

**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 JAMES WEBBER
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 FOR THE**
3 **RECORD.**

4 A. My name is James D. Webber. My business address is: QSI Consulting, Inc.
5 4515 Barr Creek Lane, Naperville, Illinois 60564.

6 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
7 **WITH THE FIRM?**

8 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated
9 industries, econometric analysis and computer-aided modeling. I currently serve
10 as Senior Consultant.

11 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
12 **WORK EXPERIENCE.**

13 A. I earned both a Bachelor of Science degree in Economics (1990) and a Master of
14 Science degree in Economics (1993) from Illinois State University. I have
15 approximately 14 years of experience in the regulated utility industries, with the
16 last 12 years specifically focused on competitive issues within the
17 telecommunication industry.

18 Prior to accepting my current position with QSI Consulting, Inc., I was employed
19 by ATX/CoreComm as the Director of External Affairs. In that capacity, my
20 responsibilities included: management and negotiation of interconnection

1 agreements and other contracts with other telecommunications carriers;
2 management and resolution of operational impediments (including, for example,
3 the unavailability of shared transport for purposes of intraLATA toll traffic or
4 continual problems associated with failed hot cut processes) arising from
5 relationships with other carriers; management of financial disputes with other
6 carriers; design and implementation of cost minimizations initiatives; design and
7 implementation of legal and regulatory strategies; and, management of the
8 company's tariff and regulatory compliance filings. I was also involved in the
9 company's business modeling as it related to the use of Resale services, UNE-
10 Loops and UNE-P.

11 Before joining CoreComm, I was employed by AT&T from November 1997 to
12 October 2000 where I held positions within the company's Local Services and
13 Access Management organization and its Law and Government Affairs
14 organization. As a District Manager within the Local Services and Access
15 Management organization I had responsibilities over local interconnection and
16 billing assurance. Prior to that position, I had served as a District Manager – Law
17 and Government Affairs where I was responsible for implementing AT&T's
18 policy initiatives at the state level.

19 Prior to joining AT&T, I was employed (July 1996 to November 1997) as a
20 Senior Consultant with Competitive Strategies Group, Ltd. ("CSG"), a Chicago-
21 based consulting firm that specialized in competitive issues in the

1 telecommunications industry. While working for CSG, I provided expert
2 consulting services to a diverse group of clients, including telecommunications
3 carriers and financial services firms.

4 From 1994 to 1996, I was employed by the Illinois Commerce Commission
5 (“ICC”) where I served as an economic analyst and, ultimately, as manager of the
6 Telecommunications Division's Rates Section. In addition to my supervisory
7 responsibilities, I worked closely with the ICC’s engineering department to
8 review Local Exchange Carriers’ – and to a lesser extent Interexchange Carriers’
9 (“IXCs”) and Competitive Local Exchange Carriers’ -- tariffed and contractual
10 offerings as well as the supporting cost, imputation and aggregate revenue data.

11 From 1992 to 1994, I was employed by the Illinois Department of Energy and
12 Natural Resources where I was responsible for modeling electricity and natural
13 gas consumption and analyzing the potential for demand side management
14 programs to offset growth in the demand for, and consumption of, energy. In
15 addition, I was responsible for analyzing policy options regarding Illinois’
16 compliance with environmental legislation.

17 A more detailed discussion of my educational and professional experience can be
18 found in Exhibit JW-1, attached to this testimony.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

1 A. No, I have not. However, I have testified in numerous proceedings in other states,
2 as reflected in my CV provided as Exhibit JW-1 to this testimony.

3 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

4 A. This testimony was prepared on behalf of Eschelon Telecom, Inc.

5 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

6 A. My testimony is organized by subject matter number as set out in the Issues by
7 Subject Matter List.¹ Each subject matter heading may contain one or more
8 disputed issues from the interconnection agreement. I explain Eschelon's
9 business need relating to each issue, and contrast Eschelon's proposed language
10 with Qwest's language and explain why Eschelon's language is more reasonable
11 and appropriate. When citing Eschelon's and Qwest's proposed language, I use
12 strikeout/underline format to signify the differences between the two proposals.

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

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

15 Exhibit JW-1. Curriculum Vitae.

16 Exhibit JW-2. E-mail exchange between Eschelon and Qwest related to
17 Subject Matter No. 16 "Network Maintenance and Modernization."

18 Exhibit JW-3. Qwest's tariff pages related to Subject Matter No. 31
19 "Expedite Orders."

20

¹ The Issues by Subject Matter List was provided as Exhibit 1 to Eschelon's Response to Qwest's Petition for Arbitration.

1 **II. ISSUES BY SUBJECT MATTER**

2 **SUBJECT MATTER NO. 16. NETWORK MAINTENANCE AND**
3 **MODERNIZATION**

4 **Issues Nos. 9-33, 9-34, 9-35, and 9-36: ICA Sections 9.1.9 and 9.1.9.1**

5 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS REASONS FOR ITS ICA**
6 **PROPOSALS REGARDING NETWORK MAINTENANCE AND**
7 **MODERNIZATION (ISSUES 9-33, 9-34, 9-35 AND 9-36).**

8 A. Qwest has refused to provide any assurances to Eschelon that its network
9 maintenance and modernization activities – activities that the parties have agreed
10 should involve only “minor changes to transmission parameters” – will not
11 adversely affect Eschelon’s End User Customers. This issue concerns Eschelon
12 customers who have a working circuit and are up and running without any service
13 problems. Left unchecked, however, Qwest’s ability to perform network
14 maintenance and modernization activities on UNEs could potentially put
15 Eschelon’s end user customers out of service with no dial tone and no access to
16 911 emergency services. These activities may affect a single customer or many
17 customers depending on the activity being performed. This customer disruption
18 would be unexpected from the End User Customer’s perspective because the
19 problem was caused by a Qwest-initiated maintenance or modernization activity –
20 not an Eschelon-initiated or customer-initiated request. This situation could be
21 very disruptive for End User Customers, harmful to the relationship between
22 Eschelon and its End User Customers and damaging to Eschelon’s reputation as a

1 whole, through no fault of Eschelon's. This would be particularly true if the
2 Customer is left without access to 911 emergency services should an emergency
3 arise during this Qwest-caused out of service period.

4 Sometimes, however, customer disruption is unavoidable, and Eschelon is not
5 attempting to hold Qwest to a zero outage standard for maintenance and
6 modernization activities. For instance, emergency situations could occur during
7 the maintenance/modernization activity that cause End User Customers to lose
8 dial tone. It is critical that during these emergencies, Eschelon is able to receive
9 accurate and reliable information from Qwest repair center personnel so that
10 Eschelon can, in turn, inform its Customer about the problem and work with that
11 customer to resolve it. This requires that the Qwest network personnel who are
12 performing the network modernization/maintenance activity inform Qwest repair
13 personnel of the problem so that the repair personnel can provide that information
14 to Eschelon. It only complicates matters and delays resolving the customer's
15 outage problem when Eschelon calls Qwest repair personnel to find out what the
16 problem is and they either misinform Eschelon about the true cause of the
17 problem (*e.g.*, Qwest repair may erroneously claim that the problem is in
18 Eschelon's network) or they simply don't know what is going on because Qwest
19 network personnel knowledgeable about the problem have not relayed that
20 information to Qwest repair personnel.

21 **Q. ISSUES 9-33 THROUGH 9-36 ALL RELATE TO NETWORK**

1 **MAINTENANCE AND MODERNIZATION ACTIVITIES. PLEASE**
2 **SUMMARIZE THESE ISSUES.**

3 A. The ICA recognizes in Section 9.1.9 that Qwest needs to make modifications and
4 changes to the UNEs in its network from time to time in order to maintain and
5 modernize the network. Each of the disagreements under Issues 9-33, 9-34, 9-35
6 and 9-36 relate to an aspect of the network maintenance and modernization
7 activities of Qwest:

8 • Issue 9-33 “Effect on End User Customers”: this disagreement relates to
9 whether and to what extent Qwest’s maintenance and modernization
10 activities can affect service to end user customers.

11 • Issue 9-34 “Location at Which Changes Occur”: this disagreement relates
12 to what information Qwest should provide to Eschelon in its notice of
13 network changes.

14 • Issue 9-35 “Emergencies”: this disagreement relates to the manner in
15 which information will be communicated from Qwest to Eschelon in the
16 case of an emergency situation in which an Eschelon End User
17 Customer’s service is disrupted so that Eschelon can assist its Customers
18 in resolving the problem.

- 1 • Issue 9-36 “Placement/Charges”: this disagreement relates to whether the
2 placement of “emergencies” in subsection 9.1.9.1 (as opposed to 9.1.9)
3 determines whether Qwest can charge Eschelon for emergency dispatches.

4 **Q. WHAT IS ESCHELON’S PROPOSAL TO ADDRESS THESE ISSUES (9-**
5 **33, 9-34, 9-35, AND 9-36)?**

6 A. Eschelon proposes the following language:

7 **Issue 9-33**

8 9.1.9..... Qwest may make necessary modifications and changes to
9 the UNEs in its network on an as needed basis. Such changes may
10 result in minor changes to transmission parameters but will not
11 adversely affect service to any End User Customers. (In the event
12 of emergency, however, see Section 9.1.9.1 and,...(for retirement
13 of copper loops, see section 9.2.1.2.3).

14 **Issue 9-34**

15 9.1.9.....Such notices will contain the location(s) at which the
16 changes will occur, including if End User Customer specific, the
17 circuit identification and End User Customer address information,
18 and any other information required by applicable FCC rules. . . .

19 **Issue 9-35**

20 ~~9.1.9.....Qwest repair center personnel will provide the status on~~
21 ~~emergency maintenance or modernization activity to the extent~~
22 ~~they are aware of such status in the same manner as would be~~
23 ~~provided for Qwest’s own end users. CLEC may contact their~~
24 ~~Service Manager to request additional information so that CLEC~~
25 ~~may, for example, communicate with its End User Customer(s).~~
26 9.1.9.1 In the event of an emergency (e.g., no dial tone), Qwest
27 need not provide CLEC with advance email notification but shall
28 notify CLEC by email within three (3) business days after
29 completing the emergency maintenance or modernizing activity.
30 In such emergencies, once Qwest personnel involved in the
31 maintenance or modernization activities are aware of an
32 emergency affecting multiple End User Customers, Qwest shall
33 ensure its repair center personnel are informed of the network
34 maintenance and modernization activities issue and their status so

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

3 **Issue 9-36**

4 9.1.9.....No charges apply to dispatches described in this Section
5 9.1.9 and 9.1.9.1
6

7 Eschelon’s language for 9-33 does two things: (i) it makes clear that when Qwest
8 makes “minor changes to transmission parameters,” these “minor changes” will
9 not disrupt Eschelon’s End User Customers’ service; and (ii) points to the
10 language in the contract that spells out the steps to take should an emergency
11 occur in which Eschelon’s Customers’ service is disrupted (the emergency
12 language is addressed under Issue 9-35). Eschelon’s language for Issue 9-34
13 states that the network notices that Qwest provides to Eschelon to inform
14 Eschelon of changes Qwest will make to its network will, when customer-
15 specific, include circuit identification and customer address information.
16 Eschelon’s language for Issue 9-35 (Section 9.1.9.1) addresses emergency
17 situations, such as loss of dial tone, by making service restoration the top priority
18 (so that Qwest does not have to notify CLECs *before* restoring service) and
19 making sure that during emergencies that affect multiple End User Customers that
20 Qwest’s network personnel are properly informing its repair center personnel of
21 the network maintenance/modernization activity. Eschelon’s language for Issue
22 9-36 simply recognizes that emergency dispatches, whether they are discussed in
23 9.1.9.1 (as proposed by Eschelon) or 9.1.9 (as proposed by Qwest), will not be

1 charged to Eschelon. Each of Eschelon's proposals is consistent with FCC rules
2 and will benefit Customers.

3 **Q. WHAT IS QWEST'S PROPOSAL TO ADDRESS THESE ISSUES?**

4 A. Qwest proposes the following language:

5 **Issue 9-33**

6 9.1.9.....Such changes may result in minor changes to transmission
7 parameters ~~but will not adversely affect service to any End User~~
8 ~~Customers. (In the event of emergency, however, see Section~~
9 ~~9.1.9.1 and for retirement of copper loops, see section 9.2.1.2.3).~~

10 **Issue 9-34**

11 9.1.9.....Such notices will contain the location(s) at which the
12 changes will occur, ~~including if End User Customer specific, the~~
13 ~~circuit identification and End User Customer address information,~~
14 and any other information required by applicable FCC rules. . . .

15 **Issue 9-35**

16 9.1.9.....Qwest repair center personnel will provide the status on
17 emergency maintenance or modernization activity to the extent
18 they are aware of such status in the same manner as would be
19 provided for Qwest's own end users. CLEC may contact their
20 Service Manager to request additional information so that CLEC
21 may, for example, communicate with its End User Customer(s).

22 ~~9.1.9.1 In the event of an emergency (e.g., no dial tone), Qwest~~
23 ~~need not provide CLEC with advance email notification but shall~~
24 ~~notify CLEC by email within three (3) business days after~~
25 ~~completing the emergency maintenance or modernizing activity.~~
26 ~~In such emergencies, once Qwest personnel involved in the~~
27 ~~maintenance or modernization activities are aware of an~~
28 ~~emergency affecting multiple End User Customers, Qwest shall~~
29 ~~ensure its repair center personnel are informed of the network~~
30 ~~maintenance and modernization activities issue and their status so~~
31 ~~that CLEC may obtain information from Qwest so that CLEC may,~~
32 ~~for example, communicate with its End User Customer(s).~~

33 **Issue 9-36**

34 9.1.9.....No charges apply to dispatches described in this Section
35 9.1.9 and 9.1.9.1

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Qwest’s language for Issue 9-33 omits the language that excludes changes having an adverse effect on customers’ service from those changes that are considered to be “minor,” and omits the language regarding Section 9.1.9.1.² Qwest argues that Eschelon’s language is vague, not tied to industry standards, and would lead to future disagreements.³ For Issue 9-34, Qwest omits the language that would include circuit ID and customer address information in customer-specific affecting network change notices. Qwest contends that the information that it currently provides CLECs through its network change notifications is compliant with FCC rules and provides Eschelon with sufficient information to determine if the change will affect its End User Customers.⁴ Qwest proposes language for Issue 9-35 that states Qwest’s repair center personnel will relay information about emergency network maintenance/modernization activities if they know about it, and directs the CLEC to contact their service manager. Qwest also proposes to omit Eschelon’s Section 9.1.9.1 and address emergencies in 9.1.9. Qwest states that it provides to CLECs the same information Qwest provides to retail customers during emergencies and no more should be required.⁵ For Issue 9-36 Qwest proposes to strike the reference to 9.1.9.1. Curiously, Qwest complains that Eschelon’s reference to 9.1.9.1 is a “blanket prohibition against Qwest’s

² Qwest proposes to address emergencies in Section 9.1.9 and omit Eschelon’s proposed 9.1.9.1.
³ *Qwest Petition for Arbitration* ¶85.
⁴ *Qwest Petition for Arbitration* ¶87.
⁵ *Qwest Petition for Arbitration* ¶90.

1 recovery of the costs associated with field dispatches arising from emergencies.”⁶

2

3 **Issue 9-33: Effect on End User Customers - Section 9.1.9; Section 9.1.9.1**

4 **Q. REGARDING THE EFFECT ON END USER CUSTOMERS (FIRST OF**
5 **FOUR ISSUES), PLEASE EXPLAIN WHY THE COMMISSION SHOULD**
6 **ADOPT ESCHELON’S PROPOSAL.**

7 A. The Commission should adopt Eschelon’s proposal primarily because “minor
8 changes to transmission facilities” should not result in customer disruption. The
9 overarching purpose of Eschelon’s language is to ensure that maintenance or
10 modernization activities do not disable Eschelon’s reliable, working circuit and to
11 protect its end user customers from such service-affecting problems, while at the
12 same time allowing Qwest to perform “necessary”⁷ maintenance and
13 modernization activities as needed. Eschelon’s language does not hold Qwest to a
14 strict or extreme standard under which service will never be adversely affected.
15 In fact, Eschelon’s language specifically carves out emergencies and copper loop
16 retirement as two types of network modernization activities in which adverse
17 effects on customer service may result. In emergency situations, the End User
18 Customer’s service should not have been affected but, because something went
19 wrong during Qwest’s maintenance or modernization activities (the change did

⁶ *Qwest Petition for Arbitration* ¶93.

⁷ As shown above in Eschelon’s proposed language for Issue 9-33, a sentence preceding the disputed language states, in closed language, “Qwest may make *necessary* modifications and changes to the UNEs in its network on an as needed basis.” (emphasis added)

1 not turn out to be “minor”), the Eschelon Customer lost dial tone. Eschelon
2 proposes language under Section 9.1.9.1 that applies to restoring service under
3 these circumstances (see, Issue 9-35).

4 Qwest is taking the position that a network modification, and resulting change in
5 transmission parameters of a UNE, may be considered “minor” even if the change
6 results in a loss of service to End User Customers. A service outage is not
7 “minor,” especially from the perspective of the Customer whose working service
8 was unexpectedly disabled due, not to a request by Eschelon or the Customer, but
9 because of Qwest’s network changes.

10 **Q. AS LONG AS QWEST MAINTAINS AND MODERNIZES ITS NETWORK**
11 **IN ACCORDANCE WITH STANDARDS AND FCC RULES, SHOULDN’T**
12 **THAT BE SUFFICIENT PROTECTION AGAINST CUSTOMER**
13 **DISRUPTION?**

14 A. Not always. Eschelon, in the past, had a situation in which Qwest was claiming
15 that it met the standards regarding decibel (db)⁸ loss for DS1s, though it did not
16 provide an operational circuit to Eschelon. Specifically, the standard for db loss
17 was set at a range between 0 and -16 dbs, and despite the db loss standard *range*,
18 Qwest arbitrarily created a policy to set the db loss level at -7.5 dbs. And
19 although Qwest had set a db loss level within the standard range, it led to Qwest

⁸ A decibel is a unit of measure of signal strength, usually the relationship between a transmitted signal and a standard signal source, known as a reference. Newton’s Telecom Dictionary, 20th edition at 233.

1 turning over circuits to Eschelon that were not operational or able to provide the
2 service the end user customer requested. The point being: it is irrelevant to
3 Eschelon and its end user customer if Qwest is meeting industry standards if it
4 provides Eschelon a circuit that is not able to provide the requested service to the
5 End User Customer.

6 Eschelon's Customers rely on Eschelon's service for dial tone, and Eschelon, in
7 turn, relies on the service Qwest provides to Eschelon in order to serve its
8 Customers. Therefore, it is impossible to separate Eschelon's service needs from
9 the service needs of Eschelon's End User Customers in terms of service quality.

10 At the bottom line, both Eschelon and its Customer need a circuit to be provided
11 by Qwest that is able to provide the service requested.

12

13 **Issue 9-34: Location at Which Changes Occur - Sections 9.1.9; 9.1.9.1**

14 **Q. ESCHELON'S PROPOSAL FOR ISSUE 9-34 (SECOND OF FOUR**
15 **ISSUES) INCLUDES CIRCUIT ID AND CUSTOMER ADDRESS**
16 **INFORMATION IN THE QWEST NETWORK CHANGE NOTICE FOR**
17 **CHANGES THAT ARE CUSTOMER-SPECIFIC. WHY IS THIS**
18 **INFORMATION NEEDED?**

19 **A.** Eschelon's proposal is designed to make Qwest's end user-specific notices of
20 network changes meaningful. Circuit ID and customer address information is
21 needed for network changes that are customer specific so that Eschelon can

1 determine if a network change will affect Eschelon's End User Customers.
2 Circuit ID is the generally accepted locator within the network and the customer
3 address is the locator within the CLEC's list of customers. This information
4 identifies particular customers in the network, and with this information, Eschelon
5 can cross reference its records to determine which customers Qwest's network
6 change will affect. Eschelon can then inform and assist these customers, as
7 necessary.

8 **Q. DO THE FCC RULES ADDRESS THE INFORMATION ILECS MUST**
9 **PROVIDE ON THEIR NETWORK CHANGE NOTICES?**

10 A. Yes. In 47 CFR § 51.327, the FCC provides a list of items that a public notice of
11 network changes must include, one of which is the location at which the changes
12 will occur. The FCC described this list as "minimum" requirements. Therefore,
13 the FCC anticipated the potential for this list being supplemented – just as
14 Eschelon's proposal does.

15 **Q. ARE THERE OTHER FCC RULES THAT SUPPORT ESCHELON'S**
16 **PROPOSAL?**

17 A. Yes. The term "location" in the rule must be considered in the context of 47 CFR
18 § 51.325(a), which states that the public notice must include notice regarding any
19 network change that "will affect a competing service provider's performance or
20 ability to provide service." Unlike Qwest's proposal, Eschelon's proposal is
21 consistent with 47 CFR §51.327 *and* 47 CFR §51.325 taken together, in that it

1 provides that Qwest's customer-specific network notices will provide the location
2 of the customer for whom the CLEC's performance will be affected. Eschelon's
3 language calls for the circuit ID and customer address information, both of which
4 are necessary in this regard.⁹ Without this information, the notice provided by
5 Qwest would not achieve the intent of the FCC's notice rules.

6 **Q. ARE THERE OTHER ADVANTAGES TO ESCHELON'S PROPOSAL?**

7 A. Yes. The less information Qwest provides in its notices, the more information is
8 needed from its repair department when an emergency arises. If Qwest's notices
9 allowed the CLEC to identify specifically customers that may be affected by the
10 network activity, Eschelon would be less likely to need to contact Qwest's repair
11 department for that information, thereby streamlining the process and reducing
12 the work for both Eschelon and Qwest.

13

14 **Issue 9-35: Emergencies - Sections 9.1.9; 9.1.9.1**

15 **Q. PLEASE BRIEFLY DESCRIBE THE DISAGREEMENT BETWEEN**
16 **ESCHELON AND QWEST ON ISSUE 9-35 (THIRD OF FOUR ISSUES).**

17 A. In emergency situations, Qwest's network modification may turn out to not be
18 "minor," in which case Eschelon's End User Customers lose dial tone. Under the
19 repair process to restore dial tone for these Customers, Eschelon contacts Qwest's
20 repair department for status updates, which Eschelon then passes on to its

⁹ Circuit ID is the generally accepted locator within the network and the customer address is the locator within the CLEC's list of customers.

1 Customers. If the Qwest repair department has not made the connection between
2 the Qwest maintenance or modernization activity and Eschelon's End User
3 Customer's outage, Qwest's repair department will be unable to identify the
4 problem for Eschelon, and in turn, Eschelon will be unable to identify the
5 problem for its Customers (and therefore unable to assist these customers during
6 this outage). Eschelon and Qwest disagree as to how information on these
7 emergencies should be communicated. Eschelon's proposal simply ensures that
8 Qwest's repair center personnel are informed of these activities and their status
9 once Qwest personnel involved in the maintenance or modernization activities are
10 aware of the emergency. Qwest makes no assurances about informing its repair
11 center personnel.

12 **Q. SHOULD QWEST MAKE SURE THAT ITS NETWORK PERSONNEL**
13 **WORKING ON AN EMERGENCY ACTIVITY INFORM QWEST**
14 **REPAIR CENTER PERSONNEL?**

15 A. Yes. The only way in which Eschelon will be able to assist its End User
16 Customers during these emergencies is if it has reasonable access to information
17 from Qwest. In this way, Qwest's repair department will be informed of the
18 maintenance or modernization activities of Qwest, and will be able to identify the
19 problem for Eschelon, who can quickly inform its Customers. Eschelon's
20 language is reasonably limited to situations in which the Qwest personnel are

1 aware of the emergency, and applies only when the emergency affects multiple
2 customers.

3 **Q. ARE THERE EXAMPLES SHOWING THAT QWEST DOES NOT**
4 **SUFFICIENTLY INFORM ITS REPAIR CENTER PERSONNEL DURING**
5 **THESE TYPES OF OUTAGES?**

6 A. Yes. Eschelon experienced a problem related to Abnormal Network Condition
7 Report (ANCR) back in 2004. Qwest indicated during monthly network meetings
8 that “Qwest does not notify the repair personnel of all events because their job is
9 to work tickets.”¹⁰ Another example is when Eschelon experienced an outage of
10 one of its SS7 links Qwest provides to Eschelon in Washington. When Eschelon
11 reported this problem, Qwest indicated that this was caused by maintenance
12 activities – yet, Eschelon did not receive notification of this maintenance, nor did
13 the Qwest technician in the SS7 group to whom Eschelon spoke about the
14 problem. In this example, customers were put at considerable risk because one of
15 the SS7 links Qwest provides to Eschelon went down, thereby leaving Eschelon’s
16 switch and all calls relying on SS7 signaling without redundant SS7 connectivity.
17 Luckily, this case did not end in a catastrophe for Eschelon as it could have, but it
18 does provide an example of a very critical situation facing Eschelon about which
19 Qwest repair personnel were not even aware. These are just two examples that

¹⁰ I have provided an e-mail exchange between Eschelon and Qwest detailing this issue as Exhibit JW-2.

1 show that Qwest has no intention to routinely inform its repair personnel about
2 these emergency outages without ICA language requiring it to do so.

3 **Q. QWEST’S LANGUAGE REQUIRES QWEST TO PROVIDE STATUS OF**
4 **EMERGENCY MAINTENANCE AND MODERNIZATION ACTIVITIES**
5 **“IN THE SAME MANNER AS WOULD BE PROVIDED FOR QWEST’S**
6 **OWN END USERS.” WHY ISN’T THIS SUFFICIENT?**

7 A. Qwest’s proposal would allow Qwest to remain idle during these emergency
8 situations with respect to communicating the cause to its internal repair personnel,
9 thereby leaving Eschelon in the dark. Qwest’s logic is that if it does nothing to
10 inform its retail customers during emergencies, it can do nothing for Eschelon’s
11 End User Customers. Qwest misses the point. The disagreement is not whether
12 this goes beyond the scope of notice Qwest provides to its retail customers, but
13 whether Qwest repair center personnel have been given relevant emergency
14 notification information by Qwest network personnel involved in emergencies
15 related to maintenance and modernization activities. Customers, whether retail or
16 wholesale, are entitled to assistance from qualified and informed Qwest
17 personnel. If Qwest fails to notify its own internal repair center personnel about
18 emergencies related to maintenance and modernization activities, how can Qwest
19 repair center personnel offer qualified and informed assistance to its own
20 customers? And since Eschelon does not know what information Qwest is
21 communicating to its repair personnel or to its retail customers, Qwest could

1 either be providing its retail customers superior information or equally shoddy (or
2 no) information. Either outcome is insufficient, especially when Qwest's own
3 actions were the cause of the emergency outage. The major problem with
4 Qwest's position is shown by Qwest's refusal to simply inform its repair
5 department during these emergencies once the Qwest personnel involved in the
6 maintenance/modernization activity are aware of the problem.

7 **Q. IS ESCHELON'S PROPOSAL IN LINE WITH OTHER AGREED TO**
8 **LANGUAGE IN THE ICA?**

9 A. Yes. Section 12.4.3.11 entitled "Protective Maintenance and Repair" is as
10 follows:

11 12.4.3.11.1 Qwest will work cooperatively with CLEC to
12 develop industry-wide processes to provide as much notice as
13 possible of pending maintenance activity. Qwest shall provide
14 notice of potentially CLEC End User Customer impacting
15 maintenance activity, to the extent Qwest can determine such
16 impact, and negotiate mutually agreeable dates with CLEC in
17 substantially the same time and manner as it does for itself, its End
18 User Customers, its Affiliates, or any other party.

19 12.4.3.11.2 Qwest shall advise CLEC of non-scheduled
20 Maintenance and Repair, testing, monitoring, and surveillance
21 activity to be performed by Qwest on any Services, including, to
22 the extent Qwest can determine, any hardware, equipment,
23 software, or system providing service functionality which may
24 potentially impact CLEC and/or CLEC End User Customers.
25 Qwest shall provide the maximum advance notice of such non-
26 scheduled Maintenance and Repair and testing activity possible,
27 under the circumstances; provided, however, that Qwest shall
28 provide emergency Maintenance and Repair as promptly as
29 possible to maintain or restore service and shall advise CLEC
30 promptly of any such actions it takes.

1

2 This agreed to language (*e.g.*, “Qwest shall provide emergency Maintenance and
3 Repair as promptly as possible to maintain or restore service and shall advise
4 CLEC promptly of any such actions it takes”) is very similar to the language of
5 Eschelon’s proposal under Issue 9-35. Yet, Qwest has not explained why it
6 agreed to the language in Section 12 above, but not the language in Section 9.

7

8 **Issue 9-36: Placement/Charges - Sections 9.1.9; 9.1.9.1**

9 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE 9-36**
10 **(FOURTH OF FOUR ISSUES).**

11 A. No charges shall apply to the dispatches described in Section 9.1.9, and the closed
12 language in 9.1.9 makes this clear. This is logical because Qwest should not be
13 allowed to charge Eschelon to repair an emergency customer disruption that
14 Qwest caused when doing its own network maintenance and modernization
15 activity, especially given that the activity was not requested by Eschelon or its
16 customer. Eschelon moved some language relating to emergencies to subsection
17 9.1.9.1 and expanded upon it. Qwest now disagrees to identify the emergency
18 dispatches discussed in Eschelon’s 9.1.9.1 as those for which Qwest will not
19 assess charges on Eschelon.

20 **Q. YOU REFERRED ABOVE TO QWEST’S DISAGREEMENT ON THIS**
21 **ISSUE AS “CURIOUS.” PLEASE EXPLAIN.**

1 A. Placement of the language dealing with emergencies in 9.1.9.1 did not change the
2 reason why Qwest cannot charge Eschelon. Yet, that is precisely what Qwest's
3 proposal insinuates by omitting Section 9.1.9.1. It remains clear from the
4 language in Section 9.1.9 and 9.1.9.1 together that the only dispatches referred to
5 in these sections are Qwest-caused emergencies from Qwest doing work of its
6 own (and not some other dispatches unrelated to the Qwest-caused emergencies.)
7 Qwest should not be allowed to charge Eschelon for any related dispatch to repair
8 the service back to the condition it was in before Qwest caused the problem,
9 regardless of whether the language resides in Section 9.1.9 or Section 9.1.9.1.
10 Qwest's complaint that Eschelon's language is a "blanket prohibition"¹¹ against
11 Qwest recovering costs related to dispatch is misleading, and even if it were
12 accurate (which it is not), it would apply equally to Qwest's own language.
13 Again, Eschelon only moved the language dealing with emergencies from Section
14 9.1.9 to a separate subsection 9.1.9.1 and did not change the type of dispatch
15 involved. Therefore, Qwest is not entitled to recover costs from Eschelon in these
16 situations, as Qwest concedes in the agreed to language in Section 9.1.9 ["No
17 charges apply to dispatches described in this Section 9.1.9"].

18 **Q. PLEASE SUMMARIZE THE NETWORK MAINTENANCE AND**
19 **MODERNIZATION ISSUES (ISSUES 9-33, 9-34, 9-35, 9-36).**

20 A. Minor changes to transmission parameters should not disrupt service for End User

¹¹ *Qwest Petition for Arbitration* ¶93.

1 Customers. When Qwest performs maintenance and modernization activities on
2 UNEs – activities that are “minor” changes – Eschelon’s Customers’ service
3 should not be adversely affected, especially when there are special exceptions
4 when service may be disrupted during emergencies or copper retirement. Further,
5 when emergencies do occur and customer service is disrupted, Qwest network
6 personnel should be informing Qwest repair personnel when they are aware of the
7 problem so that Eschelon can work with its customers during these unexpected
8 service problems. For all of the reasons discussed with respect to Eschelon’s
9 business need and in these responses, the Commission should adopt Eschelon’s
10 language for Issues 9-33, 9-34, 9-35 and 9-36.

11

12 **SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**
13 **ACKNOWLEDGEMENT OF MISTAKES**

14 **Issues Nos. 12-64, 12-64(a) and 12-64(b): ICA Section 12.1.4**

15 **Q. PLEASE DESCRIBE ESCHELON’S BUSINESS NEED REGARDING**
16 **ACKNOWLEDGEMENT OF MISTAKES REFLECTED IN ISSUES NOS.**
17 **12-64, 12-64(a) AND 12-64(b).**

18 **A.** In its role as a wholesale provider to Eschelon, Qwest performs activities, such as
19 installing and repairing unbundled loops on Eschelon’s behalf. If Qwest makes
20 an error in the course of these activities that impacts Eschelon’s Customer, that
21 Customer will likely attribute fault to Eschelon, rather than Qwest. Indeed, this
22 may occur because the Customer does not fully understand the wholesale

1 relationship between its provider (Eschelon) and Qwest. Or, Qwest may even tell
2 the End User Customer that the error was caused by Eschelon despite the fact that
3 Qwest caused the service impacting error. In either situation, it is important that
4 Qwest acknowledge its mistake in a form that allows Eschelon to pass this
5 acknowledgement to the End User Customer, if necessary, so that Eschelon does
6 not lose its Customers and suffer harm to its reputation in the marketplace. The
7 Minnesota Commission recognized this need and ordered Qwest to create
8 procedures for acknowledging mistakes related to Qwest's errors that affect
9 CLEC's End User Customers.¹² Specifically, the Minnesota Commission said:

10 Within 30 days of the date of this Order, Qwest shall make a
11 compliance filing detailing its proposal for remedying the service
12 inadequacies identified in this Order. This proposal shall include
13 ... (b) procedures for promptly acknowledging and taking
14 responsibility for mistakes in processing wholesale orders; (c)
15 procedures for reducing errors in processing wholesale orders,
16 including a report on the feasibility of maximizing reliance on
17 electronic processing, with an explanation of the necessity for each
18 manual operation required for wholesale order processing.¹³
19

20 Eschelon has proposed contract provisions for its Washington ICA that
21 incorporate these procedures. Eschelon's need to protect against harm to its
22 business and its reputation is as great in Washington as it is in Minnesota; the
23 Washington Commission should therefore consider and adopt the reasonable
24 measures required by the Minnesota Commission.

¹² See MN Docket No. P-421/C-03-616.

¹³ Order Finding Service Inadequate and Requiring Compliance Filing, *In the Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, MN PUC Docket No. P-421/C-03-616. July 30, 2003, p. 9 ["MN 616 Order"]

1 **Q. BRIEFLY DESCRIBE THE FACTS IN THE CASE THAT LED TO A**
2 **MINNESOTA COMMISSION DECISION REQUIRING QWEST'S**
3 **ACKNOWLEDGEMENT OF MISTAKES.**

4 A. A large business End User Customer selected Eschelon as its carrier of choice,¹⁴
5 and Eschelon initiated the conversion process. Almost two weeks before the
6 requested due date (i.e. the date Eschelon requested that Qwest effectuate the
7 conversion), many of the Customer's telephone numbers went out of service.
8 Eschelon later learned that a Qwest employee made an error by typing an
9 incorrect due date within its internal service order associated with this conversion
10 – which error brought the customer's service down two weeks earlier than the
11 conversion date. Naturally, the End User Customer was upset. Moreover, Qwest
12 worsened the situation by actually telling Eschelon's Customer that the outage
13 was Eschelon's fault. The End User Customer was so upset about the outage that
14 the Customer asked Eschelon to cancel the order and stop the Customer's
15 conversion to Eschelon. Qwest was successful, therefore, in preventing a
16 Customer from switching to Eschelon.

17 The situation was further aggravated by the fact that when Eschelon submitted its
18 request to cancel the wholesale orders associated with Customer's conversion, as
19 the Customer had requested, Qwest rejected Eschelon's request to cancel the

¹⁴ The facts described are based on the information contained in the *MN 616 Order*.

1 order.¹⁵ After Eschelon's escalation, the order was eventually cancelled. Further,
2 Eschelon learned that Qwest's *Wholesale* group alerted Qwest's *Retail* group of
3 the situation with this End User Customer (an outage caused by Qwest's
4 Wholesale group) so that Qwest's Retail group could turn its own company's
5 error into an opportunity to win back the unhappy Customer, even though
6 Qwest's error made that Customer unhappy.¹⁶

7 Eschelon also learned that Qwest Retail's group sent an e-mail to the End User
8 Customer that misleadingly told the Customer that it would lose service again
9 unless Eschelon took specific action to cancel the service transfer order.¹⁷ As
10 may happen in such a "he said, she said" situation, *the End User Customer*
11 *demanded that Eschelon provide a written statement from Qwest stating clearly*
12 *that Qwest made the error causing the outage, and that Eschelon had complied*
13 *with the Customer's wishes.* Because Qwest had created doubt about Eschelon's
14 explanation of the problem, the Customer wanted confirmation from Qwest itself.
15 Eschelon requested such a statement from Qwest. Qwest told Eschelon that
16 Qwest's policy is that Qwest will not provide a written statement to be provided
17 to the Customer, even when the purpose of the statement is to correct Qwest

¹⁵ The rejection was due to the way Qwest's systems treat an order for which some of Qwest's internal service orders have already been completed.

¹⁶ This conduct was captured in an e-mail that Qwest's *Retail* sent directly to Eschelon's Customer. In the e-mail, the Qwest Retail representative specifically said: "*I was contacted by our wholesale group. . . .*"

¹⁷ MN 616 Order at p.6.

1 misinformation. Eschelon then turned to the Minnesota Commission for relief,
2 and the Commission issued the Order cited above.

3 **Q. ARE THESE FACTS UNUSUAL?**

4 A. The unusual aspect of these facts is the “smoking gun” nature of the evidence.
5 Usually, a CLEC may learn of such Qwest Wholesale-Qwest Retail contacts, or
6 believe based on a course of events that they have occurred, but cannot prove
7 Qwest’s conduct. Rarely are the contacts in writing (as happened in the above
8 case) or, if they are written and provided to Customers, the Customers may not
9 want to be caught in the middle by providing copies to the CLEC. The absence of
10 the “smoking gun” evidence in these more typical cases, however, does not mean
11 that Qwest’s errors and improper Wholesale-Retail contacts, such as those
12 demonstrated in the above example, do not occur.

13 Another example occurred just recently, when a Qwest End User Customer
14 decided to switch to Eschelon. After Eschelon submitted the conversion order to
15 Qwest Wholesale, this Customer received a letter from Qwest Retail group¹⁸--
16 while its order to switch to Eschelon was still pending. Qwest Retail group’s
17 letter to the Customer switching to Eschelon begins: “Thank you for once again
18 putting your trust in Qwest. We’re pleased to continue bringing you the quality
19 and reliability you demand” Qwest Retail group’s letter then asked the

¹⁸ See Exhibit BJJ-12 to the Testimony of Ms. Johnson (Qwest’s Retail letter to Eschelon’s End User Customer) and BJJ-13 (Chronology of the events and e-mail exchange associated with this incident).

1 Eschelon End User Customer to “please verify your order details listed at left and
2 review the enclosed instructions.” The order number given in the letter is the
3 *Eschelon* order number for Eschelon’s order submitted to Qwest to switch the
4 Customer to Eschelon. (In other words, Qwest is asking Eschelon’s Customer to
5 verify whether Eschelon placed the order correctly.)

6 Carriers cannot use Customer Proprietary Network Information (“CPNI”) to
7 attempt to retain a customer “during the time subsequent to the customer’s
8 placement of an order to change carriers and prior to the change actually taking
9 place.” The FCC has specifically found that this is anti-competitive:
10 “[C]ompetition is harmed if *any* carrier uses carrier-to-carrier information, *such*
11 *as switch or PIC orders*, to trigger retention marketing campaigns.”¹⁹

12 Furthermore, at a minimum, if Qwest’s letter ended with the above quoted request
13 for order verification from Qwest Retail, it would still create customer confusion.
14 The letter proceeds, however, with a fairly undisguised winback message. Qwest
15 Retail group’s letter to Eschelon’s Customer ends: “As your communications
16 needs expand and change, you know you can call us at 1-800-997-9378.”
17 Although the letter invited the End User Customer to call Qwest, the End User
18 Customer in this case did not initiate contact with Qwest. Instead, *Qwest’s Retail*
19 *Business Office called the End User Customer directly about Eschelon’s*

¹⁹ See Order on Reconsideration and Petitions for Forbearance, FCC 99-223, CC Docket No. 96-149;
Adopted August 16, 1999; Released September 3, 1999 (“CPNI Order”), at ¶69, 76.

1 *wholesale order*. Qwest’s Retail Business Office told the End User Customer that
2 the service would be disconnected at Eschelon’s request. Qwest’s Retail Business
3 Office neglected to tell the End User Customer that his service would be
4 transferred to Eschelon, so service disruption would *not* occur. Naturally, the End
5 User Customer was extremely concerned and informed Eschelon that he was
6 considering canceling his request of the service transfer to Eschelon. Only after
7 Eschelon explained to the Customer that the Customer would not be losing
8 service, despite Qwest’s use of the term “disconnect,” did the Customer agree to
9 proceed with the service transfer. Clearly, had the Customer not contacted
10 Eschelon to check the distorted “facts” presented by Qwest’s Retail group,
11 Eschelon would not know why the Customer changed his mind, and why Qwest
12 accomplished an improper “winback” so quickly. Incidents like this further
13 bolster the need for inclusion of Eschelon’s language to prevent such incidents.

14 Eschelon requested a root cause analysis on this incident, to which Qwest
15 responded that Qwest’s contact with this customer switching to Eschelon was
16 incorrect and the result of “human error.”²⁰

17 **Q. HOW DOES ESCHELON’S PROPOSAL ADDRESS THESE ISSUES?**

18 A. Eschelon proposes that the ICA contain provisions about the procedures for
19 promptly acknowledging and taking responsibility for mistakes. This proposal is

²⁰See Exhibit BJJ-13 to the Testimony of Ms. Johnson (Qwest e-mails to Eschelon).

1 modeled after the Minnesota Commission's order in the above described case.

2 Eschelon proposes the following language:

3 **Issue 12-64:**

4 12.1.4 Root Cause Analysis and Acknowledgement of Mistakes

5 12.1.4.1 CLEC may make a written request to its Qwest Service
6 Manager for root cause analysis and/or acknowledgement of a
7 mistake relating to products and services provided under this
8 Agreement. The written request should include the following
9 information, when applicable and available: Purchase Order
10 Number (PON), Service Order Number, billing telephone number,
11 a description of the End User Customer impact and the ticket
12 number associated with the repair of the impacting condition. It is
13 expected that CLEC has followed usual procedures to correct a
14 service impacting condition before beginning the process of
15 requesting Qwest acknowledgement of error.

16 12.1.4.2 When the Qwest Service Manager receives a request for
17 root cause analysis and/or acknowledgement from CLEC, an
18 investigation process will begin. When this investigation results in
19 agreement that Qwest erred, the Qwest Service Manager will
20 provide written correspondence to CLEC.

21 12.1.4.2.1 The letter will include a recap of sufficient ~~the~~ pertinent
22 information to identify the issue, (e.g., PON, Service Order
23 Number, order Due Date and billing telephone number, as
24 provided in the CLEC request) and the following statement,
25 "Qwest acknowledges its mistake. The error was not made by the
26 other service provider."

27 **Issue 12-64(a):**

28 12.1.4.2.3 Written responses acknowledging Qwest error will be
29 provided with Qwest identification, such as Qwest letterhead, logo,
30 or other indicia.

31 12.1.4.2.4 The Qwest Service Manager will provide the
32 acknowledgement to CLEC.

33 **Issue 12-64(b):**

34 12.1.4.2.5 The acknowledgment response described in Section
35 12.1.4.2.3 and provided by the Qwest Service Manager to CLEC

1 will be provided on a non-confidential basis and will not include a
2 confidentiality statement.

3 Issue 12-64 for the most part represents the basic premise, supported by Eschelon
4 and opposed by Qwest in Washington, that any acknowledgement of mistake
5 requirements must be embodied in the ICA. Issues 12-64(a) and 12-64(b) focus
6 on requirements that Qwest contends are beyond the scope of the Minnesota
7 Commission’s decision establishing acknowledgement of mistake procedures for
8 Qwest in Minnesota Docket No. P-421/C-03-616.

9 **Q. WHAT IS QWEST’S PROPOSAL ON THESE ISSUES?**

10 A. In Washington, Qwest does not agree with any of Eschelon’s proposed language,
11 and instead proposes that section 12.1.4 be left intentionally blank. Qwest argues
12 that this language is inappropriate for an ICA.²¹ Note that Qwest’s position is
13 different in Minnesota, where Qwest agrees with including provisions about the
14 procedures for promptly acknowledging and taking responsibility for mistakes,
15 and only disagrees on specific nuances of these provisions. At the same time
16 Qwest argues in Washington that implementation of unique procedures would
17 cause modification of Qwest’s systems and additional costs.²² By proposing
18 different terms in Minnesota and Washington, Qwest is creating such unique
19 procedure. Qwest does not justify this apparent contradiction between its
20 arguments and positions.

²¹ See Qwest’s position statement in the *Disputed Issues Matrix*.

²² See Qwest’s position statement in the *Disputed Issues Matrix*.

1 Qwest claims in Washington that Eschelon's proposal is inappropriately
2 expanding the scope of the Minnesota Commission's decision in Docket No. P-
3 421/C-03-616, which Qwest narrowly reads to deals only with problems
4 involving orders,²³ and that Eschelon's proposal would "require Qwest to disclose
5 potentially highly confidential materials (such as sensitive internal
6 documentation) on a non-confidential basis."²⁴ Qwest further claims that
7 Eschelon's proposal goes beyond the Minnesota Commission's decision in
8 requiring a root cause analysis in addition to acknowledgement of mistakes.²⁵

9 Because Qwest is not willing to agree to incorporate even the language it has
10 agreed to in Minnesota, the point of Qwest's claim that Eschelon's proposal
11 "expands" the Minnesota Commission's order is unclear. Qwest's position in
12 Washington is actually that the Commission should not include *any* aspect of the
13 protections that Eschelon and its customers are entitled to in Minnesota with
14 regard to Qwest's obligations to acknowledge its mistakes. Qwest does not point
15 to any state-specific reason why Minnesota End User Customers "deserve"
16 acknowledgment of Qwest's mistakes, but Washington End User Customers "do
17 not deserve" such acknowledgement. Therefore, in the discussion of each of the
18 three issues (12-64, 12-64(a) and 12-64(b)) below, I demonstrate that Eschelon's

²³ See *Disputed Issues Matrix*, Qwest's position.

²⁴ See *Disputed Issues Matrix*, Qwest's position.

²⁵ *Qwest Petition for Arbitration* at ¶161.

1 proposals on each of the issues are consistent with reasonable requirements in the
2 Minnesota Commission's order.

3 **Q. DO ISSUES 12-64 AND SUBPARTS FALL WITHIN THE CATEGORY OF**
4 **ISSUES FOR WHICH QWEST REFERS TO CMP, AND IF SO, WHAT IS**
5 **ESCHELON'S POSITION?**

6 A. In Washington, Qwest objects to Eschelon's proposed Section 12.1.4 in its
7 entirety, arguing, as it does with a number of other issues, that the issue involves
8 "processes that affect all CLECs and not just Eschelon."²⁶ This generic CMP
9 argument is addressed in the direct testimony of Mr. Starkey. However, a few
10 observations specific to this issue are in order.

11 As discussed above, in Minnesota, most of Section 12.1.4 is closed as a result of
12 Qwest's acceptance of Eschelon's proposed language. Qwest did not claim, in
13 Minnesota, that the agreed upon language was inappropriate for an ICA and
14 should only be dealt with in CMP. In Washington, however, Qwest contends that
15 the very same language that it agreed to include in its Minnesota ICA is
16 "inappropriate" for inclusion in its Washington ICA.

17 As Qwest's inconsistent conduct further shows, there is no bright line rule for use
18 of CMP. The test is not an easy one of either labeling an issue as a "process" or
19 asking if "multiple CLECs are affected." Both proposed tests allow Qwest to

²⁶ See *Disputed Issues Matrix*, Qwest position statement

1 pigeonhole an issue as CMP or not at its whim. As I understand it, according to
2 Section 252 of the Act , the Commission must decide each issue in the arbitration
3 petition and response individually on the merits of that issue. For the reasons
4 stated in the following discussion of the language of Issues 12-64, 12-64(a), and
5 12-64(b), the Commission should adopt Eschelon's proposed language regarding
6 acknowledgment of mistakes. Eschelon's proposal provides the method for
7 communicating needed information to End User Customers – a need that has been
8 recognized by the Minnesota Commission – and provides Eschelon with the
9 meaningful opportunity to compete.

10 **Q. ARE YOU ABLE TO PROVIDE ANY EXAMPLES THAT ILLUSTRATE**
11 **ESCHELON'S BUSINESS NEED FOR AN ICA PROVISION THAT**
12 **REQUIRES QWEST TO ACKNOWLEDGE ITS ERRORS (ISSUE 12-64 —**
13 **THE FIRST OF THREE ISSUES)?**

14 A. Yes. Ms. Johnson's testimony provides examples of errors committed by Qwest
15 in connection with repair situations (including a particular situation involving a
16 restaurant) that impacted Eschelon's End User Customers.²⁷ In the restaurant
17 example, the restaurant, Eschelon's End User Customer, experienced trouble with
18 its voice line. During the repair of this line, Qwest's technician erroneously
19 disconnected the Customer's credit card line. The next day, Qwest's technician
20 was again at the Eschelon End User Customer's location with Eschelon's

²⁷ See Exhibit BJJ-8 to the Testimony of Ms. Johnson.

1 technician.²⁸ The Customer told them that the restaurant had effectively given
2 away “free food” worth \$110, because of the credit card line outage. Qwest’s
3 technician responded to the Eschelon End User Customer with profanity.
4 Following the mistake resulting in the credit card line outage, this obviously upset
5 the Customer even further. After Eschelon reported this incident to Qwest, Qwest
6 recognized that this was inappropriate and took disciplinary action against its
7 technician.

8 In addition, with respect to this specific restaurant example, Eschelon later
9 learned that Qwest management also visited Eschelon’s End User Customer and
10 communicated directly with the Customer, without Eschelon’s knowledge or
11 presence, about the incident. The current Qwest-Eschelon ICA, like the pending
12 ICA, provides that Eschelon is the single point of contact with Eschelon’s End
13 User Customer.²⁹ Per this provision, Qwest should not have communicated with
14 the Eschelon Customer instead of Eschelon.³⁰ This suggests that the ICA
15 language needs to be more explicit on this point. If Eschelon’s proposed language

²⁸ This is called a joint meet.

²⁹ This incident happened in Colorado, where the provision regarding the point of contact is contained in Attachment 8, section 1.1.1.1 of the current Qwest-Eschelon ICA. This provision states “At all times, CO-PROVIDER shall be the primary (single and sole) contact and account control for all interactions with its subscribers, except as specified by CO-PROVIDER.” A similar provision exists in the current Qwest-Eschelon ICA in Washington (see Attachment 5, Section 1.1.1.1: “CO-PROVIDER at all times shall be the primary contact and account control for all interactions with its subscribers, except as specified by CO-PROVIDER.”) (Note that at the time of drafting the above quoted ICAs, Eschelon was referred to as “Electro-Tel, Inc.” in Colorado, and as “ATTI” in Washington.)

³⁰ Afterwards, Qwest claimed the purpose of its return visit was to apologize to Eschelon’s customer. Any apology should have been provided to Eschelon, per the ICA language.

1 were adopted for Issues 12-64, 12-65, and 12-66,³¹ the ICA would be more clear
2 in requiring that Qwest take the appropriate steps to provide a written
3 acknowledgement of its error in causing the credit card line outage to Eschelon,
4 allowing Eschelon to communicate with its own Customer and pass along
5 Qwest's written acknowledgement to its Customer, if necessary.

6 In a situation in which the End User Customer requests a written
7 acknowledgement of the error causing the service disruption, Qwest should be
8 required to acknowledge its mistake. As the Minnesota Commission observed,
9 "Providing adequate wholesale service includes taking responsibility when the
10 wholesale provider's actions harm customers who could reasonably conclude that
11 a competing carrier was at fault. Without this kind of accountability and
12 transparency, retail competition cannot thrive. Telecommunications is an
13 essential service, and few customers will transfer their service to a competitive
14 carrier whose service quality appears to be inferior to the incumbent's."³²

15 **Q. YOU MENTIONED THAT THE SCOPE OF QWEST'S OBLIGATION**
16 **ADDRESSED IN ISSUE 12-64 SHOULD ALSO EXTEND TO THE**
17 **PROVISION OF ROOT CAUSE ANALYSES THAT MAY HELP**
18 **PREVENT SERVICE AFFECTING MISTAKES IN THE FUTURE.**
19 **PLEASE EXPLAIN.**

³¹ Issues 12-65 and 12-66 deal with Qwest's communications with Eschelon's End User Customers.

³² MN 616 Order at p. 8.

1 A. A root cause analysis is needed to determine fault in order to avoid arbitrary
2 action. The requirement for a root cause analysis, when necessary to establish the
3 carrier who caused the error, is implicit in the requirement that Qwest
4 acknowledge its mistakes. In establishing its requirements for Qwest's
5 acknowledgement of its mistakes, the Minnesota Commission cannot have meant
6 that fault be arbitrarily assigned in order for an acknowledgement to be made.

7 In many instances, a root cause analysis is essential to getting to the heart of the
8 error, and hopefully preventing further similar mistakes. Eschelon is not
9 requesting Qwest to develop procedures that do not exist. In Qwest's own PCAT,
10 Qwest acknowledges that CLECs may submit requests for root cause analysis:

11 Your Qwest Service Team is prepared to assist you with:

12 ...

13 Handling maintenance and repair post mortems (root cause
14 analysis) when you submit a specific request for a post mortem on
15 an unusual repair event, e.g., event over eight hours. Your Qwest
16 Service Manager will review the logged notes regarding the event
17 and discuss the circumstances surrounding the event with the
18 Qwest Repair Center to determine the cause, the process used to
19 repair/restore service, and the process(es) implemented to prevent
20 a reoccurrence of the event. Working with Qwest's Repair
21 Center/Network Reliability Operations Center, as appropriate, your
22 Qwest Service Manager will conduct the Root Cause Analysis
23 (RCA) and provide you the complete analysis in writing.
24 Investigation and preparation of a typical postmortem takes from
25 2-10 business days depending on the complexity of the event.³³
26

³³ Qwest's PCAT, *Account Team / Sales Executives and Service Managers - V9.0* available at
<http://www.qwest.com/wholesale/clecs/accountmanagers.html>.

1 As evident from the above quotation, Qwest admits that CLECs can request a root
2 cause analysis. Similarly, in the 271 proceeding in Arizona, Qwest recognized
3 that, in case of tandem failures that may lead CLECs' end user customers to
4 believe that their CLEC provider was at fault, CLECs can obtain root cause
5 analyses and may need them to explain the Qwest error to CLEC customers:

6 Qwest will provide information that will contain a root cause
7 analysis of the network failure. This can be used to explain to a
8 customer the cause of the network problems they experienced.
9 The information is provided without a confidential footer and can
10 therefore be shared with the customer.³⁴

11

12 These root cause analyses are also obtained from the Qwest Service Manager. As
13 this 271 Order and the PCAT language discussed above show, the process for
14 obtaining a root cause analysis is simply to request it from the Qwest Service
15 Manager. As Qwest already assigns a Service Manager to Eschelon, and the
16 Service Manager knows how to obtain root cause analyses (as shown by these two
17 quotations), no new procedures or costly changes are needed to provide the
18 requested root cause analyses. Eschelon's language therefore imposes no undue
19 burden on Qwest.

20 Qwest argues, however, that Eschelon should not "dictate situations where
21 Qwest's investigation must go beyond an individual order to determine whether a

³⁴ Decision No. 66242, *In the Matter of U.S. WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. T-00000A-97-0238, September 16, 2003, p. 37 ¶135 ["AZ 271 Order"].

1 systematic problem exists.”³⁵ By using the word “dictate,” Qwest appears to
2 suggest that Eschelon should not tell Qwest how to run its business when it is
3 none of Eschelon’s business. It *is* Eschelon’s business in this case, however,
4 because repeat or systemic problems in Qwest’s provisioning of wholesale
5 services to Eschelon adversely affect Eschelon each time they occur. Therefore,
6 Eschelon should have a contract right to request root cause analyses for the
7 purpose of helping to prevent similar mistakes in the future. By proposing to
8 exclude the term from the contract, Qwest is attempting to reserve the right to
9 stop providing root cause analyses during the contract term without amending the
10 agreement. This would harm Eschelon’s ability to protect itself from ongoing
11 Qwest mistakes of the nature that harm Eschelon’s end user customers. Including
12 this term in the contract, in contrast, is more efficient and will help avoid disputes
13 that would otherwise occur if troubles are not identified through root cause
14 analyses and continue to re-occur.

15 The Commission should adopt Eschelon’s proposed language for Issue 12-64, as
16 it best reflects the appropriate scope of Qwest’s obligation to acknowledge its
17 errors when performing wholesale activities, including the provision of root cause
18 analyses to help avoid customer-affecting errors in the future.

19 **Q. HAS QWEST PROVIDED ROOT CAUSE ANALYSES TO ESCHELON?**

³⁵ *Qwest Petition for Arbitration* p. 57 at ¶161.

1 A. Yes. Exhibit BJJ-8 to the Testimony of Ms. Johnson includes a number of
2 examples when Qwest provided root cause analysis. The second, third, fourth,
3 fifth, eighth, and ninth examples in that Exhibit describe situations for which
4 Qwest provided root cause analysis to Eschelon. Qwest has the capability to
5 conduct these root cause analyses and provide them to Eschelon.

6 **Q. WHY IS QWEST INCORRECT WHEN ARGUING THAT ESCHELON'S**
7 **PROPOSAL TO REQUIRE ACKNOWLEDGEMENT OF MISTAKES IS**
8 **UNNECESSARY BECAUSE OF THE EXISTENCE OF PERFORMANCE**
9 **INDICATOR DEFINITIONS ("PIDS")?³⁶**

10 A. Qwest's argument is incorrect for a number of reasons. First, PIDs do not capture
11 all types of Qwest's inadequate service. Ms. Johnson's direct testimony contains
12 Exhibit BJJ-8 that provides several real-life examples of Qwest's mistakes that
13 affected Eschelon's End User Customers for which Eschelon requested (and
14 Qwest provided) root cause analysis. In one of these examples that I discussed
15 above, Qwest's technician insulted Eschelon's End User Customer with
16 profanity.³⁷ In another example, Eschelon's End User Customer was
17 unnecessarily called to the customer premises at 10 p.m., while Qwest's
18 technician did not show up (and did not need the Customer's presence at the
19 customer premises).³⁸ PIDs do not measure these types of mistakes. Similarly,

³⁶ *Qwest Petition for Arbitration*, p. 57 at ¶160.

³⁷ Exhibit BJJ-8, Example 1.

³⁸ Exhibit BJJ-8, Example 4.

1 PIDs do not measure the harm to Eschelon's reputation done by Qwest's mistakes
2 in situations in which the End User is led to believe that Eschelon was at fault.
3 Note in the specific incident that prompted the Minnesota Commission to direct
4 Qwest to create procedures for the acknowledgement of its mistakes, it was not
5 the outage of service itself, but Qwest's conduct, that caused Eschelon to lose the
6 End User Customer. The PIDs would capture the outage, but not Qwest's
7 inappropriate conduct that misrepresented the outage as caused by Eschelon.

8 Further, even if Qwest is penalized for a specific instance of inadequate service
9 via PIDs, Qwest may still have incentives to commit a mistake because gains
10 from winning back a large End User Customer may exceed PID penalties. The
11 specific incident that prompted Minnesota Docket No. P-421/C-03-616, for
12 example, illustrates this problem: Qwest's conduct in that case caused Eschelon
13 to lose, and Qwest to win back, a large End User Customer. The Commission's
14 order notes that annual telecommunications bills from this End User Customer
15 were approximately \$463,655 per year.³⁹ In this instance, Qwest's stream of
16 recurring revenues is likely to far exceed one-time PID penalties from causing
17 outage to the customer.

18 **Q. REGARDING ISSUE 12-64(a) (THE SECOND OF THE THREE ISSUES**
19 **RELATING TO ACKNOWLEDGEMENT OF MISTAKES), PLEASE**
20 **EXPLAIN ESCHELON'S POSITION REGARDING CARRIER**

³⁹ MN 616 Order, p. 1.

1 **IDENTIFICATION.**

2 A. Issue 12-64(a) deals with the proper identification of Qwest as the company
3 issuing the letter of acknowledgment (in Section 12.1.4.2.3) and Eschelon as the
4 company receiving the acknowledgment (in Section 12.1.4.2.4).

5 Eschelon’s proposal for the first paragraph (Section 12.1.4.2.3) requires that the
6 written acknowledgement will be provided with Qwest identification “such as
7 Qwest letterhead, logo, or other indicia.” This proposal is very similar to one of
8 the requirements established by the Minnesota Commission. Just like Eschelon’s
9 proposal, the November 12, 2003 Order in Minnesota Docket No. P-421/C-03-
10 616 required that Qwest provided the acknowledgement of mistakes on Qwest’s
11 letterhead or similar indicia. The Order stated that Qwest’s compliance filing
12 addressing the inadequacies found by the Commission’s original July 2003 Order
13 should include the following:

14 (h) Procedures for ensuring that acknowledgements appear on
15 Qwest letterhead or other indicia to show that it is Qwest making
16 the acknowledgement.⁴⁰

17 Eschelon’s proposal is driven by the business need to obtain these
18 acknowledgements and share them with its end user customers to avoid losing
19 customers in situations where Qwest’s mistakes might be incorrectly attributed to
20 Eschelon. Eschelon’s language is both consistent with the Minnesota
21 Commission’s order and a logical means of demonstrating to the CLEC end user

⁴⁰ *Id.*

1 that the acknowledgement of error was generated by Qwest. Similarly,
2 Eschelon's proposal for 12.1.4.2.4 is a logical means, adopted by the Minnesota
3 Commission, of clarifying that Eschelon is the subject CLEC requesting and
4 receiving the acknowledgement.

5 **Q. REGARDING ISSUE 12-64(b) (THE THIRD OF THE THREE ISSUES**
6 **RELATING TO ACKNOWLEDGEMENT OF MISTAKES), PLEASE**
7 **EXPLAIN ESCHELON'S POSITION REGARDING THE NON-**
8 **CONFIDENTIAL STATUS OF THE ACKNOWLEDGEMENT.**

9 A. Issue 12-64(b) deals with whether a Qwest acknowledgment will be provided on a
10 non-confidential basis to allow Eschelon to provide it to the end user customer.
11 Just like with Issue 12-64(a), Eschelon's proposal is based on the language used
12 by the Minnesota Commission in Docket No. P-421/C-03-616. In its November
13 12, 2003 Order, the Minnesota Commission stated that Qwest's compliance filing
14 addressing the inadequacies found by the Commission's original July 2003 Order
15 should include the following:

16 (j) Procedures for preventing use of a confidentiality designation
17 in acknowledgements, to ensure that the competitive local
18 exchange carrier can provide the acknowledgement to its end user
19 customer.

20 Eschelon's proposal requires that acknowledgements will be provided on a non-
21 confidential basis *and* will not include a confidentiality statement. The choice of
22 words in Eschelon's proposal is a safeguard against a situation in which the

1 acknowledgement letter does not include a confidentiality statement, but is still
2 provided on a confidential basis. For example, Qwest may provide the
3 acknowledgement as an enclosure to a cover e-mail containing a confidentiality
4 message.

5 **Q. DOES QWEST PROVIDE COVER E-MAILS CONTAINING**
6 **CONFIDENTIALITY PROVISIONS?**

7 Yes. In fact, Qwest has recently begun to insert a confidentiality message on its
8 e-mails as follow: “This communication is the property of Qwest and may
9 contain confidential or privileged information. Unauthorized use of this
10 communication is strictly prohibited and may be unlawful. If you have received
11 this communication in error, please immediately notify the sender by reply e-mail
12 and destroy all copies of the communication and any attachments.” When
13 Eschelon inquired about this message, Qwest’s service management personnel
14 said that this message “is generated on all out going e-mails from Qwest. I do not
15 control it.”⁴¹ While somewhat non-committal (as it uses the term “may”), this
16 message is likely to cause confusion about the non-confidential status of the
17 requested information. It may deter using the information for its intended
18 purposes – to explain the situation to the end user customer and to attempt to
19 avoid similar problems in the future. Qwest’s apparently auto-generated
20 confidentiality message will present practical obstacles to sharing with the End

⁴¹ Qwest (Ms. Jean Novak) e-mail to Eschelon (Ms. Bonnie Johnson), May 15, 2006 (subject: “Confidential statement”).

1 User Customer the acknowledgement of mistakes and root cause analysis (which
2 is, of course, the primary purpose of requiring that Qwest acknowledge its
3 mistakes), if this issue is not addressed in the interconnection agreement
4 language. With such language in the interconnection agreement, if Qwest desires
5 to continue to use such auto-generated messages, Qwest would need to clearly
6 indicate that the acknowledgement is not confidential to counter the confusion
7 caused by this message.

8 **Q. PLEASE SUMMARIZE ISSUES 12-64, 12-64(a) AND 12-64(b) RELATING**
9 **TO ACKNOWLEDGEMENT OF MISTAKES.**

10 A. When Eschelon's end user customer incorrectly attributes Qwest-caused errors to
11 Eschelon, the business relationship between Eschelon and its customer is affected,
12 which can be to Qwest's advantage. A situation in which Eschelon lost its end
13 user customer due to a Qwest mistake caused the Minnesota Commission to order
14 Qwest to provide non-confidential acknowledgements of mistakes to CLECs in
15 the Minnesota Docket No. P-421/C-03-616. Eschelon proposes to include in its
16 Washington ICA with Qwest provisions that capture the Minnesota ruling.
17 Eschelon proposal is not limited to a narrow set of issues regarding ordering
18 wholesale activities (*i.e.*, LSR and ASR orders) because Qwest errors that harm
19 Eschelon's customers can occur when Qwest is performing other wholesale
20 activities in its role as a vendor to Eschelon as well. As root cause analyses can
21 be essential to getting to the heart of these errors, Qwest should be required to

1 provide them to help prevent additional customer-affecting mistakes. Qwest's
2 acknowledgement statement should clearly identify Qwest as the carrier
3 generating the statement and Eschelon as the carrier receiving the statement to
4 avoid customer confusion. Consistent with the Minnesota Commission's order in
5 Docket No. P-421/C-03-616, the interconnection agreement should prevent Qwest
6 from using a confidentiality designation in acknowledgements to ensure that
7 Eschelon can provide the acknowledgement to its end user customer.

8

9 **SUBJECT MATTER NO. 30. COMMUNICATIONS WITH CUSTOMERS**

10 **Issues No. 12-65, (ICA Section 12.1.5.4.7) 12-66 (ICA Section 12.1.5.5) and**
11 **12-66(a) (ICA Section 12.1.5.4.8)**

12 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
13 **CUSTOMER COMMUNICATIONS, REFLECTED IN ISSUE NOS. 12-65,**
14 **12-66 AND 12-66(A).**

15 A. Issues 12-65, 12-66 and 12-66(a) relate to communications between Qwest
16 personnel and Eschelon's End User Customers. As a function of the wholesale
17 service Qwest provides to Eschelon Qwest's technicians may visits Eschelon End
18 User Customers' location. For example, when Eschelon serves its Customer with
19 an unbundled loop leased from Qwest, and the loop needs a repair, Qwest's
20 technicians may be dispatched to the premises. Eschelon's End User Customers
21 may, for example, mistakenly call Qwest's Retail repair organization to follow up
22 on an installation or repair or to clarify a question about an invoice for such

1 repair, because the Customer saw that the repair technician was from Qwest. Or,
2 the Qwest technician may see the Customer at the premises and take an
3 opportunity to talk to the (Eschelon's) Customer. Because opportunities such as
4 these exist for Qwest personnel to communicate directly with Eschelon's End
5 User Customer while Qwest is performing work for Eschelon (at Eschelon's
6 expense), the interconnection agreement needs to fully address how such
7 communications should be handled to avoid Customer confusion and anti-
8 competitive conduct.

9 Qwest is Eschelon's vendor for unbundled network elements largely because of
10 Qwest's unique position as the incumbent and owner of the essential facility –
11 "local loop." The unbundling rules require Qwest to repair and maintain the
12 unbundled network elements after installing them.⁴² Eschelon is Qwest's
13 Customer of record for such activities.⁴³ Because Qwest competes with Eschelon
14 in the End User Customer market, however, Qwest personnel communicating
15 with Eschelon's End User Customers have incentives to engage in "marketing"
16 efforts to win back the End User Customer for Qwest.

17 Qwest also has unique access to information about its competitor, because it gains
18 confidential information about Eschelon through its role as a wholesale provider.
19 If Qwest makes mistakes in that role that cause harm to Eschelon's End User

⁴² See, e.g., *First Report and Order* ¶268.

⁴³ See closed language at ICA Section 12.1.5.2.

1 Customer (such as the mistakes discussed above under Issue 12-64), Qwest will
2 also have knowledge of when Eschelon's End User Customers may be unhappy
3 about such outages that Eschelon's Customers may not realize are caused by
4 Qwest. Due to Qwest's unique position of control over the local loop and its
5 position as Eschelon's competitor – which together create means, incentive, and
6 opportunity for anti-competitive conduct – Eschelon needs adequate safeguards in
7 the interconnection agreement to protect against anti-competitive conduct.

8 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 12-65, 12-66 AND 12-**
9 **66(A)?**

10 A. Eschelon proposes to add provisions to Section 12.1.5, entitled "Responsibilities
11 Relating to End User Customers" to address these needed safeguards. The first
12 proposal (Section 12.1.5.4.7) appears in the portion that is specifically dealing
13 with "Maintenance and Repair." The second proposal (Section 12.1.5.5) appears
14 at the end of Section 12.1.5 to ensure that, notwithstanding any other provision,
15 Qwest cannot turn its own known Eschelon-Customer affecting errors into Qwest
16 Retail win back opportunities. The third proposal (Section 12.1.5.4.8) references
17 agreed upon language in section 12.1.5.5 dealing with misdirected calls.
18 Specifically, Eschelon proposes insertion of the following language for Issues 12-
19 65, 12-66 and 12-66(a):

20 **Issue 12-65**

21 12.1.5.4.7 The Qwest technician will limit any communication
22 with CLEC End User Customer to that necessary to gain access to

1 premises and perform the work. Specifically, the Qwest technician
2 will not discuss Qwest's products and services with CLEC End
3 User Customer and will not make disparaging remarks about
4 CLEC and will refer any CLEC End User Customer questions to
5 CLEC. If the Qwest Technician has questions or concerns, the
6 Qwest technician will discuss them⁴⁴ with CLEC and not CLEC
7 End User Customer.

8 **Issue 12-66**

9 12.1.5.5 Notwithstanding any other provision of this Agreement,
10 when a CLEC End User Customer experiences an outage or other
11 service affecting condition or Billing problem due to a known
12 Qwest error or action, Qwest shall not use the situation (including
13 any misdirected call) as a win back opportunity or otherwise to
14 initiate discussion of its products and services with CLEC's End
15 User Customer.

16 **Issue 12-66(a)**

17 12.1.5.4.8 CLEC, or CLEC's agent, shall act as the single point of
18 contact for its End User Customers' service needs, including
19 without limitation, sales, service design, order taking,
20 Provisioning, change orders, training, maintenance, trouble reports,
21 repair, post-sale servicing, Billing, collection and inquiry. CLEC
22 shall inform its End User Customers that they are End User
23 Customers of CLEC for resold services. CLEC's End User
24 Customers contacting Qwest in error will be instructed to contact
25 CLEC; and Qwest's End User Customers contacting CLEC in
26 error will be instructed to contact Qwest. In the event CLEC's End
27 User Customers contact Qwest in error, Qwest will either (1)
28 provide the caller with a number the caller can dial to obtain sales
29 information, or (2) ask the caller whether he or she would like to
30 hear sales information. In responding to calls, neither Party shall
31 make disparaging remarks about each other. To the extent the
32 correct provider can be determined, misdirected calls received by
33 either Party will be referred to the proper provider of local
34 Exchange Service; however, except as provided in Section
35 12.1.5.5, nothing in this Agreement shall be deemed to prohibit
36 Qwest or CLEC from asking CLEC's or Qwest's End User
37 Customers who call the other Party if they would like to discuss

⁴⁴ Eschelon has inserted the word "them." This insertion is not in the proposed ICA or Disputed Issues Matrix but Eschelon recommends it, upon reading the language, for readability.

1 the Party's products and services, and then discussing the Party's
2 products and services with those End User Customers who would
3 like to do so.
4

5 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUES NOS. 12-65, 12-66 AND 12-**
6 **66(A)?**

7 A. Qwest does not agree with Eschelon's proposed language, and does not propose
8 any alternative language (other than "Intentionally Left Blank" for Section
9 12.1.5.4.7). In the Disputed Issues Matrix, Qwest's position statements are
10 identical for these three provisions. Qwest argues that this contract language was
11 litigated in the section 271 proceedings throughout the 14-states, and Qwest
12 claims its contract language reflects the 271 decisions of the state commissions.
13 Qwest also claims that Eschelon's proposal limits Qwest's First Amendment
14 protected commercial speech rights. Qwest arguments, which are discussed
15 below, provide no basis for allowing Qwest to disparage Eschelon. Eschelon's
16 proposals, in contrast, are consistent with contract language previously adopted in
17 this and other states (while closing certain gaps in that language) and prevent
18 improper disparagement.

19 **Q. DOES ESCHELON'S PROPOSAL FOR ISSUES 12-65, 12-66 AND 12-66(A)**
20 **INTRODUCE COMPLETELY NEW LANGUAGE?**

21 A. No. The contract language on which Eschelon and Qwest have agreed contains
22 provisions limiting marketing in situations in which a representative of one
23 company is communicating with the End User Customer of the other company

1 because of the repair or maintenance issue. Specifically, Eschelon and Qwest
2 agreed to the following language:

3 12.1.5.3 CLEC's End User Customers contacting Qwest in
4 error will be instructed to contact CLEC; and Qwest's End User
5 Customers contacting CLEC in error will be instructed to contact
6 Qwest. *In responding to calls, neither Party shall make*
7 *disparaging remarks about each other.*⁴⁵

8 12.1.5.4.4 Qwest shall use unbranded Maintenance and Repair
9 forms while interfacing with CLEC End User Customers. Upon
10 request, Qwest shall use CLEC provided and branded Maintenance
11 and Repair forms. *Qwest may not unreasonably interfere with*
12 *branding by CLEC.*⁴⁶

13 12.1.5.4.6 Except as specifically permitted by CLEC, *in no*
14 *event shall Qwest provide information to CLEC subscribers about*
15 *CLEC or CLEC product or services.*⁴⁷

16
17 Qwest's Washington SGAT contains similar provisions:

18 12.3.8.1.5. ... In responding to calls, neither Party shall make
19 disparaging remarks about each other....⁴⁸

20 12.3.2.1 Qwest shall use unbranded Maintenance and Repair
21 forms while interfacing with CLEC End User Customers. Upon
22 request, Qwest shall use CLEC provided and branded Maintenance
23 and Repair forms. Qwest may not unreasonably interfere with
24 branding by CLEC.

25 12.3.2.2 Except as specifically permitted by CLEC, in no
26 event shall Qwest provide information to CLEC subscribers about
27 CLEC or CLEC product or services.⁴⁹
28

⁴⁵ Emphasis added.

⁴⁶ Emphasis added.

⁴⁷ Emphasis added. As explained in the introductory section 12.1.5.4 of this sub-section, this provision refers specifically to maintenance and repair.

⁴⁸ The same provision is contained in other WA SGAT section – Sections 6.4.1 (Resale) and 9.23.3.17 (Unbundled Network Elements).

⁴⁹ This sub-section is listed under section 12.3 "Maintenance and Repair."

1 As seen from the above quoted language, the SGAT, as well as the mutually
2 agreed upon language of the ICA, already prohibit the companies from making
3 disparaging remarks about one another when one company responds to calls of an
4 End User Customer of the other company. Eschelon is proposing to extend this
5 language to include not only repair *calls*, but also repair *face-to-face*
6 communications, between Qwest's personnel and Eschelon's End User
7 Customers.

8 Qwest does not explain why the prohibition of improper in-person win back
9 efforts in situations when Qwest's communications with Eschelon's End User
10 Customers are caused by Qwest's own errors would allegedly violate its "freedom
11 of speech" rights, while the prohibition of disparaging comments over the phone
12 does not violate Qwest's "freedom of speech." Qwest's position is inconsistent
13 with contract language to which Qwest has already agreed. Qwest points out in
14 its position statement that this "contract language was thoroughly litigated in the
15 section 271 proceedings throughout the 14-states."

16 **Q. IS ESCHELON'S PROPOSAL CONSISTENT WITH CONTRACT**
17 **LANGUAGE AND POLICIES RESULTING FROM THE SECTION 271**
18 **PROCEEDINGS?**

19 A. Yes. Eschelon's proposed provisions are fully consistent with the existing
20 contract provisions and their intended purpose. Eschelon proposes to simply
21 close gaps in the language to ensure that the approved policies behind that

1 language are met. Surely the state commissions, when approving earlier
2 language, did not intend for Qwest to take advantage of a loophole (created by the
3 reference to “calls”) by engaging in conduct when face-to-face with Eschelon’s
4 Customers that is prohibited for calls. Eschelon’s proposal to modify the
5 language is natural because Eschelon’s course of business has illuminated the fact
6 that certain aspects of Qwest’s communications with Eschelon’s End User
7 Customers need to be more explicitly addressed in the contract language.

8 **Q. YOU SAID THAT ESCHELON’S BUSINESS EXPERIENCE**
9 **ILLUMINATED THE NEED FOR ESCHELON’S PROPOSED**
10 **LANGUAGE. CAN YOU PROVIDE AN EXAMPLE?**

11 A. Yes. Although Eschelon is not generally present when communications between
12 its Customers and Qwest personnel occur, occasionally they are reported to
13 Eschelon. For example, the testimony of Ms. Johnson describes a situation in
14 which Qwest personnel were installing service for Eschelon’s Customer and
15 Eschelon’s End User Customer later informed Eschelon that Qwest: (1)
16 commented to Eschelon’s End User Customer that the Customer should have
17 ordered service with Qwest; (2) bridged in by telephone Qwest’s Retail
18 representative who quoted various Qwest retail offerings to Eschelon’s End User
19 Customer; (3) suggested that Eschelon’s End User Customer would receive
20 service much faster if the Customer were to choose Qwest over Eschelon; and (4)
21 told Eschelon’s End User Customer that before Qwest could move forward with

1 installing the equipment, the Customer needed to decide whether to stay with
2 Eschelon or move to Qwest. The Customer described this situation as being “held
3 hostage” by Qwest.

4 This type of repair situation is addressed in Eschelon’s proposed language in Issue
5 12-65. The example provided with respect to Acknowledgement of Mistakes
6 (Issue 12-64) in the facts of the case in Minnesota Docket No. P-421/C-03-616 –
7 in which Qwest wholesale made an error, and Qwest Retail used it to win back
8 Eschelon’s End User Customer – is the type of situation addressed in Eschelon’s
9 proposed language in Issue 12-66.

10 Common sense dictates that such conduct is wrong. Intuitively, it is inappropriate
11 to engage in activities damaging a client’s (Eschelon’s) business *while* providing
12 services to the client (Eschelon). The fact that instances of such conduct have
13 actually occurred bolsters the need for contract language expressly prohibiting
14 this type of behavior.

15 **Q. DO THE TELECOMMUNICATIONS ACT AND FCC RULES PROHIBIT**
16 **SUCH CONDUCT?**

17 A. Yes. Such behavior is unjust and unreasonable, and comprises unfair
18 competition. As I mentioned above, the reason Qwest’s technician may visit
19 Eschelon’s End User Customer premises is that Qwest controls an essential
20 facility – the local loop. To compete, Eschelon must lease this essential facility

1 from Qwest. Recognizing such unique position of Qwest and other ILECs as
2 providers of essential facilities, the Telecommunications Act mandated that the
3 ILECs provide unbundled access to these essential network elements for
4 competing carriers on non-discriminatory terms.⁵⁰ The FCC further defined in its
5 rules that unbundled access includes maintenance and repair functions that the
6 ILEC must provide to CLECs.⁵¹ In other words, Qwest's personnel performing
7 work for Eschelon in a wholesale capacity will be performing service for
8 Eschelon as part of the federal unbundling requirements.

9 The federal rules provide that, at a minimum, the ILECs' "just, reasonable and
10 non-discriminatory" obligation implies that the ILECs should provide unbundled
11 network elements to requesting carriers under terms and conditions that are at
12 least equal to the terms and conditions under which the ILEC provides the service
13 to itself.⁵² Clearly, when a Qwest technician provides repair service to Qwest's
14 own End User Customers, the technician would not make disparaging remarks
15 about the End User Customer's current carrier (Qwest) or engage in marketing
16 efforts persuading the End User Customer to switch to another carrier. Similarly,

⁵⁰ Telecommunications Act, § 251(c)(3).

⁵¹ CFR §51.313(c) defines the meaning of "just, reasonable and nondiscriminatory" access to UNEs prescribed that an ILEC must provide a carrier purchasing UNEs with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems. In addition, the FCC's *First Report and Order* stated that the provision of unbundled network elements does not relieve the ILEC from the duty to maintain and repair the unbundled network element: "The ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element." (¶268; emphasis added; footnotes omitted).

⁵² CFR §51.313(b).

1 Qwest's technician – when providing repair service to Eschelon's End User
2 Customers – should not engage in marketing behavior persuading Eschelon's End
3 User Customer to switch to another carrier such as Qwest. Engaging in such
4 behavior and taking advantage of Qwest's unique position in the market as
5 wholesale provider of essential facilities would be unjust, unreasonable and would
6 comprise unfair competition against Eschelon. Eschelon is simply proposing to
7 further clarify the language in Issue 12-65 to prevent such unlawful conduct and
8 introduce additional safeguards with Issue 12-66 that prevent Qwest from using
9 its own errors for improper winback activity.

10 **Q. WHY ARE ADDITIONAL SAFEGUARDS NECESSARY IN CASES OF**
11 **QWEST ERRORS OR INACTION THAT AFFECT ESCHELON'S END**
12 **USER CUSTOMERS?**

13 A. If Qwest is allowed to use its own errors or inactions in provisioning wholesale
14 products to CLECs as an opportunity to win back CLEC End User Customers,
15 Qwest would have incentives (and opportunities) to create "errors." Rewarding
16 Qwest with a marketing opportunity when its actions or inactions cause a CLEC
17 Customer to contact Qwest regarding a service issue would create a perverse
18 incentive for the company to induce such opportunities, or at least to be lax in
19 guarding against them. Eschelon's proposal does not reflect an attempt to point
20 the finger at Qwest or assign any particular motive; it simply acknowledges that

1 protections are necessary to offset Qwest's significant natural winback advantage
2 as an incumbent.

3 **Q. HAS ANY STATE COMMISSION EVER ADDRESSED THE ISSUE OF**
4 **QWEST'S ADVANTAGES WHEN TRYING TO WIN BACK A**
5 **CUSTOMER?**

6 A. Yes. The Minnesota Commission recognized this advantage when it rejected a
7 winback tariff proposed by Qwest because it found the tariff anticompetitive in
8 light of Qwest's inherent advantage as the incumbent and owner of essential
9 bottleneck facilities. Specifically, the Minnesota Commission noted in its
10 Winback Order⁵³ that because of its special status as an incumbent and owner of
11 bottleneck facilities, Qwest can take marketing advantage of End User Customers
12 where CLECs have no marketing advantage:

13 Due to Qwest's role as the incumbent monopolist, nearly every
14 phone subscriber was a Customer of Qwest at some time.
15 Competitors, lacking the advantage of incumbency, cannot make a
16 similar claim. As a result, Qwest can use the Win Back tariff to
17 pursue most of a competitor's Customers, but competitors cannot
18 use the Win Back tariff to pursue most of Qwest's Customers.

19
20 Although the quoted paragraph refers to a specific Qwest Winback tariff, the
21 Minnesota Commission's logic applies equally to other situations in which
22 Qwest's inherent advantage as an incumbent provider of essential facilities gives

⁵³ Order Rejecting Win Back Tariff, *In the Matter of a Commission Investigation into the Issues Raised by New Access Communications Regarding the Application of Qwest's Avoided Cost Discount to Its Win Back Tariff*, MN PUC Docket No. P-421/CI-02-582. December 20, 2002. ("MN Winback Order").

1 Qwest a winback opportunity not available to CLECs. The Winback Order also
2 quoted the Minnesota Commission's previous decision in the *SingleNumber*
3 *Service Case* on a similar issue:

4 This marketing strategy and its resulting competitive advantage are
5 available to U S WEST only because it is currently the monopoly
6 provider.

7 To allow U S WEST or any other incumbent provider to exploit its
8 monopoly status and throw up eleventh hour barriers to Customers
9 changing companies would directly contravene state and federal
10 policies opening the local telecommunications market to
11 competition. It would complicate, prolong, and perhaps jeopardize
12 the already complex process of transforming a monopoly
13 environment into an effectively competitive one.⁵⁴
14

15 The Minnesota Commission's decisions demonstrate that protections are
16 necessary to ensure that Qwest's win back efforts are not anticompetitive and do
17 not result from Qwest's inherent advantage as an incumbent and owner of
18 essential bottleneck facilities.

19 **Q. PLEASE EXPLAIN THE REASON BEHIND ESCHELON'S PROPOSAL**
20 **FOR ISSUE 12-66(A).**

21 A. Issue 12-66(a) concerns section 12.1.5.4.8. This section addresses contacts
22 between Eschelon's End User Customers and Qwest, as well as Qwest's End User
23 Customers and Eschelon. One of the agreed-upon provisions in this section states
24 that in the case the End User of one company (Eschelon or Qwest) calls the other

⁵⁴ *In the Matter of U S WEST Communications, Inc's Proposal to Offer a Rate Stability Plan for SingleNumber Service*, MN PUC Docket No. P-421/EM-95-1245, Order Rejecting Rate Stability Plan. May 7, 1996.

1 company, nothing in this contract shall prohibit the called company from asking
2 the End User Customer if he or she would like to discuss this company's
3 products. However, Eschelon's proposal for section 12.1.5.5 (Issue 12-66)
4 prohibits Qwest from discussing its products with Eschelon's End User Customer
5 *in a special situation* in which the Customer called as a result of Qwest-caused
6 service problem. For consistency, Eschelon proposes that section 12.1.5.4.8
7 (Issue 12-66(a)) contain a clarifying cross-reference (exception) to the special
8 situation addressed in section 12.1.5.5 (Issue 12-66).

9 **Q. PLEASE SUMMARIZE ISSUE NOS. 12-65, 12-66 AND 12-66(A)**
10 **REGARDING COMMUNICATIONS WITH CUSTOMERS.**

11 A. Due to Qwest's unique position of control over the local loop and its position as
12 Eschelon's competitor – which together create means, incentive, and opportunity
13 for anti-competitive conduct – Eschelon needs adequate safeguards in the
14 interconnection agreement to protect against anti-competitive conduct. The
15 Commission should adopt Eschelon's proposed clarifying language in Issue 12-65
16 to prevent such unlawful conduct and the proposed safeguards in Issues 12-66 that
17 are designed to Qwest from taking advantage of its own errors for improper win
18 back activity. The Commission should also adopt Eschelon's language in Issue
19 12-66(a) to ensure consistency between sections 12.1.5.4.8. (Issue 12-66(a)) and
20 12.1.5.5 (Issue 12-66). Eschelon's language for all three issues is consistent with
21 the contract language and public policies that resulted from the 271 proceedings

1 and the regulators' recognition of Qwest's inherent advantage as the incumbent
2 and provider of essential facilities. False distinctions should not be made based
3 on whether a repair communication is made via a call or face-to-face, and Qwest
4 should not benefit from its own wholesale errors that harm Eschelon's End User
5 Customers. Eschelon's proposals close gaps in the language to address these
6 legitimate business concerns. Eschelon's proposal is reasonable. If Qwest does
7 not intend to engage in such improper winback activity, it should not object to
8 such language.

9 **SUBJECT MATTER NO. 31. EXPEDITED ORDERS**

10 **Issues Nos. 12-67 and 12-67(a)-(g)**

11 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED RELATING TO**
12 **EXPEDITED ORDERS.**

13 A. An expedited order, or an "expedite," is an order for which Qwest provides
14 service more quickly than it otherwise would under the normal provisioning
15 interval. For example, if the normal interval for a particular UNE is five days,
16 Qwest can expedite the order for that UNE by providing it in less than five days.
17 Under certain circumstances, an Eschelon customer may need service by a certain
18 date, such as the date of the grand opening of its business or some other important
19 event, or may need service to be restored following a disaster, such as a fire or
20 flood that might require the customer to have to move to different offices on short
21 notice. In order to be able to meet this customer need, Eschelon needs to be able

1 to obtain service from Qwest on an expedited basis. To assure that Eschelon has
2 the ability to receive expedited service on terms and conditions that are
3 nondiscriminatory and provide Eschelon with a meaningful opportunity to
4 compete, it is necessary for those terms to be contained in the ICA.

5 **Q. DOES QWEST PROVIDE ESCHELON WITH EXPEDITED SERVICE**
6 **TODAY?**

7 A. From the very beginning of the interconnection relationship between Eschelon
8 and Qwest, when Eschelon opted in to the AT&T interconnection agreement in
9 2000, Qwest provided Eschelon with expedites at no additional charge when
10 certain specified emergency conditions were met. This continues to be the
11 practice in Washington. However, in January 2006, in all other states but
12 Washington, Qwest, implemented over the objection of multiple CLECs through
13 CMP a new expedite policy (referred to by Qwest as “Pre-Approved Expedites”)
14 that required CLECs to sign an “expedite amendment” and pay a fee of \$200 per
15 day for each day expedited, even if the CLEC already had expedite terms in its
16 ICA, and even if Qwest had been providing expedites at no additional charge
17 under the ICA. Washington is the only state in which Qwest does not currently
18 offer fee-added Pre-Approved Expedites – *i.e.*, expedite capability for UNE loops
19 if the emergency conditions are *not* met. Qwest has explained its treatment of the
20 two types of expedites (emergency-based and fee-added) in Washington as
21 follows:

1 The Expedites Requiring Approval section of this procedure does not
2 apply to any of the products listed below (unless you are ordering services
3 in the state of WA).

4 The Pre-Approved expedite process is available in all states except
5 Washington for the products below when your ICA contains language for
6 expedites with an associated per day expedite charge.⁵⁵

7 Thus, contrary to other states, in Washington Qwest currently has a web-based
8 offering for emergency based expedites (what it terms Expedites Requiring
9 Approval) at no additional charge but it does not offer the fee-added Pre-
10 Approved expedite process at any charge in Washington. Although in its
11 proposed ICA in Washington Qwest is proposing an “ICB” rate that it identifies
12 in Exhibit A as being a Commission-approved rate and claims applies to
13 expedites,⁵⁶ therefore, Qwest today in Washington does not provide expedites to
14 CLECs, including Eschelon, pursuant to Commission-approved ICA expedite
15 language even at that ICB rate for any expedite request when the emergency-
16 based conditions are not present.

17 It is important to note that, whatever the expedite process Qwest is offering in
18 Washington now, if the ICA does not include language embodying the expedite
19 procedure, Qwest may later claim that it can change its expedite policy at will

⁵⁵ See Qwest’s PCAT, *Expedites and Escalations Overview – V. 41.0* available at <http://www.qwest.com/wholesale/clecs/exesclover.html>.

⁵⁶ See ICA Exhibit A, §9.20.14 (in which Qwest cites footnote “E,” which is defined as “Docket UT-003013, Part D”). Qwest argues that Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff, and that the tariff authorizes Individual Case Basis (“ICB”) charges. *Petition for Arbitration* (see p. 50 at ¶¶ 143-144). Qwest’s position statement refers to Qwest’s Washington Tariff WN U-42 “Interconnection Service,” which lists a charge for expedite as ICB. Qwest’s Washington Tariff WN U-42 section 3.1 p. 14.13.

1 through the PCAT.⁵⁷ I will discuss below the series of events that resulted in such
2 a Qwest change of policy on expedites in other states. A chronology and list of
3 documented facts regarding this issue attached to Ms. Johnson's testimony as
4 Exhibits BJJ-3 and BJJ-4 provide a detailed account of these events, including the
5 CLECs' objections to Qwest's unilateral removal of the emergency-based
6 expedite process for UNE services. Those events provide an example of Qwest's
7 unilaterally changing the rules that govern the parties' contractual relationship and
8 further underscore why it is essential to include expedite terms and conditions in
9 the ICA, rather than, as Qwest has insisted, simply referring in the ICA to
10 expedite requirements contained in Qwest's PCAT.⁵⁸

11 **Q. WHAT ARE THE DISPUTED ISSUES ASSOCIATED WITH EXPEDITED**
12 **ORDERS?**

13 A. There are eight disputed issues associated with expedited orders, including:

14	Issue 12-67:	General provisions
15	Issue 12-67(a)	Emergencies
16	Issue 12-67(b)	Charges in Exhibit A
17	Issue 12-67(c)	Non-Recurring Charges
18	Issue 12-67(d)	UNEs
19	Issue 12-67(e)	Combinations
20	Issue 12-67(f)	Trunk Orders
21	Issue 12-67(g)	Expedite Charge

⁵⁷ See Qwest's discussion of the PCAT and CMP in Joint Disputed Issues Matrix (Exhibit 1 to Qwest's Arbitration Petition – *see, e.g.*, position statement for Issue 1-1).

⁵⁸ *See id.*

1 These issues are associated with Section 12.2.1.2 and its subparts, as well as
2 7.3.5.2 and its subparts, 9.1.12.1 and its subparts, 9.23.4.5.6, and Exhibit A
3 section 9.20.14. Eschelon proposes addressing expediting the due date when
4 ordering centrally in Section 12.2 (“Pre-Ordering, Ordering, and Provisioning”).
5 Qwest proposes addressing this subject in Section 7 (“Interconnection”) and
6 Section 9 (UNEs). Therefore, Eschelon’s language and Qwest’s counter language
7 do not appear in the same sections of the ICA.

8 **Issue 12-67: ICA Section 12.2.1.2 – General Provisions**

9 **Q. WHAT IS ESCHELON’S BUSINESS PURPOSE BEHIND THE**
10 **LANGUAGE IT HAS PROPOSED AS ISSUE NO. 12-67?**

11 A. This issue concerns general contract provisions about expedites. Because
12 expedites are requests associated with provisioning a CLEC order, it is logical to
13 include general provisions about expedites in Section 12 (“Access to OSS”) under
14 sub-section 12.2, “Pre-Ordering, Ordering, and Provisioning.” Therefore,
15 Eschelon proposes that expedites be described in section 12.2.1.2. Note that in
16 the currently approved ICA, expedites are placed in the same manner – in
17 Attachment 5 “Provisioning and Ordering,” which covers topics similar to topics
18 in Section 12.2 of the contract.

19 **Q. WHAT IS ESCHELON’S PROPOSED LANGUAGE ON ISSUE 12-67?**

20 A. Eschelon proposes to include the following paragraph in the contract:

1 12.2.1.2 Expedites. CLEC may request a Due Date earlier than
2 the applicable Due Date interval for that product or service.
3 Requests for expedites can be made either prior to, or after,
4 submitting CLEC's service request.

5
6 **Q. PLEASE EXPLAIN THE KEY POINTS IN ESCHELON'S PROPOSED**
7 **LANGUAGE.**

8 A. First, under Eschelon's proposal, expedites will be described in the section of the
9 contract that deals with pre-ordering, ordering and provisioning. This is the most
10 appropriate place for expedites in the contract because expedites are directly
11 related to provisioning and ordering. The proposed placement also avoids
12 redundancy, which would arise if expedites were defined in the product-specific
13 sections of the contract, such as sections 7 ("Interconnection") or 9 ("Unbundled
14 Network Elements"), as proposed by Qwest in Issues 12-67(d) and (f).

15 Second, Eschelon's proposed language describes expedites in terms of "Due
16 Date" – a term that is defined in the agreed-upon "Definitions" section of the
17 contract.⁵⁹ Eschelon's proposal is consistent with the following language in
18 Attachment 5 "Provisioning and Ordering" of the currently approved ICA:

19 3.2.2.13 Expedites: U S WEST shall provide CO-PROVIDER the
20 capability to expedite a service order. Within two (2) business
21 hours after a request from CO-PROVIDER for an expedited order,
22 U S WEST shall notify CO-PROVIDER of U S WEST's
23 confirmation to complete, or not complete, the order within the
24 expedited interval.

⁵⁹ This definition states as follows: "Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

1 ...
2 3.2.4.2.1 If CO-PROVIDER requests a due date earlier than the
3 standard due date interval, then expedite charges may apply.

4
5 Similar to the above cited language in Attachment 5, Eschelon's proposal
6 describes expedites as requests for due dates earlier than the due dates that would
7 otherwise apply under the ICA. Because the due dates are defined elsewhere in
8 the contract, Eschelon's proposed definition of expedites leaves no ambiguity.

9 Third, Eschelon's proposed language explains that requests for expedites can be
10 made either with Eschelon's service order request, or after Eschelon submits the
11 request.⁶⁰ It is important that expedites can be made after the initial Eschelon
12 order is submitted because circumstances requiring an expedite may arise *after*
13 the initial order.⁶¹ These circumstances may include emergency conditions that
14 did not exist originally or a change of Eschelon's End User Customer's plans. In
15 addition, if Eschelon were to cancel its original request so that it could submit a
16 new request in order to ask for an expedite, and Qwest were then to deny

⁶⁰ Qwest's PCAT relating to expedites currently provides: "For any of the above conditions, expedited request can be made either prior to, or after, submitting your service request." See <http://www.qwest.com/wholesale/clecs/exesclover.html>. In contrast, Qwest's proposed language is more limiting. For example, Qwest's proposed Section 9.1.12.1.1 provides that the expedite request must be made on the LSR or ASR, which would preclude making an expedite request prior to or after submitting that LSR or ASR. Please refer to my discussion of this issue below.

⁶¹ This business need is addressed in the currently approved ICA, Attachment 5 "Provisioning and Ordering." This Attachment states as follows: "3.2.4.4 Subsequent to an initial order submission, CO-PROVIDER may request a new/revised due date that is earlier than the committed due date. If U S WEST agrees to meet that new/revised due date, then that new/revised due date becomes the committed due date and expedite charges may apply."

1 Eschelon's expedite request, Eschelon would have lost the due date interval to
2 which it was entitled under its original request.

3 **Q. HOW DOES ESCHELON'S PROPOSAL FOR ISSUE 12-67 COMPARE**
4 **TO QWEST'S CURRENT PRACTICES?**

5 A. Eschelon's proposal reflects Qwest's current practices regarding expedites in
6 Washington. Specifically, under Qwest's current procedures (which it applies
7 only to emergency-based expedites), a CLEC may submit an expedite request
8 with the initial order, or after the order.⁶² In other words, this aspect of
9 Eschelon's proposal requires no change for Qwest.

10 **Issue 12-67(a): ICA Section 12.2.1.2 Expedited Orders – Emergencies**

11 **Q. WHAT IS ESCHELON'S BUSINESS PURPOSE RELATED TO THE**
12 **LANGUAGE IT HAS PROPOSED TO ADDRESS ISSUE NO. 12-67(A)?**

13 A. Eschelon's language is focused on emergencies which refer to extraordinary
14 situations in which the End User Customer has a need for quick provisioning of
15 service. An example of an emergency situation would be a flood in the end user
16 customer's business office which requires the customer to move to a temporary
17 location. In order to run his or her business, the End User Customer would need
18 quick access to telephone service. This might be particularly true for certain
19 businesses to which telephone service is critical, such as a call center or a health
20 care facility. Thus, Eschelon's proposal on this issue is driven directly by the

⁶² See Qwest's PCAT, *Expedites and Escalations Overview – V. 41.0* available at
<http://www.qwest.com/wholesale/clecs/exesclover.html>.

1 needs of Eschelon's customers. In addition, as I will discuss below, because
2 Qwest provides expedites to its retail customers and to its reseller and QPP CLEC
3 customers under emergency conditions at no additional charge, Eschelon needs to
4 be able to obtain expedited service on the same terms and conditions in order to
5 be able to compete meaningfully.

6 **Q. WHAT IS ESCHELON'S PROPOSED LANGUAGE FOR ISSUE 12-67(a)?**

7 A. Eschelon proposes the following language for section 12.2.1.2.1:

8 12.2.1.2.1 Notwithstanding any other provision of this Agreement,
9 for all products and services under this Agreement (except for
10 Collocation pursuant to Section 8), Qwest will grant and process
11 CLEC's expedite request, and expedite charges are not applicable,
12 if one or more of the following conditions are met:

13 a) Fire;

14 b) Flood;

15 c) Medical emergency;

16 d) National emergency;

17 e) Conditions when the End User Customer is completely out
18 of service (primary line);

19 f) Disconnect in error when one of the other conditions on
20 this list is present or is caused by the disconnect in error;

21 g) Requested service necessary for CLEC End User
22 Customer's grand opening event delayed for facilities or
23 equipment reasons with a future Ready For Service (RFS) date;

24 h) Delayed orders with a future RFS date that meet any of the
25 above described conditions;

26 i) National Security;

27 j) Business Classes of Service unable to dial 911 due to
28 previous order activity; or

29 k) Business Classes of Service where hunting, call forwarding
30 or voice mail features are not working correctly due to previous
31 order activity where the End User Customer's business is being
32 critically affected.

33

1 **Q. HOW DOES ESCHELON'S PROPOSAL WITH RESPECT TO**
2 **EMERGENCY EXPEDITES COMPARE WITH QWEST'S CURRENT**
3 **PRACTICES?**

4 A. Eschelon's proposal, with the minor exception of (f), is consistent with the
5 manner in which expedites have been handled in the past in other states and are
6 handled for Washington UNE CLECs, as well as consistent with the way in which
7 Qwest provides expedited service to its retail customers⁶³ and to CLECs when
8 they are providing service using Qwest's QPP and resale products today.

9 Historically, Qwest offered Eschelon and other CLECs an option to request
10 expedited orders when emergency-type conditions were met ("emergency-based
11 expedites"). Originally, this was Qwest's retail process that later extended to
12 CLEC wholesale products when they became available.⁶⁴ Pursuant to its
13 interconnection agreements in Washington, as well as in other states, Qwest
14 provided this capability to order expedites for several products, including all
15 unbundled loops, at no additional charge when the emergency conditions were
16 met. As discussed below, Qwest continues to provide expedites at no additional
17 charge when the emergency conditions are met for UNEs in Washington and

⁶³ Qwest's Washington retail tariffs, *Private Line Transport Services* WN-41 and *Access Services* WN-44 contain sections stating that non-recurring charges (including the expedite fee) do not apply for the reestablishment of retail service following fire, flood or other Acts of God. See, Exhibit JW-3 to this testimony for the relevant pages of the tariff.

⁶⁴ Eschelon was able to trace this offering to at least September 21, 2001. This offering is captured in Qwest's document *Expedite and Escalations Overview – V8.0*, which is no longer available online (See <http://www.qwest.com/wholesale/cnla/uploads/PROD%2E09%2E20%2E01%2EF%2E00087%2EF%2EBFRSR%2Edoc>)

1 certain other products in other states, but recently has refused to do so in other
2 states for certain UNEs, including analog and DS1 unbundled loops.

3 Eschelon's proposed list of emergency conditions closely follows Qwest's own
4 list of emergency conditions for which Qwest grants expedites at no additional
5 charge – the list that is contained in Qwest's PCAT.⁶⁵ The only minor difference
6 is condition (f). Qwest's PCAT language lists under the item (f) condition
7 "Disconnect in error by Qwest." Eschelon's proposal is to include "Disconnect in
8 error when one of the other conditions on this list is present or is caused by the
9 disconnect in error." From the customer's perspective, it does not matter why the
10 service was disconnected or which company caused the disconnection; the
11 customer needs its service restored without delay. Eschelon's proposal that would
12 provide for expedited service in on an emergency basis when a customer's service
13 is disconnected in error is consistent with Qwest's past practice.

14 **Q. YOU MENTIONED THAT QWEST DOES NOT ANY LONGER OFFER**
15 **THIS EMERGENCY-BASED EXPEDITE OPTION FOR CLECS'**
16 **SERVICE ORDERS ASSOCIATED WITH CERTAIN UNES SUCH AS**
17 **DS1 LOOP IN STATES OTHER THAN WASHINGTON. PLEASE**
18 **EXPLAIN THE RELEVANCE OF THIS CHANGE TO THIS**
19 **ARBITRATION.**

⁶⁵ See Qwest's PCAT, *Expedites and Escalations Overview – V. 41.0* available at <http://www.qwest.com/wholesale/clecs/exesclover.html>.

1 A. As I mentioned above, Qwest's wholesale tariff in Washington, upon which
2 Qwest relies as the only support for its proposals on Issue 12-67 and its subparts,
3 does not provide any description of the expedite process, its terms and conditions,
4 other than simply stating that the expedite charge is ICB. Instead, the only
5 document that states how expedites are handled today in Washington is Qwest's
6 PCAT. Qwest can change its PCAT through CMP at any time without the
7 Commission's oversight. This is exactly what happened in other states when,
8 through a series of changes made through its CMP and against protests of the
9 CLEC community, Qwest stopped offering emergency-based expedites to CLECs
10 for UNE products, though no change had occurred to CLEC ICAs. The history of
11 this change illustrates that Qwest's proposals in Washington, which include
12 references to Qwest's PCAT (Issue 12-67(d)) and ICB rate (Issue 12-67(g)), are
13 not only confusing and open-ended, but also allow Qwest flexibility to change
14 terms and conditions unilaterally without the Commission's approval. The
15 history of this change also shows that Eschelon's proposal to spell out the
16 definition, terms and conditions of expedites in the ICA is necessary to meet
17 Eschelon's business needs and will help to avoid potential disputes regarding
18 these terms and conditions.

19 **Q. PLEASE BRIEFLY DESCRIBE HOW QWEST STOPPED OFFERING**
20 **THE EMERGENCY-BASED EXPEDITE OPTION FOR CLECS'**
21 **SERVICE ORDERS ASSOCIATED WITH CERTAIN UNES IN OTHER**

1 **STATES.**

2 A. On October 19, 2005, Qwest announced a change to the expedite process to
3 become effective on January 3, 2006. Qwest issued a new version of its PCAT
4 document describing expedites (*Expedites & Escalations Overview*). In this
5 version of the PCAT's *Expedites & Escalations Overview* (Version 30.0),⁶⁶ Qwest
6 unilaterally removed multiple products, including unbundled loops, from the
7 emergency-based expedite process that Qwest historically offered.⁶⁷ Qwest's
8 changes in Version 30.0 denied the capability, even to a CLEC with expedite
9 "language in [its] Interconnection Agreement (ICA),"⁶⁸ to expedite several
10 products (including all unbundled loops) under the existing interconnection
11 agreement language, even when the emergency conditions are met. As a result of
12 Version 30.0, in early 2006, Qwest began denying Eschelon the capability to
13 expedite unbundled loop orders under its Commission-approved interconnection
14 agreements in all states other than Washington.⁶⁹

15 **Q. YOU MENTIONED THAT QWEST UNILATERALLY REMOVED**
16 **MULTIPLE PRODUCTS, INCLUDING UNE PRODUCTS, FROM THE**

⁶⁶ Qwest's PCAT, *Expedites and Escalations Overview – V.30.0* available at
http://www.qwest.com/wholesale/downloads/2005/051018/PCAT_ExpEscl_V30.doc.

⁶⁷ The chronology of events that caused this change is attached to Ms. Johnson's testimony as Exhibit BJJ-3.

⁶⁸ *Qwest Response*, p. 48.

⁶⁹ That Qwest continued offering in Washington emergency-based expedites under Version 30.0 of PCAT's *Expedites & Escalations Overview*, is evident from Qwest's response to Covad's clarification comment made through CMP and available at
http://www.qwest.com/wholesale/downloads/2005/051118/PROS.11.18.05.F.03492.FNL_Exp-EscalationsV30Qwest%20Response.doc. Note that emergency-based expedites are currently referred to as "Expedites Requiring Approval."

1 **LIST OF SERVICES ELIGIBLE FOR EMERGENCY-BASED EXPEDITE**
2 **PROCESS IN STATES OTHER THAN WASHINGTON. DID CLECS**
3 **AGREE TO THIS REMOVAL?**

4 A. No, as reflected in the chronology and list of documented facts that is attached to
5 Ms. Johnson's testimony, CLECs did not agree to this removal. In fact, at the
6 time Qwest introduced its *fee-added* non-emergency expedite process, it assured
7 CLECs that the new fee-added process was *in addition* to the existing emergency-
8 based expedite process.

9 **Q. DOES QWEST CURRENTLY OFFER IN OTHER STATES ANY OTHER**
10 **EXPEDITE OPTIONS FOR CLECS' SERVICE ORDERS ASSOCIATED**
11 **WITH UNES SUCH AS DS1 LOOP?**

12 A. Qwest offers its *fee-added* expedite option for UNE products such as DS1 capable
13 loop in other states, but only if the CLEC's ICA contains "language supporting
14 expedited requests with a "per day" expedite rate."⁷⁰ Under its fee-added expedite
15 process, Qwest requires the CLEC to pay a \$200 per day fee for each day
16 expedited. This fee-added process does not provide any emergency conditions for
17 which no fee is charged. Thus, as I explain further below, the availability of this
18 fee-added expedite process is separate from Issue 12-67(b), which deals with
19 situations in which the CLEC has not met the required conditions for an
20 emergency-based expedite.

⁷⁰ See Qwest's PCAT, *Expedites and Escalations Overview – V. 41.0* available at
<http://www.qwest.com/wholesale/clecs/exesclover.html>.

1 Q. PLEASE EXPLAIN WHY IT IS REASONABLE ON ESCHELON'S PART
2 TO PROPOSE THAT ITS ICA LANGUAGE REQUIRE QWEST TO
3 PROVIDE EMERGENCY-BASED EXPEDITES FOR CLECS' UNE
4 ORDERS?

5 A. Eschelon's proposal is reasonable because it reflects the way Qwest offers
6 emergency-based expedites today in Washington. Further, even with the advent
7 of its new fee-added non-emergency expedite process in other states, Qwest
8 continues to expedite service requests for facilities carrying similar services for its
9 own retail customers, and for Qwest resale and QPP customers, *at no additional*
10 *charge in emergencies.* Although currently Qwest treats its UNE orders in
11 Washington differently than other states (by offering emergency-based expedite),
12 there is absolutely no guarantee that Qwest will *continue* this practice unless it is
13 captured in the ICA. Indeed, Eschelon is seeking certainty in this regard.

14

15 **Issue 12-67(b): ICA Section 12.2.1.2.2 & Exhibit A – Charges in Exhibit A**

16 Q. WHAT IS ESCHELON'S BUSINESS PURPOSE REGARDING ITS
17 PROPOSAL WITH RESPECT TO ISSUE NO. 12-67(B) RELATED TO
18 CHARGES IN EXHIBIT A FOR EXPEDITED ORDERS?

19 A. With this proposal, Eschelon describes the application of the rates in Exhibit A
20 when the conditions for an emergency expedite are not met. Although Eschelon's
21 previous requests for expedited service have typically arisen in the context of a
22 customer emergency, it also needs to be able to receive expedited service under

1 non-emergency conditions. Under those circumstances, Eschelon is willing to
2 pay a fee.

3 **Q. WHAT IS ESCHELON'S PROPOSED LANGUAGE ON ISSUE 12-67(B)?**

4 A. Eschelon proposes the following language in section 12.2.1.2.2 of the contract:

5 12.2.1.2.2 If none of the conditions described in Section 12.2.1.2.1
6 are met, Qwest will grant and process CLEC's expedite request,
7 but the expedite charges in Exhibit A will apply, unless the need
8 for the expedite is caused by Qwest.

9 Eschelon's proposal for the specific rate (which would appear in Exhibit A,
10 Section 9.20.14) constitutes Issue 12-67(g) discussed below. Qwest offers no
11 alternative contract language.

12 **Q. PLEASE EXPLAIN THE RATIONALE BEHIND ESCHELON'S**
13 **PROPOSAL.**

14 A. If the emergency conditions described in Section 12.2.1.2.1 are not met, Eschelon
15 offers to voluntarily pay additional charges for expedites, even though Qwest has
16 offered no cost support for an expedite rate. Eschelon is offering to pay for
17 expedites when emergency conditions are *not* met. For its part, Qwest states in its
18 PCAT that it will *not* offer fee-added non-emergency expedites to Washington
19 CLECs.⁷¹

20 Eschelon is asking for expedites at no additional charge when emergency
21 conditions *are* met because Qwest continues to provide emergency-based free-of-

⁷¹ See Qwest's PCAT, *Expedites and Escalations Overview – V. 41.0* available at
<http://www.qwest.com/wholesale/clecs/exesclover.html>.

1 charge service in such situations to other groups of its customers, including resale
2 and QPP-based CLECs, as well as Washington UNE customers.

3 **Q. HOW DOES ESCHELON PROPOSE TO ADDRESS SITUATIONS IN**
4 **WHICH QWEST HAS CAUSED THE NEED FOR AN EXPEDITE?**

5 A. Eschelon's proposed language for Issue 12-67(b) contains an exception so that
6 Qwest may not charge the CLEC if Qwest caused the need for an expedite. If, for
7 example, Qwest makes an error affecting Eschelon's customer's service, and an
8 expedite is needed to correct the error without pushing out the due date, Qwest
9 should not be able to charge Eschelon for such an expedite. The addition of this
10 language also removes an inappropriate incentive for Qwest to mishandle orders
11 to create a situation requiring payment of expedited order charges.

12 The agreed-upon language of the contract already contains provisions similar to
13 Eschelon's proposal (though product-specific), spelling out that expedite charges
14 do not apply in cases of expedites necessitated by Qwest's errors. Specifically, in
15 sections 9.2.4.4.2 and 9.6.4.1.4(d), Eschelon and Qwest agreed that expedite
16 charges do not apply for UNE loops and UNE transport products if expedites are
17 caused by Qwest.

18 **Q. IF THE AGREED-UPON LANGUAGE ALREADY STATES THAT**
19 **EXPEDITE CHARGES DO NOT APPLY IF THE EXPEDITE IS CAUSED**
20 **BY QWEST, IS ESCHELON'S PROPOSAL FOR ISSUE 12-67(b)**

1 **DUPLICATIVE?**

2 A. No. Eschelon's proposal is not duplicative because the agreed-upon language
3 does not cover all products to which expedite requests may apply. For example,
4 the agreed-upon language does not address expedite charges for Interconnection
5 trunks (section 7.3.5.2). In fact, Qwest proposes language modification to section
6 7.3.5.2 (this proposal constitutes Issue 12-67(f)) does not contain language stating
7 that expedite charges do not apply if the expedite is caused by Qwest. This is
8 another illustration of why provisions regarding expedites should be placed in
9 section 12 – the section that addresses ordering and provisioning – rather than be
10 scattered across different product-specific sections of the contract.

11 **Issue 12-67(c): ICA Section 12.2.1.2.3 – NRC**

12 **Q. WHAT IS ESCHELON'S BUSINESS PURPOSE FOR ITS PROPOSAL**
13 **WITH RESPECT TO ISSUE NO. 12-67(C) RELATED TO NON-**
14 **RECURRING CHARGES FOR EXPEDITED ORDERS?**

15 A. Eschelon is not trying to get something for nothing through its expedite proposal.
16 Thus, Eschelon proposes the following language to spell out that applicable NRC
17 charges apply in addition to any applicable expedite charges:

18 12.2.1.2.3 Nothing in this Section 12.2.1.2 alters whether a non-
19 recurring installation charge in Exhibit A applies to the CLEC
20 order pursuant to the terms of the applicable section of this
21 Agreement. The expedite charge, if applicable, is separate from
22 the installation charge.

1 This language ensures that the provisions of section 12.2.1.2 will not alter the
2 application of installation charges under Exhibit A when they appropriately apply.
3 Expedites are not free under Eschelon's proposal. Eschelon clarifies that it will
4 pay the installation charge (covering Qwest's costs), in addition to expedite
5 charges when applicable.

6 **Issue 12-67 (d): ICA Section 9.1.12.1 and subpart – UNEs**

7 **Q. WHAT IS ESCHELON'S BUSINESS PURPOSE FOR ITS PROPOSAL**
8 **WITH RESPECT TO ISSUE NO. 12-67(D) RELATED TO EXPEDITED**
9 **ORDERS FOR UNES?**

10 A. Eschelon proposes that Section 9.1.12.1 contain a simple cross reference to
11 Section 12 "OSS" – the ICA section that addresses ordering and provisioning –
12 where the definition of expedites and their conditions are much more
13 appropriately placed. In contrast, Qwest is proposing that expedites and their
14 conditions be defined not in the general section that addresses ordering and
15 provisioning (Section 12), but rather in product-specific sections of the ICA. Not
16 only does Eschelon disagree, as a substantive matter, with Qwest's proposal for
17 Section 9.1.12.1, it is also the case that the expedite terms are more appropriately
18 placed in Section 12, rather than as part of product-specific sections of the ICA.

19 **Q. WHAT IS QWEST'S PROPOSAL ON ISSUE 12-67(D)?**

20 A. Qwest is proposing that expedites be defined in Section 9 "Unbundled Network

1 Elements.” Qwest’s proposal is as follows:

2 9.1.12.1 Expedite requests for designed Unbundled Network
3 Elements are allowed. Expedites are requests for intervals that are
4 shorter than the interval defined in Qwest’s Service Interval Guide
5 (SIG), Exhibit C or Individual Case Basis (ICB) Due Dates as
6 applicable.

7 9.1.12.1.1 CLEC will request an expedite for designed Unbundled
8 Network Elements, including an expedited Due Date, on the Local
9 Service Request (LSR) or the Access Service Request (ASR), as
10 appropriate.

11 9.1.12.1.2 The request for an expedite will be allowed only when
12 the request meets the criteria outlined in the Pre-Approved
13 Expedite Process in Qwest’s Product Catalog for expedites at
14 Qwest’s wholesale web site.

15

16 **Q. WHY IS THE QWEST PROPOSAL NOT SUITABLE FOR**
17 **WASHINGTON?**

18 A. Qwest’s proposal for section 9.1.12.1.2 states that expedites for designed UNEs
19 will be allowed only when the expedite request meets the criteria outlined in the
20 Pre-Approved Expedite process published in Qwest’s web-based PCAT.
21 Currently the PCAT contains a Washington-specific exception that *excludes*
22 UNEs ordered in the state of Washington from the Pre-Approved Expedite
23 process.

24 **Pre-Approved Expedites**

25 The Pre-Approved expedite process *is available in all states except*
26 *Washington* for the products listed below when your ICA contains

1 language for expedites with an associated per day expedite
2 charge.⁷²
3 Further, the same PCAT states that in the State of Washington another process –
4 the emergency-based Expedites Requiring Approval--is available for UNE
5 products.⁷³ In other words, Qwest’s proposal appears to conflict with the PCAT
6 that it references: By referencing the PCAT criteria for Pre-Approved expedites
7 as the *only* situations in which expedites are allowed, Qwest’s proposed language
8 could be interpreted as excluding UNEs ordered in Washington from *any* expedite
9 process.

10 **Q. WITH WHAT OTHER KEY ELEMENTS OF QWEST’S PROPOSAL**
11 **DOES ESCHELON NOT AGREE?**

12 A. First, in section 9.1.12.1, Qwest’s language says expedites are “allowed,” but
13 Qwest does not commit to granting them. This is unacceptable because even
14 under its template “Pre-Approved Expedite” terms,⁷⁴ to which Qwest’s proposed
15 language refers in section 9.1.12.1.2, Qwest automatically grants expedites when
16 a CLEC pays Qwest’s expedite charges.

17 Second, Qwest’s proposed definition of expedites refers to its generic Service
18 Interval Guide, rather than just the ICA. (Note that the ICA normal intervals are

⁷² See Qwest’s PCAT, *Expedites and Escalations Overview – V. 41.0* available at <http://www.qwest.com/wholesale/clecs/exesclover.html>. As seen from this document, the list of products for which this provision applies is composed primarily of UNEs (emphasis added).

⁷³ Qwest’s PCAT, *Expedites and Escalations Overview – V. 41.0* (available at <http://www.qwest.com/wholesale/clecs/exesclover.html>) states as follows: “The Expedites Requiring Approval section of this procedure does not apply to any of the products listed below (unless you are ordering services in the state of WA).”

⁷⁴ The fee-added expedite process discussed in Issue 12-67(a).

1 contained in Exhibit C). This problem constitutes Issue 1-1 addressed by
2 Eschelon's witness Mr. Starkey.

3 Third, in section 9.1.12.1.1, Qwest proposes that requests for expedites be placed
4 on *the* Service Order. The choice of the article "the" suggests that an expedite can
5 only be requested on *the original* service order. This is a departure from Qwest's
6 current practice of allowing requests either on or after the service request. For
7 example, Qwest's PCAT currently states that initial orders for designed services
8 can be supplemented to request an expedite date:

9 If the expedited or agreed to due date is different from what
10 was originally submitted on the ASR or LSR, Qwest will
11 contact you and request that you supplement your request
12 with the agreed to expedited date. The EXP field on the
13 supplement ASR or LSR must also be populated.⁷⁵

14 Fourth, Qwest's proposal for 9.1.12.1.2 varies from Eschelon's proposal by
15 referring to provisions outside the ICA rather than those filed and approved with
16 this Commission. Qwest proposes to replace all of Eschelon's ICA proposal with
17 a reference to its web-based PCAT. As explained fully in Mr. Starkey's
18 testimony, the FCC has clearly held, that at "no point did we create a general
19 'web-posting exception' to section 252(a)."⁷⁶ Terms and conditions that are
20 important to Eschelon's customers and business need to be included in the ICA.

⁷⁵ See Qwest's PCAT, *Expedites and Escalations Overview – V. 41.0* available at
<http://www.qwest.com/wholesale/clecs/exesclover.html>.

⁷⁶ FCC Forfeiture Order, ¶32.

1 For these reasons, Eschelon proposes a simple, clear cross-reference to section
2 12.2.1.2 for discussion of expedites and opposes Qwest's language for Sections
3 9.1.12.1, 9.1.12.1.1, and 9.1.12.1.2.

4 **Issue 12-67 (e): ICA Section 9.23.4.5.6 – Combinations**

5 **Q. WHAT IS ESCHELON'S BUSINESS PURPOSE FOR ITS PROPOSAL**
6 **WITH RESPECT TO ISSUE NO. 12-67(E) RELATED TO EXPEDITED**
7 **ORDERS FOR COMBINATIONS?**

8 A. This issue concerns section 9.23 that addresses UNE Combinations such as EELs.
9 UNE combinations are important product offerings for Eschelon and other
10 CLECs. For example, an EEL, which is a loop and transport combination, allows
11 Eschelon to serve its End User Customers geographically associated with end
12 offices where Eschelon does not have collocation. In other words, EELs serve a
13 very similar purpose as an unbundled loop, providing the essential bottleneck
14 facility "last mile" (as well as transport). Therefore, Eschelon has the same
15 business need for expedites for UNE Combinations as it has for local loop and
16 transport.

17 **Q. WHAT IS ESCHELON'S PROPOSAL ON ISSUE 12-67(E)?**

18 A. Eschelon proposes that Section 9.23 "Combinations" contain a provision about
19 expedite orders. Specifically, Eschelon proposes the following language:

20 9.23.4.5.6 For expedited orders, see Section 12.2.1.2.
21

1 Although Qwest proposes to omit Eschelon's proposed language, it does not offer
2 any substantive proposal of its own regarding how Eschelon will be able to
3 expedite orders for UNE combinations.

4 **Q. WHAT IS THE RATIONALE BEHIND ESCHELON'S PROPOSAL?**

5 A. As I explained above, UNE combinations serve a purpose very similar to UNE
6 loop, and therefore, UNE combinations should be subject to the same expedite
7 terms as UNE loops. Eschelon is proposing that, to avoid redundancy and
8 potential inconsistencies, the expedite provision of Section 9.23 "Combinations"
9 include only a cross reference to Section 12.2.1.2 – the section that defines
10 expedites under Eschelon's proposal for Issue 12-67.

11 **Issue 12-67 (f): ICA Section 7.3.5.2 – Trunk Orders**

12 **Q. WHAT IS ESCHELON'S BUSINESS REASON FOR ITS PROPOSAL**
13 **WITH RESPECT TO ISSUE NO. 12-67(F) RELATED TO EXPEDITED**
14 **ORDERS FOR TRUNK ORDERS?**

15 A. Section 7.3.5.2 concerns the terms for expedited orders for Interconnection trunks.
16 Eschelon's need to be able to have the capability of receiving Interconnection
17 trunks on an expedited basis are similar to the reasons discussed above with
18 respect to Eschelon's need to be able to obtain expedited service generally. Thus,
19 Eschelon's proposal confirms that Eschelon will be able to obtain Interconnection
20 trunks on an expedited basis and that the terms governing such expedited service
21 are set out in Section 12.2.1.2.2, which sets out the ICA's general expedite terms.

1 **Q. WHAT IS ESCHELON'S PROPOSAL ON ISSUE 12-67(F)?**

2 A. Eschelon proposes to replace all of Section 7.3.5.2 (consistent with its proposal
3 for Sections 9.1.12.1 and 9.23.4.5.6) with the following cross reference:

4
5 7.3.5.2 For expedites, see Section 12.2.1.2.

6 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 12-67(F)?**

7 A. Qwest's proposal is as follows:

8 7.3.5.2 Expedite requests for LIS trunk orders are allowed.
9 Expedites are requests for intervals that are shorter than the
10 interval defined in Qwest's Service Interval Guide (SIG) or
11 Individual Case Basis (ICB) Due Dates. Expedite charges as
12 identified in Exhibit A apply per order for every day that the Due
13 Date interval is shortened, based on the standard interval in the
14 SIG or based on ICB criteria for Due Dates.

15 7.3.5.2.1 CLEC will request an expedite for LIS trunks, including
16 an expedited Due Date, on the Access Service Request (ASR).

17 7.3.5.2.2 The request for expedite will be allowed only when the
18 request meets the criteria outlined in the Pre-Approved Expedite
19 Process in Qwest's Product Catalog for expedite charges at Qwest's
20 wholesale web site.

21 **Q. PLEASE EXPLAIN THE RATIONALE BEHIND ESCHELON'S**
22 **PROPOSAL.**

23 A. Eschelon's proposal is to substitute the product-specific language of section
24 7.3.5.2.2 with a simple cross-reference to Section 12.2.1.2, where expedites are
25 defined under Eschelon's proposal for Issue 12-67. In contrast to Qwest's
26 approach, Eschelon's approach eliminates redundancy and avoids confusion

1 regarding whether asymmetric provisions in different product sections are
2 intentional, or accidental, omissions.

3 **Issue 12-67 (g): Exhibit A Section 9.20.14 –Expedite Charge**

4 **Q. WHAT IS ESCHELON’S BUSINESS PURPOSE FOR ITS PROPOSAL**
5 **WITH RESPECT TO ISSUE NO. 12-67(G) RELATED TO EXPEDITE**
6 **CHARGE?**

7 A. This issue concerns the amount of expedite charge. Eschelon proposes a flat fee
8 of \$100 per expedite. Under Eschelon’s proposal on Issue 12-67(b), this fee
9 would apply if conditions for emergency-based expedite (Issue 12-67(a)) are not
10 met. Qwest proposes a fee defined as ICB. Under Qwest’s proposal on Issues
11 12-67(d) and (f), this fee would apply to all expedites for UNE and
12 Interconnection services. But Qwest has stated that it will not offer a fee-added
13 non-emergency expedite in Washington. Particularly in light of Qwest’s
14 confusing offering, Eschelon’s willingness to pay a \$100 expedite fee under non-
15 emergency conditions represents a compromise on Eschelon’s part.

16 **Q. PLEASE EXPLAIN THE OTHER REASONS THAT QWEST’S**
17 **PROPOSAL FOR AN ICB RATE IS UNACCEPTABLE IN THE ICA.**

18 A. First, Eschelon needs certainty when making its business decisions, including
19 decisions on whether to request an expedite. By nature, a need for an expedite
20 arises in circumstances that require fast response. Clearly, an expedite rate that is
21 described only as “ICB” does not provide the required certainty and fast response

1 because it requires that Eschelon pass additional hurdles (requesting a quote for
2 the ICB rate) in circumstances where time is of the essence.

3 Second, Qwest's proposal needs to be evaluated together with the ICA's already
4 agreed-upon provisions on ICB rates. Specifically, Section 4.0 "Definitions" of
5 the ICA provides the following agreed-upon definition of the ICB:

6 "Individual Case Basis" or "ICB" shall have the meaning set forth
7 in Exhibit I.

8 With regard to ICB rates Exhibit I contains the following agreed-upon provision:

9 2.1 For those products and services identified in the Agreement
10 that contain a provision for ICB rates, Qwest will provide CLEC
11 with a written quote of the ICB rate within twenty (20) business
12 days unless a specific interval for providing the quote is either
13 contained in the Agreement or this Exhibit.

14 The key to this provision is that Qwest will provide Eschelon a quote for an ICB
15 rate *within 20 business days*. Normal provisioning intervals are typically much
16 shorter.⁷⁷ For example, normal interval for DS1 capable loop is 5 days. Clearly,
17 if there is a need to provide a DS1 loop in *less than 5 days*, the 20-day waiting
18 period for Qwest's expedite quote is unacceptable and defeats the purpose of the
19 expedite process. In other words, a combination of Qwest's proposal to keep the
20 expedite rate as unspecified ICB rate and the agreed-upon provisions of the
21 contract is incompatible with the whole concept of expedites.

22 **Q. WHY DO YOU SAY THAT ESCHELON'S RATE PROPOSAL**
23 **REPRESENTS A COMPROMISE ON THE PART OF ESCHELON?**

⁷⁷ See Exhibit C of the ICA.

1 A. Eschelon proposes to set a specific rate for non-emergency-based expedites,
2 despite the fact that no cost basis has been established for such rate, in order to
3 avoid additional litigation in this case. However, Eschelon reserves its right to a
4 cost-based rate if this rate is litigated in the cost case. Therefore, Eschelon
5 proposes its non-emergency-based expedite rate as an interim rate.

6 Note that in all other states where Qwest and Eschelon are engaged in ICA
7 arbitration proceedings, Qwest proposed a specific expedite fee of \$200 *per day*.
8 By proposing a \$100 flat fee to be charged by Qwest for expedites, Eschelon is
9 offering a compromise. Eschelon's proposed rate is still high when compared to
10 the mechanism that Qwest uses to set its expedite charges for access services in
11 Washington. Specifically, Washington switched and special access tariffs spell
12 out the method by which Qwest determines expedite charges for these services.⁷⁸
13 Under this method the expedite charge is dependent on the total NRCs associated
14 with the order, as well as the number of days in the normal and expedited
15 provisioning intervals. Moreover, the expedite charge is capped at 50% the total
16 NRCs associated with the order.

17 A comparison of Eschelon's proposed rate with the rate that would apply under
18 Qwest's tariff shows that Eschelon's proposal is reasonable.⁷⁹ Typically, Eschelon
19 uses the basic installation procedure when ordering UNE loops from Qwest

⁷⁸ See Qwest Washington tariffs WN U-41 "Private Line Transport Services," section 4.1.4.C p. 8 and WN U-44 "Access Service," section 5.2.2.D pp. 16-17.

⁷⁹ Note that this is an example provided for illustrative purposes.

1 (Basic Installation, Section 9.2.5.1 of Exhibit A). The NRC for Manual Basic
2 Installation (First Loop) is \$104.82 per loop.⁸⁰ Therefore, applying the method
3 described in Qwest’s Washington access tariffs, the total charge for such an
4 expedite request will be capped at 50% of NRCs, which is only \$52.41,⁸¹ and the
5 amount charged will clearly be smaller than Eschelon’s proposed expedite charge
6 of \$100.

7 **Q. WHAT IS THE RELEVANCE OF QWEST’S PROPOSAL FOR THE**
8 **EXPEDITE CHARGE MADE IN OTHER STATES TO THIS**
9 **ARBITRATION?**

10 A. As discussed above, Qwest is proposing that the ICA reference Qwest’s web-
11 based PCAT for the description of the expedite process. Qwest’s PCAT currently
12 states that Qwest charges for expedite *on a per day basis*.⁸² In other states Qwest
13 is proposing that the expedite charge be set at \$200 per day. Given that Qwest’s
14 Washington-specific proposal is general as “ICB,” it is logical to expect that
15 Qwest – if asked for a quote for this ICB – will offer the same expedite rate (or at
16 least structured on the same “per day” basis) as it proposes in other states.

⁸⁰ This is an agreed-upon charge specified in Exhibit A, section 9.2.5.1.1.1 of the ICA. Note that other charges associated with the order (such as OSS charges per Local Service Request defined in section 12 of the ICA Exhibit A) are small. For clarity of presentation of the example I do not consider these charges, but this omission does not affect the qualitative conclusion of this example.

⁸¹ This charge is calculated as 50% of the Installation NRC, which is $\$104.82 * 50\%$.

⁸² See Qwest’s PCAT, *Expedites and Escalations Overview – V. 41.0* available at <http://www.qwest.com/wholesale/clecs/exescover.html>.

1 Note that not only Qwest's proposal in other states, but also both Eschelon's
2 proposal and the expedite charges based on the methodology of Qwest's access
3 tariffs (described above) are exorbitant charges because Qwest performs the same
4 work under an expedite install as it does under a normal install. The only material
5 difference is that the work is performed earlier. The only cost that Qwest *may*
6 incur would be the cost of processing the expedite order – which is likely to be
7 relatively small.

8 Further, CFR § 51.507 requires that “[e]lement rates shall be structured
9 consistently with the manner in which the costs of providing the elements are
10 incurred.” In other states Qwest's proposed charge is *per day*. The only likely
11 cost of performing a job five days earlier than the normal interval is the cost of
12 processing of the expedite order. This cost is a *per-request*, not per-day cost.
13 Because it is hard to imagine circumstances that would drive costs of an expedite
14 request to be per-day-based, Qwest's unilateral decision to charge this rate on a
15 per-day basis indicates that this rate is not cost-based. The ICA should specify a
16 cost-based rate at the appropriate time when a cost basis is established. If no such
17 cost basis is set in this arbitration, the ICA should contain an interim rate here
18 until that rate is set. Eschelon has proposed for an interim rate a flat charge of
19 \$100.

20 **Q. WHAT IS THE BASIS FOR YOUR CONCLUSION THAT AN EXPEDITE**
21 **RATE FOR UNE SERVICES MUST BE COST BASED?**

1 A. An expedite charge is clearly a rate established for purposes of accessing a UNE
2 and, as such, is subject to the FCC's TELRIC rules. This conclusion follows
3 directly from the following FCC language regarding "access to unbundled
4 elements" reflected in CFR §51.307 and 51.313:

5 An incumbent LEC shall provide a requesting
6 telecommunications carrier access to an unbundled network
7 element, along with all of the unbundled network element's
8 features, functions, and capabilities, in a manner that allows the
9 requesting telecommunications carrier to provide any
10 telecommunications service that can be offered by means of
11 that network element.⁸³

12 An incumbent LEC must provide a carrier purchasing access to
13 unbundled network elements with the pre-ordering, ordering,
14 provisioning, maintenance and repair, and billing functions of
15 the incumbent LEC's operations support systems.⁸⁴

16 In ¶268 of its *First Report and Order*, the FCC similarly found that the
17 requirement to provide "access" to UNEs must be read broadly, concluding that
18 the Act requires that UNEs "be provisioned in a way that would make them
19 useful." As evident from these citations, an unbundled network element includes
20 not only the physical facility, but also all the capabilities of providing service,
21 such as provisioning and maintenance and repair.⁸⁵ As accurately summarized by
22 the North Carolina commission in a recent BellSouth proceeding, "[t]he
23 Commission also believes that expediting service to customers is simply one
24 method by which BellSouth can provide access to UNEs and that, since BellSouth

⁸³ 47 CFR §51.307(c).

⁸⁴ 47 CFR §51.313(c)

⁸⁵ See also Issue 9-31 addressed by Mr. Starkey.

1 offers service expedites to its retail customers, it must provide service expedites at
2 TELRIC rates pursuant to Section 251 of the Act and Rule 51.311(b).⁸⁶ Based
3 on this reasoning, the North Carolina Commission affirmed its initial decision that
4 BellSouth must provide service expedites at TELRIC-compliant rates.

5 **Q. PLEASE SUMMARIZE YOUR OPINIONS AND CONCLUSIONS WITH**
6 **RESPECT TO ISSUE 12-67 AND ITS SUBPARTS (A) THROUGH (G).**

7 A. The ability to expedite an order is critical to Eschelon's ability to respond to the
8 needs of its customers and also to its ability to compete effectively. Expedited
9 service is a method of obtaining access to UNEs and, accordingly, must be
10 provided on terms and conditions that are transparent, just, reasonable, and
11 nondiscriminatory. Those terms and conditions must be made part of the ICA or
12 they risk being diminished or rescinded as they have been in other states.

13 Eschelon's proposals with regard to emergency expedites are reasonable because
14 they are consistent with the terms on which Qwest, from the beginning of the
15 parties' interconnection relationship, has been providing Eschelon with expedited
16 service. Those terms are also consistent with terms that Qwest makes available to
17 its retail customers and to its reseller and QPP CLEC customers.

18 Eschelon's proposals with regard to non-emergency expedites are also reasonable.

19 Eschelon proposes a flat \$100 as an interim rate, a charge that is structured to

⁸⁶North Carolina Utilities Commission Dockets Nos. P-772 Sub. 8, P-913 Sub. 5, P-1202 Sub 4, *Order* dated February 8, 2006, p. 47.

1 better approximate costs associated with an expedite (if any) than the clearly
2 excessive \$200 per day charge proposed by Qwest in other states. Most
3 importantly, Qwest states in its PCAT that it does not offer any option for non-
4 emergency based expedites in Washington at this time.

5 Language embodying reasonable expedite requirements must be incorporated into
6 the ICA, where it cannot be unilaterally changed or rescinded by Qwest as it has
7 been in other states.

8

9 **SUBJECT MATTER NO. 31A. SUPPLEMENTAL ORDERS**

10 **Issue No. 12-68 (ICA Section 12.2.3.2)**

11 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
12 **SUPPLEMENTAL ORDERS, REFLECTED IN ISSUE NO. 12-68.**

13 A. Supplemental orders are used to add or change previously submitted Local or
14 Access Service Requests ("LSRs" or "ASRs"). After Eschelon's initial LSR is
15 submitted to Qwest, Eschelon may need to modify the request for any number of
16 reasons and routinely does so as part of day to day operations. Modifications may
17 be needed, for example, because Eschelon's End User Customer requests a new
18 service delivery date or that additional services be added to the initial request.
19 Eschelon may need to change the due date because of other unforeseen
20 circumstances. Similarly, Eschelon's End User Customer may request that all or
21 part of its initial request be cancelled. Eschelon could also submit a supplemental

1 order to correct previous mistakes, which could be made either by Eschelon
2 during submission of the original order (see Issue 12-74 “Fatal rejection errors”)
3 or by Qwest during implementation of Eschelon’s order. Therefore, the
4 submission of supplemental service requests is a necessary part of ordering
5 process as it exists today. Qwest does accept supplemental orders for LSRs or
6 ASR that have not been completed.⁸⁷ This fact is captured in the following
7 agreed-upon language of section 12.2.3.1 of the ICA:

8 12.2.3.1 CLEC may submit a supplement to a LSR or ASR
9 (known as a “supplement” or “supplemental order”) that serves as
10 a request to cancel or to add or change an already existing,
11 previously submitted LSR or ASR.

12 Eschelon needs contractual certainty regarding the rates (if any) under which it
13 may submit supplemental orders to Qwest.

14 **Q. DESCRIBE ESCHELON’S PROPOSAL FOR ISSUE 12-68.**

15 A. Currently, Qwest does not charge CLECs for supplementing service requests.
16 Eschelon offers two ICA language proposals, both of which accurately reflect that
17 there is no charge applicable when it supplements orders. Neither of Eschelon’s
18 proposals require a change by Qwest. Specifically, Eschelon proposes two
19 alternative options for the language in section 12.2.3.2:

20 **Proposal #1**

⁸⁷ See, for example, Qwest PCAT, *Ordering Overview – V 122.0* available at
<http://www.qwest.com/wholesale/clecs/ordering.html>.

1 12.2.3.2 There is no ~~transaction~~ charge for ~~the physical act of a~~
2 CLEC submitting a supplement or cancelling or re-submitting a
3 service request.

4 **Proposal #2**

5 12.2.3.2 There is no ~~transaction~~ charge for the physical act of a
6 CLEC submitting a supplement or cancelling or re-submitting a
7 service request, unless otherwise expressly provided in this
8 Agreement. Whether a charge applies to any activity resulting
9 from such a service request will be governed by the provisions of
10 this Agreement applicable to such activities.
11

12 **Q. WHAT IS QWEST’S PROPOSAL FOR ISSUE NO. 12-68?**

13 A. Qwest proposes the following, more narrow language:

14 12.2.3.2 There is no transaction charge for the physical act of a
15 CLEC submitting a supplement ~~or cancelling~~ or re-submitting a
16 service request.

17 Qwest argues⁸⁸ against Eschelon’s proposal on the grounds that Qwest is entitled
18 to compensation for all UNEs, including its Operational Support System (“OSS”),
19 and that Eschelon is trying to avoid payments for OSS “in certain
20 circumstances.”⁸⁹ Qwest does not explain exactly what circumstances it is
21 referring to. Qwest also notes that the “appropriate venue for discussing rates for
22 OSS cost recovery is a Washington cost docket.”⁹⁰ As I explain below, Qwest
23 currently does not charge CLECs when submitting supplemental orders. As such,

⁸⁸ Note that Qwest does not address Issue 12-68 in its *Petition for Arbitration*, which references the Disputed Issues Matrix (Exhibit 1) as the source of Qwest’s position on this issue (see *Qwest Petition for Arbitration*, p. 45 at ¶130).

⁸⁹ *Disputed Issues Matrix*, Qwest’s position.

⁹⁰ *Disputed Issues Matrix*, Qwest’s position.

1 Eschelon's proposal is reflective of Qwest's current rate structure for
2 supplemental orders and does not propose any changes thereto.

3 **Q. PLEASE EXPLAIN YOUR BASIS FOR STATING THAT QWEST**
4 **CURRENTLY DOES NOT CHARGE ESCHELON FOR SUBMITTING**
5 **SUPPLEMENTAL ORDERS.**

6 A. Qwest's practice of not charging Eschelon (and other CLECs) for submitting
7 supplemental orders is captured in the following language of Qwest's PCAT:

8 *Note: Qwest does not charge you for submitting a supplement or*
9 *resubmitting a service request. Contact your Qwest Service*
10 *Manager if you have further questions around this issue.*⁹¹
11

12 Eschelon's Proposal #1 is similar to the language included in the PCAT. Indeed,
13 both the PCAT and Eschelon's proposal use the term "charge," rather than
14 Qwest's proposed use of the more narrow and undefined term "transaction
15 charge." Similarly, both Eschelon's proposal and PCAT use the general term
16 "submitting" a request, rather than Qwest's proposed more narrow and undefined
17 phrase "physical act of" submitting a request. Qwest's proposal is not only
18 narrow; it implies that Qwest may charge Eschelon some other unspecified (non-
19 transaction) charges when Eschelon places supplemental orders, and some
20 unspecified "non-physical" act occurs when a supplement order is submitted for
21 which Qwest is entitled to additional revenue. Because the ICA does not define

⁹¹ Qwest PCAT, *Ordering Overview – V 122.0* available at
<http://www.qwest.com/wholesale/clecs/ordering.html>.

1 this “transaction charge” or the “physical act” of submitting supplemental
2 requests, Qwest’s language creates unnecessary ambiguity and potential for
3 dispute.

4 **Q. WHAT IS THE RATIONALE BEHIND ESCHELON’S SECOND**
5 **PROPOSAL?**

6 A. Although Qwest has not specified the payments it alleges that “Eschelon is trying
7 to avoid,”⁹² Eschelon’s second proposal addresses concerns that Qwest appears to
8 have in this regard. Based on Qwest’s proposed language, it appears that Qwest is
9 attempting to address a concern that it cannot charge Eschelon if the supplemental
10 order results in additional work, and the Agreement allows Qwest to charge for
11 that work. Eschelon’s Proposal #2 clarifies that if there is an explicit charge
12 somewhere else in the ICA (a charge that is applicable to any such additional
13 work), this ICA-based charge would continue to apply. For example, if Eschelon
14 supplements a request to add a line to its initial order, installation charges
15 associated with this line do apply.

16 **Q. WHAT IS YOUR RESPONSE TO QWEST’S ARGUMENT THAT**
17 **ESCHELON IS ATTEMPTING TO CREATE AN EXCEPTION TO THE**
18 **APPLICATION OF RATES ESTABLISHED IN THE COMMISSION’S**
19 **COST DOCKET?**

⁹² *Disputed Issues Matrix*, Qwest’s position.

1 A. Qwest's argument is nonsensical: As I explained above, currently Qwest does not
2 charge for supplemental orders. The Commission has not established a charge for
3 supplemental orders. If the Commission approves and orders that such a rate be
4 implemented at some point in the future, that rate would apply pursuant to the
5 applicable rate and pricing provisions of this Agreement.⁹³ Further, if Qwest is
6 concerned about cost recovery⁹⁴ and wishes to charge Eschelon a rate for
7 submitting supplemental orders, it would need to negotiate an appropriate rate.
8 Until then, to avoid disputes and promote administrative efficiency, the contract
9 should specifically state that there is no charge.

10 **Q. PLEASE SUMMARIZE ISSUE NO. 12-68 REGARDING**
11 **SUPPLEMENTAL ORDERS.**

12 A. Submitting supplemental orders is part of the routine ordering process. Qwest
13 does not charge Eschelon for submitting supplemental requests. The Commission
14 should adopt Eschelon's proposed language because it reflects current practice.
15 Qwest's proposal is ambiguous. By using the undefined terms "transaction
16 charge" and "physical act," Qwest's language erroneously suggests that there is a
17 charge that is somehow "non-transactional" or "non-physical." Qwest's concern
18 that Eschelon's proposal would prevent Qwest from charging rates that the
19 Commission may order at some time in the future is unfounded because if the

⁹³ See ICA Sections 2.2 & 22.

⁹⁴ *Disputed Issues Matrix*, Qwest's position.

1 Commission sets this rate, this rate will be accommodated in the amendment to
2 the ICA.

3

4 **SUBJECT MATTER NO. 32. PENDING SERVICE ORDER NOTIFICATIONS**
5 **("PSONS")**

6 **Issue No. 12-70: ICA Section 12.2.7.2.3**

7 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
8 **PSONS, REFLECTED IN ISSUE NO. 12-70.**

9 A. Eschelon currently utilizes Qwest-provided Pending Service Order Notifications
10 ("PSONS") to identify *Qwest errors* in the processing of Eschelon's orders before
11 and on the due date. Although Qwest's quality control is not Eschelon's job, the
12 alternative is to find out about errors the hard way – when the Eschelon's End
13 User Customers complain that service is down or has not been provided in a
14 manner that is consistent with the original service orders. Eschelon seeks to avoid
15 that result whenever possible such that it can remain competitive. While CLECs
16 should not be forced to use the PSONS to conduct quality checks for Qwest,
17 which can be a resource-intensive task, PSONS should remain available to CLECs
18 such as Eschelon that are willing to go this extra mile for their End User
19 Customers. This is particularly true because Eschelon spent extensive time and
20 resources providing data and examples to Qwest to develop and improve the
21 PSONS through CMP for a period four years. Eschelon seeks to capture that hard
22 work and has actually proposed language that requires Qwest to provide less

1 information than it does today, but ensures that the most critical information in
2 terms of End User Customer impact is provided in PSONs. While all of the
3 information received on the PSON today is important, the most critical is that
4 which is taken from the Service and Equipment (S&E) and Listings sections of
5 the Qwest service order. These sections list features, telephone numbers, USOCs
6 (reflecting the products and services ordered by the Customer), and listing detail,
7 including the End User Customer's address. These data must be accurate to
8 ensure that Customers receive the services they requested on the appropriate
9 telephone numbers and at the correct address. Eschelon must be able to utilize
10 this information – as provided through the PSON – in order to identify Qwest
11 generated errors in order to mitigate the damage such errors could cause
12 Eschelon's customers, as well as Eschelon itself.

13 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUE 12-70?**

14 A. Eschelon proposes that Qwest's current practice of providing PSONs be captured
15 in the contract language so that Qwest will continue to provide PSONs, with at
16 least the Service and Equipment and Listings information provided today, until
17 the ICA is amended with mutually agreeable terms and conditions. Eschelon
18 specifically proposes that the following underlined language be included in
19 Section 12.2.7.2.3 of the ICA:

20 **Proposal #1**
21 12.2.7.2.3 Pending Service Order Notification. When Qwest
22 issues or changes the Qwest service orders associated with the
23 CLEC LSR, Qwest will issue a Pending Service Order Notification

1 (PSON) to CLEC. Through the PSON, Qwest supplies CLEC with
2 information that appears on the Qwest service order providing at
3 least the data in the service order's Service and Equipment (S&E)
4 and listings sections.

5 **Proposal #2**

6 12.2.7.2.3 Pending Service Order Notification. When Qwest
7 issues or changes the Qwest service orders associated with the
8 CLEC LSR, Qwest will issue a Pending Service Order Notification
9 (PSON) to CLEC. Through the PSON, Qwest supplies CLEC with
10 information that appears on the Qwest service order, providing at
11 least the data in the service order's Service and Equipment (S&E)
12 and listings sections *that Qwest provided to requesting CLECs as*
13 *of IMA Release 13.0.*⁹⁵
14

15 Eschelon has two proposals. The second proposal, which is a modification on the
16 first proposal (marked with bold italicized font) was made in order to address
17 Qwest's concern raised for the first time in the Direct Testimony of Ms.
18 Albersheim in Minnesota. In that testimony⁹⁶ Qwest claimed that PSONs do not
19 currently contain *all* of the data contained in the *Service and Equipment* and
20 *Listings* sections of the service order, and that Eschelon's language would force
21 Qwest to make system changes. Eschelon's second proposal specifies that Qwest
22 should provide only those data in its *Service and Equipment* and *Listings* that is
23 currently included in the PSON. Qwest rejected this proposal, suggesting that
24 Ms. Albersheim's argument was not truly a valid concern. Eschelon continues to
25 offer this alternative proposal for the Commission's consideration.

26 **Q. WHAT IS QWEST'S PROPOSAL?**

⁹⁵ IMA Release 13.0 contains the most recent updates in requirements for the PSON.

⁹⁶ MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Renee Albersheim, p. 62.

1 A. Qwest does not agree to inserting the clause specifying the two sections of the
2 service order that must be provided (*Service and Equipment; Listings*). Qwest
3 proposes to delete the underlined phrase at the end of the quoted language above.
4 Qwest argues that Eschelon is trying to broaden the existing process to obtain
5 more information than it currently receives in PSONs, even though Eschelon's
6 proposal lists only two of the five types of service order information currently
7 provided by Qwest today.⁹⁷ Although PSONs were already developed in CMP
8 and are currently provided by Qwest in the form requested by Eschelon in its
9 proposal, Qwest also claims, as it does throughout Section 12 of the ICA, that the
10 open issues in Section 12.2.7.2.3 belong in CMP because implementation of a
11 unique process for Eschelon would require Qwest to modify its systems and
12 processes, which would cause additional cost.⁹⁸ Qwest claims that Eschelon
13 "wants to prohibit the industry from ever modifying OSS Notices [such as PSON]
14 in CMP,"⁹⁹ without recognizing that the ICA contains similar provisions for this
15 and other types of status notices and it can, of course, be amended. I address
16 Qwest's arguments further when explaining Eschelon's proposal below.

17 **Q. PLEASE DESCRIBE PSONS AND HOW ESCHELON USES THEM TO**
18 **IDENTIFY QWEST ERRORS BEFORE THE CUSTOMER DUE DATE.**

⁹⁷ See *Disputed Issues Matrix*, Qwest's position statement; see discussion below.

⁹⁸ *Id.*

⁹⁹ *Qwest Petition for Arbitration*, p. 50.

1 A. When Eschelon submits an order (a Local Service Request (“LSR”)) to Qwest,
2 Qwest creates (either manually or electronically) internal service orders¹⁰⁰ to
3 implement the LSR. If the information in a Qwest service order differs from the
4 information on Eschelon’s LSR (*e.g.*, due to a Qwest representative making a
5 typographical error in a manually typed Qwest service order), the End User
6 Customer’s service may be harmed because Qwest will deliver a service different
7 from what was ordered, possibly even disconnecting the service in error per the
8 erroneous Qwest service order. Before PSONs were developed and in the early
9 stages of PSON development, Eschelon experienced an unacceptable level of
10 customer affecting Qwest service order errors. Eschelon had no visibility into
11 activities at Qwest to view those Qwest service orders to check for errors and try
12 to get them corrected. Therefore, as described below, Eschelon spent time and
13 resources to participate in development of a method that would allow Eschelon to
14 verify whether the information that Qwest placed in its service orders accurately
15 reflected the information on Eschelon’s orders. After many stages of
16 development, the end result of this development effort in CMP was that Qwest
17 provides a PSON to requesting CLECs about an hour after the Firm Order
18 Confirmation (“FOC”) is received. The PSON provides the Qwest service order
19 detail described above (*e.g.*, features/USOCs from the *S & E* section, and
20 customer address and listing detail from the *Listings* section) to requesting
21 CLECs.

¹⁰⁰ There may be multiple internal Qwest service orders per each LSR submitted by CLEC.

1 Eschelon double-checks information contained in Qwest's internal service orders
2 by comparing the Qwest provided PSON (information in the *Service and*
3 *Equipment and Listing* sections of the Qwest service order) with the information
4 contained in Eschelon's original LSR. Eschelon strives to undertake this time-
5 and resource-consuming effort because the other option – to allow Qwest's
6 mistakes to affect Eschelon's End User Customers on the due date – would hurt
7 Eschelon's Customers, its reputation, and its business.

8 **Q. IS ESCHELON'S PROPOSAL TO INCLUDE *LISTING AND SERVICES***
9 ***AND EQUIPMENT* SECTIONS IN PSONS CONSISTENT WITH**
10 **QWEST'S CURRENT PRACTICE?**

11 A. Yes. Qwest currently provides PSONs that contain the Listing and Services and
12 Equipment sections of the Qwest service order. Moreover, currently Qwest
13 provides in PSONs additional types of data, such as billing information. Below is
14 an excerpt from Qwest's PCAT that contains the complete list of sections
15 included currently in Qwest's PSON:

16 The PSON contains data from the following service order sections only:

- 17 • Listings (IMA Release 13.0 and beyond)
- 18 • Bill (IMA Release 13.0 and beyond)
- 19 • Control (IMA Release 13.0 and beyond)
- 20 • Traffic (IMA Release 13.0 and beyond)
- 21 • S & E (all Releases)¹⁰¹
- 22

¹⁰¹ Source: http://www.qwest.com/wholesale/downloads/2006/060501/PSON_May2006.doc. IMA Release 13.0 was implemented in 2003.

1 As specified in this Qwest excerpt, Qwest has been including the information
2 from the *Services and Equipment* and *Listings* sections of the Qwest service order
3 in PSONs in the interface used for ordering from Qwest (IMA - Interconnect
4 Mediated Access) for some time. Because Eschelon's proposed language
5 requests that Qwest provide *only two out of five* sections that Qwest is currently
6 providing to Eschelon in PSONs, Qwest's assertion in its position statement that
7 Eschelon is trying to broaden existing process and create a unique process for
8 Eschelon does not make sense. Of the two proposals for Issue 12-70, only
9 Qwest's proposal would require system modifications, if Qwest chose to decrease
10 the amount of information that Qwest provides today, as its proposal would allow
11 Qwest to do without any amendment or Commission oversight. No modification
12 of systems or processes is necessary to continue to provide the PSONs in their
13 current form. Nor is any CMP activity required to continue to do so, as CMP
14 addresses "changes,"¹⁰² and no change is required to maintain the status quo.

15 In other words, Eschelon's request is narrower (not broader) than the data Qwest
16 provides under the current process. The PSON currently provides *more* (not less)
17 information than what is included in the *Listing*, and *Services and Equipment*
18 sections, because the PSON also includes information from the bill, control, and
19 traffic sections of the Qwest service order. Eschelon has identified two of these

¹⁰² See Exhibit BJJ-1 to Ms. Johnson's testimony (CMP Document §1.0, 1st paragraph).

1 sections in its proposed contract language because of the particular importance of
2 the information that they provide.

3 **Q. YOU MENTIONED THAT IN ITS DIRECT TESTIMONY IN**
4 **MINNESOTA QWEST ARGUED FOR THE FIRST TIME THAT PSONS**
5 **DO NOT CURRENTLY CONTAIN ALL THE DATA IN THE SERVICES**
6 **AND EQUIPMENT SECTION OF THE ORDER. PLEASE ELABORATE.**

7 A. Qwest did not provide any support for this statement. In fact, Qwest's witness
8 Ms. Albersheim, attached to her testimony Qwest's *PSON Preparation Guide*;¹⁰³
9 however, language in this Guide does not support Ms. Albersheim's statement. In
10 fact, it contains statements to the contrary. Specifically, on page 20, the Guide
11 says as follows:

12 **3.3 S&E SECTION**

13 This section of the PSON represents the S&E section of a Qwest
14 service order.¹⁰⁴

15
16 Nevertheless, Eschelon attempted to meet Qwest's concern and made a counter-
17 proposal (cited above as Proposal #2) to specifically state that the PSON need
18 only contain the *Service and Equipment* and *Listings* data provided currently in
19 the PSON.¹⁰⁵ As I stated above, on September 8, 2006 Qwest rejected this
20 proposal, indicating that this argument is not Qwest's valid concern.

¹⁰³ MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Renee Albersheim, Exhibit RA-11.

¹⁰⁴ MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Renee Albersheim, Exhibit RA-11, p. 20, §3.3.

¹⁰⁵ Eschelon made this proposal on September 7, 2006.

1 On September 15, 2006, Qwest delivered another surprise in the form of a
2 systems release notification. Although the legitimate purpose of the notice bears
3 no reasonable relationship to the content of service orders or PSONs,¹⁰⁶ Qwest
4 used the notice to alter the language of Section 3.3 of Qwest's *PSON Preparation*
5 *Guide*,¹⁰⁷ which Qwest just filed with the Commission on August 25, 2006. In the
6 redlined document attached as Exhibit BJJ-14,¹⁰⁸ Qwest deleted the sentence upon
7 which Eschelon relied (quoted above) and replaced it, in its entirety, with a
8 sentence that states: "This section applies for each Service Order when there is
9 activity for this section. ACTION CODE through LHLFIDDATA may repeat as
10 a group."¹⁰⁹ Qwest provided no explanation. Deletion of the sentence was not
11 discussed in CMP. Therefore, Eschelon does not know if Qwest is changing the
12 PSON, and if PSON will look different when Eschelon receives it. If so, using
13 the procedures that Qwest described in its Petition,¹¹⁰ Qwest should have
14 submitted a systems change request in CMP for discussion, consideration, and
15 ranking. Even assuming the PSON will not change, Qwest provided no
16 forewarning or explanation for its announced change to this key language, much

¹⁰⁶ The purpose of the systems release is to recognize an upcoming move from one application-to-application method of delivering information (EDI) to another (XML). As indicated on the Qwest's web site, EDI will be retired in October of 2007. (http://www.qwest.com/wholesale/cmp/cr/CR_SCR090606-01.htm).

¹⁰⁷ Exhibit BJJ-14 to Ms. Johnson's testimony (Sept. 15, 2006; PROS.09.15.06.F.04160.LSOG_PCAT_IMA_R_20; comments due Sept. 22, 2006; effective Oct. 16, 2006.

¹⁰⁸ Exhibit to Johnson Direct.

¹⁰⁹ See Johnson Direct Exhibit BJJ-14 §3.5.

¹¹⁰ Qwest Petition for Arbitration, p. 51 at ¶146..

1 less discussed it with CLECs. The timing of the change, in light of the relevance
2 of the language to this arbitration issue, is suspect.

3 **Q. WHY IS INFORMATION FROM THE *LISTING AND SERVICES AND***
4 ***EQUIPMENT* SECTIONS SO IMPORTANT?**

5 A. These two sections are very important to making sure that the End User Customer
6 receives the service requested. As indicated previously, the features, telephone
7 numbers, USOCs (reflecting the products and services ordered by the Customer),
8 and listing detail are listed in these sections, including the Customer's address.
9 They need to be accurate in the Qwest service orders to ensure that Eschelon's
10 End User Customer receives the requested services and correct telephone numbers
11 at the correct address, and in working order. If Qwest limits the PSONs in the
12 future to exclude the service order detail in the *Listing*, and *Services and*
13 *Equipment* sections, the useful purpose that the PSONs currently serve would be
14 defeated.

15 Eschelon relies heavily on the *Listing*, and *Services and Equipment* sections of the
16 PSON because errors in these sections have an immediate impact on the End User
17 Customer. For example, if the End User Customer's address is not listed
18 correctly in Qwest's internal systems even though it was correct on Eschelon's
19 order, the End User Customer would not receive its service on the due date at the
20 correct address. The Customer's expectations will not be met, and the Customer
21 will be disappointed. If the Customer needed service that day for a particular

1 reason, such as a Grand Opening, the Customer is likely to be very upset with its
2 provider for the missed commitment. Similarly, if the End User Customer orders
3 900 blocking, and Qwest installs service that does not include 900 blocking in
4 error, the End User Customer's employees could make 900 calls charged to their
5 employer even when the Customer strongly objects to such calls and has
6 specifically requested to have them blocked. In these types of situations, the End
7 User Customer generally will not know that Qwest made the error and will blame
8 Eschelon. This directly affects Eschelon and its business. Eschelon needs to be
9 able to plan its business to avoid problems caused by Qwest to meet its End User
10 Customers' expectations.

11 **Q. DESCRIBE HOW THE PSON, IN ITS CURRENT FORM, CAME TO BE.**

12 A. The lengthy history of PSON's development demonstrates why it is important that
13 Qwest's continued provisioning of the key sections of Qwest service orders in the
14 PSONs should be captured in the contract language. Developing the PSON to its
15 current form was a resource-intensive process that lasted four years, counting
16 from the first CLEC's Change Request in the CMP to the completion of the
17 PSON in its current form. Specifically, this process started with McLeod's
18 submission of a Change Request in CMP on March 21, 2001,¹¹¹ followed by five
19 other Change Requests related to the content of PSONs made by Eschelon, AT&T

¹¹¹ McLeod's Change Request 5466535 is available at http://www.qwest.com/wholesale/cmp/archive/CR_5466535.htm. As explained in this hyperlink, McLeod's Change Request was caused by the fact that "McLeod has experienced a huge number of Qwest typist errors."

1 and Qwest,¹¹² and ended on February 17, 2005 with the closure of the last
2 outstanding Change Request.¹¹³ That is longer than the three-year term of the
3 ICA.¹¹⁴ Eschelon spent time and resources providing data and examples to Qwest
4 to develop and improve the PSONs, so that the PSONs would serve the purpose
5 of helping to avoid adverse End User Customer impact. Qwest should not be able
6 to nullify that work without an amendment to the contract.

7 **Q. DOES ESCHELON'S PROPOSAL PREVENT THE INDUSTRY FROM**
8 **MODIFYING OSS NOTICES?**

9 A. No. Note that the agreed-upon portions of section 12.2.7.2.3 (which contains the
10 proposed language for Issue 12-70) already specifies certain information that a
11 PSON should contain (“information that appears on the Qwest service order”).
12 Inexplicably, Qwest does not consider the agreed-upon requirement (to include
13 information that appears on Qwest’s service order) as a “prohibition” to modify
14 OSS notices through CMP, but it considers the disputed language (to include the
15 data in Service and Equipment and listing sections, which are on Qwest’s service
16 order) to be a “prohibition” on modifications of OSS notices.

¹¹² The description of these Change Requests is available at the following hyperlinks: Eschelon
(http://www.qwest.com/wholesale/cmp/archive/CR_SCR073001-2.htm and
http://www.qwest.com/wholesale/cmp/archive/CR_SCR093002-04.htm), Qwest
(http://www.qwest.com/wholesale/cmp/archive/CR_25497.htm), and AT&T
(http://www.qwest.com/wholesale/cmp/archive/CR_SCR041202-01.htm and
http://www.qwest.com/wholesale/cmp/archive/CR_SCR022703-14.htm).

¹¹³ Eschelon’s change request SCR093002-04 available at
http://www.qwest.com/wholesale/cmp/archive/CR_SCR093002-04.htm.

¹¹⁴ This term is outlined in Section 5.2.1 of the ICA.

1 The amount of information in the contract provision sought by Eschelon relating
2 to PSONs is also similar to the amount of information provided in other
3 provisions in the contract, to ensure that the purposes of those terms are met. For
4 example, Section 12.2.7.2.1 provides, in agreed upon language, that the Firm
5 Order Confirmation (“FOC,” which is another “order status notice,”¹¹⁵ like the
6 PSON) will “follow industry-standard formats.” It then also specifically states
7 that the FOC must “contain the Due Date for order completion.” The ICA does
8 not leave to chance that industry standards may change during the contract term,
9 resulting in an omission of the Due Date from FOC, because the Due Date is
10 critical to the purpose of the provision (*i.e.*, the Due Date is an integral part of the
11 reason for providing the FOC at all). Similarly, the *Service and Equipment* and
12 *Listings* information are integral to the reason for providing the PSON and
13 ensuring that its purpose is served. The information is definitional in nature –
14 defining the PSON to include the *Service and Equipment* and *Listings*
15 information, just as the FOC is defined in this section of the ICA as an order
16 status notice that contains the Due Date. The obligation to provide this
17 information in the PSON should similarly be contained in the interconnection
18 agreement, which can be amended if circumstances change.

19 **Q. PLEASE SUMMARIZE ISSUE 12-70 REGARDING PSON.**

20 A. Eschelon proposes that Qwest’s current practice of providing PSONs be captured

¹¹⁵ See ICA Section 12.2.7.2 lists in its sub-parts various “order status notices” that Qwest must provide to CLEC, including the FOC and PSON.

1 in the contract language so that Qwest will continue to provide PSONs, with at
2 least the *Service and Equipment* and *Listings* information provided today, unless
3 the ICA is amended. Eschelon uses the PSONs to identify Qwest errors in the
4 processing of Eschelon's orders before the due date. To reduce the probability of
5 Qwest errors affecting Eschelon's End User Customers on the due date, Eschelon
6 double-checks information in Qwest service orders by comparing information in
7 the PSONs to information requested by Eschelon in its order. Two groups of data
8 currently provided in Qwest's PSONs – *Listing* and *Service and Equipment*
9 sections – are particularly important in Eschelon's ability to help prevent End
10 User Customer affecting service delays and disruptions. Eschelon's proposed
11 language does not require any changes or system modifications. It does require
12 Qwest to continue to provide, during the term of the agreement unless amended, a
13 PSON that contains sufficient information for the PSON to serve its intended
14 purpose. Eschelon's proposal is reasonable and consistent with the type of
15 information provided in the ICA for other terms, such as order status notices. It
16 should be adopted to ensure that the purpose of the PSON is not defeated by
17 actions taken without contract amendment.

18

19 **SUBJECT MATTER NO. 33. JEOPARDIES**

20 **Issues Nos. 12-71 through 12-73: ICA Section 12.2.7.2.4.4 and subparts**

21 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
22 **JEOPARDIES AS REFLECTED IN ISSUE NOS. 12-71 THROUGH 12-73.**

1 A. When circumstances exist to suggest that a due date of service delivery will likely
2 be missed , the due date is in “jeopardy.” Consequences flow from being the
3 company that errs or otherwise causes the jeopardy: Which company must take
4 action, whether performance measurements are met and, in some cases, whether
5 non-recurring charges are due¹¹⁶ may depend on which company is at fault.
6 Eschelon accepts these consequences when it is at fault and therefore the jeopardy
7 is accurately classified as an Eschelon (“Customer Not Ready,” or “CNR”)
8 jeopardy. Eschelon should not have to suffer these consequences when Qwest is
9 at fault. The adverse consequences of the Qwest-caused jeopardy will flow to
10 Eschelon, however, if Qwest incorrectly assigns fault to Eschelon.

11 Eschelon has identified through experience a particular scenario that the
12 interconnection agreement needs to explicitly address to avoid the latter result.
13 Timely delivery of the Firm Order Confirmation (FOC) after a Qwest jeopardy is
14 at the heart of this scenario. The interconnection agreement (like the SGAT)
15 requires Qwest, if it causes a change to the committed due date, to send a Qwest
16 Jeopardy notice to CLEC that states the reason for the change in due date.¹¹⁷ It
17 also requires Qwest to send an FOC with a new Due Date.¹¹⁸ By sending a
18 jeopardy notice for unavailable facilities, Qwest is telling Eschelon that it does
19 not need to be ready on the requested due date. If Qwest fails to send the FOC

¹¹⁶ See, e.g., ICA Section 9.2.2.9.3 (“If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the non-recurring charge for the installation option.”)

¹¹⁷ See ICA Section 9.2.4.4.1, discussed below.

¹¹⁸ *Id.*

1 with a new due date, or sends it minutes before (or even after) attempted delivery
2 of that loop, Eschelon has no reason to plan available resources or arrange
3 Customer premise access for delivery of the loop. Therefore, Eschelon may
4 appear that it is not ready when Qwest actually caused the jeopardy by failing to
5 send a timely FOC. The contract needs to state that Qwest cannot assign fault to
6 Eschelon for this Qwest-caused jeopardy.

7 Including Eschelon's language in the contract will provide clarity and reduce the
8 likelihood of disputes. Particularly because Qwest assigns the classifications
9 (Qwest or Eschelon/CNR jeopardy), even though it has a natural incentive to
10 avoid the adverse consequences of a Qwest jeopardy, the interconnection
11 agreement needs to clearly set out the ground rules for classifying jeopardies as
12 Qwest or Eschelon (CNR) jeopardies. It is also important to include these terms
13 in an ICA because they affect Eschelon's ability to timely deliver service to its
14 End User Customers.

15 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 12-71 THROUGH 12-**
16 **73 REGARDING JEOPARDIES?**

17 A. Eschelon proposes insertion of the following three contract provisions to help
18 ensure that the company responsible for a jeopardy will be correctly identified,
19 and that the failure to provide a timely FOC will be expressly recognized as a
20 factor in making this determination.

21 **Issue 12-71:**

1 12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a
2 Qwest jeopardy, and a jeopardy caused by CLEC will be classified
3 as Customer Not Ready (CNR).

4 **Issue 12-72:**

5 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these
6 types are: (1) CLEC or CLEC End User Customer is not ready or
7 service order is not accepted by the CLEC (when Qwest has tested
8 the service to meet all testing requirements.); and (2) End User
9 Customer access was not provided. For these two types of
10 jeopardies, Qwest will not characterize a jeopardy as CNR or send
11 a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest
12 attempts to deliver the service, and Qwest has not sent an FOC
13 notice to CLEC after the Qwest jeopardy occurs but **at least a**
14 **day**¹¹⁹ before Qwest attempts to deliver the service. CLEC will
15 nonetheless use its best efforts to accept the service. If needed, the
16 Parties will attempt to set a new appointment time on the same day
17 and, if unable to do so, Qwest will issue a Qwest Jeopardy notice
18 and a FOC with a new Due Date.

19 **Issue 12-73:**

20 12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was
21 not caused by CLEC, Qwest will correct the erroneous CNR
22 classification and treat the jeopardy as a Qwest jeopardy.

23
24 **Q. PLEASE EXPLAIN ESCHELON'S PROPOSAL.**

25 A. Eschelon reasonably proposes to accept fault when it causes a jeopardy situation
26 and asks Qwest to do the same. In Issue 12-71, Eschelon's proposal states that
27 Qwest will classify a jeopardy caused by Qwest as a Qwest jeopardy and a
28 jeopardy caused by Eschelon as a CLEC jeopardy (also known as Customer Not
29 Ready – "CNR").

¹¹⁹ The Disputed Issues Matrix does not include the phrase "at least a day." This language (included in the ICA (Exhibit 2 of Eschelon's September 1, 2006 filing) should be used as Eschelon's proposal.

1 Issue 12-72 addresses the specific scenario described above. For this issue,
2 Eschelon's proposal clarifies that if (a) a Qwest jeopardy already exists, (b) Qwest
3 attempts to deliver service without timely notification of the due date, and (c)
4 Eschelon is unable to accept service because of the absence of the timely
5 notification, Qwest will not classify the jeopardy as caused by Eschelon (CNR).
6 Eschelon's proposal for Issue 12-72 is narrowly limited to two types of CNR
7 jeopardies. Of the many types of CNR jeopardies identified by Qwest,¹²⁰
8 Eschelon's proposed language for Issue 12-72 applies to only the following two:
9 (1) CLEC or CLEC End User Customer is not ready or service order is not
10 accepted by the CLEC (when Qwest has tested the service to meet all testing
11 requirements.); and (2) End User Customer access was not provided. For these
12 two types of CNR jeopardies, Eschelon can be ready if it receives a timely FOC.
13 For example, if the FOC is timely, Eschelon has sufficient notice of when to
14 arrange access to the End User Customer's premise to meet the due date.
15 Eschelon's proposal is reasonable and does not attempt to address CNR
16 jeopardies for which the absence of a timely FOC is less likely to be a factor in
17 the potential delay of service (even though Qwest is required to provide the FOC
18 in each case).¹²¹ For example, one specific CNR jeopardy (called "C24") refers to
19 situations in which the CLEC has not installed needed conduit. Eschelon's
20 proposed language in Issue 12-72 does not address this type of CNR jeopardy,

¹²⁰ http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc

¹²¹ See ICA Sections 12.2.7.2.1 & 9.2.4.4.1; see also ICA Sections 9.2.2.9.3, 9.2.2.9.4, 9.2.2.9.5.3.

1 because even if Qwest failed to deliver a timely FOC, Eschelon is unlikely to be
2 able to install conduit in a day.

3 In Issue 12-73, Eschelon proposes that if Qwest incorrectly classifies a jeopardy
4 as caused by CLEC, this initial classification should be corrected. Eschelon's
5 proposal is very reasonable in providing that Eschelon must "establish" that
6 Eschelon did not cause the jeopardy to obtain a correction of Qwest's erroneous
7 classification. This is only fair, since Qwest should not have assigned a CNR
8 jeopardy to the Qwest jeopardy in the first place.

9 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUES 12-70 THROUGH 12-73?**

10 A. Qwest proposes to delete all of Eschelon's ICA language in Section 12.2.7.2.4.4
11 and subparts and replace it with the following reference to its PCAT:

12 12.2.7.2.4.4 Specific procedures are contained in Qwest's
13 documentation, available on Qwest's wholesale web site.
14

15 In support of this language, Qwest cites its generic argument used throughout
16 Section 12 that this issue belongs in CMP. Qwest also claims in its position
17 statement that the jeopardy process is incorporated in PID performance measures
18 such as OP-3 "Installation Commitments Met" and OP-4 "Installation Interval."¹²²

19 I address Qwest's arguments when discussing Eschelon's proposal below.

20 **Q. WHAT CONSEQUENCES FLOW FROM BEING THE PARTY WHO**

¹²² See Qwest's Position in the *Disputed Issues Matrix* and *Qwest Petition for Arbitration*, p. 52.

1 **CAUSES A JEOPARDY?**

2 A. Perhaps the most important consequence of being assigned fault is the effect on
3 the due date for providing service. Jeopardy classification determines which
4 company must take action to resolve the jeopardy. In the case of an Eschelon
5 (CNR) jeopardy, when Eschelon is not ready on the due date, Eschelon must
6 supplement its order to request a later due date. This means that the due date
7 upon which its Customer's expectations are set will be delayed. When Eschelon
8 is classified as being at fault, Qwest requires a minimum due date of three days
9 from the date the supplemental order is placed.¹²³ This gives Qwest a minimum
10 of three days to plan its resources and get ready for the rescheduled work.
11 Eschelon then needs to inform its End User Customer that expected service based
12 on the due date will be delayed at least three days. Eschelon suffers the
13 consequences of its actions. Eschelon accepts these consequences when it is at
14 fault and therefore the jeopardy is accurately classified as an Eschelon (CNR)
15 jeopardy.

16 In the case of a Qwest-caused jeopardy, Qwest must take action to attempt to
17 meet the due date or, if it cannot be met, continue to process the order (including

¹²³ This requirement, which is applicable to "designed" services such as UNEs, is explained in the following citation from Qwest's PCAT available at <http://www.qwest.com/wholesale/clecs/provisioning.html>: "The CNR jeopardy notice will provide information regarding the action required during the 30 business days you have to respond. If you wish to accept the service within the 30-business day timeframe, issue a supplement with a new due date that occurs within 30 business days of the original due date for service. Note: for products that follow Qwest's Designed Services process flow, there is a minimum due date of 3 business days from the date you submit the supplement to Qwest."

1 issuing an FOC with a new date) with no supplemental order from Eschelon.¹²⁴
2 Eschelon does not have to automatically receive a due date that is at least three
3 days out, because Eschelon did not cause the jeopardy in these situations. In
4 some cases, Qwest must waive certain costs.¹²⁵ Qwest suffers these consequences
5 when it is classified as at fault (a Qwest jeopardy).

6 In addition, Qwest's performance measures – measures that have been developed
7 as part of Qwest's 271 approval and approved by the Commission – are affected
8 as well. Qwest is exposed to higher performance assurance plan payments when
9 it is classified as at fault. These measures are often defined in such a way as to
10 exclude CLEC-caused delays.¹²⁶

11 **Q. WHAT ARE THE CONSEQUENCES WHEN QWEST ASSIGNS FAULT**
12 **TO THE WRONG COMPANY?**

13 A. For Eschelon, failure to deliver working service on the due date can have major
14 ramifications to a business Customer. It may actually destroy a CLEC's
15 relationship with its would-be Customer before it has begun. In contrast, Qwest

¹²⁴ This process is explained in the Jeopardy Matrix included in Qwest's PCAT and available at http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc. According to this matrix, in case of Qwest-caused jeopardy "Qwest will work to solve the problem."

¹²⁵ See ICA Section 9.2.2.9.3 ("If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the non-recurring charge for the installation option.")

¹²⁶ According to Qwest's Service Performance Indicator Definitions ("PIDs") (available at http://www.qwest.com/wholesale/downloads/2005/050331/PIDVersion8_1.doc), performance indicator OP-3 *Installation Commitments Met* excludes from the data used in calculation instances where due dates are missed for Customer reasons. Similarly, performance indicators OP-4 *Installation Interval* and OP-6 *Delayed Days* subtract from the numerator of the performance measure "time intervals associated with Customer-initiated due date changes or delays occurring after the Applicable Due Date" – a calculation that effectively excludes Customer-initiated delays from the measure.

1 benefits under the performance measures, when a jeopardy is classified as caused
2 by the CLEC (a CNR jeopardy). Because performance measures are often
3 defined in such a way as to exclude CLEC-caused delays, Qwest has a financial
4 incentive to classify jeopardies as CNR to exclude jeopardies from measurement
5 of its performance.

6 **Q. WHY IS ESCHELON NOT AT FAULT, AND THEREFORE “CNR” NOT**
7 **THE CORRECT CLASSIFICATION, IN THE SCENARIO DESCRIBED**
8 **IN ISSUE 12-72?**

9 A. The test for assigning fault is not simply whether a company is ready but why the
10 company is not ready. That there are many different reasons as illustrated by the
11 many cause codes that Qwest has developed to identify the various reasons why a
12 company may not be ready to accept service on the due date.¹²⁷ If Qwest causes
13 Eschelon to not be ready to accept service, Qwest should in all fairness not assign
14 fault to Eschelon. Issue 12-72 describes a scenario in which Eschelon has found
15 this is the case. The factual scenario involves Qwest either not providing an FOC
16 with a new due date at all or not providing an FOC in a timely manner. If Qwest
17 provides an FOC but does so only a few minutes before attempting to deliver a
18 loop, Qwest cannot reasonably expect Eschelon to have resources available to
19 accept that loop. Even if resources happen to be available, Eschelon may not be
20 able to accept service, for example, if its End User Customer already closed its

¹²⁷ http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc

1 business for the day and Eschelon had no reason to make other arrangements with
2 the Customer for that day, because Qwest failed to provide an FOC identifying
3 that day as the due date.

4 Several examples involving “no FOC” or “untimely FOC” that demonstrate
5 Eschelon’s experience leading to the need for this proposal are attached to the
6 testimony of Ms. Johnson.¹²⁸ In these examples, Qwest classified this situation as
7 “Customer Not Ready” when it should not have done so. In addition, Ms.
8 Johnson describes a particular example that occurred in March of this year. In
9 that example, Qwest failed to provide the required FOC. This caused Eschelon to
10 appear not ready when it could have been ready had Qwest provided reasonable
11 notice of the new due date. Because Qwest inaccurately attributed fault to
12 Eschelon for not being ready and characterized this as a CNR jeopardy, Qwest’s
13 PID performance would not reflect the missed due date. Over time, this
14 ultimately would reduce PID payments to Eschelon, even though Qwest’s failure
15 to send the required FOC caused the performance problem. More importantly for
16 Eschelon, the order did not complete until six days after the requested due date.
17 This creates a bigger problem for Eschelon because it affects service to the End
18 User Customer. Eschelon should not have to disappoint its customer because
19 Qwest failed to notify Eschelon in sufficient time to schedule resources, make

¹²⁸ See Exhibit BJJ-6 to Testimony of Ms. Johnson (list of examples).

1 arrangements with the End User Customer for access to its premises, or take other
2 steps necessary to prepare to accept delivery of service.

3 **Q. IN THE SITUATIONS ILLUSTRATED BY THESE EXAMPLES, WILL**
4 **ESCHELON AUTOMATICALLY REFUSE TO ACCEPT DELIVERY OF**
5 **SERVICE IF QWEST FAILED TO PROVIDE A TIMELY FOC?**

6 A. Absolutely not.. Eschelon seeks to deliver service to its End User Customers in
7 the most timely manner available and will make extra efforts to try to accomplish
8 this goal, even when Qwest's own jeopardy and later, its failure to notify
9 Eschelon that the jeopardy was cleared, caused the problem. Despite that
10 Eschelon would have no reason to expect service delivery (where it has received a
11 jeopardy notice) on any particular day, it would not have planned for and
12 committed necessary resources, nor would it have arranged Customer access.
13 Nevertheless, Eschelon will use its best efforts to accept the service, as stated in
14 its proposal and scramble and try to staff the unexpected delivery and coordinate
15 Customer access if at all possible.

16 Whereas Qwest requires at least three days notice when CLECs such as Eschelon
17 are not ready to arrange staffing for delivery and therefore the situation is
18 properly classified as a CNR,¹²⁹ Eschelon will attempt to overcome these
19 obstacles because delivery of service to its Customer is of the utmost importance
20 to Eschelon. Thus, any further disruption or delay in service is clearly a direct

¹²⁹ <http://www.qwest.com/wholesale/clecs/provisioning.html>

1 product of Qwest's jeopardy action or inaction and subsequent failure to send a
2 FOC, not of Eschelon's unwillingness to mitigate the consequences. If, however,
3 the obstacles are too great because of Qwest's failure to provide timely notice to
4 Eschelon of service delivery, and Eschelon cannot accept delivery at the time,
5 Qwest should not classify this as an Eschelon (CNR) jeopardy. Qwest created the
6 situation that lead to the inability to complete delivery. This is truly a Qwest
7 jeopardy and should be treated as such. .

8 **Q. DOES QWEST PROVIDE THAT SAME 3 DAY PREPARATION AND**
9 **SCHEDULING TIME TO CLECS THAT IT REQUIRES THEY PROVIDE**
10 **QWEST WHEN THE JEOPARDY IS THEIR FAULT?**

11 A. No. As I explained above, Qwest may attempt (and has done so)¹³⁰ to deliver
12 service after it has declared a Qwest jeopardy but before providing a timely FOC
13 identifying a new due date. There is no "due" date at this point, because Qwest
14 has not provided any date via FOC on which delivery is due. In other words,
15 Qwest expects that Eschelon should be ready to accept Qwest's service even
16 though Qwest told Eschelon through its jeopardy notice that there is at least a very
17 good chance that Qwest would delay service delivery (*i.e.*, miss the requested due
18 date).

19 This means that the Eschelon will be scheduling its personnel for acceptance of
20 service, waiting all day on the due date, and possibly subsequent dates, standing

¹³⁰ See Exhibit BJJ-6 to Testimony of Ms. Johnson (list of examples).

1 ready to accept Qwest's service – holding its own employees and the End User
2 Customer – *just in case* Qwest clears its jeopardy in the last moment without
3 adequate notice to Eschelon. In the end, Qwest may not show up. This wastes
4 Eschelon's time and resources, not to mention the inconvenience Qwest is causing
5 the Eschelon's End User Customer. Qwest gives itself three full days to prepare
6 after CLEC is not ready on the due date.¹³¹ Qwest cannot expect Eschelon to staff
7 resources and inconvenience the Customer on the off chance that, even though
8 Qwest hasn't followed the ICA requirement to provide an FOC, it shows up at the
9 doorstep. The Commission should not allow Qwest to build such inefficiencies
10 for CLECs into the terms for jeopardy situations.

11 **Q. DOES ESCHELON'S LANGUAGE REFLECT TERMS DEVELOPED**
12 **THROUGH CMP?**

13 A. Yes. Ms. Johnson's testimony explains the background and timeline of the
14 relevant Change Request. In CMP, in February of 2004, Qwest confirmed (in
15 response to an example provided by Eschelon) that (1) an *FOC should have been*
16 *sent* after CLEC received a Qwest jeopardy; (2) the FOC should have been sent
17 *the day before the due date*; and (3) both sending the FOC and doing so the day
18 before the due date are *part of Qwest's delayed order process*.¹³² In March of
19 2004, also in CMP, Qwest confirmed that "Qwest cannot expect the CLEC to be

¹³¹ <http://www.qwest.com/wholesale/clecs/provisioning.html>

¹³² See Exhibit BJJ-5 to the Testimony of Ms. Johnson (Jeopardy/FOC Chronology) regarding the facts discussed throughout this response.

1 ready for the service if we haven't notified you." This confirmed the terms now
2 reflected in Eschelon's proposed language for Issues 12-71 through 12-73. Qwest
3 closed the Change Request in CMP based on this information and indicated that
4 Eschelon could bring any issues of compliance with these terms to Qwest service
5 management.

6 Accordingly, Eschelon provided examples of problems when they occurred to
7 Qwest service management. In March of 2005, the Qwest service management
8 representative assigned to Eschelon's account with Qwest provided a response to
9 Eschelon indicating that Qwest still maintained its process that was the one
10 developed in CMP, although Qwest was having some individual compliance
11 problems. In a March 28, 2005 e-mail, the Qwest representative confirmed that
12 Qwest "Missed sending the Releasing FOC." Qwest did not (as it has later done)
13 claim that sending the releasing FOC after a Qwest jeopardy was not its process.
14 Instead, Qwest acknowledged that missing sending the releasing FOC was non-
15 compliance with the process developed in CMP and said: "Qwest has trained
16 individually and with the group. In addition, tracking information from other
17 Qwest departments which impact timely responses." With respect to jeopardy
18 compliance issues generally, Qwest added: "Of all the misses due to not adhering
19 to process, 50% were attributed to the same person. Correction action has taken
20 place."

21 Since then, as further described in the documentation attached to Ms. Johnson's

1 testimony,¹³³ Qwest has indicated to Eschelon that it no longer feels that it must
2 comply with the process developed in CMP, even though Qwest has not followed
3 CMP procedure by introducing a Change Request to modify that process. On
4 September 1, 2005, Eschelon provided the following scenario to Qwest:

- 5 • “Qwest sends Eschelon a facility jeopardy (Qwest jeopardy)
- 6 • Qwest does not send Eschelon an FOC releasing the circuit
- 7 • Qwest calls Eschelon to deliver the circuit
- 8 • Eschelon does not have the resources to accept the circuit by close of
- 9 business that day
- 10 • End result - Qwest places the circuit in a CNR jeopardy status.”

11
12 Qwest’s CMP Process Manager confirmed that, in the above scenario – in which
13 Qwest provides no FOC at all after the Qwest facility jeopardy and before
14 delivering the circuit – Qwest will classify the jeopardy situation as Eschelon’s
15 fault, despite all of the work done in CMP to avoid this very result. She
16 specifically said: “Your scenario is correct.” Going back to CMP will do no
17 good in this situation, as Eschelon has already been there and obtained the desired
18 result. Qwest is simply choosing to ignore the terms that Eschelon devoted
19 resources to pursuing in CMP. This is a good example of why language is needed
20 in the interconnection agreement to provide certainty, when Qwest’s contradictory
21 conduct provides no certainty upon which a company may plan its business and
22 resources.

23 **Q. DOES THE INTERCONNECTION AGREEMENT DEAL WITH SIMILAR**

¹³³ See Exhibit BJJ-5 to the Testimony of Ms. Johnson (Jeopardy/FOC Chronology).

1 **CONTENT IN CLOSED LANGUAGE?**

2 A. Yes. The classification of jeopardies as being a “Qwest jeopardy” or a “Customer
3 Not Ready” jeopardy and the consequences of such classification are appropriate
4 subject matters for an ICA. For example, agreed upon language in Sections
5 9.2.2.9.3, 9.2.2.9.4, 9.2.2.9.5.3 and 9.2.4.4.1 deals with whether a jeopardy is a
6 “Qwest jeopardy” and what happens if it is. They all provide that, if Qwest is at
7 fault in the particular situation described, Qwest will issue a jeopardy notice and a
8 FOC with a new due date. These same provisions appear, with the same section
9 numbers, in the Qwest SGAT. Not a single one of these provisions replaces this
10 information with a reference to Qwest’s PCAT or its web site, as proposed by
11 Qwest for Issues 12-71 through 12-73. Eschelon’s proposed language is
12 consistent with these terms and adds express language addressing the scenario
13 that Eschelon has encountered, despite this language in the SGAT and other
14 approved ICAs, when Qwest classifies a jeopardy as Eschelon-caused, even
15 though Qwest did not provide a timely FOC. It also expressly requires Qwest to
16 correct an erroneous classification.

17 These terms may seem implicit in the existing terms of the ICA. After all, the
18 agreed upon language in Section 9.2.4.4.1 states:

19 If Qwest must make changes to the commitment date, Qwest will
20 promptly issue a Qwest Jeopardy notification to CLEC that will
21 clearly state the reason for the change in commitment date. Qwest
22 will also submit a new Firm Order Confirmation that will clearly
23 identify the new Due Date.
24

1 Qwest's own repudiation of the work done in CMP, however, reinforces the need
2 for express contract language clearly setting out the terms for classifying
3 jeopardies. As indicated in my previous answer, on September 1, 2005, despite
4 the above quoted language, Qwest's own CMP process manager confirmed that,
5 when Qwest does not send an FOC (*i.e.*, "Qwest does not send Eschelon an FOC
6 releasing the circuit"), Qwest will place the circuit in a CNR jeopardy status,
7 classifying it as Eschelon caused and escaping all the consequences for Qwest of
8 a Qwest jeopardy.

9 Qwest's CMP Process Manager also confirmed that, despite Qwest's verification
10 to Eschelon in CMP in February of 2004 that Qwest's process included providing
11 the FOC the day before the due date, Qwest now considers the process developed
12 in CMP to be a mere "goal." She said: "Our goal is to be able to provide you a
13 FOC prior to the due date but there may be occasions that we were not able to do
14 so if we did not resolve the facility condition until the due date." As discussed,
15 Qwest reserves three days to prepare and schedule resources for itself, but now
16 will not even recognize that Eschelon needs at least a day to do so.

17 Explicit ICA language is needed to correct the inequity of this situation and to
18 provide certainty when, even after having used Qwest's CMP successfully,¹³⁴

¹³⁴ It would be ironic for Qwest to claim that Eschelon should invoke dispute resolution when Qwest granted Eschelon's Change Request at the time. Because Qwest granted Eschelon's Change Request, closed the Change Request, and for a time operated under the terms developed through that Change Request, the Dispute Resolution terms of the CMP Document do not apply. (In any event, the Dispute Resolution terms in Section 15.0 of the CMP Document provide that a CLEC may "seek remedies in a regulatory or legal

1 Eschelon cannot get Qwest to provide the terms previously completed in CMP
2 without Commission intervention.

3 **Q. DO PERFORMANCE INDICATORS DISTINGUISH BETWEEN QWEST**
4 **CAUSED AND CLEC CAUSED DELAYS?**

5 A. No. PIDs use terms “Customer initiated due date changes or delays” and “Qwest-
6 initiated due date,” but they do not define these terms on the level required for the
7 above discussed jeopardy situations. This fact defeats Qwest’s argument that
8 Eschelon’s proposed language belongs in the PCAT, rather than an ICA, because
9 Eschelon is already “protected insofar as Qwest is currently required to
10 differentiate between Qwest caused and CLEC/Customer caused delays.”¹³⁵
11 Specifically, in its Arbitration Petition,¹³⁶ Qwest cites the following definitions of
12 the Applicable Due Date and Time Intervals:

13 The Applicable Due Date is the original due date or, if changed or
14 delayed by the Customer, the most recently revised due date,
15 subject to the following: If Qwest changes a due date for Qwest
16 reasons, the Applicable Due Date is the Customer-initiated due
17 date, if any, that is (a) subsequent to the original due date and (b)
18 prior to a Qwest-initiated, changed due date, if any.

19 Time intervals associated with Customer-initiated due date
20 changes or delays occurring after the Applicable Due Date, as
21 applied in the formula below, are calculated by subtracting the
22 latest Qwest-initiated due date, if any, following the Applicable

arena at any time,” and this arbitration is such a regulatory arena.) Those terms may be used when Qwest denies a Change Request. In this case, Qwest granted the Change Request. It has now unilaterally changed course, without going back to CMP, as it would require Eschelon to do.

¹³⁵ *Qwest Petition for Arbitration*, p. 52.

¹³⁶ *Id.*

1 Due Date, from the subsequent Customer-initiated due date, if
2 any.¹³⁷
3

4 The purpose of Qwest's citations is to point out that PID metrics "specifically
5 differentiates between Qwest caused delays and CLEC/Customer caused
6 delays."¹³⁸ However, these provisions do not address when Qwest incorrectly
7 classifies delays as caused by CLEC when they are not. Surely it is not consistent
8 with the purpose of the PIDs to allow Qwest to escape accurate performance
9 measurement and potential payments by assigning fault in a manner that
10 erroneously relieves Qwest of its obligations. As I explained above, a typical
11 situation that prompted Eschelon's proposal is a situation where Qwest
12 *incorrectly* classifies a delay as caused by the CLEC, while in reality it was
13 Qwest's delay because Qwest failed to notify the CLEC that the installation will
14 take place despite Qwest's originally declared jeopardy due to Qwest's reasons.
15 In other words, Eschelon's proposal does not contradict or replace the PIDs.

16 The PIDs provide no basis upon which to reject Eschelon's proposed language.
17 In fact, Eschelon's proposal is most consistent with the purpose of the PIDs to
18 accurately measure performance. Erroneous assignment of fault will lead to
19 erroneous PID results, to Qwest's benefit. Eschelon's proposal helps avoid that
20 result. In contrast, Qwest's language proposal is inconsistent with the operation
21 of the PIDs. Qwest's proposed language for Issues 12-71 through 12-73 refers to

¹³⁷ *Service Performance Indicator Definitions (PID). 14-State 271 PID Version 8.1*, p. 39.

¹³⁸ *Qwest's Petition for Arbitration*, p. 52.

1 the Qwest web site. The posted Qwest Product Catalog, however, is the wrong
2 place to deal with Qwest's PID and PAP obligations.¹³⁹

3 **Q. PLEASE SUMMARIZE ISSUES 12-71 THROUGH 12-73 REGARDING**
4 **CLASSIFICATION OF JEOPARDY SITUATIONS.**

5 A. Jeopardy classification should be spelled out in the contract because correct
6 assignment of fault through jeopardy classification is crucial in timely delivery of
7 service to End User Customers. Eschelon reasonably proposes to accept fault
8 when it causes a jeopardy situation and asks Qwest to do the same. Eschelon
9 should not have to suffer adverse consequences when Qwest is at fault. If Qwest
10 fails to send an FOC with a new due date, or sends it minutes before (or even
11 after) attempted delivery of that loop, Eschelon has no reason to plan resources to
12 be available for delivery of the loop. Therefore, Eschelon may appear that it is
13 not ready when Qwest actually caused the jeopardy by failing to send a timely
14 FOC in which Qwest describes its intent to complete the order and states when it
15 will do so. Including Eschelon's language in the contract will clarify that Qwest
16 can not assign fault to Eschelon in these situations and therefore reduce the
17 likelihood of disputes. Particularly because Qwest assigns the classifications,
18 even though it has a natural incentive to avoid the adverse consequences of a
19 Qwest jeopardy, the interconnection agreement must clearly establish the ground
20 rules for classifying jeopardies as Qwest or Eschelon (CNR) jeopardies.

¹³⁹ See ICA Section 20.0 "Service Performance," and ICA Exhibits B & K (PID and Performance Plan).

1

2 **SUBJECT MATTER NO. 34. FATAL REJECTION NOTICES**

3 **Issue No. 12-74: ICA Sections 12.2.7.2.6.1 and 12.2.7.2.6.2**

4 **Q. PLEASE DESCRIBE ESCHELON’S BUSINESS NEED REGARDING**
5 **FATAL REJECTION NOTICES REFLECTED IN ISSUE 12-74.**

6 A. Eschelon should not be penalized when Qwest rejects its orders in error. If Qwest
7 can force Eschelon to resubmit its LSR in situations when Qwest mistakenly
8 rejects Eschelon’s order, Eschelon will suffer the consequences of Qwest’s error.
9 Issue 12-74 relates specifically to “Fatal Errors” – situations in which Qwest does
10 not have enough data, or the correct data, to process Eschelon’s service request.
11 In these situations, Qwest will send Eschelon a “Fatal Rejection Notice” – a
12 notice that includes the action CLEC was requesting, the problem(s) encountered
13 and steps that the CLEC must undertake next.¹⁴⁰ Generally, if the CLEC
14 submitted an order with a fatal error that caused a Fatal Rejection Notice, the
15 CLEC has to resubmit the service order. Qwest may also send the CLEC the
16 Fatal Rejection Notice in error. The issue is whether Eschelon must resubmit its
17 service request in situations when Qwest sends an erroneous Fatal Rejection
18 Notice.

19 **Q. WHAT IS ESCHELON’S PROPOSAL FOR ISSUE 12-74?**

¹⁴⁰ See section on Fatal Rejections in Qwest’s PCAT available at
<http://www.qwest.com/wholesale/clecs/ordering.html>.

1 A. To address this issue, Eschelon proposed the language in Sections 12.2.7.2.6.1
2 and 12.2.7.2.6.2. The language that is not underlined in Section 12.2.7.2.6.1 is no
3 longer open, as Qwest accepted it. The remaining open language in Issue 12-74 is
4 Eschelon's proposal shown in the underlined language:

5 12.2.7.2.6.1 If CLEC submits an LSR or ASR that contains a Fatal
6 Error and receives a Fatal Reject notice, CLEC will need to
7 resubmit the LSR or ASR to obtain processing of the service
8 request, except as provided in Section 12.2.7.2.6.2.

9 12.2.7.2.6.2 If Qwest rejects a service request in error, Qwest will
10 resume processing the service request as soon as Qwest knows of
11 the error. At CLEC's direction, Qwest will place the service
12 request back into normal processing, without requiring a
13 supplemental order from CLEC and will issue a subsequent FOC
14 to CLEC.
15

16 Eschelon's proposal simply provides that, if Qwest knows that it has rejected an
17 Eschelon order in error, Qwest will resume processing the order without requiring
18 a supplemental order. In essence, the second paragraph (section 12.2.7.2.6.2) is a
19 mirror image of the agreed-upon language in section 12.2.7.2.6.1, which specifies
20 that if the CLEC causes fatal error, it should undertake actions to correct it. The
21 second paragraph simply states that if Qwest causes the error, it should undertake
22 actions to correct it. In the latter situation, Qwest's corrective actions would not
23 require re-submission of the order because Qwest would have continued
24 processing CLEC's initial order.

25 **Q. IS ESCHELON'S PROPOSAL THE SAME AS QWEST'S CURRENT**
26 **PRACTICE?**

1 A. Yes. Eschelon's proposal requires no change by Qwest, as Qwest does this today.

2 Specifically, Qwest's PCAT states:

3 Resubmitting a Rejected Service Request

4 Generally, a rejected service request is resubmitted by the party
5 making the error. If you submitted an invalid CFA for an
6 Unbundled Local Loop, you will need to resubmit the service
7 request. If Qwest rejects a service request in error, we will resume
8 processing as soon as the error is brought to our attention. At your
9 direction, Qwest will place the service request back into normal
10 processing with or without a supplement and issue a subsequent
11 FOC.¹⁴¹
12

13 **Q. WHAT IS QWEST'S PROPOSAL?**

14 A. Qwest proposes to retain the language in Section 12.2.7.2.6.1, which obligates
15 Eschelon to resubmit its order when Eschelon makes a mistake, but to replace
16 Eschelon's companion language in Section 12.2.7.2.6.2, which addresses Qwest's
17 obligations when Qwest makes an error, with a general reference to its web based
18 PCAT:

19 12.2.7.2.6.2 Fatal Rejection Notices. Specific procedures are
20 contained in Qwest's PCAT, available on Qwest's wholesale web
21 site.
22

23 In support of this language, Qwest makes its generic argument used throughout
24 Section 12 that this issue belongs in CMP. There is no reason to request a change
25 in process through CMP when Eschelon's language reflects Qwest's current
26 process. Although Qwest states in its position statement that implementing a
27 unique process for Eschelon would require Qwest to modify its systems and incur

¹⁴¹ <http://www.qwest.com/wholesale/clecs/ordering.html>.

1 additional costs, Eschelon's proposed language does not require any changes to
2 Qwest's systems, but rather follows the established process.

3 As with Pending Service Order Notifications (PSOs) in Issue 12-70, Qwest also
4 claims in its position statement for this issue that Eschelon "wants to prohibit the
5 industry from ever modifying OSS Notices [such as Fatal Rejection Notices] in
6 CMP."¹⁴² Eschelon's proposed language for Issue 12-74, however, does not
7 address the form or content of the Fatal Rejection Notice. Eschelon's language
8 deals with the consequences of an assignment of fault. This is appropriate content
9 for an interconnection agreement on this issue, just as the consequences of
10 assignment of fault is appropriate for inclusion in the contract in agreed upon
11 language in Sections 9.2.2.9.3, 9.2.2.9.4, 9.2.2.9.5.3 and 9.2.4.4.1.

12 **Q. IS QWEST CONSISTENT IN ITS POSITION ON THE ROLE OF CMP**
13 **AND THE NATURE OF AN INTERCONNECTION AGREEMENT?**

14 A. No. Qwest is happy to agree that the consequences of assignment of fault is
15 appropriate content for inclusion in an interconnection agreement when fault is
16 assigned to Eschelon and only Eschelon is bound to consequences. Both Sections
17 12.2.7.2.4.1 and 12.2.7.2.4.2 deal with the consequences of an error in the context
18 of Fatal Rejection Notices. Note that Qwest is not objecting to Section
19 12.2.7.2.4.1, which obligates Eschelon to resubmit its order when Eschelon makes
20 a mistake, and is not insisting that this language be replaced with a reference to

¹⁴² *Qwest's Petition for Arbitration*, pp. 50-51.

1 the PCAT because it is unsuitable for a contract. On the flip side, however, when
2 the subject matter is Qwest's obligations when Qwest makes an error, suddenly
3 the content is inappropriate for inclusion in an interconnection agreement and
4 belongs in the PCAT. There is no one bright line for when a term goes in the
5 interconnection agreement or through CMP, and Qwest should not be allowed to
6 pretend that there is a line and then cross it when convenient.

7 **Q. PLEASE SUMMARIZE ISSUE 12-74 REGARDING FATAL REJECTION**
8 **NOTICES.**

9 A. Eschelon proposes language to help ensure that it is not be penalized, such as by
10 losing its due date, when Qwest rejects Eschelon's orders in error. Eschelon
11 accepts the consequences of its own fatal errors and asks Qwest to do the same.
12 Eschelon's proposal for the whole of Section 12.2.7.2.6 is balanced and
13 reasonable. Eschelon's proposal also requires no change by Qwest, as it reflects
14 Qwest's established process.

15

16 **SUBJECT MATTER NO. 35. TAG AT DEMARCATION POINT**

17 **Issues Nos. 12-75 and 12-75(a): ICA Sections 12.3.1 and subpart; 12.4.3.6.3**

18 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
19 **TAGGING AT THE DEMARCATION POINT AS REFLECTED IN ISSUE**
20 **NOS. 12-75 AND 12-75(a).**

1 A. If either Qwest or Eschelon cannot find the hand-off point when it comes time to
2 install or repair facilities, it is a problem. Issues 12-75 and 12-75(a) relate to
3 terms surrounding a method for finding that critical hand-off point between the
4 two companies' networks. Generally speaking, the hand-off point – where
5 Qwest's network ends and Eschelon's or the End User Customer's network
6 begins – is the demarcation point. A method for identifying the demarcation, or
7 hand-off, point is to "tag" the demarcation point. To "tag" the demarcation point
8 means that Qwest physically marks it with identifying information (such as
9 telephone number or circuit ID).

10 It is important that demarcation points are identified ("tagged") accurately. If
11 either company cannot find that hand-off point when it comes time to install or
12 repair facilities at the Demarcation Point, the installation or repair will either not
13 occur or be delayed. For service problems, Eschelon must know the demarcation
14 points to accurately isolate the trouble. If the trouble is on the Qwest's side of the
15 network, it should be reported to Qwest. If Eschelon's dispatched technician fails
16 to find the demarcation cross-connect point because the demarcation tag is
17 missing, Eschelon would have to make another dispatch to complete the job. In
18 other words, a missing demarcation tag causes not only delays, but also additional
19 costs to carriers.

20 Finding the Demarcation Point is not always easy. For business Customers in a
21 multi-tenant environment, for example, demarcation points may be in hundreds of

1 possible locations. If Qwest does not provide the correct location of the
2 demarcation points to Eschelon, Eschelon is unlikely to find it.

3 Therefore, when necessary, Qwest generally provides CLECs with identifying
4 information about the demarcation point's location (*e.g.*, binding post
5 information). Qwest also generally tags the demarcation point by physically
6 marking it with identifying information (such as telephone number or circuit ID).
7 The serious cost and competitive consequences of failure to accurately tag the
8 demarcation point support inclusion of language about the obligation to tag
9 demarcation points in the interconnection agreement.

10 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 12-75 AND 12-75(A)?**

11 A. Eschelon proposes to insert the following contract language in two places, Section
12 12.3.1 (under Ordering, Provisioning and Installation) and Section 12.4.3 (under
13 Activities to Resolve Trouble Reports or Perform Maintenance and Repair Work):

14 **Issue 12-75:**

15 12.3.1.1 If CLEC requires information identifying the
16 Demarcation Point to complete installation, Qwest will provide to
17 CLEC information identifying the location of the Demarcation
18 Point (*e.g.*, accurate binding post or Building terminal binding post
19 information). If Qwest is unable to provide such information, the
20 Demarcation Point is not tagged, and CLEC has dispatched
21 personnel to find the Demarcation Point and is unable to locate it,
22 Qwest will dispatch a technician and tag the line or circuit at the
23 Demarcation Point at no charge to CLEC, if CLEC informs Qwest
24 within 30 Days of service order completion.

25 **Issue 12-75(a):**

26 12.4.3.6.3 Whenever a Qwest technician is dispatched to an
27 End User Customer premise, Qwest will place a tag accurately

1 identifying the line or circuit, including the telephone number *or*
2 Qwest Circuit ID, at the Demarcation Point if such a tag is not
3 present. *See also* Section 12.3.1.1.¹⁴³
4

5 **Q. WHAT IS QWEST’S PROPOSAL ON ISSUES 12-75 AND 12-75(A)?**

6 A. Qwest proposes to replace all of Eschelon’s proposed language with references to
7 its web-based PCAT:

8 **Issue 12-75:**

9 12.3.1 Specific procedures are contained in Qwest’s PCAT,
10 available on Qwest’s wholesale web site.

11 **Issue 12-75(a):**

12 12.4.3.6.3 Responsibilities of Qwest’s Maintenance and
13 Repair technicians are contained in Qwest’s PCAT, available on
14 Qwest’s wholesale web site.
15

16 Once again, Qwest states in its position statement that these issues are “process”
17 issues so they belong in CMP and that adopting Eschelon’s proposal would cause
18 Qwest to incur additional cost.

19 **Q. DOES ESCHELON’S PROPOSAL FOR ISSUES 12-75 AND 12-75(A)**
20 **INTRODUCE ANY NEW PROCEDURES OR COSTS?**

21 A. No. Eschelon proposes to capture the processes Qwest currently employs with
22 respect to tagging demarcation points. There are no costs associated with
23 changing the process, because Eschelon’s proposed language requires no change.

¹⁴³ Note that due to typographical error, the Washington *Disputed Issues Matrix* and the ICA do not contain the word “or” in the phrase “including the telephone number *or* Qwest Circuit ID.” Eschelon discovered this error while responding to Qwest’s Direct Testimony in the Minnesota Arbitration. Eschelon’s proposal on Issue 12-75(a) should be read as quoted in this testimony.

1 The following citations from Qwest's PCAT¹⁴⁴ confirm that Eschelon's proposed
2 language closely follows Qwest's existing procedures:

3 Demarcation Points

4 If you require binding post information to complete your repair or
5 installation work, your technician may call Qwest's Repair
6 Department. If available, Qwest will provide demarcation binding
7 post information for Design facilities and building terminal binding
8 post information for POTS facilities through its Repair Department
9 upon request. If binding post information is not available, the
10 existing process for tagging the demarcation point will apply.

11 Tagging of Circuits

12 The Qwest technician that provisioned your end-user's new service
13 was responsible for tagging the demarcation point of the
14 communication lines for your specific service. However, this
15 information can change, be destroyed/lost, or a premise visit may
16 not have been required to turn up the specific service/product. If
17 you cannot identify your end-user's demarcation point, you may
18 request that Qwest tag and identify the demarcation point of the
19 lines that serve your end-users.

20 Design Services

21 If the circuit is for new service 30 calendar days or less of order
22 completion, you should call the Wholesale Repair Center, or
23 RCHC, or request a trouble ticket via the Electronic Gateway.
24 Indicate that this is new service, include lift and lay unbundled
25 information (within 30 calendar days), and state that you cannot
26 locate the tag. We will dispatch a repair technician. If we find that
27 the circuit is tagged, we will bill you a MSC. If the circuit is not
28 tagged, we will tag it and you will not be charged.¹⁴⁵

29 Whenever a Qwest technician is dispatched to a premise, the
30 Qwest demarcation point will be tagged if a tag is not present.¹⁴⁶
31

¹⁴⁴ Local Business Procedures. Maintenance and Repair Overview - V64.0
<http://www.qwest.com/wholesale/clecs/maintenance.html>.

¹⁴⁵ Local Business Procedures. Maintenance and Repair Overview - V64.0
<http://www.qwest.com/wholesale/clecs/maintenance.html>.

¹⁴⁶ See Qwest's PCAT, *Dispatch* – V 3.0 available at <http://www.qwest.com/wholesale/clecs/dispatch.html>.

1 **Q. ESCHELON’S PROPOSAL FOR ISSUE 12-75(A) CLOSELY FOLLOWS**
2 **YOUR LAST CITATION, WHICH IS TAKEN FROM QWEST’S PCAT**
3 **DISPATCH DOCUMENT. IS IT CORRECT THAT IN ITS MINNESOTA**
4 **REPLY TESTIMONY QWEST CLAIMED THAT THERE IS A**
5 **DISCREPANCY BETWEEN ITS PCAT DISPATCH AND PCAT**
6 **MAINTENANCE AND REPAIR DOCUMENTS?**

7 A. Yes. In its Reply Testimony in Minnesota¹⁴⁷ Qwest stated that while Eschelon’s
8 proposal for Issue 12-75(a) is based on an existing provision in PCAT’s *Dispatch*
9 document, this document contains discrepancies compared to the PCAT’s
10 *Maintenance and Repair Overview* document, and that the *Dispatch* document
11 does not reflect Qwest’s current practices. Note that Qwest has not provided any
12 explanation of how it determined that the error was in the *Dispatch* PCAT, rather
13 than in the *Maintenance and Repair Overview* PCAT. Neither has Qwest pointed
14 to a specific language in the *Maintenance and Repair Overview* document that
15 would describe the “correct” practices regarding tags. Nevertheless, Qwest’s
16 “discovery” of the “discrepancy” between the two PCAT documents highlights
17 the serious deficiency of Qwest’s own proposal – which is to reference “Qwest’s
18 PCAT.” Clearly, a contract should not rely on a set of documents (such as
19 Qwest’s PCAT) that are internally inconsistent and that do not correctly describe
20 existing practices. As opposed to Qwest’s proposal to reference PCAT,

¹⁴⁷ MN PUC Docket No. P-5340, 421/IC-06-768, Reply Testimony of Renee Albersheim, p. 55 and Reply Testimony of Philip Linse, p. 6.

1 Eschelon’s proposal spells out the procedures regarding tagging of demarcation
2 points, so that no ambiguity arises as to what specific practices apply to this
3 procedure.

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

5 A. As I explained above, tagging demarcation points is an important subject that
6 affects CLECs’ costs and ability to deliver timely service to End User Customers.
7 Eschelon must be able to locate the demarcation point to accurately isolate service
8 trouble. If service trouble is due to Qwest’s network, CLEC would request repair
9 from Qwest. A CLEC may not even submit a trouble report to Qwest until it
10 conducts such trouble isolation.¹⁴⁸ In essence, a presence or absence of a
11 demarcation tag is one of the UNE’s “features, functions and capabilities” that
12 makes the UNE *useful* – a manner in which UNEs should be provisioned
13 according to the Telecommunications Act and the FCC.¹⁴⁹ In other words, the
14 presence of a demarcation tag is crucial to CLEC’s ability to access UNEs and
15 offer service as discussed in the unbundling rules:

16 An incumbent LEC shall provide a requesting
17 telecommunications carrier access to an unbundled network

¹⁴⁸ For example, the language of the ICA on which both parties agreed says in section 9.2.5.1: “CLEC will perform trouble isolation on the Unbundled Loop and any associated ancillary services prior to reporting trouble to Qwest.” Similarly, section 12.4.1.3 states: “CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest.”

¹⁴⁹ The FCC *First Report and Order* at ¶268 found that the requirement to provide “access” to UNEs must be read broadly, concluding that the Act requires that UNEs “be provisioned in a way that would make them useful.” The same paragraph noted that “[t]he ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.”

1 element, along with all of the unbundled network element's
2 features, functions, and capabilities, in a manner that allows the
3 requesting telecommunications carrier to provide any
4 telecommunications service that can be offered by means of
5 that network element.¹⁵⁰

6 An incumbent LEC must provide a carrier purchasing access to
7 unbundled network elements with the pre-ordering, ordering,
8 provisioning, maintenance and repair, and billing functions of
9 the incumbent LEC's operations support systems.¹⁵¹
10

11 If a Qwest technician is dispatched to an End User Customer's premises for any
12 reason, and the demarcation point for that Customer is not tagged with the
13 telephone number or circuit ID, there is no reason why the Qwest technician
14 would not properly correct the problem and tag it. Regardless of the reason why
15 it is not tagged (*e.g.*, the tag just fell off), the tag needs to be present to allow
16 technicians to find the demarcation point to complete installations and repairs.
17 Therefore, Qwest needs to ensure it is possible to conduct the required trouble
18 isolation by tagging the Demarcation Point. In essence, replacing a missing
19 demarcation point tag is part of the maintenance and repair services that are part
20 of the concept "access to UNEs" as defined by the federal rules.¹⁵²

21 **Q. PLEASE SUMMARIZE ISSUES 12-75 AND 12-75(A) REGARDING**
22 **TAGGING AT THE DEMARCATION POINT.**

¹⁵⁰ CFR §51.307(c).

¹⁵¹ CFR §51.313(c).

¹⁵² See rule CFR §51.313(c) cited above. As already quoted, the FCC *First Report and Order* at ¶268 found that "[t]he ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element."

1 A. The tag identifying the demarcation point is critical to Eschelon's ability to
2 deliver timely service and conduct trouble isolation. Qwest's responsibility for
3 tagging demarcation points and replacing missing tags follows directly from the
4 federal unbundling rules – rules which prescribe that the concept of “access to
5 UNEs” includes not only the physical facility, but also its usefulness, including
6 repair and maintenance. A missing or unclear tag is a situation that requires
7 Qwest's repair and replacement. Eschelon proposal in Issue 12-75 spells out
8 Qwest's obligation to tag the demarcation point. Eschelon's proposal in Issue 12-
9 75(a) indicates that demarcation point is tagged whenever Qwest's technician
10 visits the End User Customer premise, which incorporates an efficiency since the
11 technician is already at the premises. Eschelon's proposals are reasonable and,
12 because they reflect Qwest's current practices, require no changes and impose no
13 additional costs.

14

15 **SUBJECT MATTER NO. 36. LOSS AND COMPLETION REPORTS**

16 **Issues Nos. 12-76 and 12-76(a): ICA Sections 12.3.7.1.1, 12.3.7.1.2**

17 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
18 **LOSS AND COMPLETION REPORTS AS REFLECTED IN ISSUE NOS.**
19 **12-76 AND 12-76(a).**

20 A. Issues 12-76 and 12-76(a) concern daily *Loss and Completion Reports* Qwest
21 provides to notify Eschelon when its End User Customer changes to a different

1 local service provider (a “loss”) and when activity other than losses (such as
2 changes to service) occur on the End User Customer’s account (“completions”).
3 Historically, these reports did not provide CLECs with accurate loss and
4 completion information. For example, the detail was inadequate to determine
5 which Customers have left the CLEC for another carrier. This was a significant
6 issue that could adversely affect the CLEC’s reputation, uncollectible revenues
7 and cause confusion for the End User Customer. For example, if Eschelon is not
8 aware that a Customer has left (a “loss”), Eschelon continues to bill the End User
9 Customer. The End User Customer would likely not understand why Eschelon
10 would not know that the Customer has left. The End User Customer may get
11 upset, which reduced Eschelon’s chances of successful collection of the legitimate
12 charges due from the End User Customer. Loss and completion reports need to
13 include sufficient information to avoid such problems.

14 **Q. WHAT IS ESCHELON’S PROPOSAL FOR ISSUES 12-76 AND 12-76(A)?**

15 A. Eschelon proposes the following underlined language modifications:

16 **Issue 12-76:**

17 12.3.7.1.1 The daily loss report will contain a list of accounts
18 that have had lines disconnected because of a change in the End
19 User Customer’s local service provider. Qwest will issue a loss
20 report when a service order Due Dated for the previous business
21 day, is completed or canceled in Qwest’s service order processor
22 (SOP). The losses on the report will be for the previous day’s
23 activity. This report will include detailed information consistent
24 with OBF guidelines, but no less than the BTN, service order
25 number, PON, service name and address, the WTN the activity
26 took place on and date the service order completed (the date the

1 change was completed). Individual reports will be provided for at
2 least the following list of products:

3 **Issue 12-76(a):**

4 12.3.7.1.2 Completion Report provides CLEC with a daily
5 report. This report is used to advise CLEC that the order(s) for the
6 previous day's activity for the service(s) requested is complete.
7 This includes service orders Qwest generates without an LSR (for
8 example, records correction work, PIC or Maintenance and Repair
9 charges). This report will include detailed information consistent
10 with OBF guidelines, but no less than the BTN, service order
11 number, PON, service name and address, the WTN the activity
12 took place on and date the service order completed (the date the
13 change was completed). Individual reports will be provided for
14 Resale and Unbundled Loop.
15

16 Eschelon proposes that the contract language specify the information necessary to
17 make these reports useful for their intended purpose. This information should
18 include the Billing Telephone Number ("BTN"), the Working Telephone Number
19 ("WTN"), service name and address, service order number, Purchase Order
20 Number ("PON"), and the date the service order was completed.

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

22 A. Qwest's proposal is to delete the underlined language. As with the other
23 provisions of Section 12, Qwest states in its position statement that the issue
24 belongs in CMP and that Eschelon's proposal would require system modifications
25 and additional costs on part of Qwest. Eschelon has already expended substantial
26 resources in CMP participating in the development of the current Loss and
27 Completion reports and now seeks to capture that hard work in the
28 interconnection agreement.

1 In addition, Qwest again argues that Eschelon “wants to prohibit the industry
2 from ever modifying OSS Notices [such as Loss and Completion Reports] in
3 CMP.”¹⁵³ Most of the language in Sections 12.3.7.1.1 and 12.3.7.1.2 is agreed
4 upon. Qwest does not explain why the agreed-upon requirements are not such a
5 “prohibition,” but the unresolved proposals comprise a “prohibition” to
6 modification of OSS notices. Note that Eschelon’s proposed language does not
7 preclude Qwest from providing *more* data than the information itemized in
8 Eschelon’s proposal.

9 **Q. DOES ESCHELON’S PROPOSAL PREVENT THE INDUSTRY FROM**
10 **MODIFYING OSS NOTICES?**

11 A. No. The amount of information in the contract language proposed by Eschelon is
12 similar to the amount of information provided for in other provisions of the ICA,
13 to ensure that the purposes of those terms are met. For example, agreed upon
14 language in Section 12.2.4.1.2 provides that the Customer Service Records
15 (“CSRs”) will “include Billing name, service address, Billing address, service and
16 feature subscription, Directory Listing information, and long distance Carrier
17 identity.”¹⁵⁴ CSRs are identified as “real time pre-order functions” available to
18 CLECs.¹⁵⁵ Each of the items in the list in Section 12.2.4.1.2 is important to the

¹⁵³ *Qwest’s Petition for Arbitration*, pp. 50-51.

¹⁵⁴ *See also* SGAT Section 12.2.1.4.2.

¹⁵⁵ *See* ICA Section 12.2.4.1. In the Third Report and Order (at ¶425), the FCC said: “In the *Local Competition First Report and Order*, the Commission defined OSS as consisting of *pre-ordering*, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases

1 purpose of the CSR, and therefore the contract requires Qwest to provide at least
2 these items for the term of the contract. Section 4.0 defines “include” to mean
3 “includes but is not limited to” so this list is a minimum requirement. Qwest may
4 add to the list but it may not stop providing any of the listed items during the
5 contract term, unless amended. Significantly, Section 12.2.4.1.2 does not refer to
6 Qwest’s PCAT to define the minimum contents of the CSR. Providing a
7 minimum list of the information to be included in the Loss and Completion
8 reports in Issues 12-76 and 12-76(a) (Sections 12.3.7.1.1 and 12.3.7.1.2) is
9 consistent with this approach contained in the agreed-upon section 12.2.4.1.2.
10 The work to define what the minimum list should be contained in a Loss or
11 Completion report has already been done in CMP, as described below.

12 The fact that the language in Issues 12-76 and 12-76(a) refers to industry
13 guidelines does not change this result. As discussed with respect to Issue 12-70,
14 for example, Section 12.2.7.2.1 provides, in agreed upon language, that the Firm
15 Order Confirmation (“FOC”) will “follow industry-standard formats” but it also
16 requires that the FOC must at a minimum contain the Due Date. The contract
17 does not leave to chance that industry standards may change during the contract
18 term and omit the Due Date, because the Due Date is critical to the purpose of the
19 provision. Similarly, the itemized information in the provisions that address Loss
20 and Completion reports is integral to the reason for providing the Loss and

and information. OSS includes the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems” (emphasis added).

1 Completion reports and ensuring that their purposes are served. The obligation to
2 provide the recommended information in the Loss and Completion reports should
3 similarly be contained in the interconnection agreement, which can be amended if
4 circumstances change. There should be no reason for Qwest to modify the reports
5 in such a way as to provide *less* data if Qwest intends to preserve the useful
6 function of these reports.

7 **Q. DOES ESCHELON'S PROPOSAL MIMIC PRACTICES THAT WERE**
8 **DEVELOPED THROUGH LENGTHY CMP ACTIVITY?**

9 A. Yes. Eschelon's proposal reflects Qwest's current procedure.¹⁵⁶ And, the list of
10 information to be contained in these reports emanates from many iterations and
11 years of work by and between CLECs and Qwest that took place within the CMP.
12 Indeed, this work started with Eschelon's Change Request in April 2001,¹⁵⁷ and
13 continued with four other Change Requests,¹⁵⁸ with the last Change Request being
14 completed in February 2004. In other words, CLECs and Qwest worked on these
15 issues over a period of three years. As with the PSONs in Issue 12-70, this is
16 longer than the term of the ICA.

¹⁵⁶ See Qwest's PCAT, *Billing Information - Additional Outputs - SMDR, Completion Report, Loss Report - V15.0* available at <http://www.qwest.com/wholesale/clecs/output.html>.

¹⁵⁷ See description of this Change Request at http://www.qwest.com/wholesale/cmp/archive/CR_5522887.htm.

¹⁵⁸ See descriptions of these Change Requests at http://www.qwest.com/wholesale/cmp/archive/CR_SCR093002-01.htm, http://www.qwest.com/wholesale/cmp/archive/CR_SCR012802-1.htm, http://www.qwest.com/wholesale/cmp/archive/CR_SCR012802-2.htm, and http://www.qwest.com/wholesale/cmp/archive/CR_SCR111501-1.htm.

1 Eschelon invested a significant amount of time into improving these reports.
2 Eschelon provided examples of errors and problems on a regular basis to its
3 Qwest service management team over a period of approximately 1.5 years.
4 CLECs created a joint matrix to track the many issues raised by the examples and
5 the corrections made as a result of them. The data collection process was
6 resource intensive, but was warranted because of the significant impact on CLECs
7 and their End User Customers. The end result was better reporting that benefits
8 not only CLECs but also Qwest. Qwest does not receive and have to expend
9 resources on escalation calls, for example, due to problems that used to arise from
10 inadequate reports but no longer occur.

11 **Q. PLEASE SUMMARIZE ISSUES 12-76 AND 12-76(A) REGARDING LOSS**
12 **AND COMPLETION REPORTS.**

13 A. Loss and Completion Reports are necessary for Eschelon to properly bill its End
14 User Customers. They must include adequate information to determine, for
15 example, which Customers have left Eschelon for another carrier. Inaccurate
16 information in these reports could lead to situations that adversely affect
17 Eschelon's reputation, uncollectible revenues, and the End User Customer's
18 service. Eschelon is proposing to include in the contract a list of required
19 information to include in these reports to ensure that they serve their intended
20 purpose. Eschelon's proposed list is the same list that Qwest currently provides to
21 CLECs, and that list was developed as a result of a lengthy joint effort by CLECs

1 and Qwest in CMP. Adopting Eschelon's proposal would require no change in
2 process and thus would impose no costs associated with modifications. Allowing
3 Qwest to decrease the amount of information without contract amendment, after
4 all that Eschelon and other carriers have invested in developing in these reports,
5 would harm Eschelon and expose its End User Customers to the very problems
6 that all of that work was designed to avoid.

7

8 **SUBJECT MATTER NO. 37. TESTING CHARGES WHEN CIRCUIT IS ON**
9 **PAIR GAIN**

10 **Issue No. 12-77: ICA Section 12.4.1.5.**

11 **Q. PLEASE DESCRIBE ESCHELON'S NEED REGARDING TESTING**
12 **CHARGES WHEN A CIRCUIT IS ON PAIR GAIN REFLECTED IN ISSUE**
13 **NO. 12-77.**

14 A. If a circuit cannot be tested, Qwest should not charge for testing the circuit. This
15 simple principle is at the heart of this issue. Issue 12-77 concerns defining when
16 Qwest may assess charges for performing trouble isolation with Eschelon on a
17 circuit that uses pair gain technology. Pair Gain equipment (*i.e.*, electronics that
18 enable multiple signals to be carried simultaneously on a single physical circuit)
19 generally cannot be tested through. Eschelon's language recognizes this in all
20 cases when Qwest cannot test, and Qwest's language does not.

21 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUE 12-77?**

1 A. Eschelon proposes insertion of the following underlined language:

2 12.4.1.5.1 If the circuit is on Pair Gain, or like equipment that
3 CLEC or Qwest cannot test through, and CLEC advises Qwest of
4 this, Qwest will not assess any testing charges. Whether other
5 charges, such as dispatch charges, apply will be governed by the
6 provisions of this Agreement associated with such charges.

7 12.4.1.5.2 Sections 12.4.1.1 through 12.4.1.5 describe situations in
8 which CLEC elects to perform trouble isolation and testing, as
9 described in those sections. If, in those situations, CLEC cannot
10 test through (or tests and cannot obtain valid results) as described
11 in Sections 12.4.1.4 and 12.4.1.5.1, any such testing that Qwest
12 conducts due to those circumstances is not “optional” but is
13 required by those circumstances. Therefore, optional testing
14 charges do not apply. Regarding situations in which CLEC elects
15 not to perform trouble isolation, see Section 12.4.1.6.1¹⁵⁹
16

17 Eschelon makes this proposal because circuits with pair gain equipment *cannot be*
18 *tested through*. The purpose of this language is to make sure Qwest does not
19 impose any *testing* charges. If other (non-testing) charges apply pursuant to some
20 other provision of the agreement (such as provisions relating to dispatch charges),
21 Eschelon’s final sentence in Section 12.4.1.5.1, which Qwest accepted, makes
22 clear that this provision does not change the operation of those provisions or
23 applicability of those charges.

24 Because Qwest’s proposed language cited below attempts to collapse the
25 otherwise clear and long-standing distinction between two test procedures – when
26 Eschelon *elects to perform* trouble isolation (12.4.1.3 & 12.4.1.5) and when

¹⁵⁹ Eschelon added this paragraph to its proposal in an attempt to clarify application of the first paragraph. Because this proposal was made on September 11, 2006, this paragraph is not in the versions of the *Disputed Issues Matrix* (filed with the Commission by Qwest on August 9, 2006) and the *ICA* (filed with the Commission by Eschelon on September 1, 2006). Qwest rejected Eschelon’s proposal.

1 Eschelon *elects not to perform* trouble isolation and *instead requests Qwest to*
2 *perform optional testing* (12.4.1.6), Eschelon proposed added Section 12.4.1.5.2
3 as a clarification.

4 **Q. WHAT IS QWEST’S PROPOSAL?**

5 A. Qwest does not agree to Eschelon’s proposal in the above cited paragraph and
6 proposes to delete Eschelon’s underlined language. Qwest instead proposes the
7 following language:

8 12.4.1.5.1 If the circuit is on Pair Gain, or like equipment that
9 CLEC or Qwest cannot test through, and CLEC advises Qwest of
10 this, Qwest will not assess optional testing charges. Whether other
11 charges, such as dispatch charges, apply will be governed by the
12 provisions of this Agreement associated with such charges.
13

14 Qwest has proposed that, rather than prohibiting Qwest from imposing “any”
15 testing charges for Pair Gain circuits, this Section should prohibit only “optional”
16 testing charges, suggesting that Qwest believes that some, albeit undisclosed and
17 unexplained, charges might apply.

18 **Q. HAS QWEST IDENTIFIED ANY TESTING CHARGES THAT IT MAY**
19 **APPLY PURSUANT TO SECTION 12.4.1.5.1 WHEN THE CIRCUIT IS**
20 **ON EQUIPMENT THAT TEST CANNOT TEST THROUGH?**

21 A. No. Qwest’s single argument is that trouble isolation involving a circuit that uses
22 pair gain equipment may involve a dispatch of Qwest’s technician¹⁶⁰ to test the

¹⁶⁰ See *Qwest’s Petition for Arbitration*, p. 55 and *Disputed Issues Matrix*, Qwest’s position.

1 distribution portion of the circuit (portion on the Customer side of pair gain
2 equipment that does not use pair gain technology). Qwest suggests it is concerned
3 that Eschelon's proposal will prevent recovery of such dispatch charges for
4 testing on the side that does not use pair gain technology. Eschelon's proposal,
5 however, explicitly addresses Qwest's concern: Eschelon added (and Qwest
6 recently accepted) the final sentence to its proposed language for Section
7 12.4.1.5.1 that explicitly mentions dispatches and makes clear that the provision
8 on testing charges does not change the applicability of dispatch charges. If Qwest
9 is concerned that phrase "*any testing charges*" is too broad and, as unlikely as this
10 seems, can be interpreted to include non-testing charges (despite use of the term
11 "testing" before "charges"), the final sentence is available to clarify that this is not
12 the case. Qwest has not explained why the final sentence of Section 12.4.1.5.1
13 does not address Qwest's concern.

14 Qwest has not provided a single example that involves both *testing* (not dispatch)
15 charges and a circuit that is on equipment that *cannot be tested* through. That is
16 the only situation, however, governed by this paragraph. Eschelon needs to plan
17 its business and, if Qwest intends to impose some other *testing* charges when the
18 equipment cannot be tested through, Qwest should be required to disclose and
19 support them, rather than spring them on Eschelon after this arbitration and claim
20 Qwest may collect them pursuant to Section 12.4.1.5.1.

21 **Q. QWEST'S COUNTER PROPOSAL REFERS ONLY TO "OPTIONAL"**

1 **TESTING CHARGES. ARE OPTIONAL CHARGES ADDRESSED BY**
2 **ANY OTHER PROVISION OF THE ICA?**

3 A. Yes. Qwest’s proposal represents a duplicate of the agreed-upon language in
4 Section 12.4.1.6.1. Compare the following two paragraphs:

5 **Qwest’s proposal for 12.4.1.5.1:**
6 12.4.1.5.1 If the circuit is on Pair Gain, or like equipment that
7 CLEC or Qwest cannot test through, and CLEC advises Qwest of
8 this, Qwest will not assess optional testing charges.

9 **Agreed-upon language in 12.4.1.6.1:**
10 12.4.1.6.1 If the circuit is on Pair Gain, Qwest will not assess
11 optional testing charges.
12

13 Qwest’s proposal to include the word “optional” in both of these sections fails to
14 recognize that these sections deal with different testing scenarios. Note that
15 Section 12.4.1.6 deals with situations in which “CLEC elects not to perform
16 trouble isolation and CLEC requests Qwest to perform optional testing,”¹⁶¹ while
17 section 12.4.1.5 deals with situations where “CLEC requests that Qwest perform
18 trouble isolation with CLEC.”¹⁶² In other words, the language about charges for
19 optional testing belongs in Section 12.4.1.6, which concerns optional testing, but
20 it is too narrow for Section 12.4.1.5, which is not limited to optional testing,
21 because it does not exclude application of some other (unidentified) testing
22 charges. Eschelon’s proposal for Section 12.4.1.5.2 captures the fact that when
23 faced with Qwest’s pair gain equipment, Eschelon is not requesting optional

¹⁶¹ See the agreed-upon language in Section 12.4.1.6.

¹⁶² See the agreed-upon language in Section 12.4.1.5.

1 testing (which assumes free choice) in order to diagnose the problem. Instead, it
2 has no other choice than to involve Qwest in trouble isolation because Eschelon
3 cannot test *through* such circuit.

4 **Q. PLEASE SUMMARIZE ISSUES 12-77 REGARDING TESTING**
5 **CHARGES WHEN CIRCUIT IS ON PAIR GAIN.**

6 A. Eschelon's proposed language contains no ambiguity: If a circuit cannot be
7 tested, then Qwest should not charge for testing the circuit. Qwest's proposed
8 language introduces ambiguity and uncertainty by attempting to limit testing
9 charges that cannot be charged when a circuit cannot be tested to "optional"
10 charges, without disclosing what testing charges it may charge when a circuit
11 cannot be tested. Section 252 of the Act requires cost-based rates. Charging
12 testing charges when a circuit cannot be tested through has no cost basis.

13

14 **SUBJECT MATTER NO. 38. DEFINITION OF TROUBLE REPORT**

15 **Issue No. 12-78: ICA Section 12.4.1.7**

16 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS INTEREST REGARDING**
17 **THE DEFINITION OF TROUBLE REPORT IN ISSUE NO. 12-78 AND**
18 **ALSO BRIEFLY INTRODUCE ISSUE NO. 12-80, WHICH USES THE**
19 **TERM "TROUBLE REPORT."**

20 A. Issue 12-78 relates to the definition of a Trouble Report for purposes of Issue 12-
21 80, and Issue 12-80 addresses "repeat" troubles within Qwest's network that

1 cause Eschelon to dispatch its technicians.¹⁶³ These provisions address the
2 circumstances under which Eschelon may charge Qwest for doing so. Eschelon
3 is seeking reciprocity (charging Qwest in similar, albeit more limited,¹⁶⁴
4 circumstances as when Qwest charges Eschelon).

5 Together, Issues 12-78 and 12-80 concern troubles within Qwest's network that
6 cause Eschelon to dispatch its own technicians when that dispatch could have
7 been avoided *had Qwest fixed its trouble in the first instance*. In the meantime,
8 Eschelon's End User Customer is likely in need of a repair, experiencing
9 problematic delays, and may, in fact, blame Eschelon erroneously for these
10 problems. Under Eschelon's proposed language, Eschelon has already dispatched
11 a technician¹⁶⁵ and the trouble is definitely in Qwest's network¹⁶⁶ before any
12 charge¹⁶⁷ could be applied against Qwest.

13 The difference between Eschelon's proposal for charging Qwest and Qwest's
14 current billing practice is that Qwest charges CLECs (in this case Eschelon) *every*

¹⁶³ Issue 12-79 is Intentionally Left Blank, which is why the numbering skips from 12-78 to 12-80.

¹⁶⁴ The arrangement is not completely reciprocal, because Eschelon cannot charge Qwest under this language in a situation for which Qwest charges Eschelon. Section 12.4.1.8 of the ICA states that CLEC may bill only for dispatches on "Repeat Troubles" (or, under Qwest's proposal, "repeat dispatches"). There is no provision in the language for CLEC to bill on the initial trouble, even when CLEC dispatches, although Qwest charges on the initial trouble when it dispatches.

¹⁶⁵ See ICA Section 12.4.1.8(e). Although a portion of this language is open and at impasse, the closed and agreed upon portion states that CLEC has demonstrated a technician dispatch on the repeat trouble. See *id.* The repeat trouble is the only one for which Eschelon is seeking to charge. See 12.4.1.8.

¹⁶⁶ Only when the trouble has been found to be in the Qwest network may Eschelon charge Qwest. See ICA Section 12.4.1.8(c) & (d) (closed language). Qwest codes the trouble tickets. See <http://www.qwest.com/wholesale/clecs/maintenance.html> ("Responsibilities of our repair technicians include: . . . Assigning resolution codes prior to closing your report").

¹⁶⁷ See discussion of Issue 12-80 and subparts below. For Issues 12-78 and 12-80 and their subparts, Eschelon will charge the same rate as Qwest charges or may charge (*see* Section 22.1.1).

1 time it dispatches (including initial dispatches), and the trouble is not in Qwest's
2 network.¹⁶⁸ On the other hand, Eschelon proposes, through its contract language,
3 to invoice Qwest only when the trouble¹⁶⁹ is in Qwest's network, and Eschelon
4 dispatches on a *repeat* trouble,¹⁷⁰ meaning that Qwest did not fix its own trouble
5 in the first instance. Eschelon's proposal is reasonable and provides the correct
6 incentives.

7 Both companies' proposals for charges for repeats (Issue 12-80) use the term
8 "Trouble Report," but they disagree on definition of that term – giving rise to
9 Issue 12-78. Qwest seeks to distinguish between "provisioning" troubles and
10 "repair" troubles and then exclude provisioning troubles from its definition of
11 Trouble Report. Provisioning troubles should not be confused with installation
12 work. In its proposed definition, Eschelon is not seeking to include *installation*
13 work. On the day of installation when installation work is completed,¹⁷¹ however,

¹⁶⁸ This is evident from the agreed-upon language of Sections 6.6.4 & 9.2.5.2, as well as Qwest's PCAT. Specifically, the PCAT contains the following language: "**Dispatch.** CLEC contacts Qwest to report trouble. CLEC has performed trouble isolation testing and provides test results to Qwest. If trouble is found in Qwest's network, no charges will apply. *If one or more technicians are dispatched and no trouble is found in Qwest's network, a dispatch charge (in addition to the MSC) will be applied. Dispatch charges will apply for each additional dispatch request when no trouble is found in the Qwest network.* Qwest's PCAT, *Maintenance and Repair Overview - V65.0*, available at <http://www.qwest.com/wholesale/clecs/maintenance.html> (emphasis added).

¹⁶⁹ Eschelon has offered to limit this to repair troubles, if the ICA documents that Qwest does not apply dispatch charges for provisioning troubles, as further described below.

¹⁷⁰ This means that, if Eschelon dispatches on the initial trouble as it often will do, Eschelon will not be compensated when Qwest would for the dispatch on the initial trouble.

¹⁷¹ In addition to troubles after installation completion, troubles before installation, in the case of disconnects in error when Qwest disconnects the Customer's service early (*i.e.*, before the installation should begin), should be included. *See, e.g.*, Order, *In re. U.S. West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Decision No. 66242, ACC Docket No. T-00000A-97-0238, ¶¶76-79 (Sept. 16, 2003) ["AZ 271 Order"].

1 if a trouble (an unexpected problem with service) occurs, it should be included in
2 the definition of Trouble Report, regardless of how Qwest requires the trouble to
3 be reported or chooses to track it. Qwest's proposal for Issue 12-78 artificially
4 excludes from its definitions certain troubles. Therefore, under Qwest's proposed
5 definition, some recurring troubles would not be counted as *Repeat Troubles* for
6 purposes of Section 12.4.1.8 (Issue 12-80), and thus Qwest would not incur
7 charges associated with those troubles. For example, if CLEC reports a trouble
8 within 24 hours of the due date and then submits another trouble report four days
9 later, Qwest will not consider the second report as a *Repeat Trouble* when the first
10 report was tracked in the provisioning system, and Qwest's repair system shows
11 only one (the second) report of trouble. Some of the most critical service-
12 affecting errors, from the End User Customer's perspective, however, are those
13 that occur on or shortly after the day of cut – when the customer is switching
14 carriers and determining whether the switch is satisfactory. Because Qwest's
15 proposed language only includes trouble reports tracked in Qwest's repair
16 systems, these early repair troubles that are so important to the Customer are
17 omitted. This is a double problem for Eschelon, whose End User Customer has
18 been harmed by a Qwest-caused trouble, and now Qwest will not include the
19 trouble for purposes of determining when Eschelon may charge Qwest for
20 dispatches for repeat troubles caused by Qwest.

1 With respect to Qwest’s proposed definition generally, because Qwest’s language
2 limits trouble reports to those tracked in specified Qwest systems, the proposal
3 would allow Qwest in the future to simply choose to track troubles in another
4 system (which it chooses to call something other than a “repair” system) to omit
5 more trouble reports from the definition and avoid associated charges – charges
6 that CLECs impose on Qwest.

7 Nonetheless, if the approved ICA will commit Qwest to not charging for
8 dispatches for provisioning troubles reported to a Qwest call center within 30
9 calendar days of installation completion (as set forth below), Eschelon will
10 withdraw its objection to a definition of trouble report that excludes those
11 provisioning troubles, for the purposes of Issue 12-80.¹⁷² Because Qwest “does
12 not apply dispatch charges for provisioning problems Eschelon may experience
13 for thirty days, even after Eschelon has accepted Qwest’s provisioned facility,”¹⁷³
14 this alternative proposal is reciprocal.

15 **Q. WHAT IS ESCHELON’S PROPOSAL FOR ISSUE 12-78?**

16 A. Eschelon proposes to modify the definition proposed by Qwest as follows:

¹⁷² If this option is adopted, Eschelon would propose the following additional modification to Qwest’s proposed definition: “12.4.1.7. For the purposes of Section 12.4.1.8, “Trouble Reports” means trouble reports received via MEDIACC, CEMR, or successor systems, if any, or reported to one of Qwest’s call or repair centers, and managed and tracked within Qwest’s repair systems consisting of WFA (Work Force Administration) and MTAS (Maintenance Tracking Administration System), and successor repair systems, if any.”

¹⁷³ MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Philip Linse, p. 26, lines 5-7. See also Linse Direct, p. 24, lines 13-14 (“Qwest does not charge CLECs for work that Qwest technicians perform associated with these issues.”).

1 **Issue 12-78 (associated with Eschelon’s proposal #1 for Issues 12-80(b)-(c)):**

2 12.4.1.7 For the purposes of Section 12.4.1.8, “Trouble Reports”
3 means ~~trouble reports of trouble received via electronic interface~~
4 ~~(MEDIACC, CEMR or successor system, if any) or submitted~~
5 ~~reported to one of Qwest's call or repair centers, and managed and~~
6 ~~tracked within Qwest's repair systems consisting of WFA (Work~~
7 ~~Force Administration) and MTAS (Maintenance Tracking~~
8 ~~Administration System), and successor repair systems, if any.~~

9 **Issue 12-78 (only in the event that Eschelon’s proposal #2 is adopted for**
10 **Issues 12-80(b)-(c)):**

11 12.4.1.7. For the purposes of Section 12.4.1.8, “Trouble Reports”
12 means trouble reports received via MEDIACC, CEMR, or
13 successor systems, if any, or reported to one of Qwest's call or
14 repair centers, and managed and tracked within Qwest's repair
15 systems consisting of WFA (Work Force Administration) and
16 MTAS (Maintenance Tracking Administration System), and
17 successor repair systems, if any.
18

19 **Q. WHAT IS QWEST’S PROPOSAL?**

20 A. Qwest proposes the following language:

21 12.4.1.7. For the purposes of Section 12.4.1.8, “Trouble Reports”
22 means trouble reports received via MEDIACC, CEMR, or reported
23 to one of Qwest's call or repair centers, and managed and tracked
24 within Qwest's repair systems consisting of WFA (Work Force
25 Administration) and MTAS (Maintenance Tracking
26 Administration System), and successor repair systems, if any.
27

28 **Q. PLEASE EXPLAIN ESCHELON’S PROPOSAL.**

29 A. In its primary proposal, Eschelon’s definition of trouble report is consistent with
30 that term’s use throughout the remainder of the interconnection agreement.
31 Agreed upon ICA language in Section 12.4.2.2 and subparts, for example, provide
32 that CLEC may submit trouble reports electronically or manually by calling
33 Qwest’s support centers as described in Section 12.1.3.3.3. The trouble reporting

1 activities described in those contract sections is most consistent with the
2 definition proposed by Eschelon. Specifically, compare the language of ICA
3 Section 12.4.2.2 with Eschelon's proposed language:

4 ICA: 12.4.2.2 CLEC may report trouble to Qwest through the Electronic
5 Bonding or GUI interfaces provided by Qwest or manually through the
6 support centers described above in Section 12.1.3.3.3

7 Eschelon's proposal: 12.4.1.7 For the purposes of Section 12.4.1.8,
8 "Trouble Reports" means reports of trouble received via electronic
9 interface (MEDIACC, CEMR or successor system, if any) or submitted to
10 one of Qwest's call or repair centers.
11

12 **Q. DOES ESCHELON'S PRIMARY PROPOSAL INCLUDE QWEST'S**
13 **LANGUAGE THAT LIMITS TROUBLE REPORTS TO THOSE**
14 **TRACKED IN QWEST'S REPAIR SYSTEMS?**

15 A. No. Eschelon does not include in its proposed definition the additional language
16 that Qwest proposes to add to the end of the definition stating that, to be trouble
17 reports, the reports must be managed and tracked in Qwest's repair systems
18 (WFA, MTAS, or successor systems). There is no other reference to WFA or
19 MTAS in the interconnection agreement. And, there is contrary language in
20 Qwest's own PCAT. In Qwest's Maintenance and Repair Overview PCAT,
21 Qwest also describes submission of trouble reports. In a portion of that
22 Maintenance and Repair PCAT entitled "Recent Service Order Activity," Qwest
23 explains that troubles that occur within the first 24 hours after installation cannot
24 be reported to Qwest repair because the Qwest service order has not yet

1 completed in Qwest's ordering systems.¹⁷⁴ Therefore, trouble reports during the
2 first 24 hours after installation must be reported manually by calling the
3 "Customer Service Inquiry and Education (CSIE)" *as Qwest repair cannot yet*
4 *access the information through its systems.*¹⁷⁵ The regulatory proceeding
5 described below confirmed that these trouble reports are not tracked in Qwest's
6 repair systems, which is why for a time Qwest was not counting them for
7 performance measurement purposes. This is also evident from the Recent Service
8 Order Activity information in Qwest's PCAT. If the service order has not yet
9 completed, and Qwest's systems have not been updated such that a CLEC must
10 manually call the CSIE (not repair) to report the trouble, there is nothing to track
11 yet in the repair systems. As indicated above, however, these are significant
12 troubles requiring repair from the End User Customer's perspective.

13 **Q. HAVE REGULATORS RECOGNIZED THAT REPAIR TROUBLES**
14 **THAT ARE REPORTED TO THE QWEST CALL CENTER IN THE**
15 **FIRST 24 HOURS ARE NOT TRACKED IN QWEST'S REPAIR**
16 **SYSTEMS?**

17 A. Yes. Because of the significant impact of this issue on End User Customers, as
18 well as on Qwest's reporting, Eschelon previously raised the issue of how Qwest

¹⁷⁴ See <http://www.qwest.com/wholesale/clecs/maintenance.html> ("Maintenance and Repair Overview - V65.0": "Submitting Trouble Reports" . . . "Recent Service Activity Request" "If you have a service-affecting problem, Qwest recommends the following options: If a service order is pending for the line/circuit, call the Customer Service Inquiry and Education (CSIE) at 866 434-2555. If notification has been received within the last 24 hours indicating your service order may have completed, contact the CSIE.")

¹⁷⁵ See <http://www.qwest.com/wholesale/clecs/maintenance.html>

1 defines trouble reports with regulators. Eschelon raised the issue of Qwest's
2 records excluding repair troubles reported shortly after installation in the Arizona
3 271 case and then in the FCC 271 proceedings. Arizona conducted an audit in
4 which the auditor confirmed that Qwest was not adequately capturing errors in its
5 Performance Indicator Definitions ("PID") data due to this problem.¹⁷⁶ In the 271
6 proceedings, Qwest's performance measure that deals with trouble report was
7 modified to explicitly account for all trouble reports (including those not tracked
8 in Qwest's repair systems). Specifically, measure OP-5 "New Service Quality"
9 consists of several sub-measures, where the Total New Service Installation
10 Quality is measured by accounting for trouble reports:

11 **OP-5T: New Service Installation Quality Total**

12 Measures the percentage of inward line service orders that are free
13 of repair or provisioning trouble reports during the provisioning
14 process and within 30 calendar days of installation completion,
15 subject to exclusion shown below.¹⁷⁷
16

17 In other words, regulators in 271 proceedings found that an appropriate measure
18 of total quality should account for all troubles (regardless of how they are
19 "tracked" in Qwest's systems), otherwise service quality is not measured
20 accurately.

21 **Q. DOES THE DISTINCTION IN TERMINOLOGY BETWEEN**

¹⁷⁶ See AZ Commission's Decision No. 66242, *In the Matter of U.S. WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. T-00000A-97-0238, September 16, 2003, ¶¶6-8.

¹⁷⁷ Qwest. *Service Performance Indicator Definitions. 14-State 271 PID Version 8.1*, p. 42 (emphasis added).

1 **“PROVISIONING” TROUBLE REPORTS AND “REPAIR” TROUBLE**
2 **REPORTS FOR PID PURPOSES PROVIDE A BASIS FOR EXCLUDING**
3 **TROUBLES REPORTED TO THE CALL CENTER FROM THE**
4 **DEFINITION OF TROUBLE REPORTS IN ISSUE 12-78 REGARDING**
5 **CHARGES FOR REPEAT TROUBLES?**

6 A. No. Trouble reports that are manually reported to Qwest’s provisioning centers
7 within 24 hours of the due date include repairs. Qwest includes such “Recent
8 Service Order Activity” in its “Maintenance and Repair Overview” PCAT.¹⁷⁸
9 Before the Qwest service order or other “paperwork” completes in Qwest’s
10 systems, a trouble requiring repair can arise. That trouble cannot be reported to
11 the physical Qwest repair department because of this systems issue internal to
12 Qwest. For the End User Customer and Eschelon, however, a repair is needed.
13 Eschelon already has to call in manually to the Qwest call center to report the
14 trouble, as the electronic method is unavailable at this point, and Eschelon has to
15 deal with a new End User Customer in need of repair. Eschelon should not also
16 have to forego the ability to charge Qwest for the dispatch on a repeat trouble for
17 a Qwest-caused problem. Qwest can simply look to its call center database
18 records¹⁷⁹ for the information if it seeks to verify Eschelon’s charges.

19 As I mentioned above, in Minnesota Qwest testified that it does not charge a
20 dispatch charge for “provisioning” troubles. If Qwest is willing to commit to that

¹⁷⁸ <http://www.qwest.com/wholesale/clecs/maintenance.html>

¹⁷⁹ See, e.g., PID (Version 8.1) OP-5(b) description.

1 in the contract (see below), Eschelon will agree that such troubles do not need to
2 be included in the definition of trouble report (Issue 12-78) for purposes of
3 Section 12.4.1.8 (Issue 12-80). Eschelon is simply seeking reciprocity¹⁸⁰ and is
4 willing to accept Qwest's definition of the Trouble Report (Issue 12-78), with the
5 slight modification indicated above (to refer to successor systems should the
6 current trouble reporting systems be replaced), should the ICA preclude Qwest
7 from charging for dispatches during the installation process as has been described
8 by Qwest. To capture this commitment, Eschelon proposes the following two
9 alternates for Sections 6.6.4 and 9.2.5.2 (Issues 12-80(b) and 12-80(c)):

10 **Eschelon's primary proposal for Issues 12-80(b) and (c) is a simple cross**
11 **reference to Section 12.4.1.8, using the term "repeat trouble" rather than**
12 **Qwest's proposed term of "repeat dispatch":**

13
14 **Issue 12-80(b) – Eschelon's Proposal #1:**

15 6.6.4 If Qwest reported no trouble found in its network but,
16 as a result of a repeat ~~CLEC dispatch~~ trouble, CLEC demonstrates
17 that the trouble is in Qwest's network, CLEC will charge Qwest a
18 trouble isolation charge as described in Section 12.4.1.8.

19 **Issue 12-80(c) – Eschelon's Proposal #1:**

20 9.2.5.2 If Qwest reported no trouble found in its network but,
21 as a result of a repeat ~~CLEC dispatch~~ trouble, CLEC demonstrates
22 that the trouble is in Qwest's network, CLEC will charge Qwest a
23 trouble isolation charge as described in Section 12.4.1.8.

24
25 **Eschelon will accept Qwest's proposal on 12-78 (as modified above),**

¹⁸⁰ Again, Eschelon is not asking for *full* reciprocity, because Qwest's language allows it to charge for troubles every time it dispatches, whereas Eschelon is only seeking to charge when it dispatches for *repeat* troubles. This is true under both of Eschelon's proposals for Issues 12-80(b) and 12-80(c) (original and alternate). In other words, under both proposals, Eschelon does not get to charge Qwest for the initial trouble even when Eschelon dispatches. Under Eschelon's alternate proposal for Issues 12-80(b) and 12-80(c), in addition to not charging Qwest, Eschelon will *also* not use the trouble for purposes of determining whether a later trouble is a repeat, if Qwest is not allowed to charge for dispatches on that trouble and commits not to do so in the ICA.

1 **however, if Qwest accepts Eschelon’s Alternative Proposals for 12-80(b) and**
2 **12-80(c):**¹⁸¹
3

4 **Issue 12-80(b) – Eschelon’s Alternate Proposal (Proposal #2):**

5 6.6.4 When CLEC requests that Qwest perform trouble isolation with
6 CLEC, a trouble isolation charge (TIC) charge will apply when Qwest
7 dispatches a technician and the trouble is found to be on the End User
8 Customer’s side of the Demarcation Point. If the trouble is on the End
9 User Customer’s side of the Demarcation Point. If a repair trouble is on
10 the End User Customer’s side of the Demarcation Point, and CLEC
11 authorizes Qwest to repair the trouble on CLEC’s behalf, Qwest will
12 charge CLEC the appropriate Additional Labor Charges set forth in
13 Exhibit A in addition to the TIC charge. No charges for dispatches (other
14 than the dispatch component, if any, of the installation non-recurring
15 charges) shall apply to provisioning troubles reported to a Qwest call
16 center within 30 calendar days of installation completion. No charges
17 shall apply if CLEC indicates trouble in Qwest’s network and Qwest
18 confirms that such trouble is in Qwest’s network. In the event that Qwest
19 reports no trouble found in its network on a trouble ticket and it is
20 subsequently determined that the reported trouble is in Qwest's network,
21 then Qwest will waive or refund to CLEC any TIC charges assessed to
22 CLEC for that same trouble ticket. If Qwest reported no trouble found in
23 its network but, as a result of a repeat trouble, CLEC demonstrates that
24 the trouble is in Qwest’s network, CLEC will charge Qwest a trouble
25 isolation charge as described in Section 12.4.1.8.

26 **Issue 12-80(c) – Eschelon’s Alternative Proposal (Proposal #2):**

27 9.2.5.2 When CLEC requests that Qwest perform trouble isolation with
28 CLEC, a Maintenance of Service Charge will apply when Qwest
29 dispatches a technician and the trouble is found to be on the End User
30 Customer’s side of the Loop Demarcation Point. If a repair trouble is on
31 the End User Customer’s side of the Loop Demarcation Point, and CLEC
32 authorizes Qwest to repair the trouble on CLEC’s behalf, Qwest will
33 charge CLEC the appropriate Additional Labor Charges and Maintenance
34 of Service Charge, if any, as set forth in Exhibit A at 9.20. No charges for
35 dispatches (other than the dispatch component, if any, of the installation
36 non-recurring charges) shall apply to provisioning troubles reported to a
37 Qwest call center within 30 calendar days of installation completion. No
38 charges shall apply if CLEC provides Qwest with test results indicating

¹⁸¹ Eschelon’s proposal for Issue 12-80 is the same under Eschelon’s primary or alternate proposal. In Section 12.4.1.8, Eschelon proposes to use the term “Repeat Trouble” rather than Qwest’s proposal of “repeat dispatch.” In Section 12.4.1.8(e), Eschelon proposes to use “dispatch on the Repeat Trouble” instead of Qwest’s proposed “dispatch on the prior and Repeat Trouble.”

1 trouble in Qwest's network and Qwest confirms that such trouble is in
2 Qwest's network. In the event that Qwest reports no trouble found in its
3 network on a trouble ticket and it is subsequently determined that the
4 reported trouble is in Qwest's network, then Qwest will waive or refund to
5 CLEC any Maintenance of Service Charges assessed to CLEC for that
6 same trouble ticket. If Qwest reported no trouble found in its network but,
7 as a result of a repeat trouble, demonstrates that the trouble is in Qwest's
8 network, CLEC will charge Qwest a trouble isolation charge as described
9 in Section 12.4.1.8.

10

11 **Q. WITH RESPECT TO ISSUE 12-78, ESCHELON'S PROPOSED**
12 **DEFINITION OF TROUBLE REPORT USES THE TERM "REPORTS OF**
13 **TROUBLE," WHEREAS THE ALTERNATE PROPOSAL ABOVE USES**
14 **THE TERMS "REPAIR TROUBLE" AND "PROVISIONING TROUBLE."**
15 **PLEASE ELABORATE ON THESE TERMS.**

16 A. Eschelon's proposed definition of Trouble Report distinguishes between trouble
17 that coincide with installation work and troubles that do not (*i.e.* troubles that
18 occur either before or after installation work is complete).¹⁸² The Performance
19 Indicator Definition ("PID") for Repair Repeat Report Rate (MR-7), for example,
20 includes repeated trouble reports received for the same line/circuit within 30
21 calendar days,¹⁸³ including trouble reports on the day of installation after the

¹⁸² See AZ 27 Order, at ¶7 ("Eschelon also questioned whether the PIDs *adequately capture troubles that are reported* through Qwest's documented processes when those processes allow action *other than opening a trouble ticket with the repair desk*. Qwest stated that it believes the PIDs do adequately capture all types of troubles. In its Report, Staff disagreed with Qwest and stated that trouble reports that are caused by Qwest service order errors should be included in OP-5 *as trouble reports*.") (emphasis added).

¹⁸³ Note that, when determining whether a trouble is a repeat for purposes of Eschelon charging Qwest, Qwest agreed to only *three*, not 30, days. See Section 12.4.1.8(b.). Eschelon has been very reasonable on this issue.

1 installation work is reported by the technician/installer as complete.¹⁸⁴ The fact
2 that troubles which occur on the day of installation are reported to a call center
3 and not repair was also recognized in the development of the PIDs for New
4 Service Quality (OP-5) and Manual Service Order Accuracy (PO-20,
5 Expanded).¹⁸⁵ Repeat or (“multiple”) trouble reports are tracked in a sub-measure
6 of OP-5 (OP-5R) that includes troubles regardless of whether reported to a call
7 center and repair.¹⁸⁶

8 Because Qwest has to track these trouble reports for purposes of these PIDs, it
9 tracks troubles in a manner that allows Qwest to implement Eschelon’s proposal.
10 Only trouble reports on the day of installation *before* the installation work is
11 reported by the technician/installer as complete are excluded from MR-7,¹⁸⁷ so
12 Qwest has to be tracking those *after* that work is completed for *repeat* troubles,
13 even though *on the day of installation* they are reported to a call center and not the
14 repair center.¹⁸⁸ In addition, OP-5B shows that Qwest tracks the call center
15 tickets in a “call center database.”¹⁸⁹ Qwest’s proposed definition of Trouble

¹⁸⁴ ICA Exhibit B, p. 69 (purpose & exclusions, fourth bullet point).

¹⁸⁵ See AZ 271 Order, ¶7 (quoted in above footnote). For PO-20 and OP-5, see ICA Exhibit B, pp. 28 & 42.

¹⁸⁶ ICA Exhibit p. 42, OP-5R: New Service Quality Multiple Report Rate, second bullet point (“Measures the percentage of all repair and provisioning trouble reports considered in OP-5A and OP-5B that are additional repair or provisioning trouble reports received by Qwest for the same service order during the provisioning process or within 30 days following installation completion.”).

¹⁸⁷ ICA Exhibit B, p. 69 (exclusions, fourth bullet point).

¹⁸⁸ ICA Exhibit B, p. 42 (OP-5B); see also <http://www.qwest.com/wholesale/clecs/maintenance.html> (“Maintenance and Repair Overview - V64.0”: “Submitting Trouble Reports” . . . “Recent Service Activity Request”).

¹⁸⁹ ICA Exhibit B, p. 42 (OP-5B: New Service Provisioning Quality; second bullet point: For provisioning trouble reports, Qwest creates call center tickets in its call center database.”

1 Report excludes the call center database from the list of systems in which it tracks
2 trouble reports. Eschelon's proposed definition appropriately includes troubles
3 (not installation work) tracked in call center databases, *in addition to* those
4 tracked in Qwest's maintenance and repair systems.

5 Nonetheless, for purposes of Section 12.4.1.8, Eschelon offers in the alternative a
6 modified proposal for Issues 12-80(b) and 12-80(c) to accommodate Qwest's use
7 of the terms repair trouble and provisioning trouble. In OP-5, "repair trouble
8 reports are defined as CLEC/customer notifications to Qwest of out-of-service
9 and other service affecting conditions for which Qwest opens repair tickets in its
10 maintenance and repair management and tracking systems that are closed in the
11 reporting period or the following month," subject to certain exclusions.¹⁹⁰ In OP-
12 5, "provisioning trouble reports are defined as CLEC notifications to Qwest of out
13 of service or other service affecting conditions that are attributable to provisioning
14 activities, including but not limited to LSR/service order mismatches and
15 conversion outages. For provisioning trouble reports, Qwest creates call center
16 tickets in its call center database."¹⁹¹

17 **Q. HAS QWEST RESPONDED TO ESCHELON'S ALTERNATIVE**
18 **PROPOSALS FOR ISSUES 12-80(B) AND 12-80(C)?**

19 A. Yes. Qwest made a counter-proposal to which Eschelon does not agree. This

¹⁹⁰ ICA Exhibit B, p. 42 (OP-5A: New Service Installation Quality Reported to Repair, second bullet point).

¹⁹¹ ICA Exhibit B, p. 42 (OP5-B: New Service Provisioning Quality, second bullet point).

1 counter-proposal is as follows:

2 **Issue 12-80(b) – Qwest’s Counter-Proposal to Eschelon’s Proposal #2**

3 6.6.4 When CLEC requests that Qwest perform trouble isolation with
4 CLEC, a trouble isolation charge (TIC) charge will apply when Qwest
5 dispatches a technician and the trouble is found to be on the End User
6 Customer’s side of the Demarcation Point. If the trouble is on the End
7 User Customer’s side of the Demarcation Point. If a repair trouble is on
8 the End User Customer’s side of the Demarcation Point, and CLEC
9 authorizes Qwest to repair the trouble on CLEC’s behalf, Qwest will
10 charge CLEC the appropriate Additional Labor Charges set forth in
11 Exhibit A in addition to the TIC charge. No separate charges for required
12 dispatches (other than the dispatch component, if any, of the installation
13 non-recurring charge) shall apply prior to acceptance of the circuit to
14 provisioning troubles reported to a Qwest call center within 30 calendar
15 days of installation completion. No charges shall apply if CLEC indicates
16 trouble in Qwest’s network and Qwest confirms that such trouble is in
17 Qwest’s network. In the event that Qwest reports no trouble found in its
18 network on a trouble ticket and it is subsequently determined that the
19 reported trouble is in Qwest's network, then Qwest will waive or refund to
20 CLEC any TIC charges assessed to CLEC for that same trouble ticket. If
21 Qwest reported no trouble found in its network but, as a result of a repeat
22 CLEC dispatch, CLEC demonstrates that the trouble is in Qwest’s
23 network, CLEC will charge Qwest a trouble isolation charge as described
24 in Section 12.4.1.8.

25
26 **Issue 12-80(c) – Qwest’s Counter-Proposal to Eschelon’s Proposal #2**

27 9.2.5.2 When CLEC requests that Qwest perform trouble isolation with
28 CLEC, a Maintenance of Service Charge will apply when Qwest
29 dispatches a technician and the trouble is found to be on the End User
30 Customer’s side of the Loop Demarcation Point. If a repair trouble is on
31 the End User Customer’s side of the Loop Demarcation Point, and CLEC
32 authorizes Qwest to repair the trouble on CLEC’s behalf, Qwest will
33 charge CLEC the appropriate Additional Labor Charges and Maintenance
34 of Service Charge, if any, as set forth in Exhibit A at 9.20. No separate
35 charges for required dispatches (other than the dispatch component, if any,
36 of the installation non-recurring charge) shall apply prior to acceptance to
37 the circuit to provisioning trouble reported to a Qwest call center within 30
38 calendar days of installation completion. No charges shall apply if CLEC
39 provides Qwest with test results indicating trouble in Qwest’s network and
40 Qwest confirms that such trouble is in Qwest’s network. In the event that
41 Qwest reports no trouble found in its network on a trouble ticket and it is
42 subsequently determined that the reported trouble is in Qwest's network,

1 then Qwest will waive or refund to CLEC any Maintenance of Service
2 Charges assessed to CLEC for that same trouble ticket. If Qwest reported
3 no trouble found in its network but, as a result of a repeat CLEC dispatch,
4 CLEC demonstrates that the trouble is in Qwest's network, CLEC will
5 charge Qwest a trouble isolation charge as described in Section 12.4.1.8.
6

7 **Q. WHY DOESN'T ESCHELON AGREE TO QWEST'S COUNTER-**
8 **PROPOSALS FOR ISSUES 12-80(B) AND 12-80(C)?**

9 A. Qwest proposes three groups of changes. First, it inserted but did not explain the
10 word "separate" when referring to charges. Qwest may be trying to avoid
11 duplication of any dispatch component of the NRC. To meet this potential
12 concern, Eschelon proposed replacing the word "dispatch" with a more specific
13 phrase for insertion as a parenthetical after the word "dispatch," which
14 states "(other than the dispatch component, if any, of the installation non-
15 recurring charge)." Qwest has not responded to this proposed modification.
16 Eschelon's proposed language is more clear and less likely to lead to disputes.

17 Second, Qwest proposed insertion of word "required" before word "dispatches."
18 Qwest's proposal is inconsistent with its own position on how this charge works¹⁹²
19 and it could allow Qwest to circumvent the rule that, if a trouble is in Qwest's
20 network, CLEC does not pay. If Qwest makes an unnecessary dispatch (or if the
21 dispatch is unnecessary because Qwest did not isolate a trouble to its own
22 network and repair its trouble the first time), Eschelon should not pay for that. It

¹⁹² See my citation from MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Philip Linse, p. 26, lines 5-7: "Qwest does not apply dispatch charges for provisioning problems Eschelon may experience for thirty days, even after Eschelon has accepted Qwest's provisioned facility."

1 also leaves to Qwest's discretion what is "necessary." If the trouble is in Qwest's
2 network, or if it falls within the provisioning troubles for which Qwest has said it
3 does not charge CLECs,¹⁹³ Qwest should not be charging Eschelon.

4 Third, Qwest proposes to limit provisioning troubles for which it does not charge
5 to those "prior to acceptance after the circuit." This proposal is inconsistent with
6 Qwest's admission that it does not apply dispatch charges for provisioning
7 troubles "for thirty days, even after Eschelon has accepted Qwest's provisioned
8 facility."¹⁹⁴ Qwest's proposal to limit its language to those "prior to acceptance"
9 is contrary to Qwest's own practices. Therefore, Qwest's proposal is not
10 reciprocal.

11

12 **SUBJECT MATTER NO. 39. CHARGES FOR REPEATS**

13 **Issues Nos. 12-80, 12-80(a), 12-80(b) and 12-80(c): ICA Sections 12.4.1.8,**
14 **12.4.1.8.1, 6.6.4, and 9.2.5.2**

15 **Q. WHAT IS ESCHELON'S BUSINESS ISSUE RELATED TO REMOTE**
16 **TESTING CAPABILITY IN THE CONTEXT OF CHARGES FOR**
17 **REPEAT TROUBLES REFLECTED IN ISSUE 12-80(a)?**

¹⁹³ MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Philip Linse, p. 26.

¹⁹⁴ MN PUC Docket No. P-5340, 421/IC-06-768, Direct Testimony of Philip Linse, p. 26.

1 A. Issues 12-80 and 12-80(b)-(c)¹⁹⁵ were discussed above with respect to Issue 12-
2 78. Issue 12-80(a) relates to remote testing capability in the context of charges
3 for repeats.

4 Both Qwest and Eschelon have the capability in many cases to test remotely,¹⁹⁶
5 and when they are able to conduct remote testing, they may not dispatch a
6 technician for trouble isolation. Eschelon proposes to use the same standard for
7 test results as is applied to Qwest. That standard is set forth in Section 12.4.1.1,
8 and Eschelon's language specifically cross references that standard. Section
9 12.4.1.1 on its face applies to "either party." In contrast, Qwest applies the
10 Section 12.4.1.1 standard to itself but proposes a unique, onerous standard when
11 Eschelon conducts remote testing.

12 When Eschelon conducts remote testing, Qwest's proposal states for Issue 12-
13 80(a) that Eschelon must provide test results meeting a novel "conclusive" circuit
14 specific standard. Testing is needed when uncertainty exists as to cause of a
15 problem and tests are conducted to determine that cause. Eschelon does not know
16 whether Qwest will attempt to distinguish between test results that it claims are
17 probative, for example, versus conclusive. The uniqueness of this standard is not

¹⁹⁵ Eschelon's proposal for Issue 12-80 is the same under Eschelon's primary or alternate proposal. In Section 12.4.1.8, Eschelon proposes to use the term "Repeat Trouble" rather than Qwest's proposal of "repeat dispatch." In Section 12.4.1.8(e), Eschelon proposes to use "dispatch on the Repeat Trouble" instead of Qwest's proposed "dispatch on the prior and Repeat Trouble."

¹⁹⁶ See, e.g., ICA Sections 12.4.1.6 & 12.4.3.3.1 (referring to situations in which Qwest tests remotely). Remote testing is done from central office or other access point, during which remote test equipment can isolate a trouble to the network interface unit, Customer service unit, or point of interface.

1 just a problem because the standard is undefined. It is also a problem because
2 Qwest's proposal requires Eschelon to meet this higher standard for test results
3 for the initial trouble, only if there is a repeat trouble – a fact that Eschelon will
4 not know when conducting trouble isolation on the initial trouble.

5 Under Qwest's proposal, Qwest determines whether Eschelon has provided
6 "conclusive" test results for the initial trouble so that Eschelon may charge when
7 it dispatches on the repeat trouble. In any case for which Qwest unilaterally
8 declares that the test results are not conclusive, Qwest can prevent Eschelon from
9 charging Qwest for a repeat trouble. Any time that Qwest declares test results are
10 not "conclusive," Qwest's proposed language allows Eschelon to charge Qwest
11 only when there is a repeat *dispatch* (as opposed to repeat *trouble*). This
12 eliminates charging for repeat troubles when Eschelon performed remote testing
13 on the initial trouble, simply because Qwest says that testing in its opinion was
14 not conclusive for some reason. In these situations, Qwest wants at least one free
15 dispatch, even though Eschelon's End User Customer is out of service or
16 otherwise in need of repair and that repair has been delayed because Qwest did
17 not fix the trouble in its network the first time. Qwest does not give Eschelon one
18 free dispatch. Eschelon needs cost-based rates based on clear terms that do not
19 contain this imbalance.

20 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 12-80 AND 12-80(a)?**

21 A. Eschelon's proposes the language modifications below for Issues 12-80 and 12-

1 80(a). (With respect to Issues 12-80(b) and 12-80(c), Eschelon has provided
2 proposals above in the discussion of Issue 12-78.)¹⁹⁷

3 **Issue 12-80 (Trouble Isolation Charge):**

4 12.4.1.8 Where Qwest has billed CLEC for Maintenance of
5 Services or Trouble Isolation (“TIC”) charges for a CLEC Trouble
6 Report, Qwest will remove such Maintenance of Services or TIC
7 charge from CLEC’s account and CLEC may bill Qwest for its
8 ~~repeat~~ dispatch(es) on Repeat Troubles(s) to recover a
9 Maintenance of Services or TIC charge or CLEC’s actual costs,
10 whichever is less, if all of the following conditions are met:

11 (a) the repeat Trouble Report(s) is the same trouble as the prior
12 Trouble Report (“Repeat Trouble”), as is demonstrated by CLEC’s
13 test results isolated between consecutive CLEC access test points;
14 and

15 e) CLEC’s demonstration of its technician dispatch on the ~~prior~~
16 ~~and~~ Repeat Trouble; provided that such demonstration is sufficient
17 when documented by CLEC’s records that are generated and
18 maintained in the ordinary course of CLEC’s business.

19 **Issue 12-80(a) (Remote Testing Capability):**

20 12.4.1.8.1 Where CLEC does not have remote testing
21 capability, subsection (e) of Section 12.4.1.8 requires a technician
22 dispatch for both the prior and Repeat Trouble. Where CLEC has
23 remote testing capability and provides the test results described in
24 subsection (d) of Section 12.4.1.8, CLEC must demonstrate the
25 technician dispatch pursuant to subsection (e) of Section 12.4.1.8
26 only for the Repeat Trouble.

27
28 **Q. WHAT IS QWEST’S PROPOSAL?**

29 A. Qwest opposes Eschelon’s proposal. For Eschelon’s proposal to Issue 12-80 and

¹⁹⁷ Since Eschelon has withdrawn its objection to including a definition of Trouble Report in Issue 12-78, the term Trouble Report will be capitalized in Section 12.4.1.8. Regardless of whether the Commission selects Eschelon’s or Qwest’s definition, the term will be defined for the purpose of Section 12.4.1.8. The convention then is to capitalize defined terms. Note that the *ICA* filed by Eschelon on September 1, 2006 (Exhibit 2) does not reflect this change of Eschelon’s proposal.

1 Eschelon's Proposals #1 for Issues 12-80(b) and (c), Qwest proposes to reject the
2 underline/strikeout modifications in Eschelon's proposed language. In addition,
3 for Issue 12-80(a) (Remote Testing Capability), Qwest proposes the following
4 language instead of Eschelon's proposal for this Section:

5 12.4.1.8.1 Where CLEC has remote testing capability and
6 provides Qwest with conclusive circuit specific test results that
7 isolate trouble to Qwest's network, demonstration of CLEC's prior
8 dispatch pursuant to subsection (e) of Section 12.4.1.8 will be
9 waived.
10

11 **Q. PLEASE EXPLAIN ESCHELON'S PROPOSALS FOR ISSUE 12-80 AND**
12 **12-80(a) AND INDICATE WHY THEY ARE APPROPRIATE.**

13 A. For Issue 12-80 (as well as Issues 12-80(b) and 12-80(c), which are cross
14 references back to the language in Issue 12-80), Eschelon proposes the
15 terminology "repeat trouble," whereas Qwest proposes "repeat dispatch."¹⁹⁸ The
16 choice is between *repeated dispatch* caused by repeat trouble, or *any dispatch*
17 caused by repeat trouble. As discussed above, Qwest charges Eschelon for any
18 dispatch caused by repeat trouble. If Eschelon conducts remote testing for the
19 initial trouble and dispatches a technician for a repeat trouble, Qwest's proposal
20 of "repeat dispatch" would not be met. Although there are two troubles (initial
21 and repeat) and Eschelon conducted trouble isolation testing in both instances,
22 Qwest excludes this scenario from its terminology because it refers only to

¹⁹⁸ Similarly, in subparagraph (e) to Section 12.4.1.8, Qwest proposes to refer to dispatch on the "prior and Repeat Trouble."

1 “repeat dispatches” (excluding situations involving remote testing for the initial
2 trouble).

3 Qwest’s proposal to use this terminology pre-dates its proposal for Section
4 12.4.1.8.1, which now allows Eschelon to charge Qwest in cases of repeat
5 troubles even when Eschelon remote tested on the initial trouble, albeit subject to
6 an objectionable testing standard. It is unclear why Qwest retained the
7 terminology “repeat dispatch” after introducing Section 12.4.1.8.1. Under
8 Qwest’s own proposal, if Qwest’s proposed higher standard for test results is met,
9 Eschelon may charge for a repeat trouble, even though there is no repeat dispatch.
10 (The only dispatch would be for the repeat trouble, since Eschelon tested remotely
11 for the initial trouble.) From Qwest’s language, it appears that Qwest is
12 attempting to establish a presumption that remote testing is not used and
13 dispatches occur in every case and, in the exception when remote testing is used,
14 the requirement for a dispatch on the first trouble is “waived.” Qwest has
15 provided no evidence that there is any basis for such a presumption. Eschelon
16 tests remotely, just as Qwest tests remotely.¹⁹⁹ In any event, there is no need for a
17 presumption. If a CLEC opts into this agreement that does not test remotely,
18 Eschelon’s proposed language clearly requires that CLEC (as well as Eschelon in
19 cases when Eschelon does not test remotely) to dispatch a technician on the initial
20 trouble before it can charge Qwest when it dispatches on the repeat trouble.

¹⁹⁹ See, e.g., ICA Section 12.4.3.3.1 (referring to situations in which Qwest tests remotely).

1 Eschelon’s proposed term of “repeat trouble” is used both in this ICA²⁰⁰ and
2 Qwest’s own PCAT.²⁰¹ Qwest’s proposed term of “repeat dispatch” is not used
3 anywhere else in the agreement and a search of Qwest’s PCAT found no results
4 for this term. Eschelon’s terminology is more common and its proposal is more
5 clear and accurate.

6 Issue 12-80(a) contains the standard to be applied to trouble isolation test results
7 that Eschelon provides to Qwest. Eschelon reasonably proposes the same
8 standard be applied to Eschelon that applies to Qwest. In its proposed language,
9 Eschelon actually refers to this standard by ICA Section number, rather than
10 attempting to paraphrase the standard, to ensure it is the same. Therefore,
11 Eschelon’s proposed language states that, when CLEC has remote testing
12 capability and provides the test results “described in subsection (d) of Section
13 12.4.1.8,” CLEC must dispatch a technician only for the repeat trouble.²⁰²
14 Subsection (d) in turn refers to a paragraph of general applicability to Qwest and
15 Eschelon – Section 12.4.1.1. As discussed, Qwest’s proposal applies the Section
16 12.4.1.1 standard to itself and a higher “conclusive” test result standard to

²⁰⁰ See ICA Section 12.4.1.6 (“When trouble is found on Qwest’s side of the Demarcation Point, or Point of Interface during the investigation of the initial or *repeat trouble* report for the same line or circuit within thirty (30) Days, Maintenance of Service Charges shall not apply.”) (emphasis added).

²⁰¹ <http://www.qwest.com/wholesale/cnla/uploads/SYST%2E07%2E19%2E05%2EF%2E03124%2ECEMROnlineHelpUpdate0%2Dday%2Edoc> (Qwest Notification July 19, 2005 SYST.07.19.05.F.03124. CEMROnlineHelpUpdate0-day, “*Repeat Trouble* from Display Abbreviated Trouble History”) (emphasis added).

²⁰² The language actually refers to CLEC “demonstrating” the technician dispatch. Note that language in the ICA referring to Qwest dispatches simply states that Qwest dispatches a technician and not that Qwest “demonstrates” a dispatch. Qwest, however, must verify its charges and so must also keep records to demonstrate that it dispatched a technician when it charges Eschelon for a dispatch.

1 Eschelon. Because this requirement is different from the usual requirements to
2 testing,²⁰³ Eschelon would need to know during the first trouble that a repeat
3 trouble will occur, so the new, stricter test should be applied. Clearly, CLECs
4 would not know during the first trouble that the trouble is going to be repeated
5 because Qwest does not fix it the first time. Similarly (assuming the repeat
6 trouble is not intentional), Qwest will not know in advance that a repeat trouble
7 will occur either. Therefore, this proposal is unreasonable and inconsistent with
8 the agreed-upon contract language. This proposal would not work, unless CLECs
9 always use the stricter test, which nullifies the agreed-upon language of the
10 contract that provide the same test should apply to “either party.”²⁰⁴

11 If Qwest believes that its unique “conclusive circuit specific” standard is fair,
12 Qwest should propose contract language which requires that, in all cases before
13 Qwest may charge Eschelon for dispatches on initial or repeat troubles, Qwest
14 must provide such “conclusive circuit specific” test results to Eschelon. And, it
15 should likewise provide that Eschelon gets to decide whether Qwest’s test results
16 are “conclusive.” If Qwest is not agreeable to such an approach, its objection
17 reflects the unreasonableness of its own proposal.

18 In Section 12.4.1.8.1 (Issue 12-80(a)), Eschelon’s uses the phrase “prior and
19 Repeat Trouble” in Section 12.4.1.8.1 regarding remote testing capability. Qwest

²⁰³ See Sections 12.4.1.1 and 12.4.1.8(d).

²⁰⁴ See Section 12.4.1.1.

1 uses this same terminology, but places it in Section 12.4.1.8(e). Eschelon's
2 placement is more clear and accurate, for the reasons discussed. Eschelon's
3 proposed language in Section 12.4.1.8.1 makes clear that, when CLEC does not
4 have remote testing capability, a technician dispatch is required "for both the prior
5 and Repeat Trouble." This is the result Qwest seeks. Qwest does not explain
6 why this language does not adequately address its concern. Eschelon's proposal
7 clearly describes both situations (when CLEC remotely tests and when it does not
8 on the initial trouble) and expressly indicates whether a dispatch is required or not
9 on the repeat trouble in each case. Such clear language will help avoid later
10 disputes.

11 **Q. WHY IS ESCHELON'S PROPOSAL ON ISSUE 12-80 AND SUBPARTS**
12 **REASONABLE?**

13 A. Eschelon is not seeking to charge in all cases when Qwest would charge
14 Eschelon. Specifically, Eschelon is not proposing to charge Qwest for the first
15 dispatch (on the initial trouble) – the dispatch that occurred in place of remote
16 testing. Despite this, Qwest represented to the Commission that Eschelon is
17 trying to bill Qwest for every dispatch, including "each instance where it
18 dispatches a technician to cure difficulties provisioning a circuit."²⁰⁵ As is
19 obvious from Eschelon's proposed language, however, if Eschelon dispatches a
20 technician for trouble isolation and Qwest fixes it the first time (*i.e.*, there is no

²⁰⁵ Qwest's Petition for Arbitration, p. 56.

1 repeat trouble), Eschelon does not get to charge at all.²⁰⁶ Eschelon's proposal
2 deals with cases of *repeat* trouble, therefore, rather than "each instance" of
3 trouble.

4 In contrast, Qwest's dispatch charges are not limited to repeat troubles, but are
5 charged in each applicable case.²⁰⁷ Thus, under Eschelon's proposal, Eschelon
6 will dispatch twice in some cases (*e.g.*, when remote testing is not available), but
7 even in those cases, Eschelon will only charge Qwest one time (for the second,
8 repeat trouble). In contrast, in all cases of trouble not in its network when Qwest
9 dispatches twice, Qwest will charge Eschelon twice. Therefore, Eschelon's
10 proposal is very reasonable.

11 **Q. IS THERE ANY REASON WHY ESCHELON HAS FOCUSED ON**
12 **REPEAT TROUBLES IN ITS PROPOSAL?**

13 A. Yes. It is reasonable to expect that Qwest would fix the trouble after its first
14 occurrence. That is why a repeat trouble is a less tolerated condition than a single
15 episode of trouble. In these situations, Eschelon's End User Customer is out of
16 service or otherwise in need of repair and that repair has been delayed because
17 Qwest did not fix the trouble in its network the first time. Therefore, Eschelon
18 proposes to charge Qwest for repeat troubles, rather than single episode troubles.

²⁰⁶ Section 12.4.1.8 states that CLEC may bill only for dispatches on "Repeat Troubles" (or, under Qwest's proposal, "repeat dispatches"). There is no provision in the language for CLEC to bill on the initial trouble, even when CLEC dispatches.

²⁰⁷ See ICA Sections 6.6.4 & 9.2.5.2; Qwest's PCAT, *Maintenance and Repair Overview - V65.0*, available at <http://www.qwest.com/wholesale/clecs/maintenance.html> (emphasis added).

1 It does not matter how the first occurrence of (what became) a repeat trouble was
2 established (through remote testing or dispatch). These are all instances of
3 Qwest-caused trouble, and it is reasonable to expect that Qwest should
4 compensate Eschelon for Qwest's caused trouble.

5

6 **SUBJECT MATTER NO. 40. TEST PARAMETERS.**

7 **Issue No. 12-81: ICA Section 12.4.3.5**

8 **Q. WHAT IS ESCHELON'S BUSINESS NEED WITH RESPECT TO ISSUE**
9 **12-81?**

10 A. In the case of a trouble condition associated with an Eschelon End User
11 Customer's service, Qwest may conduct testing in order to isolate, diagnose and
12 resolve the trouble. An example of this testing occurs when the CLEC isolates
13 the trouble to Qwest's portion of the network, and Qwest then performs trouble
14 isolation testing. To conduct this testing, Qwest must follow standards and
15 internal processes regarding test parameters and levels. Issue 12-81 addresses the
16 scenario in which there is a conflict between generally-accepted industry
17 standards related to test parameters and levels, and Qwest's own test parameters.
18 The question in this case is "which standard should prevail?" This is an
19 extremely important question to Eschelon because it must depend upon Qwest to
20 perform trouble isolation testing in Qwest's network. Eschelon needs to make
21 sure that the testing is conducted properly, so that its results can be relied upon
22 and service to Eschelon's End Users is promptly restored or repaired.

1 **Q. WHAT IS ESCHELON'S PROPOSAL IN THIS REGARD?**

2 A. Eschelon's proposal is that industry-wide standards, such as Telcordia and ANSI
3 standards, should prevail over Qwest's standards in case of a conflict between the
4 two. Eschelon proposes the following language modification:

5 12.4.3.5 Qwest Maintenance and Repair and routine test
6 parameters and levels will be in compliance with Qwest's
7 Technical Publications and to the extent not inconsistent with the
8 foregoing, Telcordia's General Requirement Standards for Network
9 Elements, Operations, Administration, Maintenance and Reliability
10 and/or the applicable ANSI standard, and, to the extent not
11 inconsistent with the foregoing, Qwest's Technical Publications.

12

13 **Q. WHAT IS QWEST'S PROPOSAL?**

14 A. Qwest proposes that its own standards should prevail over industry-wide standards
15 in case of a conflict between the two, arguing that Eschelon's proposals should be
16 rejected because Qwest can only modify its technical publications in CMP.
17 Qwest specifically proposes the following :

18 12.4.3.5 Qwest Maintenance and Repair and routine test
19 parameters and levels will be in compliance with Qwest's
20 Technical Publications and to the extent not inconsistent with the
21 foregoing, Telcordia's General Requirement Standards for
22 Network Elements, Operations, Administration, Maintenance and
23 Reliability and/or the applicable ANSI standard, ~~and, to the extent~~
24 ~~not inconsistent with the foregoing, Qwest's Technical~~
25 ~~Publications.~~
26

27 **Q. WHAT IS ESCHELON'S RATIONALE FOR ITS PROPOSAL?**

28 A. The disputed language concerns a subject of testing. The plain-English meaning
29 of the word "test" implies that performance will be compared against certain

1 standards.²⁰⁸ For example, Qwest's PCAT provides the following examples of
2 test results:

- 3 • Noise 65 db measured at network interface;
- 4 • Circuit loss at 1004 HZ is greater than or equal to -8.5 dbm.²⁰⁹

5 In order to interpret and evaluate these test results ("Is the observed noise level
6 intolerable? Is the observed circuit loss significant? Should it be measured at the
7 specified frequency 1004 HZ?"), it is necessary to compare them to pre-defined
8 standards and parameters. Clearly, when testing telecommunications network
9 facilities, it is more appropriate to compare the observed parameters against well-
10 established, objective industry standards, rather than Qwest's internal, subjective
11 standards. Industry standards reflect the consensus of the industry as a whole,
12 rather than practices of any particular company. Using industry-wide standards
13 helps to avoid ambiguity or dispute in interpreting test results.

14 **Q. PLEASE EXPLAIN WHY THE TYPE OF TESTING IN QUESTION**
15 **PROVIDES JUSTIFICATION FOR ESCHELON'S PROPOSAL RATHER**
16 **THAN QWEST'S.**

17 A. Eschelon, as well as Qwest, performs testing during trouble isolation. Because
18 testing is done by both sides, it makes sense that industry standards take

²⁰⁸ For example, Webster's New Universal Unabridged Dictionary (1972) defines test as "a standard or criterion by which the qualities of a thing are tried." Similarly, Webster's Ninth New Collegiate Dictionary (1985) defines test as "a basis for evaluation, criterion."

²⁰⁹ *Qwest's PCAT, Test Results Information* available at http://www.qwest.com/wholesale/downloads/2004/041019/Test_Results_Information_10_04.doc. These are examples of CLECs reporting their own test results. Although they are not Qwest's test results (a subject of Issue 12-81), they provide a general idea of test parameters and levels accepted by Qwest.

1 precedence over Qwest's own, company-specific practices. It is also important to
2 stress that this provision is narrow: it concerns routine testing, not equipment or
3 other items that may be unique to Qwest. In connection with a function as basic
4 as routine testing, it is reasonable for industry standards to take precedence over
5 Qwest's own, company-specific practices.

6 **Q. WOULD ESCHELON'S PROPOSAL PREVENT QWEST FROM USING**
7 **ITS OWN TESTING PARAMETERS?**

8 A. No. Eschelon's proposal would not prevent Qwest from using its own testing
9 parameters, as reflected in its technical publications, so long as those parameters
10 are consistent with industry standards. In Minnesota, Qwest's witness Mr. Linse
11 admitted that he "can think of no instance where a Qwest Technical Publication
12 would be inconsistent with current industry wide standard or practice. However,
13 this does not preclude the possibility that currently or at some point during the
14 term of the ICA, Qwest Technical Publications *exceed* industry standard."²¹⁰ It is
15 important that Mr. Linse does not suggest that standards in Qwest's Technical
16 Publications may be *lower* than industry standards. He only suggests that they
17 may exceed industry standards today or in the future. Clearly, Eschelon's
18 proposal, by using the phrase "not inconsistent" with industry standards, permits
19 that Qwest's standards exceed industry standards.²¹¹ Eschelon's proposal only

²¹⁰ MN PUC Docket No. P-5340, 421/IC-06-768, Reply Testimony of Philip Linse dated September 22, 2006, p. 19, lines 12-16 (emphasis added).

²¹¹ A comparison of the two cited sentences from Mr. Linse's testimony indicates that Mr. Linse shares Eschelon's interpretation of phrase "not inconsistent:" In the first sentence he states that Qwest's Technical

1 asks that Qwest's testing parameters be not inferior to the industry standards – a
2 situation that Mr. Linse does not perceive as happening.

3 **Q. PLEASE SUMMARIZE ISSUE 12-81.**

4 A. Eschelon proposes that generally-accepted, industry-wide testing parameters take
5 precedence over Qwest's own testing parameters in cases of conflict between the
6 two. Because Qwest uses test parameters during trouble isolation performed for
7 Eschelon, Eschelon needs to make sure that the results of the testing – testing
8 which is conducted by Qwest in its own network – can be relied upon. Eschelon's
9 proposal does not require a change to Qwest's processes or technical publications
10 because Qwest states that its current maintenance and routine test parameters
11 comply with industry-wide standards.

12

13 **SUBJECT MATTER NO. 42. TROUBLE REPORT CLOSURE.**

14 **Issue No. 12-86: ICA Sections 12.4.4.1; 12.4.4.2; 12.4.4.3**

15 **Q. WHAT IS ESCHELON'S BUSINESS NEED ASSOCIATED WITH ISSUE**
16 **12-86?**

17 A. After Qwest fixes a problem that is the subject of a trouble report, Eschelon needs
18 to know the cause for the service problem (to adequately update its End User

Publications are *not inconsistent with current* industry standards, and in the second sentence he suggests that *currently* Qwest's Technical Publications *may exceed* industry standards.

1 Customer on the service problem and its repair) and actions taken by Qwest to
2 resolve the problem (to verify the accuracy of Qwest's repair bills to Eschelon).

3 Eschelon serves its End Users by means of facilities leased from Qwest. In case
4 of a trouble condition associated with of Eschelon's End User Customer, Qwest
5 may conduct maintenance and repair work in order to isolate, diagnose and
6 resolve the trouble. This process starts with Eschelon submitting a trouble report
7 to Qwest, and ends with Qwest closing the trouble report after the problem is
8 fixed. The trouble report is closed after Qwest clears the trouble.²¹² At this point,
9 Eschelon needs to know that the trouble is fixed, and also the cause for the service
10 problem and the actions taken by Qwest to resolve the problem. Information on
11 the cause of the trouble is essential for Eschelon to adequately update its End User
12 Customer on the service problem and its repair. Eschelon needs information on
13 the actions taken by Qwest to verify the accuracy of Qwest's repair bills to
14 Eschelon.

15 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUE 12-86?**

16 A. Eschelon's proposed language for Issue 12-86 is as follows:

17 12.4.4.1 When Qwest closes a trouble report, Qwest will
18 assign a code accurately identifying the reason or cause for service
19 problems and the action taken (i.e., a "disposition code").

²¹² For design services, "After obtaining your approval to close your trouble report, the MCO CCT will assign trouble codes and close the trouble report." For Non-Design services, "Qwest will assign disposition and cause codes, close the trouble ticket, and notify you via a phone call that the trouble has been resolved." (See, <http://www.qwest.com/wholesale/clecs/maintenance.html>). Business personnel often use the terms "trouble codes" and "disposition and cause codes" interchangeably. The essence and results of these codes are the same: they report what the problem was and how it was fixed.

1 12.4.4.2 Qwest will notify CLEC of the disposition code
2 upon request. For Maintenance and Repair trouble reports, the
3 disposition code and any remarks will also be available through
4 electronic interface (e.g., Customer Electronic Maintenance and
5 Repair (CEMR)). CLEC closed trouble reports will be available to
6 CLEC via the history function in the electronic interface (e.g.,
7 CEMR).

8 12.4.4.3 Qwest will provide a web based tool (currently
9 known as Maintenance and Repair Invoice Tool) that allows CLEC
10 to access electronic copies of Qwest repair invoice information.
11 The repair invoice information will include the time and material
12 information that Qwest provides to its retail End User Customers
13 on their time and material invoices. Qwest, through this tool, will
14 provide access to at least the telephone number or circuit
15 identification, CLEC ticket number, Qwest ticket number, End
16 User Customer Address, End User Customer Name, USOC,
17 Quantity, Start Date, End Date, Disposition Code, and any related
18 remarks (comments by repair technician). Such invoice
19 information will be available to CLEC within two (2) business
20 days of ticket closure for POTS services and **sixteen (16)**²¹³
21 business days for non-POTS services. Invoice information will be
22 retained and available to CLEC via this tool for at least twelve (12)
23 months.
24

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

26 A. Qwest proposes to replace all of Eschelon’s proposed language modifications
27 with a reference to its web-based PCAT. In support of its proposal, Qwest uses
28 the same generic argument that it uses throughout section 12 – that this issue
29 affects all CLECs, and as such, should be addressed through CMP.²¹⁴

30 **Q. WHY IS IT IMPORTANT THAT THE ICA CONTAIN PROVISIONS**

²¹³ Please note that this is a correction to the time stated in Eschelon’s September 1, 2006 filing of the ICA (Exhibit 2 to *Eschelon’s Response*), which was ten (10) days.

²¹⁴ See *Disputed Issues Matrix*, Qwest’s position.

1 **REGARDING QWEST’S TROUBLE REPORT CLOSURE?**

2 A. Trouble report closure terms are important to Eschelon for a number of reasons.
3 First and foremost, Eschelon uses the codes to update its End User Customers on
4 the status and closure of the trouble reported by that customer. Second, Eschelon
5 relies on the trouble report closure terms when verifying the accuracy of Qwest’s
6 repair bills and providing its own customers with timely and accurate bills.

7 Note that a discussion of trouble reports (section 12.4.4 proposed by Eschelon in
8 this issue) is very appropriate in Section 12.4, which is “Maintenance and
9 Repair.” Eschelon’s proposed language for Issue 12-86 is the next logical step in
10 the process that is described in Sections 12.4.1 (testing), 12.4.2 (trouble reports
11 and status), and 12.4.3 (resolving trouble reports). These sections describe the
12 terms and conditions for repairing a trouble, from the opening of a trouble report
13 through resolving it. Maintenance and Repair is incomplete without stating how
14 the trouble ticket – the ticket that is opened under Section 12.4.2 – is then closed.

15 **Q. WHAT INFORMATION DOES QWEST PROVIDE TO ITS RETAIL**
16 **CUSTOMERS WHEN COMPLETING A TROUBLE REPAIR?**

17 A. It is my understanding that when Qwest performs repair services for its retail
18 customers, it provides a statement of time and materials and applicable charges to
19 the customer at the time the work is completed. Clearly, provision of this
20 information is most appropriate right after the work is completed because it is a
21 convenient time for the customer to verify and question (if necessary) the charges;

1 all of those involved are available, and the facts necessary to determine the
2 accuracy of the charge are still fresh in everybody's minds.

3 Until recently, Qwest did not provide similar information to its CLEC wholesale
4 customers. This placed CLECs at a disadvantage because CLECs were not able
5 to verify and, if necessary, dispute a charge at the time or soon after the work was
6 completed. Instead, CLECs had to wait until this information appeared on their
7 monthly bills, which meant that CLECs learned about repair charges related to a
8 specific incident of trouble after a significant delay.

9 **Q. DID ESCHELON DO ANYTHING TO ADDRESS THIS ISSUE?**

10 A. Yes. Eschelon pointed out this problem in the Arizona 271 proceeding:

11 In summary, Eschelon claims that it cannot obtain an invoice of
12 applicable repair charges at the time repair work is completed, but
13 rather must wait until Qwest sends the monthly Wholesale
14 invoices. Eschelon asserts this places them at a disadvantage in
15 that it is not able to dispute such charges in a real time basis.²¹⁵
16

17 The Arizona Staff agreed with Eschelon. The Staff stated that it did not need to
18 take further steps, because Qwest was already working on a solution with CLECs:

19 Staff agrees with Eschelon that this is a very important issue and
20 needs to be resolved. Since this issue is being appropriately
21 worked on in CMP, this should provide a resolution to this impasse
22 issue. Qwest should advise the Commission when this process is
23 agreed upon and implemented.²¹⁶

²¹⁵ Staff's Final Report and Recommendation on July 30 – 31, 2002 Supplemental Workshop, *In The Matter Of Qwest Communication, Inc.'s Section 271 Application*, ACC Docket No. T-00000A-97-0238, (Report Two), June 20, 2003, p. 19 ¶80.

²¹⁶ *Id.* at ¶86.

1 Qwest provided an update on progress in the CMP on this issue.
2 Qwest reported that is has met with Eschelon on this CR
3 (SCR070202-1X) to ensure that the requirements are correctly
4 defined. This CR is in the development phase and following the
5 CMP process.²¹⁷
6

7 **Q. THE ARIZONA STAFF'S REPORT MENTIONS A CERTAIN CHANGE**
8 **REQUEST THAT WAS INTENDED TO ADDRESS THIS PROBLEM.**
9 **WAS THIS CHANGE REQUEST IMPLEMENTED?**

10 A. Yes. The Arizona Staff's report mentions Change Request SCR070202-1X. This
11 "systems" report is one of the three Change Requests that resulted from a Change
12 Request initiated by Eschelon on July 2, 2002.²¹⁸ The description of the requested
13 change is as follows:

14 Currently Qwest leaves a "Time and Materials Invoice" with its
15 retail customers during a repair visit when the trouble was not
16 found in the Qwest network. Qwest does not supply anything to
17 CLECs. This "Invoice" would assist Eschelon in reconciling its
18 bill. Eschelon asks Qwest to develop, document and train an
19 adhered to process to supply CLECs with this same "Invoice" or
20 something similar, with the same detail, that will state the charges
21 that Qwest plans to bill at the time of the repair visit. The "Invoice"
22 should contain the Qwest repair ticket number, the number or
23 circuit ID which was reported in trouble, the customer's name and
24 address, the Qwest technicians name and telephone number, the
25 date, the USOCs that Qwest will bill, the quantity of each USOC,
26 the cost of each USOC, the total cost and the reason for the
27 charge.²¹⁹
28

²¹⁷ *Id.* at ¶87.

²¹⁸ The original "processes" request CR PC070202-1X was a "crossed over" to the "systems" request SCR070202-1X, which in turn crossed over to another process request CR PC070202-1X. For a complete detail on these CRs see http://www.qwest.com/wholesale/cmp/archive/CR_PC070202-1X.htm, http://www.qwest.com/wholesale/cmp/archive/CR_SCR070202-1X.htm, and http://www.qwest.com/wholesale/cmp/archive/CR_PC070202-2X.htm.

²¹⁹ See http://www.qwest.com/wholesale/cmp/archive/CR_PC070202-1X.htm.

1 All three Change Requests related to trouble reports have been completed (with
2 the last one completed on February 18, 2004). One of the key outcomes that
3 resulted from this effort was Qwest's development of its *Maintenance and Repair*
4 *Invoice Tool*. This tool – referenced in Eschelon's proposal on this issue under
5 section 12.4.4.3 – provides CLECs with the circuit identification, CLEC and
6 Qwest ticket numbers, end-user's name and address, USOC codes and quantities
7 for Qwest's provided repair service, start and end dates of the repair, disposition
8 codes, and remarks made by the repair technicians²²⁰—remarks that may provide
9 additional information about the trouble and actions taken to repair the trouble. In
10 other words, Qwest's *Maintenance and Repair Invoice Tool* currently provides
11 CLECs the information included in Eschelon's proposal for section 12.4.4.3.

12 **Q. WHY IS QWEST'S PROPOSAL TO REFERENCE THE WEB-BASED**
13 **PCAT INADEQUATE?**

14 Eschelon has already addressed this issue though CMP. Given that Eschelon has
15 already litigated this issue with Qwest and spent almost two years developing a
16 solution, that solution (i.e., the web-based *Maintenance and Repair Invoice Tool*)
17 should be available with at least the current functionality for the term of the ICA,
18 unless amended. Qwest will not commit in this regard. If Qwest decreases that
19 functionality or eliminates the tool, Eschelon will be back to square one, where it
20 was before the 271 proceedings. Qwest should not be allowed to back-slide in

²²⁰ See Maintenance and Repair Invoice Tool (MRIT) User Guide available at
http://www.qwest.com/wholesale/downloads/2004/040217/M_R_Invoice_Tool_V3.doc.

1 this manner. Furthermore, as the FCC has noted, “at no point did we create a
2 general ‘web-posting exception’ to Section 252 (a).”²²¹

3 This language is furthermore needed in the ICA to prevent Qwest from increasing
4 the time periods in which it will provide the information to Eschelon, thus placing
5 Eschelon at an even greater disadvantage as compared to Qwest retail customers.

6 **Q. PLEASE SUMMARIZE ISSUE 12-86.**

7 A. As a wholesale provider to Eschelon, Qwest performs repairs on circuits serving
8 Eschelon’s End User Customers. After Qwest fixes the problem, Eschelon needs
9 to know the cause for the service problem (to adequately update its End User
10 Customer on the service problem and its repair) and actions taken by Qwest to
11 resolve the problem (to verify the accuracy of Qwest’s repair bills to Eschelon).
12 Eschelon proposes that Qwest provide this information on trouble reports.
13 Currently, Qwest provides trouble reports through its *Maintenance and Repair*
14 *Invoice Tool*, so no significant change of process is necessary to implement
15 Eschelon’s proposal.

16

17 **SUBJECT MATTER NO. ISSUE 43. CONTROLLED PRODUCTION**

18 **Issue No. 12-87: ICA Section 12.6.9.4**

19 **Q. PLEASE DESCRIBE ESCHELON’S BUSINESS NEED ARISING IN**

²²¹ *FCC Forfeiture Order*, ¶32.

1 **CONNECTION WITH ISSUE NO. 12-87.**

2 A. Eschelon needs certainty in the contract language that controlled production will
3 continue to be unnecessary for recertification. Qwest’s Operational Support
4 System (“OSS”) uses various electronic interface systems that exchange
5 information (for example, related to ordering) with CLECs. From time to time,
6 Qwest issues updated versions of the existing systems, or implements new
7 systems that address new business needs or reflect changes in Qwest’s processes.
8 With both new implementations and updates to existing systems, Qwest conducts
9 a series of tests to make sure the interface systems are working properly.

10 Issue 12-87 concerns testing done on Qwest’s OSS electronic interface during
11 new releases and updates of this interface. There are several types of testing that
12 take place during different stages of the interface system development. They are
13 outlined in the agreed-upon language of sections 12.6.3.1 through 12.6.9.4.
14 Specifically, the first step is the most basic testing – *connectivity testing* that
15 establishes the ability of Qwest and CLECs to send and receive *Electronic Data*
16 *Interchange* (“EDI”) messages. The last step (before the system is turned to
17 production) constitutes the most rigorous testing, called *controlled production*.
18 Controlled production consists of controlled submission of CLEC real product
19 orders to the new or updated interface.²²² This test verifies that the data exchange

²²² See Qwest’s *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, p. 9;
available at
http://www.qwest.com/wholesale/downloads/2006/060425/IMA_EDI_Implementation_Guidelines_19_2_0_42406.pdf.

1 between Qwest and CLEC is done according to the industry standard called
2 X12.²²³

3 Issue 12-87 also concerns a process called *re-certification*, which is defined in the
4 agreed-upon section 12.6.4 of the contract. This section reads as follows:

5 Re-certification is the process by which CLECs demonstrate the
6 ability to generate correct functional transactions for enhancements
7 not previously certified. Qwest will provide the suite of tests for
8 re-certification to CLEC with the issuance of the disclosure
9 document.

10

11 In other words, re-certification is a process involving *upgrades* to the existing
12 interface systems, rather than implementation of new systems. In general, it is
13 reasonable to expect that re-certification (a process that verifies that a CLEC can
14 use the upgraded system) would require less rigorous testing than initial
15 certification (a process that verifies that a CLEC can use a new system). Because
16 controlled production testing involves additional effort on the part of Eschelon
17 and other CLECs (as well as Qwest), it is reasonable to forego this stage in cases
18 where this testing is unnecessary. The question is whether the controlled
19 production test is required for CLEC's re-certification.

20 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUE 12-87?**

21 A. Eschelon proposes that in case of re-certification, which concerns upgrades to the
22 existing systems, and not new system implementations, the parties have an option

²²³ This is an ANSI standard for syntax that governs electronic data transfers.

1 to forego controlled production testing. Eschelon's proposed language
2 modification for Issue 12-87 in Section 12.6.9.4 is as follows:

3 12.6.9.4 Controlled Production – Qwest and CLEC will perform
4 controlled production. The controlled production process is
5 designed to validate the ability of CLEC to transmit EDI data that
6 completely meets X12 (or mutually agreed upon substitute)
7 standards definitions and complies with all Qwest business rules.
8 Controlled production consists of the controlled submission of
9 actual CLEC production requests to the Qwest production
10 environment. Qwest treats these pre-order queries and orders as
11 production pre-order and order transactions. Qwest and CLEC use
12 controlled production results to determine operational readiness.
13 Controlled production requires the use of valid account and order
14 data. All certification orders are considered to be live orders and
15 will be provisioned. Controlled production is not required for
16 recertification, unless the Parties agree otherwise. Recertification
17 does not include new implementations such as new products and/or
18 activity types.

19

20 **Q. WHAT IS QWEST'S PROPOSAL ON ISSUE 12-87?**

21 A. Qwest is opposing Eschelon's language modification in its entirety. In other
22 words, Qwest's counter-proposal is to delete Eschelon's proposal (the underlined
23 sentences in the above cited language of section 12.6.9.4). Qwest asserts that
24 Eschelon should not be able to make unilateral decisions such as refusing
25 controlled production testing "when it may be necessary to protect the industry at
26 large."²²⁴ Qwest argues that controlled testing protects not only against system

²²⁴ *Qwest Petition for Arbitration*, p. 55.

1 down time, but also potential negative impact on other CLECs.²²⁵ I address these
2 arguments below.

3 **Q. HOW DOES ESCHELON'S PROPOSAL COMPARE TO QWEST'S**
4 **CURRENT PRACTICE?**

5 A. Eschelon's proposal reflects Qwest's current practice, so no change is required.
6 Specifically, Qwest's document titled *EDI Implementation Guidelines – for*
7 *Interconnect Mediated Access* states:

8 In some releases, existing transactions are updated with significant
9 additions that add business rules and/or large map changes. If the
10 CLEC intends to use the new functionality, they will be required to
11 perform a new product implementation of this transaction. This
12 will entail Progression Testing and Controlled Production
13 submittal of scenarios that reflect the new functionality. *CLECs not*
14 *intending to use the new functionality will be allowed to recertify*
15 *existing functionality that is still available in the new release*²²⁶.

16 CLECs will be reminded in writing of their need to migrate to a
17 new release prior to the next release being implemented. *For*
18 *migration, the CLEC will follow the same process as an initial*
19 *implementation except that Controlled Production is not required*
20 *on any EDI transaction that successfully completed Controlled*
21 *Production testing in a prior release. Any product not successfully*
22 *tested in Controlled Production in a prior release will not be*
23 *migrated under this exemption.*²²⁷

24
25 **Q. IF ESCHELON'S PROPOSAL REFLECTS QWEST'S CURRENT**

²²⁵ *Qwest Petition for Arbitration*, p. 55. See also *Disputed Issues Matrix*, Qwest's position.

²²⁶ Qwest's *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2 available at http://www.qwest.com/wholesale/downloads/2006/060425/IMA_EDI_Implementation_Guidelines_19_2_0_42406.pdf, p. 48 (emphasis added). Note that Qwest does not submit its EDI Guidelines to the CMP process, making inclusion in the ICA all the more necessary.

²²⁷ Qwest's *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, p. 50 (emphasis added).

1 **PRACTICE, WHY IS IT NECESSARY TO INCLUDE IT IN THE**
2 **CONTRACT?**

3 A. It is necessary to include Eschelon’s proposed language modification in the ICA
4 because, without it, the broader language in the remainder of the paragraph may
5 suggest that controlled production is required for re-certification, when it is not.
6 The first sentence, for example, broadly states: “Qwest and CLEC will perform
7 controlled production.” That is not always the case, and the ICA should be clear
8 on this point when outlining the terms of controlled production.

9 **Q. QWEST’S PETITION FOR ARBITRATION REFERS TO CMP AS A**
10 **SOURCE THAT “SPECIFICALLY RECOGNIZES THAT THERE ARE**
11 **TIMES WHEN CONTROLLED TESTING IS NECESSARY.”²²⁸ PLEASE**
12 **EXPLAIN THE FLAW IN THIS ARGUMENT.**

13 A. As I noted above, Qwest does not submit its EDI Guidelines to the CMP process.
14 The provision currently allowing a CLEC to forego controlled production if the
15 CLEC does not plan to use the new functionality of the updated existing system is
16 contained in Qwest’s EDI Guidelines.²²⁹ Just this September, Qwest issued a
17 non-CMP notification indicating that it had revised the EDI Guidelines.²³⁰ The
18 change was effective “immediately.”²³¹ If Qwest’s proposal is adopted, Qwest

²²⁸ *Qwest Petition for Arbitration*, pp. 54-55.

²²⁹ Qwest’s *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, p. 48.

²³⁰ Exhibit BJJ-15 (Sept. 15, 2006).

²³¹ See BJJ-15, p. 1.

1 could just as easily -- with same day notice and no CMP activity, much less any
2 amendment to the ICA – impose the costs of unnecessary controlled production
3 upon Eschelon for functionality it will not use. This is an important issue that
4 Eschelon has properly raised under Section 252, and Qwest should not be able to
5 impose such costs on Eschelon without an amendment to the contract.

6 **Q. DOES ESCHELON’S PROPOSAL REPRESENT A “THREAT TO**
7 **INDUSTRY AT LARGE,” AS CLAIMED BY QWEST?**

8 A. No. As I explained above, Qwest’s current practice allows CLECs to forego
9 controlled production testing during system upgrades. (It is worth noting again
10 that Eschelon’s proposal involves only cases of system upgrades, and not
11 implementations of new systems.) As stated in Qwest’s own guidelines²³² cited
12 above, if a CLEC does not plan to use a new functionality, it can forego
13 controlled production testing. Obviously, Qwest does not consider the fact that
14 some CLECs will forego the test (because they do not use the new functionality)
15 as being a threat to the “industry at large.” If a CLEC plans to use new
16 functionality, it is in the interest of this CLEC to conduct thorough testing of the
17 system, including controlled production. In other words, some CLECs may
18 conduct controlled production testing, while others will find it to be unnecessary.
19 Eschelon’s language modification does not prohibit CLECs from undergoing
20 controlled production testing. It only states that such testing is optional – which is

²³² Qwest’s *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2.

1 in full accord with Qwest's current practice. This clarification is necessary
2 because the existing language of section 12.6.9.4 may suggest that controlled
3 production is required under all circumstances.

4 **Q. PLEASE SUMMARIZE ISSUE 12-87.**

5 A. Upgrades to Qwest's existing OSS interface systems require less rigorous testing
6 than implementation of new OSS interface systems. A requirement that CLECs
7 go through rigorous testing that uses actual order data (Controlled Production) for
8 upgrades to existing systems causes unnecessary waste of resources. Qwest's
9 current practices allow a CLEC to forego Controlled Production if the CLEC does
10 not plan to use the new functionality of the existing system. Eschelon proposes
11 that the contract capture the fact that Controlled Production is optional for CLECs
12 in cases of system upgrades.

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

14 A. Yes.