Exhibit T-___ (RAS-T-1)
Docket No. UT-033011
Witness: Richard A. Smith

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Petitioners, vs. ADVANCED TELECOM GROUP, INC.; et al. Respondents.	)	Docket No. UT-033011

TESTIMONY OF

Richard A. Smith

Eschelon Telecom of Washington, Inc.

August 31, 2004

Q. State your name and business address.

A. My name is Richard A. Smith and my business address is 730 2nd Avenue South, Suite 900, Minneapolis, MN, 55402. My business e-mail address rasmith@eschelon.com.

Q. By whom are you employed and in what capacity?

A. I am the President and Chief Executive Officer of Eschelon Telecom, Inc., the parent company of Eschelon Telecom of Washington, Inc.

Q. How long have you held that position at Eschelon?

A. Since August of 2003.

Q. What other positions have you held with Eschelon?

A. I started with Eschelon in October 1998 as Executive Vice President and Chief Financial Officer and was appointed to Chief Operating Officer in June 1999. In March 2000 I was promoted to President and Chief Operating Officer (COO) of the company.

Q. What did you do prior to coming to Eschelon?

A. Prior to joining Eschelon, I was Vice President of Financial Management for Frontier Corp. where I had been employed since 1972. While there I served in a variety of positions including: Vice President and Controller; Chief Information Officer; President of Information Technologies; Vice President of Midwest Telephone Operations; Network Plant Operations Director; and Director of Business Development.

Q. Please summarize your education.

A. I hold an Associates of Applied Science degree in Electrical Technology from the Rochester Institute of Technology, a BS degree cum laude in Electrical Engineering from the State University of New York at Buffalo, a Masters degree in Mathematics from the State University of New York at Brockport and an MBA from the University of Rochester's William E. Simon Graduate School.

Q. Please describe Eschelon.

A. Eschelon Telecom, Inc. was founded in 1996. Eschelon is a provider of integrated voice, data, Internet services and business telephone systems. We are headquartered in Minneapolis, Minnesota. We serve primarily small and medium sized businesses to whom we offer a comprehensive line of telecommunications and Internet products including local lines, long distance, business telephone systems, DSL, T-1 connections, network solutions and Web hosting. Eschelon has more than 900 telecommunications professionals and currently provides service to over 38,000 customers in Washington, Minnesota, Arizona, Utah, Oregon, Colorado and Nevada.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to present truthful testimony and evidence about the Eschelon agreements ("Agreements") in this case and related issues in accordance with the settlement agreement with Commission Staff dated August 12, 2004 ("Settlement").

Q. Has the Staff directed the content of your testimony?

A. No. While I do address each of the topics stated in the Settlement, this testimony would have been included in Eschelon's testimony to explain the circumstances of the Agreements, even if no Settlement had been reached with Staff.

Q. Please summarize your testimony

A. I will explain the nature of the business relationship between Eschelon and Qwest, and with other CLECs during the periods relevant to the Agreements. I will also explain the meaning of, and intent behind, those documents from Eschelon's perspective. I will discuss Eschelon's reasons for, and the circumstances surrounding, the execution of the Agreements, including any agreement to keep those documents confidential. In that context I will explain that Eschelon's concerns with Qwest's non-performance of its wholesale obligations under the Eschelon Interconnection Agreement ("ICA") at the time were key factors underlying Eschelon's decision to enter into the Agreements. I will explain how these agreements affected Eschelon's ability to complete. I will discuss how the agreements affected Eschelon's role in Commission Section 271 proceedings. Finally, I will discuss the effectiveness of these agreements and their impact on Eschelon. I will also sponsor as exhibits certain documents, which are consistent with my knowledge of, and understanding of, the issues between Eschelon and Qwest that I discuss throughout my testimony. The documents are:

Exhibit No.___ (RAS-2) July 20, 2000 letter to Judy Tinkham, regarding Eschelon's request to convert Eschelon's resold lines to UNE-P Pricing. This describes the failure of Qwest to make UNE-P conversions.

Exhibit No. ___ (RAS-3) August 15, 2000 E-Mail – UNE-P meeting notes. This document summarizes problems with UNE-P conversions.

Exhibit No.___ (RAS-4) Affidavit of F. Lynne Powers. This describes Eschelon's problems with UNE-P and UNE-E and the November 15, 2000 agreements.

Exhibit No. ___ (RAS-5) July 10, 2002 letter to Arizona Commissioners. This describes Qwest's attempts to squelch Eschelon participation in Section 271, CMP and other regulatory proceedings and retaliation against Eschelon for such participation.

Exhibit No.___ (RAS-6) June 24, 2000 letter to Arizona Commissioners. This explains the context of unfiled agreements and the agreement not to participate in Section 271 proceedings.

Exhibit No. ___ (RAS-7) Escalation letters. These show the many disputes, Qwest's lack of response and ultimate refusal to abide by the escalation process.

January 22, 2001 letter to Judy Tinkham
January 2, 2002 letter to Gordon Martin
February 4, 2002 letter to Gordon Martin
February 8, 2002 letter to Joseph Nacchio
February 15, 2002 letter from Joseph Nacchio
February 21, 2002 letter to Joseph Nacchio

Q. Describe the business relationship between Eschelon and Qwest at the beginning of 2000.

A. Eschelon was a competitive local exchange carrier ("CLEC") operating in competition with US WEST as well as other CLECs, in six states including Washington. Eschelon's

ICA with Qwest was approved by this Commission on August 21, 2000 in Docket No. UT-990385, after an arbitration of some issues. Eschelon initially competed by use of a resale-only business model by reselling Qwest services, usually Centrex, pursuant to our ICAs in the states in which we operate. However, it became apparent to me shortly after I joined the Company, that a resale-only business model offered insufficient gross margins to sustain our enterprise. Therefore, we needed to move from resale to a different business model or platform, in order to become profitable. This platform was based on the use of unbundled network elements ("UNEs"). By deploying switching facilities, Eschelon decided it could convert its on-net resale lines to UNE-loops (UNE-L). However we could not deploy switching facilities everywhere we served. We needed a solution for Eschelon's off-net resale lines. That solution appeared to be the UNE-P platform. Eschelon refers to customers and lines served through Eschelon's own switching facilities as "on-net" and customers and lines served through a UNE-P platform or resale as "off-net."

Thus, in early 2000 we were building out our network by deploying switches in each of our markets and building collocations in order to become a facilities-based CLEC. Our switch in Washington was turned up in July of 2000. At this time it was clear that Eschelon's entire business model (and economic success) was heavily dependent upon Qwest's provision of the UNE-P platform.

Q. What was your expectation regarding the UNE-P platform under your ICA with Qwest?

A. Eschelon's management expected that we would be able to obtain UNEs and a UNE-P platform at Commission-approved rates and to be able to convert customers from Qwest's resale platform to the UNE-P Platform in a manner that would not disrupt customer service. Simply put, we expected that we would obtain what the ICA (Part A, ¶ 21.1 and Att. 3, ¶ 1.2.2 and 18.1) and the Act said we were entitled to, which was the ability to purchase and provision UNE-P. Because UNE-P was to be offered at more favorable prices than resale, and because it would allow Eschelon to collect switched access charges, UNE-P was key to the economic viability of our company. We also knew that we would not be able to migrate all of our resale customers to UNE-L because we could not afford to deploy switches through ubiquitous collocations and loop cutovers were difficult, error-prone, and costly. Thus we could not rely entirely on a UNE-L platform even though we had made a substantial investment in a facilities buildout and to fund the sales, provisioning and other efforts required to utilize those facilities. Therefore, we had to rely heavily upon UNE-P. In sum, we expected to be able to operate through use of UNEs as contemplated by the Act and our ICA.

Q. What was your actual experience with Qwest over provision of UNE-P?

A. Qwest could not, or would not, provide the UNE-P services Eschelon was entitled to under its ICA and the Act. Qwest's wholesale service quality was poor, and not timely. Qwest also refused to cooperate on many issues, or to even address issues and complaints in a timely and constructive manner. Eschelon was forced to spend a lot of time and energy insisting that Qwest abide by the ICA and the Act. Even then, Qwest refused to do so and continued to not provide the service we were entitled to. Most significantly, Qwest would not provide UNE-P to Eschelon in any viable, meaningful way. The Affidavit that F. Lynne Powers (Exhibit No. ___ (RAS-4), filed with the Minnesota Commission, explains in detail Qwest's multiple failures regarding the provision of UNE-P and the consequences to Eschelon. Exhibit Nos. ___, ___ (RAS-2, RAS-3) also describe these failures.

Q. How would you describe Eschelon's relationship with Qwest in 2000 and 2001?

A. The Qwest/Eschelon relationship in 2000 and 2001 was contentious and frustrating because Qwest provided very poor service and we were insisting upon better service. The key issue was Qwest's failure to make UNE-P available, notwithstanding the fact that our ICA required Qwest to make UNE combinations available to competitors, such as

Eschelon. We had the right to purchase UNE-P at TELRIC rates, which were much more favorable to Eschelon than resale rates. In addition, by using a UNE-P platform, Eschelon could receive switched access revenues that were available from a resale platform. Qwest, however, frustrated both our on-net and our off-net service offerings. For instance, Qwest was unable to hot cut lines from resale to UNE-L. This resulted in service outages to our customers, many of whom left our service. Qwest also failed to provide clear, adequate directions for ordering UNE-P and processed our test orders poorly.

Qwest also provided inadequate, incorrect billing information, erroneously rejected orders or processed them poorly. On the one hand, we concluded Qwest was not competent to provide the services we tried to order (and were entitled to). On the other hand, we thought that Qwest had every motive to make life as difficult as it could for us because Eschelon is a competitor. In any event, Qwest's inability or unwillingness to provide us with proper service clearly inhibited our ability to compete.

Q. Why were Qwest's actions so important to Eschelon?

A. For two reasons, first we were (and are) extremely dependent upon Qwest to provide us with the necessary facilities and services to compete. Second, Qwest is a key competitor for our customers.

Qwest could literally put us out of business in a very short time frame by refusing to comply with the ICA or the Act, simply by continuing to provide poor service. Thus, we had to prod and cajole them into providing better service. I felt as if I was poking a sleeping giant, who could crush me if I was not careful in my dealings.

Q. Why did Eschelon believe it was necessary to negotiate with Qwest for things it felt it was already entitled to under the ICA?

A. During this critical time period it was clear that Qwest would not, or could not, voluntarily comply with the ICA regarding Eschelon's most crucial requests absent some change in the relationship with Qwest. The only alternative of costly and potentially lengthy litigation was unattractive and unrealistic from a business standpoint. As a businessman I try to work problems out rather than take them to litigation before a commission or court. Because Eschelon was trying to run a business and survive in a very competitive and challenging industry, Eschelon simply could not afford to spend a year or more in litigation in six different states (followed by appeals) to enforce its ICAs and incur the wrath of Qwest in the meantime. By the time any relief would be granted, it may well be too late for Eschelon to survive.

Therefore, we hoped that we could work things out with Qwest in a way that would allow us to go forward and compete consistent with our ICA. Eschelon was encouraged when, upon the merger of US WEST and Qwest, Qwest promised to make wholesale service improvements. Qwest executives indicated that Qwest wanted to deal with wholesale customers on a "business to business" basis. Exhibit No. ___ (RAS-6) is a letter from Eschelon to the Arizona Corporation Commission dated June 24, 2002, which further explains Qwest's "new" approach to CLECs. I welcomed that approach and took Qwest executives at their word while I continued to push for the products and services we needed. Unfortunately, we soon discovered we could not rely on Qwest to comply with the ICA without more detailed, specific processes in place to implement the agreement. Therefore we not only had to spell out in some detail what we were entitled to under the ICA, we had to actually tell Qwest how to accomplish it.

Q. Why were the Agreements between Eschelon and Qwest that remain at issue in this case designated as confidential and not filed with the Commission?

A. The Agreements were not filed with this Commission because Qwest insisted that they be kept confidential and Qwest assured us that they need not be filed. I was told by Qwest management that Qwest's legal and business people had evaluated the agreements and determined they need not be filed. I had always operated with the understanding that the filing of an ICA amendment was always the ILEC's responsibility, so I relied upon Qwest's judgment on this issue. The only time we did file an ICA (Ex. TLW-75) was because Qwest asked us to do so because Qwest's legal department was extremely busy at the time. Normally, Qwest kept tight control over ICA filings. Eschelon did nothing to discourage the filing of these agreements. In fact, Eschelon encouraged Qwest to file these agreements but ultimately, with respect to the Agreements here, Qwest left Eschelon with a simple choice – either agree to the confidentiality of an agreement, or have no agreement. It was clear that keeping the Agreements confidential was extremely important to Qwest and that, without a promise of confidentiality, Qwest would not enter into any agreement concerning the pricing, escalation, or other service issues that were critical to Eschelon's business. Eschelon simply had no choice but to accede to Qwest if it wanted an agreement.

Q. The first agreement in this case involving Eschelon is a Stipulation (Agreement 1A) as part of a settlement related to the Qwest/US WEST merger entered into in February of 2000. Why did Eschelon oppose the Qwest/US WEST merger in Minnesota early 2000?

A. The service we were receiving from Qwest/US WEST at that time was very poor. Qwest had also taken the position that the service quality provision in our Minnesota ICA did not provide for the payment of service quality credits, a position we disagreed with. At the time I did not believe that US WEST had much incentive to improve its service to competitors like Eschelon. I was concerned that the merger would only further divert US WEST's attention away from its wholesale obligations. Therefore, we took the position that the Minnesota Commission should either deny the merger or require certain actions by Qwest to improve its wholesale services as a condition of the merger. We hoped that either the Commission would order certain service quality measures, or Qwest would agree to them rather than risk rejection of the merger or the imposition of more onerous conditions on approval of the merger.

Q. Under Agreement 1A, Eschelon agreed to remove its opposition to the merger. Why did Eschelon enter into this agreement?

A. We believed that our service quality problems would be addressed by this agreement, thus removing any reason to oppose the merger. Qwest agreed to settle some disputed issues, and to put processes in place to address some of the service issues that we were concerned about, by agreeing to implement certain service quality measures known as DMOQ's and SPMs. Qwest also agreed to establish a dedicated provisioning team.

Q. Why was Agreement 1A not filed as an amendment to the ICA?

A. Because Qwest did not want to file it, insisting that it need not be filed. Qwest insisted that because Agreement 1A was a settlement agreement, it would have to be confidential, and need not be filed.

Q. Why did you rely upon Qwest for this decision?

A. As I stated above, I understood that the ILEC had the responsibility for deciding what agreements should be filed, and for making sure that they are filed, consistent with industry practice. Furthermore, because Qwest had agreements with numerous CLECs in several states, we thought Qwest had more experience in this respect, while Eschelon had none. Therefore, we relied upon Qwest to make those judgments because we believed it was Qwest's duty to do so. Finally, because Qwest pressured Eschelon to agree to confidentiality, Eschelon was in no position to file it.

Q. Did Qwest exert the same pressure as to all of the remaining Agreements involving Eschelon in this proceeding?

A. Yes.

Q. Why did Eschelon request a dedicated provisioning team as provided for in Agreement 1A?

A. Due to serious provisioning problems, we needed Qwest to take direct action to solve those problems so that we could obtain the services and the quality of service we believed we were entitled to under our ICA. We hoped that a dedicated provisioning team would rectify some of the problems we were encountering.

Q. What costs did Eschelon incur regarding the dedicated provisioning team?

A. Under the terms of Agreement 2A, which superseded the dedicated provisioning provisions of Agreement 1A, we paid Qwest $9,206.00 per month, and provided office space and furnishings, five telephone lines, a fax machine and parking to the Qwest dedicated provisioning team. We estimate the total cost exceeded $10,000 per month.

Q. How much did Eschelon actually pay Qwest for the dedicated provisioning team?

A. Eschelon paid Qwest a total of $ $233,933 for charges related to the dedicated provisioning team, which provided us with what we were already entitled to under our ICA.

Q. What was the purpose of Agreement 2A?

A. It was an agreement to basically set out the details of the dedicated provisioning team that was addressed in 1A.

Q. Why was this not filed as an amendment to the ICA?

A. Qwest stated that it did not need to be filed. We were informed by Qwest that this was a new process that would be available to Eschelon for a limited time for the purpose of testing it out to see if Qwest wanted to offer it to other CLECs. In effect, we were told we were guinea pigs to test out this dedicated provisioning team concept, so long as we agreed to pay for it. Qwest said such a trial agreement need not be filed.

Q. Did Eschelon believe it was obtaining some additional benefit under this agreement?

A. No. We believed that we were receiving no "additional" benefit but might ultimately obtain the level of service we were already entitled to under our ICA. It was no “benefit” to have to pay for the level of service that we were entitled to under the ICA. Given the competitive pressures we faced, and our dependence upon Qwest, we needed to get some help in addressing our service quality issues. We felt a dedicated provisioning team was a constructive way to achieve this goal.

Q Eschelon and Qwest entered into a group of agreements on November 15, 2000 (Nos. 3A, 4A, 19A and 21A). Why were these agreements entered into at the same time?

A. These agreements need to be reviewed in the context of events around that time. We had started down the path of "business to business" solutions with Agreements 1A and 2A, based upon Qwest's assurances that our concerns would be best addressed in the manner outlined in their letters. The Qwest/US WEST merger had just been completed, and Qwest told us it needed time to become a more "CLEC-friendly wholesale business" (to use Qwest's term). As the Escalations and Business Solutions Letter (Agreement 3A) shows, Eschelon's management believed in the promise of a better relationship under new management and chose to use the non-litigious path offered by Qwest, as the most prudent business course of action.

Some members of Eschelon's management had worked for incumbent local exchange carriers ("ILECs") themselves and had been through changes in ownership and management, and knew that the related transitions can take time. Therefore, Eschelon's management was open to working with Qwest and, at some point, supporting Qwest's Section 271 bid, if Qwest addressed our concerns.

Qwest publicized its new "business to business" approach as a new approach by a new company. Qwest talked to other CLECs about this approach. For instance, shortly before the Eschelon agreements in November of 2000, Qwest's Chairman and Chief Executive Officer, Joseph Nacchio, publicly announced an agreement with McLeod, which he characterized as a significant positive development. Around the same time Mr. Nacchio told the Regional Oversight Committee ("ROC") that Qwest was going to go "behind closed doors" and work out differences with CLECs, rather than litigate them. Representatives of Qwest repeatedly said to Eschelon that they wanted to work on a "business-to-business" basis with Eschelon, rather than litigate issues. I wanted to do likewise. Qwest management also continually attempted to distinguish Qwest from the former company, US WEST.

Qwest's message to the CLEC community at that time appeared to be that if a CLEC did not agree with Qwest's new approach, it may be left out, and more "agreeable" competitors would be allowed to obtain a competitive advantage by separate agreements with Qwest. Eschelon felt it had no choice but to accept Qwest's new "business to business" approach if Eschelon wanted to compete.

Q. What was Eschelon's relationship with McLeod at the time?

A. McLeod was (and is) an aggressive competitor, with similar target markets and business plans. Qwest provided both companies with pretty similar treatment as reflected in the November, 2000 agreements of Eschelon and McLeod, which were, we later discovered, identical in most important respects. The filed UNE-E amendment (Ex. TLW-75) was also virtually the same as the UNE-M amendment. Eschelon clearly wanted to be treated by Qwest in the same manner as McLeod.

Q. What was Eschelon's relationship with other CLECs?

A. Eschelon has no specific relationship with other CLECs except as competitors. Because we target a very specific market that consists of small to medium businesses, CLECs with a different geographical or customer market are often not direct competitors. Our business plan is different than many other CLECs -and thus we may purchase different services from Qwest on a wholesale basis than those CLECs. While we will cooperate with other CLECs when we can, we also compete vigorously with them within our target market.

Q. Why did Eschelon agree to these November 15, 2000 agreements?

A. As I explained previously and as set forth in several exhibits to my testimony, Qwest's failure to make UNE-P available had harmed Eschelon significantly prior to November 15, 2000. We needed to finally obtain the benefits of UNE-P, such as lower costs and access revenues that Eschelon was entitled to since its switches went into operation. Therefore, the November 15, 2000 agreements in total were viewed as the best means at that time of achieving that goal. The November 15, 2000 agreements culminated in the so-called "UNE-E Amendment," which was the publicly filed and a Commission-approved amendment to our ICA (Ex. TLW-75). It provided for a type of UNE Platform but at a higher rate than UNE-P. It allowed Eschelon to collect switched access revenues that were unavailable with resale. Most importantly to Eschelon, Qwest promised that Eschelon would no longer have the significant provisioning problems associated with UNE-P, and that Qwest would develop a tool to convert Eschelon's resale base to UNE-E on a mass basis without any negative impact on our customers.

Q. Why were there several November 15, 2000 agreements instead of just one?

A. Because Qwest insisted that it be done that way. Qwest also had control over document preparation.

Q. Please explain Agreement 3A.

A. It was intended to memorialize a series of discussions between Qwest and Eschelon concerning their intentions to establish a better business relationship for future dealings. We "agreed to agree" to work on developing an Implementation Plan. Eschelon hoped that such a plan could help Eschelon obtain the kind of service and processes it was entitled to under its ICA in a constructive, cooperative manner. Agreement 3A proposed expedited escalation procedures to provide access to Qwest's CEO to deal with our frustration over Qwest's lack of meaningful response to Eschelon's issues.

Q. Did this escalation procedure prove effective?

A. No, basically Qwest acted as it did before this agreement. Despite the provision requiring Qwest's CEO to participate in the escalation process, when we tried to invoke it, Mr. Nacchio refused to meet with me. (Exhibit No. ___ (RAS-7).

Q. Why did Eschelon agree not to oppose Qwest in Section 271 proceedings and agree not file complaints against Qwest, as part of these agreements?

A. Eschelon is a small CLEC with little bargaining power in comparison with Qwest. As I have explained throughout, Eschelon's primary objective with Qwest was to get the service Eschelon required in order to remain a viable business – which service Qwest was obligated to provide under the ICA. Therefore, Echelon's primary reason to oppose Qwest's Section 271 efforts was to remedy all of the service problems, and other wholesale problems Eschelon was experiencing with Qwest. Eschelon was not required to participate in Section 271 proceedings. Qwest presented the November 15, 2000 agreements as a means of achieving our business objective. Therefore, the primary basis for Eschelon's objection in the Section 271 proceedings would evaporate – if Qwest lived up to its ICA obligations. Thus, Eschelon was willing to agree to remove its Section 271 opposition and to not file complaints with regulators.

An additional business pressure was the fact that we suspected Qwest was negotiating agreements with other CLECs such as McLeod, and we wanted to make sure that we were not prejudiced for failing to "agree," when other CLECs did. In short – Eschelon felt it had to work things out with Qwest to get better service by more timely, actual implementation of our ICA at better rates, in order to compete.

Q. Did Qwest insist, as a condition of the November 15, 2000 Agreements, that Eschelon remove its Section 271 opposition?

A. Yes. Exhibit 5 further explains Qwest insisted that we drop any Section 271 opposition. This exhibit also shows that Qwest tried to stop our involvement in non-Section 271 proceedings in Arizona that involved service quality issues. When Eschelon tried to participate in these regulatory proceedings, Qwest became quite hostile, tried to exclude Eschelon and retaliated against Eschelon because of its opposition to Qwest in those proceedings.

Q. Please explain Agreement 4A.

A. This agreement settled Eschelon's claim to UNE-P and UNE-P prices and its related claim to switched access revenues. In addition, it bound Eschelon to make a minimum amount of purchases between October 1, 2000 and September 30, 2001. Eschelon was also required to provide consulting and network-related services to Qwest, if requested by Qwest, in exchange for payment in an amount equal to 10% of the aggregate billed charges for purchases by Eschelon over a five-year period.

Q. Did Eschelon provide consultant services to Qwest under this agreement?

A. We offered but Qwest expressed little interest, and never requested such services.

Q. Please explain Agreement 19A.

A. This is a letter from Qwest regarding an ongoing dispute about daily usage files, information that Eschelon relied upon to be able to bill switched access to IXCs. It reflected an attempt to implement the details of Eschelon's right to bill for switched access as a facilities-based provider.

Q. Please explain Agreement 21A.

A. This is a purchase agreement under which Eschelon agreed to purchase at least $150 million worth of services from Qwest over the five-year term of the agreement. It was a key part of, and related to, the package of agreements entered into on November 15, 2000, which again were viewed by Eschelon as inducements to Qwest to perform its ICA obligations.

Q. Did the November 15, 2000 agreements accomplish what Eschelon had hoped?

A. No. Eschelon was very disappointed that many of the benefits expected by Eschelon did not materialize. As is outlined in Exhibit No. ___ (RAS-4), we continued to experience many major problems with the conversion to UNE-E that significantly reduced its value to Eschelon. In addition, we were forced to sue Qwest in Federal Court here in Washington over huge billing problems. That suit is ongoing. We received switched access revenues that were less that expected because Qwest did not provide complete and accurate records from which to bill IXCs. Eschelon has had to expend a considerable amount of time and money to try to correct this problem in order to collect the access charge revenues to which it is entitled. To date those efforts have been unsuccessful. We also experienced significant problems with other portions of the November 15, 2000 agreements resulting in many disputes. Ultimately, Qwest simply stopped complying with the agreements, and refused to pay the amounts due to Eschelon.

In summary, the benefits Eschelon received from the November 15, 2000 Agreements were not as anticipated. For instance, Qwest refused to abide by the escalation process in the Agreements. It did not provide the promised provisioning and billing support for UNE-E. It did not agree to an implementation plan to address Eschelon's quality of service issues. Finally Qwest stopped paying Eschelon under those agreements. However Eschelon, for its part, did honor its agreement not to bring complaints before the Commission or participate in Section 271 proceedings.

Q. Please explain the document that has been designated as Agreement 5A (letter to Rick Smith from Audrey McKenney, July 3, 2001.)

A. This is a letter to me from Audrey McKenney of Qwest reflecting the ongoing dispute between the parties over the reporting of switched access minutes by Qwest that Eschelon used to bill IXCs for switched access, a matter that was addressed in Agreement 4A. In this letter Qwest agreed to increase the credits to Eschelon that were first addressed in Agreement 4A, and Eschelon agreed to not seek payments due from Qwest for DMOQs in Minnesota. The parties also agreed to undertake a joint audit to try to resolve the matter. It also reflects an agreement by Qwest to pay Eschelon $2.00 per line for missing access records for Qwest's intraLATA toll traffic terminating to customers served by an Eschelon switch.

Q. Why was this agreement necessary?

A. Eschelon knew that the access minutes allocated to Eschelon by Qwest were substantially understated, but Qwest refused to acknowledge the problem or correct their system. Qwest simply was unwilling or unable to provide correct bills. Eschelon spent over $500,000 to have an accounting firm do an audit of Qwest's access billing, which showed that Qwest was greatly under-reporting the switched access minutes that should have been allocated to Eschelon. Even after this audit Qwest refused to acknowledge the scope of the problem and insisted upon a second joint audit as reflected in this letter. Qwest refused to credit Eschelon with the appropriate access minutes. This is but another example where Eschelon was forced to devote its limited resources to obtain from Qwest something as basic as the accurate reporting of switched access minutes.

Q. Please explain Agreement 6A.

A. This is the Implementation Plan that had been discussed in earlier agreements. It was supposed to be a broad blueprint for how Qwest and Eschelon would deal with each other on a day-to-day basis. It included an escalation chart for service-related issues, performance measures, conversions and other issues. This was another attempt to obtain the kind of service that Eschelon was entitled to. As explained in Exhibit No. ___ (RAS-6), the plan was never successfully implemented.

Q. Please explain Agreement 12A.

A. This is a settlement agreement that was filed with the Commission. Among other things it terminated several of the other agreements in this case that I discussed above (Nos. 3A, 4A, 6A, 21A).

Q. Why was this done?

A. First, Qwest insisted upon it. Second, Eschelon agreed because it was clear that the previous agreements had proven to be no longer viable because Qwest refused to abide by them. Therefore, Eschelon elected agreed to "terminate" the agreements in order to start over with a different approach to its solving problems with Qwest.

Q. Was this agreement filed as an ICA amendment?

A. Yes, Section 6 of the agreement required that it be filed in all of the states where it was applicable.

Q. Has Eschelon entered into any ICAs with Qwest since Agreement 12A was entered into that have not been filed with the Washington Commission?

A. No. The last Eschelon agreement listed on Exhibit A that was not filed was Agreement 6A, which was entered into over three years ago, and which was terminated by 12A almost two and one-half years ago. Since then all agreements with Qwest that meet the definition of an ICA have been filed.

Q. Have Eschelon's practices changed regarding agreements with Qwest?

A. Yes. Eschelon now reviews each agreement with Qwest in light of the FCC's definition of an ICA and this Commission's ruling that CLECs have an obligation to file ICAs and their amendments. Eschelon is careful to now make its own independent judgment about whether such an agreement should be filed. It is now a standard part of our process to assume that any agreement with Qwest about which there is any doubt as to whether it is an ICA, should be filed.

Q. Do you have any opinion whether competition in Washington was affected by the unfiled agreements of Eschelon and other CLECs?

A. Because there are so many agreements with so many different CLECs, it is very difficult to know. Since McLeod and Eschelon had very similar agreements, their competitive positions as to each other probably were not harmed by their agreements. Whether other CLECs would have been able to qualify to opt-in or be interested in doing so under the conditions in those agreements I do not know and don't have a basis for judging.

In our experience even when agreements are filed they have proven difficult to opt-into. For example, we have pursued opting into the McLeod UNE rate agreement that was filed in October of 2002. Qwest repeatedly denied our request and we ended up in disputes with Qwest before several state Commissions. We have received

Commission rulings in three states allowing us to opt-in and are awaiting a fourth almost two years after the McLeod amendment was filed. This has required a lot of time, money and effort to opt into an ICA amendment that was publicly filed from the start.

Q. Did the unfiled agreements of other CLECs harm Eschelon?

A. We have not done an analysis of that. It certainly may be true that it would have been helpful to have some of the terms in those agreements. I suspect that we could not, or would not want to, meet all of the related terms and conditions of many of them, just as other CLECs would likely not want to meet many of the terms and conditions of the McLeod or Eschelon agreements.

The one unfiled agreement that we did try to opt-into involved an MCI and Qwest agreement regarding EELs (Ex. TLW-31). However, it has been determined by the Minnesota Public Utilities Commission that this unfiled agreement was a settlement agreement, not an interconnection agreement, and therefore, not available for opt-in.

Q. What is your present position as to the Eschelon/Qwest agreements in this case?

A. Obviously, in retrospect I regret that any agreements that are deemed to be ICAs were not filed with the Commission. As stated, we believed that the duty to determine what agreements needed to be filed – and to file them – fell on Qwest and not on Eschelon. Eschelon had no intention of violating the law and we did not believe we were doing so at the time. We did not believe that many of these were ICAs as we understood that term at the time and we did not believe that we had a duty to file such agreements. Had we the chance to do things over again with what we know now we would undoubtedly do things differently by filing the agreements at issue here.

Q. Does Eschelon intend to follow the Commission's rules in the future?

A. Yes. Eschelon has always followed the Commission's rules and has never been found to have violated those rules. Eschelon intends to comply with the Commission's rules, state statutes and the Act at all times. Eschelon will follow the Commission's rules regarding the filing of ICAs, as well as all other applicable rules and abide by the terms of its Settlement in this case.

Q. Does this conclude your testimony?

A. Yes.