

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Petition of Qwest
Corporation for Arbitration with Eschelon
Telecom, Inc., Pursuant to 47 U.S.C. Section
252 of the Federal Telecommunications Act
of 1996**

DOCKET NO. UT-063061

REBUTTAL TESTIMONY

OF KAREN STEWART

QWEST CORPORATION

(Disputed Issue Nos. 4-5 (a,b,c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-50, 9-51, 9-52, 9-53, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a,b,c,d,e), 9-59, 9-61,(a,b,c))

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1 **I. INTRODUCTION**

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

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

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

7 A. My rebuttal testimony addresses the responsive testimony of Eschelon witnesses
8 Douglas Denney, Michael Starkey, and James Webber relating to the following
9 issues as they are numbered in Qwest's petition for arbitration: Issue Nos. 4-5
10 (a,b,c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-50, 9-51, 9-52, 9-53, 9-54, 9-
11 54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a,b,c,d,e), 9-59, and 9-61,(a,b,c).

12
13 **1. Issues 4-5 (a, b, c) - Design Changes**

14 **Q. WHAT DISPUTES REMAIN BETWEEN THE PARTIES RELATING TO**
15 **DESIGN CHANGES?**

16 A. As I describe in my responsive testimony, two fundamental issues relating to
17 design changes remain in dispute. First, Qwest and Eschelon continue to disagree
18 concerning whether a charge for changes to connection facility assignments
19 ("CFAs") should apply in the circumstance where a CFA is required while Qwest
20 and Eschelon are performing a coordinated cut-over. This dispute is designated
21 as Issue 4-5(a). Second, there is a fundamental disagreement between the parties
22 concerning the rates that should apply to design changes involving unbundled
23 loops and CFA changes that Eschelon requests. This issue is designated as Issue
24 4-5(c).

1 In addition, although I reported in my responsive testimony that the parties had
2 resolved Issues 4-5 and 4-5(b), the responsive testimony of Eschelon witness,
3 Douglas Denney, suggests that in Eschelon's view, Issue 4-5 may not be closed.
4

5 **2. Issue 4-5**

6 **Q. WHAT DISPUTE REMAINS WITH RESPECT TO ISSUE 4-5?**

7 A. This dispute originally involved two ICA sections, Sections 9.2.4.4.2 and 9.2.3.8.
8 Qwest has agreed to Eschelon's proposed language for both of these sections,
9 which should close Issue 4-5.
10

11 **Q. DOES MR. DENNEY SUGGEST THAT THERE ARE OTHER ISSUES**
12 **ENCOMPASSED BY ISSUE 4-5 THAT REMAIN OPEN?**

13 A. Yes. At pages 15-18 of his responsive testimony, Mr. Denney raises an issue
14 involving loop and CFA design change charges that is unrelated to the ICA being
15 arbitrated in this proceeding. According to Mr. Denney, Qwest has charged
16 Eschelon and other CLECs for loop and CFA design changes without having a
17 right to do so in existing ICAs or in Qwest's Arizona Statement of Generally
18 Available Terms ("SGAT"). Based on this assertion, Mr. Denney argues that
19 Qwest should be required to credit Eschelon and other CLECs for the loop and
20 CFA charges it has previously assessed. However, it is not clear whether Mr.
21 Denney and Eschelon are actually asking the Commission to address this claim in
22 this proceeding.
23

24 **Q. IS THE ISSUE THAT MR. DENNEY RAISES APPROPRIATE FOR**
25 **CONSIDERATION IN THIS ARBITRATION OF A PROSPECTIVE**

1 **INTERCONNECTION AGREEMENT?**

2 A. No. Mr. Denney's assertions are not only wrong on the merits; they also are not
3 properly raised in this arbitration. The purpose of this proceeding is to resolve the
4 parties' differences relating to the language for a *prospective* ICA that will be
5 ordered at the conclusion of the proceeding. It is not the purpose of this
6 proceeding for either party to request Commission action relating to concerns or
7 complaints arising from their existing ICA. No such issues are raised in Qwest's
8 petition for arbitration or in Eschelon's response to the petition. The issue that
9 Mr. Denney raises is unrelated to the terms and conditions for the prospective
10 ICA that is being arbitrated and therefore is not properly a part of this proceeding.

11
12 **Q. IS MR. DENNEY CORRECT IN ASSERTING THAT QWEST DOES NOT**
13 **HAVE AN EXISTING RIGHT TO ASSESS LOOP OR CFA DESIGN**
14 **CHANGE CHARGES?**

15 A. No. Mr. Denney bases this assertion on my statement in the Minnesota arbitration
16 that "neither Qwest's SGAT nor the parties' current ICA includes a design change
17 charge for loops."¹ However, that statement was unique to Minnesota and
18 accurately reflects the fact that there is no design change rate in that state.
19 However, that is not the case in Washington. As both Terri Million and I have
20 discussed in our prior testimony in this proceeding, the Washington Commission
21 has established design change charges of \$53.65 (non-mechanized rate) and
22 \$50.45 (mechanized rate), which apply not only to unbundled dedicated transport
23 ("UDIT"), but also to loops and CLEC requested CFA changes. These rates are
24 included in the "Miscellaneous Charges" section of Exhibit A to the existing

¹ See Denney Responsive Testimony at 17.

1 Qwest-Eschelon Washington ICA and, accordingly, Qwest has a contractual right
2 to collect the charges and to recover the costs it incurs to provide Eschelon and
3 other CLECs with design changes.

4

5 **Q. IS MR. DENNEY'S POSITION CONSISTENT WITH THE RIGHT**
6 **QWEST HAS UNDER THE TELECOMMUNICATIONS ACT TO**
7 **RECOVER THE COSTS IT INCURS TO PROVIDE ACCESS TO UNES?**

8 A. No. Mr. Denney does not contest the fact that Qwest incurs costs to provide
9 Eschelon with loop and CFA design changes. Instead, his position is that under
10 the existing ICA, Qwest should not be permitted to recover these costs because
11 there is no rate for these activities. As Ms. Million and I have discussed, he is
12 wrong about the absence of a rate, and moreover, he is plainly attempting to deny
13 Qwest recovery of all of its costs that he acknowledges are incurred. That
14 position is inconsistent with the right Qwest has under Section 252(d) of the
15 Telecommunications Act of 1996 to recover the costs it incurs to provide access
16 to UNEs.

17

18 **Q. WITH RESPECT TO THE ICA BEING ARBITRATED IN THIS CASE,**
19 **DOES ESCHELON ACKNOWLEDGE QWEST'S ONGOING RIGHT TO**
20 **RECOVER THE COSTS OF DESIGN CHANGES?**

21 A. Yes. Mr. Denney states at page 16 of his responsive testimony that Eschelon "has
22 always maintained that Qwest is entitled to recover its costs" associated with
23 design changes. Consistent with this statement, Eschelon has included language
24 in the ICA specifically recognizing Qwest's right to charge for design changes,
25 and the inclusion of design change rates in the ICA's Exhibit A further confirms

1 and establishes that right. Eschelon's acknowledgment of Qwest's right of cost
2 recovery in this proceeding demonstrates that in attempting to prevent Qwest
3 from charging for design changes performed under the existing ICA, Eschelon is
4 seeking to prevent Qwest from recovering past costs for design changes that
5 Qwest indisputably incurred. Eschelon should not be permitted to obtain the
6 benefits of design changes without paying for them, which is what Mr. Denney is
7 effectively seeking through his testimony at pages 15-18 relating to past design
8 changes that Qwest has performed.

9
10 **3. Issue 4-5(a)**

11 **Q. ARE YOU ASSERTING, AS MR. DENNEY STATES AT PAGES 14-15 OF**
12 **HIS RESPONSIVE TESTIMONY, THAT ESCHELON IS REFUSING TO**
13 **PERMIT ANY COST RECOVERY FOR CFA CHANGES?**

14 A. No. Mr. Denney mischaracterizes my testimony when he states that I have
15 incorrectly asserted that Eschelon is unwilling to pay anything for design changes
16 involving CFA changes. I recognize that Eschelon has proposed a rate of \$5.00
17 for CFA design changes, but my point is that this rate does not come close to
18 compensating Qwest for the costs it incurs to perform these changes. Although I
19 have previously discussed the fact that Eschelon has not provided any information
20 or cost support showing how the \$5.00 rate was developed or whether the rate
21 bears any relationship to the costs Qwest incurs to perform CFA changes, Mr.
22 Denney's responsive testimony does not respond to this criticism. Mr. Denney
23 states only that the actual design work needed for CFA changes "would take a
24 matter of seconds or minutes," apparently implying that Eschelon's proposed

1 \$5.00 charge is appropriate.² However, Mr. Denney never supports this incorrect
2 assertion with a description of the activities and costs that are required for a CFA
3 change. The fact remains that Eschelon has not in any way demonstrated that the
4 rate it is proposing is cost-based and would permit Qwest to be fully compensated
5 for the costs imposed by CFA changes.

6

7 **Q. IS THE INAPPROPRIATENESS OF ESCHELON'S PROPOSED RATE**
8 **FOR CFAS CHANGED IN ANY WAY BY THE FACT THAT THE RATE**
9 **WOULD BE INTERIM, AS MR. DENNEY EMPHASIZES AT PAGES 16-**
10 **17 OF HIS REBUTTAL TESTIMONY?**

11 A. No. Mr. Denney contends incorrectly that Qwest's concerns about Eschelon's
12 proposed rate are unfounded because the rate would be interim. The relevant
13 point about the proposed \$5.00 rate is not that it would be interim, but that it is
14 not cost-based and therefore would prevent Qwest from fully recovering its costs.
15 Any denial of cost recovery, even for a limited period, is unlawful and improper.
16 In addition, while Mr. Denney describes the rate as "interim," the rate likely
17 would remain in effect for an indefinite period. There is no assurance that the rate
18 would last only for a limited period, as Mr. Denney suggests.

19

20 **Q. MR. DENNEY ASSERTS AT PAGES 21-23 OF HIS RESPONSIVE**
21 **TESTIMONY THAT QWEST ALREADY RECOVERS THE COSTS OF**
22 **CFA DESIGN CHANGES THROUGH THE WASHINGTON CHARGE**
23 **FOR COORDINATED INSTALLATIONS. IS THIS ASSERTION**
24 **CORRECT?**

² Denney Responsive Testimony at 21.

1 A. No. It is important to remember that design changes involving CFAs are typically
2 the result of flawed or defective CFA assignments that CLECs provide to Qwest,
3 as I describe in my responsive testimony. Mr. Denney's claim that the existing
4 Washington rate for coordinated installations includes the costs of these changes
5 necessarily assumes that the coordinated installation rate was set with the
6 assumption that CLECs would provide defective CFAs and thereby impose last
7 minute design and service order related change costs upon Qwest. It would be
8 very surprising if the coordinated installation rate includes this assumption, and I
9 am not aware of any information indicating that it does. While Mr. Denney
10 asserts that certain activities associated with the coordinated cutovers required for
11 CFA changes are already included in the coordinated installation rate, he fails to
12 cite anything from a cost study or a Commission rate order to support this
13 assertion. As Ms. Million discusses in her rebuttal testimony, the Washington
14 rate for coordinated installations does not include the additional cutover activities
15 and costs that Qwest must perform and incur when a CLEC like Eschelon
16 provides defective CFAs. Moreover, Mr. Denney fails to recognize that
17 technician time is not included in the costs underlying the Washington rates for
18 design changes. Accordingly, there cannot be any "double recovery" for
19 technician time and costs included in the rate for coordinated installations.

20

21 **Q. PLEASE RESPOND TO MR. DENNEY'S REPEATED CLAIM THAT CFA**
22 **CHANGES ARE MERELY "RECORDS CHANGES" AND THAT**
23 **APPLICATION OF THE COMMISSION'S DESIGN CHARGE RATES OF**
24 **\$53.65 AND \$50.45 WILL RESULT IN AN OVER-RECOVERY.**

1 A. In Mr. Hubbard's responsive testimony (pages 1-4), Qwest has already rebutted
2 Mr. Denney's claim that CFA changes are merely "records changes." Mr.
3 Hubbard, who unlike Mr. Denney is a network engineer, describes the multiple
4 steps that Qwest must perform when CLECs request CFA changes mid-stream in
5 the installation process and demonstrates that these changes involve substantially
6 more than just a change of a record. In addition, Ms. Million explains in her
7 responsive testimony (pages 14-16) that the design change rates set by this
8 Commission are based on the average cost of performing a design change for all
9 types of products (*i.e.*, loops and transport) and includes CFA changes. The
10 nonrecurring cost study upon which the rate is based estimates the amount of
11 time, on average, that it will take to perform any given task in the list of activities
12 necessary to complete a design change and the probability that the task will occur.
13 The study and the resulting rate are therefore based on average for all design
14 changes, and application of the average rate to CFA changes does not, contrary to
15 Mr. Denney's claim, result in an over-recovery.

16

17 **Q. IS MR. DENNEY CORRECT IN ASSERTING AT PAGES 23-25 OF HIS**
18 **RESPONSIVE TESTIMONY THAT ISSUES RELATING TO**
19 **ESCHELON'S QUALITY CONTROL FOR CFAS ARE IRRELEVANT?**

20 A. No. Mr. Denney himself injected this issue into the proceeding by asserting in his
21 direct testimony that Eschelon sometimes requires multiple CFA changes and
22 therefore could be required to pay multiple CFA charges. In responding to this
23 assertion in my rebuttal testimony, my point was to demonstrate that the examples
24 Mr. Denney describes reveal that Eschelon may have a problem with CFA quality
25 control. This issue is relevant for determining the appropriate rate for design

1 changes only to the extent Eschelon is relying on the examples to support the low
2 CFA rate it is advocating. If Eschelon is having the level of difficulty with CFA
3 assignments suggested by Mr. Denney's testimony, the solution is not to set an
4 arbitrary rate for CFA changes that prevents Qwest from recovering costs.
5 Instead, the solution is for Eschelon to improve its quality control and to minimize
6 the number of CFA changes it requires.

7

8 **4. Issue 4-5(b)**

9 **Q. DOES ANY DISPUTE REMAIN WITH RESPECT TO ISSUE 4-5(B)?**

10 **A.** No. This issue is closed.

11

12 **5. Issue 4-5(c)**

13 **Q. WITH RESPECT TO ESCHELON'S CLAIM THAT THE**
14 **COMMISSION'S ESTABLISHED DESIGN CHARGE RATES APPLY**
15 **ONLY TO TRANSPORT OR UDIT, IS MR. DENNEY CORRECT IN**
16 **ASSERTING THAT IT IS IRRELEVANT THAT THE CHARGE IS**
17 **LISTED IN THE "MISCELLANEOUS CHARGES" SECTION OF**
18 **EXHIBIT A OF THE ICA?**

19 **A.** No. If the Commission-ordered design change charges were intended to apply
20 only to UDIT and not to unbundled loop and CFA design changes, as Mr. Denney
21 claims, the rate would appear in the section of Exhibit A that lists rates specific to
22 transport. That section includes multiple rates that apply only to transport. For
23 example, the transport section of Exhibit A lists the transport-specific rates for
24 "DSO UDIT (Recurring Fixed and per Mile)." These rates apply only to transport
25 and not to other UNEs or services. By contrast, rates listed in the "Miscellaneous

1 Charges" section of Exhibit A may apply in multiple circumstances and, in
2 several instances, to more than one network element or activity. For example, the
3 service referred to as "Additional Engineering – per Half Hour or fraction thereof"
4 is not limited to a single interconnection service or network element and could be
5 used in several different scenarios.

6 Mr. Denney's reading of Exhibit A illogically assumes that Qwest and Eschelon
7 included a transport-specific charge in a section of the ICA pricing exhibit that is
8 not specific to transport and that applies to multiple elements, services, and
9 activities. The illogic of this reading is further demonstrated by the fact that, as
10 Ms. Million describes in her rebuttal testimony, the cost study upon which the
11 design change charge is based is not limited to transport and includes both
12 unbundled loops and CLEC-caused CFA changes.

13

14 **Q. IS THERE ANY MERIT TO MR. DENNEY'S CLAIM THAT THE COST**
15 **STUDY THE COMMISSION USED TO SET THE DESIGN CHANGE**
16 **CHARGE IS BASED EXCLUSIVELY ON DESIGN CHANGE CHARGES**
17 **FOR TRANSPORT?**

18 A. No. Ms. Million explains in both her responsive and rebuttal testimony that the
19 cost study specifically includes costs and activities relating not just to transport-
20 related design changes, but also costs and activities for loop and CFA design
21 changes.

22

23 **Q. MR. DENNEY ALSO IMPLIES AT PAGES 25-26 OF HIS RESPONSIVE**
24 **TESTIMONY THAT QWEST CANNOT ASSESS ANY OF THE**
25 **MISCELLANEOUS CHARGES IN EXHIBIT A UNLESS A PROVISION**

1 **IN THE BODY OF THE ICA OR SGAT SPECIFICALLY REFERS TO**
2 **AND AUTHORIZES THE CHARGE. IS THIS A CORRECT**
3 **INTERPRETATION OF THE ICA?**

4 A. No. Qwest's ability to charge the miscellaneous rates in Exhibit A is not
5 dependent upon a specific reference to the rate in the body of a specific section of
6 the ICA or SGAT. Exhibit A is a comprehensive listing of the elements and
7 services that are available under the ICA and the rates apply to them. The
8 presence of an element or service in Exhibit A establishes an obligation on
9 Qwest's part to provide the element or service at the listed price and an obligation
10 on Eschelon's part to pay the listed price. There are multiple examples of rates
11 listed in Exhibit A that are not specifically referred to in the body of the ICA but
12 that nevertheless clearly apply to Qwest's and Eschelon's business relationship.
13 For example, "Additional Engineering – per Half Hour or fraction thereof" could
14 apply to different types of UNEs and services where Eschelon has an additional
15 need to complete an engineering job. This is available for use with different
16 UNEs and services even though there is no language in the provisions of the ICA
17 addressing individual services and UNEs that refers to the "Additional
18 Engineering" rate element. If CLECs could only order the rate elements in
19 Exhibit A that are specifically referred to in each section of the ICA, the number
20 of elements and services that would be available to Eschelon under the ICA
21 would be significantly reduced. That result would not be in Eschelon's interest,
22 which Mr. Denney may not have realized when he presented this argument in his
23 testimony.

24
25 **Q. PLEASE RESPOND TO MR. DENNEY'S ASSERTION AT PAGES 28-29**

1 **OF HIS RESPONSIVE TESTIMONY THAT ESCHELON HAS NO**
2 **OBLIGATION TO SUBMIT A COST STUDY TO SUPPORT THE**
3 **DESIGN CHANGE RATES IT IS PROPOSING.**

4 A. In claiming that CLECs have no obligation to submit cost studies in support of the
5 rates they are proposing, Mr. Denney ignores the Act's basic requirement – set
6 forth in Section 252(d)(1) – that rates must be based on the cost of providing an
7 interconnection service or UNE. Section 252(e) (2) prohibits state commissions
8 from approving ICAs that do not comply with this requirement. Without a cost
9 study or any other evidence to support Eschelon's proposed design change rates,
10 the Commission has no basis for determining whether Eschelon's rates meet the
11 Act's pricing requirement and, in turn, whether the ICA is lawful. Mr. Denney's
12 cavalier position that CLECs can demand rates without providing any cost
13 support for them has no support in the Act.

14 Mr. Denney does correctly point to statements from the FCC requiring ILECs to
15 submit proof of the costs they incur. However, he then inaccurately asserts that
16 Qwest did not meet that burden with respect to design changes. As Ms. Million
17 has described, Qwest submitted a TELRIC-based cost study for design changes in
18 the Washington cost docket, and the Commission adopted rates based on that
19 study. That is precisely how the FCC envisioned that the rate-setting process
20 would work in the statements that Mr. Denney quotes in his testimony. Mr.
21 Denney is now asking the Commission to disavow that determination and, in its
22 place, to adopt design rates for CLEC caused CFAs changes and loops that are
23 unsupported by cost studies or any other evidence of costs.

24

1 **6. Issue 9-31 - Access to UNES**

2 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THIS ISSUE.**

3 A. This issue involves language in Section 9.1.2 of the ICA that defines the access
4 Qwest will provide Eschelon to the UNES that Qwest makes available under
5 Section 251(c)(3) of the Act. Consistent with applicable legal requirements,
6 Qwest has agreed to ICA language obligating it to provide Eschelon with non-
7 discriminatory access to UNES at agreed service performance levels and to
8 perform "those Routine Network Modifications that Qwest performs for its own
9 End User Customers."

10

11 **Q. HAS QWEST ATTEMPTED TO ADDRESS ESCHELON'S CONCERNS**
12 **IN THIS SECTION?**

13 A. Yes. Using Eschelon's language as a starting point and with Qwest's red-lined
14 changes, Qwest proposed the following language:

15

16 **Additional activities available for Access to** Unbundled
17 Network Elements includes moving, adding to, repairing and
18 changing the UNE (through, e.g., design changes,
19 maintenance of service including trouble isolation,
20 additional dispatches, and cancellation of orders) **at the**
21 **applicable rate.**

22 Qwest has offered this language as a good faith effort to settle this dispute
23 between the parties.

24

25 **Q. WHAT IS QWEST'S CONCERN WITH THE WORDS "ACCESS TO"**
26 **THAT APPEARS IN ESCHELON'S PROPOSED LANGUAGE?**

27 A. Typically, when one refers to "access" to a UNE, it is in the context of the CLEC
28 paying a recurring rate to be able to "use" the UNE. Qwest is concerned that

1 Eschelon is attempting to redefine "access" to include not only moving and
2 adding to a UNE, but also to include a long list of design changes -- "maintenance
3 of service including trouble isolation," "additional dispatches," and "cancellation
4 of orders." These activities are not included in the Washington recurring rates for
5 UNEs. Qwest's concern about Eschelon's intention is increased by the fact that
6 Eschelon uses "*e.g.*" in listing these services, indicating that this is just a partial
7 list of the services that it may claim Qwest must provide as part of "access" to a
8 UNE. It is likely that at some future date, Eschelon (or another CLEC that opts
9 into the agreement) will claim that when it pays a monthly recurring rate to
10 "access" a UNE, its access (*i.e.*, use) includes all of the listed activities and other
11 unidentified services at no additional charge. That result would improperly deny
12 Qwest the cost recovery to which it is entitled under the Act, which is why Qwest
13 has proposed the "at the applicable rate" language I quote above.

14 When viewing Eschelon's proposed definition of "access," including the words
15 "adding" and "moving," the logical response is to ask what these terms mean.
16 Does the proposal mean that when Eschelon orders access to one unbundled loop,
17 Qwest must add to it, *i.e.*, install a second unbundled loop at no additional charge?
18 What does moving mean? Does it mean that accessing a UNE through payment
19 of a monthly recurring rate obligates Qwest to move it at no additional charge?
20 Does "moving" mean that Qwest must move the UNE only at the same location or
21 perhaps across town? The point is that this language is far-reaching and creates
22 an unacceptable level of exposure and financial risk for Qwest, which can only be
23 protected against by obligating Eschelon to pay for these activities "at applicable
24 rates."

1 Qwest's concern is more than hypothetical, as Mr. Denney expressly testified in
2 the Minnesota arbitration that the costs of many of these activities are included in
3 monthly recurring rates. Eschelon's proposal could thus prevent Qwest from
4 recovering its costs and would effectively require it to provide services for free.
5 With that in mind, Qwest proposed the language I set forth above, which we
6 believe properly balances Eschelon's concern that the listed services are available
7 with Qwest's concern that it be properly compensated for providing the services.

8
9 **Q. AT PAGES 90-92 OF HIS RESPONSIVE TESTIMONY, MR. STARKEY**
10 **DISCUSSES A QWEST CMP CHANGE INVOLVING A RESTRICTION**
11 **THAT QWEST PLACED ON THE NUMBER OF VERBAL CFA**
12 **CHANGES CLECS ARE PERMITTED TO SUBMIT ON DUES DATES.**
13 **DOES THIS "EXAMPLE" SUPPORT ESCHELON'S PROPOSAL**
14 **RELATING TO THE SCOPE OF THE ACCESS TO UNES QWEST**
15 **SHOULD PROVIDE?**

16 A. No. The "example" Mr. Starkey refers to is a September 2006 CMP notice
17 regarding a process clarification for CFA changes that did not deny access to any
18 UNEs or UNE activities. Rather, it was a reasonable clarification by Qwest
19 regarding the process for CFA changes on the due date. Qwest was attempting to
20 address concerns created by CLECs who were abusing the CFA change process.
21 When CLECs do not have an adequate CFA management system in place, they
22 frequently attempt to demand the ability to make numerous verbal changes to
23 orders that can turn a non-coordinated cut into a coordinated cut. The CMP
24 notice to which Mr. Starkey refers was an outgrowth of this situation, as Qwest
25 was facing the risk that unlimited verbal changes to orders would interfere with its

1 ability to complete all service orders due on a particular day within a reasonable
2 period of time. That result not only would have had negative consequences for
3 Qwest, but it also would have unfairly affected CLECs that provide correct,
4 working CFAs in advance of due dates for orders. Qwest's CMP notice reflected
5 an attempt to address this untenable situation.

6

7 **Q. HAS ESCHELON AGREED THAT QWEST'S PROPOSED LANGUAGE**
8 **COULD SETTLE THE ISSUE BETWEEN THE PARTIES?**

9 A. No. At pages 99-100 of his responsive testimony, Mr. Starkey repeats Eschelon's
10 claim that these activities should be priced at TELRIC, and he dismisses as a "red
11 herring" (page 93) Qwest's concern that Eschelon's language would require Qwest
12 to provide services for free. Mr. Starkey fails to show that Eschelon's language is
13 not susceptible to this interpretation. Nor does he show Eschelon's language
14 would permit Qwest to charge TELRIC rates for these activities separate and
15 apart from the monthly recurring rate for UNEs.

16

17 7. **Issues 9-33,9-34,9-35 and 9-36 – Qwest Network Maintenance and**
18 **Modernization Activities**

19 1. **Issue 9-33**

20 **Q. HAS ESCHELON REVISED ITS ICA PROPOSALS RELATING TO**
21 **ISSUE 9-33?**

22 A. Yes. Eschelon has three different proposals relating to this issue, as set forth at
23 page 6 of Mr. Starkey's responsive testimony. Under Eschelon's first proposal,
24 Qwest would be prohibited from making network changes that "adversely affect
25 service to any End User Customers." Eschelon's second proposal includes this

1 same prohibition, but it allows for "a reasonably anticipated temporary service
2 interruption, if any, needed to perform the work." In addition, in recent
3 arbitration proceedings in other states, Eschelon has presented the following third
4 proposal: "If such changes result in the CLEC's End User Customer experiencing
5 unacceptable changes in the transmission of voice or data, Qwest will assist the
6 CLEC in determining the source and will take the necessary corrective action to
7 restore the transmission quality to an acceptable level if it was caused by the
8 network changes."

9

10 **Q. WHAT IS THE COMMON FLAW WITH EACH OF THESE**
11 **PROPOSALS?**

12 A. The common flaw is that each proposal contains broad, undefined terms that
13 would put Qwest at risk of violating the ICA whenever it makes modernization
14 and maintenance changes to its network. As I have described in my prior
15 testimony, Eschelon has not offered any definition of what it would mean to
16 "adversely affect" service to an End-User customer. Although I expressed
17 Qwest's concern about the vagueness of this term in both my direct and
18 responsive testimony, Eschelon still has not come forward with any definition of
19 the term or with any standard by which the parties would determine whether a
20 change to the network has a prohibited "adverse affect" on an End-User. Further,
21 Eschelon's new, third proposal is as vague as its first two proposals. Specifically,
22 the third proposal prohibits "unacceptable changes" in transmission, but, again,
23 Eschelon does not tie this term to any standard or metric. As a result, disputes
24 involving whether a change violates the ICA would hinge on subjective
25 evaluations of whether a change was "unacceptable." With that vagueness in the

1 ICA, Qwest would be left guessing about whether a network change is prohibited
2 under the ICA and would almost certainly have reduced incentive to perform
3 network maintenance and modernization. That result would not be in either
4 party's interest and, more important, could result in Washington consumers not
5 receiving the full benefits of network maintenance and modernization.

6

7 **Q. DOES MR. WEBBER CITE ANY RELEVANT LEGAL AUTHORITY IN**
8 **SUPPORT OF ESCHELON'S "NO ADVERSE AFFECT" PROPOSAL?**

9 A. No. In support of this proposal, Mr. Webber relies on 47 CFR § 51.319(a)(8),
10 which is one of the FCC rules that defines the access to unbundled loops that
11 ILECs are required to provide.³ The portion of the rule that Mr. Webber relies
12 upon provides that an ILEC "shall not engineer the transmission capabilities of its
13 network in a manner . . . that disrupts or degrades access to a local loop or
14 subloop" Mr. Webber states that this provision has the same effect as
15 Eschelon's "no adverse affect" proposal, but this assertion ignores the fact that the
16 context and language of the FCC's rule is different from Eschelon's proposal.
17 First, the FCC rule specifically addresses the type of access an ILEC must provide
18 to a local loop and is not intended to define the level of transmission quality an
19 ILEC must ensure exists following network maintenance and modernization
20 activities. Second, the rule establishes a general obligation of an ILEC and of
21 course is not intended to serve as contract language. It thus does not have the
22 level of specificity required for an ICA, as it is recognized that the ILECs and
23 CLECs must agree upon or arbitrate the specific contract language that is needed
24 to implement FCC rules and orders. Third, when the FCC uses the terms

³ Webber Responsive Testimony at 10-11.

1 "disrupt" and "degrade" it does so in specific reference to the access an ILEC
2 must provide to a loop and not in reference to the level of service to an end-user
3 customer.

4 Similarly, Rule 51.316(b), which Mr. Webber also cites,⁴ does not relate to
5 network maintenance and modernization activities. Instead, it involves
6 conversions from wholesale services to UNEs. While that section uses the term
7 "adversely affecting," it does not purport to be a contractual provision and thus
8 does not attempt to define when a conversion would result in an "adverse effect."
9

10 **Q. CITING AGREED ICA LANGUAGE IN SECTION 9.1.9, MR. WEBBER**
11 **ASSERTS AT PAGES 8-9 OF HIS RESPONSIVE TESTIMONY THAT**
12 **YOU HAVE INCORRECTLY REPRESENTED THAT ESCHELON'S**
13 **PROPOSAL WOULD IMPEDE QWEST'S ABILITY TO PERFORM**
14 **NETWORK MODERNIZATION AND MAINTENANCE. IS HE**
15 **ACCURATELY DESCRIBING YOUR POSITION?**

16 A. No. Section 9.1.9 does provide that Qwest can make necessary modifications and
17 changes to UNEs in its network. However, the problem is that Eschelon's
18 proposal dilutes this essential right by prohibiting changes that have an undefined
19 adverse effect. My point is not that Qwest is without a right to make network
20 maintenance and modernization changes. Instead, my point is that faced with a
21 prohibition against changes that have an adverse effect and undefined
22 consequences for violating that prohibition, Qwest would have substantial risk
23 whenever it made a network change. The presence of that risk, which would

⁴ Webber Responsive Testimony at 11.

1 result from Eschelon's language, would inevitably reduce Qwest's incentive to
2 carry out network changes.

3

4 **2. Issue 9-33(A)**

5 **Q. PLEASE DESCRIBE THE ISSUE THAT IS ENCOMPASSED BY ISSUE 9-**
6 **33(A).**

7 A. This issue involves a straightforward dispute concerning a reference to another
8 ICA section within Section 9.1.9. Qwest and Eschelon agree that language should
9 be included in Section 9.1.9 establishing that terms and conditions relating to the
10 retirement of copper loops are not addressed in Section 9.1.9 but, instead, are
11 addressed in other ICA sections. The purpose of such language is to make it clear
12 that the terms and conditions in Section 9.1.9 governing network maintenance and
13 modernization do not apply to the retirement of copper loops. The dispute is that
14 Qwest and Eschelon disagree concerning the language that should be used to
15 reflect this intent.

16

17 **Q. WHAT LANGUAGE ARE THE PARTIES PROPOSING?**

18 A. Eschelon proposes to include the following sentence in Section 9.1.9: "This
19 Section 9.1.9 does not address retirement of copper Loops or Subloops (as that
20 phrase is defined in Section 9.2.1.2.3). *See* Section 9.2.1.2.3."

21 In contrast, Qwest proposes to include the following sentence in this section:

22 "Because the retirement of copper loops may involve more than just minor
23 changes to transmission parameters, terms and conditions relating to such
24 retirements are set forth in Section 9.2."

1 **Q. WHAT IS THE SUBSTANTIVE DIFFERENCE BETWEEN THE**
2 **PARTIES' PROPOSALS?**

3 A. Eschelon's proposal creates the inaccurate impression that the retirement of
4 copper loops is addressed only in Section 9.2.1.2.3. Qwest agrees this is the
5 primary reference; however, all the terms and conditions relating to copper
6 retirements (and/or replacements) are not set forth just in that section, but also are
7 addressed in Sections 9.2.1.2.2 (and subparts), 9.2.1.2.2.3 and 9.2.2.3. These
8 additional sections, which Eschelon's reference fails to address, also set forth
9 terms and conditions relating to the retirement or replacement of copper loops.
10

11 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S PROPOSAL?**

12 A. Very simply, Qwest's proposed language is complete because it includes
13 references to all the ICA sections that address issues involving copper retirements.
14 By contrast, Eschelon's proposal creates the misimpression that copper
15 retirements (or replacements) are addressed only in Section 9.2.1.2.3. That
16 inaccuracy and the confusion it could create should be, and can be, easily avoided.
17

18 **3. Issue 9-34**

19 **Q. MR. WEBBER ASSERTS THAT SINCE ESCHELON IS ONLY SEEKING**
20 **DETAILED INFORMATION IN NOTICES WHEN QWEST'S NETWORK**
21 **CHANGES HAVE CUSTOMER –SPECIFIC EFFECTS, THE NOTICE**
22 **REQUIREMENT IS NARROWLY TAILORED AND NOT**
23 **BURDENSOME. IS THIS ASSERTION ACCURATE?**

24 A. No. Despite Mr. Webber's testimony, Eschelon's proposed language relating to
25 notice requirements would appear to require Qwest to provide detailed notices

1 that include circuit IDs and customer addresses whenever an Eschelon end-user
2 might be affected. Thus, in the examples I provide in my testimony relating to
3 switch software upgrades and changes in dialing plans, it would appear that
4 detailed notice would be required because the changes would specifically affect
5 Eschelon end-users. If Eschelon's intent is to impose these detailed notice
6 requirements only in the narrow situations Mr. Starkey describes, Eschelon should
7 modify its proposed ICA language to make that clear. For example, at page 23 of
8 his responsive testimony, Mr. Starkey states that a change that is "specific to an
9 end user customer" is one that is made "to the service of a customer at an address
10 and not a change made that affects a geographic area (or many customers)." But
11 that is not what Eschelon's proposed ICA language says. Instead, the language
12 states only that Qwest will comply with these detailed notice requirements for
13 changes "specific to an End User Customer," without ever defining what this
14 phrase means.

15
16 **Q. HAVE QWEST'S NETWORK AND MODERNIZATION ACTIVITIES
17 BEEN A MAJOR ISSUE FOR EITHER RETAIL OR CLEC END USERS?**

18 A. Not that I am aware of. Even in the most service-affecting situation, that of
19 copper loops being retired, it was never established in the Covad arbitrations (in
20 which this issue was extensively reviewed by this and numerous other
21 Commissions) that Qwest had ever disconnected or even disrupted the service to a
22 single Covad DSL customer who primarily depends on copper loops. Even
23 Eschelon's description of a single incident (that arguably may or may not have
24 resulted from a network modernization activity) for a single customer is an
25 anomaly. Qwest regularly – on a daily basis – performs network modernization

1 and maintain activities across its fourteen states. If Qwest was in the habit of
2 being cavalier about affecting the service it provides to CLECs and end-users, this
3 Commission would know that. The FCC notice requirements for network-
4 affecting activities have stood the test of time and provide ample notice to the
5 CLEC community. It would be unreasonable to modify these federal notice
6 requirements in the very significant ways that are required by Eschelon's
7 proposal.

8
9 **Q. HAS ESCHELON PRESENTED AN ALTERNATIVE PROPOSAL IN**
10 **RECENT ARBITRATIONS IN OTHER STATES?**

11 A. Yes. Eschelon's alternative proposal is as follows: "Such notices will contain the
12 location(s) at which the changes will occur including, if the changes are specific
13 to an End User Customer, the circuit identification, if readily available." While
14 this alternative proposal is an improvement on Eschelon's original proposal, it still
15 improperly attempts to shift the burden of determining circuit IDs from Eschelon
16 to Qwest. Because Eschelon has access to circuit IDs in its own records and
17 Qwest has neither ready access to those IDs nor a legal obligation to provide
18 them, Eschelon's alternative proposal is improper and should be rejected.

19
20 **Q. IS MR. WEBBER'S TESTIMONY SEEKING CUSTOMER ADDRESSES**
21 **IN NOTICES OF NETWORK CHANGES CONSISTENT WITH THE**
22 **COMMISSION'S DECISION IN THE QWEST-COVAD ARBITRATION?**

23 A. No. In that arbitration, the Commission rejected Covad's demand for Qwest to
24 provide customer-specific information in notices relating to Qwest's retirement of

1 copper loops.⁵ Interpreting the FCC's notice rule relating to all network changes,
2 not just copper retirement, this Commission stated: "We reject Covad's assertion
3 that the FCC's rule [47 C.F.R. § 51.327(a)] requires the identification of specific
4 Covad customers affected by the change, or places the burden solely on the ILEC
5 to determine the impact of a change."⁶ The Commission concluded further that
6 the information Qwest had agreed to provide to Covad – the same type of
7 information Qwest is agreeing to provide in its network notices to Eschelon –
8 "appears sufficient to allow Covad to determine, with some research, whether a
9 planned change will affect its customers."⁷

10 Consistent with this ruling and the language of FCC Rule 51.327, Qwest does not
11 have any obligation to provide Eschelon with the addresses of its customers that
12 could be affected by network maintenance or modernization. Instead, Qwest's
13 obligation is to provide Eschelon with sufficient information about where a
14 network change is taking place so that Eschelon – not Qwest – can identify the
15 addresses of any of its customers that could be affected by the change. In
16 addition, if that information is not enough, Qwest's notices include the name and
17 telephone number of a contact person at Qwest who can provide additional
18 information about the location and nature of the network changes, as required by
19 Rule 51.327(a)(2).

20

⁵ Final Arbitration Order, *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation*, Docket No. UT-043045, Order No. 6 (Feb. 9, 2005).

⁶ *Id.*, ¶ 15.

⁷ *Id.*, ¶ 16.

1 **8. Issue 9-50 – Sub-Loop Cross-Connect Work.**

2 **Q. WITH RESPECT TO THE ISSUE OF CROSS-CONNECT WORK, DOES**
3 **ESCHELON PROVIDE ANY REBUTTAL TO YOUR TESTIMONY THAT**
4 **THERE IS NO DEMAND FOR THIS PRODUCT IN WASHINGTON**
5 **FROM ESCHELON OR OTHER CLECS?**

6 A. No. Mr. Denney does not contest the fact that Eschelon and other CLECs have
7 not ordered and do not intend to order cross-connects from Qwest in Washington.
8 The absence of any rebuttal from Mr. Denney relating to this fact undermines any
9 claim by Eschelon that it will be competitively impaired if Qwest does not
10 provide access to cross-connects in the ICA.

11

12 **Q. HOW DO YOU RESPOND TO MR. DENNEY'S ASSERTION AT PAGE 89**
13 **OF HIS RESPONSIVE TESTIMONY THAT CROSS-CONNECT WORK**
14 **IS NOT A VOLUNTARY OFFERING AND THAT QWEST IS**
15 **THEREFORE LEGALLY PROHIBITED FROM DISCONTINUING IT?**

16 A. While he states that cross-connect work is not a voluntary offering, Mr. Denney
17 fails to cite any FCC rule or order that requires Qwest to provide this service. In
18 fact, there is no such rule or order. Qwest has provided this service voluntarily,
19 there has been no demand for it, and Qwest therefore seeks to stop offering it.
20 There is no law or regulation that requires Qwest to continue offering the service
21 in this circumstance. Eschelon's position essentially boils down to the argument
22 that once an ILEC begins voluntarily offering a service without any legal
23 obligation, it cannot stop offering the service unless it obtains regulatory
24 approval. The negative public policy implications of this position are clear. If
25 ILECs are required to obtain regulatory approval to end voluntary offerings, they

1 will have reduced incentive to provide voluntary offerings in the first instance.

2 The Commission should not countenance this anti-competitive policy.

3
4 **Q. DOES THE ABSENCE OF ANY DEMAND FOR CROSS-CONNECTS**
5 **AND THE UCCRE PRODUCT OFFERING IN WASHINGTON THAT**
6 **YOU DISCUSS IN ISSUE 9-53 GIVE RISE TO CONCERNS ABOUT THE**
7 **LOGIC OF THE PRODUCT WITHDRAWAL PROCESS THAT**
8 **ESCHELON IS PROPOSING THROUGH ITS ALTERNATIVE**
9 **PROPOSAL NOS. 2, 3, AND 4 FOR THIS ISSUE?**

10 A. Yes. Eschelon appears to be proposing a product withdrawal process specifically
11 in response to Qwest's desire to stop offering the cross-connect and UCCRE
12 products for which there is no demand at all in Washington. It does not seem
13 either logical or efficient to initiate a time-consuming, resource-intensive generic
14 docket relating to product withdrawals in response to Qwest's attempt to stop
15 offering products that no CLEC is ordering or has ever ordered. The fact that
16 there is no demand at all for these products and no legal obligation to provide
17 them should provide a sufficient basis for Qwest to stop offering them. It should
18 not be necessary to go through a time-consuming generic docket to reach this
19 logical and seemingly inevitable outcome. As I explain in my rebuttal testimony,
20 Qwest is attempting to grandfather the service for existing CLECs that have it in
21 their interconnection agreement, and to not offer the service (for which there is
22 not interest or demand) for new CLEC agreements.

23
24 **Q. WHY DOES QWEST BELIEVE THAT THIS ARBITRATION BETWEEN**
25 **TWO CARRIERS IS NOT THE APPROPRIATE FORUM FOR THE**

1 **COMMISSION TO CONSIDER AND POTENTIALLY ADOPT A**
2 **PROCESS THAT COULD AFFECT ALL WASHINGTON LOCAL**
3 **EXCHANGE CARRIERS?**

4 A. Interconnection arbitrations involve disputes between an ILEC and a CLEC that
5 relate to specific disagreements over the language to include in an ICA. As set
6 forth in Section 252 of the Act, arbitrations must be preceded by at least 135 days
7 of negotiations between an ILEC and a CLEC that focus on the language in an
8 ICA. By imposing this negotiation requirement, the Act is designed to facilitate
9 voluntary agreements between ILECs and CLECs and to limit the number of
10 disputed issues that a state commission must decide. In this regard, Section
11 252(b)(4) limits the arbitration authority of state commissions to the open or
12 disputed issues that remain after at least 135 of negotiations and that are set forth
13 in the petition for arbitration and any response to the petition: "The State
14 commission shall limit its consideration of any petition under paragraph (1) (and
15 any response thereto) to the issues set forth in the petition and in the response, if
16 any, filed under paragraph (3)." Section 252(b)(4)(A).

17 This requirement for state commissions to limit the exercise of their arbitration
18 authority to issues that were negotiated by an ILEC and a CLEC but left
19 unresolved or open means that interconnection arbitrations are not the proper
20 forum for commissions to implement broad changes in rules and processes that
21 apply to all local exchange carriers and that were not negotiated by the ILEC and
22 CLEC. Instead, commissions are permitted only to consider disputed, negotiated
23 issues relating to specific language to include in ICAs. This requirement ensures
24 that after at least 135 days of negotiations, the issues that will be presented to state
25 commissions in interconnection arbitrations for resolution will generally be well-

1 defined and the parties' positions relating to the issues will be thoroughly
2 developed. Here, Qwest and Eschelon did not negotiate Eschelon's broad
3 proposal for adoption of a generic product withdrawal process, and the proposal
4 does not appear in Qwest's arbitration petition or in Eschelon's response to the
5 petition. Eschelon made this proposal after filing its arbitration petition and only
6 after the Minnesota Department of Commerce presented a similar proposal in the
7 Minnesota arbitration. Thus, Eschelon's proposal is not properly part of this
8 arbitration proceeding and should be addressed, if at all, in a broader context that
9 allows other interested parties to provide input.

10
11 **9. Issue 9-51 – Application of UDF-IOF Termination Rate Element**

12 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE RELATING TO**
13 **ISSUE 9-51.**

14 A. This issue concerns a dispute regarding how to define a rate element involving
15 unbundled dark fiber (UDF). Eschelon has proposed changes to the definition of
16 this rate element, claiming that the definition requires clarification. It is apparent,
17 however, that through its proposed definitional change, Eschelon is actually
18 seeking to limit Qwest's ability to recover all the costs it incurs for dark fiber
19 terminations.

20
21 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE**
22 **RELATING TO THIS ISSUE?**

23 A. Qwest is often required to perform more than one dark fiber termination in a
24 central office. Eschelon's proposal would improperly deny Qwest compensation
25 when more than one termination is required. Eschelon apparently has taken this

1 position based on its erroneous view that the existing rate for dark fiber
2 terminations already factors in the possibility of Qwest having to perform more
3 than one termination in a central office. Qwest witness, Terri Million, explains in
4 her testimony why this view is wrong and establishes that the rate for dark fiber
5 terminations is based on one termination and not on multiple terminations.
6 Because that is the case, Qwest must be permitted to charge the rate for each
7 termination in a central office in order to be fully compensated for its costs.

8
9 **10. Issue 9-53 – Access To UCCRE.**

10 **Q. DOES YOUR RESPONSE SET FORTH ABOVE TO ESCHELON'S**
11 **PROPOSALS RELATING TO A PROCESS FOR PRODUCT**
12 **WITHDRAWALS APPLY TO THE PARTIES' DISPUTE RELATING TO**
13 **UNBUNDLED CUSTOMER CONTROLLED REARRANGEMENT**
14 **ELEMENT ("UCCRE")?**

15 A. Yes. As I describe in my direct and responsive testimony, Qwest is seeking not to
16 include UCCRE in the ICA since there is no longer any obligation under the
17 FCC's rules to provide it, and there is no demand from CLECs for this service.
18 Despite the FCC's elimination of any obligation for ILECs to provide UCCRE
19 and the absence of any demand for it, Qwest apparently would have to obtain the
20 Commission's approval to discontinue UCCRE under Eschelon's proposals. For
21 the reasons I discuss above in the section of my testimony relating to Issue 9-50
22 and cross-connects, it would be improper to require Qwest to obtain approval to
23 discontinue an offering that the FCC has eliminated from its unbundling rules. In
24 addition, as I discuss above, it is improper to address a process for product
25 withdrawals in this single arbitration between two parties.

1

2 **Q. DOES ESCHELON PROVIDE ANY REBUTTAL TO YOUR TESTIMONY**
3 **THAT THERE IS NO DEMAND FOR UCCRE FROM ESCHELON OR**
4 **OTHER CLECS?**

5 A. No. Again, Mr. Denney addresses this issue largely by repeating arguments he set
6 forth in his direct testimony. I have already addressed those arguments in my
7 rebuttal testimony. As with cross-connects, Mr. Denney does not contest the fact
8 that Eschelon and other CLECs have not ordered and do not intend to order
9 UCCRE. Once again, the absence of any rebuttal from Mr. Denney relating to
10 this fact undermines any claim by Eschelon that it will be competitively impaired
11 if Qwest does not provide access to cross-connects in the ICA.

12

13 **Q. HAS UCCRE BEEN ORDERED IN THE PAST SEVERAL YEARS BY**
14 **ESCHELON OR ANY OTHER CLEC?**

15 A. No. CLECs have not ordered UCCRE.

16

17 **Q. IS THERE ANY ALTERNATIVE AVAILABLE IN THE UNLIKELY**
18 **EVENT A CLEC DECIDES IN THE FUTURE THAT IT DESIRES THE**
19 **UCCRE FUNCTIONALITY?**

20 A. Yes, the same functionality is available as a tariffed service known as Command-
21 A-Link.

22

23 **11. Issues 9-55 – Combination of Loops and Transport**

24 **Q. CAN YOU PROVIDE A VERY BRIEF OVER VIEW OF THIS ISSUE?**

1 A. The dispute covered by Issue 9-55 arises from Eschelon's attempt to define a
2 "Loop Transport Combination" as a generic "umbrella" EEL and then to sweep
3 unique products and commingled circuits with unique terms and conditions under
4 this umbrella.

5
6 **Q. DOES MR. STARKEY'S TESTIMONY CREATE ANY ADDITIONAL**
7 **CONCERNS FOR QWEST REGARDING ESCHELON'S PROPOSED USE**
8 **OF THIS TERM?**

9 A. Yes. On pages 112-113 of his responsive testimony, Mr. Starkey states that the
10 goal of the Eschelon language is to provide expressly in the ICA that the UNE
11 piece of a loop-transport combination is governed by the ICA. This can be (and
12 has been through Qwest's language) addressed without using the confusing
13 "Loop-Transport Combination" umbrella term that masks the critical differences
14 between the three different Qwest products that are combinations of loops and
15 transport.

16 Qwest's fundamental concern is that Eschelon's proposal to use the term "Loop-
17 Transport Combination" in the agreement is intertwined with its proposals in
18 Issue 9-58 (A,B,C,D,E) to treat commingled EELs as if the complete circuit is a
19 UNE. Because different pricing and provisioning obligations apply to
20 commingled EELs, on the one hand, and combinations of UNE loops and UNE
21 transport, on the other, there is a legal requirement not to treat commingled EELs
22 as though the entire circuit is a UNE. But Eschelon's proposal confuses these
23 distinctions and creates unnecessary and improper confusion. It is both clearer
24 and more consistent with governing law to list and treat individually in the ICA
25 each of Qwest's three distinct products that are combinations or commingled

1 arrangements of loops and transport. Qwest's language properly identifies the
2 individual terms and conditions for each EEL arrangement.

3

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

7 A. For the reason I have identified here and in my direct and responsive testimony,
8 Qwest recommends the Commission adopt the Qwest position and that it reject
9 the Eschelon Loop-Transport Combination language.

10 Qwest has developed and implemented separate and distinct systems, procedures
11 and provisioning intervals for EELs, combinations of UNEs and tariffed private
12 line services and is under no legal requirement to implement costly modifications
13 to provide Eschelon's proposed "loop-transport combination" umbrella product. If
14 Eschelon's true concern is that UNEs be governed under the ICA and
15 Commission jurisdiction while non-UNE (*e.g.*, private line) circuits are governed
16 under the tariff, Qwest proposed ICA language address their concern.⁸ Qwest
17 recommends the Commission adopt the Qwest proposed resolution and that it
18 reject the Eschelon Loop-Transport Combination language.

19

20 **12. Issues 9-56 and 9-56a – Service Eligibility Criteria Audits**

21 **Q. DOES MR. DENNEY CITE ANY RULINGS FROM THE FCC THAT**
22 **SUPPORT ESCHELON'S DEMAND THAT QWEST BE PERMITTED TO**
23 **CONDUCT SERVICE ELIGIBILITY AUDITS ONLY UPON A**

⁸ See Stewart Responsive Testimony at 35.

1 **DEMONSTRATION OF "GOOD CAUSE"?**

2 A. No. Mr. Denney's rebuttal testimony simply repeats the partial quote from the
3 FCC's *Supplemental Order Clarification* that Mr. Denney claims supports the
4 imposition of a good cause requirement before an ILEC can conduct a service
5 eligibility audit. However, as I discuss in my responsive testimony, the
6 *Supplemental Order Clarification* was superseded by the *TRO*, which does not
7 condition the right of an ILEC to conduct a service eligibility audit on a
8 demonstration of good cause. Moreover, Mr. Denney fails to discuss footnote
9 1898 from the *TRO* in which the FCC summarizes the audit rights it established in
10 the *Supplemental Order Clarification*. Nowhere in that summary does the FCC
11 suggest that it adopted a good cause requirement in the *Supplemental Order*
12 *Clarification*. Finally, I observed in my responsive testimony that it is curious
13 that in his direct testimony, Mr. Denney did not quote or describe in any detail the
14 FCC's rulings in the *TRO* relating to audit rights, since that is the FCC's latest
15 pronouncement on the issue. In his rebuttal testimony, Mr. Denney again fails to
16 discuss or even mention the service eligibility audit framework the FCC
17 established in the *TRO*.

18

19 **Q. AT PAGE 95 OF HIS RESPONSIVE TESTIMONY, MR. DENNEY**
20 **STATES THAT WITHOUT A GOOD CAUSE REQUIREMENT, "THE**
21 **AUDIT PROCESS BECOMES A POTENTIAL TOOL FOR BULLYING**
22 **RATHER THAN A MEASURE FOR ASSURING COMPLIANCE." IS**
23 **THERE ANY VALIDITY TO THIS ASSERTION?**

24 A. No. As I describe in detail in my direct and responsive testimony, the audit
25 framework the FCC adopted ensures that ILECs will not abuse the audit process

1 by: (1) limiting audits to once per year, and (2) requiring an ILEC to pay a
2 CLEC's costs of responding to the audit if the auditor determines that the CLEC is
3 in compliance with the service eligibility criteria. Mr. Denney continues to refuse
4 to acknowledge these components of the *TRO*'s audit framework, which have
5 been incorporated into the ICA through agreed language in Section 9.23.4.3.1.3.5.
6

7 **Q. DOES MR. DENNEY CITE ANY LANGUAGE FROM THE *TRO* TO**
8 **SUPPORT ESCHELON'S DEMAND THAT BEFORE CONDUCTING AN**
9 **AUDIT, QWEST IDENTIFY THE SPECIFIC CIRCUITS ON A HIGH**
10 **CAPACITY EEL THAT QWEST BELIEVES DO NOT MEET THE**
11 **SERVICE ELIGIBILITY CRITERIA?**

12 A. No. Mr. Denney fails to cite any rulings or language from the *TRO* that supports
13 this demand. In fact, there is no such requirement in the *TRO*, just as there is no
14 requirement for an ILEC to demonstrate good cause before conducting an audit.
15

16 **13. Issues 9-58 (All A,B,C,D,E) Ordering, Billing, and Circuit ID for**
17 **Commingled Arrangements**

18 **Q. HAS QWEST BEEN ABLE TO IDENTIFY THE SPECIFIC COSTS**
19 **ASSOCIATED WITH ESCHELON'S REQUEST THAT PRIVATE LINE**
20 **ACCESS SERVICES BE PROVISIONED WITH AN LSR AND BILLED**
21 **WITHIN THE CRIS BILLING SYSTEM?**

22 A. It is not possible to identify the precise costs that would be required to make these
23 significant changes, as that determination would require significant work and cost
24 analysis. However, it is clear that the magnitude of these changes is such that
25 they would require extensive work and a large investment of costs, relating to

1 both analyzing the process changes required and then implementing them. In
2 many respects, this request is similar to same effect that ratcheting (billing a
3 single circuits at multiple rates, both UNE and private line access) would have
4 required within the Qwest provisioning systems. With ratcheting, a first step
5 would have required that either the Qwest CRIS billing system or the IABS
6 system would have been modified so that it performs cross-billing and cross-
7 association of products. In an affidavit submitted by Qwest in New Mexico in
8 2002 in Utility Case No. 3495 regarding the potential of requiring Qwest to
9 ratchet rates, Qwest demonstrated that a switch in billing UNEs from Qwest's
10 CRIS system to its IABS system would alone require many thousands of hours in
11 coding and other work. This was in addition to the daunting challenge of the
12 necessary transfer of ordering UNEs on LSRs to ordering UNEs on ASRs, as
13 private line access is ordered today. While I realize that Eschelon is not
14 specifically requesting ratcheting at this time, the net effect of its demands is that
15 Qwest allow Eschelon to order private line access circuits via an LSR and to bill
16 them in CRIS, which could result in very similar work efforts as would have been
17 required for the ratcheting proposal I describe above.

18

19 **Q. PLEASE ADDRESS MR. DENNEY'S RESPONSIVE TESTIMONY AT**
20 **PAGES 100-101 WHERE HE STATES THAT ESCHELON ONLY WANTS**
21 **QWEST TO ALIGN "THE ORDERING, TRACKING AND REPAIR, AND**
22 **BILLING PROVISIONS OF A POINT-TO-POINT UNE EEL AND A**
23 **POINT-TO POINT COMMINGLED EEL," BUT THAT THIS IS NOT A**
24 **REQUEST TO HAVE QWEST MODIFY ITS SYSTEMS.**

1 A. Qwest does not understand Eschelon's position, unless Eschelon is saying that
2 Qwest does not need to modify its systems. The only way Qwest could avoid
3 modifying its systems to meet the far-reaching changes Eschelon is proposing
4 would be if Qwest performed each of the tasks I list above on a manual basis. If
5 that is the case, implementation of manual procedures would impose significant
6 time demands and costs on Qwest. In addition to the manually intensive day-to-
7 day work that would be required, Qwest would have to invest substantial amounts
8 of time to train its personnel performing this work so that they could respond to
9 orders any degree of processing consistency. All of this effort would be for just
10 one CLEC in one state with a limited number of orders.

11

12 **Q. WHEN A CLEC REQUESTS A COMMINGLED ARRANGEMENT, DOES**
13 **QWEST BELIEVE IT WILL MORE OFTEN BE WITH AN INTRALATA**
14 **ACCESS PRIVATE LINE OR WITH AN INTERSTATE ACCESS**
15 **PRIVATE LINE?**

16 A. Based on my experiences with commingled arrangements, I believe most CLECs
17 will choose the maximum network flexibility of commingling with a private line
18 access circuit from the Qwest FCC tariffs, not a state tariff private line.

19

20 **Q. IS THE FACT THAT CLECS ARE LIKELY TO COMMINGLE WITH**
21 **PRIVATE LINE ACCESS CIRCUITS OBTAINED THROUGH FCC**
22 **TARIFFS RELEVANT TO WHETHER THE COMMISSION SHOULD**
23 **CONSIDER ESCHELON'S PROPOSAL HERE OR IN A SEPARATE,**
24 **GENERIC PROCEEDING?**

1 A. Yes. I am not an attorney, but I do not believe the Washington Commission has
2 jurisdiction over FCC access private line tariffs. Since I am not an attorney, I
3 certainly acknowledge that this issue is better handled in briefs than through my
4 testimony.

5

6 **14. Issues 9-59 – Eschelon Alternate Commingled EEL Repair Language.**

7 **Q. DOES MR. DENNEY ACKNOWLEDGE IN HIS RESPONSIVE**
8 **TESTIMONY THAT QWEST'S PROPOSED REPAIR PROCESS FOR**
9 **COMMINGLED ARRANGEMENTS WOULD NOT RESULT IN A CLEC**
10 **PAYING FOR A TROUBLE ISOLATION CHARGE IF TROUBLE IS**
11 **FOUND IN QWEST'S NETWORK?**

12 A. Yes, Mr. Denney makes that acknowledgement at page 104 of his responsive
13 testimony. However, even with this clarification, Eschelon is still concerned
14 about Qwest's repair language because the language recognizes the reality that
15 there may be times when a second repair ticket is required.

16

17 **Q. WOULD IT BE APPROPRIATE TO ADOPT ICA LANGUAGE UNDER**
18 **WHICH ESCHELON WOULD NEVER BE REQUIRED TO OPEN A**
19 **SECOND REPAIR TICKET FOR COMMINGLED EELS?**

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

1 the arrangement, it is unavoidable that a second trouble ticket will have to be
2 submitted that correctly identifies the trouble as being associated with the UNE
3 circuit.

4

5 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION WITH**
6 **REGARD TO ISSUE 9-59?**

7 A. Issue 9-59 identifies an alternative proposal for addressing commingled EEL
8 repairs if the Eschelon's demands that Qwest modify its ordering, installation,
9 repair and billing process for Commingled EELs in Issue 9-58 (A,B,C,D,E) are
10 not adopted by the Commission. Qwest's processes for handling UNEs and
11 special access services involve many employees, processing steps and service
12 centers over 14 states, and it would therefore be extremely difficult and costly for
13 Qwest to make a change to this process for a single CLEC in a single state.

14 I recommend that the Commission reject Eschelon's Issue 9-58 (A,B,C,D,E) and
15 its alternate proposal in Issue 9-59 and adopt Qwest's proposed repair process for
16 commingled EELs as outlined in my responsive testimony. The newly proposed
17 Qwest repair process addresses Eschelon's repair concerns. It could be
18 implemented for Eschelon and all other CLECs cost-effectively and as a part of
19 Qwest's existing repair systems.

20

21 **15. Issues 9-61,(a,b,c) Loop-Mux Combination**

22 **Q. IF QWEST PROVIDES MULTIPLEXING PURSUANT TO UNE RATES,**
23 **TERMS, AND CONDITIONS FOR USE WITH UNE COMBINATIONS,**
24 **WHAT IS THE BASIS FOR THE DISPUTES ENCOMPASSED BY ISSUE**

1 **9-61 AND ITS SUBPARTS?**

2 A. The dispute concerns the rates, terms, and conditions that apply to multiplexing
3 when Qwest provides multiplexing commingled with a non-UNE – typically
4 private line transport. Because multiplexing is a feature or function of transport
5 but not of UNE loops, a commingled arrangement that involves tariffed transport
6 and a UNE loop requires that Eschelon and other CLECs obtain multiplexing
7 based on tariffed rates, terms, and conditions. This dispute arises because it
8 appears that Eschelon is insisting that in addition to obtaining multiplexing for
9 UNE combinations pursuant to UNE rates, terms, and conditions, it be permitted
10 to obtain multiplexing pursuant to those same UNE rates, terms, and conditions
11 when it is used to commingle a UNE loop with non-UNE transport.

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

16 A. Yes. As described in my rebuttal testimony, the FCC confirmed in the *TRO* that
17 multiplexing used with commingled EELs is a tariffed access service and is not
18 governed by UNE terms and pricing . Mr. Starkey never addresses these
19 controlling statements by the FCC. To reiterate, in providing an example of a
20 tariffed "interstate access service" to which a CLEC may attach a UNE, the FCC
21 specifically referred to multiplexing: "Instead, commingling allows a competitive
22 LEC to connect or attach a UNE or UNE combination with an interstate access
23 service, *such as high-capacity multiplexing* or transport services." *TRO* at ¶ 583.
24 In the very next sentence, the FCC emphasized that "*commingling will not enable*
25 *a competitive LEC to obtain reduced or discounted prices on tariffed special*

1 *access services*" This portion of the *TRO* directly refutes any claim by
2 Eschelon claim that it is entitled to multiplexing at UNE rates, terms, and
3 conditions when it obtains multiplexing for use with commingled arrangements.
4

5 **Q. AT PAGE 121 OF HIS RESPONSIVE TESTIMONY, MR. STARKEY**
6 **STATES THAT I HAVE INACCURATELY ASSERTED THAT**
7 **ESCHELON IS ATTEMPTING TO OBTAIN MULTIPLEXING AS A**
8 **"STAND-ALONE UNE" AND THAT, ON THE CONTRARY, ESCHELON**
9 **IS ONLY SEEKING TO OBTAIN MULTIPLEXING AS A FEATURE,**
10 **FUNCTION, OR CAPABILITY OF THE UNBUNDLED LOOP? IS**
11 **THERE ANY MERIT OR MATERIALITY TO THIS CRITICISM?**

12 **A.** No. Despite this claim, Mr. Starkey has never explained why central office based
13 multiplexing used to "mux up" multiple unbundled loops to a higher transport
14 facility is a feature and function of a single individual UNE loop. If central office
15 based multiplexing used to mux up multiple loops to a higher bandwidth transport
16 facility is not a feature function of an individual loop, then any request to have
17 Qwest provide central office based multiplexing separate from transport is clearly
18 a request for stand-alone transport multiplexing.
19

20 **Q. AT PAGES 121-125 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**
21 **REPEATS HIS FACTUAL ASSERTION THAT MULTIPLEXING IS A**
22 **"FEATURE, FUNCTION, OR CAPABILITY" OF THE UNE LOOP AND**
23 **ARGUES THAT I HAVE NOT PRESENTED TESTIMONY REBUTTING**
24 **THAT ASSERTION. HOW DO YOU RESPOND?**

1 A. First, the FCC's description of the multiplexing used with commingling as "an
2 interstate access service" should put to rest Mr. Starkey's claim that multiplexing
3 used with commingling is a feature, function, or capability of the UNE loop.
4 Second, this description from the FCC in the *TRO* is consistent with the statement
5 of the FCC's Wireline Competition Bureau in the Verizon-Virginia arbitration
6 confirming that loop multiplexing is not a network element: "We thus reject
7 WorldCom's proposed contract language because it defines the 'Loop
8 Concentrator/Multiplexer' as a network element, which the Commission has
9 never done."⁹ Third, in my responsive testimony, I do refute Mr. Starkey's claim
10 that multiplexing is a feature, function, or capability of the UNE loop. In sum,
11 central office based transport multiplexing is not required for a UNE loop facility
12 to function. If the functioning of a DS1 loop was dependent upon multiplexing,
13 there might be a factual argument that multiplexing is a feature or function of the
14 loop. But since a DS1 loop functions regardless whether there is transport related
15 multiplexing used with the loop, multiplexing cannot reasonably be viewed as a
16 "feature, function, or capability" of the loop. In addition, the multiplexing
17 function is provided through equipment that is physically separate from and
18 independent of UNE loops.

19
20 **Q. IS MR. STARKEY CORRECT IN ASSERTING THAT THE FCC**
21 **WIRELINE COMPETITION BUREAU'S STATEMENT IN THE**
22 **VERIZON-VIRGINIA ARBITRATION IS NOT ENTITLED TO WEIGHT**

⁹ *In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration*, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039 at ¶ 494 (FCC Wireline Competition Bureau July 17, 2002).

1 **BECAUSE IT IS NOT A STATEMENT FROM THE FCC ITSELF?**

2 A. No. That argument about the binding effect of the Virginia-Verizon order has
3 been presented before, and courts have rejected it. In our post-hearing briefs,
4 Qwest will provide cites to decisions in which federal courts have rejected the
5 contention that the Virginia-Verizon order is not entitled to weight because the
6 Wireline Bureau purportedly does not speak for the FCC as a whole. There also
7 is no merit to Mr. Starkey's claim that the Virginia-Verizon order actually
8 undermines Qwest's position because the Wireline Bureau ruled that multiplexing
9 is a feature, function, or capability of UNE transport. As I discussed earlier,
10 Qwest agrees that multiplexing is a feature, function, or capability of UNE
11 transport, and, accordingly, it makes multiplexing available on UNE rates, terms,
12 and conditions for UNE combinations comprised of UNE loops and UNE
13 transport.

14 But the fact that multiplexing is a feature, function, or capability of UNE transport
15 does not, as Mr. Starkey states on pages 123-24 of his responsive testimony, make
16 multiplexing a feature, function, or capability of the loop. This is a leap that is
17 completely unsubstantiated or even connected to the FCC's statements regarding
18 transport and transport related multiplexing. Indeed, it is significant that while
19 finding that multiplexing is a feature of UNE transport, the FCC expressly
20 rejected the contention that it is a feature of the loop. If the Wireline Bureau had
21 intended that it's finding about multiplexing being a feature of UNE transport also
22 means that multiplexing is a feature of the UNE loop, it presumably would have
23 said so and certainly would not have expressly rejected MCI's contention that
24 loop multiplexing is a UNE.

25

1 **Q. IS IT IRRELEVANT, AS MR. STARKEY CLAIMS, THAT ESCHELON**
2 **AND OTHER CLECS ARE ABLE TO SELF-PROVISION**
3 **MULTIPLEXING?**

4 A. No. Mr. Starkey argues at pages 124-25 of his responsive testimony that the
5 ability of CLECs to self-provision multiplexing – and he does not contest the fact
6 that Eschelon has that ability – is only relevant to a "necessary and impair"
7 inquiry under Section 251(d) of the Act into whether ILECs are required to
8 provide network elements as UNEs under Section 251. However, there is at least
9 an implicit undertone to Eschelon's testimony on this issue suggesting that loop
10 multiplexing will not be available at reasonable rates, terms, and conditions if
11 Qwest is not required to provide multiplexing as a UNE. The fact that CLECs
12 self-provision multiplexing and that Eschelon has the ability to do the same
13 responds directly to any suggestion that loop multiplexing is realistically available
14 only through Qwest at UNE rates and terms.

15

16

II. CONCLUSION

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

18 A. Yes.