

**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

EXHIBIT BJJ-7

TO THE

DIRECT TESTIMONY OF BONNIE J. JOHNSON

ON BEHALF OF ESCHELON TELECOM, INC.

SEPTEMBER 29, 2006

Secret TRRO PCAT

Event Summary (see Chronology below for additional information):

- 3/17/03 Minnesota Statement of Generally Available Terms (SGAT) text last updated
- 3/2/04 USTA II decision
- 10/27/04 In CMP, Qwest submitted Change Request PC102704-1ES CR that cited the TRO and USTA II Decision in the title
- 11/8/04 In CMP, Covad escalated and said "it is absolutely inappropriate for Qwest to implement its interpretation of its legal rights and obligations through change management rather than in the appropriate legal venue."
- 11/16/04 In CMP, Qwest responded that "the CR is not superseding the language in the CLEC ICA."
- 11/17/04 In CMP, CLECs said TRRO issues should be negotiated and arbitrated.
- 1/10/05 In CMP (oversight), Qwest confirmed that SGATs do not reflect the products Qwest offers; Covad said that Qwest's process is backwards because Qwest should work with negotiations teams before CMP as ICAs control; Eschelon said product availability is based on the ICA; five CLECs, including Eschelon, recommended the CR (*i.e.*, any change based on the TRRO) be deferred "***until permanent rules are issued***" (emphasis added). Qwest decided to move forward with the CR instead of defer it.
- 2/16/05 In CMP, Qwest said that, once it determined what the final rulings are, Qwest "would notify via this same CR."
- 3/11/05 USTA II ***permanent rules are issued/effective***.
- 6/23/05 In ICA negotiations, Eschelon proposed TRRO terms
- 6/30/05 In CMP, Qwest said it would negotiate ICAs with CLECs and that "no TRO/TRRO changes to products and processes will be made across the board until such language is final." Qwest added that PCATs and business procedures will be "in alignment" with ICA language. Covad summarized that "PCATs won't be updated until the final language is approved." Qwest said that "there are more changes coming and ***the CR is the means to share those changes***" and that "***PCAT changes will be brought through CMP***" (emphasis added).
- 9/12/05 **QWEST ISSUES PASSWORD PROTECTED (SECRET) TRRO PCAT, without CR and without bringing the PCAT changes through CMP; updates PCAT "effective" three weeks from notice date.**

Chronology

3/17/03 – Date Minnesota Statement of Generally Available Terms (SGAT) text (not including exhibits to the SGAT) last updated
<http://www.qwest.com/wholesale/downloads/2003/030328/MN-SGAT-3-17-03.doc>

3/2/04 – USTA II decision

9/13/04 – USTA II Interim rules effective

10/27/04 – Qwest submitted CR SCR102704-1RG¹ entitled "FCC Triennial Review Order CC 01-338 (TRO), U.S. Court of Appeals for the DC Circuit decision (USTA II) Decision No. 00-1012, and FCC Interim Rules Compliance: Certain Unbundled Network Elements (UNE) Product Discontinuance." Although Qwest submitted it as a systems regulatory CR, the Qwest description of change states: "This CR will be implemented as a product/process CR as there are no CLEC facing system changes." Under Product Availability, Qwest said: "This CR details changes to availability of certain Unbundled Network Elements (UNE) products pursuant to the FCC Report, Order on Remand, and Further Notice of Proposed Rulemaking, referred to as the "Triennial Review Order" (TRO) CC Docket 01-338, the subsequent U.S. Court of Appeals for the DC Circuit decision 00-1012 (USTA II) which vacated some of the FCC's unbundling rules, and the FCC's Interim Rules, which preserved some of the unbundling rules vacated in USTA II. In accordance with these orders and findings, the following UNE products are no longer available to CLECs unless the most current, effective version of CLEC's Interconnection Agreement (ICA) or Amendment includes terms, conditions, and pricing for the products before 6/15/04: [list of products]." Under Product Transition, Qwest said: "Not Applicable." Under PCAT Updates, Qwest said: "All impacted UNE PCATs will be updated in the future to reflect this change in availability. These changes will be announced via the CMP notification process." Under Expected Deliverables/Proposed Implementation Date, Qwest said: "Retroactive to 6/15/04 pursuant to FCC Interim Rules, subject to CMP Guidelines."

(See http://www.qwest.com/wholesale/cmp/archive/CR_SCR102704-1RG.htm)

10/27/04 – Qwest submitted CR PC102704-1ES² with the same title, to replace CR SCR102704-1RG. The body of the CR and description of change remained the same. However, this CR was now a product and process CR, instead of a systems CR.³ (See http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)

11/4/04 – Qwest CR Status History indicates it revised its CR to remove the regulatory classification. (See http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)

¹ The change request designation of "RG" in the CR number indicates it is submitted as a "Regulatory CR." See CMP Document § 5.9. (The CMP Document is posted on Qwest's web site at http://www.qwest.com/wholesale/downloads/2006/060130/QwestWholesaleChangeManagementDocument_0130_06_1.doc).

² The designation of ES in the CR number is defined as "Escalation process invoked on a CR." See CMP Document § 5.9.

³ A CR number that begins with "SCR" is submitted as a systems CR, and a CR number that begins with "PC" is a product and process CR. See CMP Document § 5.9.

11/8/04 – Covad submitted escalation PC102704-1E32 asking Qwest to withdraw its CR. In its escalation, Covad's attachment included the following (emphasis changed):

***“There are a number of pending legal proceedings at the state and federal regulatory level that are addressing the legal issues surrounding access (whether under Section 251, Section 271 or state law) to most, if not all, of the elements listed on Qwest's change request. At best, therefore, it is premature for Qwest to eliminate access rights unless and until there is a final, non-appealable order out of a regulatory or judicial body that clearly specifies the rights and obligations of Qwest and CLECs. At worst, it is absolutely inappropriate for Qwest to implement its interpretation of its legal rights and obligations through change management rather than in the appropriate legal venue.*”**

Qwest's interpretation (which benefits itself at the expense of CLECs and consumers) is not a substitute for, or anywhere near the same as, a final, binding order of a federal or judicial body. ***Qwest's attempt to implement its interpretation is nothing more than a shameless backdoor attempt to evade its legal obligations***, particularly when the purpose of change management is to provide the “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” and not to debate legal issues.

Further, it is clear within the CMP document itself that any and all legal issues surrounding access, as expressed in interconnection agreements, should be addressed within those agreements and not within CMP.

Despite recognizing that many, if not all, of the elements may continue to be available to CLECs under their current interconnection agreements, Qwest seeks to wholly eliminate access via CMP. In effect, therefore, while paying lip service to access requirements that are clearly in place, Qwest nonetheless is trying to deprive all CLECs of access to all of the listed elements (regardless of whether such elements are in their current IAs). At the very least, Qwest's desire to implement systems changes presumably designed to eliminate all together the ability to order the elements listed will ensure the ordering and provisioning of elements available to a CLEC under its current IA are fraught with problems and delay, which is anti-competitive and inappropriate. ***Qwest's action of eliminating all access while admitting that at least some CLECs continue to have access is tantamount to swatting a fly with a sledgehammer.***

The CMP clearly specifies that “regulatory changes” are changes that are affirmatively required by the applicable regulatory or judicial body. ***Contrary to Qwest's assumptions, there is nothing in the TRO, USTA II or the Interim Rules that requires the elimination of access to all of the elements Qwest has listed in its CR.*** To the contrary, for example, the Interim Rules actually requires access to at least three of the elements on Qwest's list of elements for which it wants to eliminate access. Absent such an affirmative requirement that access not be provided, Qwest has failed to demonstrate that its desired changes are actually mandated changes as defined and understood in the governing CMP document.

Qwest has failed to comply with the procedural requirements surrounding submission of a regulatory CR. The governing CMP document requires specific page and paragraph references. Qwest's CR lacks this specification and thus is faulty and must be withdrawn per the agreed-upon CMP requirements for regulatory CRs and CRs generally.

(See

http://www.qwest.com/wholesale/downloads/2004/041109/PC102704_1_E32_Covad_Escalation.doc)

Nov. 2004 – Eschelon joined Covad's escalation. At that time, Qwest's web site documentation did not indicate which CLECs joined an escalation.

11/16/04 – Qwest provided its binding response to Covad. Qwest's response includes the following (emphasis added):

“In response to Covad's objections which are provided in detail in Escalation #32, Qwest emphasizes that the CR is not superceding the language in the CLEC ICA. If the language in the current ICA allows the CLEC to order the products, the CLEC will be permitted to continue to order at this time. This change request is instead advising CLECs who don't have this language in their ICA or who don't currently have an ICA that they cannot seek an amendment or ICA with language for these products on a prospective basis. Further, there are no related system changes to impact a CLEC ordering what is available to them in their ICA. ***As this is a change to limit the availability of certain products only, Qwest believes this is a Level 4 change and belongs in CMP.***” (See http://www.qwest.com/wholesale/downloads/2004/041116/Qwest_Response_Escalation_PC102704_1E32_11_16_04.pdf)

(Note: Qwest's entire 11/16/04 response to Covad's escalation is attached to this chronology and is available at the above URL).

11/17/04 – CMP November monthly meeting minutes included (emphasis added):

Covad “stated that this is more than a product being discontinued. In addition, Qwest can not cite the law and then not call it a Regulatory CR. There are legal means ***to negotiate agreements.***”

Covad “advised the reason they objected to the Regulatory classification is that Qwest didn't cite the page and paragraph. Qwest is still citing the law, (insert comment from Covad/Eschelon)⁴ not calling it a regulated changed and that is still out of scope for CMP.”

Covad said “Qwest is trying to manipulate the CMP process to fit their needs.”

TelWest “said it is not important to me what Qwest's interpretation is. ***It should be arbitrated and not unilaterally implemented by Qwest.***”

⁴ Qwest prepares the CMP meeting minutes. Material in brackets generally indicates that a carrier commented and Qwest reflected the comment in the posted Qwest minutes.

Eschelon "said whether or not we agree on the language, this should not be discussed in CMP. We do not discuss legal interpretation in CMP. *This should be done in a different forum.*"

Covad "stated that *this is an ICA negotiation discussion.*"

(See http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)

12/15/04 – Qwest recommended a CMP oversight committee meeting.

1/4/05 – CLECs and Qwest held a CMP oversight committee meeting. Comments from the meeting included (emphasis added):

"Liz Balvin felt that Qwest has called into question the law and has jerry rigged the CMP process to meet Qwest's needs because there are system edits in place to restrict ordering the products. [Comment received from Covad: products and that the notifications, even level 4 notices carry the clause that IA supercede PCAT documents.]"

"[Comment received from Eschelon: Bonnie Johnson and Becky Quintana discussed Qwest exercising their rights to limit product availability, basis for product limitation as it relates to PCAT comments, *Bonnie said Qwest is limiting products prematurely and Becky agreed. Becky and Bonnie discussed the appropriateness of legal discussion on Product / Process changes.*]"

"Cindy Buckmaster responded that Qwest has the right to not have to offer products based on the law."

"Bonnie Johnson asked that the meeting minutes reflect all of the conversation that has taken place. [Comment Received from Eschelon: Bonnie said Qwest often reflects their views but not CLECs.]"

"Kim Isaacs and Bill Campbell discussed SGAT changes, PCAT changes and the ICA negotiations. [Comment received from Eschelon: *Bill said that the current negotiation template reflects the correct information but the SGATs have not been updated.* Bonnie asked if there was a particular CLEC that was challenging Qwest on this issue and if that is why Qwest needed to update PCATs.]"

"Cindy Buckmaster, Bonnie Johnson and Liz Balvin continued discussion related to processing the CR, Bonnie Johnson, Bill Campbell and Liz Balvin discussed how CLECs should be notified of the product change and the PCAT reflecting the SGAT, *notification through change of law, how contracts override the PCATs, and product availability is negotiated through the ICA agreements.* [Comment received from Eschelon: *Bonnie said if Qwest will limit product availability in its existing ICA, Qwest would need to notify Eschelon through the change in law provision of its contract and not through a PCAT CMP notice. Bill agreed.*]"

(http://www.qwest.com/wholesale/downloads/2005/050114/CMP_Oversight_Committee_Mtg_Min_1_4_05.pdf)

1/7/05 – Qwest distributed a red line version of Qwest's CR PC102704-1ES to the CMP oversight committee members. In its email, Qwest said: "As a follow up to our discussion on Tuesday, Qwest has met internally and our preference is to revise the existing change request PC102704-1ES instead of withdrawing and issuing a new CR. We believe that by changing the title and removing references citing the law we would be keeping the historical information and maintaining the documentation trail."

1/10/05 – CMP oversight committee meeting. Comments included (emphasis added):

"Bill Campbell of Qwest explained that the PCATs are based on the approved SGATs and the SGATs can be different from the ICA. We try to time the CMP update changes with the SGAT changes and Qwest did put together SGAT changes. However, the SGAT's have been pulled back with concurrence of the states due to the unsettled regulatory situation post USTA II, post interim order and pre final FCC order. Qwest has changed the ICA language template (insert comment) but **the current SGAT's do not accurately reflect the products Qwest offers** and Qwest (end comment) feels it is important to notify CLECs on the changes to the products."

"Liz Balvin felt that the process was backward because if a CLEC wants these products they would work with the negotiation team and would not go through CMP (insert comment) because CMP specifically call out ICA's override (end comment)."

"Bonnie Johnson said that product availability is based on the ICA and even though Qwest notices about product availability, CLEC's can't get the products without an agreement including the product."

"Becky Quintana of the Colorado PUC asked if Qwest was considering filing the SGAT prior to the final rules or waiting and Bill Campbell stated that Qwest is waiting, although we did file prior to the USTA decision, but withdrew the filings when it was clear that the states did not believe the timing was right to make the proposed changes knowing full well any state proceedings would have to be revisited. **Becky Quintana voiced concerned that the SGAT on file and the Wholesale tariff are not the current Qwest offering.**"

"Liz Balvin stated that the CR should identify the interim rules as the basis for notifying the CLECs of 6/15 product changes and that Qwest is not going to file the SGAT until the permanent rules are available."

"Bill Campbell agreed that the CR is based on the USTA II rules and that Qwest has restricted the products and changes will have to be made to comply with the final rules."

"Liz Balvin stated the basis is USTA II and Bill Campbell said he agreed that the basis is USTA II, and under the FCC guidance, are no longer required to provide unbundled elements."

"Bonnie Johnson and Becky Quintana discussed the merit of language changes to the CMP process. *Liz Balvin and Bonnie Johnson stated that the CR should not have defaulted to CMP as it was not the appropriate approach and the importance of keeping the CMP guidelines in tact.*"

"Sharon Van Meter stated that *AT&T* does not think this is a regulatory CR and would like the CR to include the history of what has been discussed. *Deferring the CR would be better* and revising is acceptable if the history is included. *Liz Balvin* agreed *deferring would be better and revising the CR sets a precedent that the CR is regulatory but not identifying in that way.* There was recommendation from *Covad, Eschelon, AT&T, TDS/MetroCom and MCI that the CR be deferred until permanent rules are issued.* Becky Quintana stated that without making any statement on the merits of the CR, she believed that Qwest *should go ahead with the CR because she agreed with Bill Campbell's estimated timeline for permanent rules.* Qwest would like to move forward by revising the CR. The Oversight Recommendation will include the different recommendations from the Oversight members."

http://www.qwest.com/wholesale/downloads/2005/050202/CMP_Oversight_Committee_Meeting_Minutes_1_10_05_CLEC_updat_.pdf

2/4/05 – FCC release date for TRRO

2/16/05 - CMP February monthly meeting minutes included (emphasis added):

"Jill Martain-Qwest stated that when the final rulings came out, we received feedback. Jill stated that Qwest would withdraw the PCATs that were affected by the final rules and that Qwest would proceed with UNE-P. Jill stated that Qwest would reissue the PCATs that are being removed from the CR, once it is determined what those changes are *and would notify via this same CR.*"

(See http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)

3/11/05 – USTA II permanent rules are issued/effective.

3/16/05 - CMP March monthly meeting minutes included (emphasis added):

"Cindy Buckmaster-Qwest stated that this CR will be effective on March 18th and that she would like to move the CR to CLEC Test on the 18th. *Jill Martain-Qwest stated that she was okay moving this CR to CLEC Test on the 18th, but then would like it moved back to Development status for the rest of the piece.*"

(See http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)

6/23/05 – Qwest/Eschelon ICA negotiations – Eschelon provided Qwest with proposed language for Section 9.23, including terms and conditions reflecting the TRRO for service eligibility criteria, self certification, audits, conversions and loop transport combination ordering, billing and repair process (such as a single LSR for loop-transport arrangements in Sections 9.23.4.5.2 & 9.23.4.5.5). (Qwest included Eschelon's proposed language in Qwest's next ICA draft which it sent to Eschelon on 7/6/06.)

6/30/05 – Qwest CMP adhoc meeting minutes state (emphasis added):

"Cindy Buckmaster-Qwest said that Qwest suggested this Ad-Hoc meeting to help communicate our implementation plans for the TRO/TRRO. She said that many of the CLECs are interested in the implementation of the rules laid out in the orders and may have questions. Cindy said the CLECs likely agree that these orders cover numerous products and processes, not to mention availability and even eligibility. Cindy said that Qwest is developing template language that encompasses our obligations under the TRO/TRRO and that we will be filing that template language with the states in the months to come. She said that the normal filing process will be followed likely allowing a comment period from interested parties. Cindy said that in the meantime, our negotiations team *will negotiate* the amendment or full template with interested CLECs. ***Cindy said that negotiation combined with State approval of our template language that is necessary to finalize applicable language and/or processes. Cindy said that in order to most effectively and efficiently work through that process, we believe that it is best to further delay announcements of process or product changes related to these orders via CMP until such time as the language is finalized and will impact all CLECs. She said that no TRO/TRRO changes to products or processes will be made across the board until such language is final.*** Cindy said, as mentioned earlier, we will implement product and process changes only as you sign the amendment or template language, through the change of law provisions that are outlined in your individual contracts. She said that the CLECs, at that time, will be provided with individual Product Catalogs (PCATs) and Business Procedures ***that are in alignment with their current language*** so that they can determine any changes to the way you do business with Qwest. Tom Hyde-Cbeyond stated that this plan sounds logical and asked when Qwest could share a draft or final version of the language to review ***before negotiating***. Cindy Buckmaster-Qwest said that Candice Mowers (Qwest) is closer to the filings and this Qwest effort. Candice Mowers-Qwest stated that ***with the SGAT, there are no filings scheduled yet and with the number of changes, getting language is quite a task***. Candice said that there is a negotiations template and a TRO Remand Compliance template on the Qwest Wholesale Website at www.Qwest.com/wholesale/clecs/amendments.html. ***Candice said that when the CLECs want to begin negotiations, they can contact the Qwest negotiations team.*** Tom Hyde-Cbeyond said that they would like to review and schedule negotiations. Candice Mowers-Qwest said that this was a good idea and to wait until the last minute will be a push. Tom Hyde-Cbeyond stated that he would download and review the information. The following question was raised in the meeting: What does this have to do with QPP? Cindy Buckmaster-Qwest said that this has nothing to do with QPP. She said that the QPP Commercial Agreements are on the same website and will remain there. ***Liz Balvin-Covad summarized that the purpose of this meeting was to relay information on the TRO negotiations, the templates are out there for review and that the PCATs won't be updated until the final language is approved. Cindy Buckmaster-Qwest stated that we did not want to make process changes that will impact a lot of you and that we will honor your contracts. She said we will share documents as process changes are made.*** The following question was asked in the meeting: Does this have anything to do with PC102704-1ES. Cindy Buckmaster-Qwest said that this CR was opened as a way to communicate changes in the TRO/TRRO. She said that there are more changes coming and ***the CR is the means to share those changes***. Cindy said that the CR was initially issued when the TRO came out and had changes. She said that we had to pull back some of the PCATs but will keep the CR open until we can finish CR. Tom

Hyde-Cbeyond said that he understood the format and information can be used on the website. Cindy Buckmaster-Qwest stated that *the next steps depend on where each Company is*. She said that they can go to the web, study and *start negotiations*. Cindy said that if you don't want involvement, they could do nothing. *She said that as SGAT language changes, we will have a comment period* and that the States will engage you when decisions are made. *Cindy also said that PCAT changes will be brought through CMP.* There were no additional questions or comments."
(See http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)

9/12/05 – NON-CMP SECRET PCAT NOTICE - Qwest distributes a Product notice document number PROS.09.12.05.F.03236.TRRO_Login_Product_Page through its QWEST WHOLESALE NOTIFICATION PROCESS (*i.e.*, not CMP).⁵ The subject line of the announcement states: "Triennial Review Remand Order (TRRO) Products & Services." The effective date is listed as October 3, 2005 – three weeks from the date of the announcement. The non-CMP notice contains no comment period. The announcement states (emphasis added):

"On September 12, 2005, Qwest will post updates to its Wholesale Product Catalog that include new/revised documentation for Triennial Review Remand Order (TRRO) Products & Services. This material becomes effective on October 3, 2005.

Updates are associated with documentation not previously documented. Qwest has established a website which will include Product Catalogs (PCATs) and other documentation specific to certain Qwest interconnection products and services as are provided for in the Report, Order on Remand, and Further Notice of Proposed Rulemaking (FCC 03-36), referred to as the "Triennial Review Order" (TRO) effective October 2, 2003 and the Remand Order (CC 01-338) referred to as the "Triennial Review Remand Order" (TRRO) effective March 11, 2005.

These TRO/TRRO-related documents are available and applicable to you only if and/or when you have completed and signed an Interconnection Agreement or Amendment incorporating provisions that reflect the requirements and changes called for in the TRO/TRRO documents.

Pursuant to the TRO/TRRO Decision, certain Unbundled Network Elements are available to you on a limited basis.

The documents on this website are in place to assist CLECs who *have signed* the TRRO Amendment and are ordering services where they are deemed available as UNEs. *When the CLEC receives a copy of their signed amendment Qwest will also include a letter that advises them how to access the web site using an assigned USERID and Password to access the PCATs.* For those CLECs who have already signed an amendment you will be receiving a letter with the USERID and Password by October 3, 2005.

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.

On October 3, 2005 the updates will be found on the Qwest Wholesale Web site at the following URLs:

<http://www.qwest.com/cgi-bin/wholesale/trrologin.cgi>

If you have any questions or would like to discuss this notice *please contact your Qwest Service Manager*. Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest Corporation

Note: 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."

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E09%2E12%2E05%2EF%2E03236%2ETRRO%5FLogin%5FProduct%5FPage%2Edoc>

9/12/05 - Eschelon requested a copy of Qwest's secret PCAT from the Qwest ICA negotiations team, in an email copied to Bonnie Johnson, Doug Denney, and the participating Minnesota DOC representative (emphasis added):

"Eschelon requests a copy of Qwest's proposed "TRO/TRRO" PCAT language, which Qwest describes in the enclosed notice.

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? As you know, Eschelon is negotiating terms through these ICA negotiations and opposes such an approach. Qwest has indicated in numerous Section 12 sessions that the PCAT goes through CMP, but the language described in the enclosed notice did not go through CMP. (The notice refers to CLEC's "ordering services." Does this PCAT language deal with ordering?) Qwest's notice does not even allow for a comment period. (We don't recall ever seeing a notice before in which alleged product/process information is not publicly available, is limited to certain CLECs, and must be accessed with a password.) 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. Although the notice states that the PCAT terms are applicable to CLECs after they have "completed and signed an Interconnection Agreement or Amendment," the terms will not be applicable at all, even after we have signed our Agreement, because the ICA controls. *If you want such terms with Eschelon, you need to propose them in negotiations and negotiate with us.*"

9/23/05 – Qwest's ICA negotiations team sent Eschelon its response to Eschelon's Section 9.23 TRRO proposal (which Eschelon provided to Qwest on 6/23/05 but to which Qwest had not yet responded). (Qwest included its updated language in the next ICA draft on 11/2/05, which was accompanied by an email copied to Bonnie Johnson, Doug Denney, and the participating Minnesota DOC representative from Qwest that stated: "In reply to your message below, attached is the latest draft of the Agreement (Draft 11-2-05). Since the last

release of the "full" Agreement on 8-25-05, this version incorporates the changes made to Sections 9.1 through 9.7, 9.23 and 12. Sections 9.7 and 9.23 incorporated in this version are the exact Sections that Linda provided in her 9-13-05 and 9-23-05 e-mail messages. Qwest is still working on Sections 9.7 and 9.23, and will have updates for these Sections by end of next week..")

9/29/05 - Qwest distributes announcement that it is providing the password to the Secret⁶ PCATs as a result of customer feedback. It states: "***As a result of customer feedback***, this products and services documentation will be made available to the full customer community. However, to differentiate it from existing Wholesale product documentation, access to these TRRO products and services ***will continue to be provided via a common public USERID and Password.***"

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E09%2E29%2E05%2EF%2E03322%2ETRO%5FUSERID%5FPassword%2Edoc>

1/18/06 - CMP January monthly meeting minutes stated (emphasis added):

"January 18, 2006 Monthly Product Process CMP Meeting Discussion: Jill Martain-Qwest stated that this is the CR for the TRO work and because there has been no change in the status, for several months, she would like to put the CR in a Deferred Status. Jill stated that ***when it is time for the PCAT updates, this CR would move out of Deferred.*** There was no dissent to moving this CR to Deferred. ***Kim Isaacs-Eschelon stated that there was a notice out today for TRRO and asked if that was separate from this effort. Jill Martain-Qwest stated that it was separate and that it was a non-CMP Notice. (1/27/05 - Comments to Minutes Received from Eschelon: Jill Martain-Qwest stated that the TRRO notices sent today was for CLECs that had signed the TRRO Amendment.***"

http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm

3/29/06 – In response to an email objection from Eschelon to the Qwest Service Management regarding Qwest non-CMP announcement entitled "Product Notice: TRRO: GN: TRRO PCAT with CSIE Updates: Effective 5-1-06," Qwest Service Management states (emphasis added):

"This notice is associated to the overall organizational change that was distributed on March 27, 2006. Please review PROS.03.27.06.F.03801.CSIE_Contact_Information and PROD.03.27.06.F.03803.PROD_PCAT_CSIE_Update.

As agreed to at CMP, the PCATs/Business Procedures associated specifically to TRRO are handled outside the scope of CMP until such time that there is an approved SGAT, which is why the change was noticed as a non-CMP document.

As we researched your concern, we determined that we should have included the reference in the notice that was sent through the non-CMP process so the overlying notices were related and we will add that reference as applicable to the TRRO notices in the future."

⁶ Password-protected PCATs are referred to as "Secret" PCATs to distinguish them from generally available PCATs accessible without a password distributed through Qwest notice process.

4/6/06 - Qwest 4/6/06 New and Amended Responses to Eschelon 3/31/06 Qwest Take Backs/Action Items list in ICA negotiations -- Qwest responded to Eschelon's request with the following (with emphasis changed –yellow shading and bold are in original and indicate Qwest's response):

"9.1.13.4 & 9.1.15.2.3 (see also 9.1.15.3, 9.23.4.5.4, 9.23.4.6.6, 9.23.4.7.1 - order processing, single order, single bill, single circuit ID – billing and repair) (2/7/06, 3/8/06, & 3/21/06 calls) **Jill response**

Qwest (Kathy) sent Eschelon's language (re. single order, single bill, and single circuit ID to Jill Martain of Qwest (CMP). Qwest (Kathy) will ask which issues, if any, Qwest will deal with in CMP. Qwest (Kathy) will also ask Jill which issues, if any, Qwest will deal with in CMP of the issues in Qwest's "TRRO" PCATs.

This is related to Qwest (Harisha's) separate take back from the 2/7/06 call to respond to questions regarding issues and what forum – CMP or other – Qwest would discuss/negotiate them with us/CLECs."

9.1.13.4 no system edit to challenge orders

9.1.15.2.3 circuit IDs will not change

9.23.4.5.4 point-to-point EELs, commingled EELs , Loop Mux Transport

9.23.4.6.6 same BAN, Loop Transport

9.23.4.7.1 single trouble report process

In response to the two questions raised by Eschelon, Qwest and the CLECs discussed the TRRO and related TRRO PCATs in CMP with Change Request PC102704-1ES. From those discussions it was agreed that until such time that a SGAT is filed and the TRRO related issues were finalized that all of the TRRO processes and issues would be deferred from a CMP perspective. Since those discussions in CMP, formal proceedings have been initiated with specific state commissions to further discuss the TRRO ruling. Based on those proceedings, Qwest believes that it is premature to initiate TRRO discussions at this time. At the point in time when the state commission proceedings have concluded and an SGAT is approved, Qwest will bring PC102704-1ES back to an active status in CMP and will initiate the appropriate process and PCAT updates at that time."

5/26/06 – Eschelon files its petition for arbitration in the state of Minnesota. Issue Nos. 9-43, 9-44, 9-58, 9-59 at impasse.

Qwest continues to distribute non-CMP Secret TRRO PCATs with dates upon which Qwest indicates they will be effective. Example:

7/21/06 - Qwest distributes a non-CMP Product notice document number PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1 through its QWEST WHOLESALE NOTIFICATION PROCESS (*i.e.*, not CMP). The subject line of the announcement states: **"TRRO - Reclassification of Terminations for Unbundled Network Element (UNE) Conversions - V1.0."** The effective date is listed as July 28th, 2006 – one week from the date of the announcement. The non-CMP notice contains no comment period.

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E07%2E21%2E06%2EF%2E04074%2ETRRO%5FReclass%5FTermin%5FV1%2Edoc>

The notice included a URL link to a Version 1 (new) non-CMP PCAT, entitled "TRRO - Reclassification of Terminations for Unbundled Network Element (UNE) Conversions - V1.0." The Version 1.0 PCAT is password protected. It includes:

The Description states: "This document is provided for customers who have signed the Triennial Review Remand Order (TRRO) compliant agreement/amendment. TRRO - Reclassification of Terminations for UNE Conversions is a procedure that is needed when you are converting UNE Services to Finished Services in Non-Impaired Central Offices as required by the TRRO."

The Terms and Conditions state: "CLECs are responsible for submitting a Collocation Application to have Qwest reclassify your UNE Collocation terminations to a Finished Service Interconnection Tie Pair (ITP) with the DEMARC outside the collocation as required by the TRRO. This process will reclassify your UNE terminations. To reclassify terminations, an application must be submitted for each Central Office. The terminations will be reclassified "AS IS" and no ITP to Expanded Interconnection Channel Termination (EICT) physical modifications will be performed as part of the reclassification. The Digital Signal Level 1 (DS1) terminations will be reclassified in blocks of 28 DS1s as part of the reclassification request and must reside in the same cable sheath. Digital Signal Level 3 (DS3) terminations may be reclassified on an individual termination basis. When the reclassification is complete, Qwest will send you a revised Alternate Point of Termination (APOT). You are responsible for updating your database to reflect the new cable naming found on the revised APOT."

The Rate Structure section states: "Recurring charges for the UNE-terminations will continue to be billed until a valid application is submitted for the reclassification. You will not be charged a nonrecurring charge to perform this reclassification of terminations from UNE to Finished Service when the activity is associated with TRRO."

The Tariffs, Regulations and Policies section states: "Tariffs, regulations and policies are located in the state specific Tariffs/Catalogs/Price Lists."

The Implementation section states, under "Ordering": "The TRRO - Reclassification of Terminations for UNE Conversions order process is completed by using the TRRO Reclassification of UNES form."

The Provisioning and Installation section states regarding access to *Section 251/252 Collocation* (emphasis added): "***Submission of new connect, change, and disconnect orders on the cable being reclassified⁷ will be restricted until the***

⁷ 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. Qwest indicated in the same document that it has

reclassification order is complete. The restriction of orders will begin once the application for reclassification is validated through the Ready for Service (RFS) date of the Reclassification Request. All work in progress related to the cable being reclassified must either be completed or cancelled by you prior to quote acceptance. 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.”

<http://www.qwest.com/wholesale/pcat/trroreclassuneterm.html>



ESCALATION #PC102704-1E32

November 16, 2004

Liz Balvin
Covad Communications

Dear Ms. Balvin,

This letter is in response to your November 8, 2004 escalation regarding Qwest's submitted CR PC102704-1 and Covad's request that Qwest withdraw the change request.

Qwest would like to note the scope of the change request was revised on November 10, 2004 to incorporate only those products specifically addressed by the USTA II Decision and the FCC Interim rules. These changes were communicated via notification CMPR.11.10.04.F.02294.Revision_CR_PC102704-1ES.

In response to Covad's objections which are provided in detail in Escalation #32, Qwest emphasizes that the CR is not superceding the language in the CLEC ICA. If the language in the current ICA allows the CLEC to order the products, the CLEC will be permitted to continue to order at this time. This change request is instead advising CLECs who don't have this language in their ICA or who don't currently have an ICA that they cannot seek an amendment or ICA with language for these products on a prospective basis. Further, there are no related system changes to impact a CLEC ordering what is available to them in their ICA. As this is a change to limit the availability of certain products only, Qwest believes this is a Level 4 change and belongs in CMP.

As stated in notification CMPR11.04.04.F.02273.Regulatory_CR_FCC_Interim, and cited by Covad in their escalation, Qwest maintains and does not waive its position that the regulatory classification of the CR is appropriate. Qwest revised the CR to remove the regulatory classification. Further, TRO and Non-USTA II items were included in the original CR prematurely. As USTA II is law Qwest intends to exercise the rights afforded to it by the USTA II decision regarding the elimination of the items impacted by that decision.

Qwest believes that because the classification of the CR is no longer regulatory, the issues associated with specific page and paragraph reference required for a Regulatory CR no longer apply.

Hopefully these clarifications will resolve all of Covad's issues. If not, Qwest is committed to continue to work with Covad to resolve these issues.

Sincerely,

Bill Campbell
Director – Product Management