

BEFORE THE WASHINGTON STATE
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

CONFIDENTIAL

RESPONSIVE TESTIMONY

OF WILLIAM R. EASTON

QWEST CORPORATION

(Disputed Issue Nos. 2-3, 2-4, 5-6, 5-7, 5-7(a), 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88, 22-88(a), 22-88(b), 22-90, A-93, A-93(a), A-93(b), A-93(c), A-93(d) and A-95)

DECEMBER 4, 2006

REDACTED VERSION

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1 **I. IDENTIFICATION OF WITNESS**

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

3 A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle
4 Washington. I am employed as Director – Wholesale Advocacy. I am testifying on behalf
5 of Qwest Corporation (“Qwest”).
6

7 **Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT TESTIMONY**
8 **IN THIS PROCEEDING?**

9 A. Yes.
10

11 **II. PURPOSE OF TESTIMONY**

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my testimony is to respond to the Eschelon testimony of Mr. Denney.
14 Specifically I reply to Mr. Denney’s testimony as it relates to the following disputed issues:

- 15 ▪ Section 2 issues
- 16 ▪ Section 5 issues
- 17 ▪ Section 7 issues
- 18 ▪ Section 22 issues
- 19 ▪ Exhibit A issues
- 20

21 **III. SECTION 2 DISPUTED ISSUES**

22 **Issue No. 2-3**

23 **Q. MR. DENNEY ARGUES AT PAGE 6 OF HIS TESTIMONY THAT QWEST**
24 **“SEEKS TO CREATE A ‘DEFAULT’ THAT RATE CHANGES WILL BE GIVEN**

1 **ONLY A PROSPECTIVE EFFECT.” HOW DO YOU RESPOND?**

2 A. Qwest’s proposal avoids ambiguity in situations where a Commission order does not
3 specify a true-up requirement. In such situations, the Qwest language clarifies that the
4 appropriate implementation process is to apply the rates prospectively from the effective
5 date of the order. Eschelon’s proposed language is deficient in that it fails to address what
6 should be done in such a situation.

7
8 **Q. AT PAGE 7 MR. DENNEY STATES THAT SECTION 22 OF THE**
9 **INTERCONNECTION AGREEMENT (“ICA”) “ALREADY DEALS WITH THE**
10 **APPLICATION OF RATES IN EXHIBIT A AND DOES SO MORE**
11 **THOROUGHLY AND CLEARLY THAN QWEST’S PROPOSED SINGLE**
12 **SENTENCE HERE.” PLEASE COMMENT.**

13 A. Contrary to Mr. Denney’s assertion, Section 22 is silent as to what is to occur when a
14 Commission order does not specify a true-up of past billing. Section 22.4.1.2 states:

15 22.4.1.2 If the Interim Rates are reviewed and changed by the
16 Commission, the Parties shall incorporate the rates established by
17 the Commission into this Agreement pursuant to Section 2.2 of this
18 Agreement. Such Commission-approved rates shall be effective as
19 of the date required by a legally binding order of the Commission.

20 Although Mr. Denney claims on page 8 that the Qwest language creates ambiguity, he is
21 wrong. Under Qwest’s proposal, one looks first to the commission order to determine
22 when a rate applies. If the commission order fails to address the issue, a rate change is
23 applied prospectively. There is nothing ambiguous about Qwest’s language.

24
25 **Issue No. 2-4**

26 **Q. PLEASE COMMENT ON MR. DENNEY’S TESTIMONY REGARDING THE**
27 **CHANGE OF LAW LANGUAGE THAT IS AT DISPUTE IN ISSUE NO. 2-4.**

1 A. Although I disagree with Mr. Denney's characterizations of the Qwest proposed language,
2 I do agree with Mr. Denney that the change of law language should: 1) provide the parties
3 with clear guidance as to when a change of law will take effect; 2) not provide an
4 opportunity for any party to delay the effect of a change in law; and 3) preserve the
5 authority of the relevant regulatory body. The Qwest proposed language satisfies all three
6 of Mr. Denney's requirements. It provides specificity as to when a change of law will take
7 effect. It allows either party to give notice to make such change effective on the effective
8 date of the legally binding change. Finally, it preserves the authority of the regulatory
9 body.

10

11 **Q. AT PAGE 11 MR. DENNEY ARGUES THAT THE QWEST LANGUAGE IS**
12 **AMBIGUOUS. DO YOU AGREE?**

13 A. No. Mr. Denney argues that the term "specific implementation date" in the Qwest
14 language is a source of ambiguity, claiming that an order that the Commission states is to
15 be "effective immediately" could be considered to lack a "specific implementation date."
16 This interpretation strains credibility, as such an order would surely be deemed to be
17 effective on the date of the order, which is a specific date. In fact, it is the Eschelon
18 language that provides ambiguity by failing to specify an effective date when an order does
19 not include a specific implementation date and neither party provides notice to the other
20 party.

21

22 **Q IN MINNESOTA, ESCHELON RELIED ON AN ARIZONA PROCEEDING AS**
23 **SUPPORT FOR ITS POSITION THAT THE TERM "EFFECTIVE DATE" IS**
24 **AMBIGUOUS. IS THE ARIZONA PROCEEDING CITED BY ESCHELON**
25 **RELEVANT TO THIS LANGUAGE DISPUTE?**

1 A. No. The Arizona did not relate at all to the effective date of a cost docket order. It was
2 agreed by all parties to the proceeding that the ordered rates would apply on June 12, 2002.
3 Instead, the dispute in that proceeding related to when Qwest would have its systems
4 modified to reflect the new prices. That question is not addressed by this contract
5 language. This contract provision relates to the first question - namely the date that the
6 new rates apply.

7

8 **Q. AT PAGE 12 MR. DENNEY STATES THAT QWEST'S PROPOSAL CREATES**
9 **AN OPPORTUNITY FOR DELAY SINCE THE EFFECTIVE DATE OF A**
10 **CHANGE IN LAW DEPENDS ON WHETHER ONE PARTY GIVES THE OTHER**
11 **NOTICE. PLEASE COMMENT.**

12 A. Qwest's language removes any incentive for delay by providing that with notice by either
13 party within 30 days, the effective date of any resulting amendment shall be the effective
14 date of the change of law. This removes the ability of one party or the other to drag out the
15 negotiations of an amendment to establish a later implementation date of the change of law.
16 If neither party provides notice, the effective date of the change of law will be the
17 amendment date. This avoids the situation of either party being able to approach the other
18 party months or perhaps years after a change of law, request the agreement to be amended
19 to comply with the change of law and then expect that it be made effective of the effective
20 date of the change of law.

21 Qwest believes that this process is both simple and fair, as each party has an equal
22 opportunity to notify the other party of its intent with respect to changes in law. By
23 establishing a fair and straightforward process, the Qwest language will eliminate future
24 disputes over when an amendment should be made effective between the parties.

25

1 **Q. MR. DENNEY ARGUES THAT LIMITED RESOURCES MAY PREVENT**
2 **ESCHELON FROM HAVING KNOWLEDGE OF REGULATORY**
3 **PROCEEDINGS AND THUS IMPACT ITS ABILITY TO PROVIDE NOTICE. IS**
4 **THIS REALLY A CONCERN?**

5 A. No. I would note that Eschelon is by all appearances a sophisticated company with a great
6 deal of awareness of the regulatory environment. Regardless, in the age of the Internet,
7 with each state utility commission having its own homepage, it is difficult to argue that any
8 CLEC lacks easy access to relevant regulatory information.

9
10 **Q. ON PAGE 12 AND 13 MR. DENNEY CLAIMS THAT THE QWEST LANGUAGE**
11 **WOULD ALLOW FOR AN EFFECTIVE DATE DIFFERENT THAN THE DATE**
12 **ORDERED BY THE COMMISSION. IS MR. DENNEY'S INTERPRETATION**
13 **CORRECT?**

14 A. No. Mr. Denney ignores the first sentence of Qwest's change of law language, which
15 begins:

16 When a regulatory body or court issues an order causing a change
17 in law ***and that order does not include a specific implementation***
18 ***date. . . .*** [Emphasis added].

19 The Qwest language regarding the effective date of the change in law applies only when an
20 effective date is not specified.

21
22 **Q. HAS ESCHELON NOW OFFERED NEW ALTERNATIVE LANGUAGE FOR**
23 **SECTION 2.2?**

24 A. Yes. Eschelon has now offered another alternative to the previously proposed section 2.2
25 language. Eschelon is offering the following alternative language related to issue no. 2-4 -
26 change of law:

1 Each Party reserves its rights with respect to the effective date of a
2 legally binding modification or change of the Existing Rules and,
3 if different, other dates for implementation or application of an
4 order, if any. If a Party desires a particular deadline or time period
5 for application or implementation of any aspect of a proposed
6 order, the Party may request under the Commission's regularly
7 established rules that the Commission establish a specific
8 implementation date, stay the order, or provide other such relief as
9 applicable. If, however, the Commission enters an order that is
10 silent on the issue, the order shall be implemented and applied on a
11 prospective basis from the date that the order is effective either by
12 operation of law or as otherwise stated in the order (such as
13 "effective immediately" or a specific date), unless subsequently
14 otherwise ordered by the Commission or, if allowed by the order,
15 agreed upon by the Parties.

16 Qwest objects to this new language. Rather than providing a clear process for how the
17 parties are to proceed in cases of change of law as the Qwest language does, the new
18 Eschelon language appears only to preserve the parties' rights to resolve this issue at a
19 future time.

20
21 **Q. IN CONJUNCTION WITH ITS NEW PROPOSAL FOR SECTION 2.2, HAS**
22 **ESCHELON ALSO PROPOSED NEW RATE LANGUAGE FOR SECTION FOR**
23 **SECTION 22.4.1.2?**

24 A. Yes. As a part of its proposal for issue no. 2-3, Eschelon has proposed to add the following
25 sentence into section 22.4.1.2:

26 Each party reserves its rights with respect to whether Interim Rates
27 are subject to true-up. If, however, the Commission issues an
28 order with respect to rates that is silent on the issue of a true-up,
29 the rates shall be implemented and applied on a prospective basis
30 for the effective date of the legally binding Commission decision
31 in Section 2.2

32
33 **Q. DOES QWEST ACCEPT THE NEW ESCHELON LANGUAGE?**

34 A. No. Although Qwest believes the addition of clarifying language to Section 22 is
35 appropriate, Qwest believes the added language should read as follows:

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

5 The Qwest language removes any ambiguity. One looks first to the commission order to
6 determine when a rate applies. If the commission order fails to address the issue, a rate
7 change is applied prospectively.

8
9 **IV. SECTION 5 DISPUTED ISSUES**

10 **Q. BEFORE ADDRESSING THE SPECIFIC POINTS RAISED BY MR. DENNEY,**
11 **DO YOU HAVE A GENERAL COMMENT ON ESCHELON'S PAYMENT AND**
12 **DEPOSIT TESTIMONY?**

13 A. Yes. Eschelon devotes over 30 pages to criticizing Qwest's proposed payment and deposit
14 language, but devotes no space to explaining why Eschelon should not pay its bills on time.
15 In fact, Eschelon has a history of late and slow payment with Qwest and, as will be
16 discussed later in my testimony, pays its bills [BEGIN CONFIDENTIAL XXXXXXXXX
17 XXXX END CONFIDENTIAL] later than other CLECs. Although Eschelon claims that
18 it believes Qwest should have the ability to protect its financial interests when there is a
19 legitimate concern about future payment, Eschelon's past payment behavior and proposed
20 billing language belie this claim.

21 Mr. Denney speaks of "unilateral" action and "devastating" consequences related to
22 Qwest's proposed remedies in cases of non-payment, but fails to acknowledge that the
23 ability to prevent these consequences lies solely in Eschelon's hands. Eschelon need only
24 pay its *undisputed* bills in a timely manner to avoid consequences such as the
25 discontinuance of taking orders or deposit requirements. The payment and deposit

1 language that Qwest is proposing is simply a reasonable business precaution designed to
2 encourage timely payment and, when it does not occur, provide the ability for Qwest to
3 limit its financial risk. Similar language is contained in Qwest's Washington SGAT and in
4 the recently approved AT&T and Covad ICAs. Eschelon provides no compelling reason
5 why it should not abide by the same payment and deposit terms as other carriers.
6

7 **Issue Nos. 5-6, 5-7 and 5-7(a)**

8 **Q. AT PAGE 43 MR. DENNEY ARGUES THAT DISCONTINUING THE**
9 **PROCESSING OF ORDERS IS A VERY SERIOUS STEP THAT SHOULD ONLY**
10 **BE USED AS A LAST RESORT. DO YOU AGREE?**

11 A. Yes, I agree with Mr. Denney that this is a serious step. It is for this reason that the
12 language in this provision: (1) excludes disputed amounts; (2) provides that Qwest will not
13 take this action until payments are more than 30 days past due; and (3) requires that Qwest
14 provide notice to Eschelon (and the Commission) at least 10 business days in advance.
15 Again, it is important to note that the ability to avoid this serious step is solely within
16 Eschelon's control.
17

18 **Q. ON PAGE 44 OF HIS TESTIMONY MR. DENNEY REFERS TO "UNJUSTIFIED**
19 **DISCONNECTION OR DISRUPTION OF SERVICE ORDER PROCESSING."**
20 **DOES QWEST'S PROPOSED LANGUAGE ALLOW IT TO DISCONNECT**
21 **SERVUCE OR DISCONTINUE SERVICE ORDER PROCESSING**
22 **UNJUSTIFIABLY?**

23 A. No. Qwest will only disconnect service or discontinue order processing based on the fact
24 that Eschelon has not paid for services that Qwest has previously provided under the terms
25 of the contract. In light of this non-payment, Qwest is justified in limiting its exposure to

1 potential future non payment.
2

3 **Q. IS QWEST'S PROPOSED ORDER DISCONTINUATION LANGUAGE**
4 **CONSISTENT WITH ITS ICAS WITH OTHER CARRIERS?**

5 A. Yes. Similar language appears in the Washington SGAT and the recently approved
6 agreements with AT&T and Covad.
7

8 **Q. ON PAGES 47-48 MR. DENNEY DESCRIBES A RECENT INCIDENT WHERE**
9 **QWEST THREATENED TO STOP PROCESSING ORDERS BECAUSE OF**
10 **OVERDUE BALANCES. COULD YOU PLEASE DESCRIBE THE**
11 **CIRCUMSTANCES THAT LEAD UP TO THIS SITUATION?**

12 A, To begin with, this is not a situation that developed over night. Eschelon has a long history
13 with Qwest of ignoring payment due dates, paying less than it owes and misusing the
14 dispute process to avoid timely payment. In fact, despite the 30-day payment requirement
15 language in its ICAs, on average Eschelon takes over [BEGIN CONFIDENTIAL
16 XXXXXXXX END CONFIDENTIAL] to pay its monthly bills. This is [BEGIN
17 CONFIDENTIAL XXXXXXXXXXXXXXXXXXXX END CONFIDENTIAL] longer than other
18 CLECs incurring similar monthly charges. In May 2006, Eschelon's undisputed past due
19 amount was over three million dollars. Qwest determined Eschelon's undisputed past due
20 balance as follows. First, Qwest determined that, as of May 24, 2006, Eschelon's past due
21 balance, i.e., the total amount owing more than 30 days past due, stood at just over \$4M.
22 Qwest then subtracted from that past due balance every single dollar that Eschelon claimed
23 to be in pending dispute status, approximately \$932,000, regardless of the fact that Qwest's
24 records showed less than half that amount in pending dispute status. By this method,
25 Qwest determined that, even when viewed in the light most favorable to Eschelon,

1 Eschelon's *undisputed past due* balance (total past due less all amounts claimed to be in
2 dispute) indisputably exceeded \$3.1M as of May 24, 2006. Based on this significant
3 undisputed past due balance, Qwest notified Eschelon that, while Qwest was willing to
4 further discuss the discrepancy concerning the amounts in dispute, it would not tolerate
5 such a large past due balance and would therefore begin suspending service order activity if
6 the undisputed past due amounts were not paid within a month. Qwest's demand was fully
7 consistent with the parties' interconnection agreements and Qwest's tariffs since,
8 incontrovertibly, by virtue of such a large *undisputed* past due balance, Eschelon was in
9 default of its payment obligation under these agreements and tariffs.

10
11 **Q. WHAT WAS THE END RESULT OF QWEST'S THREATENED ACTION?**

12 A. After much discussion between the parties regarding the amounts in dispute, whether
13 checks that Eschelon sent to Qwest represented payment of past due balances or were for
14 current amounts due, and whether Eschelon's payments were for Eschelon or affiliated
15 companies, Eschelon ultimately paid the majority of undisputed past due balances by the
16 deadline set by Qwest. Qwest therefore agreed to defer order suspension, while reserving
17 all rights, even though Eschelon had not fully cured its default. Qwest continued to
18 monitor payments and notified Eschelon on August 11, 2006 that it had yet to fully cure the
19 default. Therefore, while the companies continue to work through a process to reconcile
20 the disputed amounts, Eschelon still carries a significant undisputed past due balance.

21
22 **Q. WHAT DID THIS COLLECTIONS DISPUTE DEMONSTRATE?**

23 A. This dispute is a clear demonstration that the payment and deposit language that Qwest
24 proposes in this arbitration is necessary and provides effective incentives for the parties to
25 work out their differences without having to involve the Commission in managing the

1 companies' business to business relationship. The fact that Eschelon's underpayment had
2 gone on for so long and was such a significant amount also demonstrates that threats of
3 suspending service order activity are not something that Qwest takes lightly or undertakes
4 for insignificant amounts.

5 **Q. ON PAGE 48 MR. DENNEY STATES THAT "ESCHELON PAID ALL AMOUNTS**
6 **ALLEGED BY QWEST." IS THIS REALLY WHAT HAPPENED?**

7 A. No. As I described above, Qwest required a payment based on the amount shown as past
8 due on its books less a figure provided by Eschelon itself for amounts in dispute. Qwest's
9 August 11, 2006 letter to Eschelon, contained in Mr. Denney's exhibit DD-3, makes clear
10 that, in determining the amount in default, Qwest was excluding the amount Eschelon
11 claimed was in dispute. In fact, as noted above, Eschelon paid the majority of what Qwest
12 was owed, but not all of what Qwest was owed. Eschelon still carries a significant past due
13 balance with Qwest. Based on this, Eschelon cannot now argue that it paid Qwest any more
14 than Qwest was owed.

15
16 **Q. ON PAGE 48 MR. DENNEY CLAIMS THAT ESCHELON PAID MORE THAN \$ 9**
17 **M TO QWEST. WAS ALL OF THE \$ 9 M RELATED TO UNDISPUTED PAST**
18 **DUE AMOUNTS?**

19 A. No. Mr. Denney's \$ 9 M figure includes payment for ongoing services and also for
20 amounts owed by companies affiliated with Eschelon that were not part of Qwest's
21 calculation of Eschelon's undisputed pas due amount. This confusion over what
22 constituted payment for ongoing services versus what amounts were to be applied to past
23 due balances versus what amounts were to be applied to Eschelon's accounts explains
24 some of the correspondence in DD-3 regarding whether amounts had been paid or not.

1 **Q. ON PAGE 55 MR. DENNEY ARGUES THAT THE INFORMATION USED BY**
2 **QWEST TO DETERMINE WHETHER TO DISCONNECT SERVICE OR**
3 **DISCONTINUE PROCESSING ORDERS IS NOT ALWAYS ACCURATE AND IS**
4 **EXTREMELY VAGUE. IS THIS TRUE?**

5 A. No. There are two figures relevant to determining undisputed past due amounts: total
6 amounts billed and amounts disputed by the billed party. Qwest provides detailed
7 information by Billing Account Number (BAN) for total amounts billed. With some minor
8 exceptions, due to LATAs that overlap state boundaries, these BANs correspond to states.
9 As to amounts in dispute, through the Change Management Process Qwest and the CLECs,
10 including Eschelon, have developed a formal disputes process to insure that disputes are
11 formally identified and resolved. Mr. Denney's claims are simply unfounded.

12
13 **Issue No. 5-8**

14 **Q. ON PAGE 45 MR. DENNEY CLAIMS THAT QWEST COULD DEMAND A**
15 **DEPOSIT EVEN WHEN THERE IS NO LEGITIMATE CONCERN ABOUT**
16 **ESCHELON'S ABILITY TO PAY. IS THERE ANY BASIS FOR SUCH A**
17 **CONCERN?**

18 A. No. Qwest's deposit requirements are triggered by a history of delinquent payments or a
19 credit review. Given that a company's credit standing and payment behavior is an
20 indicator of its ability to pay future bills, the fact that a company has a change in its credit
21 standing or a history of making delinquent payments raises a legitimate concern about that
22 company's risk of non payment.

23
24 **Q. MR. DENNEY STATES ON PAGE 45 THAT ESCHELON "CANNOT HAVE ITS**
25 **FINANCIAL RESOURCES TIED UP IN FRIVOLOUS DEPOSITS." PLEASE**

1 **COMMENT.**

2 A. Such deposits are certainly not frivolous from Qwest’s standpoint. Mr. Denney argues that
3 \$5.8 M is not real money to Qwest, but that is a considerable sum for any company, not to
4 mention a company like Qwest that is operating in today’s highly competitive
5 telecommunications marketplace. Mr. Denney’s argument also ignores the fact that
6 Eschelon is not Qwest’s only customer. The purpose of the payment language in an ICA is
7 to balance the needs of both the billing and billed parties. Mr. Denney focuses only on the
8 impacts of deposit requirements on Eschelon and ignores the necessity of deposits for
9 Qwest. Finally, Mr. Denney again fails to acknowledge that Eschelon need only pay its
10 bills on time to avoid deposit requirements.

11
12 **Q. ON PAGE 46 MR. DENNEY IMPLIES THAT QWEST’S DEPOSIT**
13 **REQUIREMENTS ARE SOMEHOW UNFAIR SINCE “QWEST WOULD NOT BE**
14 **FACED WITH PAYING ANY DEPOSIT TO ESCHELON.” DOES THIS**
15 **ARGUMENT MAKE SENSE?**

16 A. No. As Mr. Denney himself acknowledges in his footnote on page 43 of his testimony,
17 Eschelon is the party that purchases services from Qwest, not the other way around.
18 Deposits are designed to limit the risk of non payment. Given that Qwest is not purchasing
19 services from Eschelon, there is simply no reason for Qwest to pay a deposit to Eschelon.

20
21 **Q. ON PAGE 46 MR. DENNEY ATTEMPTS TO JUSTIFY THE NEED FOR**
22 **COMMISSION INVOLVEMENT IN DEPOSIT REQUIREMENTS BY ARGUING**
23 **THAT ESCHELON AND QWEST HAVE DISAGREEMENTS ABOUT BILLING**
24 **INFORMATION AND THEREFORE REQUIRE AN INDEPENDENT**
25 **ARBITRATOR. DO BILLING DISAGREEMENTS HAVE AN IMPACT ON**

1 **DEPOSIT REQUIREMENTS?**

2 A. No. The repeatedly delinquent deposit language in section 5.4.5 specifically applies to
3 undisputed amounts. Therefore, amounts that Eschelon disputes would not be subject to
4 the requirements laid out in section 5.4.5.

5
6 **Q. ON PAGE 63 THROUGH 66 MR. DENNEY DISCUSSES WHY HE BELIEVES**
7 **THE WORDS “NON DE MINIMUS” ARE NECESSARY IN THE DEPOSIT**
8 **LANGUAGE. WHY IS MR. DENNEY’S ARGUMENT FLAWED?**

9 A. Although Mr. Denney argues that there is a common understanding as to what constitutes a
10 “non de minimus” amount, Mr. Denney’s assertion that \$ 5.8 M is real money to Eschelon,
11 but not to Qwest, demonstrates that “de minimus” can have vastly different meanings
12 depending on the context and the party involved. More importantly, Eschelon has
13 presented no evidence that Qwest has ever invoked collections or deposit requirements
14 based upon insignificant amounts. The three million dollar dispute that I discussed
15 previously is a clear example of the fact that Qwest does not undertake these types of
16 actions for small amounts. Qwest’s proposed language has not resulted in problems that I
17 am aware of for carriers operating under the Washington SGAT, or under the AT&T and
18 Covad ICAs. Mr. Denney’s offer to substitute the words “non material” for non de
19 minimus is, again, a solution to a problem that does not exist.

20
21 **Issue No. 5-9**

22 **Q. ON PAGE 67 MR. DENNEY ARGUES THAT THERE ARE A NUMBER OF**
23 **COMPANIES WITH A DIFFERENT DEFINITION OF REPEATEDLY**
24 **DELINQUENT THAN QWEST IS PROPOSING IN THIS ARBITRATION AND**
25 **THAT QWEST IS THEREFORE HOLDING ESCHELON TO A DIFFERENT**

1 **STANDARD THAN OTHER COMPANIES. PLEASE COMMENT.**

2 A. As I discussed above, this same ‘repeatedly delinquent’ language appears in Qwest’s
3 SGAT as well as the recently approved agreements for AT&T and Covad. In fact, the
4 language was developed in the Section 271 workshops by Qwest and the participating
5 CLECs. The agreements cited by Mr. Denney are either very old agreements or are
6 wireless/paging agreements. For example, the ATI agreement in Washington was
7 approved in 1998 and the McLeodUSA agreement was signed in 2000. Qwest’s
8 agreements with wireline carriers have contained the ‘repeatedly delinquent’ language for
9 several years. For wireless/paging carriers, Qwest has not experienced the same magnitude
10 of non payment issues. Nonetheless, since early 2004 Qwest is using the same deposit
11 language being proposed here in all new contracts with wireless/paging carriers.

12
13 **Issue Nos. 5-11 and 5-12**

14 **Q. MR. DENNEY STATES ON PAGE 71, “THE KEY HERE IS THAT COMMISSION**
15 **OVERSIGHT IS PRESERVED AND QWEST IS NOT ALLOWED TO**
16 **UNILATERALLY DEMAND DEPOSITS.” IS THIS THE KEY?**

17 A. No. First, there is no need to insert the Commission into the parties’ business relationship
18 in an attempt to prohibit Qwest from utilizing standard and reasonable business practices.
19 Second, although Mr. Denney describes the actions of Qwest as unilateral, any action that
20 Qwest takes must first be triggered by Eschelon’s failure to pay its *undisputed* billing
21 amounts. There is no need for Qwest to invoke the deposit requirements if Eschelon pays
22 undisputed amounts in a timely manner.

23
24 **Issue Nos. 5-13**

25 **Q. MR. DENNEY ARGUES THAT QWEST SECTION 5.4.7 LANGUAGE, WHICH**

1 **ALLOWS FOR AN INCREASE IN A DEPOSIT BASED UPON A REVIEW OF A**
2 **PARTY’S CREDIT STANDING, IS UNNECESSARY. WHY DOES QWEST**
3 **BELIEVE THAT THIS LANGUAGE IS NECESSARY?**

4 A. Circumstances can change over the course of the parties’ business relationship. It only
5 makes sense that deposit requirements be allowed to reflect those changes. Although Mr.
6 Denney argues that the section 5.4.7 language nullifies the deposit language in 5.4.5, it is
7 actually complementary to the language in section 5.4.5 and allows for deposit
8 requirements to be revised as a party’s circumstances change. This same language is in the
9 Washington SGAT and the recently approved AT&T and Covad agreements. I am not
10 aware of other carriers objecting to this language or raising the issues that Eschelon raises
11 here.

12
13 **Q. DO YOU THINK THAT MR. DENNEY’S CONCERN THAT UNDER SECTION**
14 **5.4.7 THERE WOULD BE NO “TRIGGERING EVENT” THAT COULD BE USED**
15 **TO SELECT THREE MONTHS FOR CALCULATING A DEPOSIT AMOUNT IS**
16 **LEGITIMATE?**

17 A. No. The date of the credit review itself is the triggering event if Qwest determines that
18 Eschelon’s credit standing warrants the imposition of a deposit requirement.

19
20 **Q. DID ESCHELON PROPOSE ALTERNATE LANGUAGE FOR SECTION 5.4.7**
21 **DURING THE RECENT MINNESOTA ARBITRATION HEARING?**

22 A. Yes. Eschelon is now proposing to modify the Qwest language as indicated below:

23 5.4.7 If a Party has received a deposit pursuant to Section 5.4.5
24 but the amount of the deposit is less than the maximum deposit
25 amount permitted by Section 5.4.5, the Billing Party may review
26 the other Party's credit standing and increase the amount of deposit
27 required, if approved by the Commission, but in no event will the
28 maximum amount exceed the amount stated in Section 5.4.5.

1 Section 5.4 is not intended to change the scope of any regulatory
2 agency's or bankruptcy court's authority with regard to Qwest or
3 CLECs.
4

5 **Q. IS QWEST OPPOSED TO THE PROPOSED CHANGES?**

6 A. Yes. In addition to objecting to Eschelon's attempt to involve the Commission in normal
7 business processes, Qwest objects to the clause inserted at the beginning of the section.
8 This language is designed to prevent Qwest from asking for a deposit if a deposit has not
9 previously been requested. This undermines the purpose of section 5.4.7, which is to allow
10 deposit requirements to reflect a change in circumstances. A change in circumstances may
11 well warrant a deposit requirement despite the fact that a deposit has not been required
12 previously. Eschelon's language would prohibit this reasonable business practice and
13 should be rejected.
14

15 **Q. PLEASE SUMMARIZE QWEST'S PAYMENT AND DEPOSIT CONCERNS.**

16 A. Over the past several years, Qwest has found itself in the position of being left stranded
17 with large receivables when CLECs filed Chapter 7 bankruptcy and exited the local
18 exchange market. These recent experiences highlight the need for Qwest to have more, not
19 less, payment and credit protections. The payment and deposit language proposed by
20 Eschelon, especially considering the ability of other CLECs to opt-in to this agreement,
21 would unreasonably increase Qwest's financial exposure.

22 Qwest's proposed language strikes a balance between the needs of both parties, as reflected
23 by the fact that these same provisions were agreed to by the CLECs during the Section 271
24 workshops. In its testimony on payment and deposit issues, Eschelon ignores this balance
25 and instead focuses only on purported disadvantages to Eschelon. Eschelon devotes a
26 great deal of its testimony to criticizing Qwest's proposed language, but it offers no

1 explanation for why it should not pay its *undisputed* bills in a timely manner. In the end,
2 Eschelon offers no compelling reason why the payment and deposit language that was
3 agreed to by all parties during the Section 271 workshops, should now be modified.
4

5 **Issue No. 5-16**

6 **Q. IN DISCUSSING THE NON DISCLOSURE AGREEMENT ISSUE ON PAGE 78,**
7 **MR. DENNEY ARGUES THAT IF QWEST DOES NOT PROVIDE ESCHELON**
8 **WITH COPIES OF THE NON-DISCLOSURE AGREEMENTS, ESCHELON WILL**
9 **HAVE INSUFFICIENT INFORMATION TO OBJECT IF SENSITIVE**
10 **INFORMATION IS PROVIDED TO A QWEST EMPLOYEE NOT AUTHORIZED**
11 **BY THE ICA TO RECEIVE IT. IS THIS A VALID CONCERN?**

12 A. No. First, the Qwest language mandates very strict procedures for the handling of CLEC
13 forecasted information. Second, in addition to the stringent requirements set forth in
14 section 5.16.9.1, under section 18, Eschelon has further protection and recourse if it
15 believes that Qwest has misused confidential information. Section 18.3.1 of the ICA
16 provides that “either party can request an audit of the other party’s compliance with the
17 Agreement’s measures and requirements applicable to limitations on distribution,
18 maintenance, and use of proprietary or other protected information that the requesting party
19 has provided the other.”
20

21 **Q. TO SUPPORT HIS POSITION, ON PAGES 78 AND 79 MR. DENNEY CITES THE**
22 **NON-DISCLOSURE AGREEMENT IN THIS PROCEEDING WHICH REQUIRES**
23 **SIGNED COPIES TO BE CIRCULATED TO ALL COUNSEL. ARE THE TWO**
24 **SITUATIONS REALLY THE SAME?**

25 A. No. This proceeding is in fact very different than the on-going business operation that the

1 ICA's nondisclosure language covers. While this proceeding is of limited duration, the
2 business relationship between the parties is ongoing. As employees change jobs and new
3 employees take their place, Qwest will update the nondisclosure agreements. Providing the
4 agreements on a continual basis to Eschelon, and to any CLEC who opts into the parties'
5 ICA, creates an administrative burden for Qwest.
6

7 **V. SECTION 7 DISPUTED TRANSIT RECORD ISSUES**

8 **Issue No. 7-18 and 7-19**

9 **Q. ON PAGE 82 MR. DENNEY STATES THAT ESCHELON'S RECORDS DO NOT**
10 **ALLOW IT TO VALIDATE TRANSIT BILLING, THAT THE RECORDS ONLY**
11 **ALLOW IT TO INFER IF QWEST IS ACTING AS A TRANSIT PROVIDER. ARE**
12 **YOU AWARE OF INFORMATION THAT ESCHELON HAS AVAILABLE TO IT**
13 **THAT WOULD ALLOW IT TO VALIDATE QWEST'S TRANSIT BILLING?**

14 A. Yes. Eschelon has two sources of information that allows it to validate transit billing.
15 First, Qwest's monthly transit bills provide detail of transiting minutes by end office and
16 provide the company code of the terminating carrier. Attached, as Exhibit WRE-3, is a
17 sample of a Qwest transit bill, which indicates how this information is provided. Through
18 a comparison with the recordings from its own switch, Eschelon can validate that Qwest
19 transited these calls to the terminating carrier. In addition, presumably the terminating
20 carrier is billing Eschelon for termination. Eschelon can therefore compare the details of
21 the termination bill with the details of the Qwest transit bill to determine if there are
22 inconsistencies.
23

24 **Q. WAS THE QWEST TRANSIT RECORD PRODUCT DESIGNED TO PROVIDE**
25 **RECORDS TO ORIGINATING CARRIERS?**

1 A. No. The Qwest Category 11 transit record product was designed to create records for
2 terminating carriers, not originating carriers. To accomplish what Eschelon is asking,
3 Qwest would have to undertake a significant amount of additional programming. Since
4 other originating carriers have not requested these types of records, Qwest has not been
5 willing to expend the resources necessary to meet the needs of just one carrier.

6
7 **Q. HAS QWEST BEEN WILLING TO WORK WITH ESCHELON REGARDING ITS**
8 **TRANSIT VALIDATION ISSUES?**

9 A. Yes. Qwest billing personnel have had a number of discussions with Eschelon to explain
10 how billing validation can be accomplished. In addition, Qwest has offered to work with
11 Eschelon to provide some sample checking of selected end offices.

12

13 **VI. SECTION 22 DISPUTED ISSUES**

14 **Issue No. 22-88 and 22-88(a)**

15 **Q. MR. DENNEY ARGUES AT PAGE 167 THAT, “ESCHELON NEEDS THE SAME**
16 **CERTAINTY AND CLARITY REGARDING THE RATES THAT ESCHELON**
17 **CHARGES QWEST AS QWEST DESIRES REGARDING THE RATES QWEST**
18 **CHARGES ESCHELON.” DOES QWEST’S PROPOSED LANGUAGE PROVIDE**
19 **THIS CERTAINTY?**

20 A. Yes. Mr. Denney himself cites 4 pages of language that specifies when the CLEC may
21 charge rates from Exhibit A and when CLEC tariff rates apply. This agreed upon language
22 makes it very clear in what situations CLECs may charge Qwest and what rates apply.
23 Given the clarity of this language, no credence should be given to Mr. Denney’s claims that
24 Qwest’s language creates ambiguity or a false impression that Eschelon cannot charge for

1 services pursuant to the ICA. The reality is that all of the elements on the Exhibit A relate
2 to services that Qwest provides Eschelon. Only a small subset relate to services for which
3 Eschelon may charge Qwest. As Mr. Denney notes in his footnote on p. 43, Eschelon is
4 almost always the purchaser of services under the ICA. For the small number of cases
5 where Eschelon may charge Qwest, the language in the ICA, as demonstrated by Mr.
6 Denney's cited language, provides the necessary clarity.

7
8 **Q. DOES QWEST'S PROPOSED IDENTIFICATION OF THE QWEST**
9 **WASHINGTON ACCESS SERVICES TARIFF CAUSE CONFUSION AS MR.**
10 **DENNEY CLAIMS?**

11 A. No. Again, Mr. Denney himself cites agreed upon language from the ICA that makes it
12 clear when CLEC tariff rates apply. What is unclear is how the specification of the Qwest
13 tariff in the Exhibit A would cause any confusion. It has not caused confusion for other
14 carriers such as AT&T that have the same specification in their Exhibit A.

15
16 **Issue No. 22-88(b)**

17 **Q. ON PAGE 179 MR. DENNEY CHARACTERIZES QWEST'S CONCERN ABOUT**
18 **ISSUE 22-88(B) AS BEING ABOUT THE CREATION OF AN ADMINISTRATIVE**
19 **BURDEN. IS THAT REALLY THE ISSUE FOR QWEST?**

20 A. No. As I noted in my direct testimony, the issue is that this language is unnecessary, a
21 conclusion that reached by the administrative law judge when AT&T tried to insert similar
22 language into its ICA with Qwest.¹

23

¹ *In the Matter of the Petition for Arbitration of AT&T Communications of the Pacific Northwest and TCG Seattle, With Qwest Corporation, Pursuant to 47 U.S.C. Section 252(b).* Docket No. UT-033035. Order No. 4. Arbitrator's Report (December 1, 2003).

1 **Issue No. 22-90**

2 **Q. ISSUE 22-90 CONCERNS THE PROCESS TO BE FOLLOWED FOR**
3 **UNAPPROVED TELRIC RATES. HAVE THE PARTIES ATTEMPTED TO**
4 **REACH AGREEMENT ON THIS PROCESS?**

5 A. Yes. The parties have been discussing the language but have not been able to reach
6 agreement. Eschelon's proposal for Section 22.6.1 is as follows (with the language that has
7 not been agreed to by Qwest indicated by italics):

8 22.6.1 Qwest shall obtain Commission approval before charging
9 for a UNE or process that it previously offered without charge. If
10 Qwest offers a new Section 251 product or service or one that was
11 previously offered with a charge for which a price/rate has not
12 been approved by the Commission in a TELRIC Cost Docket
13 ("Unapproved rate"), Qwest shall develop a TELRIC cost-based
14 rate and submit that rate and related cost support to the
15 Commission for review within sixty (60) Days of the later of (1)
16 the Effective Date of this Agreement, or (2) Qwest offering the rate
17 to CLEC, unless the Parties agree in writing upon a negotiated rate
18 (in which case Qwest shall file the negotiated rate with the
19 Commission within 60 Days). Except for negotiated rates, Qwest
20 will provide a copy of the related cost support to CLEC (subject to
21 an applicable protective agreement, if the information is
22 confidential) upon request or as otherwise ordered by the
23 Commission. If the Parties do not agree upon a negotiated rate and
24 the Commission does not establish an Interim Rate for a new
25 product or service or one that was previously offered under Section
26 251 with an Unapproved Rate, CLEC may order, and Qwest shall
27 provision, such product or service using such Qwest proposed rate
28 until the Commission orders a rate. In such cases, the Qwest
29 proposed rate (including during the aforementioned sixty (60) Day
30 period) shall be an Interim Rate under this Agreement.

31
32 **Q. WHY DOES QWEST DISAGREE WITH ESHELON'S PROPOSED**
33 **MODIFICATIONS?**

34 A. Currently there is no formally defined process for dealing with unapproved rates. Qwest's
35 intent in negotiating this language is to establish a fair and reasonable process to handle
36 these situations. Qwest accepted Eschelon's originally proposed language because it

1 strikes an appropriate balance between Eschelon's reasonable need to have Qwest's rates
2 reviewed and Qwest's need to be compensated for services it provides. Eschelon's new
3 language disrupts this balance by creating the opportunity to delay or eliminate
4 compensation for services Qwest provides in the time period prior to the Commission
5 making a decision regarding the new rate.

6
7 **Q. WHY IS QWEST OPPOSED TO THE FIRST SENTENCE ESCHELON IS**
8 **PROPOSING FOR SECTION 22.6.1?**

9 A. Qwest has two objections to this sentence. First, Eschelon's language appears to apply to
10 pricing beyond Section 251 products and services. The TELRIC based cost support
11 discussed in this section is not appropriate beyond Section 251 products and services.

12 Eschelon's first sentence also raises the potential for arguments that Eschelon is entitled to
13 Qwest services for free. Such situations could arise (1) when Qwest has an approved rate,
14 but has been unable to bill; (2) where Qwest seeks to restructure rates for existing
15 products, giving rise to an argument that Qwest is not charging for something that it
16 previously provided for free, or (3) where there is disagreement about the application of a
17 previous rate. In each of these instances, Eschelon's language appears to impose an
18 obligation on Qwest to provide the product, but requires that Qwest do so without
19 compensation.

20
21 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S LANGUAGE REQUIRING**
22 **QWEST TO PROVIDE NOTICE AND COST SUPPORT TO ESCHELON EVERY**
23 **TIME QWEST FILES INTERIM RATES WITH THE COMMISSION?**

24 A. It is not clear what Eschelon's business need for this information is. The proposed rate
25 would not apply to carriers who already have a rate specified in their interconnection

1 agreement. For carriers who are negotiating an amendment or a new agreement, as a part
2 of the negotiations process, the cost support will be provided if requested. There is simply
3 no reason for Qwest to be required to notify all CLECs of a change that will not impact
4 them. Should the Commission open a cost docket to determine rates, it is my
5 understanding that CLECs in the state would be notified. It is this initiation of a
6 Commission proceeding that should serve as the trigger for Eschelon to get involved.

7
8 **Q. AT PAGE 185 MR. DENNEY ARGUES THAT IF ESCHELON IS NOT NOTIFIED**
9 **OF THE QWEST RATE FILINGS, IT WILL HAVE INSUFFICIENT TIME TO**
10 **REVIEW THE STUDIES PRIOR TO THE FILING OF TESTIMONY. PLEASE**
11 **COMMENT.**

12 A. If the timing of past cost dockets is any indication, this is not a realistic concern. The time
13 between the filing of a cost docket and the filing of testimony is entirely discretionary with
14 the Commission. CLECs generally get as much time as they need and are free to advocate
15 for whatever type of schedule they want.

16
17 **Q. DO THE PARTIES ALSO DISAGREE ABOUT THE LANGUAGE FOR SECTION**
18 **22.6.1.1?**

19 A. Yes. Eschelon's proposal for Section 22.6.1.1 is as follows (with the language that has not
20 been agreed to by Qwest indicated by italics):

21 22.6.1.1 For a UNE or process that Qwest previously offered
22 without charge, the rates in Exhibit A do not apply until Qwest
23 obtains Commission approval or the Parties agree to a negotiated
24 rate. If the Parties do not agree on a negotiated rate, the
25 Commission does not establish an Interim rate, and Qwest does not
26 submit a proposed rate and related cost support to the Commission
27 within the time period described in Section 22.6.1 for a new
28 product or service or one that was previously offered under Section
29 251 with an Unapproved Rate, the Unapproved rate(s) in Exhibit A
30 do not apply. Qwest must provision the such products and services

REDACTED

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER IN UT-063061

1 pursuant to ~~the~~ such terms of this Agreement, at no additional
2 charge, until Qwest submits the rate and related cost support to the
3 Commission for approval.
4

5 **Q. WHY IS QWEST OPPOSED TO THE ESCHELON'S PROPOSED CHANGES?**

6 A. Eschelon again inappropriately attempts to broaden the language beyond Section 251
7 products and services. In addition, as was the case with Eschelon's section 22.6.1
8 language, this language creates the possibility that Qwest will not be compensated for
9 services it provides.
10

11 **VII. EXHIBIT A DISPUTED ISSUES**

12 **Issue No. A-98**

13 **Q. HAS THIS ISSUE NOW BEEN CLOSED BY THE PARTIES?**

14 A. Yes. The following footnote will be added to the appropriate rates in Exhibit A to clarify
15 that there are no additional charges associated with the installation and disconnection of the
16 transport portion of the EEL:

17 The nonrecurring charges for the EEL transport element are
18 included in the EEL Loop and/or Multiplexed EEL nonrecurring
19 charges. Therefore there is no additional nonrecurring charge for
20 the EEL Transport. When an EEL transport circuit is commingled
21 with a Private Line Channel Termination circuit, the nonrecurring
22 charge for the commingled EEL will be the EEL Loop NRC.
23

24 **VIII. CONCLUSION**

25 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

26 A. Yes.