges of discrimination from other
15 CLECs that pay for UNE combinations based on the appropriate individual rates
16 for each component of the combinations.

17 **Q. BY INCLUDING THIS SPECIFIC LANGUAGE IN THE ICA, IS QWEST**
18 **ATTEMPTING TO AVOID PROVIDING UNE COMBINATIONS WHEN**
19 **ALL UNES AND THEIR ASSOCIATED RATES TERMS AND**
20 **CONDITIONS ARE IN THE ICA?**

1 A. No. Qwest has no objection to providing combinations of UNEs when all the
2 rates, terms and conditions for the UNEs are included in the ICA. Qwest's
3 objection is to providing UNE combinations when the rates, terms and conditions
4 for each UNE component are not included in the ICA. Eschelon's position is too
5 simplistic -- that if the UNE is referred to at all in the agreement, then Qwest
6 should be required to make all combinations using that UNE, regardless if all the
7 options (and their associated rates) are included.

8 **Q. WHAT IS THE INTENT OF THE QWEST PROPOSAL?**

9 A. The intent of Qwest's proposal is to ensure that the essential terms and conditions
10 of UNE combinations are in the ICA. Qwest requires certainty about the terms of
11 our transactions with CLECs because of our past disputes with CLECs, not
12 because we are looking for excuses to reject orders. Indeed, it is not
13 commercially reasonable to require Qwest to enter into transactions for which the
14 terms and conditions are unknown.

15 Eschelon asserts that as long as the UNEs that comprise a combination "are
16 contained in the interconnection agreement," the combination should be provided.
17 However, the Eschelon's language begs the question of what it means to be
18 "contained in the ICA." Is a mere reference to a UNE enough to be "contained in
19 the ICA" so that Qwest should have to provide a combination even if rates, terms
20 and conditions for the UNE are not in the ICA? Further, if there are not rates,
21 terms and conditions in the ICA for a particular UNE option, Qwest is concerned

1 that Eschelon will interpret its language as requiring Qwest to provide the option
2 at a zero rate.

3 **Q. DO YOU HAVE AN EXAMPLE OF A SITUATION WHERE A UNE IS**
4 **ARGUABLY "CONTAINED" IN THE ICA BUT NOT ALL THE TERMS**
5 **AND CONDITIONS FOR THE UNE ARE IN THE ICA?**

6 A. Yes. A good example is with unbundled loops. A simple review of the Exhibit A
7 of the Washington SGAT alone is an indication of the variety of options there are
8 with unbundled loops. For example, for two-wire unbundled loops, there are five
9 different installation options. These options have evolved over time to meet the
10 needs of CLECs. Not all of these installation options are in all effective ICAs.
11 The least expensive option for two-wire loops is the mechanized two-wire basic
12 installation at \$37.53, and the most expensive is the manual two-wire Coordinated
13 Installation with Cooperative Testing/Project Coordination Installation at
14 \$171.07. As indicated by the names (i.e., really descriptions of installation related
15 activities), the price differences reflect the amount of Qwest labor at the time of
16 install.

17 What happens if a CLEC's ICA only includes the mechanized two-wire
18 unbundled loop basic installation of \$37.53 but the CLEC requests a UNE loop
19 combination with manual "Coordinated Installation with Cooperative
20 Testing/Project Coordination?" Qwest believes the rate of \$170.07 for
21 Coordinated Installation with Cooperative Testing/Project Coordination would

1 need to be added to Exhibit A of the agreement for the CLEC to order that type of
2 installation.

3 With Eschelon's proposed language, the CLEC could insist that "they have the
4 UNE two-wire unbundled loop "contained" in their ICA" and Qwest must do the
5 installation as requested pursuant to the rate in the agreement of \$37.53. In
6 summary, the intent of the Qwest language is that a CLEC who has a UNE in its
7 ICA still needs to have all the options it desires relating to that UNE in its ICA.
8 It is not appropriate for Qwest to be forced to do a cooperative installation at a
9 reduced rate; nor is it fair to other CLECs who have properly added to their ICA
10 all installation options (and the associated rates) in their ICA prior to utilization.

11 **Q. WHAT IS QWEST'S RECOMMENDATION RELATING TO THIS**
12 **ISSUE?**

13 A. Qwest's obligation to provide non-standard UNE combinations should be limited
14 to combinations for which the rates, terms, and conditions of the component parts
15 are included in the ICA. Accordingly, the Commission should adopt Qwest's
16 language that limits Qwest's obligation to provide non-standard UNE
17 combinations to combinations for which the rates, terms, and conditions of the
18 component parts are included in the ICA.

1 **Issue 9-54a – Recurring Rates for New Combinations.**

2 **Q. WHAT IS THE NATURE OF THE DISPUTE ENCOMPASSED BY ISSUE**
3 **9-54(A)?**

4 A. This issue involves the ICA's "bona fide request" ("BFR") and "special request"
5 ("SR") processes that Eschelon can use to submit orders for unique or non-
6 standard products and services. If Eschelon elects to order a non-standard UNE
7 combination, it can do so through the BFR or SR process. This dispute arises
8 because of Eschelon's proposal to include language relating to the BFR and SR
9 processes that would limit the rates Qwest is permitted to charge for non-standard
10 UNE combinations. As I explain below, the language Eschelon is proposing
11 could prevent Qwest from recovering the costs it incurs to provide non-standard
12 UNE combinations and therefore should be rejected.

13 **Q. WHAT IS ESCHELON'S SPECIFIC PROPOSAL TO WHICH QWEST**
14 **OBJECTS?**

15 A. Eschelon proposes to add the following Section:

16 **9.23.5.1.3 If CLEC elects to use the BFR/SR process to obtain access**
17 **to a different UNE Combination, the recurring rates for the UNE**
18 **Combination will be no greater than the total of the recurring rates in**
19 **Exhibit A in that combination.**

20 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S**
21 **RECOMMENDATION TO DELETE ESCHELON'S PROPOSED**
22 **SECTION 9.25.5.1.3?**

1 A. As the name implies, *non-standard* UNE combinations are unique combinations
2 that Qwest does not routinely provide. Because these combinations are non-
3 standard, Qwest may need to perform unique tasks to provision the UNEs in a
4 combined form through the BFR or SR process. If Qwest is required to perform
5 unique tasks, resulting in a different or unique non-standard combination, it has a
6 right under Section 252(d)(2) of the Act to recover the costs of those tasks.
7 Eschelon's proposal could prevent Qwest from recovering the costs of any unique
8 tasks that are required to create and provision a non-standard UNE combination.
9 The recurring rates for UNEs listed in Exhibit A of the ICA do not include any
10 costs for non-standard provisioning options. Therefore, by limiting charges for
11 UNE combinations ordered through the BFR and SR processes to the recurring
12 rates in Exhibit A, Eschelon's proposal would necessarily prevent Qwest from
13 recovering the costs of any unique provisioning or other tasks that Qwest may
14 have to perform in responding to Eschelon BFR/SR requests for non-standard
15 combinations.

16 **Q. IS ESCHELON'S PROPOSED LANGUAGE NECESSARY TO PROTECT**
17 **ESCHELON AGAINST IMPROPER CHARGES RELATING TO NON-**
18 **STANDARD UNE COMBINATIONS?**

19 A. No. If Qwest can provide a non-standard UNE combination without performing
20 any unique provisioning or other tasks, it will not charge Eschelon for any
21 additional costs. On the other hand, if Eschelon wants the benefits of being able
22 to order non-standard products and services through the BFR/SR process, it must

1 assume the responsibility of compensating Qwest for any additional costs its non-
2 standard requests impose. Through its proposal, Eschelon is attempting to obtain
3 the flexibility offered by the BFR/SR process without compensating Qwest for the
4 costs it may incur to provide that flexibility.

5 **Q. WHAT IS QWEST'S INTENT WITH REJECTING THE ESCHELON**
6 **LANGUAGE?**

7 A. Qwest's intent is to insure that the appropriate rates, including rates for any
8 optional features, are included in the ICA, as I have discussed in connection with
9 Issue 9-54. Again, Eschelon is attempting to box Qwest in as it relates to
10 appropriate cost recovery. Eschelon desires the ability to ask for unique
11 combinations of UNEs (even UNEs that result from the BFR process that could
12 easily require a UNE to be modified in such a manner that existing recurring rates
13 would not insure cost recovery for Qwest) but wants all the cost and risks of these
14 unique combinations to be born by Qwest. In addition, the reference to BFR is
15 particularly troublesome given the description of the BFR process in Section 17:

16 **Section 17.0 - BONA FIDE REQUEST PROCESS**

17 17.1 Any request for Interconnection or access to an Unbundled
18 Network Element or ancillary service that is not already available
19 as described in other sections of this Agreement, including but not
20 limited to Exhibit F or any other Interconnection Agreement, Tariff
21 or otherwise defined by Qwest as a product or service shall be
22 treated as a BFR. Qwest shall use the BFR Process to determine
23 the terms and timetable for providing the requested
24 Interconnection, access to UNEs or ancillary services, and the
25 Technical Feasibility of new/different points of Interconnection.

1 Qwest will administer the BFR Process in a non-discriminatory
2 manner.

3 Despite Eschelon's claims to the contrary, if the BFR process is being utilized, by
4 its very definition, it is utilized for UNEs not available in the ICA, so how can the
5 recurring rate for the BFR be limited to the recurring rates for the UNEs in
6 Exhibit A?

7 **Q. WHAT IS QWEST'S RECOMMENDATION RELATING TO THIS**
8 **ISSUE?**

9 A. To preserve the necessary flexibility of the BFR/SR process and to ensure that
10 Qwest recovers the costs it incurs to provide non-standard UNE combinations, the
11 Commission should reject Eschelon's proposed Section 9.23.5.1.3 and accept the
12 Qwest language of "Intentionally left blank".

13 **Issue 9-55 - Combinations of Loops and Transport**

14 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTES**
15 **ENCOMPASSED BY ISSUE 9-55.**

16 A. While Issue 9-55 encompasses multiple provisions of the ICA, there are a small
17 number of fundamental differences in the parties' positions that account for the
18 differences in the parties' proposed ICA language for these provisions. Generally,
19 Qwest's proposed Section 9.23.4 describes the terms and conditions for Enhanced
20 Extended Loops ("EELs"), Commingled EELs and High Capacity EELs. The
21 Qwest EEL product offering consists of a combination of an Unbundled Loop and

1 Unbundled Dedicated Interoffice Transport (UDIT). However, in response to
2 Eschelon's proposal, Qwest agreed to remove the terms and conditions associated
3 with commingling (*i.e.*, the combining of a UNE and non-UNE network circuit)
4 from Section 9.23 and to create a new ICA Section 24 dedicated to commingling.
5 This change in structure has challenged both parties to make sure the necessary
6 terms and conditions are described in each section and to make sure that
7 inappropriate duplication does not occur.

8 Each issue that I discuss below in this section of my testimony identifies all the
9 ICA sections implicated by the issue. Because some ICA sections are implicated
10 by more than one issue, I discuss or refer to some sections in connection with
11 multiple issues. I attempt to target the portion of the section under dispute in each
12 issue in order to reduce the duplication of sections in the testimony.

13 Eschelon's proposal is particularly troubling given that Eschelon's definition of
14 Loop-Transport Combinations includes commingled arrangements where UNE
15 and non-UNE circuits are combined. Different rates and provisioning processes
16 are required for all UNE "loop-transport" combinations than for a commingled (or
17 connected) UNE circuit with a Private line circuit arrangement. By combining
18 both into a single description, the Eschelon language would effectively eliminate
19 all of the critical distinctions between the two types of arrangements.

1 **Q. PLEASE PROVIDE AN EXAMPLE OF A COMMINGLED**
2 **ARRANGEMENT AND THE TERMS AND CONDITIONS THAT WOULD**
3 **APPLY TO SUCH AN ARRANGEMENT.**

4 A. A typical commingled arrangement would be an EEL loop connected to a private
5 line transport circuit. Consistent with governing FCC rules relating to
6 commingled arrangements, the UNE terms and conditions set forth in the
7 interconnection agreement would apply to the UNE (*i.e.*, the EEL Loop) circuit,
8 while the provisions of the tariff (or price list as appropriate) would dictate the
9 terms and conditions that would apply to the private line transport circuit in the
10 arrangement. Specifically, the FCC notes this application of rates, terms and
11 conditions in the *Triennial Review Order* at footnote 1796:

12 For example, a competitive LEC connecting a UNE loop to special
13 access interoffice transport facilities would pay UNE rates for the
14 unbundled loops and tariffed rates for the special access service . . .

15 **Q. WHAT IS QWEST'S PROPOSAL RELATING TO ISSUE 9-55?**

16 A. The term "Loop-Transport Combination" should be deleted from each product
17 section of the ICA. The sections from which this term should be excluded include
18 Sections 9.23.4 (general terms and conditions for EELs), 9.23.4.4. and 9.23.4.4.1
19 (Additional Terms for EELs), 9.23.4.5 and 9.23.4.5.4 (Ordering Process for
20 EELs), and 9.23.4.6 (Rate Elements for EELs).

1 Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S
2 LANGUAGE?

3 A. Eschelon proposes the underlined changes to the EEL product offering set forth
4 below. These are the sections in which the term "Loop-Transport Combination"
5 should be eliminated:

6 9.23.4 Loop-Transport Combinations: Enhanced Extended Links
7 (EELs), Commingled EELs, and High Capacity EELs.

8 Loop-Transport Combination –For purposes of this
9 Agreement, “Loop-Transport Combination” is a Loop in
10 combination, or Commingled, with a Dedicated Transport
11 facility or service (with or without multiplexing capabilities),
12 together with any facilities, equipment, or functions necessary
13 to combine those facilities. At least as of the Effective Date of
14 this Agreement “Loop-Transport Combination” is not the
15 name of a particular Qwest product. “Loop-Transport
16 Combination” includes Enhanced Extended Links (“EELs”),
17 Commingled EELs, and High Capacity EELs. If no
18 component of the Loop-transport Combination is a UNE,
19 however, the Loop-Transport Combination is not addressed in
20 this Agreement. The UNE components of any Loop-Transport
21 Combinations are governed by this Agreement.

22

23 Commingled EEL – If CLEC obtains at UNE pricing part (but not
24 all) of a Loop-Transport Combination, the arrangement is a
25 Commingled EEL. (Regarding Commingling, see Section 24.)

26

27 High Capacity EEL – “High Capacity EEL” is a Loop-Transport
28 Combination (either EEL or Commingled EEL) when the Loop or
29 transport is of DS1 or DS3 capacity. High Capacity EELs may
30 also be referred to as “DS1 EEL” or “DS3 EEL,” depending on
31 capacity level.

32 9.23.4.4 Additional Terms for ~~EEL~~ UNE Components of Loop
33 Transport Combinations

1

2

9.23.4.4.1 EELs and Commingled EELs may consist of loops and interoffice transport of the same bandwidth (Point-to-Point).

3

4

When multiplexing is requested, EELs and Commingled EELs may consist of loops and interoffice transport of different

5

6

bandwidths (Multiplexed). CLEC may also order combinations of interoffice transport, concentration capability and DS0 loops.

7

8

9.23.4.5 Ordering Process for ~~EEL~~ **UNE Components of Loop Transport Combinations**

9

10

9.23.4.5.4 . . . Qwest may require two (2) service requests when

11

CLEC orders Multiplexed **Loop Transport Combinations** (which are not Point-to-Point) and EEL loops (as part of a multiplexed

12

13

EEL). Regarding Commingling see Section 24.

14

9.23.4.6 Rate Elements for ~~EEL~~ **UNE Components of Loop Transport Combinations**

15

16

Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-TRANSPORT UMBRELLA TERM?

17

18

19

20

A. The net result is that Eschelon is seeking to have Qwest's special access and

21

private line circuit's terms and conditions be governed by the ICA. This is

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improper because ICAs must, as a matter of law, be limited to terms and

23

conditions relating to the services and elements required by Sections 251(b) and

24

(c). Special access and private line circuits are not within Section 251 and are

25

therefore governed by tariffs, not ICAs.

26

Moreover, Eschelon's demands that commingled arrangements be put in place

27

with a single LSR and be billed in CRIS is a direct attempt by Eschelon to have

1 this Commission (via an ICA arbitration) force Qwest to change its special access
2 and private line service order process and billing arrangements. By eliminating
3 the commingling restriction, the FCC modified the rules to permit CLECs to
4 commingle UNEs and combinations of UNEs with services (e.g. switched, special
5 access and private line services offered pursuant to tariff) that a requesting carrier
6 has obtained at wholesale from an ILEC pursuant to any method other than
7 unbundling under section 251(c)(3) of the Act.

8 Wholesale services such as switched and special access services have always been
9 separate and distinct products from those UNE products provided to CLECs under
10 the terms and conditions of their ICA. Each of these products, whether it is
11 tariffed or UNE, has its own established ordering, provisioning, and billing
12 systems and methods. Eliminating the commingling restriction did not change
13 that; and no where in the TRO or TRRO does the FCC require ILECs to modify
14 the rate, terms and conditions of their special access and private lines services,
15 beyond removing any commingling with UNE restrictions. The FCC only
16 required the ILECs to perform the necessary functions to effectuate such
17 commingling upon request. Qwest has established provisioning processes and
18 methods for all commingled arrangements to meet that requirement. Qwest's
19 processes properly provide for billing of the UNE rates to the UNE circuit and the
20 appropriate special access and/or private line tariff rates to the tariffed circuit.

1 **Q. DOES QWEST COMMIT IN THE ICA THAT THE UNE CIRCUIT WILL**
2 **BE GOVERNED BY THE TERMS AND CONDITIONS IN THE ICA?**

3 A. Yes. In fact, in agreed ICA language Qwest commits as follows:

4 24.1.2.1 The UNE component(s) of any Commingled arrangement
5 is governed by the applicable terms of this Agreement. The other
6 component(s) of any Commingled arrangement is governed by the
7 terms of the alternative service arrangement pursuant to which that
8 component is offered (e.g., Qwest's applicable Tariffs, price lists,
9 catalogs, or commercial agreements). Performance measurements
10 and/or remedies under this Agreement apply only to the UNE
11 component(s) of any Commingled arrangement. Qwest is not
12 relieved from those measurements and remedies by virtue of the
13 fact that the UNE is part of a Commingled arrangement.

14 Qwest has been clear that when two circuits are commingled, each circuit retains
15 the appropriate terms and conditions. As I stated above, it is Eschelon's proposed
16 melding of EELs, Commingled EEL circuits and High Capacity EELs into a
17 single umbrella product that creates the confusion regarding this issue.

18 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S PROPOSAL AND**
19 **REJECT ESCHELON'S USE OF THE TERM 'LOOP-TRANSPORT**
20 **COMBINATIONS?'**

21 A. The FCC uses the term "loop-transport" to generally describe varieties of EELs,
22 not to establish an unbundled product separate from EELs. By contrast, Eschelon
23 uses "loop-transport" as a defined term that applies equally to high capacity and
24 commingled EELs. Although "loop-transport" is not a Qwest product, Eschelon
25 improperly proposes to assign product attributes to it. *See, e.g.*, §§ 9.23.4.4.3.1
26 (intervals); 9.23.4.5.1.1. (Billing); 9.23.4.6.6. (BANS).

1 Qwest has developed and implemented separate and distinct systems, procedures
2 and provisioning intervals for EELs, UNEs and tariffed services and is under no
3 legal requirement to implement costly modifications to provide Eschelon's
4 proposed "loop-transport" product. In addition, even if Qwest had an obligation
5 to make the multiple changes that would be needed to support this proposed
6 product, my understanding is that Eschelon has not agreed to compensate Qwest
7 for the costs of making the changes. Under Section 252(d)(1) of the Act, Qwest
8 would have a right to recover those costs through charges imposed on Eschelon.
9 Eschelon's apparent unwillingness to compensate Qwest for these costs provides
10 an additional reason for rejecting the proposal.

11 **Issues 9-56 and 9-56a – Service Eligibility Criteria Audits**

12 **Q. WHAT IS THE NATURE DISPUTE BETWEEN THE PARTIES**
13 **RELATING TO ISSUES 9-56 AND 9-56A?**

14 A. These two issues involve disputes relating to the audits Qwest is permitted to
15 conduct, as contemplated by FCC rules, to determine whether Eschelon is
16 complying with the FCC's service eligibility criteria that apply to orders for high
17 capacity EELs. The parties agree such audits are permitted. However, the dispute
18 encompassed by Issue 9-56 concerns whether Qwest should be allowed to
19 conduct audits without cause. Issue 9-56A involves the information Qwest must
20 provide to Eschelon in requesting an audit, including whether the notice of an
21 audit must set forth a cause for the audit.

1 **Q. WHAT ARE THE "SERVICE ELIGIBILITY CRITERIA" FOR HIGH-**
2 **CAPACITY EELS?**

3 A. In the *TRO*, the FCC established service eligibility criteria for high-capacity EELs
4 that are designed to ensure access to these facilities for bona fide providers of
5 "qualifying services" while also protecting against the potential for "gaming" by
6 providers. By "gaming," the FCC was referring to the practice of providers that
7 obtain access to UNE facilities even though the services they provide do not
8 qualify for use with UNEs. Through this practice, carriers attempt to obtain
9 favorable UNE rates when they are not entitled to them or otherwise engage in
10 regulatory rate arbitrage.

11 To protect against gaming, the FCC adopted the following service eligibility
12 criteria for high-capacity EELs at paragraph 597 of the *TRO*: (1) the requesting
13 carrier must have a state certification of authority to provide local voice service;
14 (2) the requesting carrier must have at least one local number assigned to each
15 circuit and must provide 911 or E911 capability to each circuit; and (3) the
16 requesting carrier must have certain "circuit-specific architectural safeguards" in
17 place to prevent gaming. The FCC describes these specific "architectural
18 safeguards" in paragraph 597.

19 **Q. WHAT RIGHTS DO ILECS HAVE TO CONDUCT AUDITS TO**
20 **DETERMINE IF CLECS ARE COMPLYING WITH THESE**
21 **ELIGIBILITY REQUIREMENTS?**

1 A. In paragraphs 625-629 of the *TRO*, the FCC describes the rights that ILECs have
2 to conduct audits of CLECs to determine whether they are complying with the
3 service eligibility criteria. As described in paragraph 626 of the *TRO*, an ILEC is
4 permitted to "obtain and pay for an independent auditor to audit, on an annual
5 basis, compliance with the qualifying service eligibility criteria." The auditor
6 must issue an opinion regarding the requesting carrier's compliance with the
7 criteria. If the auditor determines that the CLEC is not in compliance, the CLEC
8 must make true-up payments, convert non-complying circuits to the appropriate
9 service, and may have to pay the costs of the independent auditor. If the auditor
10 concludes that the CLEC is complying with the criteria, the ILEC must reimburse
11 the CLEC for the costs associated with the audit. As described by the FCC in
12 paragraph 628, the intent of this reimbursement requirement for ILECs is to
13 "eliminate the potential for abusive or unfounded audits."

14 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
15 **TO ISSUE 9-56?**

16 A. Qwest's proposed language is as follows:

17 9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance
18 with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to
19 ascertain whether those High Capacity EELs comply with the Service
20 Eligibility Criteria set forth in Section 9.23.4.1.2.

21 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
22 **LANGUAGE?**

23 A. Eschelon proposes the following underlined addition to the Qwest language:

1 9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance
2 with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to
3 ascertain whether those High Capacity EELs comply with the Service
4 Eligibility Criteria set forth in Section 9.23.4.1.2, **when Qwest has a**
5 **concern that CLEC has not met the Service Eligibility Criteria.**

6 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

7 A. As I describe above, the *TRO* gives ILECs the right to conduct audits of CLECs to
8 ensure compliance with the FCC established Service Eligibility Criteria for high-
9 capacity EELs. There is no support in the *TRO* or FCC rules for Eschelon's
10 proposal that would limit Qwest's rights to conduct an audit to only when Qwest
11 states it has "cause" to believe Eschelon has not met the Service Eligibility
12 Criteria." Eschelon's proposal impermissibly interferes with and weakens the
13 audit rights Qwest granted in the *TRO*. If the FCC had intended to limit audits to
14 situations where there is demonstrable cause, it would have said so. It did not
15 and, instead, established a compensation and reimbursement scheme that provides
16 CLECs with incentives to comply with the service eligibility criteria and ILECs
17 with incentives not to conduct wasteful audits.

18 Qwest recommends the Commission strike the Eschelon proposed addition to
19 9.23.4.3.1.1, allowing Qwest to retain the audit rights contemplated by the FCC.

20 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
21 **TO ESCHELON'S ISSUE 9-56(a)?**

1 A. Eschelon also has proposed a new section 9.23.4.3.1.1.1.1 that further undermines
2 Qwest rights to conduct proper audits. Qwest proposes that section
3 9.23.4.3.1.1.1.1. be deleted.

4 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
5 **LANGUAGE?**

6 A. Eschelon proposes the following new section in the ICA:

7 **9.23.4.3.1.1.1.1 The written notice shall include the cause upon which**
8 **Qwest has a concern that CLEC has not met the Service Eligibility**
9 **Criteria. Upon request, Qwest shall provide to CLEC a list of circuits**
10 **that Qwest has identified as of that date, if any, for which Qwest**
11 **alleges non-compliance or which otherwise supports Qwest's concern.**

12
13 **Q. PLEASE DESCRIBE FURTHER THE AUDIT RIGHTS THAT THE FCC**
14 **GRANTED ILECS IN THE *TRO* FOR DETERMINING CLEC**
15 **COMPLIANCE WITH THE SERVICE ELIGIBILITY CRITERIA.**

16 A. Again, contrary to Eschelon's assertions, the FCC did not condition ILEC audit
17 rights on a demonstration of good cause to believe that a CLEC is violating the
18 service eligibility criteria. Instead, as described in paragraph 626 of the *TRO*, an
19 ILEC is permitted to "obtain and pay for an independent auditor to audit, on an
20 annual basis, compliance with the qualifying service eligibility criteria." The
21 auditor must issue an opinion regarding the requesting carrier's compliance with
22 the criteria. If the auditor determines that the CLEC is not in compliance, the
23 CLEC must make true-up payments, convert non-complying circuits to the
24 appropriate service, and may have to pay the costs of the independent auditor. If

1 the auditor concludes that the CLEC is complying with the criteria, the ILEC must
2 reimburse the CLEC for the costs associated with the audit. Nowhere in this
3 description of ILEC audit rights does the FCC refer to or impose a "good cause"
4 requirement.

5 **Q. SINCE THE FCC DID NOT IMPOSE A "GOOD CAUSE"**
6 **REQUIREMENT FOR SERVICE ELIGIBILITY AUDITS, DOES THE**
7 **FCC TAKE STEPS TO MAKE SURE ILECS DO NOT ABUSE THE**
8 **PROCESS?**

9 A. Yes. While the FCC did not impose a "good cause" requirement, it did take steps
10 to ensure that ILECs would not abuse the audit process. Specifically, as I
11 describe above, the FCC established that if an auditor concludes that the CLEC is
12 complying with the service eligibility criteria, the ILEC must reimburse the CLEC
13 for the costs associated with the audit. This reimbursement obligation gives
14 ILECs a strong incentive not to conduct abusive audits. Indeed, the FCC stated in
15 paragraph 628 of the *TRO* that the intent of this reimbursement requirement for
16 ILECs is to "eliminate the potential for abusive or unfounded audits." In addition,
17 the *TRO* establishes that ILECs are permitted to conduct audits only "on an annual
18 basis," which further prevents ILECs from conducting abusive audits. It is
19 through this reimbursement scheme and the annual limit on audits, not through a
20 "good cause" requirement, that the FCC eliminated the potential for abusive
21 audits.

1 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST POSITION ON**
2 **ISSUE 9-56(a)?**

3 A. There is no support in FCC rules for Eschelon's proposal that would permit Qwest
4 to conduct an audit only if Qwest states and explains the "cause upon which
5 Qwest has a concern that [Eschelon] has not met the Service Eligibility Criteria."
6 In addition, Eschelon's proposal improperly would require Qwest to identify
7 specific Eschelon circuits that Qwest believes do not comply with the service
8 eligibility criteria. There is no requirement in the *TRO* or FCC rules for Qwest to
9 identify non-complying circuits as a condition to conducting an audit. Eschelon's
10 proposal impermissibly interferes with and weakens the audit rights Qwest is
11 granted in the *TRO*.

12 Qwest recommends that the Commission reject Eschelon's proposed section
13 9.23.4.3.1.1.1.1 on the grounds that is both overreaching and not consistent with
14 the audit rights granted by the FCC. Adoption of the notice requirement Eschelon
15 proposes would raise the distinct possibility of Eschelon using the form of notice
16 as a basis for objecting to proper audits that are contemplated by the *TRO*.

17 **Issues 9-58 (ALL A,B,C,D,E) Ordering, Billing, and Circuit ID for**
18 **Commingled Arrangements.**

19

20 **Q. PLEASE PROVIDE AN OVERVIEW OF THIS ISSUE.**

1 A. Issue 9-58 and the related sub-issues (a,b,c,d,e) involve process-related disputes
2 between the parties. When a CLEC orders either an EEL loop or EEL transport
3 commingled with a private line transport circuit or a channel termination circuit, it
4 is necessary to order, provision and bill each circuit out of the appropriate Qwest
5 service order systems and to follow the established processes Qwest has for these
6 products. For example, when a CLEC orders an EEL Loop commingled with a
7 private line transport circuit, the design of Qwest's systems and processes requires
8 that the CLEC order the EEL loop by submitting a local service request ("LSR").
9 Qwest bills the CLEC for this network element through its "CRIS" system. By
10 contrast, the design of Qwest's systems and processes requires that the CLEC
11 order the private line transport circuit by submitting an access service request
12 ("ASR"), and Qwest bills the CLEC for this circuit through a different billing
13 system referred to as the "IABS system." Each circuit is separate and is assigned
14 its own circuit identification number ("circuit ID"). Moreover, the EEL loop is
15 provided pursuant to terms and conditions that are specific to that facility, and the
16 private line transport circuit is provided based on specifically defined terms and
17 conditions set forth in tariffs.

18 This dispute arises because of Eschelon's demands that Qwest modify its systems
19 and processes so that commingled EELs are provisioned and processed as though
20 they are a single, unified element instead of a combination of two very distinct
21 circuits with distinct characteristics and provisioning requirements. Eschelon's
22 proposals in this regard would require very substantial changes to Qwest's

1 systems and processes at a very substantial cost. In addition to the fact that Qwest
2 has no obligation to make such changes, Eschelon apparently is not proposing to
3 compensate Qwest for the substantial costs they would impose.

4 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE**
5 **ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE**
6 **CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-**
7 **TRANSPORT UMBRELLA TERM?**

8 A. Qwest is concerned that Eschelon is seeking to have Qwest's special access and
9 private line circuit's terms and conditions be governed by the ICA. This is
10 improper because these are tariffed services that Qwest does not provide pursuant
11 to Section 251 of the Act, and, therefore, ICA terms and conditions do not apply
12 to them. Moreover, the combination of Eschelon's demands that commingled
13 arrangements be put in place with a single LSR and be billed in CRIS is a direct
14 attempt to have this Commission (via an ICA arbitration) force Qwest to change
15 its special access and private line service order process and billing arrangements.

16 By eliminating the prior restriction on commingling in the *TRRO*, the FCC
17 modified its rules to permit CLECs to commingle UNEs and combinations of
18 UNEs with services (e.g. switched, special access and private line services offered
19 pursuant to tariff) that a requesting carrier has obtained at wholesale from an
20 ILEC pursuant to any method other than unbundling under section 251(c)(3) of
21 the Act. Wholesale services such as switched and special access services have

1 always been separate and distinct products from those UNE products provided to
2 CLECs under the terms and conditions of their ICAs. Each of these products,
3 whether the product is tariffed or a UNE, has its own established ordering,
4 provisioning, and billing systems and methods. Eliminating the commingling
5 restriction did not change this. Nowhere in the *TRO* or *TRRO* does the FCC
6 require ILECs to modify the rate, terms and conditions of their special access and
7 private lines services, beyond removing any commingling with UNE restrictions.
8 The FCC only required the ILECs to perform the necessary functions to effectuate
9 such commingling upon request. Qwest has established provisioning processes
10 and methods for all commingled arrangements to meet that requirement. Qwest's
11 processes and methods provide for billing of the UNE rates to the UNE circuit
12 and the appropriate special access and/or private line tariff rates to the tariffed
13 circuit.

14 **Q. DO OTHER TYPES OF TRANSPORT-LOOP COMBINATIONS ALSO**
15 **REQUIRE MULTIPLE ORDERS AND CIRCUIT IDS?**

16 A. Yes. Numerous UNE, access and private line network arrangements require
17 CLECs to place more than one order and to use more than one circuit ID. Even
18 Eschelon acknowledges with their language at Section 9.23.4.5.4 that multiplexed
19 facilities require at least two service orders and multiple circuits IDs. The typical
20 arrangement of 28 DS1s multiplexed on to a DS3 facility that may have up to 29
21 different circuit IDs. This is true in the UNE EEL, special access and private line

1 arena. Eschelon has not suggested that Qwest commingle two separate facilities
2 of different bandwidth/capacity into one order, one bill, and one circuit ID.

3 **Q. DOES THIS MEAN THAT NOT ONLY ARE THE TWO SERVICE**
4 **ORDERS AND TWO CIRCUIT IDS UNDER DISPUTE AS A SUB-**
5 **SECTION OF EELS, BUT ALSO AS A SUB-SECTION OF SAME**
6 **BANDWIDTH EELS?**

7 A. Yes. When available, a CLEC will select the all UNE EEL option, so Eschelon's
8 dramatic statements about potentially exiting the Washington marketplace
9 because of having to manage one additional circuit ID and one additional service
10 order per EEL revolve around a very narrow application -- that of a single
11 bandwidth Commingled EEL when the all UNE loop and transport EEL is not
12 available.

13 **Q. WHEN WOULD YOU TYPICALLY SEE A SINGLE BANDWIDTH**
14 **COMMINGLED EEL UTILIZED BY A CLEC?**

15 A. Generally, a CLEC's first choice will be to use UNE transport and UNE loops
16 (when available) to make a UNE EEL. In the event one or the other is not
17 available, then a CLEC will use a special access or private line circuit with a UNE
18 circuit in a commingled arrangement, i.e., a Commingled EEL. Qwest believes
19 that a typical need for a same bandwidth Commingled EEL is when the transport
20 is between non-impaired wire centers, but a UNE loop is still available.

21 **Q. WHAT IS THE SPECIFIC DISPUTE ENCOMPASSED BY ISSUE 9-58?**

1 A. Issue 9-58 involves Eschelon's attempt to require Qwest to overhaul its systems
2 and processes to make them capable of handling a single service order request –
3 instead of an LSR and a separate ASR -- when Eschelon orders its so-called
4 “Loop-Transport Combination” product (which, as defined by Eschelon, could be
5 a commingled arrangement). *See* Echelon’s proposed language for sections
6 9.23.4.5.1, 9.23.4.5.1.1 and 9.23.4.5.4.

7 The Commission should reject Eschelon’s attempt to force Qwest to modify its
8 systems and processes to accommodate Eschelon's proposed and improper “Loop-
9 Transport Combination” product. Under Eschelon's proposal, Qwest would be
10 required to (1) create an entirely new and unique hybrid service, (2) combine a
11 tariffed service and a UNE into one circuit, (3) permit Eschelon to submit one
12 order for this hybrid service, and (4) issue just one bill, not two, even though the
13 product would be comprised of separate elements. The requirement of separate
14 orders, bills, and circuit IDs is not a new concept. Indeed, this requirement
15 applies whenever a CLEC orders separate, distinct services are requests that they
16 be connected to one another. Qwest’s existing ordering, provisioning, and billing
17 processes already provide the ability to commingle tariffed and UNE services.

18 The Commission should allow this section to remain as proposed by Qwest and
19 consistent with the current Qwest method and procedures for processing not only
20 EEL services commingled with tariffed services, but all commingling requests.
21 Qwest’s commingling processes are no different from those that other ILECs use.

1 Q. COULD YOU PLEASE PROVIDE ADDITIONAL DETAIL ABOUT WHY
2 YOU BELIEVE THE QWEST PROCESS FOR COMMINGLED
3 ARRANGEMENTS IS CONSISTENT WITH AT LEAST ONE OTHER
4 ILEC?

5 A. Yes. Exhibit KAS-2, attached to my testimony, contains a copy of SBC's
6 Commingling policy and general ordering information for commingled
7 arrangements. SBC clearly requires that each circuit in the commingled
8 arrangement be ordered separately.

9 Q. ARE OTHER CLECS USING QWEST'S EXISTING SYSTEMS AND
10 PROCESSES TO ORDER COMMINGLED EELS?

11 A. Yes. Qwest is successfully provisioning other CLEC's requests for commingled
12 EELs based on the process outlined by Qwest in its proposed Section 9.23.4.5.

13 Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S
14 LANGUAGE?

15 A. Eschelon proposes the following deletions and underlined additions:

16 9.23.4.5.1 CLEC will submit orders for ~~EELs~~ Loop Transport
17 Combinations using the LSR process. Submission of LSRs is described
18 in Section 12.

19 9.23.4.5.1.1 If any component of the Loop-Transport
20 Combination is not a UNE (i.e., not a component to which UNE
21 pricing applies), CLEC will indicate on the LSR that the
22 component is not a UNE (e.g., CLEC is ordering the
23 component as an alternate service such as special access).
24 CLEC will indicate this information in the Remarks section of
25 the LSR, unless the Parties agree otherwise.

1 9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point
2 EELs and Point-to-Point Commingled EELs. . . .

3
4 **Q. WHAT IS YOUR RESPONSE TO ESCHELON’S PROPOSAL THAT THE**
5 **COMMINGLED EEL BE IMPLEMENTED ON A SINGLE LSR?**

6 A. The Eschelon idea of using the remarks section of the LSR to convey that a UNE
7 circuit commingled with a private line circuit is not reasonable or feasible with
8 the current Qwest provisioning systems. The remarks section can be utilized to
9 convey information at the time of ordering or repair. However, once the initial
10 activity has been completed, Qwest's systems do not retain, much less read, the
11 remarks section of the original LSR. This is even more critical as I discuss later
12 in this section the related Eschelon request for a single circuit ID.

13 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SYSTEM THAT CANNOT**
14 **READ THE REMARKS SECTION?**

15 A. Yes. UNEs are subject to specific performance indicator measurements (PIDs)
16 and potential payments. Special access and private line arrangements are not
17 subject to the same performance indicator measurements and potential payments.
18 If Qwest were required to create a hybrid product (such as would result if all of
19 Eschelon’s proposals in 9-58 A,B,C,D,E were adopted by the Commission) that
20 was a mix of both the UNE circuit and private line facilities, it would be
21 inappropriate to subject Qwest to UNE specific performance indicator
22 measurements (PIDs) and potential payments on this hybrid product.

1 If a single LSR and single circuit ID (as Eschelon proposes in 58 A) were utilized,
2 how would the Qwest systems magically know what part of the hybrid circuit had
3 an installation and/or repair issue to know if specific performance indicator
4 measurements and potential payments would apply? In addition, our systems
5 used to track these measurements do not read and filter results by the remarks
6 section of the LSR. While Qwest believes the complete Eschelon proposal in
7 Issue 9-58 A,B,C,D,E should be rejected, at a minimum, the Commission would
8 need to exclude such hybrid products from the Washington UNE specific
9 performance indicator measurements.

10 **Q. DOES QWEST COMMIT IN THE ICA THAT THE UNE CIRCUIT**
11 **COMMINGLED WITH A PRIVATE LINE CIRCUIT (COMMINGLED**
12 **EEL) WILL BE PROPERLY MEASURED BY PIDS, AND IF**
13 **APPROPRIATE, THAT PAP PAYMENTS WILL BE MADE IF THERE IS**
14 **A PERFORMANCE ISSUE WITH UNE?**

15 A. Yes. Qwest has made that commitment in the ICA at 24.1.2.1:

16 24.1.2.1 The UNE component(s) of any Commingled arrangement
17 is governed by the applicable terms of this Agreement. The other
18 component(s) of any Commingled arrangement is governed by the
19 terms of the alternative service arrangement pursuant to which that
20 component is offered (e.g., Qwest's applicable Tariffs, price lists,
21 catalogs, or commercial agreements). Performance measurements
22 and/or remedies under this Agreement apply only to the UNE
23 component(s) of any Commingled arrangement. Qwest is not
24 relieved from those measurements and remedies by virtue of the
25 fact that the UNE is part of a Commingled arrangement.

1 The Qwest process for Commingled EELs allows for application of the correct
2 performance measurements for UNE circuits.

3 **Q. HAS ESCHELON OFFERED TO REIMBURSE QWEST FOR ANY**
4 **ADDITIONAL COSTS THAT ITS PROPOSAL WOULD CAUSE QWEST**
5 **TO INCUR?**

6 A. No. I am not aware that Eschelon has made any offer to reimburse Qwest for the
7 unique service ordering process costs its single LSR demand would create.

8 **Q. DOES QWEST BELIEVE THIS ARBITRATION IS THE CORRECT**
9 **FORUM FOR DISCUSSING DETAILED OPERATIONAL SUPPORT**
10 **SYSTEMS (OSS) RELATED CHANGES SUCH AS ESCHELON'S**
11 **SINGLE LSR REQUEST?**

12 A. No. Qwest has developed and implemented OSS related procedures and intervals
13 for UNE EELs, and UNEs commingled with special access circuits and is under
14 no legal requirement to modify these systems to support Eschelon's proposed
15 "Loop-Transport Combination" single umbrella OSS process concept. Such
16 modifications as Eschelon proposes in Issue 9-58 would require Qwest to incur
17 significant OSS related costs that it is entitled to recover under the Act.

18 Further, the Change Management Process ("CMP") was approved as part of
19 Section 271 proceedings by both this Commission and the FCC for the purpose of
20 providing a vehicle to address the types of changes in OSS related processes and
21 systems changes that impact UNEs. From a CLEC's perspective, the purpose of

1 CMP is to provide CLECs with a meaningful opportunity to modify OSS related
2 systems, processes and procedures. CMP also allows CLECs collectively to
3 prioritize what changes should be made to OSS related systems. This stands in
4 contrast to Eschelon's attempt here to circumvent the CMP process and have this
5 arbitration redefine OSS related service order changes without the prioritization
6 input from other CLECs. In summary, even if the changes to the LSR ordering
7 process that Eschelon is proposing were appropriate – which they are not – the
8 CMP is the proper forum for raising any concerns with UNEs. For more detail
9 regarding CMP, please see the testimony of Qwest witness Renee Albersheim.

10 **Q. HAS A CMP REVIEW ALREADY BEEN CONDUCTED FOR**
11 **COMMINGLED EELS?**

12 A. No. Commingling is a requirement that resulted from the *TRO* and *TRRO*
13 proceedings that required ILECs to provide commingled arrangements between
14 UNEs and special access and private lines. Therefore, CMP is the appropriate
15 forum for potential *TRRO* generated systems changes; however, because CLECs,
16 including Eschelon, agreed that *TRRO* legal issues were not settled, the change
17 request intended to complete *TRRO* related work has been deferred pending
18 completion of the *TRRO* wire center dockets in Qwest's states. It is likely that a
19 change request on this topic would have to be deferred for the same reason. For
20 more detail regarding CMP and *TRRO* related changes, please see the testimony
21 of Qwest witness Renee Albersheim.

1 **Issue 9-58(a)**

2
3 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE?**

4 A. As I described earlier, the FCC uses the term "loop-transport" to describe varieties
5 of EELs, not to establish an unbundled product separate from EELs. By contrast,
6 Eschelon uses "loop-transport" as a defined term that applies equally to high
7 capacity and commingled EELs. Qwest has developed and implemented systems,
8 procedures and intervals for EELs, UNEs and tariffed services and is under no
9 legal requirement to modify these systems to provide Eschelon's proposed "Loop-
10 Transport" product. Such modifications would require Qwest to incur significant
11 costs that it is entitled to recover under the Act. Further, the CMP was approved
12 as part of Section 271 proceedings by both this Commission and the FCC for the
13 purpose of providing a vehicle to address the types of changes in processes and
14 systems that Eschelon is proposing. From a CLEC's perspective, the purpose of
15 CMP is to provide CLECs with a meaningful opportunity to modify systems,
16 processes and procedures. Even if the changes that Eschelon is proposing were
17 appropriate – which they are not – the CMP is the proper forum for raising them.
18 For more detail regarding CMP, please see the testimony of Qwest witness Renee
19 Albersheim.

20 Moreover, UNEs are subject to specific performance indicator measurements and
21 potential payments that would be inappropriate to subject Qwest to when the

1 “Loop-Transport combination” contains a private line circuit not subject to these
2 requirements.

3 **Q. WHAT IS THE SPECIFIC DISPUTE IN ISSUE 9-58(a) AND QWEST’S**
4 **PROPOSED CONTRACT LANGUAGE?**

5 A. Issue 9-58(a) involves Eschelon's attempt to require Qwest to change its processes
6 by assigning a single circuit ID to Eschelon's proposed “Loop-Transport
7 Combination” product and to commingled EELs.

8 **Q. IS IT NECESSARY FOR QWEST TO HAVE SEPARATE CIRCUIT IDS**
9 **FOR THE DIFFERENT COMPONENTS THAT COMPRISE A**
10 **COMMINGLED EEL?**

11 A. Yes. Eschelon's demand that Qwest use a single circuit ID for commingled EELs
12 instead of separate identification numbers for the UNE and non-UNE circuits is
13 improper for several reasons. First, circuit IDs often include product-specific
14 information that Qwest relies upon for proper processing, monitoring of
15 performance indicator measurements and billing of products. Using a circuit ID
16 assigned to a UNE for a tariffed service may result in mis-identification of the
17 service and lead to billing and other errors. Second, there is no legal requirement
18 for Qwest to change its systems for this purpose; indeed, Qwest uses separate
19 circuit ID numbers for other CLECs, so adoption of that approach for Eschelon
20 will not result in unequal treatment. Third, it would be very costly for Qwest to
21 modify its operation systems to meet Eschelon's demand for use of the same

1 circuit ID number after a conversion. As far as I am aware, Eschelon is not
2 proposing to compensate Qwest for the costs to implement this very substantial
3 change.

4 **Q. WHY IS CMP, NOT THIS ARBITRATION, THE CORRECT FORUM**
5 **FOR ESCHELON TO SEEK THE USE OF A SINGLE CIRCUIT ID FOR**
6 **COMMINGLED ARRANGEMENTS?**

7 A. Eschelon's demand for a single circuit ID involves processes that affect all
8 CLECs, not just Eschelon. This demand should therefore be addressed through
9 the CMP, not through an arbitration involving a single CLEC.

10 **Q. YOU MENTIONED THE CIRCUIT ID CONTAINS INFORMATION**
11 **ABOUT THE SPECIFIC CIRCUIT. COULD YOU PLEASE PROVIDE**
12 **EXAMPLES OF THE TYPE OF INFORMATION?**

13 A. Yes. By way of illustration, set forth below is the Circuit ID of an unbundled DS-
14 1 loop and a Private Line DS-1 channel termination (the closest equivalent to a
15 DS1 unbundled loop) Service, along with an indicator of what each character
16 means:

17 DS-1 Private Line Service: 15/HCGS/147426/NW

18 DS-1 Unbundled Loop: 3/HCFU/105228/NW

19 The first two characters or in this case numbers (15 and 3) are the prefix
20 and they indicate the LATA and the type of circuit. For this instance:

1 15 denotes Private Line in LATA 628 in MN

2 3 denotes Unbundled DS-1 Loop in LATA 628 in MN

3 The Next four characters are the service code and service modifiers and in
4 this case:

5 HCGS denotes the DS-1 Service Technical Characteristics (HC)
6 and it is a interstate service (GS)

7 HCFU denotes the DS-1 Service Technical characteristics (HC)
8 and it is intrastate service (FU)

9 The next set of numerical numbers are the serial number of the circuit. It is
10 necessary to issue a new Serial Number to ensure that no duplication
11 occurs. This serial number is generated automatically.

12 The last two Characters represent the region where the circuit exists and in
13 this case it is North West.

14 When a circuit ID does not actually reflect the service being provided, it can
15 cause provisioning, billing and documentation of service quality concerns. To
16 have a single circuit ID for commingled EELs would require Qwest to develop
17 and implement a new circuit identification for what is essentially a hybrid product
18 within Qwest's pre-order, order, provisioning, circuit inventory and tracking
19 systems, repair and associated billing systems. Major changes also would be
20 required for all of Qwest's associated technical publications that support these
21 systems. This would be an extremely time-consuming and expensive

1 undertaking. Further, given the service performance measurements issues
2 discussed above, it may not be possible to identify and apply appropriate PID and
3 PAP measurements to the product.

4 **Q. IS THERE ANY MERIT TO ESCHELON'S CLAIM THAT THE USE OF**
5 **SEPARATE CIRCUIT IDS FOR COMMINGLED ARRANGEMENTS**
6 **WILL LEAD TO DIFFICULTIES IN COMPLETING REPAIRS FOR**
7 **ESCHELON'S CUSTOMERS?**

8 A. No. Qwest provides CLECs with the circuit IDs for commingled EELs, which
9 should eliminate any repair-related concerns. If Eschelon properly updates its
10 own records to reflect the circuit IDs that apply to these arrangements, the use of
11 two circuit IDs should not result in any difficulties in completing repairs.

12 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
13 **LANGUAGE?**

14 A. Eschelon proposes the following underlined additions to this section:

15 9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point
16 EELs. **and Point-to-Point Commingled EELs. For such Point-to-Point**
17 **Loop-Transport Combinations, Qwest will assign a single circuit**
18 **identification (ID) number for such combination.** Qwest may require
19 two (2) service requests when CLEC orders Multiplexed **Loop-Transport**
20 **Combinations** (which are not Point-to-Point) and EEL loops (as part of a
21 multiplexed EEL). Regarding Commingling see Section 24.

22

23 **Q. HAS ESCHELON PROPOSED ANY ALTERNATIVE LANGUAGE FOR**
24 **THIS SECTION?**

1 A. Yes. For Eschelon's alternative proposal (if single circuit ID is rejected), please
2 see Issue 9-58 (c) below, specifically subpart Section 9.23.4.7.

3 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-58(A)?**

4 A. For the reasons I describe above, the Commission should adopt Qwest's proposed
5 language for Section 9.23.4.5.4 and reject Eschelon's language that would require
6 the use of a single circuit ID for commingled EELs and so-called "Loop-
7 Transport Combinations."

8 **Issue 9-58(b)**

9
10 **Q. PLEASE DESCRIBE THE DISPUTE RELATING TO ISSUE 9-58(B).**

11 A. This issue arises because of Eschelon's demand that for each so-called "Loop-
12 Transport Combination," Qwest should use a single billing account number
13 ("BAN") – or issue a single bill – for the different elements that comprise the
14 combination. Eschelon presents this demand in its proposed language for Section
15 9.23.4.6.6. Because Qwest opposes this improper demand, it recommends the
16 Eschelon's proposed Section 9.23.4.6.6 should be excluded from the ICA.

17 **Q. WHY IS ESCHELON'S DEMAND FOR USE OF A SINGLE BILLING**
18 **ACCOUNT NUMBER IMPROPER?**

19 A. Eschelon's demand that Qwest use a single BAN for the elements comprising a
20 commingled EEL or for Eschelon's proposed "Loop-Transport Combination" fails
21 to recognize that BANs contain essential product-specific information that affects

1 the proper billing for products. This information affects, for example, whether a
2 product is billed at a UNE-based rate or at a tariffed rate. Without separate BANs
3 for the distinct products that comprise commingled arrangements, billing errors
4 would be inevitable.

5 **Q. WOULD IT BE COSTLY FOR QWEST TO MODIFY ITS SYSTEMS AND**
6 **PROCESSES TO PERMIT THE USE OF A SINGLE BILLING ACCOUNT**
7 **NUMBERS FOR A COMMINGLED ARRANGEMENT?**

8 A. Yes. Eschelon's demand for a single BAN would impose very substantial costs
9 on Qwest because of the systems changes that would be required. Qwest has no
10 legal obligation to make those changes, and, moreover, Eschelon apparently is not
11 offering to compensate Qwest for the costs of performing them. Qwest has
12 developed and implemented systems, procedures and intervals for EELs, UNEs
13 and tariffed services and is under no legal requirement to modify these systems to
14 provide Eschelon's proposed "Loop-Transport Combination" product.

15 **Issue 9-58(c)**

16
17 **Q. HAS ESCHELON PROPOSED ANY ALTERNATIVE LANGUAGE FOR**
18 **ITS PROPOSED SECTION 9.23.4.6.6 RELATING TO A SINGLE**
19 **BILLING ACCOUNT NUMBER?**

20 A. Yes. Issue 9-58 (c) involves Eschelon's alternative proposal for Section
21 9.23.4.6.6, which Eschelon apparently advocates if the Commission rejects its

1 improper request for single BANs with commingled arrangements. Eschelon's
2 alternative proposal is as follows:

3 **9.23.4.6.6 For each Point-to-Point Commingled EEL (see Section**
4 **9.23.4.5.4), so long as Qwest does not provide all chargeable rate**
5 **elements for such EEL on the same Billing Account Number (BAN),**
6 **Qwest will identify and relate the components of the Commingled**
7 **EEL on the bills and the Customer Service Records. Unless the**
8 **Parties agree in writing upon a different method(s), Qwest will relate**
9 **the components of the Commingled EEL by taking at least the**
10 **following steps:**

11 **9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each**
12 **month, the circuit identification (“circuit ID”) for the non-**
13 **UNE component of the Commingled EEL in the sub-account**
14 **for the related UNE component of that Commingled EEL;**

15 **9.23.4.6.6.2 Qwest will assign a separate account type to**
16 **Commingled EELs so that Commingled EELs appear on an**
17 **account separate from other services (such as special**
18 **access/private line);**

19 **9.23.4.6.6.3 Each month, Qwest will provide the summary BAN**
20 **and sub-account number for the UNE component of the**
21 **Commingled EEL in a field (e.g., the Reference Billing Account**
22 **Number, or RBAN, field) of the bill for the non-UNE**
23 **component; and**

24 **9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on**
25 **all associated Customer Service Records the circuit ID for the**
26 **UNE component; the RBAN for the non-UNE component; and**
27 **the circuit ID for the non-UNE component.**

28 **Q. IS ESCHELON'S ALTERNATIVE OR BACK-UP VERSION OF SECTION**
29 **9.23.4.6.6 APPROPRIATE?**

30 **A.** No. Eschelon's back-up version of Section 9.23.4.6.6 suffers from most of the
31 same flaws that characterize its original version. Most significantly, this version,
32 like the original version, would require major changes to Qwest's systems and

1 processes. Under Eschelon's back-up version of Section 9.23.4.6.6, Qwest would
2 be required, at a minimum to: (1) modify its systems and processes to include on
3 bills for the UNE component of commingled EELs the circuit ID of the non-UNE
4 component; (2) create an entirely separate account type within its billing systems
5 for commingled EELs; (3) modify its systems and processes to include on bills for
6 the non-UNE component of commingled EELs "the summary BAN and sub-
7 account number for the UNE component;" and (4) modify its systems and
8 processes to include on all customer service records for commingled EELs "the
9 circuit ID for the UNE component; the RBAN for the non-UNE component; and
10 the circuit ID for the non-UNE component."

11 These major changes to Qwest's billing systems and processes, which Qwest
12 would be implementing solely in response to Eschelon's request, would impose
13 upon Qwest very substantial costs. Qwest has no legal obligation to modify its
14 systems and processes in this way, and, moreover, Eschelon has no legitimate
15 business justification for these far-reaching modifications.

16 **Q. DO OTHER CLECS OBTAIN COMMINGLED EELS FROM QWEST**
17 **WITHOUT THE SPECIFICALLY TAILORED BILLING FORMAT THAT**
18 **ESCHELON IS REQUESTING?**

19 A. Yes. Other CLECs successfully obtain and are billed for commingled EELs
20 without receiving the tailored billing information Eschelon is requesting. Qwest's
21 successful experiences with other CLECs that have obtained commingled EELs

1 confirms that there is no legitimate business justification for the major changes
2 Eschelon is proposing.

3 **Q. HAS ESCHELON AGREED TO COMPENSATE QWEST FOR THE**
4 **COSTS IT WOULD INCUR TO IMPLEMENT THE SYSTEMS AND**
5 **PROCESS CHANGES ESCHELON IS PROPOSING?**

6 A. To my knowledge, Eschelon is requesting that Qwest implement these major
7 changes on its behalf without agreeing or offering to compensate Qwest for them.
8 While Qwest has no legal obligation to make these changes, Eschelon's refusal to
9 compensate Qwest for the changes is an additional major flaw in both its initial
10 and alternative proposals. As I have described earlier, the Act gives Qwest a
11 basic right to recover the costs it incurs to provide interconnection and access to
12 UNEs; Eschelon's apparent refusal to compensate Qwest for the improper systems
13 and process changes it is demanding violates Qwest's right of cost recovery.

14 **Q. WHAT DOES QWEST RECOMMEND WITH RESPECT TO BOTH**
15 **ISSUE 9-58(B) AND (C)?**

16 A. For the reasons I describe above, the Commission should reject both of Eschelon's
17 BAN proposals and not include in the ICA any of the language Eschelon proposes
18 for Section 9.23.4.6.6 and its sub-parts.

19 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE 9-58(D).**

20 A. Issue 9-58 (d) relates directly to Eschelon's demands described above involving
21 single LSRs, single circuit IDs, and single BANs for commingled EELs. In its

1 proposed Sections 9.1.1.1.1 and 9.1.1.1.2, Eschelon sets forth these same
2 proposals for what it refers to as "Other Arrangements." By "other
3 arrangements," Eschelon is apparently referring to commingled arrangements
4 other than commingled EELs. More specifically, Eschelon is apparently
5 proposing the use of single LSRs, single circuit IDs, and single BANs for the non-
6 existent so-called "Loop-Transport Combination" product it is attempting to
7 impose on Qwest.

8 **Q. WHAT IS ESCHELON SPECIFICALLY PROPOSING FOR THESE**
9 **"OTHER ARRANGEMENTS," INCLUDING "LOOP-TRANSPORT**
10 **COMBINATIONS?"**

11 A. Even though the "Loop-Transport Combination" product does not exist, Eschelon
12 is nevertheless proposing the following specific requirements for this non-existent
13 product and, potentially, for undefined "other arrangements":

14 **9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any**
15 **other Commingled arrangement, the following terms apply, in**
16 **addition to the general terms described in Section 24:**

17 **9.1.1.1.1.2 When a UNE or UNE Combination is connected or**
18 **attached with a non-UNE wholesale service, unless it is not**
19 **Technically Feasible or the Parties agree otherwise, CLEC**
20 **may order the arrangement on a single service request; if a**
21 **circuit ID is required, there will be a single circuit ID; and all**
22 **chargeable rate elements for the Commingled service will**
23 **appear on the same BAN. If ordering on a single service**
24 **request, using a single identifier, and including all chargeable**
25 **rate elements on the same BAN is not Technically Feasible,**
26 **Qwest will identify and relate the elements of the arrangement**
27 **on the bill and include in the Customer Service Record for**

1 **each component a cross reference to the other component, with**
2 **its billing number, unless the Parties agree otherwise.**

3 **Q. IS ESCHELON'S PROPOSAL APPROPRIATE?**

4 A. No. As I described earlier, FCC uses the term "loop-transport" to describe
5 varieties of EELs, not to establish an unbundled product separate from EELs.
6 Accordingly, there is no legal basis for Eschelon's attempt to impose upon Qwest
7 the duty to create other commingled products that would be encompassed by
8 Eschelon's use of the terms "Loop-Transport Combinations" or "Other
9 Arrangements." For this reason alone, it is improper for Eschelon to be proposing
10 terms and conditions for these non-existent products. In addition, even if these
11 products existed or if Qwest had a legal obligation to provide them, for the
12 reasons I describe above, Eschelon's demand for a single LSR, single circuits ID,
13 and single BAN for commingled arrangements comprised of both UNE and non-
14 UNE circuits is improper.

15 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-58(D)?**

16 A. The Commission should reject Eschelon's billing proposals for non-existent
17 products and exclude Eschelon's proposed Sections 9.1.1.11 and 9.1.1.1.2 from
18 the ICA.

19 **Issue 9-58(e)**

20

21 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE 9-58(E).**

1 A. This dispute is a continuation of Eschelon's attempt to eliminate the basic
2 differences between the UNE and non-UNE components of commingled EELs
3 and to impose upon Qwest ordering, billing, and provisioning processes that
4 ignore those differences. The dispute also is a continuation of Eschelon's demand
5 for Qwest to make major, costly changes to its systems and processes without
6 compensation. In this particular case, Eschelon is seeking to eliminate the
7 separate and distinct provisioning intervals that apply to the UNE and non-UNE
8 components of commingled EELs. "Provisioning intervals" refer to the period of
9 time between Qwest's receipt of an order from a CLEC and Qwest's installation or
10 provisioning of the service or facility the CLEC ordered. Instead of maintaining
11 the separate intervals for these distinct components, Eschelon would have the
12 Commission impose one interval that would be the longer of the two intervals for
13 either component. Eschelon's specific proposal is as follows:

14 **9.23.4.4.3.1 When any component of the Loop-Transport**
15 **Combination is not a UNE, the service interval for the combination**
16 **will be the longer interval of the two facilities being Commingled. See**
17 **Section 24.1.2.1.**

18 **24.3.2 See Section 9.23.4.4.3.1 regarding intervals for Commingled**
19 **EELs.**

20 **9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any**
21 **other Commingled arrangement, the following terms apply, in**
22 **addition to the general terms described in Section 24:**

23 **9.1.1.1.1.1 When a UNE and another service are Commingled,**
24 **the service interval for the Commingled arrangement will be**
25 **the longer interval of the two facilities being Commingled.**

26 Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 9-58(E)?

1 A. Qwest's proposal preserves the necessary distinctions between the UNE and non-
2 UNE components of commingled EELs and properly recognizes that different and
3 separate provisioning intervals are required for each component. Qwest's
4 proposal is as follows:

5 24.3.2 The service interval for Commingled EELs will be as follows. For
6 the UNE component of the EEL see Exhibit C. For the tariffed component
7 of the EEL see the applicable Tariff.

8 **Q. DOES QWEST HAVE A LEGITIMATE NEED TO USE DIFFERENT AND**
9 **SEPARATE PROVISIONING INTERVALS FOR THE UNE AND NON-**
10 **UNE COMPONENTS OF COMMINGLED EELS?**

11 A. Yes. For engineering and legal reasons, it is essential for Qwest to use and
12 preserve the different provisioning intervals that apply to the UNE and non-UNE
13 components of commingled EELs. First, from an engineering perspective, Qwest
14 must install the tariffed circuit and the UNE circuit separately from each other. In
15 addition, the service orders for each circuit must be complete before Qwest can
16 install either circuit. For these reasons, it is essential from an installation and
17 engineering perspective to have separate provisioning intervals for the UNE and
18 non-UNE circuits and to preserve Qwest's potential need to add these intervals
19 together to determine the total time required for installation of commingled EELs.

20 From a legal perspective, the terms and conditions for the non-UNE components
21 of commingled EELs are typically set forth in interstate and intrastate tariffs that
22 include provisioning intervals. As the Commission is well aware, tariffs are

1 binding and Qwest does not have discretion to deviate from them. Because
2 Eschelon's proposal for the use of single provisioning intervals for commingled
3 EELs could force Qwest to deviate from tariffed provisions, the proposal is
4 legally improper.

5 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

6 A. Qwest's language for Section 24.3.2 properly recognizes and maintains the
7 necessary distinctions between the provisioning intervals for the UNE and the
8 non-UNE components of commingled EELs. Accordingly, the Commission
9 should adopt Qwest's proposal and reject each of Eschelon's proposals described
10 above that would impose single provisioning intervals.

11 **Issue 9-59 - Eschelon Alternate Commingled EEL Repair Language.**

12 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE ENCOMPASSED**
13 **BY ISSUE 9-59.**

14 A. This dispute also involves commingled EELs. If the Commission rejects
15 Eschelon's demand relating to a single circuit ID for commingled EELs, as it
16 should, Eschelon is proposing alternative language in connection with Issue 9-59
17 that would require Qwest to make significant modifications to the systems and
18 processes it uses for carrying out repairs associated with the individual circuits
19 that are included in commingled EELs. Eschelon's specific proposal is as follows:

1 9.23.4.7 Maintenance and Repair for UNE Component of Commingled

2 EELs:

3 **9.23.4.7.1 When CLEC reports a trouble through any of the**
4 **means described in Section 12.4.2.2, so long as Qwest provides**
5 **more than one circuit ID per Commingled EEL, CLEC may**
6 **provide all circuit IDs associated with the Commingled EEL in**
7 **a single trouble report (i.e., Qwest shall not require CLEC to**
8 **submit separate and/or consecutive trouble reports for the**
9 **different circuit IDs associated with the single Commingled**
10 **EEL). If CLEC is using CEMR to submit the trouble report,**
11 **for example, CLEC may report one circuit ID and include the**
12 **other circuit ID in the remarks section (unless the Parties agree**
13 **to a different method). Qwest will communicate a single**
14 **trouble report tracking number (i.e., the “ticket” number)**
15 **(described in Section 12.1.3.3.1.1) for the Commingled EEL**
16 **to CLEC at the time the trouble is reported.**

17 **9.23.4.7.1.1 If any circuit ID is missing from any**
18 **Customer Service Record associated with the**
19 **Commingled EEL, Qwest will provide the circuit ID**
20 **information to CLEC at the time CLEC submits the**
21 **trouble report.**

22 **9.23.4.7.1.2 Qwest may charge a single Maintenance of**
23 **Service or Trouble Isolation Charge (sometimes**
24 **referred to as “No Trouble Found” charge) only if**
25 **Qwest dispatches and no trouble is found on both**
26 **circuits associated with the Commingled EEL. If CLEC**
27 **may charge Qwest pursuant to Section 12.4.1.8, CLEC**
28 **may also charge only a single charge for both circuits**
29 **associated with the Commingled EEL.**

30 **Q. WHAT IS ESCHELON SEEKING THROUGH THIS PROPOSAL?**

31 A. Eschelon is seeking that in the event of a “trouble” associated with a commingled
32 EEL arrangement, it be permitted to submit just a single trouble report instead of
33 a report for each circuit that comprises the commingled EEL.

34 **Q. WHAT IS QWEST'S PROPOSAL RELATING TO THIS ISSUE?**

1 A. Qwest strongly opposes including Eschelon's proposed language as identified
2 above in the ICA. There are very legitimate and necessary reasons why a CLEC
3 may be required to submit two trouble reports for commingled EELs. In fact,
4 Qwest repair processes for commingled arrangements are consistent with the
5 repair practices of SBC as noted in my Exhibit KAS-2.

6 However, Qwest has decided to agree to make changes to its repair process for
7 commingled EELs to address the concerns of Eschelon and to make a good faith
8 effort at closing Issue 9-59.

9 **Q. WHAT IS QWEST'S PROPOSED MODIFICATION TO THE REPAIR**
10 **PROCESS FOR COMMINGLED EELS?**

11 A. Qwest agrees to modify its process as follows for repairs on a Commingled EEL
12 arrangement when Qwest is providing all of the network elements. However,
13 given the complexities and various repair problems that can occur, it may be
14 necessary that a second repair ticket be opened. Thus, Qwest cannot agree that
15 there will never be a second repair ticket. This is not unique to commingled
16 arrangements. Frequently, for both UNE EELs and Private Line Access repair
17 situations, a second ticket is required. For example, if a repair is called in on the
18 loop portion of a UNE EEL, or channel termination (private line loop) and the
19 trouble is found on the high capacity transport instead, a second repair ticket
20 becomes necessary and is opened. This allows for proper tracking, and future

1 references for repair history. In some cases, there may need to be an additional
2 repair center involved then would deal with a loop-only related failure.

3 Qwest would agree to modify its process as follows:

4 First, the CLEC would do isolation testing to the Qwest network, and the
5 CLEC must provide overall test results across both circuits or authorize
6 optional testing for the UNE circuit before opening a trouble ticket.

7 Charges for Qwest performing testing on behalf of the CLEC are found in
8 Exhibit A of the ICA.

9 Second, the CLEC submits a repair ticket following the normal process,
10 on the specific Commingled circuit the CLEC has reason to believe has
11 the failure. For illustrative purposes, let's assume it is the UNE Loop.

12 Third, the CLEC will reference in the remarks field, the circuit ID of the
13 circuit that is linked (commingled) with the circuit identified as having the
14 failure. In our illustrative example; this would be the Private Line mux and
15 high capacity transport.

16 Fourth, Qwest processes the ticket and begins the repair process on the
17 UNE Loop, and if trouble is found on the UNE Loop, Qwest makes the
18 repair and the ticket is closed.

19 In the alternative, the UNE Loop tests clear, but Qwest finds trouble on
20 the high capacity transport portion of the commingled circuit. Qwest will

1 close the UNE Loop repair ticket; and communicate to the CLEC what
2 was found. No maintenance of services charges will apply since the
3 trouble was isolated in the Qwest network (even if not specifically on the
4 UNE loop). The Qwest technician will contact the CLEC and they will
5 mutually agree upon which company opens the second repair ticket for the
6 high capacity transport. If the Qwest technician opens the ticket, it will be
7 a manual ticket and not contain the bonded automated trouble ticket
8 advantages. If the CLEC opens the trouble ticket, it can follow the normal
9 bonded process and enjoy all automated ticket advantages.

10 Fifth, no time delay occurs regardless of whether Qwest or the CLEC
11 opens the second ticket, and thus the repair process is not delayed. Qwest
12 will already be using the testing information gained from the first ticket to
13 begin the repair process for the second ticket.

14 Sixth, due to the fact that these are different services, the repair clock for
15 quality service measurements will start and end with the opening and
16 closing of the ticket associated with the specific circuit. In this example,
17 the UNE repair ticket would be closed with no trouble found, but no
18 maintenance of service charges would apply, since there was trouble
19 found within the Qwest network on the private line transport portion
20 circuit.

1 Qwest believes these changes address the issues raised by Eschelon without
2 requiring such significant system changes as proposed by Eschelon that Qwest
3 could not reasonably implement within its existing repair systems.

4 **Q. IS IT REALISTIC TO ASSUME THAT A SECOND REPAIR TICKET**
5 **FOR COMMINGLED EEL ARRANGEMENTS WILL NEVER BE**
6 **REQUIRED AS RECOMMENDED BY ESCHELON, AND CAN QWEST**
7 **MAKE THAT COMMITMENT?**

8 A. No. The intent of Qwest's agreement to modify its repair process is to eliminate
9 the need in most circumstances for Eschelon to open two repair tickets instead of
10 one for commingled arrangements. It is important to note, however, that repairs
11 can give rise in some situations to an unavoidable need for two repair tickets, as I
12 discuss above.

13 **Q. DOES QWEST HAVE PROPOSED ICA LANGUAGE THAT REFLECTS**
14 **THE MODIFICATIONS TO THE REPAIR PROCESS YOU DESCRIBE**
15 **ABOVE?**

16 A. Yes. Qwest proposes the following language to memorialize this commitment in
17 the ICA:

18 9.23.4.7 Maintenance and Repair for UNE Component of Commingled
19 EELs

20
21 9.23.4.7.1 When CLEC reports a trouble through any of the means
22 described in Section 12.4.2.2, CLEC may provide both circuit IDs
23 associated with the Commingled EEL in a single trouble report. If CLEC
24 is using CEMR to submit the trouble report, for example, the CLEC will

1 first report one circuit ID (the circuit it believes has the trouble) and
2 include the other circuit ID in the remarks section. Should a second repair
3 ticket be required for the circuit in the remarks section, Qwest will contact
4 CLEC, and they will mutually agree who will open the second repair
5 ticket.

6 9.23.4.7.1.1 Intentionally left blank

7 9.23.4.7.1.2 Qwest may charge a single Maintenance of
8 Service or Trouble Isolation Charge only if Qwest
9 dispatches and no trouble is found on either circuit
10 associated with the Commingled EEL.

11 The language that follows is Qwest's newly proposed language with red-lining
12 to show how the proposal differs from Eschelon's:

13 **9.23.4.7 Maintenance and Repair for UNE Component of**
14 **Commingled EELs**

15
16 9.23.4.7.1 When CLEC reports a trouble through any of the means
17 described in Section 12.4.2.2, ~~so long as Qwest provides more than one~~
18 ~~circuit ID per Commingled EEL, CLEC may provide all **both** circuit IDs~~
19 ~~associated with the Commingled EEL in a single trouble report. (i.e.,~~
20 ~~Qwest shall not require CLEC to submit separate and/or consecutive~~
21 ~~trouble reports for the different circuit IDs associated with the single~~
22 ~~Commingled EEL). If CLEC is using CEMR to submit the trouble report,~~
23 ~~for example, **the** CLEC may **will first** report one circuit ID (**the circuit it**~~
24 ~~**believes has the trouble**) and include the other circuit ID in the remarks~~
25 ~~section. **Should a second repair ticket be required for the circuit in the**~~
26 ~~**remarks section, Qwest will contact CLEC, and they will mutually**~~
27 ~~**agree who will open the second repair ticket.** for the Qwest will~~
28 ~~communicate a single trouble report tracking number (i.e., the "ticket"~~
29 ~~number) (described in Section 12.1.3.3.1.1) for the Commingled EEL to~~
30 ~~CLEC at the time the trouble is reported.~~

31
32 **9.23.4.7.1.1 If any circuit ID is missing from any**
33 **Customer Service Record associated with the**
34 **Commingled EEL, Qwest will provide the circuit ID**

1 information to CLEC at the time CLEC submits the
2 trouble report. Intentionally left blank

3 9.23.4.7.1.2 Qwest may charge a single Maintenance of
4 Service or Trouble Isolation Charge (~~sometimes referred~~
5 ~~to as “No Trouble Found” charge~~) only if Qwest
6 dispatches and no trouble is found on either both circuits
7 associated with the Commingled EEL. ~~If CLEC may~~
8 ~~charge Qwest pursuant to Section 12.4.1.8, CLEC may~~
9 ~~also charge only a single charge for both circuits~~
10 ~~associated with the Commingled EEL.~~

11 Q. WHY HAS QWEST NOT ACCEPTED SECTIONS 9.23.4.7.1.1 AND
12 9.23.4.7.1.2 AS PROPOSED BY ESCHELON?

13 A. Section 9.23.4.7.1.1 appears to require Qwest to add the circuit ID of the
14 Commingled EEL to the trouble ticket if it was missing from the Customer
15 Service Record. Qwest is uncertain about the context in which Eschelon believes
16 this could occur and, given this significant ambiguity, cannot agree to the
17 proposal. In addition, if Eschelon does not indicate the additional circuit IDs it
18 believes may be experiencing trouble, it would not be appropriate for Qwest to
19 “assume” the identity of the circuits and to start adding circuit IDs to the trouble
20 report.

21 With respect to Section 9.23.4.7.1.2, “No Trouble Found” is not a defined term in
22 the ICA and therefore likely would result in ambiguity and disputes in
23 implementing the ICA. Moreover, Qwest's commitment to the potential for only
24 a single charge for Maintenance of Service or Trouble Isolation is clearly
25 conveyed through Qwest's proposed language. Finally, Section 12.4.1.8 remains

1 in dispute between the parties, and, therefore, Qwest opposes a reference to that
2 section in Section 9.23.4.7.1.2.

3 **Q. WHY IS IT SOMETIMES NECESSARY FOR A CLEC TO SUBMIT A**
4 **TROUBLE REPORT FOR EACH CIRCUIT ASSOCIATED WITH A**
5 **COMMINGLED EEL?**

6 A. It is also critical that Qwest maintain accurate repair history detail on each circuit.
7 These various obligations require submission of a trouble report specific to the
8 circuit where trouble was actually found. However, with appropriate trouble
9 isolation testing, the CLEC will generally know which circuit is experiencing
10 trouble. Accordingly, CLECs should be able to routinely submit their trouble
11 tickets with accurate listings of the circuit IDs. If this does not occur, as I stated
12 above, the repair process will not be delayed. Further, if no trouble is found on
13 the circuit identified in the trouble ticket, Qwest will also test the commingled
14 circuit identified in the remarks section of the ticket.

15 **Q. HAS ESCHELON AGREED TO COMPENSATE QWEST FOR THE**
16 **COSTS QWEST WOULD INCUR TO IMPLEMENT THE SYSTEMS AND**
17 **PROCESS CHANGES THAT ECHELON'S PROPOSAL RELATING TO**
18 **TROUBLE REPORTS WOULD REQUIRE?**

19 A. No, once again, to my knowledge, Eschelon is requesting that Qwest implement
20 significant changes on its behalf without agreeing or offering to compensate
21 Qwest for any process-related changes. Eschelon's apparent refusal to

1 Qwest is under no obligation to provide a stand-alone multiplexer as a UNE. A
2 multiplexer is electronic equipment which allows two or more signals to pass over
3 a single circuit. In the example of LMC, the multiplexed facility lets the traffic
4 from several individual loops go over a single higher bandwidth facility.

5 Accordingly, a CLEC must order the multiplexed facility used for LMCs through
6 the applicable tariff. LMC, therefore, involves the connecting of a UNE Loop
7 with a tariffed facility and thus constitutes a commingled arrangement, since
8 commingling is, per the FCC's ruling in the *TRO*, a connection or attaching of a
9 UNE and a wholesale non-UNE. As I discussed previously, commingling is
10 properly addressed in the ICA in Section 24.

11 The first dispute between the parties (Issue 9-61) is the section of the ICA in
12 which the LMC offering should be placed. Qwest has properly included LMCs in
13 Section 24 because it is a commingling offering. Eschelon has proposed moving
14 it to the UNE Combination section in 9.23. Issue 9-61(a) concerns Eschelon's
15 demand that Qwest provide the stand-alone multiplexing service as a UNE instead
16 of as a tariffed facility. Issue 9-61(b) involves a dispute concerning whether
17 intervals for LMC should be in Exhibit C; and Issue 9-61-(c) address should the
18 rates for LMC multiplexing be included in Exhibit A.

19 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S POSITION**
20 **WITH RESPECT TO ISSUE 9-61?**

1 A. The first dispute in Issue 9-61, as addressed above, is where the LMC product
2 offering should be placed in the ICA. Qwest has properly placed it in Section 24,
3 which is the commingling section that Eschelon itself requested Qwest to include
4 in the ICA. By contrast, Eschelon is proposing to include LMCs in Section 9.23
5 of the ICA, which is within the ICA section that governs UNE combinations.
6 UNE combinations, as the name implies, are combinations of elements that
7 qualify as UNEs that ILECs must provide under Section 251(c)(3) of the Act.
8 Because an LMC is a combination of a UNE and a tariffed multiplexing service, it
9 is not a UNE combination. Instead, it falls within the FCC's definition of
10 commingling, which is "the connecting, attaching, or otherwise linking of a UNE,
11 or a UNE combination, to one or more facilities or services that a requesting
12 carrier has obtained at wholesale from an incumbent LEC pursuant to any method
13 other than unbundling under section 251(c)(3) of the Act, or the combining of a
14 UNE or UNE combination with one or more such wholesale services."¹² For this
15 reason, LMCs should be addressed in Section 24 of the ICA, not in Section 9.

16 **Q. WITH RESPECT TO ISSUE 9-61(A) IS ESCHELON CORRECT IN**
17 **ASSERTING THAT QWEST HAS AN OBLIGATION TO PROVIDE**
18 **MULTIPLEXING AS A STAND-ALONE UNE, NOT AS A TARIFFED**
19 **FACILITY?**

¹² *TRO* at ¶ 579.

1 **A.** No. Stand-alone muxing is not a UNE that Qwest is required to provide on an
2 unbundled basis. In the decision of the FCC’s Wireline Competition Bureau in
3 the Verizon-Virginia arbitration, paragraph 491, the Bureau rejected WorldCom’s
4 proposed language that would have established multiplexing as an independent
5 network element, stating that the FCC has never ruled that multiplexing is such an
6 element: “We thus reject WorldCom’s proposed contract language because it
7 defines the ‘Loop Concentrator/Multiplexer’ as a network element, which the
8 Commission has never done.” *In the Matter of Petition of WorldCom, Inc., et al.,*
9 *for Preemption of the Jurisdiction of the Virginia State Corporation Commission*
10 *Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration,*
11 CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039 at ¶ 494 (FCC Wireline
12 Competition Bureau July 17, 2002).

13 **Q. DO CLECS HAVE THE ABILITY TO PROVISION THEIR OWN**
14 **MULTIPLEXING?**

15 **A.** Yes. CLECs are able to self-provision multiplexing within their own collocation
16 spaces.

17 **Q. WHAT ARE ESCHELON’S PROPOSED CHANGES TO QWEST’S**
18 **LANGUAGE FOR ISSUE 9-61 (A)?**

19 **A.** Eschelon proposed modifications regarding placement of LMC in the
20 UNE Combination section are primarily section number changes. Eschelon

1 proposed modifications beyond placement of LMC in UNE Combination section
2 are as follows:

3 9.23.2 UNE Combinations Description and General Terms

4 **9.23.9 and subparts – Loop-Mux Combination**

5 **9.23.9.3.2 [~~24.4.3.2~~] LMC multiplexing is offered in DS3 to DS1 and**
6 **DS1 to DS0 configurations. LMC multiplexing is ordered with LMC**
7 **Loops. The recurring and nonrecurring rates in Exhibit A apply.**

8 **9.23.9.3.2.1 3/1 multiplexing rates are contained in Exhibit A**
9 **of this Agreement, and include the following:**

10 **a) Recurring Multiplexing Charge. The DS3**
11 **Central Office Multiplexer provides de-**
12 **multiplexing of one DS3 44.736 Mbps to 28 1.544**
13 **Mbps channels.**

14 **b) Non-recurring Multiplexing Charge. One-**
15 **time charges apply for a specific work activity**
16 **associated with installation of the multiplexing**
17 **service.**

18 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

19 A. Eschelon's proposed language recited above is premised on the assumption that
20 multiplexing is a stand-alone UNE. Based on that assumption, Eschelon assigns
21 UNE attributes, including UNE-based rates, to multiplexing. For the reasons I
22 describe above, Eschelon's premise is wrong. Multiplexing is not a stand-alone
23 UNE, and Eschelon's proposals based on the assumption that it is are therefore
24 flawed and should be rejected.

1 **Q. PLEASE PROVIDE AN OVERVIEW OF THIS ISSUE AND WHAT IS**
2 **QWEST'S PROPOSED CONTRACT LANGUAGE RELATING TO**
3 **ESCHELON'S ISSUE 9-61 (b).**

4 A. Issue 9-61 (b) is a continuation of a portion of Issue 1-1. Specifically, the parties
5 disagree regarding how changes to intervals in Exhibit C (the Service Interval
6 Table) would occur. Qwest has proposed they can be changed via the CMP and
7 Eschelon believes that any changes would require an amendment to the ICA.
8 Please see the Testimony of Qwest witness Renee Albersheim for the complete
9 record on Issue 1-1. In addition, 9-61 (b) is an LMC product-specific dispute.
10 Since LMC is not a UNE combination and is a commingled service, the proper
11 placement of service intervals should be in the Qwest Service Interval Guide and
12 not in Exhibit C. In addition, currently the only UNE Combination in the ICA is
13 EELs, so Qwest has listed EELs specifically in the discussion of combination
14 intervals.

15 Qwest proposed language for Issue 9-61 (b):

16 9.23.2 UNE Combinations Description and General Terms

17 9.23.4.4.3 Installation intervals for EEL are set forth in Exhibit C but will
18 be no longer than the respective Private Line Transport Service that Qwest
19 will maintain on the following web-site address:
20 <http://www.qwest.com/carrier/guides/sig/index.html>

21 9.23.6.2 Service intervals for each EEL are set forth in Exhibit C. For
22 UNE Combinations with appropriate retail analogues, the Provisioning
23 interval will be no longer than the interval for the equivalent retail service.
24 CLEC and Qwest can separately agree to Due Dates other than the
25 interval.

1 Section 24 (Commingling)

2 24.4.1 and subparts Loop Mux-Combination

3 24.4.4.3 Standard service intervals for LMC Loops in the Service
4 Interval Guide (SIG) available at www.qwest.com/wholesale.

5

6 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
7 **LANGUAGE?**

8 A. Eschelon proposes the following changes:

9 9.23.2 UNE Combinations Description and General Terms

10 9.23.9.4.3 **Service intervals for LMC(s) are set forth in Exhibit C. For**
11 **UNE Combinations with appropriate retail analogues, the**
12 **Provisioning interval will be no longer than the interval for the**
13 **equivalent retail service. CLEC and Qwest can separately agree to**
14 **Due Dates other than the interval.**

15 9.23.4.4.3 Installation intervals for ~~EEL~~ **UNE Combinations** are set forth
16 in Exhibit C but will be no longer than the respective Private Line
17 Transport Service that Qwest will maintain on the following web-site
18 address: <http://www.qwest.com/carrier/guides/sig/index.html>

19 9.23.6.2 Service intervals for each ~~EEL~~ **UNE Combinations** are set forth
20 in Exhibit C. For UNE Combinations with appropriate retail analogues,
21 the Provisioning interval will be no longer than the interval for the
22 equivalent retail service. CLEC and Qwest can separately agree to Due
23 Dates other than the interval.

24 Exhibit C:

25 **Loop Mux Combo (LMC)**

26 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

1 A. There is no legal requirement for ILECs to provide stand-alone multiplexing.
2 Multiplexing is not a feature or function of the loop, and Qwest is not required to
3 provide loops and multiplexing as a UNE combination.

4 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
5 **TO ESCHELON'S ISSUE 9-61 (c)?**

6 A. Issue 9-61 (c) is the final issue of the LMC issues. Since LMC is not a UNE
7 combination, Qwest has not included rates for LMC in Exhibit A. As discussed
8 above, Eschelon disputes the Qwest position and believes that rates for LMC
9 should be contained in rate descriptions should be contained in ICA and rates in
10 Exhibit A.

11 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

12 A. For the reasons I describe above, multiplexing is not a UNE. Accordingly, there
13 is no legal basis for Eschelon to apply UNE-based rates in Exhibit A to this non-
14 UNE product. The appropriate rates are those set forth in the applicable tariff for
15 multiplexed facilities. Accordingly, the Commission should reject Eschelon's
16 proposed references to the rates in Exhibit A for multiplexing.

17 **Issue 24-92 – Entrance Facility Commingling**

18 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE RELATING TO**
19 **ISSUE 24-92.**

1 A. The dispute between the parties is a limited one regarding Qwest's inclusion in
2 the ICA at section 24.1.2.2 a statement regarding the fact that Interconnection
3 Entrance Facilities and Mid-Span Meet POI arrangements are not available for
4 commingling. Eschelon disputes the need to repeat language already contained in
5 Section 7 of the ICA, and believes that this section is ambiguous.

6 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
7 **TO ESCHELON'S ISSUE 24-92?**

8 A. The Qwest proposed language is as follows:

9 24.1.2.2 When Qwest provides an Interconnection Entrance
10 Facility, Interconnection Entrance Facilities may not be used for
11 Interconnection with Unbundled Network Elements. A CLEC may
12 not use remaining capability in an existing Mid-Span Meet POI to
13 gain access to UNEs. Entrance Facilities and Mid-Span Meet POI
14 are not available for Commingling. See Sections 7.1.2.1 and
15 7.1.2.5

16 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
17 **LANGUAGE?**

18 A. Eschelon has proposed that the Qwest language at 24.1.2.2 be eliminated:

19 ~~**24.1.2.2 When Qwest provides an Interconnection Entrance**~~
20 ~~**Facility, Interconnection Entrance Facilities may not be used for**~~
21 ~~**Interconnection with Unbundled Network Elements. A CLEC may**~~
22 ~~**not use remaining capability in an existing Mid-Span Meet POI to**~~
23 ~~**gain access to UNEs. Entrance Facilities and Mid-Span Meet POI are**~~
24 ~~**not available for Commingling. See Sections 7.1.2.1 and 7.1.2.5**~~

25 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

26 A. The first two sentences of Qwest's language in Section 24.1.2.2 properly reinforce
27 the agreed to language in Sections 7.1.2.1 and 7.1.2.5. It is appropriate to include

1 that language in the commingling section since the process by which a CLEC
2 could mistakenly attempt to connect UNEs to an Interconnection Entrance
3 Facility or a Mid-Span Meet could be via commingling. Section 24.1.2.2 does not
4 add any ambiguity to what is stated in Section 7, and, in fact, it clarifies Section 7
5 with respect to commingling. The last sentence is simply a factual statement that
6 it is not possible to legitimately commingle an Interconnection Entrance Facility
7 or a Mid-Span Meet since these network components are the final connection
8 between the two company's networks. Any commingling that may occur would
9 occur prior to this last Interconnection Entrance facility between the two
10 interconnecting companies.

11 **IV. Conclusion**

12
13 **Q. DO YOU HAVE ANY FINAL COMMENTS?**

14 A. Yes. Although there are substantive differences in the issues I have addressed in
15 my testimony, there are recurring themes in the manner in which Qwest and
16 Eschelon have addressed the issues through the language they have proposed for
17 the ICA. Qwest has proposed language that recognizes and incorporates the
18 FCC's rulings in the *TRO* and *TRRO* and that recognizes the need for uniform
19 systems and processes in the service that Qwest provides to all CLECs.
20 By contrast, Eschelon's proposals rely on sweeping general language that is
21 intended to impose the broadest possible unbundling, and in some cases, new

1 obligations on Qwest without regard for applicable law. Moreover, in several
2 cases, Eschelon is proposing language that is broad and vague and not susceptible
3 to either meaningful analysis by the Commission or precise and practical
4 implementation by the parties. If the Eschelon language is adopted this would
5 likely result in disputes concerning implementation of the ICA, which will
6 unnecessarily require the Commission and the parties to devote limited resources
7 to resolving disputes that can be avoided through the use of the type of precise
8 ICA language the Qwest is proposing.

9 For these reasons, the Commission should adopt Qwest's proposed ICA language
10 for each of the issues I have addressed.

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A. Yes.**