

**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

REBUTTAL TESTIMONY OF

JAMES WEBBER

ON BEHALF OF ESCHELON TELECOM, INC.

DECEMBER 4, 2006

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1 **I. INTRODUCTION AND OVERVIEW OF REBUTTAL TESTIMONY**

2

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

5 A. My name is James D. Webber. My business address is: QSI Consulting, Inc.
6 4515 Barr Creek Lane, Naperville, Illinois 60564.

7 **Q. ARE YOU THE SAME JAMES WEBBER WHO FILED DIRECT**
8 **TESTIMONY IN THIS PROCEEDING ON SEPTEMBER 29, 2006?**

9 A. Yes.

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

11 A. Generally, my testimony is organized by subject matter number. First, I discuss
12 Subject Matter 16, dealing with Issues 9-33 through 9-36 (Network Maintenance
13 and Modernization) from ICA Section 9 (Unbundled Network Elements).
14 Second, I address all of the open issues in Section 12 (Access to Operational
15 Support Systems), starting with a general introduction and then proceeding by
16 subject matter number.

17 **Q. DO YOU HAVE ANY EXHIBITS?**

18 A. Yes. I have one exhibit – Exhibit JW-4 “Impacted CLEC Circuits Form showing
19 circuit ID and customer address information of impacted circuits.”

1 **II. ISSUES BY SUBJECT MATTER**

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

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

5 **Q. YOU ADDRESSED NETWORK MAINTENANCE AND**
6 **MODERNIZATION ISSUES (ISSUES 9-33, 9-34, 9-35 AND 9-36) AT**
7 **PAGES 5 THROUGH 23 OF YOUR DIRECT TESTIMONY. HAVE**
8 **THESE ISSUES CHANGED SINCE DIRECT TESTIMONY WAS FILED**
9 **IN THIS PROCEEDING?**

10 **A. Yes. To recap, my direct testimony addressed the following issues under Subject**
11 **Matter No. 16 (Network Maintenance and Modernization):**

- 12 • Issue 9-33 “Affect on End User Customers”: this disagreement relates to
13 whether and to what extent Qwest’s maintenance and modernization
14 activities can affect service to end user customers.
- 15 • Issue 9-34 “Location at Which Changes Occur”: this disagreement relates
16 to what information Qwest should provide to Eschelon in its notice of
17 network changes.
- 18 • Issue 9-35 “Emergencies”: this disagreement relates to the manner in
19 which information will be communicated from Qwest to Eschelon in the
20 case of an emergency situation in which an Eschelon End User
21 Customer’s service is disrupted so that Eschelon can assist its Customers
22 in resolving the problem.
- 23 • Issue 9-36 “Placement/Charges”: this disagreement relates to whether the
24 placement of “emergencies” in subsection 9.1.9.1 (as opposed to 9.1.9)
25 determines whether Qwest can charge Eschelon for emergency dispatches.

26 Since that time, the following changes to these issues have occurred:

- 27 • Issue 9-33: Eschelon has proposed a second alternative for Issue 9-33
28 clarifying that a reasonably anticipated temporary service interruption
29 needed to perform the network modernization/maintenance work would

1 not be adversely affecting the service to the End User Customer under
2 Section 9.1.9.

- 3 • Issue 9-33(a): a new issue number was added, entitled “Relationship
4 between 9.1.9 and Copper Retirement,” due to Qwest’s claim that Section
5 9.1.9 addressed copper loop retirement, when copper loop retirement is
6 addressed elsewhere in the ICA.
- 7 • Issue 9-34: Eschelon modified its language regarding the meaning of an
8 End-User Customer-specific network change.
- 9 • Issues 9-35 and 9-36: the parties have closed Issues 9-35 and 9-36, and I
10 have provided the closed language below.

11 At this point, Issues 9-33, 9-33(a) and 9-34 remain open under Subject Matter No.
12 16 (Network Maintenance and Modernization).

13 **Q. PLEASE BRIEFLY SUMMARIZE THE NETWORK MAINTENANCE**
14 **AND MODERNIZATION ISSUES (ISSUES 9-33, 9-33(a) AND 9-34).**

15 A. The three network maintenance and modernization issues are (1) whether minor
16 changes in transmission parameters include changes that adversely affect the End
17 User Customer’s service on more than a temporary or emergency basis [Issue 9-
18 33]; (2) whether copper retirement provisions that are agreed upon and closed
19 should be contradicted or undermined by Qwest’s new reading of Section 9.1.9
20 [Issue 9-33(a)]; and (3) whether, in situations when Qwest makes changes that are
21 specific to an End User Customer, Qwest should include the circuit identification
22 and End User Customer address information in the notice [Issue 9-34].

23 First, regarding Issue 9-33, Qwest has refused to commit in the ICA that network
24 maintenance and modernization activities that the companies have agreed will

1 involve only “minor changes to transmission parameters” will not adversely affect
2 service to Eschelon’s End User Customers on more than a temporary or
3 emergency basis. The operative term in Eschelon’s proposal for Issue 9-33 –
4 “adversely affect” – is a known term in the industry, as it has been used by the
5 FCC in its rules (discussed in more detail below), and Eschelon’s proposed
6 language clearly anticipates and addresses reasonably anticipated temporary
7 service interruptions and emergencies.¹ The expectation in Section 9.1.9 should
8 be that once any anticipated temporary disruption (such as a brief outage during
9 non-working hours needed to perform the maintenance and modernization work)
10 or any emergency (such as when a brief anticipated outage develops into an
11 unanticipated extended outage) *has ended*, the End User Customer’s service will
12 work without any adverse affect to that service. This is different, for example,
13 from situations in which copper is retired and replaced with fiber pursuant to
14 Section 9.2.1.2.3. In those copper retirement situations, the expectation is that the
15 End User Customers’ *will* be adversely affected (so Qwest must provide 91 Days
16 notice, CLECs are allowed to object, *etc.*).² In contrast, for Section 9.1.9
17 activities, Eschelon’s proposed language appropriately provides that, after those
18 modifications and changes to the UNEs in Qwest’s network that result in minor

¹ Former Issues 9-35 and 9-36 are closed. Therefore, the terms relating to emergencies in Section 9.1.9.1 are agreed upon and closed. Although the language of Section 9.1.9.1 is now closed, Qwest has not agreed to Eschelon’s proposal to include a cross reference in Section 9.1.9 to Section 9.1.9.1, even though a primary purpose of the cross reference is to assure Qwest that the “adversely affect” language is not a zero outage standard, as Eschelon’s proposed language clearly recognizes that emergencies will occur.

² See Section 9.2.1.2.3 of the proposed ICA (closed language).

1 changes to transmission parameters, the End User Customer's service will be
2 restored (if a temporary interruption or emergency occurs) and will continue to
3 work within the transmission limits of the UNE ordered by Eschelon.³ Eschelon
4 needs this commitment in the ICA to ensure that it may continue to provide
5 working service to its Customers, using the UNEs for which it has compensated
6 Qwest. Contrary to Qwest's assertion, working service is a minimal standard that
7 ought to be recognized, particularly in this situation in which the customer's
8 service *is* working, until Qwest intervenes with what it chooses to describe as an
9 improvement.

10 Second, regarding Issue 9-33(a), Eschelon's proposed language clearly states that
11 Section 9.1.9 does not address retirement of copper Loops or Subloops (as that
12 phrase is defined in Section 9.2.1.2.3). The expectation under these two
13 provisions is different (with the Customer's service being expected to work after
14 Section 9.1.9 activities but not 9.2.1.2.3 copper retirement activities). The
15 language of Section 9.1.9 should clearly state that it does not include the activities
16 already addressed – in closed language – in Section 9.2.1.2.3.

17 Finally, regarding Issue 9-34, Eschelon's proposed language provides that, in the
18 limited scenario when changes are specific to an End User Customer, the notice of
19 the change will contain the circuit identification and End User Customer address

³ Closed language in Section 9.1.9 provides: "Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC."

1 information. Qwest's technicians will need this information in order to perform
2 changes that are specific to an End User Customer and Qwest should also provide
3 this information to Eschelon. Eschelon needs this information to be prepared to
4 address any temporary service interruptions and to communicate with its
5 Customer.

6 **Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS ISSUES 9-33, 9-33(a)**
7 **AND 9-34?**

8 A. Eschelon offers two proposals for Issue 9-33, a proposal for Issue 9-33(a) and a
9 modified proposal for Issue 9-34, as shown below:⁴

10 **Issue 9-33 (Option #1) – same proposal as in direct testimony**⁵

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

16 **Issue 9-33 (Option #2)**

17 9.1.9..... Qwest may make necessary modifications and changes to
18 the UNEs in its network on an as needed basis. Such changes may
19 result in minor changes to transmission parameters but will not
20 adversely affect service to any End User Customers (other than a
21 reasonably anticipated temporary service interruption, if any,
22 needed to perform the work). (In addition, in the event of
23 emergency, see Section 9.1.9.1).

24 **Issue 9-33(a)**

25 9.1.9... This Section 9.1.9 does not address retirement of copper
26 Loops or Subloops (as that phrase is defined in Section 9.2.1.2.3).
27 See Section 9.2.1.2.3. Network maintenance and modernization

⁴ Modified language is shown in gray shaded text.

⁵ See Webber Direct, p. 8.

1 activities will result in UNE transmission parameters that are
2 within transmission limits of the UNE ordered by CLEC...

3 **Issue 9-34**

4 9.1.9.....Such notices will contain the location(s) at which the
5 changes will occur including, if the changes are specific to an End
6 User Customer, the circuit identification and End User Customer
7 address information, and any other information required by
8 applicable FCC rules. . . .

9 **Issues 9-35 and 9-36 are now closed with the following language:**

10 9.1.9.1 In the event that Qwest intends to dispatch personnel to the
11 Premises of a CLEC End User Customer, for the purpose of
12 maintaining or modernizing the Qwest network, Qwest shall
13 provide CLEC with email notification no less than three (3)
14 business days in advance of the Qwest dispatch and within three
15 (3) business days after completing the maintenance or
16 modernization activity. In the event of an emergency (e.g., no dial
17 tone), Qwest need not provide CLEC with advance email
18 notification but shall notify CLEC by email within three (3)
19 business days after completing the emergency maintenance or
20 modernizing activity. In such emergencies, once Qwest personnel
21 involved in the maintenance or modernization activities are aware
22 of an emergency affecting multiple End User Customers, Qwest
23 shall ensure its repair center personnel are informed of the network
24 maintenance and modernization activities issue and their status so
25 that CLEC may obtain information from Qwest so that CLEC may,
26 for example, communicate with its End User Customer(s). CLEC
27 may also contact its Service Manager to request additional
28 information so that CLEC may, for example, communicate with its
29 End User Customer(s). In no event, however, shall Qwest be
30 required to provide status on emergency maintenance or
31 modernization activity greater than that provided to itself, its End
32 User Customers, its Affiliates or any other party. To the extent
33 that the activities described in Sections 9.1.9 and 9.1.9.1 include
34 dispatches, no charges apply.
35

36 **Q. WHAT IS QWEST'S PROPOSAL FOR THESE ISSUES?**

37 A. For Issues 9-33 and 9-34, Qwest's proposal has not changed. Qwest continues to
38 recommend that the "adversely affect" language should be omitted under Issue 9-

1 33 and that the language requiring circuit ID and customer address information
2 for changes specific to End User Customers should be omitted under Issue 9-34.
3 For Issue 9-33(a), Qwest proposes the following language:

4 **Issue 9-33(a)**

5 ...Because the retirement of copper loops may involve more than
6 just minor changes to transmission parameters, terms and
7 conditions relating to such retirements are set forth in Section 9.2.
8 Network maintenance and modernization activities will result in
9 UNE transmission parameters that are within transmission limits of
10 the UNE ordered by CLEC...

11
12 **Issue 9-33: Affect on End User Customers - Section 9.1.9**

13 **Q. QWEST CLAIMS THAT ESCHELON'S LANGUAGE FOR ISSUE 9-33**
14 **COULD IMPEDE QWEST'S ABILITY TO MODERNIZE AND**
15 **MAINTAIN ITS NETWORK.⁶ IS THIS AN ACCURATE**
16 **CHARACTERIZATION OF ESCHELON'S LANGUAGE?**

17 **A.** No. Ms. Stewart misconstrues Eschelon's proposal. First, the agreed to language
18 in Section 9.1.9 expressly allows Qwest to perform network maintenance and
19 modernization activities ["In order to maintain and modernize the network
20 properly, Qwest may make necessary modifications and changes to the UNEs in
21 its network on an as needed basis"]. In addition, Eschelon's modified proposal
22 for Issue 9-33 clarifies that an anticipated temporary service interruption needed
23 to perform the work would not be considered "adversely affecting" under Section

⁶ Stewart Direct, p. 23, lines 4-5. See also, Stewart Direct, p. 29, lines 3-4; p. 31, lines 3-5
("Eschelon's proposed language...could effectively prohibit Qwest from upgrading its network...").

1 9.1.9. Furthermore, Eschelon’s language carves out copper loop retirement and
2 emergences – two instances in which the network change could have an adverse
3 effect on End User Customers – and refers to terms governing those changes in
4 other sections of the ICA.

5 The key is that the agreed to Section 9.1.9 states that “such changes may result in
6 *minor* changes to transmission parameters”⁷ and Eschelon’s proposal recognizes
7 that “minor” changes should by definition not result in adverse effects on End
8 User Customers. Therefore, Eschelon’s proposal expressly allows Qwest to
9 maintain or modernize its network (even when these activities may cause a
10 temporary service interruption needed to perform the work), and even recognizes
11 that certain maintenance and modernization activities could have an adverse effect
12 on End User Customers. Therefore, Ms. Stewart is incorrect when she states that,
13 “Under Eschelon’s proposed language, Qwest could only upgrade its network if
14 Qwest was certain that the upgrade would have no impact on Eschelon end
15 users.”⁸

16 **Q. DOES MS. STEWART AGREE THAT NETWORK MAINTENANCE AND**
17 **MODERNIZATION ACTIVITIES SHOULD BE PERFORMED**
18 **WITHOUT ADVERSELY AFFECTING END USER CUSTOMERS?**

⁷ Emphasis added.

⁸ Stewart Direct, p. 31, lines 5-7.

1 A. It appears so. She explains that Qwest will “upgrade its network in a *seamless*
2 manner for its millions of customers.”⁹ If Qwest performs these activities in a
3 “seamless” manner, as Ms. Stewart testifies, Qwest should have no problem with
4 putting this commitment in the ICA. That Qwest will not agree to this language
5 raises serious questions as to whether Qwest’s network maintenance and
6 modernization activities will be seamless to End User Customers in the future.

7 **Q. DOES MS. STEWART RAISE ANY OTHER CONCERNS ABOUT**
8 **ESCHELON’S LANGUAGE FOR SECTION 9.1.9 (ISSUE 9-33)?**

9 A. Yes. Ms. Stewart states that Eschelon’s “adversely affect” language is not tied to
10 ANSI standards and is vague and ambiguous.¹⁰ Qwest’s position is that, so long
11 as Qwest meets ANSI standards, the Commission and Eschelon need not worry
12 about whether Eschelon’s End User Customers actually have working service
13 over Qwest’s UNEs.

14 **Q. PLEASE ADDRESS MS. STEWART’S CLAIM THAT THE TERM**
15 **“ADVERSELY AFFECT” IS NOT TIED TO INDUSTRY STANDARD**
16 **AND IS VAGUE AND AMBIGUOUS.**

17 A. Ms. Stewart is wrong. 47 CFR § 51.319(a)(8) states:

18 (8) *Engineering policies, practices, and procedures.* An incumbent
19 LEC shall not engineer the transmission capabilities of its network

⁹ Stewart Direct, p. 27, lines 4-5. (emphasis added)

¹⁰ Stewart Direct, p. 27, lines 6-16. *See also*, Stewart Direct, p. 30.

1 in a manner, or engage in any policy, practice, or procedure, that
2 *disrupts or degrades* access to a local loop...

3
4 The FCC’s rule prohibits Qwest from making a change to transmission
5 parameters that “disrupts” or “degrades” access to the loop over which a CLEC
6 provides service to its End User Customer. Note that this FCC rule is not tied to
7 ANSI standards and does not delineate the degree of degradation that would be
8 prohibited – it simply prohibits degradation and disruption. Eschelon’s language
9 requires the same. Therefore, Qwest’s complaint that Eschelon’s “adversely
10 affect” language is not tied to ANSI standards and is vague and ambiguous is a
11 collateral attack on the FCC’s rule.

12 Furthermore, 47 CFR § 51.316(b), entitled “conversion of unbundled network
13 elements and services,” states:

14 (b) An incumbent LEC shall perform any conversion from a
15 wholesale service or group of wholesale services to an unbundled
16 network element or combination of unbundled network elements
17 without ***adversely affecting*** the service quality perceived by the
18 requesting telecommunications carrier’s end-user customer.
19 (emphasis added)
20

21 The FCC uses the term “adversely affecting” in FCC Rule 51.316(b) to describe
22 the ILECs’ obligations regarding performing conversions of the CLEC’s UNEs
23 the same way Eschelon’s proposal uses the term to describe Qwest’s obligation
24 regarding Qwest performing network maintenance and modernization activities
25 on Eschelon’s UNEs. This FCC rule is not tied to ANSI standards, nor does it
26 define a specific level of degradation that would be allowed. Qwest ignores these

1 FCC rules that support Eschelon’s proposal. Qwest’s criticisms of Eschelon’s
2 proposal is misplaced given that the FCC has used the same term (*i.e.*, adversely
3 affect) and for the same purpose – *i.e.*, requiring ILEC activities performed on
4 UNEs to be done seamlessly from the perspective of the End User Customer.

5 **Q. MS. STEWART CLAIMS AT PAGE 28 OF HER DIRECT TESTIMONY**
6 **THAT ESCHELON’S LANGUAGE HAS THE WRONG FOCUS.**
7 **ACCORDING TO HER, THE PROPER FOCUS IS ON THE SERVICE**
8 **QWEST PROVIDES TO ESCHELON, NOT THE SERVICE THAT**
9 **ESCHELON’S END USER CUSTOMERS EXPERIENCE. IS SHE**
10 **CORRECT?**

11 A. No. I addressed this issue at page 14, lines 6-11 of my direct testimony. Again,
12 this is a situation in which Eschelon’s end user customer’s service is working just
13 fine until Qwest makes a network change, so the end user customer’s perception
14 is clearly relevant. As mentioned above, FCC Rule 51.316(c) focuses directly on
15 the “service quality perceived by the requesting telecommunications carrier’s end-
16 user customer.” Therefore, the FCC’s rules focus on service quality perceived by
17 the end user when the ILEC performs activities on the CLEC’s UNEs, and
18 Eschelon’s proposal is consistent with this approach.¹¹

¹¹ Ms. Stewart’s claim that Qwest will perform maintenance and modernization activities in a seamless manner is instructive because “seamless” is the exact same word that the FCC used to describe the manner in which conversions should be performed by ILECs on CLEC UNEs. (*TRO*, ¶ 586) When codifying the “seamless” conversion requirement in 47 CFR § 51.316(b), the FCC made clear that “seamless” meant “without *adversely affecting* the service quality perceived by the requesting telecommunications carrier’s end-user customer.” Therefore, if Qwest performs maintenance and

1 **Q. IN ADDITION TO PROVIDING THAT CHANGES TO TRANSMISSION**
2 **PARAMETERS WILL BE “MINOR,” CLOSED LANGUAGE IN**
3 **SECTION 9.1.9 PROVIDES THAT QWEST’S ACTIVITIES WILL**
4 **RESULT IN UNE TRANSMISSION PARAMETERS THAT ARE WITHIN**
5 **THE TRANSMISSION LIMITS OF THE UNE ORDERED BY**
6 **ESCHELON. WHY DOESN’T THIS CLOSED LANGUAGE**
7 **ADEQUATELY ADDRESS ESCHELON’S CONCERNS?**

8 A. Qwest has previously taken the position that it meets its obligations under this
9 language if it provides a UNE within transmission parameters, even though the
10 circuit is *not operational* and there is a way to provision an operational circuit
11 that is within transmission parameters. Eschelon, in the past, had a situation in
12 which Qwest was claiming that it met the industry standards regarding decibel
13 (dB)¹² loss for DS1s, but Qwest did not provide a working circuit to Eschelon. I
14 will refer to this as the dB loss example. An email exchange and supporting
15 documentation on this example is provided by Ms. Johnson as Exhibit BJJ-27.
16 When Eschelon provided the facts of this example in ICA negotiations, Qwest
17 confirmed that it interpreted the language of Section 9.1.9 as proposed by Qwest
18 to allow Qwest to render an End User Customer’s circuit non-operational if such a
19 situation arose under the ICA as a result of Qwest network maintenance and

modernization in a “seamless” manner, it should have no problem agreeing that they should not adversely affect the service quality perceived by Eschelon’s End User Customers.

¹² A decibel is a unit of measure of signal strength, usually the relationship between a transmitted signal and a standard signal source, known as a reference. Newton’s Telecom Dictionary, 20th edition at 233.

1 modernization activities. Eschelon's proposed modifications are needed,
2 therefore, to avoid that result.

3 **Q. PLEASE ELABORATE ON THE DB LOSS EXAMPLE.**

4 A. In the 2004 timeframe, Qwest provisioned some DS1 circuits to Eschelon that did
5 not work. These DS1 circuits required a repair immediately after Qwest
6 provisioned them because the dB levels were set at levels that did not work for the
7 service requested. The standard for dB loss is a range between 0 and -16.5 dBs.¹³
8 When Qwest sets the dB level within this range (including at a level of -7.5 dBs),
9 often the service works. In some cases, however, Eschelon encounters situations
10 in which Qwest has set the dB level at a setting that, although it is within this
11 range, the circuit is not operational. In such situations, Eschelon asks Qwest to
12 adjust the dB level to another point *within the standard range* to make the circuit
13 operational (such as an adjustment from -7.5 dBs to -1.0 dBs). For example, if
14 the circuit does not work at the Network Interface Unit ("NIU") (this means that
15 the trouble is not in Eschelon's equipment, which may not even be connected
16 yet), an adjustment in the dB level may be needed to obtain an operational circuit.
17 A simple adjustment at either the Qwest central office card or the NIU or both
18 often will correct the problem.

19 For a period of time, Qwest began to deny requests for an adjustment in the dB

¹³ It is undisputed that the relevant industry standard in this example provides a *range* from 0 to -16.5 for dB loss. *See*, Exhibit BJJ-27, p. 1 (Qwest said: "As you know the ANSI range is -16.5 as the lowest setting and "0" as the highest setting for dB levels.")

1 level even though, with the adjustment, the level would still be within the range of
2 0 and -16.5 dBs. Eschelon escalated this issue and spent quite a bit of time
3 attempting to resolve this issue with Qwest. When examples of Qwest denials
4 continued to occur despite Eschelon's efforts, Eschelon even requested and
5 received the participation of staff from the Minnesota Department of Commerce
6 in its attempts to resolve the issue. During Eschelon's efforts to resolve this
7 problem, Eschelon learned that Qwest had unilaterally implemented a network
8 maintenance plan to set the dB levels at a specific level (-7.5) as a default, even
9 though the industry standard was not -7.5, but rather a dB range of between 0 and
10 -16.5. Qwest claimed that it was appropriately delivering the circuit within the
11 ANSI standard, even though the circuit was not operational.¹⁴ Eschelon received
12 no notice of Qwest's maintenance and modernization plan. Instead, it was
13 revealed in an email from Qwest to Eschelon dated 10/21/04¹⁵ as follows (see,
14 Exhibit BJJ-27, page 1):

15 ...techs were instructed to reset the db at -7.5 whenever they did a
16 repair. This was first given as an instruction four years ago and
17 has been repeated over time. Thus, in order to allow for proper
18 performance of end-user equipment, Qwest has been moving the
19 network over time to a default setting of -7.5.
20

21 Qwest's admission in this email shows that Qwest instructed its technicians that,
22 whenever performing work needed for repairs, they should also reset the dB level

¹⁴ See Exhibit BJJ-27, pp. 1 and 7.

¹⁵ Email from Qwest – Senior Attorney (Joan Peterson) to Eschelon (including Ms. Johnson) dated 10/12/04. Exhibit BJJ-27, p. 1.

1 at -7.5 (not as part of the repair but rather as part of its move to a different default
2 setting). It stands to reason, however, that if Eschelon had to obtain an
3 adjustment in the dB level during installation to obtain an operational circuit, that
4 a later action to return the dBs back to the former level would likely once again
5 cause the circuit to become non-operational. Because Qwest provided no advance
6 notice to Eschelon of the instruction that Qwest provided to its technicians in this
7 regard, however, Eschelon would not have known, when troubles or repeat
8 troubles occurred, that changes made per this instruction had been the cause.

9 As previously noted, Qwest said that it was making this change for the purposes
10 of “moving the network over time to a default setting of -7.5.” This Qwest
11 statement is indicative of a network maintenance or modernization policy that
12 Qwest established to, over time, move its network to a new default dB setting – a
13 setting that results in DS1s that do not work in some instances (*i.e.*, causes a
14 previously working circuit to not work for the customer). Though the particular
15 problems Eschelon brought to Qwest’s attention at that time arose during
16 installation,¹⁶ in the course of investigating the cause of this problem, Qwest
17 revealed its *maintenance and modernization policy* to proactively reset dB level at
18 a default of -7.5 during repairs. This maintenance and modernization policy could
19 cause some customers to lose service – service that had previously been up and
20 working fine.

¹⁶ Qwest delivered DS1s of such poor quality that they needed an immediate repair.

1 This example demonstrates that Qwest will defend a non-working circuit (that
2 previously worked just fine for the Customer) as being acceptable, within
3 transmission limits, and meeting the ICA if it can conceivably be described as
4 within those limits, even though it *does not work*, when another setting – also
5 within industry standard transmission limits (such as when the industry standard
6 provides a range) – would both meet the standard and *work*. Therefore, while it
7 may have seemed obvious (given use of the word “minor” in the ICA) before this
8 example arose that the service should work as it did before Qwest performed its
9 network maintenance and modernization activities, it is now clear that the ICA
10 needs to expressly address this point.

11 **Q. IS ESCHELON ASKING QWEST TO PROVIDE SERVICE OUTSIDE OF**
12 **INDUSTRY STANDARDS?**

13 A. No. If a setting of -7.5 always resulted in working service, the industry standard
14 would logically be -7.5. Instead, the industry standard is a range (-16.5 to 0)
15 because, logically, the service may or may not work at all the settings in the range
16 but should work somewhere within that range depending on other factors (such as
17 Qwest cards in the central office or at the NIU – which the standard allows for).
18 In the dB loss example, Eschelon’s request was simply for Qwest to provide
19 working service *within this range* (i.e., within industry standard transmission
20 limits), including near the top of the range if necessary to make the service work
21 (or work *again* in the case of network maintenance and modernization). Eschelon
22 is not asking Qwest to set the dB levels outside the range. Eschelon is not even

1 asking Qwest to re-set the default level, so long as Qwest adjusts the level within
2 the range when needed. Eschelon is paying Qwest for these circuits and, when
3 working service is obtainable somewhere within the applicable standard, Eschelon
4 should be able to expect that these circuits for which Qwest is being compensated
5 will be operational. With its proposed language, Eschelon is asking the
6 Commission to recognize a key purpose of industry standards – to ensure working
7 service for End User Customers.

8 **Q. THOUGH MS. STEWART IGNORES THE FCC RULES YOU DISCUSS**
9 **ABOVE, SHE DOES TESTIFY THAT THE TELECOMMUNICATIONS**
10 **ACT AND FCC RULES ANTICIPATE CHANGES THAT COULD**
11 **AFFECT OTHER CARRIERS.¹⁷ DOES HER TESTIMONY TELL THE**
12 **WHOLE STORY?**

13 A. No. The rules on which Ms. Stewart relies are not on point. Ms. Stewart points
14 to the “Notice of Changes” language of Section 251(c)(5) of the Act and 47 CFR
15 § 51.325, and claims that this language anticipates network change that “has
16 effects on other carriers.”¹⁸ But this language only addresses the ILECs’
17 obligation to notify carriers of changes that could affect the interoperability of the
18 networks of the ILEC and CLEC so that steps can be taken to avoid adverse
19 effects on End User Customers. In addition, this language applies to all network

¹⁷ Stewart Direct, pp. 23-24.

¹⁸ Stewart Direct, p. 24, lines 22-23.

1 changes – not just “minor” changes – and the agreed language in Section 9.1.9
2 under Issue 9-33 is limited only to “minor” changes to “transmission parameters.”

3 **Q. MS. STEWART TESTIFIES THAT QWEST’S MODERNIZATION**
4 **ACTIVITIES COULD AFFECT A CLEC CUSTOMER BECAUSE OF**
5 **THE FACILITIES THE CLEC IS USING.¹⁹ PLEASE RESPOND.**

6 A. Ms. Stewart hypothesizes that a CLEC could be providing DSL service to an end
7 user over a 2 wire analog loop instead of a data-capable digital loop, which could
8 cause CLEC’s DSL equipment to cease working if Qwest replaces the copper
9 loop with a hybrid (copper/fiber) loop. Ms. Stewart hypothesizes that in this
10 instance, the CLEC’s decision to use a 2 wire loop instead of a data-capable
11 digital loop led to the adverse impacts on the customer’s service. It is my
12 understanding that Eschelon does not use 2 wire *analog* loops to provide DSL
13 service, and therefore, Ms. Stewart presents a solution in search of a problem. If a
14 carrier does attempt this hypothetical practice, it likely will not be around long
15 enough to be a problem. Ms. Stewart provides no details on this hypothetical
16 example, and does not even claim that this problem has occurred. If a problem
17 does arise, Qwest needs to pursue that carrier and not “make a rule out of the
18 exception.”²⁰

¹⁹ Stewart Direct, pp. 28-30. *See also* Stewart Direct, p. 38.

²⁰ Linse Direct, p. 33, line 15. *See also* Linse Direct, p. 44, line 4.

1 Moreover, the larger point is that under Qwest’s scenario the End User Customer
2 had a working circuit prior to Qwest’s maintenance or modernization activities
3 and has a non-working circuit after Qwest’s activities. This would not be a
4 “minor” change, as discussed in Section 9.1.9, and is therefore, not applicable to
5 the disagreement under Issue 9-33. In addition, Ms. Stewart makes no mention of
6 whether the change Qwest made in her scenario (*i.e.*, replacing copper loop with
7 hybrid loop) was “necessary” as required by Section 9.1.9.²¹

8

9 **Issue 9-33(a): Relationship Between 9.1.9 and Copper Retirement – Section 9.1.9**

10 **Q. WHY IS ESCHELON’S PROPOSAL FOR ISSUE 9-33(A) SUPERIOR TO**
11 **QWEST’S?**

12 A. Retiring copper Loops or Subloops (as that phrase is defined in Section 9.2.1.2.3)
13 involves more than “minor changes to transmission parameters”²² and therefore
14 does not fall within this term in Section 9.1.9. Qwest, however, has pointed to
15 copper retirement resulting in adverse affects upon service to End User Customers
16 as an example of why Eschelon’s language in Issue 9-33 should be rejected.
17 Qwest is using an extreme and inapplicable example to claim that Eschelon’s
18 language is too broad, when that example does not even fall within Eschelon’s

²¹ The closed language of 9.1.9 shows that Qwest does not have unlimited discretion in modifying and changing UNEs. Rather, according to Section 9.1.9, the modifications/changes must be “necessary.” Ms. Stewart makes it appear that Qwest has unlimited discretion in making these changes, which is not the case. *See, e.g.*, Stewart Direct, p. 22, lines 16-19 (“It is of course essential that Qwest have the ability to both maintain and modernize its telecommunications network without unnecessary interference and restriction. The need for this flexibility is particularly important in this era of rapidly changing technologies.”)

²² *See* Section 9.1.9 of proposed ICA (closed language).

1 proposed language. Qwest should not be allowed to use copper retirement (as that
2 term is used in Section 9.2.1.2.3) as a means to defeat Eschelon's proposed
3 "adversely affect" language for Issue 9-33, when copper retirement is addressed
4 in Section 9.2.1.2.3 and that language has long been closed.

5 Of the two proposals, only Eschelon's language clearly states that Section 9.1.9
6 does not address the copper retirements that are the subject of Section 9.2.1.2.3.
7 Qwest's proposed language states that terms for retirements are set forth in
8 Section 9.2 but does *not* state that they are not also addressed in Section 9.1.9.
9 Eschelon's proposal more clearly defines the topic that is not being addressed in
10 Section 9.1.9 as "retirement of cooper Loops or Subloops (*as that phrase is*
11 *defined in Section 9.2.1.2.3*)" (emphasis added). Qwest's proposal (which begins
12 with "Because") also suggests that there is only a single reason why copper
13 retirement is addressed in Section 9.2, which is not the case. And, although
14 Qwest suggests a causal relationship, Qwest does not go on to state that, therefore,
15 Section 9.1.9 does not address the same subject. Eschelon's proposed language is
16 clearer. Eschelon needs to be able to rely on each provision (9.1.9 and 9.2.1.2.3)
17 for its intended purpose. Clarifying that Section 9.1.9 does not address the same
18 retirement of copper issues as already addressed in other provisions dealing with
19 retirement of cooper Loops or Subloops as that phrase is defined in Section
20 9.2.1.2.3 will help avoid future disputes.

21

1 **Issue 9-34: Notices - Location at Which Changes Occur - Sections 9.1.9**

2 **Q. WHAT CONCERNS DOES QWEST HAVE WITH ESCHELON'S**
3 **PROPOSAL FOR ISSUE 9-34?**

4 A. Ms. Stewart claims that Eschelon's language is not practical and is overly
5 burdensome.²³

6 **Q. ARE MS. STEWART'S CONCERNS WARRANTED?**

7 A. No. In an attempt to poke holes in Eschelon's proposal for Issue 9-34, Ms.
8 Stewart points to changes in dialing plans and switch software upgrades and
9 claims that Eschelon's proposal for Qwest to provide circuit ID and customer
10 address information for these changes would be impractical and burdensome
11 because these changes would either affect a large geographic region or would not
12 impact CLEC customers at all.²⁴ This is a red herring. Eschelon's language
13 requires circuit ID and customer address information only if the change is specific
14 to an End User Customer.²⁵ The changes that Ms. Stewart points to (dialing plan
15 changes and switch software upgrades) are not specific to an End User Customer,
16 so Qwest would not be required to provide the circuit ID and customer address
17 information.

²³ Stewart Direct, p. 32, lines 11-12; p. 33, line 4. Regarding Ms. Stewart's claim that Eschelon's language exceeds the FCC's requirements (Stewart Direct, p. 32, lines 10-11), see my direct testimony at pages 15-16.

²⁴ Stewart Direct, p. 33.

²⁵ Because Eschelon's language is limited to End User Customer specific changes, Ms. Stewart misses the point when she complains that Eschelon's proposal would require Qwest to provide this information "regardless if the Qwest network change would actually have a noticeable impact to either Eschelon or its customer." (Stewart Direct, p. 33, lines 7-9).

1 **Q. PLEASE ELABORATE ON WHAT AN “END USER CUSTOMER**
2 **SPECIFIC” CHANGE IS.**

3 A. A change that is specific to an end user customer is a change that is made to the
4 service of a customer at an address and not a change made that affects a
5 geographic area (or many customers).

6 **Q. CAN YOU PROVIDE AN EXAMPLE OF A CHANGE THAT IS SPECIFIC**
7 **TO AN END USER CUSTOMER FOR WHICH CIRCUIT ID AND**
8 **CUSTOMER ADDRESS INFORMATION WOULD BE PRACTICAL?**

9 A. Yes. The dB loss example described above is a good example of a type of End
10 User Customer specific change that could be made in this context. Qwest
11 arbitrarily created a policy to set the dB loss level at -7.5 dbs for DS1 loops, and
12 though this level was in the industry standard range between 0 and -16.5 dBs,
13 DS1s specific to an Eschelon End User Customer did not work. See, Exhibit BJJ-
14 27. Circuit ID and customer address information is needed in this type of
15 situation so that Eschelon can identify the affected customer and communicate
16 with that customer.

17 **Q. IS THERE EVIDENCE DEMONSTRATING THAT QWEST CAN**
18 **IDENTIFY CHANGES THAT ARE SPECIFIC TO END USER**
19 **CUSTOMERS AND PROVIDE CIRCUIT ID AND CUSTOMER ADDRESS**
20 **INFORMATION TO ESCHELON?**

1 A. Yes. Agreed upon language in Section 9.2.1.2.3 provides that, although notices of
2 copper retirement will generally be posted on its website, Qwest will provide
3 direct notice to Eschelon of any planned replacement of copper with fiber “when
4 CLEC or its End User Customers will be affected.” This shows that, when
5 making a change, Qwest can distinguish between changes that will affect
6 Eschelon’s End User Customers and those that will not. Qwest has not provided
7 any reason why this would not also be true for network maintenance and
8 modernization activities. Also, to perform changes that are specific to an End
9 User Customer, the Qwest technician logically needs this type of customer
10 identifying information to perform the work. Qwest should share this information
11 with Eschelon.

12 I have attached, as Exhibit JW-4, a document that Qwest’s new service manager
13 recently provided to Eschelon about a network change – a change resulting in a
14 different dB level (the very type of change used as an illustration in negotiations
15 when describing the facts of the dB loss example). The document is a Qwest
16 form (with a date of October 27, 2005 for the form itself) for copper retirements
17 and Impacted CLEC circuits. The form provides for one of two “Forseeable
18 Impacts to the CLEC Community”: (1) “Copper to Fiber (Hybrid)”; or (2)
19 “Negative impact on Loop Make-up (Length or Gauge Change).” By its terms,
20 the first impact is when the copper is moved to fiber (hybrid) and the second is
21 when the copper is replaced with copper but the length or gauge changes. In this
22 particular example, which was dated October 17, 2006, Qwest checked the second

1 box (for replacement of copper with copper). When Eschelon inquired about the
2 anticipated impact of this change, Qwest indicated that the change may result in a
3 greater dB loss but, with the length or gauge change, service should continue to
4 work just fine.

5 Significantly, on page 1, Qwest provides the “circuit ID” and “Impacted Address”
6 (as well as other information) for the Eschelon circuits that will be impacted by
7 the change. This is clear evidence that Qwest already possesses and processes
8 this information on impacted circuits for network changes and, therefore, adopting
9 Eschelon’s language for Issue 9-34 would not result in a unique process for
10 Eschelon or costly modifications to Qwest’s systems or processes. Qwest’s own
11 form shows that this falls within the “Impacted CLEC Circuits” portion of the
12 form and is not a copper retirement job involving replacement with FTTH or
13 FTTC Loops because it contains an effective date only 10 days after the
14 announcement date,²⁶ when such copper retirement notices must be issued at least
15 90 days in advance of the retirement.²⁷ Therefore, what Exhibit JW-4 shows is
16 that Qwest can provide the precise information that Eschelon is requesting under
17 Issue 9-34 for End User Customer specific changes.

18 When Eschelon inquired further about this notice, Qwest told Eschelon that it sent
19 the notice to Eschelon “in error” and that it “should not have been sent to

²⁶ The form was dated 10/17/06 with an effective date of 10/27/06.

²⁷ 47 CFR § 51.333(b)(2).

1 Eschelon.”²⁸ Qwest referred Eschelon instead to the “generic network disclosure
2 concerning the copper retirement posted to the Qwest website.”²⁹ Eschelon has
3 not been able to discern which generic notice that would be. As Qwest obviously
4 has this more specific information, including circuit identification and End User
5 Customer address, it should be required to provide this information to Eschelon as
6 well.

7 **Q. IS QWEST OBLIGATED TO PROVIDE THIS INFORMATION TO**
8 **ESCHELON?**

9 A. Yes. To abide by the nondiscrimination requirements of Section 251 of the Act,
10 Qwest must provide CLECs service that is “at least equal in quality to that
11 provided by the local exchange carrier to *itself* or to any subsidiary, affiliate, or
12 any other party to which the carrier provides interconnection.”³⁰ *See also* 47 CFR
13 § 51.313(b).³¹ Exhibit JW-4 illustrates that Qwest generates and provides circuit
14 ID and customer address information to itself for changes made to circuits, and
15 therefore, Qwest must provide it to Eschelon.

16 **Q. PLEASE SUMMARIZE THE NETWORK MAINTENANCE AND**

²⁸ Exhibit JW-4, p. 3.

²⁹ Exhibit JW-4, p. 3.

³⁰ Section 251(c)(2)(C) of the Act (emphasis added).

³¹ 47 CFR § 51.313(b): “Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.”

1 **MODERNIZATION ISSUES (ISSUES 9-33, 9-33(a) AND 9-34).**

2 A. First, minor changes to transmission parameters should not disrupt service for End
3 User Customers. Eschelon’s Customers’ service should not be adversely affected,
4 especially when there are special exceptions when service may be disrupted
5 temporarily when needed to perform the work and during emergencies, with
6 disruptions that may not be temporary being addressed separately in Section
7 9.2.1.2.3 relating to copper retirement. Second, Eschelon’s language provides the
8 most clarity regarding the relationship between Sections 9.1.9 and 9.2.1.2.3,
9 which will help avoid future disputes. Finally, when Qwest makes changes that
10 are specific to End User Customers, Qwest should be required to provide
11 information sufficient to allow Eschelon to identify and provide quality service to
12 the affected Customer(s). For all of the reasons discussed with respect to
13 Eschelon’s business need and in these responses, the Commission should adopt
14 Eschelon’s language for Issues 9-33, 9-33(a) and 9-34.

15

16 **INTRODUCTION TO SECTION 12 ISSUES**

17 **Q. QWEST BEGINS ITS TESTIMONY REGARDING SECTION 12 OF THE**
18 **ICA WITH TWO SECTIONS, ONE ON CMP³² AND ANOTHER**
19 **ENTITLED “INTRODUCTION TO SECTION 12 ISSUES.”³³ PLEASE**
20 **RESPOND.**

³² Albersheim Direct, pp. 3-28.

³³ Albersheim Direct, p. 39, lines 17-24.

1 A. Mr. Starkey responds to Qwest's Change Management Process ("CMP")
2 arguments in his direct testimony at pages 8-9 and 12-78 and as the first topic in
3 his rebuttal testimony. I will also provide additional examples of some of the
4 issues he raises regarding the need for contractual certainty as part of my
5 discussion below of the specific issues in Section 12. Mr. Starkey also responds
6 to Ms. Albersheim's testimony³⁴ regarding intervals (Issue 1-1 and subparts),
7 immediately following his discussion of the ICA and CMP.

8 In Qwest's "Introduction to Section 12 Issues," Qwest testifies that "Qwest's
9 standard negotiations template" was not used for the negotiation of Section 12 of
10 the interconnection agreement.³⁵ Qwest adds that: "Eschelon proposed a new
11 version of section 12 and negotiations were based on Eschelon's rewrite of the
12 section. For illustrative purposes, I have attached Qwest's Template language as
13 Exhibit RA-3. I have attached the initial draft of Eschelon's rewrite as Exhibit
14 RA-4."³⁶

15 **Q. IS QWEST EXHIBIT RA-4 THE DRAFT OF SECTION 12 THAT**
16 **ESCHELON SENT TO QWEST ON MARCH 18, 2004?**

17 A. No, it has been altered. As indicated by Ms. Johnson in her rebuttal testimony,³⁷
18 Qwest's Exhibit RA-4 contains shading (in colors such as red, blue, and purple)

³⁴ Albersheim Direct, pp. 28-39.

³⁵ Albersheim Direct, p. 39, lines 17-21.

³⁶ Albersheim Direct, p. 39, lines 21-24.

³⁷ See discussion of BJJ-21 in Johnson Rebuttal.

1 that was not part of the draft of Section 12 that Eschelon sent to Qwest on March
2 18, 2004. Eschelon could not find any acknowledgement in Qwest's direct
3 testimony that the document had been altered or any explanation of the added
4 shading.

5 **Q. IS QWEST'S TESTIMONY THAT QWEST'S TEMPLATE WAS NOT**
6 **USED FOR THE NEGOTIATION OF SECTION 12 ACCURATE?**

7 A. No. Attached to the rebuttal testimony of Ms. Johnson is an annotated version of
8 the Section 12 proposal that Eschelon sent to Qwest on March 18, 2004 (Exhibit
9 BJJ-21) which shows the source of the language, including language that is the
10 same or substantially the same as Qwest's template language at the time.³⁸ On the
11 first page of Exhibit BJJ-21, Eschelon has provided a key to the annotations, so
12 the alterations are clearly identified. Merely paging through Exhibit BJJ-21
13 shows that a substantial amount of Qwest's template language was used for the
14 negotiation of Section 12. Qwest chooses to ignore that as part of negotiations
15 Eschelon accepted a significant amount of Qwest's template language. This was
16 a concession on Eschelon's part, as Eschelon's initial proposal was to use the
17 parties' existing approved interconnection agreement as a starting point for
18 negotiations.³⁹

19 **Q. QWEST DESCRIBES ESCHELON'S PROPOSAL AS A "REWRITE"**⁴⁰

³⁸ Exhibit BJJ-21.

³⁹ Johnson Rebuttal.

⁴⁰ Albersheim Direct, p. 39, lines 22 & 24.

1 **OF SECTION 12. PLEASE RESPOND.**

2 A. Mr. Starkey describes Qwest's entitlement mentality with respect to its template
3 *proposals* in his rebuttal testimony regarding the need for contractual certainty
4 and CMP issues. Eschelon's proposal *would be* a "rewrite" if Qwest *had* some
5 predestined right to its proposal in this negotiation between two parties. Section
6 252 contains no such presumption in favor of Qwest. Eschelon had one proposal,
7 and Qwest had another. Nonetheless, Exhibit BJJ-21 shows that Eschelon
8 compromised in its own Section 12 proposal by using a substantial amount of
9 Qwest language, either from Qwest's template or Qwest's approved ICA with
10 AT&T. In addition, the vast majority of the remainder of Eschelon's proposal
11 was also Qwest's language in the sense that it reflected Qwest's own language in
12 Qwest's wholesale web site documentation.⁴¹ When providing its Section 12
13 proposal to Qwest, Eschelon said: "Eschelon's proposals generally reflect current
14 Qwest processes, consistent with Qwest's own documentation of those
15 processes."⁴² This shows that at any time since March of 2004 Qwest could have
16 informed Eschelon if it believed Eschelon was mistaken on this point in any
17 regard, but Qwest chose to rely on its CMP argument and, in some cases, is only
18 raising other fallback positions now that the parties are in arbitration.⁴³ Very little

⁴¹ Exhibit BJJ-21 (bold text).

⁴² Exhibit BJJ-21 at March 18, 2004 cover email to Eschelon Section 12 proposal.

1 of Eschelon's own proposed language in March of 2004 had Eschelon as a source
2 (shown in underlining in Exhibit BJJ-21).⁴⁴

3 **Q. DID ESCHELON SUCCEED IN ALLEGEDLY "REWRITING" SECTION**
4 **12 IN NEGOTIATIONS?**

5 A. No. Eschelon continued to compromise significantly by withdrawing a large
6 number of its proposals. The gray shading in Exhibit BJJ-21 shows the extensive
7 concessions by Eschelon. In the end, more than 90% of the paragraphs proposed
8 by Eschelon on March 18, 2004 are either closed or have been eliminated from
9 the ICA.⁴⁵ Eschelon had every right to present proposals to Qwest in negotiations
10 and has negotiated in good faith, making significant concessions along the way.
11 The relatively few remaining open issues in Section 12 are critical business issues
12 for which Eschelon asks the Commission to adopt its proposed language.

13

14 **SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**
15 **ACKNOWLEDGEMENT OF MISTAKES**

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

17 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-64 AND ITS**
18 **SUBPARTS.**

⁴³ See Webber Direct, pp. 105-107 (discussion of PSN) and 140-141 (discussion of Tag at Demarcation issue, which is now closed).

⁴⁴ Even then, the source may not have been Eschelon, as with Section 12.1.4 (Acknowledgement of Mistakes), for which Eschelon relied upon a Minnesota commission order, as discussed in the next section.

⁴⁵ See discussion of BJJ-21 in Johnson Rebuttal.

1 A. Because Qwest is a wholesale vendor to Eschelon, the company sometimes
2 performs installation and/or repair activities on behalf of Eschelon and at
3 Eschelon's expense. If Qwest makes an error in the course of these activities that
4 negatively impacts Eschelon's End User Customers, the Customer may
5 wrongfully attribute the fault to Eschelon rather than Qwest. A situation in which
6 Eschelon lost its end user customer due to a Qwest mistake in processing a
7 wholesale order for Eschelon⁴⁶ resulted in the Minnesota Commission's ordering
8 Qwest in Docket No. P-421/C-03-616 to provide non-confidential
9 acknowledgements of mistakes to CLECs and to develop procedures to reduce
10 mistakes.⁴⁷

11 Eschelon proposes that the interconnection agreement incorporate such
12 procedures. Eschelon's need to protect against harm to its customers, its business
13 and its reputation is as great in Washington as it is in Minnesota. Eschelon also
14 proposes that Qwest should be required to provide root-cause analyses regarding
15 such mistakes. As I explained in my direct testimony,⁴⁸ root-cause analyses are
16 fundamental to developing procedures that can actually reduce mistakes.
17 Following the Minnesota Commission's November 12, 2003 Order in Docket No.
18 P-421/C-03-616, Eschelon's proposal requires that Qwest's acknowledgement
19 statement be provided on a non-confidential basis and avoid customer confusion

⁴⁶ MN PUC Docket No. P-421/C-03-616. This situation is discussed on pp. 24-27 of my direct testimony.

⁴⁷ See the relevant citations from the MN Commission's decision in Webber Direct, pp. 24, 36, 42-43.

⁴⁸ Webber Direct, pp. 36-37.

1 by clearly identifying Qwest as the carrier generating the statement and Eschelon
2 as the carrier receiving the statement.

3 Qwest has summarily rejected all of Eschelon's proposed language in this regard,
4 proposing instead that section 12.1.4 be left intentionally blank. It is telling,
5 however, that Qwest has agreed to include provisions regarding procedures for the
6 prompt acknowledgement of mistakes in the ICA in Minnesota.⁴⁹ Qwest has
7 identified no reason why Washington should be handled any differently.

8 **Q. DID YOU OMIT PORTIONS OF ESCHELON'S PROPOSALS FOR**
9 **ISSUES 12-64 AND 12-64(B) FROM YOUR DIRECT TESTIMONY?**

10 A. Yes. I inadvertently omitted Eschelon's proposed language for Section 12.1.4.2.2
11 (i.e., the last part of Issue 12-64) and 12.1.4.2.6 (i.e., the last part of Issue 12-
12 64(b)). Below I reproduce the language that should have appeared in Eschelon's
13 proposal as contained in my direct testimony at pages 30 and 31:⁵⁰

14 **To Eschelon's proposal in Issue 12-64:**

15 12.1.4.2.2 Qwest understands that time is of the essence in
16 processing such a request and that a response should be provided
17 as quickly as is possible given the particular issue raised by CLEC.

18 **To Eschelon's proposal in Issue 12-64(b):**

19 12.1.4.2.6 Qwest external documentation available to CLEC will
20 instruct CLEC to make requests for acknowledgements directly to
21 its Qwest Service Manager. Such external documentation will also
22 include instruction for accessing the Qwest Customer Contact

⁴⁹ After the filing of Washington Direct testimony, Issue 12-64(a) was closed in Minnesota with the adoption of Eschelon's proposed language – language listed on p. 30 of Webber Direct.

⁵⁰ The same omission is present in Eschelon's position statement in the Joint Disputed Issues Matrix filed with Qwest's Petition dated August 9, 2006. The ICA filed with Eschelon's Response dated September 1, 2006 correctly includes these otherwise omitted sections as parts of Issues 12-64 and 12-64(b).

1 Information Tool to identify the assigned Qwest Service Manager
2 if CLEC does not know to whom its request can be sent.

3 This language stresses that the acknowledgement should be provided quickly
4 (otherwise the purpose of the acknowledgment of mistakes is defeated) and that
5 such acknowledgements should be done through Qwest’s Service Manager. The
6 latter provision is consistent with Qwest’s current practices.⁵¹

7 **Q. PLEASE RESPOND TO QWEST’S SUGGESTION THAT ESCHELON’S**
8 **PROPOSED LANGUAGE IS NOT APPROPRIATELY INCLUDED IN AN**
9 **ICA.⁵²**

10 A. Qwest’s position in Washington is not consistent with its actions in Minnesota,
11 where it agreed to include the bulk of Eschelon’s proposal for Section 12.1.4
12 within the ICA. As explained in my direct testimony,⁵³ retail competition cannot
13 be fair without Qwest – the wholesale provider of essential facilities – taking
14 responsibility for its mistakes and providing Eschelon a vehicle through which it
15 can communicate needed information to End User Customers.

16 **Q. HOW DO YOU RESPOND TO MS. ALBERSHEIM’S CLAIM THAT**
17 **ESCHELON’S LANGUAGE IMPOSES “ADDITIONAL UNNECESSARY**
18 **BURDENS ON QWEST THAT GO WELL BEYOND CORRECTING**
19 **MISTAKES ON ORDERS?”⁵⁴**

⁵¹ Webber Direct, p. 37.

⁵² Albersheim Direct, p. 40.

⁵³ Webber Direct, pp. 34-36.

⁵⁴ Albersheim Direct, p. 46 line 1-2.

1 A. Ms. Albersheim refers to Qwest’s interpretation of Eschelon’s proposal as being
2 “broader” than the Minnesota Commission’s order. As explained in my direct
3 testimony,⁵⁵ although Eschelon disagrees with Qwest, given that Qwest does not
4 agree in Washington with any of Eschelon’s proposed language, the purpose of
5 this “fall back” argument is unclear. Qwest reads the Minnesota Commission-
6 ordered procedures for acknowledgement of mistakes too narrowly – as relevant
7 only to “mistakes on orders” and not to repairs. Ms. Albersheim does not explain
8 why acknowledgement of mistakes on orders is *necessary*, while
9 acknowledgement of mistakes in repairs is *unnecessary*. Clearly, the same
10 purpose would be served in both cases.

11 The Minnesota Commission’s ruling in that docket discussed wholesale ordering
12 because the facts prompting that specific complaint involved a mistake in
13 ordering. The term wholesale order processing can certainly be read to include
14 end-to-end processing of products and services, and not merely “mistakes on
15 orders.” Eschelon’s direct testimony⁵⁶ provides a number of factual examples
16 illustrating that similar problems exist in a variety of contexts, including Qwest’s
17 repair service. The logic behind the need for an acknowledgement of mistakes⁵⁷
18 equally applies to all situations in which the inadequate provision of the

⁵⁵ Webber Direct, p. 32.

⁵⁶ See Webber Direct, pp. 34-35 and Exhibit BJJ-8 to Johnson Direct for examples of customer affecting Qwest’s errors associated with repair activity.

⁵⁷ This logic is evident from the citation of the MN PUC order included on p. 36 of Webber Direct (lines 9-14). The Minnesota Commission found that Qwest had failed to provide adequate wholesale service, and that retail competition cannot thrive without the wholesale provider’s taking responsibility and accountability.

1 underlying wholesale service can damage irreparably the retail provider's
2 customer relationships.

3 **Q. MS. ALBERSHEIM ALSO OBJECTS TO ESCHELON'S PROPOSED**
4 **REQUIREMENT TO PROVIDE ROOT CAUSE ANALYSIS.⁵⁸ PLEASE**
5 **RESPOND.**

6 A. My direct testimony explains⁵⁹ that root-cause analyses are necessary to the
7 correct attribution of mistakes and, therefore, the development of procedures
8 designed toward the reduction of such mistakes.⁶⁰ Further, Qwest routinely
9 provides Eschelon with root cause analysis.⁶¹ For all these reasons, Eschelon's
10 proposal does not impose additional "burden" on Qwest, as claimed by Ms.
11 Albersheim.⁶²

12 **Q. MS. ALBERSHEIM CLAIMS THAT ANY LANGUAGE REGARDING**
13 **THE ACKNOWLEDGEMENT OF MISTAKES IS UNNECESSARY**
14 **BECAUSE OTHER CLECS ALLEGEDLY HAVE NOT EXPRESSED A**
15 **SIMILAR NEED. MR. ALBERSHEIM ALSO CLAIMS THAT QWEST**
16 **HAS RECEIVED NO INDICATION THAT MISTAKES ARE AN**

⁵⁸ Albersheim Direct, p. 46, lines 3-8.

⁵⁹ Webber Direct, pp. 36-37.

⁶⁰ See the relevant citation from the Commission's decision in Webber Direct, p. 24.

⁶¹ Webber Direct, pp. 37-38 and p. 40. See also Exhibit BJJ-8 to Johnson Direct containing actual examples in which Qwest provided root cause analysis to Eschelon. Regarding Qwest's recent refusal to provide root cause analyses regarding problems with jeopardies and firm order confirmations that result in customer affecting delays, however, see my discussion below regarding Issues 12-71 through 12-73.

⁶² Albersheim Direct, p. 46 lines 1-2.

1 **ONGOING PROBLEM.⁶³ PLEASE RESPOND.**

2 A. First, unlike “other” CLECs, Eschelon has expended the resources to bring this
3 issue to the Commission in an exercise of its Section 252 rights, and therefore
4 Eschelon’s need for contractual certainty on this issue is properly before this
5 Commission. Second, Ms. Albersheim’s statements are not supported by any
6 evidence, whereas Qwest’s own documentation on its web site is contrary to her
7 assertions. The fact that Qwest’s own PCAT includes a description of procedures
8 by which CLECs can request root cause analyses of repair mistakes⁶⁴ indicates
9 that mistakes may be an ongoing problem, and Qwest is fully aware that CLECs
10 may have a business need for requesting such analyses despite Ms. Albersheim’s
11 arguments to the contrary. Similarly, as discussed in my direct testimony, Qwest
12 recognized within the context of the 271 proceedings in Arizona⁶⁵ that in certain
13 cases the CLECs’ end user customers may believe that their provider was at fault
14 when service affecting problems occur and, therefore, CLECs may request root
15 cause analyses and may need them to explain the Qwest’s errors to their
16 customers. The fact that other CLEC have expressed a desire for root cause
17 analysis is also confirmed by a simple search of Qwest’s web site for “root
18 cause,” which produced this statement by AT&T:

⁶³ Albersheim Direct, p. 46 lines 9-12.

⁶⁴ Webber Direct, pp. 37-38.

⁶⁵ Webber Direct, p. 38. In the Arizona 271 case Qwest indicated that, even before requested by Eschelon, it provided a mechanism for CLECs to obtain “root cause analysis without a confidentiality footer” to “address CLECs’ need for information about an outage.” *AZ 271 Staff Report*, ¶ 219. Note that Qwest uses the plural form of the abbreviation “CLEC.” The specific incident related to tandem failures.

1 “While the collaborative work from the Documentation Forum has
2 accomplished areas of improvement relative to the content of the
3 event notification, AT&T believes that Qwest does not fulfill the
4 requirement to provide to CLECs detailed root cause analysis of
5 unplanned degradations/outages nor detailed final corrective
6 actions taken as part of the root cause analysis.”⁶⁶

7 Finally, to the extent other CLECs have not requested acknowledgments of
8 mistakes (as opposed to root cause analyses), perhaps this is because Qwest chose
9 not to implement the Minnesota Commission-ordered procedures through CMP
10 (for Minnesota⁶⁷ or any state) to inform other CLECs of the availability of such
11 acknowledgements and how and when to obtain them. The CMP Document
12 outlines procedures for initiating a Change Request (known as a “Regulatory
13 CR”) in CMP when a regulatory agency orders Qwest to make a change,⁶⁸ as well
14 as to voluntarily initiate a change request if not mandated. A change may be
15 implemented on a state-specific basis.⁶⁹ Eschelon is not advocating use of these
16 procedures, as it has consistently maintained that this issue should be addressed in

⁶⁶ http://www.qwest.com/wholesale/downloads/2004/040323/SCR111203-01-E22_EscalationResponse-Final.doc.

⁶⁷ Terms may be implemented in CMP on a state-specific basis. Expedites, for which Qwest offers unique terms in Washington but not its other 13 states (see my discussion of Issue 12-67) is an example.

⁶⁸ The CMP Document defined a regulatory change request as follows: “A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may originate the Change Request.” See Exhibit BJJ-1 to Ms. Johnson’s testimony (CMP Document) at §4.1. If the requirements for a Regulatory CR are not met, a company may submit a regular change request. Consistent with its position that this issue should be addressed in the ICA, Eschelon did not initiate a Change Request.

⁶⁹ A process affecting “all CLECs” that Qwest contends belongs in CMP may be specific to one state. See, e.g., the Washington-only expedite terms. See Exhibit RA-9, p. 3 [Qwest’s PCAT, *Expedites and Escalations Overview – V. 41.0*, stating: “The Expedites Requiring Approval section of this procedure does not apply to any of the products listed below (unless you are ordering services in the state of WA).”].

1 the interconnection agreement. In contrast, Qwest's stated position is that
2 processes, procedures, and business practices should be handled in CMP and not
3 in interconnection agreements to avoid "one-off" processes.⁷⁰ Yet, for this
4 particular issue of acknowledging Qwest mistakes, Qwest did not use CMP even
5 though its decision not to do so has resulted in a "one-off" process. The
6 inconsistency in Qwest's position may reflect the fact that the results of the
7 Minnesota Commission's order were unfavorable to Qwest. Qwest simply chose
8 not to implement them through CMP. While CMP is apparently optional for
9 Qwest when issues affect multiple CLECs,⁷¹ Qwest does not propose to give
10 Eschelon that option.

11 If, according to Qwest, the Minnesota Commission-ordered requirements to
12 *implement*⁷² steps regarding acknowledgment provisions for *all* Qwest errors in
13 processing wholesale orders, which the Commission described as "*processes and*
14 *procedures*,"⁷³ are not "processes that affect all CLECs"⁷⁴ that "should be
15 addressed through CMP,"⁷⁵ then Qwest's proposed test for excluding terms from

⁷⁰ See, e.g., Linse Direct, p. 7, line 4. Qwest's position with respect to CMP is discussed in greater detail in the testimony of Mr. Starkey. See, e.g., Starkey Direct, pp. 17-20.

⁷¹ In its order finding Qwest's compliance filing inadequate, the Minnesota Commission's fourteen ordering paragraphs (a-n) regarding the required contents of Qwest's next compliance filing included, for example, the following items that referred to "all" Qwest wholesale orders and CLECs generally (not only Eschelon): "(f) Procedures for extending the error acknowledgment procedures set forth in part (e) to *all* Qwest errors in processing wholesale orders." Order, *MN 616 Case* (Nov. 13, 2003) p. 4] (emphasis added).

⁷² Order, *MN 616 Case* (Nov. 13, 2003) p. 5, ¶2.

⁷³ Order, *MN 616 Case* (Nov. 13, 2003), p. 3 (emphasis added).

⁷⁴ Exhibit 1 to Qwest Petition, Joint Disputed Issues Matrix, multiple Qwest position statements (including for Issue 12-64).

⁷⁵ Exhibit 1 to Qwest Petition, Joint Disputed Issues Matrix, p. 140 (Qwest position statement said: "Further, this issue involves processes that affect all CLECs, not just Eschelon. . . . Processes that

1 the interconnection agreement on the basis that they can be labeled as “processes”
2 or affect multiple CLECs is meaningless.⁷⁶ With respect to this particular issue
3 for which Qwest did *not* itself use CMP, when it came time to oppose Eschelon’s
4 request to arbitrate this issue, Qwest claimed that this very issue *should* be
5 brought to CMP.⁷⁷ Qwest’s own inconsistency on this issue demonstrates that
6 Qwest’s approach to CMP is one of convenience and does not offer Eschelon any
7 certainty upon which Eschelon may plan its business.

8 Qwest does not want to implement the Minnesota Commission’s directive through
9 its own template or any state interconnection agreement – which will be available
10 for opt-in by other CLECs – either.⁷⁸ Qwest should not be allowed to defeat
11 Eschelon’s proposal on the grounds that other CLECs have allegedly expressed
12 no interest in receiving acknowledgement of mistakes, when Qwest chose not to
13 inform CLECs through CMP of the availability of such acknowledgments.

14 **Q. MS. ALBERSHEIM STATES THAT ESCHELON HAS NEVER ASKED**
15 **FOR A FORMAL LETTER ACKNOWLEDGING A MISTAKE SINCE**
16 **THE RESOLUTION OF THE MINNESOTA DOCKET⁷⁹ THAT**

affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC.”).

⁷⁶ See Starkey Direct, pp. 17-20

⁷⁷ See Exhibit 1 to Qwest’s Petition, *Joint Disputed Issues Matrix*, Qwest’s position statement for Issue 12-64, pp. 140-141. For all such issues, *see also* the Overview and Introduction in the testimony of Mr. Starkey.

⁷⁸ Albersheim Direct, p. 44, lines 15-16.

⁷⁹ MN PUC Docket No. P-421/C-03-616.

1 **PROMPTED ESCHELON’S PROPOSAL ON ISSUE 12-64 AND ITS**
2 **SUBPARTS.⁸⁰ PLEASE COMMENT.**

3 A. Ms. Albersheim’s observation exposes the weaknesses of her other argument –
4 that Eschelon’s proposal imposes burden on Qwest.⁸¹ Clearly, given that
5 procedures for the acknowledgment of mistakes have been available to Eschelon
6 in Minnesota since 2004,⁸² while Qwest argues that Eschelon has not yet used
7 such procedures, the “burden” described by Qwest must not be great. In addition,
8 the fact that Eschelon *has the ability to* request formal acknowledgement of
9 mistakes may serve as an additional incentive for Qwest not to create situations in
10 which formal acknowledgement would be requested.

11 **Q. IS MS. ALBERSHEIM CORRECT WHEN SHE ARGUES THAT**
12 **ESCHELON’S PROPOSAL TO REQUIRE ROOT CAUSE ANALYSIS IS**
13 **UNNECESSARY BECAUSE OF THE EXISTENCE OF PERFORMANCE**
14 **INDICATORS (“PID”)?⁸³**

15 A. No. As I explained in my direct testimony,⁸⁴ PIDs do not capture all types of
16 Qwest’s inadequate service. For example, a real life incident described in Exhibit
17 BJJ-8 to Ms. Johnson’s direct testimony, in which Qwest’s technician insulted
18 Eschelon’s End User Customer with profanity, would not be captured in PIDs.
19 Similarly, PIDs do not measure the harm to Eschelon’s reputation done by

⁸⁰ Albersheim Direct, p. 46.
⁸¹ Albersheim Direct, p. 46, line 2.
⁸² Year of the Minnesota PUC Final Order in that case.
⁸³ Albersheim Direct, p. 47.
⁸⁴ Webber Direct, pp. 40-41.

1 Qwest's mistakes in situations in which the End User is led to believe that
2 Eschelon was at fault.

3 Further, even if Qwest is penalized for a specific instance of inadequate service
4 via PIDs, Qwest may still have incentives to commit a mistake because gains
5 from winning back a large End User Customer may exceed PID penalties. This
6 may have been the case in the specific incident that prompted Minnesota Docket
7 No. P-421/C-03-616.

8 **Q. MS. ALBERSHEIM SUGGESTS THAT, IF THE COMMISSION ADOPTS**
9 **ESCHELON'S PROPOSED LANGUAGE REGARDING**
10 **ACKNOWLEDGEMENT OF MISTAKES, THIS LANGUAGE SHOULD**
11 **BE RECIPROCAL.⁸⁵ PLEASE RESPOND.**

12 A. Ms. Albersheim's testimony is the first time that Qwest has raised this issue.
13 Qwest did not request reciprocal language in negotiations for Washington or any
14 other state or raise the possibility of reciprocity in any of the three rounds of
15 testimony in Minnesota for Issue 12-64. The main flaw in Ms. Albersheim's new
16 suggestion is that it has little (if any) real life applicability: As I explained in my
17 direct testimony,⁸⁶ the need for Eschelon's proposed language arises from the fact
18 that Qwest, as an owner of essential facilities, performs activities on Eschelon's
19 behalf, such as installation or repair of loops. Because Eschelon does not own
20 essential facilities such as the local loop, Eschelon does not perform installation

⁸⁵ Albersheim Direct, p. 48.

⁸⁶ Webber Direct, pp. 23-24.

1 and repair activities on behalf of Qwest. Therefore, a situation in which Qwest's
2 End User Customers would incorrectly attribute Eschelon's fault to Qwest is
3 highly unlikely. The specific language of Eschelon's proposal is drafted to reflect
4 Qwest's unique position and procedures in the wholesale market in mind; many of
5 its specific provisions and terminology would not apply reciprocally. Qwest
6 addresses reciprocity in two sentences in its direct testimony that do not include
7 discussion of each provision,⁸⁷ so it is unclear to which portions of the language
8 Qwest is referring and how Qwest would modify the language. As of today, after
9 several years of negotiations, Qwest has not provided a language proposal that
10 captures Ms. Albersheim's suggestion. If Qwest provides proposed language to
11 Eschelon, Eschelon will consider the proposal.

12

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

14 **Issue No. 12-65 (ICA Section 12.1.5.4.7) & 12-66 (ICA Section 12.1.5.5)**

15 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUES 12-65 AND 12-66.**

16 A. In its role as a wholesale provider to Eschelon, Qwest is presented with
17 opportunities to communicate directly with Eschelon's End User Customers while
18 performing activities on Eschelon's behalf. For example, a Qwest technician may
19 be doing repair work on the premises of Eschelon's End User Customer, or
20 Eschelon's End User Customer may mistakenly call the Qwest Retail repair call
21 center to follow up on an installation or repair, or to clarify a question about a bill.

⁸⁷ Albersheim Direct, p. 48, lines 9-10.

1 Because Qwest competes with Eschelon in the End User Customer market, Qwest
2 personnel communicating with Eschelon's End User Customers have an incentive
3 to engage in "marketing" efforts to win back the End User Customer for Qwest.

4 Due to Qwest's unique position as both the provider of the bottleneck facility
5 "local loop" and Eschelon's competitor⁸⁸ – a circumstance that creates the means,
6 incentive, and opportunity for anti-competitive conduct – Eschelon needs
7 adequate safeguards in the interconnection agreement against such conduct.
8 Eschelon proposes that, if an Eschelon End User Customer experiences an outage
9 or other problem caused by Qwest, Qwest shall not use this situation as a winback
10 opportunity or otherwise to initiate discussion of its products and services with
11 CLEC's End User Customer.

12 **Q. IS IT CORRECT THAT, SINCE THE FILING OF YOUR DIRECT**
13 **TESTIMONY, QWEST AND ESCHELON CLOSED SOME OF THE**
14 **LANGUAGE AND MODIFIED THEIR PROPOSALS ON THE**
15 **REMAINING OPEN LANGUAGE FOR ISSUES 12-65 AND 12-66?**

16 A. Yes. Eschelon and Qwest closed Issue 12-65 regarding communications with the
17 customer during repair at the End User Customer's premises. The remaining
18 disagreement concerns the discussion of Qwest and CLEC products by Qwest's
19 personnel communicating with Eschelon's customers in a situation caused by
20 Qwest's error (Issue 12-66). Issue 12-65 was closed with the following language:

⁸⁸ Webber Direct, pp.47-48.

1 **Issue 12-65 (Closed)**

2 12.1.5.4.7 The Qwest technician will limit any communication
3 with CLEC End User Customer to that necessary to gain access to
4 premises and perform the work. Specifically, the Qwest technician
5 will not initiate any discussion regarding Qwest's products and
6 services with CLEC End User Customer and will not make
7 disparaging remarks about CLEC and will refer any CLEC End
8 User Customer questions other than those related to the Qwest
9 technician's gaining access to the premises and performing the
10 work to CLEC. If the Qwest Technician has questions or concerns
11 other than those necessary to gain access to premises and perform
12 the work, the Qwest technician will discuss with CLEC and not
13 CLEC End User Customer. Notwithstanding the foregoing, if a
14 CLEC End User Customer initiates a discussion with the Qwest
15 technician about Qwest's products or services and requests such
16 information, nothing in this Agreement prohibits the Qwest
17 technician from referring the CLEC End User Customer to the
18 applicable Qwest retail office and providing the telephone number
19 and/or web site address for that office to the CLEC End User
20 Customer.

21
22
23 On Issue 12-66 (Section 12.1.5.5) Qwest accepted most of Eschelon's language
24 with the exception of the portion of the last sentence as shown in underline below.

25 **Issue 12-66 (Open)**

26 12.1.5.5 Notwithstanding any other provision of this Agreement,
27 when a CLEC End User Customer experiences an outage or other
28 service affecting condition or Billing problem due to a known
29 Qwest error or action, Qwest shall not use the situation (including
30 any misdirected call) as a win back opportunity or otherwise to
31 initiate discussion of its products and services with CLEC's End
32 User Customer.

33
34 **Q. WHAT IS QWEST'S MODIFIED PROPOSAL FOR ISSUE 12-66?**

35 A. Qwest does not agree to the portion of the language shown as "underlined," and
36 proposes its deletion.

1 **Q. MS. ALBERSHEIM ARGUES THAT THIS ISSUE HAS BEEN**
2 **LITIGATED IN 271 PROCEEDINGS.⁸⁹ PLEASE RESPOND.**

3 A. Ms. Albersheim cites⁹⁰ the FCC 9-State 271 order to support her argument against
4 Eschelon’s proposed language. The FCC 9-State 271 order, however, is directed
5 to the subject of “random”⁹¹ misdirected calls, while Eschelon’s proposal
6 concerns a different topic – the narrow situation in which misdirected calls *result*
7 *from Qwest-caused service or other problem* experienced by Eschelon’s End User
8 Customer. Clearly, the situation of a “random” misdirected call is inherently less
9 subject to competitive abuse than is that of causing an outage and then following
10 up the significant customer-affecting incident with a winback effort. If a Qwest
11 representative initiates discussion of its products and services with Eschelon’s
12 customer in this context, Qwest may not refer to this as “winback” activity, but
13 Qwest identifies no legitimate basis to initiate such a discussion under these
14 circumstances.

15 Further, I note that the FCC 9-State 271 order explains that its conclusion cited by
16 Ms. Albersheim is based on the absence of record (i.e., “factual evidence”) of the
17 anti-competitive effect of winback efforts associated with misdirected calls.⁹² In
18 contrast, Eschelon’s direct testimony provided a number of real-life examples
19 illustrating that Qwest’s errors and the subsequent winback attempts cause harm

⁸⁹ Albersheim Direct, p. 50, lines 20-22.

⁹⁰ Albersheim Direct, p. 50, footnote 34.

⁹¹ “Random” in a sense that the FCC did not discuss any specific causes for these calls.

⁹² For the citation, see Albersheim Direct, p. 50, footnote 34.

1 to Eschelon and the reputation of its service in the eyes of Eschelon's End User
2 Customers.⁹³

3 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON'S PROPOSAL LIMITS**
4 **QWEST'S SPEECH AND PROHIBITS QWEST FROM PROVIDING**
5 **"TRUTHFUL" INFORMATION TO ESCHELON'S CUSTOMERS WHO**
6 **VOLUNTARILY CALL QWEST.⁹⁴ PLEASE COMMENT.**

7 A. As I explained in my direct testimony,⁹⁵ this argument is nonsensical because
8 both the SGAT and the agreed-upon language of the ICA already contain many
9 provisions that "limit speech." Further, the example discussed in Issue 12-64
10 regarding Qwest Retail's letter to the End-User Customer switching to Eschelon
11 illustrates the type of "truthful" information that Qwest is providing to End User
12 Customers in an effort to discuss its products and services and ultimately try to
13 win them back. Finally, Ms. Albersheim's statement concerns situations in which
14 the End User Customers "voluntarily call Qwest."⁹⁶ Misdirected calls that follow
15 a Qwest-caused outage or other problem (the scenario to which Eschelon's
16 proposal is limited) cannot be considered voluntary calls.

17 Qwest appears to agree with Eschelon about "winback" activity, since that portion
18 of the language is now closed. Qwest should not be allowed to circumvent that

⁹³ See, e.g., Webber Direct pp. 53-54 and Exhibit BJJ-8 to Ms. Johnson's Direct testimony.

⁹⁴ Albersheim Direct, p. 50.

⁹⁵ Webber Direct, p. 50. See also p. 51 for the relevant quotations from the agree-upon portion of the ICA and Qwest's Washington SGAT.

⁹⁶ Albersheim Direct, p. 50 line 24.

1 provision by Qwest using these Qwest-caused situations to initiate discussion of
2 its products and services with Eschelon's End User Customer and then claiming
3 that because the customer may not immediately switch back to Qwest that it was
4 not "winback" activity.

5

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

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

8

9 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-67 AND ITS**
10 **SUBPARTS.**

11 A. A key issue between Qwest and Eschelon as it pertains to expedites is whether
12 Qwest will assess a retail or wholesale charge upon Eschelon (a wholesale
13 customer of Qwest's) when Eschelon requests that a UNE order for one of its end
14 user customers be expedited. Indeed, Qwest prefers to assess the higher, retail
15 rate whereas Eschelon requires access to UNEs, including expedites, on terms that
16 are non discriminatory and cost based consistent with the FCC's rules.

17 An expedited order, or an "expedite," is an order for which Qwest provides
18 service more quickly than it otherwise would under its normal service
19 provisioning interval. An expedite can be crucial in situations in which an
20 Eschelon End User Customer needs service by a certain date, for example, when
21 the Customer needs service to be installed at a new location following a disaster

1 such as a fire or flood. The ability to expedite an order is critical to Eschelon's
2 ability to respond to the needs of its customers and to compete effectively. And
3 because expedited service is a method of obtaining access to UNEs, it must be
4 provided on terms and conditions that are just, reasonable, and
5 nondiscriminatory.⁹⁷

6 Because expedites are requests associated with provisioning a CLEC order,
7 Eschelon proposes, logically, to include general provisions about expedites in
8 Section 12 ("Access to OSS") under sub-section 12.2, "Pre-Ordering, Ordering,
9 and Provisioning."⁹⁸ Qwest claims this is inappropriate because Section 12 is
10 "supposed to contain language about Access to OSS."⁹⁹ Qwest appears to be
11 suggesting that "OSS" is narrower and limited to systems provisions. That
12 suggestion, however, is contrary to both the closed language of the ICA and the
13 FCC's definition of OSS.¹⁰⁰ The ICA specifically provides that Section 12
14 describes both the systems and the manual processes that support pre-ordering,

⁹⁷ For the discussion of unbundling rules, see Webber Direct, pp. 141-142.

⁹⁸ Webber Direct, p. 63-64. This is Issue 12-67.

⁹⁹ Albersheim Direct, p. 57, lines 17-18.

¹⁰⁰ The term "OSS" is broader and also includes 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." Similarly, Section 12.1.1 of the proposed ICA contains closed language that states: "This Section describes Qwest's OSS interfaces, *as well as manual processes*, that Qwest shall provide to CLEC to support Pre-ordering, Ordering, Provisioning, Maintenance and Repair and Billing" (emphasis added).

1 ordering, and provisioning.¹⁰¹ Qwest proposes that expedites be addressed instead
2 in product-specific section 7 “Interconnection”¹⁰² and section 9 “Unbundled
3 Network Elements.”¹⁰³ Qwest’s proposed language for these sections is based on
4 references to its web-based PCAT.

5 From the time that Eschelon opted into the Qwest/AT&T interconnection
6 agreement in 2000,¹⁰⁴ Qwest provided Eschelon with expedites at no additional
7 charge over the normally applicable non recurring installation charges if and
8 when certain emergency conditions were met.¹⁰⁵ This continues to be the practice
9 in Washington (*i.e.*, emergency expedites are currently provided at no additional
10 charge). However, in January 2006, in all states except for Washington, Qwest
11 implemented (through CMP and over the objection of multiple CLECs) a change
12 denying CLECs ability to use the emergency-based expedites process for UNE
13 loops, among other things. In 2004, Qwest implemented a new fee-added option
14 to expedite orders that do not meet the emergency conditions¹⁰⁶ that required
15 CLECs to sign an “expedite amendment” to the ICA and to pay a fee of \$200 per
16 day for each day expedited even if the CLEC already had expedite terms in its

¹⁰¹ *See id.*

¹⁰² This is Qwest’s proposal for Issue 12-67(f). See Webber Direct, pp. 83-85.

¹⁰³ This is Qwest’s proposal for Issue 12-67(d). See Webber Direct, pp. 78-83.

¹⁰⁴ Some of the language was opted into and some was agreed upon.

¹⁰⁵ Currently Qwest refers to this process as “Expedites Requiring Approval.”

1 ICA and even if Qwest had been providing expedites at no additional charge
2 under the Commission-approved ICA.¹⁰⁷

3 According to the PCAT,¹⁰⁸ Washington is the only state in which Qwest offers the
4 emergency-based expedite capability for UNE loops when the emergency
5 conditions are met. And, Washington is the only state in which the fee-added
6 expedite process is not available for CLECs who wish to expedite loop orders for
7 which the emergency conditions have not been met. In light of Washington-
8 specific PCAT language to this effect, Qwest's proposals for Issue 12-67 and its
9 subparts appear to conflict with the company's current stated practices. , Unlike
10 the PCAT, Qwest's ICA proposals for expedited orders are not state-specific.
11 Qwest's proposal for Section 9.1.12.1.2 states that requests to expedite loop
12 orders will be allowed "only when the request meets the criteria outlined in the
13 Pre-Approved Expedite Process" in Qwest's PCAT (Issue 12-67(d)). This could
14 be interpreted as if the company will exclude UNEs ordered in Washington from
15 any expedite process going-forward, because the criteria in Qwest's PCAT for the
16 pre-approved fee-added process state that such expedites are unavailable in
17 Washington.¹⁰⁹ Similarly, Qwest's proposal to apply an "ICB" rate conflicts with
18 its current practice as reflected in the PCAT, under which Qwest does not offer

¹⁰⁶ Currently Qwest refers to this process as "Pre-Approved Expedites."

¹⁰⁷ See Webber Direct, pp. 70-73 and Exhibits BJJ-3 and BJJ-4 to Johnson Direct for further details.

¹⁰⁸ See the relevant citations from Qwest's PCAT on p. 62 of Webber Direct.

¹⁰⁹ Webber Direct, p. 80.

1 fee-added expedites in Washington.¹¹⁰ Qwest's proposal to apply an ICB rate is
2 not workable because agreed-upon provisions of the contract state that an ICB
3 quote will be provided within 20 days, which would negate the benefit of an
4 expedite.¹¹¹ Therefore, not only may the charges be non-cost-based and
5 unreasonably high, but the delay would make the expedite moot.

6 It is important to note that, whatever the expedite process Qwest is offering in
7 Washington, if the ICA does not include language embodying that specific
8 expedite procedure, Qwest may later claim that it can modify its expedite policy
9 through changes to the PCAT as has happened in other states.

10 **Q. DID MS. ALBERSHEIM PRESENT AN ACCURATE DESCRIPTION OF**
11 **THE CMP HISTORY THAT RESULTED IN QWEST'S CURRENT**
12 **PROCESS FOR EXPEDITES?**¹¹²

13 A. No. Ms. Albersheim described Qwest's removal of loops from the historically-
14 offered emergency-based expedite process as though it had been desired by
15 CLECs. Specifically, Ms. Albersheim neglected to mention several important
16 factors. First, Ms. Albersheim failed to indicate that when Qwest withdrew the
17 emergency-based expedite process for UNE products in other states by issuing a
18 CMP notice, it did so over the objections of multiple CLECs, including

¹¹⁰ Webber Direct, p. 85.

¹¹¹ As I explained on p. 86 of my direct testimony, a typical example of an expedite is to shorten normal provisioning interval for a DS1 loop, which is 5 days.

¹¹² Albersheim Direct, pp. 54-56, 58-59. This is Issue 12-67(a).

1 Eschelon.¹¹³ Ms. Albersheim’s claims that Eschelon is trying to “circumvent”¹¹⁴
2 and “override the CMP”¹¹⁵ are incorrect. As demonstrated in Exhibit BJJ-3 to
3 Ms. Johnson’s Direct Testimony, Eschelon did take several steps in CMP, as well
4 as use the dispute resolution process,¹¹⁶ with respect to Qwest’s objectionable
5 withdrawal of the emergency based expedite process, even though the CMP steps
6 are optional and there is *no* requirement in the CMP Document to exhaust
7 remedies before going to the Commission in any forum.¹¹⁷

8
9 Second, Ms. Albersheim did not note that the objectionable withdrawal of the
10 emergency based expedite process for loops in other states resulted from a Qwest-
11 initiated notice and *not* the Covad change request, which was completed earlier.
12 The fee-added expedites were implemented in other states in July of 2004 with
13 Version 11 of the PCAT, and the Covad Change Request was formally closed or
14 “completed” in July 2005.¹¹⁸ In contrast, the changes to exclude loops from
15 emergency-based expedites were Qwest-initiated changes implemented, not as
16 part of the Covad change request, but by Qwest notices distributed to CLECs in

¹¹³ Webber Direct p. 62 and Exhibit BJJ-3 to Johnson Direct, pp.8

¹¹⁴ Albersheim Direct, p. 56 lines 2-3.

¹¹⁵ Albersheim Direct, p. 58, lines 1-2.

¹¹⁶ Eschelon filed a complaint against Qwest before the Arizona state commission in April of 2006” (*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”]). See Starkey Direct, p. 43 and Exhibit BJJ-3 to Johnson Direct, p. 14 (2nd full paragraph).

¹¹⁷ Starkey Direct, pp. 44-45. See also Starkey Rebuttal, including his discussion of Exhibits BJJ-18 – BJJ-20.

¹¹⁸ See Exhibit BJJ-3, pp. 5-6.

1 October of 2005, relating to Versions 27 and 30 of the PCAT.¹¹⁹ After
2 implementation of the Covad change request in 2004, the emergency-based
3 expedites (“Requiring Approval”) remained available for UNE loops (“designed”
4 services) without an amendment in other states as well as Washington.¹²⁰ It was
5 only after Qwest’s Version 30 notification, to which multiple CLECs objected,
6 that it became unavailable for UNE loops without an amendment in other
7 states.¹²¹

8

9 Third, as part of her discussion of the Covad change request, Ms. Albersheim
10 neglected to mention that, when Covad made its Change Request to introduce a
11 fee-added expedite, it proposed it as *an enhancement (additional option) to the*
12 existing emergency-based process. This is evident from Ms. Albersheim’s
13 Exhibit RA-8 (Covad’s Change Request Status History), which contains the
14 following statement:

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John Berard – Covad reviewed the change request. John explained that Covad would like the title of the CR updated, as *this is really a request for an enhancement to the existing expedite process*. Cindy agreed to update the CR. John advised that the expedite process is limited today to certain types of orders and processes. For example, medical emergencies. *We may find that it is Covad’s error that caused the customer to be disconnected. We would like to be able to get our customers restored quicker than standard interval, when it is our error. We are willing to pay for this service.*

¹¹⁹ See Exhibit BJJ-3, pp. 8-12.

¹²⁰ *Id.* at 5-6.

¹²¹ *Id.* at 10.

1 Other ILECs provide this service. We would like the criteria to be
2 expanded to allow an expedite when the CLEC makes an error.¹²²
3

4 Fourth, as I discussed in my direct testimony, at the time Qwest introduced its fee-
5 added non-emergency expedite process, it assured CLECs that the new fee-added
6 process was *in addition to* the existing emergency-based expedite process.¹²³
7 After implementing Covad's Change Request for the new optional fee-added
8 expedite, Qwest *continued to offer emergency-based expedites without an*
9 *amendment in other states through January 3, 2006.* At that point, Qwest
10 removed multiple products, including unbundled loops, from the emergency-
11 based expedite process via its own notification over CLEC objection.¹²⁴

12 **Q. MS. ALBERSHEIM POSES A SERIES OF QUESTIONS¹²⁵ REGARDING**
13 **ESCHELON'S REACTION TO "THE CHANGE REQUEST." WHAT**
14 **CHANGE REQUEST IS SHE REFERRING TO?**

15 A. Ms. Albersheim must be referring to Covad's change request that introduced the
16 *additional* option of fee-added expedites in situations that do not meet
17 emergency-based criteria. This follows from the fact that Covad's change request
18 is the only change request discussed by Ms. Albersheim on the preceding pages of

¹²² Albersheim Exhibit RA-8, Change Request PC021904, p. 7 (Minutes from February 27, 2004 Clarification Meeting (emphasis added)).

¹²³ Webber Direct p.62 and Exhibit BJJ-3 to Johnson Direct, pp. 7-8.

¹²⁴ *Id.*

¹²⁵ Albersheim Direct, p. 58 lines 13-25 and p. 59 lines 1- 2.

1 her testimony where she discusses expedites.¹²⁶

2 **Q. WAS THERE ANY REASON FOR ESCHELON TO “OBJECT TO THE**
3 **CLOSURE”¹²⁷ OF THIS CHANGE REQUEST, ESCALATE IT,¹²⁸ OR**
4 **TAKE IT TO THE OVERSIGHT COMMITTEE?¹²⁹**

5 A. No. Ms. Albersheim conveniently replaces the discussion of Qwest’s *later*
6 *actions that removed* UNE loops from the list of emergency-based expedites with
7 a discussion of an *earlier event* – Covad’s change request *that added expedite*
8 *options* for UNE loops. As explained above and in Exhibit BJJ-3, it was *not*
9 Covad’s change request, but Qwest’s later actions (*i.e.*, its Version 27 and 30
10 notices) that totally removed loops from the historically-offered emergency-based
11 expedite process and caused objections of multiple CLECs.¹³⁰ In response to
12 Eschelon’s CMP comments on the Covad change request, Eschelon obtained two
13 commitments from Qwest (both reflected in Qwest’s CMP Response¹³¹): (1)
14 implementation of the Covad change request would not result in replacement of
15 the existing emergency-based option (*i.e.*, “continue with the existing process that
16 is in place”); and (2) resources would remain available to process expedite

¹²⁶ Albersheim Direct, pp. 51-57. Ms. Albersheim mentions only Covad’s change request (on pp. 54-55).
The Covad change request is attached as her Exhibit RA-8.

¹²⁷ Albersheim Direct, p. 58 line 13.

¹²⁸ Albersheim Direct, p. 58 line 22.

¹²⁹ Albersheim Direct, p. 59 line 1.

¹³⁰ *See also* the rebuttal testimony of Mr. Starkey. After the Covad change request, for CLECs like Eschelon that continued to operate under their existing ICA without amendment, the emergency-based expedites continued to be available until after Qwest’s Version 30 notice was effective. *See* Exhibits BJJ-3, BJJ-4, and BJJ-26 (examples of expedite requests approved by Qwest for loop orders).

¹³¹ The CLECs’ comments and Qwest’s Response to those comments are included as part of Exhibit BJJ-26 to the rebuttal testimony of Ms. Johnson.

1 requests under the existing emergency-based option even with the addition of the
2 optional fee-added alternative (*i.e.*, “this will not impact resources”). To the
3 extent that Qwest criticizes Eschelon for not objecting to closure, escalating, or
4 otherwise objecting with respect to Covad’s change request,¹³² there was no
5 reason to do so, because Qwest made these commitments to Eschelon and
6 therefore there was no impact on the existing emergency-based option for
7 Eschelon to challenge at that time (in 2004 when the Covad change request was
8 implemented or in 2005 when it was officially closed).

9 **Q. MS. ALBERSHEIM CLAIMS THE PROVISIONING DIFFERENCES**
10 **BETWEEN DESIGNED AND NON-DESIGNED SERVICES**
11 **NECESSITATE TWO SEPARATE EXPEDITE PROCESSES – A FEE-**
12 **ADDED PROCESS APPLIED TO DESIGNED SERVICES AND AN**
13 **EMERGENCY-BASED PROCESS APPLIED TO NON-DESIGNED**
14 **SERVICES.¹³³ PLEASE RESPOND.**

15 A. Ms. Albersheim’s argument does not make any sense in any state but particularly
16 in Washington: While in all other states Qwest currently offers only fee-added
17 expedites for the so-called designed services, and only emergency-based
18 expedites for the so-called non-designed services, the process is reversed in
19 Washington, where Qwest offers only emergency-based expedites to the so-called
20 designed services. Ms. Albersheim does not explain why in other states the

¹³² Albersheim Direct, p. 58 lines 13-25 and p. 59 lines 1- 2.

¹³³ Albersheim Direct, pp. 55-57.

1 “complexity”¹³⁴ of designed services dictates that only fee-added expedite process
2 is offered, while in Washington the “complexity” of designed services dictates
3 *just the opposite* – that only emergency-based expedite process is offered for these
4 services. Similarly, Ms. Albersheim does not explain why the “complexity” of
5 designed services was not an issue in other states for many years (until early
6 2006), during which the emergency-based expedite process was available for
7 designed services.¹³⁵

8 Ms. Albersheim did not explain why *complexity of designed services* necessarily
9 means *complexity of expedites for designed services*. As I discussed in my direct
10 testimony,¹³⁶ Qwest performs the same work for an expedited order as it does for
11 an order provisioned within normal service intervals -- the only difference is that
12 Qwest performs the function sooner than it would otherwise.

13 Further, the difference in treatment is actually between retail and wholesale,
14 rather than designed and non-designed services. As I explained in my direct
15 testimony,¹³⁷ Qwest’s retail tariffs specify that Qwest waives expedite charges, as
16 well as other non-recurring charges, for service restoration to its retail customers
17 following emergency conditions such as flood or fire. The specific tariffs on
18 which I based this conclusion deal with private line and advanced communication

¹³⁴ Albersheim Direct, p. 57 line 3.

¹³⁵ This is illustrated by Exhibit BJJ-26 that contains examples of Eschelon’s emergency-based expedite requests approved by Qwest for Unbundled Loop Orders.

¹³⁶ Webber Direct, p. 89.

¹³⁷ Webber Direct, p. 74.

1 services – services that are not POTS, but rather designed, services.¹³⁸ In other
2 words, Ms. Albersheim’s statement that Qwest offers *only* fee-based expedites to
3 its retail designed services is not supported by Qwest’s tariffs for these services.

4 Regardless of whether a service is designed or non-designed or whether it has a
5 retail analogue or not, Qwest must provision the service on terms that are just,
6 reasonable, and nondiscriminatory.¹³⁹

7 **Q. MS. ALBERSHEIM STATES THAT QWEST DOES NOT OFFER**
8 **EXPEDITES FOR RETAIL DESIGNED SERVICES IN WASHINGTON**
9 **BECAUSE IT DOES NOT HAVE AN APPROVED TARIFF FOR THIS**
10 **OFFERING. PLEASE RESPOND.**

11 A. I disagree. Although Qwest has not provided a clear definition of designed
12 services, Ms. Albersheim has referenced DS1 and DS3 private line services as
13 examples of retail “designed” services.¹⁴⁰ According to Qwest’s current Private
14 Line Tariff WN-41, which applies to DS1 and DS3 private line services,¹⁴¹ Qwest
15 offers expedites for its private line services. Exhibit JW-3 to my direct testimony

¹³⁸ The Qwest Private Line tariff offers high-speed services such as DS1 and higher, while Advanced Communications tariff offers services such as Frame relay and ATM.

¹³⁹ 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, ¶ 44 (citations omitted) [“NY 271 Order”]. The FCC’s test in the NY 271 Order¹³⁹ for the provision of UNEs is that they must be provisioned on terms that are just, reasonable, and nondiscriminatory -- in “substantially the same time and manner” for an element with a retail analogue and offering a “meaningful opportunity to compete” when no retail analogue. *See id.* The FCC stated specifically that the latter retail analogue test is no less rigorous than the first. *See id.* ¶ 55.

¹⁴⁰ MN PUC Docket No. P-5340, 42/IC-06-768, Albersheim Surrebuttal (October 9, 2006), p. 25 lines 21-22.

¹⁴¹ As seen from section 5.1.1.A of this tariff, this tariff applies to DS1 and DS3 private line services among others.

1 contains relevant tariff language. Indeed, expedites are not only available, but the
2 tariff language describes the method by which expedite charges would be
3 calculated.

4 **Q. MS. ALBERSHEIM CLAIMS THAT QWEST’S PROPOSAL TO CHARGE**
5 **AN ICB RATE FOR UNE LOOPS “ALLOWS QWEST TO CHARGE**
6 **[CLECS] CURRENT RETAIL RATES.”¹⁴² PLEASE RESPOND.**

7 A. Ms. Albersheim’s current interpretation of Qwest’s expedite proposal in
8 Washington is not apparent from Qwest’s proposed contract language or the
9 Expedite PCAT language. Qwest proposes that expedites be offered according to
10 the process captured in Qwest’s PCAT. As I explained in my direct testimony,¹⁴³
11 Qwest’s proposed language appears to exclude UNE loops ordered in Washington
12 from the *fee-added* expedite process. Therefore, it’s unclear to what extent
13 Qwest would provide expedites in the future and at what price. Below I
14 reproduce Qwest’s proposal, which is a portion of Issue 12-67(d) (italics added
15 for emphasis), as well as the relevant language from the PCAT:

16 **Qwest’s Proposal for Issue 12-67(d)**

17 9.1.12.1.2 The request for an expedite will be allowed *only when*
18 *the request meets the criteria outlined in the Pre-Approved*
19 *Expedite Process in Qwest’s Product Catalog for expedites at*
20 *Qwest’s wholesale web site.*

21 **Qwest’s Expedite PCAT**
22 **Pre-Approved Expedites**

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

¹⁴² Albersheim Direct, p. 60 lines 7-8.

¹⁴³ Webber Direct, pp. 79-80.

1 language for expedites with an associated per day expedite
2 charge.¹⁴⁴

3 At a minimum, Qwest's proposed language is vague, does not support the
4 interpretation of Qwest's own witness and fails to provide the necessary
5 contractual certainty. Indeed, the ICA must be clear on this point; terms such as
6 these cannot be left to the interpretation of unclear references to ambiguous
7 language.

8 **Q. IT IS PROPER TO COMPARE CHARGES IMPOSED BY QWEST ON**
9 **CLECS WITH EXPEDITE CHARGES IMPOSED BY QWEST ON ITS**
10 **RETAIL CUSTOMERS?**

11 A. No. With respect to charges, Ms. Albersheim incorrectly claims that Qwest's
12 obligation is to offer "expedites to CLECs on the same terms and conditions as
13 Qwest's retail customers in all states[.]"¹⁴⁵ The relevant comparison considers
14 those expedite charges faced by CLECs and *Qwest* ("itself"). The need for this
15 comparison stems from the fact that Qwest acts in a dual role of the CLECs'
16 provider of bottleneck facilities and the CLEC's competitor in retail markets, and
17 is supported by following FCC rule:

18 **§ 51.313 Just, reasonable and nondiscriminatory terms and**
19 **conditions for the provision of unbundled network elements.**
20 (b) Where applicable, the terms and conditions pursuant to which
21 an incumbent LEC offers to provide access to unbundled network

¹⁴⁴ See Qwest's PCAT, *Expedites and Escalations Overview – V. 41.0* available at <http://www.qwest.com/wholesale/clecs/exescover.html>. As seen from this document, the list of products for which this provision applies is composed primarily of UNEs (emphasis added).

¹⁴⁵ Albersheim Direct, p. 60 lines -4-5.

1 elements, including but not limited to, the time within which the
2 incumbent LEC provisions such access to unbundled network
3 elements, shall, *at a minimum, be no less favorable to the*
4 *requesting carrier than the terms and conditions under which the*
5 *incumbent LEC provides such elements to itself.*¹⁴⁶
6

7 Qwest faces only the cost of an expedite when expediting its own orders, instead
8 of the non-cost-based per day charge that it charges its retail customers when the
9 emergency conditions are not met. Qwest has indicated that rate is \$200 per day
10 for Qwest retail customers,¹⁴⁷ and has proposed to charge UNE CLECs the same
11 retail \$200 per rate in Minnesota and even in Washington for any CLEC using
12 Qwest's template agreement.¹⁴⁸ The expedite rate for UNE orders should be cost-
13 based, and not set based on retail tariff offerings.

14 By proposing to charge Eschelon a non cost based price that is higher than
15 Qwest's own expedite costs, Qwest proposes to violate rule §51.313 because this
16 price constitutes terms that are less favorable than terms faced by Qwest in
17 expediting its own orders. Eschelon and Qwest compete in the retail market and
18 this competition includes an ability to offer expedite service to retail customers
19 "on competitive" terms. By charging Eschelon a wholesale expedite price that
20 exceeds the cost of expedite, Qwest is gaining an unfair advantage because Qwest
21 can "profit" on the difference between the retail price of an expedite and Qwest's

¹⁴⁶ CFR § 51.313(b) (emphasis added).

¹⁴⁷ Albersheim Direct, p. 57, lines 8-11 ("Qwest will be filing a tariff soon to offer expedites for designed services to its retail customers. This tariff will offer expedites at the same \$200 per day rate that Qwest charges in all other states for designed service expedites.").

¹⁴⁸ Qwest ICA Template, Washington Exhibit A, §9.20.14 ("Expedite Charge, per Day Advanced (uses rate from Qwest's Tariff FCC No. 1 Section 5" - \$200). See Exhibit DD-16.

1 cost associated with expedites. This advantage is very similar to an advantage
2 that Qwest would have if it charged above-cost rates for UNE loops and other
3 UNE elements – a situation that the unbundling rules and TELRIC pricing are
4 designed to avoid.

5 **Q. PLEASE RESPOND TO MS. ALBERSHEIM’S REMARK THAT**
6 **EXPEDITES COMPRISE PREMIUM SERVICES.**¹⁴⁹

7 A. Ms. Albersheim argues that expedite charges should not be cost-based because
8 expedites are “premium services.”¹⁵⁰ My direct testimony makes clear that the
9 ability to expedite orders is an integral part of Eschelon’s ability to **access UNEs**,
10 and therefore, the expedite charges associated with that access should be cost-
11 based.¹⁵¹ Indeed, the FCC’s rules¹⁵² require that an unbundled network element
12 include not only the physical facility, but also all the capabilities of providing
13 service, such as provisioning, maintenance and repair.

14 Further, merely because the ability to expedite UNE installation, for example,
15 provides *an option*, does not mean that such expedited access to UNEs should not
16 be subject to cost-based regulation. Indeed, Qwest offers *options*, if you will, for
17 a number of products that constitute access to UNEs. For example, Qwest offers
18 UNE loop installation in different forms – Basic Installation, Basic Installation
19 with Performance Testing, and Coordinated Installation with Cooperative

¹⁴⁹ Albersheim Direct, p. 60, line 10.

¹⁵⁰ Albersheim Direct, p. 60 line 10.

¹⁵¹ Webber Direct, pp. 89-91.

¹⁵² CFR §51.307 and 51.313. See also First Report and Order, ¶ 268.

1 Testing.¹⁵³ Qwest does not argue that the Basic Installation should be priced
2 consistent with cost-based principles, and all other options should be based on a
3 non-cost based retail price.¹⁵⁴ Similarly, Exhibit A contains the agreed-upon
4 charges for Standard, Overtime and *Premium* Managed Cuts,¹⁵⁵ and Overtime
5 and *Premium* Labor associated with UNE products.¹⁵⁶ To the best of my
6 knowledge, Qwest has not argued that these options for “premium” access to
7 UNE products should be subject to a different pricing standard than those
8 standards which are applicable to “basic” access or level of service.

9

10 **Q. DO YOU HAVE ANY OTHER COMMENTS ABOUT MS.**
11 **ALBERSHEIM’S ARGUMENTS AGAINST ESCHELON’S EXPEDITE**
12 **RATE PROPOSAL?**

13 A. Yes. Ms. Albersheim argues that Eschelon’s proposed rate must not be cost-
14 based because Eschelon did not provide a cost study to support its proposed
15 rate.¹⁵⁷ Ms. Albersheim is correct: As I explained in my direct testimony,¹⁵⁸ to
16 avoid additional litigation, Eschelon proposed this rate as a compromise to
17 Qwest’s \$200 per day proposal in other states, which was submitted without cost

¹⁵³ See ICA Exhibit A, Sections 9.2.4, 9.2.5 and 9.2.6.

¹⁵⁴ As seen from the footnotes for these rates, most of them were approved in the Commission’s TELRIC dockets.

¹⁵⁵ ICA Exhibit A, Section 10.1.2.

¹⁵⁶ ICA Exhibit A, Section 9.20.2. These rates were approved in the Commission’s cost docket.

¹⁵⁷ Albersheim Direct, p. 60 footnote 39.

¹⁵⁸ Webber Direct, p. 87. Note that Eschelon reserves its right for a cost-based rate if the expedite rate is litigated in a cost case.

1 data. I also explained in my direct testimony that a comparison of Eschelon's
2 proposed rate with the rate that would apply to high-capacity services under
3 Qwest's retail tariff shows¹⁵⁹ that Eschelon's proposal is reasonable. Eschelon's
4 proposal is for an interim rate, so a cost-based rate may be established.

5 **Q. ON PAGES 52-53 OF MS. ALBERSHEIM'S TESTIMONY, SHE**
6 **PRESENTS ESCHELON'S PROPOSAL FOR ISSUE 12-67(f). IS ALL OF**
7 **ESCHELON'S PROPOSAL CORRECTLY PRESENTED?**

8 A. No. In addition, in my own direct testimony, I inadvertently omitted one of
9 Eschelon's alternative proposals for Issue 12-67(f) that deals with expedites for
10 interconnection trunk orders.¹⁶⁰ In addition to proposal that is listed in my direct
11 testimony¹⁶¹ (which is simply a cross reference in Section 7.3.5.2 to Section
12 12.2.1.2 to replace all of Qwest's proposed language for Section 7.3.5.2 and
13 subparts), the following proposal (Option #1) should be added as alternative
14 language:

15 **Option #1:**

16 7.3.5.2 Expedite requests for Interconnection ~~LIS~~ trunk orders are
17 allowed. ~~Expedites are requests for intervals that are shorter than~~
18 ~~the interval defined in Qwest's Service Interval Guide (SIG) or~~
19 ~~Individual Case Basis (ICB) Due Dates. Expedite charges as~~

¹⁵⁹ As explained in Webber Direct on p. 87 and mentioned above, Qwest's retail tariffs include a description of the method by which Qwest determines expedite charges for private line and access services.

¹⁶⁰ Note that the similar omission was made in the Disputed Issues Matrix and the proposed ICA files with Eschelon's Response. Further, the proposed ICA filed with Qwest's Petition contains a different omission – it includes Eschelon's Option #1 (listed in this testimony), but not Option #2 (listed in my direct testimony). All documents should contain both Options 1 and 2 under Eschelon's proposal.

¹⁶¹ Webber Direct, p. 84. This is Eschelon's Option #2.

1 ~~identified in Exhibit A apply per order for every day that the Due~~
2 ~~Date interval is shortened, based on the standard interval in the~~
3 ~~SIG or based on ICB criteria for Due Dates.~~

4 7.3.5.2.1 CLEC will request an expedite for Interconnection LIS
5 trunks, ~~including an expedited Due Date~~, on an the Access Service
6 Request (ASR).

7 7.3.5.2.2 The request for expedite will be allowed only when the
8 request meets the criteria outlined in Section 12.2.1.2.2 ~~the Pre-~~
9 ~~Approved Expedite Process in Qwest's Product Catalog for~~
10 ~~expedite charges at Qwest's wholesale web site.~~
11

12 **Q. PLEASE EXPLAIN THE RATIONALE BEHIND ESCHELON'S**
13 **ALTERNATIVE PROPOSAL FOR ISSUE 12-67(f) RELATED TO**
14 **EXPEDITED ORDERS FOR TRUNK ORDERS.**

15 A. If a cross reference to Section 12 is not used and expedites are addressed
16 separately in Section 7, Eschelon proposes modifications to Qwest's proposal that
17 demonstrate the deficiencies in Qwest's proposal. First, Eschelon proposes to
18 replace the abbreviation "LIS" (meaning "Local Interconnection Service") with a
19 more general term "Interconnection." As explained in agreed-upon language in
20 section 4.0 "Definitions" of the contract, "'Local Interconnection Service' or
21 'LIS' is the Qwest product name for its provision of Interconnection as described
22 in Section 7 of this Agreement." It is more appropriate in contract language to
23 use generic industry-wide names of telecommunications services, rather than
24 product names such as "LIS" that may change at Qwest's whim. Qwest
25 previously agreed to use "Interconnection" rather than "LIS" in Section 7.3.5.2 of
26 its interconnection agreement with AT&T, which was approved by this

1 Commission.

2 Second, Eschelon's proposal avoids defining expedites in terms of Qwest's
3 Service Interval Guides. As noted in my direct testimony,¹⁶² as well as in the
4 direct testimony of Eschelon's witness Mr. Starkey,¹⁶³ the correct reference is to
5 service provisioning intervals defined in the ICA, not the web-based Service
6 Interval Guides.

7 Third, in section 7.3.5.2.1 Qwest's language states that a CLEC will request an
8 expedite on *the* Access Service Request. The choice of the article "the" suggests
9 that the expedite must be requested on the original Access Service Request, which
10 is more restrictive than Qwest's own current practice.¹⁶⁴ Eschelon proposes that
11 this sentence read less restrictively and in accordance with Qwest's current
12 practice. To accomplish this goal, Eschelon proposes to change article "the" to
13 "an" to read "an Access Service Request."

14 Finally, Qwest proposes a reference to its PCAT in lieu of setting forth
15 substantive expedite terms and conditions. For reasons that have already been
16 discussed, a reference to the PCAT does not provide Eschelon with the
17 contractual certainty that it needs to run its business. In order to be assured that
18 Qwest will provide expedites on just, reasonable, nondiscriminatory terms, and to
19 avoid disputes, those terms need to be contained in the ICA.

¹⁶² Webber Direct, pp. 80-81.

¹⁶³ Starkey Direct, Issue 1-1 (pp. 80-96).

¹⁶⁴ Webber Direct, p. 81.

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

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

3 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-68.**

4 A. Supplemental orders are used to add or change previously submitted Local or
5 Access Service Requests (“LSRs” or “ASRs”). After submitting an initial LSR to
6 Qwest, Eschelon may need to modify that request for any number of reasons and
7 routinely does so as part of its day to day operations.¹⁶⁵ Qwest does not currently
8 charge Eschelon for submitting such supplemental requests.¹⁶⁶ Eschelon’s
9 proposed language reflects this current practice. Previously, Qwest proposed
10 language that includes the undefined terms “transaction charge” and “physical
11 act.” Qwest’s language erroneously suggested that there is a charge that is
12 somehow “non-transactional” or “non-physical.” Since then, as I discuss below,
13 Qwest has modified its proposal.

14 **Q. HAVE ESCHELON AND/OR QWEST MODIFIED THEIR PROPOSALS**
15 **REGARDING ISSUE 12-68 SINCE THE FILING OF DIRECT**
16 **TESTIMONY?**

17 A. Yes. Eschelon modified its Proposal # 2 on November 7, 2006, in the form of a
18 counter proposal to Qwest’s November 6, 2006 modified proposal on this issue.
19 Each of these proposals is below:

¹⁶⁵ Webber Direct, pp. 92-93 provide additional detail on Eschelon’s business need for submitting supplemental orders.

¹⁶⁶ Webber Direct, p. 95 citing Qwest PCAT, *Ordering Overview*.

1 **Eschelon's Modified Proposal # 2¹⁶⁷**

2 12.2.3.2 There is no charge for CLEC submitting a supplement or
3 cancelling or re-submitting a service request. Nothing in this
4 provision is intended to prohibit Qwest from billing OSS-related
5 costs pursuant to Section 12.7 of this Agreement or non-recurring
6 or recurring charges for products or services applicable pursuant to
7 other provisions of this Agreement.

8
9 **Qwest's Modified Proposal**

10 12.2.3.2 There is no charge for the physical act of a CLEC
11 submitting a supplement or cancelling or re-submitting a service
12 request. Nothing in this provision is intended to prohibit Qwest
13 from recovering OSS-related costs associated with service requests
14 as approved by the Commission, or appropriate NonRecurring and
15 Recurring charges for the products or services ordered.

16
17 **Q. PLEASE EXPLAIN THE RATIONALE BEHIND ESCHELON'S**
18 **MODIFIED PROPOSAL #2.**

19 A. Eschelon's proposal addresses Qwest's concerns that language in Section 12.2.3.2
20 not be construed as to prohibit Qwest from charging OSS and other non-recurring
21 or recurring charges that may be associated with the order. Just like Eschelon's
22 original Proposal # 2, Eschelon's modified proposal #2 clarifies that if there is an
23 explicit charge somewhere else in the ICA, that ICA-based charge would continue
24 to apply. The new modification is designed to account for the OSS charges,
25 which are charges applicable to Local Service Requests.¹⁶⁸ Even though
26 Eschelon's proposal #1 mirrors Qwest's current process (as reflected in Qwest's
27 PCAT),¹⁶⁹ Qwest objected to Eschelon's original proposals (proposals captured in
28 my direct testimony), professing concern that Eschelon's original proposals would

¹⁶⁷ This proposal replaces Eschelon's Proposal # 2 cited on p. 94 of Webber Direct.

¹⁶⁸ This charge is listed in Exhibit A, Section 12.

¹⁶⁹ Webber Direct, p. 95 (quoting PCAT language).

1 prevent Qwest from applying Commission-approved OSS charges.¹⁷⁰ Eschelon's
2 modified proposal #2 even more clearly addresses Ms. Albersheim's concerns,
3 and therefore, I do not address her arguments related to OSS charges in this
4 testimony.

5 **Q. DOES QWEST'S TESTIMONY CONTAIN ANY OTHER REASONS**
6 **SUPPORTING ITS OBJECTIONS TO ESCHELON'S LANGUAGE?**

7 A. No.

8 **Q. CAN ESCHELON AGREE TO ACCEPT QWEST'S NEW**
9 **MODIFICATIONS TO THE PROPOSED LANGUAGE CITED ABOVE**
10 **AND, IF NOT, WHY NOT?**

11 A. No, it cannot. Qwest's modified proposal lacks the precision appropriate for an
12 interconnection agreement. It uses vague terminology such as "recovering OSS
13 cost," which could be interpreted to refer to issues involved with regulatory
14 accounting, while more direct and appropriate contract language would include,
15 for example, "billing for OSS cost." Similarly, Qwest's proposal relies upon the
16 term "appropriate" non-recurring and recurring charges without specifying the
17 standard for determining what is and what is not "appropriate." In contrast,
18 Eschelon proposes to specify that the "appropriate" non-recurring and recurring
19 charges are charges applicable pursuant to other provisions of the contract, and

¹⁷⁰ Albersheim Direct, pp. 61-63.

1 that the charges for OSS costs in questions are OSS charges contained in a
2 specific section of the contract.

3 **Q. WHY DO YOU DISAGREE WITH MS. ALBERSHEIM'S**
4 **RECOMMENDATION TO THE COMMISSION TO RULE THAT**
5 **SECTION 12.2.3.2 IS NOT NECESSARY?**

6 A. First, Ms. Albersheim makes statements that contradict Qwest's official proposal
7 on the issue: Qwest proposes specific language for this section, and its proposal
8 does not include an option of "Intentionally Left Blank" or similar language that
9 would indicate a position that a provision regarding charges for supplemental
10 orders is not necessary. Second, as explained in detail in Mr. Starkey's testimony,
11 Eschelon needs contractual certainty regarding rates, terms and conditions under
12 which it purchases products and services from Qwest. A provision addressing
13 charges for supplemental orders is necessary and appropriate in the contract.

14

15 **SUBJECT MATTER NO. 32. PENDING SERVICE ORDER NOTIFICATIONS**
16 **("PSONS")**

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

18 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-70.**

19 A. A Pending Service Order Notification (PSON) is an electronic notice sent by
20 Qwest that provides Eschelon with information that can be used to help confirm
21 that Qwest has correctly reflected the information in Eschelon's service request.
22 To reduce the probability of Qwest errors affecting service of Eschelon's End

1 User Customers,¹⁷¹ Eschelon double-checks information contained within
2 Qwest's PSONs to information originally included within Eschelon's initial order.
3 Although Eschelon should not need to oversee Qwest's quality control, it does so
4 in order to avoid the alternative — finding out about a service-affecting Qwest
5 error after the damage has been done to Eschelon's end user customer. Eschelon
6 needs to avoid that result when possible to remain competitive.

7 As I explained in my direct testimony,¹⁷² two groups of data currently provided in
8 Qwest's PSONs — *Listing*, and *Service and Equipment* sections¹⁷³ — are
9 particularly important to Eschelon's ability to prevent End User Customer-
10 affecting service delays and disruptions. Eschelon proposes that Qwest's current
11 practice of providing PSONs be captured in the contract language so that Qwest
12 will continue to provide PSONs with at least the *Service and Equipment*, and
13 *Listings* information provided today. Qwest objects to the clause specifying the
14 two sections of the service order that must be provided (*Service and Equipment*,
15 and *Listings*).

16 Qwest currently provides in its PSONs the information from the *Service and*
17 *Equipment* and *Listings* sections of the service order, as well as three other

¹⁷¹ When CLEC submits an LSR to Qwest, Qwest creates (either manually or electronically) internal service orders to implement the LSR. There may be multiple Qwest service orders per each LSR. If the information in a Qwest service order differs from the information on the LSR (*e.g.*, due to a typo in a manually typed service order), the End User Customer's service may be harmed because Qwest will deliver a service different from what ordered or possibly even disconnect the service in error per the erroneous Qwest service order.

¹⁷² Webber Direct, pp, 111.

¹⁷³ These sections would include information such as products ordered and customer address.

1 sections. In other words, Eschelon’s proposal is reasonable because its request is
2 narrower (not broader) than the data Qwest provides under the current process.

3 **Q. WHAT ARGUMENTS DOES QWEST MAKE AGAINST ESCHELON’S**
4 **PROPOSAL IN ITS DIRECT TESTIMONY?**

5 A. Apart from its generic argument that this language belongs within the CMP¹⁷⁴
6 (which is addressed by Mr. Starkey in his discussion of the need for contractual
7 certainty), Qwest’s only other argument is that if Eschelon obtains the contract
8 language it desires for PSONs, no other CMP participant will be able to request a
9 PSON change until Qwest first obtains an agreement from Eschelon for contract
10 modification.¹⁷⁵ As I explained in my direct testimony,¹⁷⁶ Qwest’s position is
11 flawed because it can equally be applied to other, similar, provisions of the
12 contract to which Qwest agreed. For example, the agreed-upon portions of
13 section 12.2.7.2.3 (which contains the proposed language for Issue 12-70) already
14 specify certain information that a PSON should contain (“information that appears
15 on the Qwest service order”). Inexplicably, Qwest does not consider the agreed-
16 upon requirement (to include information that appears on Qwest’s service order)
17 as a “prohibition” to modify OSS notices through CMP, but it considers the
18 disputed language (to include the data in Service and Equipment and listing
19 sections, which are on Qwest’s service order) to be a “prohibition” on
20 modifications of OSS notices.

¹⁷⁴ Albersheim Direct, p. 65.

¹⁷⁵ Albersheim Direct, p. 66 lines 15-23.

¹⁷⁶ Webber Direct, p. 109.

1 **Q. WHAT IS YOUR RESPONSE TO QWEST'S ARGUMENT THAT TWO**
2 **OTHER COMPANIES BESIDES ESCHELON (QWEST AND AT&T)**
3 **HAVE REQUESTED CHANGES TO PSONS OR FATAL REJECTION**
4 **NOTICES?¹⁷⁷**

5 A. First, Ms. Albersheim incorrectly combines her arguments on Issue 12-70
6 (content of PSON) and Issue 12-74 (actions following a receipt of a Fatal
7 Rejection Notice). As I explain below, Issue 12-74 does not concern the content
8 of Fatal Rejection Notices, and therefore, Ms. Albersheim's method of addressing
9 both issues in the same sentence does not work. Second, Ms. Albersheim
10 mentions that AT&T and Qwest submitted change requests on these issues to
11 CMP, but provides no further detail. As I explained in my direct testimony,¹⁷⁸
12 Eschelon's, AT&T's and Qwest's change requests (together with McLeod's
13 change request that Ms. Albersheim neglects to mention) regarding PSON
14 constitute stages in the lengthy history of PSONs. These change requests helped
15 to develop PSONs into their current useful form. It is this lengthy history and the
16 associated effort of different companies that demonstrate the importance of
17 PSONs and the need to make sure that certain content of PSONs is guaranteed for
18 at least the duration of the contract. Qwest should not be able to nullify that work
19 without an amendment to the contract. Further, Eschelon's own review¹⁷⁹ of
20 Qwest's CMP archive confirmed that none of these change requests asked Qwest

¹⁷⁷ Albersheim Direct, p. 66.

¹⁷⁸ Webber Direct, pp. 108-109.

¹⁷⁹ See Johnson Rebuttal and Exhibit BJJ-31 to Johnson Rebuttal (Review of Change Requests on PSONs in Qwest's Archive).

1 to provide *less information* or stop providing CLECs with PSONs. If a CLEC no
2 longer wants to receive PSONs, it may decline to receive them. Eschelon desires
3 to continue receiving them because they serve a useful purpose in helping to
4 reduce customer affecting service issues and asks the Commission to approve
5 contract language to help ensure that PSONS will continue to perform this useful
6 function.

7 **Q. MS. ALBERSHEIM MENTIONS THE INDUSTRY ORDERING AND**
8 **BILLING FORUM (OBF) AS AN ENTITY THAT MAY MAKE**
9 **RECOMMENDATIONS REGARDING PSONS.¹⁸⁰ PLEASE COMMENT.**

10 A. Ms. Albersheim made a similar statement in her Minnesota Direct Testimony in
11 the companion arbitration¹⁸¹ and then corrected herself in her Minnesota Rebuttal
12 Testimony.¹⁸² Specifically, Ms. Albersheim explained that her characterization of
13 PSONs “as an industry standard notice required by the OBF”¹⁸³ is incorrect, and
14 that Qwest created PSONs “in response to feedback from Qwest’s CLEC
15 customers.”¹⁸⁴

16 In other words, it is not the OBF but Qwest’s CLEC customers, including
17 Eschelon, whose business needs affect the content of PSONs. Eschelon is not
18 proposing to freeze the content of these notices in time; instead it is proposing that

¹⁸⁰ Albersheim Direct, pp. 66-67.

¹⁸¹ MN PUC Docket No. P-5340, 42/IC-06-768, Albersheim Direct (August 25, 2006), p. 65.

¹⁸² MN PUC Docket No. P-5340, 42/IC-06-768, Albersheim Rebuttal (September 22, 2006), p. 47.

¹⁸³ MN PUC Docket No. P-5340, 42/IC-06-768, Albersheim Rebuttal (September 22, 2006), p. 47, lines 22-23.

¹⁸⁴ MN PUC Docket No. P-5340, 42/IC-06-768, Albersheim Rebuttal (September 22, 2006), p. 47, lines 24-25.

1 certain minimum content be included in PSONs for the duration of the contract.
2 Eschelon's proposal would not preclude other CLECs from requesting that
3 additional data be included in PSONs, as Qwest would have this Commission
4 believe. Eschelon's language merely requires Qwest to provide a sub-set of the
5 data that Qwest provides today,¹⁸⁵ without dictating the format of the data or
6 preventing Qwest from adding to that data/the PSON.¹⁸⁶

7

8 **SUBJECT MATTER NO. 33. JEOPARDIES**

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

10 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUES 12-71 THROUGH**
11 **12-73.**

12 A. A due date is in "jeopardy" when that due date has not yet been missed but
13 circumstances exist to suggest that it will not likely be met. In such cases, Qwest
14 typically sends Eschelon a "jeopardy" notice to inform Eschelon that the due date
15 is, indeed, in jeopardy of being missed.¹⁸⁷ If the jeopardy is a Qwest-caused
16 facility jeopardy, Qwest is supposed to send Eschelon a new Firm Order
17 Confirmation ("FOC") if either (1) as a result of the jeopardy situation, Qwest
18 needs to change the due date to a later date,¹⁸⁸ or (2) despite the jeopardy
19 situation, the date will not change, because Qwest "cleared" or "corrected" the

¹⁸⁵ Webber Direct, pp. 103-104.

¹⁸⁶ Proposed ICA Section 12.2.7.2.3 (Eschelon proposed language) (including "at least the data").

¹⁸⁷ See, e.g., proposed ICA Sections 9.2.4.4.1, 12.2.7.2.4.1 & 12.2.7.2.4.2 (closed language).

¹⁸⁸ See proposed ICA Section 9.2.4.4.1 (closed language); see also SGAT 9.2.4.4.1.

1 jeopardy by making facilities available.¹⁸⁹ In the first scenario, the FOC contains
2 the new due date.¹⁹⁰ In the second scenario, the FOC serves as notice to Eschelon
3 that the Qwest facility jeopardy¹⁹¹ has been cleared and that, despite the previous
4 jeopardy notice, Qwest will deliver service on the due date.¹⁹² In either case, the
5 new FOC must be sent sufficiently *before* Qwest attempts to deliver service to
6 allow Eschelon to prepare for service delivery, including making any necessary
7 arrangements with its Customer. Qwest has previously “*agreed, and confirmed*
8 *that Qwest cannot expect the CLEC to be ready for the service if we haven’t*
9 *notified you. . . .*”¹⁹³ Qwest confirmed in CMP that the FOC will be sent at least

¹⁸⁹ See Exhibit BJJ-5 (entry for 8/26/03: “The Qwest prepared minutes state: ‘Phyllis explained the jep could be placed early in the morning and the tech working on the it may get a solution the same day. This creates a timing difficulty. The current process is for the order to be jep’d, *Qwest would send an FOC when they find out the issue has been taken care of. . . .*’ See http://www.qwest.com/wholesale/cmp/archive/CR_PC081403-1.htm (emphasis added).)”

¹⁹⁰ See proposed ICA Section 9.2.4.4.1 (closed language); see also SGAT 9.2.4.4.1.

¹⁹¹ Eschelon has limited its proposed language to these facility (“K”) jeopardizes that Qwest has identified as due date (“DD”) jeopardizes. Due Date jeopardizes indicate that a CLEC should not plan on going forward with the due date unless Qwest advises CLEC that the jeopardy condition has been resolved. Qwest outlines these facts on its website. See

<http://www.qwest.com/wholesale/clecs/provisioning.html>: “Qwest differentiates between DD jeopardizes and Critical Date jeopardizes. DD jeopardizes indicate that your due date is in jeopardy; however, Critical Date jeopardizes indicate that a critical date prior to the DD is in jeopardy. Critical Date jeopardizes can be ignored by you. Critical Date jeopardizes are identified in the Jeopardy Data document (see download in the following paragraph) in the column labeled “Is Due Date in Jeopardy?” If the DD is not in jeopardy, this column will contain “No” and you can disregard the jeopardy notice sent for this condition and continue your provisioning process with the scheduled DD. If the column contains “Yes” and Qwest has the responsibility to resolve the jeopardy condition, we will advise you of the new DD when the jeopardy condition has been resolved. This is usually within 72 hours. For information regarding jeopardy codes contained on notices and clarification regarding who is responsible for taking steps to resolve jeopardy conditions, download [Local Service Request \(LSR\) Jeopardy Data](#).” (Qwest’s document provides the link as http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc (all “K” jeopardizes are “YES”)).

¹⁹² See Exhibit BJJ-5 (entry for 8/26/03).

¹⁹³ See Exhibit BJJ-5, entry for 3/4/04: This entry is quoting (with emphasis added) from Qwest Minutes from Ad hoc CMP call, available at http://www.qwest.com/wholesale/cmp/archive/CR_PC081403-1.htm.

1 *the day before* delivery of the service so Eschelon can be ready for delivery of the
2 service.¹⁹⁴ For clarity, Eschelon is willing to accept the inclusion of either the
3 phrase “at least a day before” or the phrase “at least **the** day before.”¹⁹⁵

4 However, as illustrated in Eschelon’s direct testimony,¹⁹⁶ Qwest may fail to send
5 a new FOC or, if it sends the FOC, it may not be timely (*i.e.*, it is not sent
6 sufficiently in advance of service delivery to allow Eschelon to be ready). When
7 Qwest attempts to deliver service without warning, Eschelon may not have
8 resources on hand to accept service or may not be able to schedule access with the
9 Customer with little or no notice. It *may appear* that Eschelon is not ready when
10 it was actually Qwest who caused the jeopardy condition in issue by failing to
11 send an FOC either on time or at all. In these circumstances, the jeopardy is
12 appropriately classified as a Qwest-caused jeopardy. It cannot fairly or
13 reasonably be categorized as an Eschelon-caused jeopardy (known as “Customer
14 Not Ready,” or “CNR”), because Qwest’s failure to deliver an FOC or a timely
15 FOC deprives Eschelon of the opportunity to be ready. Properly classifying this
16 situation as Qwest-caused (*i.e.*, a “Qwest jeopardy”) provides Qwest with an
17 incentive to send FOCs, and to do so in a timely manner. Eschelon’s proposed
18 ICA language ensures that such situations will be properly classified.

¹⁹⁴ See Exhibit BJJ-5 (entry for 2/26/04).

¹⁹⁵ Webber Direct, p. 114, lines 13-14 & footnote 119.

¹⁹⁶ See Webber Direct pp. 112-113 and Exhibit BJJ-6 to Johnson Direct.

1 The correct classification is important, as I explained in my direct testimony,¹⁹⁷
2 because a CNR classification automatically causes a delay in the due date of at
3 least three days — delaying delivery of service to the End User Customer. It
4 would be unfair to make Eschelon and its Customer suffer adverse consequences
5 when Qwest is responsible for the delay. In addition, erroneous assignment of
6 fault will lead to erroneous Performance Indicator Definition (“PID”) results, to
7 Qwest’s benefit.¹⁹⁸ Eschelon’s proposal helps avoid that result.

8 With its ICA language proposal, Eschelon reasonably proposes to accept fault
9 when it causes a jeopardy situation and asks Qwest to do the same. Qwest
10 proposes to exclude these terms from the filed ICA and replace them with a
11 reference to Qwest’s web-based documentation.

12 **Q. HOW DOES QWEST RESPOND TO ESCHELON’S PROPOSALS**
13 **REGARDING ISSUES 12-71 THROUGH 12-73 (JEOPARDIES)?**

14 A. Ms. Albersheim rejects Eschelon’s proposals and attempts to advance three
15 arguments: (1) that Eschelon’s language proposal is inappropriate for an ICA and
16 that these issues should be under Qwest’s control in the CMP and its PCAT;¹⁹⁹
17 (2) that Eschelon’s proposal is unnecessary because PIDs already differentiate

¹⁹⁷ Webber Direct, pp. 112-113.

¹⁹⁸ Webber Direct, pp. 120-121.

¹⁹⁹ Albersheim Direct, pp.68-69.

1 between Qwest-caused and CLEC-caused (“CNR”) delays;²⁰⁰ and (3) that other
2 CLECs have submitted change requests to change jeopardy notices.²⁰¹

3 **Q. HOW DO YOU RESPOND TO QWEST’S PROPOSED EXCLUSION OF**
4 **LANGUAGE RELATING TO JEOPARDIES FROM THE ICA AND,**
5 **INSTEAD, ITS PROPOSED INCLUSION OF A REFERENCE TO THE**
6 **QWEST-CONTROLLED PCAT?**

7 A. Although Mr. Starkey addresses Qwest’s the PCAT argument generally in his
8 testimony in his discussion of CMP and the need for contractual certainty,²⁰² two
9 points in particular are relevant here with respect to 12-71 through 12-73. First,
10 these very issues dealing with jeopardy classification and FOCs have been
11 through CMP, but Qwest is choosing to ignore the terms developed in CMP (as
12 well as the SGAT)²⁰³ without first following its own CMP rules to change those
13 terms, as explained in my direct testimony.²⁰⁴ Second, while Ms. Albersheim
14 claims that inclusion of Eschelon’s proposed ICA language would preclude Qwest
15 from responding to “changes to industry standards for jeopardy notices,”²⁰⁵ she
16 does not name any industry standard that says – or may reasonably be expected to
17 say in the future – “a Qwest-caused jeopardy may be classified as CLEC-caused

²⁰⁰ Albersheim Direct, pp. 69-70.

²⁰¹ Albersheim Direct, p. 69, lines 2-5.

²⁰² Starkey Direct, pp. 13-14 & 33-78; Starkey Rebuttal (first topic of his rebuttal).

²⁰³ See SGAT 9.2.4.4.1.

²⁰⁴ Webber Direct, pp. 124-125; see also Starkey Direct, pp. 47-49; Exhibit BJJ-5.

²⁰⁵ Albersheim Direct, p. 69 line 2

1 jeopardy.” It defies common sense. It is also directly contrary to the purpose of
2 the PIDs to accurately measure performance.

3 **Q. PLEASE RESPOND TO QWEST’S SECOND ARGUMENT THAT PIDS**
4 **DIFFERENTIATE BASED ON CAUSE.**

5 A. Ms. Albersheim claims that Eschelon’s proposal is unnecessary because PIDs
6 already differentiate between Qwest-caused and CLEC-caused delays.²⁰⁶ It is
7 precisely because PIDs require this “differentiation” that responsibility must be
8 properly assigned, or the PID results will be inaccurate. If delays caused by
9 Qwest’s failure to provide an FOC on time or at all are classified as Eschelon-
10 caused (“CNR”) jeopardies, the purpose of this PID differentiation will be
11 defeated. The consequences of the PIDs flow from which carrier caused the
12 delay. When Qwest causes the delay by failing to provide an FOC on time or at
13 all, it needs to accept that responsibility and classify the jeopardy correctly as a
14 “Qwest jeopardy.” In its proposed language, Eschelon likewise accepts
15 responsibility when the delay is caused by Eschelon.²⁰⁷ Eschelon’s proposal does
16 not duplicate or contradict the PIDs. In fact, Eschelon’s proposal is most
17 consistent with the purpose of the PIDs to accurately measure performance.²⁰⁸

18 **Q. QWEST SAID ITS CLAIM ABOUT THE PIDS ALREADY PROTECTS**
19 **ESCHELON, “IF ESCHELON’S INTENTION BY ITS LANGUAGE IS TO**

²⁰⁶ Albersheim Direct, p. 69.

²⁰⁷ See Eschelon proposed Section 12.2.7.2.4.4 (“... a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR)).”

²⁰⁸ Webber Direct, p. 129.

1 **DIFFERENTIATE QWEST-CAUSED DELAYS.”²⁰⁹ IS THAT THE**
2 **INTENTION OF ESCHELON’S PROPOSED LANGUAGE?**

3 A. Eschelon’s proposal does require accurate differentiation between Qwest versus
4 Eschelon jeopardies. Accurate jeopardy classification is not, however, an end in
5 itself. Proper classification of jeopardies will not only help ensure proper
6 application of the PIDs but also will help avoid customer-impacting delays. The
7 problem addressed by Eschelon’s language is not a hypothetical problem. Exhibit
8 BJJ-35 to the testimony of Ms. Johnson includes twenty-two examples of
9 situations when Eschelon was unable to accept delivery of the circuit on the date
10 of attempted delivery because Qwest sent no FOC or an untimely FOC and yet
11 Qwest erroneously classified this situation as “Customer Not Ready” when it
12 should not have done so. This Exhibit has three components: (1) Data provided
13 by Eschelon to Qwest to identify examples when no FOC or an untimely FOC
14 was sent after a Qwest facility jeopardy;²¹⁰ (2) Qwest’s review (performed during
15 the Minnesota Qwest-Eschelon ICA arbitration) of that data, in which Qwest
16 provides its technicians’ notes associated with each example,²¹¹ and (3)
17 Eschelon’s reply to Qwest’s review.²¹²

²⁰⁹ Albersheim Direct, p. 71, lines 16-19.

²¹⁰ See Exhibit BJJ-35 (first four columns – “Eschelon Data”). These examples were provided with Ms. Johnson’s direct testimony in Exhibit BJJ-6

²¹¹ See Exhibit BJJ-35 (fifth and sixth columns – “Qwest Review”).

²¹² See Exhibit BJJ-35 (final column – “Eschelon Review”).

1 Of the 22 examples in Exhibit BJJ-35, 15 were identified by Eschelon as
2 examples for which Qwest sent no FOC. As indicated in the rebuttal testimony of
3 Ms. Johnson, Eschelon gathered these examples as these events were occurring
4 and, at that time, Eschelon confirmed in Qwest's own systems whether and when
5 an FOC was sent. When Qwest reviewed Eschelon's data for purposes of
6 arbitration, Qwest did not confirm in its systems' "FOC archives" whether and
7 when an FOC was sent,²¹³ even though those facts are key to this analysis. Qwest
8 relied instead upon its technicians' notes.²¹⁴ Based on those notes, Qwest
9 admitted that it sent no FOC at all after the pertinent facility jeopardy in at least
10 8²¹⁵ of the 22 examples.²¹⁶ Qwest is required to send an FOC with the due date
11 after a Qwest facility jeopardy,²¹⁷ and Qwest admits that its current process
12 requires it to do so.²¹⁸ Qwest also admits that the reason Qwest is required to
13 send an FOC after a Qwest facility jeopardy has been cleared is to let the CLEC
14 know that it should be expecting to receive the circuit so that the CLEC will have
15 personnel available and perhaps make arrangements with the customer to have the

²¹³ MN Tr. Vol. I, p. 41, lines 10-22 (Ms. Albersheim).

²¹⁴ MN Tr. Vol. I, p. 41, lines 10-22 (Ms. Albersheim).

²¹⁵ MN Tr. Vol. I, p. 40, lines 5-14 (Ms. Albersheim).

²¹⁶ Actually, Qwest's Review shows that there was no FOC in ten of these instances. *See* Exhibit BJJ-35 [(OR482897 T1FAC: "Although Qwest did not send a FOC prior to the DD"); (AZ485850 T1FAC: "No FOC resent."); (AZ510194 T1FAC: "No FOC sent."); (WA609209 T1FAC: "No FOC."); (AZ610687 T1FAC: "No FOC."); (AZ602905 T1FAC: "No subsequent FOC."); (AZ624356 T1FAC: "No FOC."); (MN659573 T1FAC: "No FOC"); (OR668544 T1FAC: "No FOC."); (AZ716331 T1FAC: "No FOG." [sic]).

²¹⁷ *See, e.g.*, ICA Section 9.2.4.4.1 & footnote 4 to Exhibit BJJ-35.

²¹⁸ MN Tr. Vol. I, p. 37, lines 16-23 (Ms. Albersheim).

1 premises available.²¹⁹ Qwest even admits that, under its current process, if the
2 CLEC does not have adequate notice that the circuit is being delivered (with
3 adequate notice consisting of an FOC), then it is “*not appropriate*” for Qwest to
4 assign a CNR (CLEC-caused) jeopardy.²²⁰ In other words, Qwest agrees with all
5 of these elements of Eschelon’s proposed language and admits that they reflect
6 Qwest’s current process.²²¹

7 Nonetheless, Qwest asserts that only 3 of the 22 examples represent situations in
8 which Qwest inappropriately classified the jeopardy as a “CNR” (CLEC-caused)
9 jeopardy. For 7 of the 22 examples, Qwest is claiming that its process is not to
10 provide the FOC *the day before*,²²² and I discuss why that is incorrect in my
11 testimony below. For the 8 for which Qwest admits that it sent no FOC at all after
12 the Qwest facility jeopardy (even though it also admits that it is required to
13 provide an FOC in this situation), however, Qwest claims that it *appropriately*
14 *classified the jeopardy as a CNR* in 5 of these 8 examples.²²³ Eschelon, however,
15 was denied the opportunity to accept the circuit on the desired due date because of
16 Qwest’s failure to send the required FOC in all 5 of these examples. Qwest’s

²¹⁹ MN Tr. Vol. I, p. 37, line 24 – p. 38, line 6 (Ms. Albersheim).

²²⁰ MN Tr. Vol. I, p. 94, lines 4-11 (Ms. Albersheim) (emphasis added).

²²¹ MN Tr. Vol. I, p. 37, lines 16-23 (Ms. Albersheim). Despite the Qwest meeting minutes to the contrary in Exhibit BJJ-5 (p. 4, entry for 2/26/04), Qwest claims that Eschelon’s proposed phrase “at least the day before” is not part of Qwest’s current process. See MN Tr. Vol. I, p. 37, lines 16-23. Other than that phrase, however, Qwest admits that the remainder of Eschelon’s proposed language reflects Qwest’s current process. See *id.* p. 37, lines 16-23.

²²² See Exhibit BJJ-35 (these 7 examples are designated as “No FOC Day Prior” in final column).

²²³ Albersheim MN Rebuttal, p. 55, lines 19-22 (“Qwest has determined that only 3 of the 23 orders demonstrate a situation in which Qwest incorrectly used the Customer Not Ready (“CNR”) status when placing the order in jeopardy.”).

1 position that it may appropriately classify the jeopardy as being Eschelon-caused
2 in these 5 examples when Qwest sent no FOC at all -- in violation of its own
3 process -- demonstrates that Eschelon's proposed language is needed to ensure
4 proper classification of jeopardies. If Eschelon's proposed language is not
5 adopted, Qwest will continue to unfairly classify jeopardies caused by Qwest that
6 result in a delay in delivery of the circuit as being caused by Eschelon.
7 Eschelon's intention is to avoid this situation and obtain proper classification so
8 that, not only are the PID results more accurate, but also and more importantly,
9 delivery is not delayed.

10 **Q. HOW DOES QWEST EXPLAIN ITS CLASSIFICATION OF THOSE FIVE**
11 **JEOPARDIES AS "CNR," AND DO YOU AGREE WITH QWEST'S**
12 **POSITION?**

13 A. Qwest claims that it may appropriately classify a jeopardy as being Eschelon-
14 caused in these five situations when Qwest sent no FOC at all in violation of its
15 own requirement to provide an FOC because, even though Qwest missed the
16 desired due date, the resulting delay could have been even longer because
17 Eschelon accepted the circuit before Qwest's required supplemental order date.²²⁴

18 I disagree. As I discussed above, Qwest requires a minimum due date of three

²²⁴ MN Tr. Vol. I, p. 94, lines 18-19 (Ms. Albersheim) ("I would submit, though, that in the examples provided we found only three cases where we classified a subsequent jeopardy as a CNR, in error, and that is mostly because the service was delivered."). As shown in Exhibit BJJ-35, in none of the 10 examples for which Qwest's Review shows that there was no FOC was the circuit delivered when initially attempted (referred to here for this purpose as the "desired due date"). The delivery was delayed at least a day or two days after that date. See Exhibit BJJ-35.

1 days from the date a supplemental order for designed services is placed. No
2 supplemental order would be required if Qwest sent an FOC after the facility
3 jeopardy and Eschelon accepted the circuit. If the only reason that Eschelon must
4 submit a supplemental order to delay the due date is because Qwest failed to send
5 an FOC after clearing a facility jeopardy, the new due date that is three or more
6 days later is a direct result of Qwest's failure to send that FOC. Nonetheless, if
7 Qwest delivers the circuit after the desired due date but before the later date
8 resulting from the supplemental order, Qwest maintains that it can appropriately
9 classify the jeopardy as being Eschelon-caused ("CNR").²²⁵ In other words,
10 Qwest is forcing Eschelon to request a later date to correct Qwest's failure to send
11 an FOC and then telling Eschelon that it ought to be grateful that the delay was
12 not even longer (the entire three-day supplemental order period or more).

13 Delivery of the circuit is late because Qwest failed to send the required FOC.
14 When Eschelon's End User Customer experiences a longer delay as a result of
15 Qwest's failure to provide an FOC, however, that harms both the Customer and
16 Eschelon. Qwest's classification is inappropriate. Eschelon's proposed language
17 is needed to ensure proper jeopardy classification, which will help avoid
18 erroneous PID results and customer affecting delays.

²²⁵ MN Tr. Vol. I, p. 94, lines 18-19 (Ms. Albersheim) (quoted above). In addition, Qwest claims that it is possible that "communication was happening between Qwest and the CLEC technicians." *Id.* p. 94, lines 19-20. Qwest admits, however, that such informal communication even if it occurs is not the agreed upon process by which Qwest informs Eschelon of the due date for circuit delivery. *Id.* p. 38, lines 13-19. In addition, Qwest provides no evidence that the CLEC technicians (rather than, for example, CLEC service delivery personnel) are the appropriate contacts with respect to FOCs. Eschelon cannot rely upon informal communications that are outside the appropriate process to plan its business and ensure timely delivery of circuits necessary to meet its Customers' expectations.

1 **Q. DOES ESCHELON CONTINUE TO PROVIDE EXAMPLES SIMILAR TO**
2 **THOSE IN EXHIBIT BJJ-35 TO QWEST TO REVIEW AND PERFORM**
3 **ROOT CAUSE ANALYSIS TO ACHIEVE THAT INTENDED RESULT?**

4 A. Yes. Eschelon continues to provide the data to Qwest, but Qwest has recently
5 refused to review and root cause Eschelon's examples. Since August of 2004,
6 Eschelon has provided data relating to DS1 capable loop jeopardies to Qwest's
7 service management team on an approximately weekly basis as part of Eschelon's
8 tracking and obtaining root cause of this important issue.²²⁶ Eschelon and Qwest
9 then discussed the data after Qwest had an opportunity to review it.²²⁷ In some
10 cases, Qwest disputed Eschelon's data and in others it acknowledged its errors
11 and, in the latter cases, described steps it had taken (such as training of Qwest's
12 employees) to attempt to gain compliance with its delayed order process and
13 avoid Qwest-caused delays for Eschelon customers.²²⁸ This data exchange,
14 therefore, has led to needed remedial action to try to address this problem.

15 Recently, however, Qwest has changed its position. After Eschelon sent its
16 regular weekly data to Qwest, Qwest responded on November 7, 2006 that
17 "Qwest has determined that due to resources Qwest will not be reviewing this
18 report any longer. Qwest through self reporting internally will manage the

²²⁶ See Ms. Johnson's rebuttal testimony relating to Exhibit BJJ-26.

²²⁷ See *id.*

²²⁸ See Exhibit BJJ-36 & Ms. Johnson's rebuttal testimony relating to Exhibit BJJ-26. See also Exhibit BJJ-5 to the direct testimony of Ms. Johnson.

1 process and compliance of the delayed order process.”²²⁹ It is difficult to accept
2 Qwest’s claim that this unilateral decision is “due to resources” because obtaining
3 compliance saves both companies resources that would otherwise be expended
4 when the process breaks down and both companies have to scramble to correct
5 the problem and re-do the work on another day when delivery has to be
6 rescheduled. In addition, Eschelon expends its own resources on gathering the
7 data for Qwest to point Qwest to the problem areas, and this saves Qwest time
8 that it would have to expend on finding these issues for itself. If Qwest were able
9 to identify all of these problems by itself based on “self reporting internally,”
10 presumably Qwest would have corrected the problems and they would not re-
11 occur.²³⁰ The fact that they continue to occur until Eschelon raises them through
12 its examples shows that the examples have an added benefit beyond any internal
13 Qwest efforts.

14 Another concern with relying upon Qwest to internally “manage the process and
15 compliance” is the extent to which Qwest has already vacillated on this issue. As
16 discussed in Eschelon’s direct testimony²³¹ and detailed in the Jeopardy

²²⁹ See Exhibit BJJ-36. Since then, Eschelon has continued to send the data with a request for Qwest to review it, but Qwest continues to decline to review and root cause Eschelon’s data. *See id.*

²³⁰ As I discussed above, when Qwest reviewed Eschelon’s data for purposes of arbitration, Qwest relied upon its technicians’ notes and did not confirm in its systems’ FOC archives whether and when an FOC was sent. This is at least some evidence that Qwest’s internal review is inadequate, because whether and when an FOC was sent is key to this analysis.

²³¹ Starkey Direct, pp. 46-48; Webber Direct, pp. 123-125.

1 Classification and Firm Order Confirmation Chronology attached to the direct
2 testimony of Ms. Johnson²³²:

3 (1) Qwest agreed to provide an FOC the day before the due date as part of
4 the change request; Qwest provided FOCs the day before the due date and
5 treated instances when it did not as non-compliance with its process;²³³ (2)
6 Qwest then changed its policy and began to deny that providing FOCs the
7 day before the due date was part of its process; Qwest did not take any
8 action in CMP to change the designated time frame in CMP associated
9 with this change in policy;²³⁴ (3) Qwest's CMP Manager even denied that
10 providing the FOC at all was a requirement²³⁵ and instead characterized it
11 as a "goal";²³⁶ (4) Qwest then admitted that providing an FOC after a
12 Qwest facility jeopardy has cleared is part of Qwest's process, to let
13 Eschelon know to have personnel available and make any arrangements
14 with the customer so as to be prepared to accept the circuit;²³⁷ (5) Qwest
15 then said that when there is *no FOC at all* in violation of Qwest's process,
16 even though Qwest agrees that Eschelon needs advance notice and an
17 FOC is the agreed upon process to provide that notice,²³⁸ it is appropriate
18 to classify the jeopardy when Eschelon cannot be ready due to lack of the
19 required notice as "CNR" (Eschelon-caused);²³⁹ (6) Despite its own
20 classification of five jeopardies with no FOC at all as CNR (Eschelon-
21 caused) in its own Review,²⁴⁰ Qwest testified that it is improper, under
22 Qwest's current process, to categorize the CLEC's inability to take the
23 circuit as a CNR jeopardy when Qwest did not provide an FOC after the
24 jeopardy cleared.²⁴¹ Qwest's statements contradict each other, and its
25 conduct contradicts its statements.
26

²³² Exhibit BJJ-5.

²³³ See, e.g., Exhibit BJJ-5 (entries for 2/26/04 and 3/4/04).

²³⁴ Exhibit BJJ-5.

²³⁵ Regarding the requirement to provide an FOC, see Exhibit BJJ-35, footnotes 4-5.

²³⁶ Webber Direct, p. 127; Exhibit BJJ-5, pp. 13 & 15.

²³⁷ Minnesota Transcript, Vol. 1, p. 37, line 20 – p. 38, line 6.

²³⁸ Minnesota Transcript, Vol. 1, p. 38, lines 17-19 (Ms. Albersheim); see also *id.* p. 37, line 20 – p. 38, line 6.

²³⁹ Minnesota Transcript, Vol. 1, p. 40, lines 5-14 (Ms. Albersheim) (8 examples clearly had no FOC). Compare *id.* p. 98, lines 23-25.

²⁴⁰ See Exhibit BJJ-35 (column two).

²⁴¹ Minnesota Transcript, Vol. 1, p. 95, lines 6-24.

1 Particularly in light of the most recent development in this saga – Qwest’s refusal
2 to review and root cause Eschelon’s data – these facts show that contractual
3 certainty is needed.

4 The timing of Qwest’s refusal to perform root cause of Eschelon’s data also
5 makes it difficult to accept Qwest’s stated reason for the change. Qwest and
6 Eschelon have been exchanging this data and working together to review and
7 address it for more than two years. Only after Eschelon has raised the issue in
8 arbitrations – so that the issue will receive Commission review and oversight –
9 has Qwest suddenly reversed course. Now, it appears that Qwest would rather
10 remain ignorant than work to solve this business problem. This may then free
11 Qwest to disclaim knowledge of any problems. In the context of Issue 12-64
12 (Acknowledgement of Mistakes and Root Cause Analysis), Qwest testified:
13 “Qwest has received no feedback that mistakes are a significant or ongoing
14 problem.”²⁴² The significance of such a claim is at best unclear if Qwest can
15 simply refuse to receive the feedback about mistakes and ongoing problems.
16 Eschelon is a multi-million dollar Qwest customer that is expressing genuine
17 concerns about the service Qwest provides, and Eschelon is providing back-up
18 data directly to Qwest to support those concerns and help resolve the problems.
19 Taking these facts into account and in the absence of any legitimate reason to

²⁴² Albersheim Direct, p. 46, lines 11-12.

1 ignore examples provided by Eschelon, Qwest's refusal suggests that it may be
2 potentially retaliatory for Eschelon's having raised issues with the Commission.

3 **Q. HOW DO YOU RESPOND TO QWEST'S ARGUMENT THAT OTHER**
4 **CLECS HAVE REQUESTED CHANGES TO JEOPARDY NOTICES?**

5 A. Ms. Albersheim states that a "review of the CMP change request archives shows
6 that change requests have been submitted by Eschelon, McLeodUSA, MCI,
7 Qwest, and Sprint"²⁴³ She provides no further elaboration. Eschelon, therefore,
8 conducted its own review of Qwest's CMP archive and found eleven change
9 requests on this subject.²⁴⁴ It is not surprising to find that none of these change
10 requests asked Qwest to stop providing CLECs with notice before delivering
11 service or change the process to say that Qwest may classify a Qwest-caused
12 jeopardy as CLEC-caused jeopardy. Of the eleven change requests located by
13 Eschelon, four were withdrawn, four were completed, and three were denied. The
14 four completed change requests asked Qwest to send FOCs before sending
15 jeopardies; to not prematurely identify a jeopardy as CNR before 5pm on the due
16 date; to allow the CLEC a designated time frame to respond to a released delayed
17 order after Qwest sends an updated FOC; and to automate Qwest's internal

²⁴³ Albersheim Direct, p. 69, lines 9-10.

²⁴⁴ As Ms. Albersheim did not provide the change request numbers or any other helpful information, Eschelon took on finding these change requests itself. See Exhibit BJJ-22. They are change request numbers SCR021403-1 (MCI); 5097684 (McLeod); 4381492 (Sprint); PC072303-1 (Eschelon); PC081403-1 (Eschelon); PC022105-1 (Eschelon); SCR030204-04 (Eschelon); SCR021904-02 (Eschelon); PC112901-1 (Qwest); 30623 (Qwest). For completeness Eschelon also added change request SCR061405-03ESDR made by VCI Company – a CLEC not named by Ms. Albersheim on this point. Albersheim Direct, p. 69, lines 9-10.

1 jeopardy process (a Qwest change request).²⁴⁵ None of the requested changes
2 (whether completed, withdrawn, or denied) would require a change to the
3 interconnection agreement language proposed by Eschelon. Although Qwest
4 states that CMP is “intended to give all parties equal participation when it comes
5 to changing Qwest’s processes,”²⁴⁶ only Qwest may unilaterally deny a change
6 request in CMP, as Qwest did for three of these eleven change requests.

7

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

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

10 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-74.**

11 A. Issue 12-74 relates to “Fatal Errors” – situations in which Qwest does not have
12 enough data, or the correct data, to process Eschelon’s service request. In these
13 situations Qwest will send Eschelon a “Fatal Rejection Notice.” Generally, if the
14 CLEC submitted an order with a fatal error that caused a Fatal Rejection Notice,
15 the CLEC has to resubmit the service order, which typically results in a delayed
16 due date for the service order completion. Qwest may also send the CLEC the
17 Fatal Rejection Notice in error. The issue is whether Eschelon must resubmit its
18 service request (and probably face a delay) in situations when the Fatal Rejection
19 Notice was a result of Qwest’s, rather than Eschelon’s, error. Eschelon proposes
20 that, if the Fatal Rejection Notice was a result of Qwest’s error, Qwest will

²⁴⁵ See Exhibit BJJ-22.

²⁴⁶ Albersheim Direct, p. 69, lines 4-5; see Starkey Direct, pp. 41-42 (discussion of voting in CMP).

1 resume processing the order without requiring a supplemental order. Qwest's
2 proposal for this section is to reference its PCAT.

3 As I explained in my direct testimony,²⁴⁷ the proposed ICA already contains
4 agreed-upon language stating the course of action if the Fatal Rejection Notice
5 was caused by the CLEC's error. Eschelon's proposed language parallels and
6 completes the already agreed-upon language by specifying the course of action
7 for the alternative scenario (Qwest's error). My direct testimony provides the
8 citations from Qwest's PCAT showing that Eschelon's proposal reflects Qwest's
9 current practices.²⁴⁸ I also explain why Qwest's argument that Eschelon's
10 proposal would prevent Qwest from modifying its system notices is incorrect by
11 pointing out that Eschelon's proposal does not affect the form or content of the
12 Fatal Rejection Notice.²⁴⁹

13 **Q. HOW DOES QWEST RESPOND TO ESCHELON'S PROPOSAL**
14 **REGARDING ISSUE 12-74?**

15 A. Ms. Albersheim once again argues that this issue belongs under Qwest's control
16 within the CMP and Qwest's PCAT.²⁵⁰ Although Eschelon addresses this generic
17 argument in the testimony of Mr. Starkey, it is worth noting that this argument is
18 particularly inappropriate for Issue 12-74. While Ms. Albersheim refers to

²⁴⁷ Webber Direct, pp. 134-135.

²⁴⁸ Webber Direct, pp. 132-133.

²⁴⁹ Webber Direct, p. 134.

²⁵⁰ Albersheim Direct, p. 65.

1 Eschelon’s proposed language on fatal rejects as “process detail” that cannot be
2 addressed in an interconnection agreement (only in Qwest’s PCAT),²⁵¹ in fact,
3 Qwest is perfectly willing to include such “process detail” when it obligates
4 Eschelon — in this case, to resubmit an order after it has submitted a service
5 request in error and received a fatal reject. See below language agreed upon by
6 Qwest in 12.2.7.2.6.1 (the underlined portion represents Eschelon’s proposal on
7 Issue 12-74):

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

12 Only when Eschelon proposes language addressing the symmetric circumstance
13 — Qwest submitting a fatal rejection notice in error — does Qwest insist upon the
14 PCAT. Eschelon’s proposed language, opposed by Qwest, is shown below:

15 12.2.7.2.6.2 If Qwest rejects a service request in error, Qwest will
16 resume processing the service request as soon as Qwest knows of
17 the error. At CLEC’s direction, Qwest will place the service
18 request back into normal processing, without requiring a
19 supplemental order from CLEC and will issue a subsequent FOC
20 to CLEC.
21

22 Clearly, if Qwest agreed to include the first paragraph in the contract, it cannot
23 logically object to including the second paragraph on the grounds that it contains
24 “process detail.”

25 **Q. DOES MS. ALBERSHEIM MAKE ANY OTHER ARGUMENTS?**

²⁵¹ *Id.*, lines 18-20.

1 A. Yes. Ms. Albersheim makes another argument that I already addressed in my
2 direct testimony – that Eschelon’s proposal would prevent Qwest from making
3 modifications to systems that generate Fatal Rejection Notices.²⁵² As I explained
4 above and in my direct testimony,²⁵³ Eschelon’s proposal has nothing to do with
5 the generation, content or form of the Fatal Rejection Notice, and therefore, Ms.
6 Albersheim’s argument does not apply to Issue 12-74.

7 **Q. WHAT IS YOUR RESPONSE TO QWEST’S ARGUMENT THAT TWO**
8 **OTHER COMPANIES BESIDES ESCHELON (QWEST AND AT&T)**
9 **HAVE REQUESTED CHANGES TO PSONS OR FATAL REJECTION**
10 **NOTICES?**²⁵⁴

11 A. As I noted above, Ms. Albersheim’s method of addressing two different issues
12 (Issue 12-70 PSON and Issue 12-74 Fatal Rejection Notice) in the same sentence
13 is confusing. Ms. Albersheim mentions that AT&T and Qwest submitted change
14 requests on these issues to CMP, but provides no further detail. Eschelon’s own
15 review²⁵⁵ of Qwest’s CMP archive confirmed that none of the change requests
16 relating to PSONs asked Qwest to provide *less information* or stop providing
17 CLECs with PSONs.²⁵⁶ Similarly, none of the change requests relating to fatal
18 rejections contained any request by a CLEC, when Qwest rejects a service request

²⁵² Albersheim Direct, p. 65.

²⁵³ Webber Direct, p. 144.

²⁵⁴ Albersheim Direct, p. 66.

²⁵⁵ See Johnson Rebuttal and Exhibit BJJ-32Y to Johnson Rebuttal (Review of Change Requests on Fatal Rejection Notices in Qwest’s Archive).

²⁵⁶ See Exhibit BJJ-31 to Johnson Rebuttal.

1 in error, to not process the request when Qwest knows of the error. No CLEC
2 asked Qwest to place the responsibility for the Qwest error on CLEC, nor is a
3 CLEC likely to do so in the future.

4

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

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

7 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUES 12-76 AND 12-**
8 **76(A).**

9 A. *Loss and Completion Reports* are daily reports that Qwest provides to notify
10 Eschelon when its End User Customer changes to a different local service
11 provider (a “loss”) and when activity other than losses (such as changes to
12 service) occur on the End User Customer’s account (“completions”). Loss and
13 Completion Reports are necessary for Eschelon to properly bill its End User
14 Customers. Inaccurate information in these reports could lead to situations that
15 adversely affect the End User Customer’s service and Eschelon’s reputation, and
16 result in higher uncollectible revenues.²⁵⁷ Eschelon proposes that the contract
17 contain a list of information to be included in these reports in order to ensure that

²⁵⁷ As I explained in my direct testimony (p. 144), if Eschelon is not aware that a Customer has left, Eschelon continues to bill the End User Customer. The End User Customer may get upset, which reduces Eschelon’s chances of successful collection of the legitimate charges due from the End User Customer.

1 they serve their intended purpose.²⁵⁸ Although Eschelon's proposed list is the
2 same list that Qwest currently provides to CLECs, and that was developed as a
3 result of a lengthy joint effort by CLECs and Qwest in CMP,²⁵⁹ Qwest rejects
4 Eschelon's proposed language.

5 **Q. HOW DO YOU RESPOND TO THE ARGUMENTS QWEST MAKES IN**
6 **ITS DIRECT TESTIMONY AGAINST ESCHELON'S PROPOSAL?**

7 A. Ms. Albersheim acknowledges that Eschelon's proposal does not require any
8 change on Qwest's part.²⁶⁰ Further, Ms. Albersheim appears to acknowledge that,
9 under Eschelon's proposal, future changes can be made via an amendment to the
10 ICA.²⁶¹ Nonetheless, she claims that Eschelon's proposal would freeze the data
11 elements that appear on these reports²⁶² and prohibit any changes.²⁶³ Ms.
12 Albersheim is incorrect because Eschelon's proposal does not prohibit changes; it
13 only defines the *minimum* list of data elements that make these reports useful.
14 Eschelon's proposal does not preclude Qwest from providing *more* data elements.
15 As I explained in my direct testimony, the work to define what the minimum list
16 should contain has already been done in CMP.²⁶⁴ There is no reason for Qwest to

²⁵⁸ This information should include the Billing Telephone Number ("BTN"), the Working Telephone Number ("WTN"), service name and address, service order number, Purchase Order Number ("PON"), and the date the service order was completed.

²⁵⁹ Webber Direct pp. 146-147.

²⁶⁰ Albersheim Direct, p. 76 line 28 ("Eschelon's proposed language duplicates the data elements that appear on the loss and completion reports today").

²⁶¹ Albersheim Direct, p. 77 lines 3 & 4.

²⁶² Albersheim Direct, p. 76 line 26.

²⁶³ Albersheim Direct, p. 76 line 29.

²⁶⁴ Webber Direct, p. 147.

1 modify the reports in such a way as to provide *less* data if Qwest intends to
2 preserve the useful function of these reports.

3 Regarding Ms. Albersheim characterizations of Eschelon’s proposal (on this and
4 other issues) as “freezing” and “locking” terms in place,²⁶⁵ the FCC had a related
5 characterization of its own – permanence. When rejecting Qwest’s contention
6 that information posted on its website need not be contained in a publicly-filed
7 interconnection agreement, the FCC stated that “[a] ‘web-posting exception’
8 would render [Section 252(a)(1)] meaningless, since CLECs could not rely on a
9 website to contain all agreements *on a permanent basis*.”²⁶⁶ While the
10 interconnection agreement can be amended and therefore is not “permanent” in
11 the sense that it is frozen in time, set in stone, locked in place, *etc.*, the FCC
12 recognized that permanency, or certainty, is needed for the term of the contract
13 when not amended. Eschelon should be able to rely on the terms and conditions
14 for loss and completion reports, to make them useful and meaningful, during the
15 term of the agreement.

16 **Q. HOW DO YOU RESPOND TO MS. ALBERSHEIM’S ARGUMENT**
17 **REGARDING OBF INDUSTRY STANDARDS?**

18 A. Ms. Albersheim claims that “Eschelon’s language would preclude Qwest from

²⁶⁵ Albersheim Direct, p. 76, lines 26 & 29. *See also id.* p. 9, line 12; p. 27, lines 4-13; p. 65, lines 23-24; p. 66, line 15; p. 72, line 24; p. 77, lines 2 & 15; p. 79, line 22; p. 85, line 31; p. 87, line 20; p. 89, line 33; p. 90, line 2.

²⁶⁶ *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263, Notice of Apparent Liability for Forfeiture (rel. March 12, 2004) (“*Qwest Forfeiture Order*”) at ¶32 (emphasis added).

1 responding via the CMP to changes to these reports made in OBF industry
2 standards.”²⁶⁷ In my direct testimony, I referred to agreed upon language in
3 Section 12.2.4.1.2 relating to Customer Service Records (“CSRs”) as one example
4 of how the amount of information in the contract requested by Eschelon for Loss
5 and Completion Reports is similar to the amount of information provided in other
6 provisions in the contract.²⁶⁸ *CSRs are also subject to OBF industry*
7 *standards.*²⁶⁹ A review of the data elements in the ICA compared to OBF
8 documentation for CSRs shows the following:

9 Billing Name - Not specifically called out in OBF for CSI (CSR)
10 Service Address - Included in OBF through various fields.
11 Billing Address - Not specifically called out in OBF for CSI (CSR)
12 Service and Feature Description - Included in OBF through various fields.
13 Directory Listing Information - Included in OBF through various fields.
14 Long Distance Carrier Identity - Included in OBF as PIC and LPIC
15 fields.²⁷⁰

16
17 Applicability of OBF standards did not preclude inclusion in the interconnection
18 agreement of a list of data elements for CSRs similar in number and level of
19 specificity as the list proposed by Eschelon here for Loss and Completion
20 Reports,²⁷¹ even though that means they can not be eliminated for the term of the

²⁶⁷ Albersheim Direct, pp. 76, lines 31-21 and 77, line 1.

²⁶⁸ Webber Direct, p 146.

²⁶⁹ See, e.g., Customer Service Inquiry (CSI) Preparation Guide Part 2. ATIS/OBF-LSR-122. Similarly, ICA Section 12.2.7.2.1 provides, in agreed upon language, that the Firm Order Confirmation (“FOC”) will “follow industry-standard formats” but it also requires that the FOC must at a minimum contain the Due Date. See Webber Direct, p. 157.

²⁷⁰ See Customer Service Inquiry (CSI) Preparation Guide Part 2. ATIS/OBF-LSR-122.

²⁷¹ “Billing name, service address, Billing address, service and feature subscription, Directory Listing information, and long distance Carrier identity.” See ICA §12.2.4.1.2.

1 ICA unless amended. This does not imply that Qwest will be out of compliance
2 with OBF. Consistent with the above list, the fact that a carrier provides data
3 elements over and above the minimum requirements does not mean that the
4 carrier is not complying with the standards. Doing so is consistent with the
5 standards. In addition, changes other than elimination of a data element will
6 occur through industry standards bodies. For example, the standards-setting body
7 may change the number of characters in a field. Nothing about inclusion of the
8 data element in the ICA will prohibit Qwest from complying with that standard or
9 similar changes.²⁷² Ample opportunity remains to make many changes to the
10 format of the data elements, as well as to increase the number of them, to comply
11 with industry standards.

12 **Q. MS. ALBERSHEIM NOTES THAT A “REVIEW OF THE CMP CHANGE**
13 **REQUEST ARCHIVES SHOWS THAT CHANGE REQUESTS RELATED**
14 **TO LOSS AND COMPLETION REPORTS HAVE BEEN SUBMITTED BY**
15 **AT&T, COVAD, VCI COMPANY AND WORLDCOM.”²⁷³ DOES THIS**
16 **OBSERVATION PROVIDE SUPPORT AGAINST ESCHELON’S**
17 **PROPOSAL?**

²⁷² Qwest, however, has in the past chosen to deviate from industry standards. For example, although the billing name field in the OBF guidelines is 50 characters long, Qwest limited the billing name to 30 characters. See Memorandum Opinion and Order, *In re. Application of Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket 02-314 (Rel. Dec. 23, 2002), at footnote 162 to ¶51.

²⁷³ Albersheim Direct, p. 78, lines 4-6.

1 A. No. Ms. Albersheim provides no further elaboration other than that other CMP
2 participants “have an interest in proposing changes to the loss and completion
3 reports in the CMP.”²⁷⁴ Significantly, she does not provide any examples
4 showing that other CLECs have requested *less* data on Loss and Completion
5 Reports than the data elements provided today -- the *only* type of Change Request
6 that would be inconsistent with Eschelon’s proposed contract language. Eschelon
7 has reviewed those change requests, and not a single one requested *less* data on
8 Loss and Completion Reports.²⁷⁵

9 Eschelon has already described its efforts in CMP as to this issue.²⁷⁶ Of the six
10 other CLEC change requests relating to these reports, a CLEC withdrew one of
11 them, and Qwest completed three of them and denied the other two. The three
12 completed change requests asked Qwest to archive loss and completion reports, to
13 send the same data but to do so in EDI format, and to add a data element
14 (Wireless Indicator) to notify a CLEC when a customer moves to a wireless
15 carrier.²⁷⁷ None of the requested changes (whether completed, withdrawn, or
16 denied) would require a change to the interconnection agreement language
17 proposed by Eschelon.

²⁷⁴ As Ms. Albersheim did not provide the change request numbers or any other helpful information, Eschelon took on finding these change requests itself. *See*, Exhibit BJJ-23. They are change request numbers SCR100101-1 (AT&T); SCR112702-02 (MCI); SCR022703-12 (MCI); SCR051304-01 (AT&T); SCR111904-01 (VCI).

²⁷⁵ See Exhibit BJJ-23.

²⁷⁶ Webber Direct, pp. 148-149.

²⁷⁷ See Exhibit BJJ-23.

1 Ms. Albersheim goes on to argue that “Eschelon should have no more rights than
2 other CMP participants regarding whether or not the loss and completion reports
3 may change.”²⁷⁸ Qwest is a CMP participant as well. Eschelon (or any other
4 CLEC) has no ability in CMP to deny a Qwest change request. Qwest, in
5 contrast, simply denied two of the six other CLEC change requests.²⁷⁹ Qwest
6 attempts to reserve the right to say “whether or not the loss and completion
7 reports may change” for itself. Both under the Telecommunications Act²⁸⁰ and
8 the CMP Document,²⁸¹ however, the Commission retains authority over that
9 decision.

10 Ms. Albersheim also argues that Eschelon has many opportunities to object to a
11 Change Request to reduce the list of data elements provided on Loss and
12 Completion Reports before the Commission.²⁸² In essence, Ms. Albersheim is
13 suggesting that instead of exercising Eschelon’s right under the Act to raise Issues
14 12-76 and 12-76(a) in this arbitration after years of both CMP work and ICA
15 negotiations, Eschelon should forgo that right, wait until Qwest attempts to reduce
16 the usefulness of Loss and Completion Reports, and then run to the Commission
17 in a separate case when a problem is imminent. The Act does not require this of

²⁷⁸ Albersheim Direct, p. 77 , lines 19-21.

²⁷⁹ Exhibit BJJ-23 (CR SCR112702-02; CR SCR111904-01).

²⁸⁰ 47 U.S.C. §252.

²⁸¹ Exhibit BJJ-1, p. 100, §15.0 (“Without the necessity for a prior ADR Process, Qwest or any CLEC may submit the issue, following the commission’s established procedures, with the appropriate regulatory agency requesting resolution of the dispute. This provision is not intended to change the scope of any regulatory agency’s authority with regard to Qwest or the CLECs.” & “This process does not limit any party’s right to seek remedies in a regulatory or legal arena at any time.”)

²⁸² Albersheim Direct, p. 77, lines 22-24.

1 Eschelon. Additionally, this line of action is more expensive and less efficient
2 than deciding these issues in the pending arbitration, in which all of the parties
3 have already expended resources with the goal of obtaining a decision. Eschelon
4 needs contractual certainty on these important issues, which Ms. Albersheim's
5 approach will not provide. Including language in the interconnection agreement
6 will provide clarity, certainty and fewer future disputes -- all legitimate bases for
7 determining that specific language should be included in an interconnection
8 agreement. In the recent Verizon-CLEC arbitration in Washington, for example,
9 the Commission pointed to the likelihood of reducing the opportunity for future
10 disputes as a basis for including specific contract language in half (7 of the 14) of
11 the issues specifically addressed by the Commission in its Order.²⁸³

12

13 **SUBJECT MATTER NO. 42. TROUBLE REPORT CLOSURE.**

14 **Issue No. 12-86: ICA Sections 12.4.4.1; 12.4.4.2; 12.4.4.3**

15 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-86.**

16 A. As a wholesale provider to Eschelon, Qwest performs repair on circuits
17 supporting Eschelon's End User Customers. After Qwest fixes the problem,
18 Eschelon must know the cause of the initial problem (to adequately update its End
19 User Customer on the service problem and its repair) and actions taken by Qwest
20 to resolve the problem (to verify the accuracy of Qwest's repair bills to

²⁸³ *Washington Order No. 18* at ¶¶28, 31-32, 36, 42, 48, 58, 64; see also *Conclusions of Law* ¶¶102, 104,105, 106, 111, 112.

1 Eschelon).²⁸⁴ Eschelon proposes that Qwest continue to provide this important
2 information. Currently, Qwest provides the requested information through its
3 *Maintenance and Repair Invoice Tool*, so no change of process is necessary to
4 implement Eschelon's proposal.²⁸⁵

5 Eschelon's proposal to include a brief section on trouble report closure in Section
6 12 is consistent with the existing language and structure of the ICA, thus showing
7 that this type of information is suitable content for an interconnection agreement.
8 Eschelon's proposed language for Issue 12-86 is the next logical step in the
9 process that is described in Sections 12.4.1 (testing), 12.4.2 (trouble reports and
10 status), and 12.4.3 (resolving trouble reports). These sections describe the terms
11 and conditions for repairing a trouble, from the opening of a trouble report
12 through resolving it. Maintenance and Repair is incomplete without stating how
13 the trouble ticket – the ticket that is opened under Section 12.4.2 – is then closed.
14 Qwest proposes that this section of the ICA simply reference Qwest's web-based
15 PCAT, leaving this ICA section incomplete.

16 **Q. HOW DO YOU RESPOND TO THE ARGUMENTS QWEST MAKES**
17 **AGAINST ESCHELON'S PROPOSAL IN ITS DIRECT TESTIMONY?**

18 A. Ms. Albersheim makes the same generic argument that Qwest makes throughout
19 Section 12 – that this language belongs to CMP, and that Eschelon attempts to

²⁸⁴ Webber Direct, pp. 186-187.

²⁸⁵ Webber Direct, pp. 192-193.

1 lock in these procedures in the ICA.²⁸⁶ As I explained in my direct testimony,²⁸⁷
2 Eschelon has already litigated in a 271 proceeding whether Qwest should be
3 required to provide a statement of time and materials and applicable charges to
4 CLECs at the time maintenance and repair work is completed (as Qwest does with
5 its retail Customers). As a result, Eschelon spent almost two years working to
6 develop a solution, which is the web-based *Maintenance and Repair Invoice Tool*.
7 Before the Commission had oversight over the issue due to the 271 proceeding,
8 Qwest would not even entertain the idea of providing a statement of time and
9 materials to CLECs, even though it provides them to its retail Customers.
10 Multiple CLECs including Eschelon raised this need in CMP,²⁸⁸ but Eschelon had
11 to go to the state commission before Qwest would change its position and provide
12 nondiscriminatory treatment to CLECs.

13 Ms. Albersheim claims that it would be uneconomical to operate one way for
14 Eschelon, and another way for other CLECs.²⁸⁹ It would also be uneconomical to

²⁸⁶ Albersheim Direct, pp. 89-90. .

²⁸⁷ Webber Direct, pp. 192.

²⁸⁸ See <http://www.qwest.com/wholesale/downloads/2001/011221/122101email.pdf>, p. 13 of 21 (“More information on the bill is only a part of the request made by Allegiance, Covad, and Eschelon in their joint Escalation. With respect to billing, we also asked Qwest to ‘Ensure that CLECs receive notification, at the time of the activity, if a charge will be applied, because CLECs should not have to wait until the bill arrives to discover that Qwest charged for an activity.’ (Joint Suppl. Escalation, p. 9.) As Eschelon said at the most recent CMP meeting, the CLEC needs to know at the time of the event that a charge will apply. Immediately after the work is completed, Qwest needs to send CLEC a statement of services performed, testing results, and applicable charges (by telephone number) that will appear on CLEC’s next invoice. If Qwest is claiming that a charge was authorized, a process should also be in place to provide timely documentation as to who authorized the charge. If CLECs must wait until the bill is received, it will be a huge task to go back and analyze what happened in each situation and whether a charge should have been applied. All of these kinds of issues should be discussed and reviewed jointly before implementation.”).

²⁸⁹ Albersheim Direct, p. 87 lines 22-24.

1 dismiss the two-year effort of developing this tool. Because Qwest does not
2 currently operate one way for Eschelon and another way for other CLECs now,
3 there is certainly no reason to do so. This tool should be available with at least
4 the current functionality for the term of the ICA, unless amended. Without the
5 certainty of ICA language, Qwest decreases that functionality or eliminates the
6 tool, Eschelon will be back to square one, where it was before the 271
7 proceedings. Qwest should not be allowed to backslide in that manner, after
8 obtaining 271 approval in part on its assurances that it would provide this
9 information to Eschelon and other CLECs to prevent discrimination.²⁹⁰

10
11 **SUBJECT MATTER NO. 43. CONTROLLED PRODUCTION**

12 **Issue No. 12-87: ICA Section 12.6.9.4**

13 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 12-87.**

14 **A.** Eschelon needs certainty in the contract language that *controlled production*
15 *testing*,²⁹¹ consistent with current practice,²⁹² will continue to be necessary for a
16 *new implementation* effort and unnecessary for *re-certification*. With both new
17 implementations and updates to existing systems, Qwest conducts a series of tests
18 to make sure the interface systems are working properly. *Controlled production*
19 is one of these tests. It involves controlled submission of CLEC's real product
20 orders to the new or updated interface to verify that the data exchange between

²⁹⁰ See AZ 271 Order, ¶¶82-85. The Arizona "Staff agreed with Eschelon that this is a very important issue in need of resolution." *Id.* at ¶83.

²⁹¹ Webber Direct, pp. 194-195.

²⁹² Webber Direct, p. 197.

1 Qwest and CLEC is done according to the industry standard. A *new*
2 *implementation* effort involves transactions that CLEC does not yet have in
3 production within the current version of the electronic interface such as
4 *Interconnect Mediated Access* (“IMA”) interface.²⁹³

5 *Re-certification* is the process by which CLECs demonstrate the ability to
6 generate correct functional transactions for *updates* to the existing interface
7 systems, rather than implementation of new systems.²⁹⁴ Qwest’s current terms
8 allow a CLEC to forego controlled production if the CLEC does not plan to use
9 the new functionality of the updated existing system.²⁹⁵ This principle accurately
10 reflects that, if Eschelon does not plan to use the new functionality, it should not
11 have to expend resources on unnecessary controlled production. Eschelon
12 proposes that this be captured in the ICA language. Insertion of this language in
13 the ICA is particularly important because without it, the broader language of the
14 remainder of the paragraph in Section 12.6.9.4 may suggest that controlled

²⁹³ “At the time a CLEC migrates to a new release, any transaction(s) that the CLEC does not yet have in production using a current IMA EDI version is considered to be a new implementation effort.” See Qwest’s *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, p. 48 (“Recertification is the process by which CLECs demonstrate the ability to correctly generate and accept transactions that were updated for the new release.”), available at http://www.qwest.com/wholesale/downloads/2006/060425/IMA_EDI_Implementation_Guidelines_19_2_042406.pdf; see also Qwest’s *XML Implementation Guidelines – for Interconnect Mediated Access*, Version 20, p. 41 (same sentence, except that the acronym “EDI” is omitted after “IMA”); available at http://www.qwest.com/wholesale/downloads/2006/061030/IMA_XML_Implementation_Guidelines_20_0_10_30_06.pdf

²⁹⁴ Webber Direct, p. 195 lines 11-15 citing the closed language in the proposed ICA.

²⁹⁵ Qwest’s *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, pp. 48 and 50, quoted in Webber Direct, pp. 202-203. The IMA Release 20.0 (to which Eschelon may move in approximately February of 2007) contains similar provisions on pp. 41-42 (http://www.qwest.com/wholesale/downloads/2006/061030/IMA_XML_Implementation_Guidelines_20_0_10_30_06.pdf).

1 production is required for re-certification, when it is not.²⁹⁶ Although this
2 principle will not change during the ICA term, Qwest is attempting to reserve the
3 right to impose the costs of unnecessary controlled production on Eschelon by
4 changing those terms with no corresponding change in the ICA. Qwest admits
5 that Eschelon's proposal accurately reflects the status quo,²⁹⁷ yet Qwest does not
6 agree to Eschelon's proposal.

7 **Q. IS IT CORRECT THAT ESCHELON MADE ANOTHER PROPOSAL ON**
8 **THIS ISSUE SINCE THE FILING OF ITS DIRECT TESTIMONY?**

9 A. Yes. Eschelon made an alternative proposal to address Qwest's concerns
10 expressed during the Minnesota arbitration hearing on this issue. This proposal is
11 in addition to the proposal listed on p. 196 of my direct testimony, which is now
12 Proposal 1. The new proposal reads as follows:

13 **Proposal 2**²⁹⁸
14 12.6.9.4 Controlled Production – Qwest and CLEC will perform
15 controlled production for new implementations, such as new
16 products, and as otherwise mutually agreed by the Parties. The
17 controlled production process is designed to validate the ability of
18 CLEC to transmit EDI data that completely meets X12 (or
19 mutually agreed upon substitute) standards definitions and
20 complies with all Qwest business rules. Controlled production
21 consists of the controlled submission of actual CLEC production
22 requests to the Qwest production environment. Qwest treats these
23 pre-order queries and orders as production pre-order and order

²⁹⁶ Webber Direct, p. 198. The first sentence of Section 12.6.9.4 broadly states: "Qwest and CLEC will perform controlled production."

²⁹⁷ Albersheim, p. 98, lines 1-3.

²⁹⁸ This proposal was made recently to address Qwest's concerns expressed during the Minnesota arbitration hearing on this issue. The ICA and Disputed Issues Matrix filed with Eschelon's Petition on September 8, 2006 do not include this proposal as it was offered to Qwest in negotiations after the Petition was filed with respect to this same issue.

1 transactions. Qwest and CLEC use controlled production results to
2 determine operational readiness. Controlled production requires
3 the use of valid account and order data. All certification orders are
4 considered to be live orders and will be provisioned.

5

6 **Q. HOW DO YOU RESPOND TO THE ARGUMENTS THAT QWEST**
7 **MAKES IN ITS DIRECT TESTIMONY AGAINST ESCHELON'S**
8 **PROPOSAL REGARDING ISSUE 12-87?**

9 A. Ms. Albersheim's first argument is that it is not appropriate for participation in
10 controlled production testing to be negotiable because "only Qwest can determine
11 when and how CLECs must test their use of these interface systems."²⁹⁹ In
12 support of her argument, Ms. Albersheim quotes from the CMP document.³⁰⁰ As
13 I explained in my direct testimony and footnote above (citing the Implementation
14 Guidelines, both IMA-EDI and IMA-XML), Qwest's own implementation
15 guidelines for IMA (the name of Qwest's computer-to-computer electronic
16 interface³⁰¹) already specify that "Controlled Production is not required on any
17 EDI transaction that successfully completed Controlled Production testing in a
18 prior release."³⁰² Obviously, this CMP Document provision does not preclude

²⁹⁹ Albersheim Direct, p. 98 lines 8-11.

³⁰⁰ Albersheim Direct, p. 8, lines 2-9.

³⁰¹ Albersheim Direct, p. 93 lines 10-12 and 23.

³⁰² Qwest's *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, p. 50 (emphasis added) available at http://www.qwest.com/wholesale/downloads/2006/060425/IMA_EDImplementation_Guidelines_19_2_042406.pdf. This citation is included in Webber Direct, p. 198. As noted in footnote 229 of Webber Direct, Qwest does not submit its EDI Guidelines to the CMP process. The new IMA Release 20.0 (to which Eschelon may move in approximately February of 2007) contains similar provisions on p. 42

1 this practice, as the practice and the CMP Document provision co-exist today.

2 **Q. PLEASE EXPLAIN WHY MS. ALBERSHEIM'S RELIANCE ON**
3 **QWEST'S CMP DOCUMENT WHEN DISCUSSING ISSUE 12-87**
4 **ISNOTABLE.**

5 A. With respect to this particular issue of the implementation of OSS applications,
6 Qwest is violating a previously agreed upon requirement to bring its IMA
7 implementation guidelines through CMP, which is another reason for Eschelon to
8 seek contractual certainty and include its proposed language (reflecting status
9 quo) into the ICA.

10 Qwest's *Wholesale Change Management Process Document*³⁰³ describes the
11 scope of CMP as including OSS implementations. It states:

12 Qwest will track changes to OSS Interfaces, products and
13 processes. This CMP includes the identification of changes and
14 encompasses, as applicable, Design, Development, Notification,
15 Testing, *Implementation*, Disposition of changes, etc. (See Change
16 Request Status Codes, Section 5.8). Qwest will process any such
17 changes in accordance with this CMP.³⁰⁴

18 This language was specifically added to the Scope section of the CMP Document
19 to ensure that the Implementation Guidelines would be within the scope of

http://www.qwest.com/wholesale/downloads/2006/061030/IMA_XML_Implementation_Guidelines_20_0_10_30_06.pdf.

³⁰³ See Exhibit BJJ-1 to Johnson Direct.

³⁰⁴ Exhibit BJJ-1 to Johnson Direct, section 1.0 p. 15 (emphasis added).

1 CMP.³⁰⁵ The CMP Document was created by a Redesign team. The Redesign
2 team maintained a list of action items and then noted when they were closed. The
3 minutes of the CMP Redesign meetings are posted on the Qwest web site. The
4 action item log was attached to the minutes as an attachment. Attachment 5 (the
5 action item log) to the March 5 through March 7, 2002 CMP Redesign meeting
6 minutes shows that Action Item Number 143 (“Is the EDI Implementation
7 Guideline under the scope of CMP?”; “Does Scope include documentation?”) was
8 closed in the affirmative in “Master Redline Section 1.0.”³⁰⁶ Specifically, the
9 team closed with the resolution: “The EDI Implementation Guideline will follow
10 the CMP guidelines and timeframes.”³⁰⁷ Therefore, as shown in the above-quoted
11 language, the Implementation Guideline is supposed to be within the scope of
12 CMP.³⁰⁸ Qwest obtained 271 approvals after completing these action items and
13 providing assurances such as this one about CMP to CLECs, including Eschelon
14 (which was a member of the CMP Redesign Core Team) and regulators.

15 Despite Qwest’s assurances to the CMP Redesign team, Qwest does not submit
16 changes to the Implementation Guidelines (EDI and XML) through CMP. An
17 example is the way Qwest treated its IMA Release 20.0 Implementation

³⁰⁵ See Exhibit BJJ-29 to Johnson Direct containing Excerpts from Final Meeting Minutes of CLEC-
Qwest Change Management Process Re-design meeting dated March 5-March 7, 2002 (Att. 5,
Action Item 143).

³⁰⁶ *Id.*

³⁰⁷ *Id.* (final column for Action Item 143).

³⁰⁸ As shown in the above quote from the CMP Document, the Scope includes all “Implementation”
documentation. The fact that Qwest is moving from EDI to XML does not change that the
Implementation Guideline for the application-to-application interface, whatever it is called, is within
the Scope of CMP and changes to those guidelines should be submitted to CMP.

1 Guidelines, which was announced via a non-CMP notice and was effective
2 immediately.³⁰⁹ In the Minnesota Arbitration of the same contract language,³¹⁰
3 Qwest testified that the IMA Implementation Guideline documents are not and
4 should not be under the CMP control³¹¹ -- without citing any documentation in
5 Qwest's posted CMP Redesign materials to support this statement, which is
6 contrary to the closure of Action Item 143.

7 The fact that Qwest is violating its previously agreed upon policy of bringing its
8 IMA implementations through CMP is another reason for Eschelon to seek
9 contractual certainty and include its proposed language (reflecting status quo) into
10 the ICA. If Qwest's proposal is adopted, Qwest could just as easily – with same
11 day notice and no CMP activity, much less any amendment to the ICA – impose
12 the costs of unnecessary controlled production upon Eschelon for functionality it
13 will not use. This is an important issue that Eschelon has properly raised under
14 Section 252, and Qwest should not be able to impose such costs on Eschelon
15 without an amendment to the contract.

16 **Q. DO YOU AGREE WITH MS. ALBERSHEIM'S CHARACTERIZATION**
17 **OF QWEST'S OSS AS SYSTEMS DESIGNED TO MEET QWEST'S**
18 **INTEREST?**

19 A. No. Ms. Albersheim incorrectly represents OSS as systems that exist to meet

³⁰⁹ This notice is contained in attachment BJJ-15 to Johnson Direct.

³¹⁰ MN PUC Docket No. P-5340, 421/IC-06-768.

³¹¹ MN PUC Docket No. P-5340, 421/IC-06-768, Surrebuttal Testimony of Renee Albersheim, p. 44
lines 4-10.

1 Qwest's interests, when in reality OSS exist to meet CLECs' interests as well. For
2 example, the FCC 271 orders specifically explain this in the following citations:

3 The Commission has defined OSS as the various systems,
4 databases, and personnel used by incumbent LECs to *provide*
5 *service to their customers.*³¹²
6

7 Finally, a BOC must demonstrate that its *OSS is designed to*
8 *accommodate both current demand and projected demand for*
9 *competing carriers' access* to OSS functions. Although not a
10 prerequisite, the Commission continues to encourage the use of
11 industry standards as an appropriate means of *meeting the needs of*
12 *a competitive local exchange market.*³¹³
13

14 Qwest's unilateral dictation of controlled production may be what is best for
15 Qwest, but it may not be in the best interest of CLECs. Eschelon has no issue
16 with negotiating a fair controlled production scenario as long as Qwest can
17 provide a substantial need for controlled production test for recertification. Note
18 that Eschelon's proposed language specifies that "Controlled production is not
19 required for recertification, unless the Parties agree otherwise."³¹⁴ As opposed to
20 Qwest's position expressed in Ms. Albersheim's testimony,³¹⁵ Eschelon is not
21 asking for a unilateral determination that controlled production is never required.
22 Eschelon's language commits Eschelon to use controlled production other than
23 for recertifications, such as for new products.

³¹² Qwest 9-State 271 Order, p. 18 footnote 83.

³¹³ New York 271 Order, ¶88 (footnotes omitted; emphasis added).

³¹⁴ Webber Direct, p. 196 lines 15-18 (italics added for emphasis). This is Eschelon's Proposal 1. As seen from the above quoted Eschelon's Proposal 2, it contains a similar clause: "Controlled Production – Qwest and CLEC will perform controlled production for new implementations, such as new products, and as otherwise mutually agreed by the Parties" (italics added for emphasis).

³¹⁵ Albersheim Direct, p. 98 lines 9-11.

1 **Q. MS. ALBERSHEIM ALSO ARGUES THAT IF ESCHELON IS GIVEN A**
2 **WAIVER FROM CONTROLLED PRODUCTION, IT MAY HAVE**
3 **NEGATIVE IMPACTS ON OTHER CLECS THAT USE OSS. PLEASE**
4 **RESPOND.**

5 A. There is no “waiver,” because controlled production is not required now for
6 recertification. As I explained in my direct testimony³¹⁶ and as confirmed by Ms.
7 Albersheim,³¹⁷ currently Qwest allows CLECs to forego controlled production
8 testing for recertification. Obviously, Qwest does not consider the fact that some
9 CLECs will forego the test for recertification as being a threat to other CLECs, or
10 it would not have allowed this term for some time. Ms. Albersheim speculates
11 that in the future Qwest’s OSS may require controlled production testing for all
12 cases of system upgrades.³¹⁸ Eschelon’s proposed language does not guarantee
13 that Eschelon would never participate in controlled production for recertification.
14 Qwest and Eschelon should be able to discuss what Qwest perceives as "potential
15 harm" and develop a resolution for recertification. Eschelon has an incentive to
16 avoid harm as well.

17

³¹⁶ Webber Direct, p. 197 citing Qwest’s *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2. The new IMA Release 20.0 (to which Eschelon may move in approximately February of 2007) contains similar provisions on pp. 41-42 (http://www.qwest.com/wholesale/downloads/2006/061030/IMA_XML_Implementation_Guidelines_20_0_10_30_06.pdf).

³¹⁷ Albersheim Direct, p. 98 lines 1-3.

³¹⁸ Albersheim Direct, p. 98 lines 8 and 17-22.

1 **CLOSED SECTION 12 ISSUES: SUBJECT MATTERS 35, 37, 38, 39**
2 **AND 40 (ISSUES 12-75 AND SUBPART, 12-77, 12-78, 12-80 AND**
3 **SUBPARTS, AND 12-81)**

4 **Q. HAVE ANY OF THE SECTION 12 ISSUES CLOSED SINCE**
5 **ESCHELON'S FILING OF ITS PETITION?**

6 **A. Yes. Five subject matters have been closed since the filing of Eschelon's Petition.**

7 Below is the closed language for each closed Subject Matter:

8 **SUBJECT MATTER NO. 35. TAG AT DEMARCATION POINT --**
9 **Issues Nos. 12-75 and 12-75(a): ICA Sections 12.3.1 and subpart;**
10 **12.4.3.6.3**

11 **Issue 12-75**

12 12.3.1 Demarcation Point.

13 12.3.1.1 If CLEC requires information identifying the Demarcation Point
14 to complete installation, Qwest will provide to CLEC information
15 identifying the location of the Demarcation Point (e.g., accurate binding
16 post or Building terminal binding post information). If Qwest is unable to
17 provide such information, the Demarcation Point is not tagged, and CLEC
18 has dispatched personnel to find the Demarcation Point and is unable to
19 locate it, Qwest will dispatch a technician and tag the line or circuit at the
20 Demarcation Point at no charge to CLEC, if CLEC informs Qwest within
21 30 Days of service order completion.
22

23 **Issue 12-75(a)**

24 12.4.3.6.3 Whenever a Qwest technician is dispatched to an End User
25 Customer premises other than for the sole purpose of tagging at the
26 Demarcation Point, CLEC may request Qwest to place a tag accurately
27 identifying the line or circuit, including the telephone number or Qwest
28 Circuit ID, at the Demarcation Point if such a tag is not present. Qwest
29 will perform such tagging at no charge to CLEC. If CLEC is requesting
30 the dispatch solely for purposes of having Qwest tag the Demarcation
31 Point, see Section 12.3.1.1.
32

1 **SUBJECT MATTER NO. 37. TESTING CHARGES WHEN**
2 **CIRCUIT IS ON PAIR GAIN – Issue No. 12-77: ICA Section**
3 **12.4.1.5**

4 12.4.1.5.1 If the circuit is on Pair Gain, or like equipment that CLEC or
5 Qwest cannot test through, and CLEC advises Qwest of this, Qwest will
6 not assess testing charges. Whether other charges (including charges that
7 may have a testing component), such as dispatch charges, Maintenance of
8 Service charges or Trouble Isolation Charges, apply will be governed by
9 the provisions of this Agreement associated with such charges. See, e.g.,
10 Sections 6.6.4 & 9.2.5.2.
11

12 **SUBJECT MATTER NO. 38. DEFINITION OF TROUBLE**
13 **REPORT – Issue No. 12-78: ICA Section 12.4.1.7**

14 12.4.1.7 For the purposes of Section 12.4.1.8, “Trouble Report” means
15 trouble reports received via MEDIACC, CEMR, or successor systems, if
16 any, or reported to one of Qwest’s call or repair centers, and managed and
17 tracked within Qwest’s call center databases and Qwest’s WFA (Work
18 Force Administration) and MTAS (Maintenance Tracking Administration
19 System), and successor systems, if any.
20

21 **SUBJECT MATTER NO. 39. CHARGES FOR REPEATS – Issues**
22 **Nos. 12-80, 12-80(a), 12-80(b) and 12-80(c): ICA Sections 12.4.1.8,**
23 **12.4.1.8.1, 6.6.4, and 9.2.5.2**

24 **Issues 12-80 and 12-80(a)**³¹⁹

25 12.4.1.8 Where Qwest has billed CLEC for Maintenance of Services or
26 Trouble Isolation (“TIC”) charges for a CLEC trouble report, Qwest will
27 remove such Maintenance of Services or TIC charge from CLEC’s
28 account and CLEC may bill Qwest for its dispatch(es) on Repeat
29 Troubles(s) to recover a Maintenance of Services or TIC charge or
30 CLEC’s actual costs, whichever is less, if all of the following conditions
31 are met:

32

33 e) CLEC’s demonstration of its technician dispatch on the Repeat Trouble;
34 provided that such demonstration is sufficient when documented by

³¹⁹ Issue 12-80(a) concerned language is Section 12.4.1.8.1. Section 12.4.1.8.1 was deleted as a separate section, and the content was moved to paragraph (i).

1 CLEC's records that are generated and maintained in the ordinary course
2 of CLEC's business.

3
4
5 (i) If, however, CLEC does not use remote testing capability, a
6 technician dispatch is required for both the prior and Repeat Trouble.
7 Where CLEC uses remote testing capability and provides the test
8 results described in subsection (d) of Section 12.4.1.8, CLEC must
9 demonstrate the technician dispatch pursuant to subsection (e) of
10 Section 12.4.1.8 only for the Repeat Trouble.

11
12 **Issue 12-80(b)**

13 6.6.4 When CLEC requests that Qwest perform trouble isolation with
14 CLEC, a trouble isolation charge (TIC) charge will apply when Qwest
15 dispatches a technician and the trouble is found to be on the End User
16 Customer's side of the Demarcation Point. If the trouble is on the End
17 User Customer's side of the Demarcation Point, and CLEC authorizes
18 Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC
19 the appropriate Additional Labor Charges set forth in Exhibit A in
20 addition to the TIC charge. No charges shall apply if CLEC indicates
21 trouble in Qwest's network and Qwest confirms that such trouble is in
22 Qwest's network. In the event that Qwest reports no trouble found in its
23 network on a trouble ticket and it is subsequently determined that the
24 reported trouble is in Qwest's network, then Qwest will waive or refund to
25 CLEC any TIC charges assessed to CLEC for that same trouble ticket. If
26 Qwest reported no trouble found in its network but, as a result of a repeat
27 trouble, CLEC demonstrates that the trouble is in Qwest's network, CLEC
28 will charge Qwest a trouble isolation charge as described in Section
29 12.4.1.8.

30
31 **Issue 12-80(c)**

32 9.2.5.2 When CLEC requests that Qwest perform trouble isolation with
33 CLEC, a Maintenance of Service Charge will apply when Qwest
34 dispatches a technician and the trouble is found to be on the End User
35 Customer's side of the Loop Demarcation Point. If the trouble is on the
36 End User Customer's side of the Loop Demarcation Point, and CLEC
37 authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will
38 charge CLEC the appropriate Additional Labor Charges and Maintenance
39 of Service Charge, if any, as set forth in Exhibit A at 9.20. No charges
40 shall apply if CLEC provides Qwest with test results indicating trouble in
41 Qwest's network and Qwest confirms that such trouble is in Qwest's
42 network. In the event that Qwest reports no trouble found in its network
43 on a trouble ticket and it is subsequently determined that the reported

1 trouble is in Qwest's network, then Qwest will waive or refund to CLEC
2 any Maintenance of Service Charges assessed to CLEC for that same
3 trouble ticket. If Qwest reported no trouble found in its network but, as a
4 result of a repeat trouble, CLEC demonstrates that the trouble is in
5 Qwest's network, CLEC will charge Qwest a trouble isolation charge as
6 described in Section 12.4.1.8.
7

8 **SUBJECT MATTER NO. 40. TEST PARAMETERS – Issue No.**
9 **12-81: ICA Section 12.4.3.5**

10 12.4.3.5 Qwest Maintenance and Repair and routine test parameters and
11 levels will be in compliance with Qwest's Technical Publications, which
12 will be consistent with Telecordia's General Requirement Standards for
13 Network Elements, Operations, Administration, Maintenance and
14 Reliability and/or the applicable ANSI standard.
15

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 A. Yes.