

**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 MICHAEL STARKEY
ON BEHALF OF ESCHELON TELECOM, INC.**

SEPTEMBER 29, 2006

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1 **I. INTRODUCTION**
2

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

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

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

10 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated
11 industries, econometric analysis and computer-aided modeling. I currently serve
12 as the firm's President.

13
14 **Q. PLEASE PROVIDE A SYNOPSIS OF YOUR EDUCATIONAL**
15 **BACKGROUND AND RELEVANT WORK EXPERIENCE.**

16 A. Included with this testimony as Exhibit MS-1 is a thorough description of my
17 educational background and relevant work experience. In brief, I have been a
18 consultant to telecommunications providers, equipment manufacturers,
19 government agencies and other private parties since 1996. Previous to my
20 consulting experience, I served as the Director of Telecommunications for the

1 Maryland Public Service Commission (“PSC”) and prior to that, as the Office of
2 Policy and Planning’s Senior Policy Analyst for the Illinois Commerce
3 Commission. I began my career as a Senior Economist at the Missouri PSC.
4 Throughout my career I have spent a great deal of time studying
5 telecommunications networks, including substantial time and effort aimed at
6 developing rationale, efficient means by which competing communications
7 carriers can interconnect their respective facilities. I have likewise analyzed the
8 underlying economic characteristics of communications networks and have on
9 numerous occasions provided expert testimony regarding the costs of providing
10 various services. Finally, I am very familiar with the negotiation, mediation and
11 arbitration processes envisioned by Section 252 of the Telecommunications Act
12 of 1996 and I have, since 1996, participated in dozens of negotiations and
13 arbitrations on behalf of some of the largest, and smallest, carriers in the nation.
14

15 **II. OVERVIEW AND INTRODUCTION TO DIRECT TESTIMONY**

16
17 **Q. HOW IS ESCHELON’S DIRECT TESTIMONY PHYSICALLY**
18 **ORGANIZED?**

19 A. Eschelon’s direct testimony follows the organization of the enclosed Issues by
20 Subject Matter List.¹ The Issues by Subject Matter List is a roadmap to all of the

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

1 open issues, ICA Section numbers, and groupings of issues. The Issues by
2 Subject Matter List follows the same grouping and issue numbering as found in
3 the joint Revised Disputed Issues Matrix (“Disputed Issues List”),² for ease of
4 reference. In the Issues by Subject Matter List and the Disputed Issues List, the
5 issues are generally discussed in the order in which they appear in the
6 Interconnection Agreement (“ICA”). Generally, the first number of the Issue
7 Number refers to the Section number of the ICA. For example, Issue 2-3 refers to
8 contract language that appears in Section 2 of the ICA (entitled “Interpretation
9 and Construction”) and issue number three of the total open issues.³

10 There are 48 Subject Matter groupings identified on the Issues by Subject
11 Matter List.⁴ The List is annotated to indicate where in Eschelon’s direct
12 testimony discussion of that Subject Matter may be found (*i.e.*, which witness
13 discusses that Subject Matter for Eschelon). After this overview, the discussion in
14 individual Eschelon testimony will begin with headings indicating the Subject

² The Washington Disputed Issues List was filed initially with Qwest’s Petition for Arbitration in this matter on August 9, 2006. *See* Qwest Corporation’s Petition for Arbitration. *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-063031 [“*Qwest Petition*”], Exhibit 1. A brief written narrative summarizing Eschelon’s position with respect to the open issues is set forth in the Issues List for each issue [“*Eschelon position statement*”]. The Issues List also includes a brief written narrative drafted by Qwest that summarizes Qwest’s position for each issue [“*Qwest position statement*”].

³ There will be gaps in the issue numbering. For example, there is no issue 1-2. These gaps are generally due to renumbering or closure of issues.

⁴ There are additional issues to be resolved as part of this arbitration (set forth at the end of the Issues by Subject Matter List). The parties have agreed not to file testimony on these issues until a deadline is set for filing testimony on these issues in this proceeding. Until then, Eschelon incorporates by reference its positions on these issues as explained in Eschelon’s Response to Qwest’s Petition for Arbitration and in the Disputed Issues List.

1 Matter number, followed by the Issue Numbers for that grouping and then the
2 ICA Section numbers for each issue. In an electronic version of Eschelon's
3 Direct Testimony which will be provided on CD-ROM with the hardcopy version,
4 the files are linked such that the reader may generally click on the Subject Matter
5 heading (1-48) in the Issues by Subject Matter List, and it will take the reader to
6 that portion of Eschelon's direct testimony. It is Eschelon's hope that this will
7 allow the Commission an efficient way to review each of the issues.

8

9 **Q. IN TERMS OF CONTENT, HOW IS ESCHELON'S DIRECT**
10 **TESTIMONY ORGANIZED?**

11 A. I begin with an overview of the open issues and address Qwest's claim, with
12 respect to about a third of those issues, that they should be excluded from the
13 interconnection agreement and dealt with in Qwest's Change Management
14 Process. After this overview, I turn to the individual issues set forth in the Issues
15 by Subject Matter List. In my testimony and the direct testimony of the other
16 Eschelon witnesses, Eschelon addresses each Subject Matter individually and asks
17 the Commission to consider it on the merits. Eschelon generally begins with an
18 explanation of the business need that led Eschelon to bring the particular issue –
19 out of the numerous other issues that arise in the Qwest-Eschelon business
20 relationship – to the Commission for resolution. Eschelon identifies its proposed
21 language, briefly describes Qwest's position, and then discusses the reasons why
22 the Commission should adopt Eschelon's proposal. Ideally, an overview and

1 introduction would include a brief summary of each Subject Matter. To avoid
2 redundancy and given the length of the testimony, however, Eschelon instead
3 refers the reader to its position statement in the Disputed Issues Matrix, as well as
4 to the description of Eschelon's business need in the testimony, for a summary of
5 each issue.

6

7 **Q. HOW IS DISPUTED CONTRACT LANGUAGE IDENTIFIED IN**
8 **ESCHELON'S TESTMONY?**

9 A. I provide the language proposals of both Eschelon and Qwest for each issue. The
10 format used to identify the disputed language in my testimony will be the same as
11 is shown in Exhibit 2 to Eschelon's Response to Qwest's Petition for Arbitration.
12 When Eschelon's proposed language is shown, any language that is proposed by
13 Eschelon and opposed by Qwest will be shown in underlined text to denote that
14 the language is not agreed to. Oftentimes it is helpful to review Qwest's language
15 alongside that of Eschelon's within Eschelon's proposed language to illustrate the
16 differences in proposals, and in these instances, Qwest's proposed language is
17 shown in ~~strikeout text~~. The same goes for when Qwest's proposed language is
18 displayed: Qwest proposed language opposed by Eschelon is shown in underlined
19 text, and Eschelon's language is shown in ~~strikeout text~~. Any agreed to language
20 that is provided for context will not be highlighted in any way (*i.e.*, not underlined
21 and not ~~strikeout~~).

22

1 **Q. ARE THE 48 SUBJECT MATTERS PROPERLY BEFORE THIS**
2 **COMMISSION FOR DETERMINATION OF APPROPRIATE**
3 **INTERCONNECTION AGREEMENT LANGUAGE RESOLVING THE**
4 **ISSUE?**

5 A. Yes. Section 252(b) of the federal Telecommunications Act (“the Act”) indicates
6 that interconnection “agreements [will be] arrived at through compulsory
7 arbitration” for issues raised in the arbitration petition and any response thereto.⁵
8 The 48 Subject Matters are reflected in the petition and/or response (including
9 their attachments) and are properly before the Commission for action to determine
10 the interconnection agreement’s terms.

11 The 48 Subject Matters represent only a small number of the total issues
12 that Eschelon and Qwest confront in their business relationship. These 48 Subject
13 Matters, however, have risen to the level of needing Commission action to arrive
14 at interconnection agreement terms. A key factor in determining the importance
15 of an issue is often the effect on End User Customers. With respect to many of
16 the issues, therefore, Eschelon will describe the Customer impact when explaining
17 Eschelon’s business need reflected in the issue to be arbitrated. If the End User
18 Customer is harmed, Eschelon’s reputation and its ability to compete
19 meaningfully are harmed as well. Many of the terms and conditions that Eschelon
20 believes need to be included in the ICA have a direct impact on End User

⁵ 47 U.S.C. §252(b).

1 Customers, and those terms and conditions should not be changed without
2 Commission oversight through approval of contract amendments.

3 Eschelon has no incentive to arbitrate unnecessarily. Qwest is the
4 dominant carrier, and Eschelon is dependent on Qwest for the products and
5 services governed by this Section 251/252 interconnection agreement. Eschelon's
6 annual revenue is less than 2% of Qwest's annual revenue.⁶ It is too time
7 consuming and expensive for Eschelon to arbitrate unnecessarily. The
8 Commission can fairly draw an inference that Eschelon – in bringing forward in
9 this arbitration a relatively few, but specific, issues⁷ winnowed from the vast
10 number of day-to-day business issues – is raising them because the business need
11 is compelling and a Commission determination of *ICA language* resolving the
12 substance of each issue is critical. Obtaining ICA language resolving the
13 language issues now will help avoid future disputes.

14

15 A. ESCHELON BUSINESS NEED FOR INTERCONNECTION
16 AGREEMENT TERMS
17

⁶ Eschelon's business is described further in the Testimony of Mr. Denney.

⁷ Qwest will likely enumerate for the Commission the number of issues that Eschelon has brought to Qwest's Change Management Process (CMP). In addition, Eschelon must raise many more issues in weekly and monthly communications to the Qwest service management team, as described in the Testimony of Ms. Johnson. Although Qwest may attempt to characterize the number of arbitration issues as large (and the workload may feel that way), the number selected for arbitration is very small when compared to the total potential number.

1 **Q. WHAT CRITICAL BUSINESS NEEDS ARE COMMON TO THE FORTY-**
2 **EIGHT SUBJECTS FOR WHICH ESCHELON SEEKS DISPOSITIVE⁸**
3 **LANGUAGE IN THE ICA?**

4 A. Interconnection agreements are contracts. A primary reason why Eschelon needs
5 an interconnection agreement addressing these issues is fundamental to most
6 contracts – Eschelon needs certainty to plan and manage its business. The FCC
7 has specifically recognized this need for CLECs to “rely on” interconnection
8 agreements “on a permanent basis.”⁹ While the interconnection agreement can be
9 amended and therefore is not “permanent” in the sense that it is frozen in time, the
10 FCC recognized that permanency is needed for the term of the contract when the
11 parties do not agree to changes through contract amendment. Eschelon needs
12 certainty and reliability to plan its business and effectively compete. The FCC
13 has also recognized that interconnection agreement terms can be “many and
14 complicated.”¹⁰

15 Another business need common to these Subject Matters is the need for
16 Commission involvement and oversight to address the imbalance created by
17 Qwest’s continued dominance in the areas governed by the interconnection
18 agreement. In terms of arbitrating issues brought to the Commission, Qwest’s

⁸ By “dispositive,” I mean language that resolves the substantive dispute, and not language that defers the dispute for another day (such as language referring to Qwest’s ever changing Product Catalog, or “PCAT”).

⁹ Notice of Apparent Liability for Forfeiture, *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263 (March 11, 2004) (“*FCC Forfeiture Order*”) at ¶ 32.

¹⁰ *Declaratory Ruling* at ¶ 8

1 special status as an incumbent monopoly provider for Section 251 products and
2 services requires Commission intervention to break the deadlock when Qwest and
3 Eschelon disagree. Eschelon does not have any of the leverage in negotiations
4 that would result from saying it will go elsewhere to obtain the product, because
5 Qwest is its only source for monopoly products. Section 252(b) addresses the
6 lack of this more typical customer leverage by instead giving CLECs an ability to
7 obtain Commission resolution of disputes and interconnection agreement terms
8 through “compulsory arbitration.” To fulfill this function of Section 252(b), an
9 arbitration decision needs to provide the type of certainty and reliability
10 recognized as a business need by the FCC. All of the issues in this proceeding
11 have been negotiated by Eschelon and Qwest and are, therefore, properly before
12 the Commission for resolution on their merits in this arbitration.
13

14 B. ISSUES FOR WHICH QWEST AGREES COMMISSION SHOULD
15 ADOPT ICA LANGUAGE
16

17 **Q. DOES QWEST AGREE THAT THE ISSUES THAT ESCHELON IS**
18 **ASKING THE COMMISSION TO RESOLVE IN THIS COMPULSORY**
19 **ARBITRATION SHOULD RESULT IN DISPOSITIVE**
20 **INTERCONNECTION AGREEMENT LANGUAGE?**

21 A. For two-thirds of the issues, yes, Qwest agrees. As indicated by Qwest’s position
22 statements in the Disputed Issues List, Qwest arranges the issues into two

1 categories: (1) interconnection agreement issues that do not belong in the Change
2 Management Process (“CMP”)¹¹ so that Qwest agrees the Commission may
3 decide upon ICA language resolving the issue in this arbitration [“contractual
4 non-CMP issues”]; and (2) issues that Qwest claims inherently belong in CMP so
5 that Qwest argues the Commission should not decide upon dispositive ICA
6 language in this arbitration and should defer its oversight and decision making
7 authority to CMP [“inherent CMP issues”].
8

9 **Q. FOR WHICH ISSUES DO ESCHELON AND QWEST AGREE THAT THE**
10 **COMMISSION SHOULD DECIDE UPON DISPOSITIVE CONTRACT**
11 **LANGUAGE ADDRESSING THE MERITS OF THE ISSUE?**

12 A. Eschelon and Qwest agree that the Commission should establish dispositive ICA
13 language for approximately two-thirds (33 of 48) of the Subject Matters identified
14 on the Issues by Subject Matter List, at this time.¹² Therefore, both Eschelon and
15 Qwest ask the Commission to decide the following Subject Matters individually

¹¹ I discuss Qwest’s claims regarding CMP further below. For a more detailed description of the terms of CMP, *see* the Qwest “CMP Document” which sets forth the rules for conduct of CMP. The CMP Document is attached to the Testimony of Ms. Johnson as Exhibit BJJ-1. (It is also Exhibit G to the ICA and the Minnesota SGAT.) The “scope” provision of the CMP Document (§1.0) provides that “CMP provides a means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and billing capabilities and associated documentation and production support issues for local services (local exchange services) provided by Competitive Local Exchange Carriers (CLECs) to their end users.”

¹² This is Eschelon’s current understanding based on Qwest’s position statements in the Disputed Issues List. For these Subject Matters, Qwest does not argue in its position statement that the issue should be addressed through CMP. As discussed below and in the testimony of Mr. Webber and Exhibits to the Testimony of Ms. Johnson, Qwest’s position on whether an issue belongs in CMP or not vacillates, so the list is a moving target.

1 and on the merits to determine ICA language that provides certainty as to how
2 issues will be handled for the term of the contract, unless amended:

- 3 • **RATE APPLICATION (2)**¹³: Issue No. 2-3
- 4 • **EFFECTIVE DATE OF LEGALLY BINDING CHANGES (3)**: Issue
5 No. 2-4
- 6 • **DISCONTINUATION OF ORDER PROCESSING AND**
7 **DISCONNECTION (5)**: Issue Nos. 5-6, 5-7 and subpart
- 8 • **DEPOSITS (6)**: Issue Nos. 5-8, 5-9, 5-11, and 5-12
- 9 • **REVIEW OF CREDIT STANDING (7)**: Issue No. 5-13
- 10 • **COPY OF NON-DISCLOSURE AGREEMENT (8)**: Issue 5-16
- 11 • **TRANSIT RECORD CHARGE AND BILL VALIDATION (9)**: Issue
12 Nos. 7-18, 7-19
- 13 • **POWER (11)**: Issue Nos. 8-21 and subparts, 8-22, 8-23
- 14 • **NONDISCRIMINATORY ACCESS TO UNES (14)**: Issue No. 9-31
- 15 • **NETWORK MAINTENANCE AND MODERNIZATION (16)**: Issue
16 Nos. 9-33, 9-34, 9-35, 9-36
- 17 • **CAPs – DATA RELATING TO CAPS (17)**: Issue No. 9-39
- 18 • **INTERFERING BRIDGED TAP (19)**: Issue 9-46¹⁴
- 19 • **SUBLOOPS – QWEST CROSS CONNECT/WIRE WORK (20)**: Issue
20 No. 9-50
- 21 • **APPLICATION OF UDF-IOF TERMINATION (FIXED) RATE**
22 **ELEMENT (22A)**: Issue 9-51
- 23 • **ACCESS TO 911 DATABASES (21)**: Issue No. 9-52
- 24 • **UNBUNDLED CUSTOMER CONTROLLED REARRANGEMENT**
25 **ELEMENT (UCCRE) (22)**: Issue No. 9-53
- 26 • **DIFFERENT UNE COMBINATIONS (23)**: Issue No. 9-54 and subpart
- 27 • **LOOP-TRANSPORT COMBINATIONS (24)**: Issue No. 9-55
- 28 • **SERVICE ELIGIBILITY CRITERIA – AUDITS (25)**: Issue No. 9-56
- 29 • **COMMINGLED EELS/ARRANGEMENTS (26)**: Issue Nos. 9-58 and
30 subparts, 9-59
- 31 • **MULTIPLEXING (LOOP-MUX COMBINATIONS) (27)**: Issue No.
32 9-61 and subparts
- 33 • **MICRODUCT RATE (28)**: Issue No. 10-63

¹³ The number in parentheses indicates the Subject Matter Number on the Issues by Subject Matter List.

¹⁴ Issue 9-46 has been closed. I have provided the agreed to language below in my discussion of Issue 9-46.

- 1 • **COMMUNICATIONS WITH CUSTOMERS (30)**: Issue Nos. 12-65,
2 12-66
- 3 • **SUPPLEMENTAL ORDERS (31A)**: Issue 12-68
- 4 • **TESTING CHARGES WHEN CIRCUIT IS ON PAIR GAIN (37)**:
5 Issue No. 12-77
- 6 • **DEFINITION OF TROUBLE REPORT (38)**: Issue 12-78
- 7 • **CHARGES FOR REPEATS (39)**: Issue No. 12-80 and subparts
- 8 • **CONTROLLED PRODUCTION (43)**: Issue No. 12-87
- 9 • **RATES FOR SERVICES (44)**: Issue No. 22-88 and subparts
- 10 • **UNAPPROVED RATES (45)**: Issue No. 22-90 and subparts
- 11 • **INTERCONNECTION ENTRANCE FACILITY (46)**: Issue No. 24-
12 92
- 13 • **REMOTE COLLOCATION (47)**: Issue No. A-94 and subpart
- 14 • **EEL TRANSPORT, NONRECURRING (48)**: Issue No. A-96
15

16 C. ISSUES WHICH QWEST SEEKS TO EXCLUDE FROM THE ICA
17 AND RELEGATE TO CMP
18

19 **Q. FOR WHICH ISSUES DO ESCHELON AND QWEST DISAGREE THAT**
20 **THE COMMISSION SHOULD DECIDE UPON DISPOSITIVE**
21 **CONTRACT LANGUAGE ADDRESSING THE MERITS OF THE ISSUE**
22 **IN THIS ARBITRATION?**

23 A. Eschelon and Qwest disagree with respect to approximately one-third (15 of 48)
24 of the Subject Matters identified on the Issues by Subject Matter List. For each of
25 these issues, Eschelon asks the Commission to decide the issue on the merits and
26 provide much needed certainty for purposes of planning and conducting business
27 and competing effectively. Eschelon provides ample support for its position and
28 business need with respect to each of these issues and encourages the Commission
29 to individually review the evidence related to each issue. In most of these cases,

1 Qwest has identified no problem with Eschelon's proposed language (other than
2 the fact that it is in the ICA at all) and, in fact, generally cannot deny that
3 Eschelon's language is consistent with Qwest's current offerings and practices.

4 As there is little, if any, substantive response that Qwest can make to
5 Eschelon's evidence, Qwest instead asks the Commission to consider these issues
6 in the abstract. Qwest asks the Commission to find that, regardless of whether
7 these are pressing business issues for Eschelon, *conceptually* they are somehow
8 different in some respect that makes them inherently inappropriate for inclusion in
9 an ICA and appropriate for the Change Management Process ("CMP") (regardless
10 of whether they have *already* been resolved in Eschelon's favor in CMP, as is the
11 case for some of these issues). Qwest asks the Commission to leave the future
12 uncertain and, instead of the ICA, rely upon Qwest's Product Catalog ("PCAT")¹⁵
13 or Standard Interval Guide ("SIG")¹⁶ language – for which the only certainty is

¹⁵ The "PCAT," which is an acronym for Product Catalog, is a web-site published by Qwest to distribute a catalog describing Qwest's products and services. Qwest's PCAT is provided for informational purposes only and does not govern rates, terms or conditions that exist between Qwest and Eschelon. Section 4.0 of both the SGAT and agreed upon language in the proposed ICA, for example, provide in the definition of "Product Catalog" or "PCAT" that: "Qwest agrees that CLEC shall not be held to the requirements of the PCAT." Not all Qwest PCAT changes are generated as a result of CMP. *See, e.g.,* Exhibit BJJ-7 (Secret TRRO PCAT Chronology). Qwest's language proposals referring to its PCAT or web-site (such as Issue 12-74, ICA Section 12.2.7.2.6.2), therefore, may or may not ultimately refer to information that is announced through CMP.

¹⁶ The "SIG," or Standard Interval Guide, is a Qwest document posted on Qwest's web site listing various provisioning intervals with respect to Resale, UNE and other Interconnection Services. *See, e.g.,* Qwest Communications Service Interval Guide for Resale, UNE and Interconnection Services, V73.0, updated 7/21/06 http://www.qwest.com/wholesale/downloads/2006/060721/InterconnSIG_V73.pdf. CMP applies only to changes to intervals "in Qwest's SIG" (*see* Exhibit BJJ-1, CMP Document §§ 5.4.3 & 5.4.5). It does not control conflicting intervals in ICAs. (*Id.* at §1.0.)

1 that Qwest can accomplish change over Eschelon's objection without amending
2 the interconnection agreement.

3 The one-third of the Subject Matters identified on the Issues by Subject
4 Matter List which Qwest currently places in this category are:

- 5
- 6 • **INTERVAL CHANGES AND PLACEMENT (1)**: Issue No. 1-1 and
- 7 subparts
- 8 • **DESIGN CHANGES (4)**: Issue No. 4-5 and subparts
- 9 • **COLLOCATION AVAILABLE INVENTORY(10)**: Issue No. 8-20 and
- 10 subpart
- 11 • **NEBS STANDARDS (12)**: Issue No. 8-24
- 12 • **OPTIONED CONTIGUOUS SPACE (13)**: Issue No. 8-29
- 13 • **CONVERSION (18)**: Issue Nos. 9-43 and 9-44 and subparts
- 14 • **ROOT CAUSE ANALYSIS AND ACKNOWLEDGEMENT OF**
- 15 **MISTAKES (29)**: Issue No. 12-64 and subparts
- 16 • **EXPEDITED ORDERS (31)**: Issue No. 12-67 and subparts
- 17 • **PENDING SERVICE ORDER NOTIFICATIONS (PSOs) (32)**:
- 18 Issue No. 12-70
- 19 • **JEOPARDIES (33)**: Issue Nos. 12-71, 12-72, 12-73
- 20 • **FATAL REJECTION NOTICES (34)**: Issue No. 12-74
- 21 • **TAG AT DEMARCATION POINT (35)**: Issue No. 12-75 and subpart
- 22 • **LOSS AND COMPLETION REPORTS (36)**: Issue No. 12-76 and
- 23 subpart
- 24 • **TEST PARAMETERS (40)**: Issue No. 12-81
- 25 • **TROUBLE REPORT CLOSURE (42)**: Issue No. 12-86
- 26

27 **Q. YOU STATE THAT IT IS CRITICAL FOR THE ICA TO PROVIDE**
28 **CERTAINTY. HAS QWEST RECOGNIZED THE NEED FOR**
29 **CERTAINTY IN THE ICA DESPITE QWEST'S PROPOSAL TO**
30 **EXCLUDE ONE THIRD OF THE ISSUES FROM THE ICA?**

1 A. Yes. Qwest confirmed in its direct testimony in the companion Minnesota
2 arbitration case that certainty is important and is a valid basis for deciding to
3 include terms in an interconnection agreement. Specifically, Qwest witness Philip
4 Linse testified that the Minnesota Commission should adopt a Qwest proposal¹⁷ to
5 “provide contractual certainty.”¹⁸ In addition, Qwest witness Karen Stewart
6 testified that “a critical goal of this arbitration should be establishing clarity
7 concerning the parties’ rights and obligations.”¹⁹ She added that “clear ICA
8 language is necessary so that the parties *know what is expected of them* under the
9 agreement and to avoid or minimize future disputes.”²⁰ Further, she said that it is
10 a “reasonable expectation” that a party’s obligations “should be clearly defined
11 and should not be subject to future interpretations” that a party “develops based
12 on its needs and desires at a given time.”²¹ Qwest argued that, rather than allow
13 “uncertainty,”²² the Commission should provide a “known set of rules to

¹⁷ As I indicate below, Issue 9-46 (Interfering Bridged Tap) has since closed, but the circumstances surrounding Issue 9-46’s closure are instructive.

¹⁸ Direct Testimony of Philip Linse, Minnesota PUC Docket No. P-5340, 421/IC-06-768; OAH Docket No. 3-2500-17369-2; August 25, 2006 (“Linse Minnesota Direct”), p. 6, lines 17-18.

¹⁹ Direct Testimony of Karen Stewart, Minnesota PUC Docket No. P-5340, 421/IC-06-768; OAH Docket No. 3-2500-17369-2; August 25, 2006 (“Stewart Minnesota Direct”), p. 13, lines 4-6.

²⁰ Stewart Minnesota Direct, p. 13, lines 6-7 (emphasis added); *see also* Stewart Minnesota Direct, p. 13, lines 16-17 (“the goal of avoiding future disputes under the ICA”).

²¹ Stewart Minnesota Direct, p. 13, lines 13-16. Qwest was specifically referring to itself as the party at the time. *See id.* Eschelon believes the statement applies to Qwest as well, such as Qwest’s position that language should be subject to future interpretations that Qwest develops based on its needs and desires at a given time, through CMP (*see, e.g.*, CRUNEC example, Exhibit BJJ-9), through disregarding CMP results (*see, e.g.*, the jeopardies example in Exhibit BJJ-6), and through non-CMP activities (*see, e.g.*, Qwest’s recent collocation non-CMP notice discussed with respect to Issue 9-31, access to UNEs, and the non-CMP “TRRO” PCATs, discussed in Exhibit BJJ-7).

²² Linse Minnesota Direct, p. 8, line 22.

1 follow.”²³ Eschelon likewise needs and requests a known set of rules, especially
2 for issues that are likely to impact its core business operation and ultimately its
3 ability to effectively service its customers. The Commission should set the
4 “rules” by establishing interconnection agreement terms and conditions that must
5 be filed, approved, and amended if changed. Unlike Qwest, Eschelon asks that
6 the Commission provide that known set of rules for all of the open issues in the
7 arbitration, and not just a subset hand-picked by Qwest.
8

9 **1. QWEST TESTS FOR EXCLUDING ISSUES FROM ICA**
10

11 **Q. WHAT IS QWEST’S LITMUS TEST FOR EXCLUDING ISSUES FROM**
12 **252(a) AND DESIGNATING THEM AS INHERENT CMP ISSUES?**

13 A. Though Qwest suggests that the contractual or non-contractual nature of an issue
14 is discernable, Qwest provides no litmus test. If an issue is either inherently a
15 CMP issue or a contractual issue, a test must exist to identify that the true nature
16 of the issue. For Qwest’s position on the above one-third of the issues to be
17 correct, therefore, a litmus test would be needed to determine on which side of the
18 ICA/CMP line an issue inherently belongs. While Qwest suggests the line is
19 intuitive, the examples described below illustrate that Qwest either has had
20 trouble with identifying that alleged line and sometimes moves back and forth due
21 to internal inconsistency, or chooses when to do so for its own convenience or

²³ Linse Minnesota Direct, p. 8, line 19.

1 other purpose.²⁴ Eschelon cannot plan and manage its business based on such
2 uncertainty, and Qwest should not be allowed to engineer the rules of the game at
3 its discretion to achieve an unjust or anticompetitive advantage. The Commission
4 should set the “rules” by establishing interconnection agreement terms and
5 conditions that must be filed, approved, and amended if changed. In other words,
6 Eschelon believes a litmus test does exist; *i.e.*, if one of the parties chooses to
7 arbitrate the issue pursuant to its rights under Section 252, the Commission should
8 then decide the issue on its merits. Otherwise, CMP or some other forum may be
9 an appropriate means by which to address this issue now or in the future.

10
11 **Q. DOES QWEST HAVE A SIMILARLY DEFINABLE LITMUS TEST?**

12 A. No, it does not. To the extent that Qwest attempts to articulate a test for
13 identifying ICA issues versus those better addressed in CMP, Qwest suggests a
14 couple of standards in its position statements. The first Qwest-proposed standard
15 is whether a label of “process” or “procedure” can be attached to the proposed
16 provision.²⁵ However, labeling tends to be fairly circular, with the chosen label
17 often restating the desired result. Even so (or perhaps because of this measure of
18 control when needed to obtain desired ends), it does not necessarily lead to

²⁴ Later in my testimony, after providing additional background information about CMP and the PCAT, I describe four examples (Jeopardies, Delayed Orders, CRUNEC, and Secret TRRO PCATs) that demonstrate this point. The facts relating to each of these examples are set forth in detailed chronologies attached to the Testimony of Ms. Johnson. *See* Exhibits BJJ-5, BJJ-2, BJJ-9, and BJJ-7.

²⁵ Qwest Petition at ¶ 135.

1 consistent results. For example, when the Minnesota Commission ordered Qwest,
2 in Docket No. P-421/C-03-616, to propose “*procedures*” for promptly
3 acknowledging mistakes,²⁶ Qwest did not use CMP to implement the
4 “procedures” it then put in place.²⁷ The label of “procedures” applies, but Qwest
5 did not rush to CMP to implement this unfavorable ruling for Qwest.

6 The second standard that Qwest puts forward in multiple position
7 statements is that CMP applies when provisions “affect all CLECs, not just
8 Eschelon.”²⁸ A review of the first list above, which contains two-thirds of the
9 issues, includes numerous examples of terms that could affect all CLECs as much
10 as those on the second list. Yet, Qwest considers the issues on the first list to be
11 contractual non-CMP issues. The ruling in Docket No. P-421/C-03-616 discussed
12 in the previous paragraph, which was unfavorable to Qwest, affected multiple
13 CLECs. The Commission ordered Qwest to develop procedures generally – not
14 procedures specific to Eschelon.²⁹ Still, Qwest did not implement those multiple-
15 CLEC affecting procedures through CMP.

16 Another example relates to collocation (specifically, optioned contiguous
17 space - Issue 8-29). After filing its arbitration petition, Qwest argued that certain
18 issues that affect multiple CLECs must go through CMP before Qwest may

²⁶ 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*, Docket No. P-421/C-03-616, (July 30, 2003) (“MN 616 Order”), p. 9.

²⁷ See discussion of Issue 12-64 and subparts in the Testimony of Mr. Webber.

²⁸ Qwest Petition at ¶ 130.

²⁹ See MN 616 Order, p. 9.

1 change its position in ICA negotiations. Issue 8-29 is one of these. Eschelon's
2 discussion of Issue 8-29, however, includes examples of various changes in
3 position by Qwest (including during the Eschelon-Qwest ICA negotiations and in
4 connection with other parties' agreements) on this issue.³⁰ These examples show
5 that Qwest's position in negotiations and in ICA language on this same issue has
6 changed over time – *with no CMP activity*. Now, as a litigation tactic, Qwest has
7 for the first time issued a CMP notice to allegedly effectuate such a change in
8 position - to support Qwest's arbitration position that Issue 8-29 and other issues
9 inherently belong in CMP. Qwest's handling of Issue 8-29 demonstrates the
10 transparency of its claim.

11 As these examples and other examples in Eschelon's direct testimony
12 show, Qwest has no true litmus test or bright line rule that excludes certain issues
13 from inclusion in a Commission-approved interconnection agreement. Even
14 Qwest's own proposed rules fail based upon Qwest's past and current
15 inconsistencies in labeling an issue as a "process" or asking if "multiple CLECs
16 are affected." Both alleged tests allow Qwest too much room to maneuver to
17 achieve its desired results.

18
19 **Q. HAS QWEST PROPOSED ANY OTHER TEST FOR EXCLUDING**
20 **ISSUES FROM AN APPROVED ICA?**

³⁰ See discussion of Issue 8-29 in the Testimony of Mr. Denney.

1 A. Yes. Qwest has proposed limiting interconnection agreements to the schedule of
2 itemized charges and associated descriptions of the services to which the charges
3 apply – *i.e.*, limited to terms that advantage Qwest by ensuring its right to charge
4 CLECs,³¹ without offering CLECs certainty as to what they will get in return.³²
5 Consistent with this argument, several of the issues on Qwest’s non-CMP
6 contractual list relate to charges.³³ Qwest also points out that rates are outside the
7 scope of CMP, when it does not want to address an issue in CMP, even if it has at
8 some point relied on CMP for the same issue.³⁴
9

10 **2. REJECTION OF QWEST’S PROPOSED TESTS**
11

12 **Q. HAS THE FCC CONSIDERED THIS QWEST PROPOSED TEST FOR**
13 **LIMITING THE SCOPE OF INTERCONNECTION AGREEMENTS?**

³¹ Similarly, *see* discussion of Issue 12-74 (Fatal Rejection Notices) in the Testimony of Mr. Webber, in which he describes Qwest’s willingness to consider a provision that binds Eschelon as “contractual” in nature, while Qwest describes the corresponding provision, which would similarly bind Qwest, as an inherent CMP issue.

³² *See e.g.*, Issue 12-67 (expedited orders – and specifically Integra’s comments, in Exhibit BJJ-3, that Integra did not know when signing the Qwest template expedite amendment that Qwest would later remove unbundled loops from the Expedites Requiring Approval process). *See also* the “CRUNEC” example discussed below and the Secret PCAT Chronology in Exhibit BJJ-7 to the Testimony of Ms. Johnson (describing how Qwest required CLECs to sign the TRRO amendment before revealing password-protected terms to them).

³³ *See, e.g.*, Issue 12-80 (Charges for Repeats) which is one of only a few of issues in Section 12 that Qwest does not ask the Commission to defer to CMP.

³⁴ *See, e.g.*, discussion of Issue 4-5 (design changes) in the Testimony of Mr. Denney; and the Exhibits to Ms. Johnson’s testimony relating to Issue 12-67 (expedited orders). *See* Exhibits BJJ-3 and BJJ-4.

1 A. Yes. The FCC expressly rejected Qwest's argument. In its *Declaratory Ruling*,
2 the FCC addressed the scope of the mandatory filing requirement under Section
3 252(a)(1) of the Telecommunications Act.³⁵ The FCC said:

4 [W]e find that an agreement that creates an ongoing obligation
5 pertaining to resale, number portability, dialing parity, access to
6 rights-of-way, reciprocal compensation, interconnection,
7 unbundled network elements, or collocation is an interconnection
8 agreement that must be filed pursuant to section 252(a)(1). This
9 interpretation, which directly flows from the language of the Act,
10 is consistent with the pro-competitive, deregulatory framework set
11 in the Act. This standard recognizes the statutory balance between
12 the rights of competitive LECs to obtain interconnection terms
13 pursuant to section 252(i) and removing unnecessary regulatory
14 impediments to commercial relations between incumbent and
15 competitive LECs. *We therefore disagree with Qwest that the*
16 *content of interconnection agreements should be limited to the*
17 *schedule of itemized charges and associated descriptions of the*
18 *services to which those charges apply.* Considering the *many and*
19 *complicated terms* of interconnection typically established
20 between an incumbent and competitive LEC, *we do not believe*
21 *that section 252(a)(1) can be given the cramped reading that*
22 *Qwest proposes.* Indeed, on its face, section 252(a)(1) does not
23 further limit the types of agreements that carriers must submit to
24 state commissions.³⁶
25

26 **Q. CAN QWEST AVOID THE FCC'S RULING ABOUT THE CONTENT OF**
27 **INTERCONNECTION AGREEMENTS BY POSTING THE**
28 **INFORMATION ON ITS WEB-SITE, SUCH AS IN ITS PCAT OR SIG?**

³⁵ Memorandum and Order, *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, (rel. October 4, 2002) (“*Declaratory Ruling*”) at ¶ 8.

³⁶ *Declaratory Ruling* at ¶ 8 (footnotes omitted) (emphasis added).

1 A. No. In its *Forfeiture Order*,³⁷ the FCC also expressly rejected Qwest's claim that
2 the *Declaratory Ruling* authorized posting of information regarding service
3 offerings on a website in lieu of an agreement filed with, and approved by, state
4 commissions. To that end, the FCC observed, "At no point did we create a
5 general 'web-posting exception' to section 252(a)...[A] 'web-posting exception'
6 would render that provision meaningless, since CLECs could not rely on a
7 website to contain all agreements on a permanent basis. Moreover, unlike the
8 terms of an SGAT, web-posted materials are not subject to state commission
9 review, further undermining the congressionally established mechanisms of
10 section 252(e)."³⁸

11
12 **Q. WAS CMP IN PLACE WHEN THE FCC MADE THIS DECISION?**

13 A. Yes. Qwest's CMP has been in place since at least the fall of 2002,³⁹ and the
14 FCC did not issue its Forfeiture Order until March of 2004. The FCC has created
15 no special "web-posting exception" for postings (such as PCAT or SIG) that are
16 made through CMP.

17

³⁷ Notice of Apparent Liability for Forfeiture, *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263 (March 11, 2004) ("*FCC Forfeiture Order*").

³⁸ *FCC Forfeiture Order* at ¶ 32.

³⁹ See Exhibit BJJ-2 to Testimony of Ms. Johnson (No Build Held Order Chronology, entry for 11/2/02).

1 issues that Eschelon has not brought forward in this arbitration, which are handled
2 through CMP, service management, billing disputes, *etc.*

3
4 **Q. SINCE CMP WILL CONTINUE TO PLAY A ROLE, DO THE**
5 **COMMISSION-APPROVED CMP RULES, SET FORTH IN EXHIBIT G**
6 **TO THE ICA (AND THE SGAT), DICTATE THE RELATIONSHIP**
7 **BETWEEN CMP AND THE INTERCONNECTION AGREEMENT?**

8 A. Yes. The “CMP Document” outlines the rules and procedures governing conduct
9 of Qwest’s CMP. The following excerpt from Section 1.0 (“Introduction and
10 Scope”) of the CMP Document addresses the relationship between the
11 interconnection agreement and CMP and clearly indicates that Commission-
12 approved interconnection agreement terms control:

13 In cases of conflict between the changes implemented through this
14 CMP and any CLEC interconnection agreement (whether based on
15 the Qwest SGAT or not), the rates, terms and conditions of such
16 interconnection agreement shall prevail as between Qwest and the
17 CLEC party to such interconnection agreement. In addition, if
18 changes implemented through this CMP do not necessarily present
19 a direct conflict with a CLEC interconnection agreement, but
20 would abridge or expand the rights of a party to such agreement,
21 the rates, terms and conditions of such interconnection agreement
22 shall prevail as between Qwest and the CLEC party to such
23 agreement.
24

25 This requirement is so important and integral to CMP in relation to the ICA that
26 the same language must appear in all CMP notices to inform CLECs receiving the
27 notice that it does not apply to them if it conflicts with their interconnection

1 agreements.⁴¹ In other words, per the Commission approved CMP terms and
2 conditions, CMP changes may affect some, but not all, CLECs, depending on the
3 terms of their interconnection agreements and whether the change conflicts with
4 those terms for each CLEC. This built-in recognition in the governing CMP
5 document that ICA terms will vary from CMP disproves Qwest's claim repeated
6 throughout its position statements that the "entire purpose" of CMP is to create
7 processes "that are uniform among all CLECs." Instead, Qwest is attempting to
8 circumvent this clearly defined hierarchy under which the ICA controls by
9 preventing issues from being included in the ICA. Qwest seeks to render this
10 carefully crafted and Commission approved hierarchy meaningless by making
11 CMP the only source of terms for one-third of the arbitration issues, so that in the
12 end Qwest's *CMP controls* those issues through ever changing PCAT and SIG
13 language.

14 Qwest received 271 approval, at least in part, based upon the availability
15 of a CMP that reflected the hierarchy reflected in Section 1.0 of the CMP
16 Document. The Commission should not allow Qwest, now that it has 271
17 approval, to use that very CMP process to undermine the CMP's own governing
18 provision as to its scope. Terms that rise to the level of being arbitrated and

⁴¹ Qwest is required, per the CMP Document, to include this language in CMP notices. *See* Exhibit BJJ-1, §5.4, which states (with emphasis added): "The following defines five levels of Qwest originated product/process changes and the process by which Qwest will originate and implement these changes. None of the following shall be construed to supersede timelines or provisions mandated by federal or state regulatory authorities, certain CLEC facing Web sites (*e.g.*, ICONN and Network Disclosures) or individual interconnection agreements. ***Each notification will state that it does not supersede individual interconnection agreements.***"

1 approved as part of an interconnection agreement not only govern as between the
2 parties, but also, per Section 1.0 of the CMP Document, are outside the scope of
3 CMP.

4
5 **Q. IN ADDITION TO THE APPROVED CMP DOCUMENT ITSELF, DID**
6 **THE COMMISSION PROVIDE ANY OTHER INDICATION THAT CMP**
7 **OR THE PCAT SHOULD NOT GOVERN A CLEC'S RIGHTS?**

8 A. Yes. Before Qwest obtained 271 approval, it needed to have an SGAT in place
9 for requesting CLECs to adopt as their ICA. The Washington SGAT provides, in
10 Section 2.3, that: "In cases of conflict between the SGAT and Qwest's Tariffs,
11 PCAT, methods and procedures, technical publications, policies, product
12 notifications or other Qwest documentation relating to Qwest's or CLEC's rights
13 or obligation under this SGAT, then the rates, terms and conditions of this SGAT
14 shall prevail. To the extent another document abridges or expands the rights or
15 obligations of either Party under this Agreement, the rates, terms and conditions
16 of this Agreement shall prevail." Consistent with this provision, the definition of
17 "Product Catalog" in Section 4 of the SGAT explicitly provides: "Qwest agrees
18 that CLEC shall not be held to the requirements of the PCAT."

19 Both of these SGAT provisions recognize that there will be overlap
20 between the ICA and CMP, including different terms for different CLECs, and
21 when that happens, the ICA controls. After all, there would be no need for a
22 provision regarding "cases of conflict between the SGAT and Qwest's . . . PCAT,

1 methods and procedures” if conflicts were not expected to occur because the CMP
2 existed to make all PCAT terms and methods and procedures uniform. Both of
3 these SGAT provisions, therefore, further disprove Qwest’s repeated claim that
4 the “entire purpose” of CMP is to create processes “that are uniform among all
5 CLECs.” If that were true, the Commission-approved CMP Document and the
6 SGAT would both provide that, in cases of conflict, the CMP Document controls
7 to maintain uniformity. They send the opposite message, however. The purpose
8 of these provisions⁴² is defeated if Qwest is successful in excluding terms from
9 the ICA so no conflict may occur and CMP, by default, prevails.

10
11 **Q. ARE UNIFORM TERMS AND CONDITIONS FOR CLECS ENVISIONED**
12 **BY THE ACT?**

13 A. No. Nothing in the Telecommunications Act requires that terms and conditions of
14 an interconnection agreement be identical for all CLECs. To the contrary, the
15 structure of the Act reflects the exact opposite: that an interconnection agreement
16 should be tailored to accommodate specific needs of the CLEC in order to provide
17 a meaningful opportunity to compete. Had Congress intended that the
18 interconnection agreement be a “one size fits all” document, as Qwest is trying to
19 make it, Congress would have provided the SGAT as the sole means by which
20 terms and conditions of interconnection would be made available by the ILEC.

⁴² Both of these provisions are also part of the proposed ICA, as closed language in Section 2.3 and 4.0 (definition of “Product Catalog” or “PCAT”).

1
2 **Q, HAS THE WASHINGTON COMMISSION REJECTED THE NOTION**
3 **THAT TERMS AND CONDITIONS AVAILABLE TO CLECS SHOULD**
4 **BE UNIFORM?**

5 A. Yes. The Washington Commission has twice rejected such claims of uniformity
6 or standardization and has found that asking for specific terms in an individual
7 ICA is not a request for preferential treatment. The arbitrator in the recent
8 Verizon arbitration case in Washington said:

9 The fact that there are differences in change of law provisions
10 among various agreements is not discriminatory: It reflects the
11 variations in negotiation and arbitration of terms in
12 interconnection agreements. The interconnection agreements
13 are filed with the Commission and available for review.
14 CLECs have opted into a number of agreements, including the
15 agreement originally arbitrated by MCI.⁴³
16

17 Similarly, the arbitrator made the following observation in the Qwest-Covad
18 arbitration in Washington:

19 While Qwest relies heavily on “consensus” reached in the
20 Section 271 proceeding as a strong reason for retaining the
21 30-day period, that argument does not apply to an
22 arbitration proceeding. Parties engage in arbitration to
23 enter into an agreement tailored to the companies’ needs,
24 not to adopt a standard agreement. Covad is not bound to
25 the 30 day payment period simply because it was a party to
26 the SGAT negotiations and hearings.⁴⁴

⁴³ Washington State Utilities and Transportation Commission, Docket UT-043013, Order No. 17
Arbitrator’s Report and Decision dated July 8, 2005 at ¶79, [“Washington ALJ Report”], *affirmed in*
relevant part in “Washington Order No. 18.”

⁴⁴ Arbitrator's Report and Decision, *In The Matter Of The Petition For Arbitration Of Covad*
Communications Company, With Qwest Corporation, Pursuant To 47 U.S.C. Section 252(B) And
The Triennial Review Order, WUTC Docket No. UT-043045, Order No. 04, Nov. 2, 2004 [“WA

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Furthermore, in the recent Verizon/CLEC arbitration, the Commission pointed to the likelihood of reducing the opportunity for future disputes as a basis for including specific contract language in half of the issues addressed by the Commission in its order.⁴⁵

Q. ARE PROCESSES AND PROCEDURES APPROPRIATE FOR INCLUSION IN THE ICA?

A. Yes, and this undermines Qwest’s proposal to exclude processes and procedures from the ICA. The FCC has said that processes and procedures are appropriate content for interconnection agreements:

Individual incumbent LEC and competitive LEC arrangements governing the *process and procedures* for obtaining access to an UNE to which a competitive LEC is entitled, are more appropriately addressed in the context of individual interconnection agreements pursuant to section 252 of the Act.⁴⁶

Similarly, the Washington Commission has found it reasonable to include “operational procedures to ensure customer service quality” in an interconnection agreement.⁴⁷

Covad Arbitration Order”], at note 16 to ¶100. Although the Commission rejected Covad’s 30-day proposal (which is not an issue in this case), it did so on other grounds.

⁴⁵ *Washington Order No. 18* at ¶¶ 28, 31-32, 36, 42, 48, 58, 64; *see also* Conclusions of Law ¶¶ 102, 104,105, 106, 111, 112.

⁴⁶ TRRO ¶358 (emphasis added).

⁴⁷ *Washington Order No. 18* at ¶61 (quoting Order No. 17 at ¶ 416, quoting TRO ¶586); *see also* ¶¶60-64, 112.

1 **Q. IN ANY EVENT, IS ESCHELON IN THIS ARBITRATION TRYING TO**
2 **DEFEAT “UNIFORM PROCESSES?”**

3 A. No. Indeed, the majority of the contract language proposed by Eschelon for these
4 one-third of the issues matches Qwest’s current practices, including language
5 describing the same terms in the PCAT. Therefore, Qwest’s assertion in its
6 position statements that developing processes solely for Eschelon will cause
7 Qwest to incur costs is a red-herring issue. Eschelon is not seeking to make
8 changes that would require Qwest to commit additional resources.⁴⁸ Eschelon is
9 not attempting to gain some advantage or make Qwest’s processes more difficult
10 to implement. Eschelon is simply requesting, and is entitled to, contract language
11 that sets forth terms that are critical to its business and ability to compete.

12
13 **Q. YOU SAID THE CMP DOCUMENT DOES NOT PROVIDE THAT CMP**
14 **CONTROLS TO MAINTAIN UNIFORMITY, HAS ANY BENEFIT OF**
15 **INDIVIDUAL, NON-UNIFORM ICA TERMS BEEN RECOGNIZED?**

16 A. Yes. And, ironically, Qwest is among those that have previously proclaimed the
17 benefits of unique interconnection agreements. On October 16, 2003, Qwest, in
18 opposing the then current application of the FCC’s “pick and choose” rule, filed
19 extensive comments extolling the virtues of negotiated interconnection

⁴⁸ For any issues for which Qwest claims that Eschelon is asking for a change that Qwest believes would generate additional costs, Qwest should, in this proceeding, quantify those additional costs to the extent they actually exist. General arguments heralding undisclosed costs or resources should be given little, if any, weight given that Qwest has, via this proceeding, an evidentiary vehicle by which to quantify those costs.

1 agreements and the importance of the "...dynamic, innovative interconnection
2 negotiations intended by the Telecommunications Act of 1996."⁴⁹ Qwest
3 recognized that: "ILECs and CLECs have a fundamental interest in making the
4 interconnection process as cooperative and open as possible, since both parties
5 benefit from well-negotiated and mutually beneficial wholesale arrangements."⁵⁰

6 Even more specific to the point here, Qwest argued that:

7 "...the pick-and-choose rule restricts the ILEC's willingness to
8 **tailor negotiations and contracts to the specific needs of**
9 **CLECs and their business plans.** Further, the current rule does
10 not realistically reflect the ordinary trade-offs and give-and-take
11 that characterize free negotiations, in which an ILEC would
12 ordinarily be willing to give up one term of a contract in order to
13 get another."⁵¹
14

15 Finally, Qwest summarized its arguments with the following opinion:

16 "The ability of carriers to negotiate binding agreements with each
17 other was a cornerstone of the Act."⁵²
18

19 Now that Qwest has reaped the benefits of eliminating the pick-and-choose rule
20 by making these arguments, Qwest seeks to deny Eschelon the very ability to
21 "tailor negotiations and contracts" to Eschelon's "specific needs" and "business
22 plans" upon which Qwest relied to defeat that rule.

⁴⁹ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, p. ii.

⁵⁰ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, pp. 3-4.

⁵¹ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, p. 4 [emphasis added]

⁵² *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, p. 6.

1
2 **Q. DOES INCLUSION OF TERMS, INCLUDING POTENTIALLY UNIQUE**
3 **TERMS, IN AN INTERCONNECTION AGREEMENT MEAN THAT**
4 **ESCHELON ARGUES FOR EXCLUSIVE TERMS FOR ITSELF?**

5 A. No. Contract language in a Commission-approved interconnection agreement
6 allows the Commission to review the terms, decide disputed issues on the merits,
7 and approve changes before they are made to avoid disruption that may occur
8 without Commission oversight. The alternative, *i.e.*, a lack of contract language,
9 leaves Eschelon in a position in which it will likely be forced to approach the
10 Commission in crisis mode, after it is being faced with adverse consequences that
11 impact its End User Customers,⁵³ perhaps requesting expedited relief.⁵⁴ It simply
12 makes more sense to allow the Commission to consider the issues in an orderly
13 manner through ICA arbitration, as envisioned by Section 252. Further, if terms
14 are arbitrated, the approved agreement is then available for opt-in pursuant to
15 Section 252(i), or for use as a negotiations template/proposal,⁵⁵ by other and
16 potentially “multiple” CLECs.

⁵³ See, e.g., the “CRUNEC” example that I discuss below.

⁵⁴ This assumes resources are available to challenge individual issues on a piece-meal basis in every state affected. If that is not the case, Qwest may gain an unjust or anticompetitive advantage simply due to lack of resources rather than merit.

⁵⁵ Although the FCC eliminated the pick-and-choose rule in favor of the all-or-nothing rule, when it did so, the FCC clearly stated that doing so did not limit the nondiscrimination provisions of the Act, which remain available to protect CLECs. See Section Report and Order, *In re. Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (Rel. July 13, 2004), at ¶¶20-23.

1 CLECs should have a choice of opting into ICAs and ICA amendments
2 that best suit their business models, instead of all CLECs being forced to sign the
3 same agreement or amendment. Clearly, Section 252(i) of the
4 Telecommunications Act provides CLECs the ability to opt into other CLECs'
5 ICAs:

6 AVAILABILITY TO OTHER TELECOMMUNICATIONS
7 CARRIERS.--A local exchange carrier shall make available any
8 interconnection, service, or network element provided under an
9 agreement approved under this section to which it is a party to any
10 other requesting telecommunications carrier upon the same terms
11 and conditions as those provided in the agreement.

12
13 This language recognizes that different CLECs have different business models
14 and needs.

15

16 **4. CMP BACKGROUND: REALITIES OF CMP AND PCAT**

17

18 **Q. EARLIER, YOU MENTIONED THAT YOU WOULD PROVIDE SOME**
19 **EXAMPLES. DO YOU NEED TO PROVIDE SOME BACKGROUND**
20 **BEFORE DOING SO?**

21 A. Yes, I need to describe some elements of CMP and the PCAT and related
22 terminology that will be useful for understanding the examples. As with much of
23 telecom, this area is also acronym and “techno-speak” dependent. Without some
24 explanation, it may be difficult to understand the import of events. For example,
25 with all of the talk about “change requests” in CMP, which is sometimes

1 described as an “industry forum,” it may come as a surprise to learn that the vast
2 majority of changes in CMP occur through Qwest email announcements for
3 which there is no discussion on the CMP calls. There is no collaborative
4 development or even any mention of them. When reading the CMP Document
5 (which is Exhibit G to the ICA and SGAT and which I described earlier as the
6 document containing the governing rules and procedures for the conduct of
7 CMP), this may not be immediately apparent. The reader has to get through the
8 description of the four “levels” of changes in the CMP Document (which I
9 describe more fully below) to discover that only the highest, fourth level requires
10 Qwest to submit a “request” rather than a notification. Even then, for product and
11 process changes (which are different from “systems” changes), Qwest does not
12 need any kind of vote on adoption of or consent to its “request” before
13 implementing it, provided that Qwest follows the applicable time periods. In
14 some cases, CLECs may comment, but Qwest may “respectfully decline” the
15 comment and proceed as planned, as though the CLEC had never commented at
16 all. In one of the examples below (“CRUNEC”), pretty much every actively
17 participating CLEC objected to the Qwest CMP notification, but Qwest
18 implemented it anyway. Qwest may have created a different impression when,
19 throughout its position statements in the Disputed Issues List, it states that the
20 purpose of CMP was to “ensure that the industry (not just Qwest or one CLEC) is
21 involved in creating and *approving* processes” (emphasis added). Qwest requires
22 no approval from CLECs to implement process changes in CMP. To the contrary,

1 as the CRUNEC example described below shows, Qwest will implement a
2 process change in the face of clearly articulated disapproval by multiple CLECs.

3 And, although much of the work of CMP is conducted through Qwest
4 email “notifications,” not all Qwest email notifications are “CMP” notifications.⁵⁶
5 Carriers may choose among a variety of other notices, such as billing, contract,
6 and network notices, and those notices do not follow the CMP procedures, such as
7 assignment of “levels.” Similarly, with respect to Qwest’s PCAT, continual
8 reference to the PCAT in conjunction with CMP may suggest that all PCAT
9 changes are made through CMP. It is not the case that all Qwest PCAT changes
10 are generated as a result of CMP, as one of the four examples discussed below
11 (involving Secret TRRO PCATs) demonstrates quite clearly.

12 By recognizing these CMP and PCAT realities, Eschelon is not requesting
13 changes to CMP or suggesting that the Commission needs to make a finding that
14 CMP is flawed before it can find in Eschelon’s favor. Such findings are
15 unnecessary for Eschelon to prevail. Eschelon’s position on each issue is fully
16 supported by the facts and should prevail on the merits of that issue, as discussed
17 with respect to each individual issue throughout the direct testimony. The
18 purpose in relating these CMP and PCAT realities is to ensure that the facts about

⁵⁶ See Exhibit BJJ-7 (Secret TRRO PCAT Chronology, at footnote 5) (“The **SUBJECT** field of a Qwest announcement starts with “CMP” when it is a CMP notice. Not all Qwest Customer “notices” and PCAT changes are generated as a result of CMP. Carriers may choose among a variety of notices, such as billing, contract, and network notices, that are not CMP notices. See <http://www.qwest.com/wholesale/notices/cnla/maillist.html>. In addition, if it is a CMP notice, the listed contact person is a CMP representative. If it is not a CMP notice, the contact person is the Qwest Service Manager or other contact. CMP notices with comment periods identify the timeframe for comment.

1 CMP and the PCAT are known when evaluating claims made by Qwest and when
2 reviewing the examples and chronologies. Several chronologies are attached to
3 the testimony of Ms. Johnson, including one for each of the four examples
4 discussed below.⁵⁷ Because the chronologies often relate to CMP events, they
5 use a lot of CMP terminology (such as references to CMP numbering, the
6 “levels” of notices, *etc.*). The absence of any reference in any of these
7 chronologies to a vote being taken on adoption or rejection of any of the requests
8 is explained, for example, by the discussion below explaining that there is no
9 voting on adoption or rejection of product and process changes in CMP.

10 Certainly, the realities of CMP and the PCAT shed some light on why, for
11 critical business issues, a CLEC may conclude its needs to exercise its Section
12 252 right to negotiation and compulsory arbitration. This is particularly true
13 when the manner in which Qwest has used CMP and the PCAT to achieve its
14 objectives, as demonstrated by the examples, is taken into account. Even though
15 CMP may inform Eschelon that Qwest is making changes that will be adverse to
16 Eschelon’s business, CMP provides Eschelon no real ability to keep Qwest from
17 unilaterally making those changes. Contract language appears to be the only
18 vehicle that will give Eschelon the ability to “force Qwest to the table” to
19 negotiate those types of changes. As discussed above, Section 252 provides this
20 ability to CLECs. Qwest’s proposal (*i.e.*, use CMP) does not.

⁵⁷ See Exhibits BJJ-2, BJJ-5, BJJ-7 and BJJ-9.

1 Significantly, the realities of CMP and the PCAT also run counter to
2 Qwest's basic premise that some issues are inherently CMP issues that should be
3 excluded from the ICA. After providing background information about CMP and
4 the PCAT, I describe four examples (Jeopardies, Delayed Orders, CRUNEC, and
5 Secret TRRO PCATs) that each in its own way demonstrates how Qwest's own
6 conduct is not in accord with that claim. Instead, Qwest has the capability to use,
7 and sometimes uses, CMP as either a sword or a shield toward furthering its own
8 policy initiatives.

9
10 a. CMP TERMINOLOGY AND PROCEDURES

11
12 **Q. PLEASE BRIEFLY DESCRIBE HOW CMP WORKS.**

13 A. CMP generally works through a series of change requests ("Change Requests" or
14 "CRs") submitted by CLECs to Qwest or announcements by Qwest to CLECs in
15 the form of "CMP notifications." Change Requests and a small sub-set of the
16 Qwest CMP notifications are discussed on CMP monthly and ad hoc calls among
17 Qwest and participating CLECs. Qwest maintains minutes of the calls and posts
18 the minutes on its CMP web-site.⁵⁸ A "change request" contains a description of
19 the request for a new, or change to an existing, product, process, or system. All
20 CLEC proposed changes are submitted as change requests because there are no
21 CLEC CMP notifications. CLECs must propose a change to Qwest, and Qwest

⁵⁸ See <http://www.qwest.com/wholesale/cmp/index.html>

1 may decide to either accept or reject a CLEC request for product or process
2 changes. While some Qwest changes are in the form of change requests, Qwest
3 generally announces its changes through its email notification process. As
4 indicated above, although much of the work of CMP is conducted through Qwest
5 email “notifications,” not all Qwest email notifications are “CMP” notifications.⁵⁹

6 Each change (whether by request or notification) within CMP is classified
7 by its potential impact on carriers, or the time-critical nature of the change.
8 Changes to a product or process within CMP are assigned severity or
9 “disposition” levels. Each change is classified as a Level 0, 1, 2, 3, or 4 change.
10 The following table provides a high level overview of the disposition levels used
11 in the CMP notification process:⁶⁰

12

Level 0	Level 0 changes are defined as changes that do not change the meaning of documentation and do not alter CLEC operating procedures. Level 0 changes are effective immediately without notification. [CMP Document, Section 5.4.2]
Level 1	Level 1 changes are defined as changes that do not alter CLEC operating procedures or changes that are time critical corrections to a Qwest product/process. Time critical corrections may alter CLEC operating procedures, but only if such Qwest product/process has first been implemented through the appropriate level under CMP. Level 1 changes are effective immediately upon notification. [CMP Document, Section 5.4.2.1]
Level 2	Level 2 changes are defined as changes that have minimal effect on CLEC operating procedures. Qwest will provide notification of Level 2 changes at least twenty-one (21) calendar days prior to implementation. [CMP Document,

⁵⁹ See Exhibit BJJ-7 (Secret TRRO PCAT Chronology, footnote 5).

⁶⁰ A non-CMP Qwest notification (such as a billing or contract notice) generally would not be assigned or contain these CMP disposition levels.

	Section 5.4.3]
Level 3	Level 3 changes are defined as changes that have moderate effect on CLEC operating procedures and require more lead-time before implementation than Level 2 changes. Qwest will provide initial notification of Level 3 changes at least thirty-one (31) calendar days prior to implementation. [CMP Document, Section 5.4.4]
Level 4	Level 4 changes are defined as changes that have a major effect on existing CLEC operating procedures or that require the development of new procedures. Level 4 changes will be originated using the CMP Change Request process and provide CLECs an opportunity to have input into the development of the change prior to implementation. [CMP Document, Section 5.4.5]

1
2 **Q. DO THE DESCRIPTIONS OF LEVEL 3 AND 4 CHANGES MEAN THAT**
3 **ALL CHANGES THAT HAVE A MODERATE OR MAJOR EFFECT ON**
4 **CLEC OPERATING PROCEDURES MUST GO THROUGH CMP?**

5 A. No. Many of the agreed upon ICA provisions, for example, have a moderate or
6 major effect on Eschelon's operating procedures, but many of them did not go
7 through CMP as they were negotiated or opted in to and publicly filed with the
8 Commission.⁶¹ CMP is expressly limited by its "scope" provision.⁶² As
9 discussed above, interconnection agreement terms are outside the scope of CMP
10 and, when they conflict with CMP, the ICA terms control.⁶³ Sections 251 and
11 252 of the Act, as well as state rules, apply to ICA negotiation and arbitration.
12

⁶¹ See Exhibit DD-5 (table showing changes related to Issue 8-29 that were not noticed through CMP).

⁶² See Exhibit BJJ-1 (CMP Document) at Section 1.0.

⁶³ See Exhibit BJJ-1 (CMP Document) at Section 1.0.

1 **Q. WHAT ARE PRODUCT, PROCESS, AND SYSTEM CHANGES?**

2 A. Change Requests and Qwest CMP notifications are classified by whether they
3 relate to a Qwest product or process or system.⁶⁴ Changes to systems (such as
4 Interconnect Mediated Access or “IMA”)⁶⁵ are handled in CMP somewhat
5 differently from product and process changes. None of the relevant changes in
6 the four examples discussed below were systems changes. The notifications and
7 change requests discussed here are product and process (*i.e.*, not systems)
8 notifications and requests.⁶⁶

9
10 **Q. DO QWEST AND THE CLECS VOTE ON ADOPTION OR REJECTION**
11 **OF PRODUCT AND PROCESS CHANGE REQUESTS?**

⁶⁴ Numbers are assigned to CMP notifications and change requests. Whether a CMP Change Request (Change Request) or notice is a product, process, or systems Change Request or notice is easily determined by looking at the assigned CMP number. If the number begins with “PROD” it is a product Change Request/notice, and if the number begins with “PROS,” it is a process Change Request/notice. The CMP Document provides that changes that go through the process and product procedures “are not changes to OSS Interfaces” (*i.e.*, are not system changes). *See* CMP Document, §5.4.

⁶⁵ These are changes to the “systems,” as distinguished from other processes (such as manual processes, which are handled as “process” changes), for purposes of CMP. Although the term “Operations Support Systems” or “OSS” may come to mind as it is sometimes used in this sense, the term “OSS” is broader and also includes the associated business processes, including manual processes. In the Third Report and Order (at ¶ 425), the FCC said: “In the *Local Competition First Report and Order*, the Commission defined OSS as consisting of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases and information. OSS includes the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems.”

⁶⁶ The only open issue relating to systems is Issue 12-87 (Controlled Production). For that issue, no change is required, as Eschelon’s proposed language reflects Qwest’s current practice documented in the EDI Implementation Guidelines. *See* discussion of Issue 12-87 in the Testimony of Mr. Webber.

1 A. No. Voting in the CMP process occurs in only two narrow circumstances. First,
2 voting occurs for changes to the CMP Document itself and certain procedures
3 within the Document, *e.g.*, whether to change the disposition level of a Change
4 Request⁶⁷ or whether to grant an exception to the CMP Document's procedures.⁶⁸
5 Second, voting occurs to prioritize (*i.e.*, rank) proposed systems changes.⁶⁹ If
6 Qwest, in CMP, chose to change terms affecting any of the issues Eschelon has
7 included in arbitration (as identified in the Disputed Issues List), none of those
8 changes would be subject to voting as they relate to adoption or rejection of the
9 changes.⁷⁰ In other words, no vote is taken on whether a particular product or
10 process change request should be implemented or not. Therefore, even if a
11 change is universally opposed by CLECs, Qwest is still free to implement the
12 change after the time period applicable to product and process changes has run its
13 course. *See* CMP Document, Section 5.4. Although a CLEC may request that
14 Qwest postpone a change, Qwest is the sole decision maker as to whether a
15 postponement request is granted. If Qwest determines that it will not postpone

⁶⁷ CMP Document Section 5.4.3.1.

⁶⁸ CMP Document Section 16.2.1.

⁶⁹ CMP Document Sections 5.2.1, 5.2.2, 10.3.3, 10.3.4 16.2, et al., and 17.0.

⁷⁰ Eschelon would have thought that Issue 12-87 would be an exception to this, as it relates to a systems issue and systems changes are at least ranked in CMP. Language on Qwest's EDI Implementation Guide, however, suggests that Qwest reserves the right to make changes without going through CMP. Perhaps Qwest will clarify. With respect to Issue 12-87, *see* discussion of Issue 12-87 in the Testimony of Mr. Webber.

1 the implementation of a proposed change, Qwest may implement the change
2 thirty days after giving notice of its decision to deny the request to postpone.⁷¹
3

4 **Q. DOES QWEST IMPLEMENT MOST OF ITS OWN CHANGES**
5 **THROUGH CHANGE REQUESTS?**

6 A. No. The vast majority of Qwest-initiated CMP changes are accomplished
7 through Level 0-3 email notifications. When Qwest issues a Level 3 “Notice” to
8 CLECs, indicating that it intends to implement a change, Qwest provides CLEC
9 15 days to provide written comment on the proposed change. Qwest then
10 responds to the CLECs’ comments. The CMP rules (in the CMP Document)
11 allow Qwest to implement the proposed change no fewer than 15 days after it has
12 provided its response to CLEC comments. If Qwest responds to CLEC
13 comments immediately following the close of the CLEC comment period, Qwest
14 can implement its proposed changes (notwithstanding any CLEC objections), 31
15 days following its initial notification.

16 Therefore, CMP affords Qwest a “Notice and Go” capability, *i.e.*, if Qwest
17 wants to make a change, it simply notices CLECs, solicits and then may deny
18 their requests for modifications, and implements its proposed change in as little as
19 31 days after initial notice. At times, this can be the “sword” that Qwest wields
20 through CMP, such as when Qwest dramatically restricted Eschelon’s ability to
21 successfully order DS1 capable loops, simply by changing one-word in its PCAT

⁷¹ CMP Document Section 5.5.3.3.

1 through a Level 3 email notification (see the CRUNEC example discussed
2 below). Specific contract language in the interconnection agreement would offer
3 Eschelon some defense against this type of behavior on the part of Qwest and
4 provide Eschelon with some much needed measure of control over its own
5 business.

6
7 **Q. CAN CLECS EMPLOY THE SAME “NOTICE AND GO” APPROACH**
8 **TO CHANGES THEY REQUEST IN CMP, OR IN DISPUTING A**
9 **CHANGE ANNOUNCED BY QWEST?**

10 A. No.⁷² In contrast to the relatively quick “notice and go” process that is available
11 to Qwest, if a CLEC disagrees with the change proposed by Qwest, its only
12 recourse is to seek expensive and time consuming dispute resolution in each state
13 affected by the change.⁷³ As part of a CMP dispute resolution, Eschelon filed a
14 complaint against Qwest before the Arizona state commission in April of 2006.⁷⁴
15 In that case, Qwest argued vigorously against an October hearing date, citing its
16 intent to conduct multiple depositions and other discovery. On Qwest’s motion
17 for reconsideration of the schedule, Qwest argued that six months to hear the
18 single issue presented by the Complaint was so short an amount of time that

⁷² CMP Document Sections 5.4.5, 5.4.5.1.

⁷³ CMP Document Sections 5.4, 15.0.

⁷⁴ See Complaint, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (April 14, 2006) [“Arizona Complaint Docket”].

1 Qwest had not even heard of rocket dockets proceeding that fast.⁷⁵ The hearing
2 date has been extended to February of 2006 – ten months after filing of the
3 Complaint – with Qwest expressing an intention to conduct additional discovery
4 during the intervening months. This is a far cry from the 31 day notice-and-go
5 process available only to Qwest. It is clear that CMP dispute resolution is not a
6 salve for all ills, particularly for issues that a CLEC has already spent the time
7 and resources necessary to bring before the Commission through arbitration in an
8 exercise of its Section 252 rights (as is the case here).

9 In addition, there may be some misimpression that there is a “special”
10 process for CMP dispute resolution that offers benefits beyond a typical
11 individual complaint case. That is not the case, as dispute resolution under CMP
12 works much like dispute resolution under other provisions of the ICA, and may
13 result in an individual CLEC filing a complaint against Qwest before the
14 Commission, as with any other complaint. Any reference to “CMP” dispute
15 resolution for issues involving “multiple” CLECs should not be construed to
16 mean there is a special “multiple CLEC” CMP dispute resolution process. While
17 companies may opt to jointly bring complaints or intervene in them under
18 Commission rules, those rules are no different for CMP.

⁷⁵ AZ Complaint Docket, Transcript, Procedural Conference (July 27, 2006), at p. 18, lines 20-24 (Counsel for Qwest stated: "So the whole point is, we look at this scheduling question as one that is perplexing; that why is it that we are moving -- I mean I've been involved in rocket dockets. I've never seen a case that goes from beginning to end within this period of time that we've proposed in this case, and maybe there's cases here that I'm unaware of. None in my experience.")

1 The dispute resolution terms of the CMP Document are few and simple.
2 When an individual CLEC disagrees with a Qwest action in CMP, the CMP
3 Document contains dispute resolution procedures that provide that an individual
4 CLEC “*may* pursue the dispute resolution processes set forth follow.”⁷⁶ The
5 dispute resolution procedures in the CMP Document are expressly qualified by
6 the following statement: “This process does not limit any party’s right to seek
7 remedies in a regulatory or legal arena at any time.”⁷⁷ Section 252 arbitration, for
8 example, is one such “regulatory or legal arena” that a CLEC may pursue
9 unhindered by the dispute resolution provisions of the CMP Document.

10
11 b. EXAMPLES: QWEST VACILLATES OR MANEUVERS
12 ON CMP
13

14 **Q. WITH THAT BACKGROUND INFORMATION TO HELP EXPLAIN**
15 **THE CMP TERMINOLOGY AND PROCEDURES, PLEASE PROVIDE**
16 **THE FOUR EXAMPLES YOU MENTIONED EARLIER.**

17 **A.** As I mentioned previously, the four examples below illustrate that Qwest either
18 has had trouble in the past identifying issues that are inherently tied to CMP, or
19 Qwest chooses when to label certain issues as inherently relating to CMP for its

⁷⁶ See CMP Document Section 15.0 (emphasis added).

⁷⁷ See CMP Document Section 15.0.

1 own convenience or to achieve a particular purpose. I will refer to the four
2 examples as Jeopardies, Delayed Orders, CRUNEC, and TRRO Secret PCATs.
3

4 **i. JEOPARDIES EXAMPLE**
5

6 **Q. PLEASE DESCRIBE THE JEOPARDIES EXAMPLE.**

7 A. I refer to the first example as the “Jeopardies” example because the underlying
8 facts involve situations in which Eschelon’s requested due date is in jeopardy of
9 not being met. Meeting the End User Customer’s expectations regarding due
10 dates is a significant issue and affects Eschelon’s business and its ability to
11 compete. The substantive issue is explained in Mr. Webber’s testimony regarding
12 Issues 12-71 through 12-73. A detailed chronology is also attached to the
13 Testimony of Ms. Johnson.⁷⁸ It is not necessary to know the terminology or
14 technical explanations of the “jeopardies” issue to identify the problems with
15 Qwest’s handling of this issue within and outside of CMP.

16 Eschelon followed CMP procedures to submit a Change Request in CMP
17 in August of 2003. In the course of working on that Change Request, Eschelon
18 provided examples to Qwest of the situations described further in Issues 12-71
19 through 12-73. In CMP, in February of 2004, Qwest confirmed (in response to an

⁷⁸ See Exhibit BJJ-5.

1 example provided by Eschelon) that Eschelon's understanding was correct.⁷⁹ One
2 of Eschelon's concerns was that it needed information from Qwest in advance of
3 the due date so that Eschelon could have sufficient resources available on the due
4 date to complete its work and turn up its Customer. In March of 2004, in CMP,
5 Qwest also confirmed that "Qwest cannot expect the CLEC to be ready for the
6 service if we haven't notified you." Qwest closed the Change Request in CMP
7 (indicating that it had made the change requested by Eschelon) and said that
8 Eschelon could bring any issues of compliance with these terms to Qwest's
9 service management (*i.e.*, outside of CMP).

10 Accordingly, Eschelon provided examples of problems, when they
11 occurred, to Qwest's service management. In March of 2005, Qwest service
12 management provided a response to Eschelon that indicated that Qwest still
13 maintained that its process was the one developed in CMP, although Qwest was
14 having some individual compliance problems.

15 Since then, however, as further described in the documentation attached to
16 Ms. Johnson's testimony,⁸⁰ Qwest has indicated to Eschelon that it no longer feels
17 that it must comply with the process developed in CMP. Qwest has not followed
18 its own CMP procedures, which require it to introduce a Change Request to
19 modify the process developed in CMP as a result of Eschelon's Change Request,
20 before it makes a change.

⁷⁹ This communication is reflected in Exhibit BJJ-5 (Jeopardy/FOC Chronology) and described in more detail in the Testimony of Mr. Webber regarding Issues 12-71 through 12-73.

⁸⁰ See Exhibit BJJ-5 to the Testimony of Ms. Johnson (Jeopardy/FOC Chronology).

1 Although Qwest has initiated no CMP activity to alter completion of
2 Eschelon's Change Request, Qwest is no longer following the process developed
3 in CMP. Initially, Eschelon thought perhaps this was a mistake. On September 1,
4 2005, Eschelon provided a written scenario to Qwest to confirm whether Qwest
5 would follow the process developed in CMP. Qwest's CMP Process Manager
6 confirmed that, in that scenario, Qwest will act in the opposite manner of the
7 process developed in CMP. Qwest's CMP Process Manager described a key
8 portion of that process – some of which is required conduct under the proposed
9 ICA and SGAT – as a “goal” that Qwest will “strive” to meet but may not meet.
10 Qwest is not complying with the process, despite all of the work done in CMP to
11 avoid this very result.

12 Remarkably, neither Eschelon's “successful” completion of its Change
13 Request nor Qwest's own non-compliance with both the process developed in
14 CMP and the CMP procedures for modifying that process has stopped Qwest
15 from asserting that Eschelon should take this issue to CMP! It is clear that
16 returning this issue to CMP would be fruitless as Eschelon has already been there
17 and obtained what it believed to be the desired result. Unfortunately, Qwest is
18 simply choosing to actively ignore the terms defined via CMP that Eschelon has
19 devoted resources to pursuing on this important, Customer-affecting issue. This
20 is a good example of why language is needed in the interconnection agreement to
21 provide certainty, when Qwest's contradictory conduct provides no certainty upon
22 which a company may plan its business and resources. It is also a good example

1 of why dispute resolution is not the solution. Because Qwest “completed” the
2 Change Request, there is nothing in CMP to dispute.

3

4 **ii. DELAYED ORDER EXAMPLE**

5

6 **Q. PLEASE DESCRIBE THE DELAYED ORDER EXAMPLE.**

7 A. The second example is “Delayed Orders when Facilities are Not Available.” The
8 substantive disagreement regarding this issue has been closed in Washington, but
9 this example still typifies the manner in which Qwest can, and has, used CMP to
10 its advantage. A detailed chronology on this issue is attached to the direct
11 testimony of Ms. Johnson.⁸¹

12 On December 1, 2000, Eschelon submitted a Change Request via CMP.
13 The purpose of Eschelon’s Change Request was to request changes in Qwest’s
14 “held order” policy. At that time, Eschelon was experiencing a substantial
15 number of “held” (*i.e.*, delayed) orders in situations when Qwest described the
16 necessary facilities as “not available.” Eschelon’s Change Request was submitted
17 in an attempt to prompt Qwest to adopt a policy related to facilities unavailability
18 so that the substantial backlog of Eschelon held orders could be fulfilled.
19 However, Qwest did not develop a policy that would provide for non-
20 discriminatory access to UNEs and fulfill the numerous Eschelon held orders.
21 Qwest, instead, revised its held order policy so that all orders held (or pending)

⁸¹ See Exhibit BJJ-2; see Change Request (“CR”) 5263637.

1 for 30 days would be cancelled. Stated differently, rather than help solve the
2 underlying facilities availability problem, Qwest changed its held order policy in a
3 way that cancelled all of Eschelon's backlog of delayed orders – ensuring that
4 those orders would never be filled. It also removed those orders from the queue
5 of orders to which facilities would be assigned were they to become available in
6 the future. This subverts the non-discriminatory “first come, first served”
7 provisioning policy. Ironically, Qwest then dubbed Eschelon's Change Request
8 as “completed.” However, based upon Eschelon's objection to this clearly
9 erroneous designation, Qwest ultimately changed the resolution of the matter to a
10 “denial” of Eschelon's request. Completion of Eschelon's Change Request in
11 CMP, from submission to this unsatisfactory closure, took 469 days.

12
13 **Q. DOES THE ISSUE STOP THERE?**

14 A. No. Given the manner by which Qwest had “resolved” this issue in CMP,
15 Eschelon determined that progress could be made on this issue only in the form of
16 contract negotiations directly between Qwest and Eschelon. Eschelon began
17 negotiations with Qwest in early 2001. Eschelon's initial proposal was simply to
18 not cancel the orders until they are filled or CLEC cancels them, as had been the
19 practice and as occurs in the state of Washington still today. Those negotiations
20 have been ongoing ever since, culminating ultimately in Eschelon bringing it to
21 state commissions for arbitration (this remains open in every state but
22 Washington). Toward resolution of the matter, Eschelon in early 2005 offered to

1 Qwest two alternative proposals. Specifically, Eschelon first proposed that orders
2 should be able to rest in a “held” fashion for 90, as opposed to 30, days. As part
3 of this alternative, the language on delayed orders when facilities are unavailable
4 would remain the same, except for the change from 30 to 90 days. As an
5 additional alternative, Eschelon offered that, after 30 days, it re-issue the order
6 and be allowed to maintain its place in the queue related to facilities when/if they
7 did become available. Qwest would not agree to either proposal. Since that time,
8 Eschelon has provided Qwest with two additional alternatives, bringing the total
9 number of alternatives offered by Eschelon to four. Qwest refused to agree to any
10 of Eschelon’s four proposals.

11 Instead, on June 1, 2006 (after Eschelon filed its arbitration petition in
12 Minnesota asking regulators to review Qwest’s conduct), Qwest, via CMP, issued
13 a Level 3 notice adopting, in part, the extension from 30 days to 90 days that
14 Eschelon had originally proposed. Eschelon responded in CMP by requesting that
15 Qwest include all four of Eschelon’s alternative proposals for CLEC
16 consideration. The following is an excerpt from Eschelon’s request:

17 “...Qwest indicates that this change may impact the arbitration of
18 Eschelon’s Interconnection Agreement. If Qwest is serious about
19 dealing with the issue of orders held for no local facilities in CMP,
20 Eschelon believes that Qwest should provide the CLEC
21 community the opportunity to have meaningful dialogue on this
22 topic. Qwest said in the Minnesota arbitration that: “The entire
23 purpose of CMP was to ensure that the industry (not just Qwest or
24 one CLEC) is involved in creating and approving processes.” If

1 so, Qwest should include in its proposal, at least, the following 4
2 options to facilitate a full discussion with the CLEC community.”⁸²
3

4 The CMP Document allows Qwest several alternatives for responding to
5 such a comment, such as placing it on a meeting agenda or scheduling an ad hoc
6 call to discuss. Instead, Qwest merely “acknowledged” Eschelon’s comment.
7 Qwest said: “With a Change Management Process level 3 change, Qwest is
8 utilizing the formal comment process *which is what is required.*”⁸³ On July 14,
9 2006, Qwest implemented the one alternative it preferred, the 90 day hold policy
10 described in its original notice (*i.e.*, “Notice and Go”) without discussion of the
11 other alternatives.
12

13 **Q. DID THIS RESOLVE THE ISSUE IN THE MINNESOTA**
14 **ARBITRATION?**

15 A. No. Rather than offer Eschelon this same 90 day held order alternative in its
16 arbitration in Minnesota, Qwest insisted that in the arbitration the 90 day held
17 order policy must be tied to another provision allowing Qwest to automatically
18 cancel Eschelon’s order if Qwest determined that “copper is not in the ground.”
19 In other words, if Qwest unilaterally determines that copper is not currently “in
20 the ground” (however Qwest is using that term) it appears Qwest would not even

⁸² Exhibit MS-2 (Eschelon June 7th, 2006 Response to Qwest Product and Process Notice: PROD.06.01.06.F.03974.Held_Order_30_to_90_Day), p. 1.

⁸³ See Exhibit BJJ-2 (Delayed Order Chronology) at p. 9 (6/29/06) (emphasis added). This might as well “because that is all that is required.”

1 leave Eschelon's order in a "held" status pending the availability of future
2 facilities for 90 days, but would, instead, cancel that order outright. Nowhere is
3 this "in the ground" language found in the SGAT or other ICAs.

4

5 **Q. IS QWEST'S PROPOSAL IN MINNESOTA WITH RESPECT TO**
6 **INSERTION OF ITS NEW "IN THE GROUND" LANGUAGE IN THE**
7 **ICA CONSISTENT WITH QWEST'S POSITION ON CMP?**

8 A. No. In its Response to Eschelon's Arbitration Petition in Minnesota, Qwest said
9 that it would agree to Eschelon's 90 day held order policy if the delayed order
10 issue "...is fully considered and adopted through the CMP." When Qwest
11 announced its change through CMP, Eschelon suggested doing that very thing –
12 fully considering the issue in CMP by sharing all four options and opening up the
13 issue for discussion with multiple CLECs. Instead, Qwest implemented its one-
14 dimensional notice without regard for Eschelon's comment. Therefore, there was
15 no full consideration of the issue. Once Qwest wanted a change, it took Qwest 43
16 days to implement it in CMP.

17 Even more significant, Qwest *did not include* in its CMP notice its new,
18 later proposal to Eschelon in Minnesota to change the long standing language
19 relating to "unavailability" of facilities (which is part of its current practice as still
20 reflected in its current PCAT) to Qwest's new "in the ground" ICA language. In
21 other words, interestingly, the only change that Qwest put through CMP, to
22 support its arbitration position that CMP is where the issue belongs, is the issue of

1 30 versus 90 days. This is a CLEC friendly position and got no real opposition,
2 other than Eschelon's comment. In contrast, *after* Qwest submitted the 90-day
3 issue to CMP, Qwest provided its brand new proposal in Minnesota to change
4 "available" to "in the ground" in Section 9.2.2.3.2 in the ICA negotiations,
5 without any CMP activity. This shows Qwest is willing to accept ICA language
6 that is not "uniform," even though an issue affects multiple CLECs, when the
7 non-uniform provision benefits Qwest. Qwest should not be able to pick and
8 choose when an issue belongs in ICA or CMP in this results-oriented manner.

9 If Qwest's claims about the mutual development of processes and the
10 value of CMP for CLECs were meaningful, Qwest would have not only included
11 the new language altering the availability terminology in its notice but also
12 explained its proposal and opened it up for discussion. After all, Qwest states
13 repeatedly throughout its position statements that the purpose of CMP is to
14 "ensure that the industry (and not just Qwest or one CLEC) is involved in creating
15 and approving processes so that processes are uniform among CLECs." That
16 concept works great for Qwest when using CMP as a shield against ICA changes,
17 but it is less handy for Qwest when it slows down something that Qwest wants to
18 get done quickly before regulators take a hard look at it. Introducing the entirely
19 new "in the ground" language through CMP would have risked CLEC objections,
20 potentially slowing down Qwest's desired implementation. So, Qwest just
21 skipped the CMP route for the "in the ground" proposal and went directly to ICA
22 negotiations – something it opposes for CLECs.

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iii. CRUNEC EXAMPLE

Q. PLEASE DESCRIBE THE CRUNEC EXAMPLE RELATING TO SPECIAL CONSTRUCTION CHARGES.

A. The third example involves a change that Qwest implemented through CMP relating to special construction charges, which Qwest calls “CLEC Requested UNE Construction” or “CRUNEC.” Generally, special construction is not required to provide UNEs except in those situations when other alternatives have been exhausted and no facilities are available to provide the requested service. The other alternatives that Qwest must perform before indicating there are no facilities include work that has been referred to as “Incremental Facility Work.” For example, Section 9.1.2.1.2 of the Washington SGAT provides: “If cable capacity is available, Qwest will complete incremental facility work (*i.e.*, conditioning, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.”

If, after exploring all alternatives including “Incremental Facility Work,” facilities are still not available, these are “no-build situations.” No-build situations exist when Qwest will not build for CLECs because it would likewise not build for itself for the normal charges assessed to its Customers. However, for

1 “special” additional charges associated with the cost of building facilities, Qwest
2 will build facilities when the CLEC submits an application and agrees to pay
3 those higher charges through the process that Qwest calls “CRUNEC.” Eschelon
4 does not use the relatively time-consuming and expensive special construction, or
5 CRUNEC, process. Qwest sends a substantial number of email notifications
6 about a wide variety of issues and products (some of which, like CRUNEC,
7 Eschelon generally does not order). Eschelon has to sift through the Qwest
8 notifications for those impacting its business and has little reason to review those
9 relating to CRUNEC.

10 On April 30, 2003, Qwest sent to all participating CLECs a Level 3
11 (“notice and go”) CMP notification, indicating an effective date of June 16, 2003
12 for a one-word change to its PCAT. The notice said:

13 Qwest is modifying/changing the existing manual process by
14 removing conditioning as a limiting factor of the CRUNEC
15 [“CLEC Requested UNE Construction”] process as it relates to
16 DS1 Capable Loops when facilities are not available.⁸⁴
17

18 Specifically, via this email notification, Qwest revised the PCAT dealing with
19 special construction for UNEs so as to remove the word “conditioning” from the
20 definition of “Incremental Facility Work” as follows:

21 Incremental Facility Work: Completing facilities to an end-user’s
22 premises (e.g., ~~Conditioning~~, pPlace a drop, add a Network
23 Interface Device (NID), Central Office (CO) tie pairs, field cross-

⁸⁴ PROS.04.30.03.F .011071.CRUNEC. For further details, see Exhibits BJJ-9 and BJJ-10 to the Testimony of Ms. Johnson.

1 connect jumpers, or card in existing Subscriber Loop Carrier
2 systems at the CO and Remote Terminal).⁸⁵
3

4 On May 13, 2003, Covad objected to Qwest's revision, expressing concerns as to
5 how this relatively minor-looking change might be implemented by Qwest in
6 undertaking conditioning activities used by Covad on a regular basis. Covad
7 indicated its concerns were rooted in the fact that the section of the PCAT from
8 which the word "conditioning" was being removed was a list of activities Qwest
9 would undertake *without* the need for the special construction (CRUNEC) process
10 – *i.e.*, activities Qwest would perform in the normal course of providing UNEs *at*
11 *no additional charge*.⁸⁶ Therefore, the likely impact of Qwest's change would be
12 to require additional costly special construction (CRUNEC) charges for
13 conditioning activities in situations in which CRUNEC-related charges were not
14 required before (*i.e.*, previously, Qwest had conditioned loops in the normal
15 course of provisioning without additional charge).

16 On May 21, 2003, Qwest "respectfully declined" Covad's comments.
17 Instead of answering Covad's concern, Qwest's response to Covad in its entirety
18 said:

19 Removal of the word "conditioning" from the PCAT language
20 allows the CLEC to use CRUNEC for the build process of
21 products where before they could not. Current products that have
22 conditioning at no charge will not be affected. Qwest respectfully
23 declines this comment.⁸⁷

⁸⁵ http://www.qwest.com/wholesale/downloads/2003/030430/PCAT_CRUNEC_V4_1.doc

⁸⁶ http://www.qwest.com/wholesale/downloads/2003/030521/CNL3_response_CRUNEC_V4.doc

⁸⁷ http://www.qwest.com/wholesale/downloads/2003/030521/CNL3_response_CRUNEC_V4.doc

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Qwest’s proposed change went into effect, as Qwest planned, on April 30, 2003, with no delay as a result of Covad’s expressed concerns. As indicated below, only later did Eschelon and other CLECs learn that, by extending the so-called opportunity to CLECs “to use CRUNEC for the build process of products where before they could not,” Qwest was, through its CMP email notification, actually requiring CLECs to pay special construction charges (*i.e.*, “use CRUNEC”) in situations when before they paid no additional charges pursuant to their interconnection agreements.

Q. DID QWEST’S CHANGE CAUSE UNEXPECTED PROBLEMS FOR ESCHELON AND ITS END USER CUSTOMERS?

A. Yes, though at first it was unclear that Qwest’s CMP notice was the cause of the problem. There was no apparent reason to associate the two events. As I said earlier, Eschelon did not use the special construction (CRUNEC) process, so it did not expect changes in that process to affect its business. Almost immediately after the effective date of Qwest’s unilateral email notification, however, Eschelon began experiencing a dramatic spike in the number of held orders relative to DS1 loops ordered from Qwest. Early on, Echelon reported receiving more than *four times* the number of these held order notices in 25 days than it had

1 received in the previous 170 days.⁸⁸ When an order goes “held,” it is delayed, so
2 the End User Customer does not receive service on the expected due date or, if
3 cancelled, not at all. Therefore, inappropriate held orders are a serious
4 competitive issue.

5
6 **Q. DID ESCHELON IMMEDIATELY NOTIFY QWEST WHEN IT**
7 **NOTICED THAT THE NUMBER OF DS1 HELD ORDERS HAD SPIKED?**

8 A Yes. Eschelon queried Qwest as to the substantial increase in held orders via
9 several emails, such as those attached to Ms. Johnson’s testimony. Qwest
10 responded that the increase was likely due to the CMP change identified above,
11 and admitted that the effect of its CMP notice was to implement a new Qwest
12 policy related to “charging” for certain activities for which it had assessed no
13 charges in the past. Qwest said:

14 Qwest has in the past not fully enforced our contractual right to
15 collect on the charges incurred when completing DS1 level
16 unbundled services. Charging is the specific change that has
17 occurred.⁸⁹
18

19 Rates and the application of rates are outside the scope of Qwest’s CMP process.
20 Although Eschelon and Qwest disagree about what all this means and how Qwest
21 implements it, Qwest admits that “discussion around rates associated with an

⁸⁸ Eschelon’s Comments Regarding Staff Second Report, ACC Docket No. T-00000A-97-0238 (July 18, 2003), p. 5.

⁸⁹ Qwest (Teresa Taylor) email to Eschelon (July 3, 2003).

1 Interconnection Agreement are outside the scope of the CMP process.”⁹⁰ In
2 addition, Qwest has acknowledged that, in the meetings in which CMP
3 procedures were developed (known as CMP “Re-Design”), “it was agreed that
4 discussions on rate change were not in the scope of CMP.”⁹¹ Nonetheless,
5 through its email notification, Qwest had revised the PCAT, via CMP, so that it
6 could “enforce [its] contractual rights” to assess charges by requiring use of
7 Qwest’s CRUNEC process that it had not, in the past, assessed. I find it
8 interesting here that Qwest used its CMP notice to enforce “contractual” rights
9 that can only be interpreted as referring to an ICA (that is the primary contract
10 dictating terms between Qwest and CLECs). In other words, even though the
11 ICA is meant to govern when there are conflicts between an ICA and a CMP
12 notice, Qwest purposefully used a CMP notice to implement a change in policy
13 related to interpreting its ICAs.

14 Perhaps more importantly, however, is the fact that Qwest’s use of CMP
15 held up Eschelon’s DS1 End User Customers relative to their normally-scheduled
16 due dates. The orders went on hold, even though the ICA under which Eschelon
17 and Qwest were operating had not changed (nor had the SGAT, quoted above).

18 As leverage to obtain those higher charges, Qwest refused to provide facilities

⁹⁰ See Exhibit BJJ-3 (Expedite Chronology, quoting Qwest’s response sent by email on November 7, 2005 (and dated November 4, 2005), to McLeod-Eschelon escalation. See

http://www.qwest.com/wholesale/downloads/2005/051104/Qwest_Response_to_Escalation_39_McLeodUSA.doc

⁹¹ See CMP Meeting Minutes (May 12, 2002); see <http://www.qwest.com/wholesale/downloads/2002/020614/ProductProcessCMPMeetingDistributionPackage06-19-02.pdf>

1 unless Eschelon and other CLECs requested special construction through
2 “CRUNEC.” The interval for a DS1 capable loop is five days in Washington.
3 Under Qwest’s “CRUNEC” process, there are 3-, 2-, 5-, and 30-day intervals for
4 various activities associated with obtaining a quote before construction even
5 begins.⁹² The interval to actually construct the facilities is unknown because the
6 interval is Individual Case Basis (“ICB”).⁹³ Even assuming a CLEC were willing
7 to pay the expensive CRUNEC charges, the impact on serving the Customer in a
8 timely fashion is unacceptable when the CRUNEC process should not be required
9 at all.

10 Before issuing its CMP notice, Qwest routinely performed “Incremental
11 Facility Work” using UNE intervals and at no additional charge. This shows that
12 Qwest had the capability to make facilities available in this way but had, through
13 its “notice,” simply chosen not to. Qwest’s one-word CMP notice was just a
14 means by which Qwest implemented a rate hike – using CMP as the vehicle to do
15 so and causing End User Customer delays for Eschelon’s Customers in the
16 process.

17

18 **Q. WERE COVAD AND ESCHELON THE ONLY CLECS TO OBJECT?**

⁹² See <http://www.qwest.com/wholesale/clecs/crunec.html>

⁹³ See *id.*

1 A. No. Twelve CLECs were active in CMP, and all twelve joined in escalating
2 Qwest's conduct in CMP.⁹⁴ Qwest implemented the change in its notice in CMP
3 over the strenuous objection of all of these active CLEC CMP participants.
4 CLECs then had to complain to the Arizona commission, which still had an open
5 271 proceeding at the time.

6

7 **Q. DID THE ARIZONA COMMISSION AGREE WITH ESCHELON?**

8 A. Yes. In a September 16, 2003 Order in the 271 Docket, Docket No. T-00000A-
9 97-0238 (Decision No. 66242), the Arizona commission agreed with its Staff's
10 position, as outlined in a Staff report, that Qwest should suspend its new policy
11 and not change rates in this manner, in the context of CMP. Specifically, the
12 Commission said:

13 109. Staff agrees with Eschelon with respect to the recently
14 imposed construction charges on CLECs for line conditioning.
15 Staff is extremely concerned that Qwest would implement such a
16 significant change through its CMP process without prior
17 Commission approval. As noted by AT&T, during the Section 271
18 proceeding, the issue of conditioning charges was a contested
19 issue. Language was painstakingly worked out in the Qwest SGAT
20 dealing with the issue of line conditioning which Qwest's new
21 policy is at odds with. Staff recommends that Qwest be ordered to
22 immediately suspend its policy of assessing construction charges
23 on CLECs for line conditioning and reconditioning and
24 immediately provide refunds to any CLECs relating to these
25 unauthorized charges. Qwest should reinstitute its prior policy on

⁹⁴ On August 15, 2003, Allegiance, AT&T, Cbeyond, Contact Communications, Covad, Eschelon, MCI, McLeod USA, MTI, Tel-West, Time Warner Telecom, and U S Link proposed a resolution (the "12-CLEC Proposal"), to be discussed on the August 15th ad hoc CMP conference call, with respect to the CMP process, CRUNEC and CMP notices PROS.04.30.03.F.01071.CRUNEC_V4.0, PROS.05.21.03.F.01089.FNL_CRUNEC, PROD.07.11.03.F.03468.UNECRUNEC_V5.0, and PROD.08.06.03.F.03494.DelayedResponseCRUNEC.

1 these issues as reflected in its current SGAT. If Qwest desires to
2 implement this change, then it should notify the Commission in
3 Phase III of the Cost Docket, but must obtain Commission
4 approval of such a change prior to its implementation. To the
5 extent Qwest does not agree to these conditions, Staff recommends
6 that Qwest's compliance with Checklist Items 2 and 4 be reopened.
7 We agree with Staff.
8

9 **Q. SINCE THE TIME OF THIS EXAMPLE, HAS THE FCC CONFIRMED**
10 **THAT QWEST MUST PERFORM THIS TYPE OF INCREMENTAL**
11 **FACILITY WORK FOR ESCHELON AND OTHER CLECS?**

12 A. Yes. In its *Triennial Review Order* (“TRO”), the FCC confirmed that Qwest (and
13 other ILECs) must make “routine network modifications” on behalf of CLECs
14 ordering UNEs, under the same terms and conditions by which they undertake
15 those same types of modifications for themselves and their own retail customers.⁹⁵
16 In other words, only if Qwest forces its own Customers into a time-consuming
17 and expensive construction process to build new facilities in the same
18 circumstances (which it does not), would the same treatment for CLECs be
19 justified. Therefore, Qwest’s initial observation that it was not “fully enforcing”
20 its rights to hold orders and apply charges for these types of “conditioning”
21 activities⁹⁶ was mistaken from the outset – an issue Eschelon would almost

⁹⁵ Report and Order and Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003), *vacated in part and remanded*, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004) (“TRO”) at ¶¶ 630-648.

⁹⁶ Qwest (Teresa Taylor) email to Eschelon (July 3, 2003).

1 certainly have raised if Qwest had been required to address the issue with
2 Eschelon via negotiations or a contract amendment.

3

4 **Q. WHAT SHOULD THE COMMISSION TAKE AWAY FROM THIS**
5 **EXAMPLE WITH RESPECT TO ADOPTION OF ICA LANGUAGE?**

6 A. Qwest, through its CMP notice described above, knew it was changing the
7 manner in which it processed and assessed charges related to CLEC orders. It is
8 clear that the process Qwest wanted to implement (*i.e.*, assessing additional
9 charges for conditioning) was inconsistent with the current language in its PCAT
10 – language that needed to be changed in order to square with Qwest’s intentions.
11 Because that language was in the PCAT, and not specified in an ICA to the level
12 of detail demanded by Qwest, Qwest was able to implement that change
13 unilaterally and over the objection of its multiple CLECs. This change
14 substantially undermined Eschelon’s existing business processes and caused real-
15 world orders to fail and Eschelon End User Customers to be delayed or go
16 without service. If contract language in an ICA had governed this issue in more
17 detail, Qwest could not so easily, or independently, have changed its policy (or its
18 “contractual rights”) regarding this issue. Qwest would have had to offer the
19 change in language to Eschelon, explain its intentions, and negotiate or arbitrate
20 an amendment with Eschelon. Had Qwest been required to follow this approach,
21 Eschelon’s End User Customers would not have been held up and the dramatic

1 spike in Eschelon's "held orders" (each one representing an Eschelon End User
2 Customer whose service is delayed) could have been avoided.

3 Instead, Eschelon and other CLECs had to rush to a state commission in a
4 crisis mode, while End User Customers were being negatively affected, and
5 request speedy relief. Fortunately, Arizona happened to have an open 271
6 proceeding in which comments were soon due. The alternative today, without
7 271 proceedings, would be for each objecting CLEC to incur the expense of filing
8 one or more complaints before the state commissions, under the CMP or ICA
9 dispute resolution provisions (or both), asking the commissions for expedited
10 relief. Inclusion of specific ICA language in the contract on open issues as a
11 result of this arbitration will help avoid disputes and these kinds of crisis
12 situations that require expedited action from the Commission.

13
14 **iv. SECRET TRRO PCATS EXAMPLE**
15

16 **Q. WHY DO YOU REFER TO THE FOURTH EXAMPLE AS THE "SECRET**
17 **TRRO PCATS" EXAMPLE?**

18 A. After the FCC issued its *TRO*, Qwest developed a PCAT document intended to
19 implement terms of the *TRO* in a fashion Qwest claimed to be most consistent
20 with its newly-defined obligations relating to UNEs. Qwest attempted to force
21 CLECs to execute amendments reflecting Qwest's interpretation of its post-
22 *TRO/TRRO* obligations (when read in conjunction with its TRRO PCAT)

1 without allowing CLECs the ability to review the PCAT documents in which
2 Qwest placed operative language regarding Qwest's interpretation. Qwest
3 password protected the PCAT changes and initially refused to provide the
4 password until after a CLEC signed Qwest's TRRO amendment, so the CLEC
5 would learn the full effect of those amendment terms only after signing it.
6

7 **Q. PLEASE ELABORATE ON THE "SECRET TRRO PCATS" EXAMPLE.**

8 A. On October 27, 2004, Qwest issued a change request entitled, "FCC Triennial
9 Review Order CC 01-338 (TRO), U.S. Court of Appeals for the DC Circuit
10 decision (USTA II) Decision No. 00-1012, and FCC Interim Rules Compliance:
11 Certain Unbundled Network Elements (UNE) Product Discontinuance."⁹⁷ A
12 chronology of events relating to this Change Request is attached to the testimony
13 of Ms. Johnson.⁹⁸

14 Qwest's Change Request dealt with the availability of UNEs pursuant to
15 Qwest's interpretation of the *TRO*, USTA II Decision, and the FCC's Interim
16 Order. This notice said it was to inform CLECs that whatever UNEs Qwest
17 claimed were "declassified" pursuant to these rulings would no longer be
18 available through the PCAT or for CLECs without an ICA. Qwest indicated that
19 there would be no transition for these changes and that the impacts of this notice

⁹⁷ Change Request No. SCR102704-1RG. Qwest originally filed this Change Request as a "systems" Change Request, but later changed that designation to a "product/process" Change Request.

⁹⁸ See Exhibit BJJ-7.

1 would be retroactive.⁹⁹ On November 8, 2004, Covad escalated the issue in
2 CMP, asking Qwest to withdraw the TRO/USTA II Change Request.¹⁰⁰ Covad
3 objected on numerous grounds, including: (i) it was premature for Qwest to make
4 these determinations about UNE availability since there were pending
5 proceedings before the FCC and state commissions dealing with these exact
6 issues; (ii) it was inappropriate for Qwest to implement its legal rights and
7 obligations through CMP instead of ICAs; (iii) Qwest's interpretation of the
8 FCC's rules and court orders was incorrect; (iv) and Qwest did not follow the
9 proper steps for issuing a regulatory Change Request.¹⁰¹ Eschelon joined
10 Covad's escalation in November 2004. Importantly, in its binding response to
11 Covad's escalation, Qwest on November 16, 2004, stated that the "Change
12 Request is not superseding the language in the CLEC ICA" and that because "this
13 is a change to limit the availability of certain products only, Qwest believes this is
14 a Level 4 change and belongs in CMP."¹⁰² Eschelon and CLECs continued to
15 raise concerns about Qwest's Change Request in CMP monthly meetings and
16 oversight committee meetings, stating that changes that affect UNE availability
17 should be addressed in negotiation/arbitration and not in CMP.¹⁰³

⁹⁹ Note that when the FCC's TRRO came out, it included very specific transition timeframes for UNEs that are declassified.

¹⁰⁰ Covad Escalation No. PC102704-1E32.

¹⁰¹ *See id.*

¹⁰² *See* Exhibit BJJ-7 (11/16/04 Qwest binding response to Covad). Qwest's entire response to Covad's escalation is provided in Exhibit BJJ-7.

¹⁰³ *See* Exhibit BJJ-7 (11/17/04 CMP November monthly meeting - Eschelon stated that "this should not be discussed in CMP. We do not discuss legal interpretation in CMP. This should be done in a

1 On January 7, 2005, Qwest refused to withdraw the TRO/USTA II PCAT.
2 When the permanent rules were released in the *TRRO*,¹⁰⁴ it was evident that
3 Qwest's interpretation of its obligations set out in its premature PCATs did not
4 comport with the permanent rules. Qwest indicated that it would withdraw its
5 previous PCATs that were inconsistent with the permanent rules and "*would*
6 *notify via the same Change Request.*"¹⁰⁵ Although CLECs requested ICA
7 negotiations rather than use of CMP, Qwest at least indicated it would do one or
8 the other. At a June 30, 2005 CMP ad hoc meeting, Qwest then indicated that it
9 would negotiate ICAs with CLECs and that "no TRO/TRRO changes to its
10 products and processes will be made across the board until such language is
11 final."

different forum." At the same CMP meeting, Covad stated, "this is an ICA negotiation discussion." TelWest said "It should be arbitrated and not unilaterally implemented by Qwest.); *see also id.* (1/4/05 CMP Oversight Committee Meeting - Eschelon indicated that "if Qwest will limit product availability in its existing ICA, Qwest would need to notify Eschelon through the change in law provisions of its contract and not through a PCAT CMP notice." Bill Campbell from Qwest agreed.); *see also id.* (1/10/05 CMP Oversight Committee meeting - Eschelon expressed concern about dealing with these issues in CMP: "Bonnie Johnson said that product availability is based on the ICA and even though Qwest notices about product availability, CLECs can't get the products without an agreement including the product." Also "Liz Balvin [Covad] and Bonnie Johnson stated that the Change Request should not have defaulted to CMP as it was not the appropriate approach and the importance of keeping the CMP guidelines in tact." Covad, Eschelon AT&T, TDS/Metrocom and MCI all recommended that the Change Request be deferred until permanent rules are issued.)

¹⁰⁴ Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, FCC 04-290 (rel. February 4, 2005) ("TRRO").

¹⁰⁵ *See* Exhibit BJJ-7 (2/16/05 CMP February monthly meeting minutes).

1 **Q. DID QWEST GO FORWARD WITH EITHER THE CMP APPROACH OR**
2 **ICA NEGOTIATIONS FOR IMPLEMENTING ITS TRRO PCAT**
3 **CHANGES?**

4 A. No. Qwest made matters even worse. Qwest initially told CLECs in CMP
5 meetings that Qwest will negotiate the TRRO changes with CLECs and will not
6 update the PCATs until language is finalized and PCAT changes are brought
7 through CMP.¹⁰⁶ However, on September 12, 2005, Qwest issued a wholesale
8 notification, entitled “Triennial Review Remand Order (TRRO) Products &
9 Services.”¹⁰⁷ Contrary to Qwest’s statements in CMP, this notification was not a
10 CMP notice, which means that it did not go through CMP and there was no
11 opportunity for CLEC comment, input, or other participation. Qwest made this
12 non-CMP notice effective three weeks after the issuance date – even quicker than
13 the “notice and go” notifications Qwest issues through CMP. But Qwest’s non-
14 CMP notice¹⁰⁸ was even more egregious: *Qwest posted its proposed TRO/TRRO-*
15 *related documents on a password protected website, and refused to provide*
16 *CLECs with the necessary username/password to access the documents until*
17 *after the CLEC executed the TRO/TRRO amendments.*¹⁰⁹ This is the secrecy
18 referred to in “Secret” PCAT.¹¹⁰

¹⁰⁶ Exhibit BJJ-7 (Meeting Minutes from 6/30/05 AdHoc CMP meeting).

¹⁰⁷ Product Notice Document No. PROS.09.12.05.F.03236.TRRO_Login_Product_Page

¹⁰⁸ See Exhibit BJJ-7 (1/18/06 CMP monthly meetings - Jill Martain (Qwest) stated that the TRRO notice “was separate and that it was a non-CMP notice.”)

¹⁰⁹ See Exhibit BJJ-7 (9/12/05 - Qwest’s non-CMP announcement stated: “When the CLEC receives a copy of their signed amendment Qwest will also include a letter that advises them how to access the

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Q. DID ESCHELON RAISE CONCERNS ABOUT THE SECRET PCAT?

A. Yes. On September 12, 2005, Eschelon requested a copy of the secret PCAT, and also raised concerns about Qwest’s intentions with respect to the non-CMP secret PCAT:

Does Qwest intend to try to take a similar approach, in which Qwest does not include terms in the ICA but then attempts to impose them through a PCAT (one that has not even been through CMP), after Eschelon has signed an Agreement?...the language described in the enclosed notice did not go through CMP...Qwest’s notice does not even allow for a comment period...This notice/conduct appears to be yet another reason to limit any reference to the PCAT in the ICA and deal with any terms that need to be negotiated in the ICA. The ICA controls; not the PCAT...If you want such terms with Eschelon, you need to propose them in negotiations and negotiate with us.¹¹¹

On September 29, 2005, Qwest announced that “[a]s a result of customer feedback” the password for the secret PCAT was being made available to CLECs, but that it would continue to be distributed outside of CMP and would remain password-protected or “secret.”¹¹² Qwest continues to issue additional secret

web site using an assigned USERID and Password to access the PCATs.” Qwest’s non-CMP notice included a similar “Note” that is included on CMP documentation stating that “in cases of conflict between the changes implemented through this notification and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement.”)

¹¹⁰ Password-protected PCATs are referred to as “Secret” PCATs to distinguish them from generally available PCATs accessible without a password distributed through Qwest’s notice process.

¹¹¹ See Exhibit BJJ-7 (9/12/05 – Eschelon email to Qwest)

¹¹² See Exhibit BJJ-7 (9/25/05 Qwest announcement)

1 PCATs.¹¹³ Additional users that want to review secret PCATs have to obtain the
2 password before being able to do so.

3
4 **Q. DID QWEST EVER OFFER ANY REASON FOR ISSUING THE SECRET**
5 **PCAT AS A NON-CMP NOTICE?**

6 A. Amazingly, Qwest claimed that there was agreement among Qwest and CLECs in
7 CMP that Qwest could issue them as non-CMP notices unaccompanied by any
8 ICA negotiations, SGAT review, or any other method for CLEC input and
9 participation and/or Commission oversight. Qwest ignores that CLECs said the
10 proper alternative to CMP was to handle TRRO changes in law through
11 negotiations that, if unsuccessful, would be decided by state commissions in ICA
12 arbitrations. Qwest also ignores its own statements afterward that it would pursue
13 its Change Request in CMP and to bring PCAT changes through CMP. Qwest
14 claims that CLEC opposition to addressing these issues in CMP rather than ICA
15 negotiations can somehow be construed as CLEC consent for Qwest to
16 unilaterally impose its TRRO view “outside the scope of CMP”¹¹⁴ with no
17 negotiation or arbitration. No reasonable interpretation of CLEC comments leads
18 to this result. For example, TelWest specifically said in CMP that the issues
19 “should be arbitrated *and not unilaterally implemented by Qwest.*”¹¹⁵ Qwest’s

¹¹³ See, e.g., Exhibit BJJ-7 (7/21/06 non-CMP Product notice document number PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1)

¹¹⁴ See Exhibit BJJ-7 (3/29/06 – Qwest service management email to Eschelon)

¹¹⁵ See Exhibit BJJ-7 (11/17/04 CMP November monthly meeting minutes)

1 claim now that CLECs' position on ICA negotiations meant that Qwest can
2 unilaterally implement the TRRO PCATs flies in the face of such clear statements
3 to the contrary.
4

5 **Q. BRIEFLY, WHY SHOULDN'T QWEST IMPLEMENT TRRO PCATS**
6 **UNILATERALLY?**

7 A. Aside from the fact that Qwest agreed to negotiate these issues before making
8 TRRO changes across the board and said it would at least bring TRRO PCATs
9 through CMP,¹¹⁶ the law and current interconnection agreements require Qwest to
10 negotiate changes of law (such as TRRO) through interconnection agreement
11 negotiation and arbitration.

12 While Qwest may argue that it has unilateral control over provisioning of
13 elements that are no longer required to be unbundled, the transition away from
14 UNEs is subject to Section 252, including its provisions giving authority to the
15 Commission to decide these issues. In the Verizon arbitration in Washington, for
16 example, the ALJ found that "the Commission specifically provided that the
17 parties address through the Section 252 process the transition away from
18 provisioning elements on an unbundled basis that the FCC has determined are no
19 longer required to be unbundled."¹¹⁷

¹¹⁶ See Exhibit BJJ-7 (6/30/05 CMP ad hoc meeting minutes)

¹¹⁷ See Verizon WA ALJ Arbitration Order, ¶105, citing *TRO*, ¶¶ 700, 701; *TRRO*, ¶ 142 n.399, ¶ 198 n.524, ¶ 228 n.630, ¶ 233.

1 In any event, Qwest’s so-called “TRRO” PCATs are not limited to
2 provisioning of elements that are no longer required to be unbundled and address
3 or at least impact UNEs and other Section 251 services. Qwest recently issued
4 another non-CMP, secret PCAT notice about new Qwest terms for converting
5 UNEs to alternative or analogous services.¹¹⁸ This recent secret PCAT is
6 discussed in Issues 9-43 and 9-44 (conversions). Although Qwest refers to it as a
7 “TRRO” PCAT, it relates to collocation and contains terms that affect UNEs
8 (such as a freeze on ordering and changing UNEs for a time). Eschelon has
9 requested negotiation of these issues with Qwest and specifically asked for
10 participation of Qwest subject matter experts to facilitate the discussion. Qwest
11 has rejected Eschelon’s request indicating that this issue should be addressed in
12 CMP – despite the fact that Qwest did not issue a CMP notice on this change to
13 begin with, and has refused to address this issue in CMP. Information is sketchy,
14 but there appears to be significant problems (not the least of which is a freeze on
15 any new orders or moves, adds, changes in affected collocations for a time) with
16 Qwest’s new changes (for which the Qwest effective date has passed). These
17 issues should be negotiated and reflected in ICA language.

18
19 **Q. WHAT DOES QWEST’S INSISTENCE ON ACTING UNILATERALLY**
20 **SAY ABOUT ITS TRUE VIEW OF ICA NEGOTIATIONS AND CMP?**

¹¹⁸ See Exhibit BJJ-7 (7/21/06 - “TRRO-Reclassification of Terminations for Unbundled Network Element (UNE) Conversions – V1.0”).

1 A. When Qwest's objective was to defeat the pick-and-choose rule, as I mentioned
2 earlier, Qwest extolled the virtues of negotiated interconnection agreements and
3 the importance of "...*dynamic, innovative interconnection negotiations.*"¹¹⁹
4 Qwest recognized that: "ILECs and CLECs have a fundamental interest in
5 making the interconnection process as *cooperative and open* as possible, since
6 *both parties benefit* from well-negotiated and mutually beneficial wholesale
7 arrangements."¹²⁰ Qwest added that the "ability of carriers to negotiate binding
8 agreements with each other was a cornerstone of the Act."¹²¹ Similarly, regarding
9 CMP, Qwest in its position statements in the Disputed Issues Matrix time and
10 again asserts the benefits of ensuring that Qwest and multiple CLECs collectively
11 create processes, suggesting this is to the benefit of all.

12 Here, we have another situation in which multiple CLECs are entreating
13 Qwest to join each of them in that "cooperative and open" ICA negotiations
14 process to negotiate TRRO changes to obtain a mutual benefit. Previously,
15 Qwest at least said it would bring the TRRO PCATs through CMP, which in this
16 case it claims is the appropriate forum for "processes" and "procedures." Despite
17 the benefits that Qwest has, when convenient, extolled as to each of these
18 procedures, Qwest has refused to use either of them with respect to the TRRO
19 PCATs. Significant business issues, that may affect End User Customers and

¹¹⁹ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003 at page ii (emphasis added).

¹²⁰ *Id.*, pp. 3-4 (emphasis added).

¹²¹ *Id.*, p. 6.

1 impose resource burdens associated with implementation, require exchange of
2 information, discussion, and negotiation. But, Qwest has provided no forum for
3 this, despite significant passage of time and multiple requests from multiple
4 CLECs, including Eschelon. Instead, Qwest has operated in secret behind the
5 scenes to devise its own plan of implementing those changes in law, which it has
6 presented as a *fait accompli*.

7
8 **Q. WHAT INFORMATION CAN BE TAKEN FROM THE SECRET TRRO**
9 **PCATS EXAMPLE?**

10 A. This example, including the use of password-protected documentation to keep
11 terms secret until after agreements are signed, demonstrates a continuing need for
12 Commission oversight and involvement. While Qwest may have learned its
13 lesson with respect to this particular tactic, the possibilities available to Qwest in
14 unilaterally implementing terms and conditions consistent with its own policy
15 objectives seem endless.

16 This example also typifies my contention that Qwest has a tendency to use
17 CMP as a “shield” or “sword,” whichever benefits Qwest at that particular time.
18 Qwest imposed its unilateral view, in CMP, of the *TRO*, *USTA II*, and FCC’s
19 Interim Rules, which proved to be premature and a poor reflection of the
20 permanent rules that were ultimately established (*i.e.*, the sword). This was done
21 over the strong objection of CLECs, who disagreed with Qwest’s use of CMP to
22 implement changes in law as well as Qwest’s interpretation of those changes.

1 Then, after permanent rules are issued, Qwest sends a notice notifying CLECs
2 about new “secret” PCATs that are being established unilaterally outside the
3 scope of the CMP to define Qwest’s legal obligations (*i.e.*, the shield), without
4 any participation by CLECs, and without CLECs even being afforded the
5 opportunity to review the initial TRRO PCAT language before being asked to
6 execute the TRRO amendment.

7
8 **Q. IF ESCHELON DID NOT SIGN THE AMENDMENT RELYING ON THE**
9 **“SECRET PCAT,” WHY IS IT RELEVANT IN THIS ARBITRATION?**

10 A. Qwest in this arbitration attempts to relegate to CMP one-third of the issues
11 brought forward by Eschelon, purportedly because those issues have some
12 inherent relationship to the CMP process. Yet, Qwest’s own actions indicate that
13 it views CMP as a vehicle that can be used to suit Qwest’s purpose, and that any
14 inherent relationship between an issue and CMP appears to be defined solely by
15 Qwest’s decision to pursue the issue there or not. Qwest stated in CMP before it
16 issued the first secret PCAT that it would negotiate TRO/TRRO changes with
17 CLECs, yet Qwest has in its negotiations with Eschelon again punted these issues
18 back to CMP. Even worse, Qwest now takes the position that an “agreement”
19 exists between itself and CLECs not to act on those issues in CMP, so it has been
20 unwilling to address those issues in CMP. Its unwillingness is clearly
21 demonstrated by Qwest continuing to implement these PCAT changes through
22 non-CMP notices. If Qwest believed that CMP was the appropriate forum (which

1 presumably explains Qwest referring Eschelon back to CMP again), Qwest would
2 have issued its notice through CMP and followed the rules laid out for CMP. Yet.
3 Qwest chooses not to. Meanwhile, Qwest's secret TRRO PCATs continue to go
4 into effect, with no oversight.

5

6 **Q. ANY FINAL OBSERVATION FROM THESE EXAMPLES?**

7 A. Yes. Qwest may attempt to claim that these examples are isolated incidents that
8 may not occur again. In some respects, however, the significance of these
9 examples is that they occurred at all. If CMP was the disciplined process Qwest
10 claims it is, or if the line between ICA issues and CMP were as clear as Qwest
11 suggests, these examples would not have occurred at all. The examples
12 demonstrate, however, how much play there is in the process and how much room
13 Qwest has to maneuver – and the fact that Qwest has used that room to advantage
14 itself relative to its own policy positions. This shows that the potential for abuse
15 in the future (*i.e.*, during the new ICA term) is real. Qwest is still the dominant
16 competitor in the markets in which Eschelon competes, as well as Eschelon's
17 largest supplier. As such, safeguards are needed to protect against the capability
18 that Qwest has to wield CMP as a shield and sword. Section 252 affords these
19 safeguards through arbitrated interconnection agreement terms. Eschelon has
20 exercised its right to bring certain terms and conditions to the Commission for
21 review and to obtain a dispositive decision. By dispositive, I mean a decision that
22 meets Eschelon's business need for certainty to plan its business and remain

1 competitive and also helps avoid disputes in the future by providing clear terms
2 on important issues. Relegating those issues to CMP, rather than decide each
3 issue on the merits of the disputed contract language, would not meet that need.

4 As these examples show, participating in CMP can be much like playing
5 cards with a big brother. It's frustrating when, because he's bigger and has more
6 access to information, he makes up the rules of the game as he goes along.¹²²
7 Eschelon's ability to compete is at stake, while Qwest as the dominant carrier
8 holds the cards. Nonetheless, Congress has decided that it is the Commission
9 who should set the "rules" by establishing interconnection agreement terms and
10 conditions that must be filed, approved, and amended if changed.

11

12 **5. ESCHELON'S POSITION IS CONSISTENT WITH**
13 **SECTION 252 AND CMP SCOPE AND EACH ISSUE**
14 **REQUIRES DISPOSITIVE ICA LANGUAGE**
15

16 **Q. IS ESCHELON TRYING TO CIRCUMVENT CMP OR OTHERWISE**
17 **"END RUN" THE PROCESS ENVISIONED BY THIS COMMISSION OR**
18 **THE FCC IN ESTABLISHING CMP?**

19 A. No. Eschelon's position is fully consistent with the terms and procedures
20 developed by the Commission and the FCC during the 271 proceedings, as shown
21 by the above discussion of the hierarchy adopted as part of the Scope of CMP and

¹²² This is particularly apparent in the jeopardies example, which is discussed at greater length in the Testimony of Mr. Webber and Exhibit BJJ-6 to the Testimony of Ms. Johnson.

1 in the SGAT, and with terms and purposes of Section 252(i) and the all-or-
2 nothing rule, also described above.

3 Although CMP has weaknesses that become self-evident when describing
4 CMP procedures and providing examples of how Qwest has used CMP, the
5 Commission does not have to find that CMP is “bad” or “broken” to determine
6 any of the disputed issues in Eschelon’s favor. The Commission simply has to
7 recognize, as it did when approving the scope of CMP,¹²³ that interconnection
8 agreement terms may vary and, when issues warrant arbitration and inclusion of
9 language in the contract, the resulting publicly available terms govern. The issue
10 then becomes whether each arbitrated issue, on its own merits, warrants inclusion
11 in the contract, and if so, whether Eschelon’s or Qwest’s proposed language better
12 fits the bill. In the remainder of Eschelon’s direct testimony, Eschelon lays out
13 each open issue and the reasons why Eschelon’s position and proposed contract
14 language on each issue should be adopted on the merits, starting with Issue No. 1-
15 1 and moving through the Issues by Subject Matter List.
16

¹²³ The Scope of CMP is Section 1.0 of Exhibit G to several ICAs approved by this Commission, including the Qwest-AT&T ICA. The Commission also allowed the SGAT to go into effect, including Exhibit G containing this provision.

1
2 **III. SUBJECT MATTER NO. 1. INTERVAL CHANGES AND PLACEMENT**
3

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

7 **Q. PLEASE DESCRIBE THE BUSINESS REASON REGARDING INTERVAL**
8 **CHANGES AND PLACEMENT (ISSUE 1-1 AND (A)-(E)).**

9 A. Provisioning intervals are critical to Eschelon's ability to provide timely service
10 to its End User Customers on the date they expect service. These provisioning
11 intervals dictate the timing of service delivery to the End User Customer, as well
12 as timing of the activities that the CLEC must perform in preparation for service
13 provisioning. When provisioning intervals are lengthened, the End User
14 Customer is forced to wait longer to receive service, and Eschelon is forced to
15 incur costs and dedicate personnel to adjust its internal systems and processes to
16 the longer interval. Shortened intervals, on the other hand, often benefit
17 Customers by allowing them to receive service more quickly, yet allow the CLEC
18 to keep the longer interval to the point necessary to effect necessary internal
19 adjustments.

20 The Interval Changes issues (Issue 1-1 and (a)-(e)) will determine whether
21 provisioning intervals for the products that Eschelon purchases from Qwest will
22 reside in the ICA and require negotiation and Commission approval for critical

1 changes, as proposed by Eschelon, or whether, as proposed by Qwest, the ICA
2 will point to non-contractual sources (such as CMP/PCAT/SIG) for provisioning
3 intervals that can be unilaterally changed by Qwest.

4 There are established intervals in place today for Qwest products. CLECs
5 who have built systems and products to support these intervals, and Customers
6 who depend on those intervals to receive service, have come to rely on these
7 established intervals. Inclusion of intervals in the ICA is the logical way to
8 ensure End User Customers and their providers such as Eschelon an orderly and
9 reliable provisioning process. In contrast, relegating these provisioning intervals
10 to non-contractual sources, as proposed by Qwest, would require no binding
11 commitment on the part of Qwest to continue to provision service within the
12 existing intervals. Non-contractual interval sources would not allow Eschelon to
13 rely on future provisioning intervals for its business planning because its ability to
14 timely deliver services could change radically at Qwest's will.

15 It is important to note that Eschelon is not asking for different intervals in
16 this arbitration than what Qwest already provides. Eschelon is only seeking
17 stability, unless and until the interval is changed through an orderly process.
18 Qwest's resistance to including currently-existing intervals in the contract signals
19 that Qwest will, indeed, change those intervals if and when it sees fit, regardless
20 of the negative effects on Eschelon and its End User Customers.

21

22 **Q. WHAT IS ESCHELON'S PROPOSAL ON ISSUE 1-1?**

1 A. Eschelon proposes alternative ICA language modifications (Eschelon proposed
2 language shown in underline) for Issue 1-1.¹²⁴ The first option would: (i) include
3 provisioning intervals in Exhibit C to the ICA; (ii) require ICA Amendment and
4 Commission approval to lengthen provisioning intervals; and (iii) allow
5 shortening of intervals to be implemented through CMP. Eschelon's second
6 option for Issue 1-1 also includes provisioning intervals in Exhibit C but provides
7 that ICA Amendment and Commission approval would be needed for all interval
8 changes, not just when intervals are lengthened.

9
10 **Issue 1-1 (1st of 2 options)**

11
12 1.7.2 If the Commission orders, or Qwest chooses to offer and
13 CLEC desires to accept, intervals longer than those set
14 forth in this Agreement, including Exhibit C, the Parties
15 shall amend this Agreement under one (1) of the two (2)
16 options set forth in Section 1.7.1 (an interval Advice
17 Adoption Letter or interval interim Advice Adoption Letter
18 terminating with approval of negotiated Amendment)
19 pertaining to the new interval (rather than new product) (or
20 as otherwise ordered by the Commission). The forms of
21 such letters are attached hereto as Exhibits N -O).

22
23 1.7.2.1 Notwithstanding any other provision in this
24 Agreement, the intervals in Exhibit C may be
25 shortened pursuant to the Change Management
26 Process (CMP) without requiring the execution or
27 filing of any amendment to this Agreement.

28
29 **Issue 1-1 (2nd of 2 options)**

30

¹²⁴ Throughout this testimony, Eschelon-proposed language to which Qwest disagrees is shown in underline text.

1 1.7.2 If the Commission orders, or Qwest chooses to offer and
2 CLEC desires to accept intervals different from those set
3 forth in this Agreement, including Exhibit C, the Parties
4 shall amend this Agreement under one (1) of the two (2)
5 options set forth in Section 1.7.1 (an interval Advice
6 Adoption Letter or interval interim Advice Adoption Letter
7 terminating with approval of negotiated Amendment)
8 pertaining to the new interval (rather than new product) (or
9 as otherwise ordered by the Commission). The forms of
10 such letters are attached hereto as Exhibits N -O).
11

12 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 1-1(A) THROUGH**
13 **(E)?**

14 A. In Issues 1-1(a) through (e), Eschelon addresses the same issues as 1-1 (*i.e.*,
15 intervals should be in the ICA and changed through amendment and Commission
16 approval) in the appropriate ICA sections regarding specific products Eschelon
17 may purchase from Qwest pursuant to the ICA. Issue 1-1(a) applies to
18 interconnection trunk intervals; 1-1(b) applies to UDIT rearrangement intervals;
19 1-1(c) applies to Local Interconnection Services (LIS) Trunking intervals; 1-1(d)
20 applies to Individual Case Basis intervals; and 1-1(e) applies to LMC (Loop-Mux
21 Combinations) intervals.

22
23 **Issue 1-1(a)**

24 7.4.7 Intervals for the provision of Interconnection trunks will
25 conform to the performance objectives set forth in Section
26 20. Intervals are set forth in Exhibit C. Any changes to the
27 Interconnection trunk intervals will be made as described in
28 Section 1.7.2 Operational processes within Qwest work
29 centers are discussed as part of the CMP. Qwest agrees that
30 CLEC shall not be held to the requirements of the PCAT.

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Issue 1-1(b): [Eschelon proposes to omit Qwest's proposed footnote regarding UDIT rearrangements from Exhibit C, and include intervals in Exhibit C].

Issue 1-1(c): [Eschelon proposes to include the LIS Trunking intervals in Exhibit C].

Issue 1-1(d)

3.1.1 For the following products and services, for which the interval is ICB, Qwest shall provide the ICB due date interval to CLEC as follows:

3.1.1.1 No later than seventy-two (72) hours after the application date for:

- a) 25 or more 2/4 wire analog loops;
- b) 25 or more 2-wire non-loaded loops;
- c) 25 or more 4-wire non-loaded loops;
- d) 25 or more xDSL-I capable loops;
- e) 9 or more conditioned loops for 2/4 wire non-loaded, ADSL compatible, xDSL-I, ISDN; and
- f) 25 or more lines Quick Loop and Quick Loop with LNP.

3.1.1.2 No later than one-hundred and ninety two (192) hours after the application date for:

- a) 25 or more DS0 UDITs;
- b) 25 or more DS0 EEL/Loop Mux;
- c) 4 or more DS3 UDITs; and
- d) 4 or more DS3 EEL/Loop Mux

Issue 1-1(e)

9.23.9.4.3 Standard sService intervals for LMC(s) are set forth in Exhibit C. For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can

1 separately agree to Due Dates other than the interval.
2

3 **Q. WHAT IS QWEST'S PROPOSAL ON ISSUE 1-1 AND (A)-(E)?**

4 A. Qwest proposes the following language for these issues:

5 **Issue 1-1**

6 **1.7.2** Notwithstanding any other provision in this agreement, the
7 attached Exhibit C will be modified pursuant to the CMP
8 process without requiring the execution of an amendment.
9

10 **Issue 1-1(a)**

11 7.4.7 Intervals for the provision of Interconnection trunks will
12 conform to the performance objectives set forth in Section
13 20. Any changes to the Interconnection trunk intervals will
14 be made through the Change Management Process (CMP)
15 applicable to the PCAT, pursuant to the procedures set forth
16 in Exhibit G. Operational processes within Qwest work
17 centers are discussed as part of the CMP. Qwest agrees that
18 CLEC shall not be held to the requirements of the PCAT.
19

20 **Issue 1-1(b)**

21 Qwest proposed footnote in Exhibit C: “For UDIT rearrangements
22 see Qwest’s wholesale website for the Service Interval guide.”
23

24 **Issue -1-1(c):** [Qwest proposes deletion of entire Section 9.0 of Exhibit C (LIS
25 Trunking Service Intervals).]
26

27 **Issue 1-1(d)**

28 **3.2** For ICB intervals for those standard products and services
29 that require negotiated project time lines for installation,
30 such as 2/4 wire analog loop for more than twenty-five (25)

1 loops, Qwest shall make every attempt to provide an FOC
2 to CLEC pursuant to the guidelines contained in the
3 Service Interval Guide.
4

5 **Issue 1-1(e)**

6 [24.4.4.3] Standard Service intervals for LMC(s) Loops
7 are in the Service Interval Guide (SIG) available at
8 www.qwest.com/wholesale
9

10 Qwest’s proposals for 1-1 and 1-1 (a) through (e) are designed to address
11 provisioning intervals in non-contractual sources such as CMP, PCAT, and SIG,
12 rather than in the ICA. Qwest’s language for 1-1 makes clear that changes will be
13 made to these intervals as Qwest desires, without ICA amendment or Commission
14 approval. Qwest makes several arguments in support of its proposals on Issue 1-1
15 and (a)-(e), most of which pertain to its overarching position that the CMP
16 process should be used to ensure uniformity among CLECs.¹²⁵
17

18 *Issue No. 1-1: Changes to Intervals – Section 1.7.2 and Exhibits N and O*
19

¹²⁵ See, *Qwest Petition*, ¶¶ 137-142. I address Qwest’s position on the CMP process and the extent to which it should be relied upon in the ICA in my preceding testimony. Qwest also argues that putting existing intervals in the ICA would “stop progress in its tracks” and make it impossible to change those in CMP process going forward (*Qwest Petition*, ¶ 142). Qwest is incorrect. Eschelon’s proposal #1 would allow shortened intervals to be addressed in CMP because these are the changes that would be agreed to by the CLECs. And even Qwest acknowledges that this constitutes most, if not all, of the changes that will occur based on past experience. That is, unless Qwest has plans to lengthen intervals for CLECs – something that it has not done in the past. Eschelon’s language does not disturb the ability of Qwest to secure lengthened intervals through Commission consideration and approval. Qwest has not explained how lengthening intervals so that Washington customers wait longer for service is “progress.”

1 **Q. WHAT ARE THE KEY REASONS THAT YOU RECOMMEND**
2 **ADOPTION OF ESCHELON'S LANGUAGE OVER QWEST'S FOR**
3 **ISSUE 1-1 "INTERVAL CHANGES"?**

4 A. Eschelon's proposed language offers the reliability and consistency necessary for
5 End User Customers and their providers such as Eschelon to plan for their
6 business needs. The ability to look to the ICA for an essential term of each
7 product – the interval in which it will be provisioned – is consistent with the
8 scheme of the ICA and also with pronouncements of the FCC, as discussed more
9 fully below. The Eschelon language offers the Commission the opportunity to
10 use its regulatory oversight in a manner that is consistent with the Commission's
11 mission, yet streamlined. And Eschelon's proposed language would not create a
12 system that is unduly burdensome for either Qwest or regulators.

13
14 **Q. YOU MENTIONED THAT ESCHELON'S LANGUAGE CREATES THE**
15 **OPPORTUNITY FOR THE COMMISSION TO ASSERT ITS**
16 **REGULATORY OVERSIGHT. CAN YOU EXPAND ON THIS?**

17 A. Eschelon's language is necessary to ensure that the Commission considers and
18 approves a longer interval before it goes into effect. This would allow the
19 Commission to consider the effects that these longer service intervals will have on
20 CLECs and their End User Customers and weigh that against Qwest's reasons for
21 lengthening the intervals. The Commission will also be able to consider whether
22 Qwest's new provisioning intervals meet applicable rules and regulations. For

1 example, the Commission must determine that the longer interval still meets the
2 FCC's requirement that UNEs be provided on terms that are just, reasonable, and
3 nondiscriminatory, and that the UNE is provided in "substantially the same time
4 and manner" (for an element with a retail analogue) and in a way that provides a
5 "meaningful opportunity to compete" (for an element with no retail analogue).¹²⁶
6 The Commission would have no opportunity to make these determinations if
7 Qwest has its way.

8
9 **Q. HAS THE WASHINGTON COMMISSION RECOGNIZED THE**
10 **POTENTIALLY HARMFUL EFFECTS OF LENGTHENED**
11 **PROVISIONING INTERVALS?**

12 A. Yes. The Washington Commission recognized this in the context of its review of
13 Qwest's Section 271. In that case, Qwest proposed an interval for DS1 loops that
14 was longer than the interval that the Commission had established when it
15 approved US WEST's merger with Qwest, and the Commission directed that the
16 proposed interval be reduced to that the Commission had previously approved.¹²⁷

¹²⁶ Memorandum Opinion and Order, *In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket No. 99-295 (rel. December 22, 1999) ("NY271 Order") at ¶ 125.

¹²⁷ Twentieth Supplemental Order, Initial Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272, *In the Matter of the Investigation into US WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996 and In the Matter of US WEST COMMUNICATIONS INC.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*. Washington Docket Nos. UT-003022 and UT-003040 (November 14, 2001) ("WA 271 Order") at ¶ 125.

1 In addition, in the recent Verizon/CLEC arbitration in Washington, the
2 Commission found it appropriate to include an interval in the ICA to protect both
3 ILEC and CLECs “from unnecessary delay and gamesmanship.”¹²⁸
4

5 **Q. HAS ANOTHER STATE COMMISSION FOUND THE NEED TO EXERT**
6 **ITS AUTHORITY WITH REGARD TO QWEST INTERVAL CHANGES?**

7 A. Yes. When Qwest previously tried to move from a 5-day to a 9-day loop interval
8 by simultaneously lengthening the interval for its retail customers, the Minnesota
9 Commission rejected Qwest’s parity argument and found that the 5-day loop
10 interval allowed competitors a meaningful opportunity to compete.¹²⁹ The
11 Minnesota Commission found that Qwest cannot make intervals “unreasonable by
12 lengthening the intervals for provision of retail service.”¹³⁰
13

14 **Q. WOULD ESCHELON’S PROPOSAL #1 REQUIRE COMMISSION**
15 **APPROVAL FOR ALL INTERVAL CHANGES?**

16 A. No. Eschelon’s language will allow Qwest to shorten intervals without amending
17 the ICA, only requiring negotiation and amendment for lengthening the intervals.

18 According to Qwest’s website, Qwest shortened service intervals in its SIG 39

¹²⁸ Washington Order No. 18, ¶¶ 70, 114.

¹²⁹ Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest’s Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1,2,4,5,6,11,13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) (“*MN ALJ 271 Order*”) at ¶125.

¹³⁰ *MN ALJ 271 Order* at ¶ 125.

1 times from July 2002 to June 2006. In contrast, according to Qwest, it has not
2 lengthened any service intervals during this same time frame.¹³¹ Based on past
3 Qwest experience,¹³² a vast majority of interval changes (if not all changes) would
4 not require ICA amendments under Eschelon's proposed language. Therefore,
5 Eschelon's proposal would not be burdensome because it would rarely, if ever, be
6 used, and would be used only when there is a disagreement between the CLEC
7 and Qwest. Qwest's proposal, on the other hand, would first require CLECs to
8 address this issue in CMP, during which time Qwest can implement longer
9 intervals over the challenge of CLECs, and then require the CLECs to come to the
10 Commission when Qwest's unilateral changes affect the service provisioned to
11 CLEC End User Customers.

12
13 **Q. YOU STATED THAT ESCHELON'S PROPOSAL FOR THIS ISSUE IS**
14 **CONSISTENT WITH THE SCHEME OF THE ICA. IS IT TRUE, AS**
15 **QWEST IMPLIES, THAT CMP CONTROLS SERVICE INTERVALS**
16 **THAT ARE CONTAINED IN ICAS?**

¹³¹ Eschelon counted two lengthened intervals during this time frame, but these lengthened intervals were to make corrections and comply with state service quality rules. Qwest "Service Interval Guide for Resale, UNE & Interconnection Services History Log" http://www.qwest.com/wholesale/downloads/2006/060615/HL_SIG_V71.doc

¹³² Qwest pointed out in the companion Minnesota docket that all interval changes have been shortened intervals. Qwest has not, however, made any commitment to continue this trend, and, unlike in previous years, no 271 approvals are pending to incent Qwest to shorten intervals.

1 A. No. According to the CMP document, the only interval changes required by CMP
2 to go through CMP are interval changes to Qwest's SIG.¹³³ If an interval in the
3 contract conflicts with an interval in the SIG, the CMP Document is very clear
4 that the ICA controls.¹³⁴ Qwest's assertion that these intervals should be
5 relegated to CMP to ensure uniformity is belied by Qwest's CMP documentation
6 that discusses potential differences between the intervals established in SIG and
7 those negotiated between Qwest and the CLEC.

8
9 **Q. YOU ALSO TESTIFIED THAT ESCHELON'S PROPOSAL FOR**
10 **INTERVALS IS CONSISTENT WITH FCC FINDINGS. HAS THE FCC**
11 **ADDRESSED RELIANCE ON NON-CONTRACTUAL WEBSITE**
12 **POSTINGS, AS ADVOCATED BY QWEST IN ITS PROPOSAL?**

13 A. Yes. In its Forfeiture Order, the FCC held that at "no point did we create a
14 general 'web-posting exception' to section 252(a)."¹³⁵ In other words, the FCC
15 has made clear that Qwest cannot avoid negotiation or arbitration simply by
16 posting changes (in this instance, changes to intervals) to the internet – which is
17 precisely what Qwest is attempting to do here.

18

¹³³ Exhibit BJJ-1 CMP Document at §5.4.3 and §5.4.5
http://www.qwest.com/wholesale/downloads/2006/060130/QwestWholesaleChangeManagementDocument_01_30_06_1.doc

¹³⁴ Exhibit BJJ-1 CMP Document at §1.0.

¹³⁵ *FCC Forfeiture Order* at ¶32.

1 **Q. YOU EXPLAINED ABOVE THAT COMMISSION APPROVAL WOULD**
2 **RARELY, IF EVER, BE NEEDED BECAUSE LENGTHENED**
3 **INTERVALS HAVE NOT OCCURRED IN THE PAST. HAS ESCHELON**
4 **DESIGNED ITS PROPOSAL SUCH THAT IT IS NOT UNDULY**
5 **BURDENSOME ON THE RARE OCCASION THAT COMMISSION**
6 **APPROVAL IS SOUGHT FOR A LONGER INTERVAL?**

7 A. Yes. Amending the contract for changes in intervals is an efficient process
8 because Eschelon's language uses established streamlined procedures to amend.
9 Eschelon's proposed Section 1.7.2 and Exhibits N and O largely mirror Section
10 1.7.1 and Exhibits L and M, which contain streamlined procedures agreed to by
11 Eschelon and Qwest, to implement new products in the ICA. And, assuming
12 Qwest does not radically change past policy to pursue longer intervals, ICA
13 amendments would not be necessary for interval changes under Eschelon's
14 Proposal #1.

15
16 **Q. GIVEN THE IMPORTANCE OF INTERVALS, SHOULDN'T THE ICA**
17 **STATE THAT ALL INTERVAL CHANGES REQUIRE COMMISSION**
18 **APPROVAL?**

19 A. Eschelon's Proposal #1 does not require Commission approval for shortened
20 intervals because shortened intervals can benefit the CLEC and its End User
21 Customers, and a longer due date can be obtained, if needed. Since changes to
22 shorten intervals would almost certainly be agreed to, and occur much more

1 frequently than lengthened intervals, Eschelon's proposal efficiently utilizes
2 resources of the Commission, Qwest and CLECs by requiring Commission
3 approval only when disagreement about the change in interval may occur.

4 However, given the importance of intervals, the Commission may desire
5 that all interval changes require Commission-approved amendments. If so,
6 Eschelon proposes a second language option (Proposal #2), which requires ICA
7 amendment whether an interval is lengthened or shortened. This option also uses
8 the established, streamlined procedures that have been applicable in the past to
9 new products (see Section 1.7.1) to expedite these amendments.

10 Issue No. 1-1(a): Interconnection Trunks – Section 7.4.7; Issue 1-1(b): UDIT
11 Rearrangements—Exhibit C, Group 2.0; Issue 1-1(c): LIS Trunking—Exhibit C,
12 Group 9.0; Issue 1-1(e): Intervals for Loop Mux Combinations (LMC)—Section
13 9.23.9.4.3 (Eschelon)/ Section 24.4.4.3 (Qwest)
14

15 **Q. WHAT IS THE RATIONALE BEHIND ESCHELON'S PROPOSALS ON**
16 **ISSUES 1-1(A) INTERCONNECTION TRUNKS, 1-1(B) UDIT**
17 **REARRANGEMENTS,¹³⁶ 1-1(C) LIS TRUNKING, AND 1-1(E) LOOP-**
18 **MUX COMBINATIONS?**

¹³⁶ Qwest's website describes a UDIT Rearrangement as follows: Rearrangement allows you to move or rearrange your UDIT or E-UDIT terminations on your demarcation point or change your UDIT or E-UDIT options. These Rearrangements are available through a single office or dual office request. Single office Rearrangements are limited to the movement of terminations within a single wire center. Dual office Rearrangements are used to change options or movement of terminations in two wire centers. Rearrangement is only available for existing and working UDITs or E-UDITs. <http://www.qwest.com/wholesale/pcat/udit.html>

1 A. These issues pertain to whether intervals for various products that Eschelon
2 purchases from Qwest must be contained in the contract, or whether it is sufficient
3 for the contract to include references to Qwest's PCAT, SIG or its website.

4 The intervals proposed by Eschelon in Exhibit C for each of these products are
5 identical to the intervals that Qwest provides for the products today. Therefore,
6 Eschelon's proposal requires no change by Qwest; Eschelon seeks only the
7 inclusion of the current intervals in the Eschelon / Qwest contract, with the ability
8 of Qwest to lengthen intervals through the amendment process. In contrast, a
9 unilateral lengthening of product intervals by Qwest could significantly adversely
10 affect Eschelon's business and its ability to compete.

11
12 Issue No. 1-1(d): ICB Provisioning Intervals – Exhibit I, Section 3
13

14 **Q. WHAT IS ESCHELON'S RATIONALE FOR ITS PROPOSAL FOR THIS**
15 **ISSUE?**

16 A. Again, Qwest's language points to non-contractual sources (here the SIG) for the
17 timeframe in which Qwest will provide ICB intervals. Eschelon's proposal, on
18 the other hand, includes the ICB due date intervals in the ICA.

19
20 **Q. ARE THERE OTHER REASONS THAT ESCHELON'S LANGUAGE**
21 **SHOULD BE ADOPTED FOR ISSUE 1-1(D), BESIDES ESCHELON'S**

1 **OVERALL REASONING THAT INTERVALS SHOULD BE INCLUDED**
2 **IN THE ICA?**

3 A. Yes. Section 3.1 of Exhibit I (“Individual Case Basis”) states that Qwest will
4 provide an ICB interval within 20 business days, unless the ICA contains a
5 “specific provision” for when the ICB interval will be provided. Qwest provides
6 an ICB interval for certain products in the Firm Order Confirmation (FOC), which
7 arrives in much less than 20 days. Therefore, Eschelon’s proposal for Issue 1-
8 1(d) is designed to include in the ICA the same ICB provisioning intervals for
9 certain products that Qwest provides via FOCs in less than 20 business days
10 today.¹³⁷ Eschelon’s proposal requires no change by Qwest in its ICB due date
11 intervals¹³⁸ and, unlike Qwest’s proposal, gives meaning to Section 3.1 of Exhibit
12 I.

13
14 **Q. PLEASE ELABORATE ON HOW ESCHELON’S PROPOSAL GIVES**
15 **MEANING TO SECTION 3.1 OF EXHIBIT I.**

16 A. Section 3 of Exhibit I discusses “specific provision(s)” in which ICB intervals
17 will be less than 20 business days. Eschelon’s proposed language only spells out
18 some of those specific provisions – provisions that exist today – to ensure that
19 Qwest provides these ICB intervals in the FOC as it does today and not the much
20 longer 20 business day interval.

¹³⁷ These products and intervals are found in Eschelon’s proposed language for Issue 1-1(d), shown above.

¹³⁸ http://www.qwest.com/wholesale/downloads/2006/060615/InterconnSIG_V71.doc

1 In addition, Section 9.2.4.3.1. of the ICA provides in agreed upon
2 language that, for certain loop products, Qwest will return a FOC to CLEC within
3 72 hours from order receipt. It states that “[s]uch FOC will provide CLEC with a
4 firm Due Date commitment...” There is no exception for ICB due dates.
5 Eschelon’s proposed language would therefore connect the dots between Section
6 3.1 of Exhibit I, which discusses specific provisions in which Qwest will provide
7 ICB intervals within the FOC period, and Section 9.2.4.3.1.2, which discusses
8 FOC intervals of 72 hours.

9
10 **Q. PLEASE SUMMARIZE THE INTERVAL CHANGE ISSUES (ISSUE 1-1**
11 **AND (A)-(E)).**

12 A. Provisioning intervals are critical to Eschelon’s ability to provide timely service
13 to its End User Customers on the date they expect service. Eschelon’s proposed
14 language calls for this key term to be included in ICA language for the relevant
15 products offered by Qwest. Eschelon does not ask for any change to Qwest’s
16 current intervals, just the inclusion of the terms in the ICA to provide necessary
17 reliability for end users and Eschelon. Eschelon’s proposal allows the
18 Commission appropriate regulatory oversight over these significant provisions,
19 but allows for an existing, streamlined process to execute any change. Eschelon’s
20 language is consistent with the relationship between the ICA and CMP and in
21 harmony with FCC findings requiring more than unilateral RBOC “website
22 posting” of terms and conditions. The Commission should reject Qwest’s

1 language, which would allow Qwest unilateral, non-contractual control over
2 provisioning intervals.
3

4 **IV. SUBJECT MATTER NO. 11: POWER**

5 Issue No. 8-21 and subparts: ICA Sections 8.2.1.29.2.1; 8.2.1.29.2.2; 8.3.1.6;
6 8.3.1.6.1; and 8.3.1.6.2 and subparts
7

8 **Q. WHAT IS THE BUSINESS NEED ESCHELON ADDRESSES IN SECTION**
9 **8 OF THE ICA WITH ITS PROPOSED CONTRACT LANGUAGE**
10 **RELATED TO ISSUES 8-21 (A)-(D)?**

11 A. Eschelon purchases DC (“Direct Current”) power from Qwest to electrify
12 telecommunications equipment it houses in collocation areas within Qwest’s
13 central offices. Eschelon purchases DC power produced by the same “power
14 plant” equipment Qwest uses to electrify its own telecommunications equipment.
15 The contract language proposed by Qwest would force Eschelon to pay for large
16 amounts of power plant capacity it does not use. Likewise, it would force
17 Eschelon to pay more for DC power than Qwest itself pays. Eschelon’s proposed
18 language is meant to ensure that Eschelon pays for the DC power and the power
19 plant capacity that it uses, and no more. Likewise, Eschelon’s language is meant
20 to prohibit the type of discrimination inherent in Qwest’s proposal.
21

22 **Q. WHAT ARE ESCHELON’S PROPOSALS FOR ISSUES 8-21 AND (A)-(D)?**

1 A. Eschelon proposes the following language for Issues 8-21 and (a)-(d). Eschelon-
2 proposed language opposed by Qwest is shown in underlined text, while Qwest-
3 proposed language that Eschelon opposes is shown in ~~strikeout text~~:

4 **Issue 8-21**

5 8.2.1.29.2.1 CLEC orders DC power ~~plant~~ feeder cables in
6 increments of twenty (20) amps per feed minimum. If CLEC
7 orders an increment larger than sixty (60) amps, engineering
8 practice normally terminates such feed on a power board. Qwest
9 measures power ~~usage~~ on the power board, as described in Section
10 8.2.1.29.2.2 below. If CLEC orders an increment of sixty (60)
11 amps or less, the power feed will normally appear on a Battery
12 Distribution Fuse Board (BDFB). No power usage measurement
13 occurs at a BDFB.

14
15 **Issue 8-21(a)**

16 8.2.1.29.2.2 Measurement of ~~Power~~ Usage at the Power Board –
17 Unless CLEC requests power measurement, power will not be
18 measured. Qwest will bill CLEC ~~power usage~~ based on the size of
19 the feeder cable ordered pursuant to Section 8.2.1.28.2.1 above
20 ~~amount of power ordered~~ unless power measurement is requested
21 and until a reading is taken pursuant to this Section. Qwest will
22 measure ~~power~~ usage at the power board on a semi-annual basis.
23 However, Qwest also agrees to take a reading within thirty (30)
24 Days of a written CLEC request. Qwest will perform a maximum
25 of four (4) readings per year for a particular Collocation site.
26 ~~CLEC is required to have its equipment in place prior to making~~
27 ~~any request for Qwest measure power usage. —~~ If the initial
28 measurement is zero, CLEC must notify Qwest when its equipment
29 is in place and allow Qwest an additional reading to measure
30 power. Based on these readings, if CLEC is utilizing less than the
31 ordered amount of power, Qwest will reduce the monthly ~~power~~
32 usage rate to CLEC's actual use based on the reading from the date
33 of CLEC's measuring request on a going forward basis until the
34 next reading. If CLEC is utilizing more than the ordered amount,
35 Qwest will increase the monthly usage rate to the CLEC's actual
36 use. Once Qwest receives a CLEC measuring request, it will bill

1 the actual power usage rate based on the reading from the date of
2 the CLEC's measuring request, on a going forward basis, until the
3 next reading.
4

5 **Issue 8-21(b)**

6 8.3.1.6 -48 Volt DC Power. There are two -48 Volt DC Power
7 charges, as described below, one for -48 Volt DC Power Plant and
8 one for -48 Volt DC Power Usage.

9 Both Power Charges described in this Section are adjusted based
10 on usage readings when power is measured.
11

12 **Issue 8-21(c)**

13 8.3.1.6.1 There are two -48V DC Power charges: (1) The -48
14 Volt DC Power Plant charge provides -48 Volt DC power to CLEC
15 collocated equipment and is fused at one hundred twenty-five
16 percent (125%) of request. The DC Power Plant Charge recovers
17 the cost of the capacity of the power plant available for CLEC's
18 use. (2) The -48 Volt DC Power Usage Charge, which is also
19 specified in Exhibit A. Both -48V DC Power charges may be
20 either non-measured or measured, as follows:
21

22 **Issue 8-21(d)**

23 ~~8.3.1.6.2 The -48 Volt DC Power Usage Charge recovers the cost~~
24 ~~of the CLEC's power usage. -48 Volt DC Power Usage can be~~
25 ~~provided and charged on a non-measured basis, or, in some cases~~
26 ~~specified below, on a measured basis.~~

27 a) Non-Measured -48 Volt DC Power Usage Charge –
28 Qwest will apply the -48 Volt Power Usage charge for the
29 quantity of power ordered by the CLEC. Qwest will not
30 adjust the billed usage based upon power usage readings.
31 This applies to all CLEC orders for -48 Volt DC Power
32 which are equal to or less than sixty (60) amps. Qwest will
33 apply the -48 Volt DC Power Usage Charge for the
34 quantity of power ordered by CLEC. Qwest will not adjust
35 the billed usage based upon actual usage. ~~power usage~~

1 ~~readings. This charge also applies to all CLEC orders for~~
2 ~~48 Volt DC Power Usage which are greater than sixty (60)~~
3 ~~amps, unless CLEC orders 48 Volt DC Power~~
4 ~~Measurement, in which case CLEC will be charged for~~
5 ~~Measured 48 Volt DC Power Usage as described in~~
6 ~~Section 8.3.1.6.2(b) below.~~

7 b) ~~Measured -48 Volt DC Power Usage Charge – This~~
8 ~~measured power usage charge applies, if elected by CLEC,~~
9 ~~on a per amp basis to all orders of greater than sixty (60)~~
10 ~~amps. For orders of greater than sixty (60) amps, CLEC~~
11 ~~may elect Measured 48 Volt DC Power Usage pursuant to~~
12 ~~this provision by ordering 48 Volt DC Power~~
13 ~~Measurement. Qwest will initially apply the -48 Volt DC~~
14 ~~Power Usage Charge to the quantity of power ordered by~~
15 ~~CLEC. Qwest will determine read the actual power usage~~
16 ~~as described in Section 8.2.1.29.2.2 and will charge based~~
17 ~~on the power usage at the time of the reading, on a going~~
18 ~~forward basis, until the next reading. There is a minimum~~
19 ~~charge of one amp.~~

20
21 **Q. WHAT ARE QWEST'S PROPOSALS FOR ISSUES 8-21 AND (A)-(D).**

22 A. Qwest's proposed ICA language is shown below. Qwest proposed language that
23 Eschelon opposes is underlined and proposes to strike is shown in bold and
24 Eschelon-proposed language opposed by Qwest is shown in ~~strikeout~~.

25
26 **Issue 8-21**

27 CLEC orders DC power plant feeder cables in increments of
28 twenty (20) amps per feed minimum. If CLEC orders an
29 increment larger than sixty (60) amps, engineering practice
30 normally terminates such feed on a power board. Qwest measures
31 power usage on the power board, as described in Section
32 8.2.1.29.2.2 below. If CLEC orders an increment of sixty (60)
33 amps or less, the power feed will normally appear on a Battery
34 Distribution Fuse Board (BDFB). No power usage measurement
35 occurs at a BDFB.

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Issue 8-21(a)

8.2.1.29.2.2 Measurement of Power Usage at the Power Board – Unless CLEC requests power measurement, power will not be measured. Qwest will bill CLEC power usage based on the ~~size of the feeder cable ordered pursuant to Section 8.2.1.28.2.1~~ amount of power ordered unless power measurement is requested and until a reading is taken pursuant to this Section. Qwest will measure ~~power~~ usage at the power board on a semi-annual basis. However, Qwest also agrees to take a reading within thirty (30) Days of a written CLEC request. Qwest will perform a maximum of four (4) readings per year for a particular Collocation site. CLEC is required to have its equipment in place prior to making any request for Qwest measure power usage. ~~If the initial measurement is zero, CLEC must notify Qwest when its equipment is in place and allow Qwest an additional reading to measure power.~~ Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly power usage rate to CLEC's actual use based on the reading from the date of CLEC's measuring request on a going forward basis until the next reading. If CLEC is utilizing more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use. Once Qwest receives a CLEC measuring request, it will bill the actual power usage rate based on the reading from the date of the CLEC's measuring request, on a going forward basis, until the next reading.

Issue 8-21(b)

8.3.1.6 -48 Volt DC Power. There are two -48 Volt DC Power charges, as described below, one for -48 Volt DC Power Plant and one for -48 Volt DC Power Usage. Both Power Charges described in this Section are adjusted based on usage readings when power is measured.

Issue 8-21(c)

8.3.1.6.1 ~~There are two -48V DC Power charges:~~ (1) The -48 Volt DC Power Plant charge provides -48 Volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five

1 percent (125%) of request. The DC Power Plant Charge recovers
2 the cost of the capacity of the power plant available for CLEC's
3 use.
4

5 **Issue 8-21(d)**

6 8.3.1.6.2 The -48 Volt DC Power Usage Charge recovers the cost
7 of the CLEC's power usage. -48 Volt DC Power Usage can be
8 provided and charged on a non-measured basis, or, in some cases
9 specified below, on a measured basis.

10
11 a) Non-Measured -48 Volt DC Power Usage Charge –
12 Qwest will apply the -48 Volt Power Usage charge for the
13 quantity of power ordered by the CLEC. Qwest will not
14 adjust the billed usage based upon power usage readings.
15 This applies to all CLEC orders for -48 Volt DC Power
16 which are equal to or less than sixty (60) amps. Qwest will
17 apply the -48 Volt DC Power Usage Charge for the
18 quantity of power ordered by CLEC. Qwest will not adjust
19 the billed usage based upon actual usage. ~~power usage~~
20 readings. This charge also applies to all CLEC orders for -
21 48 Volt DC Power Usage which are greater than sixty (60)
22 amps, unless CLEC orders -48 Volt DC Power
23 Measurement, in which case CLEC will be charged for
24 Measured -48 Volt DC Power Usage as described in
25 Section 8.3.1.6.2(b) below.

26 b) Measured -48 Volt DC Power Usage Charge – This
27 measured power usage charge applies, if elected by CLEC,
28 on a per amp basis to ~~all~~ orders of greater than sixty (60)
29 amps. For orders of greater than sixty (60) amps, CLEC
30 may elect Measured -48 Volt DC Power Usage pursuant to
31 this provision by ordering -48 Volt DC Power
32 Measurement. Qwest will initially apply the -48 Volt DC
33 Power Usage Charge to the quantity of power ordered by
34 CLEC. Qwest will ~~determine read~~ the actual power usage
35 as described in Section 8.2.1.29.2.2 and will charge based
36 on the power usage at the time of the reading, on a going
37 forward basis, until the next reading. ~~There is a minimum~~
38 charge of one amp.

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**Q. PLEASE BRIEFLY DESCRIBE THE DISAGREEMENT BETWEEN
ESCHELON AND QWEST EMBODIED BY ISSUES 8-21 AND ITS
SUBPARTS.**

A. Language subsumed by Issues 8-21 and (a) through (d) deals with the proper application of DC Power Rate elements assessed by Qwest when Eschelon purchases DC power to electrify telecommunications equipment Eschelon collocates in Qwest central offices. While Eschelon is not, in this proceeding, questioning the DC Power rate levels included by Qwest in Exhibit A to the ICA (*i.e.*, the Pricing Exhibit), Eschelon does take issue with the manner by which Qwest intends to assess those rates. Specifically, Eschelon has asked Qwest to measure the amount of electrical usage Eschelon consumes in electrifying its equipment, and assess its DC Power rates based upon that usage (on a “per Ampere” or “per Amp” basis). Qwest has agreed to that approach for one of its rate elements (*i.e.*, the rate element specifically assigned to the current used by Eschelon’s equipment), but not the other (a rate element meant to recover Qwest’s investment in the “power plant” facilities that convert AC current purchased by Qwest from the electric utility into the DC power required by telecommunications equipment).

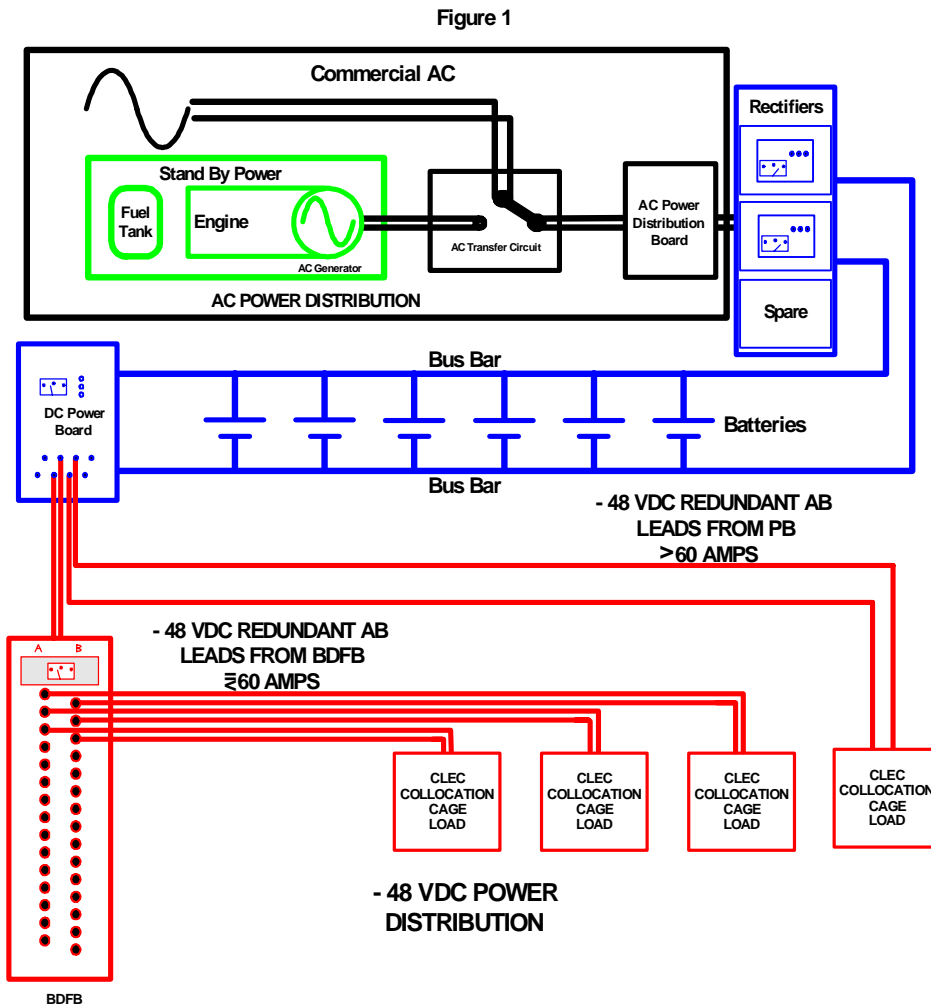
**Q. PLEASE DESCRIBE THE TWO DC POWER-RELATED RATE
ELEMENTS THAT YOU REFERENCE ABOVE?**

1 A. Qwest, in Exhibit A, identifies two rate elements related to -48 Volt DC Power:
2 (i) a *Power Usage* element that recovers the cost of the electrical current that
3 electrifies telecommunication equipment (Exhibit A, 8.1.4.1.2) and (ii) a *Power*
4 *Plant* element that recovers Qwest's investment in the physical equipment that
5 converts the AC power purchased from the utility to the -48 Volt DC Power used
6 by most telecommunications equipment (Exhibit A, 8.1.4.1.1). Both rate
7 elements are identified in Exhibit A as being applied "per ampere, per month."
8 The disagreement arises as to whether the "amps per month" should be based
9 upon the electricity Eschelon actually uses (*i.e.*, a measured basis), or whether
10 Qwest should be allowed to use the size (in amps) of Eschelon's power
11 distribution cables connecting its collocation arrangement to the Qwest power
12 plant to assess the rates (what Qwest erroneously refers to as Eschelon's "power
13 order"). There are five discrete sections of the ICA in which contract language
14 has not been agreed to (representing Issues 8-21 and subparts), and each of these
15 issues is directly tied to this overall disagreement.

16
17 **Q. WHAT IS POWER PLANT, AS THAT TERM IS USED IN YOUR**
18 **TESTIMONY?**

19 A. There are four basic components which comprise a central office power system
20 used to electrify telecommunications equipment: (i) AC commercial power
21 (shown in black in Figure 1 below), (ii) standby AC power equipment (shown in
22 green), DC power plant (shown in blue) and (iv) DC power distribution including

1 power cables that connect a collocation area to Qwest's power plant (shown in
2 red):
3



4
5
6 The primary purpose of the “power plant” is to convert the AC power purchased
7 from the utility, to the DC power required by telecommunications equipment. DC
8 power plant generally consists of the following equipment: (i) rectifiers, which are
9 used for the AC/DC conversion; (ii) batteries, which provide the necessary current
10 to power the equipment, serve as a filter to smooth out fluctuations in the

1 commercial power, remove the ‘noise’ that power often carries, and provide
2 necessary backup power should commercial power fail; and (iii) controllers,
3 which manage the DC power. Power plant is a shared resource that serves all
4 equipment in the central office. Qwest and its collocators power their equipment
5 from the same power plant facilities.

6

7 **Q. HAS QWEST AGREED THAT ONE OF THE RATE ELEMENTS**
8 **DESCRIBED ABOVE, I.E., POWER USAGE GREATER THAN 60 AMPS,**
9 **PER AMP, PER MONTH (8.1.4.1.2.2)¹³⁹ SHOULD BE BILLED BASED**
10 **UPON ESCHELON’S ACTUAL ELECTRICAL USAGE, RATHER THAN**
11 **THE SIZE OF THE POWER FEEDER CABLES ESCHELON**
12 **MAINTAINS BETWEEN ITS COLLOCATION AND QWEST’S POWER**
13 **PLANT?**

14 A. Yes. In late 2004, Qwest made available to its collocating CLECs an ICA
15 amendment that would change the way Qwest assesses its DC power rate
16 elements – the *DC Power Measuring Amendment* (a copy of that amendment is
17 included with this testimony as Exhibit MS-3). In its amendment, Qwest agrees
18 to change the manner by which it would assess at least one of its DC power rates
19 (*i.e., Power Usage Greater than 60 Amps, per amp, per month - 8.1.4.1.2.2*).
20 Qwest agreed to measure the amount of electricity actually used by collocators

¹³⁹ There are three (3) separate Power Usage rates: (1) Power Usage – Less Than 60 Amps; (2) Power Usage – Greater Than 60 Amps; and (3) Power Usage – Equal to 60 Amps. Power Measurement applies to power feeds of greater than 60 amps. (8.2.1.29.2.1).

1 and assess its Power Usage rate based upon the measured amperage, rather than
2 applying its per amp rate to the number of amps capable of being carried by the
3 collocators' power distribution cables as it had done in the past.

4

5 **Q. DID QWEST'S PROPOSED AMENDMENT INDICATE THAT IT**
6 **WOULD ALSO CHANGE THE WAY IT ASSESSES ITS *POWER PLANT***
7 **RATE, *I.E.*, WHETHER IT WOULD NOW ALSO CHARGE ITS *POWER***
8 ***PLANT RATE BASED UPON MEASURED USAGE?***

9 A. There is substantial debate between Qwest and at least one of its collocators in
10 that regard.¹⁴⁰ The Amendment can certainly be read to suggest that Qwest did
11 indeed agree to change the manner by which it charges CLECs its *Power Plant*
12 rate as well (*i.e.*, agreeing to assess it based upon measured usage), however, that
13 issue is moot in this circumstance. Eschelon did not sign the amendment.
14 Instead, because Eschelon was already in discussions with Qwest regarding a
15 successor ICA, Eschelon has addressed this issue in its ICA negotiations and now
16 in this arbitration. Nonetheless, whether Qwest should assess its per amp Power
17 Plant rate by applying it to the number of amps actually used by Eschelon (as
18 measured by Qwest), or to the number of amps defining the capacity of
19 Eschelon's power distribution cables remains the underlying question. Eschelon's
20 proposed language, Issues 8-21 (a)-(d), would require Qwest to assess both its

¹⁴⁰ See McLeodUSA Telecommunications Services, Inc. v Qwest Corporation. WUTC Docket No. UT-063013.

1 *Power Usage* and *Power Plant* rates based upon the number of amps Eschelon
2 actual uses (as measured by Qwest). Given that Qwest has agreed to assess its
3 power usage charge in this fashion, the remaining dispute involves only the
4 *Power Plant* element.

5
6 **Q. WHY SHOULD QWEST ASSESS THE POWER PLANT CHARGE**
7 **BASED ON THE POWER USED BY ESCHELON RATHER THAN THE**
8 **SIZE OF THE POWER CABLE ESCHELON ORIGINALLY ORDERED?**

9 A. Qwest sizes its power plant facilities so that they are capable of producing enough
10 electricity to power all of the telecommunications equipment in the central office
11 (equipment for both Qwest and collocators) at peak demand. More specifically,
12 Qwest power engineers identify, over time, the “busy hour” that exists in a given
13 year, meant to reflect the absolute maximum or “peak” electrical drain required of
14 the power plant by all existing equipment. The engineers then ensure that the
15 power plant is sized so as to accommodate that “peak drain” – what power
16 engineers often refer to as the “List 1 drain” for the central office. In this way the
17 power plant is driven by the amount of DC power used by the equipment in the
18 central office (or stated differently, costs related to increasing the size of the
19 equipment are incremental to additional usage). This is consistent with the
20 application of *Power Plant* rates based on a collocator’s usage because it requires
21 power users who consume more electricity to pay for a larger portion of the power

1 plant needed to meet their needs, while smaller electrical consumers pay less
2 because they use less of the power plant's overall capacity.

3

4 **Q. WOULD APPLYING QWEST'S "PER AMP" POWER PLANT RATE TO**
5 **THE SIZE OF ESCHELON'S POWER CABLE (MEASURED IN AMPS)**
6 **BRING ABOUT A SIMILAR RESULT?**

7 A. No. DC power distribution cables are sized not based upon peak demand under
8 normal operating conditions (*i.e.*, List 1 drain) like power plant is, but instead on
9 the maximum current that the equipment may draw when the batteries providing
10 DC power are approaching a condition of total failure (loosely defined as "List 2
11 drain") – and as such, the equipment must draw more current (amps) so as to
12 maintain necessary voltage. At the highest level, power cables are sized to
13 accommodate the much larger List 2 drain because they anticipate non-"normal
14 operating conditions" that may occur. If Eschelon or any other collocator is
15 regularly using enough DC power to fully load its power feeder cables, a serious
16 problem exists. For that reason, Qwest, by assessing its Power Plant rate based
17 upon the size of Eschelon's DC power cables (instead of its measured usage),
18 forces Eschelon to pay for a substantial amount of power plant capacity that it
19 doesn't use.

20 The List 2 drain is also known as the recommended amperage because it is
21 the amperage level Eschelon must order for its power cables to operate the
22 equipment properly and in accordance with manufacturer's recommendations and

1 safety standards. The recommended amperage is set at a higher amperage level
2 (compared to the amperage that will actually be used by the equipment under
3 normal circumstances) because it takes into account the worst case scenario, such
4 as low voltage during a battery discharge.

5 When sizing power cables a power engineer must identify the allowable
6 maximum voltage drop between the BDFB/PB and the telecommunications
7 equipment or CLEC collocation. This allows the engineer to size the smallest
8 diameter power cable based on the cable length that must be traversed with a
9 given amperage.

10
11 **Q. YOU STATE THAT QWEST SIZES DC POWER PLANT BASED ON THE**
12 **PEAK USAGE OF ALL TELECOMMUNICATIONS EQUIPMENT IN**
13 **THE CENTRAL OFFICE. WHAT IS YOUR BASIS FOR THAT**
14 **STATEMENT?**

15 A. Qwest uses engineering requirements and guidelines memorialized in Qwest's
16 own Technical Publications to size power plant (and other components of central
17 office power systems). Qwest's Technical Publications dictate that power plant
18 should be sized based on peak usage (*i.e.*, List 1 drain). For example, Bellcore
19 technical document "Power Systems Installation Planning" BR-790-100-652
20 requires Qwest engineers, when sizing power plant, to "determine equipment
21 powered directly from the dc plant and the average busy hour current drain of the

1 equipment at normal operating voltage.” This engineering manual goes on to
2 describe the procedure used by Qwest engineers to size power plant as follows:

3 “Step 1: Identify all DC operated telecommunications equipment that
4 needs power,

5
6 Step 2: determine operating voltages (nominal and limits) of all DC-
7 operated telecommunications equipment,

8
9 Step 3: determine List 1 drains of all telecommunications equipment,

10
11 Step 4: compute and plot all busy-hour and power failure drains, Step 5:
12 Select DC plants.”
13

14 Steps 3 and 4 are particularly relevant to this point because they show that Qwest
15 sizes DC power plant on peak usage.
16

17 **Q. CAN YOU PROVIDE A SIMPLE EXAMPLE OF HOW QWEST**
18 **ENGINEERS WOULD GO ABOUT SIZING POWER PLANT FOR THE**
19 **CENTRAL OFFICE?**

20 A. Yes. In a basic example of a Qwest central office, Qwest power engineers
21 monitor the actual usage of DC power and observe the peak power usage that
22 takes place at the busy hour. Qwest engineers would then take steps to ensure that
23 the DC power plant is capable of handling the usage that occurs at this peak
24 period. In other words, DC power plant is sized based on the maximum power
25 draw that takes place on a CO-wide basis during the busy hour. Or, perhaps more
26 appropriately, Qwest engineers identify a “target” usage level which may indicate
27 to them that the existing power plant, given forecasted peak usage, may fall short

1 in a busy hour scenario. Hence, when usage hits that “target” level, they begin to
2 explore augmentation alternatives. Importantly, however, Qwest DC power
3 engineers do not augment the DC power plant infrastructure based on particular
4 orders for power distribution cables of a CLEC or Qwest. Given that DC power
5 plant is sized based on forecasted peak usage for all equipment in the office, there
6 is no correlation between Qwest’s investment/augmentation in DC power plant
7 and sizes of power cables (whether they are from Qwest or a CLEC).

8

9 **Q. PLEASE DEFINE THE TERMS “BUSY HOUR DRAIN” AND “LIST 1**
10 **DRAIN.”**

11 A. The “busy hour drain” is the load (or amount of power usage) of the central office
12 for the busy day of the busy season, and represents the point at which the load on
13 the central office power plant is greatest. The “busy hour” oftentimes occurs
14 sometime on Mother’s Day, though the busy hour can vary by central office. The
15 “busy hour” is simply the hour, once per year, that represents the highest level of
16 drain on the power system. List 1 drain is the busy hour current during normal
17 plant operation, as indicated by Qwest Technical Publication “*Power Equipment*
18 *and Engineering Standards,*” Technical Document No. 77385 (Chapter 2):

19 **2.4 Engineering Guidelines**

20 When sizing power plants, the following criteria shall be used:

21

22 **List 1** drain is used for sizing batteries and chargers; *the average busy-*
23 *hour current at normal operating voltage should be used.* Telephony List
24 1 drains are measured at 9 ccs or at 18 ccs for the first 2 hours of a
25 discharge and 6 ccs thereafter.

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Q. ARE THERE OTHER SOURCES THAT REQUIRE POWER PLANT TO BE SIZED BASED ON PEAK USAGE?

A. Yes. For instance, Qwest Technical Publication 77385 discusses the sizing of battery plant – a component of DC power plant – as follows:

BATTERY PLANT SIZING — when a battery plant is initially installed, the meter and bus bar should be provided based on the projected power requirements for the life of the plant. Base chargers and batteries should be provided based on the projected end of engineering interval connected average busy-hour current drains (List 1).

In addition, Bellcore’s “*DC Distribution*,” Technical Document No. 790-100-656, Section 2 “Telecommunications Equipment Loads” states as follows:

List 1 – These drains are used to size batteries and rectifiers. These drains represent the average busy-hour current at normal operating voltages.

Furthermore, legacy document REGN 790-100-654RG “DC Plant” (published by Qwest) states as follows:

When selecting DC power plants and system components, the following current drain types can be used:

List 1 drains are used to size batteries and rectifiers. These drains represent the average busy-hour current at normal operating voltages...

1 Another excerpt from Qwest's engineering manuals specifically warns against
2 sizing power plant on any other standard. Qwest technical document REGN 790-
3 100-655G "Batteries" Issue No. 9 dated February 2006 (at page 22) states:

4 In some cases, List 2 drains are significantly higher than List 1
5 drains, and if they were used, would result in sever [sic] oversizing
6 of the battery plant.
7

8 This last quote is particularly relevant because by applying the power plant charge
9 based on cable size (which are sized based on List 2 drain), Qwest is assessing
10 charges on Eschelon based on a severely oversized DC power plant.
11

12 **Q. EARLIER YOU MENTIONED LIST 2 DRAIN. WHAT IS LIST 2 DRAIN**
13 **AND WHAT IS ITS SIGNIFICANCE?**

14 A. Qwest's Technical Publications define List 2 drain as follows:

15 List 2 – These drains are used to size feeder cables and fuses.
16 These drains represent the peak current for a circuit or a group of
17 circuits under worst case operating conditions.
18

19 The concept of List 2 drain is significant because Qwest proposes to assess Power
20 Plant charges based on the size of Eschelon's power cables, which as noted
21 above, are sized based on List 2 drain (so that the cables are capable of handling a
22 worst case scenario). However, the numerous Qwest Technical Publications
23 referenced above require power plant to be sized based on the lower List 1 drain
24 (peak usage under normal operating conditions). Hence, while Qwest sizes power

1 plant based on List 1 drain (peak usage), it assesses the power plant charge based
2 on the higher List 2 drain (used to size the power cables).

3 This is problematic because it forces Eschelon to pay Power Plant rates
4 based upon the much higher List 2 drain upon which its power cables are sized,
5 when it actually only uses a much smaller amount of electricity and, in turn, a
6 much smaller component of Qwest's power plant capacity. In other words, it
7 forces Eschelon to pay for more of Qwest's power plant than it actually uses.
8 Because Qwest uses the majority of the electricity in the central office, and
9 therefore, it uses the majority of the power plant capacity, Eschelon's
10 overpayment reduces the amount of capacity Qwest must recover from its own
11 services supported by its equipment. This results in a discriminatory situation
12 wherein Eschelon pays substantially more for DC power than does Qwest – a
13 situation specifically prohibited by the FCC's rules governing prices for
14 collocation and unbundled network elements.

15
16 **Q. IN ADDITION TO THE DISAGREEMENT ABOUT THE POWER PLANT**
17 **RATE APPLICATION, ESCHELON AND QWEST ALSO DISAGREE**
18 **ABOUT THE COMMENCEMENT OF POWER CHARGES. PLEASE**
19 **EXPLAIN.**

20 A. This disagreement is under Issue 8-21. Eschelon's proposal is that, once the
21 CLEC's equipment is in place in its collocation, it will notify Qwest so that Qwest

1 can measure, and charge based on, actual usage. Qwest's proposal would require
2 the CLEC to have its equipment in place before making a request for measured
3 power usage. Qwest's proposal appears to be designed to prevent CLECs from
4 requesting power measurement before installing equipment (so that the measure is
5 zero) and after installing equipment, obtaining up to six months of zero usage
6 charges. Eschelon agrees that this should not occur and its language would
7 require CLEC to notify Qwest when equipment is placed so that Qwest can take a
8 measurement – and so that situation that apparently concerns Qwest does not
9 occur. Eschelon's language has an added benefit that Qwest's proposal does not:
10 Eschelon's proposal would keep Qwest from charging Eschelon for power that it
11 does not use. It makes no sense for Qwest to assess power charges associated
12 with Eschelon's power draw before Eschelon even has the ability to draw power;
13 yet that is what Qwest's proposal would require. Eschelon's proposal, on the
14 other hand, treats both sides fairly by allowing Qwest to measure power draw
15 once equipment is collocated and, at the same time, not forcing Eschelon to pay
16 for power that it never uses.

17
18 **Q. PLEASE SUMMARIZE ISSUES 8-21 AND (A)-(D).**

19 A. Power plant is a shared resource within the central office that is used by all power
20 users in the central office, including Qwest, to electrify their respective
21 telecommunications equipment. Accordingly, the investment in power plant

1 should be recovered from the users of that power plant based on the proportionate
2 usage of each power user. Eschelon's ICA language ensures that the Power Plant
3 rate element is applied in this manner. Qwest's proposed language would result
4 in Eschelon paying for power that Eschelon does not use, and Eschelon paying
5 more than Qwest pays to use the very same power plant. Or, in other words,
6 Qwest's language is discriminatory. For all of the reasons described in
7 Eschelon's business need and in these responses, the Commission should adopt
8 Eschelon's language for Issues 8-21 and (a)-(d).
9

10 **V. SUBJECT MATTER NO. 12: NEBS STANDARDS**

11 *Issue No. 8-24: ICA Section 8.2.3.9*
12

13 **Q. WHAT IS ESCHELON'S BUSINESS CONCERN REGARDING NEBS**
14 **STANDARDS (ISSUE 8-24)?**

15 A. Qwest requires all equipment in its central office to comply with Network
16 Equipment Building Standards ("NEBS") safety standards as well as other
17 applicable laws and regulations. When equipment does not comply, Qwest is able
18 to stop work on the collocation until the issue is resolved. Because of the
19 significant disruption, delay, and expense that would result from such a stop work
20 order, Eschelon has proposed language that would help to prevent that from
21 happening.

1 Qwest requires that a CLEC provide, as part of its collocation application,
2 a considerable amount of information about equipment it intends to collocate.
3 Qwest reviews that information to ensure that the application is complete and
4 accurate, and to ensure that Qwest is able to meet the CLEC's collocation request.
5 It is very expensive and time-consuming for a CLEC to turn up equipment in its
6 collocation arrangement. The CLEC must incur costs related to, among other
7 things: planning the collocation deployment; Qwest's charges for designing,
8 engineering, constructing a collocation arrangement; and the cost of the
9 equipment that will be collocated. The CLEC's costs would be increased
10 considerably if the CLEC were to go through all of the time, money and effort to
11 collocate a piece of equipment only to have Qwest stop that collocation on the day
12 it is to be installed. The CLEC would also be delayed in turning up services and
13 bringing its product to the local marketplace.

14 Eschelon has reasonably proposed language that would require Qwest to
15 review Eschelon's collocation application and notify Eschelon in a timely manner
16 if it believes that a piece of equipment does not comply with the applicable safety
17 standards. This will avoid the increased cost and delay that would be caused if
18 Qwest were to issue a stop work order just as the collocation is nearing
19 completion.

20 Perhaps the most telling aspect of this issue is that, although Qwest will
21 not agree to review Eschelon's collocation application and notify Eschelon within
22 ten days of any safety issues, Qwest has agreed in a different section of the ICA to

1 review Eschelon's collocation application and notify Eschelon within 10 days if
2 Qwest finds the application to be incomplete or inaccurate. Qwest also agreed to
3 work with Eschelon to cure any deficiencies it discovers when reviewing the
4 application. However, when it comes to Eschelon's request for Qwest to notify it
5 of a safety concern, Qwest claims that Eschelon is pushing its obligations off onto
6 Qwest. It is at least as important to ensure that equipment complies with safety
7 standards before it is collocated in the central office as it is for the collocation
8 application to be complete and accurate. It does not make sense for Qwest to
9 refuse to notify Eschelon in the former instance, but agree to notifying Eschelon
10 in the latter instance. Qwest should not be given the opportunity to increase its
11 competitors' costs and delay their entry to market by raising eleventh hour
12 objections on issues that could have easily been rectified much earlier.

13
14 **Q. WHAT IS ESCHELON'S PROPOSAL ON ISSUE 8-24?**

15 A. Eschelon proposes the following language for Issue 8-24:

16 8.2.3.9 Qwest will determine and notify CLEC, in the manner described
17 below, within ten (10) Days of CLEC submitting its Collocation
18 application if Qwest believes CLEC's listed equipment does not
19 comply with NEBS Level 1 safety standards or is in violation of
20 any Applicable Laws or regulations, all equally applicable to
21 Qwest. If CLEC disagrees, CLEC may respond with the basis for
22 its position within ten (10) Days of receipt of such notice from
23 Qwest. If, during installation, Qwest determines CLEC activities
24 or equipment other than those listed in the Collocation application
25 do not comply with the NEBS Level 1 safety standards listed in
26 this Section or are in violation of any Applicable Laws or
27 regulations all equally applied to Qwest, Qwest has the right to
28 stop all installation work related to the activities or equipment at

1 issue until the situation is remedied or CLEC demonstrates that
2 Qwest's determination was incorrect.
3

4 Eschelon's language would require Qwest to notify Eschelon within 10 days of
5 Eschelon's collocation application if Qwest believes that the equipment Eschelon
6 intends on collocating does not comply with NEBS safety standards. Upon
7 notification, Eschelon would have 10 days from receipt of Qwest's notice to
8 respond for the basis in its position. Eschelon has proposed that Qwest may stop
9 installation of equipment that Qwest determines does not comply with safety
10 standards because it is a necessary safety measure to protect personnel and
11 property. However, because Eschelon provides a list of all collocated equipment
12 to Qwest on its collocation application to specifically inform Qwest about the
13 equipment Eschelon will collocate, Qwest should review this information when it
14 is reviewing the application for completeness and accuracy, and notify Eschelon
15 of a problem, rather than waiting until the date of installation when Eschelon has
16 already expended considerable time and resources in planning to collocate the
17 equipment and turning up service.
18

19 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 8-24?**

20 A. Qwest's proposed language is shown below (with Eschelon's proposed
21 language shown in strikeout):

22 ~~8.2.3.9 Qwest will determine and notify CLEC, in the manner described~~
23 ~~below, within ten (10) Days of CLEC submitting its Collocation~~
24 ~~application if Qwest believes CLEC's listed equipment does not~~

1 ~~comply with NEBS Level 1 safety standards or is in violation of~~
2 ~~any Applicable Laws or regulations, all equally applicable to~~
3 ~~Qwest. If CLEC disagrees, CLEC may respond with the basis for~~
4 ~~its position within ten (10) Days of receipt of such notice from~~
5 ~~Qwest. If, during installation, Qwest determines CLEC activities~~
6 ~~or equipment other than those listed in the Collocation application~~
7 ~~do not comply with the NEBS Level 1 safety standards listed in~~
8 ~~this Section or are in violation of any Applicable Laws or~~
9 ~~regulations all equally applied to Qwest, Qwest has the right to~~
10 ~~stop all installation work related to the activities or equipment at~~
11 ~~issue until the situation is remedied or CLEC demonstrates that~~
12 ~~Qwest's determination was incorrect.~~
13

14 Qwest proposes to strike the language that Eschelon has proposed regarding
15 Qwest notifying a CLEC if Qwest sees a problem with Eschelon's equipment list
16 in terms of NEBS compliance. In support of its proposal, Qwest states that
17 Eschelon's proposal inappropriately shifts the burden of determining whether
18 equipment is NEBS compliant to Qwest, and would keep Qwest from raising
19 concerns about non-NEBS compliant equipment after the 10 day notice period.¹⁴¹
20

21 **Q. WHAT ARE NEBS STANDARDS?**¹⁴²

22 A. NEBS or Network Equipment Building Standards "defines a rigid and extensive
23 set of performance, quality, environmental and safety requirements"¹⁴³ which are

¹⁴¹ *Qwest Petition*, ¶ 76.

¹⁴² NEBS Level 1 criteria is the minimum acceptable level of environmental compatibility needed to protect the network facility (equipment and structure) and operating personnel. Possible applications where Level 1 compliance is acceptable include trials of prototype equipment, limited installations of equipment used for non-vital services and the minimum requirement established by RBOCs and other incumbent carriers for co-located equipment installed by CLECs. Estep, Duncan. "NEBS 101", Telephony Online, April 24, 2000. http://telephonyonline.com/mag/telecom_nebs/index.html

¹⁴³ *Newton's Telecom Dictionary*, 20th edition, pp. 558-559.

1 “often required by telecommunications service providers such as BOCs (Bell
2 Operating Companies) and Interexchange Carriers (IEC) for equipment installed
3 in their switching offices. NEBS defines everything from fire spread and
4 extinguish ability test to Zone 4 earthquake tests to thermal shock, cyclic
5 temperature, mechanical shock, and electro-static discharge.”¹⁴⁴

6

7 **Q. IS IT REASONABLE TO REQUIRE QWEST TO REVIEW THE**
8 **EQUIPMENT LISTS THAT CLECS PROVIDE TO QWEST ON THEIR**
9 **COLLOCATION APPLICATIONS FOR NEBS COMPLIANCE?**

10 A. Absolutely. On the application form that CLECs provide to Qwest, CLECs list all
11 of the equipment that they will collocate in Qwest’s central office, including
12 vendor, model number, functionality and dimensions for each piece of equipment.
13 See Exhibit MS-4, page 6 of 15, for the pertinent page of Qwest’s collocation
14 application. The ICA identifies the information Eschelon is required to provide
15 on Qwest’s application form about the equipment it plans to collocate:

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8.4.1.4 (f) Collocated equipment and technical equipment specifications (Manufacturer Make, Model No., Functionality, *i.e.*, Cross Connect, DLC, DSLAM, Transmission, Switch, etc., Physical Dimensions, Quantity). (NOTE: Packet or circuit switching equipment requires, in writing and attached to the application, how this equipment is necessary for access to UNEs or Interconnection. Upon Qwest’s reasonable request, CLEC will provide high level equipment interface or connectivity diagram for switching equipment described in the application.

¹⁴⁴ Newton’s Telecom Dictionary, 20th edition, pp. 559.

1 This equipment list is provided specifically to inform Qwest about the equipment
2 CLEC intends to collocate so that Qwest can plan accordingly. Requiring Qwest
3 to review this information is eminently reasonable because Qwest should be
4 reviewing this information to protect its network and the equipment of other
5 carriers. And requiring Qwest to notify Eschelon of potential problems before
6 installation commences benefits all carriers in the central office, including Qwest,
7 because it ensures that any non-compliant equipment is identified before the
8 potential exists that Eschelon could collocate that equipment and cause a potential
9 safety hazard.

10
11 **Q. DOES QWEST ALREADY REQUIRE ALL EQUIPMENT COLLOCATED**
12 **IN ITS CENTRAL OFFICE TO BE NEBS LEVEL 1 COMPLIANT?**

13 A. Yes. Qwest requires that all equipment collocated in its central office to be NEBS
14 Level 1 compliant. I have attached a copy of Qwest's collocation application
15 form as Exhibit MS-4, and page 6, Section 4, Equipment Detail Note 1 states that
16 "Collocation equipment must meet NEBS 1 standards and other safety standards
17 as applies to Qwest."¹⁴⁵ Other ILECs also require the same NEBS compliance for
18 equipment collocated in their central offices (as indicated by the definitions of
19 NEBS standards provided above).

¹⁴⁵ This is also evident from Qwest's Statement of Generally Available Terms (SGAT), in which at Section 8.2.1.8 it states that "All equipment shall meet and be installed in accordance with Network Equipment Building System (NEBS) Level 1 safety standards...Qwest shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements Qwest imposes on its own equipment located on its Premises..."

1
2 **Q. IS QWEST ALREADY FAMILIAR WITH THE EQUIPMENT CLECS**
3 **INTEND TO COLLOCATE BEFORE THEY PLACE THE EQUIPMENT**
4 **IN THE COLLOCATION CAGE?**

5 A. Yes. The equipment that a CLEC collocates must either be on a list of Qwest-
6 approved equipment or the CLEC must provide Qwest with additional
7 information about the equipment prior to it being collocated in Qwest's central
8 office.¹⁴⁶ Therefore, Qwest is aware of the precise type of equipment CLEC
9 intends to collocate on the day it receives CLEC's collocation application and is
10 already familiar with that equipment because oftentimes the equipment is already
11 on the Qwest-approved list.

12
13 **Q. IF QWEST RECEIVES A CLEC EQUIPMENT LIST IN THE**
14 **COLLOCATION APPLICATION, AND THAT EQUIPMENT IS**
15 **REQUIRED TO BE NEBS COMPLIANT AND ON A QWEST-APPROVED**
16 **EQUIPMENT LIST, WHY WOULD QWEST DISAGREE WITH**
17 **ESCHELON'S PROPOSAL?**

¹⁴⁶ Section 8.4.1.5 of Qwest Washington SGAT states that "CLEC shall submit a Collocation Application to order Collocation at a particular Qwest Premises. A Collocation Application shall be considered complete, if it contains...(f) Collocated equipment and technical equipment specifications (Manufacturer Make, Model No., Functionality *i.e.*, Cross Connect, DLC, DSLAM, Transmission, Switch, etc., Physical Dimensions, Quantity). (NOTE: Packet or circuit switching equipment requires, in writing and attached to the Application, how this equipment is necessary for access to UNEs or Interconnection. High level equipment interface or connectivity schematic for equipment that is not on the approved equipment list or has not been used by CLEC for a similar purpose before, must also accompany this Application. CLEC using approved equipment found at www.qwest.com/wholesale/pcat/collocation.html need not comply with this provision)"

1 A. Qwest's position is especially puzzling in light of the closed language in 8.4.1.5.1
2 of the ICA which states:

3 8.4.1.5.1 Parties will work cooperatively to ensure the accuracy of
4 the Collocation application. If Qwest determines that the
5 application is not complete, Qwest shall notify CLEC of any
6 deficiencies within ten (10) Days after receipt of the application.
7 Qwest shall provide sufficient detail so that CLEC has a reasonable
8 opportunity to cure each deficiency. To retain its place in the
9 Collocation queue for the requested Premises, CLEC must cure
10 any deficiencies in its application and resubmit the application
11 within ten (10) Days after being advised of the deficiencies.
12

13 This language shows that Qwest is already reviewing the collocation application
14 within 10 days to ensure that it is not deficient. Obviously, if a piece of
15 equipment is not NEBS compliant – a requirement of Qwest's for collocated
16 equipment – then the CLEC's collocation's application (which contains the list of
17 equipment) is deficient and this deficiency should be cured. Qwest has agreed to
18 notify the CLEC within 10 days if its collocation application is inaccurate or
19 incomplete (containing wrong or missing information), but refuses to do so if a
20 CLEC intends to collocate a piece of equipment that does not meet Qwest's
21 requirements and could potentially cause a safety hazard.¹⁴⁷

22 Qwest says that Eschelon is attempting to shift the burden of determining
23 what equipment is NEBS compliant onto Qwest. But as I've shown above, there

¹⁴⁷ Qwest's agreement to notifying CLEC about a potential deficiency in its collocation application under 8.4.1.5.1 means that notifying CLEC about a potential NEBS compliance issue would not require any new or unique processes or modifications to systems (see, Qwest's position on Issue 8-24 in the Washington Issues Matrix, p. 58.

1 would be no reason for Eschelon to be imposing any burden on Qwest because
2 already reviews the CLEC's collocation application well in advance of the
3 installation day and Qwest should be able to easily identify any equipment that is
4 not on Qwest's own list. Once a potential safety problem is identified by Qwest,
5 it would unreasonable and risky for Qwest to sit on that information and surprise
6 the CLEC with it on the day of installation. Furthermore, the equipment is
7 usually from Qwest's own list, and is required to be NEBS compliant in the first
8 place.

9

10 **Q. YOU EXPLAIN ABOVE THAT QWEST HAS ALREADY AGREED TO**
11 **NOTIFY A CLEC WITHIN 10 DAYS IF ITS COLLOCATION**
12 **APPLICATION IS INCOMPLETE OR INACCURATE. ARE THERE**
13 **OTHER EXAMPLES THAT SHOW THAT A 10 DAY TIMEFRAME FOR**
14 **QWEST TO NOTIFY CLEC OF A POTENTIAL CONCERN ABOUT**
15 **NEBS COMPLIANCE IS REASONABLE?**

16 A. Ten days has been used in other sections of Qwest's SGAT for timeframes related
17 to Qwest's notification obligations. For instance, Section 8.2.1.9 requires Qwest
18 to, upon request by a CLEC, provide a collocation space availability report within
19 ten (10) calendar days. Certainly, it would be easier for Qwest to provide the
20 information required by Eschelon's language – *i.e.*, whether Qwest has any
21 potential problem with equipment on Eschelon's collocation application in terms
22 of NEBS compliance – than it would be for Qwest to provide all of the

1 information required by the collocation space availability report – *e.g.*, whether
2 sufficient power is available to meet the specific CLEC request, number of
3 CLECs in queue at the Premises, if any; whether the Wire Center is equipped with
4 DS3 capability; and the number and description of Qwest and its Affiliates and
5 CLEC reservations of space.

6 Ten days is also the timeframe in which Qwest must post to the internet
7 when a certain central office runs out of physical collocation space (as well as
8 when space becomes available in an exhausted office) under Section 8.2.1.13 of
9 the SGAT. The fact that Qwest can provide these reports within ten days, as
10 required by its SGAT, shows that Qwest can easily provide the notice about
11 NEBS compliance concerns, especially when Qwest has committed to review the
12 application and inform the CLEC about any deficiencies within the same 10 day
13 timeframe.

14
15 **Q. PLEASE SUMMARIZE WHY ESCHELON'S PROPOSAL FOR 8-24**
16 **SHOULD BE ADOPTED.**

17 A. Under Eschelon's proposal, Qwest has an effective tool to ensure that equipment
18 is not collocated in its central office unless it is eligible to be collocated – that is,
19 Qwest can prohibit the CLEC from collocating this equipment. Eschelon's
20 proposal simply provides that Qwest will review the collocation application, and
21 the list of equipment provided in that application, and determine within 10 days
22 whether it sees a potential problem with that list of equipment – equipment that is

1 likely on Qwest's own approved list - in terms of NEBS compliance. These
2 notices would be required very rarely as Qwest's collocation requirements already
3 put the CLEC on notice that its equipment must be NEBS 1 compliant, but if a
4 CLEC intends to collocate a piece of equipment that is not NEBS compliant,
5 Qwest should be required, based on the information that it has readily at its
6 disposal and is already reviewing to notify that CLEC at a time and in a manner
7 that is designed to minimize any potential disruption and associated expense.
8

9 **VI. SUBJECT MATTER NO. 14: NONDISCRIMINATORY ACCESS TO**
10 **UNES**
11

12 *Issue No. 9-31: ICA Section 9.1.2*
13

14 **Q. WHAT IS ESCHELON'S BUSINESS ISSUE RELATING TO**
15 **NONDISCRIMINATORY ACCESS TO UNES (ISSUE 9-31)?**

16 A. Nondiscriminatory access to UNEs and interconnection is the cornerstone of local
17 competition. The FCC has read this nondiscriminatory access requirement for
18 UNEs to apply broadly and has required that UNEs must be provisioned in a way
19 that would make them useful. This means Qwest is required to provide
20 nondiscriminatory access to the UNEs themselves as well as to the means of
21 obtaining the UNEs, repairing the UNEs, and modifying the UNEs. This is
22 critical for CLECs because these are all activities that Qwest performs for its own

1 retail customers, and if CLECs are unable to obtain these activities related to
2 UNEs on reasonable terms and conditions and at cost based rates, CLECs will be
3 competitively disadvantaged vis-à-vis Qwest. This is not an idle concern on
4 Eschelon's part, as Qwest has already attempted to restrict nondiscriminatory
5 access to UNEs through reliance on non-contractual sources, such as its tariffs
6 and CMP, and intends to continue this approach by applying non-cost based
7 charges to these UNE related activities.

8 One example of such a restriction is Qwest's 12/9/05 CMP notice, which
9 introduced a CMP change¹⁴⁸ that added language to the DS1 Loop product
10 description that stated that, "Unbundled Loops are not available for
11 telecommunications services provided directly to you or for your own
12 administrative purposes *nor are they available to serve another CLEC, IXC, or*
13 *other Telecommunications Provider.*" (emphasis added) Since Qwest
14 introduced this change in CMP, it was not required to show how its proposed
15 changes that prohibit CLECs from using UNE loops to serve another
16 telecommunications carriers comport with 47 C.F.R §51.309, which provides that
17 subject to certain limited restrictions, the ILEC "shall not impose limitations,
18 restrictions, or requirements on requests for, or the use of, unbundled network
19 elements for the service a requesting telecommunications carrier seeks to

¹⁴⁸ CMP Document No. PROD.12.09.05.F.03543.EEL_and_LMC_MTE.

1 offer.”¹⁴⁹ None of the restrictions on the use of UNEs prohibits a CLEC from
2 using a UNE to provide service to another CLEC, IXC or Telecommunications
3 Provider.

4 Since the ICA does not include Qwest’s PCAT restriction and says, to the
5 contrary, that no other limitations on the use of UNEs shall be imposed,¹⁵⁰
6 Eschelon believes that the ICA language controls and that this clause does not
7 apply to Eschelon. Qwest had every opportunity to propose this language during
8 this arbitration, but has not. All of this notwithstanding, based on the manner in
9 which Qwest has cherry-picked issues that it has and has not addressed in CMP to
10 its advantage, Eschelon is concerned that it will get through this entire case
11 without this language found anywhere in the contract, but Qwest will still apply
12 the restriction to Eschelon (perhaps by claiming that the contract is silent on the

¹⁴⁹ 47 CFR § 51.309 provides:

- (a) Except as provided in §51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.
- (b) A requesting telecommunications carrier may not access an unbundled network element for the exclusive provision of mobile wireless services or interexchange services.
- (c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.
- (d) A requesting telecommunications carrier that accesses and uses an unbundled network element consistent with paragraph (b) of this section may provide any telecommunications services over the same unbundled network element.

¹⁵⁰ “9.1.1.2.1: Except as provided in this Section 9.1.1.2.1 and in Section 9.23.4.1, Qwest shall not impose limitations, restrictions, or requirements on requests for, or the use of, Unbundled Network Elements for the service CLEC seeks to offer.”

1 matter, which it is not).¹⁵¹ Eschelon is not asking the Commission to rule on this
2 issue here because Qwest has not raised the restriction on using UNEs to service
3 other carriers in language in the arbitration, but it is further support for the
4 Commission making clear in the Eschelon and Qwest ICA that nondiscriminatory
5 access to UNEs will be established in the ICA and that any changes to the terms
6 and conditions for “access” to UNEs between Eschelon and Qwest should be
7 spelled out in an ICA amendment so that no ambiguity exists. This is one of a
8 number of examples of Qwest attempting to chip away at the nondiscriminatory
9 access to UNEs required by federal rules and orders through CMP and non-CMP
10 sources outside the ICA.

11
12 **Q. HAS QWEST ISSUED ADDITIONAL CMP NOTICES THAT FURTHER**
13 **RESTRICT ACCESS TO UNES SINCE THEN?**

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

17 NOTE: For CFA or slot changes, it is the CLEC’s responsibility to
18 provide Qwest with a new CFA that will work. Qwest will only
19 accept one verbal CFA change on the due date. If that CFA fails to
20 work, Qwest will place the order in jeopardy (customer jeopardy).
21 No further action will be taken on Qwest’s part until Qwest
22 receives a valid supplemental request to change the due date and
23 the CFA (if applicable). Additional charges may apply.
24

¹⁵¹ The operative language makes clear that no other limitations on UNEs will be imposed (beyond those in the contract) and the restriction on using UNEs to serve other carriers is not in the ICA.

1 This language restricts the availability of CFA changes,¹⁵² unnecessarily
2 complicates the provisioning process and leaves the door open for Qwest to assess
3 “additional charges” – which coupled with Qwest’s 8/31/06 notice (discussed
4 below in the next example) means that Qwest will apply access charges. As I
5 explained in my direct testimony (and as indicated in Eschelon’s proposed
6 language for Issue 9-31), design changes are activities that are necessary for
7 nondiscriminatory access to UNEs, and this arbitrary restriction on this access is
8 concerning to Eschelon (the CLEC comment due date on this CMP notice is not
9 until after this testimony is filed). What is even more concerning is that unless the
10 Commission adopts Eschelon’s language to make clear that Qwest must provide
11 design changes as part of its obligation to provide nondiscriminatory access to
12 UNEs, Qwest may attempt to impose this arbitrary restriction on Eschelon. This
13 restriction would impose additional work and costs on Eschelon (related to
14 unnecessarily supplementing orders) and would delay Eschelon’s ability to serve
15 its customers (by placing the order in jeopardy and pushing the provisioning due
16 date off until some time in the future) – and there is no indication that Qwest
17 intends to subject its retail customers to this same restriction. This is further proof
18 of the way in which Qwest can (and apparently will) attempt to disadvantage
19 CLECs unless the Commission spells out obligations very clearly in the ICA.
20

¹⁵² Design changes, and more specifically CFA changes, are addressed in Issue 4-5 (Design Changes) in the testimony of Mr. Denney.

1 **Q. YOU MENTIONED ABOVE THAT QWEST IS ATTEMPTING TO**
2 **RESTRICT NONDISCRIMINATORY ACCESS TO UNES BY APPLYING**
3 **ACCESS CHARGES. IS THIS ANOTHER EXAMPLE THAT BRINGS**
4 **ESCHELON'S CONCERNS ON ISSUE 9-31 TO LIFE?**

5 A. Yes, and this is perhaps the most important example. Qwest recently revealed a
6 new agenda to charge tariff access rates for activities that have been performed at
7 TELRIC rates pursuant to Qwest's Section 251 obligations to provide access to
8 UNEs. Qwest did not raise this issue in a cost case or ICA negotiations before
9 Eschelon filed its first petition for arbitration, and Eschelon first learned of this
10 strategy later through Qwest's new rate proposal, in which Qwest referred to the
11 tariff instead of Commission approved rates for certain elements. According to
12 Qwest, application of TELRIC rates is limited to the enumerated list of UNEs; if
13 not named on that list (*e.g.*, loops), according to Qwest, it is not a UNE for which
14 TELRIC pricing applies – even when these activities are performed on UNE
15 orders.

16 On August 31, 2006, Qwest confirmed this strategy by issuing a non-CMP
17 notification announcing that it intended to post a new “template” interconnection
18 agreement on its website on September 1, 2006 (on one day's notice). *See*,
19 Process Notification PROS.08.31.06.F.04159.Amendments.ComlAgree.SGAT.
20 This new negotiations template added a tariff reference for the following rate
21 elements: Additional Dispatch, Trouble Isolation Charge, Design Charge,
22 Expedite Charge, Cancellation Charge, and Maintenance of Service Charge.

1 During negotiations on design changes Qwest submitted a proposal that would
2 have applied tariff rates to certain activities – much like its 8/31/06 non-CMP
3 notice. Qwest later changed its position in negotiations, but indicated in meetings
4 between the two companies that Qwest’s change in position for negotiations
5 should not be construed as Qwest giving up on its tariff rate proposal for design
6 changes, and that Qwest fully intended to pursue this proposal outside of
7 negotiations. By changing its position in negotiations with Eschelon while
8 maintaining its tariff position outside of arbitration, Qwest is attempting to leave
9 the door open for Qwest to ultimately impose its tariff proposal on Eschelon
10 (despite the considerable time and resources expended to arbitrate this issue). The
11 activities that Qwest lists in its notice as activities for which tariff rates will apply
12 are the same activities in Eschelon’s proposed language for Issue 9-31 (to be
13 included as necessary to access to UNEs). Eschelon’s language for Issue 9-31
14 puts this issue squarely before the Commission, and a Commission ruling is
15 needed to ensure that CLECs receive the nondiscriminatory access to UNEs to
16 which they are entitled and avoid future disputes.

17
18 **Q. WHAT IS ESCHELON’S PROPOSAL ON ISSUE 9-31?**

19 A. Eschelon proposes the following language for Section 9.1.2:

20 Access to Unbundled Network Elements includes moving, adding
21 to, repairing and changing the UNE (through e.g., design changes,
22 maintenance of service including trouble isolation, additional
23 dispatches, and cancellation of orders).
24

1 **Q. WHAT IS QWEST’S PROPOSAL ON ISSUE 9-31?**

2 A. Qwest originally proposed to omit Eschelon’s language and provided no
3 competing language. In support of this position, Qwest states that Eschelon’s
4 language would require Qwest to provide a “superior network” and would require
5 Qwest to provide non-Section 251 offerings at TELRIC rates.¹⁵³ In its Rebuttal
6 Testimony in the Minnesota arbitration proceeding, Qwest proposed the following
7 language:

8 Additional activities available for Access to Unbundled Access to
9 Unbundled Network Elements includes moving, adding to,
10 repairing and changing the UNE (through e.g., design changes,
11 maintenance of service including trouble isolation, additional
12 dispatches, and cancellation of orders) at the applicable rate.
13

14 **Q. WHY HAS ESCHELON PROPOSED TO INCLUDE MOVES, ADDS,**
15 **REPAIRS AND CHANGES TO UNES IN THE DESCRIPTION OF**
16 **ACCESS TO UNES?**

17 A. It is crucial to include these items to ensure that CLECs get nondiscriminatory
18 access to UNES as Qwest’s attack on TELRIC pricing for these activities clearly
19 demonstrates. The importance of making this clear in the ICA is evident in both
20 the existing ICA between Eschelon and Qwest as well as FCC rules and orders.
21

22 **Q. PLEASE ELABORATE ON HOW THE FCC ADDRESSED “ACCESS TO**
23 **UNES” IN ITS ORDERS.**

¹⁵³ *Qwest Petition*, ¶¶ 81 and 82.

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

7
8 **Q. WHAT OTHER FCC ORDERS OR RULES GOVERNING NON-**
9 **DISCRIMINATION FOR UNES APPLY HERE?**

10 A. Section 251(c)(3) of the Telecommunications Act requires that Qwest provide
11 access to unbundled network elements, including unbundled local loops, on rates,
12 terms and conditions that are just, reasonable and non-discriminatory. The FCC
13 *First Report and Order*¹⁵⁴ further defined the meaning of “just, reasonable and
14 non-discriminatory,” which was included in 47 CFR §51.313. Specifically, the
15 Order stated that at the minimum, the obligation of “just, reasonable and non-
16 discriminatory” includes two conditions: First, the ILECs should provide
17 unbundled network elements to requesting carriers under terms and conditions
18 that are equal to the terms and conditions under which the ILEC provides the

¹⁵⁴ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 (1996) FCC Dockets CC Nos. 96-98 and 95-185, (“*Local Competition Order*”) adopted on August 1, 1996.

1 service to itself.¹⁵⁵ Second, the ILECs should offer equal terms and conditions to
2 all carriers requesting unbundled network elements.¹⁵⁶ Further, the Order noted
3 that the obligation of “just, reasonable and non-discriminatory” terms and
4 conditions are conditions that provide the requesting carriers a meaningful
5 opportunity to compete:

6 The duty to provide unbundled network elements on "terms, and
7 conditions that are just, reasonable, and nondiscriminatory" means,
8 at a minimum, that whatever those terms and conditions are, they
9 must be offered equally to all requesting carriers, and where
10 applicable, they must be equal to the terms and conditions under
11 which the incumbent LEC provisions such elements to itself. We
12 also conclude that, because section 251(c)(3) includes the terms
13 "just" and "reasonable," this duty encompasses more than the
14 obligation to treat carriers equally. Interpreting these terms in light
15 of the 1996 Act's goal of promoting local exchange competition,
16 and the benefits inherent in such competition, we conclude that
17 these terms require incumbent LECs to provide unbundled
18 elements under terms and conditions that would provide an
19 efficient competitor with a meaningful opportunity to compete.
20 Such terms and conditions should serve to promote fair and
21 efficient competition. This means, for example, that incumbent
22 LECs may not provision unbundled elements that are inferior in
23 quality to what the incumbent provides itself because this would
24 likely deny an efficient competitor a meaningful opportunity to
25 compete.¹⁵⁷
26

27 In addition, the Order stated that the provision of unbundled network elements
28 does not relieve the ILEC from the duty to maintain and repair the unbundled
29 network element:

¹⁵⁵ 47 CFR §51.313(b).

¹⁵⁶ 47 CFR §51.313(a).

¹⁵⁷ *Local Competition Order* at ¶ 315 (emphasis added; footnotes omitted).

1 We conclude that we should adopt our proposed interpretation that
2 the terms "access" to network elements "on an unbundled basis"
3 mean that incumbent LECs must provide the facility or
4 functionality of a particular element to requesting carriers, separate
5 from the facility or functionality of other elements, for a separate
6 fee. We further conclude that a telecommunications carrier
7 purchasing access to an unbundled network facility is entitled to
8 exclusive use of that facility for a period of time, or when
9 purchasing access to a feature, function, or capability of a facility,
10 a telecommunications carrier is entitled to use of that feature,
11 function, or capability for a period of time. The specified period
12 may vary depending on the terms of the agreement between the
13 incumbent LEC and the requesting carrier. The ability of other
14 carriers to obtain access to a network element for some period of
15 time does not relieve the incumbent LEC of the duty to maintain,
16 repair, or replace the unbundled network element.¹⁵⁸
17

18 The final rules defining the meaning of "just, reasonable and nondiscriminatory"
19 access to UNEs prescribed that an ILEC must provide a carrier purchasing UNEs
20 with the pre-ordering, ordering, provisioning, maintenance and repair, and billing
21 functions of the incumbent LEC's operations support systems.¹⁵⁹
22

23 **Q. HOW DOES THE EXISTING ESCHELON AND QWEST ICA ADDRESS**
24 **THIS ISSUE?**

25 A. Section 6.2 to Attachment 5 of the ICA states, in part:

26 6.2.1 U S WEST shall provide repair, maintenance, testing, and
27 surveillance for all Telecommunications Services and
28 unbundled Network Elements and Combinations in
29 accordance with the terms and conditions of this
30 Agreement.
31

¹⁵⁸ *Local Competition Order* at ¶ 268 (emphasis added; footnotes omitted).

¹⁵⁹ 47 CFR §51.313(c).

1 6.2.1.1 U S WEST shall provide CO-PROVIDER with the same
2 level of maintenance support as U S WEST provides itself
3 in accordance with standards and performance
4 measurements that U S WEST uses and/or which are
5 required by law, regulatory agency, or by U S WEST's own
6 internal procedures, whichever are the most rigorous.
7 These standards shall apply to the quality of the
8 technology, equipment, facilities, processes ,and techniques
9 (including, but not limited to, such new architecture,
10 equipment, facilities, and interfaces as U S WEST may
11 deploy) that U S WEST provides to CO-PROVIDER under
12 this Agreement.
13

14 6.2.1.2 U S WEST shall provide a SPOC (Single Point of Contact)
15 for Residence, and a SPOC for Business for CO-
16 PROVIDER to report via a toll free telephone number
17 maintenance issues and trouble reports twenty four
18 (24)hours a day and seven (7) days a week. The SPOC
19 Residence toll free number, and SPOC Business toll free
20 number, will be the numbers for all of U S WEST's
21 fourteen (14) states.
22

23 6.2.1.3U S WEST shall provide CO-PROVIDER maintenance
24 dispatch personnel on the same schedule that it provides its
25 own Customers.
26

27 **Q. BASED ON THE EXISTING ICA AND APPLICABLE FCC RULES AND**
28 **ORDERS, WHY IS IT CRUCIAL FOR THE ITEMS IDENTIFIED IN**
29 **ESCHELON'S LANGUAGE TO BE SPECIFICALLY IDENTIFIED IN**
30 **THE ICA AS "ACCESS" TO UNES?**

31 A. Because without the nondiscriminatory access to UNEs that would result from
32 Eschelon's proposed language (and which would not be preserved under Qwest's
33 proposal), Eschelon would not have a meaningful opportunity to compete.
34 Eschelon has an expectation, as supported by governing rules and orders, that it

1 will continue to have access to the same maintenance and repair procedures and
2 level of quality available to Qwest's other customers – whether retail, resale or
3 QPP – under terms and conditions that are nondiscriminatory.

4

5 **Q. WOULD QWEST'S PROPOSAL UNDER THIS ISSUE RESULT IN**
6 **DISCRIMINATION AGAINST ESCHELON?**

7 A. Yes, potentially. By proposing to exclude Eschelon's proposed language from the
8 ICA, Qwest is indicating that it does not intend to perform the activities (moves,
9 adds, repairs) in a nondiscriminatory fashion for Eschelon vis-à-vis Qwest's retail
10 or resale customers (otherwise, Qwest would not disagree with Eschelon's
11 language). Qwest has confirmed this is the case by recently announcing that it
12 would apply access charges to services that are necessary for nondiscriminatory
13 access to UNEs. There is no reason to believe that without Eschelon's proposed
14 language in the ICA that Qwest will continue to provide these activities, and the
15 nondiscriminatory access they provide, of its own free will. Eschelon's language
16 is therefore necessary to ensure that CLECs continue to have the access to UNEs
17 to which they are entitled.

18

19 **Q. WHY IS THE LANGUAGE THAT QWEST RECENTLY PROPOSED**
20 **NOT SUFFICIENT TO CLOSE THIS ISSUE?**

21 A. Qwest's modified language for Section 9.1.2 misses the point. The Commission
22 needs to decide that these are part of nondiscriminatory access to UNEs. Qwest's

1 language states that these activities are “available for” UNEs, and strikes the key
2 word “access.” Qwest's choice of "available for" suggests that the activities are
3 not UNE activities but are non-UNE activities that are "available for" UNEs, a
4 concept with which Qwest knows Eschelon disagrees. This does nothing to
5 address Eschelon’s concern that the ICA should clarify that these activities are
6 part of Qwest’s obligation to provide nondiscriminatory access to UNEs. Further,
7 Qwest’s language leaves the door open for Qwest charging expensive, non-cost
8 based charges for these activities (potentially tariff rates) that Qwest would argue
9 are not under the Commission’s purview. The fact that Qwest had agreed to make
10 these activities “available for” UNEs would be of little comfort to Eschelon if the
11 prices Qwest assesses for these activities are set at expensive, non-cost based
12 levels such that Qwest enjoys a cost advantage when serving its customers.

13
14 **Q. PLEASE SUMMARIZE ISSUE 9-31**

15 **A** It is critical that the ICA language make clear that Qwest must continue to provide
16 nondiscriminatory access to UNEs, including activities performed to make the
17 UNE useful. This is supported by FCC rules and orders as well as the current
18 Eschelon/Qwest ICA. For all of the reasons described in Eschelon’s business
19 need and in these responses, the Commission should adopt Eschelon’s language
20 for 9-31.

21

1 **VII. SUBJECT MATTER NO. 18. CONVERSIONS**

2 Issue Nos. 9-43 and 9-44 and subparts: ICA Sections 9.1.15.2.3; 9.1.15.3 and
3 subparts; 9.1.15.3.1; 9.1.15.3.1.1; 9.1.15.3.1.2
4

5 **Q. WHAT IS ESCHELON'S BUSINESS ISSUE REGARDING**
6 **CONVERSIONS (ISSUES 9-43 AND 9-44 AND (A)-(C))?**

7 A. A conversion happens when a circuit that was formerly available as a UNE must
8 be converted to a non-UNE alternative arrangement, as the result of a finding of
9 "non-impairment." By definition, conversions will take place on live circuits that
10 are up and running and currently supporting service to End User Customers.
11 Therefore, a seamless and error free conversion is crucial because if problems
12 arise during the conversion, the likelihood that an Eschelon Customer will be
13 placed "out of service" is high.

14 Further, it is important to note the "conversions" discussed in this
15 testimony involve only changing the rate charged for the facility and, in the vast
16 majority of circumstances, the CLEC and its End User Customer should be using
17 the same facility that was used prior to the conversion. These conversions are
18 required solely for purposes of implementing a regulatory construct and have
19 nothing to do with improving or otherwise managing the Customer's service – in
20 essence, the conversion is intended to re-label what was before a UNE, something
21 different. This reinforces the need for conversions to be transparent to Eschelon's
22 End User Customers as any disruption in service would be completely unexpected
23 and difficult to explain. In other words, even though these conversions are being

1 undertaken to effectuate Qwest's reduced legal obligations relative to UNEs, it is
2 Eschelon who bears all the risk of failure. Furthermore, the FCC has found that
3 CLECs should not be assessed conversion charges associated with serving a
4 Customer for the first time because the CLEC is already serving the Customer and
5 service is working fine. Eschelon, therefore, is highly motivated to ensure that
6 conversions can be accomplished reliably, efficiently and cost-effectively, and
7 Eschelon is concerned that Qwest will not abide by its obligation in this regard.
8

9 **Q. IS THERE GOOD REASON FOR ESCHELON'S CONCERNS THAT**
10 **QWEST WILL MAKE THE CONVERSION PROCESS**
11 **UNNECESSARILY CUMBERSOME AND POTENTIALLY DISRUPT**
12 **SERVICE TO ESCHELON'S END USER CUSTOMERS?**

13 A. Yes. In my discussion of the Change Management Process (Section II above), I
14 explained that Qwest has issued several non-CMP "secret PCATs" used to advise
15 CLECs of Qwest's view of how its obligations regarding UNEs has changed due
16 to the TRO/TRRO. These notices are password protected, and since they do not
17 go through CMP, there is no opportunity for CLEC comment about the changes.
18 Qwest issued one of these password-protected, non-CMP secret PCAT notices on
19 7/21/06¹⁶⁰ entitled "TRRO – Reclassification of Terminations for Unbundled
20 Network Element (UNE) Conversions – V1.0," with an effective date of

¹⁶⁰ Document No. PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1 (Qwest Wholesale Notification – not CMP notice).

1 7/28/2006 – just one week from the 7/21/06 date of announcement. This notice
2 announced a “procedure that is needed when you [CLECs] are converting UNE
3 Services to Finished Services in Non-Impaired Central Offices as required by the
4 TRRO.” Or, in other words, Qwest announced that CLECs would need to go
5 through a “procedure” to effectuate the same type of conversions that are the
6 subject of Issues 9-42 and 9-43.

7 This procedure, as explained in Qwest’s notice, requires the CLEC to
8 submit a collocation application for each central office to “reclassify UNE
9 terminations,” which was explained as having “Qwest reclassify your UNE
10 Collocation terminations to a Finished Service Interconnection Tie Pair (ITP) with
11 the DEMARC outside the collocation as required by the TRRO.” Qwest went on
12 to explain that DS1s would be reclassified in blocks of 28 DS1s as part of
13 reclassification and must reside in the same cable sheath,¹⁶¹ with DS3
14 terminations being reclassified on an ICB basis. When Qwest completes all of
15 this work, it will send the CLEC a revised Alternative Point of Termination
16 (“APOT”), whose responsibility it would be to update their databases to reflect
17 the new cabling arrangement.

¹⁶¹ In a document Qwest provided to Eschelon on August 11, 2006, in response to the question, “Under Qwest’s “TRRO PCAT,” can the UNE EELs and the non-UNE converted alternative arrangements reside on the same block of 28?,” Qwest said: “Yes, when the same cable is being redesignated In this example, Qwest will allow UNE EELs and non-UNE converted alternative arrangements to reside **on the same cable being reclassified**” (emphasis added). In other words, collocation and UNEs are both addressed by this Secret TRRO PCAT. The entire block (including UNEs) will be frozen.

1 In sum, Qwest’s notice indicates that Qwest intends to require a significant
2 amount of work to convert a UNE to an alternative service – work that could
3 potentially put CLECs’ Customers out of service. Qwest’s procedure is also very
4 time consuming – 45 day and ICB intervals – and Qwest indicates that unless
5 CLECs “reclassify” or “convert” their UNE circuits that are no longer impaired
6 pursuant to Qwest’s new procedure, it will stop accepting the CLEC’s connect,
7 change and disconnect orders. Worse yet, Qwest’s procedure requires the CLEC
8 to either complete or cancel all work in progress related to the cables being
9 reclassified, thereby putting a “freeze” on these cables and customers for a
10 minimum of 15 calendar days.¹⁶² This “freeze” is certainly not indicative of the
11 seamless conversions required by the FCC.

12 Qwest’s procedure conflicts with the FCC’s view of conversions in other
13 ways as well. Qwest’s notice indicates that there is a potential for Qwest to assess
14 non-recurring charges on CLECs for these conversion activities. Qwest states
15 that, CLECs “will not be charged a nonrecurring charge to perform this
16 reclassification of terminations from UNE to Finished Service *when the activity is*
17 *associated with TRRO.*” (emphasis added) And then Qwest indicates that
18 “Tariffs/Catalogs/Price Lists” may apply. This ambiguity on Qwest’s part about

¹⁶² Qwest’s PCAT states: “To eliminate CFA mismatches on orders, it is recommended that all work in progress related to the cable being reclassified either be completed or cancelled by the CLEC prior to quote acceptance. Submission of new connect, change, and disconnect orders on the cable being reclassified will be restricted 15 calendar days prior to the Ready for Service (RFS) date of the reclassification order. The restriction of orders is necessary to enable Qwest to change the designated name of the cable and provide that revised APOT information to the CLEC prior to issuance of orders against that cable.”

1 applicable charges for conversion instills little confidence in Eschelon that Qwest
2 intends to abide by the very clear FCC rule regarding conversion charges.

3 This conversion procedure announced in Qwest's non-CMP PCAT flies in
4 the face of the FCC's determinations on conversions and Qwest never once raised
5 this issue in CMP or in the Eschelon arbitration cases – despite Issues 9-42 and 9-
6 43 (conversions) being negotiated for quite some time.¹⁶³ Since Qwest's notice
7 was slim on details, Eschelon issued questions to Qwest on 8/3/06 inquiring about
8 several aspects of Qwest's notice – primarily, why the extensive work described
9 in the secret PCAT is necessary to simply convert a facility from UNE pricing to
10 a non-UNE pricing. In Qwest's responses to Eschelon's questions, Qwest
11 indicated that “[t]his is a records change, no CLEC or Qwest physical
12 modifications can be made to the facility as a part of the reclassification” – though
13 this record change, according to Qwest's PCAT, would take 45 days to execute
14 for the first five applications per week per state, and an ICB interval would apply
15 to any applications exceeding this amount.¹⁶⁴ Eschelon should be clear that it
16 does not believe that this non-CMP notice applies to Eschelon because this
17 language is not in Eschelon's ICA with Qwest and Qwest has not proposed this
18 language for negotiation/arbitration. However, Eschelon is concerned, based on

¹⁶³ Qwest also never raised the APOTs issue in any of the wire center proceedings, which discussed conversions.

¹⁶⁴ <http://www.qwest.com/wholesale/pcat/trroreclassuneterm.html> (as of 9/18/06): “Qwest will complete the reclassification request within 45 days of receipt of a valid application. The 45-day interval for Reclassification applies to the first five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation Applications are submitted by CLEC in a one (1) week period in the state, intervals for the Collocation Applications in excess of the first five (5) shall be individually negotiated.”

1 Qwest's past conduct, that if there are not clear terms and conditions in the
2 Eschelon and Qwest ICA that track the FCC's requirements on conversions,
3 Eschelon will get through this arbitration and Qwest will attempt to apply the
4 terms of this notice to Eschelon. Eschelon's proposals on Issues 9-42 and 9-43
5 will provide these clear terms and conditions and avoid future disputes.

6

7 **Q. HAS QWEST REFUSED TO NEGOTIATE THIS APOT ISSUE?**

8 A. Yes. On September 6, 2006, Qwest responded to Eschelon's questions about this
9 notice indicating that Qwest is refusing to negotiate the APOT issue because
10 according to Qwest, "the level of process Eschelon is seeking is best managed
11 through CMP."¹⁶⁵ This response is ironic and highly objectionable given that the
12 APOT notice was a non-CMP notice - meaning that Qwest itself refuses to use
13 CMP for this issue.¹⁶⁶ Again, this is a prime example of Qwest using the CMP
14 process as a sword or shield depending on what benefits Qwest. It refuses to
15 negotiate the APOT issue in state commission arbitrations, but also refuses to
16 address this issue in CMP (though Qwest admits that it is "best served by CMP").
17 Eschelon is gravely concerned that the ultimate outcome of Qwest's strategy is to
18 attempt to omit language pertaining to conversions in Eschelon's ICA, implement
19 its troublesome, potentially customer-affecting conversion procedure outside of
20 CMP (thereby avoiding the participation afforded CLECs in CMP), and then

¹⁶⁵ Email from Kathleen Salverda (Qwest), dated 9/6/06.

¹⁶⁶ Qwest issued a follow-up non-CMP notice on August 31, 2006, effective September 7, 2006 entitled "TRRO Reclassification of Terminations V2.0"

1 ultimately impose this procedure on Eschelon (arguing that the ICA does not
2 address conversions). This underscores the importance of the Commission
3 rendering a decision on conversions in this arbitration and maintaining
4 consistency with the FCC's findings regarding seamless conversions.
5

6 **Q. WHAT ARE ESCHELON'S PROPOSALS FOR CONVERSIONS (ISSUE 9-
7 43 AND 9-44 AND (A)-(C))?**

8 A. Eschelon proposes the following language:

9 **Issue 9-43**

10 9.1.15.2.3 The circuit identification ("circuit ID") will not change.
11 After the conversion, the Qwest alternative service
12 arrangement will have the same circuit ID as formerly
13 assigned to the high capacity UNE.
14

15 **Issue 9-44**

16 9.1.15.3 If Qwest converts a facility to an analogous or alternative
17 service arrangement pursuant to Section 9.1.15, the
18 conversion will be in the manner of a price change on the
19 existing records and not a physical conversion. Qwest
20 will re-price the facility by application of a new rate.
21

22 **Issue 9-44(a)**

23 9.1.15.3.1 Qwest may perform the re-pricing through use of an
24 "adder" or "surcharge" used for Billing the difference
25 between the previous UNE rate and the new rate for the
26 analogous or alternative service arrangement, much as
27 Qwest currently does to take advantage of the annual
28 price increases in its commercial Qwest Platform Plus
29 product.
30

1 **Issue 9-44(b)**

2 9.1.15.3.1.1 Qwest may add a new Universal Service Ordering
3 Code (“USOC”) for this purpose and assign the
4 “adder” or “surcharge” rate to that USOC.
5

6 **Issue 9-44(c)**

7 9.1.15.3.1.2 For any facility converted to an analogous or
8 alternative service arrangement pursuant to Section
9 9.1.15.3, Qwest will either use the same USOC or the
10 USOC will be deemed to be the same as the USOC
11 for the analogous or alternative service arrangement
12 for pricing purposes, such as for the purpose of
13 calculating volumes and discounts for a regional
14 commitment plan.
15

16 Taken together, Eschelon’s proposals for Issues 9-43 and 9-44 explain how the
17 conversions from UNEs to alternative service arrangements will be conducted.
18 For Issue 9-43, Eschelon proposes language that states that the circuit ID for the
19 facility that is being converted will not change during the conversion. For Issue
20 9-44, Eschelon proposes language that reflects the FCC’s language regarding the
21 billing changes involved in conversions, and Eschelon’s language for Issues 9-
22 44(a) and 9-44(b) set out an efficient option for implementing the re-pricing of
23 converted facilities – an adder or surcharge to the original rate – that Qwest
24 already uses for re-pricing services. Eschelon’s language for Issue 9-44 states
25 that the USOC associated with the converted circuit will remain the same for
26 calculating volume discounts.
27

1 **Q. WHAT IS QWEST'S PROPOSALS FOR CONVERSIONS?**

2 A. Qwest proposes to omit all of the Eschelon language shown above, and provides
3 no competing language. As it has with respect to a number of other issues, Qwest
4 claims that Eschelon's proposals for Issues 9-43 and 9-44 would circumvent the
5 CMP and require costly, unique processes that affect all CLECs.¹⁶⁷ This is
6 despite Qwest's refusal to address this issue in CMP.

7
8 **Q. WHAT TYPE OF CONVERSIONS ARE ADDRESSED IN ISSUES 9-43
9 AND 9-44?**

10 A. These issues apply to conversions from a UNE facility to an analogous or
11 alternative service arrangement (see, Section 9.1.15 of the ICA). These
12 conversions would occur when the parties agree, or it is determined in dispute
13 resolution, that the UNE is impacted by a finding of non-impairment. Analogous
14 or alternative service arrangements include access products purchased from
15 Qwest's access tariff. For instance, a UNE DS1 loop could be converted to a DS1
16 special access circuit if it is determined that the applicable non-impairment
17 thresholds are met for a particular wire center (*see* 47 CFR § 51.319(a)(4)).

18
19 **Q. IS THIS TRANSITION AWAY FROM UNES WITHIN THE SCOPE OF
20 SECTIONS 251 AND 252 OF THE ACT?**

¹⁶⁷ Qwest Position Statement in Issues Matrix.

1 A. Yes. The Washington Commission has found that this transition away from
2 UNEs is within the scope of 251/252 of the Act.¹⁶⁸ Similarly, the FCC found that
3 “as contemplated in the Act, individual carriers will have the opportunity to
4 negotiate specific terms and conditions necessary to translate our rules into the
5 commercial environment, and to resolve disputes over any new contract language
6 arising from differing interpretations of our rules.”¹⁶⁹

7
8 **Q. SHOULD ANY CHANGES BE MADE BY QWEST DURING A**
9 **CONVERSION THAT COULD RESULT IN SERVICE DISRUPTION FOR**
10 **ESCHELON’S END USER?**

11 A. No. When it has been determined that a UNE facility needs to be converted to an
12 analogous or alternative service arrangement, Eschelon and its End User
13 Customer will continue to use the same physical facility. Therefore, the change
14 required to effectuate the FCC’s regulatory requirements can be accomplished
15 with a record-only change.

16
17 **Q. PLEASE ELABORATE ON WHY CONVERSIONS SHOULD NOT**
18 **ENTAIL WORK THAT WOULD PUT ESCHELON’S CUSTOMERS OUT**
19 **OF SERVICE?**

¹⁶⁸ Washington ALJ Report (Order No. 17 in Verizon/CLEC arbitration), ¶ 150.

¹⁶⁹ TRO, pp. 14-15.

1 A. The conversions at issue are conversions from UNE to non-Section 251
2 alternative/analogous service (e.g., access product). The “conversion” in this
3 instance is really a conversion from cost-based UNE prices (i.e., TELRIC based
4 prices) to special access prices (e.g., conversion from UNE rates for DS1 loop to
5 access rates for DS1 special access circuit). However, since the physical facility
6 otherwise remains unchanged – indeed, the end user should not even know that it
7 has been “converted” – no other changes should be required for conversion.
8 Given that this re-pricing should not affect the operation of the facility itself,
9 Qwest should not be allowed to change the facility currently being provided.

10
11 **Q. DOES THE FCC AGREE THAT CONVERSIONS SHOULD INVOLVE**
12 **RECORD CHANGES AND AVOID NETWORK-RELATED CHANGES**
13 **THAT COULD PUT ESCHELON’S END USER CUSTOMER OUT OF**
14 **SERVICE?**

15 A. Yes. The FCC addressed the issue of conversions in the *TRO*¹⁷⁰ and found that
16 conversions should be seamless from the end user’s perspective, and should
17 involve only billing changes from Qwest’s perspective. At paragraph 586 of the
18 *TRO*, the FCC discussed the seamlessness of conversions:

19 Converting between wholesale services and UNEs or UNE
20 combinations should be a seamless process that does not affect the
21 customer’s perception of service quality.
22

¹⁷⁰ The *TRO* addressed conversions from UNEs to wholesale services and from wholesale services to UNEs.

1 The FCC codified the requirement that conversions should be seamless from the
2 perspective of the CLEC's end user in 47 CFR §51.316(a) as follows:

3 (b) An incumbent LEC shall perform any conversion from a
4 wholesale service or group of wholesale services to an unbundled
5 network element or combination of unbundled network elements
6 without adversely affecting the service quality perceived by the
7 requesting telecommunications carrier's end-user customer.

8
9 And at paragraph 588 of the *TRO*, the FCC addressed the notion that conversions
10 are billing changes:

11 588. We conclude that conversions should be performed in an
12 expeditious manner **in order to minimize the risk of incorrect**
13 **payments.** We expect carriers to establish any necessary
14 timeframes to perform conversions in their interconnection
15 agreements or other contracts. We decline to adopt ALTS's
16 suggestion to require the completion of all necessary billing
17 changes within ten days of a request to perform a conversion
18 because such time frames are better established through
19 negotiations between incumbent LECs and requesting carriers. **We**
20 **recognize, however, that converting between wholesale services**
21 **and UNEs (or UNE combinations) is largely a billing function.**
22 **We therefore expect carriers to establish appropriate**
23 **mechanisms to remit the correct payment after the conversion**
24 **request,** such as providing that any pricing changes start the next
25 billing cycle following the conversion request.
26

27 It is clear from the language above that the FCC's concern was directed at
28 ensuring proper payment for the facility, depending on whether it is a Section 251

1 UNE or a wholesale service (e.g., access product), and did not envision work on
2 the ILEC's part leading to the potential for Customer disruption.¹⁷¹

3

4 Issue No. 9-43: Conversions – Circuit ID, Section 9.1.15.2.3

5

6 **Q. WHAT IS A CIRCUIT ID AND WHAT IS ITS PURPOSE?**

7 A. The term is somewhat self-explanatory. A circuit ID is just that, a number or
8 code that identifies a specific circuit, generally by defining its two end points –
9 referred to as the “A” and “Z” location. Both CLEC and Qwest use this circuit ID
10 throughout their operational support systems to identify that circuit for numerous
11 activities including billing and repair matters.

12

13 **Q. SHOULD A CIRCUIT ID CHANGE DURING A CONVERSION?**

14 A. No. As described above, in the vast majority of circumstances in which Eschelon
15 will be required to convert an existing circuit from a UNE to an alternative service
16 arrangement, the physical facility need not (and should not) change. As such, the
17 circuit ID need not (and should not) change either. This is important from
18 Eschelon's perspective because Eschelon specifically tracks that particular facility

¹⁷¹ The FCC did mention in paragraph 586 of the *TRO* that there may be an increase in the risk of Customer disruption caused by CLECs grooming inter-exchange traffic in order to comply with the eligibility criteria. However, this potential for disruption stems from decisions made by the CLECs, not Qwest. The fact that the FCC mentioned the potential for End User Customer disruption caused by CLEC grooming, yet did not mention the possibility for disruption caused by Qwest (and indeed requires conversions to be seamless), indicates that the FCC never envisioned the potential for Qwest-caused Customer disruption because from Qwest's perspective, the conversion involves simply changing the rate that applies to the facility.

1 and the Customer it serves via the circuit ID. Numerous Eschelon systems rely on
2 that circuit ID in providing ongoing billing and customer service to the Customer.
3 To the extent Qwest is allowed to (a) unnecessarily change the underlying facility
4 simply to effectuate what should be accomplished by a billing change and then (b)
5 assign a new circuit ID to the same arrangement, Eschelon's systems will be
6 substantially, adversely, and unnecessarily affected. This will be accompanied by
7 notable cost and inconvenience. Likewise, unnecessarily re-arranging facilities
8 puts the Customer at risk of losing service – a Customer who never asked to be
9 converted and should not even realize that it happened.

10
11 **Q. PLEASE EXPLAIN HOW CHANGING CIRCUIT IDS DURING**
12 **CONVERSIONS COULD AFFECT ESCHELON'S END USER**
13 **CUSTOMERS.**

14 A. Changing the circuit ID for a circuit that is already in place and working well for a
15 Customer in connection with “converting” the circuit from a UNE to an
16 alternative arrangement significantly increases the risk of Customer disruption.
17 For instance, Qwest processes circuit ID changes using “disconnect” and “new”
18 service orders. A simple typing error in an order could send the order to Qwest
19 facilities assignment with a “disconnect” on the order, and the Customer will be
20 erroneously disconnected and put out of service. In addition, if records are not
21 correctly and timely updated to show new circuit IDs in either Qwest or CLEC
22 systems, problems are likely to arise in the areas of maintenance and repair. For

1 example, if six months after the conversion, the end user notifies Eschelon that its
2 circuit is in need of repair, but the circuit ID is incorrectly stored in either the
3 Eschelon or Qwest systems as a result of an unnecessary physical conversion, it is
4 likely that Eschelon and Qwest will be unable to effectively open a trouble-ticket.
5 As a result, the repair function will be delayed and is likely to require substantial
6 additional resources to resolve, as compared to a normal repair ticket. All of this
7 can be avoided by adopting Eschelon's proposal and making sure that Qwest does
8 not change circuit IDs for conversions.

9

10 **Q. HAS QWEST ALREADY PROCESSED CONVERSIONS WITHOUT**
11 **CHANGING CIRCUIT IDS?**

12 A. Yes. When Qwest first converted special access circuits to UNEs, the original
13 circuit IDs did not change. Issue 9-43 deals with the reverse situation – *i.e.*,
14 conversion of UNEs to special access. To date Qwest has been unable, or
15 unwilling, to explain why the circuit ID must be changed in the current situation
16 when no such change was required in previous conversions.

17

18 **Q. WILL CHANGING CIRCUIT IDS FOR CONVERSIONS IMPOSE COSTS**
19 **ON ESCHELON?**

20 A. Yes. If a circuit ID is changed for a conversion, Eschelon will be forced to
21 modify its systems and its records to account for the new circuit ID. Qwest
22 complains about purported costs that it would incur to leave the circuit ID

1 unchanged, but ignores the cost imposed on Eschelon by changing the circuit ID
2 for the same facility.

3

4 **Q. SHOULD ESCHELON BEAR THE COSTS ASSOCIATED WITH**
5 **CIRCUIT ID CHANGES?**

6 A. No. The physical circuit already exists and Eschelon paid substantial non-
7 recurring charges to establish that circuit. There is no technical need to change
8 that circuit just to convert it from one service-type (UNE) to another (special
9 access). It is Qwest's decision to make a physical change (or change
10 unnecessarily the ID for that circuit), and it is Qwest who should bear the costs.
11 Otherwise, there will be no economic discipline associated with Qwest's decision.
12 In a circumstance in which Qwest can foist additional costs on its competitors like
13 Eschelon, while at the same time endangering the service provided by its
14 competitors by requiring a physical conversion, all the while garnering additional
15 fees for unnecessary tariffed non-recurring charges, why wouldn't Qwest require
16 an unnecessary physical change in every circumstance? Unfortunately, all of
17 these additional fees and expenses will have to ultimately be paid by Qwest's
18 competitors and/or their End User Customers and, therefore, the Commission
19 should adopt the process which is most efficient and least likely to disrupt
20 Customer services. That approach is the one advocated by Eschelon.

21 .

1 **Q. YOU DESCRIBED THE RISK OF DISRUPTION FACING ESCHELON'S**
2 **CUSTOMERS IF QWEST CHANGES THE CIRCUIT IDS FOR**
3 **CONVERSIONS. WOULD QWEST'S RETAIL CUSTOMERS FACE**
4 **THIS SAME RISK?**

5 A. No, and this is a very important point. Conversions only apply to the facilities
6 used by CLECs, and not facilities used by Qwest, and therefore, Qwest's retail
7 customers would face none of the risks that are inherent in Qwest's proposal to
8 change circuit IDs during conversions. The FCC recognized this very point when
9 addressing conversion charges in paragraph 587 of the TRO:

10 Because incumbent LECs are never required to perform a
11 conversion in order to continue serving their own customers, we
12 conclude that such charges are inconsistent with an incumbent
13 LEC's duty to provide nondiscriminatory access to UNEs and
14 UNE combinations on just, reasonable, and nondiscriminatory
15 rates, terms, and conditions.
16

17 The FCC was speaking to conversion charges that ILECs may attempt to assess,
18 but the same reasoning holds true with respect to circuit ID changes. Qwest is
19 never required to perform a conversion in order to continue serving its own
20 Customers, and therefore, Qwest's proposal to change circuit IDs for conversions
21 to CLEC circuits, thereby increasing the risk of CLEC Customer disruption and
22 undermining the FCC's requirements for seamless conversions, does not meet
23 Qwest's obligation to provide access to UNEs on just, reasonable, and
24 nondiscriminatory rates, terms and conditions.

1 Issue No. 9-44 – Manner of Conversion – Section 9.1.15.3
2

3 **Q. IS ESCHELON’S PROPOSAL FOR ISSUE 9-44, WHICH RECOGNIZES**
4 **THAT CONVERSIONS CAN BE ACCOMPLISHED THROUGH A**
5 **BILLING CHANGE, SUPPORTED BY THE FCC’S FINDINGS ON**
6 **CONVERSIONS?**

7 A. Yes. As explained above, the FCC has found in paragraph 588 of the TRO that
8 conversions affect the billing of rates – not physical changes in the facilities.
9 Eschelon’s proposed Section 9.1.15.3 simply memorializes the FCC’s findings.

10
11 **Q. WHY IS IT CRITICAL TO ENSURE SEAMLESS CONVERSIONS?**

12 A. For starters, seamless conversions are required by the FCC (see, *TRO*, ¶ 586). In
13 addition, a conversion is a regulatory construct and not a change requested by
14 Eschelon or its Customer, and because only the price of a facility is changing,
15 service to end users should not be put at risk. Eschelon’s proposed Section
16 9.1.15.3 prohibits Qwest from putting Eschelon’s Customers at risk by
17 performing unnecessary physical rearrangements. Furthermore, since Qwest’s
18 Customers will not face any of the same risks (because ILECs do not need to
19 perform conversions to continue to serve their Customers), Eschelon’s End User
20 Customers will face a higher likelihood of service outage problems than will
21 Qwest’s Customers. These problems will be directly attributable to Qwest’s

1 insistence on making physical facility changes when the FCC has already found
2 that record-only changes will suffice.

3

4 **Q. ARE THERE OTHER REASONS WHY ESCHELON’S LANGUAGE IS**
5 **NECESSARY?**

6 A. Yes. Agreed upon language in Section 9.1.15 states that, if a CLEC has not
7 converted a UNE at the end of a transition period, Qwest “will convert” it to
8 month-to-month service arrangements under its tariff. Without Eschelon’s
9 language in Section 9.1.15.3, the ICA does not describe what “convert” means or
10 the terms and conditions under which this conversion will take place. As a result,
11 absent Eschelon’s proposed Section 9.1.15.3, Qwest could interpret the contract to
12 be open-ended with respect to the changes Qwest can make during conversions
13 that could harm Eschelon’s Customers’ service quality.

14

15 **Q. HAS THE FCC ADDRESSED THE CHARGES THAT CAN AND**
16 **CANNOT BE ASSESSED BY THE ILEC FOR CONVERSIONS?**

17 A. Yes. The FCC’s rules and orders determine the charges that the ILEC can and
18 cannot apply on a CLEC for a conversion. The FCC spoke to charges related to
19 conversions at paragraph 587 of the TRO as follows:

20

21

22

23

24

587. ... We recognize, however, that once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such

1 charges could deter legitimate conversions from wholesale services
2 to UNEs or UNE combinations, or could unjustly enrich an
3 incumbent LEC as a result of converting a UNE or UNE
4 combination to a wholesale service. Because incumbent LECs are
5 never required to perform a conversion in order to continue serving
6 their own customers, we conclude that such charges are
7 inconsistent with an incumbent LEC's duty to provide
8 nondiscriminatory access to UNEs and UNE combinations on just,
9 reasonable, and nondiscriminatory rates, terms, and conditions.
10 Moreover, we conclude that such charges are inconsistent with
11 section 202 of the Act, which prohibits carriers from subjecting
12 any person or class of persons (*e.g.*, competitive LECs purchasing
13 UNEs or UNE combinations) to any undue or unreasonable
14 prejudice or disadvantage.
15

16 The FCC promulgated a rule related to conversion charges in 47 CFR §51.316(c)
17 as follows:

18 51.316 (c) Except as agreed to by the parties, an incumbent LEC
19 shall not impose any untariffed termination charges, or any
20 disconnect fees, re-connect fees, or charges associated with
21 establishing a service for the first time, in connection with any
22 conversion between a wholesale service or group of wholesale
23 services and an unbundled network element or combination of
24 unbundled network elements.

25 The FCC's rules and orders on conversion charges prohibit Qwest from assessing
26 termination charges, re-connect fees, connect fees and other charges associated
27 with establishing a circuit for the first time. That is because the circuit is already
28 established and working properly, and the requesting carrier has already paid non-
29 recurring charges to originally establish the circuit. Given that no physical work
30 is needed to convert the circuit, no charges for physical work to establish the
31 circuit are allowed for conversions. Furthermore, the FCC unambiguously

1 rejected the notion of conversion charges: it found them to be not only
2 “inconsistent with an incumbent LEC’s duty to provide nondiscriminatory access
3 to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates,
4 terms, and conditions,” but it also found them to be “inconsistent with section 202
5 of the Act, which prohibits carriers from subjecting any person or class of persons
6 (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or
7 unreasonable prejudice or disadvantage.” Therefore, any claim by Qwest that
8 Eschelon’s proposals inappropriately limit Qwest’s ability to recover its costs of
9 conversions, should be seen for what it is – a collateral attack on the FCC’s
10 findings regarding conversion charges.
11

12 Issue No. 9-44(a): Manner of Conversion – Use of adder or surcharge – Section
13 9.1.15.3.1
14

15 **Q. YOU HAVE EXPLAINED ABOVE THAT CONVERSIONS INVOLVE A**
16 **BILLING CHANGE AND NOT A CHANGE IN PHYSICAL FACILITY. IS**
17 **THERE A SIMPLE, TECHNICALLY FEASIBLE WAY IN WHICH**
18 **QWEST COULD EFFECTUATE THIS BILLING CHANGE AND**
19 **IMPLEMENT THE CONVERSION?**

20 A. Yes. Providing such an option to Qwest is the purpose of Eschelon’s proposed
21 language under Issue 9-44(a). Eschelon’s proposal would allow Qwest to
22 accomplish this conversion (or re-pricing) through the application of an adder or

1 surcharge to bill the difference between the old rate and new rate (*i.e.*, pre and
2 post conversion rates). For instance, if a DS1 UNE loop was converted to a DS1
3 special access circuit, the adder or surcharge would reflect the difference between
4 the UNE rate and the special access rate.

5
6 **Q. DOES QWEST ALREADY USE SUCH AN ADDER/SURCHARGE**
7 **APPROACH TO REFLECT PRICE CHANGES?**

8 A. Yes. Qwest has already demonstrated this with its implementation of the Qwest
9 Platform Plus (“QPP”) agreements. Under those agreements, QPP circuits are
10 subject to annual rate increases. Qwest does not physically convert the circuits to
11 convert to the new rates. Instead, Qwest re-prices the circuits by using an “adder”
12 or “surcharge” for billing the difference between the previous rate and the new
13 rate. Eschelon’s proposed language in Section 9.1.15.3.1 merely makes clear that
14 Qwest may use this same approach for the conversions described in Section
15 9.1.15.

16
17 **Q. IS THE USE OF ADDERS UNDER THE QPP AGREEMENTS STRONG**
18 **EVIDENCE THAT SUCH A RE-PRICING METHODOLOGY COULD BE**
19 **USED TO IMPLEMENT CONVERSIONS?**

20 A. Yes. The rate changes involved with QPP are significantly more complex than
21 rate changes involved in converting UNE rates to analogous/alternative service
22 rates. That is, QPP rates differ depending on whether the End User Customer is a

1 residential or a business customer, and depend upon whether the CLEC has met
2 certain volume quotas. Implementing such a re-pricing methodology should be
3 easier to implement for conversion adders, which would not vary based on these
4 factors.

5

6 Issue No. 9-44(b): Manner of Conversion – Use of USOC – Section 9.1.15.3.1.1
7

8 **Q. IS THE DISAGREEMENT UNDER ISSUE 9-44(B) AN EXTENSION OF**
9 **ISSUE 9-44(A) ABOVE?**

10 A. Yes. As explained above, Eschelon’s proposal under Issue 9-44(a) would permit
11 Qwest to implement the re-pricing involved in a conversion through the use of an
12 “adder” or “surcharge” reflecting the difference between the old and new rate, just
13 as Qwest does when re-pricing under the QPP agreements. It is possible that
14 Qwest may need to add new USOC codes to identify the conversion adders.
15 Eschelon’s language for Section 9.1.15.3.1.1 is designed to allow Qwest to
16 introduce new USOC(s) if needed to implement the same re-pricing methodology
17 for conversions as Qwest uses for QPP.

18

19 **Q. SHOULD QWEST BE ABLE TO DEVELOP A CHARGE TO APPLY TO**
20 **CLECS TO RECOVER THE COST OF ADDING NEW USOCS USED**
21 **FOR CONVERSIONS?**

1 A. No. This would be a charge that the FCC prohibits under paragraph 587 of the
2 TRO and 47 CFR § 51.316(c). Specifically, this would be a conversion charge
3 “associated with establishing a service for the first time” which the FCC found to
4 be inconsistent with Qwest’s non-discrimination obligation as well as its
5 obligation not to subject any person or class of persons to undue or unreasonable
6 prejudice or disadvantage under Section 202 of the Act. Since Qwest is never
7 required to perform conversions in order to continue serving its Customers, Qwest
8 and its Customers would not incur costs related to establishing USOCs for
9 conversions. Based on the FCC’s discussion in TRO paragraph 587, this means
10 that Qwest cannot assess these types of charges on CLECs.
11

12 Issue No. 9-44(c): Manner of Conversion – Same USOC – Section 9.1.15.3.1.1
13

14 **Q. WHAT CONCERN IS ESCHELON ATTEMPTING TO ADDRESS**
15 **THROUGH ITS PROPOSED LANGUAGE FOR ISSUE 9-44(C)?**

16 A. Eschelon’s proposals under Issues 9-44(a) and 9-44(b) would permit Qwest to
17 perform the re-pricing involved in a conversion by way of an adder, similar to the
18 way in which Qwest re-prices under its QPP Agreements. The USOCs that are
19 used to represent rate elements are used for other pricing purposes, such as
20 calculating volumes and discounts for a regional commitment plant. For example,
21 a CLEC may have a volume commitment with Qwest to purchase a certain dollar
22 value worth of services over a particular state or region in order to receive a

1 percentage discount on the services it purchases from Qwest. The services that
2 contribute to that volume commitment, and in turn, the associated discount may
3 be identified by USOC. Eschelon is concerned that Qwest may change or add
4 USOCs to accomplish a conversion and then remove the revenue associated with
5 the facility from the calculated volume commitments, thereby making it more
6 difficult for Eschelon to meet its volume commitments and obtain a discount,
7 which leads to more wholesale revenues for Qwest. Eschelon's language for this
8 issue was designed to ensure that any USOC changes involved in a conversion do
9 not change the way in which the USOCs are used for pricing purposes (*e.g.*,
10 calculating volume commitments and discounts).

11

12 **Q. PLEASE ELABORATE ON WHY A USOC CHANGE USED TO**
13 **ACCOMPLISH A CONVERSION SHOULD NOT AFFECT THE WAY IN**
14 **WHICH THE USOC IS USED FOR PRICING PURPOSES.**

15 A. The facility is the exact same facility after the conversion as it was before the
16 conversion, and this would hold true even if Qwest assigned a new USOC to the
17 circuit to reflect the post-conversion pricing. Qwest should not be allowed to
18 manipulate its USOCs in such a way as to allow Qwest to recover higher charges
19 from CLECs. This would be particularly unfair since the USOC methodology of
20 implementing conversions makes the conversions efficient for Qwest, and in light
21 of the FCC's strong emphasis on nondiscriminatory, just and reasonable treatment

1 by Qwest for conversions (given that conversions apply only to CLECs and not
2 Qwest).

3
4 **Q. PLEASE SUMMARIZE ISSUES 9-43 AND 9-44.**

5 A. Conversions should be seamless to the CLEC End User Customer. A conversion
6 involves re-pricing a facility – a facility that is operational and serving an End
7 User Customer – from UNE prices to the price of the alternative/analogous
8 service, and it should not involve any work that would result in service disruption
9 for the End User Customer. Qwest and its Customers do not bear any risk of
10 disruption or costs from conversions because Qwest does not convert its circuits.
11 Eschelon’s proposed language would ensure that conversions are implemented
12 just as the FCC required them to be – seamlessly. Eschelon’s proposal of
13 implementing conversions through a billing change is specifically discussed by
14 the FCC and the billing change option included in Eschelon’s ICA language is
15 already used by Qwest to re-price services. Qwest’s proposals, on the other hand,
16 could result in disruption for Eschelon End User Customers and leaves the door
17 open for Qwest to assess conversion charges that the FCC promulgated a rule to
18 prohibit. For all of the reasons described in Eschelon’s business need and in these
19 responses, the Commission should adopt Eschelon’s language for Issues 9-43 and
20 9-44.

21

1 **VIII. SUBJECT MATTER NO. 19. INTERFERING BRIDGE TAP**

2 Issue No. 9-46: ICA Section 9.2.2.9.6
3

4 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 9-46.**

5 A. A fundamental underpinning of Qwest's position on about one-third of the issues
6 in this arbitration is that there should be no overlap between a CLEC's ICA and
7 the PCAT. With respect to Issue 9-46, Qwest took a different tact, however.¹⁷² I
8 discuss the significance of this inconsistency above in my testimony relating to
9 the CMP. After rejecting five different language options proposed by Eschelon to
10 address every objection Qwest expressed about this subject, Qwest has since
11 come back and agreed to one of those options, with a one-word modification. The
12 parties therefore will have the "contractual certainty" offered by contract language
13 on this issue that Qwest seeks to deny to Eschelon on a number of other issues by
14 proposing to exclude language from the ICA. The parties have agreed to the
15 following language, subject to Commission approval, to close Issue 9-46:

16 "Interfering Bridged Tap is defined as any amount of Bridged Tap
17 that would interfere with proper performance parameters as
18 defined in this Section 9.2.2.9.6 and applicable industry
19 standards."
20

¹⁷² Compare Linse Minnesota Direct, p. 8, lines 20-21 (Qwest's language should be adopted because it "is consistent with the PCAT") with Minnesota Linse Direct, p. 9, lines 17-19 (Eschelon's language should be rejected it "attempts to inappropriately incorporate information from Qwest's product catalog ("PCAT") into the party's interconnection agreement").

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

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

4
5 **Q. WHAT IS ESCHELON'S BUSINESS ISSUE REGARDING LOOP-**
6 **TRANSPORT COMBINATIONS?**

7 A. Eschelon is entitled to receive from Qwest UNEs that are combined, or
8 "commingled," with non-UNEs. Commingling does not mean that the UNE
9 component is no longer a UNE and Qwest remains responsible for providing the
10 UNE in a commingled arrangement, subject to the same requirements that apply
11 to non-commingled UNEs.

12 When Qwest's proposals are closely scrutinized, it becomes clear that
13 Qwest is attempting to position one type of loop transport combination, in
14 particular a commingled EEL, so that the terms governing the non-UNE (or the
15 "facilities or services that a requesting telecommunications carrier has obtained at
16 wholesale from an incumbent LEC") will dictate how the UNE portion of the
17 combination is ordered, provisioned, and repaired. Qwest's proposal is a thinly-
18 veiled attempt to remove the terms regarding these UNEs from Commission
19 purview by dictating the terms and conditions over the entire offering through its
20 access tariffs. At least one component of these offerings are a Section 251 UNE,
21 and therefore, the Commission should, at a minimum, retain its jurisdiction over
22 the UNE component of Loop-Transport Combinations, including the UNE in a
23 Commingled EEL, and ensure that terms that affect the UNE are included in the

1 filed and approved ICA. The nondiscrimination requirements of Section 251 of
2 the Act are not contained in Qwest’s access tariffs and therefore should not be
3 used to govern UNEs.

4

5 **Q. WHAT IS ESCHELON’S PROPOSAL ON ISSUE 9-55?**

6 A. Eschelon proposes the following language for Section 9.23.4:¹⁷³

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

9

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

23

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

27

28

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

33

¹⁷³ Eschelon also capitalizes the term “Loop-Transport” in its language to indicate that it is a defined term in the ICA.

1 **9.23.4.4 Additional Terms for UNE Components of Loop Transport**
2 **Combinations**

3 ...

4 9.23.4.4.1 EELs and Commingled EELs may consist of loops and
5 interoffice transport of the same bandwidth (Point-to-Point).
6 When multiplexing is requested, EELs and Commingled EELs
7 may consist of loops and interoffice transport of different
8 bandwidths (Multiplexed). CLEC may also order combinations of
9 interoffice transport, concentration capability and DS0 loops.

10

11 **9.23.4.5 Ordering Process for UNE Components of Loop Transport**
12 **Combinations**

13

14 9.23.4.5.4 . . .Qwest may require two (2) service requests when
15 CLEC orders Multiplexed Loop Transport Combinations (which
16 are not Point-to-Point) and EEL loops (as part of a multiplexed
17 EEL). Regarding Commingling see Section 24.

18

19 **9.23.4.6 Rate Elements for UNE Components of Loop Transport**
20 **Combinations**

21

22 Eschelon's proposed language defines the term Loop-Transport Combination and
23 includes language in the contract to make clear that the UNE component of a
24 Loop-Transport combination is governed by the ICA. Eschelon's language,
25 however, does not attempt to dictate the terms of the non-UNE piece of a Loop-
26 Transport combination.

27

28 **Q. WHAT IS QWEST'S PROPOSAL ON ISSUE 9-55?**

29 A. Qwest proposes the following language (with Qwest language underlined and
30 Eschelon language in strikeout):

1 **9.23.4 ~~Loop-Transport Combinations:—Enhanced Extended~~**
2 **~~Links (EELs), Commingled EELs, and High Capacity~~**
3 **~~EELs~~**

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

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

24
25 High Capacity EEL – “High Capacity EEL” is a ~~Loop-Transport~~
26 ~~Combination~~ (either EEL or Commingled EEL) when the Loop or
27 transport is of DS1 or DS3 capacity. High Capacity EELs may also be
28 referred to as “DS1 EEL” or “DS3 EEL,” depending on capacity level.
29

30 **9.23.4.4 Additional Terms for EELs~~UNE Components of Loop~~**
31 **~~Transport Combinations~~**

32
33 9.23.4.4.1 ~~EELs and Commingled EELs~~ may consist of loops and
34 interoffice transport of the same bandwidth (Point-to-Point).
35 When multiplexing is requested, ~~EELs and Commingled EELs~~
36 may consist of loops and interoffice transport of different
37 bandwidths (Multiplexed). CLEC may also order combinations of
38 interoffice transport, concentration capability and DS0 loops.
39

40 **9.23.4.5 Ordering Process for EELs~~UNE Components of Loop-~~**
41 **~~Transport Combinations~~**
42

1 9.23.4.5.4 Qwest may require two (2) service requests when
2 CLEC orders Multiplexed ~~EELs Loop-Transport Combinations~~
3 (which are not Point-to-Point) and EEL loops (as part of a
4 multiplexed EEL). Regarding Commingling see Section 24.
5

6 **9.23.4.6 Rate Elements for EELs ~~UNE Components of Loop-~~**
7 **~~Transport Combinations~~**
8

9 Qwest disagrees that the term Loop-Transport should be defined in the ICA, and
10 uses the term “EEL” instead. Qwest also proposes to omit the term “commingled
11 EEL” from these sections of the ICA. Qwest, in support of its proposal, states
12 that Loop Transport is not a separate Qwest product and complains that
13 Eschelon’s use of the term Loop Transport is different than the way in which the
14 FCC uses the term.¹⁷⁴
15

16 **Q. WHAT IS THE PRIMARY DISAGREEMENT BETWEEN ESCHELON**
17 **AND QWEST ON ISSUE 9-55?**

18 A. The crux of the issue is how Loop-Transport Combinations will be treated under
19 the ICA, particularly if they involve commingling. The FCC defines
20 Commingling in 47 CFR §51.5 as follows:

21 Commingling. Commingling means the connecting, attaching, or
22 otherwise linking of an unbundled network element, or a
23 combination of unbundled network elements, to one or more
24 facilities or services that a requesting telecommunications carrier
25 has obtained at wholesale from an incumbent LEC, or the
26 combining of an unbundled network element, or a combination of
27 unbundled network elements, with one or more such facilities or
28 services. Commingling means the act of commingling.

¹⁷⁴ *Qwest Petition*, ¶¶ 109-111.

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Q. DOES ESCHELON’S LANGUAGE USE THE TERM “LOOP TRANSPORT COMBINATION” IN THE SAME WAY AS THE FCC HAS USED THE TERM IN ITS ORDERS?

A. Yes. Eschelon’s proposed definition of “Loop-Transport Combination” mirrors the way the FCC has used that term to define any combination of loop and transport. For example, when discussing EELs in paragraph 575 of the *TRO*, the FCC states as follows:

575. As noted above, our rules currently require incumbent LECs to make UNE combinations, including *loop-transport combinations*, available in all areas where the underlying UNEs are available and in all instances where the requesting carrier meets the eligibility requirements... (emphasis added)

Again, at paragraph 576 of the *TRO*, the FCC states: “We further agree that the availability of EELs and other UNE combinations promotes innovation because competitive LECs can provide advanced switching capabilities in conjunction with *loop-transport combinations*.” (emphasis added)

The FCC goes on in paragraph 584 of the *TRO* to state that “as we explain in detail below, we obviate the risk identified by the court by applying service eligibility criteria to *commingled loop-transport combinations*.” Indeed, paragraph 593 of the *TRO* specifically refers to a high capacity loop transport combinations as a commingled EEL [“...to obtain at UNE pricing part of a high-

1 capacity loop-transport combination (commingled EEL)"] and paragraph 594 of
2 the *TRO* again refers to "commingled loop-transport combinations."
3

4 **Q. HOW ARE THESE EXCERPTS FROM THE FCC'S ORDER**
5 **CONSISTENT WITH ESCHELON'S DEFINITION OF LOOP**
6 **TRANSPORT COMBINATION?**

7 A. Eschelon's language defines the Loop-Transport combination to include: (1)
8 Enhanced Extended Links ("EELs"), (2) Commingled EELs, and (3) High
9 Capacity EELs. The excerpts from the FCC's *TRO* above show that the FCC has
10 referred to loop transport combinations as (1) EELs (*e.g.*, *TRO*, ¶¶ 575 and 576),
11 (2) commingled EELs (*e.g.*, *TRO*, ¶¶ 584, 593 and 594), and (3) high capacity
12 EELs (*e.g.*, *TRO*, ¶ 593) – just as Eschelon's proposed section 9.23.4 does.
13

14 **Q. WHAT ARE THE ADVANTAGES OF DEFINING THE TERM LOOP-**
15 **TRANSPORT COMBINATION IN THE ICA?**

16 A. The use of this defined term is efficient because it provides an umbrella that
17 includes all three types of Loop-Transport Combinations that currently exists –
18 EELs, Commingled EELs, and High Capacity EELs – thus avoiding having to
19 repeat all three terms throughout the document.

20 In addition, Eschelon's language ties the various sections of the ICA
21 together better than Qwest's language. Because at least one component of the
22 loop transport combination is a UNE, the terms and conditions belong in Section

1 9, which is entitled “Unbundled Network Elements.” Although there is also a
2 section on Commingling (Section 24), that section contains general terms and not
3 the type of terms and conditions that Eschelon and Qwest otherwise agree belong
4 in Section 9.23, such as Service Eligibility Criteria for High Capacity EELs.
5 Qwest’s proposal to place only these terms (Service Eligibility Criteria) of
6 Commingled EELs in Section 9 while placing others in Section 24 does not make
7 sense from an organizational or ease-of-use perspective. Commingled EELs have
8 a UNE component and that UNE component should be addressed in Section 9,
9 and at the same time, Section 9 contains ample cross references to Section 24 on
10 Commingling so that the user of the ICA will readily be able to locate the
11 Commingling general terms.

12
13 **Q. DOES ESCHELON’S LANGUAGE COVER NON-UNES NOT**
14 **GOVERNED BY SECTION 251 OF THE ACT?**

15 A. No. Eschelon’s proposed definition makes clear that only the UNE components
16 of a Loop-Transport Combination are subject to the ICA, and that, if no
17 component is a UNE, the combination is not governed by the ICA. This language
18 should eliminate any suggestion on Qwest’s part that the terminology is some
19 kind of attempt to govern non-UNEs in the ICA. Eschelon further clarifies this
20 point by capitalizing the term in the headings (see, Sections 9.23.4; 9.23.4.4;
21 9.23.4.5; 9.23.4.6) to indicate it is a defined term and referring to the UNE
22 components of Loop-Transport Combinations.

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Q. PLEASE SUMMARIZE ISSUE 9-55?

A. Eschelon is entitled to commingle UNEs with non-UNEs. The UNEs in these commingled arrangements are still UNEs and must be provided in a non-discriminatory manner pursuant to Section 251 of the Act and should be governed by Section 9 (UNEs) of the ICA. Eschelon’s language makes these requirements clear and defines and uses the term “Loop-Transport Combinations” precisely as the FCC has used it. For all of the reasons described in Eschelon’s business need and in these responses, the Commission should adopt Eschelon’s language for Issue 9-55.

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

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

Q. WHAT IS ESCHELON’S BUSINESS CONCERN REGARDING MULTIPLEXING (LOOP MUX COMBINATIONS) (ISSUE 9-61 AND (A)-(C))?

A. This issue concerns Eschelon’s continued unbundled access to multiplexing when multiplexing is combined with an unbundled loop. Qwest currently provides unbundled access to multiplexing at TELRIC rates and has for some time. Qwest

1 has provided multiplexing in various forms, including as part of a UNE
2 combination as well as on a stand alone basis, and the Commission has approved
3 TELRIC rates for multiplexing. The FCC has made it very clear that multiplexing
4 must be provided in conjunction with UNEs and UNE combinations. Despite all
5 of this, Qwest has decided that it will stop providing multiplexing at TELRIC
6 rates and relegate the terms, conditions and rates for multiplexing to the special
7 access tariff.

8 Eschelon is not asking for stand-alone multiplexing or unlimited access to
9 multiplexing at TELRIC rates. Rather Eschelon's proposal is narrowly-tailored to
10 treat multiplexing the same way that a reasonable reading of the FCC's order
11 treats multiplexing – *i.e.*, that unbundled access to multiplexers must be provided
12 when combined with UNEs. In these instances, multiplexing should be governed
13 by the ICA and priced at TELRIC.

14

15 **Q. WHAT IS ESCHELON'S PROPOSALS ON ISSUES 9-61 AND (A)-(C)?**

16 A. Eschelon proposes the following language in Section 9:
17

18 **ISSUE 9-61**

19 **9.23.2 UNE Combinations Description and General Terms**
20

21 UNE Combinations are available in, but not limited to, the
22 following products: EELs (subject to the limitations
23 set forth below) and Loop Mux Combinations. If
24 CLEC desires access to a different UNE
25 Combination, CLEC may request access through

1 the Special Request Process set forth in this
2 Agreement. . . .
3

4 **ISSUE 9-61(a)**

5 9.23.9.1.1 Loop-Mux combination (LMC) is an unbundled Loop as
6 defined in Section 9.2 of this Agreement (referred to in
7 this Section as an LMC Loop) combined with a DS1 or
8 DS3 multiplexed facility with no interoffice transport.
9 The multiplexed facility is provided as an
10 Interconnection Tie Pair (ITP) from the high side of the
11 multiplexer to CLEC's Collocation. The multiplexer
12 and the Collocation must be located in the same Qwest
13 Wire Center.

14 9.23.9.1.2 LMC provides CLEC with the ability to access End User
15 Customers and aggregate DS1 or DS0 unbundled Loops to a
16 higher bandwidth via a ~~PLT/SA~~-DS1 or DS3 multiplexer.
17 There is no interoffice transport between the multiplexer and
18 CLEC's Collocation.
19

20 9.23.9.1.3 Qwest offers the LMC ~~Loop~~ as a Billing conversion or as new
21 Provisioning.
22

23 9.23.9.2.1 An Extended Enhanced Loop (EEL) may be commingled with
24 the ~~PLT/SA~~ multiplexed facility.
25

26 9.23.9.2.2 LMC ~~Loops~~ will be provisioned where existing facilities are
27 available or pursuant to the provisions of Section 9.1.2.1 of the
28 Agreement.
29

30 9.23.9.2.3 The ~~PLT/SA~~-DS1 or DS3 multiplexed facility must terminate in
31 a Collocation.
32

33 9.23.9.2.4 Intentionally Left Blank.
34

35 9.23.9.2.6 Rearrangements may be requested for work to be performed by
36 Qwest on an existing LMC ~~Loop~~, or on some private line/special

1 access circuits, when coupled with a conversion-as-specified
2 request to convert to LMC-Loop.
3

4 9.23.9.3.2 LMC multiplexing is offered in DS3 to DS1 and DS1 to DS0
5 configurations. LMC multiplexing is ordered with LMC Loops.
6 The recurring and nonrecurring rates in Exhibit A apply.
7

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

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

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

17 9.23.9.3.2.2 1/0 multiplexing rates are contained in Exhibit A of this
18 Agreement, and include the following charges:

19 a) Recurring Multiplexing Charge. The DS0 Central Office
20 multiplexer provides de-multiplexing of one DS1 1.544 Mbps to
21 24 64 Kbps channels.

22 b) Non-recurring Multiplexing Charge. One-time charges apply
23 for a specific work activity associated with installation of the
24 multiplexing service, including low side channelization of all 28
25 channels.
26

27 9.23.9.3.4 Nonrecurring charges for Billing conversions to LMC Loop-are
28 set forth in Exhibit A.
29

30 9.23.9.3.5 A rearrangement nonrecurring charge as described in Exhibit A
31 may be assessed on some requests for work to be performed by
32 Qwest on an existing LMC-Loop, or on some private line/special
33 access circuits, when coupled with a conversion-as-specified
34 request to convert to LMC-Loop.
35

36 9.23.9.4.1 Ordering processes for LMC-Loop-(s) are contained below and
37 in Section 12 of this Agreement. Qwest will document its ordering
38 processes in Qwest's Product Catalog (PCAT). The following is a
39 high-level description of the ordering process:

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9.23.9.4.1.1 Step 1: Complete product questionnaire for LMC ~~Loop~~(s) with account team representative.

9.23.9.4.1.4 Step 4: After account team notification, place LMC ~~Loop~~ orders via an LSR.

9.23.9.4.3 For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.

9.23.9.4.4 Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA, EDI or Exact interfaces or through facsimile. For LMC ~~Loops~~, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC ~~Loops~~, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.

9.23.9.4.5 Out of Hours Project Coordinated Installations: CLEC may request an out of hours Project Coordinated Installation. This permits CLEC to obtain a coordinated installation for LMC ~~Loops~~ with installation work performed by Qwest outside of Qwest's standard installation hours. For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, except holidays. Installations commencing outside of these hours are considered to be out of hours Project Coordinated Installations.

9.23.9.6.1 Qwest will maintain facilities and equipment for LMC ~~Loops~~ provided under this Agreement. ~~Qwest will maintain the multiplexed facility pursuant to the Tariff.~~ CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or

1 disconnection to any interface between Qwest and the End User
2 Customer, without the prior written consent of Qwest.
3

4 **ISSUE 9-61(b)**

5 9.23.9.4.3 Service intervals for LMC(s) are set forth in Exhibit C.
6 For UNE Combinations with appropriate retail analogues,
7 the Provisioning interval will be no longer than the
8 interval for the equivalent retail service. CLEC and
9 Qwest can separately agree to Due Dates other than the
10 interval.
11

12 9.23.4.4.3 Installation intervals for UNE Combinations are set
13 forth in Exhibit C but will be no longer than the
14 respective Private Line Transport Service that Qwest
15 will maintain on the following web-site address:
16 <http://www.qwest.com/carrier/guides/sig/index.html>

17
18 9.23.6.2 Service intervals for each UNE Combination are set forth
19 in Exhibit C. For UNE Combinations with appropriate
20 retail analogues, the Provisioning interval will be no
21 longer than the interval for the equivalent retail service.
22 CLEC and Qwest can separately agree to Due Dates other
23 than the interval.
24

25 Exhibit C:
26 Loop Mux Combo (LMC)

27
28 **ISSUE 9-61(c)**

29 9.23.6.1 Interconnection Tie Pair

30
31 9.23.6.1.1 \$ 1.29

32
33 9.23.6.1.2 \$15.26

34
35
36 9.23.6.6 LMC Multiplexing
37

1 9.23.6.6.1 DS1 to DS0, \$203.47, \$295.92, B, B
2

3 9.23.6.6.2 DS3 to DS1, \$235.66, \$302.96, E10, B
4
5

6 Eschelon’s proposal would put terms, conditions and rates for Loop Mux
7 Combinations in Section 9 (UNEs) of the ICA. Eschelon’s language for Issue 9-
8 61 includes the Loop Mux Combination in the description of UNE combinations
9 (along with EELs); its language for Issue 9-61(a) defines the Loop Mux
10 Combination; its language for Issue 9-61(b) ensures that service intervals for
11 UNE combinations, including Loop Mux Combinations, are included in Exhibit C
12 to the ICA; and its language for Issue 9-61(c) includes multiplexing rates for
13 Loop Mux Combinations in the ICA – rates that have already been approved by
14 the Commission.
15

16 **Q. WHAT ARE QWEST’S PROPOSALS ON ISSUES 9-61 AND (A)-(C)?**

17 A. Qwest’s proposals on these issues are as follows:
18

19 **ISSUE 9-61**

20 **9.23.2 UNE Combinations Description and General Terms**
21

22 UNE Combinations are available in, but not limited to, the
23 following products: EELs (subject to the limitations set
24 forth below) ~~and Loop Mux Combinations.~~ If CLEC
25 desires access to a different UNE Combination, CLEC may
26 request access through the Special Request Process set
27 forth in this Agreement. . . .
28

1 **ISSUE 9-61(a)**: Section 24.4.1 contains Qwest's corresponding language:

2
3 **[24.4.1.1]** Loop-Mux combination (LMC) is an unbundled Loop as
4 defined in Section 9.2 of this Agreement (referred to in
5 this Section as an LMC Loop) Commingled ~~combined~~
6 with a private line (PLT), or with a special access (SA),
7 Tariffed DS1 or DS3 multiplexed facility with no
8 interoffice transport. The PLT/SA multiplexed facility is
9 provided as either an Interconnection Tie Pair (ITP) or
10 Expanded Interconnection Termination (EICT) from the
11 high side of the multiplexer to CLEC's Collocation. The
12 multiplexer and the Collocation must be located in the
13 same Qwest Wire Center.

14
15 **[24.4.1.2]** LMC provides CLEC with the ability to access End User
16 Customers and aggregate DS1 or DS0 unbundled Loops
17 to a higher bandwidth via a PLT/SA DS1 or DS3
18 multiplexer. There is no interoffice transport between the
19 multiplexer and CLEC's Collocation.

20
21 **[24.4.1.3]** Qwest offers the LMC Loop as a Billing conversion or
22 as new Provisioning.

23
24 **[24.4.2.1]** An Extended Enhanced Loop (EEL) may be
25 commingled with the PLT/SA multiplexed facility.

26
27 **[24.4.2.2]** LMC Loops will be provisioned where existing facilities
28 are available or pursuant to the provisions of Section
29 9.1.2.1 of the Agreement.

30
31 **[24.4.2.3]** The PLT/SA DS1 or DS3 multiplexed facility must
32 terminate in a Collocation.

33
34 **[24.4.2.4]** The multiplexed facility is subject to all terms and
35 conditions (ordering, provisioning, and billing) of the
36 appropriate Tariff.

37
38 **[24.4.2.6]** Rearrangements may be requested for work to be
39 performed by Qwest on an existing LMC Loop, or on
40 some private line/special access circuits, when coupled

1 with a conversion-as-specified request to convert to LMC
2 Loop.
3

4 [24.4.3.4] Nonrecurring charges for Billing conversions to LMC
5 Loop are set forth in Exhibit A.
6

7 [24.4.3.5] A rearrangement nonrecurring charge as described in
8 Exhibit A may be assessed on some requests for work to
9 be performed by Qwest on an existing LMC Loop, or on
10 some private line/special access circuits, when coupled
11 with a conversion-as-specified request to convert to LMC
12 Loop.
13

14 [24.4.4.1] Ordering processes for LMC Loop (s) are contained
15 below and in Section 12 of this Agreement. Qwest will
16 document its ordering processes in Qwest's Product
17 Catalog (PCAT). The following is a high-level
18 description of the ordering process:
19

20 [24.4.4.1] Step 1: Complete product questionnaire for LMC
21 Loop(s) with account team representative.
22

23 [24.4.4.1] Step 4: After account team notification, place LMC
24 Loop orders via an LSR.
25

26 [24.4.4.4] Due date intervals are established when Qwest receives
27 a complete and accurate LSR made through the IMA,
28 EDI or Exact interfaces or through facsimile. For LMC
29 Loops, the date the LSR is received is considered the start
30 of the service interval if the order is received on a
31 business Day prior to 3:00 p.m. For LMC Loops, the
32 service interval will begin on the next business Day for
33 service requests received on a non-business day or after
34 3:00 p.m. on a business day. Business Days exclude
35 Saturdays, Sundays, New Year's Day, Memorial Day,
36 Independence Day (4th of July), Labor Day, Thanksgiving
37 Day and Christmas Day.
38

39 [24.4.4.5] Out of Hours Project Coordinated Installations: CLEC
40 may request an out of hours Project Coordinated
41 Installation. This permits CLEC to obtain a coordinated

1 installation for LMC Loops with installation work
2 performed by Qwest outside of Qwest's standard
3 installation hours. For purposes of this Section, Qwest's
4 standard installation hours are 8:00 a.m. to 5:00 p.m.
5 (local time), Monday through Friday, except holidays.
6 Installations commencing outside of these hours are
7 considered to be out of hours Project Coordinated
8 Installations.

9
10 [**24.4.6.1**] Qwest will maintain facilities and equipment for LMC
11 Loops provided under this Agreement. Qwest will
12 maintain the multiplexed facility pursuant to the Tariff.
13 CLEC or its End User Customers may not rearrange,
14 move, disconnect or attempt to repair Qwest facilities
15 or equipment, other than by connection or
16 disconnection to any interface between Qwest and the
17 End User Customer, without the prior written consent
18 of Qwest.
19

20 **ISSUE 9-61(b)**

21 24.4.4.3 Standard service intervals for LMC(s) Loops are set forth
22 in Exhibit C in the Service Interval Guide (SIG)
23 available at www.qwest.com/wholesale. ~~For UNE~~
24 ~~Combinations with appropriate retail analogues, the~~
25 ~~Provisioning interval will be no longer than the interval~~
26 ~~for the equivalent retail service. CLEC and Qwest can~~
27 ~~separately agree to Due Dates other than the interval.~~
28

29 9.23.4.4.3 Installation intervals for EELs ~~UNE Combinations~~ are
30 set forth in Exhibit C but will be no longer than the
31 respective Private Line Transport Service that Qwest
32 will maintain on the following web-site address:
33 <http://www.qwest.com/carrier/guides/sig/index.html>
34

35 9.23.6.2 Service intervals for each ~~UNE Combination~~ EEL are set
36 forth in Exhibit C. For UNE Combinations with
37 appropriate retail analogues, the Provisioning interval
38 will be no longer than the interval for the equivalent retail
39 service. CLEC and Qwest can separately agree to Due
40 Dates other than the interval.
41

1 Exhibit C:
2

3 **ISSUE 9-61(c)**

4 9.23.6.6 Intentionally Left Blank.
5

6 Qwest proposes to locate language on Loop Mux Combinations in Section 24
7 (Commingling) instead of Section 9 (UNEs). Qwest's language for Issue 9-61
8 excludes the Loop Mux Combination from UNE combinations; Qwest's language
9 for Issue 9-61(a) states that multiplexing will be provided pursuant to a special
10 access as opposed to TELRIC rates, and utilizes the term "LMC Loop" instead of
11 Loop Mux Combinations; Qwest's language for Issue 9-61(b) states that intervals
12 for LMC Loops (or Loop Mux Combinations, as Eschelon calls them) will be
13 determined in the non-contractual SIG instead of the ICA, and uses the term EELs
14 instead of UNE combinations;¹⁷⁵ and Qwest's proposal for Issue 9-61(c) is that
15 Multiplexing rates should be omitted from the ICA and special access rates should
16 apply. In support of its position, Qwest states that it is under no obligation to
17 provide stand-alone multiplexing and that multiplexing is not a feature or
18 functionality of a loop.¹⁷⁶
19

¹⁷⁵ Qwest uses EELs instead of UNE combinations because it does not acknowledge a Loop Mux Combination as a UNE combination.

¹⁷⁶ *Qwest Petition*, ¶ 126.

1 Issue No. 9-61: Loop-Mux Combination (“LMC”) – Placement – Section 9 and
2 Section 24
3

4 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE 9-61.**

5 A. There are actually two disagreements under Issue 9-61: (1) whether Loop-Mux
6 Combinations language belongs in Section 9 (UNEs), as Eschelon proposes, or
7 solely in Section 24 (Commingling) as Qwest proposes; and (2) whether Section
8 9.23 should be limited only to discussing one UNE combination – the EEL – as
9 Qwest proposes, or whether Section 9.32 should also discuss other UNE
10 combinations, as Eschelon proposes.¹⁷⁷

11
12 **Q. PLEASE EXPLAIN THE FIRST DISAGREEMENT – PLACEMENT.**

13 A. It is unquestionable that the UNE loop is a component of the Loop-Mux
14 Combination, and therefore, Eschelon’s language belongs in Section 9 (UNEs).
15 As explained above in Issue 9-55, Eschelon’s proposed contract language makes
16 clear that Eschelon is not attempting to broaden Section 9 to cover non-UNEs.

17
18 **Q. AND THE SECOND DISAGREEMENT?**

19 A. Qwest’s proposed language would result in Section 9.23 discussing only one UNE
20 combination – the EEL. However, Loop-Mux Combinations are also a UNE

¹⁷⁷ Eschelon’s proposed language for Section 9.23.2 is as follows: “9.23.2 UNE Combinations Description and General Terms UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) and Loop Mux Combinations. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. . . .”

1 Combination and should therefore be identified in Section 9.23.2 along with
2 EELs. The issue of whether a Loop-Mux Combination is a UNE Combination is
3 addressed under Issue 9-61(a).
4

5 Issue No. 9-61(a): Loop-Mux Combination (LMC) – LMC Loop versus LMC,
6 Sections 9.23.9 and subparts, 24.4 and subparts, and 9.23.2
7

8 **Q. IN YOUR IMMEDIATELY PRECEDING DISCUSSION, YOU**
9 **MENTIONED THAT ESCHELON AND QWEST DISAGREE ON**
10 **WHETHER A LOOP MUX COMBINATION IS A UNE COMBINATION.**
11 **IS THAT DISAGREEMENT ADDRESSED UNDER ISSUE 9-61(A)?**

12 A. Yes. Eschelon contends that there are numerous indications that Qwest must
13 provide access to multiplexing at TELRIC rates as a feature, function or
14 capability of the UNE, while Qwest argues that there is no legal requirement for
15 Qwest to provide access to multiplexing.
16

17 **Q. PLEASE ELABORATE ON THE FACTORS THAT SUPPORT**
18 **ESCHELON’S POSITION REGARDING MULTIPLEXING.**

19 A. First, multiplexing is a “feature, function, or capability” associated with both
20 unbundled loops and transport and, pursuant to the FCC’s unbundling rules,
21 Eschelon is entitled to use that feature, function, or capability. 47 CFR §51.307
22 states as follows (emphasis added):

1 (a) An incumbent LEC shall provide, to a requesting
2 telecommunications carrier for the provision of a
3 telecommunications service, ***nondiscriminatory access to network***
4 ***elements on an unbundled basis*** at any technically feasible point
5 on terms and conditions that are just, reasonable, and
6 nondiscriminatory in accordance with the terms and conditions of
7 any agreement, the requirements of sections 251 and 252 of the
8 Act, and the Commission's rules.

9 ***

10 (c) An incumbent LEC shall provide a requesting
11 telecommunications carrier access to an unbundled network
12 element, ***along with all of the unbundled network element's***
13 ***features, functions, and capabilities***, in a manner that allows the
14 requesting telecommunications carrier to provide any
15 telecommunications service that can be offered by means of that
16 network element.

17
18 Eschelon's language would call for multiplexing to be provided at UNE rates
19 when it is provided in connection with multiplexed EELs – a combination of loop
20 and transport in which the loop and transport components have different
21 bandwidths and multiplexing is necessary to connect the facilities – and as part of
22 a Loop-Mux Combination – when unbundled loops are connected to the
23 multiplexer and the multiplexer is connected to Eschelon's collocation, with no
24 transport provided. In each of these instances, nondiscriminatory access to
25 unbundled network elements requires access to multiplexing, and that
26 multiplexing is a feature, function and capability of the UNE loop and/or UNE
27 transport to which the UNE is connected.
28

1 Q. HAS QWEST AGREED TO LANGUAGE IN ANY OTHER SECTIONS OF
2 THE ICA THAT SUPPORTS ESCHELON'S POINT ON
3 MULTIPLEXERS?

4 A. Yes. The parties have agreed to the definition of "routine network modifications"
5 as "those activities of the type that Qwest regularly undertakes for its own End
6 User Customers." This definition also lists activities that are considered routine
7 network modifications –or activities that Qwest routinely provides for its own
8 retail customers –and those activities include "deploying a new multiplexer" and
9 "reconfiguring an existing multiplexer." If Qwest regularly deploys new
10 multiplexers and reconfigures existing multiplexers for its own retail customers, it
11 should not be allowed to argue here that it need not provide access to multiplexers
12 to CLECs.

13
14 Q. ARE THERE OTHER INDICATIONS FROM THE FCC THAT ACCESS
15 TO MULTIPLEXERS SHOULD BE PROVIDED AT TELRIC RATES?

16 A. Yes. When discussing UNE loops at paragraph 214 of the *TRO*, the FCC states:

17 214. At its most basic level, a local loop that serves the mass
18 market consists of a transmission medium, which almost always
19 includes copper wires of various gauges. ***The loop may include***
20 ***additional components*** (e.g., load coils, bridge taps, repeaters,
21 ***multiplexing equipment***) that are usually intended to facilitate the
22 provision of narrowband voice service. (emphasis added)
23

24 The FCC further clarified this point at footnote 1921 of the *TRO*, in which it
25 states: "Verizon cannot refuse to provision a particular loop by claiming that

1 multiplexing equipment is absent from the facility. In that case, Verizon must
2 provide the multiplexing equipment, because the requesting carrier is entitled to a
3 fully functioning loop.” And at paragraph 571 of the *TRO*, the FCC makes clear
4 that multiplexing is a component of a UNE combination (see also, paragraph
5 575):

6 571. In the *Notice*, the Commission sought comment on issues
7 related to the EEL, which is a UNE combination consisting of an
8 unbundled loop and dedicated transport and may sometimes
9 include additional electronics (*e.g.*, multiplexing equipment).
10

11 **Q. IS THERE MORE SUPPORT FOR ESCHELON’S POSITION?**

12 A. Yes. Qwest has offered unbundled multiplexing in three ways: (1) as part of a
13 multiplexed EEL, (2) as part of a Loop-Mux Combination, and (3) as a stand
14 alone UNE. Furthermore, the Commission has set TELRIC rates for access to
15 multiplexers, and the UNE rates established for loops and transport include the
16 cost of multiplexing where appropriate.
17

18 **Q. IS ESCHELON’S POSITION THAT QWEST SHOULD PROVIDE**
19 **UNLIMITED ACCESS TO UNBUNDLED MULTIPLEXING OR**
20 **MULTIPLEXING AS A STAND ALONE UNE?**

21 A. No, and I believe this point deserves special emphasis. Eschelon’s position in this
22 arbitration only requires Qwest to provide multiplexing at UNE rates when the
23 loops and/or transport to which the multiplexer is connected are UNEs. This

1 would include providing multiplexing at UNE rates in connection with
2 multiplexed EELs and as part of a Loop-Mux Combination.

3
4 Issue No. 9-61(b): LMC Multiplexing – Intervals - Sections 9.23.9.4.3, 9.23.4.4.3,
5 9.23.6.2, Exhibit C, and 24.4.4.3
6

7 **Q. DOES ISSUE 9-61(B) CONSIST OF TWO DISAGREEMENTS THAT ARE**
8 **LARGELY EXTENSIONS OF THE DISAGREEMENTS DESCRIBED**
9 **ABOVE?**

10 A. Yes. As explained by Eschelon under Issue 1-1, it is critical for the ICA to
11 contain applicable intervals and require ICA amendment and Commission
12 approval when intervals are modified. That is precisely what Eschelon’s language
13 for Section 9.23.9.4.3 is designed to achieve:

14 9.23.9.4.3 Service intervals for LMC(s) are set forth in Exhibit
15 C. For UNE Combinations with appropriate retail
16 analogues, the Provisioning interval will be no
17 longer than the interval for the equivalent retail
18 service. CLEC and Qwest can separately agree to
19 Due Dates other than the interval.
20

21 Remaining true to its position under Issue 1-1, Qwest proposes language in
22 Section 24.4.4.3 that would allow Qwest to have unilateral control over changes
23 to intervals [“Standard service intervals for LMC Loops in the Service Interval
24 Guide (SIG) available at www.qwest.com/wholesale”] For the reasons explained

1 under Issue 1-1, intervals should be contained in the agreement and should be
2 modified by Commission-approved ICA amendment.
3

4 **Q. WHAT IS THE SECOND DISAGREEMENT UNDER ISSUE 9-61(B)?**

5 A. As described under Issue 9-61(a), Eschelon and Qwest disagree on whether Loop-
6 Mux should be identified as a UNE combination along with an EEL. For the
7 reasons explained above, it is Eschelon's position that it should be. This
8 disagreement serves as the difference between Eschelon's Sections 9.23.4.4.3 and
9 9.23.6, in which Eschelon proposes to use the term "UNE Combinations" and
10 Qwest proposes to use the term "EEL."
11

12 Issue No. 9-61(c): LMC Multiplexing - Exhibit A Section 9.23.6.6 and subparts
13

14 **Q. ISSUE 9-61(C) PERTAINS TO LMC MULTIPLEXING RATES. IS**
15 **RESOLUTION OF THIS ISSUE RELATED TO THE ISSUES ABOVE?**

16 A. Yes. As explained above (primarily under Issue 9-61(a)), a primary disagreement
17 between Eschelon and Qwest in Section 9.23.9 is whether the contract should
18 reference UNE combinations – both EELs and Loop-Mux Combinations – or
19 whether it should exclude Loop-Mux Combinations and reference only EELs. If
20 Eschelon prevails on this issue, then multiplexing rates should be contained in the
21 agreement in Exhibit A Section 9.23.6.6 – just as they are today..
22

1 **Q. PLEASE SUMMARIZE ISSUE 9-61 AND (A)-(C).**

2 A. Access to multiplexing should be provided at TELRIC rates when combined with
3 a UNE loop. Qwest has provided access to multiplexing in this manner in the past
4 and currently has Commission-approved TELRIC rates for multiplexing.
5 Accordingly, terms, conditions and rates for Loop Mux Combinations should be
6 included in the ICA. For all of the reasons described in Eschelon's business need
7 and in these responses, the Commission should adopt Eschelon's language for
8 Issue 9-61 and (a) – (c).

9

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

11 A. Yes.