BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996	Docket No. QWEST CORPORATION'S PETITION FOR ARBITRATION

1 Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("the Act") and WAC 480-07-630, Qwest Corporation ("Qwest") submits this petition to request that the Commission arbitrate disputed issues arising from Qwest's negotiation of an interconnection agreement ("ICA") with Eschelon Telecom, Inc. ("Eschelon"). The disputed issues are listed and described in the Issues Matrix that Qwest is submitting with this petition as Exhibit 1. Qwest is also providing with this petition as Exhibit 2 a proposed ICA containing undisputed provisions and the parties' competing ICA language for the provisions that are in dispute.

2 Consistent with Section 252(b) and WAC 480-07-630, this petition provides (1) a description of the parties; (2) a summary of the parties' negotiations; (3) a description of the documentation Qwest is providing with this petition; (4) a proposed schedule for the arbitration; and (5) a description of the disputed issues and a statement of Qwest's position with respect to each issue.

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I. THE PARTIES

3 Qwest is incorporated under the laws of the State of Colorado with its principal place of business at 1801 California Street, Denver, Colorado 80202. It is an incumbent local exchange carrier ("ILEC") that provides local telephone service in Washington and 13 other western and mid-western states.

4 Contacts relating to this arbitration should be addressed to the following Qwest counsel:

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5 Eschelon is incorporated under the laws of the State of Delaware with its principal place of business at 730 2nd Avenue South, Suite 900, Minneapolis, Minnesota 55402. It is a competitive local exchange carrier ("CLEC") authorized to provide local exchange services in Washington and other states in Qwest's 14-state region.

6 Eschelon's counsel in this proceeding are, based on information and belief, as follows:

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II. THE PARTIES' NEGOTIATIONS AND TIMING OF THE ARBITRATION

7 The Commission approved the initial interconnection agreement between Qwest and Eschelon on February 24, 2000, in Docket No. 990385. The term of that agreement expired on July 24, 2000, but the parties have continued to operate under the agreement while negotiating a successor agreement.

8 Qwest and Eschelon began negotiating the successor agreement in 2001, before the term of the initial agreement expired. In the early stages, the parties conducted negotiations periodically. In recent years, however, the negotiations have been continuous and extensive. Qwest and Eschelon have invested, at a minimum, hundreds of hours discussing the terms of the successor ICA. Acting through their respective negotiation teams, the parties have met regularly by telephone and occasionally in person to discuss the terms and conditions of the ICA. The negotiations are continuing notwithstanding Eschelon's initiation of an arbitration proceeding in Minnesota on May 26, 2006, and Qwest's filing of this petition.

9 Although Qwest has invested more time negotiating with Eschelon than it has with any other CLEC in recent years, the number of disputed issues in this arbitration far exceeds the number of disputed issues Qwest has recently had with other CLECs. There are dozens of disputed issues, as reflected in the attached Issues Matrix. The extended duration of the negotiations and the large number of disputed issues reflects the fact that Qwest and Eschelon have been unable to reach agreement on many issues upon which Qwest and other CLECs have routinely agreed.

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10 Eschelon and Qwest have agreed on several occasions to extend the timeframes in Section 252(b) for conducting negotiations and initiating arbitrations. Most recently, in a letter dated July 6, 2006, the parties agreed to extend the formal negotiating period in Washington to August 7, 2006, and also to extend the period for initiating arbitration to August 7 through September 1, 2006. *See* Exhibit 3.

11 Section 252(b)(1) provides that an ILEC or a CLEC may petition a state commission for arbitration "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent LEC receives a request for negotiation under this section . . . ." Based on Qwest's and Eschelon's agreement that the arbitration window in this case opened on August 7, this petition is timely filed.

12 Although Section 252(b)(4)(C) directs state commissions, acting in their role as arbitrator, to resolve open issues within nine months of the date on which the ILEC received a request for negotiations, Qwest and Eschelon have agreed to extend this deadline. The proposed arbitration schedule upon which the parties have agreed, which is described below for the Commission's consideration, reflects the parties' agreement on a modest extension of the nine-month deadline.

III. PROPOSED ARBITRATION SCHEDULE

13 In addition to this arbitration, Qwest and Eschelon will be arbitrating ICAs in Arizona, Colorado, Minnesota, Oregon, and Utah. To reduce the logistical challenges that multi-state proceedings present, Qwest and Eschelon have agreed upon a proposed schedule that is designed to avoid conflicts and promote efficiency. The parties of course recognize that their proposed schedule is subject to modifications by this Commission and the other state commissions.[1] The parties' proposal for Washington is as follows:

[1] Under the parties' proposed schedule, the Washington arbitration would be the second of the six arbitrations and would follow the Minnesota arbitration. Pursuant to a recent scheduling order issued by an administrative law judge in

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Qwest's Arbitration Petition:	August 9, 2006
Eschelon's Response to Petition:	September 5, 2006
Pre-Filed Direct Testimony:	September 29, 2006
Pre-Filed Rebuttal Testimony:	October 13, 2006
Pre-Filed Surrebuttal Testimony:	October 27, 2006
Arbitration Hearing:	November 28-December 8, 2006
Post-Hearing Briefs:	To be determined

14 Qwest asks that the Commission either adopt this proposed schedule or hold a pre-hearing conference to set a schedule that the Commission's calendar can accommodate.

IV. DOCUMENTATION

15 With respect to the relevant documents described in the Commission's rule and 47 U.S.C. § 252(b)(2)(A), Qwest is providing with this petition: (1) the Issues Matrix (Exh. 1); (2) the interconnection agreement (Exh. 2); and (3) the parties' most recent correspondence establishing the timeline for this arbitration (Exh. 3).

16 The Issues Matrix Qwest is submitting as Exhibit 1 identifies and assigns issue numbers to each disputed issue, sets forth the parties' competing ICA language for each disputed issue, and summarizes the parties' legal positions in support of their ICA proposals.

17 The ICA Qwest is submitting as Exhibit 2 includes the main agreement and exhibits A through O of the main agreement. The provisions on which the parties agree are shown in standard type, while the disputed provisions are shown in red-lined type. For each disputed issue, the parties' competing ICA proposals are shown with red-lining.

18 Qwest expects that the parties will submit additional documentation when they submit their

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Minnesota, the arbitration hearing in that state is scheduled for October 16 through October 27, 2006. The parties have not yet filed arbitration petitions in the other states and, accordingly, hearings are not scheduled in those states.

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pre-filed testimony.

V. THE DISPUTED ISSUES

A. Background: Evolution of the Telecommunications Industry

19 Qwest is filing this petition almost nine years to the day since the Federal Communications Commission ("FCC") issued its *Local Competition Order*, which was the FCC's first comprehensive effort at implementing the local competition provisions of the Act.[2] As this Commission is well aware, the telecommunications industry has changed dramatically in these nine years. The advancements in technology have been almost revolutionary and have led to forms of competition that barely existed or did not exist at all when the FCC issued the *Local Competition Order*. On a related note, local and long distance markets throughout most of the country have become highly competitive, and telecommunications consumers now have more choice than ever before.

20 As the telecommunications industry has undergone these monumental changes in the near decade since Congress passed the Act, so too has the law governing the industry. Courts, the FCC, and state commissions have been faced with the significant challenge of applying an Act that was designed for an older, almost bygone era to a new world characterized by revolutionary technologies and highly competitive markets. Their primary challenge has been to ensure that the law is applied to account for these changes so that the Act does not become an anachronism.

21 Thus, the recent and large body of law relating to implementation of the Act is replete with examples of courts and regulatory agencies recognizing that with the rapid emergence of competition in local exchange markets, there is no longer a need for the level of regulation that

[2] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (FCC August 8, 1996) ("Local Competition Order"), aff'd in part and rev'd in part on other grounds, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part and rev'd in part on other grounds, AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999).

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has been applied in the past. Perhaps most significant in this regard are the FCC's rulings in the *Triennial Review Order* and the *Triennial Review Remand Order* that have significantly reduced the unbundled network elements ("UNEs") ILECs are required to provide at highly regulated, cost-based rates under Section 251(c)(2).[3] In these rulings, the FCC has determined – and the United States Court of Appeals for the D.C. Circuit has affirmed[4] – that there is neither legal nor economic justification for mandatory unbundling at cost-based rates for many network elements for which there is now robust competitive supply.

22 The recognition that regulation should decrease as the telecommunications industry evolves and competition increases is consistent with the Act and Congress's intent to move the industry toward deregulation. As stated in the House of Representatives Report relating to the Act, a "primary purpose" of the Act was "to increase competition in telecommunications markets and *to provide for an orderly transition from a regulated market to a competitive and deregulated market*."[5]

B. The Adoption of Standardized Procedures and Process through the Collaborative Efforts of State Commissions, Qwest, and CLECs

23 This arbitration represents another step toward implementing the Act in the new competitive environment that has evolved since Congress passed the Act. Shortly after passage of the Act, this Commission conducted multiple Section 252 arbitrations involving the full panoply of wholesale obligations imposed by Section 251. Those arbitrations, like similar arbitrations throughout the country, typically involved dozens of disputed, often far-reaching issues

[3] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, 18 FCC Rcd. 16978, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (2003) ("TRO"); In the Matter of Unbundled Access to Network Elements and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, 20 FCC Rcd. 2533 (2005) ("TRRO").

[4] *See Covad Communications Co. v. FCC*, No. 05-1095 (D.C. Cir. June 16, 2006); *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

[5] H.R. Rep. 104-204(I), 104th Cong., 1st Sess. 1995, 1996 U.S.C.C.A.N. 10, 1995 WL 442504 (emphasis added).

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relating to the scope of the rights and obligations created by Sections 251(b) and (c). Because the issues were novel and the precedent was minimal or non-existent, rulings and ICA terms differed from one state to the next and from one contract to another. The resulting inconsistencies in ICA terms and conditions created significant operational challenges for ILECs and CLECs alike. Nowhere were these challenges more evident than in the processes for ordering, provisioning, measuring, and billing interconnection services and UNEs. For obvious reasons relating to efficiencies and costs, ILECs and CLECs have a strong interest in having standardized processes in place for each of these service components. The legal patchwork that evolved in the years immediately following passage of the Act worked against this desired standardization.

24 From Qwest's perspective, the lack of standardization in the processes for ordering, provisioning, measuring, and billing added exponentially to the challenges the company faced as a new wholesale provider for hundreds of CLECs in 14 different states. Fortunately, the region-wide proceedings Qwest initiated in 2000 under 47 U.S.C. § 271 for entry into the long distance markets in its 14-state territory offered a solution. Those proceedings provided a forum for Qwest, CLECs, and regulators to come together and reach resolution on many standardized procedures and processes. While there were sometimes strong differences of opinion concerning the appropriate procedures and processes, virtually all parties agreed on the need for standardization to ensure that (1) CLECs receive high quality service, (2) CLECs are treated equally, (3) Qwest and CLEC employees clearly understand their obligations to each other, and (4) Qwest's wholesale performance is measured fairly and meaningfully.

25 Qwest, the CLECs, and regulators invested extraordinary amounts of time and resources to develop and implement standardized processes through Qwest's 271 workshop proceedings. In those proceedings, all participants hammered out in detail a set of obligations to implement the duties in the Act, and developed a comprehensive set of measurements, known as the

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performance indicator definitions ("PIDs"), to determine the quality of the service Qwest was providing to CLECs.

26 Standard processes would not have been effective had they been designed to remain static. As a part of the Section 271 proceedings, therefore, Qwest, the CLECs and regulators developed a process for updating Qwest processes that would provide flexibility to change with a dynamic industry, while ensuring that change would be handled fairly and efficiently. Known as the Change Management Process ("CMP"), this process has been endorsed by state commissions as a part of Qwest's 271 applications and approved by the FCC as an appropriate vehicle for updating Qwest's processes for handling wholesale orders under the Act.6

27 It is beyond reasonable dispute that the combination of standardized processes, along with an appropriate change management process, has been successful. Qwest's wholesale performance pursuant to the PIDs improved rapidly and has consistently reached outstanding levels over the last five years. In 2002 and 2003, the FCC reviewed Qwest's processes and procedures in connection with the company's application for entry into the long distance markets in its 14 states. In granting Qwest entry into the long distance markets in each of these states, the FCC found that Qwest satisfied the 14-point point checklist in Section 271(c)(2)(B), stating that "Qwest has taken the statutorily required steps to open its local exchange markets in these states to competition."7

28 The state of competition in Washington's local exchange market directly reflects the success of

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6 Application by Qwest Communications International, Inc. for Authorization to Provided In-Region, Inter-LATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26409-10, at pages18-32 (2002) (Qwest Nine State Order); Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota, WC Docket No. 03-11, Memorandum Opinion and Order, 18 FCC Rcd 7325 at pages 19-20 (2003); Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Minnesota, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323, ¶15 (2003); Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona, WC Docket No. 03-194, Memorandum Opinion and Order, 18 FCC Rcd 25504, ¶¶ 20-21 (2003).

7 Qwest Nine State Order, ¶1.

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the collaborative Section 271 process. Competition is robust in both the residential and business markets. The Commission has recognized this competition in granting Qwest competitive classification for virtually all of its business services throughout most of Qwest's territory. And, while Qwest has not yet petitioned for competitive classification of any residential services outside of long distance service, competition by cable, VoIP, and wireless providers for that segment of the market is undeniable. In addition to competition among traditional wireline carriers, cable companies have entered the market aggressively, having taken large portions of the market in areas in which they have focused, including Phoenix, Seattle, Omaha and Denver. Voice over internet providers also have emerged as strong competitors, taking advantage of efficient infrastructures largely free from regulatory restrictions.

C. Eschelon's Proposals: Disregarding the Need for Standardized Procedures and Processes and Avoiding Changes in the Law

29 Against the background described above, it is essential that the ICA between Qwest and Eschelon recognize and retain the standardized procedures and processes that state commissions, Qwest, and the CLEC community have jointly developed for ordering, provisioning, measuring, and billing interconnection services and UNEs. It is also vital that any changes to the procedures and processes governing these facets of wholesale service be carried out through the Commission-endorsed CMP -- not through a single arbitration -- so that all CLECs with an interest in these issues can provide their input.

30 As described below and as Qwest will demonstrate during this arbitration, many of Eschelon's proposals seek specialized procedures and processes for Eschelon that, if adopted, would undermine the standardization the local exchange industry has achieved through the significant efforts of recent years. Moreover, by demanding processes specifically tailored to its desires in this arbitration, Eschelon is effectively end-running the CMP and asking this Commission to

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adopt far-reaching changes in the way that wholesale service is provided and received without obtaining the input of the many other CLECs that would be affected by the changes. The CMP is designed precisely to prevent this type of approach to industry-wide issues. Under Eschelon's proposals, the clock would be turned back to the time when there were wide variations in the procedures and processes governing wholesale service.

31 Eschelon's proposals also would turn back the clock by failing to give the required effect to recent decisions and orders of the FCC and the courts interpreting and applying the Act. Those decisions recognize and implement Congress' intent to move toward less regulation as the competition in local exchange markets increases. In violation of these rulings, including the FCC's rulings in the TRO and the TRRO, Eschelon continues to seek to impose outdated obligations that the FCC and the courts have eliminated based on the rapid growth of competition in local exchange markets. Thus, for example, Eschelon would have the Commission require Qwest to provide access to certain databases and services that the FCC has determined ILECs are no longer required to provide. Needless to say, it would be entirely improper to adopt an ICA that turns back the clock by failing to give effect to the substantial body of law that reflects the far-reaching changes of recent years in the telecommunications industry.

32 In contrast to Eschelon's proposals, the ICA Qwest is proposing maintains the standardization of procedures and processes that the industry has achieved, while keeping the door open to change through the CMP and with the participation and input of all carriers with an interest in these issues. Further, Qwest's ICA proposals carefully track the recent pronouncements from the FCC and the courts that have refined ILEC and CLEC rights and obligations as competitive conditions have changed.

33 Qwest believes it is critical that the Commission review the issues in dispute in this arbitration

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with a view to the future, rather than ignoring the monumental legal and market developments of recent years. For the reasons summarized below in connection with the parties' positions on the disputed issues, Qwest submits that its contract proposals best reflect this perspective and urges the Commission to adopt those proposals.

D. Summary of Disputed Issues

34 In the section that follows, Qwest provides a brief overview of the disputed issues and a statement of its position with respect to each issue. The discussion is organized according to the section numbers in the ICA. The parties' competing language for each section is set forth in the Issues Matrix (Exhibit 1) and the ICA (Exhibit 2).

E. Sections 1 through 7

Issues 1-1; 1-2; 1-2(a), (b), (c), (d): Interval Changes (Section 1.7.2)

35 Because this issue relates closely to Section 12 of the agreement, it is discussed in that portion of this petition.

Issue 2-3: Application of Rates in Exhibit A (Section 2.2)

36 Section 22 and Exhibit A address rate issues. Qwest discusses this issue in that section of this petition.

Issue 2-4: Effective Date of Legally Binding Changes (Section 2.2)

37 This issue relates to changes in law and whether they are effective on the date of the change in law or effective on the date that the interconnection agreement is amended. In Washington, the Commission has reached different decisions on this issue depending on the wording of the applicable order and the legal context. Qwest suggests that the Commission adopt language that first defers to the language of any applicable order. Nonetheless, in the absence of clear direction in an FCC or court order, Qwest urges that the Commission adopt language that provides incentive to parties to either quickly resolve differences in appropriate language or

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quickly bring such disputes to the Commission. Such language will reduce litigation by removing one potential issue from complaint proceedings and will ensure that the parties have incentive to quickly resolve change of law issues that arise in the future.

Issue 4-5 and 4-5(a)-(c): Issues Relating to "Design Changes" (Sections Section 9.2.3.8, 9.2.3.9, 9.2.4.4.2, 9.6.3.6, and 9.20.13)

38 Issues 4-5 and 4-5(a)-(c) involve disputes relating to Qwest's right to assess charges and recover its costs for design changes it is required to make for Eschelon. Eschelon's proposal relating to Issue 4-5 would improperly limit Qwest's ability to assess charges for design changes involving loops. Although there may be circumstances under which Qwest would have to perform design changes for loops, Eschelon would prevent Qwest from assessing a charge for that work. In other words, it appears that Eschelon is attempting to obtain loop-related design changes without paying for them, in violation of Qwest's right to recover the costs it incurs. Further, Eschelon appears to admit that there are costs associated with loop design changes, as shown by its statement that if there is a charge for these changes, it should be less than the charge for transport design changes. Eschelon provides no support for its assertion that the costs and charges for loop-related design changes are less than those associated with transport-related design changes.

39 Eschelon's proposal under which Qwest would be prohibited from assessing a design charge improperly assumes that Qwest does not have to perform work and does not incur costs for connecting facility assignment ("CFA") changes that occur with coordinated installations (Issue 4-5(a)). Eschelon bases this assumption on the fact that with a coordinated installation, a Qwest technician is already in the central office and thus no additional costs for the CFA are incurred. The flaw in Eschelon's position is that it fails to recognize that regardless whether a Qwest technician is in the central office, Qwest must perform work to implement the CFA in its operation support systems that are used for provisioning. The presence of a technician in

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the central office does not eliminate or in any way reduce the work Qwest must perform to enter the CFA into these downstream operation support systems. Eschelon's proposal would improperly prevent Qwest from recovering the costs and assessing a charge for this work.

40 Eschelon's proposal also is flawed because Eschelon contends, apparently in the alternative, that any charge should be minimal. However, Eschelon apparently has not proposed a charge and has not attempted to explain whether a "minimal charge" it is willing to accept would permit Qwest to recover its costs. Further, if Eschelon is proposing a new charge, the charge is not in Qwest's billing or provisioning systems and therefore would require changes to Qwest's billing and provisioning processes. A change in process should not be addressed in this arbitration involving only Qwest and Eschelon but, instead, should be addressed in a forum that permits all carriers with an interest in this issue to provide input.

41 Eschelon's reference in Section 9.6.3.6 to "design change rates for UDITs" improperly implies that Qwest is only permitted to assess design charges for transport (Issue 4-5(b)). As discussed above, Qwest may also be required to perform design changes for other products, including loops. If Qwest performs that work, it is entitled to assess an appropriate charge. In addition, issues relating to the charges and activities for UDIT are already addressed in Section 9.6.4.1.4. Because these issues are already addressed through agreed language in Section 9.6.4.1.4, there is no need for Eschelon's improper language in this section of the ICA.

42 Eschelon's proposal to deviate from the rates that other CLECs pay for design changes would deny Qwest cost recovery for design changes and would impermissibly result in Eschelon paying rates different from the rates other CLECs pay (Issue 4-5(c)). Further, Eschelon has failed to provide any cost-related support for the rate it is proposing for design changes involving loops and, based on information and belief, that rate is not supported by a cost study or similar evidence.

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Issues 5-6, 5-7: Discontinuation of Order Processing (Section 5.4.2)
Issue 5-8: De Minimus Amount (Section 5.4.5)
Issues 5-9, 5-10: Definition of Repeatedly Delinquent (Section 5.4.5)
Issue 5-11: Disputes before Commission (Section 5.4.5)
Issue 5-12: Deposit Requirement (Section 5.4.5)
Issues 5-13, 5-14: Review of Credit Standing (Section 5.4.7)

43 Each of the issues listed above involves the parties' rights and obligations relating to billing and payment of bills. They fall into three general subparts related to: the time at which a party may discontinue processing orders because of the other party's failure to make full payment; the definition of "repeatedly delinquent;" and a party's right to review a credit report and increase deposit requirements.

44 *Discontinuing Orders*. Eschelon is proposing language under which Qwest would not be permitted to discontinue processing Eschelon orders for non-payment of bills unless Qwest obtains approval from the Commission. As this Commission recognized in the Qwest-Covad arbitration, Qwest is entitled to timely payment for services rendered and to take remedial action if there is an apparent risk of non-payment. *See In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation*, Washington Commission Docket No. UT-043045, Order No. 06, Final Order Affirming in Part, Arbitrator's Report and Decision; Granting, In Part, Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement at ¶¶ 101-08 (Wash. Commission Feb. 9, 2005) ("*Qwest-Covad Arbitration Order*"). Although the language in Section 5.4.2 is written as if it applies to either party, in practice, it applies only to Qwest because Qwest is the only party that is processing orders under the agreement. Therefore, this section restricts only Qwest's ability to discontinue processing Eschelon's orders if Eschelon fails to pay.

45 Qwest's language provides Eschelon with 30 days before the billed amount is due and another 30 days thereafter before Qwest would discontinue processing orders if Eschelon failed to pay. This is precisely the time period that the ALJ adopted and this Commission affirmed in the

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Covad Arbitration. *See Qwest-Covad Arbitration Order* at ¶¶ 105-08. The commercial reasonableness of Qwest's proposal is further demonstrated by the fact that Eschelon may invoke a dispute resolution process under section 5.4.4 if it has a good faith dispute about its bill. Under this process, Eschelon is not required to pay disputed amounts until the dispute is resolved. Eschelon's first of its two proposals for this issue would prevent Qwest from taking action unless and until it obtains Commission approval. Placing the burden on Qwest to file for Commission action and allowing Eschelon to continue to incur debt while that action is pending is unreasonable in light of the fact that: (1) it is Eschelon's obligation to pay its bills in a timely fashion; and (2) Eschelon can invoke dispute resolution and refuse to pay bills that it reasonably disputes.

46 Eschelon proposes a second alternative to Qwest's language that is equally inequitable. Whereas Eschelon's first alternative asks the Commission to adopt language requiring Qwest to obtain Commission approval prior to discontinuing the processing of orders as a result of Eschelon's own failure to pay its bills in a timely fashion, Eschelon's second alternative proposes language whereby the simple act of its "asking" the Commission to prevent the discontinuation of order processing would prevent Qwest from protecting itself from mounting unpaid debt and force it to continue to process orders pending the outcome of a proceeding. There is a transparent double standard in the provisions proposed by Eschelon. Eschelon seeks to require Qwest to obtain Commission approval to take action, on the one hand, and, on the other hand, to continue to fail to pay its bills without consequence by "asking" for the Commission's permission, in whatever form that "asking" may take. In other words, Eschelon seeks the ability under the parties' ICA to refuse to pay its bills without the discontinuance of its orders both when it disputes amounts under the process in section 5.4.4, and even when it does not. In addition to being plainly inequitable and commercially unreasonable, this position directly conflicts with the result on the Qwest-Covad arbitration.

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47 *Definition of "Repeatedly Delinquent."* Under section 5.4.5, a party that is "repeatedly delinquent" in making payments may be required to submit a deposit before orders will be provisioned and completed, or reconnected. The dispute between the parties concerning the definition of "repeatedly delinquent" concerns three issues: (1) whether the word "non-de minimis" should be inserted to qualify the billing amount at issue; (2) the time frame within which a party's nonpayment becomes "repeatedly delinquent"; and (3) when required deposits become due and payable.

48 Eschelon seeks to insert the word "non-de minimis" in the following definition: "Repeatedly Delinquent" means payment of any undisputed *non-de minimis* amount received more than thirty (30) days after the Payment Due Date. . . ." This vague addition to the definition ensures that the parties will in all likelihood be appearing before the Commission again in short order to clarify what they intended by "non de-minimis amount." Eschelon argues that this language protects it from Qwest action in the event Eschelon pays the wrong amount in error and is off by a few dollars. As evidenced by Qwest's recent letter to Eschelon demanding that it pay **undisputed** outstanding bills of over $3 million dollars, it is not Qwest's practice, nor is it financially wise or feasible, to take collection action for "a few dollars." Eschelon's proposed language invites litigation and is wholly unnecessary.

49 Consistent with the 30-day due date proposal in section 5.4.2, Qwest proposes that "repeatedly delinquent" means "any payment received 30 calendar days or more after the payment due date three (3) or more times during a twelve (12) month period." Qwest's proposal is commercially reasonable and is identical to the "repeatedly delinquent" definition that was reviewed and approved in the Section 271 workshops. Additionally, this proposal is consistent with the Commission's recognition in the Qwest-Covad arbitration that Qwest is entitled to meaningful recourse when CLECs fail to pay bills. Further, in the nine years since the Act was passed, there have been virtually no cases where Qwest or a CLEC has been required to go to

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the Commission in this kind of circumstance. Adding commission involvement now, when it hasn't been needed before now, serves to solve a problem that does not exist. Such a proposal runs directly counter to the reality of the telecommunications market, which is evolving toward more competition instead of more regulation.

50 Eschelon proposes that "repeatedly delinquent" applies only to situations where non-payment occurs for three *consecutive* months. Under this proposal, Eschelon could be delinquent in its payments for two months, pay its bill for the third month on time, and then be delinquent again for the next two months. That definition is not commercially reasonable.

51 *Deposit Requirements.* As part of section 5.4.5, Eschelon proposes three alternative provisions under which it would add language requiring a party to abstain from demanding and collecting a deposit pending the outcome of a Commission proceeding addressing the issue of whether a deposit can be required. By proposing this type of delay, Eschelon seeks to have the Commission micro-manage the parties' relationship and prohibit a party from utilizing reasonable business practices. If a billed party is "repeatedly delinquent," the billing party should be entitled to protect itself from increasing debt and credit risk by requiring the other party to pay a deposit. Eschelon has a right under section 5.4.4 to dispute Qwest's billing; a second opportunity to do so, which is what Eschelon seeks here, is unnecessary and inequitable.

52 Review of Credit Standing. Qwest proposes language that would allow it to review Eschelon's credit standing and increase the amount of deposit required from Eschelon, subject to the limitations set forth in section 5.4.5. This proposal reflects a reasonable and customary business practice. Again, a billing party is entitled to protect itself from credit risk. Eschelon argues that there is no "triggering event" for the deposit requirement, but the credit review itself is that event; if Eschelon's credit standing reveals a level of risk that warrants a deposit,

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the requirement of a deposit is triggered. Experience in the highly competitive local exchange market demonstrates that the risk of telecommunications carriers declaring bankruptcy or simply shutting their doors is hardly remote, and, hence, a service provider like Qwest have the ability to conduct credit reviews and take actions in response to them. This is a fundamental reality of running a business.

Issue 5-16: Non-disclosure Agreement (Section 5.16.9.1)

53 This section concerns the disclosure of CLEC individual forecasts and forecasting information. Because of the highly sensitive nature of this information, strict procedures must apply to disclosures of the information. Under Qwest's proposal, Qwest would be permitted to disclose the information only to legal personnel, if a legal issue arises, and to a CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel "responsible for preparing or responding to such forecasts or forecasting information." The provision expressly prohibits disclosure to retail marketing, sales or strategic planning, and requires Qwest employees to execute nondisclosure agreements ("NDAs").

54 Eschelon demands a change to this provision that would require Qwest to provide Eschelon with copies of nondisclosure agreements executed by Qwest employees within 10 days of execution. This demand would impose an unnecessary administrative burden on Qwest, particularly since this precedent could require Qwest to provide every CLEC with copies of NDAs. Qwest already operates under careful procedures that ensure the protection of CLEC forecasts and related information; there is no need for this additional administrative burden.

55 Further, Section 18.3.1 of the ICA provides that "either party can request an audit of the other party's compliance with the Agreement's measures and requirements applicable to limitations on distribution, maintenance, and use of proprietary or other protected information that the

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requesting party has provided to the other". In addition to the stringent requirements set forth in Section 5.16.9.1, under Section 18, Eschelon has adequate protection and recourse if it believes that Qwest has misused confidential information. For this additional reason, there is no justification for Eschelon's demand that Qwest provide executed copies of non-disclosure agreements.

Issue 7-18: Application of Transit Record Charge (Section 7.6.3.1)

56 In this section, Eschelon seeks to obtain transit records from Qwest in order to validate bills that are based on data Eschelon itself provides to Qwest. In a recent complaint proceeding in Minnesota, Qwest negotiated a compromise solution to exchanging records when Qwest hands transit traffic to a terminating provider. In that proceeding, all parties recognized that the best source of information for determining the source of such calls is the originating switch. Transit records are a poor substitute for such records because the purpose of a transit switch is to complete calls, with billing considerations being secondary. Nonetheless, because the terminating provider does not necessarily know the identity of the originating company, an extensive records exchange is one way to identify and track down originators of traffic that are improperly routing calls.

57 This issue presents the opposite situation. Here, Eschelon is the originating provider, and therefore its switch produces the best information with regard to traffic it sends to Qwest for termination with a third party. Requiring Qwest to provide Eschelon with detailed records and to do so without charge is an unreasonable and inefficient way to determine appropriate billing by Eschelon. Accordingly, Qwest opposes Eschelon's language.

Issue 7-19: Transit Record Bill Validation Detail (Section 7.6.4)

58 Please see the discussion above relating to Issue 7-18.

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F. Section 8 – Collocation

Issue 8-20: Collocation Available Inventory - Posting of Price after QPF (Section 8.1.1.10.1.1)

59 As set forth in Section 8.1.1.10.1 of the agreement, Available Inventory "provides the terms and conditions under which CLEC can purchase returned Collocation sites and elements." Available inventory sites are posted on a "Collocation Classified" web site that CLECs are able to access and review. For each listing, Qwest indicates the location of the collocation site (by state, CLLI code, wire center name and floor, if applicable, on which the site is located). The listing also indicates whether the site is caged or cageless, the approximate size of the space (by number of equipment bays, or square footage), and the type and number of circuit terminations (DS0, DS1, DS3 and OCN) that were present at the location when it was returned to Qwest inventory. For "Special Sites" (i.e., collocation sites returned to Qwest on account of abandonment or bankruptcy) the listing also includes information detailing the power feeds previously provisioned to the site.

60 The dispute here focuses on Eschelon's demand that Qwest, in addition to this information, also post previous quotes [if any] for a site prepared for a different CLEC, where the prior CLEC had ordered the site, obtained a quote for the site as ordered, but then decided not to accept the site. In that case, the site would be returned to Available Inventory. The gist of Eschelon's position on this issue is that providing these previous quotes to other CLECs for Available Inventory sites would be helpful to Eschelon in making a "new" versus "used" purchase decision when procuring collocation space.

61 To begin with, and most importantly, Qwest is under no legal obligation to offer a "used" collocation product, let alone to tailor that product to meet Eschelon's demands. Section 251(c)(6) of the Act requires Qwest to "provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for

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interconnection or access to unbundled network elements . . . ." Nothing in the Act, or in the FCC rules promulgated thereunder, requires that an ILEC offer a "used" collocation option to CLECs. Qwest has chosen to do so, voluntarily, but this Commission must distinguish between collocation products or services that Qwest is required to offer and those that it chooses to offer, without any legal compulsion to do so. Here, there is no legal basis to order Qwest to provide the Available Inventory product, let alone to modify the offering. Eschelon essentially maintains that it would be "useful" or "helpful" if Qwest posted prices for Available Inventory. However, the D.C. Circuit has squarely held with respect to collocation issues under Section 251(c)(6), that the test is not whether something is "useful," but whether it is "necessary." GTE Service Corporation v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

62 Eschelon's proposed language, in addition to being legally unsupportable, is also unreasonable. The price that a CLEC will be charged for a given Available Inventory site depends entirely on the circuit terminations the CLEC requires to be delivered to a site, its power requirements for the site, and other variables. Almost never, in Qwest's experience, do CLECs order Available Inventory sites "as is," nor is there any reason to believe that CLEC B, in ordering a site, would request exactly the same modifications, circuit terminations and power feeds as CLEC A might have previously requested for the site.

63 The price that a CLEC will pay for an Available Inventory site therefore depends entirely upon that CLEC's specific circuit and power requirements, as specified in its order. Posting a previously prepared quote for a different CLEC requesting different circuit terminations, different power feeds, and other different modifications will not enable Eschelon to estimate what it might be required to pay for its entirely different order. Further, Eschelon can make this estimate itself, and it will be far more accurate than referencing a prior quote for a different CLEC and a different order as a basis for an estimate. Eschelon will pay for the site based on what it ordered -- not based on what a prior CLEC may have ordered. If Eschelon

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truly needs an estimate to guide its "new" vs. "used" decision, it can calculate the estimate itself. It has all the information necessary to do so -- the particulars of the space and the circuit terminations available at the site, and an Exhibit A to its contract that tells Eschelon what the rate will be for each termination, for space and for power. In fact, Eschelon is clearly in a position to make the best estimate, because only Eschelon knows what it will require in terms of power and circuit terminations.

64 Finally, as with other Eschelon proposals discussed previously, Eschelon's request would represent a departure from existing Qwest process. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC.

Issue 8-20(a): Collocation Available Inventory - Space Augments

65 When a CLEC requests an augment in association with ordering an Available Inventory site, Qwest must perform certain planning and engineering work in order to determine how to provision that augment request. The Quote Preparation Fee ("QPF") recovers the cost of this planning and engineering work, and the preparation of the associated quote, consistent with the right of cost recovery granted by Section 252(d)(1) of the Act. Eschelon contends that Qwest's language is inconsistent with the language in 8.2.10.4.3 stating that the quote Qwest prepares will be based on the site inventory and any requested modifications.

66 The language upon which Eschelon relies in Section 8.2.10.4.3, however, merely clarifies what the quote will cover, and how and when it will be prepared. It states, in essence, that if a CLEC requests modifications, the quote will include the charges for those modifications. It does not address the issue of cost recovery for preparing the quote where modifications are requested. That is addressed in Section 8.3.11.3.2, which is the section of the ICA that, as stated in Section 8.3, specifically addresses "rates for collocation." Indeed, agreed language in Section 8.2.10.4.3 expressly recognizes that the rate for a "site assessment fee" is set forth in

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Section 8.3.11.3.2: "The CLEC will be charged a special site assessment fee for work performed up to the point of expiration or non-acceptance of the quote. See Section 8.3.11.3.2." In addition, as demonstrated by a review of the sub-sections within Section 8.2, that section of the ICA (including Section 8.2.10.4.3.) sets forth general terms, not specific terms like the rates that apply to services. The relevant specific term is set forth in Section 8.3.11.3.2, and it expressly and unequivocally states that when a CLEC requests modifications to a site in its application, the QPF will apply.

67 Qwest's proposed language in Section 8.2.10.4.3 regarding the process to prepare a quote merely clarifies and reiterates, consistent with the more specific rate element provision in Section 8.3.11.3.2, that Qwest will charge the QPF if a CLEC requests modifications -- consistent with Section 8.3.11.3.2.

Issue 8-21 -48 Volt Power Measurement (Section 8.2.1.29.2.1, and related issues in Sections 8.2.1.29.2.2, 8.3.1.6, 8.3.1.6.1, 8.3.1.6.2 and subparts, 8.3.9.1.3, 8.3.9.2.3 and 8.3.9.2.3)

68 The fundamental dispute underlying the disputed language in each of these contract sections relates to DC Power measurement. Qwest offers CLECs the ability to pay for DC Power Usage on either a flat-rated as ordered basis, or on a measured basis. Eschelon wants Qwest to extend this measuring option to a different charge for DC Power Plant. Qwest's charge for Power Plant, however, is different from its charge for Power Usage, and cannot be adjusted based on a CLEC's actual power consumption. Qwest must engineer and provision its Power Plant as ordered to be able to provide the power requested by a CLEC. If a CLEC orders a 100 amp power connection, then that is what Qwest provisions, and it charges on that basis. A CLEC may only use 40 amps for a given period of time, but that does not alter the fact that Qwest provisioned the CLEC's order for 100 amps -- as requested by the CLEC. Power Usage, on the other hand, can be measured and billed based on actual consumption, and that is what Qwest's language accomplishes.

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69 There is no legitimate basis, however, to adjust DC Power Plant based on usage. A 100 amp connection is provisioned to be able to provide 100 amps of power at all times -- pursuant to the CLEC's request -- and remains so month to month, regardless of how much power the CLEC actually uses. If a CLEC determines that it requires less or more power, it may submit an appropriate augment request to make that change, and that will change its monthly DC Power Plant charge. Failing that, however, Qwest will bill DC Power Plant ordered at 100 amps at that 100 amp rate, because that is what Qwest has provisioned and that is what Qwest delivers to the CLEC -- the capability to always draw 100 amps over that connection.

Issue 8-21(a): -48 Volt Power Measurement (Section 8.2.1.29.2.2)

70 This issue is, in part, the same issue discussed above (Issue 8-21) related to DC Power Usage vs. DC Power Plant charges. The additional issue in this section relates to whether Qwest should be required to take the initial power measurement where a CLEC has requested to be billed for DC Power Usage on a measured basis, but where the CLEC has not yet placed or activated any equipment in its collocation space. In that situation, a power measurement would reflect a zero reading because there is no equipment in place to draw power. Qwest does not believe that there is any reason to require it to take a power measurement before there is any power to measure.

Issue 8-21(b): -48 Volt Power Measurement (Section 8.3.1.6)

71 The dispute here is the same issue presented in Issue 8-21: Whether power measurement should apply to DC Power Plant and DC Power Usage charges, or just the latter. Qwest's language clarifies that there are two charges for -48 Volt DC Power, one for DC Power Usage and one for DC Power plant. Eschelon objects to Qwest separately identifying those distinct charges.

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Issue 8-21(c): -48 Volt Power Measurement (Section 8.3.1.6.1)

72 The dispute here is the same issue presented in Issue 8-21: Whether power measurement should apply to DC Power Plant and DC Power Usage charges, or just the latter. Qwest's language clarifies that there are two charges for -48 Volt DC Power, one for DC Power Usage and one for DC Power plant. Eschelon objects to Qwest separately identifying those distinct charges.

Issue 8-21(d): -48 Volt Power Measurement (Section 8.3.1.6.2)

73 The dispute here is the same issue presented in Issue 8-21: Whether power measurement should apply to DC Power Plant and DC Power Usage charges, or just the latter.

Issue 8-22: DC Power QPF (Sections 8.3.9.1.3 and 8.3.9.2.3)

74 Eschelon objects to paying a quote preparation fee when it orders Power Restoration with Reservation. The QPF, as detailed in Qwest's proposed language, recovers the cost of performing a feasibility study and producing the quote to complete the CLEC's DC Power Restoration request. It covers the project, order and support management, engineering and planning associated with the administrative functions of processing the request. Qwest would in fact undertake this work to process a CLEC's power restoration request and prepare a quote, and Qwest is entitled to recover its costs. That is the nature of the dispute, and it clearly demonstrates that this issue is fundamentally a cost-based dispute over this QPF rate, and the application of this rate. Issues related to appropriate cost recovery, and involving cost studies and other cost-based evidence, should be resolved in a cost docket or other appropriate docket.

Issue 8-23: DC Power Restoration Charge (Section 8.3.9.2.1)

75 Eschelon takes issue with the fact that Qwest's non-recurring charge for completing the work necessary to restore power, where there has been a reservation, is ICB vs. flat-rated. Qwest charges for this activity on an ICB basis because the work required to complete a CLEC's DC

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Power Restoration request will vary from request to request, and therefore an ICB charge is appropriate. Without an ICB charge, Qwest likely will not be permitted to recover the costs it incurs to provide this service. Further, issues related to appropriate cost recovery that involve cost studies and other cost-based evidence should be resolved in a cost docket, not in an arbitration.

Issue 8-24 NEBS Standards (Section 8.2.3.9)

76 This dispute relates to the requirement that equipment placed by Eschelon in its collocation space meet NEBS Level 1 safety standards. There is no dispute between the parties as to that primary issue, but Eschelon seeks to add language that would inappropriately shift to Qwest the burden of determining whether equipment that Eschelon intends to place complies with NEBS. Eschelon proposes that within 10 days of receiving Eschelon's collocation application, Qwest must review all equipment that Eschelon intends to place and raise at that time any issues relating to NEBS or other concerns relating to the safety of the equipment. If Qwest does not raise concerns of this nature at that time, it apparently would be forever precluded under Eschelon's proposal from raising the concerns. As the purchaser of the equipment, Eschelon is in the best position to assess the safety of its equipment and compliance with NEBS. Eschelon has the relationships with the vendors from whom it is purchasing its equipment and access to any owner's manuals, specification sheets or other literature relating to the equipment. Given Eschelon's access to this information, there is no reasonable basis for shifting to Qwest the responsibility for evaluating the safety of Eschelon's equipment.

Issue 8-29: Optioned Contiguous Space (Section 8.4.1.8.7.3)

77 This dispute relates to the time period that Eschelon will have to exercise a contiguous space option, which is essentially a right of first refusal. Qwest proposes 72 hours, and Eschelon proposes seven days. Qwest's primary objection here is that Eschelon's 7-day proposal represents a departure from established Qwest process. The entire purpose of CMP was to

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ensure that the industry (not just Qwest or one CLEC) would be involved in creating and approving processes that are uniform among all CLECs. Process changes that would affect all CLECs should be addressed through CMP, not in an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes, and would cause Qwest to incur costs it is entitled to recover under the Act. Qwest is willing to consider changing the response period, but only within the CMP context. Moreover, this dispute is more academic than practical, as, to Qwest's knowledge, Eschelon has not once sought to exercise a contiguous space option.

G. Section 9 – Unbundled Network Elements

Section 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2

78 Qwest's position relating to the merits of Eschelon's proposed Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 is set forth below in connection with Issue 58 and Sections 9.23 and 24.3.2. In addition to the flaws in the merits of its position, Eschelon's proposed Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 are duplicative in that they address the same subjects that Eschelon addresses in Section 9.23.4 and related sub-sections. For example, Eschelon addresses service intervals for commingled arrangements in both Section 9.1.1.1.1.1 and 9.23.4.4.3.1. Similarly, it addresses ordering and billing procedures for commingled arrangements in Section 9.1.1.1.1.2 and again in Sections 9.23.4.5.4 and 9.23.4.6.6. These repetitive ICA provisions create unnecessary confusion, and, accordingly, Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 should be eliminated in their entirety.

79 In addition to being duplicative of other Eschelon proposals, these proposed ICA provisions are inappropriately set forth in a general section of the Agreement containing general terms and conditions relating to UNEs. It is confusing and inconsistent with the overall organization of the ICA to include specific terms and conditions relating to commingling in a section of the

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Agreement that is intended to define the broad terms and conditions that apply to UNEs. For this additional reason, Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 should be eliminated from the ICA.

80 In contrast to Eschelon's confusing approach, Qwest addresses specific issues relating to commingling in the section of the ICA titled "Commingling." Specifically, per mutual agreement of the parties, Section 24 is titled "Commingling," and it sets forth the parties' general commingling rights and obligations. In proposed Section 24.3.2, for example, Qwest includes language establishing the service intervals for commingled EELs. These and other specific sections relating to commingling are appropriately included in the section of the Agreement devoted to commingling and should not be addressed in different sections with duplicative provisions.

Issue 9-31: Access to UNEs (Sections 9.1.2.1.3.2.1, 9.1.2.1.3.2.2, 9.2.2.3.2, 9.2.2.16)

81 This issue arises from Eschelon's very recent demand to include language in the ICA establishing that access to UNEs "includes moving, adding to, repairing and changing the UNE (through, e.g., design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders)." It has long been established that the Act only requires an ILEC to provide access to its existing network, not access to "a yet unbuilt superior one." Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997). Under Eschelon's proposed language, Qwest could be required to build new facilities and to provide access to "a yet unbuilt superior network." For example, the undefined requirement for Qwest to "add to" UNEs could obligate Qwest to build new facilities and to go beyond the routine network maintenance that ILECs must provide. Similarly, Eschelon does not define the meaning of "changing the UNE," thereby leaving the door open to changes that go beyond routine network maintenance.

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82 Through this proposal, Eschelon also may be attempting to obtain modifications to UNEs without paying for them. Although it is not clear from the proposed language, Eschelon's proposal may assume that the price it pays to lease a UNE from Qwest entitles it to repairs, changes, additions, and modifications without further payment. That result would clearly violate Qwest's legal right to recover the costs it incurs to provide access to UNEs and interconnection, since UNE rates do not include the costs of these activities.

Issue 9-33: Network Maintenance And Modernization Activities (Sections 9.1.9 and 9.1.9.1)

83 This issue involves the parties' rights and obligations when Qwest modifies its network for maintenance purposes or to modernize its facilities and technologies. The dispute arises from Eschelon's demand for an ICA provision establishing that Qwest's network modifications "will not adversely affect service" to any Eschelon customer. Eschelon's proposed prohibition against changes that "adversely affect" service should be rejected for several reasons.

84 First, Qwest maintains and modernizes its network consistent with industry standards and as contemplated by FCC rules. The service to be measured for purposes of application of industry standards is the service Qwest provides to Eschelon, not the service Eschelon provides to its customers. This focus is proper since Eschelon, not Qwest, ultimately controls the service that Eschelon's customers receive. Eschelon's proposed standard improperly focuses on the service Eschelon provides to its customers, not on the service Qwest provides to Eschelon.

85 Eschelon's proposed requirement that any modernization or maintenance must "not adversely affect service to any End User customers" also is flawed because it is not tied to industry standards and is too vague to be capable of reliable and predictable contract implementation. Eschelon's failure to tie the phrase "adversely affect service" to any measurable standard creates considerable ambiguity about whether a change in the network has a negative effect

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and, as a result, will inevitably lead to disputes between the parties.

86 Eschelon's language also fails to recognize that end users could be adversely affected by Qwest's maintenance and modernization because of the equipment and technologies Eschelon may be using in its network. Qwest of course should not be held responsible for adverse effects on service resulting from Eschelon's use of equipment and technologies that are not compatible with Qwest's modernization of its network.

Issue 9-34: Notice Relating To Network Maintenance And Modernization Activities (Sections 9.1.9 and 9.1.9.1)

87 This issue relates to the notice Qwest will provide to Eschelon of changes to its network because of network maintenance and modernization activities. Qwest will provide notice of changes to its network, including the location of changes, consistent with the requirements of applicable FCC rules. Eschelon's proposal improperly converts the requirement for Qwest to provide notice of the locations of network changes into a requirement for Qwest to identify the Eschelon customers who could be affected by the changes. There is no such requirement in 47 C.F.R. § 51.327, the FCC rule that governs notice of network changes, and, moreover, Eschelon has the information it needs to determine if a change to Qwest's network could affect an Eschelon customer. Eschelon's attempt to impose a form of notice that is not required under the governing FCC rule should be rejected.

88 During the recent arbitrations between Qwest and Covad in Washington and other states, this Commission and others considered and decided this notice-related issue. See Qwest-Covad Arbitration Order, at ¶¶ 13-16. In the Covad arbitration, this Commission ruled that Qwest's obligation when it is retiring copper loops is to provide notice that is consistent with the requirements of Rule 51.327. Id. The Commission specifically rejected Covad's contention that Qwest should be required to identify the Covad customers affected by these network changes, concluding that the burden to identify the impact of a change does not rest "solely

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with the ILEC." Id. at ¶ 15. Since that arbitration, Qwest has updated its notice disclosure policies and has agreed to provide all information it can make readily available through its existing systems. Qwest's existing notices clearly comply with the notice requirements this Commission endorsed in the Covad arbitration. Moreover, while Eschelon seeks improper changes to the notice Qwest would be required to provide, it is not willing to compensate Qwest for the costs it would incur in an attempt to modify its notice process to provide that information. Accordingly, Eschelon's proposal also violates Qwest' right of cost recovery under Section 252(d)(1) of the Act.

Issue 9-35: Notice Of Emergencies Relating To Network Maintenance And Modernization Activities (Sections 9.1.9 and 9.1.9.1)

89 If an emergency occurs while Qwest is maintaining or modernizing its network that results, for example, in a loss of dial tone, Qwest's proposed ICA language establishes that Qwest will provide e-mail notice within three business days of completing the work needed to resolve the situation. Eschelon does not contest that language, but it has proposed additional language that would require Qwest field personnel, while the emergency is pending, to notify Qwest's "repair center personnel" of the nature of emergency with the understanding that Eschelon would then have access to those personnel.

90 In an emergency situation, Qwest's repair center personnel provide the same information to CLECs as provided to Qwest's retail customers. Eschelon's proposal would improperly require Qwest to provide a form of notice that goes beyond the notice Qwest provides to its retail customers. Accordingly, the Commission should reject Eschelon's request for this unique form of notice and accept Qwest's commitment to provide the same notice for Eschelon that it provides for its retail customers. Alternatively, if the Commission accepts Eschelon's proposal, Eschelon should be required to pay the cost Qwest incurs to provide this unique form of notice, consistent with Qwest's right of cost recovery under Section 252(d)(1) of the Act.

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Issue 9-36: Cost Recovery For Field Dispatches Relating To Network Maintenance And Modernization Activities (Sections 9.1.9 and 9.1.9.1)

91 This issue involves Qwest's right to recover the costs it incurs in connection with field dispatches resulting from emergencies that arise during network maintenance and modernization activities. Qwest agrees with the language in Section 9.1.9 establishing that it will not charge Eschelon for dispatching engineers or technicians into the field to perform activities involving maintenance or modernization of the network. Eschelon's proposal goes beyond this agreed limitation on Qwest's ability to charge for dispatches by also prohibiting charges for the dispatches "described" in Section 9.1.9.1. There are at least two flaws in this proposal.

92 First, Eschelon's proposed Section 9.1.9.1. does not refer to or describe any dispatches, and the prohibition against dispatches "described in Section 9.1.9.1" is therefore undefined and vague.

93 Second, given the vagueness of the proposal, Eschelon may be seeking to prevent Qwest from assessing charges for dispatches that are not the result of Qwest's maintenance or modernization of the network. In multiple circumstances, Qwest has a right to recover the costs of dispatches, and Eschelon's vague proposal could improperly prevent the recovery of those costs. Eschelon's proposal would improperly impose a blanket prohibition against Qwest's recovery of the costs associated with field dispatches arising from emergencies.

Issue 9-39: Wire Center Impairment Determinations and "Caps" on Available UNEs (Section 9.1.13.4.1)

94 The parties have agreed that with minor exceptions, issues relating to non-impairment determinations based on the criteria in the TRRO may be stayed if the Commission includes those issues in pending Docket No. UT-053025, In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the

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Competitive Telecommunications Environment in Washington State ("Wire Center Proceeding"). A request for the Commission to address those issues in Docket No. UT-053025 is forthcoming. Accordingly, Qwest is not addressing those issues in this petition, but has provided summaries of the parties' positions relating to them toward the end of the Issues Matrix attached as Exhibit 1. The exceptions to the issues the parties have agreed to stay relate to a dispute concerning Eschelon's onerous demand for data and other information it asserts it needs to evaluate the caps on the numbers of DS1 and DS3 transport circuits it is permitted to order on routes where Qwest is required to unbundled these circuits. In addition,

95 Under Eschelon's proposal, Qwest would be required to provide multiple types of data, some of which are not readily available, to permit Eschelon to identify "all CLEC circuits relating to the applicable Route or Building." Eschelon does not have a legitimate business need for this information, some of which may be confidential to other CLECs.

Issue 9-46: Bridged Taps (Section 9.2.2.9.6)

96 The parties agree that the ICA should include a performance standard for unbundled loops that are "bridged tap" but disagree concerning the description of that standard.8 Under Eschelon's proposal, bridged tap reaches an "interfering" level if it "is excessive or otherwise would interfere with proper performance." This proposed standard is really no standard at all, since it does not define "excessive" or "proper performance." To avoid disputes and to establish clarity concerning the parties' rights and obligations, the definition of "interfering bridged tap" must be tied to measurable industry standards.

97 The relevant industry standards are those set forth in ANSI and/or technical publication standards relating to permissible decibel loss. If the bridged tap associated with an unbundled loop causes a level of decibel loss in excess of the loss allowed under ANSI, then it is

[8] Bridged taps refer to "multiple appearances of the same cable pair at several distribution points." H. Newton, *Newton's Telecom Dictionary*, Telecom Books (1998). A bridged tap increases the electrical loss on a cable pair.

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"interfering" under the standards accepted in the industry. It is essential to tie the standard to this specific industry metric instead of to the broad, amorphous terms in Eschelon's proposal. Thus, Qwest's proposal provides that interfering bridged tap is that which "would cause loss at the End User Customer location to exceed the amount of loss allowable by the ANSI standards." This definition is also consistent with Qwest's PCAT, which incorporates ANSI standards. Under Qwest's proposal, unlike Eschelon's, the parties will know with certainty when bridged tap is "interfering," and their rights and obligations relating to this issue will be governed by accepted industry standards, not by undefined, ambiguous terms.

Issue 9-50: Subloops - Cross Connect/Wire Work by Qwest (Section 9.3.3.8.3.1)

98 This issue arises because of Eschelon's desire to have Qwest perform cross-connects that Eschelon is able to perform itself. Qwest has no legal obligation to perform cross-connect wiring for Eschelon, and it is undisputed that Eschelon can perform this function itself. Qwest has voluntarily offered this service in the past, but CLECs have not ordered it. Because of this lack of demand and the absence of any legal obligation, Qwest is discontinuing this offering on a going-forward basis. Contrary to Eschelon's contention, the fact that Qwest voluntarily offered this service under prior ICAs does not obligate Qwest to continue offering the service, particularly where CLECs have not ordered it.

Issue 9-51: Application of UDF-IOF termination (fixed) rate element (Section 9.7.5.2.1.a)

99 Eschelon's proposal assumes incorrectly that Qwest is always required to perform only one cross-connect to provide UDF-IOF terminations. In fact, more than one cross-connect may be necessary, which is why Qwest's proposed language permits recovery for each cross-connect that is required for a facility. Eschelon's proposal would improperly prevent Qwest from charging for more than one cross-connect when multiple cross-connects are required and would thereby deny Qwest cost recovery.

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Issue 9-52: Access to 911 Databases (Section 9.8 and subpart)

100 In 47 C.F.R. § 51.319(d)(4)(i)(B)(1), promulgated as part of the TRRO, the FCC established that ILECs are required to unbundle 911 and E911 databases "to the extent the [CLEC] is entitled to unbundled local switching." In other words, CLECs are entitled to unbundled access to these databases only if they are entitled to unbundled access to local switching. By only citing this rule and not stating that access to these databases is linked to access to local switching, Eschelon appears to be leaving the door open to obtaining access to the databases in circumstances that the FCC did not authorize.

101 Eschelon is not entitled to access to 911 and E911 databases separate from local switching, and the mere reference to the rule without express recognition of the link between switching and access to the databases is improper.

Issue 9-53: Unbundled Customer Controlled Rearrangement Element ("UCCRE") (Section 9.9 and subparts)

102 The FCC has removed from its rules the former requirement for ILECs to provide digital cross-connects for the unbundled customer controlled rearrangement element ("UCCRE"). Compare former 47 C.F.R. § 51.319(d)(2)(iv) and current 47 C.F.R. § 51.319(d)(2). Eschelon acknowledges that Rule 51.319 defines the unbundling obligations of ILECs, but it dismisses as irrelevant the fact that the FCC affirmatively removed from that rule the former obligation of ILECs to provide UCCRE. The FCC's unbundling rules are definitive and binding, and the fact that the FCC has removed UCCRE from those rules establishes that ILECs no longer have an obligation to provide this service.

103 Further, although Qwest offered this service in the past, CLECs did not order it. If Eschelon desires this service, it can obtain the service through a tariff or through the bona fide request

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process.

104 Because Qwest will not be offering this service to any CLECs that enter into new interconnection agreements, there is no merit to Eschelon's assertion that it would be discriminatory for Qwest not to offer the service to Eschelon. The service will no longer be offered to Eschelon or to any other CLEC that enters into a new interconnection agreement, and Eschelon is therefore being treated on a par with other CLECs. Under Eschelon's argument, Qwest would be prohibited from ending on a going-forward basis an offering it has no legal obligation to provide and that CLECs do not order simply because the offering is included in another carrier's interconnection agreement that is several years old. This position relies on an improper application of the Act's non-discrimination requirements and would improperly force Qwest to continue voluntary offerings of services for which there is no demand.

Issue 9-54: UNE Combinations Description And General Terms (Sections 9.23.2 and 9.23.9)

105 This issue involves Eschelon's demand for stand-alone loop multiplexing and its attempt to impose UNE rates and other UNE terms and conditions for non-UNE elements that are combined with UNEs. Stand-alone loop muxing is not a loop-related UNE that Qwest is required to provide on an unbundled basis. In the decision of the FCC's Wireline Competition Bureau in the Verizon-Virginia arbitration, paragraph 491, the Bureau rejected WorldCom's proposed language that would have established multiplexing as an independent network element, stating that the FCC has never ruled that multiplexing is such an element: "We thus reject WorldCom's proposed contract language because it defines the 'Loop Concentrator/Multiplexer' as a network element, which the Commission has never done." 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

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(FCC Wireline Competition Bureau July 17, 2002).

106 Further, Eschelon can self-provision multiplexing within its own collocation space, and, therefore, will not be denied access to this service if Qwest does not provide it. In the TRO, the FCC established that the type of multiplexing ILECs must provide is that associated with commingling, not stand-alone multiplexing. Accordingly, on a going-forward basis, Qwest will no longer offer stand-alone multiplexing, but it will continue to provide multiplexing from the tariff in connection with commingling. Indeed, after the FCC's issuance of the TRRO, Qwest stopped offering stand-alone muxing to all CLECs during negotiations of new interconnection agreements.

107 With respect to Section 9.23.2, Qwest should not be required to provide a UNE combination unless all terms and conditions, including rates, for the UNEs comprising the combination are included in the Agreement. Eschelon apparently is seeking the ability to order UNE combinations involving UNEs that are not included in the interconnection agreement. Qwest has no obligation to provide UNEs not included in the interconnection agreement and for which the parties have not agreed upon terms and conditions.

Issue 9-54(a): Recurring Rates for Different UNE Combinations (Section 9.23.5.1.3)

108 The bona fide request ("BFR") and special request ("SR") processes exist to give the parties some flexibility in requesting and responding to non-standard product and service offerings. An essential component and purpose of these processes is establishing prices that reflect the unique or non-standard nature of the product or service. Eschelon's proposal to limit prices for UNE combinations obtained through the BFR/SR processes to prices set forth in Exhibit A undermines this essential purpose of those processes and artificially limits the costs that Qwest may recover. This artificial limit could unlawfully prevent Qwest from recovering the costs of providing UNE combinations.

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Issue 9-55: Combinations of Loops and Transport (Section 9.23.4 and sub-parts)

109 This dispute arises because of Eschelon's proposed use of the term "loop-transport combination" to include more than EELs and varieties of EELs. The FCC uses the term "loop-transport" to describe varieties of EELs, not to establish an unbundled product separate from EELs. By contrast, Eschelon uses "loop-transport" as a defined term that includes varieties of EELs but also encompasses any combination of a loop with dedicated transport.

110 Qwest has no legal obligation to offer loop-transport combinations other than EELs. Eschelon asserts that certain provisions of the TRO recognize a category of loop-transport combinations that encompasses more than EELs, but that is an inaccurate characterization of the TRO. The provisions Eschelon relies upon, when read in proper context, refer only to EELs, not to loop-transport combinations other than EELs.

111 Although "loop-transport" is not a Qwest product, Eschelon improperly proposes to assign product attributes to it. See, e.g., §§ 9.23.4.4.3.1 (intervals); 9.23.4.5.1.1. (Billing); 9.23.4.6.6. ("BANS"). Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems to provide Eschelon's proposed "loop-transport" product. Moreover, even if there were such a legal requirement, the necessary modifications to Qwest's systems and procedures would impose significant costs that Qwest would have a right to recover under the Act's cost recovery provisions. Eschelon is unwilling to compensate Qwest for those costs.

Issue 9-56: Service Eligibility Criteria -- Audits (Sections 9.23.4.3.1.1 and sub-parts)

112 The TRO gives ILECs the right to conduct audits of CLECs to ensure compliance with the TRO's eligibility criteria for high-capacity EELs. TRO at ¶¶ 625-29. There is no support in

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the TRO for Eschelon's proposal that would permit Qwest to conduct an audit only if Qwest states and explains the "cause upon which Qwest has a concern that [Eschelon] has not met the Service Eligibility Criteria." In addition, Eschelon's proposal improperly would require Qwest to identify specific Eschelon circuits that Qwest believes do not comply with the service eligibility criteria. There is no requirement in the TRO for Qwest to identify non-complying circuits as a condition to conducting an audit. Eschelon's proposal impermissibly interferes with and weakens the audit rights Qwest is granted in the TRO.

Issue 9-56(a): Service Eligibility Criteria – Notice Of Audits (Section 9.23.4.3.1.1.1.1)

113 This sub-issue is related to Issue 9-56 and Eschelon's attempt to weaken Qwest's right to conduct service eligibility audits. Specifically, the issue involves Eschelon's request for ICA language that would require Qwest to submit to Eschelon a notice of Qwest's intent to conduct a service eligibility audit. The notice would describe the basis for Qwest's belief that Eschelon is not complying with the service eligibility criteria and would identify the non-compliant Eschelon circuits. As explained above, the audit rights the FCC granted in the TRO are not conditioned upon a showing of cause by Qwest, and, relatedly, there is no requirement for Qwest to identify circuits that fail to comply with the service eligibility criteria. For these reasons, there is no legal support for the notice requirement that Eschelon is attempting to impose.

Issue 9-57: Interval for Commingled Arrangements (Sections 9.23.4.3.1.1 and sub-parts)

114 This issue involves Eschelon's proposal that would require Qwest to provision the tariffed components of commingled arrangements based on terms that conflict with governing provisions of tariffs. As a matter of law and consistent with the TRO, the tariffed services Qwest provides for commingling must be provisioned based on the terms and conditions in tariffs, not based on different terms and conditions that apply to UNEs. "Tariffed services" as used herein refers to Qwest's interstate and intrastate tariffs, price lists, and price schedules

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that are in effect. Eschelon's proposal improperly applies terms and conditions relating to UNEs to tariffed services, the provisioning of which is governed by tariffed terms.

115 Accordingly, the provisioning interval for the tariffed component of a commingled EEL must be based on the terms of the applicable tariff, and the provisioning interval for the UNE component of a commingled EEL must be based on the interval applicable to the UNE. The tariffed component and the UNE component are installed separately from each other. Because each service order for each component must be complete before installation and installation of some components requires the pre-installation of other components, the provisioning intervals for each component may have to be added together to determine the total time required for installation.

Issue 9-58 and 9-58(a)-(e): Ordering, Billing, and Circuit ID for Commingled Arrangements (Sections 9.23.4.5.1, 9.23.4.5.1.1; *See* subparts (a)-(e) for related issues in 9.23.4.5.4, 9.23.4.6.6 (and subparts), 9.23.4.7 and subparts; 9.1.1.1.1 & 9.1.1.1.1.2)

116 In these sections, Eschelon proposes unique processes for ordering, billing and circuit identification numbers relating to "loop-transport combinations." As discussed above in connection with Issue 9-55, EELs are the only loop-transport combinations Qwest is required to provide, and Eschelon's use of the term "loop-transport combinations" is therefore overly broad. In the sections implicated by this dispute, Eschelon attempts to assign product attributes to "loop-transport combinations" despite the fact that Qwest has no such product and no legal obligation to offer such combinations other than EELs. Accordingly, the Commission should reject Eschelon's demand that Qwest alter its processes by requiring only one LSR for point to point commingled EELs.

117 In addition to the flaws in the merits of its position that are described below, Eschelon's proposed Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 are duplicative in that they address the same subjects that Eschelon addresses in Section 9.23.4 and related sub-sections. For

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example, Eschelon addresses service intervals for commingled arrangements in both Section 9.1.1.1.1.1 and 9.23.4.4.3.1. Similarly, it addresses ordering and billing procedures for commingled arrangements in Section 9.1.1.1.1.2 and again in Sections 9.23.4.5.4 and 9.23.4.6.6. These repetitive ICA provisions create unnecessary confusion, and, accordingly, Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 should be eliminated in their entirety.

118 In addition to being duplicative of other Eschelon proposals, these proposed ICA provisions are inappropriately set forth in a general section of the Agreement containing general terms and conditions relating to UNEs. It is confusing and inconsistent with the overall organization of the ICA to include specific terms and conditions relating to commingling in a section of the Agreement that is intended to define the broad terms and conditions that apply to UNEs. For this additional reason, Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 should be eliminated from the ICA.

119 In contrast to Eschelon's confusing approach, Qwest addresses specific issues relating to commingling in the section of the ICA titled "Commingling." Specifically, per mutual agreement of the parties, Section 24 is titled "Commingling," and it sets forth the parties' general commingling rights and obligations. In proposed Section 24.3.2, for example, Qwest includes language establishing the service intervals for commingled EELs. These and other specific sections relating to commingling are appropriately included in the section of the Agreement devoted to commingling and should not be addressed in different sections with duplicative provisions.

120 With respect to the merits of this issue, Eschelon's demand that Qwest use a single circuit identification number for commingled EELs instead of separate identification numbers for the UNE and non-UNE components (Issue 9-58(a)) is improper for several reasons. First, circuit IDs often include product-specific information that Qwest relies upon for proper processing

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and billing of products. Using a circuit ID assigned to a UNE for a tariffed alternative service may result in mis-identification of the service and lead to billing and other errors. Second, there is no legal requirement for Qwest to change its systems for this purpose; indeed, Qwest uses separate circuit ID numbers for other CLECs, so adoption of that approach for Eschelon will not result in unequal treatment. Third, it would be very costly for Qwest to modify its operation systems to meet Eschelon's demand for use of the same circuit ID number after a conversion. Fourth, Eschelon's demand involves processes that affect all CLECs, not just Eschelon, and it therefore should be addressed through the CMP, not through an arbitration involving a single CLEC. Finally, there is no merit to Eschelon's claim that the use of two circuit IDs could result in difficulties in completing repairs for Eschelon customers. Qwest provides CLECs with the circuit IDs for commingled EELs, which should eliminate any repair-related concerns if Eschelon properly updates its own records.

121 Eschelon's demand that Qwest use a single billing account number ("BAN") for the elements comprising a point-to-point commingled EEL (Issue 9—58(b) and (c)) fails to recognize that BANs contain essential product-specific information that affects the proper billing for products. This information affects, for example, whether a product is billed at a UNE-based rate or at a tariffed rate. Not only are separate BANs important to Qwest's provisioning and billing of the elements that make up point-to-point commingled EELs, but Eschelon's demand for a single BAN would impose very substantial costs on Qwest because of the systems changes that would be required. Qwest has no legal obligation to make those changes, and, moreover, Eschelon is not offering to compensate Qwest for the costs of performing them. Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems to provide Eschelon's proposed "loop-transport" product (Issues 9-58(d) and (e)). Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act.

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122 Issue 9-58(e) also implicates Eschelon's proposal that Qwest be required to provision the tariffed components of commingled arrangements based on intervals that are different from those set forth in tariffs. For the reasons described in connection with Issue 9-57, this demand for terms that deviate from tariffs is improper and should be rejected.

Issue 9-59: Maintenance and Repair for UNE Component of Commingled EELs (Section 9.23.4.7 and sub-parts)

123 This issue arises because of Eschelon's demand that in the event of a "trouble" associated with a commingled EEL, it be permitted to submit just a single trouble report instead of more than one report for each facility that comprises the commingled EEL. In addition, Eschelon proposes to limit Qwest's right of cost recovery in circumstances where Qwest must dispatch a field engineer to check on a trouble associated with a commingled EEL.

124 Eschelon's proposal fails to recognize that different repair-related obligations and performance intervals may apply depending on whether a facility is a UNE or a tariffed service. These different obligations require submission of a trouble report and a separate circuit ID for each component of a commingled EEL. In addition, to the extent Eschelon's proposal is designed to require Qwest to use a single circuit ID for commingled EELs, for the reasons discussed in connection with Issue 9-43, that would be improper.

125 Eschelon's proposal also would permit Qwest to recover only a single maintenance of service or trouble isolation charge for commingled EELs, and that single charge would be permitted only if Qwest dispatches a field engineer who does not find a trouble on either circuit of a commingled EEL. However, the costs Qwest incurs resulting from trouble reports associated with commingled EELs are not limited to checking just one circuit of a commingled EEL and are not incurred only if a trouble is not found. Accordingly, Eschelon's proposal would improperly deny Qwest full recovery of the costs it incurs in connection with trouble reports for commingled EELs.

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Issue 9-61: Loop-Mux Combination (Sections 9.23.2, 9.23.4.4.3, 9.23.6.2, 9.23.9 (and sub-parts), and 9.24.4 (and sub-parts))

126 Please see the discussion of stand-alone multiplexing set forth in connection with Issue 9-54. As described therein, there is no legal requirement for ILECs to provide stand-alone multiplexing. Multiplexing is not a feature or function of the loop, and Qwest is not required to provide loops and multiplexing as a UNE combination

127 Further, Eschelon can self-provision multiplexing within its own collocation space, and, therefore, will not be denied access to this service if Qwest does not provide it. In the TRO, the FCC established that the type of multiplexing ILECs must provide is that associated with commingling, not stand-alone multiplexing. Accordingly, on a going-forward basis, Qwest will no longer offer stand-alone multiplexing.

128 In proposing the stand-alone multiplexing product, Eschelon also improperly ascribes UNE attributes to the tariffed portion of the proposed product. Thus, it would not include any reference in the ICA to tariffed terms and would apply UNE rates when tariffed rates should apply (Issues 9-61(a) and 9-61(c)). As discussed above in connection with Issue 9-58, as a matter of law and consistent with the TRO, the tariffed services Qwest provides for commingling must be provisioned based on the terms and conditions in tariffs, not based on different terms and conditions that apply to UNEs.

129 Eschelon also would improperly apply service intervals to "UNE combinations" and loop-mux combinations that are based on "appropriate retail analogues" (Issue 9-61(b)). This proposal, like those described above, would result in intervals that could impermissibly deviate from terms in governing tariffs. Further, the proposal is exceedingly vague, since Eschelon does not

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define "appropriate retail analogues." The use of this undefined term would create a lack of clarity concerning the intervals that apply and would inevitably lead to disputes between the parties.

H. Sections Addressing Service Intervals and Section 12 - Change Management Process

1. Overview

130 Because many of the disputed issues within Section 12 of the ICA involve processes that affect all CLECs, not just Eschelon, it is appropriate to begin this section with a brief overview of the change management process, or "CMP." This overview is followed by a summary of most of the disputed issues within this section. Issues 12-68, 12-83, and 12-86 are not addressed below, but are fully described in the Issues Matrix (Exhibit 1). The CMP was approved as part of Section 271 proceedings by both this Commission and the FCC. From a CLEC's perspective, the purpose of CMP is to provide CLECs with a meaningful opportunity to modify systems, processes and procedures. From Qwest's perspective, CMP is to ensure that Qwest can implement uniform systems, processes and procedures so it can train its people and perform at a consistently high level of quality for its wholesale customers.

131 The FCC painstakingly evaluated CMP as part of 271. The FCC found CMP to be "clearly drafted, well organized and accessible." See, e.g., In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado et al., FCC 02-332 (Rel. Dec. 23, 2002) at ¶133. The FCC continued that CMP "effectively processes and communicates to competitive LECs 'any changes in Qwest's OSS interfaces and to products and processes that are within the scope of CMP." Id. Importantly, the FCC recognized that "a key component of an effective change management process is the existence of a forum in which both competing carriers and the BOC to improve . . . method[s]." Id. at ¶134. The FCC found CMP did just that. Id. For years now, Qwest and the CLECs in its region have used CMP to modify systems, and to improve

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processes and procedures. Eschelon has been very active in CMP; it has submitted 228 change requests and received approval of 188 of them. In this arbitration, however, Eschelon is trying to end-run CMP by defining certain systems requirements, processes and procedures in its interconnection agreement, which language will make it effectively impossible for the CMP to modify these processes going forward.

132 Based on its proposals, it appears that Eschelon has forgotten the difficulties experienced in the telecommunications industry for the first few years after passage of the Act. Industry participants were learning what their obligations were, and then doing their best to fulfill those obligations. The result was a hodge-podge. For example, Qwest (then U S WEST) often had multiple processes for performing the exact same task. This resulted in two principle problems. First, some CLECs argued the processes were discriminatory because Qwest did not implement the same processes across the industry. Second, the myriad processes made it difficult for Qwest to perform at an acceptable level of quality because it could not document one uniform process, and then train its employees to the process.

133 The CLEC community brought this concern to the 271 proceedings. The net result was the creation of CMP and a highly detailed document governing how CMP would operate. This document was painstakingly negotiated and created by the industry as a whole, and the industry as a whole has the ability to modify the document. See Washington SGAT Exhibit G. The parties have already agreed that that governing document – Exhibit G to Qwest's SGAT – will be an addendum to the Eschelon interconnection agreement. Exhibit G explains that CMP is where the industry creates and modifies processes:

> **1.0 INTRODUCTION AND SCOPE**
>
> This document defines the processes for change management of OSS interfaces, products and processes (including manual) as described below. ***CMP provides a means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and***

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> ***billing capabilities and associated documentation and production support issues for local services provided by CLECs to their end users.***
>
> The CMP is managed by CLEC and Qwest representatives each having distinct roles and responsibilities. The CLECs and Qwest will hold regular meetings to exchange information about the status of existing changes, the need for new changes, what changes Qwest is proposing, how the process is working, etc. The process also allows for escalation to resolve disputes, if necessary.

(emphasis added).

134 The benefits of CMP are well known; indeed, the most active CLEC participant in the process is Eschelon itself. As discussed, Eschelon has requested several hundred change requests in CMP.

135 The CMP governing document also states that "[i]n cases of conflict between the changes implemented through the CMP and any CLEC interconnection agreement … the rates, terms and conditions of such interconnection agreement shall prevail . . ." Exhibit G at §1. To ensure uniform processes, Qwest studiously avoids placing process – the manner in which something is accomplished – in interconnection agreements. Eschelon is trying to use this contract negotiation – instead of the CMP – to define processes that the parties will utilize to order, provision and repair various services. For many of the disputed issues, Eschelon is trying to modify an existing process set or approved in CMP; in some instances, Eschelon is trying to obtain a process that was specifically rejected or vacated by CMP. In other words, Eschelon uses CMP to its advantage; however, when it does not like the results, it seeks a second bite at the apple by trying to create Eschelon specific process in this arbitration.

136 The Commission should reject Eschelon's strategy. The Commission should also recognize and enforce the importance of allowing the industry – not one party – to define uniform processes and avoid reverting to the days shortly after passage of the Act where multiple processes ruled the day, leaving Qwest unable to perform at an acceptable level of quality.

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Issues 1-1 and 1-2: Service Intervals (Section 1.7.2)

137 Exhibit C to the ICA contains service interval tables. Qwest proposes language for section 1.7.2 that references Exhibit C and makes clear that service intervals are subject to change through CMP without the need for an amendment to the ICA. Historically, Qwest has modified service intervals through CMP. To date, since Qwest obtained 271 approval, all such modifications have been reductions in the lengths of service intervals for various services and have been for the benefit of CLECs.

138 Eschelon's proposed language for section 1.7.2 attempts to stop progress in its tracks. Eschelon seeks to thwart the uniformity and processes established through CMP by incorporating into the ICA a cumbersome and wholly unnecessary requirement for the parties to amend the ICA in the event, which has never happened in the time since 271 approval, that the Commission orders, or Qwest chooses to offer, intervals longer than those set forth in Exhibit C. Tellingly, Eschelon does not seek in its first proposal to impose this burden on Qwest if Qwest desires to implement shorter service intervals than those set forth in Exhibit C.

139 Additionally, Eschelon's proposed language calls for micro-management of the parties' contractual obligations. It sets forth forms of letters to be attached to the ICA that the parties are supposed to use to amend their agreement. This kind of unique process, created just for Eschelon, would increase Qwest's administrative and system costs. If such costs are imposed on Qwest, it is entitled to recover them under the Act.

140 As explained above, the Commission-approved CMP was designed to create a flexible mechanism for changes in technology and the marketplace, and for standard processes. Service intervals are exactly the type of process that the Commission and the industry anticipated that CMP would address. CMP itself contains escalation and dispute resolution provisions to enable carriers to object to proposed changes.

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141 Through its proposed language, Eschelon seeks protection against modifications that have not occurred even once since 271 approval, that is, the lengthening of service intervals, and, secondly, it seeks that protection in a context in which it already has sufficient recourse through CMP.

142 Eschelon's second option for language for section 1.7.2, identified as part of Issue 1-1 in the Matrix, involves a proposal under which the parties would set forth in a letter intervals different from those in the ICA if the parties agree to such intervals or the Commission orders them. This proposal suffers from the same flaws set forth above. It circumvents CMP. The same is true for Echelon's objections to Qwest's language for section 7.4.7 that addresses intervals for the provision of interconnection trunks, and to Qwest's proposed language in Exhibit C itself regarding rearrangements (Issue 1-1(b)), LIS trunking (Issue 1-1(c)), and ICB provisioning intervals (Issue 1-1(d)). Qwest's proposed language for Section 7.4.7 makes clear that such intervals may be modified through CMP pursuant to the procedures set forth in Exhibit G. By contrast, Eschelon argues that such intervals should be frozen in time in the ICA. It seeks the same freeze for intervals related to rearrangements, LIS trunking and ICB provisioning. Contrary to Eschelon's position, the parties should not be forced to amend the ICA to modify service intervals. Such a requirement creates unnecessary administrative burdens and risks the uniformity and standards created through CMP. Eschelon's position in this arbitration with respect to service intervals essentially asks this Commission to directly undermine CMP.

Issue 12-67: The Expedite Process

143 Qwest provisions services – whether designed services like unbundled loops, or non-design services like resold POTS – according to standard intervals. There are times, however, when a CLEC such as Eschelon wants to "expedite" the order and obtain the circuit more quickly.

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144 In the limited circumstances that Qwest offers expedites to CLECs, Eschelon must be required to pay Qwest for this unique service consistent with the terms of the governing tariff. That tariff authorizes charges on an ICB basis. Eschelon's proposal to deviate from the tariff and to obtain expedites on terms different from those that apply to other CLECs must be rejected.

Issue 12-70, 12-74 and 12-76: Pending Service Order Notifications ("PSON"), Fatal Reject Notices, Daily Loss Reports, and Completion Reports

145 Qwest's Operational Support Systems ("OSSs) are computerized systems that, inter alia, allow CLECs to electronically submit and orders. Qwest's systems include notifications called PSONs, which provide service order detail. Similarly, when the order contains a "fatal error", Qwest submits a "Fatal Reject notice." These systems also generate Daily Loss Reports and Completion Reports (all four collectively hereinafter referred to as "OSS Notices"). Qwest has no plans to modify the content of its OSS Notices without industry approval in CMP. However, it appears that Eschelon wants to prohibit the industry from modifying OSS Notices in CMP. Eschelon's proposed language is improper.

146 The CMP contains very defined processes for modifications to existing OSS. First, if a "CLEC or Qwest" wants to "change an existing OSS interface" (for example, a PSON, Fatal Reject notice or other OSS Notice), they "must submit a Change Request ['CR']." Exhibit G at §5.1. "The CR will be assigned the status of Submitted and become an active CR reported in Qwest's CLEC Change Request Systems Interactive Report located on the Qwest Wholesale CMP web site." Qwest will then evaluate the CR and "[c]onsensus will be obtained from the participating CLECs as to the appropriate direction/solution for Qwest's SME to take in responding to the CR if applicable." Then, at the last CMP meeting before deciding the content of new releases to modify systems, "Qwest will facilitate the presentation of all CRs eligible for Prioritization. At this meeting Qwest will provide a high level estimate of the Level of Effort of each CR and the estimated total capacity of the release." Exhibit 2 at Exhibit G

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§5.1.3. Thus, the entire CLEC industry is involved in deciding the systems to be modified, and the priority given to systems changes.

147 Eschelon is trying to subvert this process by forcing Qwest to conform its OSS Notices to Eschelon's stated desires. Qwest's systems are uniform; they are not CLEC specific. Thus, if the Eschelon ICA requires OSS Notices to contain certain content, Qwest and the CLEC industry will not be able to change the content without Eschelon's consent or Commission mandate. This is especially inappropriate because the Ordering and Billing Forum ("OBF") is a national group that meets and at times recommends changes to OSS. Eschelon's proposal could preclude the industry from adapting to the OBF unless Eschelon agreed to the change. Eschelon should not be permitted to serve as an impediment to change.

Issues 12-71, 12-72 and 12-73: Defining a 'Jeopardy' (Section 12.2.7.2.4.4)

148 This issue arises because of Eschelon's proposal to include the following language in Section 12.2.7.2.4.4 of the ICA: "A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR)." The premise underlying this proposal is that it is important to distinguish between situations where a due date is missed due to Qwest caused problems versus CLEC caused problems. As a general rule, Qwest does not disagree with this premise; however, the threshold issue is whether this language belongs in the ICA. Indeed, Qwest's current performance indicator definitions (PIDs) – metrics that define Qwest's acceptable level of performance as created and agreed to by the entire Regional Oversight Committee in the 271 process, and managed through Qwest's PID Management Process with participating CLECs in Qwest's fourteen-state local service region – specifically differentiate between Qwest-caused delays and CLEC/customer-caused delays. For example, OP-4 (the performance measure titled "Installation Interval" states:

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- The Applicable Due Date is the original due date or, ***if changed or delayed by the customer***, the most recently revised due date, subject to the following: ***If Qwest changes a due date for Qwest reasons,*** the Applicable Due Date is the customer-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any.

- Time intervals associated with customer-initiated due date changes or delays occurring after the Applicable Due Date, as applied in the formula below, are calculated by subtracting the ***latest Qwest-initiated due*** date, if any, following the Applicable Due Date, from the subsequent customer-initiated due date, if any.

(emphasis added). This is just one of many such examples in the PIDs. Thus, Eschelon is already protected insofar as Qwest is currently required to differentiate between Qwest-caused and CLEC/customer-caused delays.

149 Qwest objects to including this language in the ICA because no CLEC should be able to dictate terms for the entire CLEC community. If the CLECs and Qwest decide to change a PID, they should be able to without fear of how it implicates an individual ICA. Certainly, Qwest cannot change PIDs without Commission oversight. Eschelon's proposed language is unnecessary and, once again, attempts to elevate Eschelon above other carriers.

Issue 12-75: Processes for Tagging Circuits at the Demarcation Point

150 Eschelon's proposed contract language states that, upon request, Qwest will be required to identify the location of the demarcation point. Eschelon claims this is a problem for Multiple Tenant Environments (MTEs), where there are multiple potential locations where the demarcation point may exist. Insofar as MTEs are concerned, this issue was fully vetted in the 271 process during discussions about subloop unbundling. The industry reached consensus on the following provision:

> 9.3.1.1.1 Building terminals within or physically attached to a privately owned building in a Multi-Tenant Environment (MTE) are one form of accessible terminal. Throughout Section 9.3 the Parties obligations around such "MTE terminals" are segregated because Subloop terms

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> and conditions differ between MTE environments and non-MTE environments. . . .

151 The process for identifying the wiring option used by an MTE owner has already been defined and approved by the parties in other provisions of the contract:

> 9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing of its intention to provide access to End User Customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to ten (10) calendar Days to notify CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. In the event that there has been a previous determination of on-premises wiring ownership at the same MTE, Qwest shall provide such notification within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the End User Customer side of the terminal, the preceding ten (10) day period shall be reduced to five (5) calendar Days from Qwest's receipt of such claim.

This provision emanates from FCC decisions on intrabuilding cable. *In re Promotion of Competitive Networks in Local Telecommunications Markets*, 15 FCC Rcd. 22983, 23009 ¶56 (Rel'd Oct. 25, 2000) (amending 47 CFR 68.105(d)(4) (2006)).

152 In the CMP, Qwest and the industry have worked out processes and details for implementing its subloop policies and practices. Eschelon should be required to use these industry wide processes and procedures for establishing demarcation points just like every other CLEC. Eschelon is once again trying to override the CMP, create Eschelon specific processes, and elevate Eschelon above the industry.

Issues 12-81 and 12-82: Technical Publications

153 Eschelon is trying to force Qwest to utilize ANSI standards for Maintenance and Repair in all circumstances. Qwest wants to use its own technical publications, which comply with industry standards, as agreed upon and modified in the 271 process and in the CMP. The current CMP gives Qwest and CLECs alike the ability to propose modifications to Qwest's technical publications: "Redlined PCATs and Technical Publications associated with product, process,

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and systems changes will be posted to the Qwest CMP Document Review Web site, http://www.qwest.com/wholesale/cmp/review.html." Exhibit G at §2.5. Eschelon argues that Qwest should modify its technical publications in each instance where they do not comport with ANSI. However, many of Qwest's technical publications were negotiated with the industry and reflect a consensus in some cases that non-ANSI standards are appropriate. Significantly, these standards are still consistent with accepted industry standards. Eschelon should not be able to bypass the entire CMP, and modify processes that others in the industry – Qwest and CLECs alike – would prefer stay in their current form.

Issue 12-87: Controlled Production Testing

154 The "Controlled Production process is designed to validate CLEC ability to transmit transactions that meet industry standards and complies with Qwest business rules. Controlled Production consists of submitting requests to the Qwest production environment for provisioning as production orders with limited volumes. Qwest and CLEC use Controlled Production results to determine operational readiness for full production turn-up." Exhibit G at Definitions. The CMP specifically recognizes that there are times when controlled testing is necessary. Eschelon is trying to create the contractual ability to opt out of controlled testing when it so chooses. Eschelon should not have this unilateral ability. While controlled testing is not always required, there are times when it is necessary. See Exhibit G at §11. Controlled testing protects both against system down time, and potential negative impact on other CLECs. Eschelon should not be able to make unilateral decisions such as refusing controlled testing when it may be necessary to protect the industry at large.

I. Other Miscellaneous Section 12 Issues

Issues 12-65 and 12-66: Speaking With Eschelon Customers

155 These issues involve Eschelon's proposals that would strictly limit the ability of Qwest employees to speak with Eschelon customers who contact Qwest. Eschelon seeks to prohibit

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Qwest from discussing its own products and services with Eschelon's customers or from even answering questions raised by their customers. Eschelon's proposed language is an impermissible restraint on commercial speech prohibited by the First Amendment. Commercial speech is protected by the First Amendment. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976). The First Amendment preserves the flow of truthful information from merchants to consumers. *Sears, Roebuck & Co. v. FTC*, 676 F.2d 385, 399 (9th Cir. 1982). Eschelon is trying to prohibit Qwest from providing truthful information to customers who voluntarily call Qwest.

Issue 12-77: Dispatches Relating To Trouble Isolations

156 This issue involves trouble isolation testing that Qwest performs on facilities that employ "pair gain systems." When these systems are used, it is not possible for Qwest to test a facility without dispatching a technician to test the facilities on the customer side of the system. Eschelon's proposed contract language would prevent the recovery of "any testing charges." Qwest is entitled to recover the costs of such a technician dispatch. Of course, Qwest will only bill a dispatch charge when it actually dispatches a technician to perform the work.

Issues 12-78, 12-79 and 12-80: Defining Trouble Reports

157 Qwest defines trouble report as submission of a trouble to one of its repair interfaces. Eschelon expands that definition to include "reports of trouble" issued to "one of Qwest's call or repair centers." Eschelon's language means that Eschelon would expand the definition to include difficulties Eschelon is having provisioning a circuit. The FCC has repeatedly defined OSS as preordering, ordering, provisioning, repair and billing. See, e.g., In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado et al., FCC 02-332 (Rel. Dec. 23, 2002) at ¶33. The FCC has always found each aspect of OSS to be unique and different. Provisioning a new circuit is very different that repairing an existing circuit. Eschelon's

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proposed language merges provisioning and repair and should be rejected.

158 Eschelon is attempting to expand the definition of trouble report so it can charge Qwest for dispatching a technician when they are provisioning a new circuit. Eschelon proposes contract language in §12.4.1.8 that will allow Eschelon to bill Qwest for each instance where it dispatches a technician to cure difficulties provisioning a circuit. This is a cost of doing business that Eschelon incurs to serve its customers, and is not a cost caused by or appropriately recovered from Qwest. In addition, Qwest does not have the ability to charge Eschelon is parallel circumstances. Qwest can only charge Eschelon for technician dispatches associated with repairing (not provisioning) a circuit. Qwest's proposed contract language creates equity between the companies and ensures an even playing ground. Eschelon should not be allowed to use the arbitration process to gain a competitive advantage by pushing its costs of doing business onto Qwest.

Issue 12-64: Eschelon's Proposal To Require Qwest To "Acknowledge Mistakes

159 This issue emanates from a decision issued by the Minnesota Commission, where that Commission held that Qwest should take responsibility for mistakes when Qwest's actions harm CLEC customers. This process is unnecessary for a myriad of reasons.

160 Most importantly, this Commission has already adopted performance measurements (PIDs) and a Performance Assurance Plan that fines Qwest automatically for failing to perform at an acceptable level of quality. This data shows that Qwest has consistently been performing for CLECs in Washington at a high level of quality. This data has been audited and is publicly available. This process already creates an incentive for Qwest to perform at a high level of quality. Additional process acknowledging a mistake on an individual order is simply not necessary.

161 Eschelon is attempting to expand the Minnesota Commission's decision beyond the actual

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language of the decision. In Minnesota, Qwest submitted a compliance filing, which Eschelon found acceptable. Now, however, Eschelon wants to go further than the process it already agreed was acceptable. Specifically, Echelon seeks a "root cause analysis" as well as an acknowledgement of mistake. Thus, Eschelon wants to be able to dictate situations when Qwest's investigation must go beyond an individual order to determine whether a systemic problem exists. This is unnecessary and would allow Eschelon too much control over Qwest's internal business workings. Again, Qwest's PIDs define levels of performance that allow the Commission to determine whether systemic problems in Qwest's performance exist. The PIDs therefore provide the protection Eschelon wants on an industry wide level without creating the very real potential of allowing a CLEC to dictate Qwest's internal workings.

J. Section 22 and Exhibit A – Cost Issues

162 The rate issues involve several disputes. First, Eschelon seeks to have its rate sheet not only reflect rates Qwest charges Eschelon, but also reflect charges that Eschelon charges Qwest (issue 22-88, 22-88(a) and issue A-93). Qwest opposes such an approach.

163 Second, Eschelon also proposes changes to the rate sheet that have no substantive impact, but increase the administrative burden of maintaining uniform rate sheets for all CLECs. (Issues 22-88(b), A-96). Because the parties do not have substantive differences on these issues, Eschelon's proposed changes are unnecessary and should be rejected.

164 A third area of dispute relates to the process for applying for and determining new rates. Qwest has agreed to Eschelon's suggested process that Qwest make a filing with the Commission for new rates which have not previously been approved. Qwest has agreed to file cost support with the Commission for such items within sixty days of either entering into the agreement or offering a new rate. CLECs would then have the opportunity to file objections to such rate filings and suggest that the Commission investigate the appropriateness of such rates.

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165 Eschelon also suggests that Qwest should agree to an additional procedural hurdle – namely that Qwest provide it with notice and cost support at the time it makes such filings. (Issue 22-90). This requirement is unreasonable and unnecessary. Eschelon can obtain these filings by submitting a request through the Commission's website that it be served with notices of them Requiring Qwest to serve Eschelon and any CLEC that opts into the Eschelon agreement with cost studies would be unnecessarily burdensome.

166 A number of additional issues deal with rates that have not been addressed by the Commission, and for which Eschelon disagrees with Qwest's proposed rate. (Issues A-93, A-93(a), A-93(b), A-93(c), A-93(d) and A-95). Qwest's agreement to Eschelon's proposed process for filing such rates should allow these rate issues to be dealt with where they should – as a part of a cost docket proceeding – rather than a part of this arbitration. Qwest urges the Commission to follow this approach and deal with the appropriateness of these rates in that context.

K. Section 24

Issue 24-92: Interconnection Entrance Facility (Section 24.1.2.2 and sub-parts)

167 In the TRO, the FCC established that the dedicated transport ILECs are required to unbundle is limited to transmission facilities within an ILEC's network that run between ILEC switches. TRO, ¶ 366. Consistent with this ruling, any facilities that Qwest may provide for local interconnection cannot be used to obtain access to UNEs or for commingling. Without a restriction on the use of interconnection entrance facilities and mid-span meets, Eschelon could circumvent the FCC's ruling establishing that the dedicated transport ILECs are required to unbundle is limited to transmission facilities within an ILEC's network that run between ILEC switches. Accordingly, in the section encompassed by this Issue, Qwest has proposed language establishing that: (1) when Qwest provides an interconnection entrance facility, the facility may not be used for interconnection with UNEs; and (2) Eschelon may not use remaining capability in an existing Mid-Span Meet POI to gain access to UNEs. These

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proposals are entirely consistent with the FCC's treatment of entrance facilities in the TRO.

VI. CONCLUSION

168 Qwest respectfully requests that this Commission adopt Qwest's proposals for all of the contract provisions at issue in this arbitration.

DATED this 9th day of August, 2006

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