

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

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

**DOCKET NO. UT-063061**

**CONFIDENTIAL**

**REBUTTAL TESTIMONY**

**OF WILLIAM R. EASTON**

**QWEST CORPORATION**

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

**APRIL 3, 2007**

**REDACTED VERSION**

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CONFIDENTIAL PURSUANT TO WAC 480-07-160**

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**I. IDENTIFICATION OF WITNESS**

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

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

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

A. Yes.

**II. PURPOSE OF TESTIMONY**

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

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

- Section 2 issues
- Section 5 issues
- Section 7 issues
- Section 22 issues

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**III. SECTION 2 DISPUTED ISSUES**

**Issue No. 2-3 – Effective Date of Rate Changes**

**Q. MR. DENNEY ARGUES ON PAGE 4 OF HIS REBUTTAL TESTIMONY<sup>1</sup> THAT ESCHELON OBJECTS TO QWEST’S PROPOSED LANGUAGE IN SECTION 2.2 BECAUSE THE AGREED UPON LANGUAGE IN SECTION 22.4.1.2 OF THE INTERCONNECTION AGREEMENT ADDRESSES THE ISSUE OF WHEN RATE CHANGES TAKE EFFECT. DOES THE LANGUAGE IN SECTION 22.4.1.2 MAKE THE QWEST LANGUAGE UNNECESSARY?**

**A. No.** As I noted in my responsive testimony, the agreed upon language in section 22 is silent as to what is to occur when a Commission order does not specify a true-up of past billing. The agreed upon language in section 22.4.1.2 states:

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

Qwest’s proposed language in section 2.2 is necessary to avoid ambiguity in situations where a Commission order does not specify a true-up requirement. In such situations, Qwest’s proposed language for section 2.2 clarifies that the

1 appropriate implementation process is to apply the rates prospectively from the  
2 effective date of the order.

3  
4 In fact, Eschelon itself now recognizes that the previously agreed to language in  
5 section 22.4.1.2 did not address situations where an order does not specify a true-up  
6 requirement. Eschelon has now proposed to add language at the end of section  
7 22.4.1.2 clarifying that, in such situations, rates will be applied on a prospective  
8 basis. In light of this, it is not clear why Eschelon objects to the Qwest section 2.2  
9 proposal.

10  
11 **Q. AT PAGE 4 OF HIS TESTIMONY MR. DENNEY CLAIMS THAT THE**  
12 **QWEST PROPOSED LANGUAGE CREATES HAS THE POTENTIAL TO**  
13 **GIVE RISE TO FUTURE DISPUTES. PLEASE COMMENT.**

14 **A.** As was just discussed, the Qwest language provides additional clarity. There is  
15 nothing ambiguous about Qwest's language which would lead to future disputes.  
16 Under Qwest's proposal, one looks first to the commission order to determine when  
17 a rate applies. If the commission order fails to address the issue, a rate change is  
18 applied prospectively.

19  

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<sup>1</sup> Unless noted otherwise, all page references are to Mr. Denney's Rebuttal Testimony.

1 **Q. ON PAGE 8 MR. DENNEY NOTES THAT ESCHELONS' PROPOSED**  
2 **SECTION 2.2 LANGUAGE ADDRESSES THE ISSUE OF**  
3 **DISTINGUISHING BETWEEN CHANGES TO PREVIOUSLY APPROVED**  
4 **PRICES AND CHANGES TO PRICES NOT PREVIOUSLY APPROVED. IS**  
5 **IT NECESSARY TO MAKE SUCH A DISTINCTION?**

6 A. No. The Qwest language, which seeks to avoid ambiguity where a Commission  
7 order does not specify a true-up requirement. Qwest's clarifying language applies  
8 both to changes to previously approved rates as well as changes to prices not  
9 previously approved. However, this in no way precludes the Commission from  
10 treating the two types of rates differently.

11  
12 **Q. ON PAGE 10 MR. DENNEY ARGUES THAT QWEST IS ATTEMPTING**  
13 **TO LIMIT ESCHELON'S ABILITY TO ARGUE IN FAVOR OF A TRUE**  
14 **UP OF INTERIM RATES. IS THIS THE EFFECT OF THE QWEST**  
15 **LANGUAGE?**

16 A. No. Eschelon is not precluded in any way from arguing its position regarding a true  
17 up of rates. The Qwest language merely clarifies that, unless ordered otherwise by  
18 the Commission, rates should be applied on a prospective basis.

19 **Q. ON PAGE 11 MR. DENNEY ARGUES THAT COMMISSIONS HAVE**  
20 **RECOGNIZED THAT THERE ARE CIRCUMSTANCES WHEN IT IS**  
21 **APPROPRIATE FOR RATES TO BE SUBJECT TO TRUE-UP AND THAT**  
22 **THE QWEST LANGUAGE CREATES A PRESUMPTION TO THE**



1 **Q. MR. DENNEY ARGUES AT PAGE 12 THAT QWEST'S CHANGE OF LAW**  
2 **LANGUAGE WOULD ALLOW QWEST "TO IGNORE CHANGES IN LAW**  
3 **THAT QWEST DOES NOT LIKE, WHILE EMBRACING CHANGES IN**  
4 **LAW THAT WORK TO QWEST'S ADVANTAGE." DO YOU AGREE?**

5 A. No. The Qwest language allows either party to give notice to make such change  
6 effective on the effective date of the legally binding change. This process does not  
7 allow either party to ignore changes that it does not like. Although Mr. Denney  
8 argues that Eschelon is at a disadvantage because of Qwest's greater regulatory  
9 resources, as I noted in my responsive testimony, Eschelon is a sophisticated  
10 company with a great deal of awareness of the regulatory environment. Clearly  
11 Eschelon's participation in these arbitration proceedings has not demonstrated a  
12 lack of regulatory sophistication or resources.

13

14 **Q. ON PAGE 12 MR. DENNEY CITES AN ARIZONA COST CASE ARGUING**  
15 **THAT QWEST CONSIDERED THE EFFECTIVE DATE OF AN ORDER**  
16 **TO BE DIFFERENT FROM A SPECIFIC IMPLEMENTATION DATE.**  
17 **WAS THIS REALLY THE ISSUE IN THE ARIZONA PROCEEDING?**

18 A. No. As I discussed in my responsive testimony, The Arizona proceeding did not  
19 relate at all to the effective date of a cost docket order. It was agreed by all parties  
20 to the proceeding when the ordered rates would apply. Instead, the dispute in that  
21 proceeding related to when Qwest would have its systems modified to reflect the  
22 new prices. Once the systems changes were implemented, there was never any

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1 question that rates were to be adjusted retroactively back to the effective date of the  
2 order. That is an entirely different issue than Mr. Denney describes here.

3  
4 **Q. ON PAGE 5 MR. DENNEY ARGUES THAT THE QWEST PROPOSAL**  
5 **CREATES AMBIGUITY BECAUSE IT DISTINGUISHES BETWEEN AN**  
6 **“EFFECTIVE DATE” AND AN “IMPLEMENTATION DATE.” WHAT IS**  
7 **THE DIFFERENCE BETWEEN THE TWO?**

8 A. An “effective date” is the date the order takes effect. An implementation date is the  
9 date on which the parties are obligated to act pursuant to the order. An example  
10 which illustrates the difference would be an FCC order which stated that six months  
11 from the effective date of the order an ILEC would no longer be required to offer a  
12 specific service at TELRIC rates. Since not all changes in law orders specify when  
13 the parties’ obligations are to change, the Qwest’s proposal provides guidance by  
14 specifying that should either party give notice within 30 days, the parties’  
15 obligation under the interconnection agreement would change as of the effective  
16 date of the change of law order. Should neither party provide such notice, the  
17 parties’ obligations under the interconnection agreement would not change until an  
18 amendment went into effect

19  
20 **Q. MR. DENNEY STATES AT PAGE 5 THAT, “QWEST’S PROPOSAL**  
21 **IMPROPERLY INTRUDES ON THE AUTHORITY OF THE RELEVANT**  
22 **REGULATORY BODY.” IS THAT REALLY THE CASE?**

1 A. No. As I noted in my responsive testimony, Mr. Denney ignores the first sentence  
2 of Qwest's change of law language which begins:

3 When a regulatory body or court issues an order causing a change in law  
4 ***and that order does not include a specific implementation date...***  
5 [Emphasis added].  
6

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

9 **IV. SECTION 5 DISPUTED ISSUES**

10

11 **Issue No. 5-6 – Discontinuing Order Processing for Non Payment**

12

13 **Q. ON PAGE 32 MR. DENNEY STATES THAT ISSUE 5-6 CONCERNS**  
14 **WHETHER “QWEST MAY UNILATERALLY DISCONTINUE**  
15 **PROCESSING ESCHELON’S ORDERS... EVEN WHEN THE BASIS FOR**  
16 **DOING SO IS DISPUTED.” DO YOU AGREE?**

17 A. Absolutely not. First, although Mr. Denney describes the actions of Qwest as  
18 unilateral, any action that Qwest takes must first be triggered by Eschelon's failure  
19 to pay its ***undisputed*** billing amounts. Second, as to the disputed basis, the  
20 language in section 5.4.2 concerning discontinuation of order processing  
21 specifically excludes disputed amounts. Mr. Denney cites the recent \$3 million  
22 collection dispute between the parties as the basis for his concern about the  
23 proposed section 5.4.2 language and implies that the Qwest demand for payment

1 included payment of disputed amounts. As I noted in my responsive testimony,  
2 Qwest required a payment based on the amount shown as past due on its books less  
3 a figure provided by Eschelon itself for amounts in dispute. The amount demanded  
4 was clearly not an amount that Eschelon disputed, as Qwest allowed Eschelon to  
5 exclude the amount it believed to be in dispute. Contrary to Mr. Denney's  
6 assertions, the facts do not show that Eschelon's concern about Issue 5-6 is real and  
7 warranted. The facts show that if Eschelon pays its *undisputed* billing amounts,  
8 Qwest will not discontinue processing orders.

9  
10 **Q. MR. DENNEY STATES AT PAGES 40-41, "IF QWEST IS WRONG AND**  
11 **THERE IS NO PAYMENT DUE, BUT IT DISCONTINUES PROCESSING**  
12 **ORDERS OR DISCONNECTS CUSTOMERS ANYWAY, ESCHELON'S**  
13 **ENTIRE BUSINESS IS DISRUPTED FOR NO REASON." IS THERE ANY**  
14 **BASIS FOR HIS CONCERN?**

15 A. No. As I noted in my responsive testimony, discontinuing processing orders is not  
16 a step Qwest takes lightly. It is for this reason that the language in this provision:  
17 (1) excludes disputed amounts; (2) provides that Qwest will not take this action  
18 until payments are more than 30 days past due; and (3) requires that Qwest provide  
19 notice to Eschelon (and the Commission) at least 10 business days in advance. In  
20 the \$3 million dollar dispute Mr. Denney cites as a basis for his concern, Qwest was  
21 not "wrong." In fact, as was just discussed, Qwest let Eschelon calculate the  
22 amount it believed was undisputed and therefore rightfully due Qwest. The

1           protections built into the language and Qwest's past practices demonstrate that  
2           Eschelon's concerns are overstated.

3  
4       **Q.   ARE THERE ANY RECENT CASES YOU CAN POINT TO THAT**  
5       **DEMONSTRATE QWEST'S CONCERN WITH THIS ISSUE?**

6       A.   Yes. Minnesota is the only one of Qwest's states which requires commission  
7       approval to disconnect service. Recent events in Minnesota have demonstrated the  
8       problems with this Commission requirement. On May 19, 2006, CP Telecom filed  
9       an application with the Commission to discontinue service to Minnesota Phone  
10       Company for failure to make required payments. (*In the Matter of CP Telecom's*  
11       *Petition to Discontinue Service to Minnesota Phone Company*, MPUC Docket No.  
12       P6333,6198/M-06-719). On June 5, 2006, Minnesota Phone Company filed a letter  
13       indicating that it had filed a Chapter 11 bankruptcy petition. On August 17<sup>th</sup> the  
14       Commission dismissed the CP Telecom petition due to the bankruptcy proceeding.  
15       In the meantime, Minnesota Telephone Company was allowed to continue running  
16       up bills that will never be repaid.

17  
18       Similarly, Eschelon's proposed language would prevent Qwest from protecting  
19       itself from mounting unpaid debt and force it to continue to process orders pending  
20       the outcome of a proceeding. This places Qwest at additional risk of providing  
21       service to the CLEC without assurance of being compensated. Although Mr.  
22       Denney argues that the Eschelon language protects Qwest from untimely payments,

1 provisions such as late payment fees provide no protection when a carrier is  
2 ultimately unable to make payments.

3  
4 **Q. DOES MR. DENNEY SPECIFY UNDER WHAT CIRCUMSTANCES IT**  
5 **WOULD BE APPROPRIATE TO DISCONTINUE ORDER PROCESSING?**

6 A. No. Although on page 41 of his testimony he states that he doesn't disagree that  
7 Qwest should be allowed to stop processing orders "under appropriate  
8 circumstances" he does not explain what these circumstances are and, instead,  
9 infers that only the Commission can make such a determination. Mr. Denney fails  
10 to explain why failure to pay *undisputed* amounts should not constitute an  
11 appropriate circumstance.

12  
13 **Q. ON PAGES 34-36, MR. DENNEY DETAILS WHAT HE DESCRIBES ARE**  
14 **THE REASONS ESCHELON AND QWEST OFTEN DISAGREE ABOUT**  
15 **THE AMOUNT OF ESCHELON'S UNDISPUTED AMOUNTS PAST DUE**  
16 **TO QWEST. HAVE YOU HAD AN OPPORTUNITY TO LOOK INTO ANY**  
17 **OF THE SITUATIONS THAT MR. DENNEY DESCRIBES?**

18 A. Yes. I investigated a number of the incidents Mr. Denney describes and found the  
19 circumstances to be very different than Mr. Denney has characterized them. Below  
20 I will briefly respond to a number of the claims made by Mr. Denney.

21  
22 Qwest Takes It Upon Itself to Declare Disputes Resolved

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1 Mr. Denney is incorrect when states that Qwest simply unilaterally declares  
2 disputes to be resolved. Through the Change Management Process, Qwest has  
3 developed a detailed process to handle disputes. This process provides for a clear  
4 communications path between Qwest and the CLECs and provides for escalations  
5 should CLECs not agree with Qwest's proposed resolution. Although Mr. Denney  
6 argues at length on pages 37-39 that Eschelon should not have to follow this  
7 process, the use of a standard process would go a long way towards reducing  
8 misunderstandings between the parties.

9  
10 Mr. Denney is correct that the parties' current ICA has dispute resolution  
11 procedures.<sup>2</sup> However, Mr. Denney is incorrect when he states that the parties'  
12 Washington interconnection agreement "provides that if a bill dispute is not  
13 resolved in 150 days *Qwest* can take it to dispute resolution." Although  
14 interconnection agreement procedures differ from those developed during the  
15 Change Management Process, they do call for the parties to work jointly to resolve  
16 disputes and allow either party to invoke the dispute resolution process if a dispute  
17 has not been resolved in 120 days. Despite the joint responsibility for resolving  
18 disputes, Qwest billing personnel report that they often send a resolution letter to  
19 Eschelon yet hear nothing back. However, Eschelon continues to withhold  
20 payment.

1

2 Qwest's Notices of Past Due Do Not Include Billing Account Number Detail

3 It is Qwest's practice to include a spreadsheet with billing account number detail  
4 with collections letters. Contrary to this practice I did find that for one of the six  
5 Eschelon collection letters did not include this information. Again, communication  
6 between the parties would allow for a quick remedy of the situation.

7

8 Detail Does Not Match With Amounts in Letter

9 An examination of e-mail string in DD-7 shows that Qwest was more than willing to  
10 set up meetings to explain the spreadsheet and discuss Eschelon's concerns.

11

12 Payments Not Posted in a Timely Manner

13 Contrary to Mr. Denney's assertion, the issue described in Exhibit DD-8 is not an  
14 example of payments not being posted in a timely manner. According to Qwest's  
15 records this payment was not received and posted by Qwest until October 24<sup>th</sup>, the  
16 day Ms. May's letter was sent out. It should be noted that the letter includes the  
17 following language to cover just this type of situation:

18 If payment has been sent, please disregard this notice. If you feel you  
19 have received this notice in error, please contact me immediately so we  
20 can work with you to correct any discrepancies in our records.  
21

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<sup>2</sup> The dispute procedures are contained in Attachment 5 to the Washington Agreement. Attachment 7, cited by Mr. Denney is actually an implementation schedule.

1 Finally, I would point out that although section 6.1 of the Wholesale Service  
2 Agreement<sup>3</sup> that these services were purchased out of requires that “all invoiced  
3 amounts shall be paid via wire transfer,” the Eschelon correspondence in Exhibit  
4 DD-8 indicates that Eschelon paid by check thus delaying the posting of the  
5 payment.

6  
7 Qwest Includes Amounts Not Due in Its Past Due Amounts

8 The mail string in DD-9 indicates that Qwest inadvertently cited a figure as “past  
9 due” instead of “due”. When the matter was brought to Qwest’s attention, Qwest  
10 acknowledged the error and apologized. It is exactly these type of exchanges  
11 between the parties that can reveal misunderstandings before they become a  
12 problem.

13  
14 Refund Amounts Are Applied to Past Due Balances

15 Qwest does not adjust accounts by issuing billing refunds to any carrier with a past  
16 due balance. Rather, in that situation, Qwest will apply any credits due and owing  
17 to past due balances. From a business perspective, it only makes sense to address  
18 the past due balances before issuing any refunds.

19  

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<sup>3</sup> Exhibit DD-8 has to do with billing for out of region services, not local services purchased under the interconnection agreement.



1        Black Hole for Disputes

2        Contrary to Mr. Denney's inference that disputes go into a "black hole" Qwest's e-  
3        mail in DD-10 agreed to investigate the status of a past dispute and offered  
4        assurances that Qwest wanted to work with Eschelon to make sure that disputes did  
5        not fall into a black hole. The particular issue referred to in the e-mails had to do  
6        with a Colorado tax issue. In fact, prior to Mr. Markert's e-mail, Qwest's tax  
7        specialists met with Eschelon to explain why Qwest's tax treatment was correct.  
8        This was not a case of Qwest ignoring an Eschelon dispute.

9  
10       DSL Rate Adjustment

11       This adjustment had to do with wholesale discount applied to DSL purchased under  
12       commercial agreement. Based on FCC DSL categorization in Dec. 2005, effective  
13       Jan 28, 2006 all CLECs received an 18% DSL discount across the board. The  
14       discount amounts Eschelon received in previous months were correct.

15  
16       Misapplied Payments

17       According to Qwest billing center personnel, there have been cases where Qwest  
18       has received conflicting information from Eschelon regarding how payments are to  
19       be applied, with the remittance letter to the payment center saying one thing and  
20       Eschelon saying something different to the Qwest collections department. This has  
21       led Eschelon to claim payments have been misapplied.

1 Qwest Left Hand Doesn't Know What Its Right Hand is Doing

2 As I just discussed, Qwest has had experiences with Eschelon where different  
3 groups are receiving conflicting information. In fact, it was to avoid just such  
4 situations that Qwest requested that copies of the remittance letter be sent to both  
5 the payment center and the collections group.

6  
7 **Q. YOU STATED IN YOUR DIRECT TESTIMONY THAT ESCHELON**  
8 **TAKES CONSIDERABLY LONGER THAN OTHER COMPANIES IN ITS**  
9 **PEER GROUP TO PAY ITS BILLS. ARE THE INCIDENTS CITED BY**  
10 **MR. DENNEY A POSSIBLE EXPLANATION FOR THIS?**

11 A. No. First, as I have just explained Mr. Denney has mischaracterized these  
12 incidents. Telecommunications billing is a complex process. For Eschelon alone,  
13 Qwest has 269 accounts and 19 different due dates. Given this complexity, it is not  
14 surprising that there will be occasional misunderstandings and disputes between the  
15 parties. The e-mails and other correspondence Mr. Denney has attached to his  
16 testimony demonstrate to me that Qwest is very willing to work with Eschelon to  
17 minimize misunderstandings and resolve disputes.

18  
19 Second, the other carriers in Eschelon's peer group have similarly complex billing.  
20 It is the same Qwest personnel and processes that are used to bill these other  
21 carriers, yet they manage to pay their bills in half the time that it takes Eschelon.

1 **Q. DO YOU HAVE ANY OTHER REASON TO BELIEVE THAT IT IS NOT**  
2 **THE QWEST BILLING PROCESS THAT EXPLAINS ESCHELON'S**  
3 **PAYMENT HISTORY?**

4 A. Yes. Further evidence that Eschelon is the party responsible for its slow payment  
5 behavior exists in the form of payment history of a company that Eschelon acquired  
6 in 2006: Oregon Telecom. Attached as Confidential Exhibit WRE-5 is listing by  
7 month of past due balances for Oregon Telcom. For the seven months prior to  
8 Eschelon assuming control, past due balances averaged [**Begin Confidential**  
9 **XXXXXXXX End Confidential**]. In the last seven months, past due balances have  
10 averaged [**Begin Confidential XXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX End**  
11 **Confidential**]. This dramatic change in payment behavior occurred despite the  
12 fact that the same Qwest billing processes and personnel were used both before and  
13 after the Eschelon acquisition.

14

15 **Issue No. 5-8 – Disconnecting Service for Non Payment**

16

17 **Q. DO YOU AGREE WITH MR. DENNEY'S CONCLUSION ON PAGE 44**  
18 **THAT IF IT IS NOT QWEST'S PRACTICE TO INVOKE COLLECTIONS**  
19 **ACTIONS OVER A FEW DOLLARS, THEN QWEST SHOULD HAVE NO**  
20 **PROBLEM INCLUDING THE TERM 'NON-DE MINIMUS' IN THE ICA?**

21 A. No. As I stated in both my direct and responsive testimony, there is no reason to  
22 add a term such as "non-de minimus" that is subject to interpretation. Eschelon

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1 presents no evidence that Qwest has ever invoked collections or deposit  
2 requirements based upon insignificant amounts and again offers no compelling  
3 reason to depart from language that was agreed to by the CLECs and Qwest during  
4 the Section 271 workshops.

5 **Issue No. 5-9 – Definition of Repeatedly Delinquent**

6  
7 **Q. HAS QWEST FAILED TO DEMONSTRATE THAT ITS STANDARD OF**  
8 **THREE MONTHS WOULD PROVIDE A BETTER INCENTIVE FOR**  
9 **TIMELY PAYMENT AS MR. DENNEY ARGUES AT PAGE 47?**

10 A. No. It is certainly true that a more stringent standard provides greater incentive for  
11 timely payment. Under the Qwest standard, a carrier would have to pay its bills on  
12 time more than 75% of the time to avoid being considered “repeatedly delinquent.”  
13 Under the Eschelon standard, Eschelon could be late in its payments for two  
14 months, pay the bill for the third month on time, and then be late again for the next  
15 two months. In a twelve month period Eschelon could pay its bills on time only  
16 four months out of twelve, or 33% of the time, and still not be considered  
17 “repeatedly delinquent.” There can be no question that the Qwest proposal provides  
18 a greater incentive for timely payment. Although Mr. Denney cites a hand full of  
19 older interconnections agreement with different language, the majority of the Qwest  
20 interconnection agreements use the definition that Qwest is proposing here, a  
21 definition identical to the "repeatedly delinquent" definition that was reviewed and  
22 agreed to in the Section 271 workshops by Qwest and participating CLECs. Given

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1 that this is the definition agreed to during the 271 workshops, Mr. Denney's claim  
2 on page 48 that this language is somehow discriminatory, rings hollow. Ultimately,  
3 Eschelon can provide no legitimate argument to change this language other than to  
4 give itself additional and unwarranted business advantage.

5  
6 **Q ON PAGE 48 MR. DENNEY STATES THAT YOU ASSUME THAN A**  
7 **DIFFERENCE BETWEEN SGAT LANGUAGE AND ICA LANGUAGE**  
8 **SHOULD BE REJECTED. IS THAT YOUR POSITION?**

9 A. No. My position is that billing issues were discussed at length during the 271  
10 process and where possible CLECs and Qwest reached consensus on the billing  
11 language. Where consensus was not possible, an arbitrator examined the parties'  
12 positions and recommended language. The result is language that balances the  
13 needs of both the billing and billed parties. Eschelon has offered no compelling  
14 reason why this language is no longer appropriate.

15  
16 **Issue No. 5-11 – Deposit Requirements**

17  
18 **Q. ON PAGE 50 MR. DENNEY ARGUES THAT PROVIDING ESCHELON**  
19 **WITH AN OPPORTUNITY TO SEEK COMMISSION RELIEF IN THE**  
20 **CASE OF A DEPOSIT REQUEST IS EMINENTLY FAIR, SINCE**  
21 **ESCHELON IS THE PARTY WHO IS AT RISK OF HAVING ITS ORDERS**  
22 **REJECTED OR HAVING TO PAY A DEPOSIT. PLEASE COMMENT.**

1 A. As I pointed out in my responsive testimony, the purpose of the payment language  
2 in an ICA is to balance the needs of both the billing and billed parties. Mr. Denney  
3 focuses only on the impacts of deposit requirements on Eschelon and ignores the  
4 importance of deposits for Qwest. While Eschelon may be the party who is at risk  
5 of having to pay a deposit, Qwest is the party who is at risk of non-payment.

6

7 **Issue No. 5-12 – Commission Involvement in Setting Deposit Requirements**

8

9 **Q. IN ARGUING FOR COMMISSION INVOLVEMENT IN DEPOSIT**  
10 **REQUIREMENTS, MR. DENNEY STATES THAT, “IT IS**  
11 **COMMONPLACE FOR STATE COMMISSIONS TO REVIEW AN ILEC**  
12 **BUSINESS PRACTICES AS THEY RELATE TO THEIR CLEC**  
13 **WHOLESALE CUSTOMERS.” IS IT A COMMON PRACTICE TO HAVE**  
14 **STATE COMMISSIONS DETERMINE DEPOSITS?**

15 A. I am not aware of this being a standard practice, at least not in Qwest’s fourteen  
16 state region. The more standard, and more reasonable practice, is to have  
17 Commissions involved in approving a set of rules and then making sure the parties  
18 abide by them. In this way, Commissions do not need to be involved in the day to  
19 day business relationship between the parties. This is in fact what has been done  
20 relative to Qwest’s proposed deposit requirements. As I noted previously, the  
21 “repeatedly delinquent” requirement was developed and reviewed by Commissions  
22 during the Section 271 workshops.

1

2 **Issue No. 5-13 – Increasing Deposits Based on Credit Reviews**

3 **Q. HOW DO YOU RESPOND TO MR. DENNEY'S CLAIM AT PAGE 55 THAT THE**  
4 **DEPOSIT LANGUAGE IN SECTION 5.4.7 OFFERS NO OBJECTIVE OR**  
5 **QUANTIFIABLE CRITERIA.**

6 A. I would suggest that judgment is appropriate for many business issues and  
7 relationships. Calculating credit risk is not a matter of black or white and is not a  
8 precise science. I would note that the CLEC always has the dispute option if it feels  
9 Qwest is treating it unfairly in a request for a deposit. Eschelon offers no evidence  
10 that this language, which was developed during the Section 271 process and is in  
11 the contracts of the majority of carriers, has caused problems. In the unlikely event  
12 that it does, Eschelon is fully capable of quickly seeking relief from this  
13 Commission.

14

15 **Q. IS MR. DENNEY CORRECT WHEN HE STATES ON PAGE 53 THAT IT IS**  
16 **QWEST'S POSITION THAT IT COULD READ SOMETHING IN THE**  
17 **PAPER AND SIMPLY INCREASE ESCHELON'S DEPOSIT?**

18 A. No. It is possible however that Qwest could read something in the paper that would  
19 lead it to question Eschelon's credit worthiness. Based on this information, Qwest  
20 could then perform a credit review. Should the review determine that there were  
21 sufficient credit concerns, the Qwest language would allow Qwest to request a  
22 deposit.

1

2 **Q. ON PAGE 53-54 MR. DENNEY ARGUES THAT IT IS NECESSARY TO**  
3 **CLARIFY THE SECTION 5.4.7 LANGUAGE TO MAKE IT CLEAR THAT**  
4 **THIS ONLY APPLIES TO INCREASING EXISTING DEPOSITS, NOT TO**  
5 **SITUATIONS WHERE NO DEPOSIT HAD BEEN REQUIRED**  
6 **PREVIOUSLY. DO YOU AGREE?**

7 A. Absolutely not. Eschelon's language undermines the purpose of the section which  
8 is to allow deposit requirements to reflect a change in circumstances. A change in  
9 circumstances may well warrant a deposit requirement despite the fact that a deposit  
10 had not been required previously.

11

12 **Q. ON PAGE 55 MR. DENNEY STATES THAT IT IS "REASONABLE AND**  
13 **CUSTOMARY" FOR THE COMMISSION TO HAVE A SAY IN THESE**  
14 **ISSUES BETWEEN AN ILEC AND CLEC. IN YOUR EXPERIENCE, IS IT**  
15 **REASONABLE AND CUSTOMARY?**

16 A. No. As I discussed in issue no. 5-12 above, it is customary to have Commissions  
17 involved in reviewing interconnection terms and, in fact, the deposit requirements  
18 at dispute here were developed and reviewed during the Section 271 process.  
19 However, it is not customary in this, or in other states, to have Commissions  
20 involved in setting deposit amounts.

21

22 **Q. ON PAGE 57 MR. DENNEY DISCUSSES CONCERNS ABOUT QWEST**  
REDACTED



1           **ENGAGING IN “GAMESMANSHIP” RELATED TO QWEST TIMING**  
2           **CREDIT REVIEWS TO ENSURE MAXIMUM DEPOSITS. DOES MR.**  
3           **DENNEY OFFER ANY EVIDENCE FOR THIS CONCERN?**

4           A.   No. As was just discussed, the Section 5.4.7 language is the agreements of the  
5           majority of CLECs. I am not aware of any of these carriers ever charging that  
6           Qwest has engaged in “gamesmanship” with this provision.

7

8           **Q. IN ARGUING FOR COMMISSION OVERSIGHT OF DEPOSIT**  
9           **REQUIREMENTS MR. DENNEY QUOTES FROM AN AT&T FILING IN**  
10           **NEBRASKA. PLEASE COMMENT.**

11          A.   I am not familiar with the issues in the docket which gave rise to AT&T’s filing. I  
12          would only note that AT&T has agreed to the same deposit language that Eschelon  
13          is disputing here.

14

15          **Q. DO YOU HAVE A FINAL COMMENT ON THE DEPOSIT AND BILLING**  
16          **ISSUES?**

17          A.   Yes. Telecommunications is a highly competitive and quickly evolving market.  
18          Telecommunications providers, including CLECs, have failed financially in the  
19          past, and likely will fail in the future. In such situations, CLECs, like any business,  
20          are often desperate to keep their business alive and will therefore take any action in  
21          an effort to remain afloat. This interconnection agreement needs to anticipate that  
22          possible scenario, and recognize that each week that Qwest is unable to protect

REDACTED

1           itself against an Eschelon business failure results in an additional \$1 million of bills  
2           to Eschelon (across the region) that go unpaid.

3  
4           Any creditor deserves to be in a position to protect itself against such losses. The  
5           measures that Qwest proposes are nothing new or draconian. Qwest has either  
6           implicitly or explicitly had these rights since its first interconnection agreement in  
7           Arizona. Even with these rights, Qwest faces significant challenges in minimizing  
8           unpaid CLEC debts.

9  
10          Eschelon's proposals ignore this reality and instead seek to water down  
11          Qwest's current ability to protect itself. Eschelon seeks to decrease  
12          Qwest's ability to collect its bills by requiring Qwest to clear hurdles such  
13          as waiting for commission review before discontinuing order processing  
14          (Issues 5-6) or demanding a deposit (Issues 5-11, 5-12, 5-13). Eschelon  
15          seeks to water down its obligation to pay bills by limiting its obligations to  
16          pay not to the amount of the bill, but rather an amount that is close to the  
17          amount billed. (Issue 5-8). Even then, Eschelon seeks to water down that  
18          obligation to re-define "repeatedly delinquent" in such a manner that it  
19          would only be obligated to pay its bills on time four months a year to  
20          avoid triggering a potential deposit requirement. (Issue 5-9).

1 Eschelon does not stop there. It proposes limiting Qwest's ability to seek  
2 a deposit further by attempting to limit that right to its weakened  
3 definition of "repeatedly delinquent" thereby eliminating all other  
4 possibilities where a deposit request would be appropriate (Issue 5-13).  
5 Even in that situation, Eschelon seeks to require Qwest to either seek  
6 Commission approval or wait for a Commission decision to demand a  
7 deposit. (Issue 5-11).

8  
9 The cumulative effect of these proposals is to make it nearly impossible for Qwest  
10 to take effective action to collect valid, undisputed bills owed by Eschelon. Such  
11 protections for Eschelon impose significant financial risk on Qwest. Imposing such  
12 a risk would only make sense if there were a very significant demonstration of need.  
13 Ten years of history under the Telecommunications Act demonstrate that no such  
14 need exists.

15  
16 **Issue No. 5-16 – Providing Copies of Protective Agreements**

17  
18 **Q. DO YOU AGREE WITH MR. DENNEY'S STATEMENT ON PAGE 59**  
19 **THAT PROVIDING COPIES OF SIGNED PROTECTIVE AGREEMENTS**  
20 **IS A COMMON PRACTICE?**

21 **A.** No. As I discussed in my responsive testimony, it may be a common practice in  
22 proceedings such as this one to provide copies of signed protective agreements.

1           However, what Eschelon is proposing here is very different from the issue of  
2           protective agreements in this proceeding and is not a common practice. The section  
3           5.16.9.1 language was developed jointly by Qwest and CLECs during the Section  
4           271 workshops and does not contain a requirement for providing CLECs copies of  
5           the signed protective agreements. I am not aware that any other CLEC has  
6           requested that Qwest provide copies of the agreements on an on-going basis as  
7           Eschelon is requesting here.

8  
9           **Q. MR. DENNEY ARGUES THAT ESCHELON IS NOT OFFERED**  
10           **PROTECTION UNDER THE AUDIT CLAUSES OF SECTION 18.1. DO**  
11           **YOU AGREE?**

12           A. No. Like the section 5.16.9.1 language the audit language came out of the Section  
13           271 workshops. Mr. Denney fails to demonstrate that these agreed to provisions do  
14           not provide adequate protection for Eschelon. The audit provisions, in conjunction  
15           with the stringent requirements set forth in section 5.16.9.1, provide Eschelon with  
16           ample protection.

17  
18           **Q. ON PAGE 59 MR. DENNEY STATES THAT IN THE MINNESOTA**  
19           **ARBITRATION PROCEEDING YOU DESCRIBED THE**  
20           **ADMINISTRATIVE BURDEN THAT THIS WOULD PUT ON QWEST AS**  
21           **BEING A CASE OF SIMPLY PUTTING A COPY OF THE SIGNED**  
22           **AGREEMENT IN THE MAIL. PLEASE COMMENT.**

1 A. Mr. Denney ignored my full answer that the burden would be created by the fact  
2 that job churn and the potential for others to opt into this agreement is what creates  
3 an administrative burden. It does create a burden, if every time someone changed  
4 jobs, Qwest were required to mail off a copy of the protective agreement to  
5 Eschelon and anyone else who opts into this agreement.

6

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

8

9 **Issue No. 7-18 and 7-19 – Provision of Transit Records for Bill Verification**

10

11 **Q. IS MR. DENNEY CORRECT WHEN HE STATES ON PAGE 61 THAT**  
12 **WITHOUT QWEST’S CALL RECORD DATA, THERE IS NO WAY TO**  
13 **VERIFY QWEST’S BILLING?**

14 A. No. As I noted in my responsive testimony, Eschelon has two sources of  
15 information that allows it to validate transit billing. First, Qwest’s monthly transit  
16 bills provide detail of transiting minutes by end office and provide the company  
17 code of the terminating carrier. Through a comparison with the recordings from its  
18 own switch, Eschelon can validate that Qwest transited these calls to the  
19 terminating carrier. In addition, presumably the terminating carrier is billing  
20 Eschelon for termination. Eschelon can therefore compare the details of the  
21 termination bill with the details of the Qwest transit bill to determine if there are  
22 inconsistencies.

1    **Q.    IN A FOOTNOTE ON PAGE 61 MR. DENNEY ARGUES THAT QWEST IS**  
2           **REQUIRED TO PROVIDE THE INFORMATION ESCHELON IS**  
3           **SEEKING UNDER THE PROVISIONS OF SECTION 21.8.4.3 OF THE**  
4           **INTERCONNECTION AGREEMENT. DO YOU AGREE?**

5    A.    No. Section 21.8.4.3 of the agreement reads as follows:

6                           **21.8.4.3 Investigation and Resolution of Dispute.** Both CLEC  
7                           and Qwest agree to expedite the investigation of any disputed  
8                           amounts, promptly provide all documentation regarding the  
9                           amount disputed that is reasonably requested by the other Party,  
10                          and work in good faith in an effort to resolve the dispute through  
11                          informal means prior to initiating any other rights or remedies. In  
12                          addition, where a dispute is based on summary records, the billing  
13                          Party shall determine by WTN all the cases where discrepancies  
14                          identified on a summary basis exist. If the Parties have not  
15                          resolved the dispute within thirty (30) Days of receipt of the notice  
16                          of dispute, the billing Party will provide the disputing Party with a  
17                          written status update. If at any point the billing Party concludes  
18                          that it will deny the dispute, the billing Party will provide to the  
19                          disputing Party a written statement of the denial and the reasons  
20                          and rationale for the denial. Qwest personnel involved in billing  
21                          and disputes shall have access to all Billing data that Qwest  
22                          provides to CLEC, in the format provided to CLEC (such as  
23                          BillMate®), to facilitate communication about Billing matters. In  
24                          the event of a Billing dispute, the Parties will endeavor to resolve  
25                          the dispute within sixty (60) Days of written notice of the dispute.  
26

27           As the section heading indicates, this section has to do with dispute investigation  
28           and resolution, not the ongoing provisioning of records which Eschelon is seeking  
29           in this issue. Not only does Eschelon already have the information available to  
30           verify the Qwest billing, as I just explained, Qwest has offered to work with  
31           Eschelon to provide some sample checking of selected end offices.

32

1 **Q. AT PAGE 61 MR. DENNEY ARGUES THAT ESCHELON SHOULD NOT**  
2 **HAVE TO PAY IN ORDER TO RECEIVE THE DETAILS BEHIND**  
3 **QWEST'S BILLS. PLEASE COMMENT.**

4 A. Qwest's billing does provide the details necessary to verify the billing. In my  
5 responsive testimony I provided a sample of a Qwest transit bill which provides  
6 detail of transiting minutes by end office and provides the company code of the  
7 terminating carrier. As I noted above, this information coupled with Eschelon's  
8 own information will allow for the necessary bill verification.

9

10

11 **VI. SECTION 22 DISPUTED ISSUES**

12

13 **Issue No. 22-88 – Rate Reciprocity**

14

15 **Q. ON PAGE 107 MR. DENNEY STATES THAT YOU ARE WRONG WHEN**  
16 **YOU STATE THAT EXHIBIT A NEED NOT REFER TO CHARGES**  
17 **FROM ESCHELON TO QWEST SINCE THEY ARE SPELLED OUT IN**  
18 **THE ICA. PLEASE COMMENT.**

19 Q. My point is that there is no need to make all of the rates in Exhibit A reciprocal.  
20 To the extent there are charges from Eschelon to Qwest, these charges are

1 specifically identified in the ICA. Mr. Denney makes my point when he cites the  
2 language from section 8.2.3.10:

3 **8.2.3 General Terms--Caged and Cageless Physical Collocation**

4 8.2.3.10 ...If, pursuant to the random audit, Qwest does not  
5 demonstrate non-compliance, *Qwest shall pay CLEC using the*  
6 *rates in Exhibit A for Additional Labor Other, for CLEC time*  
7 *spent, if any, as a result of Qwest's audit...*

8 This section of ICA makes it very clear what rates are to apply. Mr. Denney's  
9 claim that this provision is "clearly insufficient" to determine what rate Eschelon  
10 would charge Qwest is puzzling.

11  
12 **Issue No. 22-88(a) – Reference to CLEC Access Tariff**

13  
14 **Q. WOULD QWEST'S PROPOSED LANGUAGE REGARDING ACCESS**  
15 **RATES LEAD TO THE MISTAKEN CONCLUSION THAT A CLEC MUST**  
16 **CHARGE ACCESS RATES OUT OF QWEST'S TARIFF RATHER THAN**  
17 **THE CLEC'S OWN ACCESS TARIFFS AS MR. DENNEY ARGUES ON**  
18 **PAGE 109?**

19 A. No. In his direct testimony, Mr. Denney cited the language from the ICA  
20 concerning tariff access rates which reads as follow:

21 7.2.2.3.3.1 Notwithstanding any other provision of this  
22 Agreement, in the case of Exchange Access (IntraLATA Toll)  
23 traffic where Qwest is the designated IntraLATA Toll provider, or  
24 where Qwest has agreed to be a presubscribed IntraLATA Toll  
25 provider for other LEC end user toll Customers, *Qwest will be*



1                                    *responsible to CLEC for payment of CLEC Tariff access rates* for  
2 traffic terminating to CLEC's network. Qwest will also be  
3 responsible for traffic originating from CLEC's network for a  
4 CLEC End User Customer utilizing an intraLATA Toll-free  
5 service where Qwest is the provider of the intraLATA Toll-free  
6 service. (Emphasis added).

7  
8                    Given this clear language in the ICA that CLEC tariff access rates apply, it is hard  
9 to believe that the reference to the Qwest tariffs on the Exhibit A will lead to a  
10 mistaken conclusion.

11

12    **Issue No. 22-88(b)<sup>4</sup> – Right of Parties to Request Cost Proceeding**

13

14    **Q.    ON PAGE 109-110 MR. DENNEY ARGUES THAT THE LANGUAGE THAT**  
15                    **THE COMMISSION REJECTED IN THE AT&T ARBITRATION IS**  
16                    **SOMEHOW DIFFERENT THAN WHAT ESCHELON IS PROPOSING**  
17                    **HERE. WHAT LANGUAGE IS ESCHELON PROPOSING IN THIS ISSUE?**

18    A.    As I noted in my direct testimony, Eschelon's proposed language for section  
19                    22.4.1.3 reads as follow:

20                                    22.4.1.3 Nothing in this Agreement shall waive any right of either Party to  
21                                    request a cost proceeding at the Commission to establish a Commission-  
22                                    approved rate to replace an Interim rate.  
23

24    **Q.    WHAT LANGUAGE DID AT&T PROPOSE THAT THE COMMISSION**  
25                    **REJECTED?**

1 A. AT&T had proposed the following language under the section of the agreement  
2 dealing with interim rates:

3 22.4.1.3 Nothing in this Agreement shall waive any right of either Party  
4 to initiate a cost proceeding at the Commission to establish a Commission-  
5 approved rate to replace an Interim Rate.  
6  
7

8 I stand by my previous testimony that the Commission previously ruled on this  
9 language in the AT&T arbitration.  
10

11 **Issue No. 22-90 – Unapproved Rates**  
12

13 **Q. ON PAGES 111-112 MR. DENNEY EXPLAINS ESCHELON'S REVISED**  
14 **PROPOSAL FOR SECTIONS 22.6.1 AND 22.6.11. WHY IS QWEST**  
15 **OPPOSED TO THIS LANGUAGE?**

16 A. As I noted in my responsive testimony, Eschelon's language inappropriately  
17 attempts to broaden the language beyond Section 251 products and services. In  
18 addition, this language creates the possibility that Qwest will not be compensated  
19 for services it provides.

20 **VII. CONCLUSION**

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

22 A. Yes.