

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

Docket No. UT-063061

EXHIBIT MS-9

TO THE

SURREBUTTAL TESTIMONY OF MICHAEL STARKEY

ON BEHALF OF ESCHELON TELECOM, INC.

APRIL 3, 2007

1 EVIDENTIARY HEARING - VOLUME 1 - OCTOBER 16, 2006
2 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
3 OF THE STATE OF MINNESOTA
4
5

6 In the Matter of the Petition of Eschelon Telecom, Inc.,
7 for Arbitration of an Interconnection Agreement with
8 Qwest Corporation Pursuant to 47 U.S.C. 252(b)

9 OAH DOCKET NO. 3-2500-17369-2
10 PUC DOCKET NO. P5340,421/IC-06-768
11
12

13 Minnesota Public Utilities Commission
14 350 Metro Square Building
15 121 Seventh Place East
16 St. Paul, Minnesota
17

18 Met, pursuant to Notice, at 9:00 in the
19 morning on October 16, 2006.
20
21

22
23 BEFORE: Judge Kathleen Sheehy
24 Judge Steve Mihalchick
25 REPORTER: Janet Shaddix Elling, RPR

Page 2

1 APPEARANCES:
 2 JASON TOPP, Attorney at Law,
 3 200 South Fifth Street, Room 2200, Minneapolis,
 4 Minnesota 55402, and MELISSA K. THOMPSON, Attorney
 5 at Law, 1801 California Street, 10th Floor, Denver,
 6 Colorado 80202, and PHILIP J. ROSELLI, Attorney at
 7 Law, Kamlet, Shepherd & Reichert, LLP, 1515 Arapahoe
 8 Street, Tower 1, Suite 1600, Denver, Colorado
 9 80202, and JOHN DEVANEY, Attorney at Law, Perkins,
 10 Coie, 607 14th Street NW, Washington, D.C. 20005,
 11 appeared for and on behalf of Qwest Corporation.
 12 GREGORY MERZ, Attorney at Law,
 13 Gray, Plant, Mooty, 500 IDS Center, 80 South Eighth
 14 Street, Minneapolis, Minnesota 55402, appeared for
 15 and on behalf of Eschelon Telecom.
 16 JULIA ANDERSON, Assistant Attorney
 17 General, 1400 Bremer Tower, 445 Minnesota Street,
 18 St. Paul, Minnesota 55101, appeared for and on
 19 behalf of the Department of Commerce.
 20 ALSO PRESENT:
 21 Kevin O'Grady, PUC Staff
 22
 23
 24 WHEREUPON, the following proceedings were
 25 duly had and entered of record, to wit:

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1 (Whereupon, Exhibits 1 through 4 were
 2 marked for identification by the court
 3 reporter.)
 4 JUDGE SHEEHY: Okay. Good morning,
 5 everyone.
 6 We are here this morning to start the
 7 hearing in the Matter of Eschelon's Petition for
 8 Arbitration with Qwest Corporation of an
 9 Interconnection Agreement Pursuant to 47 U.S.C.
 10 Section 252(b) of the Telecommunications Act of
 11 1996.
 12 I'm Kathleen Sheehy, I'm one of the ALJs
 13 who's been assigned to work on this matter, and with
 14 me is Judge Steve Mihalchick, who will also be
 15 working on it.
 16 And we can start off by noting
 17 appearances of the parties. Mr. Topp.
 18 MR. TOPP: Jason Topp, from Qwest, and
 19 with me is Melissa Thompson, also from Qwest.
 20 JUDGE SHEEHY: Do you have the same
 21 address, Ms. Thompson, or a different one?
 22 MS. THOMPSON: Yes, I have a different
 23 address. It's 1801 California Street, 10th Floor,
 24 Denver, Colorado 80202.
 25 JUDGE SHEEHY: Okay. Mr. Merz.

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1 its mistakes other than in the context of wholesale
2 service order processing?
3 A I'd have to see the order before I could answer.
4 Q You don't know?
5 A I don't know without looking at the order. My
6 reading of the order was that our obligation was on
7 wholesale order process.
8 Q And do you recall that the Commission just didn't
9 address other kinds of mistakes that Qwest might
10 make?
11 A Again, I'd have to look at the order. I don't think
12 so, I'd have to look at the order.
13 Q You don't think the Commission did address other
14 types of mistakes?
15 A I'm not sure.
16 Q The process for requesting an acknowledgment of
17 mistakes that Qwest has agreed to that should be
18 included in the ICA, that's not something that Qwest
19 has put through its CMP to be included in the PCAT;
20 is that right?
21 A Not in this form, no.
22 Q And Qwest hasn't agreed to the closed language that
23 we have at 12.1.4 and the subparts, Qwest hasn't
24 agreed to that language in any other state other
25 than Minnesota; is that right?

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1 A That's correct.
2 Q Now, in your rebuttal, at page 40, line 10.
3 A Yes. Under Qwest technical publications?
4 Q Your rebuttal.
5 A Oh, my rebuttal.
6 Q Reply, rebuttal, it's the second round of testimony.
7 You're discussing here on page 40 the Commission
8 order that we've been talking about; is that right?
9 A Yes.
10 Q And at line 10 you say, The settlement was between
11 Qwest and Eschelon; do you see that?
12 A Yes.
13 Q Now, it was not a settlement, it was actually a
14 Commission order that required Qwest to acknowledge
15 its mistakes; correct?
16 A Yes.
17 Q Now, the acknowledgment of mistakes process that
18 Qwest is agreeable to having included in the ICA is
19 one that would only be available to Eschelon and to
20 CLECs that opted into the Eschelon contract; is that
21 right?
22 A Yes.
23 Q And it's a process that would only be available in
24 Minnesota; is that right?
25 A Yes.

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1 Q Would you describe that as a one-off process, as
2 you've used that phrase in your testimony?
3 A In this case, yes, I would.
4 Q And that's a one-off process that Qwest is agreeable
5 to; correct?
6 A We agree because of the results of the case, yes.
7 Q Go to your surrebuttal at page 18. And I'm focusing
8 on the testimony that begins at line 24 and then
9 goes over to page 19 through line 7.
10 A Okay. My surrebuttal, page 18, starting where?
11 Q Starting at line 24.
12 A Okay.
13 Q And then carrying onto the next page through line 7.
14 So that question and answer there.
15 A Okay.
16 Q You are there responding to an example that was
17 provided by Mr. Webber regarding what he described
18 as an improper communication between Qwest and one
19 of Eschelon's customers; is that right?
20 A Yes.
21 Q And you say there in your answer that begins
22 on page -- I'm sorry, line 5 of page 19, Because
23 Qwest provides services to this customer as well as
24 Eschelon, Qwest has a right to communicate with its
25 customer; do you see that?

Page 17

1 A Yes.
2 Q Now, you understand that the concern that Mr. Webber
3 was raising, that you were responding to, was not
4 just a fact in communication, but what Qwest told
5 Eschelon's customer. You understand that, don't
6 you?
7 A Yes, I do.
8 Q Now, what Qwest told Eschelon's customer that was of
9 concern was that the customer's service was being
10 disconnected at Eschelon's request; correct?
11 A I'd have to go back and look at the exhibit for the
12 specifics.
13 Q You would acknowledge that the letter that
14 Mr. Webber refers to in his testimony was in fact a
15 mistake on the part of Qwest; correct?
16 A Without reviewing the exhibit I'd say I think so.
17 I'd have to look at the exhibit.
18 Q Why don't you go to, actually, Ms. Johnson's
19 testimony, it's Exhibit BJJ-21.
20 A All right.
21 Q And I could tell you which -- and BJJ-21 is part of
22 Ms. Johnson's rebuttal testimony?
23 A Yes.
24 Q That exhibit is the text of an e-mail from Jean
25 Novak; correct?

Page 22	Page 24
<p>1 Q Now, this was in your surrepley, you were aware at 2 the time you did your surrepley that Eschelon had 3 revised its language for 12.1.5.5; correct? 4 A I'm not sure. 5 Q If you could go to Mr. Webber's direct testimony. 6 A Okay. 7 Q And I'm looking at page 69. 8 A Okay. 9 Q And you see there at lines 16 through 23 of 10 Mr. Webber's direct testimony at page 69 Eschelon's 11 revised proposal for 12.1.5.5; correct? 12 A Yes. 13 Q And he has added to that provision, or otherwise to 14 initiate discussions of its products and services 15 with CLEC's end user customer; correct? 16 A Yes. 17 Q You say in your surrebuttal at page 21, lines 19 18 through 21, if a customer asks a Qwest 19 representative directly and on his or her own 20 initiative about Qwest's products and services, the 21 representative has a right to answer; correct? 22 A Yes. 23 Q And Eschelon's proposal, as reflected in 24 Mr. Webber's direct testimony, would allow a Qwest 25 employee to answer a communication initiated by the</p>	<p>1 of Qwest's business; correct? 2 A Yes. 3 Q And Qwest's tariff includes expedite terms; is that 4 right? 5 A Yes. 6 Q Now, in your surrebuttal at page 23, lines 10 7 through 23, the discussion there involves a 8 comparison of Qwest's retail expedite service to the 9 expedite service that Qwest offers to CLECs; is that 10 right? 11 A Yes. 12 Q And you conclude there that because retail customers 13 would pay more than CLECs to receive service in the 14 same time frame, that the service that Qwest 15 provides to CLECs is superior; is that right? 16 A Yes, that's one basis for superior service, yes. 17 Q And because it's in your view superior service, you 18 believe that expedite service is not an unbundled 19 network element, or access to unbundled network 20 elements; is that correct? 21 A And both because we have examples of shorter 22 intervals for CLECs versus retail customers, but 23 also because what we are measured on for the 24 provisioning of a UNE, giving a CLEC a meaningful 25 opportunity to compete is based on our standard</p>
Page 23	Page 25
<p>1 customer; correct? 2 A Well, that's sort of the reverse of what the 3 language says. The language says the Qwest 4 technician can't initiate the discussion. 5 Q And you don't understand that to mean, then, that if 6 the customer does initiate a discussion, the Qwest 7 customer -- the Qwest technician can have the 8 communication? 9 A That should be the result. 10 Q Now to jump to a different issue. It's expedites, 11 issue 12-67. The issue here concerns the terms 12 under which Qwest will provide Eschelon with 13 expedited service; is that right? 14 A Yes. 15 Q And expedited service concerns providing service 16 more quickly than would ordinarily be the case under 17 the regular interval; is that right? 18 A Yes. 19 Q Now, in your surrebuttal at page 23, and I'm looking 20 in particular at lines 6 through 8, you characterize 21 expedited service as a superior service; is that 22 right? 23 A Yes. 24 Q Now, expedited service is a service that Qwest 25 provides to its retail customers as a routine part</p>	<p>1 intervals, that's what we're measured on, and 2 expedite shortens the standard interval. That makes 3 it superior to what we're measured on for giving a 4 meaningful opportunity to compete. 5 Q So if I understand, there are two reasons. The 6 price difference; is that right? 7 A The price difference resulting from the shorter 8 interval in the first place, yes. 9 Q Now, I want to focus now on that first thing, the 10 price difference, just for a minute. You would 11 agree that the tariffed rate for DS1 private line 12 service, not expedited, is higher than the 13 Commission-approved rate for a DS1 UNE loop; right? 14 A I imagine it is, I don't know that for sure. 15 Q You would not conclude, based on the fact that the 16 price is higher for the private line than it is for 17 the loop, that a private line -- a DS1 private line 18 isn't -- I'm sorry, let me start again. 19 You would not conclude based on that 20 price difference that the DS1-capable loop isn't a 21 UNE; would you? 22 A It's not based on the price that we're claiming it's 23 not a UNE, so that doesn't follow. 24 Q And I understood you to say that there were two 25 reasons, one was the price difference, and then the</p>

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1 fact that you're measured on installation intervals?
 2 A We're measured on installation intervals for UNEs as
 3 a basis for whether the CLEC is given a meaningful
 4 opportunity to compete. On the price difference
 5 we're claiming that CLECs are actually getting this
 6 superior service, which we also offer to our retail
 7 customers, more cheaply than our retail customers
 8 because their intervals are shorter, yes.
 9 Q So the price difference is what makes it a superior
 10 service?
 11 A That's part of it, but it's not really because of
 12 the price difference, it's because of a shorter
 13 interval that results in a lower price.
 14 Q You would not claim that the fact that there's a
 15 difference in price means that the lower priced
 16 service is a superior service for purposes of
 17 whether that service is a UNE?
 18 A No. That's not what I'm saying.
 19 Q Okay. Now, Qwest modified its expedite service
 20 through CMP; is that correct?
 21 A Yes. Several times.
 22 Q And one way that it was modified was that the no
 23 additional fee expedite that was available under
 24 emergency circumstances was no longer available for
 25 expediting the loop order; is that right?

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1 A For designed services a loop is one, yes.
 2 Q No CLEC supported that change; is that right?
 3 A I don't think I would agree with that.
 4 Q Was there any CLEC that said we want to pay a charge
 5 for something that we used to be getting for free?
 6 A No, I wouldn't put it that way, no.
 7 Q But Qwest did it anyway, even though no CLEC was
 8 asking for that?
 9 A No, but Qwest found that it had to do that so that
 10 all orders wouldn't be expedited because the system
 11 was being abused.
 12 Q And not only did no CLEC ask for that change, no
 13 CLEC was in favor of that change; correct?
 14 A I would say that if there was a CLEC in favor they
 15 didn't speak up.
 16 Q And the ones that did speak up objected to the
 17 change?
 18 A Yes, I would agree with that.
 19 Q You agree with me that a \$200 per day expedite rate
 20 is not a cost-based rate; correct?
 21 A It's not intended to be.
 22 Q You agree that it doesn't cost Qwest any more to
 23 expedite the service by four days than it does by
 24 two days; would you agree with that?
 25 A No, I wouldn't.

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1 Q Can you explain why?
 2 A Well, I would defer to Ms. Million to explain how
 3 these costs are done.
 4 Q Okay. So that's her issue, I should ask her about
 5 that?
 6 A Yes.
 7 Q Fair enough. I'm going to talk with you now about
 8 the PSN, that's the pending service order
 9 notification, and it's issue 12-70, ICA sections
 10 12.2.7.2.3.
 11 The PSN is a notice that Qwest provides
 12 to Eschelon that Eschelon can use to confirm that
 13 Qwest's internal order complies with the order that
 14 Eschelon has made; is that right?
 15 A To Eschelon and any other CLEC that has subscribed,
 16 yes.
 17 Q And the reason -- that kind of verification, the
 18 reason Eschelon does that kind of verification is
 19 because if there is an error in the Qwest internal
 20 order, Eschelon and Eschelon's customer won't get
 21 what they want; correct?
 22 A That may be one reason, yes.
 23 Q And in fact an error may even result in a customer
 24 losing service altogether; correct?
 25 A That's a possibility. It would depend on how the

Page 29

1 order was written.
 2 Q Now, Eschelon's proposal relating to the PSN is
 3 that Qwest continue to provide at least the data in
 4 its service and equipment and listings sections; is
 5 that right? Continuing to provide the data it's
 6 providing now in those sections?
 7 A From those sections, yes.
 8 Q Eschelon's proposal doesn't require Qwest to provide
 9 anything more than it's providing now; correct?
 10 A The current proposal doesn't, that's correct.
 11 Q And Eschelon in fact revised its proposal to make
 12 that crystal clear; isn't that right?
 13 A Yes.
 14 Q Eschelon's proposal also doesn't permit Qwest from
 15 providing information in addition to the information
 16 that it provides now; correct?
 17 A Correct.
 18 Q And it doesn't require the PSN to be in any
 19 particular format; does it?
 20 A I'm not sure I would agree with that.
 21 Q Well, if you'd turn to section 12.2.7.2.3.
 22 A Yes.
 23 Q And if you could tell me what language there you
 24 believe requires the PSN to be provided in some
 25 particular format?

Page 34	<p>1 your testimony; correct?</p> <p>2 A Yes, you're right.</p> <p>3 Q Was that testimony just in error?</p> <p>4 A Not well worded. It goes into detail on the</p> <p>5 processing or handling of a fatal rejection notice.</p> <p>6 Q It goes into detail about what will happen when</p> <p>7 Qwest makes a mistake in issuing a fatal rejection</p> <p>8 notice?</p> <p>9 A Yes.</p> <p>10 Q 12.2.7.2.6.1, that's the provision just above the</p> <p>11 provision we've been talking about; do you see that?</p> <p>12 A Yes.</p> <p>13 Q The black line there is agreed upon closed language;</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q And that describes what happens if a CLEC receives a</p> <p>17 fatal rejection notice?</p> <p>18 A Yes.</p> <p>19 Q It talks about what the CLEC has to do?</p> <p>20 A Yes.</p> <p>21 Q Would you agree with me that 12.2.7.2.6.2 is</p> <p>22 effectively the counterpart of the preceding</p> <p>23 provision that talks about what the CLEC has to do?</p> <p>24 A Yes.</p> <p>25 Q Now, Eschelon's proposal, 12.2.7.2.6.2, Qwest has</p>	Page 36	<p>1 reflect the reason why the due date might be missed;</p> <p>2 is that right?</p> <p>3 A Yes.</p> <p>4 Q Now, a jeopardy might be the fault of Qwest or it</p> <p>5 might be the fault of the CLEC or it might be the</p> <p>6 fault of the CLEC customer; is that right?</p> <p>7 A Or it might be because facilities aren't available.</p> <p>8 There's a list of reasons.</p> <p>9 Q A jeopardy that's caused by the CLEC or the CLEC's</p> <p>10 customer is classified as a customer not ready</p> <p>11 jeopardy; is that right?</p> <p>12 A Generically, I would say, yes.</p> <p>13 Q And those are sometimes referred to as CNR</p> <p>14 jeopardies; is that right?</p> <p>15 A Yes.</p> <p>16 Q Now, one consequence of a CNR jeopardy is that</p> <p>17 Eschelon has to supplement its order in order to</p> <p>18 request a later due date; is that right?</p> <p>19 A Yes.</p> <p>20 Q Okay. And the minimum due date is three days from</p> <p>21 the date the supplemental order is placed; is that</p> <p>22 right?</p> <p>23 A I think that's only under specific circumstances, I</p> <p>24 don't believe that's always true. I think that's</p> <p>25 for designed orders.</p>
Page 35	<p>1 not proposed any alternative language for that</p> <p>2 provision; is that correct?</p> <p>3 A That's correct. Although I would point out the</p> <p>4 entire proposal was Eschelon's proposal, both</p> <p>5 paragraphs.</p> <p>6 Q And you were agreeable to the part that said what</p> <p>7 CLECs had to do, but not agreeable to the part that</p> <p>8 said what Qwest had to do?</p> <p>9 A Well, we were trying to come to agreement on some of</p> <p>10 these paragraphs, we didn't want this kind of</p> <p>11 processing detail in the first place.</p> <p>12 Q And so your proposal with respect to what Qwest will</p> <p>13 do when it rejects an order in error is to send that</p> <p>14 off to the PCAT; is that right?</p> <p>15 A Yes. That's where the processing details are dealt</p> <p>16 with.</p> <p>17 Q I'm going to shift gears again now and talk about</p> <p>18 jeopardy notices, and those are sections 12-71, 72,</p> <p>19 and 73. I'm sorry, issues 12-71, 72, and 73, it's</p> <p>20 section of the ICA 12.2.7.2.4.4 and its subparts.</p> <p>21 Qwest gives a jeopardy notice when a due</p> <p>22 date for an order is in danger of being missed; is</p> <p>23 that right?</p> <p>24 A Yes.</p> <p>25 Q And there are various kinds of jeopardies that</p>	Page 37	<p>1 Q Loops would be a designed order?</p> <p>2 A Loops, yes.</p> <p>3 Q And FOC is a firm order confirmation; is that right?</p> <p>4 A Yes.</p> <p>5 Q And that is a notice to the CLEC of the due date for</p> <p>6 an order; correct?</p> <p>7 A Among other things, yes.</p> <p>8 Q Looking at your surreply testimony at page 33, lines</p> <p>9 8 through 13 -- 12, I guess.</p> <p>10 A Yes.</p> <p>11 Q You say there that Eschelon's proposal does not</p> <p>12 reflect Qwest's current practice because it adds the</p> <p>13 phrase at least a day to when Qwest will provide a</p> <p>14 FOC following a Qwest jeopardy?</p> <p>15 A At least a day before, yes.</p> <p>16 Q Other than that phrase, at least a day before, is</p> <p>17 Eschelon's proposal consistent with Qwest's</p> <p>18 practice?</p> <p>19 A Current practice, yes, except for that sentence.</p> <p>20 Q So you agree with me that Qwest's current practice</p> <p>21 is to provide the CLEC with an FOC after a Qwest</p> <p>22 facilities jeopardy has been cleared; is that right?</p> <p>23 A Yes.</p> <p>24 Q And the reason for that is you want to let the CLEC</p> <p>25 know that the CLEC should be expecting to receive</p>

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1 the circuit; right?

2 A Yes.

3 Q And the CLEC needs to have personnel available and

4 it needs to also perhaps make arrangements with the

5 customer to have the premises available; right?

6 A Yes.

7 Q Now, you would agree with me that if Qwest doesn't

8 provide an FOC, it can't reasonably expect that

9 Eschelon would be ready to accept the circuit; is

10 that right?

11 A Unless Qwest is already in contact with the

12 technician on site.

13 Q Well, the FOC is the agreed upon process on which --

14 A Yes, it is.

15 Q You have to let me finish my question.

16 A Sure.

17 Q The FOC is the agreed upon process by which Qwest

18 informs Eschelon of the due date for a circuit?

19 A Yes.

20 Q Now, you are aware that Eschelon has complained

21 about Qwest's failure to follow its process and

22 provide an FOC prior to trying to deliver the

23 circuit; is that right?

24 A I'm aware that has happened in this testimony, yes.

25 Q You weren't aware of any complaints that Eschelon

Page 39

1 had raised in the past regarding that issue?

2 A If you mean a formal complaint to a commission, no.

3 Q And I didn't necessarily mean that. I meant

4 Eschelon has approached Qwest to say you're not

5 complying with your process regarding an FOC, you're

6 aware that those kinds of communications have taken

7 place?

8 A Yes.

9 Q Go to your Exhibit RA-30, which I think is probably

10 part of your reply testimony in the second round.

11 A Do you mean the trade secret version?

12 Q Yes, I do. And I don't think I'll be asking any

13 trade secret questions so I think we'll be fine.

14 A Okay.

15 Q You prepared this exhibit to respond to an exhibit

16 that was included in Ms. Johnson's testimony; is

17 that right?

18 A Yes.

19 Q And in Ms. Johnson's testimony she provided 23

20 examples of instances where an FOC either wasn't

21 provided at all or wasn't provided at least a day

22 before Qwest tried to deliver the circuit; is that

23 right?

24 A Right.

25 Q And what you're doing in RA-30 is you're providing

Page 40

1 some additional narrative that you believe explains

2 the situation; is that right?

3 A It was additional narrative available on these

4 orders through our systems, yes.

5 Q Now, you would agree with me that of the 23

6 instances identified by Ms. Johnson in her

7 testimony, 15 of those instances involved Qwest

8 failing to provide any FOC at all; correct? And I

9 mean following the original jeopardy notice.

10 A I'm not sure. I'd have to count how many of those

11 that would apply to.

12 Q Well, you can go ahead and do that.

13 A Thank you. I would say that's definitely true for

14 eight, for five it's not clear.

15 JUDGE SHEEHY: Okay. Can I just note for

16 the record that to answer that question

17 Ms. Albersheim --

18 THE WITNESS: I did mark the exhibit.

19 JUDGE SHEEHY: -- looked at the exhibit

20 and made some checkmarks and doodles, so if any ink

21 marks are on the exhibit those are hers.

22 THE WITNESS: Sorry about that.

23 JUDGE SHEEHY: That's all right, just so

24 it's clear where it came from. So you're saying

25 eight?

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1 THE WITNESS: Eight.

2 JUDGE SHEEHY: Eight of 23, no FOC

3 provided.

4 BY MR. MERZ:

5 Q And you say five aren't clear?

6 A Five aren't clear.

7 Q What about the other two?

8 A Well, this is my tally.

9 Q All right, fair enough.

10 A What I found were notes in these that indicated

11 whether or not an FOC was sent. To be definitive

12 about it we'd have to go back to our systems and

13 look for the FOC messages in our archives.

14 Q And so you're looking at your notes to figure out

15 whether or not an FOC was sent?

16 A Yes.

17 Q Now, when you went back and prepared this chart, you

18 didn't go back to whatever you had to look at to

19 figure out whether an FOC had been sent?

20 A We didn't go back to the FOC archives, we went to

21 the technician's notes about what happened in these

22 instances.

23 JUDGE SHEEHY: Okay. And that's

24 Exhibit 30?

25 MR. MERZ: RA-30.

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1 JUDGE SHEEHY: To your -- is it reply or
 2 rebuttal, what are we calling it?
 3 THE WITNESS: Reply.
 4 JUDGE SHEEHY: Reply? Okay.
 5 THE WITNESS: Yes.
 6 BY MR. MERZ:
 7 Q Now, one of the things that you say is that
 8 Eschelon's language regarding jeopardy notices is
 9 unnecessary because the issue is already
 10 sufficiently covered by the PIDs; is that right?
 11 A Well, that's part of it. It's also because these
 12 procedures are handled through our PCATs.
 13 Q One of the PIDs that you say addresses this issue is
 14 PID OP-4 regarding installation intervals; is that
 15 right? And if you want to refer to something, you
 16 identify it in your direct testimony at page 68.
 17 A Okay.
 18 Q If that helps.
 19 A Yes.
 20 Q Now, PID OP-4 -- you've actually attached the PIDs
 21 to your testimony as Exhibit RA-14; is that right?
 22 To your direct testimony?
 23 A Yes.
 24 Q PID OP-4 excludes from its coverage orders with
 25 customer requested due dates greater than a current

Page 43

1 standard interval; is that right? And I'm looking
 2 at Exhibit RA-14, page 39.
 3 A And what was your question?
 4 Q My question is whether PID OP-4 excludes orders with
 5 customer requested due dates greater than the
 6 current standard interval?
 7 A Yes.
 8 Q Now, in the case of the CNR jeopardy Eschelon has to
 9 supplement its order to request a new due date;
 10 isn't that right?
 11 A Yes.
 12 Q So any time there is a CNR jeopardy, the due date is
 13 always going to be longer than the standard
 14 interval; isn't that right?
 15 A I wouldn't say always. I'd say probably.
 16 Q Almost always?
 17 A Yeah.
 18 Q Unless the initial due date was expedited pretty
 19 significantly?
 20 A The initial -- I'm not sure I'd agree with that.
 21 Q Well, suffice it to say that OP-4 is going to
 22 exclude almost all of the instances where there's a
 23 CNR jeopardy; correct?
 24 A That's likely, yes.
 25 Q Okay. And then in your surrebuttal at page 34 you

Page 44

1 identify another PID, PO-5; is that right?
 2 A Yes, in a different context.
 3 Q Okay. And this one you're saying is a PID that
 4 provides Qwest with an incentive to provide firm
 5 order confirmation on time; is that right?
 6 A Yes.
 7 Q Now, PO-5 measures the time between the order and
 8 the FOC, not the time between the FOC and when --
 9 how far in advance of the delivery date that FOC is
 10 provided; is that right?
 11 A Right.
 12 Q Let me ask it again. My question was terrible.
 13 PID PO-5 measures the time between the
 14 order and the FOC; correct?
 15 A Yes.
 16 Q What Eschelon is concerned about with these jeopardy
 17 notice provisions is that it gets enough notice in
 18 advance of when Qwest attempts to deliver the due
 19 date -- deliver the service; correct?
 20 A Yes.
 21 Q PID PO-5 wouldn't address that issue at all; would
 22 it?
 23 A I wouldn't say at all. It is a measure of whether
 24 or not an FOC is delivered on time. It can include
 25 whether or not it's delivered on time for a jeopardy

Page 45

1 order.
 2 Q But it doesn't measure that, it doesn't measure --
 3 A Not specifically, no, it's part of -- it's a subset.
 4 Q And it doesn't measure whether the FOC provides the
 5 CLEC with notice in advance of when the circuit is
 6 delivered?
 7 A That's not its intent, its intent is to measure the
 8 delivery of the FOC.
 9 Q Now I want to talk with you about loss of completion
 10 reports, which is issue 12-76, and it's ICA sections
 11 12.3.7.1.1 and 12.3.7.1.2. And it might be helpful
 12 if you just turn to those sections, 12.3.7.1.1.
 13 A I'm there.
 14 Q Okay. Eschelon's proposal describes the minimum
 15 amount of information that must be contained in the
 16 loss of completion reports; is that right?
 17 A For Eschelon's request, yes.
 18 Q And it doesn't prevent Qwest from providing
 19 information in addition to the minimum amount of
 20 information that's described there; is that right?
 21 A That's correct.
 22 Q And Eschelon's proposal doesn't require the loss of
 23 completion report to be in any particular format;
 24 does it?
 25 A No, but it does require those reports with that

Page 54

1 A Yes.

2 Q The time that you're referring to is the time of the

3 one-word change; right?

4 A The timing is coincidental, yes. And as I said up

5 above, Mr. Hubbard explains that there were

6 differences -- first of all, in the word

7 conditioning and what that meant, but also other

8 events took place at the same time. And in fact

9 when he showed me that e-mail I believe that even

10 Qwest employees were a bit confused as to cause and

11 effect.

12 Q Did you talk with Ms. Dubuque about her e-mail?

13 A No. I'm not sure she's still employed at Qwest.

14 Q Did you talk to anybody that was involved in

15 investigating Eschelon's held orders in the mid-2003

16 time frame?

17 A Yes.

18 Q Who did you talk to?

19 A Well, several different people. There were a number

20 of meetings discussing this to find out exactly what

21 happened.

22 Q You refer in your testimony to construction being

23 outside of process; is that right?

24 A Yes. And I can't get more specific, it would have

25 to be Mr. Hubbard.

Page 55

1 Q So Qwest changed its PCAT in order to conform to its

2 process? Do you know whether that's the case?

3 A The CRUNEC PCAT?

4 Q Yeah.

5 A I don't think that's correct. I believe what Qwest

6 corrected was its process itself.

7 Q There was a one-word change made to the CRUNEC PCAT?

8 A Yes.

9 Q And the reason for the change was because Qwest was

10 constructing out of process; is that right?

11 A I believe it was intended to be a clarification.

12 The out of process was a different issue. That's

13 what I'm saying, several things were happening at

14 the same time.

15 Q When you say at the same time, what do you mean by

16 that? In the mid-2003?

17 A Yes.

18 Q In your reply testimony at page 24, lines 8 through

19 9, you say this whole issue was the result of the

20 fact that Qwest was receiving conflicting feedback

21 from its CLEC customers; correct?

22 A Yes.

23 Q And in support of that claim you cite a comment by

24 Eschelon that was made in CMP; is that right?

25 A Yes. But we've changed issues a little bit. This

Page 56

1 is a discussion about whether or not rates are dealt

2 with in ASCENT, not just about CRUNEC.

3 Q Well, in the preceding question and answer you're

4 talking about a percentage decline in Eschelon's

5 held orders in response to Mr. Starkey saying that

6 held orders went up; correct?

7 A Yes.

8 Q And then in the next question and answer you're

9 saying this whole issue was the result of the fact

10 that Qwest was receiving conflicting feedback?

11 A Yes, that answer is in response to my question, in

12 which Mr. Starkey states on page 56 of his testimony

13 that rates are outside the scope of CMP. So in this

14 discussion I'm speaking about rates.

15 Q The particular comment that you reference in your

16 testimony on page 24 is a comment that was made in

17 September of 2004; correct? And it's attached as

18 Exhibit RA-25, if you'd like to look at it.

19 A Yeah, let me look. Yes.

20 Q You would agree with me that a change that Qwest

21 noticed and Eschelon commented on in September of

22 2004 did not have the effect of causing Eschelon to

23 experience an increase in held orders in July of

24 2003?

25 A That's not what this -- this response in my question

Page 57

1 and response was about.

2 Q That just wasn't what you were intending?

3 A That's not what I was speaking about, no.

4 MR. MERZ: If I could have just a minute.

5 I don't have any further questions for the witness.

6 Thank you.

7 JUDGE SHEEHY: Ms. Anderson.

8 MS. ANDERSON: Thank you.

9 CROSS-EXAMINATION

10 BY MS. ANDERSON:

11 Q Good morning, Ms. Albersheim.

12 A Good morning.

13 Q Let me refer you to your direct testimony at page 3,

14 please. I'm looking specifically at lines 10

15 through 12. You state, do you not, that in this

16 testimony, meaning your direct testimony, you state,

17 quote, I will demonstrate that the underlying theme

18 of these issues is an attempt by Eschelon to freeze

19 Qwest's process and procedures in the parties'

20 contract, thus undermining the change management

21 process, or CMP. Did I read that correctly?

22 A Yes.

23 Q I have several questions just to explore your view

24 with respect to the effect of Eschelon's proposed

25 language on several issues. All right?

Page 90

1 compared to this language and would likely be
 2 rejected if they conflict with the way we do it
 3 today.
 4 Q Ms. Anderson mentioned, or she asked you, you know,
 5 do other CLECs want this same language, you know,
 6 would they be willing to accept the same language
 7 since it's Qwest current practice. Is that true for
 8 all of these issues, including, for example, we did
 9 touch on jeopardies, would that be true for
 10 jeopardies, for example?
 11 A Well, first of all, what Eschelon proposes for
 12 jeopardies is not our current practice. And I am
 13 not certain that CLECs would all agree to hold
 14 the -- require that an FOC be sent at least a day
 15 before the new due date because that could cause an
 16 order to be delivered late.
 17 Q With respect to the exhibit that Mr. Merz -- and I
 18 think it was Mr. Merz referred to, that was
 19 submitted by Bonnie Johnson, I think it was BJJ-23.
 20 Maybe -- I think I'm off on the 23. This has to do
 21 with the 23 examples in her exhibit with respect to
 22 jeopardies and FOCs.
 23 A Yes.
 24 Q I think Mr. Merz had you look at that exhibit.
 25 A Yes.

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1 Q So what would the ramification be, even with respect
 2 to those examples, if the Commission adopted
 3 Eschelon's proposed language?
 4 A Well, depending on the date in which the service was
 5 delivered, if it was delivered on time, in this case
 6 on the due date, it would have been forced to be
 7 late, it would be delivered a day after the due
 8 date, and I can't imagine that all CLECs would want
 9 that kind of delay built in because that then forces
 10 them to be late with delivering service to their end
 11 user customers. And the ultimate goal is to be on
 12 time with delivery. And what seems to have been
 13 missed in reviewing these examples is that there was
 14 communication ongoing between Qwest and the CLEC
 15 technicians and that helped get the service
 16 delivered.
 17 MS. THOMPSON: That's all I have. Thank
 18 you.
 19 JUDGE SHEEHY: Mr. Merz.
 20 MR. MERZ: Thank you, Your Honor.
 21 RE-CROSS-EXAMINATION
 22 BY MR. MERZ:
 23 Q We were just talking about the jeopardy issue.
 24 Really we're not talking about a jeopardy issue,
 25 we're talking about a classification of jeopardy

Page 92

1 issue; correct?
 2 A Partly. We're also talking about a procedure for
 3 delivering an FOC in response to a jeopardy.
 4 Q Isn't it the case that under Eschelon's language the
 5 issue is, if Qwest fails to provide the FOC at least
 6 a day before delivery, it won't classify the
 7 jeopardy as a CNR jeopardy if the CLEC isn't able to
 8 take the circuit? Isn't that the issue that the
 9 Eschelon language is designed to deal with?
 10 A No, I disagree. Because the classification of the
 11 jeopardy happens at the time that the jeopardy is
 12 issued, and we're talking about when an FOC is
 13 delivered in response to a jeopardy, so these are
 14 two different things.
 15 Q Just to make sure we understand the sequence of
 16 events. Qwest gives an initial jeopardy notice
 17 saying we don't have facilities, we don't believe
 18 we're going to be able to deliver on the due date.
 19 A Okay.
 20 Q That's the first thing that happens. The second
 21 thing that happens is Qwest then discovers it has
 22 facilities, it is going to be able to deliver, and
 23 the Qwest process at that point is to provide an
 24 FOC; correct?
 25 A I think we're missing some steps, but I would say

Page 93

1 yes. The process includes an FOC, yes.
 2 Q And the reason the process includes an FOC is
 3 because Qwest needs to tell the CLEC to be ready to
 4 expect the circuit?
 5 A Yes, that's the formal way of notification, yes.
 6 Q And what Eschelon's language is doing, at least in
 7 part, is saying if you don't give that FOC at least
 8 a day before you're ready to deliver the circuit,
 9 and then we're not able to take the circuit, you're
 10 not going to call that a CNR; correct?
 11 A No.
 12 Q That's not correct?
 13 A No, because that would require a change in the
 14 jeopardy status later. The jeopardy is classified
 15 when the jeopardy is issued.
 16 Q There's not a separate jeopardy if Qwest then tries
 17 to deliver the circuit, it doesn't treat that as a
 18 CNR jeopardy?
 19 A Oh, I see. If you're talking about a subsequent
 20 jeopardy, yes, that would be a CNR jeopardy.
 21 Q Well, and if Qwest clears the jeopardy and tries to
 22 deliver the circuit and the CLEC is not ready, Qwest
 23 is going to treat that as a CNR jeopardy; correct?
 24 A Yes.
 25 Q And what Eschelon is saying is, look, if you haven't

Page 94

1 told us the circuit is coming, you can't treat that
 2 as a CNR jeopardy; right?
 3 A Yes.
 4 Q And Qwest disagrees with that; is that correct?
 5 A We don't disagree with the notion that a CNR
 6 jeopardy should be assigned appropriately.
 7 Q And if the CLEC doesn't have adequate notice that
 8 the circuit is being delivered, adequate notice
 9 consisting of an FOC, then you would agree that a
 10 CNR jeopardy is not appropriate; correct?
 11 A Yes.
 12 Q And you would also agree that not only do you need
 13 the FOC, but you need the FOC in enough time to be
 14 able to act on it; correct?
 15 A I would agree with that. I would submit, though,
 16 that in the examples provided we only found three
 17 cases where we classified a subsequent jeopardy as a
 18 CNR, in error, and that is mostly because the
 19 service was delivered. And communication was
 20 happening between Qwest and the CLEC technicians.
 21 Q In all of the examples identified by Ms. Johnson,
 22 the 23 examples that you reviewed, all of those were
 23 instances that Qwest classified as CNR jeopardies;
 24 correct?
 25 A Are you talking about jeopardies in the first

Page 95

1 instance or subsequent jeopardies?
 2 Q At any point.
 3 A I'm not certain on that. I'd have to go back and
 4 look at the data. I understood that a little bit
 5 differently.
 6 Q Would you agree that if Qwest didn't provide an FOC
 7 following an initial jeopardy, that it would be
 8 improper to subsequently categorize the CLEC's
 9 inability to take the circuit as a CNR jeopardy?
 10 A If you're speaking of in a subsequent jeopardy, yes.
 11 Q And if Qwest comes to deliver the circuit and the
 12 CLEC can't take it, that's a subsequent jeopardy;
 13 correct? That's the way Qwest treats it?
 14 A Yes.
 15 Q And if the CLEC doesn't have notice and isn't able
 16 to take the circuit, Qwest treats that as a CNR
 17 jeopardy under its current process; correct?
 18 A The second jeopardy, yes.
 19 Q And you would agree that that's not proper, if the
 20 CLEC hasn't received an FOC in adequate time to be
 21 able to act on it; correct?
 22 A According to procedure, yes.
 23 Q That's Qwest's procedure?
 24 A Yes.
 25 Q Now, you would agree with me that if you provided an

Page 96

1 FOC nine minutes before attempting to deliver a
 2 circuit that that wouldn't be adequate notice;
 3 correct?
 4 A I don't think we're looking at all the
 5 circumstances, because in those situations in that
 6 Exhibit --
 7 Q Are you able to answer my question?
 8 A It might be adequate notice if we're in
 9 communication and on site with the technician, which
 10 was the case in some of these circumstances.
 11 Q Are you saying that the CLEC ought to be relying on
 12 something other than the official notice, the FOC
 13 that it receives from Qwest, as the indication of
 14 when the circuit is going to be delivered?
 15 A For a formal process, no. But it also doesn't make
 16 sense if we're in communication with each other and
 17 the circuit can be accepted not to install the
 18 circuit and have it done on time.
 19 Q You understand Eschelon is not saying you should
 20 delay the circuit in order to give us an FOC, what
 21 they're saying is if you don't give us an FOC don't
 22 treat it as a CNR jeopardy?
 23 A That's not spelled out in these terms.
 24 Q So we disagree about that?
 25 A Yes, we do disagree.

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1 Q That's not your reading. Why don't you refer to
 2 section 12.2.7.2.4.4.1.
 3 A You're going to have to say that again.
 4 Q Yeah, I thought I would. 12.2.7.2.4.4.1.
 5 A Okay.
 6 Q That section describes two specific types of
 7 jeopardies; correct?
 8 A Yes.
 9 Q And what this language is saying is that for these
 10 two types of jeopardies Qwest will not characterize
 11 a jeopardy as a CNR or send a CNR jeopardy to a CLEC
 12 if a Qwest jeopardy exists, Qwest attempts to
 13 deliver the circuit and Qwest does not send an FOC
 14 to the CLEC after the Qwest jeopardy occurs but
 15 before Qwest attempts to deliver the circuit; do you
 16 see that?
 17 A Yes.
 18 Q And what that says is if you don't give us our FOC
 19 you're not going to treat it as a CNR jeopardy?
 20 A That's what that says.
 21 Q And you understand that there's additional language
 22 that has been proposed that says we need to have the
 23 FOC at least a day before?
 24 A Right. And that additional language is not our
 25 current process. This language reflects our current

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1 process.

2 Q And then it goes on to say that if Qwest does try to

3 deliver the circuit, the CLEC will nonetheless use

4 its best efforts to accept the circuit; correct?

5 A And that's what happened in most of the examples

6 that you provided, yes.

7 Q And so those are instances where the circuit was

8 delivered on time, but Qwest treated it as a CNR

9 jeopardy; is that right?

10 A No. We only found three instances where we

11 inappropriately treated it as a CNR jeopardy.

12 Q When you say inappropriately, what --

13 A Not according to our current procedure. Part of the

14 problem with that exhibit is that it includes the at

15 least a day before provision as a part of its

16 assessment of whether or not things were

17 appropriately categorized, and in only three cases,

18 according to our current procedure, did we err.

19 Q Would you agree with me that if Qwest didn't provide

20 an FOC following a jeopardy prior to delivering the

21 circuit that that should not be treated as a CNR

22 jeopardy?

23 A A subsequent jeopardy should not be treated as a CNR

24 jeopardy. And in that exhibit we found three cases

25 where we did that.

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1 Q You had testified previously regarding the oversight

2 review process?

3 A Um-hum.

4 Q If you would refer to your Exhibit RA-1, page 115.

5 This describes the oversight review process?

6 A Um-hum.

7 Q Yes?

8 A Yes.

9 Q And under the bullet points it says the oversight

10 review process is optional; is that right?

11 A Yes.

12 Q And then it goes on to say it will not be used when

13 one or more processes documented in this CMP are

14 available to obtain the resolution the submitter

15 desires; do you see that?

16 A Yes.

17 Q And you understand that to be a limitation on how

18 the oversight review process works; is that right?

19 A Well, not really a limitation, it means that there

20 are alternatives available to meet the CLEC's needs.

21 Q Well, it is a limitation on the use of the oversight

22 review process; correct?

23 A Yes.

24 Q It says it won't be used for processes documented in

25 the CMP?

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1 A When they are available to obtain the resolution

2 desired. So if there's another way to get the same

3 result, the CLEC doesn't need to go to oversight.

4 But if that doesn't meet the CLEC's needs, then they

5 can come to oversight.

6 Q The oversight review -- was it called committee?

7 A Yes.

8 Q It makes a recommendation; is that right?

9 A Yes.

10 Q Who does it make the recommendation to?

11 A To Qwest.

12 Q And then Qwest is free to accept that

13 recommendation; correct?

14 A Yes.

15 Q Or it can reject the recommendation; correct?

16 A Yes, it can.

17 MR. MERZ: I don't have anything further.

18 Thank you.

19 JUDGE SHEEHY: Ms. Anderson?

20 MS. ANDERSON: Nothing, thank you.

21 JUDGE SHEEHY: Anything further,

22 Ms. Thompson?

23 MS. THOMPSON: No, thank you.

24 JUDGE SHEEHY: Any questions?

25 JUDGE MIHALCHICK: Yeah, I have a couple

Page 101

1 questions.

2 EXAMINATION

3 BY JUDGE MIHALCHICK:

4 Q This is Steve Mihalchick. What is your job title?

5 A Staff witnessing representative.

6 Q And that means you're a witness, I guess?

7 A Yes, it does.

8 Q And you're paid to be a witness by Qwest?

9 A Yes. I'm an employee of Qwest.

10 Q How do you gather the information you provide in

11 your testimony?

12 A In multiple ways. Research I do through the record.

13 For example, there's an extensive public record for

14 the CMP so I can get a lot of information there. I

15 also contact various employees at Qwest when I need

16 further information.

17 Q Okay. Regarding the CMP, then, you made several

18 statements in your prefiled testimony and here today

19 that the CMP was intended to do this or to do that

20 or the purpose of it was such and such or it was

21 created to do such and such. How did you determine

22 those sorts of general intention of the document?

23 A Well, first of all, I've dealt with the CMP for some

24 time and worked with the CMP team, but also I

25 reviewed legal rulings with regard to the CMP, the

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1 issues an order causing a change in law and that
 2 order does not include a specific implementation
 3 date, a party may provide notice to the other party
 4 within 30 days of the effective date of that order
 5 and any, and then the language picks up at line 3.
 6 JUDGE SHEEHY: Is there a comma before
 7 and?
 8 THE WITNESS: No.
 9 JUDGE SHEEHY: Okay.
 10 MR. TOPP: Qwest would offer Exhibits 6,
 11 7, 8 and 9.
 12 JUDGE SHEEHY: Any objection?
 13 MR. MERZ: No objection.
 14 MS. ANDERSON: None.
 15 JUDGE SHEEHY: Exhibits 6, 7 and 8 are
 16 received.
 17 MR. TOPP: There's also an Exhibit 9.
 18 JUDGE SHEEHY: 6, 7, 8 and 9 are
 19 received.
 20 (Exhibits 6, 7, 8 and 9 offered and
 21 received.)
 22 MR. TOPP: Mr. Easton is available for
 23 cross.
 24 JUDGE SHEEHY: Mr. Merz.
 25 MR. MERZ: Thank you, Your Honor.

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1 Qwest should be able to discontinue processing
 2 Eschelon's order on 10 days' notice without approval
 3 of the Commission; is that correct?
 4 A That's correct. I would note that based on the
 5 proposed language Qwest would be notifying the
 6 Commission at the same time it notifies Eschelon.
 7 Q But it wouldn't have to wait for any Commission
 8 approval?
 9 A That is correct.
 10 Q And it could proceed to then begin discontinuing
 11 accepting any new orders from Eschelon in 10 days
 12 after that notice?
 13 A That's correct. Again, this is the same language
 14 that appears in the SGATs in all Qwest states, it's
 15 been in place for many years.
 16 Q And you agree with me that if this provision were in
 17 place today in Eschelon's ICA, it would be Qwest's
 18 position that it could today give its notice that it
 19 was going to discontinue order processing; right?
 20 A Yes.
 21 Q Qwest believes today that Eschelon is more than 30
 22 days past due on its payments; is that right?
 23 A I'm not sure where we stand as of today. I do know
 24 that in the past there have been a number of billing
 25 issues between the parties, and Eschelon in fact had

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1 CROSS-EXAMINATION
 2 BY MR. MERZ:
 3 Q Good afternoon, Mr. Easton.
 4 A Good afternoon.
 5 Q I want to focus with you first on issue 5-6, which
 6 concerns discontinuation of order processing, and
 7 that relates to ICA section 5.4.2.
 8 The issue here is a contract provision
 9 that describes the circumstances under which Qwest
 10 can discontinue processing Eschelon's orders; is
 11 that right?
 12 A That's correct.
 13 Q And discontinuing order processing means that Qwest
 14 will not accept any new orders for service from
 15 Eschelon; is that right?
 16 A That's correct.
 17 Q And it won't accept any changes in any existing
 18 services; is that right?
 19 A That's correct as well.
 20 Q And you would agree with me that if that were to
 21 happen that would be a very significant consequence;
 22 correct?
 23 A Yes, it would.
 24 Q Now, it's Qwest's position that if Eschelon fails to
 25 pay an undisputed amount 30 days after the due date,

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1 considerably more than 30 days in outstanding
 2 billing.
 3 Q And you are aware as well that Eschelon disagrees
 4 with that position of Qwest, it disagrees that it
 5 has any outstanding amounts due more than 30 days
 6 past due?
 7 A I don't know that that's my understanding. In the
 8 billing issue discussed in Mr. Denney's testimony
 9 that I reply to in my rebuttal testimony, the issue
 10 had to do with the amount that was at dispute. This
 11 language specifically excludes disputed amounts.
 12 Q Under Qwest's proposed language Qwest would take the
 13 position that it is the one that gets to decide
 14 whether there are any past due amounts; correct?
 15 A I believe that is correct. However, the parties
 16 would decide on the disputed amount. And I would
 17 cite, for example, that \$3 million example we had
 18 that occurred here earlier in the year, Qwest
 19 demanded payment and they suggested to Eschelon, if
 20 you disagree with the amounts you feel are at
 21 dispute, you subtract those amounts out, but please
 22 pay us the rest of it which you're not disputing.
 23 Q Based on Qwest's determination, Qwest could, under
 24 its proposed language, proceed to discontinue order
 25 processing on 10 days' notice; correct?

Page 118	<p>1 A For nonpayment of undisputed amounts, that's</p> <p>2 correct.</p> <p>3 Q And that would be true even if Eschelon disagreed</p> <p>4 about whether there was some past due amount?</p> <p>5 A Well, I think certainly our past practice would</p> <p>6 indicate that that would not happen.</p> <p>7 Q And I'm really focusing on what the language that</p> <p>8 Qwest is proposing would permit, and what that</p> <p>9 language would permit is even if Eschelon disagreed</p> <p>10 about whether there are undisputed amounts due,</p> <p>11 Qwest could still proceed to give notice and</p> <p>12 discontinue order processing; correct?</p> <p>13 A Well, it says less any disputed amount, it doesn't</p> <p>14 say who is disputing that amount.</p> <p>15 Q And my point would be, sir, that Qwest is the one</p> <p>16 that reserves to itself the ability to decide</p> <p>17 whether an amount is in dispute; correct?</p> <p>18 A That is correct. I would point out that there is in</p> <p>19 fact a dispute process that was developed through</p> <p>20 change management by Qwest and participating CLECs</p> <p>21 that lays out how disputes are to be handled and</p> <p>22 makes very clear the amounts that are at dispute.</p> <p>23 Q And I need you to try to focus a little more closely</p> <p>24 I think on my question. And what I mean to be</p> <p>25 asking you is it is possible that the parties might</p>	Page 120	<p>1 Q And you don't dispute that; do you, sir?</p> <p>2 A I don't dispute that. I would say the flip side of</p> <p>3 that, certainly, is by Qwest not being able to have</p> <p>4 a security deposit it would put a certain level of</p> <p>5 risk or burden on Qwest.</p> <p>6 Q And you understand, don't you, that Eschelon has</p> <p>7 proposed language for section 5.4.5 that would allow</p> <p>8 Qwest to get a security deposit?</p> <p>9 A They have a number of different options, Eschelon</p> <p>10 does, for this section. Some of those options do</p> <p>11 allow that, yes.</p> <p>12 Q Don't they all allow for Qwest to get a security</p> <p>13 deposit?</p> <p>14 A I don't believe you're correct. Some it would be,</p> <p>15 rather than triggered by an action of the two</p> <p>16 parties, it would be a decision of the Commission.</p> <p>17 Q But what we're really disagreeing about here is not</p> <p>18 whether Qwest can get a security deposit, but what</p> <p>19 circumstances should trigger that ability?</p> <p>20 A I would agree.</p> <p>21 Q And you would agree with me that one of the points</p> <p>22 of dispute between the parties is how do you define</p> <p>23 the phrase repeatedly delinquent; correct?</p> <p>24 A That's correct.</p> <p>25 Q And you would agree with me as well that the</p>
Page 119	<p>1 disagree about whether or not there is an undisputed</p> <p>2 amount?</p> <p>3 A It is possible, yes.</p> <p>4 Q In fact that is something that has happened in the</p> <p>5 past in the relationship between Eschelon and Qwest?</p> <p>6 A And that has happened in the past, and as I</p> <p>7 mentioned, it's been Qwest's practice, certainly as</p> <p>8 evidenced by this most recent case, that Qwest</p> <p>9 accepted the disputed amount provided by Eschelon.</p> <p>10 Q And Qwest is here today seeking to have the contract</p> <p>11 right to decide whether an amount is disputed and</p> <p>12 then based on that determination proceed to</p> <p>13 discontinue order processing?</p> <p>14 A That's correct.</p> <p>15 Q I want to focus with you now on the deposit</p> <p>16 requirements, which are issues 5-8, 5-9, 5-11, 5-12,</p> <p>17 and they all relate to the ICA section 5.4.5.</p> <p>18 And the issue here is the circumstances</p> <p>19 under which Qwest can require Eschelon to pay a</p> <p>20 security deposit; is that right?</p> <p>21 A That's correct.</p> <p>22 Q And you would agree with me that having to pay a</p> <p>23 security deposit could impose a significant burden</p> <p>24 on Eschelon; is that right?</p> <p>25 A That is Mr. Denney's testimony.</p>	Page 121	<p>1 definition of repeatedly delinquent is one that</p> <p>2 differs from ICA to ICA that Qwest has with various</p> <p>3 CLECs and others; is that right?</p> <p>4 A There are some older ICAs that have a different</p> <p>5 definition of repeatedly delinquent. As Mr. Denney</p> <p>6 has pointed out in his testimony, all of the most</p> <p>7 recent ICAs, all of the SGATs, all of the SGAT</p> <p>8 language developed during the 271 workshops,</p> <p>9 contains the definition of repeatedly delinquent</p> <p>10 that Qwest is using here.</p> <p>11 Q The older ICAs, the ones that you've characterized</p> <p>12 as older, those are contracts that remain in effect</p> <p>13 today?</p> <p>14 A That's correct.</p> <p>15 Q And those are binding on Qwest today?</p> <p>16 A That's correct.</p> <p>17 Q I want to focus you now on the issue of credit</p> <p>18 standing, which is issue 5-13, and that's in the ICA</p> <p>19 section 5.4.7?</p> <p>20 A Yes.</p> <p>21 Q This issue involves language proposed by Qwest that</p> <p>22 would allow it to increase a deposit amount based on</p> <p>23 its review of Eschelon's credit standing; is that</p> <p>24 right?</p> <p>25 A That's correct.</p>

Page 122	<p>1 Q And it's Qwest's position that this provision would 2 allow an increase from zero; is that right? 3 A That is correct. 4 Q So even if no deposit was otherwise required under 5 the ICA, Qwest believes it could rely on this 6 provision 5.4.7 to demand the full amount of deposit 7 that the section 5.4.5 would allow; is that correct? 8 A Yes. What section 5.4.7 is intended to do is to 9 address situations where there's a change in 10 circumstances. We've experienced a number of 11 bankruptcies in the past where right up until the 12 time the company went bankrupt, they may have been 13 making their payments in a timely manner and were a 14 good credit risk at one point, but circumstances 15 change, and it's appropriate to have language in the 16 interconnection agreement that allows deposit 17 requirements to change as those circumstances 18 change. 19 Q Does Qwest's proposed language for 5.4.7 require 20 that there be any change in circumstances before 21 Qwest demands a deposit? 22 A Well, it would be based upon a credit review that 23 would indicate that a deposit would be necessary. 24 Q I'm not certain you answered my question. Does 25 Qwest's language proposed for 5.4.7 require as a</p>	Page 124	<p>1 A No, it's not spelled out any further than we have 2 there. 3 Q And it's not limited to any particular type of data 4 regarding credit standing? 5 A It would be based on financial data. 6 Q Where does it say that? 7 A It does not say that. But it talks about credit 8 standing, when you're looking at a party's credit 9 standing I would submit that you would be looking at 10 financial data. 11 Q Well, there's certainly nothing in this language 12 that would limit that to financial data; correct? 13 A Well, when you're talking about, again, reviewing 14 the party's credit standing, I don't know what 15 nonfinancial data you would be looking at to make 16 that determination. 17 Q The review that's referred to in Qwest's proposed 18 5.4.7 doesn't have to be based on credible or 19 verifiable evidence; does it? 20 A The language says what it says. 21 Q So review can be nothing more than a Qwest employee 22 getting up in the morning and reading an article in 23 the Star Tribune about Eschelon? 24 A Well, that is not in fact the process that Qwest 25 would follow.</p>
Page 123	<p>1 condition of demanding a deposit under that section 2 that there be changed circumstances? 3 A It was Qwest's understanding previously, or it was 4 Qwest's view previously that no deposit was 5 necessary, then based upon this review decided that 6 a deposit was necessary. I would argue that, yes, 7 there was a change in circumstances. 8 Q So the changed circumstance that you're talking 9 about is Qwest's belief about whether a deposit is 10 necessary? 11 A Yes, based on certain criteria Qwest would use to 12 evaluate the creditworthiness of the other party. 13 Q Now, section 5.4.7 as proposed by Qwest doesn't 14 describe any criteria to be used in evaluating 15 creditworthiness; does it? 16 A No, it does not. 17 Q And it talks generally about the billing party, and 18 I assume that's referring generally to Qwest, may 19 review the other party's credit standing; is that 20 right? 21 A That's correct. 22 Q Now, review is not any further defined anywhere in 23 the ICA; is it? 24 A No, it is not. 25 Q It doesn't require any particular kind of review?</p>	Page 125	<p>1 Q But that is the process that 5.4.7 would allow; 2 correct? 3 A Well, that is certainly not the intent of the 4 language. I don't think it would be appropriate to 5 spell out exactly the credit review process that 6 would be followed. There are a number of factors 7 that go into it, it's not, you know, necessarily a 8 black and white decision, but there is a fair amount 9 of quantitative analysis that would fall behind 10 that. 11 Q 5.4.5 does specify the credit review that's going to 12 take place if the parties have been doing business, 13 and that requires a determination of repeatedly 14 delinquent in order to get a deposit; is that right? 15 A That's correct. 16 Q Qwest could claim a deposit in 5.4.7 if a party had 17 never been repeatedly delinquent; correct? 18 A That is correct. As I mentioned, there are 19 circumstances where parties, right up until the day 20 they went bankrupt, were not repeatedly delinquent. 21 Q I'm going to ask you now about nondisclosure 22 agreements in section -- I'm sorry, issue 5-16, 23 that's ICA 5.16.9.1. The issue here is that Qwest 24 employees who have access to Eschelon's forecasting 25 information are required to sign a nondisclosure</p>

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1 agreement; is that right?
 2 A That's correct.
 3 Q And that's something the parties have agreed on;
 4 correct?
 5 A Yes.
 6 Q The information that we're talking about,
 7 forecasting data, is a highly competitive -- is a
 8 highly competitively sensitive nature; is that
 9 right?
 10 A That is correct.
 11 Q The issue here is that Eschelon, after the
 12 nondisclosure agreement has been signed by the Qwest
 13 employee, wants to be provided with a copy and Qwest
 14 doesn't want to provide a copy; is that in a
 15 nutshell?
 16 A That's it in a nutshell.
 17 Q At any one time how many Qwest employees have access
 18 to Eschelon's forecasting information?
 19 A That I can't tell you.
 20 Q Do you know if there are more than five?
 21 A I would believe there are more than five.
 22 Q Do you know if there are more than 10?
 23 A I would believe there are more than 10.
 24 Q Do you know how frequently those employees turn
 25 over?

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1 A That I can't tell you either. There is turnover in
 2 those groups.
 3 Q You don't know how frequent?
 4 A No. I'm sure it varies from time to time.
 5 Q Is there some person who is responsible for getting
 6 the nondisclosure agreement signed?
 7 A I'm sure there is.
 8 Q Are they maintained in a file?
 9 A I'm sure they are.
 10 Q Now, you talk in your direct testimony about the
 11 unnecessary administrative burden that would be
 12 imposed by Eschelon's proposed language; do you
 13 recall that?
 14 A Yes, I do.
 15 Q Now, the unnecessary administrative burden that
 16 you're talking about consists of having the person
 17 that gets the nondisclosure agreement signed put it
 18 in the mail to Eschelon; is that the burden that
 19 we're dealing with here?
 20 A That would be the case, because people, there was
 21 churn in the jobs, the other concern would be of
 22 course anybody who opted into this contract, should
 23 the Eschelon language be approved, Qwest would be in
 24 a position of mailing these things out on an ongoing
 25 basis, and I just don't know that the administrative

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1 burden is worth it.
 2 Q It may not be worth it to Qwest, are you -- are you
 3 testifying regarding whether it might be worth it to
 4 Eschelon?
 5 A Well, I think Eschelon is provided sufficient
 6 protection with the language in 5.16.9.1 that has
 7 very strict requirements on how this information is
 8 to be handled.
 9 In addition, there's an audit provision
 10 under section 18, I believe it's 18.3.1, that allows
 11 Eschelon to come in and audit the handling of this
 12 confidential forecast information. And I would
 13 submit that between those two sections that provides
 14 adequate protection to Eschelon.
 15 In fact that's the protection that's been
 16 provided to all CLECs in operating under the SGAT,
 17 that is language that was specifically addressed
 18 during the 271 workshops. I'm not aware of that
 19 having imposed any problems for the other parties.
 20 MR. MERZ: No further questions. Thank
 21 you, sir.
 22 JUDGE SHEEHY: Ms. Anderson.
 23 MS. ANDERSON: Thank you.
 24 CROSS-EXAMINATION
 25 BY MS. ANDERSON:

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1 Q Good afternoon, Mr. Easton. I'm Julia Anderson, on
 2 behalf of the Minnesota Department of Commerce. I
 3 just have a few questions for you.
 4 Following up on this last topic by
 5 Mr. Merz, do you recall the last series of questions
 6 with respect to Eschelon's proposal to be provided a
 7 signed copy of each nondisclosure agreement?
 8 A Yes.
 9 Q How lengthy are these agreements, in your view?
 10 A You know, they are one to two pages.
 11 Q How many such agreements did Qwest sign say in the
 12 past year?
 13 A That I can't tell you.
 14 Q Do you have any kind of range that you can give or
 15 you have no idea?
 16 A I have no idea whatsoever. There are a number of
 17 individuals who would have access to this
 18 information and sign the agreement at the time they
 19 have access. As they would move to new jobs and new
 20 people would come in those new people would be
 21 required to sign those agreements as well. So
 22 depending on the total number of people who have
 23 access and how those jobs change, that number could
 24 vary.
 25 Q So when you state that Qwest would have some sort of

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1 Q Is it your opinion that the function of the deposit
 2 is to provide an incentive for timely payment or is
 3 the function of the deposit to protect Qwest in the
 4 event of nonpayment?
 5 A It's a little bit of both, but it's probably more
 6 the latter, it's to provide protection for
 7 nonpayment.
 8 Q And you would agree with me that there is agreed to
 9 language regarding late payment fees; is that right?
 10 A That's correct.
 11 Q And the purpose of that agreed to language is to
 12 provide an incentive for timely payment; correct?
 13 A Yes.
 14 MR. MERZ: I don't have anything further.
 15 MS. ANDERSON: Nothing. Thank you.
 16 JUDGE SHEEHY: Mr. Topp?
 17 REDIRECT EXAMINATION
 18 BY MR. TOPP:
 19 Q Do late payment fees adequately -- or do those
 20 address the situation where Eschelon is potentially
 21 unable to pay?
 22 A No, they do not address that situation.
 23 MR. TOPP: No further questions.
 24 JUDGE SHEEHY: Mr. Merz? Ms. Anderson,
 25 anything further?

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1 MS. ANDERSON: No, thank you.
 2 JUDGE SHEEHY: Okay. Thank you,
 3 Mr. Easton.
 4 THE WITNESS: Thank you.
 5 (Witness excused.)
 6 JUDGE SHEEHY: Let's take a break for 10
 7 to 15 minutes.
 8 (Break taken from 2:03 to 2:19.)
 9 (Whereupon, Exhibits 10 through 15 were
 10 marked for identification by the court
 11 reporter.)
 12 PHILIP LINSE,
 13 after having been first duly sworn, was
 14 examined and testified on his oath as follows:
 15 MR. TOPP: Your Honor, before we have
 16 Mr. Linse testify, there has been a stipulation.
 17 We've had marked as Exhibits 14 and 15 the trade
 18 secret and public versions of Robert Brigham's
 19 testimony, the parties have stipulated that they
 20 have no need to cross Mr. Brigham and have agreed to
 21 admission of that testimony, and so I would offer
 22 Exhibits 14 and 15.
 23 MR. MERZ: I don't have any objection,
 24 but which one is 14 and which one is 15?
 25 JUDGE SHEEHY: 14 is the public rebuttal,

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1 15 is the trade secret rebuttal.
 2 MR. MERZ: Thank you.
 3 JUDGE SHEEHY: Any objection,
 4 Ms. Anderson?
 5 MS. ANDERSON: None, thank you.
 6 JUDGE SHEEHY: Okay. 14 and 15 are
 7 received.
 8 (Exhibits 14 and 15 offered and received.)
 9 MR. ROSELLI: Thank you. And before
 10 beginning questioning of the witness and for the
 11 benefit of the record and for those I have not
 12 introduced myself to, my name is Philip Roselli, I
 13 am at attorney with the Kamlet, Shepherd law firm in
 14 Denver, Colorado, and I represent Qwest on selected
 15 matters in this hearing.
 16 DIRECT EXAMINATION
 17 BY MR. ROSELLI:
 18 Q Mr. Linse, could you please state for the record
 19 your full name?
 20 A My name is Philip Linse.
 21 Q And who is your employer, please?
 22 A My employer is Qwest.
 23 Q And have you filed testimony in this case?
 24 A Yes, I have.
 25 Q And is that testimony in front of you?

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1 A Yes, it is. I believe it is.
 2 Q I hope it is.
 3 A There's a lot of it.
 4 Q Can you identify that testimony, please, for the
 5 record?
 6 A Qwest Corporation, Direct Testimony of Philip
 7 Linse --
 8 JUDGE SHEEHY: Is 10.
 9 THE WITNESS: Is 10.
 10 JUDGE SHEEHY: How about I read it and
 11 you tell me if it's right. The reply testimony is
 12 11?
 13 THE WITNESS: Correct.
 14 JUDGE SHEEHY: The public surreply is 12?
 15 THE WITNESS: That is correct.
 16 JUDGE SHEEHY: And the highly sensitive
 17 trade secret surreply is 13?
 18 THE WITNESS: That is correct.
 19 MR. ROSELLI: Thank you.
 20 BY MR. ROSELLI:
 21 Q Mr. Linse, did you also file any errata with your
 22 testimony?
 23 A Yes, I filed an errata for my direct and rebuttal.
 24 Q And is it your understanding that that errata is
 25 incorporated in those respective exhibits?

1 EVIDENTIARY HEARING - VOLUME 2 - OCTOBER 17, 2006
2 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
3 OF THE STATE OF MINNESOTA
4
5

6 In the Matter of the Petition of Eschelon Telecom, Inc.
7 for Arbitration of an Interconnection Agreement with
8 Qwest Corporation Pursuant to 47 U.S.C. 252(b)

9 OAH DOCKET NO. 3-2500-17369-2
10 PUC DOCKET NO. P5340,421/IC-06-768
11
12

13 Minnesota Public Utilities Commission
14 350 Metro Square Building
15 121 Seventh Place East
16 St. Paul, Minnesota
17

18 Met, pursuant to Notice, at 9:00 in the
19 morning on October 17, 2006.
20
21

22 BEFORE: Judge Kathleen Sheehy
23 Judge Steve Mihalchick
24 REPORTER: Angie D. Threlkeld, RPR CRR
25

Page 2

1 APPEARANCES:
 2 JASON TOPP, Attorney at Law, 200 South
 3 Fifth Street, Room 2200, Minneapolis, Minnesota
 4 55402, and MELISSA K. THOMPSON, Attorney at Law,
 5 1801 California Street, 10th Floor, Denver, Colorado
 6 80202, and PHILIP J. ROSELLI, Attorney at Law,
 7 Kamlet, Shepherd & Reichert, LLP, 1515 Arapahoe
 8 Street, Tower 1, Suite 1600, Denver, Colorado 80202,
 9 and JOHN DEVANEY, Attorney at Law, Perkins Coi,
 10 607 14th Street NW, Washington, D.C. 20005, appeared
 11 for and on behalf of Qwest Corporation.
 12 GREGORY MERZ, Attorney at Law, Gray,
 13 Plant, Mooty, 500 IDS Center, 80 South Eighth
 14 Street, Minneapolis, Minnesota 55402, appeared for
 15 and on behalf of Eschelon Telecom.
 16 JULIA ANDERSON, Assistant Attorney
 17 General, 1400 Bremer Tower, 445 Minnesota Street,
 18 St. Paul, Minnesota 55101, appeared for and on
 19 behalf of the Department of Commerce.
 20 ALSO PRESENT:
 21 Kevin O'Grady, PUC Staff.
 22
 23
 24 WHEREUPON, the following proceedings were
 25 duly had and entered of record, to wit:

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1 (Whereupon, Exhibits 16, 17, and
 2 18 were marked for identification by the
 3 court reporter.)
 4 JUDGE SHEEHY: All right. Everyone, good
 5 morning. It's my understanding that Mr. Linse has
 6 some negotiation responsibilities this morning, and
 7 so Qwest is going to interrupt his testimony to
 8 offer the testimony of Mr. Hubbard. I assume
 9 everyone was aware of that.
 10 All right. So anything else we need to
 11 talk about before we get going?
 12 MR. MERZ: I don't believe so.
 13 JUDGE SHEEHY: All right. Please
 14 proceed.
 15 MR. ROSELLI: With that we'd call
 16 Mr. Hubbard to the stand.
 17 ROBERT J. HUBBARD,
 18 After having been first duly sworn, was
 19 examined and testified on his oath as follows:
 20 JUDGE SHEEHY: Mr. Hubbard's direct
 21 testimony has been marked as Exhibit 16, his
 22 rebuttal as 17, and his surrebuttal as 18.
 23 MR. ROSELLI: Thank you.
 24 DIRECT EXAMINATION
 25 BY MR. ROSELLI:

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1 Q Could you please state your full name for the
 2 record?
 3 A My name is Robert J. Hubbard.
 4 Q And who is your employer, please?
 5 A Qwest.
 6 Q And your business address?
 7 A 700 West Mineral Avenue, Littleton, Colorado 8013 --
 8 80120.
 9 Q Thank you, Mr. Hubbard.
 10 A I tried to get my home. I'm sorry.
 11 Q And did you prepare prefiled testimony in this
 12 matter?
 13 A Yes, I did.
 14 Q And is that testimony marked in front of you?
 15 A Yes, it is.
 16 Q Can you please identify what's been placed in front
 17 of you?
 18 A Absolutely. My direct testimony that I filed is
 19 Exhibit 16. I also filed rebuttal testimony, which
 20 is Exhibit 17. And I filed surrebuttal testimony,
 21 which is Exhibit 18.
 22 Q And is that testimony true and accurate to the best
 23 of your knowledge?
 24 A Yes, it is.
 25 Q And if I were to ask you the same questions here

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1 today live that we've addressed in the testimony,
 2 would you give me the same responses?
 3 A Yes.
 4 MR. ROSELLI: Okay. With that I would
 5 move the admission of Exhibits 16, 17, and 18.
 6 MR. MERZ: No objection.
 7 MS. ANDERSON: No objection.
 8 JUDGE SHEEHY: 16, 17, and 18 are
 9 received.
 10 (Whereupon, Exhibits 16, 17, and 18
 11 were offered and received.)
 12 BY MR. ROSELLI:
 13 Q And just to be sure, no other corrections to your
 14 testimony?
 15 A That is correct.
 16 MR. ROSELLI: With that I would make
 17 Mr. Hubbard available for cross-examination.
 18 JUDGE SHEEHY: All right. Mr. Merz.
 19 MR. MERZ: Thank you, Your Honor.
 20 CROSS-EXAMINATION
 21 BY MR. MERZ:
 22 Q Good morning, Mr. Hubbard.
 23 A Good morning.
 24 Q I'd like to talk with you first about collocation
 25 available inventory --

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1 A Okay.
 2 Q -- which is issue 8-20, and it concerns ICA Section
 3 8.1.1.10.1.1. And just to lay some of the
 4 groundwork here, collocation available inventory are
 5 used collocation sites that have been returned to
 6 Qwest; is that correct?
 7 A That is correct.
 8 Q And the issue here is that when Qwest prepares a
 9 quote for a collocation site and that collocation
 10 site has been returned to Qwest, the parties have a
 11 dispute about whether Qwest's quote for the initial
 12 collocation site should be posted along with the
 13 inventory list of what's in that site; correct?
 14 A That's what is at issue here, yes.
 15 Q And Eschelon believes that the quote should be
 16 posted, and Qwest believes that it shouldn't; is
 17 that correct?
 18 A That's -- That's fair, yeah.
 19 Q Qwest's reason for opposing the requirement that the
 20 price be posted is that the information regarding
 21 the -- regarding the initial quote would not be
 22 relevant to a CLEC that might be considering
 23 purchasing that site; is that correct?
 24 A Yes, that's correct.
 25 Q And the reason for that is it's rare that a CLEC

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1 orders a collocation available site as is; is that
 2 accurate?
 3 A I think that's pretty accurate, yes.
 4 Q It's rare, but it's something that has, in fact,
 5 happened; is that right?
 6 A Well, I believe it has happened. But then you have
 7 to consider that prices do change, circumstances do
 8 change. So a posted price may not be actually the
 9 current price.
 10 Q If you'd turn to -- The white binder there in front
 11 of you is the ICA, the proposed ICA. If you'd turn
 12 to 8.1.1.10.1.1.
 13 A 8.1.1.10.1?
 14 Q .1.
 15 A Oh, I left off -- Okay. Got it.
 16 Q Actually, there are even three 1s on the disputed
 17 provision; correct? It's 8.1.1.10.1.1.1?
 18 A Yes. That's the proposed, yes.
 19 Q And you see there that Eschelon's proposal includes
 20 at the very end of that section the qualifier,
 21 Unless Qwest establishes a change in circumstances
 22 affecting the quoted price. You see that; correct?
 23 A Of that paragraph, 8.1.1.10.1.1.1, you're saying the
 24 end of it, unless -- okay, the last part of that
 25 sentence, Unless Qwest establishes a change in

<p style="text-align: right;">Page 14</p> <p>1 A There is, you know, planning and administration fees 2 that do go on with that. So there is work that is 3 done; and I believe that we're, you know, allowed to 4 recover those costs. 5 Q But your testimony is if the CLEC -- the second CLEC 6 orders a collocation available site exactly as it 7 is, there's a need for Qwest to prepare a new quote 8 for that site? 9 A We would prepare a new quote, yes. 10 Q The question is not whether you would do it, but 11 whether it's necessary for you to do it? 12 A You know, I do believe that it would be necessary 13 under our current procedures and -- 14 Q And I understand that you're saying under your 15 current procedures it would be necessary. The 16 question is whether you would need a new quote if 17 the second CLEC was ordering a collocation available 18 site exactly as is? 19 A It may not be entirely necessary. But we don't have 20 the information from the previous quote, so we would 21 prepare a new one, yes. 22 Q Wait a second. You don't have the information from 23 the previous quote. What does that mean? 24 A I mean it's not -- The prices aren't posted and 25 stuff. So we relook at it.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q But the question of whether Qwest will post a quote 2 isn't part of the cost docket, is it? 3 A No, that would not be part. 4 Q In your surrebuttal at page 3, lines 19 through 20, 5 you say there, Reviewing a different CLEC's quote 6 would not give Eschelon any information not already 7 available to it. Do you see that there? 8 A Yes, I do. 9 Q Okay. What Eschelon does not have available to it 10 with respect to a collocation available inventory 11 site is what the price is that Qwest previously 12 quoted for that site; right? 13 A No. I think you have that information that could be 14 obtained through your own engineering, if you will. 15 You have what you want. You have all the equipment 16 that's there. You have the prices in your Exhibit 17 A, I believe. And you would be able to figure up 18 for yourself what that's going to be, and you know 19 the appropriate discounts that are being applied. 20 So you could figure up the price that you'd be 21 paying yourself. 22 Q You would agree with me that Eschelon, if it's going 23 to order a collocation available inventory site, 24 does not have the price previously quoted for that 25 site; is that true?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q Qwest has its previous quotes? 2 A True. 3 Q That's something that it retains? 4 A True. 5 Q And so if it has that -- Let me just do an example. 6 I mean, today a collocation available site is 7 returned. Qwest has the quote for that site. 8 Tomorrow Eschelon wants to purchase that site. 9 Qwest would, under its existing process, turn around 10 and do a new quote even though it already has one on 11 hand; is that your testimony? 12 A That's my testimony. 13 Q And wouldn't that be -- In your testimony you use 14 the phrase make work. Wouldn't that just be make 15 work on the part of Qwest? 16 A It would be work involved. I believe, you know, 17 that you're getting into some section here that's 18 probably closely related to the cost docket. And I 19 believe this issue is teed up in the cost docket for 20 just this situation. 21 Q The issue of whether Qwest is going to post a quote 22 for collocation available inventory is in the cost 23 docket; is that your testimony? 24 A I believe the costs associated with that are in the 25 cost docket.</p>	<p style="text-align: right;">Page 17</p> <p>1 A You don't have the price previously quoted. 2 Q Now, when Qwest provides a quote, that is the price 3 at which Qwest is willing to sell; correct? 4 A That's correct. 5 Q It's not an estimate; isn't that right? 6 A That's correct. 7 Q The quote is the price? 8 A When we give you the quote, that is the price. 9 Q And Qwest requires that the CLEC get the quote; 10 correct? 11 A Correct. 12 Q The CLEC can't just say we figured out what the 13 price ought to be and here's the check; it has to 14 rely on Qwest to tell it what the price is? 15 A Yeah. But you should be able to figure out what the 16 cost is going to be yourself. 17 Q And the CLEC has to pay Qwest for the quote; isn't 18 that right? 19 A That's correct. 20 Q Now, it's the case, is it not, that the information 21 that the CLEC has available to it is enough for the 22 CLEC to estimate the price? 23 A Is enough for the CLEC to estimate the price? 24 Q Yes. 25 A I believe that, yes.</p>

Page 18

1 Q But whatever the CLEC can do, that is an estimate;
 2 correct?
 3 A I -- It should be the -- It should be the price of
 4 the collocation, yes.
 5 Q Well, if you go to your direct testimony at page 11,
 6 and I'm looking in particular at line 13 where it
 7 says, Accordingly, CLEC B is in the best position,
 8 really the only position, to estimate the
 9 nonrecurring charge it would pay based upon its
 10 desired circuit termination; correct?
 11 A Correct.
 12 Q So the number that the CLEC can come up with is an
 13 estimate; correct?
 14 A I suppose that is correct. It's going to be -- I
 15 mean, the prices are the same -- that you're looking
 16 at that we're looking at, it should be the same
 17 quote.
 18 Q You describe it in your direct testimony as an
 19 estimate; correct?
 20 A It -- The word says estimate.
 21 Q Okay. And in your rebuttal testimony at page 6...
 22 A Okay. I'm on it.
 23 Q And I'm looking at line 4 where you say, Further, as
 24 I explained in my direct testimony, Eschelon will
 25 have every data point it needs to estimate what it

Page 20

1 A That's what we're talking about here, yeah. And
 2 what section again that you're looking at? Just
 3 from --
 4 Q The special site description is at 8.2.10.4.1.
 5 A Got it. Okay.
 6 Q And that just describes what a special site is;
 7 correct?
 8 A Correct.
 9 Q And 8.3.11.3 describes the rate elements that relate
 10 to a special site; is that right?
 11 A 8.3.11...
 12 Q 3.
 13 A Oh. Let me read it.
 14 Q Sure.
 15 A Without reading it all the way through, yes, that
 16 describes this section, the rates.
 17 Q And 8.3.11.3.2 describes the special site planning
 18 and engineering fee; is that right?
 19 A Yes, that's correct.
 20 Q And then finally if you'd turn to 8.2.10.4.3.
 21 JUDGE SHEEHY: You know, I don't have
 22 what's marked as page 113 of the contract, just if
 23 anyone wants to give me a copy of it at some point.
 24 MR. MERZ: That's the next page I'm going
 25 to ask about. So...

Page 19

1 will be required to pay. Do you see that?
 2 A I see that.
 3 Q And there you use the word estimate again, that
 4 Eschelon can come up with an estimate; correct?
 5 A That's the word I used.
 6 Q I want to talk with you now about special site
 7 assessment fees --
 8 A Okay.
 9 Q -- which is issue 20 -- I'm sorry, 8-20A, and it's
 10 ICA Section 8.2.10.4.3. And, again, just to orient
 11 ourselves on some of the language here, a special
 12 site is a collocation site that has been returned to
 13 Qwest as a result of a CLEC bankruptcy or a CLEC
 14 abandoning the site; isn't that right?
 15 A That's correct. It still has power and circuits in
 16 it. It's still kind of hot. We'd call it a hot
 17 cage.
 18 Q A hot cake?
 19 A Hot cage.
 20 Q Hot cage.
 21 A Still fired up and working.
 22 Q All right. And the issue here is the fee that
 23 Eschelon must pay for a quote when it purchases a
 24 special site and requests changes to that site;
 25 correct?

Page 21

1 JUDGE SHEEHY: I know, and I don't have
 2 it.
 3 JUDGE MIHALCHICK: Nor do I.
 4 JUDGE SHEEHY: It goes from 112 to 114.
 5 BY MR. MERZ:
 6 Q Do you have page 113 in your --
 7 A Yes, I do.
 8 MR. MERZ: We'll see if we can round one
 9 up for you.
 10 JUDGE SHEEHY: It's a hot page. It's
 11 stuck to the copying machine. I mean, we can look
 12 at the matrix for the language if that's --
 13 MR. MERZ: Okay. And that's really what
 14 I'm going to --
 15 JUDGE SHEEHY: Yeah.
 16 MR. MERZ: -- get to. So we'll make sure
 17 and get that page for you.
 18 JUDGE SHEEHY: Yeah.
 19 BY MR. MERZ:
 20 Q All right. So here we are at 8.2.10.4.3. And you
 21 see the disputed language there about two-thirds of
 22 the way down in that section; correct?
 23 A In red, yes.
 24 Q Yeah. And that is Qwest's proposal. If CLEC
 25 requests an augment application, then CLEC will be

Page 22

1 charged a planning and engineering fee instead of
 2 the special site assessment fee; is that right?
 3 A That's correct.
 4 Q Now, Exhibit A is the section of the ICA that sets
 5 out the prices for different elements; is that
 6 right?
 7 A That's correct.
 8 Q And Exhibit A doesn't have on it anything called a
 9 special site assessment fee; is that right?
 10 A I'm not sure about that.
 11 Q Well, if you go to -- You have in front of you there
 12 I think the exhibits to the ICA, and I think Exhibit
 13 A will probably be the very first one.
 14 A These loose ones here?
 15 Q I believe that's right. Oh, I'm sorry, it's in the
 16 binder, sir.
 17 A Oh, I'm sorry.
 18 Q No, I --
 19 A The black binder?
 20 Q -- wasn't clear. Yes.
 21 A They are, it looks like, exhibits to the
 22 interconnection agreement. That's what this --
 23 Q Okay. If you go --
 24 A -- tab here --
 25 Q -- to Exhibit A, and it's the line number 8.15.2.1.

Page 23

1 A Did you say 8.2?
 2 Q 8.15.2.1.
 3 A That's what I thought. I hadn't got there.
 4 8.15.2...
 5 Q 1.
 6 A Yes.
 7 Q And that is the special site planning and
 8 engineering fee; is that correct?
 9 A That's what it says here on Exhibit A, yes.
 10 Q Okay. And it's Eschelon's position that that is the
 11 fee that should apply when Eschelon purchases
 12 special site whether or not there's an augment to
 13 that site; correct?
 14 A I think that's what's in contention, but with an
 15 augment that requires work from an engineering
 16 requirement to be done by Qwest.
 17 Q I understand. And really what I just want to make
 18 sure we have on the table is what the parties'
 19 competing positions are. It's Eschelon's position
 20 that the special site planning and engineering fee
 21 is the fee that should apply; correct?
 22 A I believe so, yes.
 23 Q And it's Qwest's position that what should apply is
 24 the standard site planning and engineering fee if
 25 there's an augment?

Page 24

1 A If there's an augment, yes.
 2 Q All right. And for a caged physical collocation you
 3 can find that rate at 8.4.1; is that right?
 4 A Caged physical collocation planning and engineering
 5 fee, yes, 8.4.1.
 6 Q And so if Eschelon -- If a special site were a caged
 7 physical collocation and Eschelon requested an
 8 augment, the rate at 8.4.1 is the one that Qwest
 9 believes would apply?
 10 A Yes.
 11 Q Now go to your surrebuttal testimony at page 7.
 12 A I'm there.
 13 Q And I'm looking at lines -- beginning at line 6
 14 where you say, Nowhere does the description of the
 15 special site assessment fee indicate that this fee
 16 applies when modifications are requested. Do you
 17 see that?
 18 A I see that.
 19 Q Okay. Now I want to make sure I understand the
 20 sequence of events when a CLEC orders a special
 21 site. And so the first thing that would happen is
 22 the CLEC would request the special site; is that
 23 right?
 24 A That would be correct.
 25 Q Okay. And then the next thing that would happen is

Page 25

1 Qwest would do a feasibility study to see if the
 2 site is still available; is that right?
 3 A That's correct.
 4 Q And then Qwest would prepare a quote based on the
 5 site inventory and any requested modifications; is
 6 that right?
 7 A That sounds correct, yes.
 8 Q And that -- You actually find that in 8.2.10.4.3; is
 9 that right? I'm looking at I think it's the fourth
 10 sentence of that section.
 11 A Correct.
 12 Q And requested modifications as used in that sentence
 13 is referring to modifications requested by the CLEC
 14 requesting the site; correct?
 15 A By the CLEC, yes, that they request.
 16 Q And then -- I apologize -- later on in Section
 17 8.2.10.4.3 it goes on to say, The CLEC will be
 18 charged a special site assessment fee for work
 19 performed up to the point of the expiration or
 20 nonacceptance of the quote. Do you see that?
 21 A I see that.
 22 Q And the work that's referred to in that sentence is
 23 the work of preparing the quote; is that correct?
 24 A Correct.
 25 Q I want to talk with you now about NEBS compliance,

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1 the engineer factors is not only the power
 2 requirements of Qwest's equipment, but also
 3 collocators, CLECs, within that central office. And
 4 you go through an example of the factors that you
 5 look at.
 6 My question to you is how does Qwest
 7 assess its own power requirements? What's the
 8 basic -- What are the basic steps to assess the
 9 power requirements of Qwest's equipment?
 10 A We utilize the -- basically the power usage on an
 11 existing central office plus our forecasted list one
 12 drain and then we also throw -- you know, not throw
 13 in, but then we calculate in a collocator's request.
 14 Q When you say that you have some forecasted figures,
 15 what kind of forecast period do you use? What are
 16 your basic parameters when you're saying you factor
 17 in a forecast of your power needs?
 18 A We have -- Equipment draws -- You know, different
 19 equipment draws different power. What we forecast
 20 in is through our planning department forecasted
 21 usage; how we think the area's going to grow that
 22 it's feeding; you know, forecast of lines coming in
 23 there, which equates back to how we're going to card
 24 up the equipment. How long that forecast period I
 25 believe is a little dependent on the engineer

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1 knowing the area. It takes quite awhile to build
 2 additional power plant. So the forecast period
 3 would be, you know, longer, of course, than what it
 4 would take to augment a power plant.
 5 Q So you want to build in some room to grow; is
 6 that --
 7 A Absolutely.
 8 Q How often then does Qwest reassess its power needs
 9 or power studies once a power plant is built?
 10 A The -- I believe and I -- I believe that the
 11 engineers, they can -- I don't know how often they
 12 do this. Fairly often I would assume that they
 13 monitor the usage in the power plant for the whole
 14 total office.
 15 Q When you're using forecasted figures to design a
 16 power plant, it appears from your testimony, again
 17 page 12 of your rebuttal, that Qwest looks on a
 18 central-office-by-central-office basis; am I
 19 correct?
 20 A Correct.
 21 Q So that with respect to some central offices, Qwest
 22 may be assessing power needs and forecasting
 23 accuracy on a more regular basis than other central
 24 offices?
 25 A If you've got a high-growth area that's growing

Page 40

1 pretty quick, we may be monitoring that more closely
 2 than an area that's not growing as quickly.
 3 Q How does Qwest forecast future -- likely future CLEC
 4 power needs in an area?
 5 A We -- We don't know a CLEC's business plan or their
 6 marketing plan. So we basically don't forecast for
 7 a CLEC.
 8 Q Now, on page 13 of your rebuttal, line 7, you state,
 9 the second sentence, Since Eschelon cannot forecast
 10 its own usage. And I'll stop there. Why do you
 11 believe Eschelon cannot forecast its own usage?
 12 A What the CLEC gives us is we assume their total
 13 demand. If they didn't -- And we have to build to
 14 that because we don't know when they're going to
 15 have that demand hit us. So my opinion there is
 16 that if they knew, you know, what their usage was
 17 going to be, then they would not need to order the
 18 power that they do.
 19 Q Well, let me go back. I understand your testimony
 20 when you said that Qwest can't forecast the CLEC's
 21 power needs. Did I understand that testimony
 22 correctly?
 23 A Yes, that's correct.
 24 Q Now my question is how do you know that CLECs can't
 25 forecast their own power usage requirements?

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1 A Well, looking at their collocation orders,
 2 they design everything, not only power but their DS0
 3 connections, DS1 connections, to an ultimate size
 4 that they're -- that they want. They're not -- I
 5 mean, if they were forecasting five, ten years out,
 6 they would not be paying for all this connection in
 7 the first go-round. They would be adding them as
 8 they grow. So...
 9 Q So are you saying then it's not so much a matter
 10 that CLECs aren't forecasting their power usage
 11 requirements but that they are not doing so on a
 12 long-term horizon; is that more accurate?
 13 A I think that's accurate.
 14 Q Does Qwest ever ask CLECs for a forecast of their
 15 power needs for a central office?
 16 A We ask CLECs, I believe, for their -- a forecast of
 17 their, you know, lines they're going to hook up and
 18 stuff, which then drives, of course, the power.
 19 Q But when you say that you ask what kinds and types
 20 of lines they're going to hook up, are you then
 21 looking at the total capacity of those lines and the
 22 power that would need to be provided to power those
 23 lines at maximum capacity; is that what you're --
 24 A Yes.
 25 Q So it's not on a -- You're not building your power

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1 docket.

2 Q There was some discussion before about this NEBS

3 list. Do you know the name Mary Ann Wyborg?

4 A I saw your exhibit, if you will, and did look at the

5 name, and I did look it up. I don't know her.

6 Q I think the name in the exhibit wasn't Mary Ann

7 Wyborg. Do you know that name Mary Ann Wyborg?

8 A Like I said, I looked up her name, I believe. I

9 don't know her.

10 Q Okay. That's fair. You don't know the name

11 Mary Ann Wyborg or who that person is?

12 A No.

13 Q Okay. 8-23. You talked about 8-23 at page 14 of

14 your surrebuttal. And the issue in 8-23 is the

15 price for power restoration with reservation; is

16 that correct?

17 A I believe that's -- I believe that's the issue, yes.

18 Q And Qwest had formerly proposed an ICB nonrecurring

19 price but has now agreed with Eschelon on a

20 specified price; is that right?

21 A That issue is closed.

22 Q Okay. And Qwest is still proposing to charge a

23 quote preparation fee in connection with a request

24 for power restoration with reservation; is that

25 right?

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1 A We're going to charge a fee, yes. I believe that's

2 still -- That one's in the cost docket also.

3 Q The fee is the quote --

4 A Quote.

5 Q -- preparation fee?

6 A Yes.

7 Q Now, with respect to the cost docket, you had said

8 that the issue of the site assessment fee was one

9 that was being considered in the cost docket. Do

10 you recall that?

11 A Yes.

12 Q Are you aware that Qwest brought a motion to have

13 that issue stayed pending the resolution of the

14 issues in the cost docket?

15 A You know, I don't know if I'm aware of that.

16 Q Would you agree with me that whatever decision is

17 made in the cost docket, that won't resolve the

18 immediate issue; it won't tell us now what fee ought

19 to apply when a special site is purchased by

20 Eschelon?

21 A I -- And I apologize. I had trouble following that

22 a little bit.

23 Q The resolution of the cost docket is down the road

24 somewhere?

25 A I don't know when it's scheduled for, but it's not

Page 56

1 this week. Okay? So it's down the road.

2 Q In all events, that resolution won't tell us what

3 fee would apply to Eschelon's purchase of a special

4 site in the meantime, before the cost docket reaches

5 a resolution?

6 A You have existing rates that are posted.

7 Q My question is whether the cost docket resolution

8 will determine the issue in this case before that

9 resolution actually happens? We've got a period --

10 We have a period of time before the cost docket

11 resolves; correct?

12 A Correct.

13 Q And whatever happens in the cost docket will not

14 resolve in the meantime what fees should be

15 changed -- should be charged for a special site; is

16 that correct?

17 A I -- Yeah, that's correct.

18 MR. MERZ: I don't have anything further.

19 JUDGE SHEEHY: Ms. Anderson.

20 MS. ANDERSON: Briefly.

21 RECROSS-EXAMINATION

22 BY MS. ANDERSON:

23 Q Mr. Hubbard, you testified essentially that Qwest

24 does not ask the CLEC to provide its -- the CLEC's

25 power forecast; is that right?

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1 A That's correct.

2 Q Why doesn't Qwest do that? I mean, Qwest -- Qwest

3 forecasts its own power needs. Why doesn't Qwest

4 ask a CLEC to provide Qwest's -- the CLEC's

5 forecasted power needs?

6 A Because the CLEC is the one that -- they know -- I

7 mean, they've got a marketing plan. We don't know

8 their marketing plan. We -- We don't know when

9 they're going to have, you know, an ultimate demand

10 for that power. If you start asking for forecasts,

11 you get -- kind of gets back into the early days of

12 collocation where we ask for forecasts and

13 everything. Then you've got to get, you know,

14 penalties and other language on this; if you don't

15 build, if you don't build to your forecast, or if

16 you overbuild your forecast. I think that that

17 complicates all this issue way too much.

18 MS. ANDERSON: Thank you.

19 JUDGE SHEEHY: Okay. Mr. Roselli, any

20 further redirect?

21 MR. ROSELLI: No. Thank you.

22 JUDGE SHEEHY: Okay.

23 JUDGE MIHALCHICK: I have a couple.

24 JUDGE SHEEHY: Okay.

25 JUDGE MIHALCHICK: Sorry.

<p style="text-align: right;">Page 58</p> <p>1 EXAMINATION</p> <p>2 BY JUDGE MIHALCHICK:</p> <p>3 Q Ms. Anderson asked one of the questions I had, but</p> <p>4 so -- regarding the power forecasting by the CLEC.</p> <p>5 So at this point they couldn't give it to you if</p> <p>6 they wanted to; is that right? You don't have the</p> <p>7 space on your form for it?</p> <p>8 A No, there's not a space on the form.</p> <p>9 Q And you said that in the early days of collocation</p> <p>10 you had power forecasting, but it was too much of a</p> <p>11 hassle. So I take it from that it's no longer an</p> <p>12 option that Qwest accepts power forecasts?</p> <p>13 A Well, it was -- And it wasn't really power</p> <p>14 forecasting. It was forecasting of how many lines</p> <p>15 they were going to hook up, which would, you know,</p> <p>16 drive how many cards they were going to card in</p> <p>17 their equipment and what time that, you know, the</p> <p>18 power usage would increase to serve that equipment.</p> <p>19 Q So what started out as CLECs can't forecast became</p> <p>20 CLECs don't give us a forecast, and now they</p> <p>21 really -- we won't let them give us a forecast; is</p> <p>22 that what the situation is?</p> <p>23 A I don't -- I don't say won't let them. I don't</p> <p>24 think we require them.</p> <p>25 Q On the NEBS compliance how does a CLEC engineer or</p>	<p style="text-align: right;">Page 60</p> <p>1 A Like I said, we will -- Okay. I said earlier that,</p> <p>2 you know, we don't -- we wouldn't necessarily, you</p> <p>3 know, look in their cage unless we saw something was</p> <p>4 wrong, like a piece of equipment smoking or</p> <p>5 something. And then we might get with the CLEC and,</p> <p>6 you know, try to determine if it was NEBS compliant</p> <p>7 or why this piece of equipment was causing concern</p> <p>8 and then determine if it had been NEBS compliant.</p> <p>9 Q Okay. Assuming that in a normal course it would</p> <p>10 have been a NEBS-compliant piece of equipment that</p> <p>11 somehow malfunctioned and started smoking or giving</p> <p>12 off gases or whatever it is that affected the</p> <p>13 safety. But to me that doesn't sound like it's no</p> <p>14 longer NEBS compliant; it sounds like it's</p> <p>15 malfunctioning.</p> <p>16 A In that situation if it's, you know, NEBS compliant</p> <p>17 and it's malfunctioning, I would think that the CLEC</p> <p>18 would go back to their manufacturer and say, hey,</p> <p>19 you've got a faulty piece of equipment.</p> <p>20 Q Would that trigger the right of Qwest to call it not</p> <p>21 compliant with NEBS and close it?</p> <p>22 A No, I don't think it would require us to say it's</p> <p>23 not NEBS compliant. We're saying that, you know,</p> <p>24 we've got a problem here. And I think the CLEC</p> <p>25 would want to, you know, get back with the</p>
<p style="text-align: right;">Page 59</p> <p>1 whoever is designing the collocation space and</p> <p>2 equipment determine if equipment or installation is</p> <p>3 NEBS compliant?</p> <p>4 A They would be working with their manufacturer. The</p> <p>5 manufacturer is the one that basically has to</p> <p>6 give -- make sure the equipment is NEBS compliant.</p> <p>7 Q So they can ask their manufacturer or specify when</p> <p>8 they're buying the equipment that it be NEBS</p> <p>9 compliant?</p> <p>10 A Yes.</p> <p>11 Q And that's the normal thing to do?</p> <p>12 A I don't know what -- You know, I don't know what</p> <p>13 Eschelon does or a CLEC does, but I would think that</p> <p>14 would be normal for them to do when they purchase</p> <p>15 equipment is to have the manufacturer they're</p> <p>16 purchasing it from certify to them that it's NEBS</p> <p>17 compliant.</p> <p>18 Q And how would Qwest determine that something is not</p> <p>19 compliant?</p> <p>20 A The -- Like I just said, the equipment that we</p> <p>21 purchase, we have the manufacturer either provide</p> <p>22 the NEBS --</p> <p>23 Q I'm sorry. My question was how would Qwest</p> <p>24 determine that a CLEC's equipment was not NEBS</p> <p>25 compliant?</p>	<p style="text-align: right;">Page 61</p> <p>1 manufacturer and get a good piece of equipment.</p> <p>2 Safety is all of our concerns in the central office,</p> <p>3 CLECs and Qwest.</p> <p>4 Q I had a quest -- or question on the quote</p> <p>5 preparation fee for available collocation spaces.</p> <p>6 Is the fee charged by Qwest for a subsequent quote</p> <p>7 preparation the same fee? Is there only one quote</p> <p>8 preparation fee?</p> <p>9 A I believe there's one quote preparation fee.</p> <p>10 Q And that's a fixed fee in Exhibit A rather than some</p> <p>11 sort of time and material fee?</p> <p>12 A Yes, I think it's a fixed fee, yes.</p> <p>13 Q So that even though it would be a whole lot easier I</p> <p>14 take it to fix that -- or to prepare that subsequent</p> <p>15 quote, because you only have to update some</p> <p>16 information I take it, it would be the same fee as</p> <p>17 the first time around?</p> <p>18 A It would be the fee that's posted right now. Like I</p> <p>19 said, we're -- you know, we've got that teed up in</p> <p>20 the cost docket. If there's concerns, I'm sure that</p> <p>21 they'll be addressed at that time. We have -- You</p> <p>22 know, in the cost model you have all the engineering</p> <p>23 assumptions and everything that goes into developing</p> <p>24 that cost.</p> <p>25 JUDGE MIHALCHICK: That's all I have.</p>

Page 70	<p>1 Eschelon's proposed language; correct?</p> <p>2 A Yes.</p> <p>3 Q And there's no counter language that is reflected as</p> <p>4 Qwest's proposal for that section, is there?</p> <p>5 A No, that's correct.</p> <p>6 Q And then if you look at Section 9.1.15.3 and the</p> <p>7 subparts that follow, that as well is Eschelon's</p> <p>8 proposed language; correct?</p> <p>9 A Yes, that's correct.</p> <p>10 Q And Qwest has not proposed any counter language</p> <p>11 responding to those sections, has it?</p> <p>12 A No, it has not.</p> <p>13 Q Now, the circuits that we're talking about needing</p> <p>14 to be converted are circuits that are presently</p> <p>15 being used by Eschelon to serve end user customers;</p> <p>16 is that right?</p> <p>17 A That's correct. Those are UNE circuits today. And</p> <p>18 once the TRRO issues are settled, they will be</p> <p>19 private line circuits going forward.</p> <p>20 Q Now, there's no reason why the same physical</p> <p>21 facilities can't be used before and after the</p> <p>22 conversion; is that right?</p> <p>23 A That's absolutely true. It's the same physical</p> <p>24 facilities. However, it's two different products.</p> <p>25 One is an unbundled network element, and the other</p>	Page 72	<p>1 that are involved in converting a circuit; is that</p> <p>2 right?</p> <p>3 A That's correct.</p> <p>4 Q And then carrying on at line 27 and then over to the</p> <p>5 next page, page 7, line 2, you say that the work</p> <p>6 done in these three functional areas is to assure</p> <p>7 that the data for a converted circuit is accurately</p> <p>8 recorded in the appropriate systems. Do you see</p> <p>9 that?</p> <p>10 A Yes, that's correct. That's because private lines</p> <p>11 are served out of one set of call centers and repair</p> <p>12 centers and maintenance centers and unbundled loops</p> <p>13 are provisioned and cared for out of other centers.</p> <p>14 And in order to make sure that you're provisioning</p> <p>15 the right service out of the right center, you have</p> <p>16 the data accurately recorded in the system.</p> <p>17 Q And, again, if you're able to just focus a little</p> <p>18 more closely on my question. I know that your</p> <p>19 attorney will have a chance to ask some questions</p> <p>20 when I'm done.</p> <p>21 The tasks performed in these three</p> <p>22 functional areas that we've been talking about do</p> <p>23 not involve making physical changes to the circuit;</p> <p>24 is that right?</p> <p>25 A That's correct.</p>
Page 71	<p>1 is a -- what's effectively a retail analog, the</p> <p>2 special access or private line circuits. And those</p> <p>3 two products are provisioned and maintained and</p> <p>4 repaired out of different centers for -- in Qwest's</p> <p>5 network; and, therefore, the circuit ID is the</p> <p>6 identifier that shows whether one is an unbundled</p> <p>7 loop or whether it's a private line circuit.</p> <p>8 Q And I will be getting to those issues. But maybe if</p> <p>9 I could get you to focus a little more specifically</p> <p>10 on my question. From a functional perspective, a</p> <p>11 UNE and a private line do the same thing; correct?</p> <p>12 A That's my understanding, yes.</p> <p>13 Q They are two names essentially for the same thing;</p> <p>14 isn't that fair?</p> <p>15 A Well, I don't think they're two names for the same</p> <p>16 thing necessarily. They are -- One is a retail</p> <p>17 product, and one is a wholesale or unbundled network</p> <p>18 element product.</p> <p>19 Q The retail product, the private line, is more</p> <p>20 expensive than the UNE product; is that right?</p> <p>21 A Yes, that's correct.</p> <p>22 Q Now, in your rebuttal testimony -- and I'm looking</p> <p>23 at page 6, lines 22 through 26.</p> <p>24 A Yes, I have that.</p> <p>25 Q There you identify three different functional areas</p>	Page 73	<p>1 Q And as I look at the language that you use to</p> <p>2 describe what these three areas do and I look at the</p> <p>3 verbs, I see a lot of reviewing and assuring and</p> <p>4 confirming and validating and verifying various</p> <p>5 pieces of data. Is that generally reflective of</p> <p>6 what these three functional areas do?</p> <p>7 A Well, I don't know that that's what these three</p> <p>8 areas do. That is part of the work tasks or</p> <p>9 functions that they're performing in the conversion</p> <p>10 process, certainly.</p> <p>11 Q That's what those three areas do in the context of</p> <p>12 converting a UNE to a private line; they do things</p> <p>13 like review data, they assure the data is accurate,</p> <p>14 they confirm the accuracy of data, they validate,</p> <p>15 they verify; correct?</p> <p>16 A And they make sure that the circuit identifiers are</p> <p>17 appropriately recorded in the appropriate systems,</p> <p>18 and they follow the flow of the order to ensure that</p> <p>19 there's no disruption to the CLEC's end user</p> <p>20 customer.</p> <p>21 Q Now, the reason why all this reviewing and</p> <p>22 confirming and validating is necessary is because</p> <p>23 Qwest has designed its systems such that a different</p> <p>24 circuit ID is assigned to a private line after the</p> <p>25 circuit's converted; correct?</p>

<p style="text-align: right;">Page 78</p> <p>1 A The end user service will not be disrupted in any 2 way, that's true.</p> <p>3 Q And if I'm an end user and I'm on a phone line 4 that's being converted from a UNE to a nonUNE, at 5 the moment of the conversion I won't know it; 6 correct?</p> <p>7 A No, because you are the CLEC's customer. You're not 8 Qwest's customer. The CLEC is Qwest's customer, and 9 the CLEC is changing product from an unbundled 10 element to a private line circuit.</p> <p>11 Q If you go to page 7 of your testimony, lines 16 12 through 18, you talk about the designer --</p> <p>13 A Yes.</p> <p>14 Q -- you see there? And you say that the designer 15 reviews and validates the circuit design and it 16 assures that the design records for the converted 17 circuit match the current UNE circuit as well as 18 that no visual changes to the circuit are needed. 19 Do you see that?</p> <p>20 A That's correct.</p> <p>21 Q You don't say there that the designer actually 22 designs anything. Is there anything that gets 23 designed in connection with converting a UNE to a 24 nonUNE?</p> <p>25 A No. What happens though is that the unbundled</p>	<p style="text-align: right;">Page 80</p> <p>1 all of that work would not be necessary if the 2 circuit ID didn't change; am I right about that?</p> <p>3 A If the circuit ID didn't change, you wouldn't be 4 able to identify whether you had an unbundled loop 5 or a private line circuit.</p> <p>6 Q Are you able to answer my question? Do you recall 7 my question? My question --</p> <p>8 A Would you restate it?</p> <p>9 Q -- is all of that work that you've been describing, 10 none of it would be necessary if the circuit ID 11 didn't change; isn't that true?</p> <p>12 A It's true. That's a supposition that can't happen 13 though in -- and properly identify the products.</p> <p>14 Q Another thing that you don't say that the designer 15 does is you don't say that the designer engineers 16 anything. In connection with a conversion from a 17 UNE to a nonUNE, there's no engineering that goes 18 on; isn't that right?</p> <p>19 A That's true, there's no engineering.</p> <p>20 Q And that's because there's already a functioning 21 circuit, so there's no need for any designing or 22 engineering or physical changes of any kind; isn't 23 that right?</p> <p>24 A That's correct.</p> <p>25 Q So when the designer reviews and validates the</p>
<p style="text-align: right;">Page 79</p> <p>1 element comes through as a disconnect. And because 2 of all of the mechanization that's -- that happens 3 in our systems, some mechanization that's been there 4 for a very long time, some of it that we've been 5 working on for the last 10 years to get in place, an 6 order for a disconnect flows through certain 7 systems, and then we've got essentially -- it's 8 called an add-over disconnect. It's an add that's 9 also happening at the same time for the private line 10 circuit to establish that service for the CLEC.</p> <p>11 Well, what happens in those mechanized systems is 12 that things flow along; and if you don't check and 13 take care to make sure that the disconnect doesn't 14 actually happen, then you could theoretically 15 disrupt the end user customer's service. We don't 16 want to have that happen. And so what we do is we 17 have steps along the way that our people take to 18 check that flow and make sure that the order is 19 processing so that -- so that those mechanized steps 20 don't happen. The automated steps that we've put in 21 place to try to speed up provisioning of disconnects 22 and installs and so forth have to be monitored so 23 that some of those things don't happen so that the 24 end user customer is not disconnected.</p> <p>25 Q All of those steps that you've just been describing,</p>	<p style="text-align: right;">Page 81</p> <p>1 circuit design and assures the design records for 2 the converted circuit match the UNE circuit, the 3 only reason it wouldn't match is if the records were 4 not correct in the first place; isn't that right?</p> <p>5 A No, that's not correct. The reason that they might 6 not match is that when the disconnect is put into 7 the system for the UNE circuit, the process, the way 8 that it works now, allows that to flow through; and 9 theoretically you could actually disconnect that 10 circuit. The designer is there to make sure that 11 that hasn't happened, that the information has 12 remained the same, and that when the circuit ID 13 converts to the private line that all of that is 14 still in place. It's -- It's a matter of checking 15 that it hasn't changed as a result of the disconnect 16 order that has to happen to disable the unbundled 17 network product in the systems.</p> <p>18 Q At page 8 of your rebuttal, lines 7 through 8, you 19 talk about the service delivery implementer having 20 overall control for the order provisioning. Do you 21 see that?</p> <p>22 A Yes, that's correct.</p> <p>23 Q And the service delivery implementer verifies the 24 record in and record out orders; is that correct?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q And then in the footnote you describe what that 2 means, the record in and record out orders; and you 3 say that those are in and out service orders that 4 establish the, quote, new, closed quote, private 5 line service for the CLEC and disconnect the 6 existing UNE by moving the circuit data from one 7 billing system to another; correct? 8 A That's correct. 9 Q Now, I see that you've got the word new in quotes; 10 is that right? 11 A Yes. 12 Q And the reason you've got quotation marks around the 13 word new is because this is a service that's new in 14 name only; isn't that correct? 15 A It's a new product for the CLEC. It certainly does 16 not change the existing circuit for the end user -- 17 CLEC's end user customer. 18 Q Nor is the service actually disconnected; is that 19 right? 20 A That's correct. And that's why all these people do 21 all of this work is to make sure that that doesn't 22 happen. 23 Q Now, the reason that all of this work has to be done 24 is because of the policies that Qwest has adopted 25 and set out in its nonCMP TRRO PCATs; isn't that</p>	<p style="text-align: right;">Page 84</p> <p>1 Q You just don't know anything about any TRRO PCATs? 2 A I don't. 3 Q Okay. And the various policies that Qwest has in 4 place regarding how circuits are going to be 5 converted from UNE to nonUNE, you don't know where 6 those policies are written down or how they got 7 there? 8 A No, I do not. 9 Q Now, you say in your rebuttal at page 11, lines 19 10 through 22, that for a limited period of time Qwest 11 permitted CLECs to convert from private line 12 circuits to UNEs without changing the circuit ID; is 13 that right? 14 A Yes. 15 Q And here we're talking about really the mirror image 16 of the conversion from UNE to nonUNE; is that right? 17 A Yes, that's correct. 18 Q And this is something that would have taken place 19 back when UNEs came into being and it was necessary 20 for those circuits to now be treated differently 21 from a pricing perspective; is that correct? 22 A That's correct. 23 Q Now, when Qwest implemented the policy related to 24 converting from private line circuits to UNEs, was 25 there any separate conversion charge associated with</p>
<p style="text-align: right;">Page 83</p> <p>1 right? 2 JUDGE SHEEHY: NonTRRO -- 3 MR. MERZ: I'm sorry -- 4 JUDGE SHEEHY: -- PCATs? 5 MR. MERZ: NonCMP TRRO PCATs. 6 THE WITNESS: I would disagree with that. 7 BY MR. MERZ: 8 Q Well, let me ask you this: Has Qwest agreed to 9 negotiate with any CLECs in connection with ICA 10 arbitrations about the process by which UNEs would 11 be converted to nonUNEs? 12 A I don't know. 13 Q Do you know whether Qwest has in connection with CMP 14 adopted any processes relating to the conversion of 15 UNEs to nonUNEs? 16 A I don't know. 17 Q Do you know whether Qwest has addressed the issue of 18 conversion from UNEs to nonUNEs in any commission 19 proceeding? 20 A We're talking about the conversion in the TRRO 21 proceedings that are going on, yes. 22 Q You're aware that Qwest has implemented TRRO PCATs; 23 correct? 24 A I'm -- That's not my part of the business, so I'm 25 not familiar with the PCATs.</p>	<p style="text-align: right;">Page 85</p> <p>1 that conversion? 2 A I'm not aware. 3 Q You don't know either way? 4 A I believe that -- Let me think about that. There is 5 a TELRIC charge that has been established in most of 6 our states. I don't know that it's been through a 7 cost docket in all of the states. But there is a 8 TELRIC charge for conversions of private lines to 9 UNEs that was established I -- I would say starting 10 around the 2001, 2002 time frame. 11 Q And do you know whether a TELRIC charge for 12 conversion of a private line to a UNE has been 13 approved in Minnesota? 14 A I believe that there is a charge, yes. 15 Q The various functions that you described of the 16 service delivery coordinator, the designer, the 17 service delivery implementer, were those functions 18 performed in connection with converting from a 19 private line to a UNE circuit? 20 A No, they were not. 21 Q How -- When a private line was converted to a UNE 22 circuit, how was the price difference reflected? 23 A When we establish the cost for the private line to 24 UNE conversion, at that point in time we thought we 25 could do it without doing a circuit ID change. And</p>

<p style="text-align: right;">Page 86</p> <p>1 so the process that was established or the work 2 tasks that went into the cost for that didn't 3 anticipate doing that circuit ID change. Actually 4 the private line to UNE conversion cost that I have 5 proposed now for the Minnesota cost docket does 6 anticipate that and does include those steps. 7 The reason that we didn't anticipate 8 those steps initially is because we thought we could 9 make the conversions without changing the circuit 10 IDs. When we did that, we found that -- and I 11 believe that I've addressed that in response to some 12 interrogatories that were submitted, and I've also 13 included some explanation of that in this testimony 14 I think -- that what happened was we were having 15 tremendous difficulty tracking those services as 16 UNEs and private lines if we didn't identify those 17 circuits in our systems. And so it created a 18 tremendous amount of manual effort and work for us 19 to do that. We were having to individually track 20 all of those circuits manually outside of the 21 systems that we established for doing that. And as 22 a result of that, in April of 2005 we cut off the 23 ability for CLECs to convert from private lines to 24 UNEs without going through a circuit ID change 25 process. And so our new cost study for that, the</p>	<p style="text-align: right;">Page 88</p> <p>1 elements for loops and DS1s and DS3s, yes. 2 Q And a USOC is a what, uniform service... 3 A Universal service order code. 4 Q And it's a little piece of computer code that tells 5 the system what price is to be charged for a 6 particular element; is that right? 7 A It's a code that we receive from Telcordia for a 8 particular product. Private lines have USOCs 9 associated with them and so do unbundled -- some of 10 the unbundled network elements. 11 Q Now, you mentioned the fact that Qwest cut off the 12 ability to convert from a nonUNE to UNE and keep the 13 same circuit ID, Qwest cut that off in April 2005; 14 is that right? 15 A That's correct. 16 Q And that was about the time that Qwest was also 17 looking at how to implement the TRRO; is that right? 18 A I don't know when Qwest started to look at that. 19 Q I want to talk with you now about the power 20 reduction quote preparation fee. And it's 21 section -- I'm sorry, issue 8-22 and ICA Sections 22 8.3.9.1.3 and 8.3.9.2.3. And the issue here is 23 whether Eschelon should have to pay a quote 24 preparation fee when it requests either a reduction 25 or a restoration of power with reservation; is that</p>
<p style="text-align: right;">Page 87</p> <p>1 one that we've submitted in Minnesota, reflects the 2 process and is essentially the same process in 3 reverse that we're using for the conversions of UNEs 4 back to private lines. 5 Q If your -- If your question -- If your answer 6 answered my question somewhere, I lost it. So I'm 7 just going to ask it again. When Qwest did the 8 conversion from private line to UNEs and didn't 9 change the circuit ID, how did Qwest go about 10 reflecting the price difference? Because UNEs are 11 cheaper than private line. How did you do that? 12 A How did we reflect the price difference? 13 Q How was the price difference accounted for? Was it 14 an adder on the bill? Was it a new USOC? How as a 15 matter of process did you implement the difference 16 in price when you did a conversion? 17 A And that's what I was trying to explain. It was a 18 very heavily manual process. It was changing the -- 19 certainly the USOC, but it was also not changing the 20 circuit ID initially. And that's what caused all of 21 the manual processing. 22 Q If I understand what you're saying is you 23 implemented a new USOC to reflect the price change; 24 is that accurate? 25 A There was a USOC in existence for unbundled network</p>	<p style="text-align: right;">Page 89</p> <p>1 correct? 2 A Yes. 3 Q QPF is a quote preparation fee; is that right? 4 A QPF is a quote preparation fee, yes. 5 Q And, I mean, just like what it sounds like, a quote 6 preparation fee is a charge that Qwest assesses for 7 preparing a quote; is that right? 8 A It's a charge that Qwest assesses for doing the work 9 associated with establishing an order and -- and 10 determining what the rate will be or determining 11 what work will be involved. 12 Q If you would go to the ICA, Section 8.3.9.1.3. Do 13 you have it there? 14 A Could you read me that section again, please? 15 Q Sure. 8.3.9.1.3. 16 A I have that. 17 Q That's language that Qwest has proposed that defines 18 what the power reduction QPF is? 19 A Yes. 20 Q And Qwest's language proposes that the QPF include 21 the cost of performing a feasibility study and 22 producing the quote for fulfilling the DC power 23 reduction request; is that right? 24 A That's correct. 25 Q And then 8.3.9.2.3 is Qwest's proposed language</p>

<p style="text-align: right;">Page 94</p> <p>1 established; correct?</p> <p>2 A That's correct.</p> <p>3 Q I'm going to move now to expedites, issue 12-67. In</p> <p>4 your rebuttal testimony at page 18 you discuss why</p> <p>5 you believe TELRIC pricing is not appropriate for</p> <p>6 expedites; is that right?</p> <p>7 A That's correct.</p> <p>8 Q And you believe that TELRIC pricing is not</p> <p>9 appropriate for expedites because expedites are a</p> <p>10 superior service; is that correct?</p> <p>11 A That's correct.</p> <p>12 Q Would you agree with me that if expedites are not a</p> <p>13 superior service, then TELRIC pricing is</p> <p>14 appropriate?</p> <p>15 MR. TOPP: I'll object that that's</p> <p>16 calling for a legal conclusion.</p> <p>17 JUDGE SHEEHY: I'd say overruled. I</p> <p>18 mean, you answered the first question, but you're</p> <p>19 objecting to the second one?</p> <p>20 Okay. You can answer it.</p> <p>21 THE WITNESS: Could you repeat the</p> <p>22 question?</p> <p>23 BY MR. MERZ:</p> <p>24 Q Sure. Will you agree with me that if expedites are</p> <p>25 not a superior service that TELRIC pricing is</p>	<p style="text-align: right;">Page 96</p> <p>1 A Well, I believe that the Minnesota commission has</p> <p>2 established a retail expedite charge or has allowed</p> <p>3 a retail expedite charge to go into place, and this</p> <p>4 TSLRIC study would have supported that charge.</p> <p>5 Q That study shows that an expedite rate of \$200 per</p> <p>6 day is above cost, as computed by the TSLRIC study;</p> <p>7 is that right?</p> <p>8 A Yes, that's correct.</p> <p>9 Q What did that study show Qwest's TSLRIC costs were</p> <p>10 for expedites?</p> <p>11 A I don't have that off the top of my head.</p> <p>12 Q Do you have like a ball park?</p> <p>13 A I don't know.</p> <p>14 Q Was it a per-day number?</p> <p>15 A Yes, it was a per-day number.</p> <p>16 Q If you would go to your rebuttal at page 22, lines</p> <p>17 17 through 18. You say there -- and I'm</p> <p>18 paraphrasing -- but the price for expedites was set</p> <p>19 at a level that Qwest believes reflects the value of</p> <p>20 a premium service; is that right?</p> <p>21 A Well, that's a paraphrase; but, yes, that's --</p> <p>22 Q In setting the price at \$200 a day, how did Qwest go</p> <p>23 about determining that that was a number that</p> <p>24 reflected the value of the service?</p> <p>25 A Well, I think that that's something that's</p>
<p style="text-align: right;">Page 95</p> <p>1 appropriate?</p> <p>2 A I would agree.</p> <p>3 Q Now, at page 21 of your rebuttal you talk about a</p> <p>4 TSLRIC study, T-S-L-R-I-C study; is that right?</p> <p>5 A Yes, that's correct.</p> <p>6 Q Now, that study has not been produced in this case,</p> <p>7 has it?</p> <p>8 A I'm not aware of whether it's been produced or not.</p> <p>9 Q You don't know?</p> <p>10 A No.</p> <p>11 Q And it's a TSLRIC study that relates to the cost of</p> <p>12 providing expedited service; is that right?</p> <p>13 A Well, what I'm explaining here is that a TSLRIC is</p> <p>14 what you would use to establish a price floor for a</p> <p>15 service like an expedite.</p> <p>16 Q And the specific study that you are talking about is</p> <p>17 one that was done in connection with expedited</p> <p>18 service; is that right?</p> <p>19 A I do have an expedite study that's a TSLRIC study,</p> <p>20 yes.</p> <p>21 Q Do you know whether that study, the one that you're</p> <p>22 just referring to, has been reviewed by the</p> <p>23 Minnesota commission?</p> <p>24 A Reviewed in what context?</p> <p>25 Q In any context.</p>	<p style="text-align: right;">Page 97</p> <p>1 accomplished by the product organization, when</p> <p>2 they're looking at a service that they have a</p> <p>3 particular cost for and they analyze what that --</p> <p>4 what the value of that service is. It's not</p> <p>5 something that's performed by me or by my</p> <p>6 organization. It's performed in the product</p> <p>7 organization to assess what that value is.</p> <p>8 Q Is the answer to my question I don't know?</p> <p>9 A I guess in particular how they came up with \$200,</p> <p>10 yes, I would have to say I don't know.</p> <p>11 Q Okay. Do you know what activities Qwest performs</p> <p>12 when it expedites delivery of a loop that it doesn't</p> <p>13 perform when it delivers that loop on the regular</p> <p>14 interval?</p> <p>15 A The activities that it performs is that it moves the</p> <p>16 requesting party to the head of the line.</p> <p>17 Q And I'm thinking about the act -- the provisioning</p> <p>18 activities. Are there activities that Qwest does</p> <p>19 when it expedites that it doesn't do when it</p> <p>20 delivers a loop on the normal regular interval?</p> <p>21 A There are not activities that are different, but the</p> <p>22 activities are performed on different days than they</p> <p>23 would normally be done.</p> <p>24 Q You do the same thing; you just do it faster?</p> <p>25 A That's correct.</p>

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1 Qwest, the black -- the boldfaced and underlined
2 language; is that right?
3 A That is correct.
4 Q And Qwest is proposing striking out the phrase
5 access to; is that correct?
6 A Correct.
7 Q Now, your reason for striking the words access to is
8 that typically you say when you discuss access to a
9 UNE it is in the context of a CLEC paying a
10 nonrecurring rate to be able to use the UNE; is that
11 correct?
12 A I hope and believe I say a recurring rate, that
13 access to usually means use.
14 Q Ah.
15 A In common understanding of when you say someone's
16 going to access a UNE, what you're really saying is
17 they're going to use a UNE. And so what we were
18 trying to indicate is that when you use a UNE, you
19 pay the recurring rate to access it. That does not
20 necessarily mean all of the other items that you
21 have discussed here would be available as part of
22 that recurring use rate. They would probably result
23 in a different -- or additional charges.
24 Q You understand that Qwest is required under Section
25 251 of the telecom act to provide access to UNEs at

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1 cost-based rates; is that right?
2 A Yes.
3 Q And you understood that Eschelon's reason for
4 including the phrase access to unbundled network
5 elements in this section was to confirm that moving,
6 adding to, repairing, and changing UNEs would be
7 included within the scope of 251; is that right?
8 A My understanding was that your request was that it
9 would be part of access to UNEs. And that was --
10 Again, the concern that we had, since access
11 typically means use, we did not agree that the use
12 of a UNE includes these activities. If you wanted
13 to acknowledge within the interconnection agreement
14 that you would have these additional activities
15 available to you, we were fine with that.
16 Q You understood though that Eschelon's reason for
17 using the phrase access to UNEs in connection with
18 these activities was to confirm that they fell
19 within the scope of 251?
20 A I'm going to defer to your understanding. Once
21 again, we were trying to clarify that access to in
22 the context of use, these would not be included.
23 Q Well, let me ask you this: You understood, did you
24 not, that by striking the words access to you were
25 really defeating the purpose for which Eschelon had

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1 proposed this language in the first place?
2 A No, I did not think that. My understanding was
3 Eschelon wanted some assurances that the kind of
4 activities here would be available for unbundled
5 network elements, and we were agreeing those
6 activities would be available to you. We were just
7 disagreeing that they were available as part of you
8 paying to access the UNE.
9 Q At line 8 of page 5 you say that those activities
10 will be available, quote, at the applicable rate.
11 Do you see that?
12 A Yes, I do.
13 Q Now, by the applicable rate did you mean to be
14 referring to a cost-based rate for those activities
15 that are identified there?
16 A I meant simply whatever proceeding would establish
17 those rates, that's the applicable rate. And I was
18 not predetermining what proceeding that would be.
19 Q And is it your understanding that the fundamental
20 dispute relating to this provision is, in fact, at
21 what rate these activities will be provided?
22 A I know that there is a rate dispute, and we
23 understand that and believe that rate disputes need
24 to obviously be resolved between the parties. But
25 we didn't feel that a rate dispute could be resolved

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1 with this generic term of access to.
2 Q And the specific rate dispute we're talking about is
3 a dispute about whether those activities are
4 required to be performed at cost-based rates or not;
5 correct?
6 A That is one of the disputes, yes.
7 Q I'm going to talk with you now about network
8 modernization and maintenance, which is issues 9-33,
9 34, 35, and 36. And it concerns Section 9.1.9 and
10 9.1.9.1 of the ICA.
11 Issue 9-33 concerns Eschelon's addition
12 of the phrase adversely affect to Section 9.1.9; is
13 that right?
14 A Correct. Well, that's my understanding from memory.
15 If you want to -- If you're referring to part of my
16 testimony, that would be helpful.
17 Q And the ICA is in front of you there I think in a
18 white binder.
19 A Thank you.
20 Q And if you want to refer to 9.1.9, please feel free
21 to do that.
22 A Yes.
23 Q Now, agreed-upon language in Section 9.1.9 provides
24 that modifications to maintain and modernize Qwest's
25 network may result in minor changes to transmission

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1 parameters; is that right?
2 A Yes.
3 Q And Eschelon has proposed language that provides
4 that such changes will not adversely affect service
5 to end users; is that correct?
6 A Yes.
7 Q And you would agree with me, would you not, that a
8 change that results in a circuit not working should
9 not be considered a minor change?
10 A In a vacuum not in context, it would appear to me
11 that something that isn't working would not have
12 been minor.
13 Q I mean --
14 A That's out of context, the discussion.
15 Q If a circuit worked before Qwest undertook a network
16 maintenance or modernization activity and then after
17 that activity was completed the circuit didn't work,
18 you wouldn't regard the change resulting from that
19 activity as a minor change, would you?
20 A Assuming the circuit was being used appropriately
21 within ANSI standards for that circuit, yes.
22 Q And would you also agree with me that a change that
23 reduces the quality of a customer's service such
24 that it's something the customer notices, that that
25 kind of change would not be a minor change?

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1 A There are changes in transmission parameters that --
2 Or what I really should say is up above there are
3 added needed changes that people can arguably
4 disagree whether or not they are an adverse affect.
5 So, for example, Qwest believes that when it's
6 required to do an area code split and introduce a
7 new area code, that would be a necessary change that
8 would be appropriately noticed. However, some end
9 user may think that's an adverse affect. So, yes,
10 changes can be perceived differently, depending on
11 where you're at in the continuum.
12 Q And you provided an example of a change that -- like
13 an area code change that would result in an -- a
14 customer might perceive as being an adverse affect.
15 Do you have any other examples in mind?
16 A Going from 7 to 10-digit dialing, there are some
17 customers who believe that's an adverse affect.
18 It's a little dated, but in the past there used to
19 be services available with our step-by-step central
20 offices that were not available when we went to
21 electronic or digital central offices. And so a
22 customer might have thought that was an adverse
23 affect. So if what happens changes how you're
24 currently doing your service, you think it's adverse
25 to you, even if to the rest of the world it seems

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1 like a necessary change.
2 Q Let's focus now on the quality of the transmission
3 of the service. Would you agree with me that a
4 change that Qwest makes as part of its network and
5 modernization activities that results in a
6 degradation of the transmission quality of
7 customer's service such that the customer notices
8 it, for example, static on the line, too faint, any
9 other kind of change that you might think of, would
10 you agree that that kind of change that the customer
11 notices would be not a minor change?
12 A Once again, it's hard to talk in general terms and
13 make specific statements. What Qwest believes is
14 when it does maintenance and modernization
15 activities, it typically undertakes those to
16 increase or improve the service for all customers.
17 And if that improvement or change the service is
18 still being delivered within ANSI standards, that
19 would be a minor modification. Whether an
20 individual customer, again as we already discussed,
21 thinks that change has an adverse affect or not is a
22 subjective issue.
23 Q And my question I think is different than the one
24 you answered. My question is if the customer
25 notices a degradation in the transmission quality,

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1 the way the voice sounds in the receiver, would you
2 agree with me that when the customer notices
3 something like that, the change that causes that
4 degradation would not be a minor change?
5 A If the customer notices from that customer's
6 perception, yes, it would probably be an adverse
7 affect from that customer's perception.
8 Q And it wouldn't be a minor change; correct?
9 A Once again, we're talking theoretically in the
10 abstract. And I'm assuming if a customer from their
11 perspective thinks it's adverse, then they might
12 think it's not minor. But it's all within the
13 perception of the customer, which is why with the
14 Qwest language we believe that the appropriate
15 standard is ANSI standards.
16 Q Would you agree with me that it could be the case
17 that a service might be within ANSI standards but
18 still result in a circuit that doesn't work?
19 A Typically it would be because the service that's
20 being provided over that facility is not being
21 provided commensurate with those ANSI standards. If
22 the service worked within the same range -- Because,
23 once again, one is an underlying network element or
24 facility; the second one is the service that you're
25 providing. Different services are provided over

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1 A Correct.

2 Q Is Qwest saying that the notice requirements of this

3 Section 9.1.9 also apply to copper loops?

4 A There may be situations where notice requirements

5 would apply, but you would not have a copper loop

6 retirement. That is correct. So, for example, on

7 our -- If I could provide an example. On our

8 website let's suppose we have some copper facilities

9 and they are -- real life one -- it was trying to go

10 under a lake, and they kept getting wet. So now

11 we're going to take out the part from under the lake

12 and run them around the lake. That meant that the

13 loop would be longer then for customers; and,

14 therefore, there may have been some affect. So we

15 would notice onto our copper retirement notice

16 website that we've got some copper loops that used

17 to be 5,000 feet in length, and now they're going to

18 be 9,000 feet in length. So we notice other than

19 copper retirements changes to copper that could

20 affect the customer.

21 And the two things that we notice most

22 commonly is the loop would become longer for some

23 reason, because that could affect a service to an

24 end user customer; and secondly would be if we

25 change the gauge of the copper. So, for example, if

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1 we have some copper and the gauge is 24 but we're

2 going to put in new copper and it's 26, then we

3 would notice that change in gauge because there are

4 services that are affected by changes in gauge of

5 copper. So that's why we didn't want to defer all

6 copper notices to the section in your language,

7 because we felt like it didn't cover those

8 scenarios, and you would still want notice in those

9 scenarios.

10 Q I think I understand. But I just want to clarify.

11 Section 9.2.1.2.3 contains the notice provisions

12 relating to copper loops; is --

13 A For retirement.

14 Q -- that right? For retirement of copper loops?

15 A Correct.

16 Q And Section 9.1.9 contains notice provisions other

17 than those relating to retirement of copper loops?

18 A Correct. There are still other loop notices that

19 would be required.

20 Q And you understand that Eschelon's proposal with

21 respect to 9.1.9 is that the provisions of 9.1.9

22 would not apply to retirement of copper loops?

23 A My understanding was you were trying to clarify that

24 you were not disputing retirement of copper loops,

25 and that was your language to attempt to say that

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1 you understand that copper loops are discovered in

2 this other section. But, once again, by making that

3 reference, it implied that that was the only

4 provisions that would apply to copper loops, and we

5 didn't feel that was appropriate.

6 Q You understand that Eschelon's proposal is that

7 retirement of copper loops is dealt with in

8 9.2.1.2.3?

9 A Correct.

10 Q And Qwest agrees with that?

11 A Yes.

12 Q All right. There we go. I think that's it.

13 A But there's other notices that may apply.

14 Q You say there are other notices that may apply?

15 A Correct, other than copper retirements. And I just

16 indicated two notices that could easily happen to a

17 copper facility, lengthening the copper or changing

18 the gauge in the copper, and it particularly affects

19 DSL-related services.

20 Q And those notices that are not related to retirement

21 of copper loops are to be dealt with in 9.1.9?

22 A Correct.

23 Q And that's what Eschelon proposes; correct?

24 A Well, I think -- Now I understand that that's what

25 you're attempting to propose also; that we would

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1 continue to do appropriate notices regarding copper

2 other than just the retirement ones.

3 JUDGE SHEEHY: Can I just ask you, the

4 Eschelon language refers specifically to retirement

5 of copper loops being addressed in 9.2.1.2.3.

6 THE WITNESS: Correct.

7 JUDGE SHEEHY: Whereas your language is

8 more general. And it says, Details regarding copper

9 loops may be found at 9.2.1.2.3, which seems to be a

10 little more vague as to -- What section governs the

11 notices you were just talking about involving copper

12 loops that are not retirements?

13 THE WITNESS: If --

14 JUDGE SHEEHY: Do you understand what I'm

15 saying?

16 THE WITNESS: Yes, I think I do.

17 JUDGE SHEEHY: So is it -- I mean, do you

18 think your language is better or is there something

19 different that you're trying to address?

20 THE WITNESS: We were trying to be more

21 broad in our language that the total requirements

22 for copper loop retirement are not in that section.

23 Part of the issue is is that that section is very

24 much detailed under I believe fiber to the home. So

25 you are sort of setting up a scenario where you have

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<p>1 any discussion of caps.</p> <p>2 BY MR. MERZ:</p> <p>3 Q Is it Qwest's intent to deny an Eschelon order based</p> <p>4 on Qwest's belief that the order exceeds the caps in</p> <p>5 a situation where Eschelon has provided</p> <p>6 self-certification that the order is consistent with</p> <p>7 the TRRO requirements?</p> <p>8 A Again, at the risk of not repeating that, Qwest</p> <p>9 believes that if the CLEC self-certifies that it</p> <p>10 meets all the service eligibility criteria, then</p> <p>11 Qwest would not reject that order. However,</p> <p>12 Qwest -- or at least I do not believe that the TRRO</p> <p>13 states that if you exceed caps, we still cannot</p> <p>14 reject the order. So our plan would be if we knew</p> <p>15 for a fact that an order would exceed the caps, we</p> <p>16 would reject the order and give you the rationale of</p> <p>17 why we believe it exceeded the caps.</p> <p>18 Q And that would be true even if Eschelon certifies</p> <p>19 that the order doesn't exceed the caps, that it is</p> <p>20 consistent with the TRRO requirement?</p> <p>21 A Yes.</p> <p>22 Q Yes. All right. I'm going to ask you now a few</p> <p>23 questions about cross-connects, which is issue 9-50.</p> <p>24 A Yes.</p> <p>25 Q And it's ICA Section 9.3.3.8.3. And the issue here</p>	<p>1 Qwest's obligations to provide cross-connects; Qwest</p> <p>2 is claiming that it just -- there's no demand for</p> <p>3 that element; is that correct?</p> <p>4 A That is correct.</p> <p>5 Q Now, UCCRE, U-C-C-R-E, which is a similar issue,</p> <p>6 issue 9-53, ICA Sections 9.1 and 9.1 -- I'm sorry,</p> <p>7 9.9 and 9.9.1. And here the issue is Qwest's</p> <p>8 obligations to provide the UCCRE element; is that</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q And similar to the last one, Qwest's position here</p> <p>12 is that there's no demand for that element?</p> <p>13 A They are different factual situations. We</p> <p>14 acknowledge that there is not an explicit removal of</p> <p>15 cross-connects in the issue to do with the</p> <p>16 cross-connect subloops. That is a service we were</p> <p>17 voluntarily providing. We are not required to</p> <p>18 provided it, and there's no demand, And we would</p> <p>19 like to remove it.</p> <p>20 With UCCRE we believe indeed that with</p> <p>21 the TRO that there is no longer a requirement that</p> <p>22 we provide UCCRE. So it is a fact -- There's</p> <p>23 factual differences between the two scenarios.</p> <p>24 Q Do you know whether AT&T has UCCRE in its contract?</p> <p>25 A No, I do not.</p>
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<p>1 is Qwest's obligation to provide subloop</p> <p>2 cross-connects; is that right?</p> <p>3 A Yes.</p> <p>4 Q Qwest's position on this issue is that there's no</p> <p>5 CLEC demand for this product and that it desires to</p> <p>6 phase the product out; is that right?</p> <p>7 A Yes.</p> <p>8 Q Now, you would agree with me that both AT&T and</p> <p>9 Covad have cross-connects available in their ICAs?</p> <p>10 A You know, I'm -- I have to apologize. I don't have</p> <p>11 that memorized.</p> <p>12 Q You just don't know?</p> <p>13 A I don't know as I sit here.</p> <p>14 Q Assuming that AT&T does have cross-connects in its</p> <p>15 ICA, would you agree with me that if AT&T ordered</p> <p>16 subloop cross-connects Qwest would be obligated to</p> <p>17 provide those cross-connects pursuant to the ICA?</p> <p>18 A If they were in the ICA and they ordered it, yes, we</p> <p>19 would provide them pursuant to the ICA.</p> <p>20 Q Would you also agree with me that if Eschelon orders</p> <p>21 subloop cross-connects and Eschelon doesn't have</p> <p>22 that in its ICA, Qwest would not provide those to</p> <p>23 Eschelon?</p> <p>24 A Yes, correct.</p> <p>25 Q And Qwest is not claiming here that the TRO removed</p>	<p>1 Q Do you know whether UCCRE is something that Qwest</p> <p>2 makes available under its Minnesota SGAT?</p> <p>3 A My understanding is it is in the Minnesota SGAT.</p> <p>4 Q Assuming that AT&T ordered UCCRE today, if it does</p> <p>5 in fact have it in its contract, Qwest would be</p> <p>6 obligated to provide it; correct?</p> <p>7 A Yes, except for there could be the pos -- with the</p> <p>8 caveat that if the interconnection agreement that</p> <p>9 they're operating on that has it is not completely</p> <p>10 appropriate with TRO and TRRO, then there may be an</p> <p>11 amendment situation there to bring that</p> <p>12 interconnection agreement current because, as we all</p> <p>13 know, there's different various ages of</p> <p>14 interconnection agreements.</p> <p>15 Q Well, in all events, so long as it's in the</p> <p>16 agreement, AT&T would be entitled to it; correct?</p> <p>17 A Subject to it being removed from the interconnection</p> <p>18 agreement, yes.</p> <p>19 Q Do you know whether Qwest has put out a TRO template</p> <p>20 agreement?</p> <p>21 A Yes.</p> <p>22 Q And that template agreement is something that it</p> <p>23 uses as the basis for negotiating amendments to make</p> <p>24 ICAs consistent with the TRO; is that right?</p> <p>25 A Yes.</p>

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1 this issue. I would need to confirm it with the
 2 powers that be with inside Qwest. But, yes, it is
 3 a -- combined with the cost recovery language would
 4 be a significant movement.
 5 Q And if we took the BFR out of that provision, can
 6 you think of any other issues that you would have
 7 with that section?
 8 A There are some outlines in the special request
 9 process that do talk about if there are UNE costs
 10 that they would be identified. But the special
 11 request process starts with a premise that the UNEs
 12 are available and that the UNEs are in the ICA. So
 13 if the UNE wasn't in the ICA -- It's either in there
 14 or you would easily amend to add it. So it is a
 15 different scenario than the bona fide request.
 16 Q So if we took out the BFR, at least as you sit here
 17 now you can't think of any issues that you would
 18 have with Mr. Denney's -- proposal that's set forth
 19 in Mr. Denney's surrebuttal at lines -- page 78,
 20 lines 15, through page 79, line 1?
 21 A I do not. But, as I indicated, I'm not the final
 22 Qwest decision maker on that issue.
 23 Q Commingling. We're going to talk a little bit about
 24 commingling now, which is issue 9-58 and its
 25 subparts. The issue here concerns terms relating to

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1 the provisioning of commingled arrangements; is that
 2 right?
 3 A Yes.
 4 Q Commingling means the combination of a UNE with a
 5 nonUNE; is that right?
 6 A Yes.
 7 Q An EEL -- I'm just going to go through some language
 8 here. An EEL is a combination of loop and
 9 transport; correct?
 10 A Correct. There are different types of EELs, but
 11 they are generically.
 12 Q A UNE EEL is a combination of loop and transport
 13 where both the loop and the transport are UNEs;
 14 correct?
 15 A Yes.
 16 Q A UNE EEL is ordered on a single order and as a
 17 single circuit ID; is that correct?
 18 A A UNE EEL that's a single bandwidth UNE EEL is
 19 ordered on a single LSR. If it's a multiplexed EEL,
 20 so that there is a multiplexer in the UNE
 21 combination, then, no, they are not ordered on a
 22 single LSR.
 23 Q There is -- Well, is there a special access
 24 counterpart of a UNE EEL where both the loop and
 25 transport is special access?

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1 A There are definitely private line scenarios that
 2 include loop and transport, yes.
 3 Q And that kind of circuit is also order -- a single
 4 ordering as of a single circuit ID; is that right?
 5 A It depends on the service that's being ordered. If
 6 it is a multiplex facility, there's, once again, a
 7 multiplexer in the combination. Then, no, they are
 8 not ordered on the same order. It's -- Private line
 9 has lots of variations, and you'd have to be private
 10 line specific to answer the question.
 11 Q A commingled EEL is an EEL where either the loop or
 12 the transport is not a UNE; is that right?
 13 A Yes.
 14 Q Would you agree with me that a UNE EEL and a
 15 commingled EEL are functionally the same thing, they
 16 do the same thing?
 17 A They could be doing the same thing, yes.
 18 Q And would you also agree with me that there are EELs
 19 that were before the TRRO UNE EELs, but since the
 20 TRO -- TRRO are now commingled EELs?
 21 A The ability to commingle a UNE and a nonUNE was put
 22 in place with the TRO/TRRO.
 23 Q And my question is there are things out there that
 24 before the TRRO both the loop and transport were
 25 UNEs, and so they were UNE EELs?

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1 A Yes.
 2 Q And some of those things out there that were
 3 formerly UNE EELs are now commingled EELs because
 4 either the loop or the transport portion has been
 5 reclassified as a nonUNE?
 6 A Yes. But it's not the reclassification that created
 7 commingled EELs. Commingled EELs were created
 8 because the FCC specifically removed a prohibition
 9 on commingling. So your example with the
 10 paired/nonpaired wire centers lead to CLECs maybe
 11 needing more commingled EELs. But the fact that you
 12 could commingle a UNE and a nonUNE was a separate --
 13 specific issue separate and apart from the wire
 14 center proceeding -- or section.
 15 Q I want you to think of a hypothetical circuit that
 16 before the TRRO was a UNE EEL and after the TRRO is
 17 a commingled EEL.
 18 A Yes.
 19 Q The difference between those two things is the
 20 price; is that correct?
 21 A Typically, yes.
 22 Q Now, you in your testimony describe various changes
 23 to Qwest's process regarding commingling; is that
 24 right?
 25 A Yes.

<p style="text-align: right;">Page 182</p> <p>1 Q Now, those changes were not negotiated as part of 2 any ICA negotiation, were they? 3 A No. 4 Q And you're aware that Eschelon and other CLECs, in 5 fact, requested to have an opportunity to negotiate 6 regarding those processes as part of their ICA 7 negotiation? 8 A That's my understanding of what you've requested 9 here, yes. 10 Q And the changes relating to Qwest's process for 11 commingling, those changes were not addressed in 12 CMP, were they? 13 A Qwest had a CR put out to discuss those in CMP; and 14 at the time it was discussed, it was mutually agreed 15 by the individuals on -- I wasn't one of them, but 16 the individuals who were on the CMP call regarding 17 that CR that they would be held in abeyance until 18 the TRRO-related dockets were completed at the state 19 level. 20 Q When you say it was agreed, who agreed to that? 21 A It was whatever CLECs were on the call when that 22 issue was discussed. 23 Q Are you able to identify even one CLEC that agreed 24 that the TRRO issue should not be dealt with in CMP? 25 A I've not looked at a list of the CLECs. So, no, I</p>	<p style="text-align: right;">Page 184</p> <p>1 resources or the time and resources of the 2 commissions or other CLECs to update the SGAT since 3 CLECs have elected to have more tailored agreements 4 and there is no longer CLECs who are truly adopting 5 something in its entirety such as the SGAT. 6 Q Now, I've been asking you specifically about Qwest's 7 policies relating to commingling, but I could ask 8 the same questions regarding conversions. I mean, 9 the policies that Qwest has put in place regarding 10 converting UNEs to nonUNEs also have not gone 11 through the CMP process? 12 A I'm not the witness on conversion. That was Terri 13 Million. So I don't feel comfortable speaking to 14 conversions. 15 Q Just don't know? 16 A Don't know. 17 Q All right. I want to talk with you now about 18 loop-MUX combinations, which is issue 9-61. 19 A Yes. 20 Q And the issue here is whether Qwest must provide 21 multiplexing at UNE rates when multiplexing is 22 combined with a UNE loop; is that right? 23 A Yes. 24 Q Now, looking at your testimony, page 39, lines 1 25 through 3, you say that Qwest will provide --</p>
<p style="text-align: right;">Page 183</p> <p>1 cannot confirm one. 2 Q Qwest's changes to its process relating to 3 commingling have not been approved by any state 4 commission, have they? 5 A No. 6 Q The policies that Qwest now has in place relating to 7 commingling have been implemented by Qwest without 8 any input from CLECs; isn't that right? 9 A I don't know that I could go as far as to say that 10 there's been no input. But back to your original 11 question, no, they have not gone through CMP because 12 it was agreed that the CMP would be put in abeyance 13 until such time as the state proceedings had been 14 completed. 15 Q Was another aspect of that abeyance that the changes 16 wouldn't be addressed until the SGATs had been 17 revised to reflect the TRRO? 18 A I believe at one time that statement was made, that 19 the changing of the SGAT would be the trigger to do 20 the changes in CMP. 21 Q And Qwest has now apparently decided it's not going 22 to be changing SGATs anymore; is that correct? 23 A Qwest has determined that, given the changes that 24 have happened in the marketplace since the 2003 time 25 frame, that it's not an effective use of our time or</p>	<p style="text-align: right;">Page 185</p> <p>1 MR. DEVANEY: Is this direct, Mr. Merz? 2 BY MR. MERZ: 3 Q I'm sorry, your surrebuttal testimony. 4 A Surrebuttal. 5 Q Page 39, lines 1 through 3. I'll just wait till you 6 get there. 7 A Yes. 8 Q You say that Qwest will provide multiplexing 9 pursuant to UNE rates, terms, and conditions when 10 it's used for combination of UNE transport with a 11 UNE loop or when it's used with transport alone; is 12 that right? 13 A Yes. 14 Q Now, when multiplexing is provided with UNE 15 transport alone, the multiplexing connects the 16 transport to the CLEC's collocation; is that right? 17 A Not nec -- Well, it would depend on the 18 configuration. What I was attempting to say there 19 is that if you ordered unbundled dedicated 20 interoffice transport, or UDIT as it's called 21 typically in the ICA, when you order UDIT, one of 22 the feature functionalities of UDIT is multiplexing. 23 So, yes, you could put that order in with 24 multiplexing, and they would both be UNE rates. 25 Q And then what would the multiplexing connect the</p>

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1 transport to?

2 A The multiplexing could either connect to UNE loops

3 that were brought to it; and that would be the

4 combination we talked about before, UNE transport

5 with a UNE loop. They could connect to private line

6 facilities. There may be a CLEC who currently has

7 an interconnection agreement -- excuse me, has an

8 agreement with Qwest with volume discounts and

9 et cetera, so they don't want to disconnect maybe a

10 private line channel termination that they have; but

11 they now need to combine it with services and send

12 it over this transport. Then they could potentially

13 make that type of combination.

14 Q Now, I had understood your testimony to be saying

15 that multiplexing couldn't be used to do

16 commingling; is that -- Did I miss something there?

17 A What -- Hopefully what my testimony was talking

18 about is that multiplexing goes with the transport.

19 So if it's private line transport, then the

20 multiplexer would be at private line rates. The

21 multiplexing is ordered and put in place with the

22 higher bandwidth facility. So whenever you order

23 transport, if you order UNE transport, you can get

24 UNE multiplexing. If you order private line or

25 special access -- private line or special access

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1 transport and you want multiplexing, the

2 multiplexing is put in with that facility. And

3 that's how it's contemplated and identified by the

4 FCC, as we've talked about in my testimony.

5 Q Now, is one possible use of multiplexing and

6 transport that the multiplexing could connect the

7 UDIT transport to the CLEC's collocation cage?

8 A Yes. You could use multiplexing to go into a

9 collocation cage, use a connection into a

10 collocation cage, yes.

11 Q And in that instance it would not be a commingled

12 arrangement; is that correct?

13 A Well, it would be a commingled arrangement from the

14 perspective that you had to have something put in

15 the transport, because transport is not available as

16 a stand-alone UNE. So, therefore, you couldn't have

17 installed the transport as a stand-alone UNE. Qwest

18 is not required to provide transport as a

19 stand-alone UNE. So the only way you would get

20 transport -- commingling is through a private line

21 or access arrangement if you were not purchasing

22 transport. So it does become a commingled

23 arrangement at that point in the scenario that

24 you've just listed.

25 Q So if the CLEC were to use multiplexing to connect

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1 transport to the collocation cage, it's your view

2 that would be a commingled arrangement?

3 A I think the part that's confusing is putting the

4 transport in there. Because it's that clear; if you

5 have transport, the multiplexing follows the

6 transport. So if you used UNE transport to connect

7 to a distant collocation cage, you would get UNE

8 multiplexer. If you were using private line or some

9 other termination to connect to collo other than UNE

10 transport, we don't have to provide stand-alone

11 unbundled UNE multiplexing. It's not a separate

12 element, its own UNE. So, therefore, you would have

13 to purchase stand-alone multiplexing from private

14 line or special access.

15 MR. MERZ: Could I have just one second

16 here?

17 (Off-the-record discussion.)

18 BY MR. MERZ:

19 Q Do you believe that the way that you've described

20 how multiplexing can be used is covered by the Qwest

21 proposals in the ICA?

22 A Qwest has proposals for multiplexing in its ICA.

23 One is with UNE transport. If you order UNE

24 transport, then you can get UNE multiplexing, yes, I

25 believe -- as I indicated, that is contemplated in

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1 the ICA. If you are doing a commingled arrangement

2 with private line transport and you need

3 multiplexing, you would purchase the multiplexing

4 from that private line or access tariff, and I

5 believe that is contemplated in the ICA. If you

6 were purchasing stand-alone multiplexing, that would

7 have to be ordered from a private line or access

8 tariff because Qwest does not have to provide

9 stand-alone multiplexing as a UNE; and, therefore,

10 to use that, because it would be private line, it

11 would be a commingled arrangement. And in 9 --

12 excuse me, in Section 24 of --

13 JUDGE SHEEHY: To use it --

14 THE WITNESS: -- the ICA to have --

15 JUDGE SHEEHY: To use it with what?

16 THE WITNESS: -- it commingled. To use

17 it with what you would be using it with other than

18 transport. So, for example, such as a loop, if you

19 wanted a UNE loop and private line multiplexing,

20 that would be a commingled arrangement; and that

21 would be in Section 24 of the ICA.

22 BY MR. MERZ:

23 Q If you -- If Eschelon were to buy UDIT transport and

24 multiplexing and go to the collocation cage and then

25 connect to a private line, that would be an

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1 arrangement that would be permissible under Qwest's
 2 view; correct?
 3 A You could have UNE tran -- UNE -- let me think
 4 through that. UNE transport, UNE multiplexing, but
 5 then you had a private line hooked to it, then
 6 you're correct, and I actually -- If I said that,
 7 I'm going to -- I'm going to have to retrack if I
 8 misspoke earlier.
 9 How it works is if you have a UNE -- a
 10 UNE can ride a private line facility, but a private
 11 line cannot ride a UNE facility. So if you take and
 12 put a private line onto a UNE facility, you no
 13 longer have the UNE rate; you would have the private
 14 line rate.
 15 Q Yeah, I'll ask to see if I'm understanding. What I
 16 understood you to be telling me before is if you had
 17 an unbundled transport, UNE transport --
 18 A Correct.
 19 Q -- you could get multiplexing as a UNE?
 20 A Correct.
 21 Q And then that multiplexing could go to Eschelon's
 22 collocation cage?
 23 A Correct.
 24 Q And Eschelon could connect to a private line?
 25 A Correct --

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1 STATE OF MINNESOTA)
) ss.
 2 COUNTY OF SCOTT)
 3
 4
 5 REPORTER'S CERTIFICATE
 6
 7
 8 I, Angie D. Threlkeld, do hereby
 9 certify that the above and foregoing transcript,
 10 consisting of the preceding 191 pages is a
 11 correct transcript of my stenographic notes, and is
 12 a full, true and complete transcript of the
 13 proceedings to the best of my ability.
 14 Dated October 30, 2006.
 15
 16
 17
 18
 19 ANGIE D. THRELKELD
 Registered Professional Reporter
 Certified Realtime Reporter
 20
 21
 22
 23
 24
 25

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1 Q And under those --
 2 A -- in their collocation cage.
 3 Q In their collocation cage.
 4 A Yes.
 5 Q Under those circumstances, multiplexing would be
 6 provided by Qwest at TELRIC rates?
 7 A Because there was UNE transport hooked to the
 8 multiplexing, and then the multiplexing went into
 9 the collocation cage, yes.
 10 MR. MERZ: Could we have just a short
 11 break to figure out --
 12 JUDGE SHEEHY: Yes. In fact, why don't
 13 we just break for the day.
 14 MR. MERZ: That would be fine.
 15 JUDGE SHEEHY: And then you can figure
 16 everything out. -
 17 MR. MERZ: Well, I don't know about
 18 everything. Let's not be too crazy here. We'll
 19 just take what we can get.
 20 (Proceedings concluded for the day at
 21 4:24 p.m.)
 22
 23
 24
 25

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1 EVIDENTIARY HEARING - VOLUME 3 - OCTOBER 18, 2006
2 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
3 OF THE STATE OF MINNESOTA
4
5

6 In the Matter of the Petition of Eschelon Telecom, Inc.,
7 for Arbitration of an Interconnection Agreement with
8 Qwest Corporation Pursuant to 47 U.S.C. 252(b)

9 OAH DOCKET NO. 3-2500-17369-2
10 PUC DOCKET NO. P5340,421/IC-06-768
11
12

13 Minnesota Public Utilities Commission
14 350 Metro Square Building
15 121 Seventh Place East
16 St. Paul, Minnesota
17

18 Met, pursuant to Notice, at 9:00 in the
19 morning on October 18, 2006.
20
21

22
23 BEFORE: Judge Kathleen Sheehy
24 Judge Steve Mihalchick

25 REPORTER: Janet Shaddix Elling, RPR

Page 2

1 APPEARANCES:
 2 JASON TOPP, Attorney at Law,
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 9 80202, and JOHN DEVANEY, Attorney at Law, Perkins,
 10 Coie, 607 14th Street NW, Washington, D.C. 20005,
 11 appeared for and on behalf of Qwest Corporation.
 12 GREGORY MERZ, Attorney at Law,
 13 Gray, Plant, Mooty, 500 IDS Center, 80 South Eighth
 14 Street, Minneapolis, Minnesota 55402, appeared for
 15 and on behalf of Eschelon Telecom.
 16 JULIA ANDERSON, Assistant Attorney
 17 General, 1400 Bremer Tower, 445 Minnesota Street,
 18 St. Paul, Minnesota 55101, appeared for and on
 19 behalf of the Department of Commerce.
 20 ALSO PRESENT:
 21 Kevin O'Grady, PUC Staff
 22
 23
 24 WHEREUPON, the following proceedings were
 25 duly had and entered of record, to wit:

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1 JUDGE SHEEHY: All right. Good morning,
 2 everyone. Any further news?
 3 MR. DEVANEY: Good morning, Your Honor.
 4 Yes, we do have some further news.
 5 With respect to issue 9-54(A) --
 6 JUDGE SHEEHY: Recurring rates for
 7 different UNE combinations?
 8 MR. DEVANEY: That's correct. And the
 9 parties have agreed to resolve that issue for
 10 Minnesota only, and do so -- and I'm now referring
 11 to page 29 of the revised issues matrix. I'll wait
 12 until you get there.
 13 Under the Eschelon-proposed language
 14 column, the parties have agreed to resolve this
 15 issue for Minnesota by removing the reference to BFR
 16 in that first sentence, and with that change the
 17 issue is resolved and closed for purposes of
 18 Minnesota.
 19 JUDGE SHEEHY: Okay. And that's your
 20 understanding as well, Mr. Merz?
 21 MR. MERZ: Yes, it is, Your Honor.
 22 JUDGE SHEEHY: Okay. All right. Then
 23 anything else?
 24 MR. MERZ: I did have just a couple
 25 questions left of my cross.

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1 proposed by Eschelon is such changes may result in
 2 minor changes to transmission parameters, but will
 3 not adversely affect service to any end user
 4 customers, parents, in the event of emergency,
 5 however, see section 9.1.9.1 and, parents, for
 6 retirement of copper loops see section 9.2.1.2.3; do
 7 you see that?
 8 A Yes, I do.
 9 Q And the parenthetical for retirement of copper
 10 loops, see section 9.2.1.2.3, that's agreed upon
 11 language; correct?
 12 A The version I'm looking at, yes.
 13 Q And so you would agree with me that to the extent
 14 that the retirement of a copper loop might result in
 15 a change to transmission parameters that affect an
 16 end user customer, the provisions relating to such a
 17 retirement are set forth exclusively in 9.2.1.2.3?
 18 A I'm struggling with exclusively again because, as we
 19 indicated below, the discussion of possible planned
 20 dispatches and how we're committing there would be
 21 no charge and that you would also have advance
 22 three-day notice. So to send everything at that
 23 point to that section I'm not sure would give you
 24 all of the additional commitments that we've made in
 25 this section.

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1 Q When Qwest retires a copper loop it's required to
 2 work jointly with Eschelon; isn't that right?
 3 A Typically we do when we have a retirement of copper
 4 loop.
 5 Q And that's agreed upon language in the ICA; correct?
 6 MR. DEVANEY: Is there a particular
 7 section, Mr. Merz?
 8 THE WITNESS: Yeah.
 9 BY MR. MERZ:
 10 Q 9.2.1.2.3.1.
 11 A Yes. It does speak of working jointly.
 12 Q And it says, the last sentence of that section says,
 13 should retired copper facilities be replaced by like
 14 copper facilities, Qwest and CLEC will jointly
 15 coordinate the transition of current working copper
 16 and subloops to like copper facilities so that
 17 service interruption is held to a minimum; correct?
 18 A Yes.
 19 Q And that's agreed upon language?
 20 A Yes.
 21 Q And then 9.2.1.2.3.2 also requires that Qwest and
 22 CLEC will jointly coordinate transition when copper
 23 loops are being retired; correct?
 24 A Yes.
 25 Q And that's closed language?

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1 A Yes.
 2 Q And that is the language that would apply to any
 3 network maintenance and modernization activities
 4 that concern or involve retirement of copper loops?
 5 A Yes, except for, as I have indicated, in 9.1.9, we
 6 make a commitment that if we have a planned dispatch
 7 to your end user premise we'll give you notice of
 8 three days in advance. Because typically you know
 9 when we're going out to the customer premise because
 10 you've either ordered service or you've called for
 11 repair so you know we're going to contact them.
 12 We're just making a commitment in 9.1.9
 13 that if we have a planned modernization, we know
 14 we're going to be out there, you don't know about
 15 it, we're going to give you the three-day notice.
 16 So I guess I'm failing to understand why that would
 17 not be a good thing in the context of a copper
 18 retirement.
 19 Q Well, I want to make sure that we understand what
 20 provisions Qwest believes will apply when it retires
 21 copper loops. And my question concerns how 9.2.1.2
 22 relates to 9.1.9, and Eschelon -- the parties have
 23 agreed that retirement of copper loops would be
 24 covered by 9.2.1.2.3. Is that not your
 25 understanding?

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1 A It is my understanding, and to explain it more
 2 fully, is 9.1.9 is general provisions that apply to
 3 all maintenance and modernization activities.
 4 Inside those maintenance and modernization
 5 activities copper retirement is one of the more --
 6 one of the more important activities between a CLEC
 7 and Qwest, and it deserves and has some special
 8 notification requirements to have more spelled-out
 9 detail. So we've referred to that section so that
 10 you can get the more spelled-out detail. But in
 11 referring to that section for more detail, we were
 12 not attempting to say that we wouldn't have to live
 13 by any general requirements here in 9.1.9. We're
 14 trying to be inclusive.
 15 Q You would agree with me that the retirement of a
 16 copper loop would result in something more than a
 17 minor change in transmission parameters; correct?
 18 A Yes.
 19 Q And 9.1.9 concerns network modernization and
 20 maintenance work that may result in minor changes to
 21 transmission parameters; correct?
 22 A Yes.
 23 Q And that's closed language as well?
 24 A Yes.
 25 Q Okay. Then we had some discussion yesterday toward

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1 A Yes, I do.

2 Q I think you said you didn't know. But do you know

3 if AT&T or Covad ever ordered either service?

4 A No, they have not.

5 Q Turning to the issue of commingling, which is issue

6 9-58. Mr. Merz asked you during his cross yesterday

7 whether Qwest can use a single LSR, local service

8 request, for a single band billing account number,

9 and a single circuit I.D. for UNE EELs; do you

10 recall that line of questioning?

11 A Yes, I do.

12 Q And I think the inference from his question was, if

13 Qwest can use single LSRs and single circuit I.D.s

14 for UNE EELs, for example, shouldn't it be able to

15 use single LSRs and single circuit I.D.s for

16 commingled EELs. Is that a fair inference?

17 A No, it is not. Because a commingled arrangement is

18 a UNE circuit that would then be part of an

19 arrangement with a non-UNE circuit, typically that

20 would be private line, and today our UNEs are

21 ordered via an LSR in our CRIS system, and private

22 line are ordered via an ASR in our IAB system.

23 So to have a single circuit with a single

24 bill, first of all, commingling is two individual

25 things that are put together, and the two individual

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1 things have different terms and conditions,

2 different billing, different procedures and

3 processes. So to attempt to treat it as if it was

4 one circuit when it's really not, it's two different

5 circuits that's being interconnected together, we

6 would need to move one or the other to the same

7 billing system.

8 We would either need to move all of our

9 ordering, USOCs, procedures, flow through, pricing

10 of private line into UNE, or we would need to move

11 UNE into IABs, and in either case it would be

12 extensive system work between the two systems.

13 Q Can you elaborate on what you mean by extensive

14 systems work?

15 A Well, you'd have to redesign the whole ordering and

16 billing system for one of the services to put it

17 into the alternate system. I believe in the Covad

18 information, that I believe they had wanted to move

19 private line from IABs into using an LSR, so that

20 was the service I think that would have to be moved

21 to effectuate that. And, again, it would be similar

22 to the work that Qwest would be required to do if

23 Qwest was ever required to do ratcheting.

24 And as I said in my testimony, when Qwest

25 even began to look at what kind of work that would

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1 take, it was just thousands of hours of programming

2 time, and the complexity is such that it would take

3 a long time just to even figure out, and cost a lot

4 of money, to figure out how you would do it. So

5 even to be able to size the job within our ordering

6 systems would be significant.

7 Q Can you provide some sense of the magnitude of

8 dollars that would be involved in figuring out how

9 to do it and then actually implementing that merging

10 of the billing systems? I'm not asking for a

11 specific. Are we talking hundreds of thousands of

12 dollars or millions of dollars?

13 A In a ratcheting case in, I believe, 2002, in New

14 Mexico, where we were potentially going to be

15 ordered to ratchet, even though that's prohibited

16 per the FCC rules, in that proceeding it was about

17 \$5 million, they thought, to be able to move one to

18 the other in the systems. But, again, they had not

19 done extensive -- it would be an extensive amount of

20 work just to get the software, you know, to build

21 the parameters of what you would need to do. But in

22 that case that was an estimate that was given to the

23 New Mexico Commission, \$5 million.

24 Q Are you aware of whether Eschelon is proposing or

25 has agreed to compensate Qwest for costs that would

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1 be incurred to merge the billing systems as you have

2 described?

3 A No, I'm not aware that Eschelon has made any offer

4 to pay for any additional costs.

5 Q Mr. Merz asked you during his cross yesterday

6 whether CLECs have been consulted with respect to

7 Qwest's provisioning processes relating to

8 commingled EELs and arrangements; do you recall

9 that?

10 A Yes, I do.

11 Q And do you have an update on where that stands?

12 A As I indicated in my testimony, what we would

13 typically call the PCATs, the product guide

14 catalogs, had not gone through CMP, Qwest believed

15 that at the time that CR was introduced a mutual

16 agreement had been made to delay reviewing the PCATs

17 until all of the TRRO-related dockets had been

18 completed within the states. However, Qwest has

19 relooked at that as we continue to relook at lots of

20 items as this case has gone on, and Qwest is willing

21 and would be agreeable to bringing those PCATs

22 forward for review in CMP as soon as possible.

23 We've missed the window, there are some

24 very specific notice requirements, and so we would

25 estimate it would take about 60 days, given all the

1 normal notice requirements, to get that properly
 2 teed up, and then we would be at that point taking
 3 the -- all of the TRRO-related ordering and
 4 provisioning systems for a review through CMP.
 5 Q Thank you, Ms. Stewart.
 6 MR. DEVANEY: Your Honor, I'm done with
 7 my redirect with the exception of the loop MUX issue
 8 we discussed earlier.
 9 JUDGE SHEEHY: Mr. Merz, anything
 10 further?
 11 MR. MERZ: Yes, Your Honor, just a few
 12 things here.
 13 RE-CROSS-EXAMINATION
 14 BY MR. MERZ:
 15 Q You had some discussion with Mr. Devaney regarding
 16 noticing customers of an area code split?
 17 A Yes.
 18 Q Would you regard an area code split as a change that
 19 is end user specific?
 20 A Yes.
 21 Q Would not an area code split affect all end users
 22 the same?
 23 A Yes. I mean, all end users, of course, that are
 24 impacted by the area code split.
 25 Q So how would you consider an area code split to be

1 an end user specific change?
 2 A Because that specific end user would now have to
 3 dial a different area code. They would have to give
 4 a different telephone number to people. So that
 5 while it would affect multiple end users, definitely
 6 each individual end user would think they were
 7 affected.
 8 Q So in your view any change in Qwest's network is an
 9 end user specific change; is that correct?
 10 A No. There could be changes within our network where
 11 it would be seamless to the end user customer so
 12 that the end user customer would not perceive that
 13 they were being impacted. The area code wouldn't be
 14 one of them, but --
 15 Q But you're talking about two different things,
 16 you're talking about whether a customer perceives it
 17 as opposed to whether the change is end user
 18 specific. Even if the change is not perceptible to
 19 the customer, wouldn't it be your view that the
 20 change is end user specific?
 21 A It could be. An example of we put a new tandem in
 22 the network and currently their network is being
 23 routed in a certain manner, and the end user
 24 customer, they don't know and they're indifferent,
 25 but a CLEC who is providing service to that customer

1 would need to know what's going on with the routing
 2 and the fact that the tandem is changing. So we
 3 would notify CLECs via our website that, oh, by the
 4 way, there's going to be a tandem change, so you may
 5 have to change some links between your network and
 6 our network at that tandem.
 7 So it would ultimately be end user
 8 affecting, but you're right, the end user would
 9 never know because the routing is going to be
 10 happening. To them, they're not going to perceive a
 11 change, because that's a behind-the-scenes routing
 12 where that would be a change to the CLEC.
 13 Q And just to get back, then, to my original question,
 14 would it be your view that any change that Qwest
 15 makes to its network is an end user specific change?
 16 A I don't know that I would say that any change that
 17 Qwest would make to their network is end user
 18 specific.
 19 Q What would be one that wouldn't?
 20 A Let's see. If you were changing SS7 links between
 21 two systems where nothing has changed for the
 22 customer, I guess if I want to be real specific, if
 23 you had redundant links and you only changed one of
 24 them and not the other. I guess I'm struggling to
 25 understand the difference that you're trying to --

1 Q Well, and the reason I asked is Eschelon's proposed
 2 language for 9.1.9 that would limit certain notice
 3 obligations to changes that are end user customer
 4 specific, and what I'm understanding you to be
 5 saying is you don't regard that as any limitation.
 6 Is that Qwest's interpretation of Eschelon's
 7 proposed language?
 8 A That is one of our concerns, definitely, about your
 9 language.
 10 Q And what I'm understanding you to be saying is if an
 11 area code split is end user specific, it seems like
 12 any kind of change that Qwest might possibly make is
 13 going to, by definition, affect some end user or
 14 group of end users and are therefore end user
 15 specific?
 16 A That is definitely one of our concerns with the
 17 language.
 18 Q Ms. Anderson had asked you some questions about
 19 emergency notification and you referred to the
 20 problem of identifying Eschelon's end users; do you
 21 recall that?
 22 A Yes, I do.
 23 Q Now, the term end user is actually a defined term in
 24 the ICA; isn't that right?
 25 A Yes.

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1 idea.

2 Q What would happen if Qwest filled the order and it

3 turned out that it exceeded the cap by two, is that

4 those two loops would be moved to special access and

5 Qwest would be fully compensated; isn't that right?

6 A Well, that was your decision. I guess what you're

7 saying is is that part of your proposal is is that

8 any costs that occur because of this order going

9 through that you would pay and make Qwest whole,

10 even if it was a total cancellation and you never

11 put facilities in. See, I don't know that it's a

12 given if a UNE wasn't available, that that's the way

13 you would do something.

14 You may choose, oh, I exceeded the cap at

15 10 DS1s, I'm just going to order one DS3, so you

16 would order a totally different type of facility.

17 Because that's why there is a cap, because if there

18 wasn't a cap on DS1s then you could exceed the

19 capacity of a DS3.

20 That's what I would do, if I had 12 DS1s

21 and I knew the cap was 10 but I could order a DS3

22 loop, I would cancel those orders in their entirety

23 and order a new facility of a DS3, the higher

24 bandwidth, because obviously I need it. So I would

25 have wanted those orders rejected because that's not

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1 ultimately what I'm going to install.

2 Q The parties have agreed on the terms of how Qwest

3 will be compensated in 9.1.13.5, if you'd look at

4 that, please?

5 A Yes, I will. 9.1 -- I'm sorry.

6 Q 9.1.13.5.

7 A Can I take a minute to read it?

8 Q Yes.

9 A I've read it.

10 Q And what I understand this to be saying is if it is

11 determined following dispute resolution that a

12 particular UNE is not a UNE, that Qwest will be

13 compensated; is that right?

14 A Yes. It does talk in terms of alternative service

15 arrangements.

16 Q And it provides for back billing for the difference

17 between UNE rates and the rates for Qwest

18 alternative services; is that right?

19 A Yes, it does.

20 Q And that's agreed upon language?

21 A Yes, it is.

22 Q We were talking about commingling and Qwest's

23 proposal to now bring its PCATs forward through CMP;

24 do you recall that?

25 A Yes, I do.

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1 Q Now, that's a proposal that Eschelon was advised of

2 on Monday; is that your understanding?

3 A It's very recent, Monday, yes.

4 Q Do you have any prediction of how long that CMP

5 process is likely to take?

6 A No, I do not.

7 Q Could it take more than a couple months?

8 A I don't know. I'm not -- I mean, I believe the

9 level of the notice would be such that it would at

10 minimum be a month or two, but I do not know about

11 beyond that.

12 Q You don't know if it might take as many as 18

13 months?

14 A I do not know that. I believe there are windows to

15 try and resolve issues.

16 MR. MERZ: I don't have anything further.

17 Thank you.

18 THE WITNESS: Thank you.

19 JUDGE SHEEHY: Ms. Anderson.

20 RECROSS-EXAMINATION

21 BY MS. ANDERSON:

22 Q Ms. Stewart, just following up briefly on Mr. Merz's

23 last question to you concerning taking certain

24 issues, including the commingling issue, to CMP.

25 And the commingling issue is 9-58; is that right?

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1 A Yes, it is.

2 Q What other issues is Qwest proposing to take to CMP

3 in addition to 9-58?

4 A Well, when you took the -- I would need to check and

5 confirm what the total list of the PCATs or products

6 that would be impacted, but it would be all the

7 products and services, so I believe that would

8 include loop-MUX combo also would be going to CMP,

9 as far as disputed issues here between the parties.

10 Q You made a reference earlier to taking the

11 commingling issue to CMP, including TRO-related

12 provisioning and ordering issues. So would that

13 include the conversion issues? For instance, the

14 9-43, 9-44, 9-44 a through c?

15 A I'm not representing conversion, but that would make

16 sense to me, because that would be part of

17 TRRO-related. In fact, even caps and policies and

18 rules around caps, so you're right, I haven't

19 thought through this as you're indicating it, but

20 once you free up every PCAT or process or procedure,

21 all of them would be then going through CMP.

22 MS. ANDERSON: Thank you very much.

23 JUDGE SHEEHY: Are you through,

24 Ms. Anderson?

25 MS. ANDERSON: I am. Thank you.

<p style="text-align: right;">Page 130</p> <p>1 Q Resale?</p> <p>2 A I know it's in their agreement. Frankly, I haven't</p> <p>3 asked them whether they use them or not because I</p> <p>4 don't think any of the issues in this case deal with</p> <p>5 that.</p> <p>6 Q I want to ask you questions on issue 9-31, which is</p> <p>7 access to UNEs.</p> <p>8 A Okay.</p> <p>9 Q And I'm going to focus on the disputed language with</p> <p>10 respect to that issue, which I find easy reference</p> <p>11 at page 125 of your direct testimony.</p> <p>12 A Okay.</p> <p>13 Q And I hope our pagination is the same.</p> <p>14 A It must be, that's where my contract language is</p> <p>15 found as well.</p> <p>16 Q Okay. Would you agree with me that the primary</p> <p>17 dispute with respect to this issue is Eschelon's</p> <p>18 proposed language that says access to unbundled</p> <p>19 network elements includes moving, adding to,</p> <p>20 repairing, and changing the UNE, and then there's a</p> <p>21 continuation with some language in parentheses; is</p> <p>22 that where the crux of the dispute is?</p> <p>23 A Well, that's our proposed language, and my</p> <p>24 understanding is that Qwest doesn't want that</p> <p>25 language in the agreement.</p>	<p style="text-align: right;">Page 132</p> <p>1 network modifications section of the contract that</p> <p>2 is agreed upon language, the overarching principle</p> <p>3 is that Qwest will undertake activities to provision</p> <p>4 UNEs to the same extent it undertakes those</p> <p>5 activities for its own customers. So there's a</p> <p>6 parity standard, if you will.</p> <p>7 So, and all of that emanates from the</p> <p>8 Triennial Review Order and its discussion of routine</p> <p>9 network modifications. So to the extent that Qwest</p> <p>10 will, in a certain circumstance, undertake to place</p> <p>11 cable for its own retail customers, under that same</p> <p>12 circumstance it would be required to do so for</p> <p>13 Eschelon. Now, that's the exception to the rule.</p> <p>14 The FCC, when it described routine</p> <p>15 network modifications, suggested that placing cable</p> <p>16 was one of those exceptions that did not fall</p> <p>17 underneath that rubric, per se.</p> <p>18 Q Okay. So the intent of this language, though, that</p> <p>19 we're disputing, is that in certain circumstances</p> <p>20 Qwest could be required to install new cables, dig</p> <p>21 trenches; is that correct?</p> <p>22 A I think it's unlikely.</p> <p>23 Q Well, I'm just trying to find out what the language</p> <p>24 that Eschelon is proposing means. And the</p> <p>25 fundamental question is is that type of activity</p>
<p style="text-align: right;">Page 131</p> <p>1 Q Right. And let me ask you, the terms moving,</p> <p>2 adding, and changing as used in Eschelon's proposed</p> <p>3 language, they are not defined terms in the</p> <p>4 interconnection agreement; is that correct?</p> <p>5 A Not that I'm aware of, and they're not capitalized</p> <p>6 here so I would think they are not.</p> <p>7 Q Okay. And then for further clarification, in</p> <p>8 parentheses you'll see that it says through e.g.,</p> <p>9 meaning for example, design changes, maintenance of</p> <p>10 service including trouble isolation, additional</p> <p>11 dispatches, and cancellation of orders. Is it a</p> <p>12 fair reading of that language that that is a</p> <p>13 nonexclusive list, but rather just a list of</p> <p>14 examples?</p> <p>15 A That's fair.</p> <p>16 Q Okay. With respect to the terms moving, adding to,</p> <p>17 or changing, do you know, is that language intended,</p> <p>18 for example, to require that Qwest would install new</p> <p>19 wires and cables?</p> <p>20 A And what I'm looking for in the agreement as I</p> <p>21 answer that question is the routine network</p> <p>22 modification language that is agreed upon language</p> <p>23 in the contract. I'll try to answer your question</p> <p>24 directly.</p> <p>25 Maybe, maybe not. I mean, in the routine</p>	<p style="text-align: right;">Page 133</p> <p>1 encompassed by these terms, moving and adding to or</p> <p>2 changing?</p> <p>3 A And the only thing I can say is it's unlikely.</p> <p>4 Because this section of the agreement, as all</p> <p>5 sections of the agreement, have to be read with the</p> <p>6 agreement as a whole. And if you look at the</p> <p>7 section that deals with routine network</p> <p>8 modifications, it deals with that parity standard.</p> <p>9 What this particular section in 9.1.2 is</p> <p>10 meant to do is simply notice that access to an</p> <p>11 unbundled network element doesn't just mean we hand</p> <p>12 you the element and you're on your own. It means</p> <p>13 that it must be supported in the same manner you</p> <p>14 would support the same facility for your retail</p> <p>15 customers.</p> <p>16 Q And wouldn't it be clearer to simply say that rather</p> <p>17 than using the terms moving, adding to, or changing?</p> <p>18 A No, it wouldn't be clearer, because I think the</p> <p>19 examples are provided because primarily there are</p> <p>20 specific problems that have existed with Eschelon in</p> <p>21 the past where it's attempted to get Qwest to</p> <p>22 undertake these activities for unbundled network</p> <p>23 elements and Qwest has suggested that it does not</p> <p>24 fall within the realm of their responsibilities to</p> <p>25 provide UNEs.</p>

1 JUDGE SHEEHY: So how would you propose
2 to correct your testimony?
3 THE WITNESS: There would be two
4 corrections. One would be on page 94 of my rebuttal
5 testimony. And it says, I'll start the sentence, In
6 addition, Eschelon will have unbundled access to
7 multiplexing when ordering unbundled dedicated
8 interoffice transport, paren, UDIT, close paren, and
9 then we have, whether alone or in a UNE combination.
10 I would strike whether alone or, because as I just
11 said, when we went back to find out how that process
12 would work, I discovered indeed the company does not
13 currently have a product of transport with a
14 dangling MUX. And this would imply, I'm afraid,
15 that we are saying we did. So I wanted to correct
16 it and correct it in such a manner to be available
17 to answer questions.
18 MR. MERZ: Could I voir dire on that? My
19 question, I guess, is when she learned of this?
20 Because this seems like not only a pretty big change
21 from her written testimony, but a pretty big change
22 from what she was saying yesterday, when I recall
23 Ms. Stewart telling us that MUXing was available
24 with a UDIT combination or with a UDIT alone. I
25 mean, I thought she used those exact words

1 yesterday, and so I'm wondering how this comes up
2 this afternoon.
3 JUDGE SHEEHY: Well, I think this is
4 actually more accurately described as a change to
5 her testimony as opposed to a mistake in assembling
6 it at the get-go. And I don't mean that in any
7 pejorative way. I mean, in terms of how you want to
8 reflect the correction, I think we should leave your
9 originally filed testimony the way it is and you
10 should clarify on the record now how it should be
11 accurate. I mean, you have. If anyone else wants
12 to --
13 JUDGE MIHALCHICK: Where is the other
14 location?
15 THE WITNESS: The other location is in
16 the surrebuttal testimony, at page 39, a similar
17 sentence. Qwest will provide -- I'm kind of
18 starting at the part where we had scratched off.
19 Qwest will provide multiplexing pursuant to UNE
20 rates, terms, and conditions when it is used for a
21 combination of UNE transport with a UNE loop or with
22 UNE transport alone, so you would scratch, or UNE
23 transport alone.
24 JUDGE MIHALCHICK: What line?
25 THE WITNESS: Page 39 in my pagination.

1 JUDGE MIHALCHICK: Line 3?
2 THE WITNESS: Line 3, I'm sorry. Yes,
3 line 3, page 39.
4 MR. DEVANEY: Your Honor, may I proceed?
5 JUDGE SHEEHY: You may. I'm sorry.
6 BY MR. DEVANEY:
7 Q Ms. Stewart, with that clarification, can you
8 explain different scenarios that are shown in
9 Exhibit 32?
10 A Yes, I can. What the various scenarios are trying
11 to show is commingled arrangements of where you
12 would have loop and transport and trying to
13 demonstrate kind of how they would be put in. And I
14 don't know if we wanted to go diagram by diagram or
15 just look at a few of them.
16 For example, the first diagram on the
17 first page has a EEL loop commingled with a private
18 line transport circuit, and I would clarify that
19 this is same bandwidth so there is no multiplexor in
20 this arrangement. And in this commingled
21 arrangement, the example that is shown is that a
22 private line circuit would go from a collo in one
23 Qwest central office, terminate in another Qwest
24 central office, then it would be cross-connected via
25 a COCC and go out to another -- be cross-connected

1 with an EEL loop that had been ordered on an LSR.
2 And in this case a same bandwidth
3 commingled arrangement would be put into place. And
4 the actual -- the two individual circuits would
5 actually be cross-connected in the one central
6 office with a COCC. And same bandwidth means
7 there's no multiplexing. So if it started off as a
8 DS1 from the end user, it would be a DS1 all the way
9 to the remote collocation.
10 Q Would you like to describe one other scenario just
11 for illustrative purposes?
12 A Maybe the last diagram on the second page. This is
13 a multiplexing example.
14 The first one, the lower one shows a
15 Qwest collo location and it shows that there would
16 be a DS1 or a DS0 UDIT, which would be UNE unbundled
17 transport. It goes into the Qwest wire center,
18 terminates in the Qwest wire center on a Qwest
19 private line MUX, onto the same MUX could be
20 terminated a tariff service or private line service
21 that went out to the end user customer at that point
22 from the MUX. So for illustrative, if these were
23 both DS1 facilities, they would be basically
24 combined within the MUX and then transported over
25 the private line facilities to the distant CLEC

1 discussing, you have a DS1 or a DS0 UDIT, that would
 2 be unbundled UNE transport, coming into a MUX, you
 3 also have a tariffed private line service coming
 4 into the MUX, and I think they're trying to say it
 5 could be several different items there, so that
 6 could be private line transport.

7 The way this is listed and it shows it
 8 going to like an end user, that would be potentially
 9 the DS1 channel term that we just discussed, you
 10 come onto the MUX, they're MUXed up, and then they
 11 go from the MUX to the second location, and this
 12 gives a couple examples, one of which is collo.

13 So the first part, the DS0, UDIT, UNE,
 14 that would stay at UNE rates, the private line would
 15 stay at private line, but in this scenario the MUX,
 16 because it has a mix of private line and UNE, would
 17 go up to the private line rate, and then you would
 18 have private line transport at that point.

19 Q All right. Well, let's take that bottom example but
 20 ignore the private line transport multiplex facility
 21 and the box to the left of that. And so we're just
 22 talking about a DS1, DS0, UDIT.

23 A Okay. We're talking just the UDIT.

24 Q Just the UDIT. And the connection between the MUX
 25 and the end user is a private line, a tariffed

1 about in commingling it's not an intent to have
 2 CLECs having to avoid paying the appropriate access
 3 charges, and that we don't have to do any type of
 4 ratcheting. And once again, part of the UDIT is
 5 using the MUX and part of the private line is using
 6 the MUX. Because we don't have to ratchet we don't
 7 have to take that multiplexer and somehow figure out
 8 that 50 percent of it is being used as a UDIT and 50
 9 percent is being used as private line and have a
 10 blended rate, you go up to the highest rate, which
 11 would be the private line rate.

12 Q In the example where there is no private line
 13 transport involved, so we just have a DS1 UDIT and
 14 the MUX and the private line to the end user, would
 15 the DS1 UDIT still be an unbundled network element
 16 available at TELRIC rates?

17 A And so what you're saying is that the UDIT has come
 18 into the MUX, the tariffed private line service is
 19 coming to the MUX, but there's no transport. I'm
 20 not quite sure how that would work. But the MUX
 21 would still be in private line. I got a little
 22 confused there, we have two low sides and no high
 23 side on the channel.

24 Q We're talking about a transport of DS1.

25 A Right. Got that.

1 service?

2 A Correct.

3 Q What is the rate that applies to the MUX? Is it a
 4 private line rate or is it a TELRIC rate?

5 A Let me make sure I've got the scenario. We have one
 6 part as a UNE, one part as a private line, then the
 7 MUX would become a private line MUX.

8 Q Why?

9 A Because you are putting the private line -- the
 10 private line service would be commingled or put into
 11 the MUX so the two would be working together, and at
 12 that point you go up to the highest rate because we
 13 don't have to commingle or -- excuse me, correct
 14 that, we do have to commingle, we don't have to
 15 ratchet or try to say part of this MUX is being used
 16 by a UNE, so part of the MUX is at a UNE rate, part
 17 of the MUX is being used by a private line, and so
 18 part of the MUX is at private line rates. We don't
 19 have to and cannot do some type of blended rate or
 20 some type of proportional rate within the MUX.

21 Q But what you can do is charge the TELRIC rate for
 22 the MUX, that's not prohibited by the TRRO or
 23 anything else; is it?

24 A I don't believe it's prohibited, but it is
 25 contemplated by the TRRO, I believe, that talks

1 Q And that's the UDIT, that's the one that if you're
 2 looking at your box it goes down into the lower
 3 right-hand corner?

4 A Correct.

5 Q And then you've got your MUX?

6 A Correct.

7 Q And then you've got your tariffed service to the end
 8 user?

9 A Correct.

10 Q In that scenario, as I understand what you're saying
 11 is, well, we don't have to do ratcheting, so the MUX
 12 has to go up to private line?

13 A Oh, okay.

14 Q Is that correct?

15 A Correct.

16 Q Why wouldn't you then say the same thing and take
 17 another step back and say, well, if that's the case,
 18 the DS1 has to be a private line too, because we
 19 don't have to ratchet for that either?

20 A You are correct. I misunderstood your scenario here
 21 that we were doing so I'm glad you clarified for me.
 22 Because what you would be doing in that scenario is
 23 the transport, the way it's laid out here, both the
 24 transport and the UNE transport and the private line
 25 tariffed facility are coming in on the low side of

1 the MUX, not the high side of the MUX where they're
2 being combined. So that's where it sounds like
3 you're changing the scenario where now the UDIT
4 would be the high frequency bandwidth, I mean, it
5 wouldn't be going low to low, so I'm trying to
6 figure out when you redo the diagram.

7 Q Assuming it's a DS3.

8 A The UDIT is a DS3, it's coming into the high side of
9 the MUX?

10 Q Yes.

11 A Okay. So it's almost coming in visually to where
12 the other one is. And then you bring various
13 private lines on the low side into that? Then, yes,
14 that would turn that MUX into a private line MUX
15 because it would now be blending the two and turn
16 the UDIT into a private line, because you would be
17 blending the --

18 JUDGE SHEEHY: So the UDIT is not a UDIT?

19 THE WITNESS: Would not be a UDIT because
20 you basically change the scenario of what we've got
21 in this diagram.

22 BY MR. MERZ:

23 Q Isn't that what commingling is, is the ability to
24 use a UDIT with a non-UDIT?

25 A Commingling is being able to attach two different

1 but once you use a multiplexer and you multiplex up
2 multiple things onto a single circuit, the
3 multiplexer would go to private line rates.

4 Q Then what I understand you to be saying is if
5 multiplexing is involved you can't do --

6 A No, because you could have UNE loops or UNE
7 transport on the private line MUX, that is
8 commingling.

9 JUDGE SHEEHY: What?

10 THE WITNESS: If we did not change the
11 diagram --

12 JUDGE SHEEHY: Wait, wait. I don't
13 understand why his example changes the diagram.

14 THE WITNESS: Because he changed the UDIT
15 from being low side one of the channels coming into
16 the MUX to being the high side interoffice facility
17 of the arrangement.

18 JUDGE SHEEHY: Why does it matter which
19 is the low side and which is the high side?

20 THE WITNESS: Because when you --

21 JUDGE SHEEHY: You can do either one with
22 multiplexing --

23 THE WITNESS: The original document, if
24 you look at the original picture, it shows that the
25 UNE is -- the bottom one is the UNE UDIT, and it's

1 services or facilities, but if you are going to
2 blend the two facilities onto a single facility,
3 that's where you don't have to do ratcheting. Can I
4 direct you maybe to the first two diagrams on the
5 document?

6 Q Well, actually, I want to make sure I understand
7 this last one. Because this one is of concern, if
8 I'm understanding correctly.

9 Would you agree with me, and I think we
10 talked about this yesterday, that commingling is the
11 combination of a UNE with a non-UNE?

12 A Correct.

13 Q And if we talk about the scenario that I just
14 described, where you have a DS3 UDIT, and MUXing,
15 and a private line to the end user, that is
16 commingling; correct?

17 A It's commingling, but you're commingling two types
18 of services onto the same facility. If we could,
19 please, go to the first diagram on the first page.
20 This I think is more what you are talking about.

21 This is a single bandwidth, so there's no
22 multiplexing. Half of the route, or the loop you
23 can get as a UNE, and half you can get as private
24 line. So you would totally install the one, then
25 totally install the second and then combine them,

1 terminating on a private line MUX. That is
2 commingling, that's letting a UNE terminate on a
3 MUX. And then you take the private line and it is
4 separately working and terminates on the MUX, so you
5 have both the private line and a UNE terminated on
6 that MUX, that is commingling. They then both are
7 combined together and go over the higher bandwidth
8 facility, which in this case is a private line, as
9 is identified. So they were first independent and
10 separate, so now we take the two separate
11 independent things, we terminate them on the MUX,
12 now we're mixing them up, as it were, and they're
13 both going across that facility. And since we do
14 not have to ratchet, that facility would have to be
15 at private line rates, since there is a private
16 line, at this point traffic, being commingled or
17 combined onto the higher bandwidth.

18 BY MR. MERZ:

19 Q And so in the example that I referred to, if you had
20 a DS3 UDIT and MUXing and a private line, that's the
21 combination that in your view couldn't happen?

22 A Correct. That it would become a -- a ratcheting
23 scenario, I guess, would be, for lack of better
24 words, and it is a price difference. Not that it
25 would technically operate differently.

1 Q And can you tell me why, if you have a DS3 UDIT and
 2 multiplexing in a private line, why that isn't just
 3 commingling?
 4 A Because commingling is combining or attaching two
 5 separate things that are separate. Now you've got a
 6 situation where you're taking the two separate
 7 things and you're putting them together to make a
 8 new third thing, as it were.
 9 Q What two separate things are you talking about?
 10 A You've got the UDIT, that's the separate, and then
 11 you've got the private line, that's separate, now
 12 you're combining the two onto a single facility.
 13 So --
 14 JUDGE MIHALCHICK: Which one? Which
 15 single facility?
 16 JUDGE SHEEHY: The MUX?
 17 THE WITNESS: Well, I'm down on this
 18 diagram, which I can tell is not a very popular
 19 diagram. The UDIT is coming into the MUX, the
 20 private line --
 21 JUDGE MIHALCHICK: From where? You've
 22 got three things there. The UDIT's coming from
 23 where to where?
 24 THE WITNESS: The UDIT is coming from, in
 25 this example, a collo from a Qwest wire center, a

1 point, when you get to that private line facility
 2 and that MUX where they're being commingled or
 3 combined, or combined traffic, because the
 4 commingling was actually the UDIT with the private
 5 line, now what we've got is they're both together
 6 into that private line circuit, and we do not have
 7 to ratchet or have that circuit be at multiple
 8 rates, some of it at UNE and some at private line,
 9 so that sends the whole facility to private line
 10 rates.
 11 JUDGE SHEEHY: Including what's on here
 12 as UDIT?
 13 THE WITNESS: No. In that scenario the
 14 UDIT would stay a UDIT. The UDIT is still going to
 15 stay a UDIT in this scenario. The private line is
 16 still going to stay a private line in this scenario.
 17 But the MUX, because it's being shared with both a
 18 UNE and a private line would go to private line
 19 rates, and then the transport between that and the
 20 next location would go to private line rates.
 21 BY MR. MERZ:
 22 Q Does the TRRO reflect all of these examples that you
 23 have here?
 24 A I do not believe that the TRRO reflects every single
 25 individual example, I think it broadly discusses

1 remote Qwest wire center. You now have UDIT, or UNE
 2 transport, to a distant Qwest wire center. At that
 3 point it is terminating on a Qwest private line MUX.
 4 That MUX also is bringing traffic that's coming in
 5 on a private line or a tariffed service, and because
 6 it's a triangle --
 7 JUDGE MIHALCHICK: And which line --
 8 okay, and you're talking about the triangle now?
 9 THE WITNESS: Right, the triangle.
 10 Triangle implies end user customer, which implies it
 11 would probably be a private line chan term, or CT,
 12 as the document calls it. And as we just discussed,
 13 the private line chan term is the equivalent of
 14 unbundled loop, unbundled loop at private line
 15 rates, so the private line now comes into the MUX
 16 that's in that Qwest wire center in the center, at
 17 that point the tariff service traffic and the UNE
 18 traffic are going to be combined within the MUX and
 19 then they're all going to be transported across that
 20 single facility, the private line facility.
 21 JUDGE MIHALCHICK: To the left?
 22 THE WITNESS: To the left.
 23 JUDGE MIHALCHICK: Not down to the one
 24 down in the bottom right-hand corner?
 25 THE WITNESS: Correct. And then at that

1 combinations of loop and transport and then
 2 discusses that there is no need to ratcheting, and
 3 that commingling is not intended to avoid
 4 appropriate private line rates.
 5 Q Does the TRRO talk about MUXing?
 6 A In the context of commingling?
 7 Q In any context at all.
 8 MR. DEVANEY: Your Honor, I'm going to
 9 object. The TRRO is a several hundred page
 10 document, I don't think it's a fair question to ask.
 11 JUDGE SHEEHY: Yeah. I mean, you can
 12 give your understanding, it won't be a dispositive
 13 legal argument. But you've been testifying for, you
 14 know, 45 minutes on what the TRRO calls for, and
 15 this is Qwest's version of it.
 16 MR. DEVANEY: And just for the record,
 17 commingling is addressed in the TRO, it's not the
 18 TRRO.
 19 THE WITNESS: Thank you for the
 20 clarification. I have no memory on that. Because
 21 it's both.
 22 BY MR. MERZ:
 23 Q This is the TRRO PCAT; correct?
 24 A I believe it's reflective of both the TRRO and TRO.
 25 Q It doesn't say that.