

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DOCKET NO. 06B-497T VOLUME I

IN THE MATTER OF THE PETITION OF QWEST CORPORATION FOR
ARBITRATION WITH ESCHELON TELECOM, INC. PURSUANT TO
47 U.S.C. SECTION 252 OF THE FEDERAL TELECOMMUNICATIONS
ACT OF 1996.

PURSUANT TO NOTICE to all parties in
interest, the above-titled matter came on for hearing
before MANA L. JENNINGS-FADER, Administrative Law Judge
of the Public Utilities Commission, on April 17, 2007,
9:01 a.m., at 1560 Broadway, Suite 250, Denver,
Colorado, said proceedings having been reported in
shorthand by Robin M. McGee, Registered Professional
Reporter.

WHEREUPON, the following proceedings were
had:

1 APPEARANCES:

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1	EXHIBITS	MARKED	ADMITTED
2	Exhibits No. 1 through 27A	5	
3	Exhibit Nos. 3, 4, 4A		69
4	Exhibit Nos. 9, 10, 11		174
5	Exhibit Nos. 12, 13, 14		154
6	Exhibit Nos. 15, 16, 17		177
7	Exhibit No. 28	129	140
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1 PROCEEDINGS
 2 (Exhibits 1 through 27A marked for
 3 identification.)
 4 A.L.J. JENNINGS-FADER: I call this hearing
 5 to order.
 6 This is hearing in Docket No. 06B-497T in the
 7 matter of the petition of Qwest Corporation for
 8 arbitration with Xcel Tele -- excuse me -- Eschelon;
 9 Telecom, Inc., pursuant to 47 U.S.C. Section 252 of the
 10 Federal Communications Act of 1996. This hearing is
 11 scheduled today pursuant to Decision No. R06-1288-I.
 12 My name is Mana Jennings-Fader. I'm the
 13 administrative law judge assigned by the Commission to
 14 hear this case.
 15 We'll begin this morning by taking
 16 appearances, beginning with petitioner.
 17 MR. MCGANN: On behalf of Qwest Corporation,
 18 David McGann.
 19 MR. TOPP: And Jason Topp, T-o-p-p.
 20 A.L.J. JENNINGS-FADER: Good morning,
 21 gentlemen.
 22 MR. MERZ: Good morning, Your Honor. Greg
 23 Merz, representing Eschelon Telecom of Colorado, and
 24 also representing Eschelon, Karen Clauson, in-house
 25 counsel for Eschelon.

1 A.L.J. JENNINGS-FADER: Good morning,
 2 Mr. Clauson and Topp -- actually, Mr. Merz. I'll get it
 3 straight.
 4 A couple of preliminary matters: First is
 5 that pursuant to Commission practice, this proceeding is
 6 being Webcast. I ask whether any party present has any
 7 objections.
 8 MR. TOPP: No objection.
 9 MR. MERZ: No objection.
 10 A.L.J. JENNINGS-FADER: The second is to
 11 Qwest, Mr. McGann. Qwest filed a copy of the final
 12 issues matrix in this proceeding on -- I believe it was
 13 Friday. Is that correct?
 14 MR. MCGANN: That is correct.
 15 A.L.J. JENNINGS-FADER: Did you also file a
 16 disk of that particular filing?
 17 MR. MCGANN: I am not sure. I will have to
 18 check on that. Actually, I have a call in to my
 19 assistant right now because -- actually, if I can bring
 20 up one other matter.
 21 A.L.J. JENNINGS-FADER: You may.
 22 MR. MCGANN: It has to do with Exhibits 1 and
 23 2, which are the -- No. 1, I believe, is the
 24 interconnection agreement, and No. 2 is the joint issues
 25 matrix.

1 I am asking my assistant to bring those over
 2 now because I neglected to bring them over this morning,
 3 so we will be submitting -- marking those once my
 4 assistant arrives with those.
 5 With respect to the interconnection
 6 agreement, there is -- I believe, at some point, we're
 7 going to have to caucus with the folks from Eschelon to
 8 make sure that we're in agreement in terms of the final
 9 interconnection agreement that we would like to present.
 10 There have obviously been a lot of changes to the
 11 interconnection agreement, so I would just like an
 12 opportunity to caucus with counsel to make sure that
 13 we're in agreement in terms of the final interconnection
 14 agreement that should be submitted as Exhibit 1.
 15 A.L.J. JENNINGS-FADER: Could you -- I don't
 16 know what the plans are with respect to when you would
 17 expect your assistant to arrive, but might that occur
 18 during the morning break?
 19 MR. MCGANN: I'm hoping it occurs within the
 20 next half-hour, so yes.
 21 A.L.J. JENNINGS-FADER: Thank you.
 22 With respect to the disk of the final issues
 23 matrix, we do require that to be filed, so if -- at the
 24 conclusion of this hearing. Would you please be sure
 25 that that is filed with the Commission.

1 MR. MCGANN: I absolutely will.
 2 A.L.J. JENNINGS-FADER: Thank you.
 3 I understand from reading the final issues
 4 matrix that a number of issues have been closed since
 5 the filing of the rebuttal. And a note on the record at
 6 this point: Eschelon referred to what I call its
 7 rebuttal testimony as surrebuttal testimony.
 8 For purposes of my discussion as follows,
 9 reference to rebuttal testimony includes both Qwest's
 10 rebuttal testimony and Eschelon's surrebuttal testimony.
 11 So I just didn't want anybody to get confused about what
 12 I'm talking about.
 13 But I understand that a number of issues have
 14 been closed based on my reading of the final issues
 15 matrix. If I may give you a list of what I understand
 16 to have been closed, and you all can tell me whether I'm
 17 correct or not. And this is purely as a result of
 18 reading the final issues matrix, not as a result of
 19 prior closings of issues.
 20 It appears to me that Issues 8-20, 8-20-A,
 21 8-21 and all subissues, 8-22 have been closed. I
 22 believe there was another one.
 23 First of all, am I correct as to those
 24 issues?
 25 MR. TOPP: Yes, Your Honor.

1 MR. MERZ: Yes, Your Honor.
 2 A.L.J. JENNINGS-FADER: Thank you. And the
 3 parties will forgive me. Was there another one also
 4 that was closed?
 5 MR. MERZ: I think Your Honor might be
 6 thinking of 9-50, which is one we were talking about
 7 even as of Friday.
 8 MR. TOPP: Isn't there --
 9 MS. CLAUSEN: 9-33-A is the another one.
 10 MR. TOPP: 9-33-A.
 11 A.L.J. JENNINGS-FADER: Let me check my notes
 12 here and make sure that the -- any others besides those
 13 issues that have been closed since the filing of the
 14 rebuttal testimony?
 15 MR. TOPP: It's my understanding, on Friday,
 16 we reached agreement on Issue 9-50 and --
 17 A.L.J. JENNINGS-FADER: 50?
 18 MR. TOPP: Yes. So we will submit the
 19 agreed-upon language, but we have reached resolution of
 20 that issue.
 21 A.L.J. JENNINGS-FADER: Eschelon, is that
 22 your understanding as well?
 23 MR. MERZ: I'm sorry, Your Honor?
 24 A.L.J. JENNINGS-FADER: Is that your
 25 understanding as well?

1 MR. MERZ: 9-50 except Section 1.73, which
2 overlaps 9-50 and, I believe, 9-53. The dispute
3 relating to 1.73 is not closed.

4 A.L.J. JENNINGS-FADER: So let me see -- let
5 me make my notes here. Give me the section again?

6 MR. MERZ: Section 1.7.3. It's a section
7 relating to phase-out of certain elements and services.
8 The dispute related to that section has not closed.

9 A.L.J. JENNINGS-FADER: With respect to that
10 dispute, Counsel, is that contained exclusively within
11 Issue 9-50, or is does also overlap with another issue
12 which is still at issue?

13 MR. MERZ: It overlaps 9-53, which is still
14 at issue.

15 A.L.J. JENNINGS-FADER: So to the extent that
16 overlaps, could -- I consider 9-50 closed except for the
17 overlap with 9-53.

18 MR. MERZ: That would be accurate.

19 A.L.J. JENNINGS-FADER: Counsel?

20 MR. TOPP: Sure.

21 A.L.J. JENNINGS-FADER: Counsel -- I found my
22 notes.

23 The other issue I was wondering whether it's
24 been closed or not is 9-22-B, as in boy. Excuse me.
25 Boy, I tell you what: These numbers may be the death of

1 me. 22-90-B, as in boy, is that issue also closed? And
2 with respect to that, I'm referring to the issues --
3 final issues matrix at Page 113. Where Issue 22-90-B is
4 left intentionally left blank, that has in the past
5 indicated a closed issue. Does that indicate a closed
6 issue here?

7 MR. MERZ: Yes, I believe so.

8 MR. TOPP: I don't think anything's reopened
9 in that area.

10 A.L.J. JENNINGS-FADER: So closed it is.
11 Thank you, Counsel.

12 While we're talking, or at least I'm talking
13 about the final issues matrix, I'd like counsel to refer
14 to Page 96 of that filing. Could someone help me out
15 with why in the column under 12-64-A, as in Albert, it
16 says "intentionally left blank," where, once again, that
17 would normally indicate a closed issue?

18 MR. MERZ: I believe that's actually just an
19 error in the document.

20 A.L.J. JENNINGS-FADER: Counsel?

21 MR. TOPP: Qwest's proposal is intentionally
22 left blank. I think Eschelon does have language --

23 A.L.J. JENNINGS-FADER: But in the column
24 under "issues," it says "intentionally left blank,"
25 which usually indicates closed issue.

1 MR. TOPP: Okay. Yes. That phrase should be
2 deleted. I understand.

3 A.L.J. JENNINGS-FADER: Thank you.

4 And finally, Counsel, there is a discussion
5 and a list of issues at Pages 120 to 130 of the final
6 issues matrix under the heading Potentially Stayed
7 Issues.

8 What is -- what does that mean, and what is
9 the status of those issues with respect to this
10 arbitration?

11 Qwest?

12 MR. TOPP: Those issues are issues that are
13 being addressed as a part of wire center proceedings.
14 There is some dispute between the parties as to how
15 those should be treated. There is a wire center
16 proceeding that is taking place in parallel with this
17 proceeding in Colorado. The direct and answer testimony
18 did not address those issues.

19 A.L.J. JENNINGS-FADER: You'll need to be
20 clear with me. First of all, could you give me the
21 docket number of Colorado's wire center proceeding. And
22 I assume that that's the non-impairment proceeding.

23 MR. TOPP: I believe that that is correct.

24 And I do not have the docket number.

25 MR. MCGANN: And this is David McGann. I

1 should know it and don't, so I can -- I can get that for
2 you.

3 A.L.J. JENNINGS-FADER: Is it -- is it a
4 now -- perhaps Eschelon can provide the docket number.

5 MR. MERZ: I'm looking, actually, at Page 125
6 of the matrix. Let's see if this is right. Actually,
7 no, that's not the right page.

8 MS. CLAUSON: 122.

9 MR. MERZ: Yes. It's on Page 122.

10 A.L.J. JENNINGS-FADER: There it is.

11 MR. MERZ: There's reference to the docket,
12 and it's actually definitional as to the wire center
13 docket, so ...

14 A.L.J. JENNINGS-FADER: So the docket number
15 is 06M-080T. Is that correct?

16 MR. MERZ: That's correct, Your Honor.

17 A.L.J. JENNINGS-FADER: Mr. McGann, does that
18 refresh your recollection?

19 MR. MCGANN: Yes, it does. And I believe
20 that's the docket number.

21 A.L.J. JENNINGS-FADER: I'm sorry, Mr. Topp.
22 You were in the middle of saying that -- that the issues
23 are being addressed in the wire center proceeding that
24 neither the direct nor the answer testimony -- and I
25 stopped you there. Filed in this proceeding or filed in

1 the wire center proceeding?

2 MR. TOPP: Filed in this proceeding --

3 A.L.J. JENNINGS-FADER: Thank you.

4 MR. TOPP: -- address those issues. And --
5 and none of Qwest's testimony addressed those issues.
6 Eschelon does contain some reference in Mr. Denney's
7 last round of testimony in which he makes some
8 suggestions procedurally on how to handle that.

9 It's Qwest's position that these issues
10 should be decided once and should be decided as a part
11 of the generic proceeding addressing these issue. And
12 Eschelon has -- has taken the position that -- that sort
13 of -- and that is our position, and the question for the
14 Court is how you mesh those together.

15 Do you keep this proceeding open and
16 incorporate the results of that proceeding in order to
17 reach a decision, or close this at the end, enter an
18 interconnection agreement, and reopen the -- and have
19 the parties amend their interconnection agreement to
20 reflect the results of that proceeding?

21 It's very possible that we won't need to come
22 to that point because of sort of the parallel nature of
23 these two proceedings that are taking place, but it is
24 sort of a procedural nuance that we need to figure out
25 how to address.

1 A.L.J. JENNINGS-FADER: Eschelon?

2 MR. MERZ: Our position is what we are
3 seeking in this arbitration is an ICA that addresses all
4 of the issues. And the issues that are the subject of
5 the wire impairment or the impairment proceeding, the
6 wire center proceeding, are really critical issues for
7 the parties' agreement.

8 And our proposal is that you should defer any
9 ruling as to those issues pending some result in the
10 wire center proceeding. Once that proceeding has
11 concluded, there will be presumably negotiation between
12 the parties about how the results of that proceeding
13 ought to be reflected in contract language.

14 To the extent that there are disputes about
15 how the results of that proceeding should be reflected
16 in contract language, then we would hope to come before
17 you again to have those disputes resolved, although at
18 this point, we can't tell what those disputes might be
19 or whether there even will be any.

20 But the result that we hope doesn't occur is
21 that we finish this arbitration, that there's a final
22 ruling that doesn't resolve these issues.

23 In Minnesota, what the ALJs did and what the
24 Commission did is exactly what we're suggesting; and
25 that is, defer considering the issues, keep the

1 proceeding open until the wire center case has been
2 resolved to wait and see whether there are still
3 language issues that have yet to be resolved.

4 In the meantime, the issues that the parties
5 have more thoroughly provided a record on can be
6 determined. I would say that we have, as part of our
7 testimony, put in orders from three other commissions
8 that address these issues. And we think that, if it
9 were necessary to decide the issues on the record that
10 we have now, you have enough in front of you to do that.

11 But to the extent we agree with Qwest, we
12 agree that we really shouldn't be doing things twice,
13 and so let's wait and see what happens in the wire
14 center proceedings, but don't call this proceeding done
15 until those issues are done. And part of the concern
16 that we have is that there's closed language in this ICA
17 that is interdependent with these wire center issues.

18 And so if you have -- if you say that we've
19 got a contract that will be amended to include those
20 other issues, the wire center issues, you really have a
21 contract that's got some pretty big holes in it. So it
22 really would end up being a document that is ultimately
23 unworkable. Rather than have a document that is
24 unworkable, let's wait until we get to the end, have one
25 compliance filing that does everything, resolves all of

1 the issues.

2 A.L.J. JENNINGS-FADER: Mr. Topp or
3 Mr. McGann, do you have any estimation as to when the
4 wire center proceeding might be concluded with a final
5 Commission decision sufficient to implement, if the
6 Commission were so inclined, Eschelon's suggestion?

7 MR. MCGANN: My recollection of the
8 procedural schedule in that docket is that essentially,
9 the docket was submitted on the papers. We have, I
10 believe, initial statements of position due at the
11 beginning of May, reply statements of position due, I
12 believe, at the beginning of June and, obviously, an
13 order and perhaps exceptions thereafter, so ...

14 A.L.J. JENNINGS-FADER: Excuse me. So it's a
15 recommended decision, not a Commission initial decision?

16 MR. MCGANN: That is correct, because it is
17 in front of A.L.J. Adams at this point. So obviously,
18 it's difficult to say. I would anticipate we would have
19 an order, let's say, four weeks after that those rounds
20 of brief are submitted -- briefs are submitted and
21 exceptions after that.

22 So trying to do a rough calculation, I'm
23 assuming sometime, perhaps at the end of July, beginning
24 of August, we might have an order coming out of that
25 docket. I think that's an ambitious schedule, but we

1 are hoping that we would have something around that
2 period of time.

3 A.L.J. JENNINGS-FADER: Mr. Merz? Merz
4 (pronouncing)?

5 MR. MERZ: Merz, like Fred and Ethel.

6 A.L.J. JENNINGS-FADER: I know you're tired
7 of using that line, and I apologize for forcing you to,
8 Mr. Merz.

9 If we were to -- if the Commission were to
10 accept Eschelon's proposal in the intervening time
11 between now and, let's say -- September is ambitious --
12 so let's be, perhaps, more realistic and say October,
13 November, what will Eschelon and Qwest do with respect
14 to the interconnection agreement?

15 MR. MERZ: The parties have a bridge
16 agreement that they've been operating under for quite a
17 while now. The negotiations in these various
18 arbitration proceedings have been going on literally for
19 years. The end now, we believe, is in sight, but at the
20 same time, given the history we have and the amount of
21 evidence gone into negotiating these issues, we don't
22 want to end up at the end of the day with something less
23 than a complete contract.

24 So we would continue to operate under the
25 bridge agreement that's been in place between the

1 parties.

2 A.L.J. JENNINGS-FADER: If the Commission
3 were not to accept Eschelon's proposal, what, then,
4 would happen from Eschelon's perspective? And I
5 don't -- I wish you not to provide your arguments again,
6 but procedurally, what would happen? Would it require a
7 second arbitration? If there were disagreements,
8 what -- procedurally, how would Eschelon see this going
9 forward?

10 MR. MERZ: There would have to be some forum
11 for the parties to resolve any disputes that there might
12 be over this language, whether it be a second
13 arbitration or some other similar kind of proceeding.
14 But we'd have to end up with a -- with contract language
15 that -- that both parties either agree or the Commission
16 says appropriately incorporates the decisions that are
17 made in that wire center proceeding. So there would
18 have to be some kind of hearing if the parties weren't
19 able to come to agreement on that language.

20 A.L.J. JENNINGS-FADER: Thank you.

21 Mr. Topp, could you respond to Eschelon's
22 statements with respect to both additional proceedings
23 that may be necessary if the decision is to accept
24 Qwest's proposal and also the applicability of a bridge
25 agreement if Eschelon's proposal were to be accepted?

1 MR. TOPP: I -- there's no disagreement that
2 the parties would operate under the bridge agreement
3 until we have a new contract in place. That doesn't
4 govern all issues. There's also an interconnection
5 agreement that is out there that would -- that would be
6 governing, in part, as well.

7 But with respect to the proceedings that
8 would be necessary, we would agree that it would be
9 necessary to resolve disputed issues related to contract
10 language potentially, but we would suggest that
11 Eschelon's not alone in having those potential disputed
12 issues and that efficiency would suggest that having
13 those resolved in a forum where they can be resolved for
14 all parties is the best approach.

15 A.L.J. JENNINGS-FADER: And what would that
16 forum be, in Qwest's opinion?

17 MR. TOPP: I'm not sure of precisely how that
18 would be set up, but I think that would come out of the
19 wire center proceeding or ...

20 MR. MERZ: And, Your Honor, the parties have
21 filed their evidence, as Mr. McGann has indicated, and I
22 don't believe any party has filed specific language. So
23 at least in the procedural posture that the wire center
24 case is now, there's not going to be any language that's
25 produced as a result of that proceeding.

1 A.L.J. JENNINGS-FADER: Let me understand
2 what you're saying, Mr. Merz. No specific
3 interconnection agreement language is proposed as a
4 result -- or expected to be determined as a result of
5 the current wire center proceeding in Colorado?

6 MR. MERZ: Yes. And the issues in front of
7 the Commission in the wire center proceeding are issues
8 of general policy, if you will, that the parties will
9 then have to kind of use the results of that to come up
10 with language. But no party has proposed specific ICA
11 language in the wire center proceeding, and specific ICA
12 language really has always been something that's dealt
13 with in arbitrations.

14 A.L.J. JENNINGS-FADER: Qwest, on that point,
15 please?

16 MR. MCGANN: I do. I believe Mr. Merz is
17 correct that there has not been specific interconnection
18 agreement language proposed in the wire center docket.
19 I suppose the parties have a disagreement as to whether
20 or not they will be able to proceed based upon a ruling
21 in the wire center docket without that contract
22 language.

23 I think we would I assert that essentially,
24 we should be able to take the Commission's decision in
25 the wire center docket and be able to proceed and adopt

1 language for our agreement that incorporates that
2 decision. Mr. Merz's position, obviously, is that he
3 would like the language either litigated in the wire
4 center docket or litigated here.

5 I -- and I think our differences really boil
6 down to that, is whether or not the parties actually
7 need language to come out of either one of these dockets
8 or whether or not the parties should be able to reach
9 some agreement based upon the Commission's decision in
10 the wire center docket. If I had to articulate the
11 parties' dispute, that's the way I would articulate it.

12 A.L.J. JENNINGS-FADER: When Qwest --
13 Mr. McGann, when you say that Qwest would then take the
14 language and adopt the language or in -- language in an
15 ICA, might Qwest also use the change management process,
16 the product catalog or some other mechanism to reach
17 that, or would Qwest only use the ICA mechanism?

18 MR. MCGANN: May I consult with Mr. Topp for
19 a second?

20 A.L.J. JENNINGS-FADER: You certainly may.
21 (Discussion off the record.)

22 MR. MCGANN: In response to your question, I
23 don't want to foreclose actually any of those options.
24 I think the problem is that -- the problem I'm having in
25 answering your question is, until we see the actual

1 decision, it's difficult to determine what vehicles
2 might be used to incorporate that decision into the
3 parties' operations. And so I guess I suppose I'm
4 shooting in the dark at this point, which is why I'm
5 giving you a very vague answer. I mean, I wouldn't want
6 to foreclose any -- any -- any vehicle at this point in
7 time, but I think it's dependent upon the actual
8 decision that the Commission renders.

9 A.L.J. JENNINGS-FADER: Do you anticipate the
10 Commission's decision giving direction with respect to
11 the mechanism Qwest should use --

12 MR. MCGANN: No.

13 A.L.J. JENNINGS-FADER: -- i.e., do you
14 expect specific direction about use in an
15 interconnection agreement, use product and process, use
16 under change management process, use something else?

17 MR. MCGANN: No. I think the Commission
18 decision, the substantive decision, may dictate what
19 vehicle might be used to effectuate the decision, I
20 guess is what I'm trying to say. I'm trying to be as
21 clear as possible without -- again, since I don't know
22 exactly what the Commission's going to say or how
23 they're going to rule, it's difficult for me to give you
24 a specific answer. But what I'm hoping is that the
25 Commission's substantive active decision would then --

1 would then suggest certain vehicles that could be used
2 to implement that decision.

3 A.L.J. JENNINGS-FADER: Thanks, Counsel.
4 Thanks, all counsel.

5 Putting aside the motion to dismiss issues
6 involving rates for wholesale products and services, is
7 there any other pending motion in this proceeding?

8 Mr. Topp?

9 MR. TOPP: No, there is not.

10 MR. MERZ: No, Your Honor.

11 A.L.J. JENNINGS-FADER: Is the order of
12 witnesses provided by Qwest on April 13th the correct
13 order of witnesses, Mr. Topp, as far as Qwest is
14 concerned?

15 MR. TOPP: It is the correct order of
16 witnesses. We have a couple of witnesses that Eschelon
17 has indicated that they have no questions for, and so
18 will be submitting their testimony on paper.

19 A.L.J. JENNINGS-FADER: May I inquire as to
20 what happens if I have questions? Who are the
21 witnesses?

22 MR. TOPP: Mr. Easton and Mr. Hubbard.

23 A.L.J. JENNINGS-FADER: Are they available?

24 MR. TOPP: I can figure out if I can get them
25 available.

1 A.L.J. JENNINGS-FADER: That might be wise.
2 I'll check to determine whether I have questions for
3 them.

4 MR. TOPP: Okay.

5 A.L.J. JENNINGS-FADER: So aside from
6 Mr. Easton and Mr. Hubbard, Ms. Albersheim, Ms. Million
7 and Ms. Stewart will be the witnesses, in that order?

8 MR. TOPP: That is correct.

9 A.L.J. JENNINGS-FADER: Thank you.
10 Eschelon, is the order of witnesses provided
11 in the order of witnesses filed on April 13th correct?

12 MR. MERZ: It is. I would note that the
13 testimony of James Webber, the opening testimony is
14 adopted both by Mr. Starkey and then with respect to one
15 particular issue by Mr. Denney. So Mr. Webber won't be
16 here as a witness, but Mr. Starkey and Mr. Denney will
17 respond to any questions that might have been asked of
18 Mr. Webber.

19 A.L.J. JENNINGS-FADER: Okay. Thank you.

20 I can tell you now, Mr. Topp, that I know I
21 have questions for both Mr. Easton -- well, for
22 Mr. Easton. I'm not sure about Mr. Hubbard. I'll have
23 to let you know after the break, but I know for sure
24 Mr. Easton.

25 MR. TOPP: Okay.

1 A.L.J. JENNINGS-FADER: My last preliminary
2 matter before I ask whether the parties have any
3 preliminary matters is that we do not have a date at
4 present set for post-hearing statements of position and,
5 presumably, responses to those post-hearing statements
6 of position.

7 My order indicated that those dates would be
8 set at the hearing. So at some point in the hearing, I
9 would like the parties to propose those dates so that we
10 can get those set.

11 MR. MERZ: Your Honor, just one question
12 about that. In the two other cases that have been tried
13 so far, the parties actually have just had one round of
14 post-hearing positions. Would you prefer two rounds?

15 A.L.J. JENNINGS-FADER: I really -- it's the
16 parties' preference, frankly, and one or two or none,
17 although I don't think we'll be going to zero, is fine.

18 MR. MERZ: All right. Thank you.

19 A.L.J. JENNINGS-FADER: With respect to
20 preliminary matters from the parties, putting aside the
21 motion because I have questions that -- I'd like to hear
22 argument on the motion, so any other preliminary matters
23 from the parties?

24 Qwest?

25 MR. TOPP: No, Your Honor.

1 MR. MERZ: No, Your Honor.

2 A.L.J. JENNINGS-FADER: Very good. We can
3 then move to consideration of the motion to dismiss
4 issues involving rates for wholesale products and
5 services which was filed by Qwest.

6 I do have a couple of things I'd like the
7 parties to discuss. Let me first ask Qwest as the
8 moving party whether it has anything it wishes to add to
9 the arguments that are put forth in its motion.

10 MR. TOPP: I think that the arguments that we
11 put forth in the motion largely cover our position. In
12 our view, this issue is a practical one. The Commission
13 should determine whether it wants to resolve cost
14 issues.

15 In interconnection agreement arbitrations,
16 historically, the answer to that question has been no.
17 Eschelon's pushed that issue here. We believe that
18 these sorts of decisions should be made in a forum that
19 is binding on all CLECs rather than an individual CLEC.

20 There are two vehicles for accomplishing
21 that. One is the cost docket that is -- that I
22 understand will be filed shortly and has been under
23 discussion for some period of time in Colorado. The
24 second is the process by which, while there is disputed
25 language, there is a process for resolving rate issues

1 that have not been addressed in prior cost dockets.
2 Just responding to a couple of Eschelon
3 arguments --

4 A.L.J. JENNINGS-FADER: I'm sorry. I need to
5 ask you about that first --

6 MR. TOPP: Sure.

7 A.L.J. JENNINGS-FADER: -- point you just
8 made before you move on, and I'll allow you to do so.

9 If this interconnection agreement currently
10 being arbitrated is not in existence, the language Qwest
11 cites in its motion is language from the -- being --
12 currently being arbitrated agreement. Is that correct?
13 Section 22.6.1 is in the -- is new language. Is that
14 correct?

15 MR. TOPP: That is correct.

16 A.L.J. JENNINGS-FADER: Can you explain to me
17 how that language would apply to these issues during the
18 pendency of the arbitration, which is what I think
19 you're suggesting, isn't it?

20 MR. TOPP: Well, what I'm suggesting is at
21 the conclusion of this arbitration, when the contract is
22 filed, the -- that section provides a process by which
23 Qwest would file new proposed rates for issues that have
24 not been determined in prior cost dockets.

25 And so the way we would envision this working

1 is, we would file our cost support with the Colorado
2 Commission. We'd be entitled to charge that rate until
3 the Commission determines -- you know, unless the
4 Commission determines that it needs to be altered in
5 some respect on an interim basis, but that would be done
6 in a proceeding that's binding on all parties as opposed
7 to just Eschelon and Qwest.

8 A.L.J. JENNINGS-FADER: Thank you. Now, with
9 respect to your response to Eschelon's point ...

10 MR. TOPP: Eschelon has argued that the law
11 requires that this issue -- that these issues be
12 resolved. We would suggest that there are numerous
13 examples of cost issues being deferred to cost
14 proceedings over the last 10 years since the passage of
15 the act and that certainly, in resolving this issue,
16 that is one of the decisions that is within your
17 purview. So I don't think that this is an issue in
18 which the Colorado Commission or the Court is compelled
19 to make a decision one way or the other.

20 And secondly, Eschelon raises a concern about
21 the unfairness of Qwest unilaterally imposing rates.
22 And we would suggest that both the cost docket and --
23 which is a proceeding in which these issues could be
24 raised and binding on everyone as well as this
25 process -- and the interconnection agreement provide

1 alternatives that protect against that concern.

2 In short, we think that for efficiency sake,
3 it's critical that rate issues get resolved in a forum
4 which is binding on -- throughout the industry. That's
5 typically the way that that has been handled, and we
6 think that that's appropriate here.

7 A.L.J. JENNINGS-FADER: Thank you.
8 Eschelon?

9 MR. MERZ: Thank you, Your Honor.

10 It's important to understand that Qwest isn't
11 saying here that the ICA shouldn't include rates for
12 these elements. Qwest has proposed rates. Qwest would
13 intend to charge those rates. But Qwest is taking the
14 position that because it is an arbitration and not a
15 cost case, the Commission should allow those rates to
16 really go into effect without any Commission review.

17 The federal act says that rate issues are
18 appropriate for arbitration, and state commissions that
19 have grappled with this issue have distinguished between
20 interim rates and final rates.

21 Qwest wants to charge these rates, but it has
22 provided literally nothing to show that the rates that
23 it has proposed are cost based. Eschelon, on the other
24 hand, has presented evidence that shows that those rates
25 are not cost based and, in fact, are well in excess of

1 cost.

2 A.L.J. JENNINGS-FADER: Could we keep this to
3 the procedural question and not go to the substance of
4 the question, which I do understand?

5 MR. MERZ: Yes. And I guess my point is,
6 think about what happens if these rates aren't decided
7 here. Qwest says, Well, they should be determined later
8 on in this cost case. We have to decide what's going to
9 happen in the interim. Is it going to be the rates that
10 Qwest has proposed, ignore the evidence that has been
11 presented, or should we look at that evidence and figure
12 out what rate makes sense? That's what a number of
13 state commissions have done when faced with the issue of
14 arbitrations and what to do about rate questions.

15 And so assume that Qwest files its cost case,
16 the one that it's talking about. Eschelon is going to
17 be back at square one, filing the very same evidence
18 that it's already provided about why those rates are not
19 appropriate, why they're not cost based. And, really,
20 our point is, that's contrary to the notion of
21 efficiency.

22 The driving factor, according to Qwest,
23 behind its motion is it wants to act efficiently. But
24 these issues are teed up now and they're ready for
25 decision. And we have a problem about what -- if they

1 aren't decided now, what is going to happen in the
2 meantime, because certainly Qwest isn't going to say --
3 provide those rates at no charge. That's something that
4 is just anathema to Qwest. And so they're saying, Let
5 us charge the rates that we have asked for.

6 The language that the parties have agreed
7 on -- and you're correct to note that this would be new
8 language, but that language envisions not that Qwest is
9 going to be the one setting interim rates, but that the
10 Commission is, and that's what we're asking to have
11 happen here.

12 A.L.J. JENNINGS-FADER: Let me start my
13 questions with Qwest.

14 MR. TOPP: Sure.

15 A.L.J. JENNINGS-FADER: Mr. Topp, could --
16 if -- when Qwest files what is referred to as Phase 2 of
17 the wholesale rate docket, which has been pending now
18 for a long time, many years, in fact, assume Qwest files
19 May 1st and perhaps Mr. McGann, who would know the
20 numbers a little faster, first of all, will Qwest be
21 filing -- under what provision of law will Qwest be
22 filing on May 1st? Will you be filing pursuant to state
23 law or pursuant to federal law?

24 MR. MCGANN: As currently drafted --

25 A.L.J. JENNINGS-FADER: That will work.

1 MR. MCGANN: -- it is -- it's essentially
2 a -- it's an application under state law requesting that
3 the Commission initiate Phase 2 of the docket pursuant
4 to its -- its -- actually, its order ordering or
5 declaring that it did not have authority to price
6 Section 2-71 elements.

7 So it's essentially an application under
8 state law asking that the Commission price its wholesale
9 services that it's required to provide pursuant to
10 Sections 2-51-B and C. So it is a combination. It is
11 an application under state law, but it requests that the
12 Commission price elements pursuant -- price elements it
13 is required to provide pursuant to 2-51B and C.

14 A.L.J. JENNINGS-FADER: How long does Qwest
15 project that that proceeding will take to final
16 Commission decision?

17 MR. MCGANN: Given how long those proceedings
18 take -- the reason I'm hesitating is, we actually would
19 like to have a discussion with staff, with trial staff
20 on scheduling. And so that's -- so I'm -- again, I'm
21 kind of shooting in the dark here. But I would -- I
22 would suggest that it would take at least --
23 ambitiously, it would take at least a year to conclude
24 that proceeding.

25 A.L.J. JENNINGS-FADER: And during the time

1 that the as-yet unfiled cost proceeding is pending
2 before the Commission under Qwest's proposal, what rate
3 will Qwest charge? And I don't mean the number. I mean
4 for Issues 22-990-C through I, what rate will Qwest
5 charge?

6 MR. TOPP: Yeah. I think it would make sense
7 for me to answer that question.

8 A.L.J. JENNINGS-FADER: I'm sorry.
9 Whichever.

10 MR. TOPP: The rate that we would charge
11 is -- would be the rate that we proposed unless the
12 Commission modifies it pursuant to the filing process in
13 22-61. And there is -- the way that works is you -- we
14 would file --

15 A.L.J. JENNINGS-FADER: I'm sorry. Just let
16 me understand something, okay? Are you saying -- let me
17 just -- I understand the process under 22.6.1.

18 MR. TOPP: Okay.

19 A.L.J. JENNINGS-FADER: So are you saying
20 that Qwest would charge the rates it has proposed in the
21 current arbitration proceeding and implement the process
22 contained in 22.6.1?

23 MR. TOPP: That is correct. And in my view,
24 the Commission could review those rates there in a forum
25 that is more generally applicable. And alternately,

1 certainly on occasion, in cost dockets rates have
2 been -- have been handled -- as a part of interim rates
3 have been handled as a part of that proceeding. But
4 historically, it has been the case that Qwest's proposed
5 rate has been the rate that CLECs have paid as well the
6 issue has been addressed in a cost docket.

7 A.L.J. JENNINGS-FADER: 22.6.1 applies only
8 to products or services which are offered for the first
9 time. Is that -- and for which there are no Commission
10 approved rates. Is that correct?

11 MR. TOPP: That is correct. There are some
12 disputes regarding the specific language, but each -- it
13 would be our view that each of these rates would go
14 through that process because they are new rates.

15 A.L.J. JENNINGS-FADER: That is products or
16 services for which -- which have, one, not previously
17 been offered by Qwest, for free or otherwise, and two
18 are rates which have not been approved by the
19 Commission?

20 MR. TOPP: There are some disputed -- there
21 are some disputes about what would happen if we had a
22 new rate for something that we had previously offered
23 for free. And that's something that you will decide as
24 a part of this arbitration.

25 A.L.J. JENNINGS-FADER: Okay. Now, I really

1 don't want to confuse these issues because I think it is
2 important to understand what the scope of the accepted
3 language under 22.6.1 is.

4 I understand from reading the language that
5 22.6.1 applies to a set -- quote, A Section 2-51 product
6 or service for which a price, slash, rate has not been
7 approved by the Commission in a TELRIC cost docket,
8 paren, unapproved rate, close paren, close quote. Is
9 that correct?

10 MR. TOPP: That is correct.

11 A.L.J. JENNINGS-FADER: So in that
12 circumstance, why is what Eschelon is suggesting -- to
13 the extent that the products in 22-90-C through I are
14 rates for products or services -- are rates for
15 products -- or rates for products for 2-51, products or
16 services which have not previously been approved by the
17 Commission, why is this arbitration not a substitute for
18 the 22.6.1 process and a reasonable substitute?

19 MR. TOPP: In my view, it's not a reasonable
20 substitute because in this proceeding, you have the
21 participation of two parties. And so the decision you
22 reach here will be binding on only two parties. So it
23 raises the potential for re-litigation of the precise
24 same issues in other arbitration proceedings. And the
25 way practically I would expect that this would work is,

1 in your next proceeding, your next arbitration, brought
2 by another CLEC, if they like the rate that is
3 determined as a part of this proceeding, they will --
4 they will argue that -- that it is a decided issue by
5 the Commission and that Qwest is bound by the result
6 from that arbitration proceeding. If it's a rate that
7 they do not like, they will have the opportunity -- they
8 will argue since they were not a party to this
9 arbitration proceeding, that they should have the right
10 to put in their own evidence in an effort to change the
11 rate that was ordered here.

12 And so it creates a potential for
13 re-litigation of issues and from Qwest's perspective
14 creates a potential of re-litigation of issues only when
15 we succeed as a part of one of the arbitrations.

16 A.L.J. JENNINGS-FADER: Is that not exactly
17 the situation that was created by the Federal
18 Communications' abandonment of the pick-and-choose
19 proceeding? That is to say, the Federal Communications
20 Commission has clearly stated that it is within the
21 purview of any CLEC at any time to seek -- well, under
22 certain circumstances, to seek new -- new provisions to
23 an interconnection agreement, including new rates, based
24 on the cost to serve that particular competitive
25 location exchange carrier. Am I incorrect?

1 MR. TOPP: The evidence that's been
2 presented --

3 A.L.J. JENNINGS-FADER: I'm asking about my
4 understanding of what the FCC has decided.

5 MR. TOPP: The FCC has -- I would disagree
6 with that interpretation, that the FCC has decided that
7 pick and choose does not apply, that there is a right to
8 come in and seek an entirely new contract, but the
9 binding effect of a decision in one proceeding to go in
10 a different direction in the next proceeding is, I
11 think, a real practical problem.

12 A.L.J. JENNINGS-FADER: But nonetheless, one
13 that the Federal Communications Commission has said is
14 acceptable; that is to say, no competitive location
15 exchange carrier is bound by a decision reached in any
16 interconnection arbitration with any other carrier
17 unless that competitive local exchange carrier opts into
18 the entire arbitrated agreement. Yes or no?

19 MR. TOPP: I would say that that should go in
20 both directions if that is the approach that the FCC has
21 taken, and I think that they have done that. But that
22 means that there should be the opportunity to
23 re-litigate those rate issues and -- in every proceeding
24 without any sort of binding effect from the results of
25 the first proceeding.

1 A.L.J. JENNINGS-FADER: And I agree with that
2 if it's an arbitration proceeding. And it may in fact
3 also be the case that on an individual competitive local
4 exchange carrier basis -- yes or no. Help me out here.
5 It may also be the fact that on an individual
6 competitive local exchange carrier basis in a given
7 arbitration that that carrier can, assuming it meets its
8 burden, establish that the rate -- costs to serve that
9 carrier are different, higher or lower, than the
10 Commission approved rate from a generic cost docket.
11 Yes or no?

12 MR. TOPP: That is something that they could
13 approve. I'd like to add to it, but I don't want to
14 disrespect --

15 A.L.J. JENNINGS-FADER: No, sir. I really
16 need to understand.

17 MR. TOPP: That is something that --
18 theoretically, I think you're correct. Practically, I
19 don't think that that exists in this proceeding.

20 A.L.J. JENNINGS-FADER: And "practically"
21 because of the evidence that's been presented to date?

22 MR. TOPP: That is correct.

23 A.L.J. JENNINGS-FADER: But as a matter of is
24 it an issue appropriate in this proceeding, which is one
25 of the touchstones -- one of the touchstone Qwest

1 arguments -- that is where I'm going -- as a matter of,
2 is it within the purview of this proceeding under
3 Federal Communications Commission decisions and rules?
4 That's where I'm going.

5 MR. TOPP: And we have not taken the position
6 that you are prohibited from resolving those issues as a
7 part of this proceeding. What we have said, however, is
8 that there's nothing unique about the Eschelon rate
9 issues that have been raised here, and for efficiency
10 sake, it makes sense to resolve those in a generic
11 proceeding. That is the approach that this Commission
12 has taken in the past, and we think that that is the
13 best result as a part of this proceeding.

14 A.L.J. JENNINGS-FADER: Under Section 22.6.1,
15 the agreed-to language with respect to unapproved rates
16 as defined in that section, when Qwest files -- when
17 Qwest files its proceedings 60 days after one of the
18 triggering events and the Commission holds a proceeding,
19 are the rates that come out of that proceeding final
20 rates or interim rates?

21 MR. TOPP: In my view, those would be interim
22 rates at that point.

23 A.L.J. JENNINGS-FADER: Interim rates pending
24 what?

25 MR. TOPP: Well, I guess it would be pending

1 a cost docket proceeding, so they could be pretty
2 long-term interim rates at that point.

3 A.L.J. JENNINGS-FADER: Would, in Qwest's,
4 view, the filing be -- Mr. McGann, you may have to help
5 us out here. What would the filing be under
6 Section 22.6.1 as accepted? Would it be a state
7 application process, a state advice letter process?
8 Would it be something else? I mean, how -- how does
9 this process, as Qwest envisions it, open up the issue
10 of the interim rate for these particular services and
11 products to the entire CLEC community, competitive local
12 exchange carrier community?

13 MR. MCGANN: I have to say, in -- as I
14 originally contemplated it -- and Your Honor's decision
15 and the Commission's decision may change this in this
16 proceeding --

17 A.L.J. JENNINGS-FADER: It will be a
18 Commission decision.

19 MR. MCGANN: But as I originally envisioned
20 it, it would be actually a filing within the context of
21 this interconnection agreement. It would be a filing
22 pursuant to this section. And that filing would be
23 essentially, the notice would be given to all CLECs, as
24 we do with interconnection agreement filings, amendments
25 and -- and that nature, that we would be making a filing

1 within the context of this proceeding, and all CLECs
2 would be given notice of that filing.

3 A.L.J. JENNINGS-FADER: And would they then
4 have the right, under Qwest's view of the proceeding, to
5 intervene of right in this -- in a subsequent proceeding
6 involving exclusively the arbitration between Qwest and
7 Eschelon?

8 MR. MCGANN: I think in order to give -- to
9 actually give effect to this particular section, I think
10 that would absolutely have to happen, yes. They would
11 have to be given an opportunity to come in and -- and
12 comment.

13 A.L.J. JENNINGS-FADER: Of right?

14 MR. MCGANN: Absolutely. Yeah, absolutely.
15 I think they would have to.

16 Let me put it this way, if I can perhaps take
17 the opposite side of the issue: I can't imagine -- I'm
18 trying to sit here and think under what grounds we would
19 have a right to object. Let's put it that way.

20 A.L.J. JENNINGS-FADER: Next question,
21 Counsels. And then Eschelon, don't feel neglected.
22 With respect to this process, what is -- how is the
23 notice given of a filing pursuant to Section 22.6.1 of
24 the Qwest/Eschelon interconnection agreement, how is it
25 given to other competitive local exchange carriers?

1 MR. MCGANN: My -- my recollection of the
2 section is that it does not address that.

3 A.L.J. JENNINGS-FADER: It does not.

4 MR. MCGANN: And so I envision this at least
5 one of two ways, which is that when the filing is --
6 when the filing is made, that a -- that the physical
7 filing would be served on all the CLECs.

8 The other way to do it would be for the
9 Commission, normal Commission notice -- whenever we make
10 a filing, for example, of the filing of an amendment to
11 an interconnection agreement, we have a notice that we
12 submit with the Commission which then -- which the
13 Commission then publishes. That might be another
14 mechanism.

15 A.L.J. JENNINGS-FADER: So if I understand
16 Qwest's position, it is that at some point, the
17 possibility exists that there will be two separate
18 proceedings involving the same rates going on
19 simultaneously: one, a proceeding to set interim rates
20 pursuant to Section 22.6.1 of the Eschelon and Qwest
21 interconnection agreement, and the other to set
22 permanent rates in the to-be-filed Qwest cost docket.

23 MR. MCGANN: If I may answer.

24 A.L.J. JENNINGS-FADER: Please. Someone.

25 MR. MCGANN: Theoretically, yes. I also

1 envision the fact that if we do have -- we are going to
2 have a cost docket ongoing once we file our application.
3 If a filing was triggered by this section of the
4 interconnection agreement, I am assuming that we would
5 be consolidating those proceedings.

6 So there is a way, in my view, procedurally
7 to take care of the -- the -- having twin proceedings
8 going on with perhaps two different decisions being
9 made. I think procedurally, there is a way to take care
10 of that and in the near term, especially if we have a
11 cost docket proceeding in front of the Commission.

12 A.L.J. JENNINGS-FADER: I don't know which --
13 to which counsel to direct this question, so pardon me.

14 Qwest, on Page 8 of the motion, there is a
15 statement, quote, This Commission, for example,
16 recognized long ago that the wholesale rates to be
17 included in ICA should be established in generic
18 proceedings that are open to all interested carriers,
19 period, close quote.

20 What's the source of that, since none is
21 given?

22 MR. MCGANN: Any may I answer?

23 A.L.J. JENNINGS-FADER: Please.

24 MR. MCGANN: When the Commission initially --
25 let me go back a ways. In 1996, when the legislature

1 passed House Bill 1010, which essentially required that
2 carriers submit -- essentially that Qwest submit tariffs
3 for its wholesale services, Qwest did that. At the same
4 time, the Communication -- the Telecommunications Act of
5 1996 had been passed, and there were arbitration
6 proceedings that were initiated pursuant to the act.

7 The Commission recognized in those
8 arbitration proceedings with those carriers -- and I
9 believe the carriers were several, but I think there
10 were at least AT&T, MCI and Sprint, I think. The
11 Commission recognized the fact that prices were part and
12 parcel of those arbitrations.

13 The Commission also recognized that it was
14 examining Qwest's wholesale tariffs and the prices
15 contained in those tariffs. And it recognized the fact
16 in the arbitration -- recognized the fact in the
17 arbitrations that it was looking at those prices in the
18 wholesale tariff docket; those prices would be the same
19 prices that the parties were going to be using in
20 their -- in their interconnection agreements.

21 And what the Commission stated in its
22 arbitration orders was what -- what we are going to
23 order you to do is, once we come out with prices in that
24 wholesale tariff docket, we want those prices to be
25 rolled into your interconnection agreements. And so I

1 think at least -- so the source of --

2 If I may have a moment, Your Honor.

3 A.L.J. JENNINGS-FADER: I -- I -- Footnote 4
4 references a Commission decision, but I'm curious
5 about -- I want to get there in a roundabout way.

6 MR. McGANN: And that was actually --
7 Mr. Topp was just referring me to that very Footnote 4
8 and the fact that the Commission recognized, again, I
9 think, in the arbitration proceedings and in the
10 wholesale tariff docket that its decision in the
11 wholesale tariff docket was going to be -- the prices
12 that came out of that docket were going to be
13 incorporated into the interconnection agreements.

14 And so I think for procedural efficiency
15 sake, I think this Commission has recognized it's easier
16 to consolidate -- to address those pricing issues in --
17 in a generic proceeding and then move those pricing
18 decisions into individual interconnection agreements.

19 A.L.J. JENNINGS-FADER: In the absence of a
20 then ongoing -- first of all, how far along was the
21 wholesale tariff docket at the time the Commission
22 entered its decisions?

23 MR. McGANN: Entered its decisions in?

24 A.L.J. JENNINGS-FADER: That are referenced
25 in the footnote, that the proceeding -- that the results

1 of that price docket need to be incorporated or should
2 be incorporated into the interconnection agreements
3 being arbitrated.

4 MR. McGANN: It's my understanding -- if I
5 understand your question, it's my understanding that
6 that docket was actually initiated in the mid 1996 time
7 frame, and then the Commission's decision in the
8 wholesale tariff docket came out the following year.
9 And I'm actually -- it looks like it was July 16, 1997,
10 so it was middle -- in the middle of 1997.

11 The arbitrations -- it's my -- it's my
12 recollection that the arbitrations were actually filed
13 in the mid 1996 time frame, and then those decisions
14 came out about nine months after that. I don't think --
15 I don't think they were delayed beyond the nine-month
16 time period set forth in the federal act, but I'm not
17 sure about that.

18 A.L.J. JENNINGS-FADER: With respect to
19 Qwest's argument that the broader proceeding is in the
20 nature of or is undertaken by the Commission pursuant to
21 its arbitration authority, and that's an argument made
22 on Pages 10 to 11, would you help me to understand that
23 argument, please.

24 Mr. Topp, Mr. McGann, I need to understand
25 that argument, because it raises certain questions; for

1 example, how is it arbitration, if no one has negotiated
2 and no one has disputed and no one has asked for
3 arbitration? So how is this pursuant to the
4 Commission's arbitration authority when it appears to me
5 that the conditions precedent to that authority have not
6 been met?

7 MR. TOPP: In my view, the justification for
8 going through that proceeding would be identical to the
9 justification for going through a generic cost docket
10 proceeding.

11 A.L.J. JENNINGS-FADER: No. I'm sorry. Your
12 argument is that a generic cost docket is pursuant to
13 the Commission's arbitration authority?

14 MR. TOPP: Correct.

15 A.L.J. JENNINGS-FADER: Okay. So what are
16 the conditions precedent to arbitration which have been
17 met in the generic cost docket?

18 MR. TOPP: You have rates that have not been
19 set by the Commission that go into interconnection
20 agreements and which the Commission resolves.

21 I think that you have in your inter -- I
22 mean, in this proceeding, you've got those specific
23 rates that have been put into play, and the commissions
24 have decided, as a matter of efficiency, rather than to
25 address those in every single arbitration that pops up

1 before it, to have single unified decisions that resolve
2 those issues for all CLECs.

3 A.L.J. JENNINGS-FADER: If this is pursuant
4 to the Commission's -- and these are process questions.
5 If the generic cost docket is pursuant to the
6 Commission's arbitration authority, which is established
7 in Section 2-52-B-4-C of the federal act, do the time
8 frames -- I'm sorry -- do the time frames of that
9 subsection apply to the generic cost docket?

10 MR. TOPP: I don't know that that issue has
11 ever been addressed or resolved. Certainly, I have not
12 seen a generic cost proceeding that has been completed
13 within the time frames set forth under the statute.

14 A.L.J. JENNINGS-FADER: Would the -- would
15 those -- whether or not the time frames have been met,
16 in your opinion, Counsel, do those -- does that time
17 frame apply if the generic cost docket is pursuant to
18 the Commission's arbitration authority, as you argue?

19 MR. TOPP: I haven't thought of and resolved
20 that question. This issue has not posed a problem to
21 generic cost proceedings in the past.

22 MR. McGANN: If I may add something, Your
23 Honor.

24 A.L.J. JENNINGS-FADER: Please feel free to
25 tag team. I'm good with that.

1 MR. McGANN: It seems to me that the
2 Commission -- that the -- if, arguably, those time
3 limits in the federal act did apply to a generic cost
4 proceeding, it seems to me that a carrier that wanted to
5 invoke those time lines, if the Commission went beyond
6 those time lines, a carrier would then have to invoke
7 that section of the act -- and I don't have it in front
8 of me -- that alleges that a state commission has failed
9 to act within a certain period of time. They would then
10 go to the FCC and say, We need you to act because the
11 state commission has failed to act.

12 It's my understanding that I -- I -- I know
13 of no decision from the FCC in which the FCC, when
14 confronted with a situation where a state commission
15 decided procedurally to deal with cost issues in a
16 generic proceeding and was dealing with those cost
17 issues in a generic proceeding, that the FCC has ever
18 issued an order that said, We declare the state
19 commission has failed to act because they've gone beyond
20 the time lines in the federal act.

21 So as -- as a practical matter, I just simply
22 don't know of an FCC decision where the FCC has found
23 that going beyond those time lines in an on -- when the
24 Commission goes -- when a state commission goes beyond
25 those federally mandated time lines in a generic cost

1 proceeding that the FCC has found that that is a failure
2 of the state commission to act.

3 A.L.J. JENNINGS-FADER: Once again, back to
4 our old friends, old section, Section 22.6.1, under that
5 process, what rate applies during the pendency of the
6 proceeding before the Commission?

7 MR. TOPP: Until the Commission has altered
8 Qwest's filed proposed rate, Qwest's filed proposed rate
9 applies, in our view. Now, Eschelon has suggested some
10 language to alter that, it's our view, as to how this
11 provision works.

12 A.L.J. JENNINGS-FADER: Thank you, Counsel.
13 Eschelon?

14 MR. MERZ: Yes, Your Honor?

15 A.L.J. JENNINGS-FADER: I have a few
16 questions for you.

17 MR. MERZ: I thought you might.

18 A.L.J. JENNINGS-FADER: What -- I understand
19 Eschelon's concern about the issues being teed up now.

20 Does Eschelon see any harm to -- first, does
21 Eschelon see any harm to allowing the process that Qwest
22 has suggested, the implementation of 22.6.1 broadened to
23 include all competitive local exchange carriers through
24 the notice process, doesn't the -- does that address --
25 or why does that not allow Eschelon benefit in the sense

1 that it then has, if you will, more allies to address
2 the rate, which, at least from your testimony, I gather,
3 Eschelon considers the rates -- excuse me -- plural --
4 that Eschelon considers to be too high? It seems to me
5 that would be a benefit to Eschelon of using the 22.6.1
6 process.

7 MR. MERZ: A couple of things to say on that.
8 First of all, don't forget the fact that the parties
9 disagree about 22.6.1 particularly as it applies to
10 these kinds of rates, that is, elements for which there
11 is no approved rate. If we -- if our position prevails,
12 then in this interim period of time, Qwest will be able
13 to charge a rate --

14 A.L.J. JENNINGS-FADER: I'm sorry.

15 MR. MERZ: Sure.

16 A.L.J. JENNINGS-FADER: Could we stop right
17 there --

18 MR. MERZ: Sure.

19 A.L.J. JENNINGS-FADER: -- because I
20 understood 22.6.1 to be closed.

21 MR. TOPP: No. 22.6.1 includes language
22 regarding -- that has not been agreed to regarding UNE
23 processes, UNEs and processes that have been previously
24 offered without charge, so new elements.

25 A.L.J. JENNINGS-FADER: Okay. Well, then,

1 let's -- oh, I see. All right. Let's -- let's parse
2 this, then. Let's talk first about services or
3 processes newly offered for which there's no Commission
4 approved rate. Then let's talk about services and
5 processes for which Qwest has been charging something
6 that has not -- but that rate has not been approved by
7 the Commission, okay?

8 As to the first bucket -- God, I hate that
9 term. As to the first type of unapproved rate, what is
10 the harm to Eschelon of using 22.6.1, given that no one
11 has had an opportunity to address this with respect to
12 these services and processes because they have not
13 yet -- they have not previously been offered?

14 MR. MERZ: Right. And assuming I understand
15 what the first group is, if our -- if our position is
16 the one that prevails and we're allowed to obtain those
17 elements at no additional charge, then there wouldn't be
18 a harm. But, on the other hand, if Qwest is allowed to
19 implement those rates for some period of time, as much
20 as a year, maybe more than a year, then we are harmed,
21 because we end up paying rates that are not cost based
22 for really an undetermined, indefinite period of time.

23 And the question of whether we would benefit
24 from having more allies in the proceeding, I guess I
25 hesitate somewhat to know whether there's benefit,

1 because I'm not sure how many allies there will be in
2 that proceeding. I think it's certainly conceivable
3 that we might be the ones there, too, that are -- if not
4 the only ones, at least, carrying the laboring oar on
5 these issues.

6 A.L.J. JENNINGS-FADER: And with respect to
7 the second type, services and processes for which --
8 which Qwest has offered but which have no Commission
9 approved rate, first of all, as to those, why would --
10 is this the first time Eschelon has seen those rates?

11 I'm trying to understand how -- I understand
12 from your new products how the issue comes up: New
13 product, got to charge something, here it is. Now we're
14 talking about product has been in existence, has
15 Eschelon been paying something and now the rates are
16 changing? I mean, how has this issue come up?

17 MR. MERZ: I'm looking to my --

18 A.L.J. JENNINGS-FADER: Ms. Clauson, you
19 certainly may speak if you wish.

20 MS. CLAUSON: Thank you. The category of
21 rates that you're asking about, I want to be sure to
22 answer the question, is things that they have been
23 offering, not new products, correct?

24 A.L.J. JENNINGS-FADER: Correct. I'm
25 differentiating it: new products.

1 MS. CLAUSON: And so for the second category,
2 a couple of situations may have occurred. First of all,
3 keep in mind, for all -- for -- in either case, we have
4 been negotiating this contract since before March of
5 2001. So we have been raising this issue of how to
6 handle unapproved rates with Qwest in negotiations for
7 literally years. So what to do about those rates and to
8 cure this situation where an unapproved rate could go
9 out there indefinitely has been a negotiated issue
10 during that time. We've been raising it with Qwest all
11 of that time.

12 During the meantime, a couple of situations
13 arise. One is that we -- it's a product we plan to
14 offer in the -- or have the ability to offer going
15 forward and don't currently or it's a price where Qwest
16 imposes its proposed rate. And our objection there is,
17 we don't think the rate they're applying is cost based.
18 Does that answer your question?

19 A.L.J. JENNINGS-FADER: As to the service or
20 product which Eschelon has -- an existing service or
21 product for which Qwest has been charging something but
22 which Eschelon has not in the past purchased, taking
23 that category, okay, that rate, then in your view, is a
24 rate which the Commission needs to deal with in this
25 arbitration because Eschelon has not in the past had an

1 opportunity to raise the issue of the rate? I mean,
2 that -- I'm trying to understand how it came to be in
3 this arbitration as opposed to ...

4 MS. CLAUSON: Because that's where we've
5 raised the issue, is in negotiations and arbitration,
6 and the arbitration just took a lot longer to get to
7 than we envisioned.

8 A.L.J. JENNINGS-FADER: As to services and
9 products which Qwest -- for which Qwest has been
10 charging in the past which Eschelon has been purchasing
11 and Eschelon believes to have been -- to have been an
12 inflated charge, that's another category, yes?

13 MS. CLAUSON: Yes.

14 A.L.J. JENNINGS-FADER: As to those, why has
15 Eschelon waited until the arbitration to deal with this?
16 Why didn't it deal with it by a complaint case or some
17 other mechanism?

18 MS. CLAUSON: Again, that goes to this whole
19 argument of efficiency. Should we -- we raise the issue
20 and litigate the rate in one arbitration and do them all
21 together? If you look at how many rates are at issue,
22 we have to have individual cases for each one. If you
23 look at one of the other open issues, Qwest opposes our
24 language.

25 Is that Colorado state specific language on

1 that, our language -- our right to request a cost case?
2 (Discussion off the record.)

3 MS. CLAUSON: That is an open issue in
4 Colorado. So we have an open issue in the negotiations
5 in arbitration as to whether they agree we even have a
6 right to try to get a cost case. And we would have to
7 litigate individually every time that rate.

8 The burden is not, to our understanding, in a
9 cost case to establish rates on the CLEC. The ILEC has
10 the obligation to show that their rates are cost based,
11 and in the meantime, we've tried to negotiate with them
12 knowing that if we couldn't reach agreement, we would
13 arbitrate it.

14 Let me clarify, because apparently, I didn't
15 state it -- all these things I'm talking about are
16 unapproved rates. If they're approved rates, we've paid
17 the approved rate.

18 A.L.J. JENNINGS-FADER: Right. I got that.
19 I understand that. I understand that these are all
20 subcategories and subcategories of unapproved rates.

21 With respect to the efficiencies argument,
22 Eschelon, is it not the case that Eschelon has had to
23 arbitrate an interconnection agreement with Qwest in
24 each jurisdiction in which Eschelon does business with
25 Qwest?

1 MR. MERZ: That's the case, yes.
 2 A.L.J. JENNINGS-FADER: So the efficiencies
 3 aren't -- so the efficiencies are not the -- are not
 4 the -- what is it? -- eight arbitrations. The
 5 efficiencies are the possibility of 16 proceedings.
 6 MR. MERZ: Essentially, yes.
 7 A.L.J. JENNINGS-FADER: I don't know if it's
 8 eight.
 9 MR. MERZ: We actually have six pending
 10 cases.
 11 A.L.J. JENNINGS-FADER: Okay.
 12 MR. MERZ: And as I understand what Qwest is
 13 saying today, they're not even talking about one
 14 separate cost proceeding, but two. They've put in a
 15 weigh station there that I didn't even until this
 16 morning understand existed that would come between
 17 somehow this arbitration and a final rate, which would
 18 be a separate, apparently parallel proceeding to talk
 19 about an interim rate. So rather than six proceedings
 20 or 12, now it sounds like we might be talking about 18
 21 separate cost -- separate proceedings where we're
 22 dealing with the same cost issues.
 23 A.L.J. JENNINGS-FADER: Eschelon, in order
 24 for the Commission to do what you suggest, which is
 25 arbitrate the specific rates in Issue 22-90-C through I,

1 those specific rates, will the decision of the
 2 Commission have to be, in your estimation, total element
 3 long-run incremental cost based?
 4 MR. MERZ: Yes. Yes. That's the cost-based
 5 standard. Now, I would say that -- and we cited a case
 6 on this point.
 7 A.L.J. JENNINGS-FADER: Just let me ask you
 8 this question.
 9 MR. MERZ: Sure.
 10 A.L.J. JENNINGS-FADER: If the Commission
 11 were to determine that because Qwest -- let me ask you
 12 this: Has Qwest filed total element long-run
 13 incremental cost studies in this proceeding?
 14 MR. McGANN: No.
 15 A.L.J. JENNINGS-FADER: If the Commission
 16 determines that it ought to arbitrate this issue, agrees
 17 with Eschelon -- these issues, these rates -- agrees
 18 with Eschelon and Qwest has not provided the requisite
 19 cost foundation for determination of total element
 20 long-run incremental cost-based rates, what rate -- what
 21 does the Commission do with that? What rate does the
 22 Commission charge for these however many services and
 23 elements?
 24 MR. MERZ: Eschelon has proposed rates for
 25 each of these things.

1 A.L.J. JENNINGS-FADER: Does Eschelon present
 2 total element long-run incremental cost studies to
 3 support its rate proposals?
 4 MR. MERZ: No. And it's the ILEC's burden to
 5 do that.
 6 A.L.J. JENNINGS-FADER: I appreciate that,
 7 but I'm talking about the evidentiary basis for the
 8 Commission to determine in this arbitration what the
 9 TELRIC-based rates ought to be.
 10 MR. MERZ: Well, for certain, the elements --
 11 and this is, again, Mr. Denney's testimony. For certain
 12 of the elements, we had cost studies from perhaps
 13 another state or perhaps from some other proceeding.
 14 And with respect to certain of those issues, we were
 15 able to make certain modifications to Qwest's cost
 16 studies that adopted inputs that the Commission had
 17 previously ordered in order to produce the rates that we
 18 proposed.
 19 A.L.J. JENNINGS-FADER: I appreciate that.
 20 Are the cost studies which are modified by Eschelon in
 21 the record in this proceeding?
 22 MR. MERZ: The modifications are. I don't
 23 believe the cost studies --
 24 A.L.J. JENNINGS-FADER: But not the --
 25 MR. MERZ: I don't believe the cost studies

1 themselves are.
 2 A.L.J. JENNINGS-FADER: Now we're back to
 3 apparently -- Ms. Clauson may wish to weigh in here.
 4 MR. MERZ: Go ahead.
 5 MS. CLAUSEN: That's precisely why the rates
 6 are interim. Our language says a true-up can be decided
 7 at the time of the Commission (sic). So if they
 8 decide -- you know, if the Commission decides at some
 9 point it's subject to a true-up to make sure it's cost
 10 based, that's up to the Commission. Either in this
 11 proceeding or the cost case, our language just says it's
 12 up to the Commission.
 13 So we have provided outside indicators that
 14 our -- such as modifications using past findings of the
 15 Commission to say what the rates should be to show that
 16 our proposed interim rate is more likely to be cost
 17 based than Qwest's. If we turn out to be wrong about
 18 that because they are interim, then there is a
 19 possibility of a true-up that is to be decided by the
 20 Commission, whether they want to do a true-up or not.
 21 So it does allow procedurally to make sure the rate that
 22 we pay at all times is cost based.
 23 And the question is, in the meantime, what is
 24 the fair thing we should pay, Qwest's going-in position
 25 or something else? And so we put in evidence as to what

1 the interim rate should be and why it more closely
2 approximates cost while allowing to be sure it's cost
3 based by making it interim and leaving up to the
4 Commission whether it's subject to interim.

5 A.L.J. JENNINGS-FADER: That raises a whole
6 list of other questions, which I'll be asking, but
7 nonetheless, let me get back to this. So taking
8 Ms. Clauson's argument, then, is it -- is it Eschelon's
9 position that interim rates need not be cost based?

10 MR. MERZ: No. Our position is that the
11 reason to distinguish between interim and final rates is
12 the notion that in the meantime, we have to have
13 something for Qwest to be able to charge if they're
14 going to charge anything. We want to get as close to
15 that cost-based number as we can.

16 But the reason they're interim is, the
17 parties haven't done the kind of full-blown analysis
18 that they might do as part of a cost case. They've done
19 something less than that. So the question is, which of
20 the rates that have been proposed is more likely to be
21 an accurate representation of Qwest's costs? And there
22 is evidence in this proceeding of that.

23 The correct standard is that -- is the TELRIC
24 standard. But the fact that the evidence may not allow
25 the extremely strict application of that standard

1 doesn't mean that there's not enough evidence in this
2 record to come up with a number that is a reasonable
3 reflection of Qwest's costs.

4 A.L.J. JENNINGS-FADER: Continuing with
5 Ms. Clauson's points, the true-up in Eschelon's proposal
6 or suggestions, overall view, would occur -- would occur
7 as between Eschelon and Qwest?

8 MR. MERZ: Yes.

9 A.L.J. JENNINGS-FADER: And how would it --
10 how would that happen? Let's assume the Commission
11 orders a true-up. How would that happen?

12 MR. MERZ: I'm not sure if I understand.

13 A.L.J. JENNINGS-FADER: By which I mean, the
14 Commission has ordered a true-up. What, then, occurs as
15 between Qwest and Eschelon to implement that true-up?

16 MR. MERZ: There might be billings or
17 credits. I'm not -- I'm kind of having a hard time, I
18 guess.

19 A.L.J. JENNINGS-FADER: Let's assume the
20 Commission -- let me -- let's assume the Commission
21 determines, wholly hypothetically, that Qwest is
22 correct, that it then comes in at some subsequent
23 proceeding and establishes that -- in a generic cost
24 docket or otherwise, and establishes that its number was
25 right. I understand Eschelon doesn't agree with that

1 process, but let's just make that assumption. It's the
2 most dramatic assumption. Let's -- and then also assume
3 the Commission orders a true-up. What happens as
4 between Eschelon and Qwest in terms of procedural
5 process as between the two companies? What happens?

6 MR. MERZ: Well, the Commission, as part of
7 its true-up order, would determine the date on which its
8 rate should be effective, essentially, and there would
9 be presumably some sort of bill that comes from Qwest to
10 reflect that rate.

11 A.L.J. JENNINGS-FADER: And would Eschelon be
12 able to question or to dispute that bill?

13 MR. MERZ: It wouldn't be able to dispute the
14 bill based on the question of whether the rate was
15 approved or cost based. I mean, without knowing what
16 other possible problems there might be with the bill,
17 it's hard to say, but this -- if the procedure that
18 we're proposing is the one that's followed, this is the
19 opportunity for us to make our arguments about what the
20 rates should be on an interim basis.

21 A.L.J. JENNINGS-FADER: If the bill -- if the
22 rate were, say, a minutes-of-use calculation, just as an
23 example basis. And I don't know if any of these are,
24 frankly, but just assume one of them is. Is -- would
25 the dispute then -- could the bill be disputed by

1 Eschelon, for example, that the number of minutes to
2 which the rate was applied was incorrect?

3 MR. MERZ: I certainly can imagine that might
4 be a possible point of dispute between the parties.

5 A.L.J. JENNINGS-FADER: During which time
6 Qwest doesn't get paid during the period of the dispute?

7 MR. MERZ: I -- I'm struggling, because I
8 believe that's the case, but I'm not -- not certain.
9 And I believe what the contract would provide is, to the
10 extent a bill is not in dispute, then the undisputed
11 portion is to be paid. I'm not sure that that helps
12 with your example.

13 A.L.J. JENNINGS-FADER: It's 10:30. We're
14 going to take the morning break. I want to thank you
15 all for your responses to date.

16 MR. MERZ: Thank you.

17 A.L.J. JENNINGS-FADER: We'll be back in 15
18 minutes, so what's that? 10 minutes to the hour.

19 (Recess from 10:37 a.m. to 10:54 a.m.)

20 A.L.J. JENNINGS-FADER: We'll be back on the
21 record.

22 First, as an aside, Mr. Topp and Mr. McGann,
23 I have reviewed my notes for the testimonies of
24 Mr. Easton and Mr. Hubbard. I do wish to speak to
25 Mr. Easton, but I have no questions for Mr. Hubbard.

1 MR. TOPP: Thank you. And we've asked
2 Mr. Easton to get here as quickly as he can. I expect
3 he'll be here tomorrow.
4 A.L.J. JENNINGS-FADER: We'll be back on the
5 record. First, I'd like to thank counsel for their
6 arguments this morning responsive to my questions.
7 As counsel are aware, this proceeding is --
8 will be decided by an initial Commission decision, the
9 result of which is that I do not believe that I have the
10 authority to grant or deny the motion at this -- the
11 motion to dismiss at this time. The arguments and the
12 transcript, of course, in the proceedings will be
13 available to the Commission as it makes its decision
14 with the result that for purposes of this proceeding,
15 the motion to dismiss is taken under advisement, and
16 we'll proceed and hear the witnesses' testimony on the
17 subject, which, depending on the Commission's decision,
18 will or will not factor into the initial Commission
19 decision.
20 Any questions from Qwest?
21 MR. TOPP: No. Your Honor.
22 A.L.J. JENNINGS-FADER: Anything further on
23 this?
24 MR. TOPP: No, thank you.
25 MR. MERZ: No questions. Nothing further.

1 A.L.J. JENNINGS-FADER: Thank you.
2 With that, I turn the proceeding over to the
3 Qwest counsel.
4 MR. TOPP: And, Your Honor, you had said you
5 wanted the parties to use the podium. Do you want me to
6 question from the podium?
7 A.L.J. JENNINGS-FADER: Yes.
8 MR. TOPP: We call Renee Albersheim, and her
9 testimony's been marked for identification as
10 Exhibits 3, 4, 4A and 5.
11 RENEE ALBERSHEIM,
12 being first duly sworn in the above cause, was examined
13 and testified as follows:
14 A.L.J. JENNINGS-FADER: Thank you, ma'am.
15 Please have a seat.
16 State your name and spell your last name for
17 the record.
18 THE WITNESS: Renee Albersheim,
19 A-l-b-e-r-s-h-e-i-m.
20 A.L.J. JENNINGS-FADER: Thank you very much,
21 ma'am.
22 Mr. Topp.
23 DIRECT EXAMINATION
24 BY MR. TOPP:
25 Q Ms. Albersheim, you have filed testimony in

1 this proceeding. Is that correct?
2 A Yes, I have.
3 Q And your direct testimony has been marked as
4 Exhibit 3. Is that correct?
5 A Yes.
6 Q And your public answer testimony with
7 exhibits has been marked as Exhibit 4?
8 A Yes.
9 Q And your confidential answer testimony with
10 exhibits has been marked as Exhibit 4A?
11 A Yes.
12 Q And your rebuttal testimony has been marked
13 as Exhibit 5. Is that correct?
14 A Yes.
15 Q Now, Ms. Albersheim, prior to the hearing,
16 the judge in this proceeding asked for some -- for some
17 docket citations that have been provided to the Court.
18 Is that correct?
19 A Yes.
20 Q And other than that additional submission
21 that has been provided, do you have any changes to your
22 testimony --
23 A No.
24 Q -- that's been marked?
25 A No, I do not.

1 MR. TOPP: At this point, Qwest would offer
2 Exhibits 3, 4, 4A and 5.
3 A.L.J. JENNINGS-FADER: We'll take them in
4 order. Exhibit No. 3 has been offered. Voir dire or
5 objection?
6 MR. MERZ: No objection, Your Honor.
7 A.L.J. JENNINGS-FADER: Exhibit No. 4 has
8 been offered. Voir dire or objection?
9 MR. MERZ: No, Your Honor.
10 A.L.J. JENNINGS-FADER: Exhibit No. 4A has
11 been offered. Voir dire or objection?
12 MR. MERZ: No, Your Honor.
13 A.L.J. JENNINGS-FADER: And Exhibit No. 5 has
14 been offered. Voir dire or objection?
15 MR. MERZ: No, Your Honor.
16 A.L.J. JENNINGS-FADER: Exhibits, 3, 4, 4A
17 and 5 are admitted.
18 (Exhibits 3, 4, 4A and 5 admitted.)
19 MR. TOPP: And at this point, Ms. Albersheim
20 is available for cross-examination.
21 A.L.J. JENNINGS-FADER: Thank you, sir.
22 CROSS-EXAMINATION
23 BY MR. MERZ:
24 Q Good morning, Ms. Albersheim.
25 A Good morning.

1 Q In your rebuttal testimony, you refer to
2 something called the Qwest negotiations template. Is
3 that right?

4 A My rebuttal or surrebuttal?

5 Q I'm referring to what -- I guess your --

6 A Okay.

7 Q -- testimony that's identified as your
8 rebuttal.

9 A Okay. Yes. I believe I did, yes.

10 Q And just to make sure we understand, Qwest
11 provides its negotiations template as a starting point
12 for negotiating with CLECs over the terms of their new
13 interconnection agreements. Is that right?

14 A Yes.

15 Q And the Qwest negotiation template is
16 something that Qwest provides on its Web site?

17 A Yes.

18 Q The template includes, not just the body,
19 which includes the contract language, but it also
20 includes an attached Exhibit A, which reflects the
21 rates. Is that right?

22 A Yes.

23 Q And those are Qwest's starting points for its
24 negotiation over rates. Is that right?

25 A I -- I don't know if I'd call those a

1 starting point. The Exhibit A's are statements specific
2 based on rates that have been established in each of
3 those states.

4 Q Those are the rates that Qwest is offering
5 for the elements that are listed on those Exhibit A's?

6 A Yes.

7 Q I'd like to talk with you now about
8 jeopardies, which is Issues 12-71, 12-72 and 12-73.

9 Qwest gives a jeopardy notice when a due date
10 for an order is in danger of being missed. Is that
11 right?

12 A Yes.

13 Q A jeopardy that is caused by Qwest is
14 referred to as a Qwest jeopardy?

15 A Generically, yes.

16 Q When Qwest resolves a Qwest jeopardy, it
17 gives the CLEC notice that the jeopardy has been
18 resolved, correct?

19 A Yes.

20 Q And the way it gives notice to the CLEC that
21 the jeopardy's been resolved is, it provides a firm
22 order confirmation, or an FOC, to advise the CLEC of the
23 delivery due date, correct?

24 A That is the formal notice that is provided,
25 yes.

1 Q Now, one point of dispute related to the
2 jeopardies issue is whether it is Qwest's practice to
3 give that FOC following a Qwest jeopardy at least a day
4 before the due date, correct?

5 A Yes. That's in dispute.

6 Q And it's your testimony that that is not
7 Qwest's practice?

8 A That's correct.

9 Q And you refer in your answer testimony at
10 Page 20, Lines 13 through 17 -- and just tell me when
11 you're there. I don't want to jump ahead.

12 A Page 20, Lines ...

13 Q 13 through 17.

14 A Yes.

15 Q And the testimony there is, "Qwest claims
16 that Qwest committed to delivering a new due date
17 resolving an order in jeopardy at least one day in
18 advance of the new due date. Did Qwest make such a
19 commitment?" And the answer there is, "No, and the CMP
20 record proves it."

21 Do you see that?

22 A But you misread that. It was "Eschelon
23 claims," but otherwise, yes, that's correct.

24 Q Let me just read it again so our record isn't
25 all messed up here.

1 The question there is, "Eschelon claims that
2 Qwest committed to delivering a new due date resolving
3 an order in jeopardy at least one day in advance of the
4 new date. Did Qwest make a such a commitment?" And
5 your answer is, "No, and the CMP record proves it,"
6 correct?

7 A Yes.

8 Q Now, the CMP record that you're referring to
9 there is found in your testimony as Exhibits RA 16 and
10 RA 17. Is that right?

11 A Yes.

12 Q Those are exhibits to your answer testimony,
13 correct?

14 A Yes. Those are the change requests that
15 Eschelon sponsored.

16 Q Now, if you would go to Exhibit RA 17, and
17 I'm looking specifically at Page 3 of that exhibit.

18 A Yes. I'm there.

19 Q There's a kind of a chronology there, and
20 looking at the event that is dated February 18th of two
21 thousand -- I'm sorry -- March 4, 2004. Do you see
22 that?

23 A Yes.

24 Q And it refers to an ad hoc meeting with
25 CLECs. Do you see that?

1 A Yes.
 2 Q Now, an ad hoc meeting is a meeting that
 3 takes place between Qwest and CLECs where certain CMP
 4 issues are discussed, correct?
 5 A Yes.
 6 Q That's a meeting that typically occurs by
 7 telephone conference. Is that right?
 8 A I believe so, yes.
 9 Q Now, the March 4th ad hoc meeting that's
 10 referred to in Exhibit RA 17 is a meeting relating to
 11 certain improvements that have been requested in Qwest's
 12 jeopardy notification process. Is that right?
 13 A I'd have to look at the meeting minutes to
 14 know for sure what was discussed there. I haven't
 15 memorized which meeting took place on which date.
 16 Q Well, the meeting is referred to in
 17 connection with the specific CMP change request. Is
 18 that right?
 19 A It would have been for this change request,
 20 yes.
 21 Q And this change request concerns certain
 22 improvements that have been requested with respect to
 23 Qwest's jeopardy notification process, correct?
 24 A Yes.
 25 Q Now, in the ordinary course of events, Qwest

1 would prepare materials prior to the ad hoc meeting. Is
 2 that right?
 3 A If materials are necessary for the meeting.
 4 Q That is something that happened in connection
 5 with the March 4, 2004 ad hoc meeting. Is that right?
 6 A I don't know.
 7 Q Well, if you -- you're familiar with
 8 Ms. Johnson's testimony, correct?
 9 A Yes.
 10 MR. MERZ: And, Your Honor, if I could just
 11 hand Ms. Albersheim a copy of Ms. Johnson's testimony.
 12 A.L.J. JENNINGS-FADER: You certainly may, as
 13 long as you reference for the record which exhibit
 14 number you're looking at.
 15 MR. MERZ: I will.
 16 A.L.J. JENNINGS-FADER: I'm sorry, but
 17 hearing exhibit number.
 18 MR. MERZ: Yes. And, Your Honor, I'll be
 19 referring to Hearing Exhibit No. 22, which is the
 20 testimony, the direct testimony, of Bonnie Johnson, and
 21 I'm looking specifically at Exhibit BJJ 5 to that
 22 testimony.
 23 A Can you tell me which tab that is here?
 24 Q (By Mr. Merz) Sure. Isn't it Tab 5?
 25 A Okay.

1 Q Do you have that there?
 2 A Yes.
 3 Q And I'd like you to refer to Page --
 4 beginning at 45. Then if you take 45, Page 46 of that
 5 document, Page 47, Page 48 and Page 49, down to the
 6 heading where it says Jeopardy Notification Change
 7 Proposal No. 2.
 8 A Okay.
 9 Q All of those pages are information prepared
 10 by Qwest in connection with the March 4, 2004 ad hoc
 11 meeting. Is that right?
 12 A That's how it's labeled, yes.
 13 Q And you recognize that that is in fact what
 14 that information is, correct?
 15 A It appears to be, yes.
 16 Q Now, that information was provided by Qwest
 17 to CLECs on or about February 25th of 2004. Is that
 18 right?
 19 A Yes.
 20 Q That information would also be part of the
 21 CMP record. Isn't that right?
 22 A Yes.
 23 Q You haven't attached that information to your
 24 testimony. Is that right?
 25 A No, I have not.

1 Q You were not involved in preparing the
 2 materials for the March 4th ad hoc meeting, were you?
 3 A No.
 4 Q And you did not participate in the March 4th
 5 ad hoc meeting. Isn't that right?
 6 A That's correct.
 7 Q I'd like to talk with you now about the issue
 8 of acknowledgment of mistakes and root-cause analysis
 9 which is Issues 12-64 and its subparts.
 10 That's an issue on which you testified?
 11 A Yes.
 12 Q And the issue here is contract language
 13 regarding Qwest's obligation to investigate and
 14 acknowledge mistakes that it makes in providing service
 15 to Eschelon. Isn't that right?
 16 A Yes.
 17 Q Now, Eschelon has proposed language that is
 18 based on the decision by the Minnesota Commission in a
 19 complaint case that Eschelon brought against Qwest. Is
 20 that right?
 21 A Yes.
 22 Q That complaint case is sometimes referred to
 23 as the Minnesota 6-16 case?
 24 A Yes.
 25 Q You're aware that that case concerned an

1 error made by Qwest in transferring a customer request
2 to Eschelon?

3 A Yes.

4 Q And you're also aware that as a result of
5 that error, the Eschelon customer unexpectedly lost
6 service, correct?

7 A I don't recall if the customer lost service.
8 That may be true, yes.

9 Q In the Minnesota 6-16 case, it was the
10 Minnesota Commission's conclusion that Qwest's service
11 was inadequate and ordered Qwest to make certain changes
12 to its processes and procedures. Is that right?

13 A Yes.

14 Q The changes that the Minnesota Commission
15 ordered Qwest to make concerned Qwest's procedures for
16 promptly acknowledging and taking responsibility for its
17 mistakes, correct?

18 A In part.

19 Q And the Minnesota Commission also ordered
20 Qwest to make certain changes to its procedures in order
21 to reduce errors in processing orders, correct?

22 A That's correct.

23 Q Now, Qwest was required by the Minnesota
24 Commission to make a compliance filing to reflect its
25 compliance with that order. Is that right?

1 A Yes. Qwest made several compliance filings.

2 Q The first two compliance filings were
3 actually rejected by the Minnesota Commission. Is that
4 right?

5 A Yes. I believe the third one was accepted.

6 Q Now, referring to your rebuttal testimony, at
7 Page 19, and that is Hearing Exhibit No. 5.

8 A Yes.

9 Q At Page 19 of your rebuttal testimony, you
10 criticize Eschelon's language on this issue as going
11 beyond the scope of what was ordered in the Minnesota
12 6-16 case. Is that right?

13 A That's correct.

14 Q Your rebuttal testimony was filed on
15 April 10th, correct?

16 A Yes.

17 Q Now, by the time that you had filed your
18 rebuttal testimony, the Minnesota Commission had issued
19 its order in the Minnesota arbitration case involving
20 Eschelon. Is that right?

21 A I don't recall if it had issued its written
22 order yet. I believe it had done its deliberation by
23 that time.

24 MR. MERZ: And, Your Honor, if I could, I'd
25 like to refer Ms. Albersheim to Mr. Denney's surrebuttal

1 testimony, which is Hearing Exhibit 27.

2 Q (By Mr. Merz) And if you could refer,
3 Ms. Albersheim, to Exhibit DD 27 to Mr. Denney's
4 surrebuttal testimony.

5 A Yes.

6 Q You recognize that as the Commission's order,
7 correct?

8 A Yes.

9 Q And what was the date of the order?

10 A The issue date was March 30th.

11 Q I would assume, and you tell me if I'm wrong,
12 that you probably got a copy of that order shortly after
13 it was issued. Is that right?

14 A The written order, yes.

15 Q And so you were aware at the time you
16 prepared your written sur -- rebuttal testimony that was
17 filed on April 10th that the Commission had issued its
18 order, correct?

19 A Yes.

20 Q And you were aware, were you not, that the
21 Minnesota Commission had actually rejected Qwest's
22 narrow interpretation of its order in the Minnesota 6-16
23 case, correct?

24 A Yes.

25 Q Now, the Minnesota Commission actually

1 ordered that the language proposed by Eschelon be
2 adopted on this issue, correct?

3 A Yes, it did.

4 Q In testifying about what the Minnesota
5 Commission meant with its 6-16 order, you didn't mention
6 what the Minnesota Commission itself said it had met,
7 did you?

8 A Not in this order, no, I did not.

9 Q Did you not think that that was relevant to
10 whether or not Eschelon's proposed language went beyond
11 what the Minnesota Commission intended with the 6-16
12 order?

13 A No. I would say that is relevant.

14 Q I want to talk with you now about your
15 rebuttal testimony at Page 20. And again, this is
16 Hearing Exhibit No. 5.

17 A Yes.

18 Q You refer there to an exhibit attached to
19 Ms. Johnson's testimony, BJJ 36. Is that right?

20 A Yes.

21 MR. MERZ: And, Your Honor, I have actually
22 just pulled out a copy of that exhibit, so we didn't
23 have to have so much paper there, and with your
24 permission, I'd just like to hand her a copy of the
25 exhibit.

1 A.L.J. JENNINGS-FADER: That would be fine.
 2 Q (By Mr. Merz) And actually, your testimony
 3 refers to BJJ 36, but I -- I wonder if maybe you didn't
 4 intend to refer to BJJ 39, which is the one that I just
 5 handed to you.
 6 A Yes, that's correct.
 7 Q Now, in your rebuttal testimony at Page 20,
 8 you say that Eschelon had asked Qwest to expend
 9 resources on root-cause analysis based on a process that
 10 is not Qwest's current practice and that Qwest is not
 11 required to follow. Is that right?
 12 A It is not Qwest's practice that the FOC must
 13 be delivered at least a day before, but the date
 14 Eschelon had been providing to its service manager was
 15 based on that assumption, and therefore, we were talking
 16 past each other in trying to go through the data that
 17 Eschelon was providing.
 18 Q BJJ 39 contains some e-mail correspondence
 19 between Qwest and Eschelon. Is that right?
 20 A Yes.
 21 Q And that correspondence concerns data that
 22 Eschelon was providing to Qwest regarding its jeopardy
 23 and held-order process?
 24 A That's correct. And I spoke to Jean Novak,
 25 who was Eschelon's service manager at the time, about

1 that data and why Qwest was having difficulty analyzing
 2 Eschelon's data.
 3 Q Now, if you would go to Page 8 of Exhibit
 4 BJJ 39.
 5 A Yes.
 6 Q There are two e-mails on Page 8, correct?
 7 A Yes.
 8 Q The e-mail -- the first e-mail on the page is
 9 from Jean Novak to Bonnie Johnson, correct?
 10 A Yes.
 11 Q That is an e-mail dated August 25th of 2004.
 12 Is that right?
 13 A Yes.
 14 Q In that e-mail, Ms. Novak is responding to,
 15 apparently, a prior e-mail from Ms. Johnson regarding
 16 this data that we've been talking about concerning the
 17 jeopardy process. Is that right?
 18 A Are we looking at the one at 244 or the one
 19 at 404?
 20 Q I'm looking at the one at the top of the page
 21 from Ms. Novak to Bonnie Johnson.
 22 A Okay.
 23 Q And that is an e-mail in which Ms. Novak is
 24 responding to a prior e-mail from Ms. Johnson that
 25 provided certain data to get regarding the jeopardy

1 notification process. Is that right?
 2 A Yes.
 3 Q So we know that at least as of August of
 4 2004, Eschelon was providing this -- this data. Is that
 5 right?
 6 A Yes. And Qwest endeavored to respond, yes.
 7 Q And you talk about the response, and the
 8 response to the e-mail at the top of the page is found
 9 there at the bottom of the same page. Is that right?
 10 A Yes. This is Eschelon's response to Qwest's
 11 e-mail.
 12 Q Correct.
 13 A Yes.
 14 Q Now, if you go to the next page, there are
 15 references there in the middle of the page to something
 16 called Eschelon issues logs for service managers
 17 meetings. Do you see that?
 18 A Oh, yes.
 19 Q And you were aware that Eschelon prepared
 20 issues logs to provide information to Qwest regarding
 21 compliance with certain ordering processes. Is that
 22 right?
 23 A Yes.
 24 Q And what we have here on Page 9 and also
 25 Page 10 of BJJ 39 are excerpts from those issues logs,

1 correct?
 2 A That's my understanding from what Ms. Johnson
 3 identifies these as.
 4 Q And you also talked with Ms. Novak about this
 5 issue. Is that right?
 6 A Yes.
 7 Q Now, it says here at the bottom of the
 8 page -- there's a reference to an August 3, '05 team
 9 meeting. Do you see that?
 10 A Yes.
 11 Q And it says there, I believe it's the third
 12 sentence, "Jean once again stated that Qwest disagrees
 13 that it's Qwest process to send the releasing FOC 24
 14 hours prior to the FOC due date." Is that right?
 15 A Yes.
 16 Q And then if you go to the next page, there's
 17 another reference to one of these issues logs that's
 18 dated October 5th of 2005. Do you see that?
 19 A Yes.
 20 Q And it says on the second page, "Bonnie asked
 21 if Eschelon should continue to send the delayed data to
 22 Qwest. Jean said yes." Do you see that?
 23 A Yes.
 24 Q And Eschelon does continue to send the data
 25 that it began sending in 2004. Is that right?

1 A I don't know if that continues or not.
 2 Q You don't know if Eschelon sent Qwest data
 3 regarding the held-order process in 2005 after this
 4 October 5th issues log?
 5 A From what I see, the issues log here appears
 6 to June 7, '06. I don't know how often they have been
 7 sent since.
 8 Q But you know the data -- Eschelon has been
 9 sending data?
 10 A I know Eschelon has sent additional data.
 11 Q If you look at Page 10 of BJJ 39, there's a
 12 reference to -- again, from the issues log of May 3rd of
 13 2006. Is that right?
 14 A Yes.
 15 Q And this concerns the data that Eschelon was
 16 sending regarding the jeopardy notification process. Is
 17 that right?
 18 A Yes.
 19 Q Then there's also a reference to the issues
 20 log, and that reference is dated June 7th of 2006,
 21 correct?
 22 A It doesn't identify the issues log.
 23 Actually, neither did the prior one. It mentions a
 24 monthly call.
 25 Q They're references to communications between

1 Qwest and Eschelon?
 2 A Communications, yes. I don't know about the
 3 issues log.
 4 Q And so you would agree with me that as of
 5 June 7, 2006, Eschelon was still sending this data
 6 regarding the jeopardy notification process. Is that
 7 right?
 8 A Well, I don't know if the data was sent. I
 9 know that there were communications. That's all I can
 10 gather from this.
 11 Q Then if you look at Page 1 of BJJ 39, there's
 12 an e-mail dated November 3rd and under that an e-mail
 13 dated November 7th of 2006. Do you see that?
 14 A Yes.
 15 Q And that e-mail was from Jean Novak, correct?
 16 A Yes.
 17 Q To Kim Isaacs, correct?
 18 A Yes.
 19 Q And Kim Isaacs is an Eschelon employee,
 20 correct?
 21 A I believe so.
 22 Q And in her e-mail of November 7th of 2006,
 23 Ms. Novak tells Ms. Isaacs that Qwest has determined
 24 that due to resources, Qwest will not be reviewing this
 25 report any longer. Do you see that?

1 A Yes.
 2 Q And the report that Ms. Novak is referring to
 3 is the data that we've been talking about for the past
 4 10 minutes or so regarding the jeopardy notification
 5 process?
 6 A Yes.
 7 Q I'm going to shift gears now and ask you a
 8 few questions about the expedites issue, which is
 9 Issue 12-67 and its subparts.
 10 An expedite is when Qwest provides Eschelon
 11 with service more quickly than would otherwise be the
 12 case, correct?
 13 A More quickly than the standard interval for
 14 the service.
 15 Q And so an expedite means providing the
 16 service more quickly, correct?
 17 A Yes.
 18 Q Now --
 19 A An earlier due date.
 20 Q Fair enough. An earlier due date.
 21 One of the issues relating to expedites is
 22 whether Qwest is required to provide expedites at
 23 cost-based rates. That's one of the issues in this
 24 arbitration, correct?
 25 A Yes.

1 Q And it's Eschelon's position that expedites
 2 are a method of accessing UNEs and, therefore, that
 3 expedites are required to be provided at cost-based
 4 rates. Isn't that right?
 5 A I believe that is Eschelon's position.
 6 Q And Qwest's position is that expedites are a
 7 superior service and, therefore, Qwest is entitled to
 8 charge a retail rate for expedites. Is that right?
 9 A Well, that generalizes our position. We do
 10 not believe that expedites are a UNE, that we are
 11 measured on whether we provide service that allows a
 12 CLEC reasonable opportunity to compete based on the
 13 standard interval, so seeking a shorter interval is
 14 seeking a superior service to that we are measured on.
 15 Q The reason that Qwest believes that expedites
 16 aren't a UNE is, Qwest believes that expedites are a
 17 superior service?
 18 A That's part of it yes.
 19 Q Qwest does not intend, however, that
 20 expedites are a service that's superior to the service
 21 that Qwest provides to itself, does it?
 22 A Well, if you mean by "itself" to its retail
 23 customers, actually, in some cases we do, because the
 24 intervals for our CLEC customers are in fact shorter
 25 than for our retail customers.

1 Q We've talked about this issue in a couple of
2 other cases, and you would agree with me that Qwest does
3 provide expedites to its retail customers?

4 A Yes, it does.

5 Q And it does that as a matter of course as
6 part of its regular business practice?

7 A And we offer expedites to all of our
8 customers, retail and CLECs, at the same terms and
9 conditions.

10 Q You are aware that Eschelon brought a
11 complaint in Arizona relating to expedites under its
12 current interconnection agreement, correct?

13 A Yes. The old interconnection agreement,
14 that's correct.

15 Q You're aware that that complaint is now
16 pending?

17 A Yes.

18 Q And you are in fact a witness for Qwest in
19 that case, correct?

20 A Yes, I am.

21 Q And the Arizona Commission staff has filed
22 testimony in that case. You're aware of that?

23 A Yes.

24 Q And in fact, you refer to that Arizona staff
25 testimony in your own testimony. Is that right?

1 A That's correct.

2 Q The Arizona staff has concluded that Qwest
3 had breached the terms of its interconnection agreement
4 with Eschelon by failing to provide Eschelon with the
5 capability to expedite orders. Is that right?

6 A Yes. And I believe in my testimony, I
7 explained that Qwest believes that the staff has erred
8 in that conclusion.

9 Q And the Arizona staff has concluded that
10 Qwest is required to provide expedites to Eschelon on
11 cost-based rates, correct?

12 A Yes.

13 Q In the Minnesota arbitration, the A.L.J.s
14 also concluded that Qwest is required to provide
15 expedites at cost-based rates, correct?

16 A I know that they require that it be dealt
17 with in a cost docket. I don't recall if they actually
18 concluded it was cost based.

19 Q No. I think my question's different.

20 A Okay.

21 Q You are aware that the Minnesota A.L.J.s said
22 that Qwest should provide expedites to Eschelon at
23 cost-based rates?

24 A I'd have to look at what they -- what -- the
25 A.L.J.s' order.

1 Q You just don't recall that?

2 A I'm not sure that's exactly what they said.

3 Q Do you recall that the Minnesota Commission
4 also found that Qwest was required to provide expedites
5 to Eschelon at cost-based rates?

6 A Well, what I understand is that they required
7 that the expedite rate be dealt with in the cost docket.
8 That would presume it's cost based, but ...

9 Q You are aware that in the Minnesota
10 arbitration case, Eschelon proposed an interim rate for
11 expedites, right?

12 A Yes.

13 Q And you're aware that that interim rate is a
14 hundred-dollar per order charge?

15 A I believe it's a hundred dollars per order
16 per day.

17 Q Well, it is what it is, but you're aware that
18 it's a hundred-dollar charge that's been proposed by
19 Eschelon?

20 A Yes.

21 Q And you are aware as well that in Minnesota,
22 the Commission ordered that Eschelon's proposed interim
23 rate for expedites be adopted?

24 A Yes. But I, again, believe that's until it
25 has been resolved in the cost docket, so it's an interim

1 rate.

2 MR. MERZ: I don't have anything further.
3 Thank you, Ms. Albersheim.

4 A.L.J. JENNINGS-FADER: Redirect?

5 I'm sorry. Before you do that, I'd like to
6 tell the parties how I proceed in this matter.

7 We'll do redirect. Then I will have
8 questions for Ms. Albersheim following which parties in
9 the -- Eschelon, you'll have an opportunity to ask
10 questions based on what I ask, and then Qwest, you'll
11 have an opportunity to do whatever redirect or cleanup
12 that you think may be necessary as a result of the
13 questions

14 MR. TOPP: Okay. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. TOPP:

17 Q Ms. Albersheim, I'd have you refer to
18 Exhibit RA 17 to your rebuttal testimony.

19 A My answer?

20 Q The answer testimony, excuse me, that you
21 were discussing with Mr. Merz earlier.

22 A Yes.

23 Q And Mr. Merz asked you a series of questions
24 about a March 4th meeting at -- and some of the entries
25 on Page 5 of that meeting. Is that correct?

1 A Of the March 4th meeting?
 2 Q Yes.
 3 A Yes.
 4 Q And Page 5 of the exhibit reflects minutes
 5 associated with that?
 6 A Okay. Well, he asked me about documentation
 7 provided at that meeting. You're referring to minutes
 8 of that meeting?
 9 Q Yes.
 10 A Okay. Yes. I see that.
 11 Q And near the bottom of Page 5, it lists next
 12 steps. Do you see what that refers to?
 13 A Yes, I do.
 14 Q And what does that mean? It says, "Next
 15 steps published, Documentation Level 3." What does that
 16 mean?
 17 A That means to publish the changes to Qwest's
 18 PCATs, that is the processes and procedures for
 19 jeopardies that result from this change request.
 20 Q And the changed -- and did Qwest in fact go
 21 ahead and publish the changed procedures based on this
 22 March 4th meeting?
 23 A Yes, in a red-line form so that the CLECs
 24 could see what in the documentation had been changed as
 25 a result of the change request.

1 Q And have we included that documentation as a
 2 part of this record?
 3 A Yes, we did.
 4 Q And could you point us to that?
 5 A Exhibit -- okay. Now I've got to find it.
 6 Here we are. Exhibit RA 18, I believe, is the notice of
 7 the documentation change that was published to the CMP,
 8 and then Exhibit RA 19 includes the red-line
 9 provisioning and installation overview that was provided
 10 showing the documentation changes that resulted from
 11 that change request. And we also provided Exhibit
 12 RA 20, which was changes to the codes for jeopardies
 13 that went along with that.
 14 Q And these documents are the official record
 15 of the changes to Qwest's processes and procedures. Is
 16 that correct?
 17 A Yes, they are.
 18 Q And does -- and Qwest published those on
 19 April 12th of 2004?
 20 MR. MERZ: Your Honor, I'm just going to
 21 object to the leading.
 22 A.L.J. JENNINGS-FADER: It is leading. I'll
 23 allow it for the purpose of moving this along, but do
 24 watch it, Counsel.
 25 Q (By Mr. Topp) Was there any objection -- or

1 first of all, is there any language addressing
 2 Eschelon's -- or any language in the documentation that
 3 was published addressing whether or not or when an
 4 FOC -- whether an FOC would be provided a day before?
 5 A No. There is nothing in the documentation
 6 changes reflecting that FOCs would be provided at least
 7 a day before.
 8 Q Were any objections lodged by CLECs to the
 9 documentation that Qwest published?
 10 A No. There is an amount of time in which
 11 CLECs were allowed to comment on the documentation
 12 changes, and no comments were received.
 13 Q And that -- with that documentation, did that
 14 in this particular PCAT update the process --
 15 A Yes.
 16 Q -- for change request?
 17 A Yes, though I should point out just
 18 procedurally, the change request itself ends when it is
 19 closed, but as far as our changes to procedures, yes,
 20 that was documented in these document changes.
 21 Q Mr. Merz asked you some questions related to
 22 an exhibit to Ms. Johnson's testimony about Qwest
 23 reviewing certain data provided by Eschelon.
 24 A Yes.
 25 Q Why did Qwest stop reviewing that data?

1 A According to Ms. Novak, Qwest was expending
 2 considerable resources to do analysis based on
 3 Eschelon's assumptions about what our process should be;
 4 that is that FOCs should be received at least a day
 5 before. And Qwest determined that it was essentially
 6 spinning its wheels in continuing the analysis.
 7 Therefore, Ms. Novak sent the information to Ms. Isaacs
 8 that Qwest did not want to continue analyzing that data.
 9 Q And then I'd like to move to expedites
 10 briefly.
 11 Mr. Merz asked you some questions about Qwest
 12 offering expedites to its retail customers. Is that
 13 correct?
 14 A Yes.
 15 Q Are there any -- does Qwest offer expedites
 16 to its retail customers in all situations?
 17 A No. It uses the same determinations about
 18 whether expedites will be offered: first of all, whether
 19 Qwest has the resources available to offer expedites.
 20 That's the first determination. And then expedites are
 21 offered differently depending on whether or not they are
 22 for design or non-design services.
 23 Q And does Qwest apply the same standards when
 24 it's dealing with CLECs' request for expedites?
 25 A Yes.

1 MR. TOPP: I have no further questions.

2 EXAMINATION

3 BY A.L.J. JENNINGS-FADER:

4 Q I have a number of questions, but let me
5 start with a general question about your involvement and
6 background with the change management process.

7 What is that? What is your involvement and
8 background specifically in actually working in the
9 change management process?

10 A I'm not part of the change management team
11 itself. As a witness, I obtain information from the
12 change management record as my primary source, but then
13 I also speak to the members of the change management
14 team if I need additional information, as sometimes
15 occurred in this case.

16 I was involved in the development of the
17 change management as support staff for the people who
18 were negotiating the change management redesign, but I
19 do not work as a change management team member.

20 Q So if I -- am I correct to take from that
21 that to the extent you talk about -- either in your
22 written testimony or in response to counsel's questions,
23 the reasons things happened, for instance, with respect
24 to the changes that are reflected in Exhibit BJJ 39 --

25 A Yes.

1 information that way?

2 A Yes.

3 Q Do you have the same -- do you have a
4 procedural -- excuse me -- an operations involvement
5 with the service interval guides, sometimes referred to
6 as the SIGs?

7 A No, I do not.

8 Q And working back to the testimony you've
9 given previously about your work with the change
10 management process and the product catalog, is that --
11 your involvement at that same level to the extent you
12 discuss SIG in your testimony?

13 A Yes. For the history of service interval
14 changes, I went to the change management team and
15 discussed with them how interval changes are implemented
16 through the SIG.

17 Q I understand one of the major issues in this
18 arbitration to be a fundamental disagreement between
19 Qwest and Eschelon as to the degree of specificity which
20 must be in an interconnection agreement with respect to
21 processes and procedures.

22 Is my understanding correct?

23 A That's correct.

24 Q And it's Qwest's position, if I understand it
25 correctly, that reference to documents such as the

1 Q -- that those -- that discussion is based
2 either on your reading documents or discussions you have
3 with persons who did participate in that process?

4 A Yes. So for that exhibit, I spoke directly
5 with Jean Novak.

6 Q Is that also true with respect to changes or
7 implementation through the product -- I'm sorry. That
8 was a terrible question.

9 Could you explain, for the Commission's
10 information, what your involvement is as a matter of
11 daily work with the product catalog, which is referred
12 to sometimes as the PCAT?

13 A I do not participate in the changes to the
14 PCAT itself. That is handled by our process personnel
15 and usually takes place as a result of change management
16 change requests. I get involved if those become an
17 issue in litigation, and then I must investigate what
18 took place when that change request was implemented.

19 Q And so taking your previous answer with
20 respect to the change management process, may the
21 Commission take from your answer with respect to the
22 product catalog that you used the same process for your
23 investigation; that is, you read whatever documentation
24 may be available, and you'd speak to interested -- or,
25 excuse me -- involved persons and obtain your

1 product category or the service interval guide and
2 reference to processes such as the change management
3 process suffice to address a wide variety of issues
4 at -- that are subject to arbitration.

5 A Yes. It is our belief that the processes and
6 procedures were not intended to be part of the
7 interconnection agreement. Those were for terms and
8 conditions, what products the CLECs would buy from
9 Qwest, on what terms. But the details regarding how
10 projects -- products would be proficient should be
11 according to Qwest's internal procedures, which are
12 managed through the SIG.

13 Q I'm sorry. When I was listing all the
14 various kinds of places one might go for information, I
15 forgot Qwest's implementation guide.

16 Are you familiar with that?

17 A Yes.

18 Q And referring back to our discussion having
19 to do with the change management process, the product
20 catalog and the service interval guide, is your
21 relationship or your operational understanding of
22 Qwest's implementation guide based on the same kind of
23 investigation?

24 A Yes, though a little more detailed there,
25 because I used to be in the information technologies

1 department and had more familiarity with our IT
2 processes, so I was already pretty familiar with those
3 documents. But still, as part of my investigation, I
4 did go to the implementation team at Qwest to discuss
5 the terms and the implementation guide.

6 Q Now, getting -- I'm sorry for that diversion.
7 Let's -- getting back to our discussion about
8 fundamental areas of disagreement, now, when you
9 testify, Ms. Albersheim, regarding the use of the change
10 management process instead of including processes in the
11 interconnection agreement --

12 A Yes.

13 Q -- could you explain for the record
14 briefly --

15 Let me start again. If I understand
16 correctly, there are two types of processes within
17 change management or -- one of which is a process that
18 directly relates to service -- to products and
19 processes. Is that correct? And there's a notification
20 process and an entire process to deal with Qwest's
21 implementation of product and process changes, correct?

22 A Yes, that's correct.

23 Q And there is a separate process within the
24 change management process for dealing with changes
25 having to do with operational systems. Is that correct?

1 A That's correct.

2 Q And in fact, referred to as product and
3 process and systems, correct?

4 A That's correct.

5 Q Now, when Qwest talks about referring
6 product -- process issues to the change management
7 process, it's referring to using the process related to
8 products and processes, is that correct, as opposed to
9 the systems process?

10 A Well, yes, unless the change involves the
11 system change. Sometimes they are submitted as one, as
12 a product and process, but in -- Qwest determines that
13 the change actually involves systems, so they are moved
14 over into the systems category.

15 Q So if when Qwest -- when you testified -- not
16 Qwest. When you testify that an issue ought to be
17 referred to the change management process, then what --
18 to which piece of the change management process are you
19 suggesting the issue be referred?

20 A Well, that depends on what change the CLEC
21 requires, and if what they require is a change to our
22 procedures, then it would be a product and process
23 change. But if it requires a change to our systems, it
24 would be a systems change.

25 Q In your testimony, do you identify to which

1 piece of the change management process various issues
2 ought to be referred, or is this just a general concept?

3 A It's a general concept, because I don't
4 believe any were dealt with that way, if that makes any
5 sense.

6 Q With that degree of specificity?

7 A Yes.

8 Q And if I am putting words in your mouth, stop
9 me immediately.

10 A It's okay. I believe that's the case.

11 Q I understand from the testimony of
12 Mr. Starkey, his direct testimony, which in this
13 proceeding is Exhibit No. -- Hearing Exhibit No. 18,
14 that in approximately mid November of 2006, Qwest
15 determined that it would begin using a negotiations
16 template agreement. Is that correct?

17 A I think it's been longer than that.

18 Q Well, to the --

19 A To use a negotiations template, yes.

20 Q And it did occur at some point during the --
21 during the negotiations between Eschelon and Qwest that
22 led to this arbitration?

23 A Well, Eschelon's negotiations started before
24 we started using the negotiations template, so they've
25 been going on a long time.

1 Q They have been, yes.

2 A So several intervening events.

3 Q Sure. And the switch from using the
4 statement of generally accepted terms and conditions to
5 using the negotiations template agreement occurred at
6 some point during that negotiation process between Qwest
7 and Eschelon?

8 A I believe that's correct, yes.

9 Q Do you disagree -- are you familiar with
10 Mr. Starkey's direct testimony? I believe you are,
11 because I think you responded to it.

12 A I responded to it, yes.

13 Q And do you disagree with his representation
14 that Qwest issued this notice of change from the SGAT to
15 the negotiations template agreement by a Level 1 notice?

16 A I'm not certain.

17 Q That's to say, you don't recall what the
18 level --

19 A Yeah. I don't recall how that was
20 communicated.

21 Q In the course of your investigation into the
22 issues involving change management and referring some of
23 these issues to change management process, what was the
24 basis for the change from using -- first of all, what
25 are statements of generally accepted terms and

1 conditions, or SGAT?
 2 A Yes. They are, as the title suggests,
 3 usually a template for interconnection agreements.
 4 Qwest had not been maintaining the SGAT.
 5 Q I'll get to that in a minute.
 6 A Okay.
 7 Q I want to know, what is an SGAT, for the
 8 record?
 9 A A statement of generally available terms. It
 10 is what terms and conditions are offered to CLECs, yes.
 11 Q And at least in Colorado, was the SGAT
 12 approved by the Colorado Commission?
 13 A Yes. Actually, that occurred in every state.
 14 Q And was at least one -- one, perhaps more,
 15 but at least one purpose of the SGAT to stand as a
 16 standard offering -- a standard offer contract for
 17 competitive local exchange carriers who wished to
 18 interconnect or purchase products for resale from Qwest?
 19 A I believe that was its original intent, yes.
 20 Q And over time, Qwest maintained the SGAT, by
 21 which I mean -- we're getting to your point here -- by
 22 which I mean that it filed with the Commission, at least
 23 in Colorado, various changes and had those changes
 24 approved by the Commission on a --
 25 A For a time, yes.

1 Q Now, at some point, Qwest stopped doing that.
 2 Is that correct?
 3 A Yes.
 4 Q And at some point subsequent to that, Qwest
 5 implemented the negotiations template agreement?
 6 A Yes. Qwest felt the SGATs were out of date,
 7 needed up-to-date language. They decided the most
 8 efficient way to do that was to use one standard
 9 document, the negotiations template.
 10 Q In lieu of the other standard document?
 11 A The SGAT.
 12 Q Right. Now, is that the basis for the change
 13 from SGAT to the negotiations template agreement?
 14 A That's my understanding generally. I don't
 15 know all the bases on who made these decisions or why,
 16 no.
 17 Q That was my next question.
 18 A Yeah. Who decided that, no, I don't know. I
 19 believe that was public policy and our legal department,
 20 so ...
 21 Q Now, if you will bear with me a moment.
 22 A.L.J. JENNINGS-FADER: Does someone have a
 23 copy of Mr. Starkey's direct testimony?
 24 MR. MERZ: Yes.
 25 A.L.J. JENNINGS-FADER: If you would provide

1 Exhibit -- Hearing Exhibit No. 18 to the witness, I'd
 2 appreciate it.
 3 Q (By A.L.J. Jennings-Fader) And I'll give you
 4 a couple of minutes, but could you refer to
 5 Mr. Starkey's testimony, direct testimony at Page 72.
 6 I'm sorry. I'm at the wrong page. At
 7 Page 39. And I want you to see that just for point of
 8 reference.
 9 A Yes.
 10 Q And that has on it, does it not, the levels,
 11 various levels --
 12 A Yes.
 13 Q -- for -- and those are levels of
 14 notification within the change management process?
 15 A Yes, they are.
 16 Q And when Qwest said that it -- let's assume
 17 that Mr. Starkey is correct for purposes of this
 18 question. Qwest did a Level 1 change management process
 19 notice to change from the SGAT to the negotiations
 20 template agreement?
 21 A If that was the level, okay.
 22 Q And you don't -- but you don't know?
 23 A I don't know.
 24 Q At this point, we just have Mr. Starkey?
 25 A Yeah. I haven't looked into that one.

1 Q Now, Level 1 -- and that's why I asked you to
 2 look there. The discussion -- there are boxes that show
 3 what Level 1 does and what a Level 2 notice is for, and
 4 Level 3 and 4 and 5, correct?
 5 A Um-hum, yes.
 6 Q Well, at least --
 7 A Four.
 8 Q -- at least four.
 9 A Right.
 10 Q Now, Level 1 is for a product or process
 11 change that does not alter competitive local exchange
 12 carrier operating procedure or changes that are
 13 time-critical corrections to a Qwest product or process,
 14 correct?
 15 A Correct.
 16 Q In your investigation, do you know which --
 17 well, we know it's probably not -- probably doesn't have
 18 anything to do with CLECs, is the reason, so we're
 19 probably looking at a Level 1 change due to a change
 20 that's time -- a time-critical correction, correct?
 21 A Are you speaking of the change to a
 22 negotiations template?
 23 Q Yes. Change to, right. What within Level 1
 24 triggered this, the notification as a Level 1
 25 notification?

1 A I don't know. At this point I would be
2 guessing.

3 Q Do you know -- do you know -- Ms. Albersheim,
4 please don't do that. Thank you.

5 Ms. Albersheim, do you know whether the
6 negotiations template agreement contains all the
7 provisions that are contained within the Colorado
8 Commission approved SGAT as modified?

9 A I would be guessing.

10 Q So you haven't done a side-by-side
11 comparison?

12 A I have not done a side-by-side. I believe it
13 contains more, but I would be guessing at that.

14 Q Did Qwest prior to switching from the SGAT to
15 the negotiations template agreement seek Commission
16 approval or notify the Commission before it made that
17 change?

18 A I don't believe it has. The thing is, while
19 it has published this negotiations template, I don't
20 believe the SGAT is not in effect. The thing is that
21 the language in the SGAT is significantly out of date,
22 so I don't believe Qwest has initiated formal
23 proceedings with regard to the SGAT at this time.

24 Q By "formal proceedings," you mean formal
25 proceedings to somehow -- what do you mean by "formal

1 proceedings"?

2 A Where it is to change the SGAT, withdraw the
3 SGAT, place the negotiations template in their place, I
4 don't know what Qwest's plans are there, but I don't
5 believe that has taken place yet. So the SGAT isn't
6 void, but it is significantly out of date.

7 Q And so that it leads me, actually, to kind of
8 where I was going with this whole -- I just needed to
9 set the stage.

10 A Yes.

11 Q If there is a dispute between the language in
12 an SGAT, just for example, and the language in the
13 negotiations template agreement, which document governs?

14 A That's hard to answer because I feel like
15 that's a legal question.

16 Q Well, I understand you're a lawyer, but I'm
17 not asking you a legal question. I'm asking you a
18 question based on -- first of all, you're a lawyer?

19 A I'm a lawyer but not for Qwest.

20 Q I understand that, and I'm not asking you a
21 legal question. I am asking you a question based on
22 your understanding and investigation and Qwest's
23 position about things going to CMP and other -- other
24 relevant processes.

25 A Well, you see, I don't believe Qwest

1 approaches it quite the way you frame the question,
2 because the negotiations template is a starting point
3 for negotiations. It's the starting point for coming up
4 with an interconnection agreement.

5 If the terms in the SGAT and the terms of the
6 negotiation template don't agree, the CLEC is certainly
7 free to bring that to Qwest's attention during the
8 negotiations. And Qwest can address that in the
9 negotiations and determine whether or not the CLEC is
10 correct, change the negotiations template, or come up
11 with some alternative for that CLEC's contract.

12 Q So I gather from that that the negotiations
13 template agreement is not a take-it-or-leave-it
14 proposition.

15 A No, no. It's a starting point.

16 Q Let's move back -- and thank you for that.

17 A Sure.

18 Q It helps me understand a little bit about
19 Qwest's view about the template negotiations template.

20 A Sure.

21 A.L.J. JENNINGS-FADER: I think we're pretty
22 much finished with the -- Mr. Starkey's testimony.
23 Thank you, Counsel, for letting me -- for letting us use
24 that.

25 Q (By A.L.J. Jennings-Fader) Now, Qwest's

1 view, I believe, in this case is that certain process
2 issues belong in the CMP for a variety of reasons, all
3 of which are discussed in detail in your testimony.

4 Is my understanding correct?

5 A Yes.

6 Q If an issue belongs in CMP and if the issue
7 is a product and process, correctly labeled a product
8 and process issue, what is the process by which the
9 CLEC, in this case Eschelon, can bring the issue to CMP
10 to assure that the issue is addressed with the CMP?

11 A They can submit a change request to have that
12 particular change made to the product or process.

13 Q Now, are change requests for product and
14 process subject to review by all -- all of the CLECs
15 that may participate in the change management process?

16 A They all have the opportunity to review and
17 comment on all change requests, yes.

18 Q Does Qwest under the change management
19 process -- are change requests for product and processes
20 subject to any sort of vote by anyone?

21 A No, but I'd like to clarify what voting
22 means.

23 Q Please do.

24 A Because it is not whether or not a change
25 request is accepted or denied. The voting is to

1 prioritize change requests. And the reason that is done
2 for systems change requests is that there is a limited
3 budget to accomplish systems change requests.
4 Therefore, we ask the CLECs to vote on which change
5 requests have a higher priority to them so those will
6 happen sooner rather than later. So that doesn't happen
7 with product or process change requests.

8 Q And fairly, Qwest also votes on the systems
9 changes, doesn't it?

10 A Yes, it does. It has one vote.

11 Q It has one vote?

12 A It has one vote.

13 Q It's not just a CLEC decision; technically,
14 it involves everyone?

15 A That's correct.

16 Q Now, with respect to the change request
17 having to do with a product or process correctly
18 assigned issue, then what assurance does Eschelon in
19 this case have that the issues it has raised in the
20 arbitration which Qwest suggests ought to be sent to the
21 change management process will be addressed and decided
22 by anyone other than Qwest?

23 Qwest makes a decision on product and
24 process, change of process, does it not?

25 A It makes an initial decision, yes, that's

1 correct. Qwest does have the ability to deny change
2 requests for a set number of reasons: cost, technical
3 ability to publish the change request, whatever. So
4 Qwest can deny the change request. If the CLEC does not
5 agree with that denial, it has options through the CMP
6 to object to the change request being denied.

7 Q And that's -- among them would be a request
8 to delay or escalation through the dispute resolution
9 process internal to the change management?

10 A Yes. The escalation -- I would think a delay
11 would only be if they object to a change request that
12 has actually been approved and is going in, but yes.

13 Q So then Eschelon, for example, could say, I
14 don't like your decision not to change the process and
15 therefore the way in which you change the process,
16 either way?

17 A Yes.

18 Q And therefore, go through an escalation
19 process?

20 A Yes.

21 Q And that escalation process, internal
22 escalation process, is what?

23 A You can escalate to the CMP oversight
24 committee. You can also file a dispute through the CMP.
25 It has this dispute resolution process within the CMP

1 itself. Ultimately, the CLEC also can seek dispute
2 resolution from a Commission.

3 Q And could you explain to me how, at the end
4 of the day, using the dispute resolution process within
5 the CMP will do anything other than delay a process
6 before this Commission? Will Qwest change its views
7 during the course of the CMP from those articulated in
8 this case?

9 A On the specific issues in this case?

10 Q On the specific issues in this case.

11 A No, no. But I understood your question a
12 little differently. And I think one thing I want to
13 point out, the main reason to go through the CMP is
14 because the parties interested in the results are not
15 just Qwest and Eschelon but all CLECs, because what is
16 sought is a change to a process that impacts all CLECs.

17 Q And believe me, I do appreciate that, and I
18 will get to that point.

19 A Okay.

20 Q But I'm just trying to understand how from
21 Eschelon's perspective as a CLEC which has been involved
22 in years of negotiation and now apparently years of
23 arbitration litigation from -- before various
24 commissions, that results of going to CMP will be any
25 different than ending up before this Commission, as an

1 example, with exactly the same issues teed up for
2 resolution.

3 A Well, the first issue, let me get specific.

4 Q Do you understand? Do you understand?

5 A I think I do. Let's do -- let's talk about
6 the FOC on the jeopardy issue.

7 Q Okay. Pick one.

8 A Yeah. It's easier if we have something
9 concrete, I think.

10 The point there is that Eschelon wants to
11 have in its contract a requirement that we submit the
12 FOC at least a day before the new due date on an order
13 that was in jeopardy. That is not our current process.
14 If -- any change like that should go through the CMP.
15 We don't believe that is an appropriate change, but it
16 could go through CMP, and we could find out from all of
17 our CLECs that we're wrong.

18 It's not outside the realm of possibility
19 that we would change our position. I don't believe that
20 would be the case, because I believe the interest of
21 most CLECs is to have service delivered as close to the
22 original due date as possible. And that's the
23 overriding concern. So I don't believe if this were
24 addressed through the CMP that that would be the
25 sentiment addressed.

1 Q If, taking the exhibit -- the example of the
 2 firm order commitment following a jeopardy and the date
 3 on which it is to be provided -- let's get the whole
 4 deal out there.
 5 A Yes.
 6 Q Let's assume that Eschelon had never -- had
 7 never raised the issue, goes to the CMP, goes to the
 8 process and -- product and process portion of the CMP,
 9 goes through the whole nine yards and CMP, at the end of
 10 the day Qwest says no, okay, which is pretty much what
 11 they're saying now --
 12 A Right.
 13 Q -- okay? How has going through the CMP
 14 process done anything for Eschelon other than delay a
 15 third party's resolution of the dispute?
 16 A It might give Eschelon allies in the argument
 17 if other CLECs agree that this change should be made to
 18 Qwest's process. So I believe there's a benefit in
 19 finding consensus on what this change should be and what
 20 the CMP is for. So it does delay, but Qwest could
 21 discover that that is important to all of the CLECs and
 22 isn't just a process change that Eschelon wanted.
 23 Q Now, we'll talk about all -- and you have
 24 blended in, then, the reason, among others, that Qwest
 25 wants to go for certain of these issues, among them the

1 FOC following jeopardy has to do with the fact that it
 2 wants input from all of the competitive local exchange
 3 carriers that participate in the change management
 4 process?
 5 A That is one, and the other overriding concern
 6 for Qwest is to have one set of processes and procedures
 7 for everybody.
 8 Q So, now, Qwest gets the input, decides not to
 9 proceed. What value is it to Eschelon to have had that
 10 input from other CLECs, aside from the allies?
 11 A Well, if -- if Qwest does not change its
 12 mind, then Eschelon has not received any benefit, no.
 13 It hasn't gotten that change made. But I don't believe
 14 it's appropriate for that change to be made through
 15 contract terms.
 16 Q Now, you mentioned the word "consensus" in
 17 your answer a moment ago.
 18 A Um-hum.
 19 Q Which consensus? Are change management --
 20 excuse me. Are change requests on product and process
 21 resolved by consensus?
 22 A I'm not sure I would put it that way. Qwest
 23 does listen to the input it receives from CLECs when
 24 Qwest submits its own change requests and doesn't always
 25 implement them. Likewise, it gets input from CLECs on

1 change requests submitted by other CLECs.
 2 So, you know, Qwest doesn't implement change
 3 requests in a vacuum. The input from the CLEC community
 4 is an important aspect of implementing change requests.
 5 Q And now I'd like to talk about -- a little
 6 bit about Issue 12-64, which is the root-cause analysis
 7 and commission of error, if you will.
 8 A Okay.
 9 Q I don't know how --
 10 A Acknowledgment of mistakes.
 11 Q Acknowledgment of mistakes. Thank you. I'll
 12 write that down. I want to be sure to use that right.
 13 A.L.J. JENNINGS-FADER: And again, Counsel, I
 14 apologize. Does someone have Mr. Webber's direct
 15 testimony, which will be Exhibit No. 19?
 16 MR. MERZ: Yes.
 17 A.L.J. JENNINGS-FADER: Thank you.
 18 Q (By A.L.J. Jennings-Fader) Could you turn to
 19 Page 43.
 20 A I'm there.
 21 Q And specifically, if you would take a moment.
 22 Are you familiar with Mr. Webber's testimony?
 23 A Yes. I've read it.
 24 Q And there is a long quotation there from
 25 Qwest's product catalog at Lines 12 to about 26 --

1 A Yes.
 2 Q -- having to do with postmortems under
 3 specific circumstances.
 4 A Yes.
 5 Q And postmortems are what?
 6 A Analysis of mistakes.
 7 Q And are they the functional equivalent of
 8 root-cause analysis?
 9 A Yes, yes. You could call it that, yes. And
 10 I'd point out that I believe I reference the same PCAT
 11 in my testimony. I just didn't quote it.
 12 Q You may, but the quote happened to be here,
 13 so --
 14 A Yes.
 15 Q Okay. Now, did this process that's shown
 16 here on Page 43, Lines 12 to 26 result from a change
 17 management process?
 18 A I couldn't say how all of the changes that
 19 might have been made to this would have resulted. It
 20 has a history of changes, some probably through the CMP.
 21 Q I'm sorry. I should say -- I'm sorry. Does
 22 the original concept of doing the root-cause analysis or
 23 postmortem referenced in this testimony arise -- did it
 24 come through CMP or was it --
 25 A Its origin, I don't know.

1 Q I'm sorry. I should have been clearer.
 2 A That's okay.
 3 Q While I understand -- well, the process
 4 that's referenced on Page 43 -- 43, Lines 12 to 26 of
 5 Mr. Webber's direct testimony, that process is limited
 6 to a particular circumstance. Is that correct?
 7 A Yes. This appears to be limited. This quote
 8 limits the process to repair circumstances, yes.
 9 Q And further, if I'm reading this correctly, a
 10 repair or circumstance met -- excuse me -- maintenance
 11 and repair circumstance on an unusual event, for
 12 example, an event lasting over eight hours, in other
 13 words, it's quite specific, quite directed. Is that
 14 correct?
 15 A Well, that's an example. Another unusual
 16 repair event could be an error, if you will, that occurs
 17 many times or isn't resolved on the first try. I
 18 believe that's just exhibited as an example.
 19 Q So this process may be available for more
 20 than one -- more than the one event referenced,
 21 specifically referenced?
 22 A Yes.
 23 Q Is this process still operational --
 24 A Yes.
 25 Q -- operative?

1 A Yes, it is.
 2 Q Taking this -- let's assume that there's a
 3 postmortem or root-cause analysis, which is also
 4 referenced in this same quotation, completed.
 5 What happens as a result of that root-cause
 6 analysis? Qwest does one, and then what?
 7 A It provides the results to the CLEC.
 8 Q Anything else?
 9 A That depends on what the CLEC wants to
 10 happen. It's entirely circumstance specific.
 11 Q Does -- do you know whether Qwest charges for
 12 a postmortem or a root-cause analysis which is done
 13 pursuant to this provision?
 14 A No. I don't believe there's a charge for
 15 this.
 16 Q I understand that Qwest's concern in part
 17 about the root-cause analysis -- correct me if I'm
 18 wrong, please -- is that this may result -- may be a
 19 change in Qwest's current process or procedures, is that
 20 correct, or may cause a result in a change to the
 21 current process or procedures?
 22 A I don't think that's our primary concern with
 23 this issue, though that's a possibility. I don't think
 24 that's mainly what our concern is here.
 25 Q To the extent that Qwest has a -- has stated

1 a concern about Issue 12-64, Eschelon's proposals,
 2 because it might have that effect of changing a process
 3 or procedure, is what is described in Mr. Webber's
 4 testimony on Page 43 a process or procedure that could
 5 be adapted to a broader -- to encompass a broader scope?
 6 A It could. I just have to --
 7 Q I want you to give a complete answer, so if
 8 you have some reservations, please, I'd like to hear
 9 them. I'm not --
 10 A I'd rather be looking at the entire PCAT,
 11 because I believe this is only a portion of what is
 12 available. I believe more's already available from the
 13 account manager PCAT; plus, there is a root-cause
 14 analysis of this kind specific to repair issues.
 15 So we offer them more than this already.
 16 It's possible it could be adapted to do even more than
 17 what is already offered. It depends on the
 18 circumstances, what is asked to be offered.
 19 Q Is part of Qwest's concern about Issue 12-64
 20 that it might be overused, if there were such a -- if
 21 there were a provision in the interconnection agreement,
 22 that it might be overused by Eschelon and cause
 23 increased costs to Qwest as a result?
 24 A I believe that potential exists, yes.
 25 Q And is that one of the concerns that you've

1 articulated or that's been -- with respect to this
 2 issue?
 3 A That's just my opinion. I haven't really
 4 stated that in my testimony. I believe that their
 5 request is significantly broad and creates that
 6 potential.
 7 Q To address that potential, would a -- would a
 8 provision which limits the number of such requests made
 9 within some period of time address that concern? Yes or
 10 no. And I'll ask you to explain your answer, but I
 11 just ...
 12 A Yes. It would help.
 13 Q And because?
 14 A Well, because then it would limit the amount
 15 of resources spent on those efforts by Qwest, yes, and
 16 might help to limit Eschelon's use of that provision,
 17 you know, and make it use it when it's needed. But
 18 right now, this isn't there. There's no limitation at
 19 this point.
 20 Q And I know we're running into the lunch hour,
 21 but I really just have one more specific issue that I'd
 22 like to talk about with you, and it's not nearly, I
 23 think, as detailed as we have been up to this point.
 24 A Okay. Do I still need this (indicating)?
 25 Q Oh, I think not. Thank you. There's just a

1 lot of paper in this case.
 2 A Yes, there is.
 3 Q Ms. Albersheim, are you familiar with the
 4 rebuttal or answer testimony of Mr. Denney?
 5 A Yes. I've read it.
 6 A.L.J. JENNINGS-FADER: And Counsel,
 7 please -- thank you.
 8 Q (By A.L.J. Jennings-Fader) Which would be
 9 Exhibit -- in this case, I'm sorry, Exhibit No. 26.
 10 Ma'am, if you could turn to Page 110 and the
 11 answer that begins on Line 5, so first you get to 110.
 12 A Okay. Okay.
 13 Q And then Line 5 -- it begins on Line 5 and
 14 continues through Page 111, Line 3.
 15 A The pagination doesn't look like it jibes.
 16 Do you know what question?
 17 Q Oh, good. The question is, "Please respond
 18 to Qwest's position regarding the amount of
 19 expedited" --
 20 A I see the problem. I'm looking at his
 21 direct. Sorry.
 22 Q No problem. There's, for the record, massive
 23 amounts of paper.
 24 A Okay. It begins with the question, "Please
 25 respond to Qwest's position ..."

1 Q Yes. Right.
 2 A I'm there.
 3 Q Could you do me a favor. Could you review
 4 his answer to yourself --
 5 A Okay.
 6 Q -- and let me know when you're ready.
 7 A (Witness complied.)
 8 Okay.
 9 Q All right. Just briefly for the record,
 10 would you agree with me that the testimony here has to
 11 do with what Mr. Denney perceives as a disconnect
 12 between Qwest's position during the negotiations and its
 13 position in the arbitration?
 14 A That's how I understand it, yes.
 15 Q And specifically, the disconnect is that he
 16 reads both the petition for arbitration and also
 17 understands the negotiations to have dealt with an
 18 individual-case-based rate for expedites, whereas your
 19 testimony now appears to suggest that the rate ought to
 20 be a firm \$200 per day.
 21 Is that your understanding of his testimony?
 22 A Yes. Do you want me to go into how I respond
 23 to that?
 24 Q Yeah. Could you help me to understand?
 25 A Well, first of all, his table doesn't look

1 quite right to me because it lists \$100, but ...
 2 Q Let's put that to the side because --
 3 A Okay.
 4 Q -- actually, his rate of \$100 is Eschelon's
 5 proposal --
 6 A Yeah.
 7 Q -- so ...
 8 A We're talking about a couple of different
 9 places within the Exhibit A, so that's part of the
 10 disconnect there.
 11 But the \$200 a day is what Qwest charged --
 12 charges in all circumstances. It's referred to in
 13 different ways in Section 7 of Exhibit A. It refers to
 14 a retail tariff, which is equivalent to \$200 a day under
 15 that retail tariff. In the Exhibit A, it's ICB, listed
 16 as ICB, rather than \$200 a day.
 17 Qwest didn't make any filings or changes to
 18 its Exhibit A but believed that the \$200 a day can apply
 19 in the ICB situation, which just means that in each
 20 individual case, it will be \$200 a day, but that allows
 21 Qwest, then, to charge the same rate to everybody in all
 22 circumstances.
 23 Q During the negotiations, what rate did Qwest
 24 advocate? Do you know? And by "negotiations," I mean
 25 negotiations leading up to the filing of the petition

1 for arbitration.
 2 A Right. I don't know exactly what was said on
 3 the rate. I'd have to hope Qwest advocated \$200 a day,
 4 because that is our policy. I participated in a lot of
 5 the negotiations, but I don't believe I was there when
 6 this was discussed.
 7 A.L.J. JENNINGS-FADER: With that, folks,
 8 we'll take a lunch break. We'll be back here at 1:30,
 9 and I believe that -- no guarantee -- that I've finished
 10 the questions for Ms. Albersheim.
 11 We'll see you all at 1:30.
 12 (The proceedings recessed at 12:23 p.m., to
 13 be reconvened at 1:30 p.m.)
 14 (Exhibit 28 marked for identification.)
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1 AFTERNOON SESSION 1:32 p.m.
2 A.L.J. JENNINGS-FADER: We'll be back on the
3 record.

4 Mr. McGann, during lunch or otherwise, have
5 you had an opportunity to procure a copy of Exhibits
6 No. 1 and 2?

7 MR. MCGANN: I was just talking to Mr. Merz
8 about that. We are attempting to coordinate getting
9 those exhibits.

10 I do have the joint issues matrix. However,
11 Eschelon has asked that it be in a -- in a two-color
12 version. It is now multiple colors. And I believe
13 Ms. Clauson believes it's difficult to read when you've
14 got the multiple colors, so she asked that it simply be
15 a two-color version, so we're preparing that.

16 The interconnection agreement, we are -- I
17 believe that's being sent over to Qwest. If it hasn't
18 already, it's being sent this afternoon. And we will --
19 we will -- and again, we're trying to incorporate some
20 of the changes that have been made to the agreement.

21 Our proposal was -- or my proposal was going
22 to be that we collect that information this afternoon
23 and then perhaps take that up first thing tomorrow
24 morning to enter those two exhibits.

25 A.L.J. JENNINGS-FADER: That's fine.

1 MR. MCGANN: That would give us an
2 opportunity, both Eschelon and Qwest, to take a look at
3 the exhibits and make sure we're fine with it.

4 A.L.J. JENNINGS-FADER: Believe me, I would
5 much rather they be accurate than speedy.

6 MR. MCGANN: Thank you.

7 A.L.J. JENNINGS-FADER: And that will
8 include, then, if I understand what you're saying, all
9 of the language, including the most recently settled
10 language?

11 MR. MCGANN: Yes, it will.

12 A.L.J. JENNINGS-FADER: For like 8-20 and the
13 rest of it?

14 MR. MCGANN: That's correct.

15 A.L.J. JENNINGS-FADER: Excellent. Thank
16 you.

17 Was there any preliminary matter from any
18 party before we get going this afternoon?

19 MR. TOPP: No.

20 A.L.J. JENNINGS-FADER: Mr. Merz, anything?
21 I'm sorry?

22 MR. MERZ: Nothing preliminary. I'm sorry.

23 A.L.J. JENNINGS-FADER: Because
24 notwithstanding my hopeful statement at the end of the
25 morning session, in fact, I have some additional

1 questions.

2 FURTHER EXAMINATION

3 BY A.L.J. JENNINGS-FADER:

4 Q First of all, do you have your testimony,
5 Exhibits 2, 4 and 5? You won't need the confidential
6 materials. Obviously -- I'm sorry. Do you have those?

7 A Yes, yes.

8 Q Okay. Good.

9 A I do.

10 Q As we discussed at some length this morning,
11 there's a difference between the systems changes and
12 process changes through the change management process.

13 Is there a definition in the change
14 management process document for the word "process"?

15 A For the word "process"?

16 Q Is that a defined term?

17 A I don't know. I don't know. I'd have to
18 look.

19 Q So obviously, you provided that as one of
20 your exhibits.

21 A Exhibit document, yes.

22 Q So it would be in -- I think it's RA 1, if it
23 were anywhere. Is that right?

24 A Yes. Yes, it would.

25 Q The second thing is, when is the definition

1 of process -- well, what is the definition of process,
2 from Qwest's perspective, in its concern that process
3 ought to be through the -- through the CMP procedures?

4 A Those activities that are involved in the
5 day-to-day provisionings of services to CLECs. That
6 also includes billing, maintenance and repair, all of
7 the activities that take place that provide products
8 that they have requested through their interconnection
9 agreement.

10 Q I realized that we were talking all around
11 it, but we haven't come to a working definition.

12 A Sure.

13 Q So to the extent that we were talking about
14 it earlier, that's the context in which you were
15 discussing process?

16 A Yes.

17 Q Rather, Qwest's processes, right?

18 A Yes.

19 Q I understand, at least from the testimony of
20 Eschelon, and I believe you have agreed with some of it,
21 that Qwest has for some of the matters at issue here
22 different processes and different statements; for
23 example, there may be something specific in Washington
24 State but not the rest of the areas where Eschelon
25 provides service, or perhaps there's something in

1 Minnesota that is not provided in the rest of Qwest's
2 service territory where Eschelon does business.

3 Is my understanding correct, that there are
4 perhaps some individual instances in which there might
5 be different processes in different states?

6 A Are you asking with regard to the issues
7 still in this case?

8 Q Yes.

9 A There is a slight difference in the expedite
10 process in Washington -- that's the one I'm aware of --
11 because we haven't got the retail tariff in Washington
12 to charge the \$200 a day rate for design services.

13 Q So the difference, then, is not -- is with
14 respect to the rate, that it would be an individual case
15 basis rate then, as opposed to --

16 A What it is is we offer what is colloquially
17 referred to as our old process; that is, we'll offer
18 expedites for design services in emergency circumstances
19 for free, and that's true for wholesale and retail.

20 Q So with respect to that -- and that's just --
21 we'll take that as a concrete example of what I want to
22 ask you about. Is what is given that Qwest -- at least
23 in the example you just gave has one process, is that a
24 process applicable statewide in Washington, or is that
25 CLEC by CLEC?

1 A Statewide.

2 Q What -- given that Qwest apparently has the
3 capability of having a different process, what is
4 Qwest's concern with Eschelon's requests that Qwest
5 believes are separate processes?

6 A Well, in the case of expedites, the
7 difference is that Eschelon is seeking terms that are
8 different from everybody else.

9 They have two proposals for expedites. One
10 proposal includes an extra option for expedites that
11 would allow them to have expedites for free when they
12 make an error on an order and want to expedite the
13 order. That's not offered to anybody else.

14 Their second proposal, which doesn't include
15 the list, it's just a broader proposal for expedites,
16 doesn't include the language that Qwest has in its
17 proposal that Qwest will do the expedite if resources
18 are available. So that's not there. And basically,
19 that means they get them no matter what. And they also
20 do not delineate between emergency-based expedites or
21 design -- excuse me -- expedites for design services and
22 non-design services.

23 Q I perhaps didn't state -- while I appreciate
24 the answer, I perhaps didn't state my question
25 appropriately. I wish to discuss this more in the

1 broader context of Qwest's position that process issues
2 belong in the CMP process.

3 A Okay.

4 Q And I was using as an example where --

5 A I see.

6 Q -- there may be different processes available
7 to demonstrate that Qwest is apparently capable of doing
8 different processes for -- in different circumstances.

9 What is it at a more global level, since
10 Qwest has the capability of doing so, that supports
11 Qwest's argument that it ought not to be required to do
12 so in this arbitration?

13 A Well, we don't argue that we can't, okay?
14 That isn't our position. But the problem with having
15 multiple processes, especially in terms of how different
16 products are provisioned and who gets what, is that you
17 create a complexity that must be dealt with by all of
18 the personnel involved in that provisioning. That
19 creates a greater likelihood of error in the
20 provisioning, reducing the quality and consistency of
21 what we provide.

22 Q Thank you. Now I'd like to really jump to an
23 issue we haven't discussed yet -- surprise -- which has
24 to do with Issue 12-87, which is controlled production
25 testing.

1 A Yes.

2 Q And in your direct testimony on that subject,
3 you talk about when decision -- when Qwest makes
4 decisions with respect to whether or not production
5 testing is necessary.

6 What I wish to have clear on the record is,
7 is that decision, for example, on the upcoming release
8 in the IMA, is the decision as to whether or not
9 production testing will be required made on a
10 release-by-release basis -- lots of options -- on a
11 release-by-release basis, on a CLEC-by-CLEC basis, on a
12 product-by-product basis or on some other basis?

13 A It's never a CLEC by CLEC, okay, because the
14 decision applies to everybody. I would say generally,
15 it would be on a release-by-release basis. It would
16 depend on what has changed with the new release.

17 The best example was IMA Release 20, which
18 involved the change in architecture underlying
19 computer-to-computer transactions. It applied across
20 the board for release. It may be product by product in
21 a given release. It really depends on what has changed.
22 But it's never CLEC by CLEC.

23 Q And I have a question with respect to what
24 may or may not be a typographical error in your answer
25 testimony, Exhibit No. 4. And I'm referring to Page 4.

1 I'm sorry. Do you have it?
 2 A Exhibit --
 3 Q No. It is Hearing Exhibit No. 4, is your
 4 entire testimony. I need to ask you to turn to Page 4.
 5 A Okay.
 6 Q Got it?
 7 A Sorry.
 8 Q No. I'm not being clear. No problem. All
 9 right?
 10 A Um-hum.
 11 Q And Line 1 has a date of January 29, 2006.
 12 A That should be 2007.
 13 Q Thank you.
 14 A Yes.
 15 Q Would you do me a favor, please. Would you
 16 make the change on the official -- do you have the
 17 official --
 18 A I don't have the official --
 19 Q I need the exhibit. Actually, I'm going to
 20 ask you to make two changes, because I want the exhibits
 21 to be accurate.
 22 So, Ms. Albersheim, this is the official
 23 version of Exhibit No. 4, and could you turn to Page 4
 24 of that exhibit and make the change that you've
 25 identified --

1 A Yes.
 2 Q -- on Line 1.
 3 A (Witness complied.)
 4 Q And initial and date it, please.
 5 A Today's the 17th? 16th, 17th?
 6 BY MR. MERZ: 17th
 7 Q (By A.L.J. Jennings-Fader) And actually,
 8 while we're doing that, there's another -- I believe
 9 another correction that needs to be made on your
 10 rebuttal testimony, which is Exhibit No. 5 --
 11 A Okay.
 12 Q -- as long as we're doing this.
 13 A Sure.
 14 Q And that's on Page 20. I believe you had a
 15 discussion with Mr. Merz that the exhibit number
 16 referenced in Line 4 is incorrect.
 17 A Yes. It should be BJJ 39.
 18 Q And could you make that change and correct
 19 it, please --
 20 A Yes.
 21 Q -- and date it.
 22 A (Witness complied.)
 23 Q Thank you, ma'am.
 24 And while -- and we will now continue on with
 25 your -- with your answer testimony. And with respect to

1 Issue -- and this is just a point of reference. With
 2 respect to Issue No. 12-64, acknowledgment of mistakes,
 3 and elsewhere throughout your testimony, you talk about,
 4 as we've discussed in detail, the need to refer certain
 5 process questions, certain issues being arbitrated to
 6 the CMP process. This just happens to be a place where
 7 you discuss it in some detail.
 8 Now, for the parties' information, during the
 9 lunch break, I passed out to counsel for all the parties
 10 what is Exhibit No. 28, which I'm admitting by
 11 administrative notice.
 12 It's a copy of four pages of the Commission's
 13 rule governing formal complaints, which is Rule No.
 14 1302. And I actually did that just for -- so the
 15 witness and all the parties would have the document and
 16 could reference it.
 17 (Exhibit 28 admitted.)
 18 Q (By A.L.J. Jennings-Fader) So,
 19 Ms. Albersheim, have you Exhibit No. 28 in front of you?
 20 A Yes, I do.
 21 A.L.J. JENNINGS-FADER: And just if it's not
 22 clear, Exhibit No. 28 is admitted.
 23 Q (By A.L.J. Jennings-Fader) Briefly, the
 24 Commission has a process by which -- I think we've
 25 discussed a little bit -- by which competitive local

1 exchange carriers can bring formal complaints against
 2 Qwest in the event that in the opinion of the -- in the
 3 opinion of the CLEC Qwest is not meeting its
 4 responsibilities and duties pursuant to its
 5 interconnection agreement. And generally, that's what
 6 Rule 1302-D, as in David, refers to. And that's the
 7 second page of Exhibit 28.
 8 I will read to you what that rule says. It
 9 says, quote, Formal complaints to enforce a
 10 telecommunication provider's interconnection duties or
 11 obligations or formal complaints regarding
 12 interconnection service-quality matters shall be treated
 13 as accelerated complaints if, and then there are a
 14 variety of factors not relevant to my question.
 15 A Okay.
 16 Q If the terms' precise requirements that Qwest
 17 will meet are not specifically spelled out in the
 18 interconnection agreement but, rather, have been
 19 referred to another process and that process has
 20 resulted in, for example, a change to a product catalog
 21 or a change to a service interval or something,
 22 something else external to the interconnection
 23 agreement --
 24 A All right.
 25 Q -- I -- how will the Commission know what,

1 when it is faced with a formal complaint, what the
2 duties and responsibilities of Qwest are pursuant to the
3 interconnection agreement?

4 A That should be what is contained in the terms
5 of the interconnection agreement. But I guess I'm not
6 clear. Are you saying that the -- how will the
7 Commission know whether the process has been followed
8 correctly? Is that what you're asking?

9 Q No. I'm asking literally, how will the
10 Commission know the terms of the interconnection
11 agreement if various of these processes or various of
12 these issues have been referred to another forum and are
13 not contained precisely in the interconnection
14 agreement?

15 A I am trying to think here. How -- I'm
16 wondering how you could file a complaint against the
17 interconnection agreement.

18 Q No. Against Qwest for failing to comply with
19 its duties and obligations under the interconnection
20 agreement.

21 A Yeah.

22 Q Correct. Are you saying that none of these
23 issues would be subject to a complaint brought pursuant
24 to the ICA if Qwest's position is adopted?

25 A I think that would depend on what the terms

1 out here.

2 A Okay.

3 Q So let's keep with expedites, because at
4 least that's something that's relatively simple.

5 A Okay.

6 Q Is there a provision in the ICA which says,
7 Qwest shall provide expedites?

8 A Qwest language offers that -- yes. In
9 Section 9 and Section 7, we have provisions to offer
10 expedites if resources are available.

11 Q If the Qwest language is adopted, is there
12 certainty about the provision of the ICA with respect to
13 expedites without the need to refer to any other
14 document?

15 A There is certainty that Esch -- that Qwest
16 will offer expedites with available resources, but Qwest
17 doesn't give a guarantee that expedites are available.
18 So that's not -- maybe that's not the best example.

19 Q I'm trying to come up with an example that
20 under -- as I understand Qwest's position, there are --
21 or at least Eschelon's argument, perhaps, there are
22 circumstances under which Qwest will -- Qwest's language
23 will, of necessity, require reference to yet another
24 document, yet another something, either the SIG or the
25 PCAT or something else.

1 of the ICA say. It's hard for me to answer that. This
2 feels very speculative.

3 Q Well, what it feels like is -- I'm trying to
4 understand from the Commission's perspective how it will
5 know what the obligations of an ICA are when the -- if
6 an ICA should be brought as the basis of a complaint
7 before it.

8 A So you're saying if -- if there's a complaint
9 on the basis of a term in the ICA that refers to a
10 process that's not in the ICA.

11 Q As I understand Qwest's proposal, various
12 things such as -- very specific requirements such as --

13 A I think part of the reason I'm struggling
14 with the question is that Qwest doesn't believe that
15 process should be in the ICA so that that shouldn't be
16 subject to a complaint on the terms of the ICA.

17 Q So let's talk about expedites and the terms
18 and conditions pursuant to which a CLEC, in this case
19 Eschelon, can receive an expedite.

20 A Okay.

21 Q Qwest doesn't want that in the ICA, correct?

22 A Correct, because the process for expedites is
23 managed through the CMP, if I understand what you're
24 asking me, initially.

25 Q Let -- I need -- I need to figure something

1 A I see.

2 Q And that's -- I want to talk about those
3 instances.

4 A Okay.

5 Q Is my understanding correct?

6 A Yes. For the process of expedites, that's
7 where we refer to, the expedite PCAT.

8 Q Without referring to expedites. It's back a
9 way. Perhaps that was a bad example.

10 A All right.

11 Q Are there provisions -- if Qwest's proposal
12 is accepted, are there provisions in the ICA, using
13 Qwest's language, which require a party to refer to yet
14 another document?

15 A Yes.

16 Q For example, product catalog?

17 A Yes.

18 Q The service interval guide?

19 A Yes.

20 Q Now, if the Commission accepts Qwest's
21 proposal -- and let's take the PCAT as an example. I
22 understand from our prior discussion that the PCAT
23 changes --

24 A Yes.

25 Q -- over time.

1 A Yes, it does.
 2 Q Let's assume for purposes of my -- of our
 3 discussion the following: Qwest's proposal has been
 4 accepted. Eschelon brings a complaint, formal complaint
 5 before the Commission, claiming that Qwest has not
 6 fulfilled its interconnection duties or obligations.
 7 The interconnection duties or obligations to which the
 8 complaint refers have to do with something to which one
 9 must -- for which one must refer to the PCAT in order to
 10 determine what those duties or obligations are.
 11 With me so far?
 12 A Yes.
 13 Q Okay?
 14 A Okay.
 15 Q All right. What PCAT does the Commission
 16 look to to determine the duties and obligations of
 17 Qwest? And I'll give you some options. The PCAT -- at
 18 what point in time? Is it the PCAT in existence on the
 19 day that the ICA was filed with the Commission? Is it
 20 the PCAT that was in effect on the day in which the
 21 alleged failure occurred? Is it the PCAT which -- which
 22 was in existence on the date the complaint was filed, or
 23 is it the PCAT which is in existence on the date of the
 24 hearing before the Commission?
 25 A If I understand you correctly, it would be

1 the PCAT that was in effect the date the alleged
 2 infraction occurred that the complaint is filed about.
 3 That would have to be, because that would be the
 4 procedure in effect at that point.
 5 Q And that was just an example.
 6 A Okay.
 7 Q If Qwest's -- let's assume now following the
 8 additional fact that the PCAT to which the ICA -- to
 9 which one would look in the event of a complaint that we
 10 discussed earlier is the PCAT in effect on the date of
 11 the alleged failure.
 12 If subsequent to the event of the alleged
 13 failure Qwest has changed its PCAT, what impact does
 14 that have based -- I mean, from a process view, from the
 15 Commission's perspective, trying to -- trying to deal
 16 with the complaint, how does the Commission deal with
 17 something?
 18 A That's already changed?
 19 Q That's already changed.
 20 A I'm afraid that would really depend on the
 21 circumstances. I'm not sure I could answer that
 22 globally, because it would depend on if the change may
 23 have improved the situation that caused the problem in
 24 the first place or if had made the process so different
 25 that it's hard to address in that forum. I can't really

1 guess how that would be affected.
 2 Q Thank you so much.
 3 A Sure.
 4 Q My apologies for my inartfully worded
 5 questions, but thank you for your responses.
 6 A Sure.
 7 A.L.J. JENNINGS-FADER: Mr. Merz.
 8 MR. MERZ: Thank you, Your Honor.
 9 RE CROSS-EXAMINATION
 10 BY MR. MERZ:
 11 Q The judge had some questions for you this
 12 morning about the substitution of a negotiation template
 13 for the PCAT. Do you recall that?
 14 A Yes. As a starting point for negotiations,
 15 yes.
 16 MR. MERZ: And, Your Honor, I have a document
 17 that I'd like to get marked.
 18 A.L.J. JENNINGS-FADER: Exhibit No. 29 for
 19 identification.
 20 (Exhibit 29 marked for identification.)
 21 A Is this different?
 22 Q (By Mr. Merz) You have there what's marked
 23 as Exhibit 29, is that correct, for identification?
 24 A Yes.
 25 Q And you recognize Exhibit 29 as the CMP

1 notice relating to the substitution of the negotiation
 2 template for the PCAT. Is that right?
 3 A It appears to be part of it, yes.
 4 MR. MERZ: Your Honor, Eschelon offers --
 5 A.L.J. JENNINGS-FADER: I'm sorry. Could you
 6 give me the date of the letter?
 7 MR. MERZ: It is dated November 15, 2006.
 8 It's a notice that went to Kim Isaacs, who's an Eschelon
 9 employee. It's a notice -- a CMP notice from Qwest.
 10 A.L.J. JENNINGS-FADER: And the subject is
 11 CMP getting started as a CLEC B-21.
 12 MR. MERZ: If you read down --
 13 A.L.J. JENNINGS-FADER: No. I'm sorry. Is
 14 that just the subject -- one of the lines --
 15 MR. MERZ: That's the subject line, yes.
 16 A.L.J. JENNINGS-FADER: That's all I wanted,
 17 to make sure you were talking about the same document.
 18 MR. MERZ: I understand, Your Honor.
 19 Eschelon offers Exhibit 29.
 20 A.L.J. JENNINGS-FADER: Exhibit offered.
 21 Objection or voir dire?
 22 MR. TOPP: No objection.
 23 A.L.J. JENNINGS-FADER: Exhibit 29 is
 24 admitted.
 25 (Exhibit 29 admitted.)

1 Q (By Mr. Merz) You see here, Ms. Albersheim,
2 this notice identifies the change was in fact a Level 1
3 change?
4 A Yes, I see that.
5 Q There was also a question this morning about
6 whether the SGAT would continue to be available for
7 opt-in after the negotiation templates were put in
8 place, and you see that this issue was addressed here on
9 this notice that we've now admitted as Hearing
10 Exhibit 29?
11 A Yes, I see that.
12 Q And you see that the notice from Qwest says
13 that the SGATs are no longer available to opt in and
14 have been replaced by the negotiation templates. Is
15 that right?
16 A See that, yes.
17 Q Now, Mr. Topp had some questions for you this
18 morning regarding --
19 A.L.J. JENNINGS-FADER: I'm sorry.
20 MR. MERZ: I'm sorry?
21 A.L.J. JENNINGS-FADER: Only questions that I
22 asked.
23 MR. MERZ: Only your questions. All right.
24 A.L.J. JENNINGS-FADER: Yes.
25 MR. MERZ: That's it.

1 A.L.J. JENNINGS-FADER: Thank you.
2 Mr. Topp, any redirect based on my questions?
3 MR. TOPP: Just one short one, maybe two.
4 A.L.J. JENNINGS-FADER: As many as you need,
5 Counsel.
6 REDIRECT EXAMINATION
7 BY MR. TOPP:
8 Q Ms. Albersheim, you were asked some questions
9 about whether processes vary between states. Do you
10 recall that?
11 A Yes.
12 Q Generally, does Qwest attempt to make
13 processes consistent?
14 A Yes, Qwest does.
15 Q And where there is a difference in processes
16 between states, is there any general cause for those
17 changes?
18 A Well, that can be as a result of an order in
19 that state that requires us to do things in a different
20 way, yes. I -- I was getting confused a little by the
21 judge's question, because I was hearing the question
22 about rates, and rates will vary across states. But in
23 terms of processes, we try to make them the same, but
24 sometimes we have no choice.
25 MR. TOPP: No further questions.

1 A.L.J. JENNINGS-FADER: Thank you.
2 Ms. Albersheim, thank you so much for your
3 testimony, both written and oral, and it's very helpful
4 to the Commission. Thank you, ma'am. You're excused.
5 Qwest, prepared for your next witness?
6 MR. TOPP: At this point, Qwest will call
7 Teresa K. Million, which is a little out of order, which
8 we apologize for.
9 THE WITNESS: Do you mind if I get a copy of
10 my --
11 A.L.J. JENNINGS-FADER: You certainly may,
12 but I'll give you the official version.
13 THE WITNESS: All right. Thank you.
14 A.L.J. JENNINGS-FADER: Actually, while
15 we're -- while I'm thumbing through these documents,
16 what -- have we proceeded with respect to Mr. Easton?
17 Is he available?
18 MR. TOPP: Mr. Easton is arriving tonight, so
19 he will be available tomorrow.
20 A.L.J. JENNINGS-FADER: That's fine. Thank
21 you. I should have asked earlier. My apologies,
22 Counsel.
23 MR. TOPP: And when would you like me to
24 offer Mr. Hubbard's testimony?
25 A.L.J. JENNINGS-FADER: At any time that's

1 convenient, close of business today or whenever you
2 think. Obviously, at some point before you close the
3 case.
4 Ms. Million.
5 TERESA MILLION,
6 being first duly sworn in the above cause, was examined
7 and testified as follows:
8 A.L.J. JENNINGS-FADER: Thank you, ma'am.
9 Please state your name, spell your last name for the
10 record.
11 THE WITNESS: My name is Teresa Million,
12 M-i-l-l-i-o-n, just like the number.
13 A.L.J. JENNINGS-FADER: Thank you very much,
14 ma'am.
15 Mr. Topp.
16 DIRECT EXAMINATION
17 BY MR. TOPP:
18 Q Good afternoon, Ms. Million.
19 A Good afternoon.
20 Q You've submitted testimony in this case. Is
21 that correct?
22 A Yes, I have.
23 Q And I have direct testimony dated
24 December 15th marked for identification as Exhibit 12,
25 answer testimony with exhibits dated March 26th of 2007

1 marked as Exhibit 13, and rebuttal testimony dated
2 April 10, 2007 marked as Exhibit 14.
3 Did I correctly identify how your testimony
4 has been marked --
5 A Yes.
6 Q -- in this proceeding? And did you prepare
7 that testimony yourself?
8 A Yes, I did.
9 Q And do you have any changes to that testimony
10 sitting here today?
11 A No, I do not.
12 MR. TOPP: Qwest would offer Exhibits 12, 13
13 and 14.
14 A.L.J. JENNINGS-FADER: Exhibit No. 12 has
15 been offered. Voir dire or objection?
16 MR. MERZ: No, Your Honor.
17 A.L.J. JENNINGS-FADER: Exhibit No. 13 has
18 been offered. Voir dire or objection?
19 MR. MERZ: No, Your Honor.
20 A.L.J. JENNINGS-FADER: Exhibit No. 14 has
21 been offered. Voir dire or objection?
22 MR. MERZ: No, Your Honor.
23 A.L.J. JENNINGS-FADER: Exhibits 12, 13 and
24 14 are admitted.
25 (Exhibits 12, 13 and 14 admitted.)

1 MR. TOPP: Ms. Million is available for
2 cross-examination.
3 CROSS-EXAMINATION
4 BY MR. MERZ:
5 Q Good afternoon, Ms. Million.
6 A Good afternoon, Mr. Merz.
7 Q I wanted to ask you a few questions about the
8 unaccrued rate issues which are 22-90-C through 22-90-I.
9 You are Qwest's cost witness with respect to
10 those issues, correct?
11 A Yes, I am.
12 Q Those are all elements for which there's no
13 rate that has been approved by the Colorado Commission.
14 Is that correct?
15 A That's correct.
16 Q Qwest has proposed rates for each of those
17 elements?
18 A Yes, it has.
19 Q Qwest has not provided any cost support for
20 any of the rates it has proposed. Is that right?
21 A Qwest hasn't filed any cost support in -- in
22 this proceeding. I believe that they've provided some
23 cost support to Eschelon for some of those rates. I'm
24 not sure that we have cost support for all of them
25 that's been provided, but we have provided Eschelon with

1 cost support for a number of those based on our TELRIC
2 studies.
3 MR. MERZ: Your Honor, I have Exhibit A to
4 the proposed ICA, which actually should be part of the
5 record, but just for her reference --
6 A.L.J. JENNINGS-FADER: Please.
7 MR. MERZ: -- if I could just give that to
8 her.
9 A.L.J. JENNINGS-FADER: That's fine. This,
10 if I'm correct, Counsel, will be -- at some point be
11 part of Exhibit No. 1?
12 MR. MERZ: That's correct.
13 A.L.J. JENNINGS-FADER: Thank you.
14 MR. MERZ: Then also, I need to mark an
15 exhibit.
16 A.L.J. JENNINGS-FADER: Exhibit No. 30 for
17 identification.
18 (Exhibit 30 marked for identification.)
19 Q (By Mr. Merz) Ms. Million, I'm handing you
20 what we've marked for identification of Exhibit 30.
21 Do you recognize Exhibit 30 as Qwest's
22 negotiation template, Exhibit A, for Colorado?
23 A That's the way it's labeled, yes.
24 Q And this is the negotiation template that is
25 dated January 30th of 2007. Is that correct?

1 A Actually, I see January 31st.
2 Q January 31st. Thank you for that correction.
3 A 2007.
4 MR. MERZ: Your Honor, Eschelon offers
5 Exhibit 30.
6 A.L.J. JENNINGS-FADER: Exhibit No. 30's been
7 offered. Voir dire or objection?
8 MR. TOPP: No objection.
9 A.L.J. JENNINGS-FADER: Exhibit No. 30 is
10 admitted.
11 (Exhibit 30 admitted.)
12 Q (By Mr. Merz) Now, Ms. Million, I wanted to
13 talk with you about the rates for ICDF collocation,
14 which are found -- first, if you want to refer to
15 Exhibit A to the ICA. They're found at Page 10,
16 Section 8.8.
17 A I have that.
18 Q And looking first at the rate that is set out
19 at 8.82, the rate that Eschelon has proposed, the
20 recurring rate, is \$20.84. Is that right?
21 A I see that, yes.
22 Q The non-recurring rate is \$24 -- \$2,426.42,
23 correct?
24 A It is.
25 Q And then if you compare that to Hearing

1 Exhibit 30, Esch -- or, I'm sorry -- Qwest's negotiation
2 template, Exhibit A, and if you look at Page 6, you see
3 the same rate, 8 -- 8.2 for DSO circuits per 200 legs at
4 the bottom the page there?

5 A Yes, I see that.

6 Q And the recurring rate that Eschelon has
7 proposed for that element is the same as the rate on
8 Qwest's negotiation template, correct?

9 A Yes, it is.

10 Q And the non-recurring rate is the same as on
11 Qwest's negotiation template. Is that right?

12 A Yes, that is correct.

13 Q Then if you go to the exhibit -- to the ICA
14 for 8.8.3, that element is DS -- DS1 circuits per two
15 legs, correct?

16 A Yes.

17 Q And Eschelon has proposed a recurring rate of
18 \$1.03. Is that right?

19 A Yes.

20 Q And a non-recurring rate of \$79.96, correct?

21 A Yes.

22 Q And if you go back to the negotiation
23 template, at Line 8.8.3, that's the same element, is it
24 not, DS1 circuits per two legs?

25 A Yes, it is.

1 Q And the rates that Eschelon has proposed for
2 the recurring and non-recurring rates are the same as
3 Qwest's rates on its Exhibit -- negotiation template,
4 Exhibit A, correct?

5 A Yes, that's correct.

6 Q Then go to the Element 8.8.4, DS3 circuits
7 per two legs.

8 A Yes, I have that.

9 Q Eschelon has proposed a recurring rate of
10 \$10.49. Is that right?

11 A Yes.

12 Q And that is the same as the recurring rate
13 for that element on Qwest's Colorado negotiation
14 template, Exhibit A, correct?

15 A Yes, it is, although the non-recurring rate
16 is different.

17 Q And then if you go finally to the element
18 that is on the ICA Exhibit A at 8.8.5, that's fiber
19 circuit for two legs. Is that right?

20 A Yes.

21 Q And again, the recurring and non-recurring
22 rates that Eschelon has proposed are the same as the
23 rates on Qwest's negotiation template for those rates?

24 A Yes, they are, again, with the exception of

25 8.8.4, non-recurring, which for some reason Eschelon has

1 deviated and offered something much less than what's in
2 Qwest's negotiation template.

3 MR. MERZ: Your Honor, I have one more
4 exhibit to mark.

5 (Exhibit 31 marked for identification.)

6 A.L.J. JENNINGS-FADER: Exhibit No. 31 for
7 identification.

8 (Exhibit 31 marked for identification.)

9 Q (By Mr. Merz) Do you have in front of you
10 there, Ms. Million, the document we've marked for
11 identification as Hearing Exhibit 31?

12 A Yes, I do.

13 Q And you recognize this as the SGAT Exhibit A
14 for Colorado dated May 25th of 2005. Is that right?

15 A Yes, I see that.

16 Q So this is an earlier version of the document
17 that we were just looking at?

18 A Yes.

19 MR. MERZ: Your Honor, Eschelon offers
20 Hearing Exhibit 31.

21 A.L.J. JENNINGS-FADER: Exhibit No. 31 for
22 identification has been offered. Voir dire or
23 objection?

24 MR. TOPP: No objection.

25 A.L.J. JENNINGS-FADER: Exhibit No. 31 is

1 admitted.

2 (Exhibit 31 admitted.)

3 Q (By Mr. Merz) Now, I want to do the same
4 exercise that we just did, but this time with respect to
5 the power reduction elements that are found on the -- on
6 the Exhibit A to the ICA at Page 11, Section 8.13: And
7 they're found on Exhibit 31 at Page 6, at the bottom of
8 the page, again, Section 8.13.

9 A I have that.

10 Q Now, the elements as they're numbered on the
11 SGAT are somewhat different than the way they're
12 numbered on the Exhibit A to the ICA for these items.
13 Is that right?

14 A Yes, that's correct.

15 Q So Eschelon has proposed a -- if you look at
16 8.13.1.1 on Exhibit A to the ICA, Eschelon has proposed
17 a rate of four forty-one, correct?

18 A Yes, that's correct.

19 Q And then if you go to the SGAT, Exhibit A,
20 that matches to the element that's at 8.13.1.1.1, quote
21 preparation fee, four forty-one. Is that right?

22 A Yes, that's correct.

23 A.L.J. JENNINGS-FADER: I'm sorry, Counsel.
24 You're referring back and forth between Exhibit 31

25 and --

1 MR. MERZ: Correct.
 2 A.L.J. JENNINGS-FADER: -- and the Exhibit A
 3 to the agreement being arbitrated?
 4 MR. MERZ: That is correct, Your Honor.
 5 A.L.J. JENNINGS-FADER: Thank you.
 6 A Yes. And that's based on an old power
 7 reduction rate that was in effect or that was based on a
 8 study that was initially done for power reduction when
 9 that offering was put out back before 2005. But the
 10 current rate that's in the negotiations template in
 11 Exhibit 30 for those elements is the same rate that
 12 Qwest is proposing in this arbitration --
 13 Q (By Mr. Merz) Now, in --
 14 A -- based on an updated study.
 15 Q In the far column under the -- the far
 16 column, there's a number one, do you see that, on the
 17 SGAT exhibit, Hearing Exhibit 31?
 18 A Yes. That's a notation that indicates the
 19 rate has not been addressed in a cost docket.
 20 Q And it indicates that that's Qwest's
 21 estimation of the TELRIC rate, correct?
 22 A That was an original study that was done for
 23 this element before Qwest had an opportunity to
 24 understand what was really going to be involved in the
 25 power reduction. So yes, it was an original study.

1 Q And so that is -- 4.41 is Qwest's estimation
 2 of the TELRIC rate for a quote preparation fee for power
 3 reduction, correct?
 4 A Yes, it was.
 5 Q Then if you go back to the SGAT -- I'm
 6 sorry -- the ICA Exhibit A, 8.13.1.2.1, that relates to
 7 power reduction less than 60 amps. Is that correct?
 8 A Yes.
 9 Q And Eschelon's proposal for that, the
 10 non-recurring rate for that element is three forty-six?
 11 A Yes.
 12 Q And that's the same as the rate that's found
 13 at 8.13.1.1.2 on Hearing Exhibit 31, correct?
 14 A Yes.
 15 A.L.J. JENNINGS-FADER: Counsel, you will
 16 have to forgive me. 8.13.1.1.2 was the reference?
 17 MR. MERZ: Yes.
 18 A.L.J. JENNINGS-FADER: Thank you.
 19 Q (By Mr. Merz) And 8.13.1.1.2, that rate of
 20 three forty-six on Hearing Exhibit 31, that rate covers
 21 both less than and equal to 60 amps, correct?
 22 A Yes.
 23 Q So Qwest proposed the same rate of three
 24 forty-six for both of those elements?
 25 A Yes.

1 Q And if you go --
 2 A But Qwest didn't propose it in this ICA
 3 negotiation.
 4 Q As of the date of Hearing Exhibit 31, that
 5 was -- that was Qwest's estimation?
 6 A Back in 2005, it was Qwest's estimation of
 7 what the cost would be.
 8 Q Then if you go back to the ICA, Exhibit A,
 9 8.13.1.2.2, Eschelon has proposed the same three
 10 forty-six rate for power reduction equal to 60 amps?
 11 A Yes.
 12 Q Eschelon at Exhibit A to the SGAT,
 13 Section 8.13.1.2.3, has proposed a power reduction rate
 14 for greater than 60 amps of five eighty-seven?
 15 A Yes, it has.
 16 Q And that is the same as the rate on Hearing
 17 Exhibit 31 at 8.13.1.2.2?
 18 A Yes, that is correct.
 19 Q And those two things are the same. They're
 20 the same element, correct?
 21 A Yes, they are.
 22 Q And then finally Eschelon has proposed on the
 23 ICA Exhibit A at 8.13.1.4 a recurring rate for power
 24 maintenance of \$37. Is that right?
 25 A Yes. That is correct.

1 Q And that is the same element as is found at
 2 8.13 -- 8.13.2 on Hearing Exhibit 31 on the line Monthly
 3 Maintenance. Is that right?
 4 A Yes, that's correct.
 5 Q And the rate proposed by Qwest, the recurring
 6 rate there is the same, \$37. Is that right?
 7 A Yes.
 8 MR. MERZ: I don't have anything further.
 9 Thank you.
 10 A.L.J. JENNINGS-FADER: Redirect, Counsel?
 11 REDIRECT EXAMINATION
 12 BY MR. TOPP:
 13 Q Ms. Million, if you'd refer to the
 14 interconnection agreement, Exhibit A that Mr. Merz was
 15 going through with you.
 16 A Yes. I have that.
 17 Q Initially, Mr. Merz asked you about a number
 18 of changes in Qwest's proposed rate compared to
 19 Exhibit 30 for ICDF collocation.
 20 Can you explain why those numbers vary?
 21 A Certainly. Qwest oftentimes -- and these, as
 22 Mr. Merz pointed out about the power reduction rates,
 23 have a similar notation on them. They're noted with a
 24 Footnote 1, which means that they are rates that have
 25 not been approved by the Commission. They've not been

1 through a cost docket.
 2 And oftentimes when an element is -- is first
 3 beginning to be offered by Qwest, Qwest establishes a
 4 study for it on the basis of what Qwest believes is
 5 going to be the nature of the element. And for whatever
 6 reason, over time, that element, through experience, as
 7 in the case with the power reduction, Qwest finds out
 8 that the way that the rate is -- is -- has been
 9 developed doesn't recover all the costs or hasn't taken
 10 everything into consideration or because we've updated a
 11 filing for some reason or we've gotten new studies put
 12 together and we've updated cost factors or information
 13 like that.

14 In the case of the ICDF collocation, I would
 15 presume that because our rates are very similar, for
 16 example, at 8.8.2 for the 200 DSO circuit for 200 legs,
 17 the recurring rate has actually gone down by about a
 18 dollar. The non-recurring rate has gone up slightly.
 19 That's merely a matter of updated factors being applied
 20 to essentially the exact same study that produced the
 21 rates from the negotiations template.

22 Q Okay. And similarly, in Section 8.13,
 23 related to power reduction, Mr. Merz asked you about a
 24 number of changes in rates since the May 25th of 2005
 25 SGAT exhibit, and could you explain why those rates

1 vary?
 2 A Yes. In the case of power reduction, that
 3 truly was a situation where we -- we were -- we had a
 4 number of CLECs who had made power orders early on in --
 5 in setting up their collocations that were -- were
 6 fairly high. And they were finding-out that they
 7 weren't using nearly that much power, and so they were
 8 coming back and asking to reduce their power in order to
 9 reduce their costs for power.

10 And so we set up this -- this element that
 11 was going to address -- and address reducing the power
 12 and determining how we were going to go about that. And
 13 it was simply a matter of the original estimation of
 14 what that was going to entail missed a lot of the costs
 15 that go into actually doing that work. And so when we
 16 took another look at it, after 2005, we redid the study
 17 and updated it with newer inputs and tried to capture
 18 the costs more accurately, and so the rates went up
 19 quite considerably as a result.

20 Q Is your understanding that Qwest will be
 21 proposing that the rates at issue in this arbitration be
 22 addressed in the upcoming cost proceeding?

23 A Yes. Excuse me. That's exactly what we're
 24 planning on doing in the upcoming cost docket, is to
 25 address all of the rates that have not been approved as

1 well as some other rates that have been set by the
 2 Commission in the last cost docket as interim rates.
 3 MR. TOPP: No more questions.

EXAMINATION

5 BY A.L.J. JENNINGS-FADER:

6 Q Picking up on that last point, Ms. Million,
 7 if Qwest does not, either through inadvertence or
 8 otherwise, address in the to-be filed generic cost
 9 docket, which was discussed this morning with
 10 Ms. Albersheim --

11 A Yes.

12 Q -- let's assume that -- let's just pick
 13 something, power reduction, one of the -- one of the
 14 issues here is not included in that generic filing.

15 What process is available to Eschelon to get
 16 that issue before the Commission?

17 A They can file a complaint. And in fact, last
 18 year I participated in a mini cost docket, as it came to
 19 be known, in New Mexico as a result of a complaint by a
 20 CLEC who actually didn't participate in the cost docket
 21 and then when the rates were determined and came out of
 22 that cost docket decided that they were not happy with
 23 those rates. And so they brought a complaint, and we
 24 initiated a mini cost docket for a subset of elements.
 25 There were maybe four or five rates that -- that were

1 addressed in that docket in order to address their
 2 issues.

3 I've also been involved in a similar cost
 4 docket in Arizona based on a complaint, again, of a CLEC
 5 that did not participate in the -- in the cost docket
 6 and then it was affected by the rates that came out of
 7 that cost docket and complained to the Commission. And
 8 we ended up having a small proceeding to determine those
 9 rates. And in both of those proceedings, the rates that
 10 come out of those -- of those processes are generally
 11 applicable to all of the CLECs there.

12 Q If -- continuing on with the New Mexico
 13 example just for a moment, your involvement there, what
 14 is the difference, from Qwest's perspective, between the
 15 mini-rate case that you mentioned in Arizona and New
 16 Mexico and the arbitration of those rate elements on an
 17 interim basis in this proceeding?

18 A Well, I think that the biggest difference is
 19 that because it was brought as part of a complaint
 20 proceeding, the Commission then noticed it to all of the
 21 other CLECs, and the other CLECs participated.

22 And in fact, in -- in New Mexico, one CLEC
 23 brought the initial complaint. As a result of that
 24 complaint, two or three additional CLECs joined in and
 25 all participated and all had the pieces of that as well

1 as the Commission's staff who participated in it and
 2 presented their own view of the costs.
 3 And we reached a result then -- well, it
 4 hasn't quite settled at this point, but it's close.
 5 We're getting there. But as a result of that, then we
 6 had rates that came out of that that were applicable
 7 generally to all the CLECs and a change-of-law provision
 8 that then allowed us to apply those rates to all of the
 9 CLECs.

10 Q I have a couple of questions about your
 11 direct testimony, Exhibit No. 12. Actually, they're
 12 more in the nature of trying to figure out if there's
 13 some typos or something in your testimony.

14 A Okay.

15 Q First of all, could you get Exhibit 12.

16 A I have that.

17 Q Thank you. Could you turn to Page 15.

18 A Yes, I have that.

19 Q And more particularly, the sentence that
 20 begins on Line 9 and continues onto Line 12. 10.
 21 Excuse me.

22 A Oh.

23 Q It appears to me that this sentence stops
 24 midstream.

25 A You are correct. It does.

1 Q Do you have any idea what you were intending
 2 to say in the rest of the sentence?

3 A Yes. I can tell you exactly. It should say,
 4 "For purposes of tracking and reporting its unique
 5 products separately from its private line services." In
 6 other words, its tariff offerings, retail private line
 7 services is what should have been there.

8 Q Will you kindly complete the sentence --

9 A Yes.

10 Q -- and initial and date the correction.

11 A (Witness complied.)

12 Q And then read what you've written.

13 A It now says, "In other words, Qwest must be
 14 able to distinguish for purposes of tracking and
 15 reporting its unique products separately from its
 16 private line services."

17 Q Thank you, ma'am.

18 Then if you could turn to your answer
 19 testimony, which is Exhibit No. 13, Hearing Exhibit
 20 No. 13.

21 A Yes. I have that.

22 Q Thank you. And turn to Page 3 and
 23 Footnote 2. The date there is an arbiter's report of
 24 January 16, 2007.

25 Is that the correct date? I ask because

1 there's another arbiter's report on January 16, 2006,
 2 and I wonder if they're the same or different documents.
 3 Or someone else can help me out.

4 MR. MERZ: There is an arbitrator's report of
 5 that date. That's the --

6 A.L.J. JENNINGS-FADER: Coincidentally one
 7 year later?

8 MR. MERZ: I'm not sure where the 2006
 9 reference is. That might be the one that's mistaken. I
 10 don't know.

11 MR. TOPP: 2007's correct.

12 A.L.J. JENNINGS-FADER: Okay. Thanks,
 13 everybody. It's just -- that's excellent. Thank you.

14 Q (By A.L.J. Jennings-Fader) Continuing on in
 15 your answer testimony, Ms. Million, the discussion on
 16 Page 25, were you discussing the reasons that Qwest did
 17 not produce cost studies in this proceeding.

18 A Yes --

19 A.L.J. JENNINGS-FADER: For the record,
 20 that's the Page 25, Lines 13 to 21.

21 Q (By A.L.J. Jennings-Fader) On Line 17, you
 22 talk about Qwest has agreed to a separate filing
 23 process.

24 A Yes.

25 Q What is -- to which filing process are you

1 referring?

2 A I'm referring to the process that results
 3 from the language at 22.6.1 about filing cost support
 4 within 60 days after -- is it the later of the ICA
 5 agreement or --

6 Q The initial offering?

7 A The initial offering, yes.

8 Q And is it your understanding that that

9 provision applies to -- would apply if -- if
 10 Section 22.6.1 were now in effect, would that process
 11 apply to all of the products and services at issue in
 12 Arbitration Issue 22-90-C through I?

13 A Yes, it would.

14 A.L.J. JENNINGS-FADER: Thank you, ma'am.
 15 Mr. Merz.

16 MR. MERZ: I have no further questions.

17 MR. TOPP: No further questions.

18 A.L.J. JENNINGS-FADER: Thank you.

19 Ms. Million, I'd like to thank you very much
 20 for preparing the written testimony and also appearing
 21 today and providing oral testimony. You've been quite
 22 helpful, ma'am.

23 THE WITNESS: Thank you, ma'am.

24 Should I hand those back to you?

25 A.L.J. JENNINGS-FADER: That's fine. Thank

1 you so much, ma'am.
 2 THE WITNESS: Thank you.
 3 A.L.J. JENNINGS-FADER: Mr. Topp?
 4 MR. TOPP: Your Honor, now would be a
 5 convenient time -- so that I do not forget, I'd
 6 appreciate it very much if we could offer and have
 7 admitted Mr. Hubbard's testimony, which has been marked
 8 as Exhibits 9, 10 and 11.
 9 A.L.J. JENNINGS-FADER: Is Mr. Hubbard's
 10 testimony in this stack of exhibits over here?
 11 MR. TOPP: Yes.
 12 A.L.J. JENNINGS-FADER: Okay. Thank you.
 13 Exhibits 9, 10, and 11 have been offered.
 14 Objection or voir dire?
 15 MR. MERZ: No objection.
 16 A.L.J. JENNINGS-FADER: Exhibit 9, 10 and 11
 17 are admitted.
 18 (Exhibits 9, 10 and 11 admitted.)
 19 A.L.J. JENNINGS-FADER: I understand based on
 20 earlier discussions, Counsel, that Mr. Hubbard will not
 21 be putting in an appearance.
 22 MR. TOPP: That is correct.
 23 A.L.J. JENNINGS-FADER: Thank you so much.
 24 MR. TOPP: Thank you.
 25 At this point, I'd like to introduce Mr. John

1 Devaney. He's also counsel in this case, and he'll be
 2 presenting --
 3 A.L.J. JENNINGS-FADER: Hello again.
 4 MR. TOPP: He'll be presenting our next
 5 witness.
 6 MR. DEVANEY: Your Honor, would it be
 7 possible for us to take a five-minute break before we go
 8 on? There's been a exhibit presented that I'd like to
 9 take a look at before we get started.
 10 A.L.J. JENNINGS-FADER: Absolutely. Let's
 11 take 10 minutes.
 12 MR. DEVANEY: Thank you very much.
 13 A.L.J. JENNINGS-FADER: Back on the record in
 14 10 minutes.
 15 (Recess from 2:40 p.m. to 2:53 p.m.)
 16 A.L.J. JENNINGS-FADER: We're back on the
 17 record.
 18 Qwest, are you prepared to go forward?
 19 MR. DEVANEY: Yes. Thank you, Your Honor.
 20 John Devaney appearing here on behalf of
 21 Qwest. I've given the court reporter my card, and I
 22 think from that perspective, we're ready to go.
 23 And we've called to the stand Ms. Karen
 24 Stewart. And Ms. Stewart, her direct testimony, will be
 25 Exhibit 15; answer testimony, Exhibit 16; and rebuttal

1 testimony, Exhibit 17.
 2 DIRECT EXAMINATION
 3 BY MR. DEVANEY:
 4 Q Ms. Stewart --
 5 A.L.J. JENNINGS-FADER: Excuse me. I'd like
 6 to swear the witness.
 7 KAREN A. STEWART,
 8 being first duly sworn in the above cause, was examined
 9 and testified as follows:
 10 A.L.J. JENNINGS-FADER: Please state your
 11 name and spell your last name for the record
 12 THE WITNESS: My name is Karen Anne Stewart,
 13 S-t-e-w-a-r-t.
 14 A.L.J. JENNINGS-FADER: Thank you, very much,
 15 Ms. Stewart.
 16 Mr. Devaney.
 17 MR. DEVANEY: Thank you, Your Honor.
 18 Q (By Mr. Devaney) Ms. Stewart, the testimony
 19 that you have filed, Exhibits 15, 16 and 17, are the
 20 answers you provided in this testimony true and accurate
 21 to the best of your knowledge?
 22 A Yes.
 23 Q Do you have any corrections to your
 24 testimony?
 25 A No.

1 MR. DEVANEY: Your Honor, we would ask that
 2 Exhibits 15, 16 and 17 be admitted into the record.
 3 A.L.J. JENNINGS-FADER: Thank you. Exhibit
 4 No. 15 for identification has been offered. Objection
 5 or voir dire?
 6 MR. MERZ: No, Your Honor.
 7 A.L.J. JENNINGS-FADER: Exhibit No. 16 has
 8 been offered. Objection or voir dire?
 9 MR. MERZ: No, Your Honor.
 10 A.L.J. JENNINGS-FADER: Exhibit No. 17 has
 11 been offered. Objection or voir dire?
 12 MR. MERZ: No, Your Honor.
 13 A.L.J. JENNINGS-FADER: Exhibits 15, 16 and
 14 17 are admitted.
 15 (Exhibits 15, 16 and 17 admitted.)
 16 MR. DEVANEY: Thank you, Your Honor, and
 17 Ms. Stewart is available for cross.
 18 A.L.J. JENNINGS-FADER: Thank you, sir.
 19 Mr. Merz?
 20 MR. MERZ: Thank you, Your Honor.
 21 CROSS-EXAMINATION
 22 BY MR. MERZ:
 23 Q Good afternoon, Ms. Stewart.
 24 A Good afternoon.
 25 Q I'm going to start off by asking some

1 questions about design changes, and particularly of
 2 the -- part of the design-change issue that relates to
 3 the rate for loops and connecting facility assignments.
 4 You're familiar with those issues, correct?
 5 A Yes.
 6 Q Now, the parties have a dispute about whether
 7 the design-change rate of \$73.93 applies only to design
 8 changes for unbundled transport or whether it applies to
 9 both transport and loops. Is that right?
 10 A Yes.
 11 Q And it's Eschelon's position that that rate
 12 was approved only with respect to transport, and it's
 13 Qwest's position that it was approved with respect to
 14 both unbundled loops and unbundled transports. Is that
 15 right?
 16 A Yes.
 17 Q Now, that rate, the \$73.93 rate, was set back
 18 in a cost case in 2001 in Colorado. Is that right?
 19 A I don't have the year memorized, but it was
 20 in a prior cost case, yes.
 21 Q And do you believe -- does 2001 sound about
 22 right to you?
 23 A Yes.
 24 Q And Qwest began charging for design changes
 25 for unbundled transports shortly after that rate was

1 approved in 2001. Is that right?
 2 A That's my understanding.
 3 Q Qwest did not begin charging for design
 4 changes to loops until October of 2005. Is that right?
 5 A That's my understanding.
 6 Q And before October of 2005, Qwest was
 7 providing CLECs with loop design changes at no
 8 additional charge, correct?
 9 A I think it would have depended on the type of
 10 change, whether it took a reorder of the circuit or not,
 11 but as it relates to the design changes, the specific
 12 \$73 charge, no.
 13 Q And I want to make sure I'm clear. I'm
 14 talking about the kind of design changes that are the
 15 subject of the parties' dispute.
 16 Prior to October 2005, Qwest was providing
 17 those kinds of design changes for loops to CLECs at no
 18 additional charge, correct?
 19 A My only qualification was, as I indicated,
 20 whether or not some changes would have required a change
 21 in service-order processing which I would not have known
 22 about, like an order had been cancelled and resubmitted.
 23 Q And that would be subject to some separate
 24 rate --
 25 A Yes.

1 Q -- that had been determined by the
 2 Commission?
 3 A Yes.
 4 Q And specified in the parties' contract?
 5 A Yes.
 6 Q Now, one of the things that Mr. Denney has
 7 said in this case in his testimony is that the section
 8 of the SGAT that concerns unbundled transport references
 9 the charge for design changes but that the section
 10 concerning unbundled loops does not.
 11 Are you familiar with that testimony?
 12 A Yes.
 13 Q And you don't dispute that that's the case,
 14 do you?
 15 A No.
 16 Q You agree that the SGAT sets out a
 17 design-change charge relating to transport in the body
 18 of the contract referring to transport?
 19 A There is some discussion of design changes
 20 there. However, design changes themselves are listed in
 21 9.20 of the miscellaneous charges, meaning that it's
 22 applicable to both transport loops and perhaps other
 23 services and UNEs.
 24 Q And 9.20, you're referring to a section of
 25 Exhibit A to the SGAT, correct?

1 A Correct, miscellaneous services.
 2 Q And I'm focusing now on the body of the
 3 contract, the part of the contract that comes before
 4 Exhibit A. Are you with me?
 5 A Yes, I am.
 6 Q And that sets out the terms and conditions
 7 under which Qwest will provide Eschelon with unbundled
 8 net -- I'm sorry -- which Qwest is offering as part of
 9 its SGAT to provide unbundled network elements, correct?
 10 A So you're asking specifically about the
 11 SGAT --
 12 Q Yes.
 13 A -- not the ICA under arbitration?
 14 Q Yes. I'm focusing specifically now on the
 15 SGAT.
 16 A Yes.
 17 Q And the SGAT contains provisions that
 18 describe terms and conditions under which Qwest is
 19 offering to provide unbundled transport.
 20 A Correct.
 21 Q And in the section related to unbundled
 22 transport, there's reference specifically to design
 23 changes.
 24 A I believe so in the SGAT. I'm sorry. We
 25 seem to have changed from the ICA to the SGAT. I just

1 wanted to be real clear.
 2 MR. MERZ: Your Honor, I have an exhibit I'd
 3 like to mark
 4 A.L.J. JENNINGS-FADER: Exhibit No. 32.
 5 (Exhibit 32 marked for identification.)
 6 Q (By Mr. Merz) Ms. Stewart, I'm going to hand
 7 you what has been marked as Exhibit No. 32.
 8 Do you recognize this as excerpts from Qwest
 9 Colorado SGAT?
 10 A Yes.
 11 Q And in particular, I will tell you these
 12 excerpts include the sections concerning unbundled
 13 loops, Section 9.2, and the section relating to
 14 unbundled dedicated interoffice transport, Section 9.6.
 15 Do you see that?
 16 A Yes, I do.
 17 MR. MERZ: Your Honor, Eschelon offers
 18 Hearing Exhibit 32.
 19 A.L.J. JENNINGS-FADER: Exhibit No. 32 for
 20 identification has been offered. Voir dire or
 21 objection?
 22 MR. DEVANEY: Your Honor, may I just have one
 23 moment to thumb through it?
 24 A.L.J. JENNINGS-FADER: You may.
 25 MR. DEVANEY: No objection, Your Honor.

1 A.L.J. JENNINGS-FADER: Exhibit No. 32 is
 2 admitted.
 3 (Exhibit 32 admitted.)
 4 MR. MERZ: Thank you, Your Honor.
 5 Q (By Mr. Merz) Ms. Stewart, I'd like you to
 6 refer first to Page -- at the lower bottom right of the
 7 corner -- corner of the page that says 166.
 8 Do you have that?
 9 A Yes, I do.
 10 Q And that's the ordering process pertaining to
 11 unbundled dedicated interoffice transport. Is that
 12 right?
 13 A Yes. It begins on the bottom of the page.
 14 Q And then if you go over to the next page, and
 15 I'm focusing specifically on Section 9.6.4.1.4.
 16 A Yes.
 17 Q And that section says, "Subsequent changes to
 18 the quantity of service on an existing order will
 19 require a revised order. Also, additional changes apply
 20 for the following modifications to existing orders
 21 unless the need for such change is caused by Qwest."
 22 Do you see that?
 23 A Yes, I do.
 24 A.L.J. JENNINGS-FADER: Counsel, additional
 25 charges apply?

1 MR. MERZ: Additional charges apply, yes.
 2 A.L.J. JENNINGS-FADER: Thank you.
 3 Q (By Mr. Merz) And then underneath that, at
 4 C, you see there reference to design changes, correct?
 5 A Yes.
 6 Q Now, Section 9.2 begins on Page 123 of the
 7 document, correct?
 8 A Yes.
 9 Q And then if you go to Page 134, 9.2.4 is the
 10 ordering process for unbundled loops, correct?
 11 A Yes.
 12 Q And there is no reference in 9.2.4 to design
 13 changes, correct?
 14 A Well, I haven't read the whole multiple
 15 pages, but not that I'm aware of.
 16 Q Well, let me ask you this: When you were
 17 preparing your testimony, did you review the SGAT in
 18 order to evaluate Mr. Denney's testimony that there was
 19 not a reference in the body of the SGAT to design
 20 changes with respect to unbundled loops?
 21 A I don't know for sure if I reviewed the
 22 Colorado SGAT specifically. And since we were dealing
 23 with design changes on the ICA prospectively, and in
 24 that ICA there are design-change descriptions in the
 25 unbundled loop section that were proposed by Eschelon

1 and Qwest has agreed to those references, I felt that
 2 the ICA language of -- that we were reviewing in the
 3 prospective ICA was what we were litigating. We were
 4 not litigating the SGAT and your existing ICA.
 5 Q Where I started out with you was the notion
 6 that the parties have a difference of agreement about
 7 what the existing design change rate of \$73.93 covers,
 8 correct?
 9 A Yes.
 10 Q It's Eschelon's position that it's limited to
 11 transport because that's what the issue was before the
 12 Commission at the time, correct?
 13 A I'm not sure that I understand "the issue
 14 before the Commission at the time."
 15 Q At the time that that \$73.93 rate was
 16 established, what the Commission was doing was setting a
 17 rate for design changes for unbundled transport.
 18 A No. And in fact, in the testimony of
 19 Ms. Million, I believe she has provided the executive
 20 summary, and she is our cost witness on this issue. And
 21 in that executive summary, it made clear that it pointed
 22 to items that were specifically only associated with the
 23 loop portion of a service. So obviously, it was to
 24 apply to all design changes and not just transport.
 25 Q And my point, actually, was a little bit

1 narrower and different than that. My point actually had
2 to do with Eschelon's position. It's Eschelon's
3 position that the rate approved for design changes of
4 \$73.93 back in 2001 pertains only to transport, correct?

5 A No. That is not Qwest's understanding, and
6 that's not Ms. Million's testimony, and she has provided
7 rebuttal testimony to that.

8 Q I'm focusing now on Eschelon's position, not
9 whether Qwest agrees with Eschelon's position, because I
10 assume you don't, but I'm focusing on Eschelon's
11 position.

12 And you understand that it's Eschelon's
13 position that the rate that was approved, \$73.93 for
14 design changes, back in 2001 applies only to transport,
15 correct?

16 A That is my understanding of Eschelon's
17 position, yes.

18 Q And you understand that one of the reasons
19 that Eschelon says that is that there's nothing in the
20 body of the SGAT that would apply that design-change
21 rate to unbundled loops. You understand that's part of
22 the basis for Eschelon's position?

23 A I know that's Eschelon's position. It is
24 Qwest's position, since it's in the miscellaneous
25 services, it's potentially available to all UNEs or

1 services that are in that section of the SGAT.

2 Q But you would agree with me that if there in
3 fact was a reference in the SGAT to design changes in
4 connection with unbundled loops, that would be pretty
5 powerful evidence for Qwest's position in this case,
6 correct?

7 A Yes.

8 Q And so I would assume that you looked at the
9 SGAT to find out whether that pretty powerful evidence
10 did not -- did not exist. Am I mistaken about that?

11 A No. I was just saying I didn't know if it
12 was the Colorado SGAT that I had looked at specifically.

13 Q So you did review --

14 A An SGAT.

15 Q -- an SGAT?

16 A Correct.

17 Q And you didn't in that review find any
18 reference in the unbundled-loop portion of the body of
19 the contract to design changes. Am I correct about
20 that?

21 A Correct. But that does not mean that it was
22 not applicable to the design changes, because to some
23 extent, what ended up into the ordering processes of
24 unbundled elements had to do with what came out of the
25 2-71 proceedings and the 2-71 workshop.

1 So to the extent design changes might not
2 have been an issue in those workshops, it might not have
3 been identified in that particular section, that did not
4 mean it did not apply, because those workshops did, you
5 know, have some spillover to ordering or process that
6 would not have happened except for it was, you know,
7 kind of the first review of all the services being
8 provided.

9 Q Section 9.2 deals with ordering process among
10 a number of other things relating to unbundled loops,
11 correct?

12 A It has a skeleton of the ordering process. I
13 would not say that it contains the complete ordering
14 process for unbundled loops.

15 Q Well, I guess my point is, 9.2.1 of the SGAT
16 is a description --

17 A Correct.

18 Q -- of unbundled loops.

19 A Correct.

20 Q 9.2.2 are terms and conditions --

21 A Correct.

22 Q -- correct? We've got several pages of
23 those, right?

24 A Yes.

25 Q Then we come to 9.2.3, rate elements,

1 correct?

2 A Yes.

3 Q Then we've got 9.2.4, the ordering process?

4 A Yes.

5 Q And then we've got 9.2.5, maintenance and
6 repair, correct?

7 A Yes.

8 Q And 9.2.6, spectrum management?

9 A I have to keep flipping to get to that one.
10 Yes.

11 Q So all told, the SGAT provisions relating to
12 unbundled loops cover, actually, let's see, about 16
13 pages, correct?

14 A I'm going to trust your math on that one,
15 yes.

16 Q I don't know that you want to trust my math,
17 but I'm pretty sure that that's right.

18 And I would assume that you looked throughout
19 Section 9.2 for any reference you might find for design
20 changes in connection with unbundled loops. Am I right
21 about that?

22 A Yes.

23 Q And you didn't find any?

24 A Not that I -- no.

25 Q Now, it's Qwest's position, is it not, that

1 the design-change rate that has been approved by the
2 Colorado Commission is an average for design changes?

3 A It's a reflection of all the design-change
4 orders that Qwest might perform, yes.

5 Q And so it's Qwest's position that it includes
6 design changes for transport, and it includes design
7 changes for loops, and it includes CFA changes. Isn't
8 that right?

9 A Yes.

10 Q Now, since there's averaging going on, you
11 would agree that the cost to perform all three of those
12 kinds of design changes isn't exactly the same, is it?

13 A Well, although Ms. Million would probably be
14 the best one to respond to this, but my understanding in
15 the Minnesota cost docket where we looked specifically
16 at the process flow for unbundled loops and for
17 transport, there was only like a three-minute difference
18 in the processing of a design change. So in that case,
19 while there may have been a difference, it was not
20 significant.

21 Q For averaging to be going on, there has to be
22 some above the average and some below the average.
23 You'd agree with that in all events, correct?

24 A I would agree the definition of an average is
25 that, yes.

1 Q And you will agree with me that on average,
2 it costs Qwest more to perform a design change for an
3 unbundled transport circuit than it does for a loop,
4 correct?

5 A Well, based on that three-minute difference,
6 then, yes, I would say that there's a slight difference
7 in transport.

8 Q And in fact, you are aware that Ms. Million
9 makes the point that Eschelon has received an advantage
10 as a result of paying a lower design-change charge for
11 units than would have been the case had that charge been
12 calculated on a standalone basis?

13 A Yes.

14 Q You're familiar with that testimony --

15 A Yes.

16 Q -- of Ms. Million?

17 A Yes.

18 Q Now, if the standalone cost for a unit-design
19 change is higher than the average, you would agree with
20 me, would you not, that the standalone cost of a loop
21 design change must be lower than the average?

22 A I'm just saying theoretically, on average --
23 I just want to be very cautious here. I am not a cost
24 witness for Qwest, and I do not represent the cost for
25 design changes, that that was extensively in the

1 testimony of Ms. Million. So I'm -- I'm with you here
2 as far as my understanding of the design changes, but I
3 am not representing the cost in this proceeding.

4 Q And I'm referring to your direct testimony at
5 Page 10, and I'm focusing specifically on the testimony
6 that begins at Line 20.

7 The question there is, "Is there merit to
8 Eschelon's claim that the cost of design changes for
9 loops are less than those for design changes for UDITs?"

10 Do you see that?

11 A Yes.

12 Q And then you testified that there's no basis
13 for this assumption.

14 A Yes.

15 Q Do you see that?

16 A Yes.

17 Q And that was your testimony?

18 A Yes.

19 Q You would agree that Ms. Million's testimony
20 actually provides a basis for that assumption, does it
21 not?

22 A Yes, it does.

23 Q Now, you in your testimony refer to the
24 non-recurring cost study and -- is that right?

25 MR. DEVANEY: Your Honor, is it possible to

1 get a page reference?

2 MR. MERZ: I didn't really have a specific
3 one in mind, because I think it's something she talked
4 about in a number of places. But I can probably find
5 one here.

6 A What I discuss, which is actually on the next
7 page, Page 11, is a reference to the Colorado proceeding
8 that put the Exhibit A of the SGAT in place, that that's
9 not, I believe, the actual cost docket order.

10 Q (By Mr. Merz) And my question is whether you
11 refer in your testimony to the non-recurring cost study
12 relating to design changes.

13 Do you recall making reference to that cost
14 study in your testimony?

15 A I would have to look. I absolutely know I
16 make reference to the Commission proceeding that put the
17 Exhibit A in place of the SGAT that put the \$73
18 charge -- and 93 cents charge in place. I am not a
19 hundred percent sure if I actually referred to the cost
20 docket itself.

21 Q Go to your rebuttal testimony at Page 7. And
22 I'm looking at Line -- the testimony that begins at the
23 very end of Line 13, where you say, "The non-recurring
24 cost study on which the rate is based estimates the
25 amount of time on average that it will take to perform

1 any given task in the list of activities necessary to
2 complete a design change and the probability that that
3 task will occur."

4 Do you see that?

5 A Yes, I do.

6 Q Now, is the non-recurring cost study that
7 you're referring to the document that is attached to
8 Ms. Million's testimony --

9 A Yes.

10 Q -- her -- her rebuttal -- I'm sorry -- her
11 answer testimony as Exhibit TKM-1?

12 A Yes. And I make that clear in Lines 10, 11
13 and 12, where I specifically refer to Ms. Million's.

14 Q And do you have TKM-1 there?

15 A Of Ms. Million's exhibit?

16 Q Yes.

17 A No, I do not.

18 A.L.J. JENNINGS-FADER: If you need it,
19 Counsel, it's in the pile.

20 MR. MERZ: May I rummage through the paper
21 there?

22 A.L.J. JENNINGS-FADER: Through the pile of
23 documents? Yes.

24 Q (By Mr. Merz) Do you have Exhibit -- I've
25 handed you the answer testimony of Ms. Million, and I'd

1 begins at Page -- Line 10, where she says, "In addition,
2 Ms. Million explains in her answer testimony that the
3 design-change rate set by this Commission," and she goes
4 on and summarizes essentially what Ms. Million is saying
5 about the cost study that the Commission relied upon.

6 Ms. Million is our cost witness. This
7 exhibit was attached to Ms. Million's testimony. And I
8 would ask if there are questions that are specific to
9 the cost study, they will be addressed to Ms. Million,
10 who would be in a position to answer. That's one of her
11 roles in this proceeding.

12 MR. MERZ: And, Your Honor, this is her
13 testimony. She talks about her conclusion about what
14 the non-recurring cost study shows or doesn't show.

15 If that's not her testimony, it's a different
16 issue, but if it is, I think I have a right to ask her
17 about the basis for those conclusions. And if it's just
18 something that Ms. Million told her, then I suppose
19 she's able to say that as well.

20 A.L.J. JENNINGS-FADER: I agree. This is
21 cross-examination of testimony presented by Ms. Stewart,
22 and so the objection's overruled.

23 Q (By Mr. Merz) And so returning again to
24 TKM-1, we also have Probability No. 1.

25 Do you see that?

1 like you to turn to TKM-1, and just tell me when you
2 have that.

3 A Yes, I have it.

4 Q On Pages 4 and 5 of that exhibit --

5 Do you have those --

6 A Yes, I do.

7 Q -- you'll see a number of times and
8 probabilities. Do you see that?

9 A I'm sorry. Where are you specifically?

10 Q Well, do you see a column at the top of the
11 page, it says "time, minutes"?

12 A Yes, I do.

13 Q And underneath that, a line of numbers, 2, 5,
14 4 --

15 A Yes.

16 Q -- 1 and so on?

17 A Um-hum.

18 Q And it's your understanding that that
19 represents the time, minutes to accomplish each of the
20 tasks that are identified on the left-hand side of the
21 page, correct?

22 MR. DEVANEY: Your Honor, if I could, at this
23 point I'd like to register an objection, and that is
24 that the testimony being referred to here of

25 Ms. Stewart's on Page 7 of her rebuttal testimony really

1 A Yes, I do.

2 Q And underneath that, there's a line of
3 numbers, 1.00, 1.00 and so on?

4 A Yes.

5 Q And in your testimony, your rebuttal
6 testimony, when you talk about the rate being based on
7 estimates of the amount of time on average that it takes
8 to perform a given task, the amount of time is the line
9 of numbers under the time and minutes, correct?

10 A Yes, it appears to be.

11 Q And then your testimony goes on to talk about
12 the probability that those tasks will occur, correct?

13 A Yes.

14 Q And that's the line of numbers under
15 Probability No. 1, correct?

16 A Yes.

17 Q Now, what is it about Exhibit TKM-1 that
18 caused you to conclude that the rates that were
19 developed by that study were the result of averaging?

20 A In conference with Ms. Million about the cost
21 study and then looking at the description on Page 3,
22 where it talks about what the design change -- changes
23 incurred by the company, and it lists the various
24 activities that were contemplated.

25 So in review of the cost study, relying on

1 the expertise of Ms. Million, and personally leading the
 2 executive summary, I concurred with her.
 3 Q Based -- setting aside what Ms. Million told
 4 you, based only on TKM-1, is there something that you
 5 used to conclude that the cost studies produced by that
 6 cost study (sic) were the result of averaging?
 7 A Just in conversation with Ms. Million as the
 8 expert representing the cost study.
 9 Q I want to refer now to a different issue,
 10 network modernization and maintenance, which is
 11 Issue 9.33 (sic), and this concerns Section 9.1.9 of the
 12 contract. Is that right?
 13 A Yes.
 14 Q Now, the parties have agreed upon language
 15 that provides that modifications that Qwest makes to
 16 maintain and modernize its network may result in minor
 17 changes to transmission parameters, correct?
 18 A Yes.
 19 Q And Eschelon has proposed language that would
 20 apply if modification has an adverse impact on service
 21 to Eschelon's customers, correct?
 22 A Yes.
 23 Q Now, Eschelon actually has proposed two
 24 separate proposals. Is that right?
 25 A Yes.

1 MR. MERZ: And, Your Honor, I have a copy of
 2 the contract, which I think at least addresses the issue
 3 that we're talking about, although it's not necessarily
 4 the one that we would offer in this case. If I could
 5 just hand that to her as well.
 6 A.L.J. JENNINGS-FADER: I'm sorry, Counsel.
 7 What issue is -- issue number is this?
 8 MR. MERZ: I'm sorry. It is Issue 9-33,
 9 network modernization and maintenance.
 10 A.L.J. JENNINGS-FADER: Thank you.
 11 Q (By Mr. Merz) And if you just want to return
 12 to that section of the contract, 9.1.9.
 13 A Yes. I'm there.
 14 Q And you see there the two Eschelon proposals,
 15 correct?
 16 A Yes.
 17 Q And your objection to the first proposal is
 18 that the terms "adversely affect" and "unacceptable
 19 changes" are not defined, correct?
 20 A That's one of our concerns, yes.
 21 Q Actually, that's your concern with respect to
 22 both of those proposals, the first and second proposal,
 23 correct?
 24 A Yes.
 25 Q The first proposal uses the phrase "adversely

1 affect," correct?
 2 A Correct.
 3 Q And the second proposal uses the phrase
 4 "unacceptable changes"?
 5 A Yes.
 6 Q Now, the second proposal, you are aware, is
 7 language that was suggested by the Minnesota Department
 8 of Commerce, correct?
 9 A That's my understanding.
 10 Q And adopted by the Minnesota Public Utilities
 11 Commission. Is that right?
 12 A That's my understanding.
 13 Q Would you turn to Section 9.21.2.1.5.
 14 A.L.J. JENNINGS-FADER: Of, please?
 15 MR. MERZ: 9 -- I know. 9.21.
 16 A.L.J. JENNINGS-FADER: 9.21?
 17 MR. MERZ: 9.21.
 18 A.L.J. JENNINGS-FADER: Thank you.
 19 MR. MERZ: .2.
 20 A.L.J. JENNINGS-FADER: I'm sorry. 2.1 or
 21 21?
 22 MR. MERZ: 9.21.1.5.
 23 A 9.21.2.1.5?
 24 Q (By Mr. Merz) Yes. Do you have that there?
 25 A Yes, I do. And, I'm sorry, I accidentally

1 wrote on one of your stickies. I thought it was my
 2 sticky
 3 Q I might have done that.
 4 That is a section of the contract that is
 5 agreed upon by the parties, correct?
 6 A It does not indicate there's any changes
 7 here. I have to take a minute since I haven't
 8 represented 9.21.
 9 Q You take whatever time you need.
 10 A Thank you.
 11 Yes, I've read it.
 12 A.L.J. JENNINGS-FADER: At this point, I need
 13 some help.
 14 MR. MERZ: Yes.
 15 A.L.J. JENNINGS-FADER: This is language
 16 agreed to in this proceeding?
 17 MR. MERZ: Correct.
 18 A.L.J. JENNINGS-FADER: We do not yet have,
 19 because of various problems, a -- the agreed-upon
 20 interconnection agreement being arbitrated. Please read
 21 the language so that I know what I'm looking at is the
 22 language that you all will be discussing.
 23 MR. MERZ: Yes.
 24 A.L.J. JENNINGS-FADER: Thank you.
 25 Q (By Mr. Merz) Section 9.21.2.1.5 provides

1 that "the customer of record will be able to request
2 conditioning of the loop portion of the line-splitting
3 arrangement. Qwest will perform requested conditioning
4 of the shared loops to remove low coils and express --
5 "excess bridge taps. If CLEC requests conditioning and
6 such conditioning significantly degrades the voice
7 services on the loop to the point that it is
8 unacceptable to CLEC, CLEC shall pay the conditioning
9 rate set forth in Exhibit A to recondition the loop."

10 Do you see that?

11 A.L.J. JENNINGS-FADER: I appreciate that.

12 Thank you.

13 A Yes, I do.

14 Q (By Mr. Merz) The term "significantly
15 degrade" is -- is not defined in this contract anywhere.
16 Isn't that right?

17 A It's a term -- you mean generally, is it in
18 the definition section of the contract?

19 Q Yes.

20 A It's not capitalized, so I assume not.

21 Q And the term "unacceptable" in the phrase
22 "unacceptable to CLEC," that's not a -- that's not
23 something that's defined in the contract?

24 A But it is something that's defined by the
25 CLEC, because this is a scenario where the CLEC has

1 asked us to condition a loop, so we've removed low coils
2 and bridge taps. Subsequently -- most likely to provide
3 a high-frequency service such as DSL. Subsequently,
4 their end user has experienced a problem, and the CLEC,
5 in looking at it, has made their own determination. For
6 their purposes, it degrades to that end user. So, yes,
7 it's -- a CLEC is the one who makes the call whether to
8 put it back on.

9 Q And for purposes of this provision, Qwest
10 agreed that it's appropriate for the CLEC to decide
11 whether or not the service is unacceptable?

12 A The reason Qwest had put the service in had
13 modified the circuit to the CLEC's specifications, and
14 if the CLEC wanted to undo their order, we allowed them
15 to undo their order, yes.

16 Q Then go to Section 10.2.4.2. Do you have
17 that there?

18 A Yes, I do.

19 Q And that section of the contract is also
20 agreed upon by the parties?

21 A Yes.

22 Q And that section provides for "local calls to
23 an NXX in which at least one number has been ported via
24 LNP at the request of CLEC. The party that owns the
25 originating switch shall query an LNP database as soon

1 as the call reaches the first LNP switch in the call
2 path. The party that owns the originating switch shall
3 query on a local call to an NXX in which at least one
4 number has been ported via LNP prior to any attempts to
5 route the call to any other switch. Prior to the first
6 number in an NXX being ported via LNP at the request of
7 the CLEC, Qwest may query all calls directed to the NXX
8 subject to the billing provisions as discussed in
9 Section 10.2.4.1 and provided that Qwest queries shall
10 not adversely affect the quality of service to CLEC's
11 customers or end-user customers as compared to the
12 service Qwest provides to its own customer and end-user
13 customers."

14 Do you see that?

15 A Yes, I do.

16 Q And that's a mouthful, to focus on the phrase
17 "Qwest queries shall not adversely affect the quality of
18 service to CLEC's customers or end users." The term
19 "adversely affect the quality of service" is not defined
20 for purposes of that provision, is it?

21 A It's not capitalized, so I assume not.

22 MR. MERZ: I don't have any further
23 questions. Thank you for your time.

24 A.L.J. JENNINGS-FADER: Mr. Devaney, any
25 redirect?

1 MR. DEVANEY: Yes. Thank you, Your Honor.
2 REDIRECT EXAMINATION

3 BY MR. DEVANEY:

4 Q Ms. Stewart, just focusing on the last line
5 of questioning from Mr. Merz, he focused on
6 Section 10.2.4.2 and focused on the use of the words
7 "adversely affect," where it says that "Qwest queries
8 shall not adversely affect the quality of service to
9 CLEC's customers or end users as compared to the service
10 Qwest provides its own customers and end-user
11 customers."

12 Do you know if Eschelon's proposed "adverse
13 affect" language for Section 9.19 has a similar
14 comparative standard in it?

15 A Not that I'm aware of.

16 Q And with respect to Section 9.21.2.1.5, which
17 you were also asked about a few minutes ago -- and it
18 had to do, I believe, with loop conditioning.

19 A Yes, it did.

20 Q And as you pointed out in your answer, it's
21 up to the CLEC to determine whether the conditioning has
22 affected its desired quality of service.

23 Is there also a provision in there that says
24 that the CLEC will pay Qwest if it asks for further
25 conditioning?

1 A Yes, it does.
 2 Q Mr. Merz asked you several questions about
 3 loop design changes. Do you recall that?
 4 A Yes, I do.
 5 Q Are you familiar with activities that Qwest
 6 performs in carrying out loop-related design changes?
 7 A Yes, I am.
 8 Q Can you list some of those activities?
 9 A Well, the first would depend on the type of
 10 loop involved. And so, for example, if -- and the type
 11 of design change requested. So if there was a design
 12 change such as the CLEC realized they had given the
 13 wrong address information, maybe in a large building
 14 there were two MPOPs or two ways to come into a
 15 building, and so when they gave the second address, we
 16 had to redesign facilities to reach that customer, and
 17 then we would have to go back and potentially look at
 18 reassigning facilities looping the route, or if it made
 19 the route longer, we may have to put in additional
 20 electronics and et cetera to get the service to work.
 21 Q Are there any additional steps with
 22 loop-related design changes?
 23 A I believe Mr. Hubbard has a detailed
 24 discussion of the design changes required from bundled
 25 loops in his testimony. But once again, it would be

1 service, not only loop specific, whether it was a DS1
 2 loop, whether it was a two-wire loop, but it would also
 3 be situational specific to what was the design change
 4 that the CLEC requested.
 5 But in all cases, when a change happens,
 6 Qwest needs to first go back and look at the existing
 7 design to see if it can support that change. If it can
 8 not, then, of course, it would change the design, such
 9 as the example I just gave and if there needed to be any
 10 changes. So, for example, such as a CFA change, there
 11 may have to be record changes within the Qwest systems
 12 to reflect all assigned pieces of equipment.
 13 So again, it -- generically, those are the
 14 type of steps, review the design, make any changes to
 15 the design that's necessary, then to go in and update
 16 the Qwest records consistent with those change requests,
 17 depending on what they were.
 18 Q And those activities that you just described,
 19 do they result in Qwest incurring costs?
 20 A Yes, they do.
 21 Q And is it Qwest's position in this
 22 arbitration that it should be permitted to recover those
 23 costs?
 24 A Yes.
 25 MR. DEVANEY: Thank you. That's all I have.

1 A.L.J. JENNINGS-FADER: I have a few
 2 questions of Ms. Stewart.
 3 EXAMINATION
 4 BY A.L.J. JENNINGS-FADER:
 5 Q Do you have Exhibit No. 32 in front of you?
 6 I hope so. It's the Colorado SGAT, 2003.
 7 A Yes, I do.
 8 Q And just taking as an example, on Page 133,
 9 there is a section entitled -- Section 9.2.3 entitled
 10 Rate Elements.
 11 A Yes, I see that.
 12 Q What is the purpose of that section, Rate
 13 Elements, within the SGAT?
 14 A The purpose of the rate elements is to talk
 15 about the different components specifically to --
 16 specific to that UNE that would apply when ordered, that
 17 particular UNE. So, for example, here it's talking
 18 about the rate elements for unbundled loops.
 19 Q If one -- and I think I know the answer. I
 20 just want to make sure I do. And this is where this
 21 section, for example, for unbundled loops, 9.2.3, is the
 22 section to which one would refer if one were looking to
 23 see which rates on Exhibit A applies to this service?
 24 A Yes. There's typically a corresponding
 25 Exhibit A for this section, yes, so if you go to

1 Exhibit A, there will be a 9.2 unbundled loop section in
 2 Exhibit A.
 3 Q With respect to Issue No. 9.31, access to
 4 UNEs --
 5 A Yes.
 6 Q -- about which you testify, do you not, in
 7 your -- at least in your direct testimony.
 8 A Yes, I do.
 9 Q The language in Section 9.1.2, which is
 10 quoted in your direct testimony, Exhibit -- Hearing
 11 Exhibit -- excuse me -- No. 15 at Page 15 --
 12 A Yes, I'm there.
 13 Q -- Lines -- particularly Lines 9 to 12. Now,
 14 this is an Eschelon proposal. I do understand that.
 15 A Yes.
 16 Q But what is your understanding of the term
 17 "moving, adding to, repairing and changing"?
 18 A Okay. What my understanding is, and this is
 19 Eschelon's proposal so I'm going to be giving my
 20 understanding of Eschelon's position, that Eschelon's
 21 position is that when they access an unbundled network
 22 element -- and in surrebuttal testimony of Mr. Denney, I
 23 think it's been clarified -- that that access, they're
 24 talking about paying the recurring rate for unbundled
 25 network element, that it includes the moving, adding to,

1 repairing and changing the UNE. And then they have
2 examples, design changes, e.g. being an example, design
3 changes, maintenance service, including trouble
4 isolation, additional dispatch, and cancellation of
5 orders.

6 So what Qwest -- I don't know if you wanted
7 me to -- that's my understanding, that if they think
8 when they pay the recurring charge, all these activities
9 including the e.g., which means some description even
10 larger that's in the parens, would apply when they pay
11 the recurring rate.

12 Q I do appreciate the fact that you're being as
13 objective as you can be under the circumstances and that
14 this is Eschelon's proposal.

15 What -- your criticism, your testimony, your
16 criticism of this language is that it is vague and
17 undefined language. Is that correct?

18 A Yes. And the fact that we believe it
19 includes activities for which additional charges beyond
20 recurring charges would apply. So, for example, when
21 you access a UNE, you pay Qwest for an unbundled loop at
22 Address A. We do not believe that that recurring rate
23 for us to provide new service at Address A would be
24 applicable if you called us up and said, My customer is
25 moving, they've got a new address across town, they now

1 are at Address B. We do not think that access, the
2 recurring rate of that unbundled loop would compensate
3 Qwest for moving that loop across town to Address B.

4 And that's our concern, when they say access
5 to unbundled network elements includes moving. That's
6 our exact question: Moving what, where? What recurring
7 rate compensates us for our non-recurring activities
8 associated with a move? That's just one example. I
9 could go on to others.

10 Q Thank you. I mean, that the non-recurring
11 rate -- forgive me for this -- is or is not an issue
12 here?

13 A I think when you look at this subject, we
14 believe that when you access an unbundled network
15 element and you pay the monthly rate to use that
16 element, that you get all the services associated with
17 that. Indeed, some services you get have no additional
18 charge, such as, typically, repair.

19 I think if we look at our -- our residential
20 line that we would order from Qwest, if we were a retail
21 customer, you pay for your residential line. It breaks.
22 Assuming it's our fault, we're going to repair it,
23 indeed at no additional charge. However, if you called
24 up Qwest and said, I've got one of your residential
25 lines and I'd like to add to it and have a second

1 residential line, we believe additional non-recurring
2 would result because now you've got two lines instead of
3 one, an additional non-recurring would result because
4 we've got to install it.

5 So when you look at their language that they
6 are saying, access to an unbundled network element is --
7 includes adding to, my question or concern, Qwest's
8 concern, is that, well, when you're paying the monthly
9 recurring rate for one UNE, there's nothing in that that
10 recovers or has us add to it or put in a second UNE.

11 And in the testimony -- surrebuttal testimony
12 of, I believe, Mr. Denney, he talks specifically about
13 how they believe that many of the activities encompassed
14 in this are included in the recurring rates for the
15 service. So I believe it has a kernel of both recurring
16 and non-recurring, and our concerns about this broad,
17 blanket language and with his surrebuttal testimony,
18 that just even more increased our concerns about their
19 interpretation of their own language.

20 Q To determine what was or was not included in
21 the rates -- I believe you had this discussion with
22 Mr. Merz -- one needs to look to -- at least for
23 unbundled network elements, one needs to look to the
24 cost study that was in evidence or reviewed or
25 considered by the Commission at the time they set the

1 rates. Is that right?

2 A Yes.

3 Q In the absence of such a cost study, how does
4 one determine what was or was not included in setting
5 the rate to your point about activity -- the number of
6 activities involved, the question of what is included in
7 the recurring rate? What -- what things were included
8 or considered at the time that the rate was approved by
9 the Commission? Where does one go to look for that list
10 of things that are assumed to be covered by the rate?

11 A I think a person would potentially look a
12 couple of places. One is in the terms and conditions of
13 the UNE. So if the terms and the conditions of the UNE
14 say maintenance is included at no additional charge,
15 then, oh, okay, then maintenance must be in the
16 recurring rate, so that's a place you would look.

17 The primary place you would look, I believe,
18 would be the cost study, and my understanding in -- not
19 being the cost witness is that when Qwest does provide
20 UNEs to CLECs, there is an underlying cost study that
21 goes along with that network element.

22 The cost study may have already been filed
23 and completely reviewed by a commission and a final
24 order done, or it may be subject to interim rates, but
25 that ultimately everything we offer has some cost study

1 that underlies it.

2 So if you had a question about whether
3 something was truly included or not, you would need to
4 go there to determine that. But it's also understanding
5 in context what is put into that cost study. And that's
6 why I believe it's very critical, and that's why Qwest
7 has indicated cost witnesses.

8 So, for example, in, I believe, again,
9 Mr. Denney's testimony -- excuse me -- we have a lot of
10 testimony, so I hope I'm referring to the right one. He
11 talks about the fact that there's factors that talk
12 about moving a circuit. Well, the only factors that I'm
13 aware of, and I did ask this question of Ms. Million,
14 that talks about moving the circuit is a repair factor,
15 that if we are doing a repair on your circuit and we
16 need to take your service off of that circuit, instead
17 of just knocking you totally out of service for an
18 extended period of time to effect the repair, we will
19 sometimes move or roll your facility -- your service to
20 another nearby facility, do the repair, then roll you
21 back.

22 In some cases, your facility is not
23 salvageable. It's broken beyond what is reasonable for
24 Qwest to repair. So then in a maintenance mode, we'll
25 take one of our maintenance pairs and roll you

1 permanently to that maintenance pair.

2 So yes, indeed, our factors contemplate a
3 small amount of moving for maintenance purposes, but
4 that does not mean that it includes every possible
5 conceivable move such as the example I just said, when a
6 CLEC has a customer at one address and the customer
7 decides to move and so then the CLEC puts in an order to
8 move that circuit. Then that's not the type of moving
9 that was contemplated in that maintenance factor.

10 So I think it's not only looking at the
11 language that's in the cost studies, but being able to
12 understand and be an expert about the context of that
13 language.

14 Q Thank you. If you could turn to Page 42 of
15 your direct testimony.

16 This discussion is in the context of Issue
17 9-51, application of UDF-IOF, termination rate element,
18 correct?

19 A Yes.

20 Q That is still an issue in this case?

21 A Yes.

22 MR. MERZ: It is.

23 Q (By A.L.J. Jennings-Fader) On Page 42, on
24 Lines 14 to 16, you state that since the rate was
25 approved by the Commission, that the description of the

1 rate element has changed. Is that correct?

2 A Yes. That the rate element was described in
3 one manner that potentially sounded misleading. And
4 when Qwest comes across something that's misleading, it
5 tries to add clarifying language. So what it did was
6 actually synched up the language in the written part of
7 the SGAT with the language in Exhibit A, because
8 Exhibit A had always talked about that the termination
9 was per termination per pair. And the way in which it
10 was described made it sound less clear.

11 So yes. Qwest took steps in its latest
12 updated language for dark fiber to clarify and to get
13 the written language to be consistent with the
14 Exhibit A, which is consistent with the cost study.

15 So it was truly not a rate change. We've
16 always charged the rate in the same manner. But we had
17 this language that some people felt was confusing, and
18 so we updated the verbiage to make it clearer so there
19 would not be any confusion.

20 Q In doing this synch-up, was this something
21 that Qwest just did without -- in consultation with
22 anyone or any other group or organization, or did the
23 rate people just do it, or how did it come about?

24 A I do not know the actual total history of any
25 changes to do with it. I know the more recent history.

1 Q I'm sorry. I'm referring specifically to the
2 change --

3 A Right.

4 Q -- in the latest negotiations template --

5 A Exactly.

6 Q -- we were discussing in your testimony.

7 A Dark fiber is -- okay.

8 Q It's a long and gruesome history.

9 A You were there. In the negotiations

10 template, Qwest took steps to clarify the language to
11 synch up with Exhibit A, because Exhibit A had had the
12 language correct in the vast majority of the SGAT. I
13 would have to look specifically at Colorado's to confirm
14 that, but I believe it is true. That -- would you like
15 me to just sort of describe what it is? Would that help
16 a little bit, or --

17 Q I'm sorry. Would you?

18 A Would you like me to describe what this
19 element is a little bit?

20 Q That's fine.

21 A Illustrative. What the element was, was when
22 a CLEC would order dark fiber from Qwest, Qwest
23 engineers would take and look at the request and the
24 route. They would figure out all of the cost and all of
25 the work that was necessary or the rate elements that

1 are necessary. And one of those rate elements is to
 2 terminate the dark fiber in the central office. So this
 3 is the termination charge.
 4 So, for example, you think about the dark
 5 fiber has two ends and each end are terminated. So
 6 there's an actual place where we, for lack of a better
 7 word, tie down that dark fiber. And that is how the
 8 cost study was done. That's how Exhibit A talks about
 9 it being per termination.
 10 That's when a CLEC made an inquiry of Qwest
 11 for dark fiber, and we would send back the rate
 12 proposal, because dark fiber's different than most UNEs,
 13 in that you basically request the dark fiber between
 14 certain routes. We then come back and tell you, one, if
 15 it's available and, two, what the cost would be because
 16 of what we would need to do to deliver it to you.
 17 So when that cost quote came back, it
 18 would -- I should say rate quote -- excuse me -- rate
 19 quote came back, it would include all the terminations,
 20 how many times we had to terminate the dark fiber to get
 21 it to you.
 22 So one of the things that could impact that
 23 might be in a very large central office, maybe the fiber
 24 facilities were coming in on the second floor and your
 25 colly (sic) is on the third floor. So we have to

1 terminate and go into riser cable to get up to your
 2 colly, so we have another set of terminations to get up
 3 and down the riser cable. So we laid all those out,
 4 sent them to you, and that was consistent with the cost
 5 study, consistent with Exhibit A.
 6 The original language prior to being
 7 clarified said "terminations per central office," I
 8 believe. I could probably get it out here, because I
 9 think it's one of the proposals by Eschelon. And so
 10 people who were looking, then, at their cost -- their
 11 rate sheet would say, I thought it was termination per
 12 office. And we would say, no, It's per termination. Go
 13 to Exhibit A. There's your rates as per termination.
 14 Here's our number of terminations. We'll add them all
 15 up.
 16 And that's how we've always done it. We've
 17 replied to any concerns by CLECs. However, it was
 18 determined that it would smooth the process if we didn't
 19 have this language that could be ambiguous in these
 20 circumstances, where there was a second set of
 21 terminations in an office -- I gave the one example,
 22 multiple floors -- to synch up the written language in
 23 the written term and conditions section of the rate
 24 elements section of the SGAT with the Exhibit A, which
 25 always had said "per termination."

1 And so we had an inconsistency there, and we
 2 synched them up, made them consistent in our
 3 negotiations template so as we go to negotiate new
 4 interconnection agreements with CLECs, we won't have
 5 this confusion or concern or ambiguousness between the
 6 two documents.
 7 Q So if I understand you correctly, this was
 8 something which Qwest did, for lack of a better term,
 9 unilaterally without consultation with anyone, or it
 10 just identified what it perceived to be a problem and
 11 moved to correct the problem?
 12 A And that's where I don't know, because I
 13 don't -- I did not look at all of the history on this
 14 element, whether at any time there was a clarifying
 15 message that went out about that. I haven't confirmed
 16 that.
 17 I do know, again, in our negotiations
 18 template that we made available to CLECs, we indicated
 19 the correct information. And again, the ambiguousness
 20 was in the SGAT itself. Exhibit A of the SGAT had per
 21 termination. This one did not. So we had two -- the
 22 same document was ambiguous within itself.
 23 Q Ms. Stewart, if you could refer, please, to
 24 Exhibit No. -- Hearing Exhibit No. 17, which is your
 25 rebuttal testimony. I'll keep checking to see if --

1 excuse me. And this has to do with 9-33-A.
 2 A.L.J. JENNINGS-FADER: Can folks help me
 3 out? Is that still at issue? I'm sorry. 9-34. I'm
 4 misreading this, which is still at issue.
 5 A Yes.
 6 A.L.J. JENNINGS-FADER: Right. Thank you.
 7 Q (By A.L.J. Jennings-Fader) In your
 8 discussion at Page 17 of your rebuttal testimony, you
 9 talk about Mr. Starkey's rebuttal, which is his answer
 10 testimony, and discuss at Lines 18 to 25 a suggestion or
 11 a clarification which Mr. Starkey made in his testimony.
 12 Do you see that?
 13 A Yes, I do.
 14 Q Does this clarification provided and
 15 discussed by you address Qwest's concern?
 16 A It would not address all of Qwest's concerns,
 17 but it would do a great deal to addressing many of our
 18 concerns, because the way in which this section's
 19 structured, it made it sound like almost from Qwest's
 20 viewpoint an interpretation of the language could be
 21 that any change that was listed in 9.1.9, including area
 22 code splits, that type of thing, could be end user
 23 specific and that -- and an individual end user could
 24 have a new area code.
 25 And what Eschelon had presented in testimony

1 was, we're not saying -- and I'm paraphrasing their
2 testimony, so I'm sure they'll -- if I'm paraphrasing it
3 incorrectly, they'll let you know -- is that we're not
4 talking about global situations like that. We're
5 talking something very specific, such as, maybe not the
6 total list, but an example, you're going out to our
7 end-user customer, you're doing something at our
8 end-user customer's location. We want to have this
9 information because you're out there doing something
10 specific to our end user, not just a global change that
11 would be noticed.

12 And we already address in agreed-to sections
13 of 9.19, and I believe there's some subparts where we
14 talk about if we're going to go out specifically to your
15 end-user customer on any maintenance or activity, that
16 you do not know about that, we indeed will provide three
17 days' notice.

18 So we feel that section already addresses
19 that. But at least it would go, you know, a ways toward
20 addressing some of our concerns about the globalness of
21 their statement. But we believe that specific issue,
22 when we're out there at your end user's location, we've
23 already addressed that and agreed to sections.

24 Q And, I'm sorry, what do you believe those --
25 what agreed-to sections do you believe address this

1 concern?

2 A The concern that if we were out at an
3 end-user customer specifically doing activities, it's
4 9.1.9 -- 1 -- excuse me. I'd better find my reference
5 here, and I can give it to you exactly. 9.1.9. If you
6 go to the Subpart 9.1.9.1, and I'll just read the small
7 section here. "In the event that Qwest intends to
8 dispatch personnel to the premises of a CLEC's end-user
9 customer for the purposes of maintaining or modernizing
10 the Qwest network, Qwest shall provide CLEC with e-mail
11 notification."

12 So we feel that when we're actually
13 specifically going out to your location, we're
14 specifically working on that circuit, we've already made
15 a commitment that we will provide notice to the CLEC.

16 Q Now, I notice or recall that he said "if
17 Qwest is to dispatch someone to that" --

18 A Correct.

19 Q -- "location." Is it possible that there
20 might be something done from the central office that
21 would not require dispatch to the location, that would
22 fall within the customer's specific premises, not the
23 global change, not the neighborhood change, but the
24 specific address change?

25 A I would say that it has to be within the

1 realm of possibilities, since the loop is going to
2 terminate at the end user and terminate at the CO, so
3 it's not impossible that something could be done at the
4 CO level.

5 Q I'm just trying to figure out if -- whether
6 dispatch would cover all of the potential activities
7 that might -- that raise Eschelon's concerns.

8 A No. I would say from that, we believe it is
9 really -- the majority or the bulk of the concerns were
10 out there at your customer prem (sic) or doing
11 something, but no, it is clarified with the word
12 "dispatch." So you're correct. If there was any kind
13 of change that did not include a dispatch, then this
14 provision would not apply.

15 A.L.J. JENNINGS-FADER: Thank you very much
16 for responding to my questions.

17 Mr. Merz, any questions based on what I asked
18 Ms. Stewart?

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

20 RE-CROSS-EXAMINATION

21 BY MR. MERZ:

22 Q I wanted to ask you about Section 9-31,
23 access to UNEs, and you were just asked some questions
24 about your direct testimony at Page 14 -- I'm sorry --
25 Page 15, Lines 9 through 12, correct?

1 A Yes.

2 Q And that is Eschelon's proposal for
3 Section 9.1.2, correct?

4 A Yes.

5 Q Then if you look at the immediately preceding
6 page, Page 14, beginning at Line 25 and carrying on
7 through Line 28, that is Qwest's proposal for
8 Section 9.1.2.1, correct?

9 A Yes.

10 Q And both Eschelon's proposal and Qwest's
11 proposal refers to moving, adding to, repairing and
12 changing the UNE, parens, through, e.g., design changes,
13 maintenance of service, including trouble isolation,
14 additional dispatches and cancellation of orders, close
15 parens. Is that correct?

16 A Yes.

17 Q And where the parties disagree is that
18 Eschelon proposes that those things be called access to
19 unbundled network elements, and Qwest proposes they be
20 called activities available for unbundled network
21 elements.

22 That's one way that they disagree, correct?

23 A Correct.

24 Q And the other way that they disagree is that
25 Qwest tacks onto the end of that provision "at the

1 applicable rates." Is that right?

2 A Yes.

3 Q Now, is it Qwest's position that "at the
4 applicable rates" would be a TELRIC-based rate?

5 A It would depend on the activity being
6 performed.

7 Q Would -- if it were, for example, design
8 changes, maintenance of service, including trouble
9 isolation, additional dispatches and cancellation of
10 orders, you would agree that those things would all be
11 subject to TELRIC rates, wouldn't you?

12 A You're moving a little fast for me, but, for
13 example, no. Maintenance, the applicable rate would --
14 as we discussed, would be the recurring rate.
15 Maintenance and service, if that's some type of trouble
16 isolation, my understanding is that that is a TELRIC
17 rate in the interconnection agreement. If it was
18 expedites, as already discussed, Qwest has a reference
19 to the tariff rate for expedites.

20 So it would -- you know, in one case there
21 would be no charge, one case it would be a TELRIC, and
22 another case, such as expedites, it potentially could be
23 a tariff charge. So that's why it's applicable rates.

24 Q Well, would you agree with me that design
25 changes, in Qwest's view, are subject to TELRIC rates?

1 A In that proceeding, Qwest has put in the
2 TELRIC rate for design changes in Exhibit -- the
3 proposed Exhibit A, yes.

4 Q Would you agree with me that additional
5 dispatches when performed in connection with a UNE are
6 subject to TELRIC rates?

7 A I'm not an additional dispatch expert, so
8 I -- I'm -- once again, if the rate is in the Exhibit A,
9 my understanding is that all those rates that are in
10 there have a little item that tells you where the rates
11 come from, so if that rate is in there and has the
12 TELRIC rate, that's what it would be.

13 Q The same with respect to cancellation orders.

14 Would you agree with me when that's something
15 that is done in connection with a UNE, that's something
16 that's subject to a TELRIC rate?

17 A I'm not a cancellation-of-order person in
18 this proceeding, so I really do not want to go too far
19 testifying about what the rates would or would not be.
20 As I indicate, it's whatever the applicable rate that
21 has been determined for that activity.

22 Q Let's stick, then, with design change, which
23 is something you testified about.

24 A Yes. I would feel comfortable with that one.

25 Q Now, you have said that you have a concern

1 that Eschelon's proposed language would allow Eschelon
2 to get design changes at no additional charge.

3 A Potentially, yes.

4 Q You are aware that Eschelon is not proposing
5 in this case that it get design changes at no additional
6 charge?

7 A Eschelon has proposed rates for design
8 changes.

9 Q You also had some questions about Issue 9-34,
10 and I'm focusing specifically on your direct testimony,
11 Page 17, Lines 18 through -- I think, actually, I'm
12 looking at a different -- actually, I'm looking at your
13 rebuttal testimony, Page 17.

14 A.L.J. JENNINGS-FADER: I'm sorry. Page
15 reference?

16 MR. MERZ: Page 17.

17 A.L.J. JENNINGS-FADER: Exhibit 17 at
18 Page 17?

19 MR. MERZ: No. It's not Exhibit 17. It's
20 Page 17. It's Exhibit --

21 THE WITNESS: 17.

22 MR. MERZ: Is it 17?

23 THE WITNESS: It's rebuttal testimony.

24 A.L.J. JENNINGS-FADER: That's why I wanted
25 to be sure we were getting the right numbers.

1 MR. MERZ: That's correct. Okay. Thank you.

2 Q (By Mr. Merz) You were asked some questions
3 by the judge regarding Lines 18 through 21 of your
4 testimony regarding a clarification that Mr. Starkey has
5 made. Is that right?

6 A Yes.

7 Q And you were asked whether that clarification
8 addressed Qwest's issues, and I think you said something
9 like, It goes a long way toward addressing many of
10 Qwest's concerns.

11 A Yes.

12 Q What concerns does that clarification does
13 not -- does that clarification not address from Qwest's
14 perspective?

15 A From Qwest's perspective -- I'll go back and
16 get that -- sorry -- provision in front of me so I'm not
17 trying to work from memory here.

18 But Qwest's perspective is that this is a
19 tag-on section to the Qwest commitment that it will meet
20 the FCC rules for notification of network-related
21 changes.

22 None of the FCC rules include any obligation
23 on the part of Qwest to identify the CLEC customer,
24 circuit identification, et cetera. In many cases, Qwest
25 would not perhaps even know those, or it would be

1 extensive manual searches to determine that information.

2 So many of our concerns are really solidly at
3 the fact that the FCC notification rules have been in
4 place and have worked very effectively, and Qwest does
5 meet all its obligations from those FCC rules.

6 Q So as I understand it, the remaining concern
7 that Qwest has with regard to this section is that it
8 requires Qwest to provide information that isn't readily
9 available to it. Is that Qwest's concern?

10 A That's part of it, but it's also requirements
11 that go beyond its legal obligation as it relates to
12 these FCC rules. In addition, it's combined with, up
13 above, on the adverse effect, it's almost as if working
14 together, they contemplate that Qwest cannot have an
15 adverse effect on an end-user customer, when, indeed,
16 the very fact that the FCC has these notice requirements
17 in place is because there indeed may be activities that
18 affect an end-user customer. That's why we have to
19 notify CLECs and notify customers in some cases, such as
20 area code split or the need to do 10-digit dialing.

21 So the FCC never put in place this idea that
22 you would never make a change, never affect people.
23 What they put in place is that when you do a change, you
24 will do these notices so that everyone has the
25 information ready -- available to them to deal with that

1 change. And none of the FCC rules/requirements required
2 this type of information.

3 Q Issue 9-33 describes the kinds of changes
4 that Qwest can make, and Eschelon's proposal addresses
5 what happens if there's an adverse impact on --

6 A Yes.

7 Q -- an Eschelon customer, correct?

8 A Yes.

9 Q That's Issue 9-33.

10 A Correct.

11 Q 9-34 concerns notice that Qwest will give to
12 Eschelon regarding changes that it has made, correct?

13 A Yes.

14 Q 9-34 doesn't address in any way the kinds of
15 changes that Qwest can make or what will happen if
16 there's a problem, does it?

17 A It talks about the fact that there may be
18 network changes, so -- and they're both talking about
19 that same situation.

20 When you have network changes, your language
21 is -- putting in place there will never be an adverse
22 effect. What I'm saying is there potentially could be
23 effect. That's why we have the whole FCC notice
24 requirement.

25 You drop down to talk about changes of that

1 notice requirements. And it is Qwest's position that
2 you're going beyond what we are legally required to
3 provide and that we are meeting all of our FCC
4 requirements as it relates to notice.

5 Q So as I understand it, with respect to 9-34,
6 there are three concerns that Qwest has. One is that
7 the notice might require Qwest to provide a notice when
8 it's a change relating to a whole lot of customers.

9 A Correct. Massive change, yes.

10 Q And that concern is addressed by the
11 clarification that Mr. Starkey has described in his
12 testimony?

13 A Well, he has it in his testimony. I'm not
14 sure that the language clarifies. But yes, in his
15 testimony, he attempts to narrow it down to being the
16 scenario I had discussed, where somehow we're
17 specifically working on your circuit, is my
18 understanding.

19 Q If that clarification were reflected in
20 language, that would address Qwest's concern in that
21 regard?

22 A Many of Qwest's concerns in that regard would
23 be addressed. It still would not take its other
24 concerns away.

25 Q As I understand, there are two other things

1 you talked about. One is the issue of what the FCC
2 rules require.

3 A Right.

4 Q And Qwest's belief that what Eschelon is
5 asking for goes beyond what the FCC requires.

6 A Correct.

7 Q And it's the case, is it not, that the FCC
8 requirement is really set out as a minimum, not a
9 maximum requirement?

10 A I think it's pretty healthy requirements.
11 They want to make sure that you have the information
12 necessary should a change occur.

13 Q And my question is, the FCC requirement isn't
14 a maximum requirement. It's a minimum. You must
15 provide at least this information. Correct?

16 A I think it's been used, tried and true, for
17 many years, and it's the notice requirements. I don't
18 know about the minimum/maximum. It's the notice
19 requirements that you are required to do.

20 Q And then as I understand it, the third
21 concern that you have regarding 9-34 -- I lost my train
22 of thought here.

23 MR. DEVANEY: I could probably help you.

24 MR. MERZ: I'd appreciate it.

25 MR. DEVANEY: The circuit ID and addresses

1 are not really available.
 2 MR. MERZ: Thank you so much, Mr. Devaney.
 3 This is what happens when parties can work together.
 4 A.L.J. JENNINGS-FADER: This is cooperation.
 5 Thank you, Counsel.
 6 MR. MERZ: Thank you for fixing my question.
 7 I appreciate it.
 8 MR. DEVANEY: Just piggyback some day.
 9 MR. MERZ: I certainly will.
 10 Q (By Mr. Merz) The third concern that Qwest
 11 has is that Eschelon's language that might require it to
 12 provide information that's not readily available.
 13 A Or that it may not even have -- such as a
 14 CLEC an end-user customer name, we may not have that
 15 information in our records.
 16 Q Just to make sure, I've now gotten the
 17 universe of Qwest's concerns relating to that particular
 18 issue, 9-34?
 19 A Yes.
 20 MR. MERZ: I don't have anything further.
 21 A.L.J. JENNINGS-FADER: Mr. Devaney, you get
 22 to ask any redirect you wish to ask with respect to
 23 questions that I asked.
 24 MR. DEVANEY: And questions that Mr. Merz
 25 asked?

1 A.L.J. JENNINGS-FADER: Certainly. This is
 2 redirect. Go for it.
 3 MR. DEVANEY: Now I'm scaring Ms. Stewart.
 4 REDIRECT EXAMINATION
 5 BY MR. DEVANEY:
 6 Q Ms. Stewart, just a few questions.
 7 With respect to the access to UNEs in issue
 8 9-31, Mr. Merz just asked you some questions about
 9 Qwest's use of the phrase "at the applicable rates."
 10 Do you recall that?
 11 A Yes, I do.
 12 Q And at least implicit in his question was the
 13 fact that Qwest's proposal uses some of the same words
 14 that Eschelon's proposal uses, "moving, adding
 15 changing."
 16 My question for you is, is the use of "at the
 17 applicable rates" something that gives Qwest less
 18 concern about use of those same terms?
 19 A Yes, it does.
 20 Q Could you explain why?
 21 A Should there be a question or confusion or
 22 should this section ask Qwest to do something that it
 23 typically doesn't contemplate or typically doesn't do,
 24 then the at-applicable rates gives Qwest the opportunity
 25 to ensure and work with the CLEC that the appropriate

1 cost recovery would occur for this activity.
 2 So instead of signing this blank check, as
 3 you will, that when you pay your reoccurring or access
 4 rate per UNE, we're going to do this long list, as-yet
 5 undefined list of items, because there's an e.g. and
 6 there may or may not be any cost recovery for Qwest for
 7 these special requests or activities.
 8 In this particular example, when you put "at
 9 applicable rate," then we feel much more comfortable
 10 that we will receive appropriate cost recovery for any
 11 activities we're asked to perform.
 12 Q The judge asked you a question about
 13 Section 9.2 of the interconnection agreement. It was
 14 titled Rate Elements.
 15 A Yes.
 16 Q And the question was, what's the purpose of
 17 that section? And I think you responded that that
 18 section lists the rates that apply to elements.
 19 Do you recall that?
 20 A Yes.
 21 Q My question for you is, do you know if that
 22 list is an all-inclusive list or whether there are other
 23 rates in Exhibit A to the interconnection agreement that
 24 could apply to an element?
 25 A There are additional rates, as I indicated,

1 in 9.20, the miscellaneous services. In addition, I
 2 have not compared whether the particular 9.2 in the SGAT
 3 talks about all of the possible flavors of rate elements
 4 for UNEs that might be in Exhibit A.
 5 So, for example, there might be rates around
 6 whether it's coordinated with testing, coordinated
 7 without testing, that there may be a longer list of
 8 specific rate elements in Exhibit A than were in the
 9 general rates section. I have not done that comparison.
 10 Q And my final area of questioning for you is,
 11 the judge also asked you if we wanted to determine what
 12 costs were included in recurring rate; would we have to
 13 go back and look at the cost of this type. I think you
 14 answered that yes, that would certainly be a helpful
 15 exercise.
 16 My additional question, though, is, could we
 17 also look it Exhibit A and see non-recurring rates set
 18 forth in Exhibit A that might shed some light on whether
 19 certain activities are included in recurring rates?
 20 A Yes. For example, for UDIT, you might see in
 21 Exhibit A a UDIT rearrangement charge, and so that would
 22 then let you know that whether there's a move or a
 23 change or some other type of activity with a UDIT, that
 24 you could see it was contemplated that those type of
 25 rearrangements would have an additional charge.

1 Another one might be the adding to, if you
2 see that there's a first UNE or additional UNES to be
3 installed. So yes, there could be additional clarity in
4 the Exhibit A.

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

6 FURTHER EXAMINATION

7 BY A.L.J. JENNINGS-FADER:

8 Q I confess that your second to the last
9 interchange, exchange with Mr. Devaney has confused me
10 with respect to Exhibit No. 32 and rate elements,
11 Exhibit 32 being the Colorado SGAT.

12 And just using Section 9.2.3 as an example of
13 a rate element, did I understand you correctly that a
14 CLEC looking to purchase this product would have to look
15 beyond the list in rate elements in order to determine
16 what is -- well, what is the charge for the service?

17 A No. What I was trying to indicate was that
18 typically -- and I need to pick it up and look at it
19 specifically -- it's going to talk about the rate
20 elements. So it would say the -- you know, you would
21 pay a recurring rate for a DS1 loop. That would be in
22 the rate element section and talk about it.
23 Subsequently, there might be a thing for coordinated
24 testing or whatever.

25 When you go to Exhibit A, which indeed has

1 all of the rates, when you look at the loop section,
2 it's an extensive list of rates, because all of those
3 various loops, then, have all of those various options.
4 You can have it basic, you can have it coordinated,
5 coordinated with testing, perhaps coordinated without
6 cooperative testing. So you see this real, real long
7 list.

8 I think when you look at 9.2, 9.2.3, it's
9 going to say, you know, "unbundled loops." It might
10 even say "coordinated testing," but it doesn't relist
11 coordinated testing 10 times for the 10 different types
12 of loops that are there.

13 When you go to Exhibit A, you'll see they're
14 all listed specifically for that product, because there
15 could be a different rate for a coordinated testing for
16 a two-wire loop than a DS3 loop.

17 A.L.J. JENNINGS-FADER: Thank you for the
18 clarification. Thank you.

19 And, Ms. Stewart, I'd like to -- I think
20 we're done. Ms. Stewart, I'd like to thank you for your
21 written and oral testimony, and I personally know it's
22 nice to see you again.

23 THE WITNESS: Nice to see you. Thank you.

24 A.L.J. JENNINGS-FADER: And you are excused.

25 MR. MERZ: Your Honor?

1 MR. DEVANEY: May I ask for one moment? Am I
2 allowed to ask a follow-up on what you just asked?

3 A.L.J. JENNINGS-FADER: Sure. I'm sorry. I
4 thought it might be relatively noncontroversial.

5 MR. DEVANEY: May I just confer for one
6 moment?

7 A.L.J. JENNINGS-FADER: You certainly may.

8 THE WITNESS: And I believe this is the
9 official copy.

10 A.L.J. JENNINGS-FADER: And have you any of
11 the official versions?

12 THE WITNESS: I was going to say, this is the
13 official.

14 A.L.J. JENNINGS-FADER: And also your
15 testimony?

16 THE WITNESS: That, somebody has provided the
17 official copies of my testimony.

18 A.L.J. JENNINGS-FADER: So you don't have
19 them there?

20 THE WITNESS: No. This is my own copy.

21 A.L.J. JENNINGS-FADER: Yes, sir.

22 MR. DEVANEY: Thank you. Just one follow-up.

23 REDIRECT EXAMINATION

24 BY MR. DEVANEY:

25 Q You mentioned that if you look at just

1 Section 9.2, that won't necessarily list all the loop
2 elements and, instead, you should go to Exhibit A, look
3 under "loop," and see the more itemized list of rate
4 elements.

5 Is that a fair paraphrasing?

6 A Yes.

7 Q And in addition, would it also be possible
8 that miscellaneous charges in a different portion of
9 Exhibit A could apply to a number of network elements?

10 A Yes.

11 MR. DEVANEY: That's all. Thank you.

12 A.L.J. JENNINGS-FADER: I do understand
13 that's a touchy subject. Okay. But nonetheless,
14 Ms. Stewart, thank you very much.

15 THE WITNESS: Thank you.

16 A.L.J. JENNINGS-FADER: Counsel, I propose
17 that we break for the day, beginning with Mr. Easton in
18 the morning.

19 Are there any things that we need to do by
20 way of wrap-up tomorrow? I gather we'll be getting --
21 potentially get Exhibits 1 and 2. And just to be sure
22 that we're talking about the same animals, Exhibit 1
23 will be the SGAT, including all accepted language and
24 all exhibits that pertain to the disputed issues so that
25 we will have something to look at to know what the

1 parties are referring to.
2 Is that everyone's understanding?
3 MR. MERZ: It's the ICA rather than the SGAT.
4 A.L.J. JENNINGS-FADER: I'm sorry. Yes. No.
5 I want you to do the SGAT. Dear, God, I'm joking. I'm
6 sorry. The interconnection agreement being arbitrated.
7 So that is everyone's understanding of what
8 Exhibit 1 will contain?
9 MR. DEVANEY: Yes.
10 A.L.J. JENNINGS-FADER: And anything further
11 this afternoon?
12 MR. TOPP: One thing I'd just like to check
13 with Your Honor. We have in other states split up
14 cross-examination of Eschelon witnesses.
15 A.L.J. JENNINGS-FADER: I'm fine with that.
16 MR. TOPP: Okay.
17 A.L.J. JENNINGS-FADER: Eschelon could also
18 have done so but apparently chose not to do that. But
19 nonetheless, that's fine with me. I do understand areas
20 of more specialized knowledge. I wish I could do that,
21 but I can't.
22 With that, thank you all very much. It's
23 been, from my perspective, a quite productive day.
24 Thank you very much.
25 We are adjourned until tomorrow morning.

1 (The proceedings adjourned at 4:28 p.m.,
2 April 17, 2007, to be reconvened on
3 April 18, 2007, at 9:00 a.m.)
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