

**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 WILLIAM R. EASTON

QWEST CORPORATION

(Disputed Issue Nos. 2-3, 2-4, 5-6, 5-7, 5-7(a), 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88, 22-88(a), 22-88(b), 22-90, A-93, A-93(a), A-93(b), A-93(c), A-93(d) and A-95)

SEPTEMBER 29, 2006

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1 advocacy related to Wholesale products and services. In this role I work
2 extensively with the Product Management, Network and Costing organizations.

3
4 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN WASHINGTON?**

5 A. Yes I have. I testified in Docket Numbers UT-940641, UT-950200, UT-951425,
6 UT-960347, UT-003013 (Part D), UT-033035, UT-033044, UT-043045 and UT-
7 063013.

8 **II. PURPOSE OF TESTIMONY**

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. The purpose of my testimony is to explain Qwest's positions, and the policies
11 underlying those positions related to Disputed Issues Nos. 2-3, 2-4, 5-6, 5-7, 5-7(a),
12 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88, 22-88(a), 22-88(b), 22-90, A-
13 93, A-93(a), A-93(b), A-93(c), A-93(d), and A-95. My testimony will show that the
14 Qwest position on these issues strikes a commercially reasonable and appropriate
15 balance between meeting the needs and concerns of both Eschelon and Qwest.

16
17 **III. SECTION 2 DISPUTED ISSUES**

18 **Issue No. 2-3**

19 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 2-3.**

20 A. Issue No. 2-3 is one of two disputed issues related to section 2.2 of the
21 Interconnection Agreement ("ICA"). Issue 2-3 has to do with the rates in Exhibit A
22 and when they apply. Qwest has attempted to add clarifying language in section 2.2
23 that Eschelon finds objectionable.

24

1 **Q. WHAT IS THE LANGUAGE THAT QWEST IS ATTEMPTING TO ADD?**

2 A. Qwest has proposed the inclusion of the following sentence:

3 Rates in Exhibit A include legally binding decisions of the
4 Commission and shall be applied on a prospective basis from the
5 effective date of the legally binding Commission decision, unless
6 otherwise ordered by the Commission.
7

8 **Q. WHY IS QWEST PROPOSING TO ADD THIS LANGUAGE?**

9 A. Qwest is attempting to avoid ambiguity in situations where a Commission order
10 does not specifically state a true-up requirement as part of a cost docket order.

11 Qwest will comply with an order that requires a true-up of past billing. However, in
12 the absence of such an order, the appropriate implementation process is to apply the
13 ordered rates prospectively from the effective date of the order.

14

15 **Q. ESCHELON ARGUES THAT THE LANGUAGE IN SECTION 22**

16 **ADDRESSES THIS ISSUE. DO YOU AGREE?**

17 A. No. Section 22 is silent as to what is to occur when a Commission order does not
18 specify a true-up of past billing. Section 22.4.1.2 states:

19 22.4.1.2 If the Interim Rates are reviewed and changed by the
20 Commission, the Parties shall incorporate the rates established by
21 the Commission into this Agreement pursuant to Section 2.2 of this
22 Agreement. Such Commission-approved rates shall be effective as
23 of the date required by a legally binding order of the Commission.
24

25 **Q. WHY IS PROSPECTIVE APPLICATION OF RATES GENERALLY THE**
26 **MORE APPROPRIATE PROCESS?**

1 A. Qwest recognizes that Commission ordered rates could go up or could go down as a
2 part of future proceedings. Businesses make decisions regarding the products that
3 they purchase and the products they offer based in part on estimates of the costs of
4 each product and the revenues the product will generate. Applying rates
5 retroactively prevents businesses from making these decisions in an informed
6 manner. Furthermore, the retroactive true up of rates has at times led to protracted
7 disputes regarding the appropriate amount of true up payments. Applying rates
8 prospectively prevents such disputes and allow companies to make informed
9 business decisions regarding how to compete in the market.

10

11 **Q. DOES THE ADDITION OF THIS LANGUAGE ADD AMBIGUITY AS**
12 **ESCHELON ASSERTS?**

13 A. No. In fact, just the opposite is true. As I just explained, the Qwest language
14 provides clarity about the application of rates should there be any question
15 regarding the effective date.

16

17 **Q. DOES THE QWEST LANGUAGE TAKE AWAY ANY DISCRETION**
18 **FROM THE STATE COMMISSIONS?**

19 A. No. The language states that rates should be applied on a prospective basis “unless
20 otherwise ordered by the Commission.”

21

22 **Issue No. 2-4**

23 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 2-4.**

1 A. Disputed Issue No. 2-4 relates to the changes in law provision of section 2.2 and
2 whether they are effective on the date of the change in law or effective on the date
3 that the interconnection agreement is amended.

4

5 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

6 A. Qwest is proposing the following language:

7 When a regulatory or court issues an order causing a change in law
8 and that order does not include a specific implementation date, a
9 Party may provide notice to the other Party within thirty (30) Days
10 of the effective date of that order and any resulting amendment shall
11 be deemed effective on the effective date of the legally binding
12 change or modification of the Existing Rules for rates, and to the
13 extent practicable for other terms and conditions, unless otherwise
14 ordered. In the event neither Party provides notice within thirty (30)
15 Days, the effective date of the legally binding change shall be the
16 effective date of the amendment unless the Parties agree to a
17 different date.
18

19 **Q. WHAT LANGUAGE IS ESCHELON PROPOSING?**

20 A. Eschelon has proposed the following changes to Qwest's language:

21 ~~When a regulatory or court issues an order causing a change in law~~
22 ~~and that order does not include a specific implementation date, a~~
23 ~~Party may provide notice to the other Party within thirty (30) Days~~
24 ~~of the effective date of an order issuing a legally binding change,~~
25 ~~a~~Any amendment shall be deemed effective on the effective date of
26 the legally binding change or modification of the Existing Rules for
27 rates, and to the extent practicable for other terms and conditions,
28 unless otherwise ordered. ~~In the event neither Party provides notice~~
29 ~~within thirty (30) Days, the effective date of the legally binding~~
30 ~~change shall be the effective date of the amendment unless the~~
31 ~~Parties agree to a different date.~~
32

33 **Q. WHY SHOULD THE QWEST LANGUAGE BE ADOPTED?**

1 A. Many change of law orders do not provide clear implementation dates and require
2 the parties to negotiate changes to the ICA. Generally, one party or the other
3 obtains an advantage as a result of the change in law and the other party benefits
4 from delaying implementation. Qwest's proposed language accomplishes two
5 primary goals: 1) it removes the incentive for either party to delay negotiations of a
6 change in law; and 2) it eliminates the possibility, and subsequent significant
7 financial impact, of either party attempting to apply change in law retroactively
8 over a long period of time.

9
10 In Washington, the Commission has reached different conclusions on the issue of
11 implementing changes of law, depending on the particularities in specific dockets.
12 In the absence of clear direction in an FCC or court order, Qwest urges the
13 Commission to adopt the language proposed by Qwest because it provides incentive
14 to the parties to quickly either resolve their differences or bring their disputes to the
15 Commission. The language proposed by Qwest will reduce litigation by removing
16 one potential issue from dispute and will ensure that the parties have an incentive to
17 quickly resolve change of law issues that arise in the future.

18

19

IV. SECTION 5 DISPUTED ISSUES

20

Q. WHAT ARE THE ISSUES THAT ARE AT DISPUTE IN SECTION 5?

21

A. There are nine issues at dispute in section 5. All but one of the issues concern

22

payment and deposit requirements and fall into three general subparts related to:

- 1 ▪ the time at which a party may discontinue processing orders or
- 2 disconnect service due to the other party's failure to pay
- 3 undisputed bills;
- 4 ▪ the definition of "repeatedly delinquent"; and
- 5 ▪ a party's right to review a credit report and increase deposit
- 6 requirements.

7

8 **Issue No. 5-6**

9 **Q. PLEASE DESCRIBE ISSUES NO. 5-6?**

10 A. Issue No. 5-6 is related to section 5.4.2 of the ICA that deals with the

11 discontinuation of taking orders in cases of non-payment.

12

13 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR SECTION 5.4.2?**

14 A. Qwest proposes the following language:

15 5.4.2 One Party may discontinue processing orders for relevant

16 services for the failure of the other Party to make full payment, less

17 any disputed amount as provided for in Section 21.8 of this

18 Agreement, for the relevant services provided under this Agreement

19 within thirty (30) Days following the Payment Due Date. The

20 Billing Party will notify the other Party in writing and the

21 Commission on a confidential basis at least ten (10) business days

22 prior to discontinuing the processing of orders for the relevant

23 services. If the Billing Party does not refuse to accept additional

24 orders for the relevant services on the date specified in the ten (10)

25 business days notice, and the other Party's non-compliance

26 continues, nothing contained herein shall preclude the Billing Party's

27 right to refuse to accept additional orders for the relevant services

28 from the non-complying Party without further notice. Additionally,

29 the Billing Party may require a deposit (or additional deposit) from

30 the billed Party, pursuant to Section 5.4.5. The Billing Party shall

31 resume order processing without unreasonable delay upon receipt of

32 full payment of all charges, and payment of a deposit, if any, for the

33 relevant services not disputed in good faith under this Agreement.

1 Both Parties agree, however, that the application of this provision
2 will be suspended for the initial three (3) Billing cycles of this
3 Agreement and will not apply to amounts billed during those three
4 (3) cycles. In addition to other remedies that may be available at
5 law or equity, the billed Party reserves the right to seek equitable
6 relief, including injunctive relief and specific performance.
7
8

9 **Q. WHAT LANGUAGE IS ESCHELON PROPOSING?**

10 A. Eschelon has two alternative proposals for section 5.4.2.
11

12 **Q. WHAT IS THE FIRST ESCHELON PROPOSAL?**

13 A. Eschelon seeks to insert words requiring Commission approval at the beginning of
14 section 5.4.2:

15 5.4.2 **With the Commission's approval,** One Party may
16 discontinue processing orders for relevant services for the failure of
17 the other Party to make full payment, less any disputed amount as
18 provided for in Section 21.8 of this Agreement, for the relevant
19 services provided under this Agreement within thirty (30) Days
20 following the Payment Due Date.
21

22 **Q. WHAT LANGUAGE DOES ESCHELON PROPOSE AS A SECOND**
23 **ALTERNATIVE?**

24 A. Eschelon's alternative proposal is to insert an additional sentence into the Qwest
25 proposed language as indicated below:

26 5.4.2 One Party may discontinue processing orders for relevant
27 services for the failure of the other Party to make full payment, less
28 any disputed amount as provided for in Section 21.8 of this
29 Agreement, for the relevant services provided under this Agreement
30 within thirty (30) Days following the Payment Due Date. The
31 Billing Party will notify the other Party in writing and the
32 Commission on a confidential basis at least ten (10) business days
33 prior to discontinuing the processing of orders for the relevant
34 services. If the Billing Party does not refuse to accept additional

1 orders for the relevant services on the date specified in the ten (10)
2 business days notice, and the other Party's non-compliance
3 continues, nothing contained herein shall preclude the Billing Party's
4 right to refuse to accept additional orders for the relevant services
5 from the non-complying Party without further notice. **If the billed**
6 **Party asks the Commission to prevent discontinuance of order**
7 **processing and/or rejection of orders (e.g., because delay in**
8 **submitting dispute or making payment was reasonably justified**
9 **due to inaccurate or incomplete Billing), the Billing Party will**
10 **continue order processing while the proceedings are pending,**
11 **unless the Commission orders otherwise.** Additionally, the
12 Billing Party may require a deposit (or additional deposit) from the
13 billed Party, pursuant to Section 5.4.5. The Billing Party shall
14 resume order processing without unreasonable delay upon receipt of
15 full payment of all charges, and payment of a deposit, if any, for the
16 relevant services not disputed in good faith under this Agreement.
17 Both Parties agree, however, that the application of this provision
18 will be suspended for the initial three (3) Billing cycles of this
19 Agreement and will not apply to amounts billed during those three
20 (3) cycles. In addition to other remedies that may be available at
21 law or equity, the billed Party reserves the right to seek equitable
22 relief, including injunctive relief and specific performance.
23

24 **Q. WHY IS QWEST OPPOSED TO THE TWO ALTERNATIVES PROPOSED**
25 **BY ESCHELON?**

26 A. Qwest is entitled to timely payment for services rendered and to take remedial
27 action if the risk of non-payment is apparent. Although the language in section
28 5.4.2 is written as if it applies to either party, in practice, it applies only to Qwest
29 because Qwest is the only party that is processing orders under the ICA. Therefore,
30 this section restricts only Qwest's ability to discontinue processing Eschelon's
31 orders if Eschelon fails to pay.

32
33 Qwest's language provides Eschelon with 30 days before the billed amount is due
34 and another 30 days before Qwest would discontinue processing orders if Eschelon

1 failed to pay. Further, Eschelon may invoke a dispute resolution process under
2 section 5.4.4 if it has a good faith dispute about its bill. Under this process,
3 Eschelon is not required to pay disputed amounts until the dispute is resolved.
4 Eschelon's first proposal related to discontinuing orders would prevent Qwest from
5 taking action unless and until it obtains Commission approval. Placing the burden
6 on Qwest to file for Commission action and allowing Eschelon to continue to incur
7 debt while that action is pending as is required under Eschelon's first alternative is
8 unreasonable in light of the fact that it is Eschelon's obligation to pay its undisputed
9 bills in a timely fashion.

10
11 Eschelon's second alternative to Qwest's language is equally inequitable. Whereas
12 Eschelon's first alternative asks the Commission to adopt language requiring Qwest
13 to obtain Commission **approval** prior to discontinuing the processing of orders as a
14 result of Eschelon's own failure to pay its bills in a timely fashion, Eschelon's
15 second alternative proposes language whereby the simple act of its "**asking**" the
16 Commission to prevent the discontinuation of order processing would prevent
17 Qwest from protecting itself from mounting unpaid debt and force it to continue to
18 process orders pending the outcome of a proceeding. This places Qwest at
19 additional risk of providing service to the CLEC without assurance of being
20 compensated.

21
22 Qwest does not believe that it is appropriate to involve the Commission in normal
23 business processes, or that the Commission should desire to become involved in

1 every payment issue. Eschelon has recourse under the provisions of the ICA if it
2 believes that Qwest is treating it unfairly. The Commission should become
3 involved in issues between the parties only as a last resort, not as a normal course of
4 business as Eschelon is proposing.

5

6 **Q. DOES THE LANGUAGE IN QWEST'S WASHINGTON SGAT REQUIRE**
7 **COMMISSION APPROVAL?**

8 A. No. The language in the SGAT, which was developed by the CLECs and Qwest
9 during the Section 271 workshops and approved by the Commission, does not
10 require Commission approval to suspend order activity in cases of non-payment.

11

12 **Issue No. 5-7**

13 **Q. PLEASE DESCRIBE ISSUE NO. 5-7.**

14 A. Issue No 5-7 is related to section 5.4.3 of the ICA that deals with the disconnection
15 of service in cases of non-payment.

16

17 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR SECTION 5.4.3?**

18 A. Qwest proposes the following language:

19 5.4.3 The Billing Party may disconnect any and all relevant
20 services for failure by the billed Party to make full payment, less any
21 disputed amount as provided for in Section 21.8 of this Agreement,
22 for the relevant services provided under this Agreement within sixty
23 (60) Days following the Payment Due Date. For Resale products
24 pursuant to Section 6, the billed Party will pay the applicable
25 tariffed non-recurring charge less the wholesale discount set forth in
26 Exhibit A, required to reconnect each resold End User Customer line
27 disconnected pursuant to this paragraph. The Billing Party will

1 notify the billed Party in at least ten (10) business days prior to
2 disconnection of the unpaid service(s). In case of such
3 disconnection, all applicable undisputed charges, including
4 termination charges, if any, shall become due. If the Billing Party
5 does not disconnect the billed Party's service(s) on the date
6 specified in the ten (10) business days notice, and the billed Party's
7 noncompliance continues, nothing contained herein shall preclude
8 the Billing Party's right to disconnect any or all relevant services of
9 the non-complying Party without further notice. For reconnection of
10 the non-paid service to occur, the billed Party will be required to
11 make full payment of all past and current undisputed charges under
12 this Agreement for the relevant services. Additionally, the Billing
13 Party may request a deposit (or recalculate the deposit) as specified
14 in Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this
15 Section. Both Parties agree, however, that the application of this
16 provision will be suspended for the initial three (3) Billing cycles of
17 this Agreement and will not apply to amounts billed during those
18 three (3) cycles. In addition to other remedies that may be available
19 at law or equity, each Party reserves the right to seek equitable
20 relief, including injunctive relief and specific performance
21

22 **Q. WHAT LANGUAGE DOES ESCHELON PROPOSE?**

23 A. Eschelon proposes to revise the Qwest language by adding the two passages which
24 are underlined in bold below:

25 **5.4.3 With the Commissions approval pursuant to Section**
26 **5.13.1, ~~T~~the Billing Party may disconnect any and all relevant**
27 **services for failure by the billed Party to make full payment, less any**
28 **disputed amount as provided for in Section 21.8 of this Agreement,**
29 **for the relevant services provided under this Agreement within sixty**
30 **(60) Days following the Payment Due Date. For Resale products**
31 **pursuant to Section 6, the billed Party will pay the applicable**
32 **tariffed non-recurring charge less the wholesale discount set forth in**
33 **Exhibit A, required to reconnect each resold End User Customer line**
34 **disconnected pursuant to this paragraph. The Billing Party will**
35 **notify the billed Party in at least ten (10) business days prior to**
36 **disconnection of the unpaid service(s). In case of such**
37 **disconnection, all applicable undisputed charges, including**
38 **termination charges, if any, shall become due. If the Billing Party**
39 **does not disconnect the billed Party's service(s) on the date**
40 **specified in the ten (10) business days notice, and the billed Party's**
41 **noncompliance continues, nothing contained herein shall preclude**

1 the Billing Party's right to disconnect any or all relevant services of
2 the non-complying Party without further notice, **if disconnection**
3 **has been approved by the Commission.** For reconnection of the
4 non-paid service to occur, the billed Party will be required to make
5 full payment of all past and current undisputed charges under this
6 Agreement for the relevant services. Additionally, the Billing Party
7 may request a deposit (or recalculate the deposit) as specified in
8 Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this
9 Section. Both Parties agree, however, that the application of this
10 provision will be suspended for the initial three (3) Billing cycles of
11 this Agreement and will not apply to amounts billed during those
12 three (3) cycles. In addition to other remedies that may be available
13 at law or equity, each Party reserves the right to seek equitable
14 relief, including injunctive relief and specific performance
15
16

17 **Q. WHY IS QWEST OPPOSED TO THE ADDED LANGUAGE?**

18 A. As was the case in issue 5-6, Eschelon's language would prevent Qwest from taking
19 action unless and until it obtains Commission approval. Placing the burden on
20 Qwest to file for Commission action and allowing Eschelon to continue to incur
21 debt while that action is pending is unreasonable in light of the fact that it is
22 Eschelon's obligation to pay its undisputed bills in a timely fashion. Again, Qwest
23 does not believe that it is appropriate to involve the Commission in normal business
24 processes, particularly since Eschelon has recourse under the provisions of the ICA
25 if it believes that Qwest is treating it unfairly.

26
27 **Q. DOES THE LANGUAGE IN THE QWEST SGAT REQUIRE COMMISSION**
28 **APPROVAL?**

29 A. No. The language in the SGAT, which was developed by consensus during the 271
30 workshops and approved by the Commission, does not require Commission
31 approval to suspend order activity in cases of non-payment.

1 **Issue No. 5-7(a)**

2 **Q. PLEASE DESCRIBE ISSUE NO. 5-7(a)?**

3 A. This issue is related to the default provisions in section 5.13.1.

4

5 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR 5.13.1?**

6 A. Qwest proposes the following language:

7 5.13.1 If either Party defaults in the payment of any amount due
8 hereunder, or if either Party violates any other material provision of
9 this Agreement, and such default or violation shall continue for
10 thirty (30) Days after written notice thereof, the other Party may
11 seek relief in accordance with the Dispute resolution provision of
12 this Agreement. The failure of either Party to enforce any of the
13 provisions of this Agreement or the waiver thereof in any instance
14 shall not be construed as a general waiver or relinquishment on its
15 part of any such provision, but the same shall, nevertheless, be and
16 remain in full force and effect. To the extent that either Party
17 disputes, pursuant to Section 21.8, any amount due hereunder, the
18 Party's withholding of such disputed amounts pursuant to Section
19 21.8 shall not constitute a default under this Section 5.13 during the
20 pendency of such dispute.
21

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

23 A. Eschelon proposes to revise the Qwest language by adding the two passages which
24 are underlined in bold below:

25 5.13.1 If either Party defaults in the payment of any amount due
26 hereunder, or if either Party violates any other material provision of
27 this Agreement, and such default or violation shall continue for
28 thirty (30) Days after written notice thereof, the other Party **must**
29 **notify the Commission in writing and** may seek relief in
30 accordance with the Dispute resolution provision of this Agreement.
31 The failure of either Party to enforce any of the provisions of this
32 Agreement or the waiver thereof in any instance shall not be
33 construed as a general waiver or relinquishment on its part of any
34 such provision, but the same shall, nevertheless, be and remain in
35 full force and effect. **Neither Party shall disconnect service to the**

1 **other Party without first obtaining Commission approval.** To
2 the extent that either Party disputes, pursuant to Section 21.8, any
3 amount due hereunder, the Party's withholding of such disputed
4 amounts pursuant to Section 21.8 shall not constitute a default under
5 this Section 5.13 during the pendency of such dispute.
6

7 **Q. WHY DOES QWEST OBJECT TO THE ESCHELON ADDITIONS?**

8 A. Qwest objects to the additional language for all of the reasons cited in the
9 discussion of issue 5-7.

10

11 **Q. WAS THE LANGUAGE QWEST IS PROPOSING AGREED TO BY**
12 **QWEST AND THE CLECS DURING THE 271 WORKSHOPS?**

13 A. Yes. This same language was developed by consensus during the section 271
14 workshops and approved by the Commission.

15

16 **Q. PLEASE DESCRIBE ISSUE NOS. 5-8 THROUGH 5-12.**

17 A. These issues are all related to section 5.4.5 of the contract concerning deposit
18 requirements.

19

20 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR THIS SECTION?**

21 A. Qwest proposes the following language for section 5.4.5:

22

23 5.4.5 Each Party will determine the other Party's credit status based
24 on previous payment history as described below or, if the Parties are
25 doing business with each other for the first time, based on credit
26 reports such as Dun and Bradstreet. If a Party that is doing business
27 with the other Party for the first time has not established satisfactory
28 credit with the other Party according to the previous sentence or the
29 Party is Repeatedly Delinquent in making its payments, or the Party

1 is being reconnected after a disconnection of service or
2 discontinuance of the processing of orders by the Billing Party due
3 to a previous non-payment situation, the Billing Party may require a
4 deposit to be held as security for the payment of charges before the
5 orders from the billed Party will be provisioned and completed or
6 before reconnection of service. "Repeatedly Delinquent" means
7 payment of any undisputed amount received more than thirty (30)
8 Days after the Payment Due Date, three (3) or more times during a
9 twelve (12) month period on the same Billing account number. The
10 deposit may not exceed the estimated total monthly charges for an
11 average two (2) month period within the 1st three (3) months from
12 the date of the triggering event which would be either the date of the
13 request for reconnection of services or resumption of order
14 processing and/or the date CLEC is Repeatedly Delinquent as
15 described above for all services. The deposit may be a surety bond
16 if allowed by the applicable Commission regulations, a letter of
17 credit with terms and conditions acceptable to the Billing Party, an –
18 interest bearing escrow account, or some other form of mutually
19 acceptable security such as a cash deposit. Required deposits are
20 due and payable within thirty (30) Days after demand and conditions
21 being met.
22

23 **Issue No. 5-8**

24 **Q. PLEASE EXPLAIN ISSUE NO. 5-8.**

25 A. Issue No. 5-8 concerns Eschelon's proposal to insert the words "non-de minimus"
26 into the repeatedly delinquent definition in section 5.4.5 so that "'Repeatedly
27 Delinquent' means payment of any undisputed *non-de minimus* amount received
28 more than thirty (30) days after the Payment Due Date . . . "

29

30 **Q. WHY IS QWEST OPPOSED TO THIS ADDITION?**

31 A. Rather than adding clarity to the language, this addition of a vague term such as
32 "non-de minimus" to the definition does just the opposite and creates the possibility
33 that the parties will be appearing before the Commission to clarify what they

1 intended by "non de-minimis amount". Eschelon argues that this language protects
2 it from Qwest action in the event Eschelon pays the wrong amount in error and is
3 off by a few dollars. Such a concern is unfounded. It is not Qwest's practice to
4 undertake this type of collections actions for minimal dollar amounts and Eschelon
5 itself has not claimed that Qwest has ever invoked deposit requirements based on
6 insignificant amounts. The more problematic situation relates to determining what
7 de minimus means. Does it mean \$100? Does it mean \$1,000? Does it mean
8 \$10,000 or \$100,000? Eschelon's language would give Eschelon the ability to
9 argue that any of these amounts is de minimus in a proceeding where it is
10 undisputed that Eschelon owes outstanding charges to Qwest. In that situation,
11 Eschelon should simply pay its bill.

12
13 **Q. DOES THE ESCHELON PAYMENT HISTORY REFLECT DE MINIMUS**
14 **DISPUTES?**

15 A. No. Qwest's recent letter to Eschelon demanded that it pay **undisputed** outstanding
16 bills of over \$3 million dollars. As noted above, it is not Qwest's practice, nor is it
17 financially wise or feasible, to take collection action for "a few dollars." Eschelon's
18 proposed language invites litigation and is wholly unnecessary.

19
20 **Issue No. 5-9**

21 **Q. PLEASE DESCRIBE ISSUE NO.5-9.**

22 A. Issue No. 5-9 concerns the first and second of three Eschelon alternative proposals
23 to define "repeatedly delinquent." Whereas the Qwest language defines "repeatedly

1 delinquent” to mean payment of any undisputed amount received more than thirty
2 (30) Days after the Payment Due Date, three (3) or more times during a twelve (12)
3 month period, in its first alternative, Eschelon proposes that payments must be more
4 than 30 days late for “three (3) consecutive months.”

5
6 **Q. WHY IS QWEST OPPOSED TO THE ESCHELON DEFINITION?**

7 A. The Eschelon definition fails to provide the proper incentive for timely payment.
8 Under this proposal, Eschelon could be delinquent in its payments for two months,
9 pay the bill for the third month on time, and then be delinquent again for the next
10 two months. Qwest's proposal is a reasonable business practice and is identical to
11 the "repeatedly delinquent" definition that was reviewed and agreed to in the
12 Section 271 workshops by those participating CLECs. Eschelon can provide no
13 legitimate argument to change this language other than to give itself additional and
14 unwarranted business advantage.

15
16 **Q. WHAT IS ESCHELON’S SECOND ALTERNATIVE FOR THE**
17 **DEFINITION OF “REPEATEDLY DELINQUENT”?**

18 A. In its second alternative, Eschelon proposes that in order to be considered
19 “repeatedly delinquent,” payments must be more than 30 days late “three or more
20 times during a six (6) month period.”

21
22 **Q. WHY IS QWEST OPPOSED TO THIS DEFINITION?**

1 A. Like the first alternative, this definition fails to provide the proper incentive for
2 timely payment and should be rejected. Under this definition, Eschelon could still
3 be late with payments 33% of the time, which is hardly an encouragement for
4 timely bill payment.

5

6 **Issue No. 5-11.**

7 **Q. PLEASE DESCRIBE ISSUE NO. 5-11.**

8 A. Issue No. 5-11 concerns Eschelon's proposal to add a qualifier to the deposit due
9 date language at the end of section 5.4.5. Eschelon proposes to add the following
10 underlined information:

11 Required deposits are due and payable within thirty (30) Days after
12 demand and conditions being met, **unless the billed Party**
13 **challenges the amount of the deposit or deposit requirement**
14 **(e.g., because delay in submitting disputes or making payment**
15 **was reasonably justified due to inaccurate or incomplete Billing)**
16 **pursuant to Section 5.18. If such a Dispute is brought before the**
17 **Commission, deposits are due and payable as of the date**
18 **ordered by the Commission.**

19

20 **Q. WHY IS QWEST OPPOSED TO THE ADDITIONAL LANGUAGE?**

21 A. The added language is not necessary. Eschelon has a right under section 5.4.4 to
22 dispute Qwest's billing; a second opportunity to do so, which is what Eschelon
23 seeks here, is unnecessary and inequitable. Eschelon simply seeks to further delay
24 Qwest's right to protection in the face of increased payment risk.

25

26 **Issue No. 5-12**

27 **Q. PLEASE DESCRIBE ISSUE NO. 5-12.**

1 A. Issue No. 5-12 concerns Eschelon's third alternative to Qwest's repeatedly
2 delinquent language. With this alternative, Eschelon proposes to do away entirely
3 with the repeatedly delinquent language and instead have the Commission
4 determine whether a deposit should be required. Under this alternative Eschelon
5 proposes the following language for section 5.4.5:

6 Each Party ~~has~~ **will** ~~determined~~ the other Party's credit status based
7 on previous payment history as described below, ~~or, if the Parties~~
8 ~~are doing business with each other for the first time, based on credit~~
9 ~~reports such as Dun and Bradstreet. If a Party that is doing business~~
10 ~~with the other Party for the first time has not established satisfactory~~
11 ~~credit with the other Party according to the previous sentence or the~~
12 ~~Party is Repeatedly Delinquent in making its payments, or the **If a**~~
13 ~~Party is being reconnected after a disconnection of service or~~
14 ~~discontinuance of the processing of orders by the Billing Party due~~
15 ~~to a previous non-payment situation, the Billing Party may require a~~
16 ~~deposit to be held as security for the payment of charges before the~~
17 ~~orders from the billed Party will be provisioned and completed or~~
18 ~~before reconnection of service. **The Billing Party may also**~~
19 ~~**require a deposit for the failure of the other Party to make full**~~
20 ~~**payment, less any disputed amount as provided for in Section 21**~~
21 ~~**of this Agreement, for the relevant services provided under this**~~
22 ~~**Agreement within ninety (90) Days following the Payment Due**~~
23 ~~**Date, if the Commission determines that all relevant**~~
24 ~~**circumstances warrant a deposit. "Repeatedly delinquent"**~~
25 ~~**means any payment received thirty (30) Days or more after the**~~
26 ~~**Payment Due Date, three (3) or more times during a twelve (12)**~~
27 ~~**month period on the same Billing account number. Accounts**~~
28 ~~**with amounts disputed under the dispute provisions of this**~~
29 ~~**agreement shall not be included as Repeatedly Delinquent based**~~
30 ~~**on amounts in dispute alone.**~~ The deposit may not exceed the
31 estimated total monthly charges for an average two (2) month period
32 within the 1st three (3) months from the date of the triggering event
33 which would be either the date of the request for reconnection of
34 services or resumption of order processing ~~and/or the date CLEC~~
35 ~~is repeatedly delinquent as described above~~ for all services. The
36 deposit may be a surety bond if allowed by the applicable
37 Commission regulations, a letter of credit with terms and conditions
38 acceptable to the Billing Party, an – interest bearing escrow account,
39 or some other form of mutually acceptable security such as a cash

1 deposit. Required deposits are due and payable within thirty (30)
2 Days after demand and conditions being met.
3

4 **Q. WHY DOES QWEST OBJECT TO THIS LANGUAGE?**

5 A. This language would require a party to abstain from demanding and collecting a
6 deposit pending the outcome of a Commission proceeding addressing the issue of
7 whether a deposit can be required. By proposing this type of delay, Eschelon seeks
8 to have the Commission micro manage the parties' relationship and prohibit a party
9 from utilizing reasonable business practices. If a billed party is repeatedly
10 delinquent in making its payments, the billing party should be entitled to protect
11 itself from increasing debt and credit risk by requiring the other party to pay a
12 deposit.

13
14 **Q. IS THIS A THEORETICAL OR A REAL CONCERN FOR QWEST?**

15 A. This concern is very real. With the burst of the dot com bubble, many players in the
16 telecommunications industry have faced financial trouble. Where Qwest has faced
17 regulatory hurdles or been slow to take collection action, it has been faced with
18 millions of dollars in unpaid bills. Qwest has found it necessary on numerous
19 occasions to take action to limit its exposure when a CLEC struggles.

20
21 **Issue Nos. 5-13**

22 **Q. PLEASE EXPLAIN ISSUE NOS. 5-13.**

23 A. This issue has to do with credit review language in section 5.4.7. Qwest proposes
24 the following language:

1 5.4.7 The Billing Party may review the other Party's credit standing
2 and increase the amount of deposit required but in no event will the
3 maximum amount exceed the amount stated in Section 5.4.5.
4

5 **Q. WHAT LANGUAGE DOES ESCHELON PROPOSE?**

6 A. Eschelon has two alternative proposals. The first alternative is a proposal to omit
7 the Qwest section 5.4.7 language in its entirety. The second alternative is to modify
8 the Qwest language as follows:

9 5.4.7 The Billing Party may review the other Party's credit standing
10 and increase the amount of deposit required, **if approved by the**
11 **Commission**, but in no event will the maximum amount exceed the
12 amount stated in Section 5.4.5.

13

14 **Q. WHY IS QWEST OPPOSED TO THE TWO ESCHELON PROPOSALS?**

15 A. Qwest proposes language that allows it to review the other party's credit standing
16 and increase the amount of deposit required subject to the limitations set forth in
17 section 5.4.5. This proposal reflects a reasonable and customary business practice.
18 Again, a billing party is entitled to protect itself from credit risk. Eschelon argues
19 that there is no "triggering event" for the deposit requirement, but the credit review
20 itself is that event if Qwest determines that Eschelon's credit standing warrants the
21 imposition of a deposit requirement. In light of the frequency of
22 telecommunications carriers declaring bankruptcy or simply shutting their doors,
23 the need for a service provider like Qwest to be able to conduct credit reviews of its
24 customers is acute. Eschelon's second alternative again inappropriately involves
25 the Commission as a party to the business relationship and adds significant delay

1 and inefficiency to a reasonable business practice accepted by every other CLEC
2 doing business with Qwest.

3

4 **Q. WAS THE QWEST PROPOSED LANGUAGE AGREED TO BY QWEST**
5 **AND THE CLECS DURING THE 271 PROCESS?**

6 A. Yes.

7

8 **Issue NO. 5-16**

9 **Q. PLEASE DESCRIBE ISSUE NO. 5-16.**

10 A. Issue No. 5-16 is related to section 5.16.9.1 of the ICA that concerns the very
11 limited disclosure of CLEC individual forecasts and forecasting information.

12

13 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

14 A. Qwest proposes the following language:

15 5.16.9.1 The Parties may disclose, on a need to know basis only,
16 CLEC individual forecasts and forecasting information disclosed by
17 Qwest, to legal personnel, if a legal issue arises about that forecast,
18 as well as to CLEC's wholesale account managers, wholesale LIS
19 and Collocation product managers, network and growth planning
20 personnel responsible for preparing or responding to such forecasts
21 or forecasting information. In no case shall retail marketing, sales or
22 strategic planning have access to this forecasting information. The
23 Parties will inform all of the aforementioned personnel, with access
24 to such Confidential Information, of its confidential nature and will
25 require personnel to execute a non-disclosure agreement which
26 states that, upon threat of termination, the aforementioned personnel
27 may not reveal or discuss such information with those not
28 authorized to receive it except as specifically authorized by law.
29 Violations of these requirements shall subject the personnel to
30 disciplinary action up to and including termination of employment.

31

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

2 A. Eschelon accepts the Qwest language but proposes to insert the following language
3 prior to final sentence of the Qwest provision:

4 Qwest shall provide CLEC with a signed copy of each non-
5 disclosure agreement executed by Qwest personnel within ten (10)
6 Days of execution.
7

8 **Q. WHY IS QWEST OPPOSED TO THE INSERTED LANGUAGE?**

9 A. The proposed insertion is unnecessary. Qwest's provision mandates very strict
10 procedures for the handling of CLEC forecasted information. Qwest may disclose
11 the information only to legal personnel, if a legal issue arises, and to CLEC
12 wholesale account managers, wholesale LIS and Collocation product managers,
13 network and growth planning personnel "responsible for preparing or responding to
14 such forecasts or forecasting information." The provision expressly prohibits
15 disclosure to retail marketing, sales or strategic planning personnel, and requires
16 Qwest employees to execute nondisclosure agreements.

17
18 Eschelon demands a change to this provision to require Qwest to provide it with
19 copies of employee's nondisclosure agreements within 10 days of execution. This
20 demand places an unnecessary administrative burden on Qwest, particularly if the
21 precedent set here forces Qwest to have to provide every CLEC with copies of
22 nondisclosure agreements. Already, Qwest bears the burden of ensuring that
23 forecasts and forecasting information are handled properly and securely.

24

1 In addition to the stringent requirements set forth in section 5.16.19.1, under section
2 18, Eschelon has further protection and recourse if it believes that Qwest has
3 misused confidential information. Section 18.3.1 of the ICA provides that “either
4 party can request an audit of the other party’s compliance with the Agreement’s
5 measures and requirements applicable to limitations on distribution, maintenance,
6 and use of proprietary or other protected information that the requesting party has
7 provided the other.”

8
9 **V. SECTION 7 DISPUTED TRANSIT RECORD ISSUES**

10 **Issue No. 7-18**

11 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 7-18.**

12 A. This issue and the following issue, No. 7-19, are related to Eschelon’s desire to
13 obtain transit records to validate bills that Qwest sends to Eschelon.

14
15 **Q. WHAT IS THE LANGUAGE THAT ESCHELON IS PROPOSING?**

16 A. Eschelon proposes the following language:

17 **7.6.3.1 In order to verify Qwest’s bills to CLEC for Transit**
18 **Traffic the billed party may request sample 11-01-XX records**
19 **for specified offices. These record will be provided by the**
20 **transit provider in EMI mechanized format to the billed party**
21 **at no charge, because the records will not be used to bill a**
22 **Carrier. The billed party will limit requests for sample 11-01-**
23 **XX data to a maximum of once every six months, provided that**
24 **Billing is accurate.**
25

26
27 **Q. WHY IS QWEST OPPOSED TO ESCHELON’S LANGUAGE?**

1 A. Eschelon seeks to obtain transit records from Qwest in order to validate bills that
2 Qwest sends to Eschelon. In a recent complaint proceeding in Minnesota, Qwest
3 negotiated a compromise solution to the issue of exchanging records when Qwest
4 transits traffic to a terminating carrier. In that proceeding, all parties recognized
5 that the best source of information for determining the source of such calls was
6 the originating switch. Transit records are a poor substitute for originating switch
7 records because the purpose of a transit switch is to complete calls, with billing
8 considerations being secondary. Nonetheless, because the terminating carrier
9 does not necessarily know the identity of the originating company, an extensive
10 records exchange is one way to identify carriers originating calls.

11

12 The issue in this case presents the opposite situation. Here, Eschelon is the
13 originating carrier, and therefore its switch produces the best information with
14 regard to traffic that it sends to Qwest for termination to a third party. Requiring
15 Qwest to provide Eschelon with detailed records of information it already has and
16 to do so without charge is an unreasonable and inefficient way to determine
17 appropriate billing by Eschelon. Eschelon's proposed language should be
18 rejected.

19

20 **Issue No. 7-19**

21 **Q. PLEASE DESCRIBE ISSUE NO. 7-19.**

22 A. Issue No. 7-19, like Issue No. 7-18, involves transit records. Eschelon seek to add
23 the following language to the Agreement:

1 **7.6.4 Qwest will provide the non-transit provider, upon**
2 **request, bill validation detail including but not limited to:**
3 **originating and terminating CLLI code, originating and**
4 **terminating Operating Company Number, originating and**
5 **terminating state jurisdiction, number of minutes being billed,**
6 **rate elements being billed, and rates applied to each minute.**
7

8 **Q. WHY IS QWEST OPPOSED TO THIS LANGUAGE?**

9 A. Qwest is opposed to the language for all of the reasons given in the discussion of
10 Issue No. 7-18. Qwest should not be required to provide Eschelon with information
11 that it already has.

12

13 **VI. SECTION 22 DISPUTED ISSUES**

14 **Issue No. 22-88**

15 **Q. PLEASE DESCRIBE ISSUE NO. 22-88.**

16 A. Issue No. 22-88 has to do with whether the rates in Exhibit A are reciprocal or
17 whether they apply to the services Qwest provides to Eschelon.

18

19 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR THIS ISSUE?**

20 A. Qwest proposed the following language:

21 22.1.1 The rates in Exhibit A apply to the services provided by
22 Qwest to CLEC pursuant to this Agreement.
23

24 **Q. WHAT LANGUAGE IS ESCHELON PROPOSING?**

25 A. Eschelon proposes to strike the words “by Qwest to CLEC” so that the language
26 reads as follow:

1 22.1.1 The rates in Exhibit A apply to the services provided
2 pursuant to this Agreement.
3

4 **Q. WHY IS QWEST OPPOSED TO THIS CHANGE?**

5 A, The change makes the Exhibit A rates reciprocal. Qwest disagrees with Eschelon's
6 claims that the rates are reciprocal. Qwest does not purchase any services from
7 Eschelon. To the extent there are charges from Eschelon to Qwest, these charges
8 are spelled out specifically in the ICA. Therefore the Exhibit A rates apply only to
9 services Qwest provides to Eschelon. It is simply unnecessary to define the rates as
10 reciprocal.

11

12 **Issue No. 22-88 (a)**

13 **Q. PLEASE EXPLAIN ISSUE NO. 22-88(A).**

14 A. Issue No. 22-88(a) has to do with line 7.11 of Exhibit A. Eschelon objects
15 to Qwest's inclusion of a reference to Qwest's Washington Access Service
16 Tariff and proposes to strike the reference to Qwest.

17

18 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S PROPOSAL?**

19 A. As was the case in Issue No. 22-88, Eschelon is attempting to make the rates on the
20 Exhibit A reciprocal. The Exhibit reflects rates for services that Qwest provides to
21 Eschelon. Section 7.2.2.3.3.1 of Agreement specifically spells out when CLEC
22 access rates apply. There is not need for such a reference in Exhibit A.

23

24

1 **Issue No. 22-88(b)**

2 **Q. PLEASE EXPLAIN ISSUE NO. 22-88(B).**

3 A. Issue No. 22-88(b) has to do with Eschelon's proposed language for section
4 22.4.1.3:

5 22.4.1.3 Nothing in this Agreement shall waive any right of either
6 Party to request a cost proceeding at the Commission to establish a
7 Commission-approved rate to replace an Interim rate.
8

9 **Q. WHY IS QWEST OPPOSED TO THE LANGUAGE?**

10 A. The language is unnecessary. The Commission came to this same conclusion when
11 AT&T proposed inserting similar language into its interconnection agreement with
12 Qwest. In the Arbitrator's report¹ the administrative law judge stated:

13 Proposed Sections 22.4.1.3 and 22.4.1.4 are not necessary to
14 preserve AT&T's ability to exercise its rights to ask for Commission
15 determination of disputed matters, including cost related matters.
16 The proposed provisions thus are surplusage and are rejected.
17 (Arbitrator's Report p. 38).
18

19 **Issue No. 22-90**

20 **Q. PLEASE EXPLAIN ISSUE NO. 22-90.**

21 A. Issue No. 22-90 involves section 22.6.1 of the Agreement that lays out the
22 procedure to be followed for rates that have not been approved by the
23 Commission. The parties have agreed on the process to be followed with

¹ *In the Matter of the Petition for Arbitration of AT&T Communications of the Pacific Northwest and TCG Seattle, With Qwest Corporation, Pursuant to 47 U.S.C. Section 252(b).* Docket No. UT-033035. Order No. 4. Arbitrator's Report (December 1, 2003).

1 the Commission. However, Eschelon proposes to insert the following
2 language:

3 Qwest will provide notice to CLEC of such filing and the proposed
4 rate and, upon request, will provide a copy of the related cost
5 support to CLEC.
6

7 **Q. WHY DOES QWEST OBJECT TO THE ADDITIONAL LANGUAGE?**

8 A. It is simply not necessary. CLECs do not need a separate notice to be aware of a
9 proposed rate when it already would be included in an interconnection agreement.
10 Furthermore, Commission cost docket procedures will ensure that Eschelon has
11 adequate opportunity to challenge any proposed rate.

12

13 **VII. EXHIBIT A DISPUTED ISSUES**

14 **Issue No. A-93, A-93(a), A-93(b), A-93(c)**

15 **Q. PLEASE DESCRIBE ISSUE NOS. A-93 THROUGH A-93(C).**

16 A. Issue Nos. A-93, A-93(a), A-93(b) and A-93(c) all involve rates that have not been
17 approved by the Commission.

18

19 **Q. HOW IS QWEST PROPOSING THAT UNAPPROVED RATES SHOULD
20 BE HANDLED?**

21 A. In section 22.6.1 the parties have agreed to a filing process for unapproved TELRIC
22 rates. The merits of interim treatment of unapproved rates should be treated a part
23 of that process and not as a part of this arbitration.

24

1 **Issue No. A-95**

2 **Q. PLEASE DESCRIBE ISSUE NOS. A-95.**

3 A. Issue A-95 has to do with the Exhibit A charges related to Power Reduction and
4 Restoration which have not been approved by the Commission.

5

6 **Q. HOW IS QWEST PROPOSING THAT UNAPPROVED RATES SHOULD**
7 **BE HANDLED?**

8 A. In section 22.6.1 the parties have agreed to a filing process for unapproved TELRIC
9 rates. The merits of interim treatment of unapproved rates should be treated a part
10 of that process and not as a part of this arbitration.

11

12 **Issue No. A-96**

13 **Q. PLEASE DESCRIBE ISSUE NO. A-96.**

14 A. Issue No. A-96 has to do with how the non-recurring charges for installation and
15 disconnection of EELs are displayed on the Exhibit A. This issue has now been
16 closed. The parties have resolved the issue by adding the following footnote:

17 The nonrecurring charges for the EEL transport element are
18 included in the EEL Loop and/or Multiplexed EEL nonrecurring
19 charges. Therefore there is no additional non-recurring charge for
20 the EEL Transport. When an EEL transport circuit is commingled
21 with a Private Line Channel Termination circuit, the non-recurring
22 charge for the commingled EEL will be the EEL Loop NRC.

23

24 **VIII. CONCLUSION**

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

26 A. Yes.