

**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**

**RESPONSIVE TESTIMONY  
OF KAREN STEWART  
QWEST CORPORATION**

**(Disputed Issue Nos. 4-5 (a,b,c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-50, 9-52, 9-53, 9-54, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a,b,c,d,e), 9-59, 9-61,(a,b,c), and 24-92.**

**December 4, 2006**

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is Karen A. Stewart. I filed direct testimony in this proceeding on  
4 September 29, 2006.

5  
6 **Q. WHAT IS THE PURPOSE OF YOUR RESPONSIVE TESTIMONY?**

7 A. My responsive testimony responds to the direct testimony of Eschelon witnesses Douglas  
8 Denney, Michael Starkey, and James Webber relating to the following issues as they are  
9 numbered in Qwest's petition for arbitration: Issue Nos. 4-5 (a,b,c), 9-31, 9-32, 9-33, 9-  
10 34, 9-35, 9-36, 9-39, 9-50, 9-52, 9-53, 9-54, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58  
11 (a,b,c,d,e), 9-59, 9-61,(a,b,c), and 24-92.

12  
13 **II. ISSUE NOS. 4-5 (a, b, c) - DESIGN CHANGES**

14 **Q. BASED ON THE PARTIES' DIRECT TESTIMONY, WHAT ISSUES RELATING**  
15 **TO DESIGN CHANGES REMAIN UNRESOLVED?**

16 A. There are two issues relating to design changes that remain in dispute. First, the parties  
17 continue to disagree concerning whether a charge for changes to connection facility  
18 assignments ("CFSs") should apply in the circumstance where a CFA is required while  
19 Qwest and Eschelon are performing a coordinated cut-over. This dispute is designated as  
20 Issue 4-5(a). Second, Mr. Denney's direct testimony confirms that there is a fundamental  
21 disagreement between Qwest and Eschelon concerning the rates that should apply to  
22 design changes involving unbundled dedicated interoffice transport ("UDIT"), unbundled  
23 loops, and CFA changes that Eschelon requests. This issue is designated as Issue 4-5(c).  
24 I address both of these issues in the testimony that follows.

1 **Q. WHICH ISSUES INVOLVING DESIGN CHANGES ARE NO LONGER IN**  
2 **DISPUTE?**

3 A. The parties have resolved the definition of "design change," and that issue is therefore no  
4 longer in dispute. In addition, Qwest is agreeing to Eschelon's proposed language for  
5 ICA Sections 9.2.3.8 and 9.2.4.4.2 – which is encompassed by Issue 4-5—that involves  
6 references to the fact that the ICA includes design change charges for unbundled loops.  
7 Accordingly, Issue 4-5 is also closed. Further, as I describe in my direct testimony,  
8 Qwest has accepted Eschelon's proposed language for ICA Section 9.6.3.6 that refers to  
9 the presence of design change rates for UDITs in Exhibit A of the ICA. Qwest's believes  
10 its acceptance of this language resolves Issue 4-5(b). However, Eschelon is apparently  
11 now taking the position that its proposals relating to design change are an inseverable  
12 "package" and that no remaining design change issues can be resolved unless Qwest  
13 accepts all of Eschelon's proposals for these issues. In other words, even though Qwest is  
14 accepting Eschelon's proposed language for Issue 4-5(b), Eschelon apparently still  
15 intends to litigate the issue.

16  
17 **Q. WITH RESPECT TO THE DESIGN CHANGE ISSUES STILL IN DISPUTE, AT**  
18 **PAGE 15 OF HIS TESTIMONY, MR. DENNEY ASSERTS THAT THERE IS A**  
19 **RISK THAT QWEST WILL STOP PROVIDING DESIGN CHANGE SERVICES**  
20 **TO ESCHELON. IS THIS ASSERTION CORRECT?**

21 A. No. Contrary to Mr. Denney's assertion, Qwest will continue to provide design change  
22 services to Eschelon at the rates for design changes listed in Exhibit A and, accordingly,  
23 has agreed to include in the ICA the definition of "design change" that Eschelon itself has  
24 proposed. The real dispute relating to design changes is not whether Qwest will agree to

1 provide them but, instead, whether Eschelon will agree to rates that compensate Qwest  
2 for the costs it incurs to perform them.

3  
4 **Q. MR. DENNEY ALSO ASSERTS AT PAGES 15-17 THAT QWEST INTENDS TO**  
5 **CHARGE A TARIFFED RATE FOR DESIGN CHANGES WITHOUT**  
6 **OBTAINING THE COMMISSION'S APPROVAL TO ASSESS A TARIFFED**  
7 **RATE. IS HIS ASSERTION CORRECT?**

8 A. No. While Qwest believes that design changes are not a service required under Section  
9 251 of the Act and therefore are not governed by the Act's cost-based pricing  
10 requirement, Qwest does not intend to begin charging Eschelon a tariffed rate. Instead,  
11 Qwest is agreeing to use the cost-based prices this Commission has adopted.

12  
13 **Issue No. 4-5(a)**

14 **Q. WITH RESPECT TO CHARGES FOR CFA CHANGES, HAS MR. DENNEY**  
15 **ACCURATELY DESCRIBED THE WORK REQUIRED FOR CFAS AND THE**  
16 **COSTS ASSOCIATED WITH THEM?**

17 A. No. As an initial matter, it is important to be clear about why Qwest is required to make  
18 CFA changes and to incur the costs they impose. CFA changes occur when a customer  
19 desires to obtain service from Eschelon instead of from Qwest or another carrier. After  
20 the new connect service order is submitted by Eschelon, a Qwest engineer must connect  
21 the customer's loop to Eschelon's equipment collocated in a Qwest central office. To  
22 enable Qwest to perform this connection on its behalf, Eschelon provides Qwest with a  
23 "connecting facility assignment" or CFA on the interconnection distribution frame  
24 ("ICDF") in Qwest's central office. In other words, Eschelon identifies the specific place  
25 on the ICDF where the Qwest engineer should connect the loop. In some cases, the ICDF

1 locations that Eschelon gives Qwest are incorrect, which requires a Qwest technician to  
2 remove the loop from one location on the ICDF and to reconnect the loop to another  
3 location on the ICDF.

4 Mr. Denney has mischaracterized the work required for a CFA change by simplistically  
5 analogizing it to unplugging a lamp from a socket and replugging it into a different  
6 socket. In his responsive testimony, Qwest engineering witness, Jeff Hubbard, describes  
7 the steps a Qwest engineer must take to complete a CFA and demonstrates that the  
8 completion of a CFA is not the simple task that Mr. Denney describes.

9  
10 **Q. AT PAGE 29 OF HIS DIRECT TESTIMONY, MR. DENNEY PROVIDES**  
11 **EXAMPLES OF CHARGES THAT ESCHELON HAS BEEN ASSESSED FOR**  
12 **CFAS IN AN ATTEMPT TO DEMONSTRATE THAT ESCHELON HAS PAID**  
13 **UNREASONABLE AMOUNTS FOR CFAS. WHAT DO THESE EXAMPLES**  
14 **ACTUALLY REVEAL ABOUT THE CFA ISSUE?**

15 A. Mr. Hubbard addresses these examples in his rebuttal testimony, demonstrating that  
16 Eschelon has not paid unreasonable amounts for CFAs. It is important to emphasize that  
17 since Eschelon provides the CFAs to Qwest, it is Eschelon's responsibility to have a  
18 quality control process in place to manage its CFAs. If it takes Eschelon multiple attempts  
19 to find a valid CFA, as suggested by Mr. Denney's examples, that reflects Eschelon's lack  
20 of inventory quality control in a central office. This lack of inventory control can also be  
21 a significant issue when it comes to timely repair issues. While these examples suggest  
22 that Eschelon's inventory records are seriously inaccurate, Qwest follows specific and  
23 established procedures to ensure that its records are accurate. Accordingly, when a CFA  
24 change occurs, Qwest confirms if a design change is required, and then makes all of the  
25 systems changes necessary to have a correct engineering record for that UNE.

1 If Eschelon is concerned about the costs it incurs for CFAs, it should improve its quality  
2 controls, not attempt to deny Qwest the full recovery of the costs imposed by Eschelon's  
3 use of defective CFAs. Indeed, the fact that Eschelon required Qwest to perform multiple  
4 CFAs, as occurred in Mr. Denney's examples, demonstrates why it is essential that Qwest  
5 be compensated for these activities. Qwest should not be required to perform work  
6 caused by Eschelon's incorrect CFAs and then not be fully compensated for the costs it  
7 incurs to perform that work.

8  
9 **Q. IS MR. DENNEY CORRECT IN ASSERTING AT PAGES 37-39 OF HIS DIRECT**  
10 **TESTIMONY THAT THE COSTS QWEST INCURS FOR CFAS PERFORMED**  
11 **DURING COORDINATED CUT-OVERS ARE MINIMAL AND LESS THAN**  
12 **OTHER CFAS?**

13 A. No. As I describe in my direct testimony at page 10, the presence of a Qwest technician  
14 in a central office who is performing a coordinated cut-over does not in any way  
15 eliminate the need for Qwest to re-review a CLEC's service order upon the submission of  
16 a CFA to determine if any engineering changes are required. Nor does the presence of a  
17 Qwest technician for a cut-over eliminate the need for a technician to disconnect a UNE  
18 connection from a frame and reconnect to another location on the frame or to another  
19 frame altogether. In addition, regardless whether a technician is already in a central  
20 office, Qwest must update its downstream operation support systems to reflect the new,  
21 correct CFA information.

22  
23 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 4-5(A)?**

24 A. The Commission should reject the language Eschelon is proposing for Section 9.2.3.9  
25 that would improperly prevent Qwest from recovering the costs it incurs for CFA

1 changes. There is no factual basis for Mr. Denney's assertion that the presence of a  
2 Qwest technician during a coordinated cut-over reduces the costs of CFA changes. Nor  
3 is there any factual basis for his claim that the rate for CFA design changes should be less  
4 than the rates for other design changes and that this particular type of design change  
5 should be excluded from the design change rates this Commission has established.  
6

7 **Issue No. 4-5(c)**

8 **Q. WHAT TYPES OF DESIGN ACTIVITIES MUST QWEST PERFORM FOR**  
9 **DESIGN CHANGES INVOLVING UNBUNDLED LOOPS?**

10 A. As I discuss beginning at page 7 in my direct testimony, Qwest must perform multiple  
11 activities to provide CLECs with design changes for unbundled loops. These activities  
12 are triggered by Eschelon's submission of a supplemental order, which requires a Qwest  
13 engineer to analyze the existing order and design and the new order to determine if a  
14 change in the design is necessary to meet the requirements of the new order. These  
15 activities impose costs that Qwest must be permitted to recover through a design change  
16 charge.  
17

18 **Q. IS THERE MERIT TO MR. DENNEY'S CLAIM THAT THE COSTS OF DESIGN**  
19 **CHANGES FOR LOOPS ARE LESS THAN THOSE FOR DESIGN CHANGES**  
20 **FOR UDIT?**

21 A. No. There is no basis for this assumption, since DS1 and DS3 unbundled loops on fiber  
22 systems may require the same type of re-design work as is required for UDIT using  
23 similar fiber muxing equipment. In claiming that loop design changes are less costly than  
24 UDIT design changes, Mr. Denney asserts that the use of "Local Service Requests"  
25 ("LSRs") for loops instead of the "Access Service Requests" ("ASRs") used for UDIT



1 contributes to the alleged lower cost of loop design changes. As described at pages 34-36  
2 of his direct testimony, he bases this assertion on the claim that ASRs "are more  
3 manually-intensive" than LSRs. The flaw in this analysis is that Mr. Denney fails to  
4 account for the re-design work that may be required because of the use of fiber muxing  
5 equipment. Moreover, Mr. Denney ignores the fact that the design rates this Commission  
6 has ordered expressly apply to loops.

7  
8 **Q. MR. DENNEY STATES AT PAGE 26 OF HIS DIRECT TESTIMONY THAT THE**  
9 **PARTIES' CURRENT INTERCONNECTION AGREEMENT AND QWEST'S**  
10 **STATEMENT OF GENERALLY AVAILABLE TERMS ("SGAT") DO NOT**  
11 **INCLUDE A DESIGN CHANGE CHARGE FOR UNBUNDLED LOOPS OR**  
12 **CFAS. IS THAT ASSERTION CORRECT AND, IF SO, SHOULD THE**  
13 **ABSENCE OF THESE CHARGES IN THE PARTIES' CURRENT ICA AND IN**  
14 **THE SGAT PRECLUDE QWEST FROM RECOVERING THE COSTS IT**  
15 **INCURS TO PROVIDE THESE DESIGN CHANGES?**

16 **A.** Mr. Denney is not correct in stating that neither Qwest's SGAT nor the parties' current  
17 ICA includes a design change charge for loops. The design change charges were  
18 specifically placed in the Miscellaneous Charges section of Exhibit A because they apply  
19 to all UNEs. If these charges were specific to only UDIT, they would have been placed  
20 in the 9.6 UDIT section. Moreover, even if the parties' current ICA and the SGAT did  
21 not contain these charges, that would not prevent Qwest from recovering the costs it  
22 incurs to provide these changes for Eschelon's benefit. As I have discussed, Qwest incurs  
23 costs to provide design changes, and if Qwest has not previously assessed a charge to  
24 recover those costs in every instance that it could have, that does not preclude Qwest

1 from recovering its costs on a going-forward basis. That result would violate the right of  
2 cost recovery that Qwest has under Section 252(d)(1).

3  
4 **Q. AT PAGES 18-19 OF HIS DIRECT TESTIMONY, MR. DENNEY CLAIMS THAT**  
5 **QWEST'S DECISION TO BEGIN CHARGING FOR LOOP DESIGN CHANGES**  
6 **DEMONSTRATES THAT QWEST SELECTIVELY USES THE CMP PROCESS**  
7 **TO THE DISADVANTAGE OF CLECS. IS MR. DENNEY'S CLAIM**  
8 **CORRECT?**

9 A. No. Qwest witness, Renee Albersheim, responds in detail in her rebuttal testimony to  
10 Eschelon's inaccurate claim that Qwest improperly uses the CMP process only for its  
11 benefit and not for the benefit of CLECs.

12  
13 **Q. HAS MR. DENNEY PROVIDED ANY COST SUPPORT FOR ESCHELON'S**  
14 **PROPOSAL TO USE DIFFERENT DESIGN CHANGE RATES FOR UDIT,**  
15 **LOOPS, AND CFAS?**

16 A. No. Mr. Denney proposes design change rates of \$30.00 for loops and \$5.00 for CFAs,  
17 stating only that these rates are "reasonable" because design changes for loops and CFAs  
18 allegedly cost less than design changes for UDIT. As I describe above, Mr. Denney's  
19 descriptions of the work Qwest must perform for loop and CFA design changes are  
20 inaccurate and incomplete. Thus, the premise for the different rates he proposes – that  
21 loop and CFA design changes involve less work – is wrong. Equally important, Mr.  
22 Denney does not provide a cost study or any other information explaining how Eschelon's  
23 proposed rates of \$30.00 and \$5.00 were derived. Without such information, there is of  
24 course no way for the Commission to determine that the rates are compensatory and  
25 consistent with the Act's requirement that Qwest recover its costs.

1 **Q. IS MR. DENNEY CORRECT IN ASSERTING AT PAGE 40 THAT THIS**  
2 **COMMISSION'S APPROVED DESIGN CHANGE RATES OF \$53.65 AND \$50.45**  
3 **ONLY APPLY TO UDIT?**

4 A. No. In adopting these design change rates, the Commission did not limit application of  
5 them to UDIT. The only distinction the Commission made was between mechanized and  
6 non-mechanized design changes. The Commission did not suggest, as Mr. Denney  
7 claims, that the design change rates it adopted apply only to a single UNE and not to  
8 other UNEs. Moreover, as Qwest witness Terri Million explains in her rebuttal  
9 testimony, the cost study upon which the Commission's design change rates are based  
10 was not limited to UDIT-related changes and included other design changes.

11  
12 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 4-5(C)?**

13 A. The Commission should reject Eschelon's unsupported attempt to establish different  
14 design change rates for design changes. The Commission should confirm that its existing  
15 design change rates of \$53.65 and \$50.45 apply to all design changes, including design  
16 changes involving unbundled loops and CFA changes.

17

18 **Issue No. 9-31 - Access to UNEs**

19 **Q. BEFORE RESPONDING TO MR. STARKEY'S TESTIMONY RELATING TO**  
20 **THIS ISSUE, PLEASE PROVIDE A BRIEF SUMMARY OF THE ISSUE.**

21 A. This issue involves language in Section 9.1.2 of the ICA that defines the access Qwest  
22 will provide Eschelon to the UNEs that Qwest makes available under Section 251(c)(3)  
23 of the Act. Consistent with applicable legal requirements, Qwest has agreed to ICA  
24 language obligating it to provide Eschelon with non-discriminatory access to UNEs at  
25 standard service performance levels and to perform "those Routine Network

1 Modifications that Qwest performs for its own End User Customers." Mr. Starkey's  
2 testimony confirms that Eschelon's proposed version of Section 9.1.2 would  
3 impermissibly expand the access Qwest provides to UNEs beyond the requirements  
4 imposed by governing law.

5  
6 **Q. MR. STARKEY ASSERTS THAT WITHOUT ESCHELON'S PROPOSED**  
7 **LANGUAGE IN SECTION 9.1.2, THE ICA WILL NOT HAVE LANGUAGE**  
8 **ASSURING ESCHELON OF NONDISCRIMINATORY ACCESS TO UNES. IS**  
9 **THAT ASSERTION CORRECT?**

10 A. No. The parties' agreed language in Section 9.1.2 expressly and unambiguously requires  
11 Qwest to provide Eschelon with nondiscriminatory access to UNEs: "Qwest shall provide  
12 non-discriminatory access to Unbundled Network Elements on rates, terms, and  
13 conditions that are non-discriminatory, just and reasonable." It is surprising that Mr.  
14 Starkey would present several pages of testimony about the alleged absence of an  
15 obligation in the ICA for Qwest to provide non-discriminatory access to UNEs without  
16 discussing or even mentioning this clear language in Section 9.1.2 that requires Qwest to  
17 provide precisely that form of access.

18  
19 **Q. AT PAGE 128 OF HIS DIRECT TESTIMONY, MR. STARKEY ALSO**  
20 **SUGGESTS THAT WITHOUT ADOPTION OF ESCHELON'S PROPOSED**  
21 **ADDITION TO SECTION 9.1.2, THE ICA WILL NOT ENSURE ACCESS TO**  
22 **UNES EQUAL TO THAT WHICH QWEST HAS FOR ITSELF AND THAT**  
23 **OTHER CLECS HAVE. IS THERE ANY MERIT TO THAT SUGGESTION?**

24 A. No. Again, Mr. Starkey makes these assertions without discussing or even mentioning  
25 agreed language in Section 9.1.2 that shows the assertions to be baseless. The agreed

1 language expressly links the UNE access to which Eschelon is entitled to the UNE access  
2 Qwest provides to itself: "Where Technically Feasible, the access and Unbundled  
3 Network Element provided by Qwest will be provided in 'substantially the same time and  
4 manner' to that which Qwest provides to itself or to its Affiliates." In circumstances  
5 where Qwest does not provide access to UNEs to itself, the agreed language in Section  
6 9.1.2 obligates Qwest to provide access to Eschelon that gives it a meaningful  
7 opportunity to compete: "In those situations where Qwest does not provide access to  
8 Network Elements to itself, Qwest will provide access in a manner that provides  
9 [Eschelon] with a meaningful opportunity to compete."

10 Similarly, the agreed language in Section 9.1.2 ensures that Eschelon will receive the  
11 same access to UNEs that other CLECs receive: "The quality of an Unbundled Network  
12 Element Qwest provides, as well as the access provided to that element, will be equal  
13 between all Carriers requesting access to that element." This language clearly establishes  
14 that Eschelon is entitled to access to UNEs equal to that provided to other CLECs.

15  
16 **Q. IS THERE ANY SUPPORT FOR MR. STARKEY'S ADDITIONAL CLAIM AT**  
17 **PAGE 140 OF HIS TESTIMONY THAT WITHOUT ESCHELON'S PROPOSED**  
18 **ADDITIONS TO SECTION 9.1.2, ESCHELON WILL NOT BE ABLE TO**  
19 **OBTAIN MODIFICATIONS AND REPAIRS TO UNES?**

20 A. No. Again, Mr. Starkey ignores agreed language in Section 9.1.2 that obligates Qwest to  
21 make modifications to UNEs on a nondiscriminatory basis:

22 Qwest shall perform for [Eschelon] those Routine Network  
23 Modifications that Qwest performs for its own End User  
24 Customers. The requirement for Qwest to modify its network on a  
25 nondiscriminatory basis is not limited to copper loops and applies  
26 to all unbundled transmission facilities, including Dark Fiber  
27 transport when available pursuant to Section 9.7.

1 The term "Routine Network Modifications" as used in this section is defined in the ICA  
2 to include, at a minimum, the specific network modifications the FCC listed in the  
3 *Triennial Review Order* as the modifications ILECs are required to provide.

4 In addition to the language quoted above, the agreed language in Section 9.1.1.2.3 makes  
5 it clear that Qwest will maintain and repair UNEs for Eschelon: "[Eschelon's] purchase of  
6 access to a UNE does not relieve Qwest of the duty to maintain, repair, or replace the  
7 UNE." Mr. Starkey also ignores this language in making his inaccurate assertion that  
8 without Eschelon's proposed addition to Section 9.1.2, Qwest will be free to withhold  
9 UNE maintenance and repairs.

10  
11 **Q. IN HIS ATTEMPT TO SUPPORT ESCHELON'S PROPOSED LANGUAGE FOR**  
12 **SECTION 9.1.2, AT PAGES 129-132 OF HIS TESTIMONY, MR. STARKEY**  
13 **CITES TWO "EXAMPLES" THAT HE CLAIMS DEMONSTRATE QWEST**  
14 **WILL NOT PROVIDE ESCHELON WITH NONDISCRIMINATORY ACCESS**  
15 **TO UNES. DO THE EXAMPLES SUPPORT THAT CLAIM?**

16 A. No. The first "example" Mr. Starkey cites involves a Qwest notice from December 2005  
17 introducing a proposed CMP change for DS1 loops. As Mr. Starkey states, the notice  
18 provided that unbundled loops would not be available "to serve another CLEC, IXC, or  
19 other Telecommunications Provider." Qwest has since withdrawn that notice and is not  
20 imposing this limitation. Indeed, as Mr. Starkey eventually acknowledges at page 131 of  
21 his testimony, Qwest has not proposed that limitation in this proceeding and it is  
22 therefore not at issue. Qwest has agreed to the following language in Section 9.1.1.2.1,  
23 which establishes that the restriction on the use of UNEs to which Mr. Starkey refers will  
24 not apply: "Except as provided in this Section 9.1.1.2.1 and in Section 9.23.4.1, Qwest

1 shall not impose limitations, restrictions, or requirements on requests for, or the use of,  
2 Unbundled Network Elements for the service [Eschelon] seeks to offer."

3 The second "example" Mr. Starkey refers to is the inaccurate assertion in Mr. Denney's  
4 testimony that Qwest intends to begin imposing tariffed design change charges for UNEs  
5 without Commission approval. As I discuss above in connection with Issue 4-5, Qwest is  
6 not seeking in this proceeding to impose tariffed design change charges on Eschelon.  
7 Accordingly, this second example of the restrictions Qwest supposedly places on UNE  
8 use is, like the first example, inaccurate.

9  
10 **Q. ARE ESCHELON'S PROPOSED ADDITIONS TO SECTION 9.1.2 CONSISTENT**  
11 **WITH THE OBLIGATIONS ILECS HAVE TO PROVIDE ACCESS TO UNES?**

12 A. No. Eschelon's proposal to include "move," "add to," and "change" as part of "accessing"  
13 UNEs would potentially obligate Qwest to provide a form of access that it does not  
14 provide to other CLECs or to its own retail customers. Further, Eschelon's language  
15 implies that access to or use of a UNE entitles it to moves, adds and changes at no  
16 additional charge. That result would violate Qwest's right of cost recovery.

17 Moreover, as I describe in my direct testimony, Eschelon's proposed addition violates the  
18 long-established rule that an ILEC is only required to provide access to its existing  
19 network, not access to "a yet unbuilt superior one."<sup>1</sup> Under Eschelon's proposed  
20 language, Qwest could be required to build new facilities and to provide access to "a yet  
21 unbuilt superior network." For example, the undefined requirement for Qwest to "add to"  
22 UNEs could obligate Qwest to build new facilities and to go beyond the routine network

---

<sup>1</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8<sup>th</sup> Cir. 1997).

1 maintenance that ILECs must provide. Similarly, Eschelon does not define the meaning  
2 of "changing the UNE," thereby leaving the door open to changes that go beyond routine  
3 network maintenance.

4 In the *TRO*, the FCC ruled at paragraph 632 that ILECs must provide "routine network  
5 modifications" to unbundled transmission facilities and loops. In that same paragraph,  
6 the FCC defined these modifications as "those activities that incumbent LECs regularly  
7 undertake for their own customers," while establishing that routine modifications "do not  
8 include the construction of new wires." By proposing the vague requirement for Qwest  
9 to provide "moves," "adds," and "changes," Eschelon is going beyond the routine  
10 network modifications Qwest is providing for its own customers in violation of the *TRO*.  
11 Since the ICA already includes agreed language ensuring that Eschelon will receive UNE  
12 access equal to that which Qwest's retail customers receive, Eschelon's proposed  
13 language is not necessary to ensure equal access and will serve only as a potential vehicle  
14 for Eschelon to demand superior access.

15  
16 **Q. AS YOU DESCRIBE THE DIFFERENCES IN INTERPRETATION BETWEEN**  
17 **QWEST AND MR. STARKEY REGARDING ESCHELON'S PROPOSED**  
18 **LANGUAGE, THE DISPUTE SEEMS TO POTENTIALLY BOIL DOWN TO**  
19 **QWEST'S ABILITY TO CHARGE FOR ACTIVITIES AND TO RECOVER ITS**  
20 **COSTS. IS THAT AN ACCURATE PERCEPTION?**

21 A. I believe so. With that in mind and with the benefit of Eschelon's testimony, Qwest has  
22 developed a proposal that addresses both parties' concerns. Using Eschelon's language as  
23 a starting point and with Qwest's red-lined changes, Qwest proposes the following  
24 language:



1           **Additional activities available for Access to** Unbundled Network  
2           Elements includes moving, adding to, repairing and changing the  
3           UNE (through, e.g., design changes, maintenance of service  
4           including trouble isolation, additional dispatches, and cancellation  
5           of orders) **at the applicable rate.**

6           Qwest offers this language as a good faith effort to settle this dispute between the parties.

7  
8           **Q.     WHAT IS THE BASIS FOR YOUR CONCERN THAT ESCHELON'S**  
9           **PROPOSAL MAY BE DESIGNED TO PREVENT QWEST FROM**  
10           **RECOVERING THE COSTS OF THE ACTIVITIES LISTED IN THE**  
11           **PROPOSAL?**

12          A.     In the companion arbitration in Minnesota, Mr. Denney testified in reference to the  
13           activities listed in Eschelon's proposed language that “those types of things are already  
14           covered in the recurring rates.”<sup>2</sup> He asserted further that because the costs of all of the  
15           activities required by Eschelon’s language are allegedly already included in monthly  
16           recurring rates, adoption of Eschelon’s language would not require the development of  
17           any new rates or rate elements or payment by Eschelon of any rates other than the  
18           existing recurring rates for UNEs.<sup>3</sup> It is thus clear that the real purpose of Eschelon’s  
19           proposal is not to add another cumulative guarantee against nondiscrimination but,  
20           instead, to obtain the activities listed in its proposal without paying any further charges.  
21           Neither Mr. Denney nor any other Eschelon witness has provided evidence that the costs  
22           of the undefined activities encompassed by Eschelon's vague language are already  
23           included in recurring rates this Commission has adopted.

24  
25          **Q.     PLEASE SUMMARIZE QWEST'S POSITION RELATING TO ISSUE NO. 9-31.**

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<sup>2</sup> Minnesota Hearing Transcript, V. 4, p. 207, lines 17-18. Qwest will provide a copy of this excerpt during the hearing.

<sup>3</sup> Minnesota Hearing Transcript, V. 4, p. 206, line 22 – p. 208, line 6.

1 A. Through the parties' agreed to language in Section 9.1.2, Qwest has fully committed to  
2 provide Eschelon with the access to UNEs required by the Act and that other CLECs in  
3 Washington receive. Eschelon's proposed addition to the parties' agreed language should  
4 be rejected because it is overly broad, could be misinterpreted to imply the listed  
5 activities are to be performed at no additional charge, and could create obligations that  
6 the Act does not impose. Notwithstanding these concerns and in the interest of  
7 narrowing the parties' disputes, Qwest would agree to the modified version of Eschelon's  
8 proposal set forth above, which assures Qwest of the cost recovery to which it is entitled  
9 under the Act.

10  
11 **III. ISSUE NOS. 9-33, 9-34, 9-35 AND 9-36 –**  
12 **QWEST NETWORK MAINTENANCE AND MODERNIZATION ACTIVITIES**

13 **Issue No. 9-33**

14 **Q. MR. WEBBER STATES AT PAGE 5 OF HIS DIRECT TESTIMONY THAT IF**  
15 **"[L]EFT UNCHECKED," "QWEST'S ABILITY TO PERFORM NETWORK**  
16 **MAINTENANCE AND MODERNIZATION ACTIVITIES ON UNES COULD**  
17 **POTENTIALLY PUT ESCHELON'S END USER CUSTOMERS OUT OF**  
18 **SERVICE WITH NO DIAL TONE AND NO ACCESS TO 911 EMERGENCY**  
19 **SERVICES." HAS QWEST EVER PUT AN ESCHELON CUSTOMER OUT OF**  
20 **SERVICE BECAUSE OF NETWORK MAINTENANCE OR MODERNIZATION**  
21 **ACTIVITIES?**

22 A. Mr. Webber does not identify any occasions on which Qwest put an Eschelon customer  
23 out of service because of an activity involving network maintenance or modernization,  
24 and I am not aware of any occasions on which that has occurred. The absence of any  
25 such incidents demonstrates the hypothetical nature of Mr. Webber's concerns and shows

1 that his attempt to paint a dire picture of the risks arising from Qwest's maintenance and  
2 modernization activities is exaggerated.

3  
4 **Q. IS MR. WEBBER CORRECT IN ASSERTING THAT QWEST HAS NOT**  
5 **PROVIDED ANY ASSURANCE THAT ITS NETWORK MODERNIZATION**  
6 **AND MAINTENANCE ACTIVITIES WILL NOT HARM ESCHELON'S**  
7 **CUSTOMERS?**

8 A. No. Mr. Webber ignores agreed language in Section 9.1.9 in which Qwest commits that  
9 "[n]etwork maintenance and modernization activities will result in UNE transmission  
10 parameters that are within transmission limits of the UNE ordered by [Eschelon]." This  
11 language requires Qwest to ensure that its network maintenance and modernization  
12 activities do not result in transmission parameters that fail to meet those Eschelon can  
13 reasonably expect for the UNEs it orders unless Qwest has given advance notice subject  
14 to FCC rules. In addition, Qwest has provided further protection to Eschelon and its  
15 customers by agreeing in Section 9.1.9 that "modifications and changes to UNEs" may  
16 result in only "minor changes to transmission parameters." As this language shows,  
17 contrary to Mr. Webber's claim, Qwest has agreed to language that protects Eschelon and  
18 its customers from changes to UNEs arising from maintenance and modernization.

19  
20 **Q. IN VIEW OF THE PARTIES' AGREED LANGUAGE LIMITING THE**  
21 **CHANGES IN TRANSMISSION PARAMETERS THAT CAN RESULT FROM**  
22 **NETWORK ACTIVITIES, IS THERE ANY LEGITIMATE NEED FOR**  
23 **ESCHELON'S VAGUE REQUIREMENT THAT MODERNIZATION AND**  
24 **MAINTENANCE ACTIVITIES MAY NOT "ADVERSELY AFFECT" SERVICE**  
25 **TO ANY END USER CUSTOMERS?**

1 A. No. There is no legitimate need for Eschelon's proposed language. Indeed, Qwest is  
2 very concerned that the vagueness of Eschelon's proposal will lead to time-consuming  
3 disputes between the parties about whether a network activity had an "adverse effect" on  
4 an Eschelon customer. As I describe in my direct testimony, this language is not tied to  
5 any industry standard or identifiable metric and is therefore subject to broad  
6 interpretation and dispute. The vagueness of the language would leave Qwest guessing  
7 as to whether a network change is permitted under the ICA, which could have the  
8 undesirable effect of discouraging Qwest from carrying out network maintenance and  
9 modernization activities.

10 In addition, Eschelon's proposed language focuses improperly on the service Eschelon is  
11 providing to its customers. When Qwest provides a UNE to Eschelon, it can only be  
12 responsible for the quality of that network element. There are other factors within  
13 Eschelon's control and beyond Qwest's control that affect the quality of service  
14 Eschelon's customers receive, and it is therefore improper to establish a standard for  
15 Qwest that focuses on the service Eschelon provides to its customers.

16

17 **Q. DOES MR. WEBBER EXPLAIN THE MEANING OF ESCHELON'S "NOT**  
18 **ADVERSELY AFFECT" LANGUAGE IN HIS TESTIMONY?**

19 A. No. Although Mr. Webber acknowledges Qwest's criticism that Eschelon's proposal is  
20 impermissibly vague, nowhere in his testimony does he provide any meaningful  
21 definition of what it means to "adversely affect" service to an Eschelon customer. His  
22 inability to provide a definition further confirms the ambiguity of the standard and the  
23 likelihood that it would lead to disputes between the parties.

24

1 **Q. MR. WEBBER ASSERTS AT PAGE 13 OF HIS DIRECT TESTIMONY THAT**  
2 **ESCHELON WILL NOT BE PROTECTED FROM CUSTOMER DISRUPTION**  
3 **EVEN IF QWEST MAINTAINS AND MODERNIZES ITS NETWORK IN**  
4 **ACCORDANCE WITH INDUSTRY STANDARDS. DOES MR. WEBBER**  
5 **PROVIDE MEANINGFUL SUPPORT FOR THIS STATEMENT?**

6 A. No. The only support for this statement that Mr. Webber offers is a vague description of  
7 an occasion on which Qwest allegedly provided Eschelon with non-working circuits that  
8 met industry standards for permissible decibel ("db") loss. According to Mr. Webber, the  
9 fact that the circuits allegedly were non-working even though they met industry standards  
10 for db loss demonstrates that industry standards are of limited utility in measuring  
11 performance. This claim ignores the long-standing importance of industry standards for  
12 establishing performance and quality expectations and for measuring performance. Nor  
13 did this appear to be a concern relevant to a network modernization activity, but rather an  
14 installation issue.

15 It is a matter of common sense that without quantifiable performance metrics, it is very  
16 difficult to measure performance. That is why the telecommunications industry has  
17 created standards bodies and invested very significant resources to develop reliable,  
18 quantifiable performance metrics. The single occurrence that Mr. Webber describes  
19 hardly justifies the conclusion that compliance with industry standards is irrelevant to  
20 protecting against consumer disruption. Mr. Webber is forced to reach that unfounded  
21 conclusion only because he is in the difficult position of trying to defend Eschelon's  
22 standardless "no adverse effect" proposal.

23

24 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-33?**

1 A. The Commission should reject Eschelon's vague "no adverse effect" proposal because it  
2 is not tied to any measurable metric, the ICA already protects Eschelon against network  
3 changes that alter transmission parameters, and this vague standard would create counter-  
4 productive disincentive for Qwest to modernize and maintain its network.

5

6 **Issue No. 9-34**

7 **Q. IN DISCUSSING THE NOTICE OF NETWORK CHANGES THAT QWEST**  
8 **WILL PROVIDE TO ESCHELON, MR. WEBBER STATES THAT QWEST**  
9 **WILL NOT AGREE TO PROVIDE THE "LOCATION" OF CHANGES, AS**  
10 **THAT TERM HAS BEEN DEFINED BY THE FCC. IS THAT ASSERTION**  
11 **CORRECT?**

12 A. No. As I describe in my direct testimony, Qwest is committing to provide notices that  
13 meet the requirements of the FCC's notice rule relating to network changes, set forth 47  
14 C.F.R. § 51.327. Consistent with the requirements of that rule, Qwest will include in the  
15 notice information indicating the locations at which network changes will occur. Mr.  
16 Webber asserts that the FCC's reference to "location" effectively means that an ILEC  
17 must provide the address of every CLEC customer whose service could be affected by a  
18 change to the network. However, the FCC uses the term "location" in Rule 51.327 not to  
19 refer to the addresses of CLEC customers but, instead, to refer to "the location(s) at  
20 which the changes will occur." In other words, an ILEC must identify the location in its  
21 network where the change will occur, which will, in turn, allow CLECs to determine  
22 based on their own records whether any of their customers could be affected by the  
23 change.

24

1 **Q. IS MR. WEBBER'S TESTIMONY SEEKING CUSTOMER ADDRESSES IN**  
2 **NOTICES OF NETWORK CHANGES CONSISTENT WITH THE**  
3 **COMMISSION'S DECISION IN THE QWEST-COVAD ARBITRATION?**

4 A. No. In that arbitration, the Commission considered Covad's demand that Qwest should  
5 be required to provide CLEC customer addresses in notices relating to Qwest's retirement  
6 of copper loops. The Commission rejected that demand, ruling that Qwest's obligation  
7 under Rule 51.327 is to provide sufficient information in its notices to permit a CLEC to  
8 identify the addresses of its customers that may be affected by a copper retirement.  
9 Consistent with that ruling, in this case, Qwest does not have any obligation to provide  
10 Eschelon with the addresses of its customers that could be affected by network  
11 maintenance or modernization. Instead, Qwest's obligation is to provide Eschelon with  
12 sufficient information about where a network change is taking place so that Eschelon –  
13 not Qwest – can identify the addresses of any of its customers that could be affected by  
14 the change. In addition, if that information is not enough, Qwest's notices include the  
15 name and telephone number of a contact person at Qwest who can provide additional  
16 information about the location and nature of the network changes, as required by Rule  
17 51.327(a)(2).

18  
19 **Q. IS MR. WEBBER CORRECT IN ASSERTING AT PAGE 16 THAT THE**  
20 **"INTENT" OF THE FCC'S RULES RELATING TO NOTICE OF NETWORK**  
21 **CHANGES REQUIRES QWEST TO INCLUDE CIRCUIT IDENTIFICATION**  
22 **NUMBERS OF ESCHELON CIRCUITS IN ITS NOTICES?**

23 A. No. There is no requirement in Rule 51.327(a)(2) or any other FCC rule relating to  
24 notice for an ILEC to provide circuit ID numbers for CLEC circuits that are potentially  
25 affected by a network change. Eschelon has access to the circuit ID numbers of the

1 circuits it obtains from Qwest. If Eschelon wants to know the ID numbers of circuits that  
2 may be affected by a network change, it can obtain that information from its own records  
3 after learning from Qwest the location of the network change. Eschelon should not be  
4 permitted to force Qwest to research this information – which would have to be done  
5 manually – when the information is readily available to Eschelon.

6  
7 **Issue No. 9-35**

8 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-35?**

9 A. Yes. The parties continued their discussions relating to this issue after filing the issues  
10 matrix and have reached agreement. Accordingly, this issue is no longer in dispute, and  
11 there is no need for the Commission to take any action with respect to it.

12  
13 **Issue No. 9-36**

14 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-36?**

15 A. Yes. The parties continued their discussions relating to this issue after filing the issues  
16 matrix and have reached agreement. Accordingly, this issue is no longer in dispute, and  
17 there is no need for the Commission to take any action with respect to it.

18  
19 **IV. ISSUE 9-39 - WIRE CENTER CAPS ON ORDERS**

20 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-39?**

21 A. Yes. The parties continued their discussions relating to this issue after filing the issues  
22 matrix and have reached agreement. Accordingly, this issue is no longer in dispute, and  
23 there is no need for the Commission to take any action with respect to it.



1                   **V.       ISSUE 9-50 - SUBLOOP CROSS-CONNECT WORK**

2   **Q.       PLEASE PROVIDE A SUMMARY OF ISSUE 9-50.**

3   A.       This issue involves a "cross-connect" service that Qwest had voluntarily offered to  
4           CLECs in the past despite the absence of any legal obligation to provide the service. In  
5           simple terms, a cross-connect is the connection of one wire to another for the purpose of  
6           creating an electrical connection. Qwest had previously offered to perform cross-  
7           connects for CLECs on intrabuilding cable subloops.

8           Eschelon apparently does not dispute that Qwest has no legal obligation to provide the  
9           service. Nevertheless, Eschelon has expressed concern that if Qwest has this service in  
10          any other interconnection agreement, the offering should be available to Eschelon  
11          through its interconnection agreement with Qwest.

12  
13   **Q.       MR. DENNEY STATES AT PAGE 111 THAT THIS CROSS-CONNECT OPTION**  
14           **IS IN OTHER CLEC'S AGREEMENTS. HAS THERE EVER BEEN ANY**  
15           **DEMAND FOR THIS PRODUCT?**

16   A.       No. There has never been any CLEC demand for this service since Qwest began offering  
17           it, and there is no indication that this lack of demand will change in the future.  
18           Accordingly, on a going-forward basis, Qwest will no longer offer this service to CLECs.  
19           Although Qwest developed and made this cross-connect option available to CLECs, no  
20           CLEC has ever ordered it.

21           In addition, Mr. Denney's testimony did not include any testimony regarding Eschelon's  
22           plans to use or any impending need for Qwest intrabuilding cable cross-connects, so its  
23           concern relating to this issue is at best hypothetical.

24

1 **Q. AT PAGE 113, MR. DENNEY IMPLIES THAT QWEST WITHDRAWING THIS**  
2 **PRODUCT, ON A GOING-FORWARD BASIS, AMOUNTS TO**  
3 **DISCRIMINATION, DO YOU AGREE?**

4 A. No. The individual ICA negotiation process was clearly contemplated by the FCC. In  
5 fact, the whole line of reasoning outlined by Mr. Denney at page 113 implies that if any  
6 ICA varies from one agreement to another, that is discriminatory. Again, that assumption  
7 is not consistent with the Act's requirement that ILECs negotiate individually with  
8 CLECs and reach agreements that are tailored to each carrier's needs. While this  
9 approach mandated by the Act results in terms and conditions that may be different from  
10 CLEC to another, those differences are not an illegal or prohibited form of  
11 discrimination.

12  
13 **Q. IN THE TELECOMMUNICATION INDUSTRY, IS THERE A TRADITION OF**  
14 **ALLOWING EXISTING CUSTOMERS TO RETAIN A SERVICE, WHILE NOT**  
15 **ALLOWING NEW CUSTOMERS TO ORDER THE SAME SERVICE?**

16 A. Yes. It is standard in the industry that when products, services and/or feature packages  
17 are phased out, existing customers are often “grandfathered” and can continue to use the  
18 service. Qwest's language is consistent with this standard industry practice.

19  
20 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE CERTAIN**  
21 **PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED THAT THERE**  
22 **MAY BE A PERIOD OF TIME DURING WHICH A PRODUCT OR ELEMENT**  
23 **WILL CONTINUE TO BE AVAILABLE TO SOME CARRIERS WHILE NOT**  
24 **BEING AVAILABLE TO OTHER CARRIERS?**

1 A. Yes. The FCC has used the concept of "grandfathered" service to give carriers that have  
2 relied on a product or service time to adjust to the elimination of the product or service.  
3 In these circumstances, the FCC has adopted transitional phase-outs for carriers that have  
4 previously relied on the product or service, while making the product or service  
5 immediately unavailable to carriers that did not previously rely on it. For example, while  
6 the FCC eliminated the high frequency portion of the loop ("HFPL") as a UNE in the  
7 *TRO*, it permitted CLECs with existing "line sharing arrangements" to continue obtaining  
8 the HFPL at whatever rate the ILEC was charging prior to the *TRO*. *TRO* at ¶ 264.  
9 However, those pre-*TRO* rates were no longer available for CLECs that did not have  
10 "grandfathered" line sharing arrangements. Those CLECs were required to pay different  
11 rates that the FCC established as part of its phase-out of the HFPL as a UNE. *TRO* at  
12 ¶ 265.

13 As this example shows, the FCC recognizes that there will be timing differences among  
14 CLECs in the implementation of its network unbundling orders. These differences do not  
15 result in a form of discrimination prohibited by the Act; instead, they are the result of  
16 necessary and often unavoidable differences in the timing of implementation of the FCC's  
17 orders.

18  
19 **Q. IN ARGUING THAT ESCHELON SHOULD HAVE ACCESS TO SUBLOOP**  
20 **CROSS-CONNECT SERVICE IN THE ICA, MR. DENNEY ASSERTS AT PAGE**  
21 **112 THAT THE PRESENCE OF CROSS-CONNECTS IN QWEST'S SGAT**  
22 **REQUIRES THAT QWEST INCLUDE THIS SERVICE IN THE ICA. SHOULD**  
23 **THE FACT THAT QWEST'S SGAT INCLUDES ACCESS TO AN ELEMENT OR**  
24 **SERVICE REQUIRE QWEST TO INCLUDE THE ELEMENT OR SERVICE IN**  
25 **THE ICA?**

1 A. No. Since Qwest last updated its SGAT in Washington, there have been many changes in  
2 the law, including significant changes in the network elements and services that ILECs  
3 are required to provide under Section 251 of the ICA. Qwest's SGAT does not reflect  
4 many of these changes, including, for example, the changes in the FCC's network  
5 unbundling rules resulting from the *Triennial Review Remand Order*. There are,  
6 therefore, network elements and services in the SGAT that Qwest has no obligation to  
7 provide under Section 251. Conversely, there are new requirements that benefit CLECs -  
8 - such as allowing commingled arrangements -- that are not included in the SGAT.

9

10 **Q. DO QWEST AND CLECS STILL USE QWEST'S SGATS AS A FOUNDATION**  
11 **FOR THEIR NEGOTIATIONS?**

12 A. Typically not. CLECs now have multiple other options available to them. These options  
13 include other carriers' ICAs that CLECs are able to opt into and also Qwest's multi-state  
14 "Template Agreement." The Template Agreement is based on the individual states'  
15 SGATs. It includes state-specific language and has been modified to reflect and  
16 incorporate changes in law. The Template Agreement is the underlying agreement that  
17 Qwest and CLECs typically use as the base document for their negotiations. Because of  
18 the effectiveness and utility of the Template Agreement, Qwest stopped updating its  
19 SGATs. Indeed, the SGATs have not been updated to incorporate changes in law since  
20 2002 and are therefore outdated documents.<sup>4</sup> The regulatory process for modifying and  
21 updating SGATs is very time consuming and resource-intensive. With the other options  
22 available to CLECs, there has not been a need to go through this process and to expend  
23 the significant resources that would be required. Moreover, due to the FCC's elimination

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<sup>4</sup> The only exception is that Qwest has periodically updated Exhibit A and Exhibit B as changes have occurred in rates and performance indicators.

1 of the "pick-and-choose" rule and its move to the "all-or-nothing" rule, as discussed  
2 below, CLECs are much less likely to opt into a standard SGAT when ICAs have become  
3 increasingly more tailored to CLECs. This tailoring has increased as CLECs have shaped  
4 their businesses to have a specialized focus, which is often necessary to survive in today's  
5 highly competitive telecommunications markets.

6  
7 **Q. EVEN IF QWEST HAD BEEN UPDATING ITS SGAT, WOULD IT BE**  
8 **APPROPRIATE FOR ESCHELON TO REQUEST THAT INDIVIDUAL**  
9 **PROVISIONS AND REQUIREMENTS FROM THE SGAT BE INCLUDED IN**  
10 **ITS ICA?**

11 A. No. In an order issued in 2004, the FCC established that under the opt-in provision in  
12 Section 252(i), a CLEC can only opt into an entire ICA or SGAT, not just individual  
13 provisions.<sup>5</sup> Under this "all-or-nothing" rule, CLECs that choose to opt into another  
14 carrier's ICA or an SGAT can no longer "pick-and-choose" individual provisions that  
15 they want and reject other provisions they don't want. A CLEC that elects to negotiate an  
16 agreement instead of opting into one has, by definition, chosen not to be eligible to pick  
17 and choose any or all of the provisions from another carrier's ICA. While a CLEC  
18 can negotiate terms and conditions of its own choosing, Qwest is not bound to accept  
19 every term and condition, even if it is a part of another agreement. The FCC explained  
20 the reason behind the "all-or-nothing rule," stating that the rule would promote more give  
21 and take in negotiations and would produce agreements that are more tailored to the  
22 individual needs of carriers.

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<sup>5</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*,  
CC Docket No. 01-338, Second Report and Order, FCC 04-164 (Rel. July 13, 2004).

1 In its arguments relating to cross-connects and several other disputed issues in this  
2 arbitration, Eschelon asserts that certain requirements it seeks to impose on Qwest should  
3 be included in the ICA because they are included in Qwest's SGAT or in another carrier's  
4 ICA. For example, in addition to cross-connects, Mr. Denney argues that Qwest should  
5 be required to provide unbundled customer controlled rearrangements ("UCCRE") in the  
6 ICA because that product is in Qwest's SGAT and in old ICAs entered into with AT&T  
7 and Covad . At the same time, however, Eschelon has refused to accept other provisions  
8 in those agreements that Qwest has offered. For example, Qwest offered Eschelon  
9 provisions from the AT&T ICA relating to "available inventory" and "DC Power," but  
10 Eschelon rejected those proposals. It is clear that Eschelon is effectively attempting to  
11 pick and choose from other carriers' ICAs and the SGAT, invoking them when it wants a  
12 provision and ignoring or rejecting them when it does not want a provision. This pick-  
13 and-choose approach is plainly inconsistent with the FCC's "all-or-nothing" rule and  
14 undermines the policies the FCC sought to advance through by adopting that rule.

15  
16 **Q. HOW SHOULD THE COMMISSION RESPOND TO ESCHELON'S SELECTIVE**  
17 **USE OF THE SGAT AND OTHER ICAS TO SUPPORT ITS POSITIONS?**

18 A. The Commission should reject Eschelon's attempt to support its positions by selectively  
19 invoking individual provisions from the SGAT and other carriers' ICAs. Eschelon has  
20 not established any business need for cross-connects. Instead, its argument to include  
21 this service in the ICA rests solely on its claim that if other, older ICAs include this  
22 service, its ICA should include it too. But, as I describe above, the presence of  
23 differences in ICA terms from one CLEC to another does not establish that there is  
24 unlawful discrimination. Indeed, here, the difference is simply the result of the timing of

1 the ICAs and Qwest's recent decision to stop providing a product for which there is no  
2 demand and no legal obligation to make it available.

3 Moreover, it is essential that the disputed issues in this arbitration be resolved on their  
4 merits and based on the law as it exists today. In this regard, Section 252(c)(1) directs  
5 that state commissions must resolve arbitration issues by "ensur[ing] that such resolution  
6 and conditions meet the requirements of section 251, including the regulations prescribed  
7 by the [FCC] pursuant to section 251." (Emphasis added) This language requires that  
8 arbitration issues be resolved based on current, existing FCC rules and orders, not based  
9 on selective reliance on individual provisions of SGATs and other ICAs that may be  
10 outdated and inconsistent with the FCC's latest rules and orders.

11  
12 **Q. COULD YOU PLEASE SUMMARIZE YOUR RECOMMENDATION FOR ISSUE**  
13 **9-50?**

14 A. Yes. Qwest has no legal obligation to perform cross-connect wiring for Eschelon, and  
15 Eschelon can and (routinely performs) this function for itself. Qwest has voluntarily  
16 offered this service in the past, but CLECs have not ordered it. Eschelon's claims  
17 regarding discrimination are unfounded, and frequently products or unique combination  
18 of feature packages are grandfathered for existing customers and are unavailable for new  
19 customers.

20 The Commission should reject Eschelon's attempt to impose unnecessary administrative  
21 and notice requirements for a product that Qwest has no legal obligation to offer and for  
22 which CLECs, including Eschelon, have shown no demand. In addition, there is no  
23 reasonable basis for requiring Qwest to maintain external and internal documentation,  
24 pricing and ordering information for a service that has never been ordered.

1 In sum, the Commission should reject Eschelon's attempt to impose a requirement  
2 regarding a service that Eschelon has expressed no interest in, has no demand for, and  
3 that Qwest is not obligated under Section 251 to provide.  
4

5 **VI. ISSUE 9-52 - ACCESS TO 911 DATABASES**

6 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-52?**

7 A. Yes. The parties continued their discussions relating to this issue after filing their direct  
8 testimony and have reached agreement. Accordingly, this issue is no longer in dispute,  
9 and there is no need for the Commission to take any action with respect to it.  
10

11 **VII. ISSUE 9-53 - ACCESS TO UCCRE**

12 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 9-53, AND YOUR INITIAL**  
13 **RESPONSE TO THE TESTIMONY OF MR. DENNEY.**

14 A. Issue 9-53 originated from Eschelon's initial request that Qwest place the "Unbundled  
15 Customer Controlled Rearrangement Element" ("UCCRE") product in the ICA at Section  
16 9.9.<sup>6</sup> However, as confirmed by Mr. Denney,<sup>7</sup> as a re-write of it rules pursuant to the  
17 *TRRO*, the FCC has removed from Rule 51.319(d)(2)(iv) the requirement for ILECs to  
18 provide digital cross-connects for UCCRE.<sup>8</sup> UCCRE was the product Qwest developed  
19 to meet the previous FCC requirement. As I discuss below, Mr. Denney asserts  
20 incorrectly that another FCC rule regarding simple central office cross-connects could be  
21 interpreted as requiring access to UCCRE.

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<sup>6</sup> Eschelon has also identified this as Subject Matter No. 22 in the direct testimony of Mr. Denney.

<sup>7</sup> Denney Direct Testimony at 117

<sup>8</sup> *See and compare* former 47 C.F.R. § 51.319(d)(2)(iv) and current 47 C.F.R. § 51.319(d)(2).



1 In addition, Mr. Denney's testimony does not include any claim that Eschelon's has any  
2 impending plans to use UCCRE or any impending need for it. Its concern relating to this  
3 issue is apparently largely hypothetical.

4  
5 **Q. MR. DENNEY ASSERTS THAT IF QWEST DOES NOT OFFER UCCRE IN THE**  
6 **ICA, ESCHELON WILL EXPERIENCE DISCRIMINATION AND BE AT A**  
7 **COMPETITIVE DISADVANTAGE. IS THERE ANY BASIS FOR THIS CLAIM?**

8 **A.** No. As an initial matter, Eschelon (nor any other CLEC) has ever ordered UCCRE  
9 service from Qwest in Washington or in any other state. Having never had a need for  
10 UCCRE, Eschelon has little basis for complaining that it will be competitively  
11 disadvantaged without the service in the future.

12 In addition, as I describe in my direct testimony at page 40, Qwest is discontinuing  
13 UCCRE for all CLECs entering into new ICAs and for all other CLECs when their  
14 current ICAs eventually expire. Thus, Qwest is not singling out Eschelon, as Mr. Denney  
15 suggests. Instead, given the FCC's removal of UCCRE from its unbundling rules and the  
16 lack of CLEC demand for the service, Qwest is moving toward elimination of the service  
17 offering for all CLECs. The only difference among the CLECs is the timing of Qwest's  
18 elimination of UCCRE. For CLECs like Eschelon that are entering into new ICAs,  
19 Qwest is eliminating the UCCRE offering now by not including it in the new ICAs. For  
20 CLECs with ICAs that contain the UCCRE offering and that are not expiring soon, the  
21 offering will remain in their ICAs until they enter into new agreements. However, those  
22 CLECs, like Eschelon, have not demonstrated any demand for UCCRE.

23  
24 **Q. IN HIS DIRECT TESTIMONY AT PAGE 118, MR. DENNEY CITES TO THE FACT**  
25 **THAT UCCRE IS AVAILABLE UNDER THE AT&T AND COVAD ICAS AS**

1 EVIDENCE OF THE DISCRIMINATORY COMPETITIVE DISADVANTAGE  
2 ESCHELON WOULD FACE IF UCCRE IS NOT INCLUDED IN ITS ICA. HAS  
3 EITHER AT&T OR COVAD ORDERED UCCRE FROM QWEST UNDER THEIR  
4 ICAS?

5 A. No. Neither AT&T or Covad has ever ordered UCCRE. Mr. Denney's claim of  
6 discriminatory competitive disadvantage lacks credibility given that the CLECs he cites  
7 have never ordered UCCRE under their ICAs and Eschelon itself has never ordered the  
8 service.

9  
10 **Q. MR. DENNEY APPEARS TO ASSUME THAT QWEST CANNOT STOP**  
11 **OFFERING A PRODUCT OR SERVICE ELIMINATED BY THE FCC UNLESS**  
12 **IT OBTAINS APPROVAL FROM A STATE COMMISSION. IS THERE ANY**  
13 **BASIS FOR THAT ASSUMPTION?**

14 A. No. There is nothing in the *TRO* or the *TRRO* suggesting that ILECs must seek approval  
15 from a state commission before discontinuing the UNEs and services the FCC eliminated  
16 from Section 251 in those orders. On the contrary, the FCC made it clear in the *TRRO*  
17 that its changes in unbundling requirements are to be implemented through the  
18 interconnection negotiation process, not by seeking approval of the changes from state  
19 commissions. Thus, the FCC states at paragraph 233 of the *TRRO* that "the incumbent  
20 LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and  
21 conditions necessary to implement our rule changes."

22 Mr. Denney attempts to single out UCCRE by claiming that Qwest should go to the  
23 Commission to seek approval to stop offering the product instead of relying on the ICA  
24 negotiation process. There is no such requirement and, indeed, Qwest has proceeded just  
25 as the FCC has directed by relying on the ICA negotiation process.

1 **Q. GIVEN THAT THE FCC HAS DIRECTED ILECS AND CLECS TO RELY ON**  
2 **THE ICA NEGOTIATION PROCESS TO IMPLEMENT CHANGES IN**  
3 **UNBUNDLING REQUIREMENTS, IS IT INEVITABLE THAT THE TIMING OF**  
4 **NEGOTIATIONS WILL VARY TO SOME EXTENT FROM ONE CLEC TO**  
5 **ANOTHER?**

6 A. Yes. Qwest of course cannot renegotiate ICAs with all CLECs at precisely the same  
7 time. As a result, it is unavoidable that changes in the FCC's unbundling requirements  
8 will be implemented sooner for some CLECs than for others. For example, if Qwest and  
9 a CLEC mutually agree upon all the provisions of a re-negotiated ICA implementing the  
10 *TRO* and *TRRO*, that agreement likely can be completed and approved in a matter of a  
11 few months. By contrast, if Qwest and a CLEC do not agree on the provisions required  
12 to implement the *TRO* and the *TRRO* and are required to arbitrate, it will take much  
13 longer to complete and have the agreement approved. As a result, for some period of  
14 time, one CLEC is likely to have an ICA with different unbundling requirements than are  
15 in another CLEC's ICA. The differences in the ICAs are not the result of discrimination,  
16 as Mr. Denney would suggest, but are instead the result of inevitable differences in  
17 timing.

18  
19 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE CERTAIN**  
20 **PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED THAT THERE**  
21 **MAY BE A PERIOD OF TIME DURING WHICH A PRODUCT OR ELEMENT**  
22 **WILL CONTINUE TO BE AVAILABLE TO SOME CARRIERS WHILE NOT**  
23 **BEING AVAILABLE TO OTHER CARRIERS?**

24 A. Yes. As I discuss above in connection with cross-connects, the FCC has used the concept  
25 of "grandfathered" service to give carriers that have relied on a product or service time to

1 adjust to the elimination of the product or service. In these circumstances, the FCC has  
2 adopted transitional phase-outs for carriers that have previously relied on the product or  
3 service, while making the product or service immediately unavailable to carriers that did  
4 not previously rely on it. The FCC thus recognizes that there will be timing differences  
5 among CLECs in the implementation of its network unbundling orders. These  
6 differences do not result in a form of discrimination prohibited by the Act; instead, they  
7 are the result of necessary and often unavoidable differences in the timing of  
8 implementation of the FCC's orders.

9  
10 **Q. IN THE UNLIKELY EVENT ESCHELON HAS A NEED FOR UCCRE, CAN IT**  
11 **OBTAIN THE SERVICE FROM QWEST EVEN IF IT IS NOT INCLUDED IN**  
12 **THE ICA?**

13 A. Yes. As I discuss in my direct testimony, in the unlikely event Eschelon has a need for  
14 UCCRE, it can obtain the service through Qwest's retail Command-A-Link tariff.

15  
16 **Q. IS MR. DENNEY CORRECT IN STATING THAT THE FCC DID NOT INTEND**  
17 **TO ELIMINATE UCCRE EVEN THOUGH THE FCC HAS REMOVED ACCESS**  
18 **TO DIGITAL CROSS-CONNECT SYSTEMS FROM ITS NETWORK**  
19 **UNBUNDLING RULES?**

20 A. No. As Mr. Denney acknowledges (page 117) UCCRE service is provided through  
21 access to digital cross-connect systems. Prior to the *TRO*, FCC Rule 51.319(d)(2)(iv)  
22 required ILECs to provide access to the functionality of digital cross-connect systems.  
23 Following the *TRO*, as Mr. Denney admits, the FCC eliminated this provision, thereby  
24 establishing that ILECs are not required to provide access to the functionality of digital  
25 cross-connect systems. Because UCCRE service is dependent upon access to these

1 systems, the FCC's elimination of this unbundling obligation necessarily established that  
2 ILECs have no obligation to provide unbundled access to UCCRE service.

3 Mr. Denney's suggestion that the FCC did not truly intend to eliminate access to digital  
4 cross-connect systems and UCCRE when it modified its unbundling rules after the *TRO*  
5 is inaccurate. First, if there were any merit to the argument that the FCC's unbundling  
6 rules should not be implemented as they are written but should instead be implemented as  
7 a party believes they were intended, the rules would be completely malleable and  
8 uncertain. I am not a lawyer, but I do not believe that is how agency rules and  
9 regulations are implemented. Second, there is no basis for Mr. Denney's conclusion that  
10 the FCC did not intend to eliminate access to digital cross-connect systems in its post-  
11 *TRO* rules. If that were the case, the FCC would have corrected its alleged oversight  
12 through an errata or some other corrective measure. That it has not done so confirms that  
13 it deliberately eliminated UCCRE from its unbundling rules.

14  
15 **Q. DOES THE REQUIREMENT IN RULE 51.305(A)(2)(IV) FOR ILECS TO**  
16 **PROVIDE INTERCONNECTION AT "CENTRAL OFFICE CROSS-CONNECT**  
17 **POINTS" IMPLICITLY IMPOSE A REQUIREMENT TO PROVIDE ACCESS**  
18 **TO CROSS-CONNECT SYSTEMS, AS MR. DENNEY SUGGEST (PAGES 117-**  
19 **118)?**

20 A. No. If the FCC had intended to continue requiring ILECs to provide access to UCCRE, it  
21 would not have deleted the rule requiring that access in reliance on a different rule that  
22 does not mention access to cross-connect systems. It is simply illogical to assume, as Mr.  
23 Denney does, that FCC chose to move from a clear requirement in a former rule to a  
24 vague, inferential requirement based on a rule that does not even address UCCRE.

25

1 **Q. SHOULD QWEST HAVE THE RIGHT TO STOP OFFERING A SERVICE LIKE**  
2 **UCCRE THAT THE FCC HAS ELIMINATED FROM ITS UNBUNDLING**  
3 **RULES AND THAT CLECS DO NOT ORDER?**

4 A. Yes. If the FCC determines that there is no longer a competitive need for ILECs to offer  
5 a product or a service, ILECs have no legal obligation to continue offering the product or  
6 service in new ICAs. Under Mr. Denney's argument and Eschelon's proposal for Sections  
7 9.9 and 9.9.1, Qwest would be denied the benefits from these changes in the law for  
8 indefinite periods of time because old ICAs do not include the new legal requirements.  
9 The result would be that Qwest would be forced to enter into new ICAs that reflect old  
10 law and competitive conditions that no longer exist. That approach is not consistent with  
11 sound public policy and law, as it would fail to give effect to the FCC's determinations of  
12 what the current law should be based on competitive conditions.

13  
14 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATION FOR ISSUE 9-53.**

15 A. The Commission should reject Eschelon's attempt to impose unnecessary administrative  
16 and notice requirements for a product that Qwest has no legal obligation to offer and for  
17 which CLECs, including Eschelon, have shown no demand. In addition, there is no  
18 reasonable basis for requiring Qwest to maintain external and internal documentation,  
19 pricing and ordering information for a service that has never been ordered. The  
20 Commission should reject Eschelon's proposed Sections 9.9 and 9.9.1 and exclude  
21 UCCRE from the ICA.

22  
23 **VIII. ISSUES 9-54 AND 9-54(A)-**  
24 **INCLUSION OF ALL COMPONENTS IN ICA FOR NON-STANDARD UNE**  
25 **COMBINATIONS AND RECURRING RATES FOR NEW COMBINATIONS**

26 **Q. ARE THESE ISSUES STILL IN DISPUTE BETWEEN THE PARTIES?**

1 A. No. The parties continued their discussions relating to these issues after filing the  
2 disputed issues matrix and have reached agreement on both Issue 9-54 and Issue 9-54(a).  
3 Accordingly, these issues are no longer in dispute, and there is no need for the  
4 Commission to take any action with respect to them.

5

6 **IX. ISSUE 9-55 - COMBINATIONS OF LOOPS AND TRANSPORT**

7 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTES ENCOMPASSED BY**  
8 **ISSUE 9-55.**

9 A. While Issue 9-55 (also identified in the testimony of Mr. Starkey as Subject Matter No.  
10 24) encompasses multiple provisions of the ICA, there are a small number of  
11 fundamental differences in the parties' positions that account for the parties' conflicting  
12 ICA language for these provisions. Generally, Qwest's proposed Section 9.23.4 describes  
13 the terms and conditions for Enhanced Extended Loops ("EELs"), Commingled EEL  
14 circuits and High Capacity EELs. The Qwest EEL product offering consists of a  
15 combination of an Unbundled Loop and Unbundled Dedicated Interoffice Transport  
16 ("UDIT"). However, in response to Eschelon's proposal, Qwest agreed to remove the  
17 terms and conditions associated with commingling (*i.e.*, the combining of a UNE and  
18 non-UNE network circuit) from Section 9.23 and to create a new ICA Section 24  
19 dedicated to commingling. This change in structure has challenged both parties to make  
20 sure the necessary terms and conditions are described in each section and to make sure  
21 that inappropriate duplication does not occur.

22

23 **Q. PLEASE DESCRIBE THE SPECIFIC DISPUTE RELATING TO ISSUE 9-55.**

24 A. The dispute covered by Issue 9-55 arises from Eschelon's attempt to define a "Loop  
25 Transport Combination" as a generic "umbrella" EEL and then sweep unique products

1 and commingled circuits with unique terms and conditions under this umbrella.  
2 Specifically, the products are: EELs, Commingled EEL circuits (which is an  
3 arrangement where either an EEL transport or EEL loop circuit is connected to a private  
4 line circuit), and High Capacity EELs.<sup>9</sup> The problem with Eschelon's proposal is that  
5 Qwest does not have a "Loop Transport Combination" generic EEL offering. Through its  
6 proposed language, Eschelon is attempting to either create a product offering that does  
7 not exist, or eliminate the distinctions between the product offerings and commingled  
8 arrangement identified above. In either case, Qwest opposes this attempt on Eschelon's  
9 part to create a new Qwest product and, accordingly, objects to inserting the term "Loop-  
10 Transport Combinations" in the ICA provisions. Qwest further opposes Eschelon's  
11 attempts to add confusion regarding the unique terms and conditions relating to EELs,  
12 Commingled EEL circuits, and High Capacity EELs.

13  
14 **Q. DO YOU HAVE ANY COMMENTS REGARDING MR. STARKEY'S STATED**  
15 **BUSINESS REASON FOR WANTING TO INCLUDED "LOOP-TRANSPORT**  
16 **COMBINATIONS" IN THE ICA?**

17 A. Yes. Mr. Starkey at page 169 states his position that if a combination is created between  
18 a UNE circuit and a private line circuit, then the UNE circuit terms and conditions should  
19 be included in the ICA so that the Washington Commission retains jurisdiction over the  
20 UNE circuit. Mr. Starkey suggests this is Eschelon's only objective in proposing this  
21 language. Specifically, at page 171, he states ". . .that only the UNE components of the  
22 Loop-Transport Combinations are subject to the ICA . . ."

23  

---

<sup>9</sup> Eschelon proposed ICA at 9.23.4.



1 **Q. WHAT IS QWEST'S RESPONSE TO THIS CONCERN AND OBJECTIVE OF**  
2 **ESCHELON'S?**

3 A. Setting aside Qwest's concerns that the Eschelon language goes way beyond, and is not  
4 consistent with the Eschelon stated objectives, Qwest is in conceptual agreement with  
5 Eschelon -- the ICA should govern the rates, terms and conditions of the UNE circuit in a  
6 commingled arrangement and the appropriate tariff or price list should cover the rates,  
7 terms and conditions of the private line circuit in the commingled arrangement.

8 However, as I stated above, the Eschelon language is not consistent with (and clearly  
9 goes beyond) this clear and simple objective. Eschelon attempts to modify, change and  
10 add ambiguities to numerous ICA provisions toward the supposed end of achieving this  
11 objection. If this is the actual objective of Eschelon, then Qwest would propose the  
12 following ICA language to address Eschelon's concerns and to settle Issue 9-55:

13 When a UNE circuit is commingled with a non-UNE circuit, the  
14 rates, terms and conditions of the ICA will apply to the UNE  
15 circuit (including Commission jurisdiction) and the non-UNE  
16 circuit will be governed by the rates, terms and conditions of the  
17 appropriate Tariff.<sup>10</sup>

18 Qwest would agree to insert this language both in section 9.23 and in the Eschelon  
19 proposed Section 24 Commingling section of the ICA. This is a clear and  
20 straightforward manner for addressing Eschelon's expressed concerns without creating  
21 undue confusion in Section 9.23 of the ICA. In fact, Qwest has already made such a  
22 commitment at section 24.1.2.1. Nonetheless, Qwest would agree to state it again to  
23 assure Eschelon that this is not a problem that needs extensive and confusing edits to the  
24 ICA.

---

<sup>10</sup> "Tariff" as used in the ICA is a defined term that refers to Qwest interstate Tariffs and state tariffs, price lists and price schedules.

1 **Q. YOU STATE THAT THE ESCHELON LANGUAGE GOES BEYOND**  
2 **ESCHELON'S STATED OBJECTIVE. CAN YOU PROVIDE AN EXAMPLE OF**  
3 **WHERE THIS OCCURS?**

4 A. Yes. Eschelon's very first ICA section encompassed by this issue starts the confusion:

5 9.23.4 **Loop-Transport Combinations**: Enhanced Extended  
6 Links (EELs), Commingled EELs, and High Capacity EELs.

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

23 Eschelon's language providing that “[i]f no component of the Loop-transport  
24 Combination is a UNE, however, the Loop-Transport Combination is not addressed in  
25 this Agreement” may be clear as it relates to a combination that is all non-UNEs (e.g., is  
26 completely a private line), but it implies that if **any** portion is a UNE, then the whole  
27 combination is governed by the ICA. This is contrary to the direct testimony of Mr.  
28 Starkey at page 171 where he states “. . .that only the UNE components of the Loop-  
29 Transport Combinations are subject to the ICA . . . .”

30  
31 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE ENTIRE**  
32 **COMMINGLED ARRANGEMENT (NOT JUST THE UNE CIRCUIT)**

1           **GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-TRANSPORT**  
2           **UMBRELLA TERM?**

3    A.     The net result is that Eschelon is seeking to have Qwest's special access and private line  
4           circuit's terms and conditions be governed by the ICA. This is improper because special  
5           access and private line services are provided pursuant to tariffs, not pursuant to Section  
6           251 of the Act, and, accordingly, terms and conditions for these services are found in the  
7           governing tariffs, not in ICAs. Moreover, in combination with the Eschelon demands  
8           that commingled arrangements be put in place with a single LSR and be billed in CRIS is  
9           a direct attempt by Eschelon to have this Commission (via an ICA arbitration) force  
10          Qwest to change its special access and private line service order process and billing  
11          arrangements. By eliminating the commingling restriction, the FCC modified the rules to  
12          permit CLECs to commingle UNEs and combinations of UNEs with services (e.g.  
13          switched, special access and private line services offered pursuant to tariff) that a  
14          requesting carrier has obtained at wholesale from an ILEC pursuant to any method other  
15          than unbundling under section 251(c)(3) of the Act. Wholesale services such as switched  
16          and special access services have always been separate and distinct products from those  
17          UNE products provided to CLECs under the terms and conditions of their ICA. Each of  
18          these products, whether it is tariffed or UNE, has its own established ordering,  
19          provisioning, and billing systems and methods. Eliminating the commingling restriction  
20          did not change that; and nor where in the TRO or TRRO does the FCC require ILECs to  
21          modify the rate, terms and conditions of their special access and private lines services,  
22          beyond removing any commingling with UNE restrictions. The FCC only required the  
23          ILECs to perform the necessary functions to effectuate such commingling upon request.  
24          Qwest has established provisioning processes and methods for all commingled  
25          arrangements to meet that requirement and has provided for billing of the UNE rates to

1 the UNE circuit and the appropriate special access and/or private line tariff rates to the  
2 tariffed circuit.

3  
4 **Q. ON PAGE 169, MR. STARKEY ACCUSES QWEST, VIA THE ICA, OF**  
5 **ATTEMPTING TO HAVE THE UNE PORTIONS OF A COMMINGLED**  
6 **ARRANGEMENT BE COVERED BY ACCESS TARIFFS. DO YOU AGREE**  
7 **WITH THIS ACCUSATION?**

8 A. No. Qwest has not made any attempt to have access to UNEs be dictated via its Access  
9 tariffs. Moreover, Mr. Starkey does not provide any support for his accusation. In fact,  
10 in agreed ICA language Qwest commits as follows:

11 24.1.2.1 The UNE component(s) of any Commingled arrangement  
12 is governed by the applicable terms of this Agreement. The other  
13 component(s) of any Commingled arrangement is governed by the  
14 terms of the alternative service arrangement pursuant to which that  
15 component is offered (e.g., Qwest's applicable Tariffs, price lists,  
16 catalogs, or commercial agreements). Performance measurements  
17 and/or remedies under this Agreement apply only to the UNE  
18 component(s) of any Commingled arrangement. Qwest is not  
19 relieved from those measurements and remedies by virtue of the  
20 fact that the UNE is part of a Commingled arrangement.

21 Qwest has been clear that when two circuits are commingled, each circuit retains the  
22 appropriate terms and conditions. Mr. Starkey's unsupported accusations are clearly at  
23 odds with the Qwest approved ICA language. As I stated above, it is Eschelon's  
24 proposed melding of EELs, Commingled EEL circuits and High Capacity EELs into a  
25 single umbrella product that creates the confusion regarding this issue.

26  
27 **Q. MR. STARKEY QUOTES FCC REFERENCES TO "LOOP TRANSPORT**  
28 **COMBINATIONS" IN HIS TESTIMONY AS SUPPORT FOR THE ESCHELON**

1           **LANGUAGE.<sup>11</sup> WHAT IS YOUR RESPONSE TO THESE FCC REFERENCES?**

2    A.    Both references, to paragraph 575 and 576 of the *TRO*, discuss “UNE combinations,”  
3           which means a combination that is made up of a UNE loop and UNE Transport. Neither  
4           of these cites discusses combinations between UNEs and Non-UNEs. I fail to see the  
5           leap that Mr. Starkey makes that because the FCC discusses “UNE Combinations” that  
6           Eschelon is free to attempt to thrust a new loop transport definition upon Qwest that  
7           covers UNE and UNE with private line combinations.

8           Mr. Starkey’s next two FCC references, to paragraphs 584 and 593 of the *TRO*, actually  
9           support the Qwest language. Paragraph 584 notes that combinations of UNE and private  
10          line combinations are clearly identified as “commingled” loop transport combinations,  
11          and paragraph 593 further defines such arrangements as a “commingled EEL.”  
12          Commingled EEL is the Qwest name for UNE and private line loop-transport  
13          combinations. His final cite at paragraph 594 again modifies loop transport combinations  
14          with the “commingled” descriptor.

15          In summary, none of the FCC references identified by Mr. Starkey supports Eschelon's  
16          proposal for use of a confusing umbrella definition of “loop transport combination” that  
17          attempts to cover UNE and UNE with private line combinations.

18  
19    **Q.    AT PAGE 175, MR. STARKEY CLAIMS THE USE OF LOOP TRANSPORT**  
20          **COMBINATION IS “EFFICIENT” BECAUSE YOU DON’T HAVE TO LIST ALL**  
21          **THREE TERMS MULTIPLE TIMES. DO YOU AGREE?**

22    A.    No. The three EELs identified by Mr. Starkey (i.e., EELs, Commingled EEL circuits and  
23          High Capacity EELs) have different terms and conditions that apply to each arrangement

---

<sup>11</sup> See Starkey Direct Testimony at 173-74.

1 and, accordingly, should be listed and addressed separately. There is nothing “efficient”  
2 about to trying to discuss three distinct service arrangements as if they are a single  
3 product.

4  
5 **Q. IN SUMMARY, WHY SHOULD THE COMMISSION ADOPT QWEST'S**  
6 **PROPOSAL AND REJECT ESCHELON'S USE OF THE TERM "LOOP-**  
7 **TRANSPORT COMBINATIONS?"**

8 A. The FCC uses the term "loop-transport combination" to generally describe varieties of  
9 EELs, not to establish an unbundled product separate from EELs. By contrast, Eschelon  
10 uses "loop-transport combination" as a defined term that applies equally to EEL, high  
11 capacity EEL circuits and commingled EELs. Although "loop-transport combination" is  
12 not a Qwest product, Eschelon improperly proposes to assign product attributes to it.  
13 *See, e.g.,* §§ 9.23.4.4.3.1 (intervals); 9.23.4.5.1.1. (Billing); 9.23.4.6.6. (BANS).

14 Qwest has developed and implemented separate and distinct systems, procedures and  
15 provisioning intervals for EELs, UNEs and tariffed private line services and is under no  
16 legal requirement to implement costly modifications to provide Eschelon's proposed  
17 "loop-transport combination" umbrella product.

18 If Eschelon's true concern is that UNEs be governed under the ICA and Commission  
19 jurisdiction while non-UNE (e.g. private line) circuits are governed under the tariff, the  
20 Qwest proposed ICA language addresses that concern. Qwest recommends the  
21 Commission adopt the Qwest proposed language and that it reject the Eschelon Loop-  
22 Transport Combination language.

23

1       **X.       ISSUES 9-56 AND 9-56A – SERVICE ELIGIBILITY CRITERIA AUDITS**

2       **Q.       MR. DENNEY EXPLAINS AT PAGE 131 OF HIS DIRECT TESTIMONY THAT**  
3       **ESCHELON'S PROPOSAL RELATING TO SERVICE ELIGIBILITY AUDITS IS**  
4       **PREMISED ON THE ASSUMPTION THAT THE FCC PERMITS ILECS TO**  
5       **CONDUCT THESE AUDITS ONLY UPON A SHOWING OF CAUSE? IS MR.**  
6       **DENNEY CORRECT IN ASSERTING THAT AN ILEC MUST STATE THE**  
7       **REASON OR CAUSE BEFORE CONDUCTING AN AUDIT?**

8       A.       No. This issue involves a straightforward interpretation and application of the FCC's  
9       rulings in the *TRO* relating to the rights of ILECs to conduct audits to determine if  
10       CLECs are complying with the service eligibility requirements that apply to high capacity  
11       EELs. Mr. Denney relies on a partial, incomplete quote and an inaccurate description of  
12       the FCC's rulings in an attempt to support his assertion that "Qwest is required by the  
13       FCC to have cause before conducting an audit regarding CLEC compliance with service  
14       eligibility requirements." An accurate reading of the *TRO* shows that the FCC did not  
15       impose a "cause" requirement for ILEC audits.

16  
17       **Q.       PLEASE DESCRIBE THE AUDIT RIGHTS THAT THE FCC GRANTED ILECS**  
18       **IN THE *TRO* FOR DETERMINING CLEC COMPLIANCE WITH THE**  
19       **SERVICE ELIGIBILITY CRITERIA.**

20       A.       Contrary to Mr. Denney's assertion, the FCC did not condition ILEC audit rights on a  
21       demonstration of cause or its reason to believe that a CLEC is violating the service  
22       eligibility criteria. Instead, as described in paragraph 626 of the *TRO*, an ILEC is  
23       permitted to "obtain and pay for an independent auditor to audit, on an annual basis,  
24       compliance with the qualifying service eligibility criteria." The auditor must issue an  
25       opinion regarding the requesting carrier's compliance with the criteria. If the auditor

1 determines that the CLEC is not in compliance, the CLEC must make true-up payments,  
2 convert non-complying circuits to the appropriate service, and may have to pay the costs  
3 of the independent auditor. If the auditor concludes that the CLEC is complying with the  
4 criteria, the ILEC must reimburse the CLEC for the costs associated with the audit.  
5 Nowhere in this description of ILEC audit rights does the FCC refer to or impose a  
6 demonstration of reason or cause requirement.

7  
8 **Q. SINCE THE FCC DID NOT IMPOSE A REASON OR CAUSE REQUIREMENT**  
9 **FOR SERVICE ELIGIBILITY AUDITS, IS THE AUDIT PROCESS SUBJECT**  
10 **TO POTENTIAL ABUSE BY THE ILECS, AS MR. DENNEY CLAIMS?**

11 A. No. While the FCC did not impose a reason or cause requirement, it did take steps to  
12 ensure that ILECs would not abuse the audit process. Specifically, as I describe above,  
13 the FCC established that if an auditor concludes that the CLEC is complying with the  
14 service eligibility criteria, the ILEC must reimburse the CLEC for the costs associated  
15 with the audit. This reimbursement obligation gives ILECs a strong incentive not to  
16 conduct abusive audits. Indeed, the FCC stated in paragraph 628 of the *TRO* that the  
17 intent of this reimbursement requirement for ILECs is to "eliminate the potential for  
18 abusive or unfounded audits." In addition, the *TRO* establishes that ILECs are permitted  
19 to conduct audits only "on an annual basis," which further prevents ILECs from  
20 conducting abusive audits. It is through this reimbursement scheme and the annual limit  
21 on audits, not through a "cause" requirement, that the FCC eliminated the potential for  
22 abusive audits.

23  
24 **Q. HOW DOES MR. DENNEY INACCURATELY QUOTE THE *TRO* IN**  
25 **CLAIMING THAT THE FCC IMPOSED A REASON OR CAUSE**



1           **REQUIREMENT FOR SERVICE ELIGIBILITY AUDITS?**

2    A.    Mr. Denney relies on a partial quote of paragraph 621 of the *TRO* where the FCC quotes  
3           a prior order in which it said that audits "will not be routine practice" and will be  
4           undertaken only when the ILEC has a concern about compliance with the service  
5           eligibility criteria. The first problem with Mr. Denney's presentation of this quote is that  
6           the statement is from an FCC order – the *Supplemental Order Clarification* – that was  
7           superseded by the *TRO*'s pronouncements relating to service eligibility requirements and  
8           ILEC audit rights. It is curious that Mr. Denney does not quote or describe in any detail  
9           the FCC's rulings in the *TRO* relating to audit rights, since those rulings are the FCC's  
10          latest and last word on the subject. The second problem with Mr. Denney's reliance on  
11          this quote is that he fails to discuss the footnote – footnote 1898 from the *TRO* – that  
12          follows the paragraph from which the quote is taken. In that paragraph, the FCC  
13          summarizes the audit rights it established in the *Supplemental Order Clarification*.  
14          Conspicuously absent from that summary is any mention of a "with cause" requirement.  
15          In summary, Mr. Denney's attempt to take a single sentence (out of an entire section  
16          describing audit rights) out of context is not persuasive. The FCC has consonantly been  
17          specific regarding audit rights, if there was any requirement of a "with cause" standard, it  
18          would be specifically identified.

19  
20    **Q.    MR. DENNEY ALSO IMPLIES (PAGE 131) THAT QWEST HAS NOT AGREED**  
21    **TO REIMBURSE ESCHELON FOR THE COSTS OF AN AUDIT IF AN**  
22    **AUDITOR DETERMINES THAT ESCHELON IS COMPLYING WITH THE**  
23    **SERVICE ELIGIBILITY CRITERIA? IS THAT ASSERTION ACCURATE?**

24    A.    No. Mr. Denney has overlooked or ignored an agreed provision in the ICA under which  
25          Qwest commits very clearly that it will reimburse Eschelon for the costs of an audit that

1 results in a finding that Eschelon is complying with the service eligibility criteria.

2 Section 9.23.4.3.1.3.5 could not be any clearer:

3 To the extent the independent auditor's report finds that [Eschelon]  
4 complied in material respects with the Service Eligibility Criteria,  
5 Qwest must reimburse [Eschelon] for [Eschelon's] costs associated  
6 with the audit, including staff time and other appropriate costs for  
7 responding to the audit (*e.g.*, collecting data in response to  
8 auditor's inquiries, meeting for interviews, etc.).

9 As this language shows, the reimbursement scheme the FCC adopted as protection  
10 against abusive audits is in the ICA. There is therefore no practical need and no legal  
11 basis for Eschelon's "cause" proposal.

12  
13 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

14 A. The Commission should reject Eschelon's proposed addition to 9.23.4.3.1.1, and thereby  
15 allow Qwest to retain the limited audit rights granted by the FCC in the *TRO*. Further,  
16 for the same reasons I describe above, the Commission should reject Eschelon's demand  
17 that Qwest provide information about specific circuits that may not be in compliance with  
18 the service eligibility requirements as a pre-condition to an audit. There is no cause  
19 requirement for audits and certainly no mention anywhere by the FCC of a requirement to  
20 identify specific circuits as a pre-condition to an audit.

21  
22 **XI. ISSUES 9-58 (ALL A,B,C,D,E) -**  
23 **ORDERING, BILLING, AND CIRCUIT ID FOR COMMINGLED ARRANGEMENTS**

24 **Q. PLEASE PROVIDE A SUMMARY OF THIS ISSUE.**

25 A. Issue 9-58 and the related sub-issues (a,b,c,d,e) (identified in Eschelon's testimony as  
26 Subject Matter No. 26) involve process-related disputes between the parties. When a  
27 CLEC orders either an EEL loop or EEL transport commingled with a private line

1 transport circuit or a channel termination circuit (a Commingled EEL), it is necessary to  
2 order, provision and bill each circuit out of the appropriate Qwest service order systems  
3 and to follow the established processes Qwest has for these products. For example, when  
4 a CLEC orders an EEL Loop commingled with a private line transport circuit, the design  
5 of Qwest's systems and processes requires that the CLEC order the EEL loop by  
6 submitting a local service request ("LSR"). Qwest bills the CLEC for this network  
7 element through its "CRIS" system. By contrast, the design of Qwest's systems and  
8 processes requires that the CLEC order the private line transport circuit by submitting an  
9 access service request ("ASR"), and Qwest bills the CLEC for this circuit through a  
10 different billing system referred to as the "IABS system." Each circuit is separate and is  
11 assigned its own circuit identification number ("circuit ID"). Moreover, the EEL loop is  
12 provided pursuant to terms and conditions that are specific to that facility, and the private  
13 line transport circuit is provided based on specifically defined terms and conditions set  
14 forth in tariffs.

15 This dispute arises because of Eschelon's demands that Qwest modify its systems and  
16 processes so that commingled EELs are provisioned and processed as though they are a  
17 single, unified UNE element instead of a combination of two very distinct circuits with  
18 distinct characteristics and provisioning requirements. Eschelon's proposals in this regard  
19 would require very significant changes to Qwest's systems and processes at a very  
20 substantial cost. In addition to the fact that Qwest has no obligation to make such  
21 changes, Eschelon apparently is not proposing to compensate Qwest for the costs they  
22 would impose.

23 Issue-58 is also connected with Issue 9-55, which arises from Eschelon's attempt to  
24 define a "Loop Transport Combination" as a generic "umbrella" EEL and then sweep

1 unique products and commingled circuits with unique terms and conditions under this  
2 umbrella. Specifically, they are: EELs, Commingled EEL circuits (which is an  
3 arrangement where either an EEL transport or EEL Loop circuit is connected to a private  
4 line circuit) and High Capacity EELs. The net result is that Eschelon is requesting that  
5 the Qwest special access and private lien circuits in a commingled arrangement be  
6 governed by the ICA.

7  
8 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE ENTIRE**  
9 **COMMINGLED ARRANGEMENT (NOT JUST THE UNE CIRCUIT)**  
10 **GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-TRANSPORT**  
11 **UMBRELLA TERM?**

12 A. As I discuss above, Qwest is concerned that Eschelon is seeking to have Qwest's special  
13 access and private line circuit's terms and conditions be governed by the ICA. This is  
14 improper because these are tariffed services that Qwest does not provide pursuant to  
15 Section 251 of the Act, and, therefore, ICA terms and conditions do not apply to them.  
16 Moreover, the combination of Eschelon's demands that commingled arrangements be put  
17 in place with a single LSR and be billed in CRIS is a direct attempt to have this  
18 Commission (via an ICA arbitration) force Qwest to change its special access and private  
19 line service order process and billing arrangements.<sup>12</sup>

20 By eliminating the commingling restriction, the FCC modified the rules to permit CLECs  
21 to commingle UNEs and combinations of UNEs with services (e.g. switched, special  
22 access and private line services offered pursuant to tariff) that a requesting carrier has  
23 obtained at wholesale from an ILEC pursuant to any method other than unbundling under

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<sup>12</sup> See Denney Direct Testimony at 133.

1 section 251(c)(3) of the Act. Wholesale services such as switched and special access  
2 services have always been separate and distinct products from those UNE products  
3 provided to CLECs under the terms and conditions of their ICA. Each of these products,  
4 whether the product is tariffed or a UNE, has its own established ordering, provisioning,  
5 and billing systems and methods. Eliminating the commingling restriction did not  
6 change this. Nowhere in the *TRO* or *TRRO* does the FCC require ILECs to modify the  
7 rate, terms and conditions of their special access and private lines services, beyond  
8 removing any commingling with UNE restrictions. The FCC only required the ILECs to  
9 perform the necessary functions to effectuate such commingling upon request. Qwest has  
10 established provisioning processes and methods for all commingled arrangements to meet  
11 that requirement. Qwest's processes and methods provide for billing of the UNE rates to  
12 the UNE circuit and the appropriate special access and/or private line tariff rates to the  
13 tariffed circuit.

14  
15 **Q. MR. DENNEY PAINTS A PICTURE ON PAGE 144 TO 145 THAT HAVING TO**  
16 **ORDER COMMINGLED EELS IN THE MANNER PROPOSED BY QWEST IS**  
17 **SO ONEROUS AND INEFFICIENT THAT THE ONLY ALTERNATIVE IS TO**  
18 **EXIT THE MARKET OR PURCHASE SPECIAL ACCESS TARIFFS. DO YOU**  
19 **HAVE ANY COMMENTS?**

20 A. Yes. Mr. Denney, in several instances (page 144) in his testimony, refers to Commingled  
21 EELs as a product. A Commingled EEL is a commingled arrangement, consisting of an  
22 EEL transport or EEL Loop circuit connected to a Private Line transport or Private Line  
23 channel termination circuit. Both the UNE and the Private Line circuits are ordered and  
24 billed separately, and there are numerous possible variations that do not lead to a

1 Commingled EEL being defined as a “product” offering as Eschelon is demanding Qwest  
2 create and develop.

3 Moreover, numerous UNE, access and private line network arrangements require  
4 multiple orders to be placed and multiple circuit IDs to be managed. Even Eschelon  
5 acknowledges with their language at Section 9.23.4.5.4 that multiplexed facilities require  
6 at least two service orders and multiple circuits IDs. The typical arrangement of 28 DS1s  
7 multiplexed on to a DS3 facility will have up to 29 different circuit IDs. This is true in  
8 the UNE EEL, special access and private line arena. Eschelon has not suggested that  
9 Qwest commingle two separate facilities of different bandwidth/capacity into one order,  
10 one bill, and one circuit ID. I fail to understand how having a Commingled EEL  
11 arrangement when the private line circuit and the EEL circuit are the same bandwidth  
12 capacity provisioned with two service orders and managing two circuit IDs is so beyond  
13 the capability of Eschelon that they will potentially exit the Washington marketplace.

14  
15 **Q. DOES THIS MEAN THAT NOT ONLY ARE THE TWO SERVICE ORDERS**  
16 **AND TWO CIRCUIT IDS UNDER DISPUTE AS A SUB-SECTION OF EELS,**  
17 **BUT ALSO AS A SUB-SECTION OF SAME BANDWIDTH EELS?**

18 A. Yes. When available, a CLEC will select the all UNE EEL option, so Eschelon’s  
19 dramatic statements about potentially exiting the Washington marketplace because of  
20 having to manage one additional circuit ID and one additional service order per EEL  
21 revolve around a very narrow application -- that of a single bandwidth Commingled EEL  
22 when the all UNE loop and transport EEL is not available. It is not realistic that this  
23 narrow circumstance could have the broad market implications that Mr. Denney suggests.

24

1 **Q. WHEN WOULD YOU TYPICALLY SEE A SINGLE BANDWIDTH**  
2 **COMMINGLED EEL UTILIZED BY A CLEC?**

3 A. Generally, a CLEC's first choice will be to use UNE transport and UNE loops (when  
4 available) to make a UNE EEL. In the event one or the other is not available, then a  
5 CLEC will use a special access or private line circuit with a UNE circuit in a commingled  
6 arrangement, i.e., a Commingled EEL. Qwest agrees with Mr. Denney, that a typical  
7 need for a same bandwidth Commingled EEL is when the transport is between non-  
8 impaired wire centers, but a UNE loop is still available.<sup>13</sup>

9  
10 **Q. WHAT IS THE SPECIFIC DISPUTE ENCOMPASSED BY ISSUE 9-58?**

11 A. Issue 9-58 involves Eschelon's attempt to require Qwest to overhaul its systems and  
12 processes to make them capable of handling a single LSR service order request whenever  
13 Eschelon orders any so-called "Loop-Transport Combination" umbrella term to cover  
14 both UNE EELs and Commingled EELs (which could be a commingled arrangement  
15 between a UNE circuit and a special access circuit).<sup>14</sup> See Echelon's proposed language  
16 for sections 9.23.4.5.1, 9.23.4.5.1.1 and 9.23.4.5.4.

17  
18 **Q. DOES THIS CREATE A PROCESS AND INSTALLATION CONCERN FOR**  
19 **QWEST?**

20 A. Yes, in particular, this concern arises when the request is for a Commingled EEL. For  
21 example, when a CLEC orders an EEL Loop commingled with a special access transport  
22 circuit, the design of Qwest's systems and processes requires that the CLEC order the  
23 EEL loop by submitting a LSR. Qwest bills the CLEC for this network element through

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<sup>13</sup> See Denney Direct Testimony at 144.

<sup>14</sup> See Denney Direct Testimony at 133.

1 its "CRIS" system. By contrast, the design of Qwest's systems and processes requires  
2 that the CLEC order the special access transport circuit by submitting an ASR, and Qwest  
3 bills the CLEC for this circuit through a different billing system referred to as the "IABS  
4 system."

5  
6 **Q. WHAT IS YOUR RESPONSE TO MR. DENNEY'S STATEMENT THAT**  
7 **ESCHELON'S PROPOSALS (THAT THE COMMINGLED EEL BE**  
8 **IMPLEMENTED ON A SINGLE LSR) ARE "SIMPLE"?**

9 A. Despite Mr. Denney's representation on page 134 that Eschelon's proposals are "simple,"  
10 the simplistic idea of using the remarks section of the LSR to convey that this is a UNE  
11 circuit commingled with a private line circuit is not reasonable or feasible with the  
12 current Qwest provisioning systems.<sup>15</sup> The remarks section can be utilized to convey  
13 information at the time of ordering or repair. However, once the initial activity has been  
14 completed, Qwest's systems do not retain, much less read, the remarks section of the  
15 original LSR. This is even more critical as I discuss later in this section the related  
16 Eschelon request for a single circuit ID.

17  
18 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SYSTEM THAT CANNOT READ**  
19 **THE REMARKS SECTION?**

20 A. Yes. UNEs are subject to specific performance indicator measurements ("PIDs") and  
21 potential payments. Special access and private line arrangements are not subject to the  
22 same performance indicator measurements and potential payments. If Qwest were  
23 required to create a hybrid product (such as would result if all of Eschelon's proposals in  
24 9-58 A,B,C,D,E were adopted by the Commission) that was a mix of both the UNE

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<sup>15</sup> See Denney Direct Testimony at 149.



1 circuit and private line facilities, it would be inappropriate to subject Qwest to UNE-  
2 specific PIDs and potential payments on this hybrid product.

3 If a single LSR and single circuit ID (as Eschelon proposes in 58 A) were utilized, how  
4 would the Qwest systems magically know what part of the hybrid circuit had an  
5 installation and/or repair issue to know if specific performance indicator measurements  
6 and potential payments would apply? In addition, our systems used to track these  
7 measurements do not read and filter results by the remarks section of the LSR. While  
8 Qwest believes the complete Eschelon proposal in Issue 9-58 A,B,C,D,E should be  
9 rejected, at a minimum, the Commission would need to exclude such hybrid products  
10 from the Washington UNE-specific performance indicator measurements.

11  
12 **Q. DOES QWEST COMMIT IN THE ICA THAT THE UNE CIRCUIT**  
13 **COMMINGLED WITH A PRIVATE LINE CIRCUIT (COMMINGLED EEL)**  
14 **WILL BE PROPERLY MEASURED BY PIDS, AND IF APPROPRIATE, THAT**  
15 **PAP PAYMENTS WILL BE MADE IF THERE IS A PERFORMANCE ISSUE**  
16 **WITH UNE?**

17 A. Yes. Qwest has made that commitment in the ICA at 24.1.2.1:  
18 24.1.2.1 The UNE component(s) of any Commingled arrangement is  
19 governed by the applicable terms of this Agreement. The other  
20 component(s) of any Commingled arrangement is governed by the terms  
21 of the alternative service arrangement pursuant to which that component is  
22 offered (e.g., Qwest's applicable Tariffs, price lists, catalogs, or  
23 commercial agreements). Performance measurements and/or remedies  
24 under this Agreement apply only to the UNE component(s) of any  
25 Commingled arrangement. Qwest is not relieved from those  
26 measurements and remedies by virtue of the fact that the UNE is part of a  
27 Commingled arrangement.

1 The Qwest process for Commingled EELs allows the correct performance measurements  
2 to still occur for the UNE circuit.

3  
4 **Q. HAS ESCHELON OFFERED TO REIMBURSE QWEST FOR ANY**  
5 **ADDITIONAL COSTS THAT ITS PROPOSAL WOULD CAUSE QWEST TO**  
6 **INCUR?**

7 A. No. I am not aware that Eschelon has made any offer to reimburse Qwest for the unique  
8 service ordering process costs its single LSR demand would create.

9  
10 **Q. ARE OTHER CLECS USING QWEST'S EXISTING SYSTEMS AND**  
11 **PROCESSES TO ORDER COMMINGLED EELS?**

12 A. Yes. Despite Mr. Denney's statements on pages 144 to 145, other CLECs are finding the  
13 Qwest Commingled EEL to be a useful product and Qwest is successfully provisioning  
14 other CLEC's requests for commingled EELs based on the process outlined by Qwest in  
15 its proposed Section 9.23.4.5. Qwest is not aware of a single CLEC who has claimed that  
16 the Commingled EEL ordering process is so "difficult" that they are ordering private line  
17 services as an alternative. As mentioned in my direct testimony, Qwest believes its  
18 necessary requirement for two separate orders and two separate circuit IDs is consistent  
19 with at least one other ILEC's ordering process for commingled arrangements.

20  
21 **Q. DOES QWEST BELIEVE THIS ARBITRATION IS THE CORRECT FORUM**  
22 **FOR DISCUSSING DETAILED OPERATIONAL SUPPORT SYSTEMS (OSS)**  
23 **RELATED CHANGES SUCH AS ESCHELON'S SINGLE LSR REQUEST?**

24 A. No. Qwest has developed and implemented OSS related procedures and intervals for  
25 UNE EELs, and UNEs commingled with special access circuits and is under no legal

1 requirement to modify these systems to support Eschelon's proposed "Loop-Transport  
2 Combination" single umbrella OSS process concept. Mr. Denney is incorrect when he  
3 attempts to claim on page 146 that Eschelon is not asking Qwest to modify systems and  
4 incur costs. Such modifications as Eschelon proposes in Issue 9-58 would require Qwest  
5 to incur significant OSS related costs that it is entitled to recover under the Act.

6 Further, the Change Management Process ("CMP") was approved as part of Section 271  
7 proceedings by both this Commission and the FCC for the purpose of providing a vehicle  
8 to address the types of changes in OSS related processes and systems changes that impact  
9 UNEs. From a CLEC's perspective, the purpose of CMP is to provide CLECs with a  
10 meaningful opportunity to modify OSS related systems, processes and procedures. CMP  
11 also allows CLECs collectively to prioritize what changes should be made to OSS related  
12 systems. This stands in contrast to Eschelon's attempt here to circumvent the CMP  
13 process and have this arbitration redefine OSS related service order changes without the  
14 prioritization input from other CLECs. In summary, even if the changes to the LSR  
15 ordering process that Eschelon is proposing were appropriate – which they are not – the  
16 CMP is the proper forum for raising any concerns with UNEs. For more detail regarding  
17 CMP, please see the testimony of Qwest witness Renee Albersheim.

18  
19 **Q. ARE THERE OTHER STAKE HOLDERS, BESIDES CLECS, THAT WOULD BE**  
20 **IMPACTED BY THE CHANGES ESCHELON DEMANDS?**

21 A. Yes. Interexchange Carriers ("IXCs") use ASRs and IABs billing in addition to CLECs.  
22 Any changes made to these process and systems impact these large users. In addition,  
23 ordering and billing requirements for IABS and CRIS are governed by the Ordering and  
24 Billing Forum ("OBF") (a national forum) and are set on a national basis. While there  
25 may be some options concerning how to implement these national standards, it is an

1 extensive and lengthy process to review and implement any significant changes to them  
2 because so many carriers are affected by the changes. Clearly, Qwest cannot change its  
3 ordering and billing practices simply because one CLEC wants it to.

4  
5 **Q. HAS A CMP REVIEW BEGUN FOR COMMINGLED EELS?**

6 A. Yes. Commingling is a requirement that resulted from the *TRO* and *TRRO* proceedings  
7 that required ILECs to provide commingled arrangements between UNEs and special  
8 access and private lines. Therefore, CMP is the appropriate forum for potential *TRRO*  
9 generated systems changes. Initially, numerous CLECs, including Eschelon, agreed that  
10 *TRRO* legal issues were not settled, the change request intended to complete *TRRO*  
11 related work has been deferred pending completion of the *TRRO* wire center dockets in  
12 Qwest's states. However, since then Qwest has reactivated the *TRO/TRRO* related CR  
13 and discussions are under way as to how best to review the various systems and process  
14 changes that occurred as a result of these FCC orders. For more detail regarding CMP  
15 and *TRRO* related changes, please see the testimony of Qwest witness Renee Albersheim.

16  
17 **Q. WHAT DOES QWEST RECOMMEND THE COMMISSION ORDER WITH**  
18 **RESPECT TO ISSUE 9-58?**

19 A. The Commission should reject Eschelon's attempt to force Qwest to modify its systems  
20 and processes for special access and private line to accommodate Eschelon's proposed  
21 and improper "Loop-Transport Combination" umbrella term. Under Eschelon's proposal,  
22 Qwest would be required to (1) create an entirely new and unique hybrid service, and (2)  
23 permit Eschelon to submit one LSR to order this hybrid service. Qwest's existing  
24 ordering, provisioning, and billing processes already provide the ability to commingle  
25 tariffed special access and UNE services when properly requested via their respective

1 ordering processes. Qwest's commingling processes are no different than those  
2 implemented by other ILECs.

3 To the extent Eschelon has any concerns, the Commission should indicate that Eschelon  
4 can properly address their OSS related concerns for UNEs in the appropriate TRO/TRRO  
5 related CMP proceeding.

6 Moreover, UNEs are subject to specific performance indicator measurements and  
7 potential payments. It would be inappropriate to apply these measurement and payment  
8 provisions to the "Loop-Transport combination" since these combinations contain a non-  
9 UNE private line circuit that is not subject to these provisions.

10 In summary, the Commission should allow this section to remain as proposed by Qwest  
11 and consistent with the current Qwest methods and procedures for processing not only  
12 EEL services commingled with tariffed services, but also all commingling requests.

13

14 **Q. WHAT IS THE SPECIFIC DISPUTE IN ISSUE 9-58(a)?**

15 A. Issue 9-58(a) involves Eschelon's attempt to require Qwest to change its processes by  
16 assigning a single circuit ID to Eschelon's proposed "Loop-Transport Combination"  
17 umbrella of offerings and as a result for Commingled EELs.

18

19 **Q. IS IT NECESSARY FOR QWEST TO HAVE SEPARATE CIRCUIT IDS FOR**  
20 **THE DIFFERENT CIRCUITS THAT COMPRISE A COMMINGLED EEL?**

21 A. Yes. Eschelon's demand that Qwest use a single circuit ID for commingled EELs instead  
22 of separate identification numbers for the UNE and non-UNE (special access and/or  
23 private line) circuits is improper for several reasons. Many of the factors I have  
24 described above apply with equal force to Eschelon's single circuit ID request. First,

1 circuit IDs often include product-specific information that Qwest relies upon for proper  
2 processing, monitoring of performance indicator measurements and billing of products.  
3 Using a circuit ID assigned to a UNE for a tariffed service may result in mis-  
4 identification of the service and lead to billing and other errors. Second, there is no legal  
5 requirement for Qwest to change its systems for this purpose; indeed, Qwest uses  
6 separate circuit ID numbers for other CLECs, so adoption of that approach for Eschelon  
7 will not result in unequal treatment. Third, CMP is the correct forum to address such  
8 OSS-related process changes. Fourth, it would be very costly for Qwest to modify its  
9 operation systems to meet Eschelon's demand for use of the same circuit ID number after  
10 a conversion. As far as I am aware, Eschelon is not proposing to compensate Qwest for  
11 the costs to implement this very substantial change.

12  
13 **Q. WHY IS CMP, NOT THIS ARBITRATION, THE CORRECT FORUM FOR**  
14 **ESCHELON TO SEEK THE USE OF A SINGLE CIRCUIT ID FOR**  
15 **COMMINGLED ARRANGEMENTS?**

16 A. Eschelon's demand for a single circuit ID involves processes that affect all CLECs, not  
17 just Eschelon. This demand should therefore be addressed through the CMP, not through  
18 an arbitration involving a single CLEC.

19  
20 **Q. YOU MENTIONED THE CIRCUIT ID CONTAINS INFORMATION ABOUT**  
21 **THE SPECIFIC CIRCUIT. COULD YOU PLEASE PROVIDE EXAMPLES OF**  
22 **THE TYPE OF INFORMATION?**

23 A. Yes. In his testimony, Mr. Denney makes reference to how simple is Eschelon proposals  
24 that Qwest use some note in the remarks section to identify that a circuit ID is in error  
25 and does not correctly identify the circuit. I have discussed above how the remarks

1 section is not retained in the Qwest systems. In addition, given the mixed or hybrid  
2 nature of what Eschelon is proposing, how would downstream systems be able to identify  
3 and manage the facility properly if the circuit ID they are using is incorrect?

4 By way of illustration, set forth below is the Circuit ID of an unbundled DS-1 loop and a  
5 Private Line DS-1 channel termination (the closest equivalent to a DS1 unbundled loop)  
6 Service, along with an indicator of what each character means:

7 DS-1 Private Line Service: 15/HCGS/147426/NW

8 DS-1 Unbundled Loop: 3/HCFU/105228/NW

9 The first two characters or in this case numbers (15 and 3) are the prefix and they  
10 indicate the LATA and the type of circuit. For this instance:

11 15 denotes Private Line in LATA 628 in MN

12 3 denotes Unbundled DS-1 Loop in LATA 628 in MN

13 The next four characters are the service code and service modifiers and in this  
14 case:

15 HCGS denotes the DS-1 Service Technical Characteristics (HC) and it is  
16 an interstate service (GS)

17 HCFU denotes the DS-1 Service Technical characteristics (HC) and it is  
18 intrastate service (FU)

19 The next set of 6 numerical characters are the serial number of the circuit. It is  
20 necessary to issue a new Serial Number to ensure that no duplication occurs. This  
21 serial number is generated automatically.

22 The last two Characters represent the region where the circuit exists and in this  
23 case it is North West.

24 When a circuit ID does not actually reflect the service being provided, it can cause  
25 provisioning, billing and documentation of service quality concerns. To have a single  
26 circuit ID for commingled EELs would require Qwest to develop and implement a new  
27 circuit identification for what is essentially a hybrid product within Qwest's pre-order,  
28 order, provisioning, circuit inventory and tracking systems, repair and associated billing  
29 systems. Again, circuit IDs are developed using a national Telcordia standard. Qwest

1 cannot just decide to “make up” a new way of using the circuit IDs without it potentially  
2 having a national impact. Major changes also would be required for all of Qwest's  
3 associated technical publications that support these systems. This would be an extremely  
4 time-consuming and expensive undertaking. Further, given the service performance  
5 measurements issues discussed above, it may not be possible to identify and apply  
6 appropriate PID and PAP measurements to the product.

7  
8 **Q. PLEASE RESPOND TO MR. DENNEY’S STATEMENT REGARDING HOW A**  
9 **COMMINGLED EEL OFTEN REPLACES AN EXISTING FACILITY.<sup>16</sup>**

10 A. Commingled EELs can be put in place in generally two ways -- through a completely  
11 new installation or through a conversion. In a conversion situation, the same network  
12 facilities are commonly used to convert from an all UNE EEL (or all private line service)  
13 to a Commingled EEL arrangement. However, to state that this is only a name and price  
14 change that effectively could be carried out on the back of an envelope, as Mr. Denney  
15 suggests, fails to recognize the fact that each of the circuits in the commingled  
16 arrangement have different rates, terms and conditions of service.

17 One analogy is basic residential telephone service (the 1FR) as compared to the to the flat  
18 business line (1FB). It is true that the same facilities can be used (or even converted)  
19 from one to the other and there is a corresponding name and price change. However, the  
20 differences in terms and conditions can be very different. For a residential line new  
21 connect, Qwest may have a Provider of Last Resort (POLR) obligation to build, while the  
22 business line may not. The business line telephone number may be advertised in the  
23 business section of the directory, a residential line can not. A business line may be

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<sup>16</sup> See Denny Direct Testimony at 142-43.



1 serving a 9-1-1 center and eligible for TSP, and therefore have priority restoration in an  
2 emergency, while the residential line may not.

3 The fact that the same network facilities are utilized is not a reason to put in place a  
4 process that does not insure that the correct terms and conditions of service are followed  
5 for each circuit in a commingled arrangement.

6  
7 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-58(A)?**

8 A. For the reasons I describe above and in my direct testimony, the Commission should  
9 adopt Qwest's proposed language for Section 9.23.4.5.4 and reject Eschelon's language  
10 that would require the use of a single circuit ID for commingled EELs and all so-called  
11 "Loop-Transport Combinations."

12  
13 **Q. PLEASE DESCRIBE THE DISPUTE RELATING TO ISSUE 9-58(B).**

14 A. This issue arises because of Eschelon's demand that for each so-called "Loop-Transport  
15 Combination," Qwest should use a single billing account number ("BAN") – or issue a  
16 single bill – for the different circuits that are commingled. Eschelon presents this  
17 demand in its proposed language for Section 9.23.4.6.6. Because Qwest opposes this  
18 improper demand, it recommends the Eschelon's proposed Section 9.23.4.6.6 should be  
19 excluded from the ICA.

20  
21 **Q. WHY IS ESCHELON'S DEMAND FOR USE OF A SINGLE BILLING  
22 ACCOUNT NUMBER IMPROPER?**

23 A. Eschelon's demand that Qwest use a single BAN for the elements comprising a  
24 commingled EEL or for Eschelon's proposed "Loop-Transport Combination" fails to  
25 recognize that BANs contain essential product-specific information that affects the proper

1 billing for products. This information affects, for example, whether a product is billed at  
2 a UNE-based rate or at a tariffed rate. Without separate BANs for the distinct products  
3 that comprise commingled arrangements, billing errors would be inevitable.

4 In addition, BANs are a national billing standard governed by the OBF (a national  
5 ordering and billing forum). These national standards ensure that all IXC and CLEC  
6 customers can expect standardized ordering and billing requirements regardless of which  
7 state or ILEC they are ordering service from.

8  
9 **Q. WOULD IT BE COSTLY FOR QWEST TO MODIFY ITS SYSTEMS AND**  
10 **PROCESSES TO PERMIT THE USE OF A SINGLE BILLING ACCOUNT**  
11 **NUMBERS FOR A COMMINGLED ARRANGEMENT?**

12 A. Yes. Eschelon's demand for a single BAN would impose very substantial costs on Qwest  
13 because of the systems changes that would be required. Qwest has no legal obligation to  
14 make those changes, and, moreover, Eschelon apparently is not offering to compensate  
15 Qwest for the costs of performing them. Qwest has developed and implemented systems,  
16 procedures and intervals for EELs, UNEs and tariffed services and is under no legal  
17 requirement to modify these systems to provide Eschelon's proposed "Loop-Transport  
18 Combination" product. Moreover, this attempt to force Qwest to move special access  
19 and/or private line billing from IABs to CRIS is asking this Commission to reach in to the  
20 special access terms and conditions via the ICA. This is improper and in reality it  
21 potentially becomes a form of rate ratcheting that Qwest is explicitly not required to do  
22 for CLECs per the *TRO*.

23  
24 **Q. HAS ESCHELON PROPOSED ANY ALTERNATIVE LANGUAGE FOR ITS**  
25 **PROPOSED SECTION 9.23.4.6.6 RELATING TO A SINGLE BILLING**

1           **ACCOUNT NUMBER?**

2    A.    Yes. Issue 9-58 (c) involves Eschelon's alternative proposal for Section 9.23.4.6.6, which  
3           Eschelon apparently advocates if the Commission rejects its improper request for single  
4           BANs with commingled arrangements. Eschelon's alternative proposal is as follows:

5                   **9.23.4.6.6 For each Point-to-Point Commingled EEL (see**  
6                   **Section 9.23.4.5.4), so long as Qwest does not provide all**  
7                   **chargeable rate elements for such EEL on the same Billing**  
8                   **Account Number (BAN), Qwest will identify and relate the**  
9                   **components of the Commingled EEL on the bills and the**  
10                  **Customer Service Records. Unless the Parties agree in writing**  
11                  **upon a different method(s), Qwest will relate the components**  
12                  **of the Commingled EEL by taking at least the following steps:**

13                   **9.23.4.6.6.1 Qwest will provide, on each Connectivity**  
14                   **Bill each month, the circuit identification (“circuit ID”)**  
15                   **for the non-UNE component of the Commingled EEL in**  
16                   **the sub-account for the related UNE component of that**  
17                   **Commingled EEL;**

18                   **9.23.4.6.6.2 Qwest will assign a separate account type to**  
19                   **Commingled EELs so that Commingled EELs appear**  
20                   **on an account separate from other services (such as**  
21                   **special access/private line);**

22                   **9.23.4.6.6.3 Each month, Qwest will provide the**  
23                   **summary BAN and sub-account number for the UNE**  
24                   **component of the Commingled EEL in a field (e.g., the**  
25                   **Reference Billing Account Number, or RBAN, field) of**  
26                   **the bill for the non-UNE component; and**

27                   **9.23.4.6.6.4 For each Commingled EEL, Qwest will**  
28                   **provide on all associated Customer Service Records the**  
29                   **circuit ID for the UNE component; the RBAN for the**  
30                   **non-UNE component; and the circuit ID for the non-**  
31                   **UNE component.**

32  
33    **Q.    IS ESCHELON'S ALTERNATIVE OR BACK-UP VERSION OF SECTION**  
34           **9.23.4.6.6 APPROPRIATE?**

35    A.    No. Eschelon's back-up version of Section 9.23.4.6.6 suffers from most of the same  
36           flaws that characterize its original version. Most significantly, this version, like the

1 original version, would require major changes to Qwest's systems and processes. Even a  
2 casual review of the extensive list above reveals the inaccuracy of Mr. Denney's  
3 statements that Eschelon is not asking Qwest to modify systems or incur costs to meet  
4 their various proposals.<sup>17</sup> I am not exactly sure who Mr. Denney thinks will work for free  
5 to modify the Qwest systems and/or to do extensive manual labor on the Eschelon bills  
6 each month to perform the tasks listed above.

7 As I stated in my direct testimony, under Eschelon's back-up version of Section  
8 9.23.4.6.6, Qwest would be required, at a minimum to: (1) modify its systems and  
9 processes to include on bills for the UNE circuit of commingled EELs the circuit ID of  
10 the non-UNE component; (2) create an entirely separate account type within its billing  
11 systems for commingled EELs; (3) modify its systems and processes to include on bills  
12 for the non-UNE circuit of commingled EELs "the summary BAN and sub-account  
13 number for the UNE component;" and (4) modify its systems and processes to include on  
14 all customer service records for commingled EELs "the circuit ID for the UNE circuit;  
15 the RBAN for the non-UNE component; and the circuit ID for the non-UNE circuit."

16 These major changes to Qwest's billing systems and processes, which Qwest would be  
17 implementing solely in response to Eschelon's request, would impose upon Qwest very  
18 substantial costs. Qwest has no legal obligation to modify its systems and processes in  
19 this way, and, moreover, Eschelon has no legitimate business justification for these far-  
20 reaching modifications.

21  
22 **Q. WHY IS CMP, NOT THIS ARBITRATION, THE CORRECT FORUM FOR**  
23 **ESCHELON TO ADDRESS BILLING CONCERNS FOR UNES IN A**

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<sup>17</sup> See Denney Direct Testimony at 146.

1           **COMMINGLED ARRANGEMENT?**

2    A.     At the risk of being repetitive, all of Issue 58 (a,b,c,d,e) to the extent they impact access  
3           to UNEs, not just the billing proposals, effect all CLECs, not just Eschelon, and therefore  
4           should be addressed through the CMP, not through an arbitration involving a single  
5           CLEC. Unless that single CLEC, in this case Eschelon, is willing in to make special  
6           arrangements with Qwest to pay for the systems and ongoing manual personnel work that  
7           is going to be necessary to meet their demands.

8  
9    **Q.     WHAT DOES QWEST RECOMMEND WITH RESPECT TO BOTH ISSUE 9-**  
10           **58(B) AND (C)?**

11   A.     For the reasons I describe above and in my direct testimony, the Commission should  
12           reject both of Eschelon's BAN proposals and not include in the ICA any of the language  
13           Eschelon proposes for Section 9.23.4.6.6 and its sub-parts. In particular, the Commission  
14           should reject Eschelon's improper attempt to have the terms and conditions of Qwest  
15           special access and private line tariffs governed by the ICA.

16  
17   **Q.     PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE 9-58(D).**

18   A.     Issue 9-58 (d) relates directly to Eschelon's demands described above involving single  
19           LSRs, single circuit IDs, and single BANs for commingled EELs. In its proposed  
20           Sections 9.1.1.1.1 and 9.1.1.1.2, Eschelon sets forth these same proposals for what it  
21           refers to as "Other Arrangements." By "other arrangements," Eschelon is apparently  
22           referring to commingled arrangements other than commingled EELs.

23  
24   **Q.     WHAT IS ESCHELON SPECIFICALLY PROPOSING FOR THESE "OTHER**  
25           **ARRANGEMENTS"?**

1 A. Even though these "other arrangements" do not exist, and may never exist, Eschelon is  
2 nevertheless proposing specific requirements for these non-existent and undefined "other  
3 arrangements":

4 **9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For**  
5 **any other Commingled arrangement, the following terms**  
6 **apply, in addition to the general terms described in Section 24:**

7 **9.1.1.1.1.2 When a UNE or UNE Combination is**  
8 **connected or attached with a non-UNE wholesale**  
9 **service, unless it is not Technically Feasible or the**  
10 **Parties agree otherwise, CLEC may order the**  
11 **arrangement on a single service request; if a circuit ID**  
12 **is required, there will be a single circuit ID; and all**  
13 **chargeable rate elements for the Commingled service**  
14 **will appear on the same BAN. If ordering on a single**  
15 **service request, using a single identifier, and including**  
16 **all chargeable rate elements on the same BAN is not**  
17 **Technically Feasible, Qwest will identify and relate the**  
18 **elements of the arrangement on the bill and include in**  
19 **the Customer Service Record for each component a**  
20 **cross reference to the other component, with its billing**  
21 **number, unless the Parties agree otherwise.**

22

23 **Q. IS ESCHELON'S PROPOSAL APPROPRIATE?**

24 A. No. As I described in my direct testimony, there is no basis for Eschelon's attempt to  
25 impose upon Qwest the duty to specific processes for unknown and undefined  
26 commingled arrangements.

27

28 **Q. MR. DENNEY STATES THAT THIS IS SUBJECT TO THE PARTIES**  
29 **AGREEING UPON TECHNICAL FEASIBILITY.<sup>18</sup> DOES THIS CAVEAT**  
30 **PROVIDE REASSURANCE TO QWEST?**

31 A. No. When Qwest and Eschelon cannot agree on what is technically feasible within its  
32 systems for defined commingled arrangements, I have little confidence that the parties

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<sup>18</sup> See Denney Direct Testimony at 155.

1 will agree in the future for other arrangements. In addition, there is a huge difference  
2 between “technically feasible” and financially prudent. With this type of broad language,  
3 Eschelon could attempt to prove some process was technically feasible for a product for  
4 which there is little or no demand, with little regard (if any) of the actual cost to Qwest of  
5 actually putting the process in place. This is particularly troublesome for potentially low  
6 volume “other arrangements.”

7  
8 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-58(D)?**

9 A. The Commission should reject Eschelon's billing proposals for non-existent “other  
10 arrangements” and exclude Eschelon's proposed Sections 9.1.1.11 and 9.1.1.1.2 from  
11 the ICA.

12  
13 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE 9-58(E).**

14 A. This dispute is a continuation of Eschelon's attempt to eliminate the basic differences  
15 between the UNE and non-UNE circuits (e.g., special access and/or private line) of  
16 commingled EEL arrangements and to impose upon Qwest ordering, billing, and  
17 provisioning processes that ignore those differences. The dispute also is a continuation of  
18 Eschelon's demand for Qwest to make major, costly changes to its systems and processes  
19 without compensation. In this particular case, Eschelon is seeking to eliminate the  
20 separate and distinct provisioning intervals that apply to the UNE and non-UNE circuits  
21 (e.g., special access and/or private line) of the commingled EELs. "Provisioning  
22 intervals" refer to the period of time between Qwest's receipt of an order from a CLEC  
23 and Qwest's installation or provisioning of the service or facility the CLEC ordered.

24  
25 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 9-58(E)?**

1 A. Qwest's proposal preserves the necessary distinctions between the UNE and non-UNE  
2 circuits of commingled EELs and properly recognizes that different and separate  
3 provisioning intervals are required for each component. Qwest's proposal is as follows:

4 24.3.2 The service interval for Commingled EELs will be as  
5 follows. For the UNE component of the EEL see Exhibit C. For  
6 the tariffed component of the EEL see the applicable Tariff.

7  
8 **Q. DOES QWEST HAVE A LEGITIMATE NEED TO USE DIFFERENT AND**  
9 **SEPARATE PROVISIONING INTERVALS FOR THE UNE AND NON-UNE**  
10 **CIRCUIT OF COMMINGLED EELS?**

11 A. Yes. For engineering and legal reasons, it is essential for Qwest to use and preserve the  
12 different provisioning intervals that apply to the UNE and non-UNE circuits (e.g., special  
13 access and/or private line) of commingled EELs. First, the service orders for each circuit  
14 must be complete before they are submitted and Qwest can begin the installation process.  
15 When the UNE is processed first, the UNE circuit ID becomes essentially the CFA for  
16 the special access private line circuit. For these reasons, it is essential from an  
17 installation and engineering perspective to have separate provisioning intervals for the  
18 UNE and non-UNE circuits.

19 From a legal perspective, the terms and conditions for the non-UNE circuits of  
20 commingled EELs are typically set forth in interstate and intrastate tariffs that include  
21 provisioning intervals. As the Commission is well aware, tariffs are binding and Qwest  
22 does not have discretion to deviate from them. Because Eschelon's proposal for the use  
23 of single provisioning intervals for commingled EELs could force Qwest to deviate from  
24 tariffed provisions, the proposal is legally improper.

25



1 **Q. BEGINNING AT PAGE 156, MR. DENNEY STATES THAT “ESCHELON**  
2 **AGREES TO A LENGTHENED INTERVAL”. DO YOU BELIEVE THIS IS**  
3 **CORRECT?**

4 A. My understanding of Eschelon’s testimony is they are stating they will “agree” to the  
5 longest interval, which in the example provided by Mr. Denney is the special access  
6 and/or private line circuit installation interval and some how that translates into “agreeing  
7 to a lengthened interval”. The private line tariff and special access installation intervals  
8 are not subject to modification in this arbitration and/or in the ICA. This is no “agreeing”  
9 -- the interval is as stated per Qwest Service Interval Guide for tariffed services. All  
10 Eschelon is apparently acknowledging is that Eschelon is required to follow the interval  
11 for special access and private line tariffs when installing these circuits.

12  
13 **Q. MR. DENNEY DISCUSSES AN INSTALLATION INTERVAL EXAMPLE (PAGE**  
14 **158) THAT INCLUDES THE FIRM ORDER COMMITMENT (FOC) INTERVAL.**  
15 **DO YOU HAVE ANY COMMENTS ON HIS EXAMPLE?**

16 A. Yes. For the example he provided, the FOC would be 48 hours not the 72 hours he  
17 suggests. He states that the requirement to have the FOC from one circuit to complete  
18 the order for the second circuit, results in a potential installation delay of the FOC  
19 interval, which I clarified above is 48 hours. Mr. Denney goes on to say that this time  
20 period for total service delivery time frame “thus diminishes the usefulness of the  
21 commingled arrangement”. Given the dollar savings associated with commingled  
22 arrangements that Mr. Denney outlined in his testimony at page 147 (between \$156.02 to  
23 \$59.03 per month over the life of the circuit) it is hard to believe that a 48 hour delay  
24 “diminishes the usefulness of the commingled arrangement” and makes it as “inferior” to  
25 the extent implied by Mr. Denney.

1 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

2 A. Qwest's language for Section 24.3.2 properly recognizes and maintains the necessary  
3 distinctions between the provisioning intervals for the UNE and the non-UNE circuit of  
4 commingled EELs. Accordingly, the Commission should adopt Qwest's proposal and  
5 reject each of Eschelon's proposals described above that would impose single  
6 provisioning intervals.

7

8 **XII. ISSUE 9-59 -**  
9 **ESCHELON ALTERNATE COMMINGLED EEL REPAIR LANGUAGE**

10 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE ENCOMPASSED BY**  
11 **ISSUE 9-59.**

12 A. This dispute also involves commingled EELs. If the Commission rejects Eschelon's  
13 demand relating to a single circuit ID for commingled EELs, as it should, Eschelon is  
14 proposing alternative language in connection with Issue 9-59 that, as I describe in my  
15 direct testimony, would require Qwest to make significant modifications to the systems  
16 and processes it uses for carrying out repairs associated with the individual circuits that  
17 are included in commingled EELs.

18

19 **Q. WHAT IS ESCHELON SEEKING THROUGH THIS PROPOSAL?**

20 A. Eschelon is seeking that in the event of a "trouble" associated with a commingled EEL  
21 arrangement, it be permitted to submit just a single trouble report instead of a report for  
22 each circuit that comprises the commingled EEL.

23

24 **Q. DOES MR. DENNEY ACCURATELY DESCRIBE QWEST'S PROPOSAL**  
25 **RELATING TO THIS ISSUE IN HIS DIRECT TESTIMONY?**

1 A. No. Mr. Denney inaccurately describes Qwest's proposal set forth in my direct testimony  
2 at pages 70 to 78 in two important respects. First, he states at page 161 of his direct  
3 testimony that Qwest's repair process for commingled EELs requires Eschelon to "isolate  
4 the trouble in the special access circuit first" and therefore leaves Eschelon with no  
5 choice but "to first submit an Assist Ticket (AT) on the special access portion of the EEL,  
6 even though the trouble may be on the loop portion of the circuit." However, as I  
7 describe in my direct testimony, under Qwest's current proposal, Eschelon has the option  
8 of submitting a trouble ticket for the UNE circuit of a commingled EEL first. There is  
9 therefore no merit to Mr. Denney's claim that Qwest is imposing unnecessary delay by  
10 requiring the submission of an AT on the special access circuit first and potentially  
11 prolonging the time that an Eschelon customer may be out of service.

12 Second, Mr. Denney incorrectly suggests at pages 162-63 of his direct testimony that  
13 only Eschelon's proposal would permit Eschelon to submit more than one circuit ID on a  
14 single trouble report. As I describe in my direct testimony, however, Qwest's newly  
15 proposed language for Section 9.23.4.7.1 expressly provides that "[w]hen Eschelon  
16 reports a trouble . . . [it] may provide both circuit IDs associated with the Commingled  
17 EEL in a single trouble report."

18  
19 **Q. IS THERE ANY BASIS FOR MR. DENNEY'S ASSERTION AT PAGE 162 THAT**  
20 **QWEST'S PROPOSAL WOULD EFFECTIVELY FORCE ESCHELON TO OPEN**  
21 **SIMULTANEOUSLY TWO TROUBLE TICKETS FOR BOTH COMPONENTS**  
22 **OF A COMMINGLED EEL?**

23 A. No. If Eschelon believes, for example, that the trouble with a commingled EEL is  
24 associated with the UNE circuit, it can identify the UNE as the circuit with the failure and  
25 provide the circuit ID for the non-UNE special access circuit in the remarks section of the

1 trouble ticket. If Qwest then determines through the repair process that the failure is with  
2 the UNE circuit, it will repair the UNE and Eschelon will not have any need to submit a  
3 second repair ticket. If it turns out that the trouble is associated with the non-UNE  
4 special access circuit, only then will it become necessary for Eschelon to submit a second  
5 trouble ticket. In that event, under Qwest's proposal, a Qwest technician would contact  
6 an Eschelon employee, and they would jointly agree upon which company would submit  
7 the second trouble ticket. Because Qwest will already have the test results from the first  
8 trouble ticket, it will be able to immediately begin the repair process for the second ticket  
9 and thereby avoid delay.

10  
11 **Q. WOULD IT BE APPROPRIATE TO ADOPT ICA LANGUAGE UNDER WHICH**  
12 **ESCHELON WOULD NEVER BE REQUIRED TO OPEN A SECOND REPAIR**  
13 **TICKET FOR COMMINGLED EELS?**

14 A. No. In response to the concerns Eschelon expressed about the repair process for  
15 commingled EELs, Qwest took the significant step of agreeing to modify its process to  
16 eliminate, in most cases, the need for Eschelon to submit a second trouble ticket.  
17 However, it is entirely unrealistic to assume that a second trouble ticket will never be  
18 needed. For example, if Eschelon incorrectly identifies the trouble with a commingled  
19 EEL as being associated with the non-UNE circuit of the arrangement, it is unavoidable  
20 that a second trouble ticket will have to be submitted that correctly identifies the trouble  
21 as being associated with the UNE circuit.

22  
23 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

24 A. Qwest's language for Sections 9.23.4.7.1 and 9.23.4.7.1.2 properly and realistically  
25 recognizes when a second repair ticket may be necessary, yet it allows the end-to-end

1 repair process to begin with the issuing of a single repair ticket. Accordingly, the  
2 Commission should adopt Qwest's proposal and reject Eschelon's proposals described  
3 above that would inflexibly require the use of a single repair ticket in all situations  
4 without regard for the ability of Qwest's systems to handle that requirement or for the  
5 very substantial costs that Qwest would incur just to attempt to modify its systems to  
6 meet this requirement.

7  
8 **XIII. ISSUES 9-61,(A,B,C) LOOP-MUX COMBINATIONS**

9 **Q. PLEASE PROVIDE A REMINDER OF THE NATURE OF THE DISPUTES**  
10 **ENCOMPASSED BY THIS ISSUE.**

11 A. The disputes encompassed by Issue 9-61 and the related sub-issues involve "loop-mux  
12 combinations," or "LMCs." LMC is comprised of an unbundled loop, as defined in  
13 Section 9.2 the Agreement (referred to in this Section as an LMC Loop), combined with a  
14 DS1 or DS3 multiplexed facility (with no interoffice transport) that a CLEC obtains from  
15 a tariff.

16 Qwest is under no obligation to provide a stand-alone multiplexer as a UNE. A  
17 multiplexer is electronic equipment that allows two or more signals to pass over a single  
18 circuit. In the example of LMC, the multiplexed facility allows the traffic from several  
19 individual loops go over a single, higher bandwidth facility obtained through a tariff.  
20 Accordingly, a CLEC must order the multiplexed facility used for LMCs through the  
21 applicable tariff. LMC, therefore, involves the connecting of a UNE Loop with a tariffed  
22 facility and thus constitutes a commingled arrangement, since commingling is, per the  
23 FCC's ruling in the *TRO*, a connection or attaching of a UNE and a wholesale non-UNE.

1 The first dispute between the parties (Issue 9-61) is the section of the ICA in which the  
2 LMC offering should be placed. Qwest has properly included LMCs in Section 24  
3 because it is a commingling offering. Eschelon has proposed moving it to the UNE  
4 Combination section in 9.23. Issue 9-61(a) concerns Eschelon's demand that Qwest  
5 provide the stand-alone multiplexing service as a UNE instead of as a tariffed facility.  
6 Issue 9-61(b) involves a dispute concerning whether intervals for LMC should be in  
7 Exhibit C; and Issue 9-61-(c) involves whether the rates for LMC multiplexing should be  
8 included in Exhibit A.

9  
10 **Q. AT PAGE 177 OF HIS DIRECT TESTIMONY, MR. STARKEY STATES THAT**  
11 **ESCHELON IS SEEKING TO ENSURE CONTINUED UNBUNDLED ACCESS**  
12 **TO MULTIPLEXING. IF THE COMMISSION RESOLVES THIS ISSUE IN**  
13 **QWEST'S FAVOR, WILL MULTIPLEXING STILL BE AVAILABLE TO**  
14 **ESCHELON?**

15 **A.** Yes. As I describe in my direct testimony, Eschelon can obtain multiplexing through  
16 Qwest's tariffed offering of this product and also can self-provision multiplexing in its  
17 own collocation space. In addition, Eschelon will have unbundled access to multiplexing  
18 when ordering Unbundled Dedicated Interoffice Transport (UDIT) in a UNE  
19 combination. Thus, to the extent Mr. Starkey is attempting to create the impression that  
20 Eschelon will not have access to multiplexing if Qwest's position is adopted, that  
21 impression is inaccurate.

22  
23 **Q. MR. STARKEY ALSO STATES AT PAGE 178 THAT ESCHELON IS ONLY**  
24 **SEEKING UNBUNDLED ACCESS TO MULTIPLEXERS AT TELRIC RATES**  
25 **"WHEN COMBINED WITH UNES." IS ESCHELON ONLY SEEKING**

1           **MULTIPLEXING FOR USE WITH UNES, OR IS IT ALSO SEEKING TO USE**  
2           **MULTIPLEXING TO COMMINGLE UNES WITH TARIFFED SERVICES?**

3    A.    While Eschelon is seeking to use multiplexing in UNE combinations, it also is clearly  
4           seeking to use multiplexing to commingle UNES with tariffed services and, in the latter  
5           circumstance, to have the multiplexing treated and priced as an individual Section 251  
6           UNE service, not as a tariffed service. Although Mr. Starkey never quite reveals  
7           Eschelon's real intent in this regard, Eschelon is assigning the "UNE" label to  
8           multiplexing that is used to commingle a UNE loop with a tariffed private line service.  
9           Under Mr. Starkey's and Eschelon's erroneous and less than revealing terminology, this  
10          type of arrangement is a UNE combination because it includes a combination of a UNE  
11          loop with multiplexing. However, the flaw in this analysis is that it assumes that  
12          multiplexing is a UNE, which it is not.

13        As I described in my direct testimony and as bears repeating here, stand-alone  
14        multiplexing is not a UNE that Qwest is required to provide on an unbundled basis. In  
15        the decision of the FCC's Wireline Competition Bureau in the Verizon-Virginia  
16        arbitration, paragraph 491, the Bureau rejected WorldCom's proposed language that  
17        would have established multiplexing as an independent network element, stating that the  
18        FCC has never ruled that multiplexing is such an element: "We thus reject WorldCom's  
19        proposed contract language because it defines the 'Loop Concentrator/Multiplexer' as a  
20        network element, which the Commission has never done."<sup>19</sup> Accordingly, the use of  
21        multiplexing with a UNE loop is not, contrary to Mr. Starkey's representation, a  
22        combination of two UNES. Instead, it is a commingled arrangement involving a UNE  
23        loop and a tariffed multiplexing service.

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<sup>19</sup> *In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration*, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039 at ¶ 494 (FCC Wireline Competition Bureau July 17, 2002).

1 **Q. IF MULTIPLEXING IS NOT A UNE, WHY DID QWEST PREVIOUSLY MAKE**  
2 **MULTIPLEXING AVAILABLE UNDER ITS SGAT?**

3 A. Multiplexing is a feature functionally of transport (e.g., UDIT) and, as such, was included  
4 in the Qwest SGAT. Until the FCC issued the *TRO* in August 2003, commingling  
5 arrangements were not available to CLECs. This created somewhat of a dilemma for  
6 CLECs when they desired to connect UNE loops with the much larger UDIT transport  
7 facilities terminated in their collocation. The UDIT was then utilized to connect between  
8 their collocation spaces in ILEC central offices. Without commingling, there was no  
9 readily available mechanism for "handing off" UNE loops to the collocation space so the  
10 UNE Loops could connect to these larger UDIT facilities. To address this situation,  
11 Qwest voluntarily offered LMC, thereby allowing CLECs to connect or hand off their  
12 loops to the larger transport facilities. As demonstrated by the FCC's Wireline  
13 Competition Bureau's statement in the Verizon-Virginia arbitration, this offering was not  
14 a UNE offering compelled by Section 251 but, instead, was a voluntary offering.

15  
16 **Q. PLEASE EXPLAIN THE RELATIONSHIP BETWEEN THE FCC'S RULING IN**  
17 **THE *TRO* THAT REQUIRED ILECS TO PROVIDE COMMINGLING AND THE**  
18 **NEED FOR THE LMC ARRANGEMENT THAT QWEST HAD BEEN**  
19 **OFFERING UNDER ITS SGAT.**

20 A. With ILECs being required to provide commingled arrangements after issuance of the  
21 *TRO*, CLECs no longer needed access to Qwest's LMC offering in order to hand off  
22 loops to the larger transport facilities terminated in their collocations. More importantly,  
23 CLECS can now terminate the Unbundled Loops directly on their special access transport  
24 facilities terminated in the Qwest central offices. By being able to purchase commingled  
25 arrangements – UNE loops commingled with special access or private line tariffed



1 service, for example – CLECs now have a legally mandated mechanism available to them  
2 through which ILECs provide multiplexing in conjunction with higher bandwidth tariffed  
3 services to connect UNE loops. Significantly, ILECs are not required -- and never have  
4 been required -- to provide this multiplexing as a UNE on a stand-alone basis. Instead,  
5 per the *TRO*, ILECs now provide multiplexing as a component of commingled  
6 arrangements under which UNE loops are commingled with tariffed private line services.  
7 The heart of the dispute raised by this issue is that Eschelon is attempting to break out the  
8 multiplexing component of these commingled arrangements and to assign UNE attributes  
9 to it, including UNE pricing and provisioning intervals. There is no legal basis for  
10 assigning UNE attributes to LMC. On the contrary, the Virginia-Verizon arbitration  
11 decision confirms that multiplexing stand alone from UDIT is not a UNE.

12  
13 **Q. HAS THE FCC SPOKEN CONCERNING WHETHER UNE RATES OR**  
14 **TARIFFED RATES SHOULD APPLY TO MULTIPLEXING THAT ILECS**  
15 **PROVIDE FOR USE WITH COMMINGLED ARRANGEMENTS?**

16 A. Yes. In describing its commingling ruling in paragraph 583 of the *TRO*, the FCC  
17 explained that commingling allows a CLEC to attach a UNE to an "interstate access  
18 service." Significantly, in providing an example of a tariffed "interstate access service"  
19 to which a CLEC may attach a UNE, the FCC specifically referred to multiplexing:  
20 "Instead, commingling allows a competitive LEC to connect or attach a UNE or UNE  
21 combination with an interstate access service, *such as high-capacity multiplexing* or  
22 transport services." In the very next sentence, the FCC emphasized that "*commingling*  
23 *will not enable a competitive LEC to obtain reduced or discounted prices on tariffed*  
24 *special access services . . . .*"

1 **Q. WHAT IS THE SIGNIFICANCE OF THESE STATEMENTS AND RULING BY**  
2 **THE FCC?**

3 A. This portion of the *TRO* directly refutes any claim by Eschelon claim that it is entitled to  
4 multiplexing at UNE rates, terms, and conditions when it obtains multiplexing for use  
5 with commingled arrangements. First, the FCC states very clearly that the multiplexing  
6 used with commingling is "an interstate access service." This statement directly  
7 contradicts Eschelon's claim that the multiplexing used with commingling is nothing  
8 more than a feature or function of the UNE loop component of a commingled  
9 arrangement. Instead, it is a separate "access service." Second, the FCC states  
10 unambiguously that when a CLEC obtains an access service like multiplexing for use  
11 with commingling, it is not entitled to "reduced or discounted prices on [the] tariffed  
12 special access services." In other words, Eschelon is required to pay the full tariffed rate  
13 for multiplexing used with commingling and is not entitled to a UNE rates or any other  
14 discounted rate.

15 Clearly, the FCC's statements establish that the terms of the applicable tariffs govern  
16 multiplexing, including the terms relating to provisioning intervals. Accordingly, the  
17 multiplexing and non-UNE transport circuits of commingled arrangements are to be  
18 provisioned based on the intervals in the tariffs, not based on intervals that apply to  
19 UNEs.

20  
21 **Q. AT PAGE 189 OF HIS TESTIMONY, MR. STARKEY ASSERTS THAT**  
22 **MULTIPLEXING IS A "FEATURE, FUNCTION, OR CAPABILITY" OF**  
23 **UNBUNDLED LOOPS AND THAT CLECS ARE THEREFORE ENTITLED TO**  
24 **ACCESS TO MULTIPLEXING AS A UNE AND PURSUANT TO THE TYPES OF**  
25 **TERMS AND CONDITIONS THAT APPLY TO UNES. IS HE CORRECT?**

1 A. No. From both a factual basis and a legal perspective, multiplexing is not a feature,  
2 function, or capability of UNE loops. From a factual perspective, central office based  
3 multiplexing is not required for a UNE loop facility to function. If the functioning of a  
4 DS1 loop, for example, was dependent upon multiplexing, there might be a factual  
5 argument that multiplexing is a feature or function of the loop. But since a DS1 loop  
6 functions regardless whether there is multiplexing used with the loop, multiplexing  
7 cannot reasonably be viewed as a "feature, function, or capability" of the loop. In  
8 addition, the multiplexing function is provided through equipment that is physically  
9 separate from and independent of UNE loops. That equipment is located in Qwest's  
10 central offices.

11 From a legal perspective, the Virginia-Verizon decision confirms that stand-alone  
12 multiplexing is not a UNE. In addition, the UNEs that ILECs are required to provide at  
13 TELRIC rates are limited to those network elements for which the FCC has made fact-  
14 based findings of competitive impairment pursuant to Section 251(d)(2)(B). The FCC  
15 has never made a finding that CLECs are competitively impaired without access stand-  
16 alone multiplexing at TELRIC rates and has never declared that multiplexing is a UNE.

17 In sum, Mr. Starkey's inaccurate claim that stand-alone central office multiplexing is a  
18 feature or function of the loop necessary to the functioning of the loop is simply a thinly  
19 veiled attempt to obtain multiplexing as a UNE at low TELRIC rates. There is neither a  
20 factual or legal basis for this claim.

21

22 **Q. IS MULTIPLEXING A FEATURE, FUNCTION, OR CAPABILITY OF UNE**  
23 **TRANSPORT?**

1 A. Yes. Qwest agrees that when multiplexing is provided with DS1 or DS3 transport that  
2 meets the *TRRO* impairment criteria and hence is a UNE, the multiplexing will be  
3 provided at TELRIC rates. Thus, if Eschelon requests a UNE combination comprised of  
4 a UNE loop combined with UNE transport, Qwest will provide multiplexing at TELRIC  
5 rates. In that circumstance, multiplexing is a feature or function of UNE transport and,  
6 accordingly, UNE terms and conditions, including UNE TELRIC rates, apply. By  
7 contrast, because multiplexing is not a feature or function of the UNE loop, multiplexing  
8 used to commingle UNE loops with tariffed private line transport (as opposed to UNE  
9 transport) is stand-alone multiplexing – in other words, it is not provided as a feature or  
10 function of a UNE. As such, that stand-alone multiplexing is not governed by UNE rates  
11 or other UNE terms and conditions.

12

13 **Q. AT PAGE 191 TO 192 OF HIS TESTIMONY, MR. STARKEY PROVIDES**  
14 **QUOTES FROM THE FCC THAT HE CLAIMS ESTABLISH THAT**  
15 **MULTIPLEXING IS A FEATURE OR FUNCTION OF THE UNBUNDLED**  
16 **LOOP. DO THESE STATEMENTS FROM THE FCC SUPPORT THAT**  
17 **CONCLUSION?**

18 A. No. The statements from the FCC that Mr. Starkey cites involve an entirely different  
19 type of multiplexing than is at issue here. Specifically, the FCC is referring in these  
20 statements to multiplexing for loops that takes place between a customer's premises and a  
21 main distribution frame ("MDF") in a central office. In this application, the FCC is being  
22 clear that to the extent any type of multiplexing (such as digital loop carrier systems,  
23 which are often viewed as a form of multiplexing) between the end user premises and the  
24 MDF in the central office is required, the ILEC must "de-mux" the loop so it can be  
25 handed off to the CLEC in the central office. By contrast, the multiplexing that is in

1 dispute between Qwest and Eschelon is transport multiplexing that takes place not  
2 between a customer's premise and the MDF, but after a fully functional loop has been  
3 provided to the CLEC

4  
5 **Q. PLEASE TIE YOUR DISCUSSION ABOVE ESTABLISHING THAT STAND-**  
6 **ALONE LOOP MULTIPLEXING IS NOT A UNE TO THE SPECIFIC ICA**  
7 **PROVISIONS ENCOMPASSED BY THIS ISSUE.**

8 A. The fact that stand-alone loop multiplexing is not a UNE dictates the proper outcome for  
9 each of the disputed ICA provisions encompassed by this issue. First, the threshold  
10 dispute in Issue 9-61 is where the LMC product offering should be placed in the ICA.  
11 Qwest has properly placed it in Section 24, which is the commingling section that  
12 Eschelon itself requested Qwest to include in the ICA. By contrast, Eschelon is  
13 proposing to include LMCs in Section 9.23 of the ICA, which is within the ICA section  
14 that governs UNE combinations. UNE combinations are combinations of elements that  
15 qualify as UNEs that ILECs must provide under Section 251(c)(3) of the Act. Because  
16 an LMC is a combination of a UNE and a tariffed multiplexing service, it is not a UNE  
17 combination but, instead, is a commingled arrangement. Accordingly, LMCs should be  
18 addressed in Section 24 of the ICA, not in Section 9.

19 Second, Eschelon's proposed language for ICA Section 9.23.9 and related sub-parts is  
20 premised on the assumption that multiplexing is a stand-alone UNE. Based on that  
21 assumption, Eschelon assigns UNE attributes, including UNE-based rates, to  
22 multiplexing. For the reasons I describe above, Eschelon's premise is wrong.  
23 Multiplexing is not a stand-alone UNE, and Eschelon's proposals based on the  
24 assumption that it is are therefore flawed and should be rejected.

1 Third, since LMC is not a UNE combination and is a commingled service, the service  
2 intervals for LMC are properly placed in the Qwest Service Interval Guide, not in Exhibit  
3 C of the ICA. The Service Interval Guide sets forth the intervals for commingled  
4 arrangements. By contrast, if Exhibit C is included in the ICA at all, it addresses service  
5 intervals only for UNEs. Because LMC is a commingled arrangement and not a UNE or  
6 UNE combination, it should not be included in Exhibit C. However, the UNE loop  
7 portion of LMC does utilize the EEL loop, and as such is an unbundled loop and can be  
8 treated as other unbundled loops for the perhaps of establishing a standard interval.

9  
10 **XIV. ISSUE 24-92 – ENTRANCE FACILITY COMMINGLING**

11 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-52?**

12 A. Yes. The parties continued their discussions relating to this issue after filing their direct  
13 testimony and have reached agreement. Accordingly, this issue is no longer in dispute,  
14 and there is no need for the Commission to take any action with respect to it.

15  
16 **XV. CONCLUSION**

17 **Q. DO YOU HAVE ANY FINAL COMMENTS?**

18 A. Yes. Although there are substantive differences in the issues I have addressed in my  
19 testimony, there are recurring themes in the manner in which Qwest and Eschelon have  
20 addressed the issues through the language they have proposed for the ICA. Qwest has  
21 proposed language that recognizes and incorporates the FCC's rulings in the *TRO* and  
22 *TRRO* and that recognizes the need for uniform systems and processes in the service that  
23 Qwest provides to all CLECs.

1 By contrast, Eschelon's proposals rely on sweeping general language that is intended to  
2 impose the broadest possible unbundling, and in some cases, new obligations on Qwest  
3 without regard for applicable law. Moreover, in several cases, Eschelon is proposing  
4 language that is broad and vague and not susceptible to either meaningful analysis by the  
5 Commission or precise and practical implementation by the parties. If the Eschelon  
6 language is adopted this would likely result in disputes concerning implementation of the  
7 ICA, which will unnecessarily require the Commission and the parties to devote limited  
8 resources to resolving disputes that can be avoided through the use of the type of precise  
9 ICA language the Qwest is proposing.

10 For these reasons, the Commission should adopt Qwest's proposed ICA language for  
11 each of the issues I have addressed.

12

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

14 A. Yes.