

BEFORE THE ARIZONA CORPORATION COMMISSION
PROCEEDINGS IN ARBITRATION

IN THE MATTER OF THE PETITION OF)
ESCHELON TELECOM OF ARIZONA, INC. FOR) DOCKET NOS.
ARBITRATION WITH QWEST CORPORATION,) T-03406A-06-0572
PURSUANT TO 47 U.S.C. § 252 OF THE) T-01051B-06-0572
FEDERAL TELECOMMUNICATIONS ACT OF)
1996.)
)

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(Pages 168 through 396)

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1 BE IT REMEMBERED that the above-entitled and
 2 numbered matter came on to be heard before the Arizona
 3 Corporation Commission, 1200 West Washington Street,
 4 Phoenix, Arizona, commencing at 9:00 a.m. on the 20th day
 5 of March, 2007.

6

7 BEFORE: JANE L. RODDA, Arbitrator

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25

1 ARBITRATOR RODDA: Back on the record in the
 2 Eschelon/Qwest arbitration. And I believe Qwest was going
 3 to start with Ms. Stewart this morning.

4 MR. TOPP: That's correct, Your Honor. And I
 5 have got John Devaney here to present her as our witness.

6 ARBITRATOR RODDA: Okay. Well, great. I hope
 7 you're feeling okay today.

8 MR. DEVANEY: I'm sort of stumbling through, but
 9 thank you for your accommodation yesterday. I appreciate
 10 it.

11 ARBITRATOR RODDA: No problem.

12 MR. DEVANEY: And Qwest does call Ms. Karen
 13 Stewart to begin its case.

14

15 KAREN STEWART,
 16 called as a witness on behalf of Qwest, having been first
 17 duly sworn by the Certified Reporter, was examined and
 18 testified as follows:

19

20 DIRECT EXAMINATION

21

22 Q. (BY MR. DEVANEY) Good morning, Ms. Stewart.
 23 A. Good morning.
 24 Q. We are marking your pieces of testimony. While
 25 we do that, can you just verify that you filed direct,

1 rebuttal, and surrebuttal testimony in this proceeding?

2 A. Yes. I filed direct testimony on November 8,
3 2006, rebuttal testimony on February 9, 2007, and
4 surrebuttal testimony on March 2, 2007.

5 Q. Do you have any changes to your testimony?

6 A. No. I do not.

7 Q. And to the best of your knowledge, are the
8 answers you provided in your testimony true and correct?

9 A. Yes.

10 MR. DEVANEY: Your Honor, we would ask that
11 Ms. Stewart's direct, rebuttal, and surrebuttal, including
12 all accompanying exhibits, be admitted into the record as
13 Exhibit Nos. Qwest-17, Qwest-18, and Qwest-19.

14 ARBITRATOR RODDA: Okay. So Ms. Stewart's direct
15 is Qwest-17, her rebuttal is Qwest-18, and her surrebuttal
16 is Qwest-19.

17 Any objections to 17, 18, and 19?

18 MR. MERZ: No objections.

19 ARBITRATOR RODDA: Okay. Then they are admitted.
20 (Exhibit Nos. Qwest-17, Qwest-18, and Qwest-19
21 were received into evidence.)

22 MR. DEVANEY: Thank you, Your Honor.

23 Q. (BY MR. DEVANEY) Ms. Stewart, I believe you have
24 a brief summary you would like to present.

25 A. Yes, I do.

1 Q. Please proceed.

2 A. Given the number of issues I'm covering, it would
3 be difficult to do a summary of each one, so I thought I
4 would just give a high level presentation of my role in
5 this particular docket.

6 Primarily, I'm representing Section 9 of the ICA,
7 which is the section that talks about the terms and
8 conditions of the individual UNES. Within the terms and
9 conditions of various UNES, we have some disputes between
10 the parties. Many of the disputes are process disputes,
11 and Qwest, of course, believes that all process related
12 issues should be covered within the realm of CMP, which
13 has been represented by Ms. Renee Albersheim in this
14 docket.

15 One of the issues is the issue 9-61, which is
16 whether Qwest has to provide a loop-MUX combination as a
17 UNE combination, or whether as Qwest believes it is really
18 a combination between a UNE, the unbundled loop, and the
19 multiplexing which Qwest believes must be purchased from a
20 private line tariff or access tariff.

21 It's a confusing topic in that the FCC talks
22 about the fact that an unbundled loop can have a
23 multiplexing component, and then, of course, the loop-MUX
24 combo also includes a multiplexer. In my rebuttal as
25 Exhibit 1, I do have some diagrams where I attempt to

1 explain the confusing part, understandably confusing part,
2 since both talk about multiplexing between an unbundled
3 loop and the multiplexing that really is at issue in the
4 loop-MUX combination.

5 For convenience, I have blown up the diagrams and
6 thought that that was one issue that might benefit from
7 just a minute or two of explanation. So I would like to
8 move to my exhibit, if I may.

9 ARBITRATOR RODDA: Okay.

10 THE WITNESS: This is Page 1 of my Exhibit in my
11 rebuttal testimony. And the objective of this exhibit is
12 to try and explain and to be consistent with the FCC
13 requirements around multiplexing as it relates to an
14 unbundled loop, and the multiplexing that we're talking
15 about with the loop-MUX combination.

16 The FCC says that when Qwest provides an
17 unbundled loop, it's to provide all of the feature
18 functionality and multiplexing necessary to deliver an
19 unbundled loop. And the definition of an unbundled loop
20 is really the customer premise, which I have kind of
21 demonstrated over here that there's different types of
22 CPEs. There might be a phone, a computer, multiple phones
23 in a business arrangement, and then the main distribution
24 frame which is typically the end of an unbundled loop.

25 As recognized by the FCC, it's really main

1 distribution frame or equivalent. And the equivalent
2 component has to do with the fact that an MDF, or main
3 distribution frame, is a rather dated explanation of when
4 loops were just copper facilities and you indeed could tie
5 them down or, in fact, many were soldered right onto the
6 MDF, or main distribution frame.

7 The reason we have to say equivalent is in
8 today's environments of electronics, et cetera, we're not
9 really delivering an electrical signal to a frame and
10 trying to solder it down. We have various other devices,
11 electronic devices, and those are the equivalent for an
12 electronic circuit.

13 So simply, the multiplexing the FCC is talking
14 about is they didn't want an RBOC to be able to not
15 provide an unbundled loop, if somehow a multiplexer was
16 involved, by the RBOC or ILEC being able to say that they
17 didn't have to deMUX or provide the complete loop. And so
18 the FCC wanted to make it clear that any multiplexing that
19 occurred between the customer prem and the MDF to
20 channelize and pull off a single unbundled loop was indeed
21 included in the definition of the loop. And so I have
22 shown that here.

23 In the more traditional DSO or copper you would
24 have the loop go directly from the end user to the main
25 distribution frame, no multiplexing involved. You may

1 have some type of copper T1 where a single loop is
2 channelized up to 24 channels. Again, we would need to
3 MUX down and turn off a single channel to an end user
4 customer.

5 Once again, now, to the extent that the OC3 are
6 no longer unbundled loops, when they were and multiplexing
7 was required, you have got that -- you have got the remote
8 terminal here, and so the end user customer isn't using
9 this full capacity. The end user customer is just using
10 one single loop. So at the RT we're basically deMUXing
11 down to give them one loop. It's then going across high
12 frequency bandwidth to a multiplexer which then is
13 demultiplexing down to provide an unbundled loop or
14 equivalent. Eventually, then, we would provide that
15 unbundled loop into the CLEC's collocation.

16 So this, again, is just describing that
17 multiplexing function that when we MUX up to go high
18 capacity in the loop, we need to MUX back down and hand
19 off to the CLEC exactly what they ordered. And they can
20 order a variety of loops, DS1, DSO, two-wire, four-wire,
21 whatever. We need to take all of the steps necessary on
22 this side to hand that loop off to them.

23 The multiplexing that's involved with the
24 loop-MUX combination is multiplexing that is beyond the
25 MDF. And this is a multiplexing that would typically be

1 seen as a transport multiplexer. So in this case, all of
2 the unbundled loops have totally been completed,
3 delivered, and handed off as a complete channelized loop.
4 The loops are then connected to the MUX, which then at
5 that point connect the MUX into the CLEC collocation.

6 So in this example, transport is not part of the
7 service offering or what we think of as traditional
8 transport. It's just the multiplexer. However, the
9 multiplexer as recognized in the Virginia arbitration, and
10 is not on any list as an unbundled network element with
11 the FCC, is that we are not required to provide a
12 stand-alone multiplexer as a UNE. So we have no
13 obligation to do this stand-alone multiplexer as a UNE.
14 And I think that's pretty clear that this is not an
15 unbundled network element when it's stand-alone with no
16 transport.

17 Because this is not a UNE, just because a UNE
18 loop is terminating into it, it does not make a UNE
19 combination. To have a UNE combination you have to put
20 two UNEs together, and in this case there's only one UNE.
21 So we believe it's very clear that an order for
22 stand-alone multiplexing would have to come out of Qwest's
23 access or private line tariff.

24 Therefore, the multiplexer is out of the access
25 private line tariff, and this is a UNE. When you put

1 those two types of facilities together, that's a
2 commingled arrangement, and, therefore, it does not belong
3 in the UNE section of the ICA, Section 9. It belongs in
4 Section 24, the commingled section, that in negotiations
5 with Eschelon we agreed to include in the ICA.

6 Q. (BY MR. DEVANEY) Does that conclude your
7 summary, Ms. Stewart?

8 A. Yes, it does.

9 MR. DEVANEY: Your Honor, Ms. Stewart is
10 available for cross.

11 ARBITRATOR RODDA: Mr. Merz.

12 MR. MERZ: Thank you, Your Honor.

13

14 CROSS-EXAMINATION

15

16 Q. (BY MR. MERZ) Good morning, Ms. Stewart.

17 A. Good morning.

18 Q. I'm going to start this morning talking with you
19 a little bit about design changes, which is issue 4-5.
20 And I would refer you to your surrebuttal testimony
21 beginning at Page 4, Lines 21 through 22.

22 Do you have it there?

23 A. Yes, I do.

24 Q. You say there Eschelon should not be permitted to
25 obtain the benefits of design changes without paying for

1 them, which is what Mr. Denney is effectively seeking
2 through his testimony. Do you see that?

3 A. Yes, I do.

4 Q. Now, you understand that Eschelon has proposed in
5 this case interim rates for design changes for loops and
6 for CFA changes; correct?

7 A. Yes. They have offered rates that are
8 substantially lower than the rates that have already been
9 approved in the Arizona cost docket.

10 Q. And Qwest believes that the rates that Eschelon
11 has proposed for design changes for loops and CFA changes
12 is too low?

13 A. Would not cover Qwest's costs. Correct.

14 Q. It's not the case, then, that Eschelon is asking
15 for design changes without paying for them, is it?

16 A. Qwest believes that the proposed rates that
17 Eschelon has put out -- and, again, we have existing
18 approved rates as Ms. Million has discussed in her
19 testimony -- that it would be inappropriate and Qwest
20 would not be recovering its costs for design changes.

21 Q. And my question is a different one. My question
22 is you understand that Eschelon is not proposing in this
23 case that Qwest provide it with design changes for loops
24 and CFA changes without charge. That's not Eschelon's
25 proposal in this case, is it?

1 A. It is Eschelon's proposal that they would have
2 the below cost rate of \$5 and \$30.
3 Q. Now, you say -- again looking at your surrebuttal
4 testimony at Page 6, Lines 3 through 4. Do you have that
5 there?
6 A. Yes, I do.
7 Q. You say that any denial of cost recovery even for
8 a limited period is unlawful and improper; correct?
9 A. Yes.
10 Q. And that is your view?
11 A. Yes.
12 Q. Would you also agree that to require Eschelon to
13 pay a rate that exceeds Qwest's TELRIC costs even for a
14 limited period of time is unlawful and improper?
15 A. Qwest is not asking that Eschelon pay costs that
16 exceed the TELRIC rate. A TELRIC rate for design changes
17 has been established in an Arizona cost docket, as
18 Ms. Million has testified. Therefore, that would not be
19 the situation in design changes.
20 Q. And Ms. Stewart, I really need you to focus on my
21 questions. And I know that Mr. Devaney will have an
22 opportunity to ask you questions.
23 My question is would you agree with me that to
24 require Eschelon to pay a rate that exceeds Qwest's TELRIC
25 costs even for a limited period of time would be unlawful

1 and improper? Would you agree with that statement?
2 A. I do not believe so in Arizona where my
3 understanding is that when there is -- if there was a rate
4 dispute, which, arguably, we don't agree that there is one
5 here -- that in Arizona that if there is a rate that
6 there's some question or concern or an interim rate, that
7 the rate is to be the Qwest rate and not to exceed the
8 Qwest rate, and then that rate is interim subject to
9 refund.
10 So in Arizona, potentially it would be
11 appropriate to have a rate that subsequently a lower rate
12 would be established and a refund would be given back to
13 the CLEC. So I do not believe it would be improper.
14 Q. Okay. So as I understand your testimony, it
15 would be improper for Qwest to be paid less than its costs
16 for even a limited period of time, but it would be proper
17 for Qwest to be paid for more than its costs?
18 A. Well, you're putting a big assumption in there
19 that the rate exceeds the TELRIC cost of doing the work.
20 Q. And that's my assumption. My question is just
21 would you agree with me that it's not proper for Qwest to
22 be paid more than its TELRIC costs for doing the work?
23 A. I think it's appropriate in Arizona, as I just
24 discussed, that the Qwest rates be used to establish a
25 rate subject to refund.

1 Q. And you would agree with me as well that an
2 interim rate might possibly remain in effect for an
3 indefinite period of time?
4 A. There's always that potential, yes.
5 Q. And, in fact, that's a potential that you
6 describe in your own testimony; isn't that right?
7 A. Yes.
8 Q. But you believe that even for an unlimited period
9 of time it would be appropriate for Eschelon to pay a rate
10 that exceeds TELRIC costs for design changes?
11 A. I do not believe that the rate that Qwest is
12 proposing for design changes exceeds the TELRIC cost.
13 Q. But if it does, it would not be appropriate for
14 Eschelon to have to pay that rate for an unlimited period
15 of time?
16 A. At this point in time, there is an approved rate
17 for design changes of, I believe, approximately \$72.79.
18 It is appropriate for Eschelon to pay that rate.
19 Q. And that's true even if that rate exceeds Qwest's
20 costs in your opinion?
21 MR. DEVANEY: Your Honor, I think it's been asked
22 and answered.
23 ARBITRATOR RODDA: You can answer it. Did you
24 answer it? I didn't hear it.
25 THE WITNESS: I answered that I do not believe

1 that the rate that Qwest is charging for design changes
2 for unbundled loops and CFA changes exceeds our TELRIC
3 costs because it's already been established in a cost
4 docket.
5 ARBITRATOR RODDA: I understood that. But then
6 he asked -- I can't even remember what the question was.
7 It wasn't quite that question.
8 Q. (BY MR. MERZ) No. My question is it's
9 Eschelon's position that that rate is not a cost-based
10 rate for design changes for loops and CFA changes. You're
11 aware of that?
12 A. Yes.
13 Q. Assuming that Eschelon is right and that that \$72
14 rate is not a cost-based rate but is, in fact, well in
15 excess of Qwest's cost for loop design changes and CFA
16 changes, would you agree with me that it's not proper for
17 Eschelon to have to pay that rate that is above Qwest's
18 cost?
19 A. When the Commission has established an order rate
20 of the \$72.79, even if subsequent cost work should
21 determine that the rate should be something different,
22 it's appropriate for you to pay the rate that's been
23 approved in a cost docket in this state.
24 Q. Go to your rebuttal testimony. And I'm going to
25 shift gears a little bit, and we're going to talk about

1 connecting facility assignment changes, CFA changes. So
2 if you go to your rebuttal testimony at Page 4, and I'm
3 looking at the sentence that begins on Line 15 and ends on
4 Line 19.

5 A. Yes.

6 Q. And it says there in some cases the ICDF
7 locations that Eschelon gives Qwest are incorrect, which
8 require a Qwest technician to remove the loop from one
9 location on the ICDF and reconnect the loop to another
10 location on the ICDF or to another frame in the central
11 office; correct?

12 A. Yes.

13 Q. And you're describing there what a CFA change is;
14 correct?

15 A. It's one part of the work involved with the CFA
16 change. Correct.

17 Q. And the ICDF is the place where the loop is
18 connected. The connecting facility assignment is on the
19 ICDF; is that right?

20 A. That's my understanding, yes.

21 Q. Now, you understand that the CFA change charge
22 that Eschelon has proposed would only apply when there's a
23 coordinated cutover; correct?

24 A. Yes.

25 Q. And Eschelon pays a rate, a particular rate for a

1 coordinated cutover; correct?

2 A. Yes.

3 Q. What Eschelon is paying for when it pays that
4 rate for a coordinated cutover is it's paying to have
5 Qwest working in a coordinated fashion with Eschelon
6 personnel, either physically present or on the phone at
7 the time of the loop installation; isn't that right?

8 A. Yes.

9 Q. So Eschelon is present, and the idea is that
10 working together the parties can fix any problems that
11 arise rather than, you know, the installation is done and
12 then it turns out that there's some problem that has to be
13 fixed later; is that right?

14 A. My understanding is that the goal of a
15 coordinated cut would be both parties would be there, you
16 would be able to test, and then right at that point in
17 time it would be known whether the circuit was working or
18 not, yes.

19 Q. And what might happen if you didn't have a
20 coordinated cutover is that in the case of a basic
21 installation, for example, the cutover might happen and
22 then it turns out that there's no dial tone, and that's
23 not discovered until some later point and it has to be
24 addressed then; correct?

25 A. In a noncoordinated cut, then there's a due date.

1 And typically my understanding is then the due date would
2 be any time within that business day. For example, if
3 Qwest could cut it over at 8:00 in the morning, or Qwest
4 could turn it over or turn it up at 5:00 p.m. So in a
5 noncoordinated cut it's a large window of time in which
6 the cutover may occur.

7 MR. MERZ: Could you mark this as Eschelon
8 Exhibit 3.

9 Q. (BY MR. MERZ) Ms. Stewart, you have in front of
10 you there what has been marked as Eschelon Exhibit 3; is
11 that right?

12 ARBITRATOR RODDA: Do you have an extra copy?

13 MR. MERZ: I do. I'm sorry. I have all of these
14 copies and I forgot to hand you one.

15 ARBITRATOR RODDA: I know. It's so hard to get
16 over here, too.

17 Q. (BY MR. MERZ) You have Eschelon Exhibit 3 there?

18 A. Yes, I do.

19 Q. And you recognize Eschelon Exhibit 3 as Exhibit A
20 to the proposed ICA; correct?

21 A. Yes.

22 MR. MERZ: Eschelon offers Eschelon Exhibit 3.

23 ARBITRATOR RODDA: Any objection?

24 MR. DEVANEY: No objection.

25 ARBITRATOR RODDA: Then Eschelon-3 is admitted.

1 (Exhibit No. Eschelon-3 was received into
2 evidence.)

3 Q. (BY MR. MERZ) Now, Exhibit A to the ICA sets out
4 the various rates; correct?

5 A. Yes.

6 Q. If you would look at the part of Exhibit A that
7 starts at 9.2.4.

8 A. Yes.

9 Q. And 9.2.4, 9.2.5, and 9.2.6 all involve different
10 installation options for different types of loops;
11 correct?

12 A. Yes.

13 Q. Now I would like you to look at 9.2.4.4.1. That
14 is the coordinated installation rate for an analog loop;
15 correct?

16 A. I'm sorry. 9.2.4.1?

17 Q. 9.2.4.4.1.

18 A. Excuse me. I see it.

19 Q. Okay. And so if you had one analog loop being
20 installed with the coordinated installation option, the
21 rate would be \$58.18; correct?

22 A. Yes.

23 Q. And additional loops installed as part of the
24 same installation would be then \$50.73 per loop; correct?

25 A. Yes.

1 Q. Now, the design change rate that Qwest believes
 2 it ought to be able to charge for a CFA change is \$72.79;
 3 is that correct?
 4 A. Yes.
 5 Q. And so it's your testimony that the additional
 6 work to perform a CFA change charge costs Qwest more than
 7 it costs to perform the coordinated installation of a
 8 basic loop; is that right?
 9 A. The charge for design change covers several
 10 products, both UDIT and different --
 11 Q. Are you able to answer my question, ma'am?
 12 A. Yes. I am able to answer your question.
 13 Q. Do you have my question in mind?
 14 A. Yes. I have your question in mind.
 15 Q. All right.
 16 A. Your question was does the rate exceed the
 17 installation rate for loops. I was just pointing out that
 18 there are a variety of loops that have different
 19 installation intervals, and the design change covers
 20 those, plus UDIT and other products and services. And,
 21 again, Ms. Million is the expert on the cost aspect.
 22 Q. And my question wasn't whether the rate for
 23 design changes is higher than the rate for coordinated
 24 installation. My question is, is it your testimony that
 25 the additional work to perform a CFA change costs Qwest

1 more than it costs Qwest to perform the coordinated
 2 installation of an analog loop?
 3 A. Once again, Ms. Million is the cost expert. And
 4 yes, when it was looked at as an entirety of all of the
 5 services that are covered with design changes, the rate
 6 was \$72.79, I believe.
 7 Q. So it's your testimony that it does cost more to
 8 do a CFA change than a coordinated installation of a basic
 9 -- a coordinated installation of an analog loop?
 10 A. That \$72.79 was what was determined in the cost
 11 docket, yes.
 12 Q. Now I want to ask you about your rebuttal,
 13 Page 7. I'm looking at Lines 8 through 10. And you say
 14 there there's no factual basis for Mr. Denney's assertion
 15 that the presence of a Qwest technician during a
 16 coordinated cutover reduces the costs of CFA changes.
 17 Do you see that?
 18 A. Yes, I do.
 19 Q. Now, what I understood a part of the work to
 20 perform a CFA change is taking the loop off of one CFA and
 21 putting it on another.
 22 A. I'm going to be stepping a little bit out here on
 23 a limb because, once again, Ms. Million is our cost
 24 expert. But my understanding is design change does not
 25 include the installation work of a technician actually

1 doing the install piece.
 2 The work of a design change is the call that
 3 needs to be made back to the system design center to say
 4 there's going to be a change. If we go to this different
 5 location for the CFA, is that going to change the design
 6 of the circuit? Is it going to work? Oh, by the way, we
 7 need to update our downstream systems for purposes of
 8 repair and billing that there is a different tie-down
 9 location.
 10 So design change is really covering all of those
 11 work and activities, not the actual technician time of
 12 doing the install.
 13 Q. When we first started talking this morning, I had
 14 asked you whether the work of doing a design change
 15 involved a technician removing the loop from one location
 16 on the ICDF and reconnecting it to another location. And
 17 I understood you to be saying, yes, indeed, that was part
 18 of the work, at least, involved in a CFA change.
 19 Did I get that wrong?
 20 A. I may have misunderstood your question, and if I
 21 do I apologize. I was thinking you were asking whether
 22 doing a CFA change, which is the activity piece of it, is
 23 moving or putting it on a different termination, is that
 24 part of design changes? So I do apologize if I
 25 misunderstood your question.

1 Q. And so I guess my point is that any time there's
 2 a CFA change there has to be a technician physically
 3 located at the ICDF; right?
 4 A. Yes. If you're going to do a change on an
 5 install, there would be a technician there.
 6 Q. So when you say there's no factual basis for
 7 Mr. Denney's assertion that the presence of a Qwest
 8 technician during a coordinated cutover reduces the cost
 9 of a CFA change, there's always a Qwest technician there
 10 if a CFA change is being done; isn't that right?
 11 A. Yes. But even if the technician is there, the
 12 technician still needs to go through all of the steps that
 13 I just described about going back to the design center,
 14 making sure that it's okay, it doesn't change the design,
 15 or something doesn't need to be done within the circuit,
 16 and then changing all the downstream systems.
 17 So whether the technician is there and an
 18 Eschelon technician is there or not, it doesn't change how
 19 much work is involved for the Qwest technician in
 20 confirming whether there needs to be any change to the
 21 design and, again, updating our downstream systems.
 22 Q. The charge that Eschelon is proposing for CFA
 23 changes is a charge that would be paid in addition to the
 24 coordinated installation charge; correct?
 25 A. Yes.

1 Q. The coordinated installation charge pays for the
2 Qwest technician to be there; correct?

3 A. It pays for the Qwest technician to be there and
4 to install the service as ordered.

5 Q. And it also pays for the Qwest technician to
6 interface with Eschelon either, you know, physically
7 present or on the phone; correct?

8 A. Yes.

9 Q. And the Qwest technician, I assume the
10 interfacing with the downstream systems that you have
11 talked about, that's something that the technician would
12 do by way of a phone call; is that right?

13 A. Typically, my understanding is that it begins
14 with a phone call if it occurs at the time of the cutover.

15 Q. Now, would you agree with me that the tasks to
16 complete a CFA change are different from the tasks
17 necessary to perform a loop design change?

18 A. There are different tasks involved, but perhaps a
19 CFA change could lead to a complete redesign of the loop.
20 And I'm thinking more on the higher bandwidth facilities
21 such as a DS1 or DS3. Maybe a change means a redesign or
22 sending the equipment to a different multiplexer or
23 distribution fiber panel within the office.

24 Q. Your understanding -- you understand, don't you,
25 that Eschelon's proposal with respect to CFA change

1 charges only is for two- and four-wire loops?

2 A. I did not -- was not aware of that. I thought it
3 was listed in Exhibit A as a CFA change for all loops.

4 Q. And, I mean, if that's the case -- well, assume
5 that that's the case. Would you then agree with me that a
6 CFA change would be different -- relating to a two- or
7 four-wire loop would be different than the tasks necessary
8 to do a loop design change?

9 A. There are various tasks depending on the
10 products. Once again, the design change is covering a
11 variety of products, including high capacity loops and
12 two-wire and four-wire loops. Yes, the work is different
13 depending on exactly what service, but again, as
14 Ms. Million discussed, the design change covers all of
15 these various products and work.

16 Q. I think you have the ICA in front of you there?

17 A. Yes, I do.

18 Q. If you would go to Section 9.2.3.9.

19 A. I'm sorry.

20 ARBITRATOR RODDA: Again, do you have a page
21 number?

22 MR. MERZ: I do. It's Page 234, Section 9.2.3.9.

23 Q. (BY MR. MERZ) And I'm looking at the state
24 specific language for Arizona, Colorado, Oregon, Utah, and
25 Washington.

1 A. Yes.

2 Q. And you see there Eschelon's proposal for Section
3 9.2.3.9?

4 A. Yes, I do.

5 Q. And you see that that talks specifically about
6 CFA changes for coordinated installation options for
7 two-wire and four-wire analog loops; correct?

8 A. Yes, it does.

9 Q. CFA changes are something that Qwest has been
10 providing to CLECs for as long as Qwest has been providing
11 unbundled loops; isn't that right?

12 A. I believe so.

13 Q. Qwest didn't begin charging for CFA changes until
14 October of 2004; correct? I'm sorry. October of 2005.

15 A. That is my understanding, yes.

16 Q. And so up until October of 2005, there was no
17 separate charge for a CFA change; correct?

18 A. I believe there was a separate charge, but the
19 processes were not in place to charge the charge.

20 Q. Qwest didn't charge a separate charge for CFA
21 changes before October of 2005?

22 A. There was a design change in place in Exhibit A,
23 but the processes were not in place to charge it for that
24 activity.

25 Q. I want to talk with you now about access to UNEs.

1 And I'm looking at your surrebuttal testimony beginning at
2 Page 16, Lines 18 through 23.

3 A. I know 23 was the last line. What was the first?

4 Q. You know, I think it's actually your rebuttal
5 testimony. I better -- yeah. I'm sorry. I misspoke.
6 I'm talking about your rebuttal testimony at Page 16,
7 Lines 1 through 23.

8 A. Yes.

9 Q. Do you have that there?

10 A. Yes, I do.

11 Q. What you have set out here are Eschelon's
12 proposal and Qwest's proposal with respect to Section
13 9.1.2, which concerns access to UNEs, issue 9-31; is that
14 right?

15 A. Yes.

16 Q. And just to make sure we understand what you have
17 written here, it's Qwest's proposal that this section
18 should read, "Additional activities available for
19 unbundled network elements includes moving, adding to,
20 repairing and changing the UNE," and then through the end;
21 correct?

22 A. Yes.

23 Q. And then it also includes the phrase at the very
24 end there, "at the applicable rate." Correct?

25 A. Yes.

1 Q. Eschelon's proposal is that rather than
 2 additional activities available for unbundled network
 3 elements that the section should read, "access to
 4 unbundled network elements." Correct?
 5 A. Yes.
 6 Q. And then Eschelon doesn't add the last phrase "at
 7 the applicable rate" in its proposal; correct?
 8 A. Yes.
 9 Q. Now, you have in your testimony here underlined
 10 the phrase "moving, adding to, repairing and." Correct?
 11 A. Yes.
 12 Q. That language actually is not in dispute between
 13 the parties; correct?
 14 A. No. It is not.
 15 Q. Now, in your rebuttal at Page 15, Lines 7 through
 16 9, you say that Eschelon's language implies that access to
 17 or use of UNEs entitles it to moves, adds, and changes at
 18 no additional charge; is that right?
 19 A. Yes.
 20 Q. And then you also say that result would violate
 21 Qwest's right of cost recovery; correct?
 22 A. Correct.
 23 Q. Now, the right of cost recovery you're referring
 24 to there is the right that is provided under
 25 Section 252(d) of the Telecommunications Act; is that

1 restate your question or have it read back?
 2 MR. MERZ: Sure.
 3 Q. (BY MR. MERZ) What I understood you to be
 4 telling me when we first started this line of questioning,
 5 that the right of cost recovery that you're referring to
 6 in your rebuttal testimony at Page 15, Line 9 is a right
 7 that arises under Section 252(d) of the Telecommunications
 8 Act.
 9 A. That is one of the areas. So, for example, in
 10 your scenario here, you have adding to a UNE. If you were
 11 saying that you wanted to add an additional identical UNE
 12 and put in a second UNE install, then yes, that's what
 13 would be covered.
 14 However, one of our concerns is this was so
 15 open-ended, and particularly the e.g., meaning that this
 16 is an example, not the definitive list, that what if what
 17 you asked for is we add to the UNE a private line? In
 18 that commingled arrangement, the private line rates would
 19 apply. Therefore, the applicable rate would be a private
 20 line rate.
 21 Q. The e.g. here that we have is also agreed upon
 22 language; correct?
 23 A. It is agreed upon language with the addition of
 24 "at applicable rates" as Qwest has proposed.
 25 Q. I mean, is it what -- is Qwest's goal here with

1 right?
 2 A. Yes.
 3 Q. So that the right of cost recovery you're
 4 referring to is the right for Qwest to recover its TELRIC
 5 costs for these activities, moving, adding to, repairing
 6 and changing the UNE; correct?
 7 A. It's whatever the appropriate rate is to recover
 8 the cost depending on the actual activity that is
 9 requested.
 10 Q. And if that's an activity that's governed by
 11 Section 252(d,) that would be a TELRIC rate; correct?
 12 A. If that activity is covered by that. But if the
 13 activity is covered by a different requirement, then
 14 whatever costs are appropriate in that scenario is the
 15 cost that would be recovered.
 16 Q. And I understood you to be saying that the right
 17 of cost recovery that you're referring to is the right
 18 that arises under Section 252(d) of the Act. Is that not
 19 correct?
 20 MR. DEVANEY: Your Honor, I think that
 21 misconstrues the testimony. She said that 252 can apply
 22 depending on the activity, but there's another -- but
 23 there's a different activity that might be outside of 252.
 24 So I object to the characterization of the testimony.
 25 ARBITRATOR RODDA: Okay. Could you either

1 this language, additional activities available for UNEs,
 2 to hold open the option to charge tariffed rates for
 3 moving, adding to, repairing and changing UNEs?
 4 A. In the example I just gave, it was a tariff rate,
 5 yes.
 6 Q. In your surrebuttal Page 14, and I'm looking at
 7 Lines 11 through 14 where you say "nor does he," and
 8 you're referring there to Mr. Denney; is that correct?
 9 I'm sorry. Mr. Starkey; is that correct?
 10 A. It appears to be Mr. Starkey, yes.
 11 Q. Nor does he show Eschelon's language would permit
 12 Qwest to charge TELRIC rates for these activities separate
 13 and apart from the monthly recurring rate for UNEs;
 14 correct?
 15 A. Yes.
 16 Q. Now, you agree with me that in order for Qwest to
 17 charge a separate rate, Qwest has to prove that the cost
 18 to perform that activity is not already recovered in
 19 another rate; correct?
 20 A. Generally, I think that's a true statement.
 21 Q. I want to shift gears now and talk about network
 22 modernization and maintenance, which is issues 9-33, 9-33a
 23 and 9-34. And I want to focus first on issue 9-33, and
 24 you understand that that issue involves modernizations
 25 that Qwest makes to its network that may result in minor

1 changes to transmission parameters; correct?
 2 A. Yes.
 3 Q. And Eschelon has proposed language that would
 4 apply if a modification has an adverse impact on service
 5 to one of Eschelon's customers; correct?
 6 A. Yes.
 7 Q. And it's Qwest's position that so long as the
 8 transmission parameters of the UNE fall within industry
 9 standards, then the impact of the service on the customer
 10 is irrelevant; is that right?
 11 A. That's part of the Qwest position, yes.
 12 Q. In your rebuttal, Page 22, Lines 5 through 10,
 13 you have there language based on language that was ordered
 14 in Minnesota by the Administrative Law Judges that says:
 15 If such changes result in the CLEC's end user customer
 16 experiencing unacceptable changes in the transmission of
 17 voice or data, Qwest will assist the CLEC in determining
 18 the source and will take the necessary corrective action
 19 to restore the transmission quality to an acceptable level
 20 if it was caused by the network changes.
 21 Do you see that language?
 22 A. Yes, I do.
 23 Q. You understand that that is language that
 24 Eschelon is proposing in this case?
 25 A. Yes. That's my understanding.

1 that are made.
 2 Part of it is that it talks about the service
 3 Eschelon is giving to its end user. Qwest doesn't know
 4 exactly or typically what service Eschelon is providing to
 5 the end user. Qwest is providing a service to the CLEC,
 6 and Qwest believes the proper standard is between Qwest
 7 and the CLEC. That Qwest should not have some
 8 responsibility for whatever promises that Eschelon is
 9 providing to its end user.
 10 So, for example, and I think this example is in
 11 the testimony, if the CLEC uses an analog to wire copper
 12 facility to provide a digital service to the customer, it
 13 will probably work. However, they're ordering an analog
 14 loop. When Qwest modernizes its network, Qwest can put in
 15 some type of hybrid loop, which is a combination of
 16 electronics and copper.
 17 And in that hybrid loop scenario, an analog loop
 18 is still going to work and it's going to work within the
 19 parameters, but because the CLEC -- not necessarily
 20 Eschelon -- this hypothetical CLEC is giving the end user
 21 a data service over it, the data service is not going to
 22 work. And Qwest is really not in a position that it is
 23 somehow going to remove all of the electronics which
 24 typically have been put in for growth. When you have an
 25 area and there's a higher demand for loops than was

1 Q. That's language that was initially suggested by
 2 the Minnesota Department of Commerce?
 3 A. Yes.
 4 Q. And recommended to be adopted by the Minnesota
 5 ALJs?
 6 A. Yes.
 7 Q. Now, that language provides a consequence if a
 8 change causes unacceptable changes in transmission
 9 parameters; right?
 10 A. Yes.
 11 Q. That consequence is that Qwest will determine the
 12 source and take necessary corrective action to restore the
 13 transmission quality to its previous -- to an acceptable
 14 level; correct?
 15 A. Yes.
 16 Q. Now, this proposal that we've been talking about
 17 doesn't prohibit Qwest from making changes, does it?
 18 A. No. It does not.
 19 Q. And what it does is it establishes a remedy if
 20 customers are adversely impacted; correct?
 21 A. It does establish a remedy, but it's a situation
 22 where Qwest may be put into a box where it's unable to
 23 remedy it for the end user customer. And that is an issue
 24 we'll have to deal with if this is actually ordered in the
 25 state of Minnesota, because there can be network changes

1 anticipated when the plant was put in maybe up to, you
 2 know, 75, 100 years ago, and we've got to provide growth,
 3 we're going to put those electronics in.
 4 If the CLEC -- if the relationship on what
 5 happened was between Qwest and the CLEC, then we would be
 6 able to say, yes, you have ordered X service. Yes, it
 7 still works.
 8 Because we don't know that they inappropriately
 9 used the wrong loop to deliver service to the end user
 10 customer, it's going to put Qwest in a box, and I'm not
 11 sure what the result of that would be. Once again, it
 12 would become situational specific, and that's what Qwest
 13 is trying to avoid by its language.
 14 ARBITRATOR RODDA: Can I just ask under that
 15 example you just gave, they were providing services --
 16 they must have been providing services that worked over
 17 that analog loop, and then when you modernized in the
 18 hypothetical --
 19 THE WITNESS: Correct. DSL would be the example.
 20 They had a customer loop. It was all copper for whatever
 21 reason, analog perhaps, and they knew it was going to work
 22 because they're able to see the loop makeup tool, then
 23 they would provide this digital service over the analog
 24 loop.
 25 But at the time Qwest goes to modernize its

1 network, it may not know a digital service is being
2 provided over that. And, of course, it would take -- do
3 the cutover, then we would have a problem, and the CLEC
4 would come back and say, well, I was providing a data
5 service over that. My customer is adversely affected and
6 you've got to make a change.

7 ARBITRATOR RODDA: And when they initially
8 ordered that loop, are they supposed to tell you what
9 they're using it for?

10 THE WITNESS: They don't have to tell us what
11 they're using it for, but you need to order the proper
12 loop for the proper service that you're providing so then
13 in a modernization of the network you don't have a
14 problem.

15 And, in fact, many, many years ago, Qwest had the
16 same problem within its own network in that when old alarm
17 circuits were ordered, they had to be copper. And it was
18 actually a reverse polarity across the copper facility
19 that when the alarm was triggered the reverse polarity
20 would go over a copper facility. And Qwest indeed had a
21 USOC, what we keep track of for our alarm circuits, and
22 there was a copper alarm circuit or metallic alarm circuit
23 code.

24 Well, as people went to put in new circuits and
25 our network got more modernized, it wasn't as clean.

1 People would call up and order an alarm circuit and we
2 would put a code, but one of the codes would be that it
3 didn't have to be metallic. And so we would then cutover
4 to our early carrier systems, the alarm circuits wouldn't
5 work, and then we would have to go back and figure it out
6 that the wrong USOC -- that when the customer called up to
7 the Qwest service center and asked for an alarm circuit,
8 they were just grabbing the first code that showed up and
9 putting it on there.

10 We indeed had to go back and inform our own
11 salespeople and our own service center people that when
12 they call, you need to ask what kind of alarm equipment
13 and whether they have to have a metallic pair or not.
14 Then when we go to modernize the network, we're able to
15 contact that customer, give them notice in a reasonable
16 period of time, 30 days, 60 days, whatever the situation
17 was, that your alarm circuit will no longer work because
18 we have to take out the metallic pair, or we try to leave
19 them in place as we've done for some DSL customers when we
20 modernize.

21 So this is not just this new, unique thing to the
22 Eschelon situation. It is critical that you use the right
23 circuit with the right parameters that you need for the
24 service you're providing.

25 Q. (BY MR. MERZ) You've been talking about the

1 retirement of copper loop situation; correct?

2 A. When you have a hybrid loop -- in fact, that's
3 one of the concerns I have with 33a is when you have a
4 hybrid loop, whether it's considered a replacement or a
5 retirement. But yes, there's a component of the circuit
6 would be retired or replaced.

7 Q. And Eschelon's proposed language for Section
8 9.1.9 says that that language does not address copper
9 retirement loops and subloops as defined in Section
10 9.2.1.2.3.

11 A. Yes. And our concern was that does not cover all
12 of the scenarios of retirement and all of the scenarios of
13 replacement because it only talks about fiber to the home
14 and fiber to the curb. And that is why Qwest is fine with
15 the referral of moving and having those sections apply,
16 but we believe it's appropriate to say 9.2 because of the
17 other references that cover hybrid loops.

18 ARBITRATOR RODDA: You were using an acronym --
19 this is off the record.

20 (A discussion was held off the record.)

21 Q. (BY MR. MERZ) We've been talking about Section
22 9.2.1.2.3, if you want to turn to that.

23 A. 9.2 ---

24 Q. -- 1.2.3.

25 ARBITRATOR RODDA: I still couldn't follow that.

1 MR. MERZ: I'm sorry. It's 9.2.1.2.3. It's
2 easier when you're looking at it.

3 ARBITRATOR RODDA: Okay. Do you have a page
4 number?

5 Q. (BY MR. MERZ) I do. I'm sorry. Page 217.

6 A. Yes.

7 Q. This section talks about retirement of copper
8 loops or copper subloops and replacement with fiber to the
9 home or fiber to the curb loops; is that right?

10 A. Yes.

11 Q. Now, is there any section other than the sections
12 that are in 9.2.1.2.3 and its two subsections that concern
13 retirement of copper loops?

14 A. Yes. I have them in my testimony. I don't have
15 them memorized. Is it okay if I flip to that section?

16 Q. Sure.

17 A. I apologize. I thought it was one that I had
18 marked. Could I take a minute to find that?

19 ARBITRATOR RODDA: Yes.

20 MR. DEVANEY: Could I help a little bit?

21 THE WITNESS: Do you have them there handy?

22 MR. DEVANEY: Would it be 9.2.1.2.2, 9.2.1.2.2.3
23 and 9.2.2.3?

24 MR. MERZ: Oh, sure. Easy for you to say.

25 ARBITRATOR RODDA: Yeah. That really helps.

1 MR. DEVANEY: It's the world we're living in.
 2 ARBITRATOR RODDA: I'm sorry.
 3 MR. MERZ: Could you say them again?
 4 THE WITNESS: They're in my testimony.
 5 MR. DEVANEY: 9.2.1.2.2, 9.2.1.2.2.3, and finally
 6 9.2.2.3.
 7 THE WITNESS: It's on Page 25 of my rebuttal
 8 testimony to be able to see them.
 9 ARBITRATOR RODDA: I like Page 25 better.
 10 MR. DEVANEY: Why didn't I just say that; right?
 11 THE WITNESS: Yes. 25 of my rebuttal testimony.
 12 I was just going to provide an example in 9.2.2.3
 13 of a retirement commitment that Qwest makes to CLECs.
 14 Q. (BY MR. MERZ) Maybe just wait until I ask a
 15 question.
 16 A. Okay.
 17 Q. 9.2.2.3 --
 18 A. Yes.
 19 Q. -- concerns digital capable loops?
 20 A. Yes.
 21 Q. And I don't see there any reference to retirement
 22 of copper loops, so maybe you could help me out.
 23 A. I will. It's about three-fourths of the way
 24 down. Qwest may redesignate fully retired facilities for
 25 itself as well as CLECs.

1 And it's talking about how there may be a
 2 situation, very rare but it can occur, where interoffice
 3 copper is retired because we put in electronics, and then
 4 that retired copper can be redesignated to become loops
 5 for Qwest and CLECs.
 6 Q. And would that situation that you have just
 7 described not be covered by one of the other sections that
 8 we've been discussing in 9.2.1.2.3?
 9 A. It would be covered if it was a fiber to the
 10 home, fiber to the curb, but this could occur and most
 11 likely is going to occur in a hybrid loop or some type of
 12 replacement of interoffice facilities. So there's a
 13 variety of scenarios where we're not putting in a fiber to
 14 the curb or -- fiber to the home or fiber to the curb
 15 digital loop that we could free up copper facilities and
 16 redesignate them. And this is just saying if we
 17 redesignate them for our own use, we need to redesignate
 18 them as loop facilities available to a CLEC. So it's
 19 actually a commitment to CLECs.
 20 Q. Hybrid loops are addressed by 9.2.1.6; correct?
 21 A. I do need to go to it.
 22 Q. Sure. That's on Page 219.
 23 A. Page 219. And which -- yes. 9.2.1.6 has hybrid
 24 loops.
 25 Q. And that is the section that applies that governs

1 hybrid loops; correct?
 2 A. It's part of the section that applies to hybrid
 3 loops. I think we would need to go to our last two cites
 4 here to find other scenarios to do with hybrid loops.
 5 Q. Eschelon's proposal for Section 9.1.9 references
 6 9.2.1.2.3; correct?
 7 A. I believe so, yes.
 8 Q. It doesn't just reference it. It talks about
 9 retirement of copper loops as defined in 9.2.1.2.3?
 10 A. Right. And my concern was that is only fiber to
 11 the home and fiber to the curb. So, for example, one of
 12 the ones that I was searching for is right above yours on
 13 Page 216, 9.2.1.2.2.3. When Qwest retires the copper loop
 14 in accordance with the provisions of Section 9.2.1.2.3
 15 below, we shall provide nondiscriminatory access to a
 16 64 kilobit channel.
 17 So there are different references within 9.2, and
 18 the more you look you'll come across ones where
 19 commitments are made that talk about either retirement or
 20 replacement of copper facilities.
 21 Q. The section that you were just talking about
 22 9.2.1.2.2.3 --
 23 A. Yes.
 24 Q. -- references the definitional Section 9.2.1.2.3;
 25 correct?

1 A. Yes, I believe so.
 2 Q. And another section that you have been talking
 3 about, 9.1.2.2.1, it's just above that. Oh, I'm sorry.
 4 9.2.1.2.2.1. So the section above that in the same
 5 section.
 6 A. Yes.
 7 Q. That also references the definitional section
 8 9.2.1.2.3; correct?
 9 A. Yes, it does. But it discusses a specific
 10 commitment around the 60 bit, 64k channel.
 11 Q. If we added to 9.1.9 a reference to 9.2.1.6,
 12 would that resolve Qwest's concerns?
 13 A. Could I broaden the question a little bit more?
 14 If Qwest was -- generically Qwest is in agreement with
 15 Eschelon to move and have the unbundled loop section
 16 discuss retirement and replacement of copper loops. So I
 17 think we're sort of philosophically in agreement.
 18 What we're not in agreement with is that if we
 19 point to just one section that talks very narrowly about
 20 fiber to the home and fiber to the curb, we are going to
 21 not encompass all of the possible copper retirement and
 22 copper replacement issues, and in particular hybrid loops.
 23 And a hybrid loop -- and we've got it in my board there if
 24 we wanted to see a demo of it -- is a loop that's part
 25 copper and part electronics.

1 Hybrid loops are not in the section they refer
 2 to. The vast majority of the loops, by the time we retire
 3 copper, we're putting in a hybrid loop. So it's not
 4 prudent to not refer to a section that encompasses sort of
 5 our bread and butter work of putting in hybrid loops.
 6 Qwest feels that it's just easier and cleaner to say 9.2.
 7 And then if it's a loop, it's referred to there.

8 If you're asking me to take back what if in 9.1.9
 9 where we refer to every possible section in 9.2 that has
 10 to do with retirement and replacement of loops, I could
 11 take that back and meet with the Qwest individuals.

12 Q. But every section of 9.2 doesn't deal with
 13 retirement of copper loops; correct?

14 A. Correct.

15 Q. And you mentioned digital capable loops, which
 16 are discussed in 9.2.2.3; correct?

17 A. Yes.

18 Q. And that would cover -- you said that in a very
 19 narrow circumstance that might cover retirement of copper
 20 loop, but it would also cover a lot more situations;
 21 correct?

22 A. 9.2 is all of the situations of loops, I would
 23 agree, not just copper retirement and replacement.

24 Q. No. 9.2.2.3 governs digital capable loops. You
 25 said that in a narrow circumstance that might implicate

1 retirement of copper loops; correct?

2 A. I'm sorry. Maybe it's because I don't have all
 3 of the sections memorized.

4 In the primary section that you refer to in your
 5 proposed language, it talks about fiber to the home and
 6 fiber to the curb loops. It does not talk about the
 7 retirement of hybrid loops. Hybrid loops is the number
 8 one type of loop that we install when we replace or retire
 9 copper.

10 Q. And hybrid loops are discussed at 9.2.1.6?

11 A. One of the sections that talks about hybrid
 12 loops. But as I pointed out, there are other commitments
 13 through 9.2 that talk about replacement and retirement.

14 Q. The reference to 9.2.1.2.3 is a reference to a
 15 definitional section; correct?

16 A. It's a reference to one of the sections within
 17 the section that you have already referred to. Correct.
 18 Because definitions are in Section 4, I'm a little
 19 hesitant to say it's not in there.

20 Q. 9.2.1.2.3 does not purport to be an exhaustive
 21 discussion of retirement of copper loops; correct?

22 A. Correct.

23 Q. It defines retirement of copper loops; correct?

24 A. What 9.2.1.2.3 is intended to cover is that
 25 within the TRO and the TRRO as it related to when an ILEC

1 puts in new copper facilities, there's different rules
 2 whether it's brown-filled or whether it's green-filled.

3 And this section is attempting to make sure we
 4 meet all of our commitments if it's brown-filled. And
 5 brown-filled is when there's copper there and we're going
 6 to lay fiber beside or replace the copper with fiber. We
 7 have different legal obligations.

8 If it's green-filled, which means it's a brand
 9 new subdivision, no one has ever been there before, we put
 10 in fiber facilities, and we do not have to unbundle and
 11 provide anything more than a voice channel.

12 When it's brown-filled and we did not yank the
 13 copper, we don't have to maintain it, but upon request a
 14 CLEC can ask us to re-have that copper and provide it to
 15 them. So there are very specific requirements to do with
 16 fiber to the home and fiber to the curb in both the TRO,
 17 TRRO, and I believe the broadband order talks about the
 18 brown-filled, green-filled, and this section is trying to
 19 address that. So it's not trying to address every copper
 20 retirement every copper replacement. It was really aimed
 21 specifically at our legal obligations for those services.

22 Q. You had talked before about Eschelon's language
 23 putting Qwest in a box, and the example that you referred
 24 to specifically was a two-wire analog loop used to provide
 25 digital service; is that right?

1 A. Yes, it was.

2 Q. And you're aware that Eschelon doesn't provide
 3 digital service on two-wire analog loops; correct?

4 A. I don't purport to know all of the services that
 5 you provide. If you're saying you don't, then, of course,
 6 I believe you.

7 Q. You didn't see that in the testimony that was
 8 filed on Eschelon's behalf in this case?

9 A. You know, I have read a lot of testimony, and I'm
 10 not sure that I have a cite exactly for that one.

11 Q. You are aware that closed language in the
 12 proposed ICA would require technical publications to be
 13 followed; right?

14 A. Yes.

15 Q. And so that requirement would prevent Eschelon
 16 from using the wrong facilities to provide a particular
 17 service; isn't that right?

18 A. I have never looked at a technical publication
 19 with that. I don't know that the technical publication
 20 says, oh, by the way, you can't use some other facility to
 21 provide this service. It lists the services that it
 22 supports, I agree. But I don't know that it says, oh, by
 23 the way, you can't use this to provide these other
 24 services. You know, I don't think it lists what you can't
 25 do with it. I think it only lists what you can do with

1 it.

2 Q. You mention in your testimony that Qwest makes
3 maintenance and modernization changes on a daily basis;
4 correct?

5 A. Yes.

6 Q. And that it doesn't do those things in a cavalier
7 fashion?

8 A. Yes.

9 Q. Does Qwest undertake network modernization and
10 maintenance activities that it believes will adversely
11 impact the transmission quality of network elements that
12 CLECs lease?

13 A. That's not Qwest's objective. When Qwest goes in
14 to spend money on its plant, its idea is to improve the
15 transmission quality or to increase capacity. That's our
16 -- or if we've got a known repair problem, we'll go in and
17 take care of that.

18 Q. So as I understand it, when Qwest makes a network
19 modernization and maintenance change, it expects that that
20 change will at worst have a neutral effect on the
21 transmission parameters of the facilities that Eschelon
22 leases; correct?

23 A. Correct. And if we believe that there's any
24 possibility that it could have a negative effect, then we
25 put out onto our website, per the FCC requirements,

1 information to CLECs letting them know.

2 And an example might be in an area code split, we
3 think it's great and positive and its goal is to increase
4 capacity. An individual customer might not be so thrilled
5 that they have a new area code and they may think that's
6 an adverse affect on them.

7 Q. Yeah. We talked about area code splits in
8 Minnesota, and we agreed at that time that an area code
9 split doesn't have anything to do with the transmission
10 parameters of a facility; correct?

11 A. It doesn't have to do with transmission
12 parameters, but that's one of the examples of network
13 modernization within this section.

14 Q. But the language --

15 A. And this is a lead-off. You're putting your
16 statement as a lead-off for the whole section. And
17 further down that section it does talk about area code
18 splits.

19 Q. But the language that is in dispute concerns
20 adverse consequences arising from changes to transmission
21 parameters of facilities; correct? That's the language
22 that we're disputing.

23 A. Correct.

24 Q. Correct. And that doesn't have anything to do
25 with area code splits, transmission parameters?

1 A. I would have to think about that. I'm not an
2 engineering expert. My only thought would be is that with
3 an area code split, if you put in different tandems, and
4 et cetera, so maybe someone would draw service from a
5 different tandem than they're currently drawing it. So I
6 don't want to go too far that an area code split would not
7 also have some network changes.

8 Q. You would not expect a change to a tandem to have
9 an adverse consequence on UNEs that Eschelon leases, would
10 you?

11 A. I would not expect that.

12 Q. I mean, that would be a very surprising event and
13 would suggest that there's something wrong with the
14 tandem?

15 A. It would be a surprising event. But in the event
16 that we thought there was going to be an adverse affect to
17 a tandem -- in fact, I think we put tandems out there
18 anyway because the adverse affect to a CLEC really just is
19 more one of routing, making sure that your routing codes
20 are updated and you know correctly where to route things.

21 So it's not really put out there on the website
22 per FCC requirements thinking it's adverse. It's really
23 more informational so you can update your routing and your
24 codes. But you could think having to go back and update
25 all of your routing codes is inconvenient and adverse.

1 Q. But the dispute is not about inconvenience. It's
2 about adverse changes to transmission parameters; correct?

3 A. That is what is in your language, yes.

4 Q. That's the nature of the dispute that we have.
5 It's not about inconvenience, is it?

6 A. Well, it's about someone's interpretation of what
7 does an adverse affect mean? And we may think that a
8 minor inconvenience, you need to send somebody out and
9 re-tweak your customer prem equipment, may be reasonable.
10 You may think that's a tremendous adverse affect to have
11 to go out.

12 So it's really the vagueness of what does this
13 mean, and then, secondly, the fact that it's your end user
14 customer when we're not in the commitment between you and
15 your end user customers. What we do is we provide a
16 service to you. We have an obligation to provide that
17 service the way that you have ordered it within technical
18 parameters. That's our business relationship. We don't
19 have a relationship with your end user customer.

20 Q. The adverse affect that we're talking about is an
21 adverse affect on the transmission parameters of
22 facilities?

23 A. To the end user customer. So it's to your end
24 user customer. We don't even know what you have committed
25 to them.

1 Q. Now, if there are adverse affects to the
2 transmission parameters of the facility, that means that
3 something unexpected has happened; correct?
4 A. Either unexpected happened in the cut, or for
5 whatever reason the prem equipment was not capable of
6 working within the parameter, the true parameters of the
7 technical publications.
8 Q. I'm going to actually switch gears now to ask you
9 some questions about subloop cross-connects, which is
10 issue 9-50. The issue here is whether Qwest should be
11 required by the ICA to perform subloop cross-connects for
12 Eschelon; correct?
13 A. Yes.
14 Q. And as I understand it, it's Qwest's position
15 that it never had any obligation to provide this service;
16 correct?
17 A. Yes.
18 Q. That is a service that Qwest currently offers
19 under its ICAs with certain other CLECs; correct?
20 A. There are older ICAs that have that option in
21 them, yes.
22 Q. And it's also a service that Qwest offers under
23 its SGAT; correct?
24 A. I believe it is in the Arizona SGAT, yes.
25 Q. But it's Qwest's position that it doesn't want to

1 include subloop cross-connects in Eschelon's ICA because
2 you're in the process of phasing that service out; is that
3 right?
4 A. Yes. And it's not just for Eschelon. At a
5 certain point in time when Qwest made the decision to
6 phase out the offering because there was no legal
7 requirement, plus there was no demand, ever since it's
8 been there no one has ever ordered the service, it isn't
9 prudent to try to continue to maintain processes and
10 procedures and billing arrangements for a service that no
11 one has ordered that Qwest is phasing it out for all CLECs
12 after a certain point in time.
13 MR. MERZ: Could you mark this as Eschelon-4,
14 please.
15 Q. (BY MR. MERZ) You recognize Eschelon Exhibit
16 No. 4 as Exhibit A to Qwest's Arizona SGAT; correct?
17 A. Yes.
18 Q. Now, would you look at 9.3, which is on Page 7.
19 A. Yes.
20 Q. 9.3 is titled subloops; is that right?
21 A. Yes.
22 Q. And 9.3.3 is intrabuilding cable loop per pair;
23 is that right?
24 A. Yes.
25 Q. There are two no-dispatch options and two

1 dispatch options; is that right?
2 A. Yes.
3 Q. And this intrabuilding cable loop, that's what
4 we're talking about when we talk about the subloops that
5 are part of the 9-50 dispute; right?
6 A. Yes.
7 Q. The dispatch option is the option under which
8 Qwest goes out to do the cross-connect on the CLEC's
9 behalf; is that right?
10 A. Yes.
11 Q. That's the service that Qwest wants to
12 discontinue because it says there's no CLEC demand for
13 that service?
14 A. Yes.
15 Q. Now, I see there's a note under NRC-5. And if
16 you look at the next to the last page of the document,
17 Footnote 5 indicates that rates are being proposed in the
18 Arizona cost docket Phase III.
19 Do you see that?
20 A. Yes, I do.
21 Q. Has Qwest proposed rates for this element as part
22 of the Phase III cost docket?
23 A. I do not know.
24 Q. Do you know whether Qwest intends to?
25 A. I do not know. I would guess not since we're

1 phasing out the product, but I don't know. I don't know
2 the timing on that cost docket.
3 MR. MERZ: Mark this as Eschelon-5, please.
4 Q. (BY MR. MERZ) You have in front of you there
5 Eschelon Exhibit No. 5; is that right?
6 A. Yes.
7 Q. Is this a document that you have seen before?
8 A. I don't know. I am aware of the Cox Arizona
9 issue, but, you know, I don't know that I have seen this
10 document or not.
11 Q. Go to Paragraph 2. There's a reference there to
12 on premises wire subloops, which is the issue that we're
13 talking about here, the 9-50 issue; is that right?
14 A. Yes.
15 Q. A reference as well to dispatch and no dispatch
16 circumstances; correct?
17 A. Yes.
18 Q. The dispatch circumstances would be when the CLEC
19 is asking Qwest to go out and do the cross-connects for
20 it?
21 MR. DEVANEY: Your Honor, I'm going to object at
22 this point. This is a brief filed by Cox Telcom.
23 Ms. Stewart is not sure she's seen it before, and counsel
24 is asking her substantive questions about the meaning of
25 statements in Cox's brief. I don't think it's a fair

1 question and there's no foundation for it.

2 ARBITRATOR RODDA: You know, I didn't hear your
3 question. Could you read it back or --

4 MR. MERZ: Sure. My question is whether
5 Paragraph 2 references the dispatch option, which is the
6 option to have Qwest go do the cross-connects for Cox.

7 ARBITRATOR RODDA: Okay. I'm going to allow her
8 to answer that question.

9 THE WITNESS: I can just read what is here. So
10 it is what it is.

11 Q. (BY MR. MERZ) And what it is is a request for
12 Cox to have the Arizona Commission establish a rate to
13 have Qwest provide cross-connects for subloops; right?

14 MR. DEVANEY: Same objection.

15 ARBITRATOR RODDA: Okay. But if you can
16 understand --

17 THE WITNESS: I understand the question. What I
18 don't know is, because I have not read all of the details,
19 is I just wouldn't want to get crossways and would
20 probably need to go back and reread the subloop section as
21 it related to intrabuilding connections, whether this is
22 the same component that we're attempting to not offer
23 anymore.

24 And the reason I have sort of a note of caution
25 here on that is that there are subloop connections that

1 Qwest would need to make for intrabuilding cable, and then
2 there are connections which have never been ordered, and
3 we believe it's because CLECs always do it themselves,
4 and, therefore, there's no need to have a process.

5 Because these rates don't match the other rates,
6 I'm concerned they may be talking about a different
7 cross-connect portion. So I don't want to -- because with
8 an intrabuilding cable, I could draw a diagram if there
9 would be any interest in a diagram, but there are a couple
10 of different cross-connect scenarios with intrabuilding
11 cable, and it just -- I just wouldn't want to get
12 crossways when particularly the prices are so different.

13 Q. (BY MR. MERZ) Well, let me ask you this.
14 Exhibit A, the Arizona SGAT, if you look at 9.3.3 where it
15 says intrabuilding cable loop per pair.

16 A. Yes.

17 Q. It says there there's a recurring rate of
18 0.299 -- I'm sorry -- 2955; correct?

19 A. Right.

20 Q. And that's the same as the recurring rate that's
21 referenced in Paragraph 2 of the Cox petition; correct?

22 A. Correct.

23 Q. And wouldn't you conclude from that that the Cox
24 petition is talking about the same intrabuilding cable
25 loop that is referenced at 9.3.3 of Exhibit A to the

1 Arizona SGAT?

2 A. But it says it did not address nonrecurring for
3 the on premise, and these other rates are nonrecurring
4 rates.

5 Q. That are not rates that the Commission has
6 established but rather are being proposed in Phase III of
7 the cost case; isn't that right?

8 A. That could be an explanation. I'm just saying
9 that I saw a mismatch between this saying that there were
10 no nonrecurring rates and then this document having
11 numerous nonrecurring rates.

12 ARBITRATOR RODDA: You're probably finished that
13 line of questioning.

14 MR. MERZ: Yeah, I have.

15 Q. (BY MR. MERZ) I'm going to go to a different
16 area of loop-MUX combo, which is issue 9-61.

17 ARBITRATOR RODDA: When you say MUX, is that the
18 same as -- did you say MUX?

19 MR. MERZ: Loop-MUX. Maybe I'm just not saying
20 it very well. It's a combination of both things.

21 ARBITRATOR RODDA: Okay. Is this going to be --
22 I think this might be a good time for a break.

23 MR. MERZ: That would be fine.

24 ARBITRATOR RODDA: Let's take 10.

25 (A recess was taken from 10:20 a.m. to 10:36 a.m.)

1 ARBITRATOR RODDA: Okay. Since everyone is here,
2 let's go back on the record.

3 Mr. Merz.

4 MR. MERZ: Thank you, Your Honor. I was reminded
5 that I have not offered Eschelon Exhibit 3, which is
6 Exhibit A to the proposed ICA; Eschelon Exhibit 4, which
7 is Exhibit A to the Arizona SGAT; and Eschelon Exhibit 5,
8 which is the Cox petition. I would offer those three
9 exhibits at this time.

10 ARBITRATOR RODDA: Thank you. My records do show
11 that we admitted E-3, but any objection to E-4 and 5?

12 MR. DEVANEY: I do object to the Cox petition. I
13 don't think there's a foundation for putting in another
14 party's brief that's not even a party to this proceeding.

15 ARBITRATOR RODDA: Okay. Well, it speaks to the
16 issue of whether there's going to be a -- it says what it
17 says, and it talks about the potential Phase III, but --
18 so I'll admit it for what it's worth. So we'll admit E-4
19 and E-5.

20 (Exhibit Nos. Eschelon-4 and Eschelon-5 were
21 received into evidence.)

22 MR. MERZ: Thank you. When we broke, we were
23 starting loop-MUX combinations, and I actually think I can
24 be pretty brief about this.

25 Q. (BY MR. MERZ) You're aware that the Minnesota

1 ALJs recommended the adoption of Eschelon's language on
2 this issue; correct?

3 A. Yes.

4 Q. And you're aware that the Minnesota Commission
5 recently voted to accept the ALJs' recommendation in that
6 record?

7 A. That's my understanding.

8 MR. MERZ: I have nothing further.

9 ARBITRATOR RODDA: Do you always cut down after
10 the breaks? I always feel like so stupid. Why could I
11 not have just let you ask two more questions?

12 MR. MERZ: I have a lot more, and then I think
13 about it and then I think it sure is nice being on break.
14 I get tired.

15 ARBITRATOR RODDA: All right. Well, that's fine
16 if it helps speed it along. I don't have any questions.

17 MR. DEVANEY: Maybe we should take another break.
18 I just have one question for Ms. Stewart.

20 REDIRECT EXAMINATION

21
22 Q. (BY MR. DEVANEY) Ms. Stewart, you were asked by
23 Mr. Merz questions about issue 9-33.

24 A. Yes.

25 Q. And I want to just briefly go back to that. And

1 service to an end user customer."

2 The way that that is listed, it doesn't indicate
3 that that is the only thing that it could be discussing
4 when it talks about an adverse affect to the end user
5 customer. So it's kind of separated in time saying that
6 there's -- there could be changes to a transmission
7 parameter and there can be no adverse affects to a
8 customer. The adverse affects to the customer potentially
9 under this sentence could be something other than a
10 transmission parameter.

11 Q. And how does that interpretation of the language
12 affect your examples relating to area code splits and
13 increasing from 7- to 10-digit dialing?

14 A. I think it just goes to point that the
15 ambiguousness of the language that it would be difficult
16 to know exactly what is covered and what is not covered
17 with the language. And, again, as I have testified, part
18 of our significant concern is the fact that it uses a test
19 of end user customer when our relationship is between
20 Qwest and the CLEC, not the service the CLEC provides to
21 their end user.

22 MR. DEVANEY: Thank you. That's all I have.

23 ARBITRATOR RODDA: Thank you. Okay.

24 MR. MERZ: Just maybe one or two follow-up
25 questions.

1 as you will recall, the issue that you were asked about
2 was Eschelon's Proposal No. 1, which had to do with --
3 bear with me one second and I'll read it into the record,
4 but it involves the following language. And this is
5 Section 9.1.9 of Eschelon's proposal.

6 In order to maintain and modernize a network
7 properly, Qwest may make necessary modifications and
8 changes to the UNEs in its network on an as-needed basis.
9 Such changes may result in minor changes to transmission
10 parameters, but will not adversely affect service to any
11 end user customers, paren, other than a reasonably
12 anticipated temporary service interruption, if any, needed
13 to perform the work, close paren, period.

14 What I would like to ask you about is you
15 testified in response to Mr. Merz's question that the
16 adverse affect referred to in that language refers
17 specifically to a change in transmission parameters. Do
18 you recall that?

19 A. Yes, I do.

20 Q. And in looking at the language, do you still have
21 the view that it's that narrow?

22 A. When you do look at the language, it does start
23 off with the, "but will not adversely affect service to
24 any end user. Such changes may result in minor changes to
25 transmission parameters but will not adversely affect

1 CROSS-EXAMINATION

2
3 Q. (BY MR. MERZ) The language, "such changes may
4 result in minor changes to transmission parameters but
5 will not adversely affect service," if language were added
6 that said "but such changes to transmission parameters
7 will not adversely affect service" that would take care of
8 this area code split issue that you're describing?

9 A. That potentially could with engineering
10 confirmation that some of these other things that are
11 talked about. And I think part of it is that the FCC
12 identified that changes can have an effect on CLECs and on
13 end user customers and proper notice has to be given, and
14 that is what the FCC is about in their requirements and
15 rules. That you not only -- that when you make a change
16 and there's an adverse affect you notify, not that an
17 adverse affect will never happen. Because sometimes
18 modernizing the network is going to result in an adverse
19 affect.

20 Like, for example, when we took out our step by
21 step offices and put in electronic central offices,
22 something called fire trees were no longer available. And
23 that's where you could call a number and it would ring all
24 of the volunteer firemen's homes. So when we went to
25 electronic central offices, that feature was no longer

1 available, the way in which they called out all of their
2 firemen in volunteer rural fire areas. So that was a huge
3 adverse affect to them.

4 We notified them, gave them six months' notice.
5 They then at that point in time, technology had changed
6 and most of them went to pagers.

7 But it's an example. Adverse affects can and do
8 happen when you update the network, and it's really about
9 notifying so people have plenty of time to deal with the
10 change. It's not about never doing something that's going
11 to affect the customer.

12 MR. MERZ: I don't have any further questions.

13 ARBITRATOR RODDA: Okay. Mr. Devaney.

14 MR. DEVANEY: Nothing further. Thank you.

15 ARBITRATOR RODDA: Thank you, Ms. Stewart.

16 MR. TOPP: Your Honor, that completes Qwest's
17 witnesses.

18 ARBITRATOR RODDA: All right. You're leaving
19 or --

20 MR. MERZ: No, no. Just taking another break. I
21 was going to get my Exhibits for Mr. Starkey marked here.

22 We call Michael Starkey to the stand.
23
24
25

1 MICHAEL STARKEY,
2 called as a witness on behalf of Eschelon, having been
3 first duly sworn by the Certified Reporter, was examined
4 and testified as follows:

5
6 DIRECT EXAMINATION
7

8 Q. (BY MR. MERZ) Good afternoon. I guess it's
9 still morning. Afternoon in Minneapolis.

10 A. Good morning.

11 Q. Please state your name for the record.

12 A. My name is Michael Starkey.

13 Q. And by whom are you employed, Mr. Starkey?

14 A. I'm employed by QSI Consulting, Incorporated.

15 Q. Did you prepare testimony in this case?

16 A. I did.

17 Q. We've marked as Eschelon Exhibit 6 your direct
18 testimony; is that correct?

19 A. Yes.

20 Q. And as Eschelon Exhibit 7 your rebuttal
21 testimony; is that correct?

22 A. Yes.

23 Q. And as Eschelon Exhibit 8 your surrebuttal
24 testimony; is that correct?

25 A. Yes.

1 Q. And then you're also adopting certain provisions,
2 certain parts of Mr. Webber's direct testimony; is that
3 correct?

4 A. That's correct.

5 Q. And Mr. Webber's direct testimony is marked as
6 Exhibit 9?

7 A. Yes.

8 Q. You will be adopting all of that testimony but
9 for the part that deals with expedites; is that correct?

10 A. Yes. That's my understanding.

11 Q. Mr. Starkey, is the information contained in
12 Eschelon Exhibits 6, 7, 8 and 9 true to the best of your
13 knowledge?

14 A. Yes.

15 MR. MERZ: Your Honor, Eschelon offers Eschelon
16 Exhibits 6, 7, 8 and 9.

17 ARBITRATOR RODDA: So with respect to Webber's
18 testimony, is there a different witness?

19 MR. MERZ: Mr. Denney is going to be adopting
20 what is left of the Webber testimony. I could offer it
21 then, too. It's up to you.

22 ARBITRATOR RODDA: I don't know. You're not
23 going to object to it then or now, are you?

24 MR. ROSELLI: We're not going to object to it.

25 ARBITRATOR RODDA: Or you would have objected by

1 now, I presume. So let's admit E-6, 7, 8 and 9.
2 (Exhibit Nos. Eschelon-6, Eschelon-7, Eschelon-8,
3 and Eschelon-9 were received into evidence.)

4 MR. MERZ: I would also just note for the record
5 that Exhibit MS-6 to Mr. Starkey's, I believe it's his
6 rebuttal testimony, as originally filed was incorrect.

7 And MS-6 are excerpts from the testimony of the Minnesota
8 arbitration hearing. We did file an errata that was the
9 complete excerpts that we intended to offer, and in the
10 copy that's been marked I have substituted the correct
11 exhibit for the one that was put in error.

12 ARBITRATOR RODDA: Great job.

13 Q. (BY MR. MERZ) Mr. Starkey, do you have a
14 summary of your testimony to give today?

15 A. I do.

16 Q. Go ahead and give that?

17 A. Okay. I just have a brief summary. Good
18 morning. My name is Michael Starkey, and I'm the
19 president of QSI Consulting.

20 ARBITRATOR RODDA: I'm just going to -- if you're
21 going to read that, that's fine. Just slow down.

22 THE WITNESS: I will. I don't intend to read it
23 until I get to the parts where I have to.

24 I have been asked by Eschelon to present the
25 materials supporting its proposed contract language in

1 about 10 subject areas where it and Eschelon -- Qwest and
2 Eschelon have not been able to come to agreement. I have
3 sort of for purposes of this summary grouped those 10
4 subject areas into two categories that I think have
5 general characteristics.

6 The first category includes issues where Eschelon
7 has proposed specific enforceable contract language and
8 Qwest has proposed none. Instead, Qwest proposes to
9 address these important issues in venues other than the
10 agreement. It suggests that they be looked at and decided
11 in other venues, many of which Qwest controls. In this
12 category I would put issues related to interval changes,
13 conversions, root cause analysis, and identification of
14 mistakes and jeopardies. These are important business-
15 affecting issues to Eschelon, each of which impact
16 Eschelon's ability to effectively serve its customers.

17 Further, many of these issues have a long history
18 between the companies. For example, with respect to
19 jeopardies, the company has been discussing that issue for
20 more than four years now. To the extent that this
21 Commission sends them back to another forum like change
22 management, or worse yet to Qwest's sort of internal
23 document process, the result simply isn't going to be
24 fruitful. They've been talking for four years now.
25 There's no indication that sending them back to talk

1 further is going to result in anything productive.

2 In fact, because Qwest wants more of these issues
3 put into forums where it controls the outcomes, like CMP
4 as described in my testimony, the lack of contract
5 language approved by this Commission as requested by
6 Eschelon will really be a decision to let Qwest set the
7 rules.

8 I would characterize the second category of
9 issues as contract language meant to define Qwest's
10 obligations and Eschelon's right with respect to
11 nondiscriminatory access to unbundled network elements,
12 primarily Section 9 of the contract. In this category, I
13 would place the following issues: Power,
14 nondiscriminatory access to UNEs, network maintenance and
15 modernization, loop-transport combinations, and
16 multiplexing, the loop-MUX combination that Ms. Stewart
17 discussed earlier.

18 With regard to each of these, there is competing
19 language offered by the parties. And as a general rule,
20 Eschelon's language attempts to be more specific with
21 respect to Qwest's obligation, and Qwest's language tries
22 to be less specific.

23 One example, and I think a good example of that
24 group of issues is the loop-MUX combination that
25 Ms. Stewart described earlier, and it's identified as

1 issue 9-61 in the arbitration. When we look at issue
2 9-61, it's important to note not only what is at issue,
3 but what is not at issue. This is just one example for
4 which Qwest's arguments ignore what Eschelon is actually
5 proposing in the case.

6 For example, Eschelon is not requesting
7 stand-alone multiplexing that Ms. Stewart referred to
8 earlier and refers to numerous times in her testimony, or
9 multiplexing in combination with transport at TELRIC
10 rates, which was really her second chart that she put up a
11 while ago which showed a loop-MUX and then transport.
12 That's not what Eschelon's language requests.

13 Both of these are issues that are closed in the
14 ICA. Eschelon and Qwest have already agreed that that's
15 not what this language talks about. Agreed upon -- for
16 example, agreed upon language at Section 24.2.1.1, states
17 as follows. And it's pretty short so I'll just read it:

18 A multiplexed facility will be ordered and billed
19 at the rate in Exhibit A if all circuits entering the
20 multiplexers are UNEs, or the UNE combination terminates
21 at a collocation as described in Section 9.2.3. In all
22 other situations when CLEC orders multiplexing with the
23 UNE, for example, e.g., orders a -- a CLEC orders a UNE
24 loop in combination with Qwest's special access
25 transport -- again, the description of Ms. Stewart's

1 second chart -- the multiplexing facility will be ordered
2 and billed pursuant to the applicable tariff.

3 So Eschelon does not dispute the notion that if
4 it intends transport, non-UNE transport to the loop-MUX
5 combination, that the multiplexer will be charged pursuant
6 to the tariff, not the interconnection agreement.

7 The only open issue is whether a multiplexer
8 combined with a loop and terminating to a collocation is
9 subject to the cost-based pricing required by the Act.
10 Both the loop and the collocation are Section 251 services
11 subject to cost-based pricing. In other words, this is a
12 UNE combination that belongs in Section 9.23 of the ICA
13 under UNE combination.

14 All that said, my testimony at the highest level
15 asked that the Commission look at the proposed contract
16 language. There's a lot of testimony and a lot of sort of
17 debate in the testimony about the contract language. But
18 I think a useful exercise is to sit down and put the
19 contract language in front of you. Because I think when
20 you do, you'll see that Eschelon's language is more
21 specific as opposed to less, and that the proposals are
22 reasonable with respect to the issues. That's it.

23 MR. MERZ: Mr. Starkey is available for
24 cross-examination.

25 ARBITRATOR RODDA: Okay.

1 MR. ROSELLI: I guess I will go first.

2
3 CROSS-EXAMINATION

4
5 Q. (BY MR. ROSELLI) Good morning, Mr. Starkey.

6 A. Good morning.

7 Q. I'm going to ask you some questions about power,
8 Section 8.

9 A. Okay.

10 Q. You have previously appeared before this
11 Commission on behalf of McLeod; correct?

12 A. Yes.

13 Q. With regard to some of the same power issues that
14 are described in your testimony here; correct?

15 A. Yes.

16 Q. That relate to Qwest's charges for DC power
17 plant; correct?

18 A. Yes.

19 Q. Okay. Now, you're not a power plant engineer;
20 right?

21 A. I'm not.

22 Q. And you don't claim to be one?

23 A. That's true.

24 Q. Okay. Throughout your testimony, you make a
25 point of stating that Eschelon does not order power plant;

1 is that right?

2 A. That's correct. There's a distinction that we
3 make that Qwest doesn't in respect to ordering power
4 cables that will serve your collocation versus a request
5 or an order for power itself.

6 Q. Okay. Is it reasonable to say, however, that
7 Eschelon certainly expects when it orders power cables
8 that Qwest will hook those power cables up to its power
9 plant?

10 A. Yes.

11 Q. Okay. Because engineering being what it is,
12 unless the cables are connected to a power source, the
13 power plant, they're not going to draw any power; right?

14 A. That's correct.

15 Q. Unless there's some incredible arcing going on in
16 the central office.

17 A. Yes.

18 Q. With regard to the power measurement debate that
19 is the focal point of all of the testimony on this
20 subject, Qwest's contract language would allow for
21 measurement to apply to power usage only; correct?

22 A. That's right.

23 Q. And Eschelon wants power measurement in its
24 proposed contract language to apply both to usage and to
25 power plant; correct?

1 A. That's fair, yes.

2 Q. And there is an agreement on how power
3 measurement works in that it's a random measurement
4 approach. Would you agree with that?

5 A. Can you be more specific to the language you're
6 talking about?

7 Q. Well, the contract, and it's -- I can give you
8 the citation if you want. It's 8.2.1.29.2.2. I don't
9 know that you'll need to go there.

10 A. I'm going to write it down anyway.

11 Q. 8.2.1.29.2.2.

12 A. Okay.

13 Q. I think you'll agree with me on this point
14 without even needing to look at it. Measurement calls for
15 semiannual measurement?

16 A. It was the random that you threw out earlier that
17 made me want to look.

18 Q. How many times a year does it specify measurement
19 will happen? Do you know?

20 A. I'm going to go ahead and look it up just so I
21 can be specific.

22 Q. Okay.

23 A. I'm trying to discern what is closed language
24 here versus open language. As I read it, 8.2.1.29.2.2, it
25 says Qwest will perform a maximum of four readings per

1 year for a particular collocation center.

2 Q. That's all I was essentially looking for.

3 A. Okay.

4 Q. That it specifies a certain but limited number of
5 measurements to take place?

6 A. Okay. Four, yes.

7 Q. Thank you. Now, you would agree with me, I
8 think, that random measurements of power are a different
9 thing than the List 1 drain of power equipment in the
10 central office; correct?

11 A. I would agree they're different because they're
12 -- I don't understand how you would otherwise try to
13 relate them. You're saying that random measurements --
14 random measurement is a way you measure. List 1 drain is
15 sort of a measurement of use. So not necessarily -- I
16 just don't understand your question.

17 Q. Let me ask it this way. Random measurement is a
18 different thing than the busy hour or heaviest use of a
19 piece of equipment or a CLEC's combined power use in the
20 central office. Isn't that true?

21 A. It is. Let me see if I can be fair to your
22 question. I think what you're saying is that if you
23 measure randomly, you're not always going to hit the
24 List 1 drain.

25 Q. I am saying that. And, in fact, it would take an

1 extraordinary stroke of luck to measure at a moment in
2 time when you have just captured the CLEC's busy hour
3 usage. Isn't that true?

4 A. Well, it is, but I'm not sure why you're talking
5 about random measurements.

6 Q. I'm trying to get at the fact that random
7 measurements capture something that isn't List 1 drain.
8 You agree with that; right?

9 A. It certainly can. That's true. The possibility
10 exists that if you take a random measurement you're not
11 going to hit the List 1 drain.

12 Q. In fact, it's almost certain you're not going to
13 hit the List 1 drain if you're only measuring four times a
14 year; right?

15 A. There's a certainly probability to it. I don't
16 know what it is.

17 Q. Well, fairly remote. And if I have that much
18 luck, I'm going to go buy a lottery ticket.

19 A. Good luck.

20 Q. Right? So they are different concepts; right?

21 A. I guess that's -- I can agree with you, and I
22 think I have, that if you're taking random measurements,
23 and I guess what I'm -- my original question was, I don't
24 understand where you're getting the word random out of the
25 agreed upon contract language in terms of measurements

1 when it talks about that you'll take four readings.

2 Further, however, I think I have already agreed
3 with you that you aren't necessarily going to capture the
4 List 1 drain if you take random measurements, or even if
5 you plan for four measurements throughout the year.

6 Q. Okay. And the contract language you just looked
7 at, it doesn't specify, does it, when those measurements
8 are to take place?

9 A. No, I believe it leaves it in Qwest's discretion.

10 Q. Okay. Which in my mind translates to the word
11 random, perhaps not in yours.

12 A. It wouldn't if I were -- if I were sitting in
13 Qwest's shoes it wouldn't translate into that. I would
14 want to take the measurements in a time frame that's
15 meaningful to what I'm trying to measure, which is the
16 draw of the equipment.

17 Q. What do you mean take the measurement in a time
18 frame that's meaningful in terms of what you want to
19 measure?

20 A. If I understand, I mean, if the notion here is
21 that we're attempting to capture a measurement as close to
22 the Eschelon particular List 1 drain as possible, I would
23 want to gauge my measurements toward that end.

24 Q. Okay. But Qwest can't know when Eschelon is
25 going to experience its maximum usage or draw for its

1 equipment, can it?

2 A. Well, I think it can. I mean, to be specific to
3 your question, yes, it can, because it controls the power
4 plant. It can measure it at any time it wants to,
5 including the extent to which power is going to Eschelon
6 or anyone else.

7 But I think, again, to be fair to your question,
8 that would be a specific process Qwest would have to
9 undertake. I don't think it's out of the realm of
10 reasonableness for Qwest to discern when it believes,
11 based on good knowledge as the proprietor of the power
12 plant, to know when a CLEC is going to have something
13 close to a List 1 drain.

14 Q. How does the fact that Qwest is the proprietor of
15 the power plant give Qwest any inside information as to
16 when Eschelon is going to experience its peak drain?

17 A. Because it has the information as to the amount
18 of power that Eschelon pulls at any one point in time.

19 Q. How does it have that information, Mr. Starkey?

20 A. It can measure it.

21 Q. Well, what you're proposing, then, is that Qwest
22 could measure 24/7?

23 A. It could.

24 Q. That's the only way Qwest would know; right?

25 A. No. I mean, it's not that extreme. I mean, to

1 the extent -- because a List 1 drain is something that
2 isn't going to happen most likely at midnight. I think
3 Mr. Ashton can do a pretty good job for you of discerning
4 particular points when a List 1 drain is likely to be more
5 likely than another.

6 Q. Well, you're talking about the time of day, but
7 Qwest would have no insight into what particular day it
8 should go measure if it wanted to get a higher reading
9 versus a lower reading. You're not proposing that, are
10 you?

11 A. I'm talking about the time of day because you
12 said 24/7, which suggests to me 24 hours a day. Your
13 question now, I guess, is it's not going to have any idea
14 what one day versus another might be with respect to the
15 List 1 drain for Eschelon.

16 Again, it's an analysis that could be undertaken.
17 You have access to all of the necessary information to
18 provide that analysis.

19 Q. Well, and I'm struggling here. I don't
20 understand what information you believe Qwest has access
21 to that would allow Qwest to assess what Eschelon's
22 pattern of usage of power in the central office is
23 supposed to look like.

24 A. Qwest owns the power plant. It provides power
25 from that power plant to Eschelon through cables that are

1 in its central office and it has access to measure. To
2 the extent that it wants to do an analysis of not only
3 Eschelon but, let's say, CLECs in general -- because I
4 can't imagine, frankly, that Eschelon's List 1 drain time
5 frame, its peak usage is going to be significantly
6 different than other sort of business-related CLECs, or
7 for that matter Qwest's own business-related equipment
8 that serves like customers.

9 Q. Okay. But the contract language you just looked
10 at and reviewed doesn't specify anything like what you're
11 describing, an ongoing monitoring or sampling of
12 Eschelon's power usage, does it?

13 A. It gives Qwest full discretion to choose how it
14 wants to measure the power.

15 Q. Well, now it says four times a year; right?

16 A. It says -- nothing as I understand from this
17 contract language limits the amount of time or effort that
18 Qwest can go to to measure power in its own central
19 office. For purposes of billing Eschelon with respect to
20 measurement, it limits it to four times a year such that
21 Eschelon doesn't get a different measurement every week,
22 or that it does not have to pay a different amount every
23 week based on a weekly measurement, for example.

24 Q. So what you're proposing is that Qwest could
25 measure every day, but only choose to share with Eschelon

1 utilizing more, then Qwest -- then it will bill the actual
2 power usage request on a going-forward basis.

3 The point of the four measurements is how is
4 Qwest going to bill Eschelon for power consumption. It
5 has nothing to do with limiting Qwest's ability to manage
6 its power infrastructure and measure whatever it wants to
7 measure.

8 Q. But the language you just read from says that
9 Qwest can take a maximum -- that was your word -- of four
10 readings per year; right?

11 A. Well, it's in the contract. It's not my word.

12 Q. Fair enough. It's in the contract.

13 A. Right. And then it goes on to suggest that for
14 those four readings, it will dictate how it bills to
15 Eschelon.

16 If you're suggesting that something in here
17 limits Qwest's ability to manage its power plant and
18 measure its power in some other way for some other purpose
19 than billing to Eschelon, I would suggest that that's not
20 the intention.

21 Q. Okay. But I'm not suggesting that at all, and
22 I'm trying to get at what you're suggesting, or maybe not.
23 So let me try to clarify.

24 You aren't suggesting here today that it would be
25 appropriate under the contract for Qwest to measure

1 the measurements that most work to Qwest's favor when
2 Qwest hit a particularly high spike on Eschelon's usage?
3 Are you proposing Qwest could then say, here is your bill
4 for the next three months, Eschelon? Is that what you're
5 proposing?

6 A. If by spike you mean List 1 drain, because I
7 don't know what you mean by spike.

8 Q. A high moment of usage compared to -- you know,
9 let me ask you this question. Usage is not static. It
10 fluctuates; right?

11 A. That's true.

12 Q. So there's going to be peaks and valleys; right?

13 A. Yes.

14 Q. You're not proposing that -- let me back up and
15 strike that.

16 The language that you just read from the contract
17 sets forth -- and this is agreed language in the contract
18 -- that power measurement will happen no more than four
19 times a year; right?

20 A. You have to read the language again specific to
21 my summary. When you read the language, when it talks
22 about the maximum of four times per year, it says: Based
23 on these readings, if the CLEC is utilizing less than the
24 ordered amount of power, Qwest will reduce the monthly
25 power usage rate to the CLEC's actual usage. If CLEC is

1 Eschelon's usage every single day, perhaps multiple times
2 every single day, wait until it sees a particular peak of
3 usage, and take that moment in time and then go to
4 Eschelon and say, well, we took a measurement. Here is
5 what it was. This is how you're going to be billed under
6 the power measurement language for the next three months.

7 Are you suggesting that Qwest can do that or
8 should do that?

9 A. And, again, you say spike. I'm going to refer to
10 it as List 1 drain because I think that's really what it
11 is. If Qwest wants -- and I have said this in my
12 testimony. To the extent Qwest can take a reading at the
13 point of List 1 drain and charge us those rates, I don't
14 have a problem with that.

15 Q. But, again, Qwest can't know when that moment in
16 time, that snapshot in time to going to come unless it
17 monitors on an ongoing basis Eschelon's power usage;
18 correct?

19 A. I wouldn't disagree with on an ongoing basis. I
20 would disagree with sort of the instantaneous and 24/7
21 suggestion that you threw out earlier. I think there is a
22 process and analysis that could be done and a process that
23 could be put in place to try to discern what the List 1
24 drain for Eschelon is.

25 Q. And let me come at it this way. Because you and

1 I, I think, are to some degree talking past each other,
2 and I'm trying to get out a concept that I think you'll
3 agree with.

4 Namely, that List 1 drain is a different concept
5 than fluctuating power usage. That the two things are
6 different.

7 A. They certainly are related. List 1 drain is the
8 peak usage of a particular user, in this point Eschelon,
9 or a group of users during a year such that it certainly
10 does fluctuate over time. When it fluctuates to its
11 highest degree, pulls the most power, that's a snapshot of
12 its List 1 drain.

13 Q. Right. List 1 is a fixed number; correct? It
14 doesn't change. The List 1 for a piece of equipment
15 doesn't change. It is what it is.

16 A. For a piece of equipment that's true, and I think
17 you have to make that important distinction. It may very
18 well change for a given user, as we've been talking about
19 Eschelon. Because more equipment is added or something is
20 removed, the List 1 drain for a particular user will
21 definitely change. The List 1 for a particular piece of
22 equipment, which is generally provided by the
23 manufacturer, is unlikely to change.

24 Q. Let me come at it this way by way of analogy.
25 Let me tell you that the 52-week high for Xerox

1 understand. The only thing I said that they're related is
2 that the 52-week high certainly is related to what it was,
3 what the stock price of Xerox was on April 12th. Because
4 if April 12th would have been higher, then \$49.27 wouldn't
5 be the 52-week high.

6 Q. Agreed. But you can't tell me what the
7 individual usage was for any discrete day based on knowing
8 the 52-week high?

9 A. That is true. They are related, but one does not
10 necessarily tell you the other without additional
11 information.

12 Q. And going the other way, if I told you the stock
13 price at a point in time, if I said on February 15th
14 Disney stock was trading at \$21 even, you couldn't tell me
15 based on that sole piece of information what the 52-week
16 high was for Disney stock; correct?

17 A. Correct.

18 Q. Thank you. I want to talk to you a little bit
19 about the Phase II cost docket here in Arizona. You refer
20 to that in your testimony; correct?

21 A. Yes, I believe I do. Can you tell me where
22 though?

23 Q. Well, I'll get there in just a minute. And I'm
24 not sure I'll need you to refer to your testimony or not,
25 but that is the cost docket that established the current

1 trading on the New York Stock Exchange was \$49.27. I
2 don't know if it was. I'm just making that up.

3 ARBITRATOR RODDA: Why don't you pick an easy
4 number like \$50?

5 MR. ROSELLI: That would not be realistic.

6 ARBITRATOR RODDA: All right. Never mind.

7 Q. (BY MR. ROSELLI) \$49.27. Okay?

8 A. I got it.

9 Q. You know that that's the 52-week high for Xerox;
10 right?

11 A. Okay.

12 Q. Can you tell me what it traded at on
13 February 15th, then, of 2007?

14 A. Based only on that information you have given me?

15 Q. Right.

16 A. No.

17 Q. No, because the stock price fluctuates.

18 A. It does.

19 Q. Right. It will hit one 52-week high.

20 A. That's right. But I can tell you what the
21 52-week high is. It was \$49.27. Likewise, I can tell you
22 what the List 1 drain was.

23 Q. And that's all I'm trying to get at is that one
24 provides no insight necessarily into the other?

25 A. Oh, the fluctuation versus the -- okay. I

1 power plant rates in Arizona; right? To your
2 understanding?

3 A. When you talk about the Phase II cost docket,
4 you're talking -- just to make sure that I'm on the same
5 page with you, we're talking about docket --

6 Q. It ends in 0194.

7 A. Yeah. It's a long number. Yes.

8 Q. The same docket. That is the cost docket that
9 established the current power plant rates for Qwest in
10 Arizona; right?

11 A. That's my understanding, yes.

12 Q. And you talk about this in your testimony?

13 A. I do.

14 Q. Did you represent any party in that proceeding?

15 A. I did not.

16 Q. Were you present for any part of that proceeding?

17 A. I was not.

18 Q. Okay. And the Commission approved a Qwest rate
19 for power plant in that proceeding; right?

20 A. Yes.

21 Q. Does \$10.75 sound right?

22 A. It's in the ballpark.

23 Q. And Qwest has been assessing that power plant
24 rate to Eschelon on a per amp ordered basis and not a
25 usage basis; correct? Has been.

1 A. I assume it has. I haven't asked them that
 2 specific question.
 3 Q. You have no reason to believe otherwise?
 4 A. That's true.
 5 Q. Okay. Part of the argument here is Eschelon
 6 wants it to be assessed on a usage basis; right?
 7 A. Yes.
 8 Q. Probably safe to assume that it's currently not
 9 being assessed on a usage basis or there would be no
 10 fight; right?
 11 A. That's true. But you asked me what I know, and I
 12 told you.
 13 Q. Fair enough. Do you contend that the assessment
 14 of this rate on a per amp ordered basis is contrary to the
 15 Commission's order, the 2002 order in the cost docket?
 16 A. Let me answer that as follows. The power plant
 17 rate wasn't the only rate that was adopted in this
 18 particular proceeding with respect to collocation power.
 19 The usage rate was also adopted in this particular
 20 proceeding with respect to collocation power.
 21 Since that time, Qwest has offered -- and this is
 22 directly at issue in the McLeod case that we discussed
 23 earlier -- Qwest has offered an amendment which changes
 24 the way in which it assesses power with respect to power
 25 usage. No subsequent order that I'm aware of from the

1 case and here now, and I need to focus on your
 2 understanding of what your testimony says about that cost
 3 docket order.
 4 You previously testified regarding the same order
 5 in the McLeod proceeding; right?
 6 A. Yes.
 7 MR. ROSELLI: Right. In fact, this would be an
 8 opportune time -- I have something that I would like to
 9 use with the witness, an exhibit, if I could approach.
 10 ARBITRATOR RODDA: If you can.
 11 MR. ROSELLI: I guess I should say may I
 12 approach. Whether I can physically get through is a
 13 different question.
 14 ARBITRATOR RODDA: I didn't mean to imply
 15 anything about you.
 16 Q. (BY MR. ROSELLI) Mr. Starkey, you have been
 17 handed a copy of what's been marked as Qwest Exhibit 20.
 18 A. Yes.
 19 Q. Okay. This is, in fact, a portion of the
 20 transcript of the McLeod proceeding that we were
 21 discussing. Do you see that?
 22 A. It appears to be, yes.
 23 Q. In fact, it's the portion of the transcript that
 24 is your testimony in that docket; correct? Do you
 25 recognize that?

1 Commission told them to do that or allowed them to do that
 2 per se, but they realized that there was a better way to
 3 offer usage with respect to power.
 4 What I'm suggesting is the same thing. The same
 5 rationale that supports Qwest's decision to charge usage
 6 on a different basis likewise supports its -- likewise
 7 supports a decision by the Commission in this particular
 8 case to require Qwest to do it for power plant as well.
 9 And that is because it's a better and more
 10 nondiscriminatory way to charge for this particular
 11 element.
 12 Q. And I understand your argument in that regard.
 13 That's what you're advocating. I'm trying to get at a
 14 slightly different question, which is are you contending
 15 that the cost docket itself approved and adopted a power
 16 plant rate that Qwest should have been charging on a usage
 17 basis, or are you contending that Qwest needs to make that
 18 change now? Which is it?
 19 A. Well, it certainly needs to make the change now.
 20 If I were in a different case in a different time, I might
 21 also argue that it was always wrong. But I don't think
 22 that's necessary for the Commission to reach the decision
 23 it has to reach here, which is what should it do now, and
 24 that's what I'm advocating in this case.
 25 Q. But I do need to focus on you are here in this

1 A. Yes. I'm sure -- it's an excerpt, but yes.
 2 Q. It is, in fact, an excerpt. And, again, I'm just
 3 trying to get clarity on this point. I understand what
 4 you're advocating with regard to discrimination on a
 5 going-forward basis, but what I'm trying to get at is your
 6 understanding, as you have articulated in your testimony,
 7 of what the cost docket ordered, what that 2002 order
 8 approved in terms of charging for power plant. So I would
 9 like to ask you a question in particular related to
 10 Page 79 on this transcript starting at Line 20.
 11 And I believe Lisa Anderl was putting these
 12 questions to you. Do you see that?
 13 A. Yes. I see that.
 14 Q. And she asked you: Are you contending that the
 15 assessment of the \$10.75 rate on a per amp ordered basis
 16 is contrary to the Commission's order in 2000 -- the 2002
 17 order in the cost docket. Correct?
 18 A. Yes.
 19 Q. And that's the same question I'm asking you here
 20 today. Is your answer the same?
 21 A. Yes. I think it's the same. I think it's
 22 exactly what I said earlier. I think the Commission's
 23 order is what it is and has to be interpreted given the
 24 language that the Commission used.
 25 Would I go back -- you know, would I go back if I

1 were participating in that case and say that's the wrong
 2 way to do it? Yeah, I would. I think that it wasn't
 3 necessarily done correctly, but it is what it is.
 4 Q. Okay. So your answer here, to be clear on the
 5 record, was no, you're not contending that Qwest has been
 6 misassessing that rate on a per amp ordered basis, are
 7 you?
 8 A. Not consistent with the Commission's order. I
 9 think they've been misassessing it, but the Commission's
 10 order, I think, gives them the right to do that.
 11 Q. But the reason that you believe they've been
 12 misassessing it is your argument regarding discrimination?
 13 A. Well, yes, and my review of the cost study.
 14 Q. Okay. Your review of the cost study?
 15 A. Yes.
 16 Q. But, again, so we're clear, you're not contending
 17 that the final order in that docket did anything other
 18 than approve a power plant rate to be assessed on a per
 19 amp ordered basis; right?
 20 A. That's correct.
 21 MR. ROSELLI: If I could have just a moment?
 22 ARBITRATOR RODDA: Yes.
 23 MR. ROSELLI: Thank you.
 24 That's usually a good sign when someone asks if
 25 they can have just a minute. And in this case I am, in

1 fact, done, and I'm going to turn you over to Mr. Devaney.
 2 THE WITNESS: Thank you.
 3 ARBITRATOR RODDA: So you're not really done.
 4 MR. ROSELLI: I may be done.
 5 ARBITRATOR RODDA: You're done. You can go to
 6 lunch.
 7 CROSS-EXAMINATION
 8
 9 Q. (BY MR. DEVANEY) Good morning, Mr. Starkey.
 10 A. Good morning.
 11 Q. I would like to take you through a few of the
 12 Section 9 issues, and I would like to begin with issue
 13 9-31, which is access to UNEs. And in connection with
 14 that I'm going to be asking you about Eschelon's proposed
 15 language, so hopefully you have access to that up there.
 16 In particular, I think we'll be focusing on Section 9.1.2.
 17 A. I'm sorry. You wanted to focus on which section?
 18 Q. 9.1.2.
 19 A. Okay.
 20 Q. And I just want to be sure I understand
 21 Eschelon's position here. You'll see that in 9.1.2 the
 22 disputed language provides -- and this is Eschelon's
 23 proposal -- access to unbundled network elements includes
 24 moving, adding to, repairing and changing the UNE. And
 25 then in paren, through e.g., design changes, maintenance

1 of service, including -- I'm sorry -- including trouble
 2 isolation, additional dispatches, and cancellation of
 3 orders. Do you see that?
 4 A. Yes.
 5 Q. And you have stricken or Eschelon has stricken
 6 "at the applicable rates," which is what Qwest is
 7 proposing; right?
 8 A. Yes.
 9 Q. Just to be clear, will you agree with me that the
 10 terms moving, adding to, repairing and changing are not
 11 defined anywhere in the interconnection agreement?
 12 A. I don't believe they are. They're not
 13 capitalized here, so I don't think they're meant to refer
 14 to defined terms.
 15 Q. Okay. What is your understanding of what those
 16 terms include? What activities are included, for example,
 17 by moving or adding?
 18 A. Do you mean other than the specific examples we
 19 give in the next clause?
 20 Q. Right.
 21 A. Okay. Qwest has an obligation. And the title of
 22 this particular issue is nondiscriminatory access to UNEs,
 23 which means -- basically, the way the FCC has described
 24 it, if you perform certain functions and activities in
 25 supporting service over these network elements,

1 understanding -- I know you know this -- the Act defines
 2 network elements as discrete and physical functions of the
 3 network.
 4 It then says that ILECs like Qwest are required
 5 to unbundle those network elements. So when we talk about
 6 a loop, for example, that's a network element that Qwest
 7 uses for itself when it provisions services, and it also
 8 unbundles for Eschelon's use on an unbundled network
 9 element basis.
 10 So given that distinction, when the FCC described
 11 your obligations with respect to providing access to
 12 unbundled network elements, it said you had to do it in a
 13 nondiscriminatory fashion. Meaning, to the extent that
 14 you did something or supported that unbundled network
 15 element or that network element on your side, you must
 16 also perform those same activities and support equally the
 17 network element on an unbundled basis for Eschelon.
 18 Q. What if we did something for another customer,
 19 moved a loop or a UNE, and charged the tariffed rate for
 20 the activity, and that was accepted by law and accepted by
 21 the other party? Would you agree that Eschelon also would
 22 pay a tariffed rate for the activity?
 23 A. No, because the Commission -- what I would say is
 24 there's two questions there. Should Qwest have to do it
 25 for Eschelon? And secondly, what is the price? The

1 answer to the first question is yes. Qwest should have to
2 do it because it did it for its own retail customer, and
3 nondiscriminatory access requires that it likewise do it
4 for Eschelon.

5 Now, Eschelon, unlike the customer, has rights
6 under Section 251 and 252 of the Act which require that
7 when it pays for these unbundled network elements, it do
8 it at cost-based rates. And that's what we're suggesting
9 in this language.

10 Q. Well, then, here is my question. When we look at
11 those words moving, adding to, repairing, changing, what
12 specific activities -- I know you have given your
13 nondiscrimination spiel, and I agree with your statement
14 in law absolutely, but let's focus on activities.

15 What activities are covered by these terms? When
16 you say moving or adding, are we talking about digging a
17 ditch? What are we talking about?

18 A. Well, you raise digging a ditch, I think, for a
19 specific reason. When we look at Paragraph 634 --

20 Q. No, I don't. Actually, all I want to know is
21 what activities are covered by these terms?

22 A. Let's say we're digging a ditch, though. The FCC
23 described when it talked about routine network
24 modifications in the TRO, it refused, based on Verizon's
25 suggestion, that the Commission list every activity that

1 might fall under a routine network modification. The FCC
2 said we're not going to do that, because what we're
3 setting is a standard. It's nondiscriminatory access, and
4 if you do it for your customers, do it for the person that
5 buys unbundled network elements.

6 So there isn't -- I mean, in fact, the FCC has
7 suggested the right way to do this is not to list every
8 particular activity that might accrue. The standard is
9 what is important, which is if you do it for yourself, you
10 do it for the UNE customer.

11 Q. Okay. But that's with respect to routine network
12 modifications that the FCC didn't list all of the specific
13 activities. Here we're talking about specific contract
14 language that is going to be imposed upon the parties, and
15 it includes an obligation for Qwest to move, add, repair,
16 change UNEs.

17 And my question for you as Eschelon's
18 representative on this issue is what activities are
19 encompassed by those terms? Can you name the activities
20 that are encompassed by them? That's my only question.

21 A. Are you asking me can I name them all?

22 Q. Just give me some idea of what your company has
23 in mind with respect to what is covered by these
24 activities. That's all I want to know.

25 A. And I assume by that you mean other than design

1 changes, maintenance of service.

2 Q. I've already said we can exclude what is in the
3 parens, but tell me what else is covered. That's all I
4 want to know.

5 A. Well, I'm hesitant to do that because the FCC
6 said we shouldn't list them all. But I can probably think
7 off the top of my head to give you a couple of examples if
8 you give me a second.

9 Let me give you an example. Additional
10 dispatches is one of the specific activities that we list
11 under the for example.

12 Q. Right.

13 A. When you go to provisional loop, and let's say
14 we're talking about copper, from the 2001 to -- or,
15 actually, sort of the 1999 time frame to about 2004, all
16 across the country we had cases dealing with special
17 construction charges. I'm sure that's a term you've heard
18 before. And it was the Commission's -- the FCC's decision
19 in the TRO for routine network modifications that finally
20 decided that issue on a national basis so we didn't have
21 to fight it state by state.

22 The position of most of the RBOCs -- and I would
23 admit that I wasn't in the Qwest proceedings but I was
24 participating in the Verizon and the Ameritech and the SBC
25 proceedings -- was that there was a very refined and very

1 sort of limited obligation that -- let's use SBC as an
2 example -- that SBC was undertaking for itself to
3 provision a loop.

4 If the loop was connected all the way through,
5 let's say, and by that they meant you had circuit
6 continuity all the way from the central office to the
7 customer premise, if you had circuit continuity, they
8 would provision the loop. But if they had to send a
9 person out -- dispatch a person to move a jumper at the
10 remote term from one peg to another so as to generate that
11 circuit continuity, special construction charges, tariffed
12 rates. All right?

13 What the FCC said, following on the heels of many
14 state commission decisions to the same extent, is if you
15 would send that -- if you would dispatch that person to
16 connect that jumper at the FTI for your retail customers,
17 and you do, then you must also prepare and do that same
18 activity for your unbundled network elements customers.
19 It's part and parcel of the nondiscriminatory access.

20 So there are a myriad of those types of issues
21 that come into play when you're provisioning service out
22 in the field. The FCC recognized that this isn't a
23 onesie, twosie. It might encompass three or four things.
24 It's a number of things.

25 Q. So what I hear you saying is that it's not really

1 possible to list all of the activities that might be
2 covered by these terms; is that right?

3 A. Oh, I don't know what's possible or not. I would
4 say it's not practical and, in fact, that it flies in the
5 face of the way the FCC said we should handle things.

6 Q. But whatever activities are encompassed by these
7 terms, and we don't know exactly what they are, it's
8 Eschelon's position that they all have to be paid for at
9 TELRIC rates; correct?

10 A. Cost-based rates.

11 Q. Right. Even though we don't know what all of the
12 activities are?

13 A. Well, we know that they fit within the realm of
14 what Qwest would do for its retail customers in providing
15 these same network elements. So they're certainly limited
16 to that extent.

17 Q. But if Qwest is providing that to its retail
18 customers at tariffed rates, and it's not service within
19 251 or 252, isn't it possible that tariff rate could apply
20 to Eschelon?

21 A. My understanding is that Section 9 in total
22 applies to Qwest's obligations under Section 251 for
23 unbundled network elements. If you're suggesting that
24 this was some service or feature that fell outside of 251,
25 then I think you would have a good argument to say it

1 doesn't apply here.

2 Q. Now, the activities that Eschelon believes are
3 encompassed by buying access to a UNE, whatever moving,
4 adding, and changing might include, do you have a position
5 on whether those activities are already included in the
6 recurring rates that Eschelon is paying for UNEs here in
7 Arizona?

8 A. Your question is do I have an opinion?

9 Q. Well, what is your position? Are these
10 activities that you have listed in your language already
11 included in the recurring rates that CLECs pay in Arizona
12 for UNE loops, UNE transport, other UNEs?

13 A. I'm going to answer that question two ways.
14 First I'm going to say moves, adds, and changes is a
15 vernacular in the telecom industry that doesn't bring
16 surprise to a technician's face. When you say we've got
17 moves, adds, and changes to deal with, they know what
18 you're talking about. That's a fairly established term in
19 the telecommunications business. It's not defined here in
20 the agreement. But if you ask any technician, they're
21 going to know what you're talking about.

22 With respect to whether those moves, adds, and
23 changes and these other types of -- or these sort of more
24 defined activities in the example are included in the
25 rates in Arizona, Mr. Denney is going to be better suited

1 to talk to you about that. I have read his testimony and
2 heard his testimony other places and I can recount it, but
3 I think he's probably better to discuss that.

4 Q. So you don't know?

5 A. He's going to be a better witness to talk to you
6 about that.

7 Q. Do you have in front of you Eschelon Exhibit 3,
8 which is Exhibit A to the interconnection agreement, the
9 pricing exhibit?

10 A. I did not bring that to the stand with me.

11 Q. Could you take a look, please, at Section 9.6.11,
12 which is found on Page 16.

13 A. Yes.

14 Q. Do you see UDIT rearrangement?

15 A. I do.

16 Q. UDIT refers to transport; is that correct?

17 A. Yes. I think it stands for unbundled dedicated
18 interoffice transport.

19 Q. And you'll see that the Arizona Commission has
20 set a nonrecurring rate for various types of UDIT
21 rearrangements as reflected by this exhibit. Would you
22 agree with that?

23 A. Yes.

24 Q. Do you have an understanding of what a UDIT
25 rearrangement is?

1 A. Generally, yes, but I don't think it's part of my
2 testimony.

3 Q. Well, here is my question for you. A UDIT
4 rearrangement is something that might fall within
5 Eschelon's proposed language of moving, adding, or
6 changing. Would you agree with that?

7 A. I would say, yes, generally a rearrangement would
8 fall within that category.

9 Q. And would you agree with me that pursuant to the
10 Arizona Commission's rate order from the past cost docket
11 that UDIT rearrangement would not be covered by the
12 monthly recurring rate, but instead Eschelon or another
13 CLEC would have to pay a separate nonrecurring charge for
14 that?

15 A. Now we're certainly in Mr. Denney's territory far
16 more than my own. I just don't know.

17 Q. Doesn't Exhibit A sort of reflect that because it
18 has a separate rate for UDIT rearrangements?

19 A. The cost study underlying this particular rate is
20 going to tell you the activities that are accounted for in
21 undertaking this arrangement. We're talking about
22 arrangements more generally, so I don't know whether the
23 arrangements we're talking about would be specific to what
24 is covered by that cost study or not. I just don't know.

25 Mr. Denney probably does.

- 1 Q. What cost study are you referring to?
- 2 A. The one that supports this particular rate that
- 3 you're pointing me to.
- 4 Q. So it's your testimony that it's possible that
- 5 the transport recurring rate in Arizona may already cover
- 6 UDIT rearrangements and Eschelon wouldn't have to pay this
- 7 charge; is that right?
- 8 A. I think my testimony is I don't know.
- 9 Q. Okay. Very well. I would like to turn now to
- 10 loop-transport combinations, issue 9-55.
- 11 A. Okay.
- 12 Q. Now, my understanding of Eschelon's position on
- 13 this, and it involves Section 9.23.4, is that for
- 14 efficiency sake Eschelon would like to use the umbrella
- 15 term loop-transport combination to capture various
- 16 products, three products, in fact. EELs, which are
- 17 extended enhanced links, commingled EELs, and high
- 18 capacity EELs; correct?
- 19 A. Yes.
- 20 Q. Now, would you agree that those are the only
- 21 three products Qwest is offering under this
- 22 interconnection agreement that consists of combinations or
- 23 commingling of loops with transport?
- 24 A. Yes. Those three should cover all of those
- 25 products.

- 1 Q. Are there any other products that Eschelon
- 2 intends to encompass by its umbrella term loop-transport
- 3 combination?
- 4 A. I think at the current time there's not. I think
- 5 what they're trying to do is establish in the contract a
- 6 group of products that include loop and transport
- 7 combinations. It does not mean that later there might not
- 8 be one that would fit well into this particular part of
- 9 the contract, but at this point their contract language is
- 10 specific that it only includes enhanced extended links,
- 11 commingled EELs and high capacity EELs. And that's their
- 12 proposed language at 9.23.4.
- 13 Q. And Eschelon wants to use the same term for those
- 14 three products, and that term being loop-transport
- 15 combinations; correct?
- 16 A. That's correct.
- 17 Q. And would you agree with me that the different
- 18 types of loop-transport combinations, the three different
- 19 types, actually have different, in some cases, pricing
- 20 terms and provisioning terms associated with them because,
- 21 for example, commingled EELs involve the use of a tariffed
- 22 service?
- 23 A. That's correct.
- 24 Q. Okay. But by contrast, an EEL is a combination
- 25 of UNEs, so it's not going to involve tariff pricing.

- 1 It's going to involve different provisioning processes;
- 2 right?
- 3 A. That's correct.
- 4 Q. Okay. But nonetheless, Eschelon wants to use the
- 5 same term for those distinct products; correct?
- 6 A. Because they all share a common attribute, which
- 7 is they are all a combination of UNEs either entirely, or
- 8 UNEs and commingled services that include loop and
- 9 transport. I mean, they're all loop and transport
- 10 combinations.
- 11 Q. Right. But with distinct provisioning and
- 12 pricing characteristics; correct?
- 13 A. That's correct. And the language makes clear
- 14 that the loop component when the -- let me be more
- 15 specific. The UNE component of that combination will be
- 16 dictated by the terms and conditions of Section 9 of the
- 17 contract, and the non-UNE components will be governed by
- 18 other parts of the contract, or other alternative service
- 19 arrangements. So it's clear to make that distinction in
- 20 the proposed language.
- 21 Q. Let's talk about network maintenance and
- 22 modernization, issue 9-33.
- 23 A. Okay.
- 24 Q. And the provision question there is Section
- 25 9.1.9. And Eschelon has two separate proposals; correct?

- 1 A. Yes.
- 2 Q. The first one being that -- I'm sorry. Let me
- 3 just get there myself.
- 4 The first proposal is -- and I'll just read the
- 5 first two sentences: In order to maintain a modernized
- 6 network properly, Qwest may make necessary modifications
- 7 and changes to the UNEs in its network on an as-needed
- 8 basis. Such changes may result in minor changes to
- 9 transmission parameters, but will not adversely affect
- 10 service to any end user customers other than a reasonably
- 11 anticipated temporary service interruption, if any, needed
- 12 to perform the work.
- 13 First of all, you agree with me that the term
- 14 adversely affect is not defined anywhere in the agreement;
- 15 is that correct?
- 16 A. I will agree with that. It's not.
- 17 Q. And would you also agree with me that there's no
- 18 statement here about what consequence flows from a change
- 19 that has an adverse affect?
- 20 A. Well, there's not one stated, but to the extent
- 21 that the language requires that there can't be an adverse
- 22 affect, then you would suggest -- I think it clearly
- 23 suggests that you would have to take care of that adverse
- 24 affect. You would have to remedy it, if you will.
- 25 Q. Okay. Is there a -- is Qwest going to be fined

1 or penalized if there's an adverse affect, whatever that
2 term means?

3 A. That's not my understanding.

4 Q. Okay. Is there anything that you can point to in
5 the agreement that says what happens if there's an adverse
6 affect?

7 A. Well, I think one of the things that the contract
8 includes, for example, is if one party does something in
9 the contract that it's not supposed to, then there's an
10 escalation process, there's a dispute process. The issue
11 here is --

12 Q. Yeah. No. I understand all of that. But is
13 there anything that says -- in Section 9.1.9, we say there
14 cannot be an adverse affect.

15 If there is an adverse affect, here is what
16 happens. Is there anything that says that?

17 A. I think I have said there's not. What I have
18 suggested is there's a fairly rational decision to say if
19 there's an adverse affect, it must be remedied. And the
20 contract has specific remedies associated with when
21 someone doesn't comply with their component of the
22 contract. I think we can go to any -- or pretty much any
23 page in the contract and find someone has an obligation to
24 do something. There's not an immediate description of
25 what happens if they don't.

1 Q. Well, let me ask you this. You agree with me
2 that network maintenance and modernization is a very
3 important activity for a carrier like Qwest to carry out,
4 wouldn't you?

5 A. Sure.

6 Q. And if Qwest were faced with being prohibited
7 from making an adverse affect -- making a change that has
8 an adverse affect to its network and wouldn't know the
9 consequences of an adverse affect, couldn't that chill
10 Qwest's conduct in making network maintenance and
11 modernization activities?

12 MR. MERZ: Speculation and foundation.

13 MR. DEVANEY: I can rephrase the question to make
14 it clearer, but I don't think there's any speculation.

15 ARBITRATOR RODDA: Perhaps you could do that,
16 because I was doing something else and I would have to
17 have it read back anyway. If you could.

18 You think I'm sleeping up here, don't you?

19 MR. DEVANEY: I don't.

20 ARBITRATOR RODDA: I'm sorry.

21 MR. DEVANEY: I know this is gripping.

22 ARBITRATOR RODDA: Lawyers always object right
23 when I'm thinking about what I'm going to have for lunch.
24 Sorry.

25 Q. (BY MR. DEVANEY) All right. Let me start over

1 on this. I think I have established and you have agreed
2 that there's no language in the contract that says
3 specifically what happens if there's a network activity
4 that produces an adverse affect; correct?

5 A. I think what I have said is there's no specific
6 and immediate, in that particular component of the
7 contract, discussion of what happens if Qwest doesn't meet
8 its obligation. What I have said is that the contract
9 does include a number of methods by which Eschelon can
10 seek remedy to Qwest not meeting its obligations.

11 Q. And you have agreed with me that giving a carrier
12 incentive to maintain and modernize its network is
13 important; correct?

14 A. No. I don't think I did. I think I said it was
15 important. I don't disagree with the notion that an
16 incentive might be a good thing, but --

17 Q. But it is important for carriers to engage in
18 those activities?

19 A. It is.

20 Q. And faced with contract language that says there
21 can be no adverse affect, or we're not going to tell you
22 what the consequences are if there is, wouldn't that
23 potentially chill a carrier like Qwest from making network
24 modernization and maintenance to its network?

25 A. No.

1 MR. MERZ: There's sort of my objection.

2 ARBITRATOR RODDA: But you're not objecting now?

3 MR. MERZ: Yeah. I am. The same objections.

4 ARBITRATOR RODDA: But you can answer.

5 THE WITNESS: No. And if you go to Page 12 of my
6 surrebuttal, I think I can tell you why. It's because at
7 that point I quote from you Rule 47 CFR 51.319.A.8, such
8 that this obligation not to disrupt or degrade access to
9 the local loop from these kinds of activities already
10 exists on Qwest. The contract language here just means to
11 put it in the contract. So this isn't a new obligation on
12 Qwest with respect to this sort of disrupting service. It
13 already has this obligation.

14 Q. (BY MR. DEVANEY) But the FCC doesn't say no
15 adverse affect on an end user?

16 A. It says disrupt or degrade access.

17 Q. But it's not in connection with network
18 maintenance and modernization activities?

19 A. It's engineering policies, practices and
20 procedures. It's more broad. And, in fact, I think
21 disrupt is more broad than the contract language we're
22 requesting here, because we allow you to disrupt for a
23 short period of time.

24 Q. Let me ask you this. You used the term end user
25 customer here in your language, which is capitalized. Do

1 you know the meaning of end user customer in the contract?
 2 A. I know I have read it. I would have to look it
 3 back up to see exactly what it says.
 4 I see it here.
 5 Q. And it includes customers of carriers other than
 6 Eschelon; correct? For example, Qwest retail customers?
 7 A. Yes. It refers -- I'll just read it to you. It
 8 says: End user customer means a third-party retail
 9 customer that subscribes to a telecommunications service
 10 provided by either of the parties, or by another carrier,
 11 or by two or more carriers.
 12 Q. So is it Eschelon's intent by using the term end
 13 user customer here to capture customers other than
 14 Eschelon by its language?
 15 A. I don't believe so.
 16 Q. So is that a mistake in your language?
 17 A. I don't think it's a mistake at all. I think
 18 when you look at the definition of end user customer, it's
 19 defining it broadly in terms of the way it may be used in
 20 various parts of the contract. To suggest that this
 21 language would apply to Qwest customers or to third-party
 22 customers of another carrier is simply not a logical
 23 reading of the language. I don't think it was a mistake.
 24 I think it would take a very broad reading of that to
 25 suggest what you just have suggested.

1 Q. But the definition of end user customer that you
 2 use here does include customers other than Eschelon;
 3 correct?
 4 A. It does as a general matter. However, I've got
 5 to look at Section 9. Let me think here real quick. I'm
 6 certain that there's closed language in the contract
 7 somewhere which excludes from this particular type of
 8 activity customers other than Eschelon's. I can't point
 9 it to you right now. Mr. Merz or Ms. Clauson may very
 10 well be able to, but I can't tell you. I don't believe
 11 that's their intention.
 12 Q. Okay. Eschelon's proposal No. 2 relating to this
 13 issue says that changes to the network will not result in
 14 unacceptable changes in the transmission of voice or data.
 15 My only question for you is is the term
 16 unacceptable changes identified or defined -- I'm sorry.
 17 Is the term unacceptable changes defined anywhere in your
 18 proposal?
 19 A. Can you tell me which contract language you're
 20 looking at?
 21 Q. It's your proposal No. 2 for issue 9.33.
 22 MR. MERZ: You're looking at the one that starts
 23 at the bottom of 205 and then goes onto 206; is that
 24 right?
 25 Q. (BY MR. DEVANEY) I have the issues matrix in

1 front of me. And your language reads: If such changes
 2 result in the CLEC's end user customer experiencing
 3 unacceptable changes in the transmission of voice or data,
 4 Qwest will assist the CLEC in determining the source and
 5 will take the necessary corrective action to restore the
 6 transmission quality to an acceptable level.
 7 Are you familiar with that language?
 8 A. Yeah. I'm just trying to find it. Could you
 9 give me the number again?
 10 Q. It's within Paragraph 9.1.9. It's Eschelon's
 11 proposal No. 2.
 12 ARBITRATOR RODDA: Do you have the -- your pages
 13 are different? Are they -- it's Page 205 and 206.
 14 THE WITNESS: I actually think my pages may be
 15 different.
 16 MR. MERZ: Mike, here is one that has -- it's
 17 Page 205 and 206. Do you want this one?
 18 THE WITNESS: That would be great. Just to speed
 19 things up.
 20 MR. MERZ: And I'll take the one with the little
 21 tiny print.
 22 ARBITRATOR RODDA: I think he likes that binder.
 23 Don't take his binder.
 24 MR. MERZ: Well, I'll leave it for you. I'll
 25 come back for mine.

1 THE WITNESS: I see it now. What was the question?
 2 Q. (BY MR. DEVANEY) A simple question. The term --
 3 Eschelon uses the term unacceptable changes. Is that term
 4 defined anywhere in Eschelon's proposal?
 5 A. Not that I'm aware of.
 6 Q. Okay. Do you know if Eschelon has access to its
 7 customers' circuit IDs and electronic databases?
 8 A. Yes. I believe it does.
 9 Q. Are you familiar with what steps Eschelon must
 10 take to retrieve circuit IDs from its customers'
 11 databases?
 12 A. No.
 13 Q. How about customer addresses? I assume those are
 14 also in electronic databases that Eschelon has?
 15 A. I would assume. I think Ms. Johnson is probably
 16 going to be the best person to talk to you about that type
 17 of stuff.
 18 Q. I want to talk briefly about this copper
 19 retirement issue that Ms. Stewart was asked about, issue
 20 9-33a.
 21 A. Okay.
 22 Q. As I understand Eschelon's position, all you're
 23 trying to do is make it clear that Section 9.1.9 does not
 24 include copper retirement; correct?
 25 A. Yes. As a general matter, we're trying to

1 suggest that copper retirement is treated differently
 2 already in the contract, and so these particular clauses
 3 don't necessarily apply.
 4 Q. Okay. And the dispute between the parties really
 5 comes down to in which sections of the contract is copper
 6 retirement addressed and, therefore, excluded from 9.1.9;
 7 correct?
 8 A. That would be my -- what I took away from the
 9 conversation with Ms. Stewart this morning.
 10 Q. Would you agree that that's something we ought to
 11 be able to sit down and sort of figure out?
 12 MR. MERZ: Well, you know, I'm just going to
 13 object because I don't know that that is a question for
 14 the witness.
 15 ARBITRATOR RODDA: Someone ask me that.
 16 MR. MERZ: You know, if we can get it resolved,
 17 we will.
 18 Q. (BY MR. DEVANEY) Philosophically we're of the
 19 same mind, wouldn't you agree? That we are just simply
 20 trying to be complete in our references to what copper
 21 retirement sections are in the contract and should be
 22 listed in 9.1.9?
 23 A. I think any time you sit down and talk about the
 24 contract language it's a dispute. I think you first come
 25 to this sort of formal agreement that, yes, we're trying

1 to accomplish the same thing.
 2 What I took away from the conversation this
 3 morning probably isn't that formal recognition that you're
 4 trying to accomplish the same thing. That should probably
 5 happen first, and then talk about what contract language
 6 would embody it.
 7 Q. Okay. With respect to -- and I just have two
 8 more subjects to go through. Issue 9-34, notice of
 9 network changes.
 10 A. Okay.
 11 Q. I want to ask you about Eschelon's proposal No.
 12 2, and I'll read that to you. Let me know when you're
 13 ready.
 14 A. Go ahead.
 15 Q. Such notices will contain the locations at which
 16 the changes will occur, including if the changes are
 17 specific to an end user customer, circuit identification
 18 if readily available, and any other information required
 19 by applicable FCC rules.
 20 Again, just to add the context here, this issue
 21 involves what notice should Qwest provide of network
 22 changes and what should be in the notice; right?
 23 A. That's correct. And could you give me that
 24 paragraph number you were reading?
 25 Q. Section 9.1.9.

1 A. Okay. I'm with you.
 2 Q. Okay. Now, I want to be clear. Your proposal
 3 No. 2 says notices will contain the locations at which the
 4 changes will occur, including if the change is specific to
 5 an end user customer.
 6 What does that mean, if the changes are specific
 7 to an end user customer?
 8 A. I think it just prefaced to the next -- the next
 9 component of the sentence that says if that is the case,
 10 then the following will occur. You'll give a circuit ID
 11 if readily available.
 12 I think it was actually put in there as a
 13 specific sort of recognition of -- well, not recognition
 14 even, but sort of to take away this notion that somehow an
 15 area code split is going to affect this thing, which I
 16 have never understood, frankly.
 17 But my understanding is that this particular
 18 sentence is added there to make sure that we're talking
 19 about transmission capabilities specific to an end user
 20 customer.
 21 Q. So do you mean like a customer address? Is it
 22 that specific? I'm trying to understanding the level of
 23 specificity that's being proposed here by your language.
 24 A. We're suggesting that if you're going to make a
 25 change, and it's then going to impact an end user customer

1 as opposed to a LATA, that part of the information you'll
 2 provide us is an ID of that customer.
 3 Q. What if it's a change that affects 500 customers
 4 or 1,000 customers? Is that under your proposal a change
 5 that's specific to an end user customer? Could it be?
 6 A. If you read the whole sentence, it says such
 7 notices -- and we're talking about the notice you're going
 8 to give us. It says if such notices will contain the
 9 locations -- it says: Such notices will contain the
 10 location, parentheses, S, locations, at which the changes
 11 will occur, including if the changes are specific to an
 12 end user customer.
 13 So rather than say 500 customers, let's say
 14 you're going out and you're going to make changes to an
 15 entire distribution area. Okay. An entire distribution
 16 area might be 600 customers. Okay? Some of them
 17 Eschelon's, some of them Qwest's.
 18 I think if it's going to impact particular
 19 Eschelon customers in that distribution area, yes, it
 20 would include that. I think it's not trying to capture
 21 things like LATA-wide changes, area code splits, that type
 22 of thing. If it's going to impact specific Eschelon
 23 customers, then yes, I think it would be captured.
 24 Q. Is that defined anywhere, what you just told me?
 25 A. Not that I'm aware of.

1 Q. And then you go on to say, or Eschelon goes on to
2 say: In that circumstance, Qwest will provide the circuit
3 identification, quote, if readily available, end quote.

4 Do I take it to mean that if, for example, a
5 manual search would be required for Qwest to locate the
6 Eschelon customer's circuit ID that Qwest wouldn't have to
7 perform a manual search? Is that what ready and available
8 means?

9 A. I describe it in my testimony by giving you an
10 example. I describe it by providing you a report that
11 we've recently received that shows us on these types of
12 notifications the circuit IDs that are available.

13 In Minnesota, the Commission or the arbitrators
14 basically said it looks like that information is
15 available. If it is available, provide it. To the extent
16 to which it takes a manual search, I don't know.

17 Q. Okay. Is that defined anywhere in your language?

18 A. It's not. It's probably something that the two
19 parties could sit down and talk about what exactly it
20 means. I just don't know sitting here today.

21 Q. Last subject, loop-MUX combinations, issue 9-61.
22 Let me know when you're ready.

23 A. Go ahead. I'm listening.

24 Q. Will you agree with me that for something to
25 qualify as an unbundled network element under

1 Q. When you say loop-MUX combinations are a UNE
2 combination, do you mean that the combination is a loop
3 which is a UNE and the MUX which is a UNE? Is that what
4 the combination is comprised of?

5 A. No. Loop-MUX, take for example an EEL, which is
6 a loop-MUX transport in some circumstances. If the
7 transport is a UNE, then a loop-MUX transport is a
8 combination of UNEs, though the MUX independently isn't a
9 UNE in and of itself.

10 Q. Well, you say here that loop-MUX combinations are
11 a UNE combination. You're not mentioning anything there
12 about transport. You're just talking about loop-MUX.

13 Is it your view that the loop and the MUX are
14 both UNEs and, therefore, the combination of the two is a
15 UNE combination?

16 A. Well, I go on in that sentence to point you to
17 9.23.2 where I say along with EELs, where I'm discussing
18 EELs.

19 Q. But just answer my question, if you would.

20 A. I understand that you were suggesting -- I'm
21 sorry. Maybe I could rehear it.

22 Q. So is it your position that the loop and the MUX
23 are both UNEs and, therefore, the combination of them is a
24 UNE combination?

25 A. It is not my position that a MUX is a UNE as a

1 Section 251(c) of the Act that there has to be a fact-
2 based finding of impairment by the FCC?

3 A. I would agree that the FCC has a list of
4 unbundled network elements, and for that list of unbundled
5 networks elements it periodically applies its necessary
6 and impaired standard. So yes.

7 Q. So you would generally agree with what I said?

8 A. Yes.

9 Q. Okay.

10 A. Generally.

11 Q. You look wary.

12 A. I am. Because I understand that the crux of this
13 issue deals with those network -- those unbundled network
14 elements also have features and functionalities that are a
15 part of them that don't necessarily also have to go
16 independently through that necessary and impair analysis.

17 Q. We'll get to that.

18 A. Okay. I just wanted to make sure that we were on
19 the same page.

20 Q. Now, would you turn to Page 193 of your direct,
21 Line 16 to 18. You say there that: However, loop-MUX
22 combinations are also a UNE combination and should
23 therefore be identified in Section 9.23.2 along with EELs.

24 Do you see that?

25 A. Yes.

1 stand-alone product. It's my position that a MUX is a
2 feature and function of the UNE that is the loop.

3 Q. Okay. Now, would you agree with me that as
4 Ms. Stewart, I think, summarized in her testimony, that
5 the FCC has defined the loop as the transmission path
6 between the customer premise and the main distribution
7 frame or an alternative frame in the central office?

8 A. Yes. That's a general paraphrase of the
9 Commission's rule.

10 Q. And I won't hand it out, but I have the rule in
11 front of me. It's Rule 51.319(a), and it defines local
12 loop in the way that I just described. I think you agree.

13 A. I think that's a general characterization, yeah.

14 Q. Okay. And would you agree with me that for
15 something to be a feature or function of a loop, it
16 therefore has to be a part of that transmission path
17 between the customer premise and the frame in the central
18 office?

19 A. If we're going to be specific, do you mind if I
20 see a copy?

21 ARBITRATOR RODDA: I would like to see it, too.

22 MR. DEVANEY: Okay. We can mark it as Qwest-21,
23 and I would request that Qwest-21 be entered into the
24 record.

25 ARBITRATOR RODDA: Any objection to Qwest-21?

1 MR. MERZ: No objection.
 2 ARBITRATOR RODDA: Qwest-21 is admitted.
 3 (Exhibit No. Qwest-21 was received into evidence.)
 4 Q. (BY MR. DEVANEY) Just to backtrack, Mr. Starkey,
 5 this rule defines the loop as follows: The local loop
 6 network element is defined as a transmission facility
 7 between the distribution frame, or its equivalent, in an
 8 incumbent LEC central office and a loop demarcation point
 9 at an end user customer premises.
 10 That's the definition I paraphrased before that I
 11 think you and I agreed on.
 12 A. Yes.
 13 Q. This element includes all features, functions and
 14 capabilities of such transmission facility.
 15 And, again, that's the transmission facility that
 16 runs between the customer premise and the frame in the
 17 central office; correct?
 18 A. I think in some cases it is, and I think in some
 19 cases it's more.
 20 Q. Okay. So it's your view that you could actually
 21 have a feature and function of a loop that's not part of
 22 the loop transmission facility and it's not between the
 23 customer premise and the frame in the central office; is
 24 that correct?
 25 A. You said "and". I think I would say "or". It's

1 electronics transmitting the signals to make the loop
 2 work.
 3 Q. So just to be clear, then, it's your position
 4 that there can be features or functions on the other side
 5 of the frame not between the frame and the customer
 6 premise that are still part of the loop; is that correct?
 7 A. Yes, and I can give you a specific example.
 8 Q. That's all I want to know. If your counsel would
 9 like to ask you, he's free to do that.
 10 A. Okay.
 11 Q. And you heard Ms. Stewart this morning explain
 12 that there are different types of multiplexing. Do you
 13 recall that?
 14 A. Yes.
 15 Q. Do you agree with that?
 16 A. There are different types of multiplexing.
 17 Q. And one type of multiplexing is the deMUXing that
 18 she described this morning where loops are -- between the
 19 customer premise and the main distribution frame are
 20 disaggregated and broken out into individual circuits.
 21 Would you agree that's a type of multiplexing?
 22 A. I would agree that's a type of multiplexing.
 23 Q. Okay. And that's not the type of multiplexing
 24 that's at issue with the loop-MUX combination that we're
 25 disputing here today; correct?

1 certainly a circumstance -- or circumstances exist where
 2 you would have a transmission facility that is not between
 3 the main distribution frame and the customer's premise.
 4 That's true.
 5 Q. Well, is it your position that for something to
 6 be an element or feature or function of the loop that it
 7 not necessarily be part of the loop transmission facility?
 8 It could be located outside that facility?
 9 A. It needs to be part of the transmission facility,
 10 or at least -- if that's what you're relying on here, it's
 11 not some other feature or function. But that transmission
 12 facility need not necessarily, and in some cases certainly
 13 does not, exist between the frame and the customer's
 14 premise.
 15 Q. Okay.
 16 A. There are transmission capabilities of a loop
 17 required to make it work that in some circumstances -- in
 18 a lot of circumstances exist on the other side of the
 19 frame, the CO side of the frame, if you will.
 20 Q. And you consider that to still be part of the
 21 loop even though it's on the other side of the frame; is
 22 that correct?
 23 A. It has to be. There's no other way. The loop
 24 wouldn't work without it. You would have no loop. You
 25 would have no transmission facility if you didn't have the

1 A. Well, I think it certainly could be. I mean,
 2 when we talk about multiplexing, we're -- the FCC's orders
 3 dictate sort of what it is that's required to be done and
 4 what is a feature and function of the loop, and the FCC
 5 has specifically said that multiplexing is a feature and
 6 function of the loop. It isn't more specific to one type
 7 of multiplexing or another. It's generic to multiplexing
 8 in general as long as it's used in the process of
 9 transmitting the loop.
 10 Q. But you're not requesting in this loop-MUX
 11 combination scenario deMUXing, are you?
 12 A. When you say deMUXing, can you be more specific
 13 as to what you're talking about?
 14 Q. As specific as I can be is that you have loops
 15 that are aggregated, and before they enter the central
 16 office they need to be disaggregated into individual
 17 circuits. That's what I had in mind by deMUXing.
 18 And my question for you, is that the type of
 19 MUXing that's at issue with loop-MUX combinations?
 20 A. I've not looked at the language with that in
 21 mind. Let me look at the language with that in mind,
 22 because I have generally considered it to be -- there's a
 23 high side and a low side to a multiplexer generally, which
 24 is smaller circuits come in one side, they're aggregated,
 25 bigger circuits go out the other.

1 I have sort of always looked at this particular
2 issue as they come in the low side, go out the high side
3 to the Eschelon collocation. I've not necessarily looked
4 at it from the other side, could it go the other way? So
5 I need to look at the language and see if it accommodates
6 that.

7 Q. Okay.

8 A. And I assume that is your question.

9 Q. Yes.

10 A. Just my initial reread of the language specific
11 to that issue is that it's not specific. Let's take, for
12 example, 9.23.9.3.2.1. It talks about 3-to-1
13 multiplexing. That basically means a DS1 coming in on the
14 low side and a DS3 going out on the high side. It could
15 be the other way around where we're accepting the DS1s off
16 of the DS3. I don't think the language is specific to
17 that, so I think it just talks about multiplexing more
18 generally.

19 Q. And then just with respect to the pricing of
20 multiplexing, I want to make sure I understand your
21 position. It's Eschelon's position that if it's a loop
22 connected with a loop -- a UNE transport, that the
23 multiplexing is at TELRIC rates; correct?

24 A. You said UNE transport?

25 Q. Yes.

1 A. Yes.

2 Q. If it's a loop connected to private line
3 transport or some other tariffed service, it's Eschelon's
4 position that a tariff rate applies to the multiplexing?

5 A. That's correct. The only two situations where
6 Eschelon is recommending that cost-based rates associated
7 with multiplexing would exist is if we had a loop-MUX --
8 I'm sorry -- UNE loop and then UNE transport, or if we
9 have a UNE loop MUXed into their collocation cage. Those
10 are the only two scenarios.

11 Q. And the third scenario, the loop MUXed into the
12 collocation cage, is the Eschelon rationale for TELRIC
13 price in that circumstance based on collocation being
14 equivalent of a UNE?

15 A. I don't think necessarily. It's based on the
16 fact that the loop is a UNE loop, and the multiplexing is
17 a feature or functionality of that loop.

18 Q. So the collocation, the pricing or the regulatory
19 status of the collocation has nothing to do, in your view,
20 with the pricing of the multiplexing in that situation; is
21 that correct?

22 A. I guess I just haven't thought of it from that
23 perspective. It may or may not. I just don't know. I
24 would have to think through it.

25 I guess what I'm saying is it's not dependent on

1 that. The fact that they should get cost-based rates for
2 it is because it's a feature and function of the loop. Is
3 there further support to say that it further then goes to
4 another UNE? I don't know. I would have to think through
5 that.

6 Q. Not to beat this into the ground, but with the
7 scenario where it's an unbundled loop being attached to a
8 tariff transport, obviously the fact that you're attaching
9 a tariff transport affects the price of the multiplexing;
10 correct?

11 A. Correct.

12 Q. And in this collocation situation, if you have a
13 loop that's multiplexed to something within collocation,
14 shouldn't the collocation then also affect the pricing of
15 the multiplexing just as in the tariff transport
16 situation?

17 A. I don't know. Like I said, I just haven't
18 thought through that. I don't think it's necessary in
19 order to adopt Eschelon's position in this case, because I
20 think the multiplexing as being a feature and function of
21 the loop is what wins the day with respect to should it be
22 cost-based rates.

23 Is there further support with the fact that the
24 collocation is a UNE? I don't know. I would have to
25 think more about that.

1 Q. But if feature and function of a loop, then, at
2 the end of the day in the scenario where you're connecting
3 the loop to private line transport, the multiplexing would
4 be a UNE rate, wouldn't it?

5 A. Well, there's a specific exception that the FCC
6 has made with respect to multiplexing with regard to
7 transport, and it talks about the multiplexing being part
8 of the transport. So in that particular circumstance, if
9 you're using special access transport, then the FCC has
10 said that the multiplexer is part of that special access
11 transport. That's just what they've said.

12 So what I'm saying is when you don't have that
13 special access transport and the multiplexer is part and
14 parcel of providing access to the loop, full access to the
15 loop, the multiplexer is part of the loop. It's a feature
16 and function of the loop. UNE collocation maybe adds to
17 that argument. I don't know. I just haven't thought
18 about it.

19 MR. DEVANEY: Thank you. That's all I have.

20 ARBITRATOR RODDA: I just need to write something
21 down, and then I have just a couple of questions.

22

23 EXAMINATION

24

25 Q. (BY ARBITRATOR RODDA) And my questions go to --

1 I think it's Section 9.1.9, which is that language
2 adversely affect or unacceptable changes. I guess that's
3 in connection with network modifications or upgrades.

4 A. Yeah.

5 Q. Just so I am clear or can understand, what is
6 Eschelon intending to encompass by this adversely affect?
7 Is there a measurement? A little bit or a lot, or does it
8 matter, or --

9 A. I think it's generally -- I mean, if you think
10 about it from a practical, real-world perspective, it is
11 that Qwest goes out to the field and it does this network
12 modernization and maintenance; right? Prior to that time,
13 Eschelon had a customer who was up and running and
14 everything was good.

15 After this network maintenance and modernization,
16 Eschelon gets a call from its customer, and it either says
17 my service is down or my service is so degraded that I'm
18 not comfortable. I don't feel like I'm being provided
19 what I ordered or asked for. So that's the level of
20 unacceptable is when the customer no longer is accepted of
21 what the service quality is.

22 Q. So it's unacceptable from the end user's point of
23 view?

24 A. I think it's unacceptable from Eschelon's
25 perspective, and I think that's the way I would read this

1 language. Because obviously, either one of those
2 circumstances, either the customer calling and saying my
3 service is down or the customer calling and saying my
4 service no longer works the way it should is unacceptable.
5 It's an unacceptable change in the quality of the UNE that
6 Eschelon is receiving from Qwest.

7 Q. And so is it the same between adversely affect
8 and unacceptable changes? There's two proposal, I guess.
9 One uses adversely affect, and one uses the words
10 unacceptable changes.

11 A. And I think this is the way I'm going to answer
12 this, and I hate to do this. I think I'm going to have to
13 kick this maybe to Ms. Johnson who is probably going to
14 describe what Eschelon really meant between those two
15 particular differences. That's something that I should
16 probably know, but I just don't.

17 Q. But she's also going to be testifying on this
18 section or --

19 A. I'm not sure she will, but she may be able to
20 answer questions about it. The only thing is, I just
21 don't want to say Eschelon was trying for a particular
22 thing here that I haven't talked with them about if,
23 indeed, that's not what they mean.

24 Q. I'm just trying to decide -- I'm just trying to
25 understand what Eschelon wants to encompass by adversely

1 affect. Because that could -- just from me reading it,
2 that could just be a range of things. But you're talking
3 about interrupted service or they can't -- I mean, but --

4 A. Keep in mind there are other parts of the
5 contract on agreed upon language where it talks about
6 certain parameters within which -- there is a range here
7 within which -- if they are in that range. I mean, we're
8 not talking about something that is so minute that it
9 falls outside of the range -- or it's so large that it
10 falls outside of the range of these parameters of an
11 acceptable UNE by the technical documents. We're talking
12 about a customer is in service, something happens to where
13 that customer is no longer being provided the service it
14 was provided, and that service it was provided was within
15 the parameters of the UNEs that the parties have agreed
16 upon.

17 Q. So did you just tell me -- so it talks about
18 changes to transmission parameters in that same section.

19 A. Yes.

20 Q. That those transmission parameters are somewhere
21 else defined in the agreement?

22 A. There is closed language, and I would have to
23 take a minute to find it, that talks about the provision
24 of UNEs. It's probably back toward the beginning. Let me
25 find it here real quick.

1 I can't find it off the top of my head right now,
2 but there certainly are agreed upon parameters with
3 respect to how the unbundled network elements will be
4 offered. And I guess I would point you back to an example
5 that I included. I guess actually it was in Mr. Webber's
6 testimony that I have now adopted, which is the dB loss
7 example. I don't know if you're familiar with that or
8 not. What happened was -- let me just use it as a
9 hypothetical.

10 The hypothetical was that Qwest has a parameter
11 DS1 circuit. It has electronic signals going back and
12 forth from the central office to the customer. Okay.
13 Obviously the two pieces of electronics are talking.
14 There's a range of settings by which they can still talk,
15 and you adjust those. You can set those and tune them, if
16 you will, so that they talk the best. There's a range of
17 acceptable parameters that both of them are willing to
18 accept.

19 Qwest used to -- in the example, Qwest made a
20 conscious effort to go in and tune those facilities, all
21 facilities in its network, to a given setting. I believe
22 it was 7.5 decibels. Okay. But the range is, let's say,
23 0 to 16. So anywhere within that range is acceptable with
24 respect to the parameter, but they set it at 7.5.

25 Well, the 7.5 didn't work for some of Eschelon's

1 customers. All right? So the service couldn't be
2 provided. Qwest came back and said we're within our
3 range. All right? We made a change and, yes, your
4 customer now can't get service, but we're within a range
5 that's acceptable, so too bad. I'm sure they didn't say
6 too bad. There's a long chronology that's in
7 Ms. Johnson's testimony, but when I read it that's what I
8 read is they were saying too bad.

9 So what this language is specifically getting at
10 is it might still be within the range, but the customer's
11 service going down because it was set at 7.5 instead of
12 retuning it to where it would work is unacceptable.

13 That's the example from which this language
14 really springs that they're trying to avoid. Yes, it
15 might still be in these parameters, but they changed
16 something such that our service went down. They should be
17 required to fix that within the parameters.

18 ARBITRATOR RODDA: I don't have any other
19 questions.

20 Are you going to have significant redirect?

21 MR. MERZ: I'll have -- I mean, a few. I don't
22 know how to -- we should take a break.

23 ARBITRATOR RODDA: Let's take a break and go to
24 lunch. It always helps Mr. Merz.

25 MR. ROSELLI: If I might, a quick matter. I

1 marked but neglected to have admitted Qwest Exhibit 20.
2 And if I could do that now just to take care of it, I
3 would move the admission of Qwest-20.

4 ARBITRATOR RODDA: And that was the excerpt from
5 the McLeod transcript?

6 MR. ROSELLI: Correct.

7 ARBITRATOR RODDA: Any objection?

8 MR. MERZ: No objection.

9 ARBITRATOR RODDA: So Qwest-20 is admitted.
10 (Exhibit No. Qwest-20 was admitted into evidence.)

11 ARBITRATOR RODDA: And we're going to take a
12 break until 1:35. No. I'll give you until 1:45.

13 (A recess was taken from 12:25 p.m. to 1:45 p.m.)

14 ARBITRATOR RODDA: Back on the record. And I
15 think we were going to start with redirect.

16 MR. MERZ: Yes. Thank you, Your Honor.

17

18 REDIRECT EXAMINATION

19

20 Q. (BY MR. MERZ) Mr. Starkey, first I want to ask
21 you a couple of questions about loop-transport
22 combinations, and I want to start by referring you to
23 Section 9.23.4 of the contract.

24 A. Okay.

25 Q. You recall this morning that Mr. Devaney asked

1 you about the three types of loop-transport combinations
2 that are described here?

3 A. Yes. I recall that.

4 Q. Does Eschelon's language on this issue recognize
5 that there are, in fact, three types of loop-transport
6 combinations?

7 A. Yes, it does. It not only recognizes that there
8 are three distinct types of loop-transport combinations,
9 but it also recognizes that there are differences between
10 how they may be impacted, depending on whether they are
11 combinations of UNEs or whether they also include a
12 combination of UNEs and other special arrangements.

13 Q. Then I want to ask you a question -- switching
14 gears now -- about loop-MUX combo.

15 A. Okay.

16 Q. You had mentioned this morning that you had in
17 mind an example of a situation where something might be a
18 feature or function of the loop, but it exists on the CO
19 side of the frame. Do you recall that?

20 A. I do.

21 Q. Would you describe the example that you had in
22 mind?

23 A. I will. I was going to use the picture that
24 Ms. Stewart used earlier today. I promise not to write on
25 it if I can point to it.

1 ARBITRATOR RODDA: It's attached to her --

2 THE WITNESS: It's also included in her
3 testimony.

4 MR. MERZ: And I can give you that.

5 THE WITNESS: And I think I may have that. It's
6 in her testimony as Exhibit KAS-R1.

7 ARBITRATOR RODDA: I can't remember. Was that
8 her direct?

9 MR. MERZ: It's her rebuttal.

10 THE WITNESS: And when I was describing the issue
11 with Mr. Devaney, I believe Mr. Devaney was trying to
12 discern the extent to which, because the FCC defines an
13 unbundled loop as a transmission facility between the main
14 distribution frame and the central office and the
15 demarcation point at the customer's premise, if
16 multiplexing doesn't somehow fit between those two pieces,
17 can it be considered a functionality of the loop?

18 And I suggested that I thought it could because
19 it's a part of the transmission facility itself that makes
20 the whole loop work. And one specific and very common
21 example of that is a T1 circuit. T1 is actually the
22 analog -- there are two types of sort of DS1 or T1
23 circuits. T1 is generally considered to be the analog
24 copper loop driven sort of platform on which you provide a
25 1.544 megabit per second channel. DS1 is sort of the

1 digital service component of that, generally considered to
2 be a fiber-based sort of product.

3 There's still a lot of copper based T1 in the
4 network. And when you provide a copper-based T1, the way
5 it works -- and maybe using Ms. Stewart's example is the
6 best way to do this. It's not depicted on here, but if
7 you look at Page 1 where you see it's sort of the
8 second -- where you sort of see a stop sign on the right
9 side, and it says DS1 from the stop sign in through the
10 main distribution frame, and then down to the CLEC collo.
11 In the middle there you'll see a DSX-1.

12 Well, she's left something off of her diagram,
13 because the DSX-1 really is nothing more than sort of
14 accepting the DS1 circuit for purposes of distributing it
15 to the rest of the central office. There's actually a
16 piece of equipment that's required to make the T1 work in
17 that circumstance. And I would say -- actually, let's --
18 if I changed her designation of a DS1 to T1 in that
19 circumstance, I would then add on the central office side
20 of the frame --

21 ARBITRATOR RODDA: But there's a T1 right below
22 it; right?

23 THE WITNESS: But if you see the RT designation
24 out there on that piece of equipment on the right side,
25 that basically means that -- she's done it on copper. It

1 doesn't necessary have to have an RT out at that point in
2 the network. It could be straight home-run copper, which
3 is sort of the example she's made on the one above it.

4 But she's called it DS1. Let's call it T1. If
5 we did that, we would have to add a box on the central
6 office side of the frame on the CLEC collo side of the
7 frame, and in there we would put something like a D4
8 channel bank.

9 A D4 channel bank is actually the multiplexer
10 that makes that T1 work between the central office and the
11 customer's premise. And what it does is it takes that
12 copper facility and it channelizes it to 24 DS0. DS0 is a
13 voice grade channel, 64 kilobits. A T1 is 1.544. So
14 that multiplexer not only takes those DS0 circuits and
15 makes them a T1, but it also completes the circuit such
16 that it can carry transmission at all. That's just
17 another way of saying it's a fundamental part of the loop
18 itself, because without it it wouldn't work. That is
19 multiplexing, and it does exist on the CO side of the
20 frame, and it's a very common way to provide T1 service.

21 So if Mr. Devaney were right that the FCC somehow
22 meant to limit any features or functionalities to only
23 those two points between the frame and the NID, then T1
24 circuits provided over old T1 carrier, D4 channel bank
25 carrier would not fall under the definition of a loop, and

1 we know they do.

2 So I don't agree at all with Mr. Devaney's
3 suggestion that if it isn't between the frame and the NID
4 or the frame and the demarc it can't be multiplexing as
5 defined by the FCC.

6 Q. (BY MR. MERZ) So when you talk about
7 multiplexing being on the CO side of the frame, you mean
8 to the left of the long rectangle that's marked MDF as we
9 look at this picture?

10 A. I do. And there's a specific reason for that.
11 The frame actually provides all of the electrical
12 protection. You've got a big copper wire out there in the
13 ground or on a telephone pole or somewhere else. There's
14 the potential for a lot of electrical transmission from
15 outside sources, from third party sources, on that loop.
16 The frame is your primary grounding. There are other
17 grounding sources out in the network, but your frame is
18 the primary grounding and protection source for that loop
19 to protect the equipment in the central office from surges
20 from electricity from lightning or something else.

21 So the copper loop absolutely terminates to the
22 frame and then is jumpered to the D4 channel bank for
23 purposes of providing the T1. It has to be, in fact, on
24 the CO side of the frame in order to function properly.

25 Q. I want to again switch gears and ask you some

1 questions about network modernization and maintenance, and
2 I would have you turn in the contract to Section 9.1.9.

3 A. Okay.

4 Q. Mr. Devaney asked you a number of questions about
5 Eschelon's first proposal. Eschelon actually has two
6 proposals on this issue; correct?

7 A. That's correct.

8 Q. And I recall Devaney asking you a lot of
9 questions about the first proposal and maybe one question
10 about the second proposal.

11 My first question about the second proposal would
12 be do you know where this second proposal comes from?
13 What is its origin?

14 A. This was a proposal proffered by the Department
15 of Commerce in Minnesota when this case was before the
16 Minnesota Commission as sort of an alternative to the two
17 parties' proposals related to this topic. So this is
18 language actually proposed by the Department of Commerce,
19 which Eschelon has accepted as one of its potential
20 proposals.

21 Q. Does the second proposal address concerns that
22 Qwest has raised with respect to Eschelon's first
23 proposal?

24 A. It does, and that was the intention.

25 Q. How does it do that?

1 A. For example, one of the things Mr. Devaney asked
2 about was what happens if this unacceptable -- this
3 unacceptable disruption occurs? You know, what is the
4 resolution of that?

5 I think if you look at the language in the second
6 proposal, it specifically says, -- and I'll just read you
7 the language that's at issue. It says: If such changes
8 result in the CLEC's end user customer -- and, again,
9 that's another issue. Maybe we should stop right there.
10 It says CLEC's end user customer.

11 One of the things Mr. Devaney talked about was
12 end user customer is defined in the agreement as being
13 either Qwest's customer or the CLEC's customer or
14 third-party customers.

15 The second proposed language makes clear that
16 what we're talking about here is the CLEC's customer. So
17 it says: If such changes result in the CLEC's end user
18 customer experiencing unacceptable changes in the
19 transmission of voice or data, Qwest will assist the CLEC
20 in determining the source and will take the necessary
21 corrective action to restore the transmission quality to
22 an acceptable level if it was caused by the network
23 changes.

24 So it provides what will then happen if this
25 unacceptable level of disruption occurs. Qwest will help

1 Eschelon identify it, and they'll help restore the
2 service.

3 One other thing that I might point out about this
4 language is that if you read the next sentence, the next
5 sentence that is agreed upon language, it reads as
6 follows: Network maintenance and modernization activities
7 will result in UNE transmission parameters that are within
8 transmission limits of the UNE ordered by the CLEC.

9 So I guess to another point that Mr. Devaney was
10 talking about, which is how broad could this unacceptable
11 transmission description be? I mean, could it just
12 encompass nearly anything? In fact, we heard Ms. Stewart
13 describe this morning the example of DSL, and I think her
14 point was let's say Eschelon bought a straight copper,
15 two-wire loop and used it for DSL service. Okay. What
16 they should have done is bought a digital capable loop
17 which is meant to support DSL service, but under
18 Ms. Stewart's example we bought the wrong loop and then
19 tried to make DSL work on it. And she was concerned this
20 language would require them to restore the DSL capable
21 nature of the loop even though that's not what we ordered.

22 I think that particular example and many others
23 are dispelled by the next sentence, which says: They're
24 only meant to restore it to the transmission parameters of
25 what we ordered, which in that case would be a straight

1 copper loop not with DSL capabilities.

2 Q. The first proposal uses the phrase there won't
3 be -- changes won't adversely affect transmission
4 parameters; correct?

5 A. Yes.

6 Q. And then the second proposal talks about
7 unacceptable changes in transmission of voice or data.
8 What is your understanding of the relationship between
9 those two concepts, adversely affect or unacceptable
10 changes?

11 A. Well, I think -- I think they're certainly
12 related. I think in the first proposal Eschelon was
13 trying to get at what I described earlier, which is the
14 adverse effect if their customer calls them and says
15 something is wrong.

16 When we look at the second proposal and we look
17 at the unacceptable changes, I think what the Department
18 of Commerce was after here was a little more discretion to
19 say, okay, something changed, but isn't it an acceptable
20 change? Is the customer -- or is Eschelon not able to
21 provide the service it was previously providing?

22 Either one of those terms, or, frankly, for that
23 matter, any word you put in here is going to be subject to
24 some amount of discretion. I think the point with this
25 proposal is that it places the obligation on Qwest to --

1 if there is a change that impacts Eschelon and its
2 customers, that it will help them research the problem and
3 restore it.

4 And as I said earlier, if the parties -- if
5 Eschelon -- in the real world, this is how it would
6 work -- I'm almost certain -- is Eschelon would come back
7 and say you did a network modernization. It impacted us;
8 it impacted our customers; it's unacceptable. The two
9 will talk about it. Right? Was it unacceptable or not?
10 And if they can't come to agreement, just like every other
11 term in the contract, then they'll follow the processes we
12 described earlier, escalation and dispute resolution.

13 The issue here is that the purpose is to provide
14 the obligation. And in the real world, sure, you're going
15 to have to put more meat around that by the two parties
16 talking, but that's true of nearly any term in this
17 contract that it isn't specifically defined. That's just
18 the way contracts work.

19 Q. And then, finally, I want to talk with you just
20 briefly about power. Are you aware of any instance where
21 an ILEC and a CLEC have agreed to some sort of usage-based
22 charge for power plant?

23 A. Yes, I am. I mean, I think that's what sort of
24 stands out about this issue in my mind in the Qwest
25 region, both in this case and then also in the McLeod

1 cases, is that ILECs other than Qwest across the country
2 have sort of gotten to the bottom of this issue and
3 settled it.

4 In fact, probably the most important in that
5 regard is SBC Texas where they've sat down with CLECs,
6 they've developed an amendment to the contract that
7 actually allows the CLECs to self-certify how much they're
8 using for power, and then SBC Texas charges the CLECs for
9 that amount of usage. And that includes both the power
10 usage and the power plant that we're talking about here.

11 The same is -- that amendment is available in
12 Texas. Something similar exists in Illinois. I mean,
13 this problem -- this is a problem. Charging the CLECs for
14 the amount of power plant consistent with the cable order
15 is a problem, and it's been recognized by commissions
16 across the country. Other ILECs are solving it with
17 amendments like this, and we're not getting it solved in
18 the Qwest region.

19 MR. MERZ: I don't have anything further. Thank
20 you, Mr. Starkey.

21 ARBITRATOR RODDA: Either one of you?

22 MR. ROSELLI: Nothing from me.

23 MR. DEVANEY: Two quick ones. Thank you.

24
25

1 be inserted if that loop were then going somewhere to a
2 Qwest location like to a multiplexer for transport.

3 So when fiber comes in -- the only thing that
4 terminates on the main distribution frame is copper. So
5 when fiber comes in, it comes in generally to a terminal
6 that takes the fiber, interprets the signaling, and then
7 puts a circuit out the back end to wherever it has to go.
8 Generally, because it's coming in fiber, it never goes to
9 copper, so it never hits the main distribution frame.
10 Instead, it comes out probably either coax or fiber out
11 the back into a MUX or a DAX, or even directly into the
12 switch in some circumstances.

13 But in that circumstance you're not going to have
14 a main frame. What you're going to have is a fiber
15 distribution panel and a central office terminal. That's
16 the situation I think the FCC is talking about when it
17 says or its equivalent, because it's talking about fiber
18 optic facilities.

19 Q. Okay. My other question for you is you testified
20 earlier that Qwest performance of network maintenance or
21 modernization activity set someone's service at 7.5 dBs
22 and it didn't work. Do you recall that?

23 A. I do.

24 Q. Are you sure that that happened as a network and
25 maintenance activity on Qwest's part?

1 RE-CROSS-EXAMINATION

2
3 Q. (BY MR. DEVANEY) Mr. Starkey, in the
4 conversation you had with Mr. Merz, I think you said that
5 there is a D4 channel bank that would be on the CO side of
6 the MDF; is that right?

7 A. Yes.

8 Q. The FCC rule that we looked at earlier speaks of
9 the loop running from the customer premise to either a
10 distribution frame, or its equivalent is the words that
11 the FCC uses. Is the DS4 channel bank the equivalent of a
12 distribution frame in your view as used by the FCC?

13 A. No, it's not. I mean, in the circumstance that I
14 just described, it uses the frame and it uses the D4. If
15 you took the D4 out, the loop wouldn't work. It's just
16 that essential to the T1 circuit.

17 Q. What do you think the FCC had in mind with the
18 use of the word equivalent? Do you know?

19 A. I do. Well, I obviously don't know what they
20 meant, but I think I know what they mean and it's
21 generally accepted is that if you take Ms. Stewart's
22 example again and you go to -- well, what she has done in
23 this example is because she's put the CLEC collo and then
24 she has everything going to the CLEC collo, she's inserted
25 the frame, the main frame, in situations where it wouldn't

1 A. Well, I understand there's some dispute about
2 that issue as you look at the testimony.

3 Q. All I want to know is on that particular point,
4 was it a network maintenance activity or was it an
5 installation? Do you know?

6 A. Well, I don't think the two are mutually
7 exclusive. I don't think I can answer the question with a
8 yes or no as you would like me to. The issue, as I
9 understand it, is as follows.

10 Q. I don't want you to give a speech about this.
11 What I want to know is was the service already working, up
12 and working when the 7.5 dB change was made, or was the
13 service not yet installed and working? Do you know?

14 A. That's a different question. My understanding is
15 that the service was not up and working at that particular
16 point.

17 MR. ROSELLI: That's all I wanted to know. Thank
18 you.

19 ARBITRATOR RODDA: Mr. Merz, anything further?

20 MR. MERZ: Nothing further.

21 ARBITRATOR RODDA: All right. Well. Thank you
22 Mr. Starkey.

23 THE WITNESS: Thank you.

24
25

1 BONNIE JOHNSON,
2 called as a witness on behalf of Eschelon, having been
3 first duly sworn by the Certified Reporter to speak the
4 truth and nothing but the truth, was examined and
5 testified as follows:

7 DIRECT EXAMINATION

8
9 Q. (BY MR. MERZ) Good afternoon, Ms. Johnson.
10 A. Good afternoon.
11 Q. Would you please state your name.
12 A. My name is Bonnie Johnson.
13 Q. And by whom are you employed?
14 A. Eschelon Telecom.
15 Q. Did you prepare in this case direct, rebuttal,
16 and surrebuttal testimony?
17 A. Yes, I did.
18 Q. We've marked your direct testimony as Eschelon
19 Exhibit No. 10; is that correct?
20 A. Correct.
21 Q. And your rebuttal testimony is marked as Eschelon
22 Exhibit 11?
23 A. Correct.
24 Q. And your surrebuttal testimony is marked as
25 Eschelon Exhibit 12?

1 At Eschelon I spend most of my time dealing
2 directly with Qwest or on Qwest related issues. I
3 participate on weekly conference calls with Qwest service
4 management and monthly meetings with Qwest and Eschelon to
5 discuss operational issues. I also deal with Qwest
6 service management to address day-to-day issues that may
7 require escalation to Qwest service management to resolve
8 those issues.

9 I'm a member of the Eschelon ICA negotiations
10 team, and I am Eschelon's lead representative in Qwest's
11 CMP. For example, regarding jeopardies, issues 12-71
12 through 12-73, I participated in the CMP meetings,
13 including the ones described in my exhibits. I was there
14 when Qwest told the CLECs that for Qwest facility
15 jeopardies CLECs should ignore some jeopardy notices and
16 be prepared to accept the circuit, but not for Qwest
17 facility jeopardies. For Qwest facility jeopardies, Qwest
18 told the CLECs that to -- not to prepare unless Qwest sent
19 a new FOC. Qwest also documented this in its PCAT. I was
20 also there when Qwest confirmed that its process was to
21 send the FOC the day before Qwest delivered the circuit.
22 Throughout our discussions, Qwest referred to the
23 FOC as the notice CLECs should expect to receive. Qwest
24 never referred us to some kind of informal communications
25 by the techs instead. In fact, if you review the meeting

1 A. Yes.
2 Q. Is the information contained in your direct,
3 rebuttal, and surrebuttal testimony true to the best of
4 your knowledge?
5 A. Yes, it is.
6 MR. MERZ: Your Honor, Eschelon offers Eschelon
7 Exhibits 10, 11, and 12.
8 ARBITRATOR RODDA: Okay. Any objection?
9 MR. TOPP: No objection.
10 ARBITRATOR RODDA: Then Eschelon-10, 11 and 12
11 are admitted.
12 (Exhibit Nos. Eschelon-10, Eschelon-11, and
13 Eschelon-12 were admitted into evidence.)
14 Q. (BY MR. MERZ) Ms. Johnson, have you prepared a
15 summary of your testimony?
16 A. Yes, I have.
17 Q. Would you give that now, please.
18 A. Sure. My name is Bonnie Johnson. I have been
19 employed by Eschelon since July of 2000, and my current
20 position is Director of Carrier Relations, which means I
21 handle relations with other carriers, primarily Qwest. I
22 have been in telecom for over 15 years. Before I worked
23 for Eschelon, I worked at Qwest, formerly known as U S
24 WEST. I worked in Qwest wholesale and the Qwest retail
25 business office.

1 minutes from the CMP meetings and ad hoc calls in BJJ-5
2 and Qwest's provisioning and installation PCAT, informal
3 discussions between technicians was never discussed in
4 Qwest's CMP or documented by Qwest.
5 Mr. Starkey and Mr. Denney discuss facts from my
6 exhibits in their testimony.
7 MR. MERZ: Your Honor, Ms. Johnson is available
8 for cross-examination.
9 ARBITRATOR RODDA: Okay.
10 MR. TOPP: Mr. Devaney has a few, and then I have
11 a few.
12 MR. DEVANEY: I'll be fairly brief.

14 CROSS-EXAMINATION

15
16 Q. (BY MR. DEVANEY) Good afternoon, Ms. Johnson.
17 A. Good afternoon.
18 Q. Mr. Starkey and I just had some discussion again
19 about this incident involving the 7.5 dB setting. Do you
20 recall that?
21 A. Uh-huh.
22 Q. Even though you provided an exhibit relating to
23 that, and I just want to clarify, that particular exhibit
24 is being proposed in support of Eschelon's language in
25 9.1.9 related to no adverse affect on end users; is that

1 correct?
 2 A. Correct.
 3 Q. And it's no adverse effect resulting from network
 4 maintenance or modernization activities; correct?
 5 A. Correct.
 6 Q. And isn't it correct that the 7.5 dB episode that
 7 you describe in your exhibit involved an installation? It
 8 did not involve a modernization or a maintenance activity?
 9 MR. MERZ: Mr. Devaney, if you could just tell us
 10 which exhibit you're referring to, that might be helpful.
 11 MR. DEVANEY: I don't have the exhibit number.
 12 THE WITNESS: If you look at my Exhibit BJJ-21.
 13 Q. (BY MR. DEVANEY) And that's attached to which?
 14 A. That's attached to my direct testimony --
 15 Q. Okay.
 16 A. -- Mr. Devaney, and Page 1 in that exhibit.
 17 And the answer to your question is the issue
 18 itself came up in relation to installation. However, if
 19 you look at BJJ-21, the first page, the third paragraph
 20 down about halfway through, Joan Peterson of Qwest, who is
 21 a senior attorney, said: In addition, techs were
 22 instructed to reset the dB at a neg 7.5 whenever they did
 23 a repair.
 24 So while the issue itself came up related to
 25 installation and circuits that we couldn't turn up, the

1 concern is that Qwest had confirmed that they were doing
 2 modernization by resetting the dB to a 7.5 during repairs.
 3 And it would stand to reason that if it wouldn't work at
 4 7.5 at the time of installation, if they change it from
 5 what it currently is back to 7.5, it's going to impact the
 6 service.
 7 Q. Okay. My understanding is that this particular
 8 incident was resolved by a Qwest engineer going out to the
 9 site, asking, okay, what dB level would you like it set
 10 at? Eschelon told Qwest it was set at that level and
 11 those circuits have been up and working since; isn't that
 12 right?
 13 A. Eventually, yes.
 14 Q. And further, Qwest implemented a process with
 15 Eschelon to avoid further problems like this at that point
 16 in time; isn't that correct?
 17 A. There is an existing process now, yes --
 18 Q. Okay.
 19 A. -- in maintenance and repair.
 20 Q. Okay. Changing the subject. With respect to
 21 issue 9.33, there are two proposals that Eschelon has put
 22 forth. One is the no adverse affect proposal. Actually,
 23 I guess we're still on the same issue. And then the
 24 second proposal was no unacceptable changes.
 25 I think Mr. Starkey said that you would be able

1 to address the difference between those two terms. Are
 2 you prepared to do that?
 3 A. The two terms, the intent is the same. The
 4 second proposal is what the Minnesota Department
 5 recommended.
 6 Q. What is your understanding of the meaning of no
 7 adverse affect as proposed by Eschelon?
 8 A. Well, if the customer's service was working, and
 9 then the customer is impacted and isn't able to use the
 10 service, that is adversely affecting the service.
 11 Q. Would it be more accurate, then, to change the
 12 language to say that?
 13 A. I would have to refer to Mr. Starkey on that. Or
 14 I guess my response to that would be that I'm certain that
 15 if Qwest wanted to propose some type of language that
 16 Eschelon would look at it.
 17 Q. But your understanding is --
 18 A. And consider it.
 19 Q. -- Eschelon's proposal of no adverse affect means
 20 you have a service that's working, Qwest performs a
 21 network maintenance or modernization activity, and the
 22 service stops working. That is a no adverse affect; is
 23 that correct?
 24 A. Right. The service stops -- either stops working
 25 all together or it's impacted to a point where it can't be

1 used anymore where it's degraded or --
 2 Q. Okay. And is there any measurement that Eschelon
 3 is proposing to determine where the unacceptable degrading
 4 begins?
 5 A. Once again, I'm going to have to defer that to
 6 Mr. Starkey.
 7 MR. DEVANEY: Thank you. That's all I have.
 8 MR. TOPP: He warned me that would be quick.
 9
 10 CROSS-EXAMINATION
 11
 12 Q. (BY MR. TOPP) Ms. Johnson, I would like to speak
 13 with you a little bit about the jeopardies issues which
 14 are 12-71 to 12-73. And I would like to start by looking
 15 at the exhibit you referenced in your summary, Exhibit
 16 BJJ-5 to your direct testimony.
 17 Do you have that in front of you?
 18 A. I do.
 19 Q. If you would go inside the cover to Page 1 of
 20 that document. There's an event summary that is set forth
 21 on that first page.
 22 A. Uh-huh.
 23 Q. And that's an event summary that you prepared; is
 24 that correct?
 25 A. That is correct.

1 Q. And when you look underneath the event summary,
2 it talks about a change request, and then in parens you
3 have got a CRPC081403-1. And that number refers to the
4 specific change request that Eschelon made and was dealt
5 with as a part of the change management process; is that
6 correct?

7 A. That's correct.

8 Q. Okay. And when you go under the event summary,
9 you have on July 21st of 2004, you have your description
10 of how that change request process finished up. And in
11 there you say that Qwest closed the CR by providing that
12 CLECs will receive an FOC after a Qwest facility jeopardy
13 but before, that is 24 hours before, delivering the
14 facility, with compliance issues to be addressed going
15 forward through Qwest's service management.

16 That's your description of how that CR was
17 ultimately resolved; is that correct?

18 A. That is correct.

19 Q. And, in fact, you have attached in BJJ-5 a little
20 farther in some documents, and I've got the heading at the
21 top of it as Page 17.

22 A. I'm there with you.

23 Q. Okay. And at the top of it it has the -- it
24 says -- it gives that same number that we went through
25 painfully earlier.

1 A. Uh-huh.

2 Q. And so this is the detail of the change request
3 process that took place that you're summarizing at the
4 beginning of this document?

5 A. Uh-huh.

6 ARBITRATOR RODDA: I'm sorry. You need to say
7 yes or no --

8 THE WITNESS: Yes.

9 ARBITRATOR RODDA: -- as the question requires.

10 THE WITNESS: I agree.

11 Q. (BY MR. TOPP) And I didn't go and compare it
12 word for word, but it appears to me that when I compared
13 it to an exhibit to Ms. Albersheim's testimony, that you
14 pulled this from probably Qwest's website detailing the
15 CMP process that took place, this information; is that
16 correct?

17 A. This CR is, yes, a Qwest-produced document from
18 their website.

19 Q. And essentially it's the minutes of what took
20 place?

21 A. It's the history of the change request.

22 Q. Okay. And on what is labeled at the top as
23 Page 20, if you could go there with me.

24 On April 21, 2004, there are some meeting notes.

25 Do you see where I'm referring?

1 A. Yes.

2 Q. And in those meeting notes it indicates that
3 Qwest has advised updates to the documentation have been
4 posted to the documentation site, and the comment cycle is
5 open with customer feedback due by April 27th.

6 I assume I read that pretty close to correctly
7 anyway.

8 A. Yes.

9 Q. And when it talks about documentation, those are
10 documentation changes to the product catalog of Qwest; is
11 that correct?

12 A. That is correct.

13 Q. And so at that point there were some updates that
14 were made to that product catalog that were proposed; is
15 that correct?

16 A. That would be my assumption, yes.

17 Q. And maybe I missed it, but I don't believe that
18 you attached those updates to that product catalog as a
19 part of this exhibit, did you?

20 A. I don't believe I did, no.

21 Q. Okay. I have got actually -- and Ms. Johnson,
22 before we get to those documents, if I could give you a
23 couple of other points of reference.

24 Going back to Page 20 of BJJ-5, we talked about
25 the April 21st entry. And then on May 19th, there's an

1 entry that says that the process will be implemented
2 May 27th and that no comments are received. And then on
3 June 16th, essentially similar information is included in
4 the record. And then on July 21, 2004, there is a note
5 indicating that the CR is closed with the language changes
6 that were originally referenced in the April 21st note.

7 Am I correctly characterizing what this document
8 indicates took place?

9 A. The notes on July 21st is, you know, the CR
10 closing documentation updates, and there could be multiple
11 ones are done as a result of discussion and the CR. So
12 these notes, closing, you know, is just saying that we
13 agreed to close the change request. And I had indicated
14 that I was, you know, that I had identified some issues
15 and didn't know if it was compliance issues, and was
16 willing to deal with that directly with our service
17 manager.

18 Q. Yeah. And what this note indicates is that you
19 were having a problem with compliance to this process.
20 That's what the note indicates; correct?

21 A. To the jeopardy compliance process.

22 Q. Yes. That is the subject of this change request.

23 A. That's the subject of this change request. And
24 it was Eschelon's understanding that Qwest had -- hold on
25 just a moment.

1 If you go to Page 37 of BJJ-5 under Action Item
2 No. 1, when Qwest confirmed that it was their process to
3 send the FOC the day before. And we took that as face
4 value that that was Qwest's existing process.

5 Q. Okay.

6 A. So the compliance that I'm talking about here
7 had -- there are several key points of the jeopardy
8 process, one being whether or not Qwest provides an FOC
9 after a Qwest jeopardy.

10 Q. So one of the key points from your perspective is
11 that Qwest would provide a jeopardy the day before it
12 actually delivered the circuit. Is that what you're
13 testimony is?

14 A. My testimony is that Qwest told us that that was
15 Qwest's process. And that when we pointed out examples
16 where that didn't happen, they told us it was a Qwest
17 compliance process.

18 Q. Now, when this CR -- the notes on April 21st
19 indicate that this -- proposed that this was going to
20 close with the documentation changes that were sent out at
21 that time; is that correct?

22 MR. MERZ: What page are you referring to?

23 MR. TOPP: I'm referring to Page 20 of BJJ-5.

24 THE WITNESS: Well, the process -- let me try and
25 explain. The process isn't -- you know, the documentation

1 is just one of the things that may happen as a result of a
2 change request. So in April, Qwest sent out updates to
3 the product catalog, and it doesn't necessarily mean that
4 there wouldn't have potentially been additional updates.
5 So at the point in time in April of 2004, there was, as a
6 result of this CR, really what equated to a complete
7 overhaul of the jeopardy process.

8 There were, you know, several changes that were
9 made. Eschelon had submitted two separate CRs, and in
10 reviewing those CRs there were -- you know, one of them
11 was titled, you know, you can't, you know, put a customer
12 not ready jep before 5:00 p.m. The other one was, you
13 know, titled you have to send us an FOC. And there were
14 multiple changes, both process and systems changes that
15 were made to the process in its entirety.

16 Q. (BY MR. TOPP) Yes, there were many changes to
17 the jeopardy system made as a part of this process.
18 That's the point that you're trying to make; correct?

19 A. Right. But, you know, the -- at issue, my
20 exhibit is directed at and limited to, you know, the
21 changes in regards to getting an FOC after a Qwest
22 jeopardy.

23 Q. Okay. Let's take a -- could you take a look at
24 what has been marked as Exhibit Qwest-22 and Exhibit
25 Qwest-23. And the Qwest-22 is -- and I notice the dates

1 don't precisely match up, but it sure looks like if you
2 look at the CR number, that matches up with the CR number
3 that you're discussing in BJJ-5. And within the text of
4 this document, it discusses updates to the product
5 catalog, including new revised documentation for
6 provisioning and installation overview V42.0.

7 Would it be fair to characterize this document as
8 announcing the language changes that were being
9 implemented as a result of this particular change request
10 or proposing them?

11 A. Can I just review it real quickly?

12 Q. Sure.

13 A. Thank you.

14 And Mr. Topp, your question was that these
15 changes are from this notice and a part of this CR?

16 Q. Correct.

17 A. And that is correct. This is a portion or subset
18 of some of the changes that were made as a result of this
19 CR. When we first started looking at the jeopardy
20 process, Eschelon had expressed concern that in general
21 Qwest was not sending FOCs after a jeopardy.

22 And as Qwest was reviewing that process, they
23 looked at all of the Qwest jeopardy types. You know, and
24 if you look at the Qwest jeopardy codes, there are
25 multiple types of Qwest jeopardies, which include Qwest

1 facility jeopardies. And Qwest had told us that in review
2 of all of those Qwest jeopardy types, that for everything
3 except for a small portion, which included the Qwest
4 facility jeopardy, Qwest was always meeting the due date
5 on the jeopardies that started with B's, which were
6 workforce.

7 They had identified differences between what
8 Qwest called its critical date jeopardies versus
9 jeopardies that really impacted the due date. So the
10 first step of trying to resolve the issue of not providing
11 an FOC was for Qwest to identify which of those jeopardies
12 we should ignore. And so they had identified in their
13 jeopardy code, they had identified the types of jeopardies
14 that they were always meeting the due date on.

15 So they said for these particular jeopardies, and
16 actually it is in my BJJ-5, the redline that they provided
17 us regarding those types of jeopardies starts on Page 41
18 of BJJ-5 as we were going through this process.

19 And so what they told us -- and if you look at
20 the changes that they made in Version 42, what they told
21 us is for these certain jeopardies, expect us to come,
22 we're coming anyway, even if you get one of these
23 jeopardies. They later did some systems changes to
24 prevent them from sending it to us, but first there was a
25 process change where they just communicated to us, don't

1 pay attention to these. These are internal goals for
2 Qwest. When we don't meet them, we've done analysis and
3 99.9 or 100 percent of the time we deliver the circuit on
4 the due date, so we want you to ignore these. And this
5 particular documentation in Exhibit BJJ-42 is documenting
6 that piece of it.

7 So if you go to Qwest-23, and it doesn't appear
8 that there are page numbers, but at the bottom of the page
9 there are actually page numbers from the PCAT. If you go
10 to Page 8 of 20, this is where the redlined language that
11 Qwest is adding in, and this is where they're telling us
12 that Qwest differentiates between due date jeopardies and
13 critical date jeopardies and we want you to ignore these
14 particular type of jeopardies.

15 And then this was the point in time, too, that we
16 had also expressed concern because the Qwest facility
17 jeopardy was rather just kind of a generic no facilities
18 available. And we had expressed concern saying we need to
19 determine if we need to, you know, work on alternate
20 solutions for our customers, so we need to have more
21 information. Do you have to clear an F2 pair, or do you
22 have to get a permit to dig up the street? Because it
23 makes a difference.

24 So this is also where Qwest committed that within
25 72 hours of the time they send the jeopardy that they

1 would send us either an FOC or additional information on
2 what -- you know, more information on the jeopardy.

3 MR. TOPP: Yeah. And that's within 72 -- well,
4 first of all, could I offer Exhibits 22 and 23.

5 ARBITRATOR RODDA: First of all, let's
6 identify -- I think that you were trying to identify that.

7 MR. TOPP: Yeah. That's where I started.

8 ARBITRATOR RODDA: But I still don't understand.
9 I think we got a lot more information there than what this
10 document is. Can someone tell me concisely what 22 is?
11 Don't tell me what it does, just tell me what it is so I
12 can identify Qwest-22.

13 THE WITNESS: Oh, Qwest-22 is a Qwest
14 announcement -- do you want me to do that, Mr. Topp?

15 MR. TOPP: Yes.

16 THE WITNESS: It's a Qwest announcement saying,
17 you know, that they sent out on April 12th with proposed
18 changes to their provisioning and installation overview
19 PCAT. That their proposed effective date was May 27th.
20 And the body of the announcement itself identifies, you
21 know, the changes that Qwest is making, that it's related
22 to this CR. Because they did synergies, they kind of
23 combined the two CRs and did some other work in this.

24 And this is the document that they changed.

25 ARBITRATOR RODDA: Okay.

1 THE WITNESS: 23 is the actually changes.

2 ARBITRATOR RODDA: Okay.

3 MR. TOPP: And I would offer Qwest-22 and 23.

4 MR. MERZ: No objection, Your Honor.

5 ARBITRATOR RODDA: Okay. Then Qwest-22 and
6 Qwest-23 are admitted.

7 (Exhibit Nos. Qwest-22 and Qwest-23 were admitted
8 into evidence.)

9 Q. (BY MR. TOPP) All right. Now, referring -- so
10 Qwest-23 reflects changes to the PCAT. And this other
11 stuff that you have mentioned such as the 72-hour update,
12 that is in the documentation at Page 8 of 20, is it not?
13 As well, is it not?

14 A. Page 8 of 20?

15 Q. Yeah. Referring to Exhibit 23.

16 A. Yes. Yes. That's part of the changes to it.

17 Also, if you go back to Page 20 of BJJ-5, it's also a
18 commitment that, you know, Qwest made in the March 17th
19 CMP meeting.

20 Q. And I'll ask you to focus on provisions I'm
21 asking you about.

22 A. Okay.

23 Q. Hopefully we can move through this a little bit
24 more quickly.

25 Now, and also there is information in here about

1 the difference between a due date jeopardy and a critical
2 date jeopardy. That appears on the same page, does it
3 not?

4 A. On Page 8, yes.

5 Q. Yes. Now, in BJJ-5, you indicate that one of the
6 resolutions -- well, before we get to that, did Eschelon
7 file any objections to these language changes that appear
8 in Qwest Exhibit 22 or 23?

9 A. I don't recall if we filed any objections or not.
10 I'm not certain that we filed any comments. Most of this
11 was a collaborative effort so --

12 Q. And, in fact, on Page 20 of your exhibit BJJ-5,
13 it indicates that no comments came in for this CR.

14 A. Oh.

15 Q. And you don't have any basis to quarrel with that
16 sitting here today?

17 A. No, I don't.

18 Q. Okay. And in this CR, I can find no language
19 whatsoever that addresses whether, in fact -- let me look
20 at how you describe this.

21 That indicates that CLECs would receive an FOC
22 before. In other words, 24 hours before delivering the
23 facility. Does that exist in these process documents
24 anywhere?

25 A. I don't -- I'm not certain whether or not it

1 exists in the process documents. I'll direct you once
 2 again back to Page 37 of BJJ-5 where when we provided
 3 examples, Phyllis -- it was actually Phyllis Susins at
 4 Qwest said that their process was to provide an FOC the
 5 day before after a Qwest facility jeopardy so that we knew
 6 Qwest was going to deliver the service.
 7 And also, if you go to Page 21 of BJJ-5, in a
 8 meeting that took place -- the ad hoc meeting on
 9 March 4th, if you look halfway down the page, it says:
 10 Bonnie confirmed that the CLECs should always receive the
 11 FOC before the due date. Phyllis agreed and confirmed
 12 that Qwest cannot expect the CLEC to be ready for the
 13 service if we haven't notified you. And then I asked
 14 about when Qwest sends us a customer not ready, then Qwest
 15 sends us a customer not ready jeopardy.
 16 So Qwest confirmed at that particular meeting
 17 that our understanding that Qwest would give us an FOC the
 18 day before, Qwest confirmed that.
 19 Q. Now, there were a number of issues that were
 20 raised as a part of this CMP process. In fact, Eschelon's
 21 original proposal was to receive notice in advance, an FOC
 22 in advance of provisioning without any -- without this
 23 24-hour time frame that you're claiming now; isn't that
 24 correct?
 25 A. Could you ask me that question again? I'm not

1 sure just exactly -- in what forum are you talking about?
 2 In CMP or --
 3 Q. Yes, in CMP. Your initial request in this did
 4 not include the day before language, did it?
 5 A. It did not. And after -- if you, you know, look
 6 at the title of this CR that starts on Page 17 -- give me
 7 just a moment here.
 8 I think we said it was 17, didn't we?
 9 ARBITRATOR RODDA: I think something starts on 17.
 10 THE WITNESS: It said -- and I had actually
 11 specifically when we decided that there were synergies and
 12 we would do more work related to jeopardies than just our
 13 request, I had asked Qwest to keep the title, the old
 14 title, so that we could, you know, make certain that we
 15 captured that. And it says: Delayed order process
 16 modified to allow the CLEC a designated time frame to
 17 respond to a released delayed order after Qwest sends the
 18 updated FOC.
 19 And so that request with that title was
 20 completed, and throughout the process as we talked in CMP
 21 and at ad hoc meetings and provided examples, then Qwest
 22 confirmed that actually we should be sending you an FOC
 23 the day before.
 24 Q. (BY MR. TOPP) But you were willing to close this
 25 without any language in the product catalog obligating the

1 FOC to be sent the day before?
 2 A. You know, regardless of whether or not the
 3 language is in the product catalog, Qwest had confirmed it
 4 on several calls and said that that was their process.
 5 Q. Now, is it your view that if Qwest resolves a
 6 Qwest jeopardy on the due date that Qwest should still
 7 send an FOC a day before it attempts to deliver the
 8 service?
 9 A. Our language that we are proposing in the
 10 interconnection agreement allows Qwest to attempt to
 11 deliver the service regardless of whether or not Qwest
 12 sends any FOC at all, or a timely FOC. We want to get
 13 service to our customer as much as Qwest wants to deliver
 14 it.
 15 Q. And, in fact, you attached to your testimony over
 16 100 examples of situations in which Eschelon filled orders
 17 without receiving an FOC beforehand; is that not correct?
 18 A. That is correct. That is an attachment to --
 19 it's an exhibit to my testimony which proves our language
 20 says we are committed to attempt to accept the circuit
 21 even if Qwest doesn't notify us.
 22 Q. And if there's an obligation to provide an FOC a
 23 day in advance, that's not going to make any difference
 24 with respect to getting orders provisioned in a timely --
 25 I mean, the FOC -- sorry. Let me clear that up.

1 In those situations where Eschelon has gone ahead
 2 and provisioned absent an FOC, how has Eschelon known that
 3 it needs to do something?
 4 A. Well, I think that every situation is different.
 5 You know, perhaps on those particular days we -- you know,
 6 the staff scrambled to be able to do that. You know, if
 7 we don't know Qwest is going to deliver the circuit, then
 8 we don't prepare internally for that to happen. But if we
 9 are able to do that, we do, you know, make every effort
 10 and every attempt to do that.
 11 Q. Uh-huh.
 12 A. And I think in response, you know, I believe --
 13 and if you want to ask it again, you said that -- I think
 14 you asked me how Qwest can deliver it on the due date if
 15 they have to send an FOC the day before. And our language
 16 doesn't require Qwest to send an FOC before they attempt
 17 to deliver. It only says if Qwest hasn't, that we haven't
 18 had an opportunity.
 19 Qwest made it very clear through this CMP process
 20 as this CR was going on that a Qwest facility jeopardy in
 21 particular, the due date was in jeopardy. And we actually
 22 talked a lot in CMP about the train. Should we stop the
 23 train or do we keep the train going? And that's when they
 24 looked at all of those Qwest jeopardy codes and determined
 25 that I want you to ignore these, but the Qwest facility

1 jeopardies you have to pay attention to and you have to
2 assume that the due date could be missed.

3 So Ms. Albersheim yesterday indicated that we
4 should still be ready, and that's not what they told us in
5 Qwest's CMP.

6 Q. Okay. When you -- but you would agree with me,
7 wouldn't you, that there are circumstances where Eschelon
8 can be ready to accept a circuit even when it has not
9 received an FOC?

10 A. I think that in the best interest of getting the
11 service provisioned, we have scrambled to accept these
12 circuits even when it wasn't on the workload, or there may
13 have been additional tasks that we needed to complete to
14 accept the circuit. My exhibit with the examples of those
15 where we didn't get an FOC but we accepted the circuit
16 anyway when Qwest contacted us to deliver it is proof
17 that, yeah.

18 Q. And that's, in fact, what you would want Qwest to
19 do is to try and deliver on time if they possibly can?

20 A. Yes.

21 MR. TOPP: I have no other questions.

22 ARBITRATOR RODDA: Okay. I don't have any
23 questions. Thank you very much.

24 MR. MERZ: Could I just -- maybe one or two
25 follow-up.

1 Q. And Qwest prepared Page 37 as well?

2 A. Yes.

3 Q. And Page 38, these are all part of the same
4 Qwest-prepared document?

5 A. Yes.

6 Q. Okay.

7 A. And 39, 40, and then also 41, actually, through
8 the end because we also -- you know, the red line that
9 starts on 41 that I referred to before, it was also a part
10 of the discussion that day when we talked about the
11 jeopardy codes. So that was a part of it also.

12 MR. MERZ: I don't have any further questions.
13 Thank you, Ms. Johnson.

14 ARBITRATOR RODDA: Thank you.

15 Okay. Anything else from Qwest?

16 MR. TOPP: No.

17 ARBITRATOR RODDA: I suggest we take a short
18 break between witnesses, and so 10 minutes or so.

19 (A recess was taken from 2:55 p.m. to 3:12 p.m.)

20

21 DOUGLAS DENNEY,

22 called as a witness on behalf of Eschelon, having been
23 first duly sworn by the Certified Reporter to speak the
24 truth and nothing but the truth, was examined and
25 testified as follows:

1 REDIRECT EXAMINATION

2

3 Q. (BY MR. MERZ) If you go to BJJ-5, and I'm
4 looking particularly at Page 36. What is -- that's the
5 first page of a multipage document; correct?

6 A. Yes. It's an ad hoc call that occurred on
7 March 4, 2004, regarding jeopardies and this change
8 request.

9 Q. And the document itself is dated February 25th of
10 2004; is that right?

11 A. That is correct.

12 Q. And who prepared these materials that begin at
13 BJJ-5 Page 36?

14 A. Qwest prepared these materials, and they provided
15 it to CLECs in advance on February 25th, in advance of the
16 call that happened on March 4th, as a reference point.

17 Q. What was the purpose of the ad hoc call on
18 March 4th?

19 A. The purpose of the ad hoc call -- one of the
20 purposes was to review the examples that Eschelon had
21 provided to Qwest where we had a question regarding what
22 we believed to be noncompliance of the jeopardy process.

23 Q. And are you referring, then, to the examples that
24 you find on Page 37 and following?

25 A. That is correct.

1 DIRECT EXAMINATION

2

3 Q. (BY MR. MERZ) Good afternoon, Mr. Denney.

4 A. Good afternoon.

5 Q. Please state your name for the record.

6 A. Douglas Denney.

7 Q. By whom are you employed?

8 A. I'm employed by Eschelon Telecom, Inc.

9 Q. Have you prepared testimony that has been filed
10 in this case?

11 A. Yes, I have.

12 Q. And you have direct, rebuttal, and surrebuttal
13 testimony; is that right?

14 A. Yes.

15 Q. Your direct testimony has been marked as Eschelon
16 Exhibit 13; is that correct?

17 A. Yes.

18 Q. And the confidential exhibits to your direct
19 testimony have been marked as Eschelon Exhibit 14; is that
20 correct?

21 A. Yes.

22 Q. Your rebuttal testimony has been marked as
23 Eschelon Exhibit 15; is that correct?

24 A. Yes.

25 Q. Your surrebuttal testimony has been marked as

1 Eschelon Exhibit 16; is that correct?
 2 A. Yes.
 3 Q. And the confidential exhibits to your surrebuttal
 4 testimony have been marked as Eschelon Exhibit 17; is that
 5 correct?
 6 A. Yes.
 7 MR. MERZ: Your Honor, Eschelon offers Eschelon
 8 Exhibits 13, 14, 15, 16, and 17.
 9 ARBITRATOR RODDA: Any objection?
 10 Hearing none, Eschelon-13, 14, 15, 16 and 17 are
 11 admitted.
 12 (Exhibit Nos. Eschelon-13, Eschelon-14,
 13 Eschelon-15, Eschelon-16, and Eschelon-17 were admitted
 14 into evidence.)
 15 Q. (BY MR. MERZ) Mr. Denney, have you prepared a
 16 summary of your testimony today?
 17 A. Yes, I have.
 18 Q. Would you give that now, please.
 19 A. My name is Doug Denney, and I started with
 20 Eschelon about almost two-and-a-half years ago now. And
 21 probably from the first or second day I was there I got
 22 involved in the interconnection agreement negotiations.
 23 So I've been involved in this process, you know, for
 24 two-and-a-half years, which is a short time maybe for the
 25 rest of the people at Eschelon, but it seems like a long

1 time to me.
 2 And all of the other witnesses were able to group
 3 things into themes of their testimony, and so I tried to
 4 come up with three themes for my testimony here. And one
 5 of them kind of has to do with rates and how rates are
 6 applied when they're applied. The focus of this really is
 7 on cost-based rates, applying cost-based rates, how do we
 8 establish cost-based rates. This includes things like
 9 when do rate changes take effect.
 10 And some of these issues kind of spill out of
 11 rates because there's also when, you know, when changes of
 12 law is incorporated into that, but there's also what is
 13 the process for introducing new rates, and how does this
 14 process apply to a new product and service versus setting
 15 up an interim rate.
 16 There's another discussion there about how does
 17 Qwest phase out a product offering or what does it do for
 18 something that Qwest has previously been offering but it
 19 decides it no longer wants to offer. If the Commission
 20 has already approved these rates, how does that work?
 21 Within this, then, some of the big -- like the
 22 bigger rate issues or the -- at least by counting by the
 23 amount of testimony would be expedites. What is the
 24 appropriate rate for expedites, and in what cases should
 25 there be an exception to having this, you know, having

1 this explicit rate, this additional rate for expedites.
 2 Another one would be design change charges, which
 3 you heard some about, and when do design change charges
 4 apply. I was involved in the UNE cost case, the 00-0194
 5 that's there's been some discussion. And that design
 6 change charge in that case was set up to do the loops. I
 7 mean, I'm sorry. Was set up to do transport.
 8 All of the SGAT, the SGAT at the time was focused
 9 around transport. And Section 9.6, I believe, in the SGAT
 10 referred to design changes for transport. That's the only
 11 place in the contracts that they were at the time. And
 12 when the Commission issued an order in that case, Qwest
 13 began charging design change charges for transport. Now,
 14 it took them a little while to get to -- you know, to do
 15 all of the -- update any of the rates in that order, but
 16 they charged that right away.
 17 Now, two-and-a-half years later or three years
 18 later, they decided to apply that rate to loops, which we
 19 disagreed with. And even, you know, more egregious, apply
 20 it to CFA changes, which is just a minuscule process, you
 21 know, that is easy to do, to apply an \$80 charge for that.
 22 So the testimony deals with why that is inappropriate.
 23 Some other things I talk about are kind of
 24 transport. How do we -- or not transport, but transit
 25 records. How do we validate our transit bills; what

1 information we need. Collocation available inventory,
 2 which you heard some testimony about. When do quote
 3 preparation fees apply in terms of power reduction and
 4 power restoration? What is the appropriate charge for
 5 those or the appropriate times that they would apply?
 6 There's some issues that the contract spells out,
 7 times when Eschelon -- there's a few times where Eschelon
 8 would charge Qwest for services, and so some clarification
 9 language about making sure that that's clear in a contract
 10 when those instances would apply and when Exhibit A would
 11 apply to -- those rates would apply for Eschelon to charge
 12 Qwest.
 13 And then I also have application of some interim
 14 rates, which you have heard some discussion on, and even
 15 before this hearing, on certain UNEs that Qwest has had
 16 out there as interim rates for a number of years where --
 17 and for these interim rates, Qwest did provide us with
 18 some cost studies. For some they just could never find
 19 the studies or never provided them. And so I've looked
 20 through those studies to see were they even consistent
 21 with the Commission's prior order, which they weren't.
 22 And I've made some minor modifications to those
 23 studies to try to set interim rates that would be closer
 24 to what the Commission intended when they set permanent
 25 rates so we could have an interim rate in place until

1 permanent rates are set in Phase III that would be more
2 reasonable or more consistent with the Commission's prior
3 rulings.

4 I didn't do that with every interim rate. Maybe
5 half of them I did that with. Some of them I just took
6 what Qwest had and just left it as it is, and those are --
7 you can kind of see on the Exhibit A s where I -- when
8 there's a marking that says -- has a Footnote 5 or
9 Footnote 1, those are rates that I just -- you know, that
10 you don't see the Eschelon proposal. Those are rates I
11 just accepted as they were. So I didn't go through every
12 rate there. So that's kind of the rate application theme.

13 The second theme would be around payment and
14 deposits. And this really has -- there's an agreement in
15 the contract regarding when bills are due. And there's
16 even agreement that if certain conditions exist, Qwest can
17 discontinue order processing, they can disconnect service,
18 or they can demand deposit.

19 There's some disagreement around what are the
20 conditions that would cause these things to happen and
21 when they could discontinue order processing. And there's
22 also some -- there's a disagreement around at what point
23 should the Commission get involved. There's agreement
24 that Commission involvement is important, but the
25 question -- the disagreement involves whether the

1 Commission get involved before its customer impacting or
2 after.

3 There's a section in there that's -- you know,
4 it's 5-13 about -- it's about review of credit standing,
5 kind of the last issue in that group. And this is one
6 where I guess it's most bothersome to me in a sense
7 because it kind of -- for deposits it gives Qwest the
8 unilateral ability to impose a deposit, despite whatever
9 else is in the contract regarding deposits. So even
10 though we have this dispute about other language, this
11 section in issue 5-13 throws out that other language in a
12 sense and says, here, despite that other language, Qwest
13 can go ahead and impose a deposit based upon what they
14 called a review of credit standing. It doesn't say what
15 has to happen in that review. It doesn't say your credit
16 standing goes up or down. It doesn't say what would cause
17 this credit standing. There's just no standard there at
18 all, so it's kind of a blank check in a sense.

19 My third theme is -- the best I could come up
20 with was just other issues. And I think I have -- there's
21 only a few things left here. And there are some things
22 like in what cases when we provide some proprietary data
23 to Qwest would they have to give us a copy of people at
24 Qwest that sign the nondisclosure agreement. That would
25 fall in there.

1 In terms of service eligibility, there's service
2 eligibility requirements established by the FCC, and
3 there's an issue about audits and can Qwest do an audit
4 without any cause, or should Qwest have to, you know, try
5 to give data to Eschelon when they do an audit that may
6 facilitate the resolution of dispute by identifying
7 circuits that they think -- if they have any that are
8 noncompliance.

9 And then the last issue that kind of falls in
10 other issues has to do with commingled EELs, commingled
11 arrangements. This is where you're combining UNEs and
12 nonUNEs together, and so it's setting up some conditions
13 that try to merge those two worlds to make this a useful
14 product. Because the way that Qwest is proposing to use
15 these right now, in our view, just makes it -- they have
16 added -- I called it an operational glue charge, because
17 they made them very difficult to use by having two
18 different circuit IDs. Where when they provided just a
19 UNE EEL, or in a special access world an equivalent, there
20 would be one circuit ID. So they have kind of done some
21 things like not providing them on the same bills. So they
22 have made these commingled EELS, which they've always been
23 against doing, very difficult to use.

24 And that concludes my summary.

25 MR. MERZ: Your Honor, Mr. Denney is available

1 for cross-examination.

2 ARBITRATOR RODDA: Thank you. I don't know who
3 to ask.

4 MR. ROSELLI: I'm going to begin. I think I'll
5 be relatively brief.

6
7 CROSS-EXAMINATION

8
9 Q. (BY MR. ROSELLI) Good afternoon, Mr. Denney.

10 A. Good afternoon.

11 Q. Which of your categories was collocation
12 available inventory placed into?

13 A. It's a rate -- kind of a rate application issue,
14 I would say.

15 Q. Okay. Would you agree with me that collocation
16 available inventory is basically used collocation?

17 A. Yes.

18 Q. And today what information does Qwest make
19 available with regard to these used collocation sites?

20 A. Well, Qwest puts up on their website a list of
21 collocations that would be available. And I may have
22 even -- hopefully in this case I have put a copy of what
23 was -- you know, what was on that website as an exhibit.
24 Let's see if I can just find that.

25 That would be Exhibit DD- 17 to my direct

1 testimony.

2 Q. And that -- I'm sorry. That describes what is
3 available at the website today?

4 A. Right. It tells you the collocations. It tells
5 you the -- it tells you kind of a description. Like what
6 floor of the building they're on, it might include that
7 information. It will include a description kind of what
8 is there and some information about the terminations that
9 are at that collocation.

10 And this information that's here is to give a
11 guidance to the CLEC as to what is there. It's not
12 guaranteed that if they actually go and look that this
13 will be the data that's there, but it's some information
14 of what is out there if the CLEC is looking to build a
15 collocation in that space. That was DD-17.

16 Q. And, again, these are sites that a CLEC has
17 occupied at one point in time that have now been returned
18 to Qwest?

19 A. That's correct.

20 Q. And they're listed or posted on this collocation
21 -- I think it's called classified website, and you can
22 look there and see what sites are available?

23 A. Yes.

24 Q. And find some information about specifically what
25 floor, how many bays, circuit terminations, that kind of

1 thing?

2 A. That kind of thing. I would -- I'm not sure --
3 all of that information may not be there all of the time.
4 I'm not sure about the bays, but I do see some bays listed
5 there. So that type of information.

6 Q. And all I'm trying to get to is to frame the
7 dispute, and I'll get to that now. What Eschelon wants
8 Qwest to do is provide prior quotes for available
9 inventory sites; correct?

10 A. I mean, with the caveat that if the site that's
11 been listed on Qwest's available inventory site, if a CLEC
12 had -- if a CLEC had looked to purchase that site and
13 performed the quote preparation fee for that site, then
14 that is the quote we're talking about that would be on
15 there. So not quotes with the original collocation, but
16 if someone -- if someone looked to purchase a site but
17 then decided after getting the quote that it didn't want
18 to go through with that site, a quote that is already out,
19 that's the quote that we would look to have available to
20 us in making our determination.

21 Q. Right. And I just want to make sure our record
22 is clear because we got a little sideways on this in
23 Minnesota, but the sequence would be this. Qwest
24 provisions an original collocation site to a CLEC. Let's
25 call them the original CLEC. For whatever reason, at some

1 point in time the original CLEC vacates that collocation
2 space. Are you with me so far?

3 A. Yes.

4 Q. It comes back to Qwest. Qwest posts that site on
5 the collocation classified website. Still with me?

6 A. Yes.

7 Q. Okay. Now, a different CLEC comes in and asks
8 for a quote, asks Qwest to prepare a quote for that used
9 collocation website, but for whatever reason decides not
10 to accept that quote for the used website. Still with me?

11 A. But not -- the website is not used, the
12 collocation.

13 Q. I'm sorry. I misspoke. Not to accept the quote
14 for that used collocation space; correct?

15 A. Right.

16 Q. And they walk away.

17 A. Correct.

18 Q. That is the quote that Eschelon wants to see, the
19 quote that was prepared for the available inventory site
20 but not accepted by that second CLEC; correct?

21 A. That's correct.

22 Q. Okay. Now, Eschelon hasn't introduced this issue
23 into CMP, has it?

24 A. No.

25 Q. Qwest's current process is that in the

1 information it provides on this website, it does not
2 include these prior quotes; correct?

3 A. That's correct. Qwest does not currently provide
4 this information either on the website or, you know, if a
5 CLEC asks for the information.

6 Q. But Eschelon would like access to those prior
7 quotes?

8 A. Yes.

9 Q. That's the gist of the dispute?

10 A. That's correct.

11 Q. So it hasn't been introduced into CMP. Do you
12 have any reason to believe one way or the other whether
13 other CLECs would have any concerns or objections about
14 having their prior quotes posted on this website? And
15 I'll assume that the name of the prior CLEC that requested
16 the quote would first be redacted.

17 Have you sounded out the CLEC community on that
18 issue?

19 A. I mean, the redaction of the name is -- I mean,
20 that is our proposal, that the CLEC name would be
21 redacted, but I haven't done a survey of the CLEC
22 community. But there's -- I mean, there's no reason why
23 they wouldn't be willing to make those quotes available.
24 There's no CLEC specific information, you know, involved
25 in those quotes. Those are quotes about the space that

1 Qwest has listed on its site.
 2 Q. Right. But you haven't specifically surveyed the
 3 other CLECs to find out how they feel about that, having a
 4 prior quote of theirs, even with their name redacted from
 5 it, posted on a public site?
 6 A. No.
 7 Q. Okay. And Eschelon's proposal, again, would
 8 change current process in that you would have Qwest post
 9 or make available these prior quotes; correct?
 10 A. That's correct.
 11 Q. And does it specify anything -- does Eschelon's
 12 proposed language specify any time period that these prior
 13 quotes would have to remain out there on this website?
 14 A. Well, I mean, the language accounts for whether
 15 there's a change in circumstances that would affect that
 16 quote. So, you know, we've had some discussion over what
 17 these changes in circumstances would be. So, I mean, one
 18 thing, if there's a cost case and all of the rates change,
 19 the quote wouldn't be worth -- you know, it wouldn't be
 20 useful anymore, so there would be no reason to post the
 21 quote in that case.
 22 Q. I'll get to the pricing questions in a minute,
 23 but I'm more concerned about the shelf life of these prior
 24 quotes. How long do they have to stay on the website?
 25 Because as proposed, Eschelon's language would leave them

1 up there for eternity, wouldn't they?
 2 A. Our proposal is they would be up there as long as
 3 they were useful, and they're useful as long as the rates,
 4 you know, that created that quote or there are no changes
 5 in that collocation, that those -- that quote would be the
 6 same for another -- I mean, as long as that quote is for
 7 that specific case, then yeah. If there are no changes in
 8 rates, they should stay up there for eternity, as you put
 9 it.
 10 Q. So your testimony is that prior quotes only need
 11 to stay on the site as long as they're useful?
 12 A. That's correct.
 13 Q. Okay. So if a superseding event like a cost
 14 docket came down the pipe that changed all of the relevant
 15 collocation rates in a given state, Qwest could remove any
 16 of those prior quotes at that point because they
 17 presumably would be stale and have old rates?
 18 A. Yes.
 19 Q. Okay. And then I wanted to talk to you about the
 20 language you just referenced, the changed circumstance
 21 language. As I understand it, Eschelon's proposed
 22 language would allow that Qwest can charge the quote
 23 preparation fee associated with providing the quote for an
 24 available inventory site, even if it's one that was
 25 previously quoted, so long as Qwest can establish a change

1 in circumstances. Is that Eschelon's proposal?
 2 A. That's correct.
 3 Q. And we covered this in Minnesota, and, again, I
 4 just want to make sure the record is clear here in
 5 Arizona. But changed circumstances is not further
 6 defined or elaborated in Eschelon's contract -- proposed
 7 contract language; right?
 8 A. There's no definition called change of
 9 circumstances. I think it's pretty evident that -- I
 10 mean, a change in circumstances, we've had discussion and
 11 through testimony something that would affect the quote.
 12 So if Eschelon ordered the site in a different way that it
 13 had been ordered previously, that would be a change in
 14 circumstance.
 15 Q. And that's all I'm trying to get at.
 16 A. And we would pay for our own quote in that case.
 17 If the rates change as I mentioned, that's a change in
 18 circumstances. And there's two parts to this proposal
 19 that we're kind of crossing over to make clear. And one
 20 is the availability of this quote, and the second is when
 21 does Eschelon have to pay a charge for that quote.
 22 And when you pay the charge for the quote is --
 23 if there's nothing different about the quote, there's no
 24 reason to pay Qwest to do something that it already did.
 25 If the quote is different because Qwest has to -- then has

1 to do additional work, that's the time when charges would
 2 pay. So we're kind of focusing on when there's work.
 3 Q. You're right. I had kind of transitioned to the
 4 second issue of when Qwest could or couldn't charge the
 5 QPF under Eschelon's proposed language. And I just want
 6 to be clear, as we discussed in Minnesota, if the first
 7 CLEC to request an available inventory site, say, wanted
 8 10 DS1s, and Qwest prepared a quote for that CLEC
 9 accordingly, okay, and then that CLEC didn't accept the
 10 quote. So now we have a prior quote situation; right?
 11 A. Yes.
 12 Q. So under Eschelon's proposed language, if that's
 13 adopted, Qwest would post that prior quote for that CLEC
 14 on the website, and it would show that Qwest prepared a
 15 quote for that first CLEC that included a request for 10
 16 -- what did I say? DS1s?
 17 A. That's what you said, yes.
 18 Q. Okay. If the subsequent CLEC, let's say it's
 19 Eschelon, comes along and now wants a quote for that site
 20 because the first CLEC for whatever reason didn't accept
 21 the quote and went down a different path, and Eschelon
 22 wants 9 DS1s, is that a -- would Qwest have shown a change
 23 in circumstances?
 24 A. Yes.
 25 Q. Okay. And what if Eschelon wanted 11 DS1s?

1 Change in circumstances?
 2 A. That would be a change. They're both a change of
 3 one.
 4 Q. And what if there were an intervening cost docket
 5 such that some of the rate elements in the first quote had
 6 changed. Change in circumstance?
 7 A. Yes.
 8 MR. ROSELLI: I have nothing further.
 9 ARBITRATOR RODDA: But someone does; right?
 10 MR. ROSELLI: Someone does, right. I'm sorry.
 11 MR. DEVANEY: I do.

12
 13 CROSS-EXAMINATION
 14

15 Q. (BY MR. DEVANEY) Good afternoon, Mr. Denney.
 16 A. Good afternoon.
 17 Q. I have a few areas to touch upon with you. And
 18 one is an area that you and I have spent a lot of time
 19 together on, and it's rates.
 20 You testified in your summary that one of your
 21 areas that you were addressing is -- I think you said how
 22 do you establish cost-based rates. Do you recall saying
 23 something like that at the start of your testimony?
 24 A. I don't know if I -- I think when I started my
 25 testimony I said that a big theme of mine is having

1 cost-based rates apply to the things that Eschelon is
 2 purchasing out of this contract.
 3 Q. Okay.
 4 A. And there are provisions on establishing --
 5 there's things about establishing rates for products that
 6 Qwest doesn't, you know, currently offer, or how interim
 7 rates apply. There's some provisions in my proposals
 8 about that as well.
 9 Q. Okay. Let me just ask you in general. Just sort
 10 of pull back to the big picture.
 11 With respect to nonrecurring rates and the method
 12 for establishing them, tell me if you agree in general
 13 that one should look at the time needed to perform -- or
 14 first of all, I guess the activities that go into a
 15 nonrecurring activity, the time needed to perform the
 16 activity, the labor costs, the systems costs, are those
 17 all factors that should be considered in establishing a
 18 nonrecurring rate?
 19 A. I mean, I would agree with that with the caveat
 20 that there's, you know, the assumption that we're looking
 21 in a -- what we call economic costs or forward-looking
 22 economic costs. So there's often a dispute within that
 23 about do we just look at the times that we have right now,
 24 or should we be looking at what are the efficient times,
 25 or is it the system -- the embedded systems that we have

1 now, or should we be looking at how the efficient systems
 2 would work.
 3 Q. Right.
 4 A. So I agree that you would look at these
 5 activities, but you need to -- I mean, there is some
 6 dispute on exactly how those get interpreted within the
 7 concept of forward-looking economic costs.
 8 Q. Okay. And I acknowledge that. So you get into
 9 debates about what technologies to use, what times to use,
 10 but in general would you agree that the factors that I
 11 identified are sort of the framework for establishing
 12 nonrecurring rates?
 13 A. Well, I mean, I would add, I guess, one more
 14 thing to that is that -- I mean, rates are either
 15 explicitly identified or they're implicit, covered in
 16 other rates. So when we establish nonrecurring rates,
 17 usually the first thing we look for is are these costs
 18 that we're trying to recover here already being recovered
 19 somewhere else, maybe through cost factors or maybe
 20 through, you know, installation pieces that would go into
 21 a loop cost.
 22 Q. But setting aside --
 23 A. Right. So recognizing that, I mean, I agree the
 24 things you're talking about for nonrecurring charges are
 25 areas that you would look at, but not in a vacuum,

1 obviously.
 2 Q. Understood. And for a rate to comply with TELRIC
 3 and to be cost-based, that is for a nonrecurring rate,
 4 would you agree that you have to look at those factors
 5 that you and I just discussed?
 6 A. Right. The times, the activities that occur, the
 7 probabilities that would occur around them, labor rates,
 8 systems, yes.
 9 Q. In this particular case, there's been discussion
 10 of the design change rate of \$72 and change which was
 11 established in the last cost proceeding that you and I
 12 both participated in.
 13 Did you analyze that study in that proceeding?
 14 A. No. I did not.
 15 Q. Have you ever analyzed that study?
 16 A. I mean, I have looked at Qwest's design change
 17 cost studies across some states where I can find them.
 18 They're similar with minor differences across states. So
 19 I have looked at that. I have not -- I do not have in my
 20 possession the Arizona study. I know that we've asked
 21 Qwest for that and it hasn't been provided.
 22 Q. But in the cost proceeding you did not -- that
 23 you participated in in which this study was presented, you
 24 did not analyze it; correct?
 25 A. Yeah. I mean, I'm hesitating because at the end

1 of these -- I worked for AT&T at the time, and at the end
2 of these proceedings there were compliance filings, and I
3 probably had my hands in every compliance filing that
4 occurred in that docket. So I probably have seen that
5 study, but I didn't do an analysis of that study at the
6 time.

7 Q. Okay.

8 A. I didn't testify on that study in that case. I
9 testified on the HAI model in that case.

10 Q. I remember that. Okay. Now, in your testimony
11 related to CFA changes, I'm going to paraphrase a couple
12 of criticisms that you level at Qwest with respect to CFA
13 changes. And if you disagree with my paraphrasing, go
14 ahead and correct me, but I'm just trying to move things
15 along.

16 A. Okay.

17 Q. I think you criticized Qwest for assuming that
18 there's more time than -- we assume too much time for the
19 lift and lay of the CFA. That is, removing the circuit
20 from one connecting facility assignment and then moving it
21 to another one. You analogize that to unplugging and
22 plugging in a lamp, and you think that we go way beyond
23 that; right?

24 A. I mean, the design change study includes over an
25 hour of time for something that we know -- there's a

1 30-minute installation window in these cases. We know
2 that Qwest has done these CFA changes multiple times in
3 that 30-minute window.

4 Q. What design change study are you referring to?

5 A. Well, that time there's a design -- there's a
6 study in Washington and there's a study in Oregon. And
7 both of those studies have over an hour of time involved
8 for looking at doing this design change.

9 Q. Right. But you haven't seen the study in
10 Arizona, or if you have you don't remember what's in it?

11 A. Right. Qwest has not provided me with a study in
12 Arizona, but their study is the same -- it's essentially
13 the same with a few tweaks in minutes across the states.
14 And the rate in Arizona is, I mean, it's similar to the
15 rate that's been established in other states.

16 Q. Are you aware that the design cost study in
17 Arizona does not include any technician time?

18 A. The design change studies that I have seen, they
19 have -- and I have to look at a copy of the study on
20 there, but there are these blocks of time for -- they're
21 nondescript of what is in that time, but there's a block
22 of time for this design change that's like a 35-minute
23 period for doing some engineering review, or something
24 like that. I don't know what is in that. I don't think
25 there's a separate broke out tech time, technician time

1 listed in those studies. They're very nondescript, I
2 would say.

3 Q. Were you here yesterday when Ms. Million
4 testified about Qwest design studies?

5 A. Yes, I was.

6 Q. Did you hear her say that no technician time is
7 included in that study?

8 A. I heard her say that, but I don't think you can
9 tell that from the study. Their testimony in that case is
10 not clear. There isn't a separate line item for
11 technician time. There I agree with that, but there's a
12 block of time, over an hour of time in these studies for
13 processing this design change. And it's fairly -- for the
14 bulk of that time, it's fairly nondescript as to what is
15 happening during that time.

16 Q. Are you disagreeing with Ms. Million's sworn
17 testimony that there's no technician time included in
18 Qwest's cost study?

19 A. I'm saying you can't tell from looking at that
20 study. There's no descriptions in the case. You know,
21 there's no descriptions of what is exactly in there in
22 that study.

23 Q. And when you say that study, what study are you
24 referring to?

25 A. The design change study that Qwest has filed in

1 multiple states across the region.

2 Q. When did they file that study?

3 A. Let's see. In Arizona it was filed as part of
4 the compliance -- I mean, the Washington study was filed
5 as part of the compliance filing, and that docket was
6 probably around the 2003, 2004 time frame.

7 Q. Okay.

8 A. There was a study in Oregon that Qwest had
9 provided maybe around 2002.

10 Q. Okay. And the Arizona docket in which the study
11 was filed was 2000; correct?

12 A. Right. Well, the Washington was the compliance,
13 so it probably started around that same time.

14 Q. With respect to issues 9-50 and 9-53, subloop and
15 UCCRE, U-C-C-R-E, all caps, am I correct that Eschelon has
16 never ordered either of those services from Qwest?

17 A. Right. That's correct. Eschelon has not ordered
18 those. These are things that are in the Qwest SGAT as
19 offerings, and Eschelon is opposed to them being just
20 removed on a wholesale basis from Eschelon.

21 Q. And am I correct to understand that Eschelon has
22 no current expectation of needing that in the near term,
23 either service?

24 A. That I can't answer. I mean, the use for these
25 change -- you know, can change every day. So I don't know

1 of plans to order that, but I can't say. I'm not in that
2 group of people who does that.

3 Q. Are you aware of any CLEC who has ever ordered
4 either the subloop service of UCCRE service?

5 A. No. I'm not aware. What I am aware is that Cox
6 made a filing here recently in Arizona that asked for the
7 subloop cross-connect rates to be established for all of
8 those rates, including the ones that Qwest -- they are
9 interim rates right now -- asked for permanent rates to be
10 set in Phase III.

11 Q. Are you familiar with what led to that filing and
12 whether Cox has any intention of actually using that
13 service?

14 A. No. I do know that Cox asked for those rates to
15 be established. I have the filing. I haven't talked to
16 people at Cox, but I do know that they asked for rates for
17 these particular elements we're talking about for which
18 Qwest had testified that there's no evidence that there
19 will be any demand in the future. Cox asked for these
20 rates to be established.

21 Q. Are you aware of any past dispute between Cox and
22 Qwest that's being litigated now that might affect Cox's
23 request that was set forth in that brief?

24 A. No, I'm not.

25 Q. Could you please take a look at the proposed

1 language of Eschelon's for both 9-50 and 9-53, in
2 particular Section 1.73.

3 ARBITRATOR RODDA: Are you looking at the joint
4 matrix?

5 MR. DEVANEY: Yes.

6 ARBITRATOR RODDA: Do you have a page number?

7 MR. DEVANEY: I do. Page 58.

8 ARBITRATOR RODDA: Thank you.

9 Q. (BY MR. DEVANEY) And under Eschelon's proposed
10 Section 9.3.3.8.3.1, it says: If Qwest performs or offers
11 to perform the cross-connect for any other CLEC during the
12 term of this agreement, Qwest will notify CLEC and offer
13 CLEC an amendment to this agreement that allows CLEC, at
14 its option, to request that Qwest run the jumper for
15 intrabuilding cable in MTEs on nondiscriminatory terms and
16 conditions.

17 Do I read this correctly that if Qwest performs
18 even just one cross-connect for another CLEC, that would
19 trigger a right for Eschelon to enter into an amendment to
20 the interconnection agreement?

21 A. I'm sorry. Because I'm going to -- I turned to
22 the Exhibit A at 1.7.3, and I know you read from 9. --
23 which is proposal No. 1 related to this issue. So I
24 wasn't in the right place when you were reading. So let
25 me -- I think I have that in the testimony, so let me find

1 that issue.

2 Now what was your question?

3 Q. My question is let's assume hypothetically that a
4 CLEC comes to Qwest in an emergency and says, well, I need
5 you to form a cross-connect, just one cross-connect for
6 us. Can you do it? Qwest does it.

7 Is that going to trigger under your proposal,
8 that single incident, Qwest having to offer an amendment
9 to the interconnection agreement to Eschelon?

10 A. Well, to -- I mean, the language --

11 Q. If you can answer that, and then give whatever
12 explanation you have.

13 A. Yes, I think it would, but I think the language
14 says if Qwest performs or offers to perform. And right
15 now -- I mean, in my view Qwest is offering to perform
16 because they -- this is in their SGAT. It's out there in
17 other companies' contracts. So I believe that Qwest
18 should offer an amendment to Eschelon.

19 This was Eschelon's first proposal on this issue
20 because we said we didn't have an immediate plan to buy
21 this, so we won't put it in the contract right now. But
22 as long as you're offering to perform this for other
23 CLECs, then we should have the right, if we decide to use
24 it, to add an amendment to our contract in order to
25 utilize that product. So that's the intent here of this

1 language.

2 Q. If Qwest has no demand for a product, no legal
3 obligation to provide it, no one is ordering it, do you
4 think Qwest ought to have the right to stop offering the
5 product?

6 A. Not necessarily. I think there's been
7 products -- there's been products in the past where demand
8 didn't exist immediately for that product. I think
9 there's an analysis that needs to be undertaken. I think
10 it's possible with this issue that if there is no interest
11 in this, no CLECs would object and Qwest could ask the
12 Commission and say, look, we've asked you to have rates
13 for this in the past. We would ask you not to have rates
14 for that in the future. And that's kind of our alternate
15 proposals here for this section.

16 So it would set up a process by which Qwest could
17 reasonably remove this from other CLECs. If no one was
18 interested, no one would object to having this removed
19 from the contracts. But if there's an interest and the
20 Commission has either proposed rates or indicated it
21 planned on proposing rates, and Qwest has put forth TELRIC
22 rate offers for this product, then I think Qwest should
23 offer that product until such time that the Commission has
24 made another determination.

25 Q. Do you know how many years Qwest has been

1 offering these subloop and UCCRE products?
 2 A. No, I don't.
 3 Q. Let's change the subject to unbundled dark fiber,
 4 which I think is issue -- maybe you can help me. Is that
 5 issue 9-51?
 6 A. Unbundled dark fiber terminations?
 7 Q. Right.
 8 A. This was my favorite issue, because no one at
 9 Qwest filed testimony on it. I didn't think you would ask
 10 me questions.
 11 Q. Eschelon's proposal is that within a central
 12 office, Qwest can charge for how many terminations? One?
 13 A. Let me get to our proposal here. This one is not
 14 fresh in my mind.
 15 Our proposal is that, you know, is that really
 16 that two terminations would apply per pair, per wire
 17 center. And kind of the -- I mean, a little history on
 18 this proposal was that we were trying to clarify this
 19 language, which was Eschelon's proposal No. 1. And then
 20 Qwest had changed the language that had been in the SGAT
 21 and other people's agreements.
 22 And we said, we'll just take what's in the SGAT,
 23 then, to avoid this, which is proposal No. 2, to avoid
 24 this ambiguity. And Qwest didn't agree with either of
 25 those. So they kind of had a separate description of how

1 this rate would apply for Eschelon than they had in
 2 everybody's agreements and things going forward. And so
 3 what we said to Qwest is, well, you know, you're saying it
 4 applies differently and that you're applying this rate
 5 differently --
 6 Q. Mr. Denney, I'm sorry. But all I asked you was
 7 how many terminations are you offering to pay for?
 8 A. I think the context of the language is important
 9 kind of in this case, because we did ask for evidence from
 10 Qwest to say, if you get us the cost study, maybe we can
 11 resolve this issue to determine if the application is
 12 consistent with the cost study. And this is another case
 13 where Qwest did not provide the cost study for us to
 14 confirm that, so we just went back to the SGAT language or
 15 our clarification to that language.
 16 Q. What is your understanding of what a dark fiber
 17 termination is?
 18 A. I believe it's kind of -- for lack of a better
 19 word, kind of tying down the -- you know, the fiber to
 20 some panel in the office.
 21 Q. In the central office?
 22 A. Yes.
 23 Q. And from an engineering perspective, do you know
 24 are there circumstances where there might have to be more
 25 than just one tie-down in a central office?

1 A. Yes. And we don't deny that. But what matters
 2 is how that rate was developed compared with how it's
 3 being applied, and that's the analysis that needs to be
 4 made to make sure that it's consistent.
 5 Q. So just to be clear then, do I hear you saying
 6 that if, for example, you have a multifloor central office
 7 where the dark fiber has to be cross-connected to risers
 8 at multiple floors, that Eschelon is willing to pay for
 9 those multiple cross-connects or terminations of the dark
 10 fiber?
 11 A. No. I didn't say that. I said it's the rate --
 12 I mean, what matters is when the costs were set in the
 13 rate application that the description of this said that
 14 there would be two -- these two terminations, I believe,
 15 is per pair, per office.
 16 Q. Right.
 17 A. That was the description. I don't have any
 18 evidence that -- I don't have the cost study to say that
 19 the cost study was developed in some other manner with
 20 that in mind which means the cost study would account
 21 for -- some offices there may be multiple floors, some
 22 offices there may not be. I don't know that's not in the
 23 cost, because Qwest wouldn't provide the cost study to
 24 verify this.
 25 Q. So your point is that you're limiting it to these

1 two terminations because perhaps costs from multiple
 2 terminations are put into those two terminations to kind
 3 of get an average? Is that your concern?
 4 A. Right. And I don't -- and this is the language
 5 that Qwest has for everybody else. So that's why I don't
 6 understand why Qwest is trying to change it for Eschelon.
 7 Q. Okay. Well, then, let me clarify. If more than
 8 two terminations are required in the central office as a
 9 theoretical matter, setting this rate aside, if the rate
 10 is correct, Eschelon is willing to pay for more than two
 11 terminations; is that right?
 12 A. I'm not sure I understand the -- because setting
 13 the rate aside, I'm assuming the rate is correct.
 14 Q. Let me start again. You don't deny that there
 15 are circumstances where Qwest is going to have to have
 16 more than two dark fiber terminations within a central
 17 office; correct?
 18 A. I agree that that's possible. That's correct.
 19 Q. And you agree Qwest ought to be able to recover
 20 the costs of those multiple terminations; correct?
 21 A. Right. When they're done in the efficient,
 22 forward-looking manner, yes, I agree that Qwest can
 23 recover those costs.
 24 Q. So in theory if we came up with a rate that was
 25 acceptable to both parties, Eschelon would be willing to

1 apply that rate to multiple terminations within a central
2 office; correct?

3 A. I mean, if the rate is developed appropriately,
4 then that's correct, and the rate is developed and
5 approved. It's the application that you're changing here.

6 Q. I understand. That's helpful. Thank you.
7 Now I want to ask you some questions about issue
8 9-58, commingled arrangements.

9 A. Okay.

10 Q. And one of Eschelon's requests with respect to
11 commingled arrangements is that the same circuit ID, a
12 single circuit ID be used for the UNE component of a
13 commingled EEL and the tariff component of a commingled
14 EEL; is that correct?

15 A. That is one of the proposals. That's correct.

16 Q. Okay.

17 A. There are some alternatives that we've offered up
18 to Qwest where that wouldn't have to be the case, but that
19 is -- one of the proposals, the main proposal, is that the
20 circuit ID should be the same as it is for an all-UNE EEL.

21 Q. Okay. Is it your understanding that circuit IDs
22 contain product specific information in them that are
23 recognized by the systems, the provisioning and billing
24 systems of ILECs like Qwest?

25 A. I believe there's maybe a letter code that may --

1 I'm not -- product specific information such as -- there
2 is some of that information in there. I'm not sure
3 exactly what your --

4 Q. Well, here's what I'm getting at. Is it your
5 understanding that Qwest and other ILECs provision UNES
6 out of one provisioning inventory database and bill UNES
7 out of one database, and by contrast provision and bill
8 tariffed services out of other databases?

9 A. Not entirely, because I believe the facilities
10 and things are all in -- all in TIRKS, I believe, for both
11 UNES and special access facilities. And so we're talking
12 about the same physical facilities. You may have a
13 different -- it may go somewhere after that point, but the
14 facility is the same for both of these. We're not talking
15 about a set of special access inventory and a set of UNE
16 inventory.

17 Q. But for provisioning purposes, Qwest and other
18 ILECs have different provisioning and billing systems for
19 UNES on the one hand and tariffed services on the other;
20 isn't that correct?

21 A. To some degree I think there's some crossover on,
22 you know, some of these systems. For example, like, I
23 think, UDITs are, you know, unbundled transports ordered
24 via ASRs, you know, even though they're local service
25 things. So I'm not sure there's a hard and fast rule in

1 that regard.

2 Q. But as a general rule, isn't it true that
3 tariffed services are provisioned and billed out of
4 databases separate from UNE provisioning and billing
5 databases?

6 A. I think that's been Qwest's practice. And I have
7 pointed out there's been disputes going back in the first
8 arbitration whether Qwest should even create these
9 separate billings systems for these.

10 Q. And part of the function of the circuit ID is
11 when Qwest gets an order, it sees the circuit ID and it
12 knows which system to send it to; correct? So it can be
13 provisioned and billed.

14 A. I mean, I don't know if I agree with that
15 entirely. I mean, for billing the rates are what they
16 are.

17 Q. Well, the bills have to be generated
18 electronically, don't they?

19 A. Right.

20 Q. And they have to be sent to a billing system, and
21 to be sent to the correct system you have to have the
22 right circuit ID; correct? To generate the right bill?

23 A. I think you have to have the right rates
24 associated with the circuit that's being purchased in
25 order to bill the right bill. And how -- the system that

1 you choose to bill that on is Qwest's -- in my view,
2 that's Qwest's choice of how they choose to bill that.
3 But the fact is that you just have to have the underlying
4 rates right for the right facilities.

5 Q. Okay. Well, have you looked into what it would
6 cost -- first of all, have you looked into whether it's
7 technically feasible for Qwest to begin using the same
8 circuit ID for the UNE piece and the tariff piece as
9 opposed to the UNE and UNE? Have you looked into whether
10 that's technically feasible?

11 A. I mean, I have looked into it to the extent that
12 Qwest does it today for UNE to UNE. They do it for
13 special access to special access. They have done changes
14 in the past where things have moved from special access to
15 UNE without changing circuit IDs, and they managed to do
16 those, so I believe it's technically feasible. I haven't
17 done anything beyond that.

18 Q. Okay. Have you analyzed -- if you think it is
19 technically feasible, have you done any analysis of what
20 the cost would be to begin using the single circuit IDs
21 for UNE services on the one hand and tariffed services on
22 the other?

23 A. I don't think the cost would be anything, because
24 Qwest has single circuit IDs for these end-to-end circuits
25 today. They do UNE loop and UNE transport on a single

1 circuit ID.

2 Q. But you're failing to discern my distinction.
3 That's UNE to UNE. But we're talking about two different
4 provisioning systems, UNE on the one hand and tariffed on
5 the other.

6 In that circumstance, have you analyzed what it
7 would cost to use the same circuit ID to process orders
8 and to provision orders?

9 A. And I have already said that it's my opinion that
10 there should not be a technical problem to doing that, so
11 I don't see where there would be any cost, because you
12 already are able to do that -- they are already able to do
13 that today.

14 Q. Have you studied that? Have you done any cost
15 analysis at all?

16 A. No, not other from what I have described to know
17 that Qwest is able to do that today with the circuits.

18 Q. If there is a cost, is that something that
19 Eschelon is willing to compensate Qwest for?

20 A. I mean, there's a process if there's a cost for
21 Qwest to go to --

22 Q. If Qwest has to engage some outside firm to, you
23 know, spend millions of dollars perhaps to begin using
24 single circuit ID for these orders, if that's technically
25 feasible, is Eschelon willing to compensate Qwest for

1 order.

2 Q. Okay. So let's -- you obviously won't agree with
3 me on this, but let's assume that it costs a lot of money
4 to make all of those systems and provisioning changes.

5 Would you be willing to insert language into this
6 contract that says Eschelon is making these requests, and
7 Eschelon will be willing to pay a reasonable, forward-
8 looking cost for whatever changes -- whatever costs are
9 incurred with these changes? Is that something that you
10 would be willing to do?

11 A. Is that a Qwest language proposal offer that I
12 should be taking back to our negotiations team?

13 Q. I'm asking you today. Are you willing to agree
14 to pay the costs of those systems changes?

15 A. I'm not willing to agree to that today. But if
16 Qwest has specific language that it is proposing in the
17 contract, then that would go back to our negotiations team
18 to look at. But I wouldn't agree to that today, because
19 that's like writing a blank check by saying we're just
20 going to agree to pay Qwest with something that you're
21 going to -- I don't --

22 Q. I'm not talking about amounts but in principle.
23 Is Eschelon willing to pay for the costs of the changes
24 that it's demanding Qwest make to its systems?

25 A. No, because I don't think you need -- we don't

1 whatever that cost is?

2 A. I mean, Eschelon is not going to write a blank
3 check to Qwest. In my experience, whenever Qwest doesn't
4 want to do something, it's very expensive for them to do.
5 So I'm not going to say Eschelon is going to write Qwest a
6 blank check. There are processes set up for Qwest to
7 collect rates when they believe --

8 Q. We don't have to agree on the amount. But in
9 principle you have made this demand on us to have a single
10 circuit ID. Are you willing to pay for it? That's my
11 question.

12 A. I mean, Eschelon's -- Eschelon is willing to pay
13 cost-based rates that are ordered by a commission's
14 forward-looking economic costs. So to the extent that
15 Qwest, you know, develops cost-based rates, if there are
16 any additional costs for having to do this and there are
17 cost-based rates associated with that, then Eschelon would
18 abide by Commission orders and pay those rates.

19 Q. Okay. Part of your proposal here with commingled
20 arrangements is not just the single circuit ID, but also
21 that Qwest change its processes and systems to have a
22 single billing account number, a single circuit ID, to use
23 just one form of service order form, the LSR you want
24 used, not just the --

25 A. Any form. We're not stuck to the LSR. A single

1 believe you need to make the changes you're making. We've
2 had a lot of discussion on this in negotiation, and we
3 don't believe Qwest has provided, you know, reasonable
4 evidence that it needs to make all of these changes.

5 We don't understand why this isn't just a billing
6 change or taking something that was a UNE, that wasn't a
7 UNE, that is no longer a UNE, why it's not just a rate
8 change.

9 Q. So the answer is, no, you're not willing to pay?

10 A. That's right.

11 MR. DEVANEY: Thank you.

12 Your Honor, would it be possible to take just a
13 three or four-minute break? There's an exhibit that was
14 introduced yesterday that I don't have with me that I
15 would like to get from the court reporter and ask a few
16 questions about.

17 ARBITRATOR RODDA: Certainly.

18 (A recess was taken from 4:04 p.m. to 4:14 p.m.)

19 ARBITRATOR RODDA: Let's go back on the record
20 then. I think we found the exhibit.

21 MR. DEVANEY: We did. Thank you for that break.

22 Q. (BY MR. DEVANEY) Mr. Denney, could you please
23 look, and maybe you have it, DD-23?

24 A. Right. And I thought you said the Cox exhibit,
25 not the cost exhibit. That's why I didn't think I had it

1 here. But yes. So I'm there.

2 Q. So I guess we can look for the Cox exhibit in the
3 next state, then.

4 And, obviously, what I want to ask you about is
5 what you and I talked earlier on in my cross of you where
6 we talked about whether there's technician time included
7 in the design change study that set the \$72 and change
8 rate here in Arizona.

9 A. Right.

10 Q. And looking at this particular exhibit, it's my
11 understanding that this is a detailed summary from that
12 cost study. Is that your understanding as well?

13 A. In Washington, the compliance filing, yes.

14 Q. Okay. And you'll see that service delivery
15 coordinator is one of the categories of activities, and
16 then the other is the design activity which is in the
17 design center.

18 Service delivery coordinator, those are the
19 people that take the order when a CFA changes; isn't that
20 right?

21 A. I mean, there is some ordering process of that,
22 so there's something involved -- there's something
23 involved there for the CFA change.

24 Q. Right. Actually, when there's a CFA change,
25 there's a reprocessing of the order that has to take place

1 I'm just trying to be clear.

2 Q. I understand. But in either event, whether it's
3 a new order or an internal process change, there has to be
4 manual intervention to stop the original order; isn't that
5 correct?

6 A. Well, I don't know that there has to be. I don't
7 know about the manual intervention part of that. I think
8 that might depend in your scenario where it's a new order,
9 that might depend on what stage that order was. So I
10 don't know that that's correct that there has to be some
11 manual intervention to stop the current order.

12 Q. Did you hear Ms. Million testify yesterday?

13 A. I heard her testify to a lot of things yesterday
14 that were not in the record in Arizona and were not in the
15 record about these cases. And what I'm saying is you said
16 you had manual intervention to stop this order. I'm not
17 sure that I -- and you said on a new order case. I'm not
18 sure that's always the case with the CFA that comes right
19 afterward. I don't know that -- I mean, I'm not sure what
20 you mean by manual intervention. So it's just not clear
21 to me what you're referring to there.

22 Q. Okay. The service delivery coordinator taking
23 and reprocessing of an order does not involve any
24 technician activities; is that correct?

25 A. That's correct.

1 because you have a new CFA?

2 A. I think it's a little simpler than that, because
3 I think they just kind of need to update some records to
4 make sure that's available and process through. So my
5 understanding is that's a fairly simple -- that it's
6 not -- you're not submitting a brand new order. It's
7 usually happening realtime, and there is some updating to
8 the system to log that -- you know, log that new CFA.

9 Q. My understanding from Ms. Million is that it can
10 be a new order or it can be an internal process, either
11 one; correct?

12 A. Well, I mean, I think in terms of the proposed
13 rates that we've proposed here in this case, what we're
14 talking about is it's a limited situation when we're
15 talking about CFA changes for loops. It's coordinated
16 cutovers at the time of the cut for two or four-wire
17 analog loops.

18 Q. But I'm not talking about that. I'm talking
19 about the \$72 and change rate that we have in place that's
20 the basis for this study.

21 A. Right.

22 Q. It could be either a new order or it can be an
23 internal process change that's submitted; correct?

24 A. Yeah. That's correct in that case. That's not
25 what we're asking for, for a rate for CFA change here.

1 Q. And then the other component of this cost study
2 is the design component. And as I understand it, the
3 design component is actually someone sitting off in Des
4 Moines, Iowa, I believe it is, who, when the new CFA is
5 submitted by Eschelon, actually pulls up on a computer
6 system the facility to see, number one, whether there's
7 a -- where the old CFA was, and, number two, whether
8 there's a new place on a frame for another new CFA. Is
9 that your understanding as well?

10 A. Well, that was kind of what I was testifying to
11 earlier that there's not a lot of details built in here.
12 There's some, like, 35-minute times and these large chunks
13 of times. So it's not always clear to me what all is
14 being covered in that functionality there. And I think
15 that's what I testified to earlier this afternoon, that
16 that wasn't clear. We've got 35 minutes for this and
17 10 minutes for that. It's not clear to me all that is
18 being encompassed in that. There's no detailed
19 description behind these studies.

20 Q. Right. And sometimes by way of support for
21 studies you have someone come in to explain them. And
22 Ms. Million explained that this design function is what I
23 just said, that is, a person at a computer who has to find
24 out where the old CFA assignment was and search and find a
25 new place on a frame in the central office where you can

1 reconnect to another CFA.
 2 A. Well, it's my understanding that the CLEC gives
 3 the CFA to -- is giving the CFA to Qwest. So I don't know
 4 that a Qwest person is searching for a new CFA. They're
 5 searching to -- they may say that CFA is on this frame
 6 next to the current one.
 7 Q. They have to verify its availability on Qwest's
 8 system; right?
 9 A. Yes.
 10 Q. And, again, this doesn't involve any technician
 11 activities, does it?
 12 A. That's not any central office activity for that.
 13 MR. DEVANEY: Thanks. That's all I have.
 14 THE WITNESS: For everything?
 15 MR. DEVANEY: For everything.
 16 THE WITNESS: Do I get Jason next?
 17 ARBITRATOR RODDA: That's it for this witness?
 18 MR. DEVANEY: I think we're done.
 19 ARBITRATOR RODDA: Okay. Did you have any?
 20 MR. MERZ: I do not.
 21 ARBITRATOR RODDA: Because he's such a good
 22 witness.
 23 MR. MERZ: Yeah. He doesn't need me.
 24 ARBITRATOR RODDA: You could have left hours ago.
 25 MR. MERZ: Yeah.

1 And if I came in grumpy, I'm sorry.
 2 MS. CLAUSON: Someone stole your car.
 3 ARBITRATOR RODDA: That's exactly right, and it
 4 was Monday. But no, I appreciate the way that you
 5 prosecuted this case, and it made it easy for me, and your
 6 witnesses were great. So thank you very much.
 7 (The Arbitration concluded at 4:25 p.m.)
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1 THE WITNESS: That has happened a few times when
 2 the attorney couldn't make their plane.
 3 ARBITRATOR RODDA: All right. Well, thank you
 4 very much.
 5 THE WITNESS: Thank you.
 6 MR. MERZ: Your Honor, that's our last witness,
 7 so I think we're done.
 8 ARBITRATOR RODDA: Except for briefing.
 9 MR. MERZ: Except for briefing.
 10 ARBITRATOR RODDA: Have you all talked about it?
 11 MR. MERZ: We've not. I don't know when the
 12 transcript is likely to be available.
 13 ARBITRATOR RODDA: Let's go off the record so we
 14 can talk to Michele.
 15 (A discussion was held off the record.)
 16 ARBITRATOR RODDA: All right. So just briefly
 17 back on the record. During the off-the-record discussion,
 18 the parties have agreed that they will file one
 19 simultaneous closing brief, and that would be due on
 20 April 27th; correct?
 21 Everyone is nodding.
 22 MR. MERZ: Yes.
 23 MR. TOPP: Yes.
 24 ARBITRATOR RODDA: I just want to thank the
 25 parties. It was actually a very pleasurable experience.

1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)
 3
 4
 5
 6 I, MICHELE E. BALMER, Certified Reporter
 7 No. 50489 for the State of Arizona, do hereby certify that
 8 the foregoing printed pages constitute a full, true and
 9 accurate transcript of the proceedings had in the
 10 foregoing matter, all done to the best of my skill and
 11 ability.
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 13 WITNESS my hand this 3rd day of April, 2007.
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