

**BEFORE THE
WASHINGTON 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 DOUGLAS DENNEY
ON BEHALF OF ESCHELON TELECOM, INC.**

SEPTEMBER 29, 2006

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1 **I. INTRODUCTION**

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

3 A. My name is Douglas Denney. I work at 730 2nd Avenue South, Suite 900, in
4 Minneapolis, Minnesota.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Eschelon Telecom, Inc., as Senior Manager of Costs and
7 Policy. My responsibilities include negotiating interconnection agreements,
8 monitoring, reviewing and analyzing the wholesale costs Eschelon pays to
9 carriers such as Qwest, and representing Eschelon on regulatory issues.

10 **Q. PLEASE DESCRIBE ESCHELON'S HISTORY AND BUSINESS.**

11 A. Eschelon Telecom, Inc. was founded in 1996 and owes its existence to the 1996
12 Telecommunications Act. The Act allowed companies to enter the local exchange
13 service market and compete with the incumbent monopoly.

14 Originally named Advanced Telecommunications, Inc., Eschelon is headquartered
15 in Minneapolis and serves small and medium business customers in Arizona,
16 California, Colorado, Minnesota, Oregon, Nevada, Utah and Washington.
17 Eschelon provides telecommunications services, internet access, and business
18 telephone systems to over 60,000 customers region wide using over 500,000
19 access lines. In Washington, Eschelon serves over 11,000 customers with over
20 110,000 access lines. Eschelon provides its services and products individually or

1 in customized packages to serve customers with a fully-outsourced voice and data
2 network solution.

3 Eschelon's voice and data traffic is switched through its six Nortel DMS 500
4 voice switches, six Lucent 5ESS voice switches, six Cisco BPX data switches and
5 seven Nortel Passport ATM switches. Eschelon's investment in facilities also
6 includes building physical collocations in over 120 ILEC central offices, 32 of
7 which are in Washington. Eschelon accesses its end user customers via "last
8 mile" facilities or UNE loops purchased from Qwest, AT&T, or Verizon.

9 Eschelon's growth has been achieved through a combination of its own direct
10 sales force of over 200 employees and through acquisitions of other companies
11 also focused on serving small and medium business customers. Most recently,
12 Eschelon acquired Oregon Telecom, Inc. in April, 2006. In June, 2006 Eschelon
13 announced its plans to acquire Mountain Communications, Inc., a CLEC based in
14 Tempe, Arizona¹ and in August, 2006 Eschelon announced plans to acquire
15 OneEighty Communications, a CLEC based in Billings, Montana.²

¹ See, [http://www.eschelon.com/about_us/section_detail.aspx?itemID=7636&catID=220&SelectCatID=220&ty
peID=6](http://www.eschelon.com/about_us/section_detail.aspx?itemID=7636&catID=220&SelectCatID=220&typeID=6).

² See, [http://www.eschelon.com/about_us/section_detail.aspx?itemID=7897&catID=220&SelectCatID=220&ty
peID=6](http://www.eschelon.com/about_us/section_detail.aspx?itemID=7897&catID=220&SelectCatID=220&typeID=6).

1 In 2005, Eschelon was the first CLEC in the five years since the telecom bust of
2 2000 to complete an Initial Public Offering of its common stock. Eschelon's
3 bonds are also publicly traded.

4 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
5 **BACKGROUND.**

6 A. I received a B.S. degree in Business Management from Phillips University in
7 1988. I spent three years doing graduate work at the University of Arizona in
8 Economics, and then I transferred to Oregon State University where I have
9 completed all the requirements for a Ph.D. except my dissertation. My field of
10 study was Industrial Organization, and I focused on cost models and the
11 measurement of market power. I taught a variety of economics courses at the
12 University of Arizona and Oregon State University. I was hired by AT&T in
13 December 1996 and spent most of my time with AT&T analyzing cost models. In
14 December 2004, I was hired by Eschelon Telecom, Inc., where I am presently
15 employed.

16 I have participated in over 30 proceedings in the 14-state Qwest region. Much of
17 my prior testimony involved cost models — including the HAI Model, BCPM,
18 GTE's ICM, U S WEST's UNE cost models, and the FCC's Synthesis Model. I
19 have also testified about issues relating to the wholesale cost of local service —
20 including universal service funding, unbundled network element pricing,
21 geographic deaveraging, and competitive local exchange carrier access rates.

1 Most recently I have filed testimony regarding Qwest's "non-impaired" wire
2 center lists and related issues in dockets in Utah, Oregon, Colorado, Minnesota
3 and Arizona.

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

5 A. Yes. When with AT&T, I testified in docket UT-960369 in two separate phases
6 with regard to shared transport and geographic deaveraging and was involved in
7 all aspects of this docket providing witness support and reviewing compliance
8 filings. I filed testimony again on geographic deaveraging in docket UT-023003
9 and provided witness support in that docket on other issues. I filed testimony in
10 docket UT-033044, the original Triennial Review Order ("TRO") docket, which
11 was suspended in the middle of the hearings when the D.C. Circuit Court
12 remanded parts of the TRO to the FCC. Since with Eschelon, I filed comments in
13 docket UT-053025 regarding the impact of the TRO/TRRO on competition. As
14 part of that docket I was involved in the "non-impaired" wire center list
15 workshops and following investigation.

16 **Q. BEFORE WE GET INTO THE SUBSTANCE OF YOUR TESTIMONY,**
17 **PLEASE DESCRIBE HOW IT IS ORGANIZED.**

18 A. My testimony is organized by subject matter number. Each subject matter
19 heading may contain one or more disputed issues from the interconnection
20 agreement. For each subject matter I explain Eschelon's business need relating to
21 this issue. In addition, I contrast Eschelon's proposed language with Qwest's

1 language and explain why Eschelon's language is more reasonable and
2 appropriate. I also explain the flaws in Qwest's proposal.

3 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

4 A. Yes. The exhibits to my testimony are described below:

5 **EXHIBIT DD-1:** Qwest's September 1, 2005 notice to Eschelon
6 indicating that Qwest would begin to apply Design Change charges to
7 unbundled loops. This exhibit is related to Subject Matter No. 4.

8 **EXHIBIT DD-2:** Eschelon's escalation of Qwest's proposal to
9 inappropriately apply the Design Change charge to unbundled loops. This
10 exhibit is related to Subject Matter No. 4.

11 **EXHIBIT DD-3:** Chronology of Qwest's threat to disconnect Eschelon's
12 UNE circuits and stop processing Eschelon orders. This exhibit is related
13 to Payment and Deposit provisions contained in Subject Matter Nos. 5, 6
14 and 7 and helps demonstrate why Qwest should not have unilateral
15 authority to require deposits, disconnect Eschelon's circuits, or to stop
16 processing Eschelon's orders. (Confidential Exhibit)

17 **EXHIBIT DD-4:** "Three Consecutive Months" standard. This exhibit is
18 related to Payment and Deposit provisions contained in Subject Matter
19 Nos. 5, 6 and 7. It contains pages of various carriers' ICAs with Qwest
20 showing that Qwest has agreed to the three consecutive month standard
21 with numerous CLECs, CMRS providers and paging companies.

22 **EXHIBIT DD-5:** Chronology of terms relating to Collocation Space
23 Option Reservation. This exhibit is related to Subject Matter No. 13,
24 Optioned Contiguous Space and helps to demonstrate that Qwest's claims
25 that this issue needs to go through CMP is contrary to Qwest's historical
26 practice.

27 **EXHIBIT DD-6:** Description of modifications to Qwest cost studies to
28 support Eschelon's proposed interim rates.

1 **II. SUBJECT MATTER NOS. 2, 3 AND 4**

2 **SUBJECT MATTER NO. 2. RATE APPLICATION**

3 **Issue No. 2-3: ICA Section 2.2 (first of two issues)**

4 **Q. PLEASE DESCRIBE THE BUSINESS NEED REGARDING RATE**
5 **APPLICATION IN ISSUE NO. 2-3.**

6 A. Section 2.2 of the ICA addresses changes in law. Qwest proposes two additions
7 to Section 2.2 that relate to when certain changes of law will take effect. Issue
8 No. 2-3, which is the first of the two disputed issues arising from Section 2.2,
9 concerns language regarding when rate changes resulting from a Commission
10 order will take effect. Eschelon believes that when a particular rate change should
11 take effect is a matter to be determined by the Commission in the context of a
12 particular case. Qwest, in contrast, seeks to create a “default” that rate changes
13 will be given only prospective effect.

14 **Q. WHAT IS ESCHELON’S PROPOSAL RELATING TO ISSUE NO. 2-3?**

15 A. Eschelon proposes to either remain silent on the issue in Section 2.2 (by deleting
16 Qwest’s proposed insertion that creates a presumption of a prospective rate
17 application) or to include a sentence that simply refers to Section 22.0, where the
18 issue is dealt with more completely.

19 ICA Section 2.2 Language at Dispute in Issue No. 2-3

20

21 The rates in Exhibit A and when they apply are addressed
22 in Section 22. . Rates in Exhibit A include legally binding

1 ~~decisions of the Commission and shall be applied on a~~
2 ~~prospective basis from the effective date of the legally~~
3 ~~binding Commission decision, unless otherwise ordered by~~
4 ~~the Commission.~~
5

6 **Q. WHAT IS QWEST’S PROPOSAL RELATING TO ISSUE NO. 2-3?**

7 A. Qwest proposes the following language:

8 ~~The rates in Exhibit A and when they apply are addressed~~
9 ~~in Section 22. Rates in Exhibit A include legally binding~~
10 decisions of the Commission and shall be applied on a
11 prospective basis from the effective date of the legally
12 binding Commission decision, unless otherwise ordered by
13 the Commission.
14

15 **Q. WHY IS ESCHELON’S PROPOSED LANGUAGE REGARDING THE**
16 **APPLICATION OF RATES APPROPRIATE?**

17 A. Section 22.0 (“Pricing”) already deals with the application of rates in Exhibit A
18 and does so more thoroughly and clearly than Qwest’s proposed single sentence
19 here. Most of Section 22.0 is agreed upon and closed. The issues that remain
20 open will be decided in this arbitration with respect to Section 22.0 and need not
21 also be litigated with respect to this Section 2.2. With respect to when rate
22 changes will take effect, Section 22.4.1.2, which the parties have agreed upon,
23 states: “Such Commission-approved rates shall be effective as of the date
24 required by a legally binding order of the Commission.” Section 22.4.1.2 does
25 not attempt to pre-judge whether the rates will be applied on a prospective basis
26 and leaves that issue to the discretion of the Commission to decide at the

1 appropriate time. The Commission has, in other cases, determined that the
2 circumstances warranted the establishment of an interim rate that would be
3 subject to true up when the final rate was determined. The agreed upon language
4 of Section 22.4.1.2 is consistent with the Commission's past practice, because it
5 leaves it to the Commission to decide when a rate change will take effect.
6 Qwest's new proposal in Section 2.2, in contrast, attempts to create an
7 unnecessary default that rate changes will be applied prospectively. The
8 ambiguity created by Qwest's proposal is likely to lead to additional litigation.

9 **Q. PLEASE SUMMARIZE THIS ISSUE.**

10 A. Section 22 of this agreement describes how new rates and rate changes are
11 applied. Therefore, Eschelon's proposed language should be adopted.

12
13 **SUBJECT MATTER NO. 3. EFFECTIVE DATE OF LEGALLY BINDING**
14 **CHANGES**

15 **Issue No. 2-4: ICA Section 2.2 (second of two issues)**

16 **Q. PLEASE DESCRIBE THE BUSINESS NEED REGARDING THE**
17 **EFFECTIVE DATE OF LEGALLY BINDING CHANGES IN ISSUE NO. 2-**
18 **4.**

19 A. Issue No. 2-4, which is the second of two disputed issues in Section 2.2, concerns
20 when legally binding changes in the law will take effect. When a change in the
21 law takes effect is a question that can have significant financial and other
22 consequences. Because of the potential for future disputes, it is important that the

1 ICA language on this issue: 1) provide the parties with clear guidance on when a
2 change of law will take effect, so that they can plan accordingly; 2) not provide an
3 opportunity for any party to delay the effect of a change in the law; 3) preserve
4 the authority of the relevant regulatory body – e.g., the Commission, the FCC, or
5 Congress – to determine when changes in the law will be given effect.

6 **Q. WHAT IS ESCHELON PROPOSING ON THIS ISSUE?**

7 A. Agreed upon language of Section 2.2 provides that, when a change of law occurs,
8 the ICA “shall be amended to reflect such legally binding modification or
9 change.” Eschelon’s proposal is that any such amendment “shall be deemed
10 effective on the effective date” of the change in law, unless otherwise ordered.
11 This provision will assure that the ICA properly reflects any changes in the law,
12 including any direction given in any such order regarding when the ordered
13 change shall be given effect.

14 ICA Section 2.2 Language at Dispute in Issue No. 2-4

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

26

1 **Q. HOW DOES QWEST'S PROPOSAL DIFFER FROM ESCHELON'S**
2 **PROPOSAL ON THIS ISSUE?**

3 A. Qwest's proposed language is below:

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

16 Qwest proposes that when an order that changes the law “does not include a
17 specific implementation date,” the effective date of such a change will depend on
18 whether one party gives the other notice of the order. When one party gives
19 notice of the order within thirty days of the effective date of the order, Qwest
20 proposes that the amendment of the ICA reflecting the change in the law will be
21 “deemed effective on the date of that order.” When one party does not give notice
22 of the order within thirty days, Qwest proposes that the legal change will take
23 effect on the effective date of the ICA amendment that reflects that change, unless
24 the parties agree otherwise.

25 **Q. WHAT PROBLEMS DOES QWEST'S PROPOSAL PRESENT FOR**
26 **ESCHELON?**

1 A. Eschelon has three general concerns. First, the language is ambiguous, which is
2 likely to lead to disputes in the future. Second, the language creates an
3 opportunity for Qwest to delay the effect of a legal change that is not in its favor.
4 Third, the language intrudes on the province of the relevant regulatory authority
5 to determine when the legal change will take effect.

6 **Q. HOW IS QWEST’S PROPOSAL AMBIGUOUS?**

7 A. The proposal would govern what happens when an order “does not include a
8 specific implementation date.” Qwest’s language also provides, however, that
9 when a party gives notice of an order within thirty days, the legal change resulting
10 from that order will take effect on “the effective date of that order.” What this
11 tells me is that Qwest believes a “specific implementation date” of an order is
12 something different from an order’s effective date. Under Qwest’s proposal, it
13 appears that an order that the Commission states is to be “effective immediately”
14 would not be one that has a “specific implementation date” and would, therefore,
15 be one that Eschelon would have to give Qwest notice of within thirty days for the
16 order to actually have immediate effect.

17 In addition, what constitutes “notice” is also unclear. For example, Qwest’s
18 language would appear to require Eschelon to give Qwest “notice” even when
19 Qwest is a party to the proceeding that results in the change of law.

20 **Q. HOW DOES QWEST’S PROPOSAL CREATE AN OPPORTUNITY FOR**

1 **DELAY?**

2 A. By proposing that the effective date of a change in the law will depend on
3 whether one party gives the other notice of the order giving rise to the change,
4 Qwest creates an opportunity for itself to delay implementation of adverse rulings.
5 If, for example, Qwest is a party to a proceeding and Eschelon (or another CLEC
6 that has opted into the ICA) is not, and Qwest receives an adverse result, Qwest's
7 language would allow Qwest to delay the effect of that adverse ruling by simply
8 not notifying CLECs of the order. Because CLECs have much more limited
9 resources than Qwest to participate in regulatory proceedings and Qwest is likely
10 to have more complete knowledge regarding the proceedings and any changes in
11 the law that result, Qwest's proposed "notice" requirement heavily favors Qwest
12 to the disadvantage of CLECs.

13 **Q. HOW DOES QWEST'S PROPOSAL INTRUDE ON THE AUTHORITY**
14 **OF REGULATORY BODIES TO DETERMINE WHEN LEGAL**
15 **CHANGES WILL TAKE EFFECT?**

16 A. Qwest is proposing to change the effective date to either the date of an ICA
17 amendment or a date agreed upon by the parties, even in cases when the
18 Commission has ordered a different effective date. For example, if the
19 Commission issues an order in a generic proceeding that has been properly
20 noticed and the order states that it is effective immediately, Qwest's language
21 would allow Qwest to implement that ruling at a later date if neither party gave

1 the other notice of the ruling (even if one or both parties were party to the
2 proceeding). Qwest should not be allowed to alter a Commission-ordered
3 effective date in this manner. Eschelon's proposed language is consistent with the
4 notion that the effective date of an ICA amendment incorporating a change in law
5 should be determined by the Commission in light of sound public policy, not by
6 the procedural maneuverings of the parties.

7 **Q. PLEASE PROVIDE ESCHELON'S ENTIRE PROPOSED LANGUAGE**
8 **FOR ICA SECTION 2.2 COVERING BOTH ISSUE NOS. 2-3 AND 2-4.**

9 A. Below is the entire provision in this section of the ICA.

10 2.2 The provisions in this Agreement are intended to be in
11 compliance with and based on the existing state of the law, rules,
12 regulations and interpretations thereof, including but not limited to
13 state rules, regulations, and laws, as of March 11, 2005 (the
14 Existing Rules). Nothing in this Agreement shall be deemed an
15 admission by Qwest or CLEC concerning the interpretation or
16 effect of the Existing Rules or an admission by Qwest or CLEC
17 that the Existing Rules should not be changed, vacated, dismissed,
18 stayed or modified. Nothing in this Agreement shall preclude or
19 stop Qwest or CLEC from taking any position in any forum
20 concerning the proper interpretation or effect of the Existing Rules
21 or concerning whether the Existing Rules should be changed,
22 vacated, dismissed, stayed or modified. To the extent that the
23 Existing Rules are vacated, dismissed, stayed or materially
24 changed or modified, then this Agreement shall be amended to
25 reflect such legally binding modification or change of the Existing
26 Rules. Where the Parties fail to agree upon such an amendment
27 within sixty (60) Days after notification from a Party seeking
28 amendment due to a modification or change of the Existing Rules
29 or if any time during such sixty (60) Day period the Parties shall
30 have ceased to negotiate such new terms for a continuous period of
31 fifteen (15) Days, it shall be resolved in accordance with the
32 Dispute resolution provision of this Agreement. It is expressly
33 understood that this Agreement will be amended as set forth in this

1 Section 2.2, to reflect the outcome of generic proceedings by the
2 Commission for pricing, service standards, or other matters
3 covered by this Agreement, except where CLEC notifies Qwest in
4 writing that an amendment is not required. The rates in Exhibit A and
5 when they apply are addressed in Section 22. Rates in Exhibit A
6 include legally binding decisions of the Commission and shall be
7 applied on a prospective basis from the effective date of the legally
8 binding Commission decision, unless otherwise ordered by the
9 Commission. When a regulatory body or court issues an order
10 causing a change in law and that order does not include a specific
11 implementation date, a Party may provide notice to the other Party
12 within thirty (30) Days of the effective date of that order and any
13 resulting Any amendment shall be deemed effective on the
14 effective date of the legally binding change or modification of the
15 Existing Rules for rates, and to the extent practicable for other
16 terms and conditions, unless otherwise ordered. ~~In the event~~
17 ~~neither Party provides notice within thirty (30) Days, the effective~~
18 ~~date of the legally binding change shall be the effective date of the~~
19 ~~amendment unless the Parties agree to a different date.~~ While any
20 negotiation or Dispute resolution is pending for an amendment
21 pursuant to this Section 2.2 the Parties shall continue to perform
22 their obligations in accordance with the terms and conditions of
23 this Agreement. For purposes of this Section, "legally binding"
24 means that the legal ruling has not been stayed, no request for a
25 stay is pending, and any deadline for requesting a stay designated
26 by statute or regulation, has passed.
27

28 **Q. PLEASE SUMMARIZE THIS ISSUE.**

29 A. Changes in law should take effect as of the effective date of the change in law,
30 unless otherwise ordered. Eschelon's language should be adopted for this issue in
31 order to remove ambiguity and limit the ability of one party to withhold
32 information or delay the implementation of changes in law.

33

1 **SUBJECT MATTER NO. 4. DESIGN CHANGES**

2 *Issue Nos. 4-5, 4-5(a), 4-5(b) and 4-5(c): ICA Sections 9.2.3.8, 9.2.3.9, 9.2.4.4.2,*
3 *9.6.3.6, 9.20.13 and Exhibit A*

4 **Q. WHAT IS THE BUSINESS NEED UNDERLYING ESCHELON'S**
5 **PROPOSALS FOR DESIGN CHANGES (ISSUE NOS. 4-5 AND**
6 **SUBPARTS)?**

7 A. A design change allows a CLEC to change a service previously requested without
8 the delay and cost involved in canceling and re-submitting the request. Qwest
9 provides Eschelon design changes today, and has since 1999 under its
10 Commission-approved ICA. Eschelon needs a ruling that provides certainty that
11 Qwest will continue to provide changes at cost-based rates. At the very least, the
12 Agreement must contain language that makes Qwest's obligation clear in this
13 regard so that Qwest does not quit providing design changes altogether, severely
14 restrict access to design changes, or require Eschelon to execute a separate ICA
15 amendment containing design change terms and conditions. This dispute should
16 be resolved now, while both parties are already before the Commission.

17 **Q. CAN YOU PROVIDE EXAMPLES THAT SUBSTANTIATE**
18 **ESCHELON'S CONCERNS AS REAL BUSINESS CONCERNS?**

19 A. Yes. During negotiations on design changes Qwest submitted a proposal that
20 would have applied tariff rates to design changes. Qwest later changed its
21 position in negotiations, but indicated in meetings between the two companies
22 that Qwest's change in position for negotiations should not be construed as Qwest

1 giving up on its tariff rate proposal for design changes, and that Qwest fully
2 intended to pursue this proposal outside of negotiations. Qwest recently
3 confirmed its previously stated strategy of pursuing tariff rates for design changes
4 in its August 31, 2006 non-CMP notice (Process Notification
5 PROS.08.31.06.F.04159.Amendments.ComlAgree.SGAT), effective on one day's
6 notice, which announced that Qwest was posting a new "template"
7 interconnection agreement on its website on September 1, 2006.³ This new
8 negotiations template added a tariff reference for the following rate elements:
9 Additional Dispatch, Trouble Isolation Charge, Design Charge, Expedite Charge,
10 Cancellation Charge, and Maintenance of Service Charge. Qwest's position is
11 that design changes are "not UNEs" and therefore do not need to adhere to the
12 federal TELRIC pricing rules. This new revelation was made by Qwest despite
13 all of the work that was done in the 271 proceedings relating to nondiscriminatory
14 access to UNEs and regardless of whether or not a state commission already has a
15 cost-based rate for that activity in place.

16 What is concerning to Eschelon about this recent non-CMP notice is that Qwest
17 has already indicated to Eschelon that Qwest's ultimate objective is to apply tariff
18 rates to Eschelon (*i.e.*, the same changes that Qwest announced in its 8/31/06 non-
19 CMP notice), even though Qwest is not currently pursuing that proposal in

³ Mr. Starkey explains that Qwest's position stands in stark contrast to the FCC's rules and orders that require Qwest to provide nondiscriminatory access not only to UNEs themselves, but also nondiscriminatory access to those UNEs that provide a CLEC with a meaningful opportunity to compete. *See* Issue 9-31.

1 negotiations/arbitrations (or CMP, for that matter). This means that Qwest could
2 implement its tariff proposal outside of CMP (so that no CLECs have the
3 opportunity to comment on it), refuse to negotiate its tariff proposal (by pursuing
4 a different proposal in arbitrations), yet ultimately apply that tariff proposal to
5 Eschelon once the arbitrations are finished.

6 **Q. WHAT SHOULD BE TAKEN FROM THIS EXAMPLE?**

7 A. Both of Qwest's positions on design change charges (*i.e.*, that all design change
8 charges should be priced at the same expensive rate for UDIT and that tariff rates
9 should apply to design changes) stand in stark contrast to the stance it took
10 between 1999 and late 2005, during which time Qwest provided design change
11 charges in Washington without additional charge. Qwest announced both of these
12 misguided proposals through non-CMP, non-contractual sources. This highlights
13 the need for certainty and Commission oversight related to design changes for
14 UNEs so that Eschelon is not subjected to Qwest's continual changes. This
15 arbitration is the appropriate forum for addressing the ICA language and ensuring
16 that the Commission maintains jurisdiction over UNE-based rates, and adopting
17 Eschelon's language will avoid future disputes.

18 **Q. ARE THERE OTHER EXAMPLES DEMONSTRATING THAT**
19 **ESCHELON'S CONCERNS ARE REAL?**

1 A. Yes. On September 11, 2006, Qwest issued a Level 3 CMP notice that revised its
2 Provisioning and Installation Overview that changed the verbal supplement for
3 CFA slot change on the due date. Qwest added the following language:

4 NOTE: For CFA or slot changes, it is the CLEC's responsibility to
5 provide Qwest with a new CFA that will work. Qwest will only
6 accept one verbal CFA change on the due date. If that CFA fails to
7 work, Qwest will place the order in jeopardy (customer jeopardy).
8 No further action will be taken on Qwest's part until Qwest
9 receives a valid supplemental request to change the due date and
10 the CFA (if applicable). Additional charges may apply.
11

12 This language clearly restricts the availability of CFA changes (CFA changes are
13 discussed in more detail below), unnecessarily complicates the provisioning
14 process and leaves the door open for Qwest to assess "additional charges" –
15 which coupled with Qwest's 8/31/06 non-CMP notice means that Qwest will
16 apply tariff rates. This recent CMP notice only confirms the concern I expressed
17 above that, without the specific language Eschelon is proposing for Issue 4-5 and
18 subparts, Qwest may attempt to quit providing design changes altogether (or
19 severely restrict access to design changes). And the CMP Notice's reference to
20 "additional charges" underscores the importance of a Commission ruling finding
21 that design changes are necessary for nondiscriminatory access to UNEs and
22 should be cost-based.⁴

23 **Q. IS THE DESIGN CHANGE ISSUE AN EXAMPLE OF QWEST USING**

⁴ Mr. Starkey addresses Qwest's 9/11/06 CMP notice and its effect on nondiscriminatory access to UNEs under Issue 9-31.

1 **THE CMP PROCESS TO ITS OWN ADVANTAGE – AND THE**
2 **DISADVANTAGE OF CLECS?**

3 A. Yes. Qwest provided design changes from 1999 – 2005 without any additional
4 charges to Eschelon. On September 1, 2005, Qwest sent an unexpected letter to
5 CLECs stating that “Qwest will commence billing CLECs non-recurring charges
6 for design changes to Unbundled Loop circuits” beginning on Oct. 1, 2005.⁵ In
7 that letter, Qwest also included a definition of “design change.”⁶ Qwest notified
8 CLECs of these changes and new charges for design changes without using the
9 CMP and without obtaining Commission approval for the charges. When
10 Eschelon inquired about this change,⁷ Qwest CMP personnel responded that “this
11 item is outside the scope of CMP.”⁸ Qwest will likely argue that addressing the
12 change regarding rates for design changes outside CMP was correct because CMP
13 does not deal with rates or rate application, but Qwest chose not to address the
14 definition of design changes (a non-rate or rate application issue) in the CMP, and
15 also chose not to seek Commission approval for its rates.

16 However, Qwest changed its tune when it developed its position on design

⁵ Exhibit DD-1, September 1, 2005 letter from Qwest with the subject line “Billing for design changes on Unbundled Loop.” Document No. PROS.09.01.05.F.03204.Design_Chgs_Unbundld_Loop.

⁶ In its September 1, 2005 letter, Qwest stated that design changes include the following activities: Connecting Facility Assignments (CFA) change, Circuit Reference (CKR) change, CKL 2 end user address change on a pending LSR, Service Name (SN) change, and NC/NCI Code change on a pending LSR.

⁷ Eschelon escalated this item on September 26, 2005 (escalation no. 092605-1E35). I have provided as Exhibit DD-2 an email exchange between Eschelon and Qwest detailing Eschelon’s escalation, Qwest’s confirmation and Qwest’s response.

⁸ See, Exhibit DD-2, page 3.

1 changes for its arbitrations with Eschelon. In its position statement for the Issues
2 Matrix in Minnesota (the first state in which the arbitration was filed), Qwest
3 provided the following position on the definition of Design Change (an issue that
4 has since been closed in these arbitrations):

5 Qwest agrees that there needs to be a common understanding of
6 this definition, but this definition concerns a process that affects all
7 CLECs, not just Eschelon. The entire purpose of CMP was to
8 ensure that the industry (not just Qwest or one CLEC) is involved
9 in creating and approving processes so that processes are uniform
10 among all CLECs. Processes that affect all CLECs should be
11 addressed through CMP, not through an arbitration involving a
12 single CLEC. Further, implementing a unique process for Eschelon
13 that Qwest does not follow for other CLECs would require Qwest
14 to modify its systems or processes and would cause Qwest to incur
15 costs it is entitled to recover under the Act.
16

17 Qwest had every opportunity to address the definition of design change in the
18 CMP, but instead introduced a definitional change that affected all CLECs in a
19 non-CMP announcement. But when Eschelon raised the issue in arbitration,
20 Qwest stated that the definition of design change is properly addressed in CMP
21 because it affects all CLECs.

22 Furthermore, the definition of design change was closed in the Eschelon/Qwest
23 Washington arbitration (and other states), with Qwest agreeing to a definition of
24 “design change” that differs from the definition that it introduced in its September
25 2005 letter to all CLECs.⁹ Qwest made the determination to close on the

⁹ The closed definition of Design Changes states that, “Design change *does not include* modifications to records without physical changes to facilities or services, such as changes in the circuit reference (CKR)... or Service Name (NM)...” (emphasis added) Yet, Qwest’s September 1, 2005 letter states as

1 definition of design change, agreeing to Eschelon's proposed definition, outside
2 the CMP, although its original position was that the ICA should not include
3 Eschelon's definition because it was an issue that affected all CLECs and should
4 be addressed in CMP.¹⁰ Qwest's continued inconsistency on this issue
5 underscores the need for the Commission to deal with the issue of design changes
6 now in this ICA arbitration, which is the proper forum for resolution of these
7 issues between Qwest and Eschelon.

8 **Q. WHAT IS A DESIGN CHANGE?**

9 A. The definition of "Design Change" in Section 4 is closed in Washington. The
10 term "Design Change" is defined in Section 4 of the Agreement as follows:

11 "Design Change" is a change in circuit design after Engineering
12 Review required by a CLEC supplemental request to change a
13 service previously requested by CLEC. An Engineering Review is
14 a review by Qwest personnel of the service ordered and the
15 requested changes to determine what change in the design, if any,
16 is necessary to meet the changes requested by CLEC. Design
17 Changes may include a change in the type of Network Channel
18 Interface (NCI code) on pending orders and changes in End User
19 Customer address within the same Serving Wire Center requiring
20 changes to facilities or terminations. Design Change does not
21 include modifications to records without physical changes to
22 facilities or services, such as changes in the circuit reference

follows: "Among the charges for the design change that will be billed, the following activities will generate a non-recurring design change charge per occurrence:..."Circuit Reference (CKR) change"...Service Name (SN) change..." Despite Qwest's agreement to language in the Eschelon ICA that excludes CKR and SN changes from design change charges, Qwest is still charging design change charges for these activities in other states. And Qwest is applying a design change charge designed for dedicated transport, though the agreed to language identifies these activities as modifications without physical changes to facilities or services.

¹⁰ There are numerous other examples of Qwest cherry picking issues to address in CMP because they allegedly affect all CLECs, and then agreeing to issues in bilateral negotiations that affect all CLECs when Qwest likes the terms. See the testimony of Michael Starkey and Bonnie Johnson.

1 (CKR) (i.e., the circuit number assigned by CLEC) or Service
2 Name (SN) (i.e., the name of the End User Customer at a circuit
3 location).

4 Eschelon proposes three distinct types of design change charges. The first is the
5 traditional change which applies to design changes for UDIT. The second applies
6 to design changes for loops and the third applies to a change in the Connecting
7 Facility Assignment (“CFA”) for coordinated installations of 2- and 4-wire loops
8 on the day of cut. These will be described in more detail below.

9 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THESE ISSUES?**

10 A. With respect to ICA language, Eschelon and Qwest disagree as to (1) design
11 change charges for loops [Issue No. 4-5], (2) design change charges for CFA
12 changes [Issue No. 4-5(a)], (3) design change charges for UDIT [Issue No. 4-
13 5(b)]; and (4) the Design Change Charge rates that should be included in Exhibit
14 A to the ICA. Eschelon proposes the following language modifications for Issues
15 Nos. 4-5, 4-5(a), 4-5(b), and 4-5(c). Eschelon proposed language that Qwest
16 opposes is shown in underlined text, and Qwest proposed language opposed by
17 Eschelon is shown in ~~strikeout~~ text.

18 **Issue No. 4-5**

19 **9.2.3 Unbundled Loop Rate Elements**

20 The following rates for Unbundled Loops are set forth in Exhibit A
21 of this Agreement:

22 ...
23 9.2.3.8 Design Change rates for Unbundled loops

24 9.2.4.4.2 Charges, as set forth in Exhibit A, apply for the following modifications

1 to existing orders unless the need for such change is caused by Qwest:

2
3 a) ~~Design Change~~; and

4
5 ba) Expedited order.
6

7 **Issue No. 4-5(a):**

8 9.2.3.9 CFA Change – 2/4 Wire Loop Cutovers. Connecting
9 Facility Assignment (CFA) changes for Coordinated Installation
10 Options for 2-Wire and 4-Wire analog (voice grade) Loops
11 (excluding the Batch Hot Cut Process) on the day of the cut, during
12 test and turn up. When this charge applies, the Design Change rate
13 for Unbundled Loops does not apply.

14 **Issue No. 4-5(b):**

15 9.6.3.6 Design Change rates for UDITs are contained in Exhibit A
16 of this Agreement.

17 **Issue No. 4-5(c):**

18 Exhibit A Sections
19 9.20.13 Design Change (Transport)
20 9.20.13.1.1 Manual \$53.65
21 9.29.13.1.2 Mechanized \$50.45
22 9.20.13.2 Loop \$30.00
23 9.20 13.3 CFA \$ 5.00

24 Eschelon's language makes two things clear: (1) Qwest must continue to provide
25 design changes to Eschelon pursuant to the ICA and (2) Qwest can assess a cost-
26 based rate for design changes. Eschelon's language actually benefits Qwest by
27 providing the opportunity for Qwest to charge Commission-approved cost-based
28 rates for design changes for loops and CFAs (and interim rates until Commission-
29 approved rates are established) – something that Qwest has never been able to do

1 under the existing Qwest/Eschelon ICA, while at the same time maintaining the
2 status quo with regard to UDIT design changes.

3 Under Eschelon's proposal, there is no need for the Commission to set rates for
4 design changes at this time. The Design Change Charges for UDIT are the same
5 rates Qwest developed for UDIT design changes and has been applying in
6 Washington. For loops and CFA changes, Eschelon's proposal allows Qwest to
7 assess an interim rate that Qwest could charge unless and until the Commission
8 approved a different rate for these design changes. Nothing in Eschelon's
9 proposal would prevent Qwest from coming to the Commission to propose
10 different rates for Design Changes and substantiate its costs.

11 **Q. WHAT IS QWEST'S PROPOSAL ON THESE ISSUES?**

12 A. Qwest proposes the following language for these issues. Qwest proposed
13 language that Eschelon opposes is shown in underlined text, and Eschelon
14 proposed language opposed by Qwest is shown in ~~strikeout~~ text.

15 **Issue No. 4-5**

16 **9.2.3 Unbundled Loop Rate Elements**

17 The following rates for Unbundled Loops are set forth in Exhibit A
18 of this Agreement:

19 ...

20 ~~9.2.3.8 Design Change rates for Unbundled loops~~

21 9.2.4.4.2 Charges, as set forth in Exhibit A, apply for the following modifications
22 to existing orders unless the need for such change is caused by Qwest:

23

24 a) Design Change; and

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ba) Expedited order.

Issue 4-5(a) [Qwest proposes to leave Section 9.2.3.9 blank]

~~9.2.3.9 CFA Change — 2/4 Wire Loop Cutovers. — Connecting Facility Assignment (CFA) changes for Coordinated Installation Options for 2-Wire and 4-Wire analog (voice grade) Loops (excluding the Batch Hot Cut Process) on the day of the cut, during test and turn up. When this charge applies, the Design Change rate for Unbundled Loops does not apply.~~

Issue 4-5(b) Qwest originally proposed to leave Section 9.6.3.6 blank, but agreed to Eschelon’s proposed language for 4-5(b) in Qwest’s direct testimony in the companion Minnesota arbitration proceeding.

Issue 4-5(c)

Exhibit A Sections
9.20.13 Design Change (Transport)
9.20.13.1.1 Manual \$53.65
9.29.13.1.2 Mechanized \$50.45
9.20.13.2 Loop \$30.00
9.20.13.3 CFA \$ 5.00

Qwest does not agree with any of Eschelon’s proposed language modifications, and proposes to include a mention of loop and UDIT design changes in the ordering section of the ICA for these UNEs instead of in the rate element list. The effective result would allow Qwest to assess the very same design change charge for all three types of design changes discussed under Issue No. 4-5 (*i.e.*,

1 loops, CFAs and UDIT). Further as indicated by Qwest during negotiations and
2 evidenced by Qwest's 8/31/06 non-CMP notice, Qwest's ultimate objective is to
3 apply tariff rates for design changes. Qwest argues that Eschelon's proposal
4 would improperly limit Qwest's ability to assess charges for design changes and
5 would "prevent Qwest from assessing a charge for that work."¹¹

6 **Q. DOES THE SGAT OR THE PARTIES' CURRENT ICA HAVE ANY**
7 **LANGUAGE AUTHORIZING CHARGES FOR DESIGN CHANGES FOR**
8 **LOOPS OR CFA CHANGES?**

9 A. No, there is no basis in the SGAT or current ICA for a design change charge for
10 loops or CFA changes. The only mention of design change charges anywhere is
11 Section 9.6 of the SGAT entitled "Unbundled Dedicated Interoffice Transport,"
12 which states (Section 9.6.4.1.4) that: "additional charges apply for the following
13 modifications to existing orders unless the need for such change is caused by
14 Qwest...c) Design change..." However, no similar language is included
15 under the UNE loops section (Section 9.2), and indeed, the words "design
16 change" do not appear anywhere else in the ICA.

17 **Q. HAS ESCHELON UNCONDITIONALLY AGREED TO PAY QWEST**
18 **FOR DESIGN CHANGES?**

¹¹ *Qwest Petition* ¶ 38. Qwest also argues that "Eschelon's proposal under which Qwest would be prohibited from assessing a design charge improperly assumes that Qwest does not have to perform work and does not incur costs for connecting facility assignment ("CFA") changes..." *Qwest Petition* ¶ 39. I will demonstrate that Qwest is wrong.

1 A. No. Between 1999 and 2005, Qwest performed design changes for loops without
2 additional charges, and the only support for any separate design change charge
3 found anywhere is in the UDIT section of the SGAT. Qwest unilaterally changed
4 this policy when it issued its September 2005 letter indicating that Qwest would
5 begin assessing design charges for UNE loops. To make sure that Qwest does not
6 refuse to provide design changes to Eschelon altogether, Eschelon agreed as a
7 concession in these negotiations to add language in the Loops section dealing with
8 design change charges, conditional upon a reasonable rate being established. One
9 aspect of Eschelon's conditional concession was that Qwest would substantiate
10 design change charges at the Commission (with the rate being located in the
11 Agreement) and Eschelon could argue for a \$0.00 rate if Qwest was already
12 recovering design change charges in other rates. A reasonable rate for design
13 changes would also require them to be cost-based. Eschelon conditionally agreed
14 to compensate Qwest based on these conditions because they provide the certainty
15 Eschelon needs to be able to reasonably compete in the market (*i.e.*, ensures that
16 Qwest does not have unilateral control over establishing and changing the rates
17 for design changes) and ensure that Qwest is not double-recovering costs.

18 **Q. PLEASE DESCRIBE HOW QWEST'S PROPOSALS REGARDING**
19 **DESIGN CHANGES WILL INCREASE ESCHELON'S COSTS.**

20 A. One of the sub-issues under Issue No. 4-5 – CFA change – brings to life the
21 impact the lack of certainty and Commission oversight could have on Eschelon's

1 business. Qwest applies the same expensive charge it developed for design
2 changes for unbundled dedicated transport (UDIT) – a charge that is higher than
3 the original installation charge in many Qwest states – to all design changes,
4 including CFA changes. However, the CFA change involves a simple “lift and
5 lay” activity by the Qwest central office technician who is already at the frame
6 and in contact with the CLEC representative and the Qwest personnel
7 coordinating the process. As a result, this activity takes only a few seconds or
8 perhaps minutes, yet Qwest assesses a charge that exceeds the original installation
9 charge. Given that the CFA change is comprised of one of a number of activities
10 involved in installation (*i.e.*, lift and lay), a rate for a CFA change that exceeds (or
11 even comes close) to the installation rate would be much too high. Since the CFA
12 change described in Eschelon’s language is the most frequent design change to
13 occur and the least expensive to perform, Eschelon needs the certainty of
14 Commission oversight over any attempt by Qwest to impose expensive, non-cost
15 based charges for CFA (or other) design changes that greatly increases Eschelon’s
16 costs (whether that be Qwest’s proposal to apply the UDIT design change charge
17 to all design changes or Qwest’s proposal to apply tariff rates to design changes).
18 Eschelon would otherwise be unable to adequately budget and plan its business
19 with this type of uncertainty looming over its cost of doing business.

20 **Q. CAN YOU QUANTIFY, IN DOLLAR TERMS, HOW ESCHELON’S**
21 **BUSINESS IS AFFECTED BY QWEST’S DESIGN CHANGE CHARGE**

1 **PROPOSALS?**

2 A. Yes. I have provided below a number of examples in which the CFA change
3 described above – an activity that takes a matter of seconds or, at most, minutes –
4 has significantly increased Eschelon’s costs:

5 1. In Oregon, on Qwest Order Number N47554579, PON OR648868JAS, with a
6 completion date of 3/14/06, Qwest billed non-recurring charges of \$634.00. The
7 one time charge for installation (coordinated installation without cooperative
8 testing) was \$15.40 but because the CFA changed 6 times, at the rate of \$103.10
9 per Design Change charge, the final installation cost \$634.00.

10 2. In Oregon, on Qwest Order Number N55606983, PON OR690001JXY, with a
11 completion date of 6/19/06, Qwest billed non-recurring charges of \$427.80. The
12 one time charge for installation (coordinated installation without cooperative
13 testing) was \$15.40 but because the CFA changed 4 times, at the rate of \$103.10
14 per Design Change charge, the final installation cost \$427.80.

15 3. In Oregon, on Qwest Order Number N56303135, PON OR702166LSR, with a
16 completion date of 6/20/06, Qwest billed non-recurring charges of \$216.95. The
17 one time charge for installation (coordinated installation without cooperative
18 testing) was \$10.75 but because the CFA changed twice, at the rate of \$103.10 per
19 Design Change charge, the final installation cost \$216.95.

20 4. In Washington, on Qwest Order Number N55909589, with a completion date of
21 7/3/06, Qwest billed non-recurring charges of \$160.71. The one time charge for
22 installation (coordinated installation without cooperative testing) was \$59.81 but
23 because the CFA changed twice, at the rate of \$50.45 per Design Change charge,
24 the final installation cost \$160.71.

25 5. In Arizona, on Qwest Order Number N53397956, PON AZ684385JKY, with a
26 completion date of 5/11/06, Qwest billed non-recurring charges of \$191.50. The
27 one time charge for installation (coordinated installation without cooperative
28 testing) was \$45.92 but because the CFA changed twice, at the rate of \$72.79 per
29 Design Change charge, the final installation cost \$191.50.
30

31 **Q. WHY SHOULD DESIGN CHANGE CHARGES BE COST-BASED?**

32 A. The design change charges discussed in my testimony pertain to design changes

1 for UNEs (*e.g.*, UNE loop and UDIT). UNEs are required to be priced according
2 to the federal TELRIC pricing rules, and the design changes are part and parcel of
3 Qwest’s obligation under Section 251(c)(3) of the Telecommunications Act to
4 provide “nondiscriminatory access to network elements on an unbundled
5 basis...on rates, terms, and conditions that are just, reasonable, and
6 nondiscriminatory...” The Telecommunications Act requires Qwest to provide
7 UNEs as well as functions necessary to ready those UNEs for CLECs’ use in a
8 nondiscriminatory manner and at cost-based rates. This cost-based pricing
9 requirement ensures that Eschelon does not pay more than Qwest “pays” for using
10 the same facilities.

11

12 **ISSUE 4-5 AND 4-5(a)**

13 **Q. ARE QWEST’S DESIGN CHANGE CHARGES AS THEY RELATE TO**
14 **UNE LOOPS AND CFA CHANGES IN LINE WITH THEIR**
15 **UNDERLYING COSTS?**

16 A. No. A comparison of Qwest’s design change charges to its installation charges
17 across the Qwest region shows that Qwest accesses a design change charge that
18 exceeds the charge for Coordinated Installation Without Cooperative Testing for
19 Analog loops in Arizona, Colorado, Iowa, Idaho, Montana, Nebraska, North

1 Dakota, Oregon, South Dakota, Utah, and Wyoming.¹² The design change rates
2 in Washington (\$53.65 Manual; \$50.45 Mechanized) exceed the installation
3 charge for a 2/4 wire analog loop (\$45.70 Installation Manual; \$37.53 Installation
4 Mechanized) and comes very close to the rate for Coordinated Installation
5 Without Cooperative Testing (\$59.81). This defies logic, as design change
6 charges should be less than the installation charge for initially establishing the
7 circuit. The fact that Qwest is charging more for design changes than for
8 installation and the effect this has on Eschelon's cost to acquire customers
9 (particularly with regard to loop and CFA design changes) demonstrates the need
10 for Commission oversight for design changes.

11 **Q. WHY WOULD DESIGN CHANGE CHARGES BE LESS THAN**
12 **INSTALLATION CHARGES?**

13 A. Because the design change is one component (or a subset of components) of
14 installation, the work (and cost) involved in performing a design change will be
15 less than the work (and cost) of performing the installation. For instance, a CFA
16 change and a NCI code change, two examples of design changes, do not involve a
17 Qwest outside plant dispatch, and therefore, this costly component of the
18 installation rate should not be reflected in any design change charge for these
19 activities. At the very most, even if the design change includes all components of
20 installation, the design change charge should not be more than the installation

¹² Qwest's SGAT Exhibit As, containing the rates mentioned, can be downloaded from the following website: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>.

1 charge. Yet the rate for design changes (which Qwest applies to all design
2 changes) is higher than the installation rate. Qwest's current practice of billing
3 more in some states for Design Changes than the Commission-approved
4 installation rate (*i.e.*, for a new install and not just a later change in design) shows
5 that Commission oversight is needed with regard to design changes.¹³ There is no
6 evidence to suggest that the cost of Design Changes associated with loops exceeds
7 the initial cost of installing a loop, and indeed, everything points to the contrary.
8 Further, design changes associated with CFA changes during the installation of a
9 loop should have a separate rate, as this activity is relatively common, requires
10 very little time and can be performed day of cut during the loop installation
11 process.

12 **Q. ARE THE COSTS INVOLVED IN A DESIGN CHANGE FOR UDIM SO**
13 **SIMILAR TO THAT OF LOOPS THAT THE UDIM RATE COULD**
14 **REASONABLY BE USED AS A PROXY FOR THE LOOP RATE?**

15 A. No. Loop and transport are separate and distinct services and involve different
16 processes and work – with transport typically being more complex (and higher
17 cost) than loops. That is indeed the case with regard to the UDIM design change
18 rate Qwest is applying to loops. As a result, applying a rate designed for UDIM to

¹³ For example in the following states Qwest charges a design change charge that exceeds the SGAT rates for Coordinated Installation Without Cooperative Testing for Analog loops: Arizona, Colorado, Iowa, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, and Wyoming.

1 loops will result in Qwest over-recovering its costs related to design changes for
2 loops.

3 **Q. HOW DO YOU KNOW THE MANNER IN WHICH QWEST**
4 **STRUCTURES ITS DESIGN CHANGE CHARGES FOR UDIT?**

5 A. Qwest filed a non-proprietary non-recurring cost study for a design change charge
6 for unbundled dedicated interoffice transport in an Oregon cost case. This cost
7 study shows that Qwest's design change costs for transport are based on cost
8 assumptions associated with Access Service Requests (ASRs) for dedicated
9 transport and not Local Service Requests (LSRs) (which are used for loops). I
10 have provided an excerpt from the Oregon cost study for design changes below
11 from the "Design" tab:

WUTC Docket No. UT-063061
 Eschelon Telecom, Inc.
 Direct Testimony of Douglas Denney
 September 29, 2006

Line Num	Line Type	Line Description	Time Estimate	Prob #1	Prob #2	Prob #3	Prob #4	Labor Code
	HEADER	DESIGN CHANGE						
1001	ADD							
1200	GROUP	SERVICE DELIVERY COORDINATOR						
1200	COMMENT	.90 PROBABILITY IS MECHANICAL HANDLING						
1200	COMMENT	.10 PROBABILITY IS MANUAL HANDLING						
1200	COMMENT	.65 PROBABILITY MANUAL HANDLING						
1200	COMMENT	.50 PROBABILITY MANUAL HANDLING						
1200	COMMENT	.03 PROBABILITY ASR's MANUALLY HANDLED						
1	WORKITEM	RECEIVE ASR MECHANICALLY	1	0.9	0	0	0	02
2	WORKITEM	RECEIVE ASR VIA FAX	10	0.1	0	0	0	02
3	WORKITEM	VALIDATE ASR IN EXACT	10	1	0	0	0	02
4	WORKITEM	VALIDATE CONTRACT RATES	3	1	0	0	0	02
5	WORKITEM	INTRA COMPANY CALLS	13	1	0	0	0	02
6	WORKITEM	EXACT/TUF/IABS	1	1	0	0	0	02
7	WORKITEM	VALIDATE IABS SERVICE ORDER	2	1	0	0	0	02
8	WORKITEM	MANUALLY CALCULATE CHARGES IF THE SERVICE IS INTERLCA FACILITY OR OTHER MANUALLY BILLED PRODUCTS (TANDEM Exhaust, etc.)	5	0.03	0	0	0	02
9	WORKITEM	DISTRIBUTE ORDER IN IABS	1	1	0	0	0	02
10	WORKITEM	VALIDATE 3 SUCCESSES IN SOAC TIRKS INTERFACE	1	1	0	0	0	02
11	WORKITEM	EXACT/TUF/IABS	1	1	0	0	0	02
12	WORKITEM	VALIDATE IABS SERVICE ORDER	2	1	0	0	0	02
13	WORKITEM	DISTRIBUTE ORDER IN IABS	1	1	0	0	0	02
14	WORKITEM	PC LIST ASR	1	1	0	0	0	02
15	WORKITEM	FOC MANUAL	3	0.1	0	0	0	02
16	WORKITEM	FOC ELECTRONICALLY	1	0.9	0	0	0	02
17	WORKITEM	CHECK WFA	3	1	0	0	0	02
18	WORKITEM	CHECK IABS SERVICE ORDER	5	1	0	0	0	02
19	WORKITEM	COMPLETE IABS SERVICE ORDER	1	1	0	0	0	02
20	WORKITEM	COMPLETE EXACT	1	1	0	0	0	02
21	WORKITEM	NOTE EXACT	2	1	0	0	0	02
2300	GROUP	DESIGN						
2100	COMMENT	Work is 100% manual.						
1	1	WORKITEM	NAME AND LOG FACILITY	35	1	0	0	05
2	2	WORKITEM	BUILD DRI AND WA	6	1	0	0	05
3	3	WORKITEM	BUILD CIRCUIT DESIGN	10	1	0	0	05
4	4	WORKITEM	CXRH & DISTRIBUTE DOC	4	1	0	0	05

2 Lines 1 through 3 indicate that the design change charge is based on ASRs that
 3 are used for dedicated transport, not LSRs which are used for UNE loops.

4 **Q. DOES THIS MEAN THAT QWEST INAPPROPRIATELY INFLATES**
 5 **THE COSTS OF LOOP DESIGN CHANGES WHEN IT APPLIES A RATE**
 6 **DESIGNED FOR UDOT TO UNE LOOPS?**

7 **A.** Yes, because processes associated with Access Service Requests (ASRs) are more
 8 manually-intensive than are Local Service Requests (LSRs), ASR will result in

1 higher costs than will LSR. And the cost study above assumes the use of order
2 processing systems and billing systems for transport services¹⁴ (see line numbers
3 3, 6, 7, 9, 11, 12, 13, 18-21 above), rather than the order processing system and
4 billing system that are used for UNE loops.¹⁵ Since the systems for loops
5 generally have a higher flow-through rate than do systems for dedicated transport,
6 these are further indicia that the design change costs developed for UDIT are too
7 high for loops.

8 **Q. HAS QWEST ACKNOWLEDGED THAT ASRS ASSOCIATED WITH**
9 **TRANSPORT ARE MORE MANUALLY-INTENSIVE THAN LSRS**
10 **ASSOCIATED WITH LOOPS?**

11 A. Yes, on numerous occasions. For instance, in the meeting minutes from the
12 Change Management Process meeting that occurred on November 12, 2004,
13 Qwest¹⁶ stated that “the ASR is not as mechanized as the LSR process.” Qwest
14 provided a specific jeopardy notice example that showed that the “LSR jep is
15 generated by a system” and “the ASR jep would be generated manually and sent
16 via email” and that “the process becomes much more manual as the systems are
17 not mechanized [and] more time consuming...”¹⁷ Qwest also confirmed this
18 point in data request responses from Utah Docket No. 06-049-40. In that docket,

¹⁴ EXACT order processing system and IABS billing system.

¹⁵ IMA order processing systems and CRIS billing systems.

¹⁶ Qwest employee Phyllis Sunins made this statement.

¹⁷ Change Management Process meeting minutes for the following Change Request (CR) PC070804-1 ASR Jeopardy Process Ad Hoc Meeting November 12, 2004.

1 a group of CLECs asked Qwest to confirm that an LSR has a higher electronic
2 flow through than an ASR. Qwest responded in the affirmative and explained the
3 differences between ASRs and LSRs. Qwest's response follows:

4 While it may be true that *LSRs have a higher level of electronic*
5 *flow-through than ASRs*, it is irrelevant to the inquiry of the
6 appropriate vehicle for processing a conversion order. As
7 discussed in response to data request 01-009, ASRs are designed
8 for use with the billing and downstream systems that support
9 Access Services products, such as Private Line services, and LSRs
10 are designed to be used with the systems that support Local
11 Service products.¹⁸ (emphasis added)

12 Higher levels of electronic flow-through result in lower levels of manual work
13 and lower costs.

14 **Q. REGARDING THE CONTRACT LANGUAGE FOR DESIGN CHANGES**
15 **FOR LOOPS (ISSUE 4-5), WHY HAS ESCHELON PROPOSED TO**
16 **INCLUDE LANGUAGE UNDER SECTION 9.2.3.8 INSTEAD OF 9.2.4.4.2,**
17 **AS QWEST PROPOSES?**

18 A. Section 9.2.4 relates to ordering for unbundled loops and Section 9.2.3 relates to
19 rate elements. Section 9.2.3 is the proper location for this language because it is a
20 rate element that should be included in the list of loop rate elements. Section
21 9.2.4.4.2, which pertains to ordering, states that charges apply, but does not list
22 the rate elements as 9.2.3 does.

23 **Q. YOU MENTION A CFA CHANGE AS AN EXAMPLE OF A DESIGN**

¹⁸ Qwest's cost expert Ms. Terri Million is identified as the respondent.

1 **CHANGE IN WHICH A SEPARATE RATE (TO THE EXTENT THE**
2 **COSTS ARE NOT RECOVERED IN OTHER RATES) SHOULD BE LESS**
3 **THAN THE INSTALLATION RATE. PLEASE ELABORATE ON THE**
4 **WORK INVOLVED IN THIS DESIGN CHANGE.**

5 A. CFA stands for “Connecting Facility Assignment,” which is part of the physical
6 provisioning process that allows Eschelon to transfer a customer’s loop from the
7 Qwest’s switch to Eschelon’s switch. As part of the transfer process, Eschelon
8 electronically assigns the customer’s loop (i) to specific facilities in Eschelon’s
9 switch, (ii) to equipment located in Eschelon-owned collocation space, (iii) and to
10 a Connecting Facility Assignment (“CFA”) on the ICDF Frame that will be used
11 by the Qwest technician to connect the customer’s loop to Eschelon’s collocated
12 equipment. On the day of cut (*i.e.*, installation) Qwest removes the old cross
13 connection jumper that connected the customer’s loop to the Qwest’s switch and
14 terminates the pre-wired cross connection from Eschelon’s CFA to the customer’s
15 loop. Occasionally, the CFA assigned to the customer is bad, and Eschelon and
16 Qwest can not complete the cutover.¹⁹ In this instance, Eschelon assigns a new
17 CFA to the customer and the Qwest central office technician reconnects the cross
18 connect to the newly assigned CFA on the ICDF Frame. A CFA design change is
19 needed to reassign the customer from the CFA to which the customer was
20 originally assigned (which was bad) to the new CFA. This is also referred to as a

¹⁹ The need for a CFA change in these instances can be Eschelon-caused and Qwest-caused.

1 “same day pair change” because the customer’s pair is changed from one CFA to
2 another on the day of the cut.²⁰

3 In this scenario, Qwest and Eschelon are already in contact and coordinating the
4 cutover, and the Qwest central office technician is already standing at the frame.
5 Once it is determined that a CFA change is necessary and Eschelon electronically
6 submits the reassignment, the Qwest central office technician simply removes the
7 jumper from the bad CFA and reattaches to the new CFA. Depending on where
8 the new CFA resides on the frame in relation to the old, Qwest’s technician may
9 have to move a few steps (or may not have to move at all) to attach to the new
10 CFA. In these situations, the Qwest CO technician is already available and
11 working on the cutover, and it requires little, if any, additional time to switch
12 CFAs. This activity is a simple “lift and lay” activity that can be performed in
13 matter of seconds or minutes. By comparison, this would be akin to plugging a
14 lamp into an outlet, realizing that the outlet does not work, and plugging the lamp
15 into a different outlet somewhere in the room (the new outlet may be the one
16 directly above or below the bad outlet or you may use an outlet across the room
17 that requires you to walk a few steps). And all the while, Eschelon is paying for
18 coordination, or for Qwest’s central office technician to remain in contact with
19 personnel in Qwest’s test center so that the technician has real time access to

²⁰ The type of CFA change addressed in my testimony (same day pair change) is the CFA change addressed in Eschelon’s proposal for Issue 4-5(a), which is a very limited type: *i.e.*, a CFA change to a 2/4 wire analog loop, on the day of a coordinated cut, during test and turn up, excluding batch hot cuts.

1 information during the cutover. Therefore, if it is discovered that a CFA change
2 is needed, the central office technician can immediately perform another “lift and
3 lay” to another CFA.²¹

4 Obviously, the work and costs involved in this design change, to the extent they
5 are not already recovered in other rates, would be very minimal, reflecting a few
6 seconds (or possibly a couple of minutes) of the central office technician’s time.
7 It is these types of design changes, however, that are driving up Eschelon’s cost of
8 installation by hundreds of dollars per install in some instances.

9 **Q. DOES ESCHELON’S LANGUAGE IN SECTION 9.2.3.9 APPLY TO ALL**
10 **CFA CHANGES?**

11 A. No, Eschelon’s language is very limited in scope and is designed to address a very
12 narrow circumstance. Eschelon’s language is limited by the following qualifiers:
13 (1) applies only to 2/4 wire analog voice grade loops cutovers, (2) applies only to
14 coordinated cutovers (3) excludes batch hot cuts, (4) must be on the day of the
15 cut, and (5) must be during test and turn-up. In other words, Eschelon’s language
16 only applies in a situation in which both Eschelon and Qwest personnel are
17 already working the cutover for a 2 wire/4wire analog loop and there is a need for

²¹ During a coordinated cut, the Qwest central office technician is in constant contact with personnel in Qwest’s CLEC Coordination Center (QCCC), who is, in turn, in contact with Eschelon personnel responsible for test and turn up. If after the central office technician performs the “lift and lay” and Eschelon’s testing determines there is a problem and a CFA change is needed, the central office technician will have real time access to this information through the QCCC and will be able to immediately perform another “lift and lay.” Eschelon pays for the coordination of this cut (or the involvement of QCCC) separately.

1 a design change to resolve a bad CFA. Applying the expensive charges²² that are
2 designed for UDIT (or worse yet, applying tariff rates) in these instances results in
3 charges for this activity that significantly exceed its underlying costs and a
4 windfall for Qwest.

5

6 **ISSUE 4-5(b)**

7 **Q. IS ISSUE 4-5(B) NOW CLOSED?**

8 A. Yes. Qwest agreed to Eschelon's proposed Section 9.6.3.6 in its direct testimony
9 in the companion Minnesota arbitration proceeding.²³ This issue is now closed
10 based on Eschelon's language for Section 9.6.3.6.

11 **ISSUE 4-5(c)**

12 **Q. PLEASE EXPLAIN ESCHELON'S RATE PROPOSAL UNDER ISSUE 4-**
13 **5(C).**

14 A. The Commission previously approved a design change rate for UDIT. Eschelon
15 agrees to pay that rate and has proposed the Commission-approved rate for UDIT
16 design change under 9.20.13, and has proposed language to the title of 9.20.13 to
17 clarify this application. Regarding design change charges for loops, Eschelon
18 agrees to pay a Commission-approved cost based rate if one is established in the

²² The design change charges in other states ranges from \$35.89 (Utah) to \$105.34 (South Dakota).

²³ See, Direct Testimony of Karen Stewart on behalf of Qwest Corp., Minnesota PUC Docket No. P-5340,421/IC-06-768. August 25, 2006 ("Stewart Minnesota Direct"), p. 11.

1 future. In the interim, Eschelon has proposed a rate of \$30.00, which is
2 appropriately less than the Commission-approved rate for UDIT of \$50.45
3 because of the cost differences between UDIT and loops. Given that the
4 Commission-approved rate for basic installation is \$37.53, an interim rate of
5 \$30.00 for loop design change is very reasonable. Likewise, Eschelon agrees to
6 pay a cost-based Commission-approved rate for CFA design change, and has, in
7 the interim, proposed a rate of \$5.00. This interim rate is reasonable in light of
8 the minimal work that is required in these instances.²⁴

9 **Q. DOES ESCHELON'S LANGUAGE PROHIBIT QWEST FROM**
10 **REQUESTING COMMISSION APPROVAL OF DIFFERENT RATES?**

11 A. No. To the extent that Qwest believes that the interim rates Eschelon has
12 proposed for loop and CFA design changes do not allow Qwest to recover its
13 costs, Eschelon's proposal provides the opportunity for Qwest to propose a cost
14 based rate for these design changes and substantiate its charges before the
15 Commission. If Qwest truly believes that all design changes should be the same
16 charge, all it has to do is make a filing to get the issue before the Commission.

17 **Q. PLEASE SUMMARIZE ISSUE NOS. 4-5, 4-5(A), 4-5(B) AND 4-5(C)**

²⁴ Eschelon's proposed language for Issue 4-5(c) exposes as false Qwest's claim that "Eschelon apparently has not proposed a charge and has not attempted to explain whether a "minimal charge" it is willing to accept would permit Qwest to recover its costs." *Qwest Petition* ¶ 40. Eschelon has proposed a charge for CFA design change, and explained why the interim rate Eschelon proposes is justified. It is not Eschelon's responsibility to submit and defend a cost study for a charge that Qwest will ultimately assess on CLECs (see *Qwest Petition* ¶ 42). That burden lies with Qwest, and Qwest has submitted no cost support for any design change in this proceeding.

1 **REGARDING DESIGN CHANGES.**

2 A. Eschelon’s language requires Qwest to provide design changes to Eschelon,
3 something that is an obligation of Qwest’s and that has been provided for years.
4 Contrary to Qwest’s objection, Eschelon’s proposal provides Qwest with the
5 opportunity to recover its costs by allowing Qwest to apply interim rates until the
6 Commission approves different rates for design changes. This is all despite the
7 facts that (i) there is no language in the Eschelon/Qwest ICA or Qwest’s SGAT
8 that would permit Qwest to assess charges for design changes for loops or CFAs,
9 (ii) Qwest has provided design changes for loops in Washington without
10 additional charges in the past, and (iii) Qwest’s failure to seek separate cost
11 recovery for design changes for loops suggests that they may be recovered in
12 other rates. For all of the reasons described in Eschelon’s business need and in
13 these responses, the Commission should adopt Eschelon’s language for Issue 4-5
14 and (a) – (c).

15

16 **III. PAYMENT AND DEPOSITS (SUBJECT MATTER NOS. 5, 6**
17 **AND 7)**

18 **Q. ARE YOU ADDRESSING A NUMBER OF ISSUES FROM SECTION 5.4**
19 **OF THE ICA?**

1 A. Yes. I am addressing Issue Nos. 5-6, 5-7, 5-8, 5-9, 5-11, 5-12 and 5-13, all of
2 which pertain to Section 5.4 of the ICA “Payment and Deposit.”²⁵ Issue Nos. 5-6,
3 5-7 and 5-7(a) are addressed under Subject Matter No. 5 (Discontinuation of
4 Order Processing and Disconnection); Issue Nos. 5-8, 5-9, 5-11, and 5-12 are
5 addressed under Subject Matter No. 6 (Deposits); and Issue No. 5-13 is addressed
6 under Subject Matter No. 7 (Review of Credit Standing).

7 **Q. PLEASE DESCRIBE ESCHELON’S BUSINESS REASONS FOR ITS**
8 **PROPOSALS REGARDING THE “PAYMENT AND DEPOSIT” ISSUES**
9 **(ISSUE NOS. 5-6, 5-7, 5-8, 5-9, 5-11, 5-12 AND 5-13).**

10 A. The Payment and Deposits issues pertain to the ability of Qwest to disconnect
11 Eschelon’s circuits, discontinue processing Eschelon’s orders, and demand a
12 deposit (or increased deposit amount) from Eschelon, due to an alleged concern
13 about Qwest’s ability to get paid, when Eschelon disagrees with the basis for
14 Qwest’s actions.²⁶ To fully appreciate the importance of these issues from a
15 business perspective, it is important to understand the breadth of the provisions in
16 question. The ability to disconnect circuits or discontinue processing orders –
17 remedies in the Payment and Deposit provisions – are very serious steps that
18 would be very disruptive for Eschelon’s customers and should only be used as a
19 last resort. The effects are not limited to particular orders or customers, but could

²⁵ Issue 5-7(a) also addresses Section 5.1.13.1.

²⁶ The party that would be disconnecting circuits, discontinuing orders or demanding deposits or deposit increases would be Qwest and the party facing these actions would be Eschelon in a vast majority, if not all, instances because Eschelon is the purchaser of services under the ICA.

1 lead to disruption for large groups of customers. Unjustified disconnection or
2 disruption of service order processing would be devastating to Eschelon's
3 operations and might leave current and potential Washington customers who
4 currently have working service, or were initiating or changing service without
5 telecommunications service on the planned date of service. For instance,
6 Eschelon's End User Customers could pick up the telephone one day to discover
7 that they do not have dial tone because Qwest has decided to disconnect
8 Eschelon's circuits. This would not only be service-affecting but would also be
9 potentially dangerous for Eschelon's customers as they would unexpectedly be
10 left without access to emergency services, not to mention the potential lost
11 revenue and expended resources that Eschelon's Customers would incur as
12 Eschelon and its End User Customers scramble to get them up and running again.
13 With regard to order processing discontinuation, Eschelon may have an order
14 pending for a business customer who is planning a big grand opening at a new
15 location and needs phone service, but Eschelon is unable to serve the customer in
16 time for the opening because Qwest has decided to stop processing Eschelon's
17 orders. This would lead to significant financial losses for the customer and harm
18 to Eschelon's reputation. Another example is a new medical facility that is
19 opening and has chosen Eschelon as its service provider. This facility could be
20 left without the vital emergency services they need if Qwest stops processing
21 Eschelon's orders.

1 Eschelon does not object to the inclusion of the Payment and Deposit provisions
2 and remedies in the ICA because it agrees that Qwest (and Eschelon) should have
3 the ability to protect its financial interests when there is a legitimate concern
4 about future payment. After all, the intent of the payment and deposit provisions
5 is to address situations when legitimate concerns exist in this regard. However, if
6 Qwest is able to disconnect Eschelon's circuits or stop processing Eschelon's
7 orders in cases where no legitimate concern about ability to pay exists, it would
8 cause significant harm to Eschelon and to customers. Given the seriousness of
9 these steps, and the effects they would have on Eschelon and its End User
10 Customers (not Qwest or Qwest's customers), Commission oversight should be
11 available before these steps are taken.

12 Similarly, if Qwest decided to demand a deposit (or deposit increase) from
13 Eschelon when no legitimate concern about ability to pay exists, Qwest could
14 affect the financial resources available to Eschelon for other uses such as facilities
15 needed to compete with Qwest. Eschelon is a relatively small facilities-based
16 carrier that does not have the resources that Qwest has,²⁷ and cannot have its
17 financial resources tied up in frivolous deposits. The deposit amounts required of
18 Eschelon could be an amount equal to two months' worth of Qwest charges on
19 Eschelon, which across Qwest's region could be around \$5.8 million. This

²⁷ Eschelon's annual revenue is less than 2% of Qwest's annual revenue. Stated differently, Qwest earns more revenues by the first week of January than Eschelon earns all year. Qwest has around 40,000 employees compared to Eschelon's approximate 1,300 employees.

1 amount of money may be a drop in the bucket to Qwest (this represents 0.043% of
2 Qwest's annual wireline revenues),²⁸ but this is real money to Eschelon (this
3 represents 2.5% of Eschelon's annual total revenue that could be tied up in a
4 deposit to Qwest).²⁹ And again, Qwest would not be faced with paying any
5 deposit to Eschelon.

6 Commission oversight on these matters is particularly important so that there is an
7 independent arbiter of the facts and to ensure that the information relied upon to
8 make these decisions is accurate. Eschelon and Qwest have had serious
9 disagreements about billing information (discussed below), which means that
10 Qwest could invoke these remedies based on information with which Eschelon
11 disagrees. If Eschelon challenges an action by Qwest, and the Commission finds
12 Qwest to be correct, then Qwest is not harmed. However, if Qwest can override
13 Eschelon's challenge and make these decisions without Commission approval,
14 Eschelon would be faced with these serious business-affecting and customer-
15 affecting problems even if the basis for Qwest's decision is flawed. At the same
16 time, if Eschelon has no basis to disagree with Qwest's claim, then it certainly
17 would not waste the time and money pursuing such a dispute, and would simply
18 pay the outstanding charges and/or the deposit Qwest demanded.

²⁸ Qwest's YE2005 total wireline service revenue is \$13,335,000,000
http://ww3.ics.adp.com/streetlink_data/dirQ/annual/HTML1/default.htm

²⁹ Eschelon's YE2005 total revenue is \$227,743,000. http://media.corporate-ir.net/media_files/irol/12/121503/reports/AR2005.pdf

1 Eschelon is only asking that Commission authority be reserved if there is a
2 disagreement about these issues so that Qwest cannot cut off Eschelon's
3 customers or cripple Eschelon's ability to provide service to its customers based
4 upon faulty premises.

5 **Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES THE NEED**
6 **FOR COMMISSION INVOLVEMENT WHEN ESCHELON DISAGREES**
7 **WITH QWEST'S DECISION TO DISCONNECT ESCHELON'S**
8 **CIRCUITS, STOP PROCESSING ESCHELON'S ORDERS OR DEMAND**
9 **A DEPOSIT?**

10 A. Yes. Eschelon and Qwest have had many disagreements about the accuracy of
11 Qwest's bills, the timeliness of Qwest's recognition of payments and the handling
12 of disputed billings. The parties have even been unable to agree what amounts
13 are in dispute, and Eschelon often disagrees with Qwest about the amount past
14 due and the amount disputed. In spring of 2006, Qwest threatened to disconnect
15 Eschelon's service or stop processing Eschelon's orders, or both, due to an
16 alleged overdue balance due from Eschelon to Qwest under ICAs from several
17 states in which Eschelon purchases services from Qwest. Included as Exhibit
18 DD-3 is a chronology that explains the details of this issue along with the
19 supporting documentation.

20 On April 20, 2006, Eschelon received a letter from Qwest indicating that
21 Eschelon had a total past due balance across all states of over \$4 million, and

1 further indicating that if Qwest did not receive payment in full by May 4, 2006,
2 Qwest would suspend Eschelon's service order activity and disconnect Eschelon's
3 services on May 5, 2006. However, Exhibit DD-3 shows that the amount Qwest
4 was demanding from Eschelon did not reflect the payments that Eschelon had
5 already made to Qwest, and that Eschelon and Qwest were disagreeing on the
6 amount of the outstanding charges from the beginning and are still disagreeing
7 (*see* 3/29/06 email, 4/5/06 email and reply email, 4/25/06 email, 5/22/06 email,
8 5/24/06 conference call, 5/25/06 letter, 6/5/06 letter, 7/5/06 letter and 7/12/06
9 letter). In addition, Qwest never identified a specific amount that was due under
10 any particular ICA (or in any state) and did not follow the ICA process in raising
11 the issue (*see* Qwest's 3/14/06 letter). However, after a lengthy debate and
12 additional threats of service disruption, in order to avoid any possibility of
13 disruption of services to its customers, Eschelon paid all amounts alleged by
14 Qwest making payment of almost \$9 million.³⁰ After going through all of this,
15 Qwest notified Eschelon that it remained in default and that Qwest unilaterally
16 decided to apply credits due and owing to past due balances, even if those
17 balances were in dispute, leaving Eschelon under a cloud of possible disruption of
18 service despite Eschelon's payment of all undisputed bills.³¹ As indicated in

³⁰ The following is an excerpt from Eschelon's 6/5/06 letter to Qwest: "In Qwest's May 25th letter, Qwest threatened Eschelon with 'suspending service order activity.' That means Qwest would disrupt our customer orders, and Qwest said it would do so *this month!* The consequences of Qwest carrying out that threat would be so disruptive and potentially devastating that, to avoid that possibility, Eschelon has no choice but to bring our account current even though Qwest did not provide the amount allegedly due by state and despite Eschelon's valid disputes."

³¹ Qwest stated in its 7/5/06 letter: "Qwest will, for the time being, refrain from taking further collection

1 Eschelon's July 12, 2006 letter, Eschelon continues to dispute the outstanding
2 charges that Qwest alleges is owed to it by Eschelon. And as indicated in Qwest's
3 August 11, 2006 letter, it still has not identified an amount that is allegedly past
4 due in Washington, or any other state. Yet, Qwest continues to insist that
5 Eschelon is in default under the ICA.

6 **Q. HOW DOES THIS EXAMPLE SUPPORT ESCHELON'S PROPOSALS**
7 **ON PAYMENT AND DEPOSITS?**

8 A. It shows that, because of the potential for billing disagreements, Commission
9 oversight is necessary to prevent Qwest from inappropriately using its ability to
10 disconnect circuits, stop processing orders, or extracting deposits. In the example
11 discussed above, Qwest provided a lump sum amount that it demanded was due
12 for six states, without providing any detail regarding what was due in each state or
13 what portion of the total amount was disputed or undisputed charges. Surely it
14 would not be appropriate for Washington customers to get cut off because Qwest
15 claims Eschelon did not pay a charge rendered in Utah, but that could be the
16 effect of Qwest's proposals. If Qwest's proposals are adopted on the Payment
17 and Deposits issues, Qwest could disconnect circuits or stop processing
18 Eschelon's orders without providing any detail or verification of the charges it
19 claims are outstanding. And since Eschelon believes that it is now current with
20 Qwest (and Qwest has indicated in its letter that it could take action without

action against Eschelon.”

1 further notice), Qwest could still potentially put Eschelon's customers out of
2 service unexpectedly since Section 5.4.2 of the ICA provides that, if Qwest
3 determines that Eschelon is still in non-compliance after initial notice, Qwest can
4 refuse to accept additional orders from Eschelon without further notice.

5 Therefore, Commission oversight is needed when disagreements like these arise
6 to make sure that the Payment and Deposit remedies are invoked properly and
7 based on accurate information.

8

9 **SUBJECT MATTER NO. 5. DISCONTINUATION OF ORDER PROCESSING**
10 **AND DISCONNECTION**

11 **Issue Nos. 5-6, 5-7, and 5-7(a): ICA Sections 5.4.2, 5.4.3, 5.1.13.1**

12 **Q. PLEASE BRIEFLY DESCRIBE ISSUE NOS. 5-6 AND 5-7 AND SUBPART.**

13 A. This issue addresses the remedies available to Qwest when Eschelon does not pay
14 in full the undisputed charges it owes – the ability to disconnect Eschelon's
15 services and stop processing Eschelon's orders. The proposals under Issue Nos.
16 5-6, 5-7 and 5-7(a) indictate the conditions that exist before these remedies can be
17 invoked.

18 **Q. WHAT ARE ESCHELON'S PROPOSALS TO ADDRESS ISSUE NOS. 5-6,**
19 **5-7, AND 5-7(A)?**

20 A. Eschelon provides two options for Issue No. 5-6, and offers either one for the

1 Commission's adoption.³²

2 **Issue No. 5-6 – (1 of 2 options)**

3 5.4.2 With the Commission's approval, One Party may
4 discontinue processing orders for relevant services for the failure
5 of the other Party to make full payment, less any disputed amount
6 as provided for in Section 21.8 of this Agreement, for the relevant
7 services provided under this Agreement within thirty (30) Days
8 following the Payment Due Date...

9 **Issue No. 5-6 – (2 of 2 options)**

10 5.4.2. ...One Party may discontinue processing orders for
11 relevant services for the failure of the other Party to make full
12 payment, less any disputed amount as provided for in Section 21.8
13 of this Agreement...If the billed Party asks the Commission to
14 prevent discontinuance of order processing and/or rejection of
15 orders (e.g., because delay in submitting dispute or making
16 payment was reasonably justified due to inaccurate or incomplete
17 Billing), the Billing Party will continue order processing while the
18 proceedings are pending, unless the Commission orders otherwise.

19 **Issue No. 5-7**

20 5.4.3 With the Commission's approval pursuant to Section
21 5.13.1, ~~t~~he the Billing Party may disconnect any and all relevant
22 services for failure by the billed Party to make full payment, less
23 any disputed amount as provided for in Section 21.8 of this
24 Agreement, for the relevant services provided under this
25 Agreement within sixty (60) Days following the Payment Due
26 Date...If the Billing Party does not disconnect the billed Party's
27 service(s) on the date specified in the ten (10) business days notice,
28 and the billed Party's noncompliance continues, nothing contained
29 herein shall preclude the Billing Party's right to disconnect any or
30 all relevant services of the non-complying Party without further
31 notice, if disconnection has been approved by the Commission...

32 **Issue 5-7(a)**

³² Eschelon proposed language opposed by Qwest is shown in underlined text and Qwest proposed language opposed by Eschelon (when shown for context purposes) is shown in ~~strikeout~~ text.

1 5.13.1 If either Party defaults in the payment of any amount due hereunder, or if
2 either Party violates any other material provision of this Agreement, and
3 such default or violation shall continue for thirty (30) Days after written
4 notice thereof, the other Party must notify the Commission in writing and
5 may seek relief in accordance with the Dispute resolution provision of
6 this Agreement. The failure of either Party to enforce any of the
7 provisions of this Agreement or the waiver thereof in any instance shall
8 not be construed as a general waiver or relinquishment on its part of any
9 such provision, but the same shall, nevertheless, be and remain in full
10 force and effect. Neither Party shall disconnect service to the other Party
11 without first obtaining Commission approval. To the extent that either
12 Party disputes, pursuant to Section 21.8, any amount due hereunder, the
13 Party's withholding of such disputed amounts pursuant to Section 21.8
14 shall not constitute a default under this Section 5.13 during the pendency
15 of such dispute.

16 Both of Eschelon's proposals under Issue No. 5-6 are intended to provide for
17 Commission oversight in the instance that Qwest wants to discontinue processing
18 orders of Eschelon. Eschelon's first option for Issue 5-6 requires Commission
19 approval before Qwest may discontinue processing Eschelon's orders for the
20 failure of Eschelon to make full payment. This would ensure that order
21 processing does not stop (and no action is taken that will disrupt service to end
22 users) until the Commission has at least had a chance to verify whether there is a
23 legitimate disagreement. The ICA already provides that Qwest give the
24 Commission notice of the alleged late payment and of Qwest's proposal to
25 discontinue services (Section 5.4.2), and Eschelon's proposal would simply
26 provide that Qwest would include a request for approval of that action with its
27 notice. If the Commission does not want to require Commission approval in
28 every instance in which Qwest intends to stop processing Eschelon's orders, the
29 Commission should ensure that it will have an opportunity to act on the public's

1 behalf before the services of End User Customers are disrupted when Eschelon
2 disagrees with Qwest's proposed action. To that end, Eschelon's alternative
3 option provides that if Eschelon disputes Qwest's determination and seeks
4 Commission review, Eschelon's orders will continue to be processed while its
5 dispute is pending or until a date specified by the Commission. This would ensure
6 that Commission authority is preserved when there is a disagreement, and would
7 prevent Qwest from being able to take such a serious step as stopping order
8 processing unilaterally or based on information with which Eschelon disagrees.
9 For Issue 5-7, Eschelon proposes language to ensure that before Qwest takes the
10 very serious step of disconnecting Eschelon's services, that it first obtains
11 Commission approval. This will allow the Commission to evaluate the basis for
12 the proposed disconnection and ensure that any actions taken in this regard are
13 justified and in the public interest. Regarding Issue 5-7(a), Eschelon proposes
14 language that would assure that the Commission is kept informed of alleged
15 defaults under the ICA that will allow the Commission to monitor disputes, and
16 become involved to the extent necessary and appropriate for the protection of the
17 public interest.

18 **Q. WHAT ARE QWEST'S PROPOSALS FOR ISSUE NOS. 5-6, 5-7 AND 5-**
19 **7(A)?**

20 **A. Qwest's proposals are shown below:**

21 **Issue 5-6**

1 5.4.2 ~~With the Commission's approval,~~ One Party may
2 discontinue processing orders for relevant services for the failure
3 of the other Party to make full payment, less any disputed amount
4 as provided for in Section 21.8 of this Agreement, for the relevant
5 services provided under this Agreement within thirty (30) Days
6 following the Payment Due Date.

7 **Issue 5-7**

8 5.4.3 ~~With the Commission's approval pursuant to Section~~
9 ~~5.13.1,~~ The the Billing Party may disconnect any and all relevant
10 services for failure by the billed Party to make full payment, less
11 any disputed amount as provided for in Section 21.8 of this
12 Agreement, for the relevant services provided under this Agreement
13 within sixty (60) Days following the Payment Due Date...If the
14 Billing Party does not disconnect the billed Party's service(s) on the
15 date specified in the ten (10) business days notice, and the billed
16 Party's noncompliance continues, nothing contained herein shall
17 preclude the Billing Party's right to disconnect any or all relevant
18 services of the non-complying Party without further notice, ~~if~~
19 ~~disconnection has been approved by the Commission...~~

20 **Issue 5-7(a)**

21 5.13.1 If either Party defaults in the payment of any amount due
22 hereunder, or if either Party violates any other material provision
23 of this Agreement, and such default or violation shall continue for
24 thirty (30) Days after written notice thereof, the other Party ~~must~~
25 ~~notify the Commission in writing and~~ may seek relief in
26 accordance with the Dispute resolution provision of this
27 Agreement. The failure of either Party to enforce any of the
28 provisions of this Agreement or the waiver thereof in any instance
29 shall not be construed as a general waiver or relinquishment on its
30 part of any such provision, but the same shall, nevertheless, be and
31 remain in full force and effect. ~~Neither Party shall disconnect~~
32 ~~service to the other Party without first obtaining Commission~~
33 ~~approval.~~ To the extent that either Party disputes, pursuant to
34 Section 21.8, any amount due hereunder, the Party's withholding
35 of such disputed amounts pursuant to Section 21.8 shall not
36 constitute a default under this Section 5.13 during the pendency of
37 such dispute.

38

1 The difference in Qwest's language is that Commission approval would not be
2 necessary for Qwest to stop processing Eschelon's orders or disconnect
3 Eschelon's circuits. In fact, Qwest's language would allow it to invoke these very
4 serious remedies even if Eschelon has a legitimate disagreement pertaining to the
5 charges Qwest alleges it owes (as in the example provided above). In support of
6 its position, Qwest argues that it is Eschelon's obligation to pay its bills in a
7 timely fashion and that Eschelon can invoke dispute resolution or dispute the
8 charges if it disagrees.³³

9 **Q. WHY SHOULD THE COMMISSION ADOPT ESCHELON'S**
10 **PROPOSALS ON ISSUE NOS. 5-6, 5-7 AND 5-7(A)?**

11 A. Eschelon's proposals maintain Commission authority in these instances so that
12 Qwest can not unilaterally discontinue processing Eschelon's orders or
13 unilaterally disconnect Eschelon's services. I explained above the devastating
14 effect on Eschelon that would result from Qwest unjustifiably taking these
15 actions. I also explained that the information that would be used by Qwest to
16 determine whether to reject Eschelon's orders and shut off Eschelon's services is
17 not always accurate or current, and is extremely vague. The Commission should
18 be involved on behalf of the public interest to ensure that these remedies are being
19 invoked properly and after a careful examination of the facts (particularly of the

³³ *Qwest Petition* ¶ 45.

1 data Qwest is using to allege non-payment) to ensure that these serious steps are
2 justified.

3 **Q. PLEASE ELABORATE ON THE IMPORTANCE OF ISSUE 5-7 AND**
4 **SUBPART.**

5 A. The need for Commission oversight related to the ability to disconnect services is
6 even greater than in the circumstance in which orders are rejected. Disconnecting
7 services would leave End User Customers without dial tone and without access to
8 critical 9-1-1 emergency services. Not only would such a drastic measure likely
9 very seriously, if not fatally, harm Eschelon's business, it would be extremely
10 disruptive for Eschelon's customers who would lose their telephone service as a
11 result. Before Qwest takes such a step, it should have the obligation to first seek
12 permission from the Commission in order to make sure that the interests of the
13 public are adequately protected.

14 **Q. WOULD THE PROVISIONS SET OUT IN ESCHELON'S PROPOSALS**
15 **BE UNIQUE TO WASHINGTON?**

16 A. No. In Minnesota, the Commission requires approval for disconnection, and
17 Qwest agreed to this language and the issue was not arbitrated in Minnesota.
18 Therefore, Qwest will have a process for providing notice to the Commission
19 before disconnection that it could use in Washington.

20 **Q. IF QWEST STOPPED PROCESSING ESCHELON'S ORDERS OR**

1 **DISCONNECTED ESCHELON'S SERVICES AND ESCHELON**
2 **DISAGREED, COULD ESCHELON SEEK COMMISSION RECOURSE**
3 **THROUGH DISPUTE RESOLUTION?**

4 A. Eschelon could seek dispute resolution before the Commission if Eschelon
5 disagreed with Qwest's view of late payment and/or overdue amount, but it likely
6 could not do so in time to keep Qwest from refusing to process Eschelon's orders
7 or disconnecting Eschelon's customers – so the damage to Eschelon and its End
8 User Customers will have already been done. Under the ICA language, Qwest
9 need only give 10 days notice of its intention to cease processing orders and
10 disconnect services. It would be very difficult, if not impossible, for Eschelon to
11 file a complaint, get it on the Commission's schedule, conduct a Commission
12 hearing and have a decision within 10 business days. In addition, this will cause
13 Eschelon to come to the Commission in crisis mode, which significantly
14 compresses timeframes for fact-checking and deliberations and adds additional
15 burden on the Commission, Eschelon and Qwest.

16 **Q. ARE THERE OTHER MEANS BY WHICH QWEST CAN COLLECT**
17 **UNPAID UNDISPUTED BILLS BESIDES REJECTING ORDERS OR**
18 **DISCONNECTING CUSTOMERS?**

19 A. Yes. Other remedies are available, like late payment fees and dispute resolution.
20 *See, e.g.,* Sections 5.4.8 and 5.18. These other means of redress available to
21 Qwest support the notion that Commission approval should be required before

1 taking the much more serious step of order rejection or disconnection.

2

3 **SUBJECT MATTER NO. 6. DEPOSITS**

4 **Issue Nos. 5-8, 5-9, 5-11 and 5-12: ICA Section 5.4.5**

5 **Q. YOU HAVE EXPLAINED THE BUSINESS REASON UNDERLYING**
6 **ESCHELON'S PROPOSALS ON PAYMENTS AND DEPOSITS ABOVE.**
7 **WHAT SERVES AS THE DISAGREEMENT BETWEEN ESCHELON**
8 **AND QWEST FOR ISSUE NOS. 5-8, 5-9, 5-11 AND 5-12?**

9 A. Eschelon and Qwest disagree on (1) whether the deposit requirement should be
10 triggered when Eschelon fails to pay a "de minimus" undisputed amount (with the
11 word de minimus serving as the disagreement) [Issue No. 5-8]; (2) how
12 "repeatedly delinquent" should be defined in terms of failure to pay undisputed
13 amounts [Issue No. 5-9]; (3) whether Eschelon should be required to pay a deposit
14 to Qwest within 30 days if Eschelon has challenged the merits of the deposit
15 requirement at the Commission [Issue No. 5-11]; and (4) whether a separate
16 option is appropriate in which the deposit requirement does not hinge on the
17 definition of Repeatedly Delinquent, but instead provides an avenue for the
18 Commission to review a party's payment history and determine whether "all
19 relevant circumstances warrant a deposit." [Issue No. 5-12]

20 **Q. WHAT ARE ESCHELON'S PROPOSALS ON THESE ISSUES?**

21 A. On these issues, Eschelon proposes the following language modifications (with

1 Eschelon's proposed language underlined):

2 **Issue No. 5-8**

3 5.4.5 "Repeatedly Delinquent" means payment of any undisputed
4 non-de minimus amount received more than thirty (30) Days after
5 the Payment Due Date . . .

6 **Issue No. 5-9 (1st of 2 options)**

7 5.4.5 . . . "Repeatedly Delinquent" means payment of any
8 undisputed . . . amount received more than thirty (30) Days after
9 the Payment Due Date, for three (3) consecutive months ~~or more~~
10 ~~times during a twelve (12) month period~~ on the same Billing
11 account number. . . .

12 **Issue No. 5-9(2nd of 2 options)**

13 5.4.5 . . . "Repeatedly Delinquent" means payment of any
14 undisputed . . . amount received more than thirty (30) Days after
15 the Payment Due Date, three (3) or more times during a six (6)
16 ~~twelve (12)~~ month period on the same Billing account number.

17 **Issue No. 5-11**

18 5.4.5Required deposits are due and payable within thirty (30)
19 Days after demand and conditions being met, unless the billed
20 Party challenges the amount of the deposit or deposit requirement
21 (e.g., because delay in submitting disputes or making payment was
22 reasonably justified due to inaccurate or incomplete Billing)
23 pursuant to Section 5.18. If such a Dispute is brought before the
24 Commission, deposits are due and payable as of the date ordered
25 by the Commission.
26

27 **Issue No. 5-12**

28 5.4.5 Each Party has ~~will~~ determined the other Party's credit status
29 based on previous payment history, ~~or credit reports such as Dun~~
30 ~~and Bradstreet. If a Party has not established satisfactory credit~~
31 ~~with the other Party according to the above provisions or the Party~~
32 ~~is repeatedly delinquent in making its payments, or the~~ If a Party is
33 being reconnected after a disconnection of service or
34 discontinuance of the processing of orders by the Billing Party due
35 to a previous non-payment situation, the Billing Party may require
36 a deposit to be held as security for the payment of charges before

1 the orders from the billed Party will be provisioned and completed
2 or before reconnection of service. The Billing Party may also
3 require a deposit for the failure of the other Party to make full
4 payment, less any disputed amount as provided for in Section 21 of
5 this Agreement, for the relevant services provided under this
6 Agreement within ninety (90) Days following the Payment Due
7 Date, if the Commission determines that all relevant circumstances
8 warrant a deposit. “Repeatedly delinquent” means any payment
9 received thirty (30) Days or more after the Payment Due Date,
10 three (3) or more times during a twelve (12) month period on the
11 same Billing account number. Accounts with amounts disputed
12 under the dispute provisions of this agreement shall not be
13 included as Repeatedly Delinquent based on amounts in dispute
14 alone.
15

16 Issue Nos. 5-8 and 5-9 address the definition of “Repeatedly Delinquent,” which
17 is the operative term in determining whether Qwest can demand a deposit. In
18 other words, if payment by Eschelon is “Repeatedly Delinquent,” as that term will
19 be defined by this arbitration, Qwest can invoke remedies set forth in the Payment
20 and Deposit language of the contract. Eschelon’s proposal under Issue No. 5-8 is
21 designed so that the deposit requirement (a deposit that can amount to 2 months
22 worth of charges, or about \$5 million for Eschelon) under Section 5.4.5 is
23 triggered only when there is a failure to pay a non-de minimus, undisputed
24 amount. The deposit requirement is designed to protect Qwest when there is a
25 legitimate concern regarding future payment, and a de minimus outstanding
26 amount does not rise to this level.

27 For Issue No. 5-9, Eschelon provides two options, one that defines “Repeatedly
28 Delinquent” in terms of three late payments in three consecutive months, and one

1 that defines the term as late payments in three months out of a six month period –
2 either of which is acceptable to Eschelon. Again, Eschelon’s language is
3 designed to trigger a deposit when there is a legitimate concern about its ability to
4 pay. Regarding Issue No. 5-11, Eschelon’s language simply recognizes that
5 deposits are payable in 30 days except when challenged at the Commission
6 pursuant to dispute resolution.³⁴ In these instances the Commission would
7 determine the payment due date of the deposit.

8 As a separate alternative, Eschelon proposes language in Issue No. 5-12 that
9 would not hinge on the definition of “Repeatedly Delinquent,” but rather would
10 allow the Commission to determine whether a deposit is warranted based on the
11 Commission’s review of a party’s payment history and “all relevant
12 circumstances.” Adopting Eschelon’s language on 5-12 would avoid the need to
13 rule on Issue Nos. 5-8, 5-9 and 5-11.

14 **Q. WHAT ARE QWEST’S PROPOSALS ON THESE ISSUES?**

15 A. Qwest proposes the following language on these issues (Qwest language opposed
16 by Eschelon is underlined and Eschelon proposed language opposed by Qwest in
17 ~~strikeout~~):

18 **Issue No. 5-8**

19 5.4.5 “Repeatedly Delinquent” means payment of any undisputed
20 ~~non-de minimus~~ amount received more than thirty (30) Days after
21 the Payment Due Date . . .

³⁴ Section 5.18 is the dispute resolution provision of the ICA.

1 **Issue No. 5-9**

2 5.4.5 . . . “Repeatedly Delinquent” means payment of any
3 undisputed . . . amount received more than thirty (30) Days after
4 the Payment Due Date, ~~for three (3) consecutive months or more~~
5 times during a twelve (12) month period on the same Billing
6 account number.. .

7 **Issue No. 5-11**

8 5.4.5Required deposits are due and payable within thirty (30)
9 Days after demand and conditions being met, ~~unless the billed~~
10 ~~Party challenges the amount of the deposit or deposit requirement~~
11 ~~(e.g., because delay in submitting disputes or making payment was~~
12 ~~reasonably justified due to inaccurate or incomplete Billing)~~
13 ~~pursuant to Section 5.18. If such a Dispute is brought before the~~
14 ~~Commission, deposits are due and payable as of the date ordered~~
15 ~~by the Commission.~~

16 **Issue No. 5-12**

17 Qwest does not offer an alternative proposal under Issue No. 5-12
18 as Eschelon does.
19

20 For Issue No. 5-8, Qwest proposes to omit the term “non de minimus,” which
21 means that any undisputed amount, even a few dollars, that is received after 30
22 days after the due date could be counted by Qwest as “Repeatedly Delinquent”
23 and used to invoke the deposit requirement. Qwest states that the term non de
24 minimus is vague and would lead to further disagreements requiring Commission
25 resolution.³⁵ For Issue No. 5-9, Qwest proposes to define Repeatedly Delinquent
26 as late payments in three months within a twelve month period. Qwest notes that
27 its proposed timeframe is consistent with the timeframe adopted in the past.³⁶
28 Under Issue No. 5-11, Qwest proposes to demand payment of deposits within 30

³⁵ *Qwest Petition* ¶ 48.

1 days with no exceptions. Qwest complains that the exception in Eschelon's
2 language (allowing a deposit demand to be challenged at the Commission) would
3 cause delay in the payment of the deposit and would require the Commission to
4 "micro manage" the parties' relationship.³⁷ Qwest does not provide a separate
5 proposal under Issue No. 5-12.

6 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE NO. 5-8 "DE**
7 **MINIMUS AMOUNT" (FIRST OF FOUR ISSUES).**

8 A. There is a provision in the contract under Section 5.4.5 that allows a Billing Party
9 to demand a deposit from the Billed Party if the Billed Party is "Repeatedly
10 Delinquent" in making payments. The operative, agreed to language of Section
11 5.4.5 states that:

12 If a Party that is doing business with the other Party for the first
13 time has not established satisfactory credit with the other Party
14 according to the previous sentence or the Party is ***Repeatedly***
15 ***Delinquent*** in making its payments, or the Party is being
16 reconnected after a disconnection of service or discontinuance of
17 the processing of orders by the Billing Party due to a previous non-
18 payment situation, the Billing Party may require a deposit to be
19 held as security for the payment of charges before the orders from
20 the billed Party will be provisioned and completed or before
21 reconnection of service. (emphasis added)

22 The key to Issue Nos. 5-8 and 5-9 is the appropriate definition of "Repeatedly
23 Delinquent." Eschelon proposes to include the term "non de minimus" in the

³⁶ Qwest Petition ¶ 49.

³⁷ Qwest Petition ¶ 51.

1 definition of Repeatedly Delinquent so that a few dollars of undisputed late
2 payments do not trigger a significant deposit requirement.

3 **Q. WHY SHOULD DE MINIMUS AMOUNTS NOT TRIGGER THE**
4 **DEPOSIT REQUIREMENT?**

5 A. The purpose of this deposit provision is to allow Qwest to obtain a deposit when
6 there is a legitimate concern about Eschelon's ability to pay future charges. A *de*
7 *minimus* amount of undisputed late charges does not rise to the level of a
8 legitimate concern in this regard, and should therefore not trigger the requirement
9 of Section 5.4.5 to pay a substantial deposit.

10 **Q. WHAT CONSTITUTES A DE MINIMUS AMOUNT?**

11 A. "De Minimus" is defined as "of trifling consequence of importance; too
12 insignificant to be worthy of concern."³⁸ According to *Webster's*, the term *de*
13 *minimus* is derived from the Latin phrase *de minimus non curat lex*, which:

14 ...refers to the principle of law that even if a technical violation of
15 a law appears to exist according to the letter of the law, if the effect
16 is too small to be of consequence, the violation of the law will not
17 be considered as a sufficient cause of action...

18 So, under Eschelon's proposal, for Qwest to be able to demand a deposit under
19 the "Repeatedly Delinquent" provision, the amount received more than 30 days
20 after the payment due date would need to be "worthy of concern" and not of
21 "trifling consequence." Amounts that are "too small to be of consequence" do not

³⁸ Webster's dictionary online: <http://www.webster-dictionary.net/definition/Minimus>

1 rise to the level of a legitimate concern about Eschelon’s ability to pay. The term
2 “non de minimus” should be included to acknowledge this.

3 **Q. IS THIS TERM TOO VAGUE TO BE USEFUL?**

4 A. Though Qwest may complain that the term is vague,³⁹ the dictionary definition
5 quoted above shows that the term is commonly understood. Other terms in the
6 ICA that also have a commonly understood meaning are likewise not defined.
7 For example, the term “material” and the concept of “materiality” are used
8 throughout the agreement in closed language without being defined in those
9 provisions. See ICA Sections 2.1, 2.2, 5.1.3.1, 5.4.6, 5.6.2, 5.8.4, 5.13.1,
10 7.2.2.9.6, 8.2.1.29, 10.6.2.5.1, 10.8.2.14, 10.8.2.18 & 11.3. In a way, “material”
11 is the flip side of “de minimus,” because a de minimus amount would not be
12 material. In fact, another way to resolve this issue would be to adopt the
13 following language for this sentence in Issue No. 5-8:

14 “Repeatedly Delinquent” means payment of any undisputed
15 material amount received more than thirty (30) Days after the
16 Payment Due Date.

17 Eschelon also offers this language as a means to resolve this issue. The term
18 “material” has the advantage (unlike the term “non de minimus”) of being used
19 elsewhere in the interconnection agreement. And the parties must be able to
20 determine its meaning, given the frequency of its use in other provisions of the
21 agreement. In fact, it is already used within the Payment and Deposit provisions

³⁹ *Qwest Petition* ¶ 48.

1 of Section 5.4. In Section 5.4.6, agreed-to language states:

2 Upon a material change in financial standing (including Qwest
3 transfer of relevant exchanges to any unaffiliated party as
4 described in Section 5.12.2), the billed Party may request and the
5 Billing Party will consider a recalculation of the deposit.

6 If a change in financial standing can be determined “material” or not, then an
7 undisputed amount can likewise be determined “material” or not. Eschelon does
8 not object to use of either “non de minimus” or “material” to resolve this issue.

9 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE NO. 5-9**
10 **“DEFINITION OF REPEATEDLY DELINQUENT” (SECOND OF FOUR**
11 **ISSUES).**

12 A. Eschelon proposes to define Repeatedly Delinquent to mean undisputed amounts
13 received more than 30 days after the Payment Due Date for three consecutive
14 months for the same billing account number (“BAN”). Qwest, on the other hand,
15 proposes that Repeatedly Delinquent should mean late payment three or more
16 times in a twelve month period (*i.e.*, the three months do not need to be
17 consecutive).

18 **Q. WHY IS ESCHELON’S PROPOSAL SUPERIOR TO QWEST’S?**

19 A. Similar to Issue No. 5-8, Eschelon’s proposal would trigger a deposit requirement
20 when there is actually a legitimate concern about a party’s ability to pay, while
21 Qwest’s proposal would trigger a deposit requirement when there is no legitimate
22 concern.

1 Under Qwest's proposed language, if Eschelon were to pay Qwest a portion of the
2 amount due late in months one and two (even a de minimus amount), make timely
3 payments in full for the next nine months, and then pay a portion of the amount
4 due late in month twelve, Qwest could demand a large security deposit. This
5 scenario does not provide evidence of the financial stress that gives rise to a
6 legitimate need for payment "security."

7 **Q. HAS QWEST AGREED TO THE "3 CONSECUTIVE MONTH"**
8 **STANDARD ESCHELON IS PROPOSING HERE IN ICAS WITH OTHER**
9 **CLECS?**

10 A. Yes. For example, in a recent filing in Utah, McLeodUSA quoted the definition
11 of "Repeatedly Delinquent" in § 26.4.4 of its ICA with Qwest as "being thirty
12 (30) days or more delinquent for three (3) consecutive months."⁴⁰ In addition,
13 ATI, which was recently acquired by Eschelon, has the three consecutive month
14 standard in Section 26.4.4 of its current ICA with Qwest in Washington. In
15 addition to these CLECs for whom Qwest utilizes the 3 consecutive month
16 standard for defining repeatedly delinquent, Qwest uses it for the following
17 additional companies (this list is not meant to be exhaustive): AT&T Wireless
18 Services; Pathnet, Inc.; Autotel; Arch Paging, Inc.; Airtouch Paging, Inc.;
19 MetroArea User; and Alamosa PCS LLC. The fact that Qwest has agreed to

⁴⁰ The pertinent portion of McLeodUSA's brief is provided as Exhibit No. DD-4. I have provided as Exhibit DD-4 the pertinent pages of various carriers' interconnection/service agreements with Qwest which shows that Qwest has agreed to the three consecutive month standard with numerous CLECs, CMRS providers and paging companies.

1 include “3 consecutive month” language in interconnection/service agreements
2 with other companies shows that Qwest recognizes that this standard adequately
3 protects its interests. Holding Eschelon to a higher standard is unnecessary and
4 discriminatory. Qwest attempts to support its position by pointing out that its
5 proposal has been adopted in the past, but as shown in Exhibit DD-4, Eschelon’s
6 proposal has also been adopted in the past, and Qwest/USWest has agreed to it.

7 **Q. WHY IS ESCHELON’S ALTERNATIVE PROPOSAL – “3 MONTHS IN A**
8 **SIX MONTH PERIOD” - SUPERIOR TO QWEST’S PROPOSAL?**

9 A. Again, Eschelon’s language addresses a situation in which a legitimate concern
10 exists about a party’s ability to pay. For instance, under Eschelon’s alternative
11 proposal, if the billed party had nine consecutive months of timely payment in
12 full, it would not be repeatedly delinquent (unlike under Qwest’s proposal).
13 Eschelon offers either proposal #1 or #2 for the Commission’s adoption.

14 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE NO. 5-11**
15 **“DISPUTES BEFORE COMMISSION” (THIRD OF FOUR ISSUES).**

16 A. This disagreement pertains to whether Eschelon can dispute the amount of a
17 deposit or deposit requirement at the Commission before it is implemented.
18 Qwest’s proposal is that “deposits are due and payable within thirty (30) days
19 after demand and conditions are met.” Eschelon’s proposal contains this same
20 language, but also provides an exception if the billed party challenges the amount
21 of the deposit or deposit requirement to the Commission, in which case the

1 deposit due date would be established by the Commission. Eschelon's language
2 identifies an example in which this scenario may occur, that is, delay in
3 submitting disputes or making payment was reasonably justified due to inaccurate
4 or incomplete billing – much like the examples I discuss above.

5 **Q. IS THE DISPUTE RESOLUTION PROVISION CAPABLE OF**
6 **ADDRESSING ESCHELON'S CONCERNS ABOUT QWEST LEVYING**
7 **DEPOSITS?**

8 A. No. If Eschelon is forced to rely solely on the dispute resolution provision in this
9 instance, it is likely that Eschelon would be required to pay a deposit that Qwest
10 demanded before recourse could be sought and obtained at the Commission.

11 **Q. COULD THE COMMISSION REQUIRE ANY DEPOSIT PAYMENT DUE**
12 **DATE IT WISHES UNDER ESCHELON'S LANGUAGE?**

13 A. Yes. Eschelon's language simply states that if it brings a dispute to the
14 Commission, the due date for payment of any deposit would be as of the date
15 ordered by the Commission. In this instance, the Commission could require
16 Eschelon to provide interim relief to Qwest while the dispute is being litigated, or
17 the Commission could require payment of a deposit at the conclusion of the
18 dispute, or the Commission could find the deposit unwarranted and require no
19 deposit to be paid. Eschelon's language, therefore, would allow the Commission
20 to make the call on when a deposit is paid when a disagreement regarding that
21 deposit arises.

1 **Q. WOULD ESCHELON’S LANGUAGE REQUIRE THE COMMISSION TO**
2 **MAKE A DETERMINATION IN EVERY INSTANCE?**

3 A. No. Eschelon’s language only applies if Eschelon challenges the deposit amount
4 or requirement at the Commission. If Eschelon does not challenge the deposit, it
5 would pay within 30 days as set forth in Section 5.4.5. Eschelon would not waste
6 the resources of the Commission, Qwest, or itself by raising a baseless challenge
7 that would result in Eschelon ultimately paying the deposit anyway.

8 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE NO. 5-12**
9 **“COMMISSION DETERMINES RIGHT TO DEPOSIT BASED ON**
10 **RELEVANT CIRCUMSTANCES” (FOURTH OF FOUR ISSUES).**

11 A. Eschelon has proposed the alternative language in Issue No. 5-12 that would not
12 hinge on the definition of “Repeatedly Delinquent.” Instead, it would allow the
13 Commission to determine whether a deposit is warranted based on the
14 Commission’s review of a Billed Party’s payment history and “all relevant
15 circumstances.” Since this option does not rely on the definition of “Repeatedly
16 Delinquent” and defers to Commission authority, it avoids the need to rule on
17 Issues Nos. 5-8, 5-9 and 5-11. Eschelon’s alternative language is shown above.

18 **Q. WHAT ARE SOME OF THE ADVANTAGES OF THIS ALTERNATIVE?**

19 A. This option provides the Commission the ability to determine contested deposit
20 requirements on a case-by-case basis if and when they arise. This option would
21 provide the greatest degree of flexibility to the Commission in addressing

1 potential disagreements. If Eschelon does not have a legitimate disagreement
2 with Qwest, Commission approval would be straightforward. However, if there
3 was a disagreement, this alternative would allow the Commission to weigh all
4 relevant facts. The key here is that Commission oversight is preserved and Qwest
5 is not allowed to unilaterally demand deposits.

6
7

SUBJECT MATTER NO. 7. REVIEW OF CREDIT STANDING

8 **Issue No. 5-13: ICA Section 5.4.7**

9 **Q. WHAT IS THE SOURCE OF DISAGREEMENT UNDER ISSUE NO. 5-13**
10 **(THE FINAL “PAYMENT AND DEPOSITS” ISSUE)?**

11 A Qwest proposes to include language that would allow Qwest to increase a deposit
12 amount for Eschelon based on Qwest’s review of Eschelon’s credit standing.

13 **Q. WHAT IS ESCHELON’S PROPOSAL FOR ISSUE NO. 5-13?**

14 A. Eschelon offers two proposals for Issue No. 5-13.

15 **Issue No. 5-13 (1st of 2 options)**

16 5.4.7 Intentionally Left Blank

17 **Issue No. 5-13 (2nd of 2 options)**

18 5.4.7 The Billing Party may review the other Party's credit
19 standing and increase the amount of deposit required, if approved
20 by the Commission but in no event will the maximum amount
21 exceed the amount stated in Section 5.4.5.

22 Eschelon’s first proposal is to leave this section intentionally blank. Eschelon
23 contends that Qwest’s proposed Section 5.4.7 is undefined and unnecessary.

1 Eschelon provides option #2 in case the Commission is inclined to agree with the
2 concept of allowing Qwest to increase deposit amounts based on its review of
3 Eschelon's credit standing, in which case Commission approval should be
4 required.

5 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE NO. 5-13?**

6 A. Qwest has proposed language that would allow it to review Eschelon's credit
7 standing and unilaterally increase the amount of the deposit. Qwest proposes the
8 following language under Section 5.4.7:

9 5.4.7 The Billing Party may review the other Party's credit
10 standing and increase the amount of deposit required but in no
11 event will the maximum amount exceed the amount stated in
12 Section 5.4.5.
13

14 **Q. WHY DOES ESCHELON DISAGREE WITH QWEST'S LANGUAGE IN**
15 **5.4.7?**

16 A. There are several reasons. First, Qwest's proposed language would grant it
17 unilateral authority to increase Eschelon's deposit without any recourse by
18 Eschelon. Again, Eschelon could seek dispute resolution, but as explained above,
19 Commission relief would likely come after Eschelon has already been required to
20 pay Qwest's unilaterally-determined deposit amount.

21 Second, Qwest's proposed provision contains no criteria or standards defining
22 when this provision may be invoked. Qwest's language does not describe the

1 “credit history” that would be subject to review, the conditions that might justify a
2 review, or the circumstances that would warrant an increase.

3 Third, this language would effectively nullify the limitations on deposit
4 requirements under Section 5.4.5. Section 5.4.5 would allow a party to demand a
5 deposit when a party (i) has not established satisfactory credit with the other
6 Party, (ii) is Repeatedly Delinquent in making its payments, or (iii) the Party is
7 being reconnected after a disconnection of service or discontinuance of the
8 processing of orders due to a previous non-payment situation. Qwest’s proposed
9 language in 5.4.7 is not limited in any of these respects. In fact, Qwest’s
10 proposed language would grant Qwest the authority to increase a deposit
11 requirement even when Eschelon is current in its payments to Qwest. A
12 legitimate concern about Eschelon’s ability to pay certainly does not exist when
13 Eschelon is current with Qwest, but Qwest’s 5.4.7 would allow it to demand a
14 deposit anyway.

15 **Q. DOES ESCHELON DISAGREE WITH QWEST’S 5.4.7 FOR ANY OTHER**
16 **REASON?**

17 A. Yes. Section 5.4.7 is unnecessary because Sections 5.4.5 and 5.4.6 already
18 address how deposits should be recalculated based on financial standing. There is
19 no reason to duplicate less clear provisions in Section 5.4.7.

1 Furthermore, Qwest's proposed Section 5.4.7 states that the amount of the
2 deposit, when increased, may not exceed the maximum amount under Section
3 5.4.5. Section 5.4.5, however, provides no method for calculation of a maximum
4 for Qwest's proposed Section 5.4.7. Specifically, Section 5.4.5 states that "[t]he
5 deposit may not exceed the estimated total monthly charges for an average two
6 (2) month period within the first three (3) months, *from the date of the triggering*
7 *event*, which would be either the date of the request for reconnection of services
8 or resumption of order processing and/or the date CLEC is Repeatedly Delinquent
9 as described above for all services." (*emphasis added*) However, under Qwest's
10 Section 5.4.7 there would be no "triggering event" that could be used to select
11 three months for purposes of computing an average. In other words, Section 5.4.7
12 does not involve reconnection, resumption of order processing, or Eschelon being
13 Repeatedly Delinquent, so the deposit cap in 5.4.5 makes no sense within the
14 context of Qwest's 5.4.7.

15 **Q. IS THERE REASON FOR CONCERN ABOUT MISUSE OF THIS**
16 **SECTION?**

17 A. Yes. Eschelon has requested examples from Qwest in which 5.4.7 would apply
18 that are not already covered by 5.4.5 and 5.4.6. Qwest failed to provide any
19 examples and responded that Qwest has the right to secure its accounts if it
20 determines there may be a financial risk. "Financial risk" is a broad term and
21 suggests that Qwest could take the liberty to read Section 5.4.7 very broadly. The

1 closed language in 5.4.5 reads: “each Party will determine the other Party's credit
2 status based on previous payment history as described below or, if the Parties are
3 doing business with each other for the first time, based on credit reports such as
4 Dun and Bradstreet.”

5 Given that Eschelon and Qwest already agreed to language in Section 5.4.5 that
6 explains how credit status will be determined and does not grant the unilateral
7 authority carved out in Qwest’s proposed Section 5.4.7, there is reason for
8 concern.

9 **Q. WHY IS ESCHELON’S ALTERNATIVE LANGUAGE PROPOSAL**
10 **SUPERIOR TO QWEST’S PROPOSAL FOR SECTION 5.4.7?**

11 A. Eschelon’s alternative would alleviate the concern regarding the unilateral
12 authority granted to Qwest under its proposed Section 5.4.7 by requiring
13 Commission approval of an increase in the deposit amount. This would also
14 allow the Commission to review whatever criteria and/or standards are used by
15 Qwest to modify the deposit amount, and also allow the Commission to address
16 any issues related to the deposit cap under 5.4.7.

17 **Q. PLEASE SUMMARIZE THE PAYMENT AND DEPOSIT ISSUES (ISSUE**
18 **NOS. 5-8, 5-7, 5-9, 5-11, 5-12 AND 5-13).**

19 A. Eschelon does not object to the inclusion of the Payment and Deposit provisions
20 and remedies in the ICA because it agrees that Qwest (and Eschelon) should have

1 the ability to protect its financial interests when there is a legitimate concern
2 about future payment. After all, the intent of the payment and deposit provisions
3 is to address situations when legitimate concerns exist in this regard. However, if
4 Qwest is able to invoke these provisions in cases where no legitimate concern
5 about ability to pay exists, it could cause significant harm to Eschelon and to
6 Customers. Given the seriousness of these steps, and the effects they would have
7 on Eschelon and its Customers, Commission oversight should be available to
8 protect the public interest before these steps are taken.

9

10 **IV. SUBJECT MATTER NOS. 8 – 10, 11 partial, 13, 17, 20 – 23, 25,**
11 **26, 28, AND 44 – 48**

12 **SUBJECT MATTER NO. 8. COPY OF NON-DISCLOSURE AGREEMENT**

13 **Issue No. 5-16: ICA Section 5.16.9.1**

14 **Q. PLEASE DESCRIBE THE BUSINESS NEED REGARDING COPY OF**
15 **NON-DISCLOSURE AGREEMENT IN ISSUE NO. 5-16.**

16 A. Eschelon provides forecasting information to Qwest. This information is highly
17 competitive and sensitive and this information should not be disclosed to Qwest
18 employees who are in a position to use it to Eschelon's competitive disadvantage.
19 Qwest has agreed that Qwest employees to whom Eschelon's forecasts and
20 forecasting information are disclosed will be required to execute a nondisclosure
21 agreement covering the information. However, Qwest disagrees as to whether

1 Qwest must agree to provide Eschelon with a signed copy of each non-disclosure
2 agreement within ten days of execution. Eschelon should be able to know who at
3 Qwest is reviewing Eschelon's highly confidential information.

4 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

5 A. Eschelon proposes the following (underlined) language for ICA Section 5.16.9.1:

6 5.16.9.1 The Parties may disclose, on a need to know basis only,
7 CLEC individual forecasts and forecasting information disclosed
8 by Qwest, to legal personnel, if a legal issue arises about that
9 forecast, as well as to CLEC's wholesale account managers,
10 wholesale LIS and Collocation product managers, network and
11 growth planning personnel responsible for preparing or responding
12 to such forecasts or forecasting information. In no case shall retail
13 marketing, sales or strategic planning have access to this
14 forecasting information. The Parties will inform all of the
15 aforementioned personnel, with access to such Confidential
16 Information, of its confidential nature and will require personnel to
17 execute a non-disclosure agreement which states that, upon threat
18 of termination, the aforementioned personnel may not reveal or
19 discuss such information with those not authorized to receive it
20 except as specifically authorized by law. Qwest shall provide
21 CLEC with a signed copy of each non-disclosure agreement
22 executed by Qwest personnel within ten (10) Days of execution.
23 Violations of these requirements shall subject the personnel to
24 disciplinary action up to and including termination of employment.

25

26 **Q. WHAT IS QWEST'S PROPOSAL ON THIS ISSUE?**

27 A. Qwest proposes to delete Eschelon's proposed language.

28 **Q. WHAT TYPE OF FORECAST INFORMATION IS PROVIDED**
29 **PURSUANT TO THE ICA?**

1 A. Forecasts provided under the ICA include competitively sensitive information
2 related to Interconnection Trunks in ICA Section 7.2.2.8; future Central Office
3 space Collocation requirements in ICA Section 8.4.1.4; and forecasted demand by
4 DS0, DS1 and DS3 capacities that will be terminated on the Interconnection
5 Distribution Frame (ICDF) by Qwest on behalf of CLEC in ICA Section 8.4.4.1.

6 **Q. WHY IS ESCHELON'S PROPOSAL NECESSARY AND REASONABLE?**

7 A. If Qwest does not provide Eschelon with copies of executed nondisclosure
8 agreements, Eschelon will have insufficient information to object if sensitive
9 information is provided to a Qwest employee not authorized by the ICA to receive
10 it. Eschelon thus will have no way to confirm that its confidential information is
11 being adequately protected. Qwest has already agreed that employees will sign
12 the agreement. Eschelon's proposal to require Qwest to provide a copy of that
13 existing executed agreement imposes no additional burden on Qwest. Qwest's
14 unwillingness to provide copies of executed nondisclosure agreements renders the
15 agreed upon requirement to actually execute these agreements difficult to enforce.

16 Eschelon's proposal to receive copies of executed non-disclosure agreements
17 reflects the common practice in other contexts under which the parties exchange
18 signature pages of confidentiality protective agreements so that a party will be
19 aware of who is receiving its confidential information and will be in a position to
20 raise objections if necessary. In fact, the Protective Order in this case requires

1 that parties circulate copies of signed NDA Exhibits to counsel for the party
2 producing confidential information.⁴¹

3 Because providing executed protective agreements is common practice and
4 facilitates Eschelon's ability to enforce these agreements, Qwest should be
5 required to provide signed copies of these agreements to Eschelon.

6 **Q. PLEASE SUMMARIZE THIS ISSUE.**

7 A. Qwest has agreed that Qwest employees to whom Eschelon's forecasts and
8 forecasting information are disclosed will be required to execute a nondisclosure
9 agreement covering the information. Eschelon's proposed language would
10 require Qwest to provide Eschelon with a signed copy of each non-disclosure
11 agreement within ten days of execution. Eschelon's language is reasonable and
12 should be adopted.

13

14 **SUBJECT MATTER NO. 9. TRANSIT RECORD CHARGE AND BILL**
15 **VALIDATION**

16 **Issues Nos. 7-18 and 7-19: ICA Sections 7.6.3.1 and 7.6.4**

17 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO TRANSIT**
18 **RECORD CHARGE AND BILL VALIDATION IN ISSUE NOS. 7-18 AND**
19 **7-19.**

⁴¹ Docket No. UT-063061, Order No. 3 at ¶ 9.

1 A. "Transit Traffic" is defined as any traffic that originates from one
2 Telecommunications Carrier's network, transits another Telecommunications
3 Carrier's network, and terminates to yet another Telecommunications Carrier's
4 network⁴² Qwest is a transit provider and bills Eschelon for transit for certain
5 Eschelon originated calls. The bills that Qwest provides to Eschelon for Eschelon
6 originated calls do not contain call record detail, but instead simply contain the
7 number of transit minutes and the transit traffic rate. In order to validate the bills
8 that Qwest provides, Eschelon requests, on a limited basis, call records that would
9 allow for bill verification. Qwest apparently will agree to supply transit records,
10 but only if the records are purchased by Eschelon. Eschelon should not be put in
11 the position of having to pay Qwest additional charges in order to validate the
12 invoices Qwest is sending to Eschelon.

13 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

14 A. Eschelon proposes the following (underlined) language:

15 **Issue No. 7-18:**

16 7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic
17 the billed party may request sample 11-01-XX records for
18 specified offices. These records will be provided by the transit
19 provider in EMI mechanized format to the billed party at no
20 charge, because the records will not be used to bill a Carrier. The
21 billed party will limit requests for sample 11-01-XX data to a
22 maximum of once every six months, provided that Billing is
23 accurate.

24 **Issue No. 7-19:**

⁴² See ICA, Section 4 - Definitions.

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

8 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

9 A. Qwest proposes that Eschelon’s language be deleted.

10 **Q. WHY IS ESCHELON’S LANGUAGE NECESSARY?**

11 A. Qwest has already agreed to provide reasonably requested documentation that will
12 expedite the resolution of disputes between Eschelon and Qwest.⁴³ Section 7.6.3
13 of this ICA contains agreed upon language describing the circumstances under
14 which Qwest can charge CLEC for transit records.

15 7.6.3 If the non-transit provider requests records pursuant to ICA
16 Sections 7.6.1 or 7.6.2, the Parties will charge the same rate for
17 Category 11-01-XX records sent in an EMI mechanized format.
18 *These records are used to provide information necessary for each*
19 *Party to bill the Originating Carrier.* The charge listed in Exhibit
20 A of this Agreement is applicable to each transit record that meets
21 the definition of a billable record. (Emphasis added)

22
23 Because ICA Section 7.6.3 appears to be limited to records necessary to bill the
24 Originating Carrier and the records sought by Eschelon are records of Eschelon
25 originated calls, Eschelon proposes to add a provision that explicitly states that
26 there is no charge for sample records used to verify Qwest’s bills to CLEC.

⁴³ See ICA Section 21.8.4.3 of this Interconnection Agreement.

1 Qwest does not bill Eschelon transit charges for calls originated by a third party.
2 Qwest does bill Eschelon transit charges for calls originated by Eschelon and it is
3 these records Eschelon seeks to review for bill validation purposes.

4 It should also be noted that Eschelon's language limits the request for these
5 records to once every six months, provided Qwest's billing is accurate. ICA
6 Section 7.6.4 of Eschelon's proposal simply provides detail regarding the
7 information Eschelon seeks when it requests transit records for the purpose of bill
8 validation.

9 **Q. IF THE RECORDS IN QUESTION ARE ORIGINATED BY ESCHELON**
10 **WHY CAN NOT ESCHELON RECORD THESE RECORDS AT ITS OWN**
11 **SWITCH?**

12 A. Eschelon does record this information at its switch, though our records would
13 only tell us who was called and that we handed the call off to Qwest. We can
14 only infer from our records whether Qwest is acting as a transit provider.
15 Discrepancies between Eschelon's records and the bills Eschelon receives from
16 Qwest are one reason Eschelon might request records from Qwest for bill
17 verification.

18 **Q. WHAT CHARGES DOES QWEST CURRENTLY APPLY TO TRANSIT**
19 **RECORDS IN WASHINGTON?**

1 A. The Commission has not approved a rate for category 11 records (transit traffic
2 records). However, Eschelon and Qwest have negotiated a rate, until such time
3 that the Commission approves a rate, of \$.001903 per record.⁴⁴ Eschelon's
4 language makes clear that Qwest will provide Eschelon-originated transit records,
5 on a limited basis, for the purpose of bill verification as part of the category 11
6 records. Qwest's language in 7.6.3 applies only to transit records terminated to
7 Eschelon – these records do not assist in transit traffic bill verification. It is thus
8 not clear under Qwest's proposal whether it would provide these records to
9 Eschelon and, if so, at what, if any, charge.

10 **Q. PLEASE SUMMARIZE THIS ISSUE.**

11 A. In order to validate the bills that Qwest provides, Eschelon needs occasional
12 access to a limited number of call records that would allow for bill verification.
13 Eschelon's language allows for Eschelon to obtain these records from Qwest for
14 the purpose of bill verification. Eschelon's language is reasonable and therefore
15 should be adopted.

16

17 **SUBJECT MATTER NO. 10. COLLOCATION AVAILABLE INVENTORY**

18 **Issue Nos. 8-20 and 8-20(a): ICA Sections 8.1.1.10.1.1.1 and 8.2.10.4.3**

19 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO**
20 **COLLOCATION AVAILABLE INVENTORY.**

⁴⁴ Washington ICA Exhibit A, Section 7.9.4.

1 A. The goal of Eschelon’s language is to ensure that Qwest does not have the ability
2 to charge Eschelon for work for which Qwest has already been compensated. The
3 first issue (Issue No. 8-20: Collocation Available Inventory – Posting of Price
4 After QPF⁴⁵) involves the case where Qwest has a posted collocation for which it
5 has already been paid to calculate a quoted price. In this situation Qwest should
6 post that quoted price and should not charge a second time to prepare a quote that
7 already exists. Posting of prices that Qwest has already been paid to create will
8 facilitate the review of used collocation space and aid Eschelon in making
9 efficient decisions regarding the purchase of such collocation space. Since Qwest
10 has already been compensated to prepare the collocation price quote, Qwest is not
11 disadvantaged in any way by posting this price and Qwest should not be able to
12 charge Eschelon for preparing the quote, since the quote is already prepared and
13 there is no additional work for Qwest to perform.

14 The second issue (Issue No. 8-20(a): Collocation Available Inventory – Space
15 Augments) concerns language that Qwest proposes to insert into section
16 8.2.10.4.3, which is inconsistent with the paragraph as a whole, is not contained in
17 other CLECs interconnection agreements, and would potentially increase the cost
18 to Eschelon of obtaining a quote for a collocation special site.⁴⁶

19 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THIS ISSUE?**

⁴⁵ QPF stands for Quote Preparation Fee.

⁴⁶ “Special Sites” are collocation sites returned to Qwest by CLECs through Chapter 7 bankruptcy or abandonment. See ICA Section 8.2.10.4.1.

1 A. Eschelon proposes the following language:

2 **Issue No. 8-20: Collocation Available Inventory – Posting of Price After QPF**

3 8.1.1.10.1.1.1 Notwithstanding any other provision of this
4 Agreement, if Qwest prepares a QPF for a posted Collocation site
5 and for any reason the posted Collocation site is returned to Qwest
6 inventory, Qwest will post the quoted price from the QPF on the
7 inventory list for that site and, for future requests for that site, will
8 waive the QPF, as the quote has already been prepared, unless
9 Qwest establishes a change in circumstance affecting the quoted
10 price.

11 **Issue No. 8-20(a): Collocation Available Inventory – Space Augments**

12 8.2.10.4.3 CPMC will verify whether the requested site is still
13 available for acquisition by conducting a feasibility study within
14 ten (10) Days after receipt of the application. If the site is not
15 available the CPMC will notify the CLEC in writing. If the site is
16 available a site survey will be arranged with the CLEC and Qwest
17 State Interconnect Manager (SICM). Upon completion of the
18 survey Qwest will prepare a quote based on the site inventory and
19 any requested modifications to the site. CLEC must pay in full one
20 hundred percent (100%) of the quoted non-recurring charges to
21 Qwest within thirty (30) Days of receipt of the quote. If Qwest
22 does not receive the payment within such thirty (30) Day period,
23 the quote will expire and the requested site will be returned to
24 Qwest inventory. The CLEC will be charged a special site
25 assessment fee for work performed up to the point of expiration or
26 non-acceptance of the quote. See ICA Section 8.3.11.3.2. ~~If~~
27 ~~CLEC requests an augment application then CLEC will be a~~
28 ~~charged a QPF instead of the special site assessment fee.~~ Upon
29 receipt of the full payment for the quoted non-recurring charges,
30 Qwest will begin the establishment of the site records and the
31 complete the job build-out. The interval shall be forty-five (45)
32 Days for completion of the site from receipt of payment. In the
33 event that CLEC requires Qwest to install additional services to the
34 existing site, the interval will revert to the intervals defined in the
35 assuming CLEC's Interconnect Agreement.

36

37 **Q. WHAT IS QWEST'S PROPOSAL ON THIS ISSUE?**

1 A. Qwest proposes that Eschelon's language be deleted in Issue No. 8-20 – section
2 8.1.1.10.1.1.1. Qwest proposes to insert the language below, shown as stricken
3 above in Issue No. 8-20(a) – section 8.2.10.4.3:

4 If CLEC requests an augment application then CLEC will be
5 charged a QPF instead of the special site assessment fee.

6

7 **Q. WHY IS ESCHELON'S LANGUAGE NECESSARY FOR ISSUE NO. 8-20:**
8 **COLLOCATION AVAILABLE INVENTORY – POSTING OF PRICES**
9 **AFTER QPF?**

10 A. When a collocation site is no longer being used by a CLEC and that site is
11 returned to Qwest, the site is then posted on Qwest's website as inventory that is
12 available for purchase by other CLECs. Thus, Qwest essentially offers "used"
13 collocations for sale through its "collocation available inventory" website list of
14 available collocation sites. However, Qwest does not include a price, or even an
15 estimated price, for these sites. When making a "new" versus "used" purchase
16 decision, Eschelon considers several factors, but price is almost always a key
17 factor. Thus, Eschelon proposes language providing that, when Qwest prepares a
18 quote and charges a QPF in connection with that quote for a posted Collocation
19 site, and the site is subsequently returned to Qwest inventory, Qwest will post the
20 originally quoted QPF and will waive the QPF for future quote requests. The
21 language allows for an exception when Qwest "establishes a change in
22 circumstances affecting the quoted price."

1 This provision does not require Qwest to go to any particular effort to prepare a
2 quote. Rather, Eschelon's proposal is reasonable because it only requires Qwest
3 to post pricing information that it has already available to it as a result of having
4 previously prepared a quote. Further, because Qwest has already charged a QPF
5 for the preparation of the original quote, the requirement that Qwest waive the fee
6 for subsequent quotes reasonably prevents Qwest from receiving double recovery.

7 **Q. DOES QWEST HAVE AN OBLIGATION TO OFFER "USED"**
8 **COLLOCATION SPACE ON A NON-DISCRIMINATORY BASIS AT**
9 **JUST AND REASONABLE RATES?**

10 A. Yes, section 251(c)(6) of the Act requires Qwest to "provide, on rates, terms and
11 conditions that are just, reasonable, and nondiscriminatory, for physical
12 collocation of equipment necessary for interconnection or access to unbundled
13 network elements." The Act does not state that physical collocation is "new" or
14 "used." It simply states that rates for collocation must be just and reasonable.
15 Eschelon's proposal meets that criterion of establishing just and reasonable rates
16 for QPFs for previously used Collocations. Eschelon's position is that it should
17 not be required to pay QPFs for a previously used collocation space if Qwest has
18 already previously prepared the quote and recovered those costs from another
19 carrier. Further, the posting of quotes that Qwest has already created for the
20 purpose of offering collocation sites to another carrier ensures that these sites are
21 offered on a non-discriminatory basis.

1 **Q. WHAT IF A CLEC ORDERS A DIFFERENT CONFIGURATION THAN**
2 **IS CONTAINED IN THE POSTED PRICE?**

3 A. First, ICA Section 8.2.10.3.2 provides that all services that were previously
4 connected to the Collocation will be disconnected before the site is posted and
5 that Qwest will inventory and post all Reusable and Reimbursable Elements.
6 That work has been done before a quote is even prepared and the items posted
7 will be identical for any requesting carrier. Second, ICA Section 8.2.10.3.3 states
8 that if CLEC requests modifications to the Qwest posted site, the ICA terms
9 relating to Augments will apply. Thus, if a CLEC's request was not identical to
10 the Qwest posting, Qwest would treat it as an Augment. Therefore, any claim by
11 Qwest that it cannot post the quote because CLECs do not order identical
12 configurations is inconsistent with this closed language.

13 **Q. WHY DOES ESCHELON PROPOSE TO STRIKE QWEST'S INSERTION**
14 **FOR ISSUE NO. 8-20(A): COLLOCATION AVAILABLE INVENTORY –**
15 **SPACE AUGMENTS?**

16 A. The dispute arises in ICA Section 8.2.10.4.3 because Qwest proposes to introduce
17 a new sentence that is not contained in the Covad language that states that Qwest
18 may charge a QPF for augments instead of the special site assessment fee "if
19 CLEC requests an augment application."⁴⁷ As noted previously, this language is
20 inconsistent with other, closed, provisions in this paragraph as the special site

⁴⁷ Presumably, Qwest means to say an augment, and not an "augment application", as there is not a several thousand dollar fee for requesting an application form.

1 assessment fee already includes “*any requested modifications.*” Eschelon thus
2 proposes to delete Qwest’s proposed language.

3 Since the special site assessment fee already includes quotes for any requested
4 modifications, there is no reason to charge Eschelon a higher fee to perform a
5 quote for these modifications.

6 **Q. WILL QWEST RECOVER ITS COST FOR WORK TO DETERMINE**
7 **HOW TO PROVISION MODIFICATIONS/AUGMENTS?**

8 A. Yes. Qwest argues that when a CLEC requests an augment in association with
9 ordering an available inventory site, “Qwest must perform certain planning and
10 engineering work in order to determine how to provision that augment request,”
11 and that the QPF recovers the cost of the planning and engineering work for the
12 augment.⁴⁸ This is not accurate because Eschelon is already being charged “a
13 special site assessment fee for work performed up to the point of expiration or
14 non-acceptance of the quote” and as noted previously, the special site assessment
15 fee already includes “any requested modifications.”

16 Qwest also claims ICA Section 8.2.10.4.3 merely clarifies what the quote will
17 cover, and how and when it will be prepared, but that it does not address the issue
18 of cost recovery for preparing the quote where modifications are requested, which
19 Qwest says is addressed is ICA Section 8.3.11.3.2. This too is incorrect. ICA

⁴⁸ See Issue No. No. 8-20(a), Qwest’s position in the Issues Matrix.

1 Section 8.2.10.4.3 clearly spells out that Eschelon will be charged a special site
2 assessment fee for “work performed up to that point of expiration or non-
3 acceptance of the quote.” This language very clearly addresses the issue of cost
4 recovery for preparing the quote “based on the site inventory and any *requested*
5 *modifications to the site.*” (Emphasis added).

6 **Q. PLEASE SUMMARIZE THIS ISSUE.**

7 A. The first issue concerns the fact that posting of prices that Qwest has already been
8 paid to create will facilitate the review of used collocation space and aid Eschelon
9 in making efficient decisions regarding the purchase of such collocation space.
10 Since Qwest has already been compensated to prepare the collocation price quote,
11 Qwest is not disadvantaged in any way by posting this price and Qwest should not
12 be able to charge Eschelon for preparing the quote, since the quote is already
13 prepared and there is no additional work for Qwest to perform.

14 The second issue concerns language that Qwest proposes to insert into section
15 8.2.10.4.3, which is inconsistent with the paragraph as a whole, is not contained in
16 other CLECs interconnection agreements, and would potentially increase the cost
17 to Eschelon of obtaining a quote for a collocation special site.

18 Eschelon’s proposed language should be adopted in both cases above. Eschelon’s
19 language is reasonable and avoids ambiguity.

20

1 **SUBJECT MATTER NO. 11. POWER – QPF AND DC POWER RESTORATION**
2 **CHARGE⁴⁹**

3 **Issue Nos. 8-22 and 8-23: ICA Sections 8.3.9.1.3, 8.3.9.2.3 and 8.3.9.2.1**

4 **Q. PLEASE DESCRIBE THE BUSINESS NEED WITH REGARD TO**
5 **POWER RATE ELEMENTS QUOTE PREPARATION FEE (“QPF”) AND**
6 **DC POWER RESTORATION.**

7 A. Eschelon purchases power from Qwest for the purpose of electrifying the
8 equipment Eschelon collocates in Qwest’s central offices.⁵⁰ Issues 8-22 and 8-23
9 address two of Qwest’s power products – Power Reduction and Power
10 Restoration. These products are described in the ICA and are discussed below.
11 Eschelon pays a non-recurring charge (“NRC”) for Power Reduction. Despite the
12 existence of this NRC, Qwest is attempting to charge an additional Quote
13 Preparation Fee (“QPF”) in order to develop a quote that would detail the costs to
14 reduce power. A QPF is unnecessary, redundant and results in double recovery,
15 since a NRC is already established for power reduction.

16 Under the DC Power Restoration with Reservation section, Qwest originally
17 proposed language that stated that Individual Case Basis (ICB)-based
18 nonrecurring charges will apply when power is restored. However, since filing its
19 Petition in this case, Qwest has indicated that it now agrees that the costs to

⁴⁹ The other Power issues (8-21) are being address in the testimony of Mr. Starkey.

⁵⁰ Mr. Starkey describes the central office power system and components in his direct testimony. *See* Issue 8-21.

1 restore power should be similar to the cost to reduce power and has apparently
2 agreed with Eschelon's proposal in this regard.

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

4 A. Eschelon proposes the following language:

5 **Issue No. 8-22: Power -- QPF**

6 Eschelon proposes to leave section 8.3.9.1.3 intentionally blank., and proposes the
7 following language for Section 8.3.9.2.3:

8 8.3.9.2.3 DC Power Restoration Without Reservation QPF:
9 Includes the cost of performing a feasibility study and producing
10 the quote for fulfilling the DC Power Restoration Without
11 Reservation request. It covers the project, order and support
12 management, engineering and planning associated with the
13 administrative functions of processing the request.⁵¹

14 **Issue No. 8-23: Power – DC Power Restoration**

15 8.3.9.2.1 DC Power Restoration With Reservation. CLEC will be
16 charged the DC Power Reduction/Restoration Charge. ~~When~~
17 ~~power is restored, nonrecurring charges will be assessed on an ICB~~
18 ~~basis for the work required to restore the power utilizing standard~~
19 ~~power rate elements for power usage, labor and cabling charges.~~

20

21 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE?**

22 A. Qwest proposes the following language:

23 **Issue No. 8-22: Power -- QPF**

24 8.3.9.1.3 DC Power Reduction QPF: Includes the cost of
25 performing a feasibility study and producing the quote for

⁵¹ Eschelon originally proposed to leave Section 8.3.9.2.3 blank, but has since agreed to pay a QPF in the case of Power Restoration Without Reservation. Qwest wants to assess a QPF for Power Restoration With *and* Without Reservation.

1 fulfilling the DC Power Reduction request. It covers the project,
2 order and support management, engineering and planning
3 associated with the administrative functions of processing the
4 request.

5 8.3.9.2.3 DC Power Restoration ~~Without Reservation~~ QPF:
6 Includes the cost of performing a feasibility study and producing
7 the quote for fulfilling the DC Power Restoration ~~Without~~
8 ~~Reservation~~ request. It covers the project, order and support
9 management, engineering and planning associated with the
10 administrative functions of processing the request.

11
12 **Issue No. 8-23: Power – DC Power Restoration**

13 Qwest originally proposed the language that is shown in strikeout in
14 Eschelon’s proposed language for Section 8.3.9.2.1 above, but has since
15 agreed to Eschelon’s proposed language, and 8.3.9.2.1 is now closed.

16 **Q. WHAT IS POWER REDUCTION AND POWER RESTORATION?**

17 A. These are products that Qwest has made available to manage the DC power
18 facilities in the central office. The closed language in the ICA (Section
19 8.2.1.29.3) describing these products is as follows:

20 8.2.1.29.3 -48V DC Power Reduction/Restoration

21 8.2.1.29.3.1 DC Power Reduction.

22 8.2.1.29.3.1.1 DC Power Reduction With Reservation
23 allows CLEC to reserve a fuse or breaker position on the
24 power board or battery distribution fuse board (BDFB)
25 when reducing a secondary power feed. Power must be
26 reduced down to zero. CLEC will retain the existing power
27 cabling and fuse position for future power requests or until
28 such time as CLEC informs Qwest it wishes to discontinue
29 the option. See Section 8.5.5.2.

30 8.2.1.29.3.1.2 DC Power Reduction Without Reservation

1 allows CLEC to reduce the ordered amps on a primary
2 and/or secondary feed to a minimum of twenty (20) amps.

3 * * *

4 8.2.1.29.3.2 DC Power Restoration

5 8.2.1.29.3.2.1 DC Power Restoration With Reservation
6 allows CLEC to restore reserved power on the power board
7 or BDFB.

8 8.2.1.29.3.2.2 DC Power Restoration Without Reservation
9 allows CLEC to restore amps on a primary and/or
10 secondary feed.
11

12 The DC Power Reduction product allows a CLEC to reduce the “ordered amps”
13 of DC power it receives from Qwest. As explained by Mr. Starkey in Issue No. 8-
14 21, Qwest applies power rates to the “ordered amps” associated with the CLEC’s
15 power cable (unless Qwest measures power consumption for power feeds greater
16 than 60 amps).⁵² Therefore, when a CLEC reduces the ordered amps of power via
17 Power Reduction, Qwest will apply the power rates to the lower “ordered amps”
18 and the CLEC power charges should be reduced accordingly.

19 There are two Power Reduction varieties – (i) with reservation and (ii) without
20 reservation. Power Reduction with reservation requires the CLEC to reduce its
21 ordered amperage to zero, while allowing it to reserve its existing fuse/breaker
22 position in the BDFB or Power Board. Under this option, the CLEC power cables
23 and fuses will remain in place until future power requests or the CLEC decides to

⁵² If a CLEC orders a 100 amp power cable, Qwest will apply power rate elements (Usage and Power Plant)

1 discontinue the power arrangement. CLEC pays a monthly recurring charge
2 (“Power Maintenance Charge or Reservation Charge”)⁵³ for the reservation –
3 though Eschelon and Qwest disagree about what the Reservation Charge should
4 be.⁵⁴ This is in addition to a non-recurring charge for Power Reduction.⁵⁵

5 Power Reduction without reservation, as the name suggests, does not involve the
6 reservation option, but allows a CLEC to reduce its ordered amps to a lower level,
7 with 20 amps serving as the minimum amount of “ordered amps” (without having
8 to reduce ordered amps to zero as required in the reservation option). In this
9 scenario, the non-recurring Power Reduction charge would apply, but the CLEC
10 would not pay the recurring Power Maintenance/Reservation Charge. Qwest
11 would presumably apply power charges to the lower “as ordered” amperage.

12 Power Restoration also comes in “with reservation” and “without reservation”
13 varieties. DC Power Restoration with reservation allows a CLEC that has
14 reduced its ordered amps through the Power Reduction with reservation product
15 to restore the amps it previously reduced and reserved. Power Restoration
16 without reservation allows a CLEC to increase amps on a power feed that has not
17 been reserved.

to the 100 amps associated with the capacity of the cable unless power measuring is conducted.

⁵³ See 8.13.1.4 of Exhibit A.

⁵⁴ Eschelon proposes \$37.00 and Qwest proposes \$57.28.

⁵⁵ Eschelon and Qwest disagree on the appropriate Power Reduction Charges. Eschelon proposes a Power Reduction NRC of \$346 for feeds of 60 amps or less, and \$587 for feeds greater than 60 amps. Qwest proposes a Power Reduction NRC of 675.98 for feeds 60 amps or less and \$870.83 for feeds greater than 60 amps.

1 **Q. PLEASE EXPLAIN WHY ESCHELON'S PROPOSAL SHOULD BE**
2 **ADOPTED FOR ISSUE 8-22.**

3 A. For DC Power Reduction, there is no reason to pay both a non-recurring QPF (for
4 engineering and planning) along with a non-recurring charge. The non-
5 nonrecurring Power Reduction charge recovers the cost to perform the DC Power
6 Reduction, and there would be no reason why additional planning and engineering
7 work – or charges to recover this work – would be necessary, unless additional
8 work is required outside the scope of the NRC.

9 For Power Restoration with Reservation, there would also be no reason to pay
10 both a non-recurring QPF along with the Power Restoration NRC. As explained
11 above, there are two types of "Power Reduction": (1) with reservation and (2)
12 without reservation. In the case of Power Restoration with Reservation, Eschelon
13 pays Qwest a monthly recurring charge to reserve power, which as explained in
14 8.2.29.3.1.1 allows the CLEC to reserve a fuse or breaker position and retain
15 existing power cabling and fuse positions. In this instance, the cost to restore
16 power (DC Power Restoration with Reservation) should be no more than the cost
17 to reduce power, and therefore, no additional QPF should apply other than the
18 Power Reduction/Restoration charge.

19 **Q. YOUR PREVIOUS RESPONSE DID NOT ADDRESS POWER**
20 **RESTORATION *WITHOUT* RESERVATION. WHAT IS ESCHELON'S**
21 **POSITION?**

1 A. DC Power Restoration Without Reservation is priced on an individual case basis
2 (ICB) (*See* Section 8.3.9.2.2 of ICA) and Eschelon agrees that a QPF would be
3 appropriate to prepare the quote to restore power in an instance in which Eschelon
4 was not paying Qwest a monthly recurring charge for Reservation.

5 **Q. YOU HAVE EXPLAINED THAT ESCHELON'S PROPOSAL**
6 **DISTINGUISHES BETWEEN POWER RESTORATION "WITH**
7 **RESERVATION" AND POWER RESTORATION "WITHOUT**
8 **RESERVATION" PRODUCTS. DOES QWEST DISTINGUISH**
9 **BETWEEN THE TWO IN ITS PROPOSAL?**

10 A. No. Qwest's proposal is to apply a QPF in both "with reservation" and "without
11 reservation" scenarios. Qwest's attempt to recover unnecessary planning and
12 engineering costs is especially telling under the reservation scenario. In situations
13 when a CLEC has paid Qwest to reserve power, there should be no costs
14 associated with planning or engineering restoration of the power because the
15 facilities were reserved and left in place when they were reduced, and CLEC pays
16 a monthly charge for this reservation.⁵⁶ When reservation is selected, the CLEC's
17 fuse/breaker position is reserved on the BDFB/Power Board and the CLEC's
18 power cables will remain in place. Qwest should not be altering that which has
19 been reserved by the CLEC, rather the CLEC is paying to have these facilities

⁵⁶ Eschelon agrees that Qwest should be able to assess a non-recurring charge for activities related to restoring the power, but additional engineering/planning/administrative for power restoration is unnecessary because the CLEC has paid for reservation.

1 standing ready for CLEC's use. These facilities were engineered (and paid for)
2 when they were originally installed and CLEC has paid a monthly charge to
3 reserve these facilities in place for the CLEC, so there should be no additional
4 engineering or planning associated with a CLEC wanting to use those facilities
5 again – just as it did before it reserved them. In other words, CLEC is paying for
6 reservation so that Qwest will not have to undertake the engineering and planning
7 Qwest is attempting to charge for through its proposed QPF when/if the CLEC
8 restores the reserved power. To the extent that Qwest is allowed to recover the
9 same costs in both the reservation/restoration fees and QPF charges, it will
10 double-recover costs.

11 **Q. YOU STATED ABOVE THAT THERE IS NO REASON TO APPLY**
12 **ANOTHER NON-RECURRING CHARGE FOR ENGINEERING AND**
13 **PLANNING BESIDES THE POWER REDUCTION/RESTORATION NRC**
14 **“UNLESS ADDITIONAL WORK IS REQUIRED OUTSIDE THE SCOPE**
15 **OF THE NRC.” CAN YOU PROVIDE AN EXAMPLE?**

16 A. Yes. Moves between the power board and the BDFB is an example. ICA Section
17 8.3.9.3 allows for a QPF in this instance. See “Location Change from Power
18 Board to BDFB”, 8.13.1.5 and 8.13.2.3 of Exhibit A.

19 **Q. FOR ISSUE 8-23, HAS QWEST AGREED WITH ESCHELON THAT THE**
20 **SAME NRC SHOULD APPLY FOR BOTH POWER REDUCTION AND**
21 **POWER RESTORATION?**

1 A. Yes. As I explained above, when a CLEC has paid Qwest for power restoration,
2 the costs of restoring power should be the same as the costs for reducing power,
3 and therefore the charges for each should be the same. Eschelon's proposal for
4 Issue 8-23 would apply the same "Power Reduction/Restoration Charge" NRC for
5 both power reduction and power restoration with reservation.⁵⁷ Qwest witness
6 Teresa Million, in the companion Minnesota arbitration proceeding, testified that
7 Qwest "is now in agreement with Eschelon that the same NRC should apply for
8 power restoration with reservation as applies for power reduction."⁵⁸ I understand
9 that Section 8.3.9.2.1 is now closed.

10 **Q. PLEASE SUMMARIZE ISSUES 8-22 AND 8-23.**

11 A. For Issue 8-22 Qwest is attempting to charge an additional QPF in order to
12 develop a quote that would purportedly detail the costs to reduce and restore
13 power, despite the fact that NRCs are already established for power reduction and
14 restoration. Qwest's proposed QPFs are unnecessary, redundant and result in
15 double recovery. For Issue 8-23, Qwest has agreed to Eschelon's proposal to
16 assess the same NRC for both Power Reduction and Power Restoration.

17

⁵⁷ As explained above, 8.3.9.2.2 of the ICA, in closed language, states that Power Restoration Without Reservation will be priced on an ICB basis.

⁵⁸ Rebuttal Testimony of Teresa Million, Minnesota Docket No. P-5340,421/IC-06-768, OAH Docket No. 3-2500-17369-2, September 22, 2006, p. 17.

1 **SUBJECT MATTER NO. 13. OPTIONED CONTIGUOUS SPACE**

2 **Issue No. 8-29: ICA Sections 8.4.1.8.7.3**

3 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATING TO OPTIONED**
4 **CONTIGUOUS SPACE IN ISSUE NO. 8-29?**

5 A. When Eschelon has optioned collocation space in a Qwest wire center and another
6 carrier requests that space, Eschelon needs a sufficient amount of time, seven
7 days, in order to decide whether to use this collocation space. This issue arises
8 because, under agreed upon terms, Eschelon has the right to place an “option” on
9 available collocation space in a Qwest Wire Center by submitting a Collocation
10 Space Option application form.⁵⁹ When Eschelon has optioned space and another
11 CLEC subsequently applies for the collocation space, Eschelon has a “First Right
12 of Refusal” on the optioned space.

13 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THIS ISSUE?**

14 A. Eschelon proposes that CLECs have seven (7) calendar days to decide whether to
15 exercise the option. Eschelon’s specific proposed language is as follows:

16 8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest
17 will make its best effort to notify CLEC if Qwest, its Affiliates or
18 CLECs require the use of CLEC’s contiguous space. Upon
19 notification, CLEC will have ~~seventy two (72) hours~~ seven (7)
20 Days to indicate its intent to submit a Collocation application or
21 Collocation Reservation. CLEC may choose to terminate the
22 contiguous space Option or continue without the contiguous
23 provision.

⁵⁹ See ICA Section 8.4.1.8.3.

1

2 Since Eschelon pays Qwest an Option Fee for the space option, the amount of
3 time to consider the option should be meaningful.

4 **Q. WHAT IS QWEST'S PROPOSAL ON THIS ISSUE?**

5 A. Qwest's current ICA language contains 72 hours as is indicated in the language
6 below:

7 8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest
8 will make its best effort to notify CLEC if Qwest, its Affiliates or
9 CLECs require the use of CLEC's contiguous space. Upon
10 notification, CLEC will have seventy-two (72) hours ~~seven (7)~~
11 ~~Days~~ to indicate its intent to submit a Collocation application or
12 Collocation Reservation. CLEC may choose to terminate the
13 contiguous space Option or continue without the contiguous
14 provision.

15

16 **Q. WHY HAS NOT THIS ISSUE CLOSED, GIVEN THAT QWEST IS IN**
17 **AGREEMENT WITH THE SEVEN DAY TIME FRAME?**

18 A. Thus far, Qwest refuses to close this issue. This issue is an illustration of the
19 games that Qwest plays with the CMP process. Qwest argues that because this
20 issue affects all CLECs and that:

21 "Eschelon is attempting to import PCAT-like process language
22 into the ICA and thereby undermine the Commission approved
23 CMP process. The entire purpose of CMP was to ensure that the
24 industry (not just Qwest or one CLEC) is involved in creating and
25 approving processes so that processes are uniform among all
26 CLECs. Processes that affect all CLECs should be addressed

1 through CMP, not through an arbitration involving a single
2 CLEC.”⁶⁰

3 However, Qwest’s insistence that this particular issue go through CMP is
4 inconsistent with the history on this issue and is an example of how Qwest uses
5 CMP in attempt to manipulate the negotiations process.⁶¹ For example, the Utah
6 SGAT dated October 31, 2002 states that CLEC will have seventy-two (72) hours
7 to indicate its intent to submit a Collocation Application or Collocation
8 Reservation. However, Qwest agreed to the following language in Utah in the
9 Covad ICA: “*Upon notification, CLEC will have ten (10) calendar days* to
10 indicate its intent to submit a Collocation Application or Collocation
11 Reservation.”⁶² (*Emphasis added*). Qwest did not send a CMP notification
12 announcing that the Covad language would be or needed to be posted in a PCAT.
13 Similarly, Qwest has been inconsistent with the timeframe related to the
14 notification of its own right of first refusal. For example, Section 8.2.6.1.2 of the
15 current Washington SGAT and the 14 State Template SGAT, states that “[i]f
16 CLEC terminates its Adjacent Collocation space, Qwest shall have the right of
17 first refusal to such structure under *terms to be mutually agreed upon by the*
18 *parties.*”⁶³ (*Emphasis added*). Yet, in the current agreed upon language in the

⁶⁰ See Issue No. 8-29, Qwest’s position in the Issues Matrix.

⁶¹ Exhibit DD-5 contains a chronology of changes to the provisions regarding the time frames parties have to option collocation space. This exhibit indicates whether or not Qwest used CMP when these provisions changed. As can be seen from this Exhibit, the CMP barrier, as it relates to this issue, is a new invention by Qwest.

⁶² See Qwest/Covad ICA, [http://www.psc.utah.gov/telecom/04docs/04227702/Arbitrated Intercon Agreement 8-05.doc](http://www.psc.utah.gov/telecom/04docs/04227702/Arbitrated%20Intercon%20Agreement%208-05.doc)

⁶³ See Section 8.2.6.1.2.of Washington SGAT

1 Eschelon ICA, Qwest has agreed to seven days for its own right of first refusal in
2 Section 8.2.6.1.2. Again, Qwest did not run this change through CMP. Now, in
3 this Arbitration, Qwest is claiming CMP is the proper forum for such changes and
4 it has submitted a Level 3 notification through CMP updating the PCAT to
5 Eschelon's proposed seven day period.⁶⁴

6 **Q. WHY IS A SEVEN DAY TIME PERIOD MORE APPROPRIATE THAN**
7 **THE 72 HOURS PROPOSED BY QWEST IN THE ICA?**

8 A. Eschelon is paying for the right to option space and should have a meaningful
9 time period to decide on whether or not to option the space if another carrier
10 requests that space. Collocations are an expensive undertaking and the decision
11 whether or not to use an optioned space needs to be thoroughly examined. Under
12 Qwest's proposal, if Qwest provides notice on a Friday, this means that Eschelon
13 will have only one business day to make a decision. That is too short an amount
14 of time to make such a decision given the importance of such a decision.
15 Eschelon's proposal of seven days is still a relatively short time period, but
16 balances the need for a quick decision with the importance of the decision.

(<http://www.qwest.com/wholesale/downloads/2003/030328/MN-SGAT-3-17-03.doc>) and 14-State
Template SGAT (<http://www.qwest.com/wholesale/downloads/2006/060426/NegotiationsTemplate04-17-06.doc>).

⁶⁴ See the following link for the Version 1.0 PCAT issued on September 7, 2006. Version 1.0 indicates that this PCAT is new and thus Qwest did not have the need to include this issue in CMP until September 7, 2006.
http://www.qwest.com/wholesale/downloads/2006/060814/PCAT_Collo_Space_Reservation_Space_Optimizing_Overview_V1_0.doc.

1 Further, this time period matches the amount of time that Qwest has for a right of
2 first refusal in ICA Section 8.2.6.1.2.

3 **Q. PLEASE SUMMARIZE THIS ISSUE.**

4 A. When Eschelon has optioned collocation space in a Qwest wire center and another
5 carrier requests that space, seven days is the necessary time for Eschelon to make
6 a reasoned business decision whether to use this collocation space. Qwest has
7 agreed with the seven day time frame, but refuses to close this issue because
8 Qwest is taking the position, for the first time, that this issue should go through
9 CMP. This issue is properly decided in this arbitration as it has been historically
10 with other CLECs.

11

12 **SUBJECT MATTER NO. 17. CAPs – DATA RELATING TO CAPS**

13 **Issue No. 9-39: ICA Section 9.1.13.4.1.2**

14 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO DATA**
15 **RELATING TO CAPS.**

16 A. The *TRRO* described situations where the number of UNEs available for purchase
17 by a CLEC is capped. A CLEC may obtain a maximum of ten (10) DS1 UNE
18 loops to a single building where DS1 UNE loops are available and one (1) DS3
19 UNE loop to a single building where DS3 UNE loops are available.⁶⁵ A CLEC
20 may purchase a maximum of ten (10) UNE DS1 transport circuits on routes where

⁶⁵ The availability of DS1 and DS3 UNE loops is being reviewed in Docket No. UT-053025.

1 UNE DS3 transport is not available, but UNE DS1 transport is available. A
2 CLEC may purchase a maximum of twelve (12) UNE DS3 transport circuits on
3 routes where UNE DS3 transport is available.⁶⁶ These caps on the purchase of
4 UNEs are captured, without dispute, in this ICA in sections 9.2 and 9.6.2.3.

5 In cases where Qwest disputes Eschelon's purchase of UNEs because the UNE is
6 in violation of a cap, Eschelon's language describes the information Qwest should
7 provide to Eschelon in order to expeditiously resolve the dispute.

8 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

9 A. Eschelon proposes the following language related to caps in Issue No. 9-39:

10 9.1.13.4.1.2 If the Commission conducts a proceeding(s) to consider
11 Qwest Wire Centers as described in Section 9.1.13.3, the Parties will
12 follow any procedures established by the Commission with respect to
13 exchange of data and Confidential Information and updating the approved
14 Wire Center list. If the Commission has not conducted such a proceeding
15 or otherwise approved a list of non-impaired Wire Centers, the Parties will
16 follow the procedures described in this Section. Pursuant to Section
17 5.18.2 of this Agreement, prior to any other formal Dispute resolution
18 proceedings, each Party will negotiate in good faith to resolve the Dispute.
19 To facilitate good faith negotiations and in an attempt to avoid further
20 proceedings, the Parties will work together to verify the qualification
21 information of any High Capacity Loop or high capacity transport UNE
22 that Qwest challenges. To do so, Qwest shall provide at least the
23 following information to CLEC (with any Confidential Information being
24 subject to Sections 5.16 and 5.18.3.1.4 of this Agreement or as ordered by
25 the Commission or other appropriate authority):

26 ...

27 9.1.13.4.1.2.2 For Caps:

⁶⁶ The availability of DS1 and DS3 UNE transport is also being reviewed in Docket No. UT-053025.

1 9.1.13.4.1.2.2.1 With respect to the caps described in Sections 9.2
2 and 9.6.2.3, data that allows CLEC to identify all CLEC circuits
3 relating to the applicable Route or Building [including circuit
4 identification (ID), installation purchase order number (PON),
5 Local Service Request identification (LSR ID), Customer
6 Name/Service Name, installation date, and service address
7 including location (LOC) information].

8 9.1.13.4.1.2.3 For all: Other data upon which Qwest relies for its
9 position that CLEC may not access the UNE.

11 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

12 A. Qwest proposes that Eschelon’s language in 9.1.13.4.1.2, 9.1.13.4.1.2.2,
13 9.1.13.4.1.2.2.1 and 9.1.13.4.1.2.3 be deleted.

14 **Q. WHY IS ESCHELON’S LANGUAGE NECESSARY?**

15 A. Eschelon’s language is necessary to forestall or resolve disputes that may arise
16 over the availability of UNEs. The *TRRO* sets out the process for resolving
17 disputes surrounding the availability of UNEs. Paragraph 234 of the *TRRO* states
18 that in order for a CLEC to order UNE transport and UNE high-capacity loops, “a
19 requesting carrier must undertake a reasonably diligent inquiry and, based on that
20 inquiry, self-certify that, to the best of its knowledge” it is entitled to unbundled
21 access to the particular network element.⁶⁷ The paragraph continues that the
22 ILEC “must provision the UNE and subsequently bring any dispute regarding
23 access to that UNE before a state commission or other appropriate authority.”

⁶⁷ [“TRRO”] Order on Remand, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313; CC Docket No. 01 338, FCC 04-290 (rel. February 4, 2005),

1 Footnote 660 to this paragraph states, “Of course, this mechanism for addressing
2 incumbent LEC challenges to self-certifications is simply a default process, and
3 pursuant to section 252(a)(1), carriers remain free to negotiate alternative
4 arrangements. 47 U.S.C. § 252(a)(1).” Section 5.18 of this ICA outlines the
5 process for dispute resolution.

6 Eschelon’s proposal anticipates that the parties will cooperate to verify the
7 information supporting its request for high capacity loop or transport when Qwest
8 challenges the request. Eschelon’s language also clarifies the information that
9 Qwest must provide to allow Eschelon to analyze Qwest’s claims that Eschelon is
10 violating the caps.

11 In the wire center “non-impairment” proceedings in other Qwest states, Qwest has
12 agreed to provide all background information supporting any new proposed
13 additions to the wire center “non-impaired” list.⁶⁸ This issue has not been
14 addressed in the Washington wire center proceedings, but presumably Qwest’s
15 position would be the same. As Qwest is willing to provide detailed information
16 justifying its non-impaired claims surrounding wire centers, Qwest should provide
17 this information to CLECs when making a claim that the CLECs have purchased
18 UNEs in excess of the caps. Unlike the wire center data, where proprietary data
19 for multiple companies is used to determine “non-impairment” and thus a

¶234.

⁶⁸ See for Example the Direct Testimony of Renée Albersheim, MPUC Docket No. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-999/CI-06-685, June 29, 2006, pages 14 and 15.

1 protective agreement must be in place before the review of such data, the only
2 data that needs to be reviewed for caps is specific to Eschelon's UNE circuits.

3 **Q. DOES ESCHELON HAVE AN OBLIGATION NOT TO ORDER HIGH-**
4 **CAPACITY TRANSPORT AND HIGH-CAPACITY LOOPS WHEN**
5 **THESE ORDERS VIOLATE THE CAPS DESCRIBED ABOVE?**

6 A. Yes, Eschelon does not intend to order high-capacity transport and high-capacity
7 loops that violate the *TRRO* caps. However, despite this, it is possible that Qwest
8 may claim, rightly or wrongly, that an Eschelon order is in violation of the *TRRO*
9 caps. If Qwest disputes the availability of certain circuits, then Eschelon should
10 be provided data that would facilitate review and hopefully quickly allow for
11 resolution of the dispute.

12 **Q. IS THE DATA REQUESTED BY ESCHELON NECESSARY IN ORDER**
13 **FOR ESCHELON TO QUICKLY TO REVIEW A QWEST CLAIM THAT**
14 **ESCHELON IS IN VIOLATION OF THE *TRRO* CAPS?**

15 A. Yes. The information Eschelon seeks is to allow Eschelon to expeditiously
16 identify and review the circuits involved in Qwest's dispute. The information
17 requested is contained in Qwest's systems and should be readily available to
18 Qwest.

19 Qwest should not be allowed to make generic claims, without support, that
20 Eschelon is in violation of the *TRRO* caps. Qwest's claims, without support, are

1 not facts; and Qwest should not be making claims without any basis that a CLEC
2 is violating the caps. Since Qwest will have a basis for making such a claim it
3 should be required to share that basis with Eschelon. Otherwise, Eschelon has no
4 means for agreeing or disagreeing with Qwest's claim.

5 **Q. PLEASE SUMMARIZE THIS ISSUE.**

6 A. In cases where Qwest disputes Eschelon's purchase of UNEs because it claims
7 that the UNE is in violation of a cap, Eschelon's language describes the
8 information Qwest should provide to Eschelon in order to expeditiously resolve
9 the dispute. Eschelon's language is reasonable and will lead to resolution of any
10 disputes regarding the availability of certain UNEs.

11

12 **SUBJECT MATTER NO. 20. SUBLOOPS – QWEST CROSS CONNECT/WIRE**
13 **WORK**

14 **Issue No. 9-50: ICA Section 9.3.3.8.3.1**

15 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO CROSS**
16 **CONNECT/WIRE WORK.**

17 A. Under this ICA, Qwest is required to notify CLECs in situations where the
18 Demarcation Point in a multi-tenant building (MTE) is being moved and the
19 CLEC's service is affected. Section 9.3.3.8.3 of the Agreement states that the
20 CLEC "will perform its own cross-connect" associated with any moves.
21 Previously, Qwest has agreed to performed such cross connects for CLECs at
22 Commission approved rates.

1 Eschelon's language merely states that the rates and services approved by this
2 Commission related to Qwest performing cross-connect work for CLECs in the
3 sub-loop be available to Eschelon so long as they are available to other CLECs. If
4 Qwest were to make cross-connect work for CLECs in the sub-loop available to
5 other CLECs, but not to Eschelon, then Qwest's practice would be discriminatory
6 against Eschelon.

7 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

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

9 9.3.3.8.3.1 If Qwest performs or offers to perform the cross-
10 connect for any other CLEC during the term of this Agreement,
11 Qwest will notify CLEC and offer CLEC an amendment to this
12 Agreement that allows CLEC, at its option, to request that Qwest
13 run the jumper for Intrabuilding cable in MTEs on
14 nondiscriminatory terms and conditions.
15

16 **Q. WHAT IS QWEST'S PROPOSAL ON THIS ISSUE?**

17 A. Qwest proposes the following language for this issue:

18 9.3.3.8.3.1 If during the term of this agreement a new negotiated
19 ICA or negotiated amendment has been approved by the
20 Commission that contains the option for Qwest to perform cross
21 connect jumper work for intrabuilding cable, at CLEC's request,
22 Qwest will offer CLEC an amendment to this agreement which
23 will include all the associated rates, terms and conditions as it
24 negotiated.
25

26 **Q. WHY IS ESCHELON'S LANGUAGE APPROPRIATE?**

1 A. This issue presents a straight-forward application of the prohibition against
2 discrimination.⁶⁹ The issue is that Qwest currently offers to other CLECs an
3 option under which Qwest performs this work and, when it does so, charges the
4 Commission-approved rate for the services provided. Specifically, Qwest makes
5 this option available to both AT&T and Covad pursuant to those carriers' ICAs
6 that were approved by this Commission. When the FCC reversed the pick-and-
7 choose rule, it made clear that "existing state and federal safeguards against
8 discriminatory behavior" were still in effect and remained "in place" to provide
9 needed protection against discrimination.⁷⁰ Therefore, Qwest cannot, consistent
10 with its obligation to not discriminate, offer such a UNE term under its ICAs with
11 other carriers but refuse to make that term available under its agreement with
12 Eschelon.

13 **Q. WHY IS QWEST'S PROPOSED LANGUAGE INSUFFICIENT?**

14 A. Qwest's proposal would allow Qwest to leave the other agreements in place and
15 discriminate against Eschelon. Qwest proposes language that would require it to
16 offer to provide hard-wiring and cross-connects to Eschelon only if Qwest enters
17 into a "new" negotiated ICA or amendment that provides for this option. Thus,
18 Qwest's proposal would not require Qwest to offer Eschelon any Qwest-provided
19 hard-wiring and cross-connects offered to other CLECs pursuant to existing

⁶⁹ See 47 U.S.C. § 251(c)(3) (duty of local exchange carrier to nondiscriminatory access to network elements on an unbundled basis).

⁷⁰ ["Second Report and Order"] Second Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (July 8, 2004) ¶¶

1 agreements or pursuant to “new” agreements that are arbitrated rather than
2 negotiated. These exclusions are inconsistent with Qwest’s obligation to not
3 discriminate.

4 Qwest also claims that because of “a lack of demand and the absence of any legal
5 obligation, Qwest is discontinuing this offering on a going-forward basis.”⁷¹
6 However, Qwest has not gone to the Commission and requested that these rates
7 and services be removed from existing carrier agreements. Qwest’s approach of
8 attempting to remove this rate element on an ICA by ICA basis will result in some
9 carriers having access to this service while others do not. If Qwest proposes
10 changes in Commission-approved rates, including the availability of products for
11 which this Commission has set rates, Qwest should go to the Commission, rather
12 than to each CLEC. However, unless and until it does so, Qwest has an
13 obligation to offer the service to all carriers on the same terms and conditions.

14 Qwest makes these products available pursuant to its SGAT and as well as
15 pursuant to interconnection agreements that it has with other carriers such as
16 AT&T and Covad.⁷² Because Qwest provides these products to other carriers, it
17 must also provide them to Eschelon.⁷³ Eschelon’s proposal, consistent with

18, 20 23.

⁷¹ See Issue No. No. 9-50, Qwest’s position in the Issues Matrix.

⁷² See Washington SGAT, AT&T/Qwest ICA, Covad/Qwest ICA § 9.3.6. In addition, Qwest is required to provide CLECs with nondiscriminatory access to unbundled network elements pursuant to 47 U.S.C. § 251(c)(3).

⁷³ “Second Report and Order” at ¶¶ 18, 20 23.

1 Qwest's obligations to not discriminate among carriers, only requires that Qwest
2 provide Eschelon with these products on the same terms and conditions as it
3 offers or provides that element to another carrier.

4 Qwest's language, in contrast, allows Qwest to continue to provide access to these
5 products under its existing SGATs and ICAs to other CLECs while denying such
6 access to Eschelon. This is discriminatory and violates the Act.

7 **Q. PLEASE SUMMARIZE THIS ISSUE.**

8 A. Eschelon's language merely states that the rates and services approved by this
9 Commission related to Qwest performing cross-connect work for CLECs in the
10 sub-loop be available to Eschelon so long as they are available to other CLECs.
11 This proposal is reasonable and allows Eschelon to utilize this product, to the
12 extent Qwest makes it available to other CLECs.

13

14 **SUBJECT MATTER NO. 21. ACCESS TO 911 DATABASES**

15 **Issue No. 9-52: ICA Sections 9.8 and 9.8.1**

16 **Q. HAS THIS ISSUE CLOSED?**

17 A. Yes, this issue has closed with the following language:

18 **9.8 911 and E911 Call-Related Databases**

19 9.8.1 Qwest shall provide CLEC nondiscriminatory access to 911 and
20 E911 databases only as required by the Act and 47 C.F. R. §51.319 and
21 subparts. See Section 10.3 for the terms and conditions for 911/E911
22 Service.

1

2 **SUBJECT MATTER NO. 22. UNBUNDLED CUSTOMER CONTROLLED**
3 **REARRANGEMENT ELEMENT (“UCCRE”)**

4 **Issue No. 9-53: ICA Sections 9.9 and 9.9.1**

5 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO UCCRE.**

6 A. The Unbundled Customer Controlled Rearrangement Element (“UCCRE”)
7 enables Eschelon to control the configuration of UNEs or ancillary services on a
8 Near Real Time basis through a digital cross connect device, when this device is
9 available in a Qwest central office. As with Issue No. 9-50 (Subloop – Cross
10 Connect/Wire Work by Qwest -- described above), Qwest previously has agreed
11 to provide UCCRE to CLECs.

12 Eschelon’s language merely states that the rates and services approved by this
13 Commission related to UCCRE be available to Eschelon so long as they are
14 available to other CLECs. If Qwest were to make UCCRE available to other
15 CLECs, but not to Eschelon, then Qwest’s practice would be discriminatory
16 against Eschelon.

17 Eschelon’s language is a concession as it only requires Qwest to provide UCCRE
18 to Eschelon so long as it is available to other CLECs. Eschelon could have
19 proposed language from Qwest’s Washington SGAT, which states in Section 9.9
20 that, “Qwest shall provide Unbundled Customer Controlled Rearrangement

1 Element (UCCRE) in a non-discriminatory manner according to the following
2 terms and conditions...”

3 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THIS ISSUE?**

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

5 9.9 Unbundled Customer Controlled Rearrangement Element
6 (UCCRE)

7 9.9.1 If Qwest provides or offers to provide UCCRE to any other
8 CLEC during the term of this Agreement, Qwest will notify CLEC
9 and offer CLEC an amendment to this Agreement that allows
10 CLEC, at its option, to request UCCRE on nondiscriminatory
11 terms and conditions.
12

13 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

14 A. Qwest proposes the following language for this issue:

15 9.9 Intentionally Left Blank

16 **Q. WHY IS ESCHELON’S LANGUAGE APPROPRIATE?**

17 A. As with Issue No. 9-50, this issue is about discrimination.⁷⁴ The issue is that
18 Qwest currently offers UCCRE to other CLECs and, when it does so, charges the
19 Commission-approved rate for the services provided. Specifically, Qwest makes
20 this option available to both AT&T and Covad pursuant to those carriers’ ICAs
21 that were approved by this Commission. When the FCC reversed the pick-and-
22 choose rule, it made clear that “existing state and federal safeguards against

⁷⁴ See 47 U.S.C. § 251(c)(3) (duty of local exchange carrier to nondiscriminatory access to network elements

1 discriminatory behavior” were still in effect and remained “in place” to provide
2 needed protection against discrimination.⁷⁵ Therefore, Qwest cannot, consistent
3 with its obligation to not discriminate, offer such a UNE term under its ICAs with
4 other carriers but refuse to make that term available under its agreement with
5 Eschelon.

6 **Q. WHY IS QWEST’S PROPOSED LANGUAGE INSUFFICIENT?**

7 A. Qwest’s language is silent, allowing Qwest to offer this to other CLECs while
8 excluding its availability to Eschelon.

9 Qwest also claims that because of “a lack of demand and the absence of any legal
10 obligation, Qwest is discontinuing this offering on a going-forward basis.”⁷⁶
11 However, Qwest has not gone to the Commission and requested that these rates
12 and services be removed from existing carrier agreements. Qwest’s approach of
13 removing this rate element on an ICA by ICA basis as new ICAs are negotiated or
14 arbitrated will result in some carriers having access to this service while others do
15 not. This discrimination could last for years. If Qwest proposes changes in
16 Commission-approved rates, including the availability of products for which this
17 Commission has set rates, Qwest should go to the Commission, rather than each
18 CLEC. However, unless and until it does so, Qwest has an obligation to offer the
19 service to all carriers on the same terms and conditions.

on an unbundled basis).

⁷⁵ “Second Report and Order” at ¶¶ 18, 20 23.

1 **Q. DID THE *TRRO* REMOVE QWEST'S OBLIGATION TO PROVIDE**
2 **UCCRE?**

3 A. No. Qwest argues that, because the FCC omitted a reference to "digital cross-
4 connect systems" when it re-wrote the unbundling rule, 47 C.F.R. § 51.319 ("Rule
5 319"), this means that it is not obligated to provide UCCRE as a UNE.

6 Rule 319 sets forth the FCC's unbundling rules. Prior to its revision pursuant to
7 the TRO, 47 C.F.R. § 51.319(d)(2)(iv) provided that:

8 "The incumbent shall . . . permit, to the extent technically feasible,
9 a requesting telecommunications carrier to obtain the functionality
10 provided by the incumbent LEC's digital cross-connect systems in
11 the same manner that the incumbent LEC provides such
12 functionality to interexchange carriers."
13

14 This rule was substantially re-written in 2003 (and re-written again pursuant to the
15 *TRRO*) to set forth a process by which state commissions would conduct an
16 impairment analysis to determine what elements must be unbundled. As a result
17 of the re-write, § 51.319(d)(2)(iv) was omitted from the rule. Qwest interprets
18 this to mean that the FCC found that incumbents are not required to offer access
19 to digital cross connect systems and, therefore, that Qwest is not required to offer
20 UCCRE, which is accessed using a digital cross connect system.

21 However, after Rule 319 was re-written, 47 C.F.R. § 51.305(a)(2)(iv) continued to
22 require incumbents to provide CLECs with interconnection at "central office

⁷⁶ See Issue No. No. 9-50, Qwest's position in the Issues Matrix.

1 cross-connect points.” The reasonable interpretation is that, in amending Rule
2 319, the FCC was focused on establishing a process for conducting the necessary
3 impairment analysis, and not that the FCC had concluded that unbundled access
4 to cross-connects would no longer be required. There is no discussion in the
5 FCC’s Order relieving incumbents from the obligation to offer access using cross-
6 connects. When the FCC has eliminated such obligations, it has done so
7 expressly.

8 Aside from any amendment by the FCC to its unbundling rules, it remains that
9 Qwest makes these products available pursuant to its SGAT as well as pursuant to
10 interconnection agreements that it has with other carriers.⁷⁷ Because Qwest
11 provides these products to other carriers, it must also provide them to Eschelon.⁷⁸
12 Eschelon’s proposal, consistent with Qwest’s obligations to avoid discrimination
13 among carriers, only requires that Qwest provide Eschelon with these products on
14 the same terms and conditions as it offers or provides them to another carrier.

15 Qwest’s language, in contrast, allows Qwest to continue to provide access to these
16 products under its existing SGATs and ICAs to other CLECs while denying such
17 access to Eschelon.

18 **Q. PLEASE SUMMARIZE THIS ISSUE.**

⁷⁷ See Washington SGAT § 9.9., Qwest-AT&T ICA, Qwest-Covad ICA § 9.9 In addition, Qwest is required to provide CLECs with nondiscriminatory access to unbundled network elements pursuant to 47 U.S.C. § 251(c)(3).

⁷⁸ “Second Report and Order” at ¶¶ 18, 20 23.

1 A. As with Subject Matter No. 20 above, Eschelon's language merely states that the
2 rates and services approved by this Commission related to UCCRE be available to
3 Eschelon so long as they are available to other CLECs. Eschelon's proposal is
4 reasonable and should be adopted.

5

6 **SUBJECT MATTER NO. 22A. APPLICATION OF UDF-IOF TERMINATION**
7 **(FIXED) RATE ELEMENT**

8 **Issue No. 9-51: ICA Section 9.7.5.2.1.a**

9 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO UDF-IOF**
10 **TERMINATIONS.**

11 A. Eschelon desires clear language relating to the application of rates in Exhibit A.
12 Rates that have been approved by the Commission in generic cost cases should
13 apply uniformly to all carriers. Qwest proposes unique rate application language
14 applicable to Eschelon, while using alternative language in its SGAT and
15 agreements with other carriers.

16 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

17 A. Eschelon offers two alternative proposals for this issue:

18 **Proposal #1**

19 9.7.5.2.1.a) UDF-IOF Termination (Fixed) Rate Element. This rate
20 element is a recurring rate element and provides a termination at the
21 interoffice FDP within the Qwest Wire Center. Two UDF-IOF
22 terminations apply (one for each of the two end points in the termination
23 path) per pair ~~cross-connect provided on the facility~~. Termination charges
24 apply for each intermediate office terminating at an FDP or like cross-
25 connect point.

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Proposal #2

9.7.5.2.1.a) UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Qwest Wire Center. Two UDF-IOF terminations apply per ~~pair-cross connect provided on the facility~~. Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.

10 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

11 A. Qwest has one proposal for this issue:

12 9.7.5.2.1.a) UDF-IOF Termination (Fixed) Rate Element. This rate
13 element is a recurring rate element and provides a termination at the
14 interoffice FDP within the Qwest Wire Center. Two UDF-IOF
15 terminations apply (~~one for each of the two end points in the termination~~
16 ~~path~~) per ~~pair~~ cross connect provided on the facility. Termination charges
17 apply for each intermediate office terminating at an FDP or like cross-
18 connect point.

19

20 **Q. WHY IS ESCHELON’S LANGUAGE APPROPRIATE?**

21 A. The contract contains descriptions of rate elements along with the method in
22 which they are applied. This section applies to the rate in 9.7.5.1.4 of Exhibit A.
23 Qwest is proposing unique language for rate application for Eschelon compared to
24 what is contained in its SGAT or agreement with other carriers. The rate from
25 Exhibit A is the same for all carriers. Qwest has not provided any support,
26 including cost studies, for the change in the terms related to the rate application
27 for this element. Further, these rates are approved by the Commission and there is

1 no reason why Qwest should change the terms of the application of these rates for
2 Eschelon, but not for other carriers.

3 Eschelon's second proposal mirrors the language from Qwest's SGAT and Qwest
4 has provided no clear reason why its SGAT language is unacceptable. Qwest
5 proposed adding the phrase, providing that the rate applies "per cross-connect
6 provided on the facility." Because the rate has not changed, it is unclear how
7 Qwest's proposed change impacts the rates, their application or the cost studies
8 creating these rates.

9 **Q. WHY IS QWEST'S PROPOSED LANGUAGE INSUFFICIENT?**

10 A. Qwest's language creates potentially alters the rate application of a Commission
11 approved rate. Qwest has not justified this unique Eschelon only language. In an
12 attempt to close this issue and address Qwest's "concern" with the language it
13 uses for other carriers, Eschelon offered its first proposal clarifying that the
14 termination charges described apply to each end of the transport path.

15 **Q. WILL ESCHELON'S PROPOSAL ALLOW QWEST TO RECOVER ITS**
16 **COST?**

17 A. Yes. Qwest argues that Eschelon's proposal prevents Qwest from recovering its
18 cost because multiple terminations may be required.⁷⁹ However, Qwest provided
19 no cost support to Eschelon to support this claim. Further, if Qwest believes that

⁷⁹ See Qwest's position in the Issues Matrix, issue 9-51.

1 an approved Commission rate is improper or improperly applied to all carriers in
2 the state, Qwest should raise this rate application issue in a cost case rather than
3 attempting to impose unique terms upon Eschelon.

4 **Q. PLEASE SUMMARIZE THIS ISSUE.**

5 A. Qwest's proposal is unsupported and contrary to language in its own SGAT.
6 Qwest's language would potentially create unique rate application terms for
7 Eschelon than exist for the rest of the carriers in the state of Washington. Qwest's
8 language should be rejected and Eschelon's proposal #2, which mirrors the
9 SGAT, or proposal #1, which attempts to clarify the current rate application,
10 should be adopted.

11

12 **SUBJECT MATTER NO. 23. DIFFERENT UNE COMBINATIONS**

13 *Issue Nos. 9-54 and 9-54(a): ICA Sections 9.23.2 (1 of 2 issues) and 9.23.5.1.3*

14 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO DIFFERENT**
15 **UNE COMBINATIONS.**

16 A. The contract contains rates, terms and conditions for individual UNEs and the
17 right to obtain combinations of these UNEs, whether or not the actual
18 combination is explicitly described in the contract. As long as the underlying
19 UNEs exist in the contract, Eschelon should have access to a combination of these
20 UNEs at the existing rates and terms, without being required to amend or change
21 the contract when new combinations are ordered. Amendments and/or changes to

1 the contract, in order to purchase UNEs that are already contained in the contract,
2 can delay the implementation of new products, impose unnecessary costs upon
3 Eschelon, and slow the development of competition.

4 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

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

6 **Issue No. 9-54: UNE Combinations Description and General Terms**

7 9.23.2 UNE Combinations Description and General Terms

8 UNE Combinations are available in, but not limited to, the
9 following products: EELs (subject to the limitations set forth
10 below) and Loop Mux Combinations. If CLEC desires access to a
11 different UNE Combination, CLEC may request access through
12 the Special Request Process set forth in this Agreement. Qwest
13 will provision UNE Combinations pursuant to the rates, terms and
14 conditions of this Agreement provided that all ~~individual UNEs~~
15 ~~UNE rates, terms and conditions making up~~ included in the UNE
16 Combination are contained in this Agreement. If Qwest develops
17 additional UNE Combination products, CLEC can order such
18 products without using the Special Request Process, but CLEC
19 may need to submit a questionnaire pursuant to ICA Section 3.2.2.

20

21 **Q. ARE THERE CURRENTLY ANY UNE COMBINATIONS ORDERED BY**
22 **CLECS OTHER THAN EELS?**

23 A. Yes, loop-mux combination is a UNE combinations CLECs order today and
24 should be included in this language in the list of UNE combinations. That is why
25 Eschelon's first proposed change to section 9.23.2 is to include loop-mux
26 combinations:

1 UNE Combinations are available in, but not limited to, the
2 following products: EELs (subject to the limitations set forth
3 below) and Loop Mux Combinations.

4 See Subject Matter No. 27. MULTIPLEXING (LOOP-MUX COMBINATIONS)
5 – ISSUE NO. 9-61 and (a)-(c) for Eschelon’s position and response to Qwest on
6 the issue of multiplexing, which is contained in the testimony of Mr. Starkey.

7 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

8 A. Qwest’s proposed language for Issue No. 9-54 (UNE Combinations Description
9 and General Terms) in ICA Section 9.23.2 is as follows:

10 **Issue No. 9-54:**

11 9.23.2 UNE Combinations Description and General Terms

12 UNE Combinations are available in, but not limited to, the
13 following products: EELs (subject to the limitations set forth
14 below) and ~~Loop Mux Combinations~~. If CLEC desires access to a
15 different UNE Combination, CLEC may request access through
16 the Special Request Process set forth in this Agreement. Qwest
17 will provision UNE Combinations ~~pursuant to the rates, terms and~~
18 ~~conditions of this Agreement~~ provided that all individual UNEs
19 UNE rates, terms and conditions making up included in the UNE
20 Combination are contained in this Agreement. If Qwest develops
21 additional UNE Combination products, CLEC can order such
22 products without using the Special Request Process, but CLEC
23 may need to submit a questionnaire pursuant to ICA Section 3.2.2.

24
25 By including the requirement that “all individual UNE rates, terms and conditions
26 included in the UNE Combination” be contained in this Agreement for Eschelon
27 to access a different UNE Combination, Qwest creates ambiguity by departing

1 from Qwest/AT&T contract language and the Washington SGAT language.⁸⁰
2 Qwest's proposal opens a potentially significant loophole that would make it
3 possible for Qwest to insist on slightly different or additional terms, even though
4 all of the elements making up the UNE Combination are in the ICA. It would
5 take little imagination to devise some allegedly new term that requires an
6 amendment.

7 Regardless of whether a combination is currently ordered or not, as long as the
8 individual UNEs that comprise that combination are contained in this
9 interconnection agreement, there is no basis for Qwest to delay the CLEC's use of
10 a UNE combination, simply because that combination lacks a name. Delaying the
11 use of UNEs delays a CLEC's ability to bring new products to the market and
12 thus slows the development of competition.

13 One historical example of this was the UNE combination of EELs. For years
14 Qwest fought and delayed the implementation of EELs and then eventually
15 attempted to require CLECs to sign contract amendments to obtain EELs. Such
16 delays impose costs on CLECs by slowing down the implementation of new
17 products and forcing CLECs to negotiate and potentially arbitrate over elements
18 already contained in the agreement.

⁸⁰ Washington SGAT § 9.23.2.

1 The language in the Washington SGAT and other CLEC ICAs, however, is
2 designed to avoid just that scenario and make clear that no amendment is required
3 when the elements of the combination are in the ICA. Eschelon's language is
4 consistent with that intent. Qwest's language reduces the provision to a mere
5 agreement to agree later -- defeating the purpose of ensuring that UNE
6 Combinations are fully available under this ICA.⁸¹ To further clarify this matter,
7 Eschelon proposes the following language for Issue No. 9-54(a) (Recurring Rates
8 for Different UNE Combinations) in ICA Section 9.23.5.1.3 as follows:

9 **Issue No. 9-54(a):**

10 9.23.5.1.3 If CLEC elects to use the BFR/SR process to obtain
11 access to a different UNE Combination, the recurring rates for the
12 UNE Combination will be no greater than the total of the recurring
13 rates in Exhibit A in that combination.
14

15 Qwest proposes "intentionally left blank" for Issue No. 9-54(a) (Recurring Rates
16 for Different UNE Combinations) in ICA Section 9.23.5.1.3.

17 **Q. WOULD ESCHELON BE WILLING TO USE THE CORRESPONDING**
18 **SENTENCE FROM THE WASHINGTON SGAT?**

19 A. Yes. Eschelon is willing, as another option, to use the corresponding sentence
20 from the Washington SGAT in this provision:

21 ". . . Qwest will provision UNE combinations pursuant to the terms
22 of this Agreement without requiring an amendment to this

⁸¹ See also ICA Section 9.23.5.1.3 below.

1 Agreement, provided that all UNEs making up the UNE
2 Combination are contained this Agreement....”

3

4 In either case, Eschelon’s proposal establishes that, if the individual elements to
5 be combined are addressed in the ICA, Qwest must combine them without
6 claiming an amendment is needed.

7 **Q. IS ESCHELON’S POSITION CONSISTENT WITH FCC RULES WHICH**
8 **REQUIRE ILECS TO COMBINE ELEMENTS?**

9 A. Yes. As affirmed by the FCC in the TRO, 47 C.F. R. §51.315 and subparts
10 requires “incumbent LECs to provide UNE combinations upon request and
11 prohibit incumbent LECs from separating UNE combinations that are ordinarily
12 combined except upon request.”⁸² Thus Qwest has a duty to combine UNEs as
13 spelled out in Rule 315. Specifically, parts (c) and (d) of Rule 315 state:

14 (c) Upon request, an incumbent LEC shall perform the functions
15 necessary to combine unbundled network elements in any manner,
16 even if those elements are not ordinarily combined in the
17 incumbent LEC’s network, provided that such combination:

18 (1) Is technically feasible; and

19 (2) Would not undermine the ability of other carriers to
20 obtain access to unbundled network elements or to interconnect
21 with the incumbent LEC’s network.

22 (d) Upon request, an incumbent LEC shall perform the
23 functions necessary to combine unbundled network elements with

⁸² “TRO” at ¶577.

1 elements possessed by the requesting telecommunications carrier
2 in any technically feasible manner.

3 Thus, so long as Eschelon's request to combine elements is technically feasible
4 and would not undermine the ability of other carriers to obtain access to UNEs,
5 Qwest is obligated to combine elements for Eschelon. Eschelon's proposed
6 language simply clarifies that Qwest will combine those elements at the
7 individual rates contained in the Agreement and that it will not charge any
8 additional rates for combining elements.

9 **Q. WHY SHOULD THE RECURRING COST OF A UNE COMBINATION**
10 **BY LIMITED TO THE TOTAL OF THE UNES CONTAINED IN THAT**
11 **COMBINATION?**

12 A. The rates Qwest charges for individual UNEs covers the cost of providing those
13 elements to CLECs, whether the UNEs are provided as individual elements or
14 combined elements. Unbundled network elements are piece parts of the network
15 and their cost does not change because they are purchased on a stand-alone basis
16 or in combination. For example, the cost of an unbundled loop is not greater
17 when it is purchased in combination with transport, making an EEL. Qwest is not
18 entitled to change the rates that are contained in the Agreement, simply because
19 the elements are combined in a manner in which they have not previously been
20 combined.

21 **Q. PLEASE SUMMARIZE THIS ISSUE.**

1 A. As long as the underlying UNEs exist in the contract, Eschelon should have
2 access to a combination of these UNEs at the existing rates and terms, without
3 being required to amend or change the contract when new combinations are
4 ordered. Amendments and/or changes to the contract, in order to purchase UNEs
5 that are already contained in the contract, can delay the implementation of new
6 products, impose unnecessary costs upon Eschelon, and slow the development of
7 competition. Eschelon's language should be adopted for this issue.

8

9 **SUBJECT MATTER NO. 25. SERVICE ELIGIBILITY CRITERIA**

10 **Issue Nos. 9-56 and 9-56(a): ICA Sections 9.23.4.3.1.1 and 9.23.4.3.1.1.1.1**

11 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO SERVICE**
12 **ELIGIBILITY CRITERIA.**

13 A. Qwest is required by the FCC to have cause before conducting an audit regarding
14 CLEC compliance with service eligibility requirements. Eschelon's proposed
15 language memorializes this requirement and requires Qwest to provide
16 information to Eschelon that Qwest used to support its cause for review. Service
17 eligibility audits impose a burden and cost upon Eschelon and because Qwest is
18 required to have cause for such an audit, Qwest should also be required to provide
19 the rationale supporting its request for an audit. Besides being consistent with the
20 requirement that Qwest have cause before conducting on audit, providing this
21 information is likely to facilitate resolution of any disputes.

1 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS THIS ISSUE?**

2 A. Eschelon proposes the following language:

3 **Issue No. 9-56: Service Eligibility Audits**

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

10 **Issue No. 9-56(a): Service Eligibility Audits**

11 9.23.4.3.1.1.1.1 The written notice shall include the cause
12 upon which Qwest has a concern that CLEC has not met
13 the Service Eligibility Criteria. Upon request, Qwest shall
14 provide to CLEC a list of circuits that Qwest has identified
15 as of that date, if any, for which Qwest alleges non-
16 compliance or which otherwise supports Qwest's concern.
17

18 **Q. WHAT IS QWEST'S PROPOSAL ON THIS ISSUE?**

19 A. Qwest proposes that Eschelon's language be deleted for both 9.23.4.3.1.1 and
20 9.23.4.3.1.1.1.1.

21 **Q. WHY IS ESCHELON'S LANGUAGE NECESSARY?**

22 A. To ensure that Qwest has a reasonable basis for requesting an audit and to give
23 Eschelon a chance to refute the need for an audit. Consistent with the FCC
24 requirement, Eschelon's proposal would allow Qwest to perform an audit per the
25 ICA terms when Qwest has a concern that Eschelon has not met the Service
26 Eligibility Criteria. Eschelon's proposal would require Qwest to disclose the
27 reasons for its concern. Qwest has rejected this very modest limitation on its

1 audit rights, in effect insisting that it should be able to conduct an audit without
2 cause. The FCC held, however, that:

3 ...audits will not be routine practice, but will **only** be undertaken
4 when the incumbent LEC has a concern that a requesting carrier
5 has not met the criteria for providing a significant amount of local
6 exchange service.⁸³ (emphasis added)

7 Before Eschelon is put to the work and expense that an audit necessarily entails,
8 Qwest should be required to have at least some reason to believe that there may
9 be noncompliance that will be uncovered by an audit. Otherwise, the audit
10 process becomes not a reasonable measure for assuring compliance, but rather,
11 the very sort of “routine practice” that the FCC precluded.

12 **Q. DOES THE FCC REQUIRE QWEST TO PROVIDE ANY INFORMATION**
13 **TO ESCHELON AS A CONDITION OF AN AUDIT?**

14 A. The FCC in the *TRO*, determined that the states are in a better position to address
15 implementation of the audit provisions.⁸⁴ Eschelon’s proposal is precisely the sort
16 of implementation issue that the FCC left it to the states to determine.

17 Eschelon’s language would require Qwest to describe its concern regarding
18 Eschelon’s compliance with the Service Eligibility Criteria, as discussed above,
19 and to identify any non-complying circuits that it has identified. Eschelon’s
20 proposal would require Qwest to provide information that may allow Eschelon to

⁸³ “TRO” at ¶ 621, citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification (2000), at ¶¶ 28-33, *aff’d sub nom. CompTel v. FCC*, 309 F.3d 3 (D.C. Cir. 2002).

⁸⁴ “TRO” at ¶ 625.

1 respond to Qwest's articulated concerns and further early resolution, thereby
2 avoiding the possibility of a costly audit, or that a dispute might end up in front of
3 the Commission.

4 Eschelon's notice proposal is not burdensome. It does not require Qwest to
5 provide information that it does not already have. Qwest knows the reason for its
6 concern and must merely state it. In addition, the language states only that Qwest
7 will provide, upon request, a list of allegedly non-complying circuits "if any" only
8 if Qwest has identified such circuits "as of that date." If Qwest has a list of non-
9 complying circuits, there is no reason for it to not provide that information to
10 further root cause analysis and allow CLEC to respond fully. If Qwest does not
11 have such a list, the language places no burden on Qwest to create one.

12 **Q. PLEASE SUMMARIZE THIS ISSUE.**

13 A. Qwest is required by the FCC to have cause before conducting an audit regarding
14 CLEC compliance with service eligibility requirements. Eschelon's proposed
15 language memorializes this requirement and requires Qwest to provide
16 information to Eschelon that Qwest used to support its cause for review. As a
17 result, Eschelon's language should be adopted.

18

1 **SUBJECT MATTER NO. 26. COMMINGLED EELS/ARRANGEMENTS**

2 *Issue Nos. 9-58, 9-58(a), 9-58(b), 9-58(d), 9-58(e) and 9-59: ICA Sections*
3 *9.23.4.5.1, 9.23.4.5.1.1, 9.23.4.5.4, 9.23.4.6.6 (and subparts), 9.1.1.1.1,*
4 *9.1.1.1.1.2, and 9.23.4.7*

5 **Q. WHAT IS A LOOP-TRANSPORT COMBINATION AND WHAT IS THE**
6 **BUSINESS NEED RELATED TO LOOP-TRANSPORT COMBINATIONS**
7 **AND COMMINGLED EELS/ARRANGEMENTS.**

8 A. A Loop-Transport Combination is a combination of a loop and dedicated
9 transport.⁸⁵ The term “Loop-Transport Combination” is an umbrella term to
10 cover both UNE ELLs and Commingled EELs, since both are functionally the
11 same. Eschelon may purchase commingled EELs in situations where UNE EELs
12 are not available.⁸⁶

13 Commingled EELs should be a useful offering and a meaningful alternative to the
14 UNE EEL product it is replacing. Because a Commingled EEL is functionally
15 equivalent to a UNE EEL, a Commingled EEL should be put together (ordering,
16 tracking, repair and billing) in a manner similar to a UNE EEL. Further, Qwest
17 should not be able to alter the terms of the UNE portion of a commingled EEL
18 simply because the UNE is commingled.

⁸⁵ “TRO” at ¶575 and ¶583.

⁸⁶ A UNE EEL may not be available because one of the components of this EEL has been classified as “non-impaired.” When a component of a UNE EEL is not available, Eschelon is able to order a Commingled EEL, which replaces the “non-impaired” UNE component of the UNE EEL with another Qwest wholesale product, such as private lines. For example, if DS1 UNE transport between two offices is no longer available due to a finding of “non-impairment,” then Eschelon can replace the UNE transport with private line transport. The UNE Loop / Private Line Transport combination is an example of a

1 Qwest 's proposal would make Commingled EELs difficult to use by requiring
2 separate orders, separate circuit IDs and separate bills for each component of the
3 commingled arrangement. Qwest's proposals would extend the installation time
4 for commingled EELs, lengthen the time and cost for installation and repair, and
5 make bill verification more difficult than compared with point-to-point UNE
6 EELs or end-to-end special access.

7 **Q. WHAT ARE ESCHELON'S PROPOSALS TO ADDRESS THESE ISSUES?**

8 A. Eschelon's proposals are simple as these proposals align the ordering, tracking,
9 repair and billing provisions of a UNE EEL and a Commingled EEL. As is
10 explained in more detail below, the lack of alignment diminishes the usefulness of
11 a Commingled EEL compared to the UNE EEL, by extending the provisioning
12 and repair timeframes and making tracking of the circuit difficult.

13 **Issue No. 9-58: Ordering for Commingled Arrangements**

14 9.23.4.5.1 CLEC will submit orders for Loop Transport EELs
15 Combinations using the LSR process. Submission of LSRs is
16 described in ICA Section 12.

17 9.23.4.5.1.1 If any component of the Loop-Transport
18 Combination is not a UNE (i.e., not a component to which
19 UNE pricing applies), CLEC will indicate on the LSR that
20 the component is not a UNE (e.g., CLEC is ordering the
21 component as an alternate service such as special access).
22 CLEC will indicate this information in the Remarks section
23 of the LSR, unless the Parties agree otherwise.

Commingled EEL.

1 9.23.4.5.4 One (1) LSR is required when CLEC orders
2 Point-to-Point EELs, and Point-to-Point Commingled
3 EELs. . . .
4

5 This language makes it clear that only one LSR is required for Commingled
6 EELS.

7 **Issue No. 9-58(a): Circuit ID for Commingled Arrangements**⁸⁷

8 9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-
9 Point EELs—, and Point-to-Point Commingled EELs. For such
10 Point-to-Point Loop-Transport Combinations, Qwest will assign a
11 single circuit identification (ID) number for such combination.
12 Qwest may require two (2) service requests when CLEC orders
13 Multiplexed ~~EELs~~ Loop-Transport Combinations (which are not
14 Point-to-Point) and EEL loops (as part of a multiplexed EEL).
15 Regarding Commingling see ICA Section 24. (Emphasis added).
16

17 This language makes it clear that a single circuit ID will be used for Commingled
18 EELS.⁸⁸

19 **Issue No. 9-58(b): Billing for Commingled Arrangements**

20 9.23.4.6.6 For each Point-to-Point Loop-Transport Combination
21 (see ICA Section 9.23.4.5.4), all chargeable rate elements for such
22 combination will appear on the same Billing Account Number
23 (BAN).
24

25 This language makes it clear that chargeable elements of a Commingled EEL will
26 appear on the same BAN.

⁸⁷ Note the first part of ICA Section 9.23.4.5.4 is part of issue 9-58.

1 In the event that the Commission accepts Qwest's position on 9.23.4.6.6 in Issue
2 No. 9-58(b) above, Eschelon proposes the following alternative language:

3 **Issue No. 9-58(c): Billing for Commingled Arrangements –**
4 **Alternative Proposal**

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

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

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

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

27 9.23.4.6.6.4 For each Commingled EEL, Qwest will
28 provide on all associated Customer Service Records the
29 circuit ID for the UNE component; the RBAN for the non-
30 UNE component; and the circuit ID for the non-UNE
31 component.

32

⁸⁸ For Eschelon's alternative proposal (if single circuit ID is rejected), see Issue No. 9-59 for ICA Section 9.23.4.7 in subpart below.

1 The proposal above simple provides that if Qwest is not required to provide
2 chargeable elements of a Commingled EEL on a single BAN, then these elements
3 should at least be related.

4 **Issue No. 9-58(d): Other Commingled Arrangements**

5 9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For
6 any other Commingled arrangement, the following terms apply, in
7 addition to the general terms described in Section 24:

8 9.1.1.1.1.2 When a UNE or UNE Combination is
9 connected or attached with a non-UNE wholesale service,
10 unless it is not Technically Feasible or the Parties agree
11 otherwise, CLEC may order the arrangement on a single
12 service request; if a circuit ID is required, there will be a
13 single circuit ID; and all chargeable rate elements for the
14 Commingled service will appear on the same BAN. If
15 ordering on a single service request, using a single
16 identifier, and including all chargeable rate elements on the
17 same BAN is not Technically Feasible, Qwest will identify
18 and relate the elements of the arrangement on the bill and
19 include in the Customer Service Record for each
20 component a cross reference to the other component, with
21 its billing number, unless the Parties agree otherwise.

22

23 The provisions above require the option of a single LSR, Circuit ID and BAN
24 treatment for commingled arrangements other than EELs.

25 **Issue No. 9-58(e): Interval for Commingled Arrangements**

26 9.23.4.4.3.1 When any component of the Loop-Transport
27 Combination is not a UNE, the service interval for the combination
28 will be the longer interval of the two facilities being Commingled.
29 See Section 24.1.2.1.

30 24.3.2 See Section 9.23.4.4.3.1 regarding intervals for
31 Commingled EELs.

1 ~~24.3.2 The service interval for Commingled EELs will be as~~
2 ~~follows. For the UNE component of the EEL see Exhibit C. For~~
3 ~~the tariffed component of the EEL see the applicable Tariff.~~

4 9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For
5 any other Commingled arrangement, the following terms apply, in
6 addition to the general terms described in Section 24:

7 9.1.1.1.1.1 When a UNE and another service are
8 Commingled, the service interval for the Commingled
9 arrangement will be the longer interval of the two facilities
10 being Commingled..

11
12 The provisions above logically require that when ordering a Commingled EEL the
13 total service interval will be no longer than the component with the longest
14 interval.

15 In the event that the Commission accepts Qwest's position for 9-58(a), Eschelon
16 proposes the following language:

17 **Issue No. 9-59: Circuit ID – Alternate Proposal**

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

20 9.23.4.7.1 When CLEC reports a trouble through any of
21 the means described in Section 12.4.2.2, so long as Qwest
22 provides more than one circuit ID per Commingled EEL,
23 CLEC may provide all circuit IDs associated with the
24 Commingled EEL in a single trouble report (i.e., Qwest
25 shall not require CLEC to submit separate and/or
26 consecutive trouble reports for the different circuit IDs
27 associated with the single Commingled EEL). If CLEC is
28 using CEMR to submit the trouble report, for example,
29 CLEC may report one circuit ID and include the other
30 circuit ID in the remarks section (unless the Parties agree to
31 a different method). Qwest will communicate a single
32 trouble report tracking number (i.e., the "ticket" number)

1 (described in Section 12.1.3.3.1.1) for the Commingled
2 EEL to CLEC at the time the trouble is reported.

3 9.23.4.7.1.1 If any circuit ID is missing from any
4 Customer Service Record associated with the
5 Commingled EEL, Qwest will provide the circuit
6 ID information to CLEC at the time CLEC submits
7 the trouble report.

8 9.23.4.7.1.2 Qwest may charge a single Maintenance of
9 Service or Trouble Isolation Charge (sometimes referred to
10 as “No Trouble Found” charge) only if Qwest dispatches
11 and no trouble is found on both circuits associated with the
12 Commingled EEL. If CLEC may charge Qwest pursuant to
13 Section 12.4.1.8, CLEC may also charge only a single
14 charge for both circuits associated with the Commingled
15 EEL.
16

17 This provision simply requires that Qwest treat a Commingled EEL as a single
18 circuit for the purpose of maintenance and repair.

19 **Q. WHAT ARE QWEST’S PROPOSAL ON THESE ISSUES?**

20 A. Qwest proposes the following language:

21 **Issue No. 9-58: Ordering for Commingled Arrangements**

22 9.23.4.5.1 CLEC will submit orders for ~~Loop Transport EELs~~
23 ~~Combinations~~ using the LSR process. Submission of LSRs is described in
24 Section 12.

25 ~~9.23.4.5.1.1 If any component of the Loop Transport Combination is~~
26 ~~not a UNE (i.e., not a component to which UNE pricing applies), CLEC~~
27 ~~will indicate on the LSR that the component is not a UNE (e.g., CLEC is~~
28 ~~ordering the component as an alternate service such as special access).~~
29 ~~CLEC will indicate this information in the Remarks section of the LSR,~~
30 ~~unless the Parties agree otherwise.~~

31 9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point
32 EELs and Point to Point Commingled EELs.

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Issue No. 9-58: Circuit ID for Commingled Arrangements

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

Issue No. 9-58(b): Billing for Commingled Arrangements

~~9.23.4.6.6 For Commingling see Section 24.~~

Qwest rejects Eschelon’s alternative language to 9-58(b), contained in Issue No. 9-58(c).

Issue No. 9-58(d): Other Commingled Arrangements

Qwest proposes deletion of Eschelon’s language.

Issue No. 9-58(e): Interval for Commingled Arrangements

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

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

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

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

1 **Issue No. 9-59: Circuit ID – Alternative Proposal**

2 9.23.4.7 Maintenance and Repair for UNE Component of Commingled
3 EELs

4 9.23.4.7.1 For Commingling see Section 24.

5

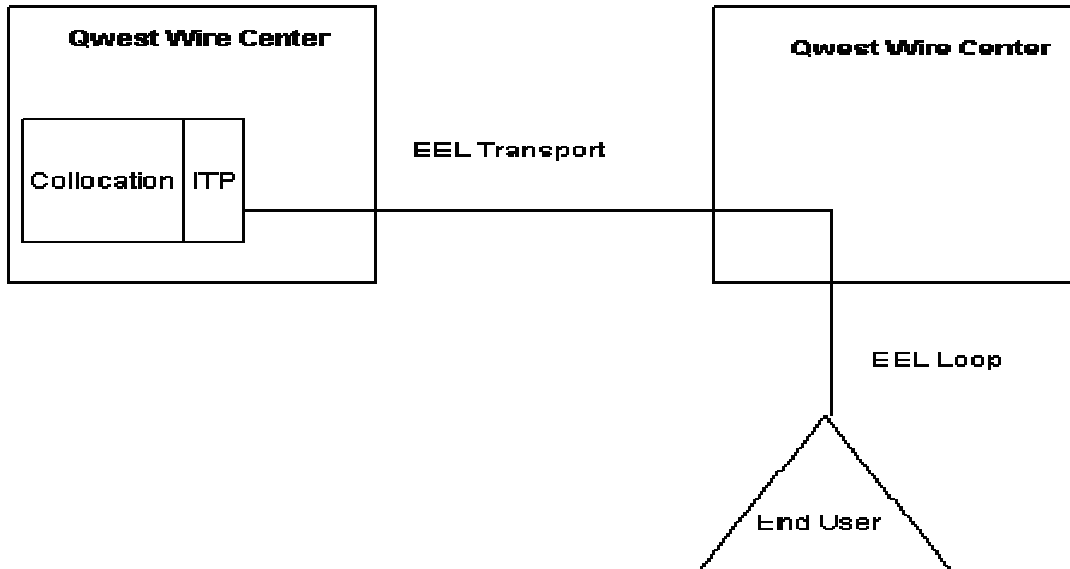
6 **Q. WHAT IS A UNE EEL AND HOW IS A COMMINGLED EEL**
7 **DIFFERENT FROM A UNE EEL?**

8 A. An EEL is a type of Loop-Transport Combinations where both components of the
9 Combination are unbundled network elements. A Commingled EEL is identical
10 to the EEL in function, except one component of the Loop-Transport
11 Combination is not a UNE.⁸⁹ Loop-Transport Combinations promote competition
12 by giving CLECs access to end user customers in wire centers where the CLEC is
13 not collocated.⁹⁰ In other words, the Loop-Transport Combination extends the
14 loop from the end user's location to a wire center where the CLEC is collocated.
15 The diagram below shows a picture of a Point-To-Point EEL. Point-To-Point
16 simply refers to the fact that the loop and transport are of the same bandwidth, in
17 other words no multiplexing is involved.

⁸⁹ As is explained below, it is the price that is different between a UNE EEL and a Commingled EEL.

⁹⁰ "TRO" at ¶576

Point-To-Point EEL with Collocation



1

2 Source: Qwest TRRO/OFO Enhanced Extended Loop (EEL) PCAT -
3 <http://www.qwest.com/wholesale/pcat/trroeel.html>

4

5 The picture for a Point-To-Point Commingled EEL, would be identical to the
6 picture above, except that the label, not the facilities, for “EEL Transport” or
7 “EEL Loop” would be replaced with non-UNE label, such as “Private Line
8 Transport” or “Channel Termination.”

9 **Q. WHY IS ESCHELON’S LANGUAGE NECESSARY?**

10 A. In several provisions of the ICA, Eschelon proposes the use of a single LSR,
11 single circuit ID, and single bill for Point-To-Point Commingled EELs, just as
12 Qwest provides a single LSR, single circuit ID, and single bill for Point-To-Point
13 UNE EELs today. In many cases a Commingled EEL is nothing more than a

1 change in name and price to the UNE EEL it is replacing. As such, it is a network
2 facility that Qwest has already been provisioning, maintaining and repairing.
3 Except for the price there is absolutely nothing new about a Commingled EEL
4 from a technical, network, provisioning or maintenance standpoint. Therefore,
5 the terms based upon well-established history proposed by Eschelon should be
6 acceptable to Qwest.

7 A single Local Service Request (LSR) is required for a Point-To-Point EEL.
8 Point-to-Point and EEL requests are issued using a Common Language Circuit
9 ID, which is identified on the customer service record (CSR) as CLS. With
10 respect to repair, CLECs submit a single trouble report for a Point-To-Point
11 EEL.⁹¹ Qwest also provides trouble isolation and testing as a joint process for
12 Point-To-Point EELs.⁹² EELs are billed on a single Customer Records and
13 Information System (CRIS) summary bill. Thus, Eschelon is able to place a
14 single order, receive a single bill, track the EEL using a single Circuit ID, and
15 issue a single repair ticket for EELs.

16 There is no functional difference between a UNE EEL and a Commingled EELs -
17 the facilities are the same; the function is the same; and the end-user experience is
18 the same for both a UNE EEL and a Commingled EEL. However, Qwest is
19 attempting to create differences by treating the two pieces of a Commingled EEL

⁹¹ Qwest Wholesale Website, Maintenance and Repair Overview - V64.0,
<http://www.qwest.com/wholesale/clecs/maintenance.html>

⁹² Qwest Wholesale Website, Maintenance and Repair Overview - V64.0,

1 separately, rather than together as Qwest treats an EEL. Qwest wants CLECs to
2 order the two components of a Commingled EELs using two separate orders;
3 Qwest wants to bill CLECs two separate bills; Qwest wants to assign two separate
4 Circuit IDs to the Commingled circuit which adds to the complexity of tracking
5 the Commingled EEL and would require CLECs to issue separate repair ticket for
6 combined components of the Commingled EEL.

7 A CLEC would purchase a Commingled EEL in a situation where a UNE EEL is
8 not available. UNE EELs availability can be limited due to limits placed upon the
9 availability of high capacity unbundled loops and transport in and between certain
10 wire centers.⁹³ The CLEC could build a collocation eliminating the need for the
11 loop-transport combination. However, collocations are capital intensive and time
12 consuming. For example, the direct cost charged by Qwest to Eschelon for a new
13 collocation (space, power, APOT) is approximately \$40,000. In addition to this
14 cost, the CLEC must place equipment in the collocation space. Without Loop-
15 Transport combinations, such as Commingled EELs, CLECs might have to
16 abandon the particular market where UNE EELs are not available.

17 By complicating the ordering, maintenance, and billing processes for
18 Commingled EELs, Qwest makes this product less useful and raises Eschelon's
19 cost by either 1) imposing onerous and inefficient processes for the purchase and

<http://www.qwest.com/wholesale/clecs/maintenance.html>

⁹³ The availability of the UNE components of a Loop-Transport combination are being determined in the Washington Wire Center Impairment Docket No. UT-053025.

1 use of a Commingled EEL or 2) making the use of this product so difficult that
2 the only alternative is to exit from the market or purchase the arrangement at a yet
3 higher price, solely from Qwest's special access tariff. Qwest's proposed
4 language diminishes Eschelon's ability to compete effectively against Qwest,
5 because the language prevents Eschelon from:

- 6 1) ordering a Commingled EEL on a single LSR;
 - 7 2) receiving a Commingled EEL identified by a single circuit ID; and
 - 8 3) being billed for a Commingled EEL on a single bill.
- 9

10 **Q. WHY DOES NOT ESCHELON SIMPLY PURCHASE END-TO-END**
11 **SPECIAL ACCESS CIRCUITS FROM QWEST INSTEAD OF**
12 **COMMINGLED EELS?**

13 A. The FCC has upheld a CLECs right to purchase UNE combinations, including
14 Commingled EELs. Eschelon should not be forced to migrate to yet a higher
15 priced product because Qwest prefers not to provide Commingled EELs on
16 reasonable terms and conditions. UNE EELs, Commingled EELs and end-to-end
17 Special Access circuits are all functionally identical. The difference between
18 them is their price. The table below compares the wholesale cost of a DS1 UNE
19 EEL, a DS1 Commingled EEL and a DS1 end-to-end special access arrangement.

Loop-Transport Combinations / Special Access Price Comparison Washington				
	UNE EEL UNE Loop / UNE Xport	Commingled EEL SA Loop / UNE Xport	UNE Loop / SA Xport Rate	Special Access SA Loop / SA Xport Rate
Loop (Zone 1) / Channel Term	\$ 68.86	\$ 87.59	\$ 68.86	\$ 87.59
ITP	\$ 1.29	\$ 1.29	\$ 1.29	\$ 4.66
Transport (10 miles)	\$ 39.62	\$ 39.62	\$ 252.00	\$ 252.00
Total	\$ 109.77	\$ 128.50	\$ 322.15	\$ 344.26
Sources				
UNE Rate Sources: Exhibit A -- Loop 9.2.3.3.2, ITP 9.1.2, Xport 9.6.2.2				
SA Rate Sources: Tariff FCC#1 -- Channel Termination (Loop) 7.11.4, ITP 7.11.4, Xport 17.2.11				

1

2 The first comparison is for a UNE EEL and shows the cost of a DS1 UNE Loop
 3 and DS1 UNE transport. The second and third cases show Commingled EELs.
 4 The second is a DS1 Channel Termination combined with a DS1 UNE Transport
 5 and the third is a DS1 loop combined with a DS1 special access transport circuit.
 6 The final case shows an end-to-end special access circuit using a DS1 channel
 7 termination and DS1 special access dedicated transport.

8 **Q. WILL ESCHELON’S PROPOSAL CAUSE QWEST TO INCUR**
 9 **SIGNIFICANT COSTS?**

10 **A.** No, Eschelon is not asking Qwest to modify systems and incur costs, but simply
 11 treat point-to-point commingled EELs as point-to-point UNE EELs and end-to-
 12 end special access circuits are treated today. Qwest is attempting to turn what is
 13 essentially a price change into something much more – an unusable alternative.
 14 With respect to ordering, Qwest claims that Eschelon’s proposal is “unique” and

1 that Eschelon's proposal would impose upon Qwest costly systems and
2 processing changes.⁹⁴ Eschelon's proposal is not unique because Eschelon is not
3 proposing a change from Qwest's current process which uses a single LSR, single
4 circuit ID, and single bill for Eschelon's Point-To-Point EELs. Eschelon is
5 merely proposing to treat EELs in the same manner, as they have been in the past.
6 In fact, for Eschelon's embedded base of EELs, those circuits are billed on the
7 same bill and have a single circuit ID, and were originally ordered on a single
8 LSR.

9

10 **Issue No. 9-58: ICA Sections 9.23.4.5.1, 9.23.4.5.1.1; 9.23.4.5.4 - Ordering,**
11 **Billing, and Circuit ID for Commingled Arrangements – ORDERING**

12 **Q. WHAT IS THE SPECIFIC BUSINESS NEED INVOLVED IN ISSUE NO. 9-**
13 **58 – ORDERING, BILLING AND CIRCUIT ID FOR COMMINGLED**
14 **ARRANGEMENTS?**

15 A. Under Qwest's proposed ordering process, Eschelon must submit separate orders
16 for the UNE and non-UNE components of Commingled EELs. The problem with
17 the separate ordering process is that once Eschelon receives the FOC for the UNE
18 segment, only then may Eschelon submit an ASR for the non-UNE component.
19 Using a DS1 UNE loop and PLT transport as an example, there are at least two
20 problems with this process: (1) there is a time delay since Qwest can take up to

⁹⁴ Qwest Petition at ¶ 120.

1 72 hours to return a FOC for a DS1 UNE loop ; and (2) receipt of a FOC is no
2 guarantee that the UNE facility will actually be delivered on the due date.

3 Because the EEL circuit is incomplete without the loop facility, completion of the
4 PLT transport order without the loop is of no use to Eschelon or its customer. In
5 that case there is no complete functioning circuit, because the UNE and non-UNE
6 segments are provisioned using a separate orders, if one segment goes held
7 because of lack of facilities, Eschelon may end up paying recurring charges for a
8 partial circuit, even though Eschelon's end-user is not yet receiving service and
9 Eschelon is not able to commence billing to its end-user. The customer thus has
10 no service, and there may be no specified time by which it will have service, and
11 all the while Eschelon is paying for a partial circuit which is of no use to Eschelon
12 or its customer.

13 **Q. HOW DOES ESCHELON'S PROPOSED LANGUAGE FOR ISSUE NO. 9-**
14 **58, ICA SECTIONS 9.23.4.5.1; 9.23.4.5.1.1; & 9.23.4.5.4 ADDRESS THESE**
15 **ISSUES?**

16 A. Eschelon proposes language in ICA Section 9.23.4.5.1 and its subpart
17 9.23.4.5.1.1, and ICA Section 9.23.4.5.4 that provides for ordering Commingled
18 EELs on a single LSR. In ICA Section 9.23.4.5.1, Eschelon proposes use of the
19 term "Loop Transport Combination" which would include Commingled EELs as
20 being ordered through the LSR process. ICA Section 9.23.4.5.1.1 is a new
21 subpart proposed by Eschelon that specifies that how non-UNE components (e.g.,

1 special access) would be specified on the LSR. Eschelon is proposing that for
2 non-UNE components, Eschelon would use would use the Remarks section of the
3 LSR to indicate that non-UNE components are included in the LSR. In ICA
4 Section 9.23.4.5.4, Eschelon proposes adding the language “Point-to-Point
5 Commingled EELs” to clarify that Commingled EELs are ordered using one (1)
6 LSR. Eschelon proposes alternate language below in Issue No. 9-59 if Qwest’s
7 position is adopted for ICA Section 9.23.4.5.4.

8

9 **Issue No. 9-58 (a): ICA Sections - 9.23.4.5.4 - Ordering, Billing, and Circuit ID**
10 **for Commingled Arrangements – CIRCUIT ID [2 of 2 issues in ICA Section**
11 **9.23.4.5.4; For 1st issue (terminology), see Issue No. 9-58 above]**

12 **Q. WHAT IS THE SPECIFIC BUSINESS NEED 9-58(A) RELATED TO**
13 **SINGLE CIRCUIT ID?**

14 A. Qwest assigns a single circuit ID to a UNE EEL and provides it to the ordering
15 CLEC for tracking purposes. For Commingled EELs, Qwest proposes to assign
16 two circuit IDs (one to the UNE and another to the non-UNE). Qwest makes this
17 proposal even in the case where a UNE EEL is being converted to a Commingled
18 EEL – in other words, the arrangement started with a single circuit ID and Qwest
19 is proposing to break them apart.⁹⁵

⁹⁵ See for example, *MN Wire Center Docket 06-685*, Testimony of Teresa K. Million, Qwest Corporation
June 29, 2006, Page 5

1 The linchpin of effective EEL facility management is the use of a single circuit ID
2 to cover all segments of the facility. It is this single identifier that permits both
3 Qwest and Eschelon to easily and accurately track facility inventories, order
4 correctly, repair in the most efficient manner possible, and bill in a way that
5 actually permits verification of bill and rate accuracy. The end result, of course,
6 is that both companies manage what is a single facility from the end user
7 customer's perspective in the most efficient manner possible, which ensures the
8 best possible delivery of service to a customer.

9 **Q. WHAT PROBLEMS RESULT FROM HAVING A COMMINGLED EEL**
10 **ASSIGNED MORE THAN ONE CIRCUIT ID?**

11 A. Under Qwest's proposal, instead of installing one EEL, the parties must install
12 two separate circuits at two different times. This leads to multiple problems,
13 including mismatches between service delivery intervals for the separate circuits.
14 For example, the gap in time between deliveries of the two circuits will cause a
15 delay in Eschelon's ability to conduct full testing on the customer's entire circuit.
16 The UNE loop interval is 5 days and the PLT transport interval is 9 days. If
17 Qwest wants to meet the PID performance for the loop, it will deliver the loop
18 within 5 days. Because the PLT transport piece will not be delivered until many
19 days later, however, there is no point in Eschelon testing the loop segment
20 because the circuit for the Commingled EEL is not complete until all segments
21 are installed. Qwest, however, will start to bill CLEC for the loop. The loop and

1 transport together serve the end user customer and whether that customer's
2 service is working "end-to-end" cannot be determined until the two are connected.
3 To make matters worse, Qwest's proposal related to intervals (as discussed in 9-
4 58(e)) forces Eschelon to order sequentially rather than concurrently, which
5 causes a delay. If Eschelon orders circuits concurrently, Eschelon must accept,
6 test and turn up of the loop independently of the special access circuit. This
7 testing process is futile because Eschelon is testing a loop not connected to the
8 customer. Thus, even if Eschelon tests and accepts the UNE loop, there is no
9 guarantee that the entire circuit is going to work.

10 **Q. HOW DOES ESCHELON'S LANGUAGE PROPOSAL FOR ICA**
11 **SECTIONS 9.23.4.5.1 AND SUBPARTS SOLVE THE ISSUES DESCRIBED**
12 **ABOVE?**

13 A. Eschelon's language makes clear that a single circuit ID will be provided for
14 Point-To-Point loop-transport combinations.

15 **Q. WILL QWEST HAVE TO MODIFY ITS INTERNAL SYSTEMS IN**
16 **ORDER TO ASSIGN A SINGLE CIRCUIT ID TO A COMMINGLED**
17 **EEL?**

18 A. Qwest currently provides combinations of loops and transport (EELs and special
19 access) using a single circuit ID. The only difference that is taking place with a
20 Commingled EEL is that the price of one of the components is changing. In most
21 cases, the price change occurs for all loops in a wire center, or all transport

1 facilities on a route as a result of a non-impairment finding in the wire center
2 proceeding. The result is that in most situations, both UNEs and Special Access
3 services will not be simultaneously available in a given wire center or along a
4 given transport route, thus the change really is as simple as an increase in price.
5 Qwest surely is competent at raising prices.

6

7 **Issue No. 9-58 (b): ICA Sections - 9.23.4.6.6 (and subparts), Ordering, Billing,**
8 **and Circuit ID for Commingled Arrangements – BILLING**

9 **Q. WHAT IS THE SPECIFIC BUSINESS NEED RELATED TO BILLING?**

10 A. When billing Eschelon for a UNE EEL, Qwest bills the UNE EEL as a single
11 facility on one billing account number (BAN). Bill review and reconciliation will
12 be challenging at best, and unmanageable at worst, if Qwest implements its
13 proposal to bill the two components of the Commingled EEL separately. In the
14 absence of a single circuit ID or relating the segments of the Commingled EEL on
15 the bills (as proposed by Eschelon in its alternative proposal), Eschelon will not
16 know whether a particular UNE is a part of a Commingled EEL. Thus, Eschelon
17 will have to review every line item on its UNE bill to attempt to determine
18 whether that UNE is part of a Commingled EEL. Given the volume of Eschelon's
19 UNE inventory, this kind of undertaking is simply not feasible. Similarly, while
20 Eschelon can track loss and completion reports to ensure accurate billing for
21 disconnected UNEs, no loss and completion reports are provided for tariffed
22 services such as special access. Without some indication that the UNE and non-

1 UNE segments of a Commingled EEL are related, a loop may be disconnected
2 and Eschelon could conceivably continue to pay for the non-UNE segment for no
3 reason at all. Thus, billing the UNE and non-UNE segments on a single bill will
4 allow Eschelon to track these segments in tandem, which makes sense since they
5 are combined together to make up the Commingled EEL.

6 **Q. IS PROVIDING A SINGLE BAN FOR COMMINGLED EELS COSTLY**
7 **FOR QWEST?**

8 A. No, it should not be costly. First, Qwest currently provides a single bill for UNE
9 EELs today. As mentioned above, the difference between a UNE EEL and a
10 commingled EEL is the price of one of the components of the EEL. In most
11 cases, the change in price is brought about by a change in the availability of a
12 UNE component of the UNE EEL. This change in availability means that what
13 was once available at a TELRIC rate is now available at an alternative, higher
14 rate, such as special access. Qwest need only change the rate that it is charging to
15 Eschelon. Qwest does not need to virtually separate the two components of the
16 loop-transport combination, so that ordering, repair and billing for these
17 components are contained in separate systems.

18

1 **Issue No. 9-58 (c): ICA Sections - 9.23.4.6.6 (and subparts) Ordering, Billing,**
2 **and Circuit ID for Commingled Arrangements – BILLING - (Alternate**
3 **proposal to 9.23.4.6.6)**

4 **Q. IF THE COMMISSION DETERMINES THAT QWEST DOES NOT NEED**
5 **TO PROVIDE A SINGLE BILL FOR COMMINGLED EELS, WHAT**
6 **ALTERNATIVE DOES ESCHELON PROPOSAL?**

7 A. As discussed above in Issue No. 9-58(b), Eschelon supports a single bill for the
8 components of a Commingled EEL. However, to the extent that the Commission
9 adopts Qwest’s language for these provisions, the Commission should order that
10 Eschelon’s alternative language for ICA Sections 9.23.4.6.6 (and subparts) and
11 9.23.4.7 (and subparts) also is included in the ICA. Eschelon’s alternative
12 language only requires that Qwest relate the UNE and non-UNE segments of the
13 Commingled EEL.

14 Eschelon’s proposed language spells out the process for relating the UNE and
15 non-UNE segments of the Commingled EEL in the billing system so Eschelon
16 can track the individual components. Absent a single circuit ID for the
17 Commingled EEL facility, relating the loop and transport segments as laid out
18 above is the only way that Eschelon can manage the repair and billing for
19 Commingled EELs to any customer’s satisfaction. Absent an identified
20 relationship between the UNE and non-UNE segments of the same EEL, no
21 CLEC can feasibly use a Commingled EEL. This is not an acceptable
22 implementation of the FCC’s mandate to eliminate restrictions on commingling,

1 and Qwest should not be permitted to so deliberately tilt the field to the advantage
2 of its exorbitantly expensive retail products. For these reasons, Eschelon
3 proposes this alternate language if Qwest's position on 9.23.4.6.6 is accepted in
4 arbitration.

5

6 **Issue No. 9-58 (d): ICA Section 9.1.1.1.1 & 9.1.1.1.2 Ordering, Billing, and**
7 **Circuit ID for Commingled Arrangements – OTHER ARRANGEMENTS**

8 **Q. WHAT IS THE SPECIFIC BUSINESS NEED RELATED TO ORDERING,**
9 **BILLING, AND CIRCUIT ID FOR COMMINGLED ARRANGEMENTS –**
10 **OTHER ARRANGEMENTS?**

11 A. The same types of problems that will occur with Commingled EELs if there is not
12 a single LSR, single circuit ID, and single bill will arise with other Commingled
13 arrangements as well. Therefore, these sections create a default to have a single
14 LSR, single circuit ID, and single bill, unless the Parties agree otherwise or doing
15 so is not Technically Feasible. In the latter, case, the components of the
16 Commingled arrangement are to be related for these purposes, unless the Parties
17 agree otherwise. Such language will help prevent Qwest from proceeding again
18 in the unilateral manner in which Qwest approached implementing Commingled
19 EELs and its initially password protected terms.

1

2 *Issue No. 9-58(e) - ICA Sections 9.23.4.4.3.1 & 24.3.2; 9.1.1.1.1 & 9.1.1.1.1.1*
3 *INTERVAL for Commingled Arrangements*

4 **Q. WHAT IS THE SPECIFIC BUSINESS NEED RELATED TO INTERVALS**
5 **FOR COMMINGLED ARRANGEMENTS?**

6 A. As discussed earlier, when Eschelon is forced to order the UNE and non-UNE
7 components separately, separate service installation intervals apply.⁹⁶ Qwest's
8 position is that the tariffed component and the UNE component must be installed
9 separately from each other, and that "because each service order for each
10 component must be complete before installation, the provisioning intervals for
11 each component may have to be added together to determine the total time
12 required for installation."⁹⁷ In other words, Qwest's position is that the intervals
13 for the individual components must be provisioned consecutively, rather than
14 concurrently, which has the effect of lengthening the overall interval for
15 Commingled arrangements. This is unnecessary, as it does not work that way
16 today for EELs. As discussed below, Eschelon agrees to a lengthened interval,
17 but applying the longer of the ICA and Tariff interval to the Commingled product.

18 **Q. HOW IS QWEST'S PROPOSAL DIFFERENT FROM ESCHELON'S**
19 **PROPOSAL ON THIS ISSUE?**

⁹⁶ See discussion for Issue No. 9-58(a).

⁹⁷ See Issue No. 9-58, Qwest's position in the Issues Matrix.

1 A. On its face, Qwest's proposal appears similar. Qwest states that the UNE interval
2 will apply to the UNE and the tariffed interval will apply to the tariffed
3 component. When Qwest's proposal is closely scrutinized and facts outside its
4 proposed ICA language are known, however, the proposals are very different. A
5 key difference is that Eschelon's proposal allows the Commission to retain full
6 jurisdiction over the UNE, whereas Qwest's proposal allows factors outside the
7 approved ICA to change the operation of the UNE terms, in contradiction to the
8 ICA. Qwest is attempting to limit ICA terms as they apply to UNE components
9 of commingled arrangements by imposing terms that are outside the ICA.

10 For example, Qwest's language in ICA Section 9.23.4.5.4 appear to allow a
11 CLEC to order a UNE loop and tariffed transport on separate service requests on
12 the same day and then, pursuant to ICA Section 24.3.2, calculate the interval. If
13 that were true, the result would be the same as under Eschelon's proposed
14 language and the longer interval would be the latest date for installation of the two
15 services. That, in fact, is not how the calculation of the interval will work. The
16 reason cannot be found in the ICA language that Qwest has presented to this
17 Commission for approval. Rather, Qwest's proposed calculation of the interval is
18 based on terms that were initially distributed by Qwest in a secret, password-

1 protected form, with the password available only to CLECs after they signed the
2 Qwest TRO amendment.⁹⁸

3 Qwest's secret PCAT states that consecutive ordering is required for each
4 component of a commingled EEL. This lengthens the total time required to install
5 the commingled EEL. Specifically, Qwest's TRRO EEL PCAT, which is not part
6 of the ICA, states:

7 ...When commingling an EEL Loop with the same bandwidth PLT
8 transport, an LSR and an ASR is required. **Your LSR for EEL**
9 **Loop must be submitted first** and must include the following
10 specific information:

11 PriLoc Section = End user Location

12 Sec Loc Section = Dangling Wire Center

13 Remark = "EEL, Install Dangling/Commingled Circuit."

14 **Once you have received the FOC with circuit ID for your**
15 **commingled EEL Loop, you may submit your ASR** for PLT
16 transport to be commingled with an EEL Loop of the same
17 bandwidth... (Emphasis added).⁹⁹

18

19 As a result, Qwest's PCAT process lengthens the interval of delivery of a working
20 service to the end user customer because the CLEC cannot submit the second
21 order until it receives an FOC on the first order. Thus, if the FOC commitment is
22 72 hours for the loop, this pushes out the later due date by up to three days.
23 Consequently, there is no way to calculate the installation interval from Qwest's
24 proposed ICA language.

⁹⁸ Qwest has since provided Eschelon the password in order to access the secret PCATs.

1 CLECs need certainty for planning purposes and to set customer expectations.
2 CLECs who signed the TRO amendment before receiving the password to the
3 secret PCAT may have been surprised to discover this. Eschelon was certainly
4 surprised to discover it once the terms were posted on the website. The terms of
5 the secret PCAT affect the UNE ordered under this ICA. As a result, under
6 Qwest's proposal, the time period for service delivery applicable to the entire
7 commingled EEL would be longer than ordering the same circuit as a special
8 access facility, thus diminishing the usefulness of the commingled arrangement.

9 Further problems arise if either one of the orders goes held because of a lack of
10 available facilities. Eschelon would end up paying for a partial circuit, while
11 waiting for the held order to clear. In addition, the overall lengthened interval
12 means that Eschelon is not able to serve its end-user customer in a timely manner.
13 From a provisioning standpoint, this makes Commingled Arrangements inferior to
14 Point-To-Point EELs or Special Access, because the combined provisioning
15 interval is longer as a result of Qwest's requirement of consecutive ordering.
16 Eschelon's proposal is reasonable because it applies the longer of the two
17 intervals for the individual components to the Commingled Arrangement.

18

⁹⁹ See Qwest PCAT, <http://www.qwest.com/wholesale/pcat/trroeel.html>.

1 *Issue No. 9-59 (alternate): ICA Sections 9.23.4.7 and subparts Ordering,*
2 *Billing, and Circuit ID for Commingled Arrangements– CIRCUIT ID -*
3 *(Alternate proposal to 9.23.4.5.4)*

4 **Q. WHAT IS THE SPECIFIC BUSINESS NEED SURROUNDING**
5 **ESCHELON’S ALTERNATE PROPOSAL FOR ORDERING, BILLING**
6 **AND CIRCUIT ID FOR COMMINGLED ARRANGEMENTS -- CIRCUIT**
7 **ID?**

8 A. Eschelon supports language for ICA Section 9.23.4.5.4 as specified in Issue No.
9 9-58 and 9-58(a). However, to the extent the Commission adopts Qwest’s
10 proposed language for ICA Section 9.23.4.5.4, Eschelon proposes alternate
11 language in 9.23.4.7 relating to repair of a commingled EEL. This language is
12 necessary because Qwest does not propose repair language for the UNE
13 component of commingled EELs and Qwest proposes deletion of Eschelon’s
14 language.

15 Currently, for UNE EELs, CLEC opens a trouble report and Qwest assigns a
16 trouble ticket number.¹⁰⁰ When CLEC opens the ticket, the clock starts running
17 under the PIDs for mean time to repair.¹⁰¹ For Commingled EELs, however,
18 Qwest is unilaterally requiring CLECs to use a different process that adds delay
19 for CLEC customers and protects Qwest from making PID payments as a result of
20 this delay.

¹⁰⁰ See ICA Section 12.1.3.3.1.1.

¹⁰¹ See ICA Exhibit B (MR-5).

1 Like the consecutive placement of orders discussed in connection with intervals in
2 ICA Section 9.23.4.4.3.1 (Issue No. 9-58(d)), Qwest's repair process for
3 Commingled EELs is also a consecutive process, with Qwest requiring that the
4 CLEC isolate the trouble in the special access circuit first. That is, when a CLEC
5 customer served by a commingled EEL experiences a service affecting problem,
6 Qwest requires the CLEC to first submit an Assist Ticket (AT) on the special
7 access portion of the EEL, even though the trouble may be on the loop portion of
8 the circuit.¹⁰² An Assist Ticket is not measured under the PID process, and
9 therefore does not start the clock running under the PIDs for mean time to
10 repair.¹⁰³ Only if Qwest does not find trouble on the special access portion of the
11 EEL will Qwest contact the CLEC and ask the CLEC to open a repair ticket on
12 the loop portion of the EEL.

13 The customer is out of service the entire time and does not know or care whether
14 the trouble is in one circuit or the other. The customer just wants it repaired. This
15 process will certainly delay repair time for the customer's service when the

¹⁰² See Qwest PCAT, TRRO Commingling UNE comb (UNE-C) V2.0
<http://www.qwest.com/wholesale/clecs/trrocommingunec.html> . Qwest's process on its website states:
"Once trouble has been isolated to Qwest's network, the CLEC will open an assist ticket (AT) on the
PLT/SA circuit and will also provide the UNE circuit ID. If no trouble is found on the PLT/SA circuit
and the problem is isolated to the UNE circuit, Qwest will contact the CLEC and request the CLEC to
open a customer report (CR) on the UNE circuit."

¹⁰³ "Assist Ticket" is not found in Qwest's PID. See Service Performance Indicator Definitions (PID)
http://www.qwest.com/wholesale/downloads/2005/050331/PIDVersion8_1.doc.

1 trouble is in the loop, but that additional delay will not affect Qwest's PID
2 performance under the ICA.¹⁰⁴

3 **Q. COULD ESCHELON OPEN TROUBLE TICKETS ON BOTH**
4 **COMPONENTES OF THE COMMINGLED EEL SIMULTANEOUSLY?**

5 A. If Eschelon defies Qwest's requirement to open an AT on the special access
6 portion of the EEL and instead opens trouble tickets on both circuits (UNE and
7 non-UNE), Eschelon increases the likelihood of incurring additional charges.
8 Finding trouble on both circuits of a commingled EEL at the same time is likely
9 rare. Much more likely is that the trouble is on one circuit or the other, but the
10 parties do not know which one. If CLEC simultaneously opens a ticket on both
11 circuits (assuming Qwest accepts them) to avoid delay, Qwest will code one ticket
12 as no trouble found (NTF) in every case, because the trouble will likely be on
13 only one of the two circuits. Qwest charges the CLEC maintenance of service
14 charges on tickets that Qwest codes as NTF. The end result is that Eschelon
15 would have to do more work to open and track more tickets, while paying Qwest
16 more charges, for trouble that is found to be a Qwest's network.

17 **Q. HOW DOES ESCHELON'S PROPOSED LANGUAGE SOLVE THIS**
18 **ISSUE?**

19 A. Eschelon's proposed language makes clear that when Eschelon reports trouble on
20 a commingled EEL, Eschelon can simultaneously submit multiple circuit IDs on a

¹⁰⁴ See ICA Exhibits B & K.

1 single trouble report; if necessary, Qwest will facilitate in identifying the multiple
2 circuit IDs for the commingled EEL; and Qwest will charge Eschelon a “no
3 trouble found” charge, only in cases where the trouble is not on either component
4 of the commingled arrangement.

5 **Q. PLEASE SUMMARIZE THESE ISSUES.**

6 A. Commingled EELs should be a useful and meaningful alternative to UNE EELs.
7 Because a Commingled EEL is functionally equivalent to a UNE EEL, a
8 Commingled EEL should be put together (ordering, tracking, repair and billing) in
9 a manner similar to a UNE EEL. Eschelon’s language accomplishes this task,
10 while Qwest’s language allows Qwest to diminish the usefulness of a commingled
11 EEL by delaying provisioning and repair. In addition, Qwest’s language allows
12 Qwest to provide bills for the components of the commingled EEL that are not
13 related in any way and thus extremely difficult to review and verify. Eschelon’s
14 language should be adopted for these issues.

15

16 **SUBJECT MATTER NO. 28. MICRODUCT RATE**

17 **Issue No. 10-63: ICA Section 10.8.2.29**

18 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO THE**
19 **MICRODUCT RATE.**

20 A. Qwest provides CLECs access to available ducts/conduits for the purpose of
21 placing telecommunications facilities. Duct/conduit are leased for copper

1 facilities only, while an innerduct is leased for the purpose of placing fiber.
2 CLECs can place innerducts in an empty duct/conduit. Agreed upon language in
3 10.8.1.2.3 provides: “The term microduct means a smaller version of innerduct.
4 Four (4) microducts can be placed within a one and one-fourth (1 ¼)-inch
5 innerduct.”

6 Since, four (4) microducts can be placed within one innerduct, Eschelon should
7 not be required to pay the full cost of an innerduct in cases where Eschelon uses
8 only a portion of that innerduct.

9 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THIS ISSUE?**

10 A. Eschelon proposes the following language:

11 10.8.2.29 In cities where Qwest has not deployed microduct and
12 CLEC wishes to use this technology, CLEC must lease an
13 innerduct at one-half (1/2) of the rate for innerduct in Exhibit A per
14 microduct placed within the innerduct. In these locations CLEC
15 will be required to furnish and place the microduct. At the
16 conclusion of the lease, CLEC and Qwest will make a joint
17 decision whether or not CLEC will be required to remove CLEC’s
18 microduct from the innerduct.

19

20 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

21 A. Qwest proposes to delete Eschelon’s proposed language.

22 10.8.2.29 In cities where Qwest has not deployed microduct and
23 CLEC wishes to use this technology, CLEC must lease an
24 innerduct ~~at one-half (1/2) of the rate for innerduct in Exhibit A~~
25 ~~per microduct placed within the innerduct.~~ In these locations
26 CLEC will be required to furnish and place the microduct. At the

1 conclusion of the lease, CLEC and Qwest will make a joint
2 decision whether or not CLEC will be required to remove CLEC's
3 microduct from the innerduct.
4

5 **Q. WHY IS ESCHELON'S LANGUAGE NECESSARY?**

6 A. In order for a CLEC to place its own microduct, there must be space available in
7 the innerduct. This means that Qwest has spare capacity that is not being used.
8 Qwest's proposal to charge for the entire innerduct amounts to over recovery.
9 Even though the capacity of an innerduct is equivalent to four (4) microducts,
10 Eschelon proposes that when Eschelon places microduct inside an innerduct,
11 Eschelon pay half of the cost of the innerduct. This amounts to a 50% capacity
12 factor.

13 CLECs have the option of placing their own microduct or leasing microduct from
14 Qwest. In Qwest's microduct cost study, Qwest allocates some of the cost of the
15 innerduct to the microduct cost. Qwest uses a 50% capacity factor in its
16 microduct cost study. Eschelon proposes this same allocation be used when
17 assigning innerduct cost to CLECs placing their own microduct. The table below
18 is extracted from Qwest's Microduct Cost Study Summary in Minnesota.¹⁰⁵ The
19 table shows that Qwest calculates microduct cost as follows: Innerduct Rate * Sharing
20 Assumption + Incremental Microduct. The sharing assumption (0.5) in this study shows
21 that when pricing microduct, Qwest allocates only half of the innerduct cost to microduct.

¹⁰⁵ This table comes from a Qwest cost study in a Minnesota UNE Docket AM-06-713. Qwest did not

Microduct Cost Study Results Summary					
Annual Attachment Rates on a per Linear Foot Basis					
	Cost Study Results				
	Existing Structure				
	Innerduct	Sharing	Existing	Incremental	
State	Rate	Assumption	Structure	Microduct *	Total
	(a)	(b)	(c) = a*b	(d)	(e) = c+d
	Note 1			Note 2	
Minnesota	\$0.1599	0.5	\$0.0800	\$0.2359	\$0.3159
Note 1: The Rate for Innerduct is shown under tab "FCC Conduit Study"					
Note 2: The Incremental rate for microduct is shown under file MN_9338_Microduct Occupancy_1					

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2 Qwest should not be allowed to assign all of the innerduct cost to CLECs placing
 3 their own microduct, while assigning only half of the innerduct costs to CLECs
 4 leasing microduct from Qwest. Under Qwest’s proposal if Eschelon placed four
 5 microducts in a single innerduct, Eschelon would be required to compensate
 6 Qwest for the cost of four innerducts even though only a single innerduct is being
 7 used.

provide a cost study specific to Washington. However, the sharing assumption in the Minnesota study is

1 **Q. PLEASE SUMMARIZE THIS ISSUE.**

2 A. When Qwest leases microduct to a CLEC, Qwest assigns half of the cost of the
3 innerduct in which the microduct is placed. The same application of innerduct
4 cost should apply in cases where the CLEC places its own microduct. Eschelon's
5 language creates consistency in the application of innerduct costs and should
6 therefore be adopted.

7

8 **SUBJECT MATTER NO. 44. RATES FOR SERVICES**

9 *Issues 22-88, 22-88(a) and 22-88(b): ICA Sections 22.1.1 and 22.4.1.1, and*
10 *Exhibit A, Section 7.11.*

11 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
12 **RATES FOR SERVICES REFLECTED IN ISSUES NOS. 22-88, 22-88(A)**
13 **AND 22-88(B).**

14 A. Eschelon needs the same certainty and clarity regarding the rates that Eschelon
15 charges Qwest as Qwest desires regarding the rates Qwest charges Eschelon.
16 Although the majority of rates in the ICA refer to Qwest's charges to Eschelon for
17 services and facilities, some of the rates apply to Eschelon's charges to Qwest.
18 Therefore, the ICA and its Exhibit A should not inaccurately confine rates to
19 "Qwest rates" or misleadingly refer solely to "Qwest" tariffs, as proposed by
20 Qwest. Eschelon and Qwest have agreed that Eschelon will charge Qwest in

consistent with Qwest's sharing assumption for microduct in other states.

1 certain instances; keeping the language in the ICA general as “rates,” rather than
2 “Qwest’s rates” avoids contradictions and confusions.

3 Issue 22-88 deals with the general references to rates in Exhibit A, while Issue 22-
4 88(a) deals with a specific line item in Exhibit A describing rates for IntraLATA
5 toll traffic. Issue 22-88(b) concerns the right of each company to request a cost
6 proceeding at the Commission to establish a rate in replacement of an interim rate.

7 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THESE ISSUES?**

8 A. Eschelon proposes language modifications to make clear that Eschelon has the
9 same right to charge for certain rates and services under the terms of the ICA as
10 Qwest does. Eschelon also proposes eliminating language in Exhibit A that
11 contradicts the parties’ agreement that they will mutually exchange, and
12 compensate for intraLATA toll traffic. In addition, Eschelon proposes to spell out
13 in the contract that each company has a right to request a cost proceeding at the
14 Commission to establish a permanent rate in replacement of an interim rate.
15 Eschelon proposes the following language modifications for Issues 22-88, 22-
16 88(a) and 22-88(b):

17 **Issue 22-88:**

18 22.1.1 The rates in Exhibit A apply to the services provided by
19 ~~Qwest to CLEC~~ pursuant to this Agreement.

20 **Issue 22-88(a):**

21 Exhibit A, Section 7.11
22 ~~Qwest’s~~ Washington Access Services Tariff

23 **Issue 22-88(b):**

1 22.4.1.3 Nothing in this Agreement shall waive any right of either
2 Party to request a cost proceeding at the Commission to establish a
3 Commission-approved rate to replace an Interim Rate.
4

5 **Q. WHAT IS QWEST’S PROPOSAL ON THESE ISSUES?**

6 A. Qwest opposes modifications to these Sections. Qwest recommends including the
7 language in Section 22.1.1 that would confine the scope of the rates in Exhibit A
8 specifically to those that apply to services provided *by Qwest to Eschelon* (thus in
9 effect excluding agreed-upon Eschelon rates from Exhibit A). Similarly, Qwest’s
10 proposal for Exhibit A, Section 7.11 is to confine the source of access charges for
11 the agreed-upon mutual exchange of intraLATA toll traffic to Qwest’s, and not
12 Eschelon’s, access tariff. In addition, Qwest opposes including in the contract the
13 provision regarding each company’s right to request a cost proceeding to replace
14 an interim rate. Qwest proposes the following language modifications:

15 **Issue 22-88:**

16 22.1.1 The rates in Exhibit A apply to the services provided by
17 Qwest to CLEC pursuant to this Agreement.

18 **Issue 22-88(a):**

19 Exhibit A, Section 7.11
20 Qwest’s Washington Access Services Tariff

21 **Issue 22-88(b):**

22 ~~22.4.1.3 Nothing in this Agreement shall waive any right of either~~
23 ~~Party to request a cost proceeding at the Commission to establish a~~
24 ~~Commission-approved rate to replace an Interim Rate~~ Intentionally
25 Left Blank.

26

1 **Q. REGARDING ISSUE 22-88 (THE FIRST OF THE THREE ISSUES),**
2 **PLEASE EXPLAIN ESCHELON’S POSITION.**

3 A. Eschelon proposes striking the phrase “by Qwest to CLEC” because it contradicts
4 the fact that Exhibit A also includes rates for services provided by Eschelon to
5 Qwest.¹⁰⁶ The contract language makes numerous references to rates charged by
6 CLECs, or by such nonspecific terms as “the originating carrier,” which are meant
7 to be equally applicable to Eschelon or Qwest. These contract references
8 furthermore state that these rates may be contained in Exhibit A. For example,
9 section 22.1.3 contains the following agreed-upon language:

10 22.1.3 Reciprocal Charges: See Section 7.3 regarding bill and
11 keep for reciprocal compensation. *To the extent that CLEC*
12 *provides services to Qwest, other than bill and keep for reciprocal*
13 *compensation, or services provided pursuant to this Agreement at*
14 *the rate in Exhibit A, CLEC may apply its tariffed rates as*
15 *provided in Section 22.1.3.1.*¹⁰⁷

16
17 Below is a partial list of citations from the agreed-upon portions of the contract
18 that make references to charges that are assessed by Eschelon or by either
19 Eschelon or Qwest, and are based on Exhibit A rates and assumptions (emphasis
20 added):

21 **Interconnection**

22 **7.3.3 Trunk Non-recurring charges**

¹⁰⁶ See, e.g., Sections 7.3.7.1 and 7.3.7.2 (charges for local, ISP-bound and intraLATA toll transit traffic);
9.2.5.2 and 9.2.5.2.1 (trouble isolation); and 10.2.5.5.4 and 10.2.5.5.5 (Qwest Requested LNP Managed
Cuts).

¹⁰⁷ Emphasis added.

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7.3.3.1 *Installation non-recurring charges may be assessed by the provider for each Interconnection trunk ordered at the rates specified in Exhibit A, or the CLEC's Tariff when the rates in the aggregate are not greater than the amount in Exhibit A.*

7.3.3.2 *Non-recurring charges for rearrangement may be assessed by the provider for each Interconnection trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.*

7.3.7 Transit Traffic

The following rates will apply:

7.3.7.1 *Local Transit and ISP-bound Transit: The applicable Interconnection tandem switching and tandem transmission rates at the assumed mileage contained in Exhibit A of this Agreement, apply to the originating Party. (See Section 7.3.1.1.2) The assumed mileage will be modified to reflect actual mileage, where the mileage can be measured, based on negotiations between the Parties.*

7.3.7.2 *IntraLATA Toll Transit: The applicable tariffed Switched Access Tandem switching and tandem transmission rates apply to the originating CLEC or LEC. The assumed mileage contained in Exhibit A of this Agreement shall apply.*

7.6 Transit Records

7.6.3 *If the non-transit provider requests records pursuant to Section 7.6.1 or 7.6.2, the Parties will charge the same rate for Category 11-01-XX records sent in an EMI mechanized format. These records are used to provide information necessary for each Party to bill the Originating Carrier. The charge listed in Exhibit A of this Agreement is applicable to each transit record that meets the definition of a billable record.*

1 **Labor Charges for Audits**

2 **8.2.3 General Terms--Caged and Cageless Physical Collocation**

3 8.2.3.10 All equipment placed will be subject to random safety
4 audits conducted by Qwest. Qwest will not enter CLEC's caged
5 Collocation space or access CLEC's cageless Collocation
6 equipment as part of a random safety audit. These audits will
7 determine whether the equipment meets the NEBS Level 1 safety
8 standards required by this Agreement. CLEC will be notified of
9 the results of this audit. If, pursuant to the random audit, Qwest
10 does not demonstrate non-compliance, *Qwest shall pay CLEC*
11 *using the rates in Exhibit A for Additional Labor Other, for CLEC*
12 *time spent, if any, as a result of Qwest's audit...*

13

14 **Trouble Isolation**

15 9.2.5.2 When CLEC requests that Qwest perform trouble isolation
16 with CLEC, a Maintenance of Service Charge will apply when
17 Qwest dispatches a technician and the trouble is found to be on the
18 End User Customer's side of the Loop Demarcation Point. If the
19 trouble is on the End User Customer's side of the Loop
20 Demarcation Point, and CLEC authorizes Qwest to repair the
21 trouble on CLEC's behalf, Qwest will charge CLEC the
22 appropriate Additional Labor Charges and Maintenance of Service
23 Charge, if any, as set forth in Exhibit A at 9.20. No charges shall
24 apply if CLEC provides Qwest with test results indicating trouble
25 in Qwest's network and Qwest confirms that such trouble is in
26 Qwest's network. In the event that Qwest reports no trouble found
27 in its network on a trouble ticket and it is subsequently determined
28 that the reported trouble is in Qwest's network, then Qwest will
29 waive or refund to CLEC any Maintenance of Service Charges
30 assessed to CLEC for that same trouble ticket. If Qwest reported
31 no trouble found in its network but, as a result of a repeat ~~CLEC~~
32 ~~dispatch~~trouble, CLEC demonstrates that the trouble is in Qwest's
33 network, *CLEC will charge Qwest a trouble isolation charge as*
34 *described in Section 12.4.1.8.*¹⁰⁸

35

¹⁰⁸ The disputed portion of this paragraph shown as strike out and underline (Issue 12-80(c)) is quoted according to Eschelon's proposal.

1 **Local Number Portability Ordering**

2 10.2.5.5.3 Qwest will incur charges for the Qwest requested
3 Managed Cut

4 10.2.5.5.4 *Charges for Qwest requested Managed Cuts* shall
5 be based upon actual hours worked in one half (½) hour
6 increments. If the time to perform the Managed Cut is extended
7 due to CLEC error, CLEC will not charge Qwest for the additional
8 time. *Exhibit A of this Agreement contains the rates for Managed*
9 *Cuts.* Qwest understands and agrees that in the event Qwest does
10 not make payment for Qwest requested Managed Cuts, unless
11 disputed as permitted under Sections 5.4 and 21 of the Agreement,
12 CLEC may choose not to accept any new LSR requests for
13 Managed Cuts.

14

15 **Exchange of Usage Data**

16 **21.14.1. Daily Usage Files**

17 21.14.1.2 CLEC agrees to record call information in
18 accordance with this Section. Unless Qwest notifies CLEC in
19 writing that CLEC may discontinue doing so, CLEC shall provide
20 to Qwest access records. The access records provide Qwest with
21 usage by CLEC end office of originating switched access usage.
22 These records are in industry standard Category 11 Exchange
23 Message Interface (EMI) format. Category 1101 series records are
24 used to exchange detail Meet Point Billed access minutes-of-use.
25 Qwest will make accessible to CLEC through electronic means the
26 transmission method/media types available for these mechanized
27 records. *The CLEC may charge Qwest for these records in*
28 *accordance with Exhibit A.*

29

30 As is evident from these citations, the agreed-upon language of the contract
31 references Exhibit A as a basis of Eschelon-charged rates (or rates chargeable by
32 Qwest or Eschelon, dependent on the circumstances) in connection with a number

1 of topics, including reciprocal compensation, transit traffic, non-recurring charges
2 for interconnection trunks, transit and usage records, labor and trouble isolation
3 charges, and Local Number Portability managed cuts.

4 **Q. DOES INCLUSION OF ESCHELON'S PROPOSED LANGUAGE IN**
5 **SECTION 22.1.1 HELP FULFILL ESCHELON'S BUSINESS NEED FOR**
6 **CLARITY IN RATES OUTLINED ABOVE?**

7 A. Yes. Eschelon, as well as Qwest, will depend upon the ICA for certainty and
8 clarity in rates that will be charged for the term of the ICA. Elimination of the
9 words "by Qwest to CLEC" (as proposed by Eschelon) allows the general
10 sentence in Section 22.1.1 linking Exhibit A rates to the "services
11 provided...pursuant to this agreement" to apply to Eschelon as well as to Qwest.
12 For the terms and conditions under which the rates actually apply, each party
13 looks equally to the text of the ICA, allowing clarity in rates for each.¹⁰⁹ Qwest's
14 proposed addition of the qualifier "by Qwest to CLEC" in Section 22.1.1, on the
15 other hand, would destroy this framework, resulting at best in ambiguity and at
16 worst in a false conclusion that Eschelon cannot charge for services pursuant to
17 the ICA.

18 As I discussed above, various sections throughout the contract already contain the
19 agreed-upon language that references Exhibit A as a basis for certain Eschelon
20 rates. In light of these other agreed-upon provisions, Qwest's proposal for

1 Section 22.1.1 – which describes rates in Exhibit A as Qwest’s rates – is clearly
2 inaccurate and misleading. In contrast, Eschelon’s proposal provides an accurate
3 and unambiguous description of rates contained in Exhibit A.

4 **Q. REGARDING ISSUE 22-88(A) (THE SECOND OF THE THREE ISSUES),**
5 **PLEASE EXPLAIN ESCHELON’S POSITION.**

6 A. Eschelon proposes that the language in Exhibit A, Section 7.11, refer simply to
7 the Washington Access Services Tariff rather than *Qwest’s* Washington Access
8 Services Tariff. Eschelon proposal is essential to bring clarity and certainty to the
9 ICA’s treatment of charges for the exchange of intraLATA toll traffic.
10 Elimination of Qwest’s proposed qualifying reference to *Qwest’s* tariff makes the
11 language in Exhibit A consistent with the agreed-upon portions of the contract
12 that discuss the mutual exchange of intraLATA toll traffic.

13 The topic Mutual Exchange of Traffic is found in Section 7.2 of the ICA.
14 Specifically included in this section is “Exchange Access (IntraLATA Toll) traffic
15 as defined in this Agreement.” (Section 7.2.1.2.2.) Qwest and Eschelon have
16 agreed that intraLATA toll traffic will be mutually exchanged and mutually
17 compensated for under the each provider’s respective tariff, as captured in the
18 following provisions of the agreed-upon language of the contract:

19 7.3.7.2 IntraLATA Toll Transit: The applicable tariffed
20 Switched Access Tandem switching and tandem transmission rates

¹⁰⁹ Exhibit A itself simply provides rates – it does not make rates specific to Qwest, Eschelon, or either.

1 apply to the originating CLEC or LEC. The assumed mileage
2 contained in Exhibit A of this Agreement shall apply.

3 7.3.10.1 Where either Party acts as an IntraLATA Toll
4 provider, each Party shall bill the other the appropriate charges
5 pursuant to its respective Tariff or Price Lists.

6
7 Given the agreed-upon language in the ICA regarding the assessment of mutual
8 compensation for the exchange of intraLATA toll traffic, the language in Section
9 7.11 of Exhibit A – which provides the Washington Access Services Tariff as the
10 source of the intraLATA toll traffic rates – must be general: This section must list
11 the source of intraLATA toll traffic rates not only for Qwest, but also for
12 Eschelon. Eschelon’s proposal that this section read simply “Washington Access
13 Tariff,” in contrast to Qwest’s proposal to limit this language to “Qwest’s
14 Washington Access Tariff,” provides necessary clarity regarding the mutuality of
15 these charges. Both Eschelon and Qwest will resort to their respective
16 Washington access tariffs for the application of intraLATA toll rates – thus,
17 neither Eschelon’s nor Qwest’s access tariff can be excluded from reference in
18 Exhibit A.

19 Finally, the agreed-upon language at Section 7.2.2.3.3.1 regarding Qwest’s
20 payment of CLEC access charges could create confusion if read in combination
21 with Qwest’s proposal for Exhibit A, Section 7.11. Eschelon’s proposed language
22 (far from rendering Eschelon’s proposal unnecessary, as Qwest argues) provides
23 necessary clarification that each party will depend on its own Washington access

1 tariff for the application of access charges, in light of the agreed-upon language as
2 follows:

3 7.2.2.3.3.1 Notwithstanding any other provision of this
4 Agreement, in the case of Exchange Access (IntraLATA Toll)
5 traffic where Qwest is the designated IntraLATA Toll provider, or
6 where Qwest has agreed to be a presubscribed IntraLATA Toll
7 provider for other LEC end user toll Customers, Qwest will be
8 responsible to CLEC for payment of CLEC Tariff access rates for
9 traffic terminating to CLEC's network. Qwest will also be
10 responsible for traffic originating from CLEC's network for a
11 CLEC End User Customer utilizing an intraLATA Toll-free
12 service where Qwest is the provider of the intraLATA Toll-free
13 service.

14

15 This language states that when Qwest acts as a provider of the long-distance
16 intraLATA toll service, it pays access charges to the CLEC whose local network
17 it is using. Comparison of the contract language and Qwest's proposed language
18 for Exhibit A creates confusion and unnecessary ambiguity: On the one hand, the
19 contract spells out a situation in which *CLEC charges Qwest* for intraLATA toll.
20 On the other hand, under Qwest's proposal, Exhibit A would say that rates for
21 intraLATA toll traffic are to be found only in *Qwest's Access Tariff*. Qwest's
22 proposed language could lead to the mistaken conclusion that a CLEC must
23 charge access rates out of Qwest's, rather than the CLEC's own, access tariff.
24 Eschelon's proposal to make a general reference to a "Washington Access Tariff,"
25 rather than "Qwest's Access Tariff," will remove any ambiguity regarding each

1 party's use of its own Washington access tariff for its access charges, and thus
2 will reduce the likelihood of future disputes.

3 **Q. REGARDING ISSUE 22-88(B) (THE THIRD OF THE THREE ISSUES),**
4 **PLEASE EXPLAIN ESCHELON'S POSITION.**

5 A. Eschelon's proposed language preserves the right of either company to request a
6 cost case with the Commission to establish permanent rates in place of interim
7 rates. This issue is closely linked to the agreed-upon language in section 22.6.1
8 (Issue 12-90).¹¹⁰ In section 22.6.1 both companies agreed upon the process under
9 which Qwest may offer products for which the Commission has not established a
10 rate. Specifically, section 22.6.1 defined the process under which an *interim* rate
11 may be established for these products. In order to make sure that an interim rate
12 does not remain effective indefinitely, Eschelon's proposal for Issue 12-88(b)
13 clarifies that each company may request a cost case to establish *permanent* rates.
14 Note that the process for establishment of an interim rate set in section 22.6.1
15 does not necessarily imply a contested cost case and a full review by the
16 Commission. Eschelon's proposal ensures that interim rates do not remain
17 indefinitely *if* one of the companies does not agree with them. The opportunity to
18 obtain permanent Commission-approved rates is necessary to ensure that rates are
19 cost-based, just, reasonable and non-discriminatory.

20 **Q. WHAT ARGUMENTS DOES QWEST MAKE AGAINST ESCHELON'S**

1 **PROPOSAL FOR ISSUE 12-88(B)?**

2 A. Qwest’s only argument against Eschelon’s proposal is that it imposes
3 “administrative burden of maintaining uniform rate sheets for all CLECs”¹¹¹ is
4 simply misplaced. If Eschelon requests a permanent cost case, and as result of
5 this case, the Commission establishes permanent rates, these rates would apply to
6 all CLECs, not just Eschelon. Further, Qwest agreed to the language in section
7 22.6.1 that permits a situation in which the two companies may agree on a
8 negotiated rate if Qwest offers a product for which the Commission has not
9 approved a rate. The agreed-upon provision does not state that the rate negotiated
10 between Qwest and Eschelon should be the same rate as the rate negotiated
11 between Qwest and other CLECs. In other words, Qwest’s agreement to the
12 language in section 22.6.1 shows that Qwest is not really concerned about
13 administrative burden of maintaining different rate sheets for different CLECs.

14 **Q. PLEASE SUMMARIZE ISSUES 22-88, 22-88(A) AND 22-88(B) RELATING**
15 **TO RATES FOR SERVICE.**

16 A. Eschelon proposals for Issues 22-88 and 22-88(a) are consistent with the
17 numerous agreed-upon provisions of the contract – provisions that refer to Exhibit
18 A as a basis of CLEC-charged rates. Qwest’s proposal to treat Exhibit A as if
19 containing only Qwest-charged rates is inaccurate and confusing. Eschelon’s

¹¹⁰ See the citation of section 22.6.1 under Issue 22-90 below.

¹¹¹ *Qwest Petition*, ¶ 163. From the context of Qwest’s argument it appears that Qwest perceives the burden in maintaining *non*-uniform rate sheets. Note that Qwest’s position in the *Issues Matrix* simply states that

1 proposal for Issue 22-88(b) complements the already agreed-upon portions of the
2 ICA¹¹² that set a process for establishment of interim rates. Eschelon's proposal
3 for Issue 22-88(b) clarifies that each company has a right to request a cost
4 proceeding at the Commission to set permanent rates.

5

6 **SUBJECT MATTER NO. 45. UNAPPROVED RATES**

7 *Issue No. 22-90 and Subparts: ICA Section 22.6 and Exhibit A Sections*
8 *8.1.1.2; 8.8.1; 8.8.4; 8.15.2.1; 8.15.2.2; 10.7.10; 10.7.12.1; 12.3; 9.2.8; 9.23.6.5;*
9 *9.23.7.6; 9.6.12; 9.23.6.8.1; 9.23.6.8.2; 9.23.7.7.1; 9.23.7.7.2; 8.13 and Subparts.*

10 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
11 **UNAPPROVED RATES AS REFLECTED IN ISSUE 22-90 AND ITS**
12 **SUBPARTS.**

13 A. In the case that Qwest offers a product for which there is no Commission-
14 approved rate, an *interim* rate for this product needs to be established. The
15 agreed-upon portions of the contract provide that this interim rate could be a rate
16 established by the Commission, or a rate negotiated between the two companies.
17 Specifically, the agreed-upon portions of section 22.6.1 of the ICA¹¹³ state that if
18 Qwest offers a product for which the Commission has no approved rate, and the
19 two companies have not agreed on a negotiated rate, Qwest will develop a
20 TELRIC study in support of its proposed rate and submit it to the Commission for

Eschelon's proposed provision is unnecessary.

¹¹² Section 22.6.1.

¹¹³ See a citation of section 22.6.1 under Eschelon's proposed language for Issue 12-90 below.

1 review. This language follows a commission's decision in a Minnesota 271 case.
2 In the Minnesota 271 case the Minnesota Commission specified that Qwest
3 cannot charge a rate for a section 251 product for which there is no Minnesota
4 Commission-approved, cost-based rate without petitioning for Minnesota
5 Commission's approval of the rate. Specifically, the Minnesota Commission's
6 order establishing this prerequisite required Qwest to file its proposed rate and
7 cost support with the Minnesota Commission within a prescribed timeframe
8 triggered by the effective date of the ICA or the offering of the rate.¹¹⁴

9 The agreed-upon portions of section 22.6.1 of the ICA ensure that Qwest cannot
10 extend a period by which it imposes unapproved rates by not filing cost support
11 with the Commission and requesting approval of the rates. The agreed-upon
12 language specifies that, unless the two companies agreed on a negotiated rate,
13 Qwest will file its proposed rate and the supporting cost study with the
14 Commission. Eschelon needs to know about Qwest's filings that concern rates
15 for UNEs offered under section 251. Notice to Eschelon of the filing will allow
16 Eschelon the opportunity to review Qwest's proposed rates and, if necessary, the
17 supporting cost studies. This basic information is necessary in order for Eschelon

¹¹⁴ October 2, 2002 Order in MN PUC Docket CI-01-1375 ("MN 271 Cost" Docket). Specifically, "Summary of the Commission's findings and conclusions" contains the following provisions on pp. A-6 and A-7: "**Price Under Development:** Qwest shall obtain Commission approval before charging for a UNE or process that it has previously offered without charge. Qwest may negotiate an interim price for a UNE and service not previously offered in Minnesota provided that Qwest file a permanent price, and related cost support, with the Commission within 60 days of offering the UNE or service. ALJ Report p. 64.**New UNE Price:** When offering a new UNE, Qwest shall file a cost-based price, together with an adequate description of the UNE's application, for Commission review within 60 days of offering. Qwest

1 to make a decision on whether to intervene in the case, and also to better forecast
2 expenses associated with purchasing Qwest's products. The ICA must include
3 language guaranteeing Eschelon the notice necessary to make these decisions
4 regarding essential UNE products.

5 With regards to rates negotiated between Qwest and Eschelon, Eschelon needs to
6 make sure that Qwest's proposed rates are cost-based, just, reasonable and non-
7 discriminatory.

8 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUE 22-90?**

9 A. For Issue 22-90, Eschelon proposes that in the event Qwest files with the
10 Commission for the interim, previously unapproved rate, Qwest would provide a
11 notice of such filing and the proposed rate to Eschelon, and if Eschelon requests,
12 the cost support information. For Issues 12-90 (a) through (f), Eschelon proposes
13 interim rates for specific Qwest's products that are closer to the "cost-based, just,
14 reasonable and non-discriminatory" standard than the interim rates proposed by
15 Qwest. This proposal is presented and discussed in detail below. Note that as
16 explained below, Eschelon's proposal does not mean that Eschelon considers its
17 proposed rates *to be* "cost-based, just, reasonable and non-discriminatory,"
18 Eschelon only offers up these rates as interim rates, until such time that the

may charge a negotiated rate immediately if part of an approved interconnection agreement (ICA),
provided the ICA is filed for Commission review within 60 days."

1 Commission reviews and sets appropriate rates. Eschelon proposes the following
2 language modification for section 22.6.1:

3 22.6 Unapproved Rates

4 22.6.1 If Qwest offers a Section 251 product or service for which
5 a price/rate has not been approved by the Commission in a
6 TELRIC Cost Docket (“Unapproved rate”), Qwest shall develop a
7 TELRIC cost-based rate and submit that rate and related cost
8 support to the Commission for review within sixty (60) Days of
9 the later of (1) the Effective Date of this Agreement, or (2) Qwest
10 offering the rate to CLEC, unless the Parties agree in writing upon
11 a negotiated rate. Qwest will provide notice to CLEC of such
12 filing and the proposed rate and, upon request, will provide a copy
13 of the related cost support to CLEC. If the Parties do not agree
14 upon a negotiated rate and the Commission does not establish an
15 Interim Rate, CLEC may order, and Qwest shall provision, such
16 product or service using such Qwest proposed rate (including
17 during the aforementioned 60-Day period) until the Commission
18 orders a rate. In such cases, the Qwest proposed rate shall be an
19 Interim Rate under this Agreement.

20

21 **Q. WHAT IS QWEST’S PROPOSAL REGARDING ISSUE 12-90?**

22 A. Qwest disagrees with Eschelon’s proposed language modification and does not
23 offer an alternative language. Qwest’s Petition for Arbitration claims that
24 Eschelon’s proposal is a “procedural hurdle” that is unnecessary because
25 Eschelon can obtain these filings by submitting a request to the Commission to be
26 served with the Commission’s notices.¹¹⁵ Qwest does not want to be “burdened”
27 with serving Eschelon notices of *Qwest’s* filings for rates; instead, Qwest

¹¹⁵ *Qwest’s Petition*, ¶ 165.

1 proposes to *burden the Commission* with serving Eschelon notices of Qwest's
2 filings.

3 **Q. PLEASE EXPLAIN WHY ESCHELON'S PROPOSAL IN ISSUE 12-90 IS**
4 **A REASONABLE RESPONSE TO ESCHELON'S BUSINESS NEED FOR**
5 **NOTICE OF A QWEST RATE FILING.**

6 A. Eschelon's proposal to require Qwest to provide it with notice of a Section 251
7 rate filing and the proposed rate, as well as (if requested) the supporting cost
8 study, is reasonable because it does not impose any material burden on Qwest. If
9 Qwest is already making a filing with the Commission, it does not take much
10 effort to copy CLECs on the filing notice, especially if the copy is sent via an e-
11 mail. Currently Qwest sends CLECs various Customer Notification Letters,¹¹⁶
12 some of which announce proposed tariff rate changes.¹¹⁷ During my work at
13 AT&T's Local Services and Access Management group, we used these Qwest
14 notices to monitor Qwest's proposed access rate changes and to make decisions
15 about participation in the commissions' proceedings reviewing these proposed
16 rate changes. In essence, Eschelon's proposal is asking that similar notifications
17 be provided regarding the proposed changes to section 251 rates. Similarly, it
18 does not take much effort to send an already prepared and filed cost study to a
19 CLEC that requests this study.

¹¹⁶ See Qwest's Customer Notification Letter Archive available at
<http://www.qwest.com/wholesale/notices/cnla/1,1202,search,00.html>.

¹¹⁷ See for example,

1 Note that Eschelon would likely receive notice of a section 251 rate filing later
2 officially – by intervening in the case. Without access to the rate information at
3 the time of Qwest’s filing, however, Eschelon is trapped in a Catch-22: It must
4 intervene in the case in order to see the cost filing, but it needs the cost filing to
5 decide whether or not to intervene. Eschelon may determine that it does not wish
6 to intervene in the end, but in the meantime it has expended the money and
7 resources required for intervention.

8 Even if information about Qwest’s cost filings made its way to CLECs’ attention
9 through informal dissemination by industry sources, the lack of a “mandatory”
10 notice of filing *at the time of the petition for rate approval* is very likely to delay
11 the moment when Eschelon (and other CLECs) would learn about the filing and
12 receive the cost studies. Since most rate cases are decided in contested case
13 proceedings, Eschelon would have less time to review the studies before the filing
14 dates for testimony. A rate case without timely and prepared intervenor
15 participation is greatly compromised.

16 **Q. YOU MENTIONED ABOVE THAT JUST BECAUSE ESCHELON**
17 **PROPOSES INTERIM RATES FOR ISSUES 12-90(A) THROUGH (F), IT**
18 **DOES NOT MEAN THAT ESCHELON CONSIDERS THESE PROPOSED**
19 **RATES AS COST-BASED, JUST, REASONABLE AND NON-**

<http://www.qwest.com/wholesale/cnla/uploads/TARI%2E12%2E23%2E04%2EA%2E001280%2ENebra%5Fswitched%5FAccess%5FRates%5FIncr%2Edoc>.

1 **DISCRIMINATORY. PLEASE ELABORATE ON THIS POINT.**

2 A. First, it is important to note that if rates and terms for these products are not in the
3 ICA, Qwest would refuse to provide Eschelon products associated with these
4 rates. In other words, Eschelon needs to have interim rates in its ICA. In essence,
5 Qwest is giving Eschelon a “take it or leave it” ultimatum: Even when faced with
6 grossly unjust and unreasonable rate proposals, Eschelon cannot simply cease
7 negotiations on these rates because its business depends on these products.

8 Second, Eschelon proposed these rates as part of negotiations when faced with
9 limited information and limited opportunity to analyze these rates and Qwest’s
10 cost studies (if any) that support some of Qwest’s proposed rates. (Note that
11 Qwest provided cost studies only for *some* of its proposed rates). Eschelon’s
12 proposal for these interim rates is made in conjunction with its proposal for Issue
13 12-88(b), which allows Eschelon to request a cost case with the Commission in
14 order to replace interim rates with permanent rates. Only in a contested
15 Commission’s cost case will Eschelon have an adequate opportunity to fully
16 review Qwest’s cost studies for the proposed rate elements.

17 Third, another important point concerns other Commission unapproved rates –
18 rates that are *not* subject to this arbitration dispute: Although Eschelon accepted a
19 large number of Qwest-proposed rates, Eschelon’s agreement to these interim
20 rates in the contract does not mean that Eschelon considers these rates to be cost-
21 based, just, reasonable and non-discriminatory. Instead, Eschelon focused on a

1 limited number of rates more likely to be of an immediate need to the business.
2 For example, Eschelon may not order many of these products very often. As with
3 the disputed interim rates that constitute Issues 12-90(a) through (g), the
4 Eschelon's acceptance of Qwest's proposed interim rates is made in conjunction
5 with its proposal for Issue 12-88(b), which allows Eschelon to request a cost case
6 with the Commission in order to replace interim rates with permanent rates.

7 **Q. WHAT RATES IS ESCHELON PROPOSING FOR ISSUES 22-90(A)**
8 **THROUGH (F)?**

9 A. The following table summarizes Eschelon's, as well as Qwest's, proposal for each
10 of the disputed rate element:

Table. Eschelon's and Qwest's Proposals for Issues 22-90(a) through 22-90(f).				
Issue #	Exhibit A Section	Rate Element	Rate Proposal	
			Eschelon	Qwest
22-90(a)	8.8.1	Quote Preparation Fee (uses rate from 8.1.1.2) (NRC)	\$ 820.21	\$ 1,386.47
	8.1.1.2	Augment Quote Preparation Fee (NRC)	\$ 820.21	\$ 1,386.47
22-90(b)	8.8.4	ICDF Collocation - DS3 Circuit, per Two Legs (NRC)	\$ 329.00	\$ 1,199.14
22-90(c)	8.15.2.1	Special Site Assessment Fee (NRC)	\$ 529.00	\$ 1,058.00
	8.15.2.2	Network Systems Assessment Fee (NRC)	\$ 831.00	\$ 1,663.00
	10.7.10	Transfer of Responsibility (Access to Poles, Ducts, Conduits and Rights of Way) (NRC)	\$ 60.08	\$ 120.15
	10.7.12.1	Microduct Occupancy Fee, per Microduct, per Foot, per Year (RC)	\$ 0.2906	\$ 0.4310
	12.3	Daily Usage Record File, per Record (RC)	\$ 0.000464	\$ 0.00110
22-90(d)	9.2.8	Private Line / Special Access to Unbundled Loop Conversion (NRC)	\$ 26.94	\$ 36.86
	9.23.6.5	Private Line / Special Access to LMC Conversion (NRC)	\$ 26.94	\$ 36.86
	9.23.7.6	Private Line / Special Access to EEL Conversion (NRC)	\$ 26.94	\$ 36.86
22-90(e)	9.6.12	Private Line / Special Access to UDIT Conversion (NRC)	\$ 84.49	\$ 126.01
	9.23.6.8.1	LMC Rearrangement - DS0 (NRC)	\$ 82.88	\$ 135.13
	9.23.6.8.2	LMC Rearrangement - High Capacity (NRC)	\$ 110.02	\$ 153.38
	9.23.7.7.1	EEL Rearrangement - DS0 (NRC)	\$ 82.88	\$ 135.13
	9.23.7.7.2	EEL Rearrangement - High Capacity (NRC)	\$ 110.02	\$ 153.38
22-90(f)	8.13.1.1	Quote Preparation Fee (QPF), per Office (NRC)	\$ 441.00	\$ 840.24
	8.13.1.2.1	Less Than 60 Amps (NRC)	\$ 346.00	\$ 675.98
	8.13.1.2.2	Equal To 60 Amps (NRC)	\$ 346.00	\$ 942.94
	8.13.1.2.3	Greater Than 60 Amps (NRC)	\$ 587.00	\$ 1,179.67
	8.13.1.3	Power Off, per Feed Set, per Secondary Feed (NRC)	\$ 587.00	\$ 870.83
	8.13.1.4	Power Maintenance Charge (Reservation Charge), per Fuse Set (RC)	\$ 37.00	\$ 57.28
	8.13.2.1	Quote Preparation Fee (QPF), per Office (NRC)	\$ 441.00	\$ 840.24

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Q. PLEASE EXPLAIN THE BASIS FOR ESCHELON'S PROPOSED RATES.

A. Eschelon's proposal is based on the analysis of Qwest's proposed rates and, in cases for which Qwest provided cost studies, on the adjustments of these cost studies. Eschelon found that for approximately half of these rates Qwest did not provide a cost study. In cases where Qwest did provide a cost study, the study was often inconsistent with the inputs ordered by the Commission in prior cases.

1 The following table provides a brief summary of Eschelon’s basis for its proposed
 2 rates; a more detailed explanation is contained in Exhibit DD-6.

Table. The Basis for Eschelon's Rate Proposals for Issues 22-90(a) through 22-90(f).

Issue #	Exhibit A Section	Rate Element	Eschelon's Rate Proposal	Basis for Eschelon's Proposal
22-90(a)	8.8.1	Quote Preparation Fee (uses rate from 8.1.1.2) (NRC)	\$ 820.21	Updated Qwest's cost study with inputs based on prior WUTC decisions.
	8.1.1.2	Augment Quote Preparation Fee (NRC)	\$ 820.21	
22-90(b)	8.8.4	ICDF Collocation - DS3 Circuit, per Two Legs (NRC)	\$ 329.00	Qwest has not provided a cost study. Rate from Qwest's FCC No 1 Special Access Tariff, Section 21"Expanded Interconnection - Collocation Service," p.21-40 DS3 termination.
22-90(c)	8.15.2.1	Special Site Assessment Fee (NRC)	\$ 529.00	Qwest has not provided a cost study. Rates cut in half.
	8.15.2.2	Network Systems Assessment Fee (NRC)	\$ 831.00	
	10.7.10	Transfer of Responsibility (Access to Poles, Ducts, Conduits and Rights of Way) (NRC)	\$ 60.08	
	10.7.12.1	Microduct Occupancy Fee, per Microduct, per Foot, per Year (RC)	\$ 0.2906	Qwest has not provided WA cost study; only AZ study. Updated AZ study with WA inputs, including WUTC inputs and inputs from Qwest's WA innerduct study.
	12.3	Daily Usage Record File, per Record (RC)	\$ 0.000464	Qwest has not provided a cost study. Eschelon's proposal is an average of rates in states where they are approved by state commissions (CO, MN, UT).
22-90(d)	9.2.8	Private Line / Special Access to Unbundled Loop Conversion (NRC)	\$ 26.94	Updated Qwest's cost study with inputs based on prior WUTC decisions and Qwest's inputs from newer cost studies.
	9.23.6.5	Private Line / Special Access to LMC Conversion (NRC)	\$ 26.94	
	9.23.7.6	Private Line / Special Access to EEL Conversion (NRC)	\$ 26.94	
22-90(e)	9.6.12	Private Line / Special Access to UDIT Conversion (NRC)	\$ 84.49	Updated Qwest's cost study with inputs based on prior WUTC decisions.
	9.23.6.8.1	LMC Rearrangement - DS0 (NRC)	\$ 82.88	
	9.23.6.8.2	LMC Rearrangement - High Capacity (NRC)	\$ 110.02	
	9.23.7.7.1	EEL Rearrangement - DS0 (NRC)	\$ 82.88	
	9.23.7.7.2	EEL Rearrangement - High Capacity (NRC)	\$ 110.02	
22-90(f)	8.13.1.1	Quote Preparation Fee (QPF), per Office (NRC)	\$ 441.00	Eschelon's proposal is the same as Qwest's earlier proposal (and Qwest's negotiation template). Qwest provided a cost study late in negotiations (the study inputs are inconsistent with WUTC prior decisions.)
	8.13.1.2.1	Less Than 60 Amps (NRC)	\$ 346.00	
	8.13.1.2.2	Equal To 60 Amps (NRC)	\$ 346.00	
	8.13.1.2.3	Greater Than 60 Amps (NRC)	\$ 587.00	
	8.13.1.3	Power Off, per Feed Set, per Secondary Feed (NRC)	\$ 587.00	
	8.13.1.4	Power Maintenance Charge (Reservation Charge), per Fuse Set (RC)	\$ 37.00	
	8.13.2.1	Quote Preparation Fee (QPF), per Office (NRC)	\$ 441.00	

3
 4
 5 As seen from the table, Qwest provided a timely Washington cost study
 6 supporting its rate proposal for only 10 out of 23 rate elements. My review of

1 these studies showed that Qwest's inputs are inconsistent with the Commission's
2 ordered inputs in cost cases. For example, Qwest's studies utilize overhead
3 factors that are higher than the Commission-ordered overhead factors. In other
4 words, Qwest's cost studies represent Qwest' "wish list" for UNE rates and do not
5 incorporate forward-looking TELRIC-compliant inputs ordered by the
6 Commission. Note that Qwest-proposed rates are rarely approved as TELRIC
7 compliant without the Commission's corrections to the cost studies that support
8 these rates. Therefore, I updated Qwest's studies using the Commission-ordered
9 inputs.¹¹⁸

10 Some of Qwest's cost studies were inconsistent with each other. For example,
11 one study has dated as 2006, while another study was dated as 2000.¹¹⁹ I updated
12 older studies with newer inputs where possible. In addition, some studies were
13 based on both mechanized and manual order processing. Because Eschelon
14 orders only mechanized order processing, and because the Washington
15 Commission ordered that mechanized and manual NRCs be separated, I updated
16 the studies to include only mechanized-based rates.

17 In one case – the microduct study (Issue 22-90(c)) – Qwest provided an Arizona,
18 but not a Washington cost study. I updated the Arizona study with Washington
19 inputs and utilized Qwest's Washington innerduct study – a study that is related to

¹¹⁸ See Exhibit DD-6 for details.

¹¹⁹ For example, studies under Issue 22-90(e) were dated 2006, while the study for Issue 22-90(d) was dated as a 2000 study.

1 the microduct study and was provided by Qwest in Washington.

2 For rate elements grouped under Issue 12-90(f) Qwest provided a cost study in
3 August 2006 – *several months after* Eschelon made its rate proposal and almost
4 simultaneously with Qwest’s filing of its Petition for Arbitration. This study
5 contains inputs that are inconsistent with the Commission’s prior decisions. With
6 regard to Issue 22-90(f), it is important to note that Eschelon’s proposal represents
7 one of Qwest’s own proposals made earlier in the ICA negotiations. Further,
8 Eschelon’s proposal is also the same as the rates contained in Qwest’s negotiation
9 template¹²⁰ -- a template that Qwest offers to all CLECs.

10 In those instances where Qwest has not provided any cost studies, Eschelon’s
11 approach was to utilize rates approved in other states. Specifically, Eschelon’s
12 proposal for Daily Usage File records (Exhibit A Section 12.3) is an average of
13 rates approved by commissions in states where Eschelon does business.¹²¹ In
14 three of Qwest’s six states where Eschelon conducts business, a rate for Daily
15 Usage File records has been approved by state commissions (Colorado,
16 Minnesota and Utah). Eschelon’s proposal is equal to the average of the rates in
17 these three states. Note that Eschelon’s proposal is conservative because
18 Eschelon did not include in its calculation unapproved rates in two other states,

¹²⁰ The template dated February 28, 2006.

¹²¹ Eschelon does business in six Qwest states -- Arizona, Colorado, Minnesota, Oregon, Utah and Washington.

1 even though Qwest does not charge a rate for this product in those two states.¹²²

2 In some instances Eschelon did not have any information such as Qwest's
3 provided cost study or commission-approved rates in other states, to make a
4 specific proposal for rate element.¹²³ Note that the absence of Qwest's cost
5 studies for these rates suggests that interim rates would be more appropriately set
6 at zero. In other words, for these rates Eschelon had two starting points
7 (boundaries) for its proposed rates – Qwest's "wish list" proposal and zero. In
8 these situations Eschelon used these two boundaries to calculate an average
9 "expected" rate (effectively dividing Qwest's proposal by a factor of two).
10 Eschelon's proposal is conservative because as I explained above, the absence of
11 Qwest's cost studies supporting rates that Qwest has claimed to be TELRIC
12 would support a rate of zero until such time that Qwest provides cost support.

13 **Q. WHAT IS QWEST'S ARGUMENT AGAINST ESCHELON'S PROPOSAL**
14 **FOR ISSUES 22-90(A) THROUGH 22-90(F)?**

15 A. Qwest argues¹²⁴ that because it has agreed on the filing process for unapproved
16 rates with the Commission, interim rates should be addressed in a cost docket, and
17 not in the ICA negotiations. In essence, Qwest is stating that Eschelon must agree

¹²² Arizona and Oregon. See AZ and OR SGATs, Exhibit A section 12.3.

¹²³ See the first three rate elements under Issue 22-90(c).

¹²⁴ See *Qwest's Petition for Arbitration*, p. 58 ¶ 166 and Qwest's position for Issue A-93 and subparts in the *Issues Matrix*. Note that Qwest's position in the Issues Matrix references section 26.1 of the ICA as a provision that governs the filing process for unapproved rates. The section reference is likely to be a typo because such section does not exist. Instead, the filing process is addressed in section 22.6.1 discussed under Issue 22-90 above.

1 to any rate that Qwest proposes in negotiations, and then wait for Qwest to file
2 with the Commission for an interim rate. Clearly, this “dictatorial” position is
3 unacceptable to Eschelon. The agreed-upon language in the ICA section 21.6
4 allows the rate to be established not only as a result of a cost filing with the
5 Commission, but also in negotiations. Negotiations imply that both Qwest and
6 Eschelon will be discussing the rate, rather than Qwest unilaterally imposing a
7 rate from its “wish list.”

8 **Q. PLEASE SUMMARIZE ISSUE 22-90 AND ITS SUBPARTS.**

9 A. Eschelon proposes that when Qwest files with the Commission its proposed rates
10 and supporting cost studies for unproved rates, Qwest should notify the CLECs
11 about this filing. These notifications require minimal effort on the part of Qwest.
12 A lack of rate filing notification could eliminate the opportunity for CLECs’
13 review of Qwest’s rates and cost studies, or at least shorten the time (and thus, the
14 depth) of such review. Clearly, by ruling that all rates should pass the
15 Commission’s approval process, the Commission recognized the importance of
16 the review. Because the rates in question concern essential products and services
17 offered to CLECs, CLECs’ participation in the Commission’s review is important
18 and contributes substantially to the process.

19 Eschelon proposes a number of interim rates for products and services for which
20 Qwest’s cost support was particularly inadequate. Eschelon’s rate proposal is
21 based (where available) on its corrections to Qwest’s cost studies to include the

1 Commission-approved cost inputs. Eschelon's rate proposal, as well as
2 Eschelon's acceptance of a large number of Qwest-proposed rates, do not mean
3 that Eschelon considers these rates, which are interim rates, to be cost-based, just,
4 reasonable and non-discriminatory. As explained in Eschelon's proposed
5 language for Issue 22-88(b) discussed above, Eschelon reserves the right to
6 request a cost case with the Commission to replace interim rates with permanent
7 rates.

8

9 **SUBJECT MATTER NO. 46. INTERCONNECTION ENTRANCE FACILITY**

10 **Issue No. 24-92: Section 24.1.2.2**

11 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATING TO**
12 **INTERCONNECTION ENTRANCE FACILITY, ISSUE NO. 24-92.**

13 A. Qwest proposes language for Section 24.1.2.2 it says is necessary to put
14 restrictions on interconnection of UNEs through Entrance Facilities and Mid-Span
15 Meets. Qwest argues that without this language, Eschelon might attempt to use
16 interconnection entrance facilities and mid-span meets to obtain access to UNEs
17 or for commingling. Eschelon's objects to Qwest's language because it is
18 redundant and is best addressed in another sections of the ICA.

19 **Q. WHAT IS ESCHELON'S SPECIFIC PROPOSAL FOR SECTION 24.1.2.2?**

20 A. Eschelon proposes deleting Qwest's proposed language.

1 ~~24.1.2.2 When Qwest provides an Interconnection Entrance~~
2 ~~Facility, Interconnection Entrance Facilities may not be used for~~
3 ~~Interconnection with Unbundled Network Elements. A CLEC may~~
4 ~~not use remaining capability in an existing Mid-Span Meet POI to~~
5 ~~gain access to UNEs. Entrance Facilities and Mid-Span Meet POI~~
6 ~~are not available for Commingling. See Sections 7.1.2.1 and~~
7 ~~7.1.2.5.~~
8

9 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE?**

10 A. Qwest proposes the following language:

11 24.1.2.2 When Qwest provides an Interconnection Entrance
12 Facility, Interconnection Entrance Facilities may not be used for
13 Interconnection with Unbundled Network Elements. A CLEC may
14 not use remaining capability in an existing Mid-Span Meet POI to
15 gain access to UNEs. Entrance Facilities and Mid-Span Meet POI
16 are not available for Commingling. See Sections 7.1.2.1 and
17 7.1.2.5.
18

19 **Q. WHY DOES ESCHELON PROPOSE DELETING QWEST'S LANGUAGE**
20 **FOR SECTION 24.1.2.2?**

21 A. The issues that Qwest attempts to address in its proposed Section 24.1.2.2 are
22 more completely and more appropriately dealt with in Sections 7.1.2.1 and 7.1.2.5
23 of the ICA, which contain language that has been agreed to between the parties.

24 These sections state:

25 7.1.2.1 Interconnection Entrance Facility. An Interconnection
26 Entrance Facility obtained pursuant to this Agreement is the
27 transport between a Party's POI and the other Party's Wire Center
28 serving that POI. Interconnection may be accomplished through
29 the provision of a DS1 or DS3 Interconnection Entrance Facility.
30 When Qwest provides an Interconnection Entrance Facility, it
31 extends from the Qwest Serving Wire Center to CLEC's Switch

1 location or any Technically Feasible POI chosen by CLEC.
2 Interconnection Entrance Facilities may not extend beyond the area
3 served by the Serving Wire Center. **When Qwest provides an**
4 **Interconnection Entrance Facility, Interconnection Entrance**
5 **Facilities may not be used for Interconnection with Unbundled**
6 **Network Elements.** The rates for Interconnection Entrance
7 Facilities are provided in Exhibit A for one-way trunking
8 associated with the applicable Ancillary Services set forth in
9 Section 10. (Emphasis added).

10 ...

11 7.1.2.5 Mid-Span Meet POI. A Mid-Span Meet POI is a
12 negotiated Point of Interface, limited to the Interconnection of
13 facilities between one Party's Switch and the other Party's Switch.
14 The actual physical Point of Interface and facilities used will be
15 subject to negotiations between the Parties. Each Party will be
16 responsible for its portion of the build to the Mid-Span Meet POI.
17 **A CLEC may not use remaining capability in an existing Mid-**
18 **Span Meet POI to gain access to UNEs.** These Mid-Span Meet
19 POIs will consist of facilities used for the Provisioning of one-way
20 or two-way Extended Area Service (EAS)/Local Traffic,
21 IntraLATA Toll Traffic, and Jointly Provided Switched Access
22 Interconnection trunks, as well as miscellaneous trunks such as
23 Mass Calling Trunks, OS/DA, 911 and including any dedicated
24 DS1, DS3 transport trunk groups used to provision originating
25 CLEC traffic. (Emphasis added).
26

27 Those sections in Section 7 fully address the restrictions on interconnection of
28 UNEs through Entrance Facilities and Mid-Span Meets, consistent with the
29 FCC's ruling in the TRO. Thus, Section 24.1.2.2 is, at best, redundant and, at
30 worst, creates potential ambiguities that could give rise to future disputes. This is
31 an interconnection issue that, as a matter of overall structure of the contract, is
32 more appropriately dealt with in Section 7, which contains terms relating to

1 interconnection, rather than in Section 24, which contains terms relating to
2 commingling.

3 Including these terms in Section 7 is also more consistent with the TRO, where
4 the impairment analysis applicable to entrance facilities and interconnection
5 facilities is discussed by the FCC in the context of access to UNEs, not in the
6 portion of the order that addresses commingling.¹²⁵ The restrictions on
7 interconnection of UNEs to Entrance Facilities and Mid-Span Meets discussed by
8 the FCC in the TRO are addressed in the agreed upon language in Sections 7.1.2.1
9 and 7.1.2.5. Therefore, Qwest's language in Section 24.1.2.2 is unnecessary and
10 should be deleted.

11 **Q. PLEASE SUMMARIZE THIS ISSUE.**

12 A. Interconnection Entrance Facilities are addressed in Section 7. Qwest's proposed
13 language for Section 24.1.2.2 is redundant and potentially creates ambiguity.
14 Eschelon's proposal to deal with this issue in Section 7 of the contract should be
15 adopted.

16

¹²⁵ See TRO at ¶ 365, which states "we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic." The term "backhauling traffic" is used in the context of connecting facilities directly to end-users.

1 **SUBJECT MATTER NO. 47. REMOTE COLLOCATION – ISSUE A-94 AND A-**
 2 **94(A)**

3 *Issue Nos. A-94 and A-94(a): ICA, Exhibit A, Sections 8.6.1.3.1.1 and*
 4 *8.6.1.3.1.2*

5 **Q. PLEASE DESCRIBE THE BUSINESS NEED RELATED TO THE**
 6 **REMOTE COLLOCATION RATE DESCRIPTIONS.**

7 A. Qwest appears to be attempting to change the terms of Commission ordered rates,
 8 for Eschelon only, through the interconnection agreement exhibit A rate element
 9 descriptions. Eschelon does not want its rate element options eliminated,
 10 especially when Qwest makes these options available to other CLECs.

11 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THIS ISSUE?**

12 A. Eschelon proposes rate element descriptions and rates consistent with the SGAT
 13 Exhibit A for sections 8.6.1.3.1.1 and 8.6.1.3.1.2. Eschelon’s proposed language
 14 in Exhibit A is as follows:

15 **Issue No. A-94 and A-94(a):**

		NRC	Notes
8.6.1.3.1.1	Less Than or equal to 60 Amps, per Ampere Ordered	\$1.57	B
8.6.1.3.1.2	Greater than 60 Amps	\$3.13	<u>B</u>
NOTES:			
	B: Docket UT-003013, Part A		

16

17 **Q. WHAT IS QWEST’S PROPOSAL ON THIS ISSUE?**

1 A. Qwest proposes to eliminate 8.6.1.1.1.2, issue A-94(a), and add terms, “per
 2 Ampere Ordered” that are better handled in the ICA language to 8.6.1.3.1.1.
 3 Qwest’s proposed language in Exhibit A is as follows:

		NRC	Notes
8.6.1.3.1.1	Less Than or equal to 60 Amps, per Ampere Ordered	\$1.57	B
8.6.1.3.1.2	Greater than 60 Amps	\$3.13	B
NOTES:			
	B: Docket UT-003013, Part A		

4

5 **Q. WHY IS ESCHELON’S PROPOSAL APPROPRIATE?**

6 A. Eschelon’s proposal matches the rates currently approved by the Commission and
 7 available to other CLECs. The only difference is in section 8.6.1.3.1.1 Eschelon
 8 adds “or equal to” to the rate element name. Because there is a Commission
 9 approved rate for both less than 60 amps and greater than 60 amps, it only makes
 10 sense to clarify what rate would apply in the case of equal to 60 amps. Eschelon
 11 would also be willing to add the “or equal to” language in 8.6.1.3.1.2 instead of
 12 8.6.1.3.1.1 in order to ensure that the 60 amp option is available, if this would
 13 close the issue.

14 Qwest’s proposal is inappropriate for a number of reasons. First, Qwest wishes to
 15 add rate element description language regarding how the rate applies “per Ampere
 16 ordered” to the Eschelon Exhibit A, while this description is not contained in the
 17 SGAT. Eschelon’s concern is that Qwest may be attempting to alter the
 18 application of Commission ordered rates, simply by imposing new rate element

1 terms in the rate element descriptions in Exhibit A. Mr. Starkey address disputes
2 as they relate to power usage rate application in detail under Subject Matter No.
3 11 Power. Second, Qwest is attempting to delete a Commission approved rate
4 because Qwest does not believe there is an application for greater than 60 amps at
5 a remote collocation.¹²⁶ Qwest should not be allowed to unilaterally withdraw
6 commission approved product offerings to Eschelon simply because Qwest does
7 not wish to offer the product any longer.

8 **Q. PLEASE SUMMARIZE THIS ISSUE.**

9 A. Eschelon's proposal is consistent with the commission approved rate elements
10 currently available to all CLECs in Qwest's SGAT. Qwest should not be allowed
11 to eliminate products or alter the rate application for those products simply
12 because Qwest wishes to do so – especially when the rates are approved by the
13 commission. Therefore, Qwest's proposal should be rejected and Eschelon's
14 exhibit A language adopted.

15

16 **SUBJECT MATTER NO. 48. EEL TRANSPORT, NRC**

17 **Issue No. A-98: ICA, Exhibit A, Sections 9.23.7.8.1, 9.23.7.8.2 and 9.23.7.8.3**

18 **Q. HAS THIS ISSUE CLOSED?**

19 A. Yes. The following footnote will be added to the appropriate rates in Exhibit A to
20 clarify that there are no additional charges associated with the installation and

¹²⁶ See Qwest's comments in the issues matrix, issue A-94(a).

1 disconnection of the transport portion of the EEL.

2 The nonrecurring charges for the EEL transport element are
3 included in the EEL Loop and/or Multiplexed EEL nonrecurring
4 charges. Therefore there is no additional nonrecurring charge for
5 the EEL Transport. When an EEL transport circuit is commingled
6 with a Private Line Channel Termination circuit, the nonrecurring
7 charge for the commingled EEL will be the EEL Loop NRC.

8

9 **V. CONCLUSION**

10 **Q. WHAT ARE YOUR RECOMMENDATIONS TO THE WASHINGTON**
11 **COMMISSION?**

12 A. I recommend that the Commission adopt Eschelon's proposed Interconnection
13 Agreement language as described in this testimony.

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

15 A. Yes.