

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DOCKET NO. 06B-497T

VOLUME II

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 continued in hearing
before MANA L. JENNINGS-FADER, Administrative Law Judge
of the Public Utilities Commission, on April 18, 2007,
9:02 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:

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2 Exhibit Nos. 1 and 2	412	499
3 Exhibit No. 5		499
4 Exhibit Nos. 6, 7, 7A, 8		250
5 Exhibit No. 18		289
6 Exhibit No. 19		290
7 Exhibit No. 20		290
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9 Exhibit Nos. 22, 23, 24		401
10 Exhibit Nos. 25 through 27A		414

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1 PROCEEDINGS

2 A.L.J. JENNINGS-FADER: We're back on the
 3 record. This is Docket No. 06B-497-Y in the matter of
 4 the petition of Qwest Corporation for arbitration with
 5 Eschelon Telecom, Inc. pursuant to 47 U.S.C Section 252
 6 of the Federal Telecommunications Act of 1996.
 7 This is a continuation of the hearing which
 8 began yesterday.
 9 Preliminary matters?
 10 MR. TOPP: No.
 11 A.L.J. JENNINGS-FADER: Status?
 12 MR. McGANN: Let me, if I might -- David
 13 McGann on behalf of Qwest.
 14 I have brought with me a copy of the joint
 15 issues matrix. I'm having somebody bring over the
 16 copies of the interconnection agreement. I would like a
 17 chance to talk with counsel for Eschelon before we
 18 submit those into the record. And I just haven't had --
 19 I was -- I got here too late to be able to do that, so
 20 I'd just like to be able to do that at a break, and we
 21 can submit Exhibits 1 and 2 after we've done that.
 22 A.L.J. JENNINGS-FADER: That's fine, or after
 23 lunch if that's more time or more convenient. That's
 24 fine.
 25 MR. McGANN: I appreciate that. Thank you.

1 A.L.J. JENNINGS-FADER: Just kind of an
 2 update request. Thank you very much.
 3 Is Qwest ready to proceed?
 4 MR. TOPP: Sure.
 5 Qwest calls Mr. William Easton.
 6 WILLIAM R. EASTON,
 7 being first duly sworn in the above cause, was examined
 8 and testified as follows:
 9 A.L.J. JENNINGS-FADER: Please state your
 10 name and spell your last name for the record.
 11 THE WITNESS: My name is William R. Easton.
 12 That's E-a-s-t-o-n.
 13 A.L.J. JENNINGS-FADER: Thank you, sir.
 14 Mr. Topp.
 15 DIRECT EXAMINATION
 16 BY MR. TOPP:
 17 Q Mr. Easton, did you prepare testimony in this
 18 case?
 19 A I did.
 20 Q And I have your direct testimony marked as
 21 Exhibit No. 6, answer testimony with exhibits as Exhibit
 22 No. 7, confidential exhibits to answer testimony marked
 23 as Exhibit 7A, and your rebuttal testimony marked as
 24 Exhibit 8.
 25 Did you prepare that testimony?

1 A I did.
 2 Q And sitting here right now, do you have any
 3 changes to that testimony?
 4 A I do not.
 5 MR. TOPP: Qwest would offer Exhibits 6, 7,
 6 7A and 8.
 7 A.L.J. JENNINGS-FADER: Thank you.
 8 Exhibit 7 has been offered. Objection or
 9 voir dire?
 10 MR. MERZ: No objection.
 11 A.L.J. JENNINGS-FADER: Exhibit -- I'm sorry.
 12 Exhibit -- did I say Exhibit 7? I should have said 6.
 13 Let me start at the beginning.
 14 MR. MERZ: I have no objection to Exhibit 6.
 15 A.L.J. JENNINGS-FADER: 7 and 7A have been
 16 offered. Objection or voir dire?
 17 MR. MERZ: No objection.
 18 A.L.J. JENNINGS-FADER: Exhibit 8 has been
 19 offered. Objection or voir dire?
 20 MR. MERZ: No objection.
 21 A.L.J. JENNINGS-FADER: Thank you.
 22 Exhibits 6, 7, 7A and 8 are admitted.
 23 (Exhibits 6, 7, 7A and 8 admitted.)
 24 MR. TOPP: Mr. Easton's available for cross.
 25 MR. MERZ: And, Your Honor, Eschelon does not

1 have any cross for Mr. Easton, although we may have
 2 follow-up things depending on your examination of him.
 3 A.L.J. JENNINGS-FADER: Thank you.
 4 EXAMINATION
 5 BY A.L.J. JENNINGS-FADER:
 6 Q Good morning.
 7 A Good morning.
 8 Q Mr. Easton, since I don't believe you were
 9 here yesterday, my name is Mana Jennings-Fader. Perhaps
 10 you can tell, I am the administrative law judge who's
 11 hearing this case on behalf of the Commission, so thank
 12 you very much for coming to answer a few questions.
 13 A My pleasure, ma'am.
 14 Q Sir, I'd like you to look at Exhibit 6, which
 15 is your direct testimony. Then particularly, I'm
 16 interested in discussing with you some of the points
 17 that you make beginning on Page 5, which has to do with
 18 Issue No. 2-3, which would be date changes.
 19 A Yes.
 20 Q Let me be more precise: Date changes for
 21 rates approved by the Commission. Is that --
 22 A That's correct.
 23 Q Thank you, sir.
 24 What I'm struggling to understand is under
 25 Qwest's proposal what Qwest means by -- as you discuss

1 starting on Page 5 that the -- I'm sorry -- just set the
 2 dates.
 3 There are two -- there are two things you
 4 discuss in your testimony. One, and I think there's no
 5 dispute, is a Commission order setting a rate may set a
 6 specific implementation or effective date for the rate,
 7 and in that case, everyone agrees, do they not, that the
 8 Commission's order establishes the date and everyone
 9 acts accordingly?
 10 A That's correct.
 11 Q And in the second circumstance is the issue
 12 where we have the dispute as between the parties, and
 13 that is where a Commission's order sets a rate but fails
 14 specifically to state an implementation date for the
 15 rate. Is that correct?
 16 A That's correct.
 17 Q Now, so know focusing on that, on the
 18 disputed-issue piece, under Qwest's proposal, what
 19 happens if the Commission does not set a date in its
 20 order?
 21 A If the order is silent as to a date, the
 22 rates would be applied on a prospective basis from the
 23 date of the order itself.
 24 Q And how is that different from Eschelon's
 25 proposal?

1 A Well, Eschelon's original proposal did not
2 have any language dealing with what was to be done in
3 case the order was silent.

4 Now, subsequently, Eschelon has added some
5 language that adopts the notion Qwest has presented
6 here, that where the order is silent, the rates will
7 apply prospectively.

8 Q And now, what's the dispute as to this issue,
9 then, if -- which is the source of my confusion -- which
10 seemed that there had been sort of a coalescing of
11 views, and so now I'm a little befuddled as to what the
12 dispute is if -- as you suggest is -- we're kind of
13 talking about the same thing.

14 A And I believe you're right. The parties have
15 coalesced, with Eschelon adopting the same principle
16 that Qwest has proposed here.

17 Q Now, so from your perspective, then, what
18 continues to be the -- talking only about 22-3, not A --
19 and I understand that there's -- excuse me -- that
20 that's -- I'm sorry -- only on this one point about
21 2. -- 2-3, is it your view, then, that either language
22 proposed at this time for 2-3 would be acceptable?

23 A I think in principle, that's correct. I
24 guess I would argue that I believe the Qwest language is
25 a little more clear than the language that Eschelon is

1 proposing to add in Section 22, but I think in
2 principle, you know, the language says the same thing,
3 and that is that rates would be applied prospectively
4 (sic) when a Commission order is silent.

5 Q Nonetheless, I take it that Qwest, through
6 your testimony, still advocates its particular language,
7 and I believe you just said it's because, in your view,
8 the language is clearer on this particular point?

9 A Yes.

10 Q And how -- how specifically is that true?

11 A Well, I'm trying to find the Eschelon
12 language here. And as I recall what -- Eschelon also
13 throws in some language about the parties reserving
14 their rights, and it's not clear to me that that
15 particular language is necessary.

16 Q In your view, is that unnecessary because
17 it's understood, or is it unnecessary because it's not
18 true?

19 A I'm trying to find the particular language.
20 I guess that's probably a question that's better through
21 the lawyers.

22 Q Well, sir, but unfortunately, you're the
23 witness here, and I need to understand Qwest's position
24 from the witness's perspective.

25 A And from my perspective, and again, I'm not a

1 lawyer, I didn't know why it was necessary to throw in
2 "each party reserves its right to protect the effective
3 date of a legally binding modification or change of the
4 existing rules, and if different, other dates for
5 implementation or application of an order, if any," and
6 that's the language that Eschelon seeks to add there.
7 To me, the Qwest language is clear. If the Commission
8 order is silent, rates will be applied prospectively,
9 and it's as simple as that.

10 MR. TOPP: Your Honor, it might be helpful to
11 Mr. Easton if he had the issues matrix in front of him.

12 A.L.J. JENNINGS-FADER: I'm sorry.
13 Absolutely. And we don't have it as an exhibit, so once
14 again ...

15 THE WITNESS: Thank you.

16 Q (By A.L.J. Jennings-Fader) And sir, if you
17 could, Mr. Easton, refer me to the page that you're
18 looking at.

19 A Well, what I was specifically quoting from
20 was in my testimony at Page 7 of my direct, but let me
21 see if I can find it in this issues matrix.

22 A.L.J. JENNINGS-FADER: Perhaps counsel might
23 assist us both here.

24 MR. TOPP: The page -- actually, the first
25 page I gave you, which is Page 5, starts with Issue 2-3

1 and then there's supplemental proposals.

2 Q (By A.L.J. Jennings-Fader) And Mr. Easton, I
3 believe we're looking at maybe Pages 5 through 11,
4 roughly, on this issue. Is that right?

5 MR. TOPP: I think that's right.

6 A That appears to be the case, yes:
7 It's on Page 10 of the issues matrix.

8 A.L.J. JENNINGS-FADER: Thank you, sir. And
9 just for the record, I'll note that the issues matrix
10 will be hearing Exhibit No. 2 in this proceeding. Thank
11 you, sir.

12 A And specifically the language is in
13 Section 22.4.1.2.

14 Q (By A.L.J. Jennings-Fader) And that's the
15 language that you just -- that's the language
16 essentially that you just read?

17 A That's correct.

18 Q So I hope not to put words in your mouth, but
19 I understand you to be saying that it's your view that
20 this language is unnecessary because it's -- it, if you
21 will, muddies the water, makes it the situation less
22 clear?

23 A That's correct. And again, the intent of the
24 Qwest language is to provide clarity, and to me, this
25 sentence at 22.4.1.2 goes against that objective.

1 Q And now, sir, still referring to your direct
2 testimony, Hearing Exhibit No. 6, I'd like to turn for a
3 moment to Issue 5-16, which is discussed beginning on
4 Page 28 of your direct testimony, and this has to do
5 with the disclosure -- limited restricted disclosure of
6 Eschelon's forecast and forecasting information,
7 correct?

8 A Correct.

9 Q And it's my understanding of Qwest's position
10 that the -- it wishes not to provide, as Eschelon
11 requests -- Qwest wishes not to provide copies of the
12 signed disclosure -- excuse me -- nondisclosure
13 agreement, correct?

14 A That's correct. Eschelon would like to
15 receive copies, and Qwest does not feel it's necessary.

16 Q Now, on Page 29 of your testimony, sir,
17 beginning at Page 18, you discuss a protection that you
18 believe already exists in the settled language of
19 Section 18.3.1 of the interconnection agreement,
20 correct?

21 A Yes. Section 18.3.1 provides for audits that
22 would allow parties to determine that -- excuse me --
23 would allow Eschelon to determine if Qwest is in
24 compliance with the agreement.

25 A.L.J. JENNINGS-FADER: Now, I do not have a

1 copy of the official soon-to-be-provided version of the
2 agreement being negotiated, but with counsels'
3 permission, I do have a copy that was filed with the
4 petition for arbitration. And if I may refer to that,
5 refer the witness to that copy. Is that all right with
6 everyone?

7 MR. TOPP: Sure.

8 Q (By A.L.J. Jennings-Fader) Mr. Easton, I'm
9 going to refer you to that section that you reference in
10 your testimony, the section of the interconnection
11 agreement that you reference in your testimony.

12 A Excuse me. Is there a copy that I could --

13 Q You may, sir. I'm going to give you mine. I
14 have my notes, and I will give you mine.

15 And the reference material, at least on the
16 version that I'm handing you, begins on Page 320 and
17 continues onto Page 321 of the agreement being
18 arbitrated.

19 Is that the section to which you're making
20 reference?

21 A That's correct.

22 Q Have you reviewed that, sir?

23 A Yes, I have.

24 Q Thank you. Now, am I correct that that
25 section is -- limits the audit protection to which you

1 refer to no more than once every three years absent
2 cause shown?

3 A That's correct.

4 Q And I understand Eschelon's concern, or
5 perhaps I'm putting words in its mouth, that it wonders
6 about its ability to show that cause absent some
7 information which is wholly in the possession of Qwest,
8 i.e., the signed nondisclosure agreement. Is that
9 correct?

10 A That's correct.

11 Q Now, so can you help me to understand what it
12 is, what information you believe Eschelon would have
13 that would allow it to show cause for more frequent
14 audits under that -- under that -- under Section 18.3.1?

15 A Well, certainly, if Eschelon had reason to
16 believe that a person who should not have access to that
17 information had access to that information, it would be
18 allowed to come in, and Qwest could either demonstrate
19 or not demonstrate that person had signed a
20 nondisclosure agreement.

21 Q My question, actually is, sir, one layer
22 below that --

23 A Okay.

24 Q -- which is, how does Eschelon -- could you
25 give me an example of the way in which Eschelon could

1 find out information which gives it reason to believe
2 that a person has had inappropriate access to its
3 forecasting information?

4 A I'm not sure how this would come up in the
5 regular course of business. And quite frankly, I'm not
6 sure how -- what Eschelon is proposing would address
7 this issue either.

8 Q And can you help me to understand your last
9 statement about how you're not sure how Eschelon's
10 language would address my question?

11 A Well, what Eschelon is requesting is that
12 copies of all the nondisclosure agreements -- and I
13 should point out that as people change jobs, the
14 nondisclosure agreements would be updated or filled out
15 for new people coming into these jobs, so Qwest would
16 continually be sending Eschelon copies of all these
17 nondisclosure agreements. What's unclear to me is what
18 then, in turn, Eschelon is going to do with those.

19 Q Yes, sir. But I'm not -- I'm still afraid I
20 don't understand how that answers my question.

21 Your response to my question was that you
22 didn't think Eschelon's proposal would help Eschelon in
23 its quest -- in its -- to address the question of
24 whether there's good cause for an audit more frequently
25 than once every three years.

1 I'm afraid your answer didn't help me to
2 understand why you think Eschelon's access to that
3 information would not help it to show good cause for an
4 audit more frequently than once every three years.

5 A And again, I guess I don't understand exactly
6 how Eschelon proposes to use the information.

7 Q Okay. And perhaps you can help me. I'm not
8 sure I recollect this from your testimony. Who pays for
9 an audit under the provisions?

10 A You know, I'm not sure of the answer to that.
11 I'd like to have a moment to look at the language,
12 maybe.

13 Q Yes. Thank you.

14 A Section 18.2.8.1 states that "each party
15 shall bear its own expenses in connection with conduct
16 of the audit or examination. The requesting party will
17 pay for the reasonable cost of special data extractions
18 required by the party to conduct the audit or
19 examination."

20 Q I'm sorry, sir. Folks who were here
21 yesterday know that I have a terrible time because these
22 numbers are so -- so its 18 dot ...

23 A 2.8.1.

24 Q Thank you. Thank you very much. I think
25 that's all we need that for. If I can have my volume

1 back. Give you a little more space down there.

2 A (Witness complied.)

3 Q Sir, if you could turn to your answer
4 testimony, which is Hearing Exhibit No. 7, and this --
5 my questions are going to be dealing with Issues
6 No. 7-18 and 7-19, which have to do with the dispute
7 regarding providing transit records. Is that correct?

8 A That's correct.

9 Q And specifically, sir, I'm going to now what
10 generally begins on Page 29 of your testimony and
11 continues on to Page 30.

12 On Page 30 at the top of page, you state that
13 Qwest's existing transit records do not contain all the
14 information which Eschelon seeks, and that's at Lines 7
15 and 8 on Page 30.

16 A Yes.

17 Q And forgive me if you provided this
18 information in your rebuttal testimony, but I don't
19 recall seeing it.

20 What information does -- if you know, do the
21 transit records not contain?

22 A Let me see here. I think I've got some notes
23 on that.

24 Q And by "information," I'm referring to the
25 information which Eschelon wishes to receive.

1 A Okay. Well, let me first go through what's
2 actually contained in the transit record, and then we'll
3 come back.

4 Q Thank you, sir.

5 A So it would be the originating CLLI -- or
6 excuse me. It does not have that. It does not have the
7 terminating CLLI. It's got the originating OCN, or
8 operating company number. It does not have the
9 terminating OCN on that record. It does not have an
10 originating state jurisdiction. It does not have
11 terminating state jurisdiction. And I believe that that
12 was information Eschelon was seeking.

13 Q Thank you, sir. Then, sir, I'd like to
14 discuss with you a little bit about your rebuttal
15 testimony here in the Exhibit No. 8.

16 I'm sorry. You still are looking for other
17 information?

18 A Okay. I'm ready.

19 Q Okay. Good. Thank you. On Page 13, you are
20 discussing Issue No. 5-8, disconnecting service for
21 nonpayment.

22 A Yes.

23 Q And the dispute not only with respect to 5-8
24 but other -- I think 5-6, 5-7 and 5-8 all have to do
25 with the addition of the term "non de minimis." Is that

1 correct?

2 A That's correct.

3 Q And Qwest's concern or -- as you have
4 testified, is that the term is vague, is not -- Qwest
5 basically doesn't understand the -- if you will, the
6 parameters of that term; and, in addition, that -- that
7 in any event, it's not Qwest's practice to either
8 discontinue processing orders or discontinuing service
9 or any of the other concerns that Eschelon has expressed
10 for trivial amounts or insignificant amounts.

11 Is that pretty much it?

12 A That -- that pretty much summarizes my
13 testimony on this issue, yes.

14 Q So my question is, is there an amount of
15 money -- if the term "non de minimis" itself is vague,
16 can you give the Commission some sense of the amount of
17 money which from Qwest's perspective is non de minimis?

18 A I don't know that there's a specific figure I
19 would have in mind.

20 I would point out that it is somewhat costly
21 to undertake the collections actions we're talking about
22 here, and so it certainly would not be Qwest's intent,
23 and certainly has not been Qwest's practice, to do that
24 for small dollar amounts.

25 And, you know, it probably would depend in

1 part on the size of the total billing to a particular
2 company and whether they were withholding a significant
3 chunk of what they owed Qwest. But certainly, there
4 is -- is no evidence that Qwest has ever invoked any of
5 these collection practices for what are small amounts of
6 dollars.

7 Q And I think we ought to be clear on this
8 discussion, that at least as I understand Qwest's
9 position, this dispute only has -- this dispute in the
10 arbitration only has to do with amounts that are owing
11 that are non -- undisputed amounts. Is that correct?

12 A That's correct.

13 Q For Qwest, undertaking -- well, let's start
14 again. When you said it is costly for Qwest to do --
15 undertake collections -- I think that's what you said.

16 A Well, let me clarify, if I can.

17 Q That's what I was going to ask you.

18 A Not to undertake collections, but to
19 undertake these specific actions that we're referring to
20 here, such as stopping taking orders, such as
21 discontinuing service itself.

22 Q Thank you. I was going to ask you that, if
23 that's what you were talking about. Thank you for
24 clarifying.

25 Now, is, then, what Qwest does in

1 determining -- let's talk about 5-8, is what we started
2 with, discontinuing service for nonpayment. Is that,
3 then, a business judgment by Qwest as to when to -- when
4 to start the process that results in disconnection of
5 service for nonpayment?

6 A Yes. It would be a business decision. It
7 would also be based on a lot of activity occurring up
8 front, meetings with the customers, try and clarify what
9 the problem is, are there disputes, let's try and get to
10 the bottom of those.

11 To the extent that didn't resolve it, there
12 would be escalation, perhaps up through levels of
13 management, there would be exchange of letters, with
14 legal being involved, ultimately culminating in taking
15 this step of disconnecting service. It's certainly
16 something that Qwest does not take lightly.

17 Q And although we've been discussing
18 disconnection of service, are your answers the same
19 for -- for discontinuing -- taking orders due to
20 nonpayment?

21 A That's correct.

22 Q And also for -- what's -- 5-7. I can't
23 remember. That's -- thank you.

24 I have some questions, some sort of other
25 issue-specific questions.

1 With respect to Issues 5-6, 5-7 and -- yeah,
2 and 5-7-A, I think maybe even 5-8, and just those two --
3 I'm sorry -- 5-6 and 5-7 in the interconnection
4 agreement, there is a provision -- there are provisions,
5 rather, are there not, for dispute resolution, internal
6 company-to-company dispute resolution?

7 A That's correct.

8 Q And in addition, there is an opportunity for
9 one or the other of the parties if -- either in lieu of
10 that internal company-to-company procedure or at the end
11 of that process to seek either arbitration or to come to
12 the Commission, this Commission, for resolution of the
13 dispute. Is that correct?

14 A That's correct. Either party would have that
15 opportunity.

16 Q During -- during the process of the
17 escalation -- and let's start with the
18 company-to-company escalation process. Is the proposed,
19 say, disconnection of service or is the proposed
20 discontinuance of processing of orders stayed by the
21 escalation process?

22 A Yes.

23 Q And that's a matter of the interconnection
24 agreement language itself provides for that stay during
25 the process?

1 A Well, again, I think what would be escalated
2 is disputes, and disputes are specifically excluded from
3 both of these actions.

4 Q See, I guess I'm -- I understood the disputed
5 amounts were excluded. And I'm not refer -- I'm not
6 referring to -- there's no dispute there's an amount
7 due, let's say, right? But would Eschelon in the case
8 of discontinuance of processing of orders, would
9 Eschelon have a right to dispute that action by Qwest
10 through the internal company-to-company
11 dispute-resolution process?

12 A What they would be disputing through that
13 internal process is -- would be particular charges on
14 their bill.

15 Q Oh, I see. Okay.

16 A These actions would be laid out in the
17 interconnection agreement, however that issue ends up
18 being resolved here. There will be language between the
19 two parties that state when these actions can be
20 invoked.

21 Now, outside of that interconnection
22 agreement, certainly, Eschelon would be able to come
23 before this Commission and say, Look, Qwest is seeking
24 to invoke this, and we don't think it's right.

25 Q I guess that's what I was trying to

1 understand. If it was -- if Eschelon's only option,
2 insofar as you understand it under the interconnection
3 agreement, would be to go to a third party, in this case
4 the Commission, to seek to stay the proposed
5 discontinuance of processing of orders.

6 A That's correct. But what we're really
7 talking about here in this language is pay the amounts
8 that aren't being disputed.

9 Q Yes, sir. I do understand that, but I'm just
10 trying to understand whether Eschelon has an ICA
11 internal company-to-company way of dealing with a,
12 Please don't discontinue processing my orders, or if it
13 has to go to an external process complaint before the
14 Commission.

15 A Again, it would be Qwest's intent, and I'm
16 sure Eschelon's as well, to follow the language of the
17 interconnection agreement, and that would be the
18 ultimate determination between the parties. But outside
19 of that, as I indicated, either party could also come
20 before the Commission.

21 Q Now, sir, I'd like to discuss with you the
22 rate issues generally, and those are generally the
23 Issues 22-90-C through 22-90-I, and I think also tied in
24 with that -- also tied in with that is another question
25 having to do with less -- whether rates in Exhibit A

1 should be reciprocal, so I'm going to kind of discuss
2 this all together.

3 A Okay.

4 Q Let's start with the question of whether the
5 rates in Exhibit A to the interconnection agreement
6 ought to be reciprocal in the sense that reference to
7 Qwest is removed, and therefore, theoretically the rates
8 would apply to services also provided by Eschelon?

9 Is that -- that was the effect in that
10 dispute, right?

11 A That is the dispute here.

12 Q And that's Section 22 -- excuse me -- Dispute
13 No. 22-88. Is that correct?

14 A I believe that's correct. Let me just see.
15 It does vary from state to state here.

16 Q Sure. I can refer you quickly to your direct
17 testimony, Hearing Exhibit No. 6, at Page 32.

18 A Yes. So 22-88, the issue we've just been
19 discussing.

20 Q Mr. Easton, the rates which are contained on
21 Hearing Exhibit -- excuse me -- on the interconnection
22 agreement, Exhibit No. -- Exhibit A, are those rates
23 based -- what are those rates based on?

24 A On the Exhibit A, those would be rates that
25 have been determined by this Commission through a cost

1 docket, most likely, and those would be rates based on
2 cost studies that have been presented during the course
3 of that proceeding.

4 Q Which company's costs are reflected in those
5 rates?

6 A They would be Qwest's costs.

7 Q To your knowledge, are any of those rates set
8 based on Eschelon's costs?

9 A No.

10 Q I'm sorry. Oh, okay. Thank you. It's
11 taking me a minute to catch up.

12 Now, with respect to Issue 22-90, I
13 understand that those rates, although they appear on
14 Exhibit A to the interconnection agreement, at least
15 Qwest's proposed interconnection agreement, are rates
16 which have not been established by the Commission, this
17 Commission. Is that correct?

18 A That's correct.

19 Q So what -- so Qwest wants the Commission in
20 this case to do what with respect to those rates?

21 A What Qwest is suggesting is that this
22 arbitration between two parties is not the appropriate
23 place to determine rates, that a more appropriate venue
24 for that would be a cost docket, like we were just
25 talking about, where all parties have a chance to

1 intervene, where days and days of testimony would be
2 devoted to cost studies. You'd have all the cost
3 experts available. Qwest believes that's the
4 appropriate forum to determine rates.

5 Now, what Qwest has suggested, and what the
6 parties have agreed to in principle, is a process-for
7 dealing with unapproved rates such as we're talking
8 about here. And in that process, Qwest would file a
9 copy of -- it would file the rate and a copy of its cost
10 support for that rate with the Commission.

11 Q Sir, I understand that for other rates not --
12 for rates that are not contained in Exhibit A -- let me
13 start again. That process applies to any rate not
14 Commission approved even if it appears in Exhibit A to
15 the interconnection agreement; in other words, it would
16 apply to the 22-90-C through I rates?

17 A Yes.

18 Q In the time between the filing -- the
19 approval of the ICA with Exhibit A and the time the
20 Commission, if it does, issues some decision with
21 respect to the filing made by Qwest, what rate applies?

22 A That rate that Qwest notified the Commission
23 of and has provided the cost support for.

24 Q Where is the cost support for those rates?

25 A Well, the cost support for those rates has

1 been shared with Eschelon in this case, with any party
2 with which Qwest is negotiating.

3 Q But I believe the record states that the
4 Commission doesn't have those rates, correct? We
5 don't -- I'm sorry. We have the rates. We don't have
6 the cost support.

7 A Well, Ms. Million would be able to tell you
8 whether the specific studies that underlie these rates
9 have ever been shared with the Commission. I don't know
10 that.

11 Q If I represent to you that her testimony or
12 the testimony of Qwest is that those rates -- those cost
13 studies are not in the record in these proceedings, will
14 you accept that?

15 A Yes.

16 Q What is the basis, then, for -- so, then,
17 Qwest's -- I'm sorry. Let me ask you this: If the
18 Commission does not approve or address interim rates in
19 this proceeding, then in an interim period between now
20 and the time that -- never mind. I got it. I'm sorry.

21 If I understand, then, Qwest wants the
22 Commission, in essence, to approve the process for --
23 that would allow the Commission in the future to look at
24 the rates contained in Exhibit A which have not been
25 subject to prior Commission approval.

1 A That's correct.

2 Q And in doing so, the Commission, in your
3 view, does or does not express any view with respect to
4 whether the rates in Exhibit A are cost based? In other
5 words, are you -- it's just, Approve the process. Does
6 it say anything about the rates in making that
7 approve-the-process decision?

8 A Well, in approving the process, a part of
9 that process, again, is that before Qwest would charge
10 these rates, they would file the rate and the cost
11 support with the Commission. The Commission at that
12 time could look at it, make sure that they are
13 comfortable with the rate that Qwest is charging.

14 Q Process is, in Section 22-6 -- excuse me --
15 6.1. Is that correct?

16 A That's correct.

17 Q Forgive me. Does that -- if you recall, does
18 that envision a full-blown examination of the rates by
19 the Commission?

20 A All 22.6.1 states is that a copy of the rate
21 and the cost study which underlies the rate will be
22 provided to the Commission.

23 Q And would it then be, in your understanding,
24 left to the Commission to determine what to do, that is
25 to say, whether to start a case or not?

1 A That would be my understanding. And, you
2 know, I guess the way I would envision it, and I'm sure
3 it would differ from commission to commission, but a
4 staff person could look at the cost study. They could
5 decide that they felt it was generally supportive of the
6 rate, and the rate would go forward. They could decide,
7 Gee, there's something here that -- that bears further
8 examination, and they could suggest the Commission open
9 a docket on that.

10 You know, a lot of it would depend on what
11 cost dockets are on the horizon with the Commission as
12 well. The intent is to have some process in the
13 interim. As you're aware, you know, we don't undertake
14 the cost docket, you know, every month or even every
15 year. So there needs to be some process so that in the
16 interim, parties such as Eschelon can receive new
17 services and Qwest can charge for those services.

18 A.L.J. JENNINGS-FADER: Thank you,
19 Mr. Easton. I appreciate that.

20 Mr. Merz?

21 And by that I mean all of your testimony.

22 Thank you.

23 CROSS-EXAMINATION

24 BY MR. MERZ:

25 Q Good morning, Mr. Easton.

1 A Good morning.

2 Q I just really had one area that I wanted to
3 talk with you about, and that concerns Issue 5-16,
4 the -- whether or not nondisclosure agreements will be
5 provided to Eschelon.

6 And you refer in your testimony to the audit
7 provision that is at 18.3.1 as the reason why Eschelon
8 doesn't need these nondisclosure agreements because
9 they'll have the opportunity to audit under that
10 provision, correct?

11 A That was one of the reasons I cite. In
12 addition, the language is specific about which
13 organization or groups within an organization would have
14 access to the information. So there's some protections
15 built in there as well.

16 Q Audit, as used in 18.3.1, is a defined term.

17 Is that correct?

18 A I would need to borrow the book again.

19 A.L.J. JENNINGS-FADER: I'll be happy to do
20 so, sir. It's on Page -- the discussion, I think, is on
21 320 and 321. I don't know. Somewhere in that vicinity.

22 A It is a capitalized term, so I would assume
23 it is a defined term.

24 Q (By Mr. Merz) Then if you refer to
25 Section 18.1.1, that's where we find the definition of

1 audit as it's used in 18.3.1. Is that correct?
 2 A Yes.
 3 Q And you see there that "audit" is defined to
 4 mean the comprehensive review of books, records and
 5 other documents used in the billing process for services
 6 performed, including, without limitation, reciprocal
 7 compensation and facilities provided under this
 8 agreement.
 9 Do you see that?
 10 A Yes.
 11 Q Now, the nondisclosure agreements that we're
 12 talking about are not documents used in the billing
 13 process for services performed, are they?
 14 A No.
 15 Q So --
 16 A They are forecasting. It's forecasting
 17 information.
 18 Q So in fact, the audit provision would not
 19 protect Eschelon in the event that the nondisclosure
 20 agreements aren't provided.
 21 Do you agree with me there?
 22 A No, I wouldn't agree with you there. And the
 23 reason I say that, again, going back to 18.3.1, it says,
 24 "Either party may request an audit of the other party's
 25 compliance with this agreement, measures and

1 requirements applicable to limitations on the
 2 distribution, maintenance and use of proprietary or
 3 other protected information that the requesting party
 4 has provided to the other."
 5 And to me, that specifically gets at
 6 information such as the forecasting information we're
 7 talking about here.
 8 Q But an audit is limited to certain kinds of
 9 documents. An audit as defined in Section 18 is limited
 10 to certain kinds of documents, correct?
 11 A Now, you're referring back to 18.1.1?
 12 Q I am.
 13 A And I, to be honest with you, sir, cannot
 14 explain why they refer to billing process here when the
 15 language in 18.3.1 clearly is -- goes beyond the scope
 16 of billing issues.
 17 Q You would agree with me that if the audit
 18 right under 18.3.1 is limited to the documents that are
 19 described in 18.1.1, the nondisclosure agreements that
 20 we're talking about fall outside the scope of that
 21 audit, right?
 22 A They are not documents that -- related to the
 23 billing process.
 24 Q And so they fall outside the scope of that
 25 audit right, correct?

1 A Well, they fall outside of the language in
 2 18.1.1.
 3 MR. MERZ: I have no further questions, Your
 4 Honor.
 5 Thank you, sir.
 6 A.L.J. JENNINGS-FADER: Mr. Topp?
 7 MR. TOPP: Thank you.
 8 REDIRECT EXAMINATION
 9 BY MR. TOPP:
 10 Q Mr. Merz, with respect to the -- or, excuse
 11 me -- Mr. Easton, with respect to the --
 12 A Thank you.
 13 MR. MERZ: I can answer too. I don't mind.
 14 Q (By Mr. Topp) The issue that Mr. Merz just
 15 raised, would you see any problem from Qwest's
 16 perspective if the word "audit" was not capitalized in
 17 that section to get rid of any confusion as to whether
 18 the definition appearing earlier --
 19 A I think that suggestion makes sense.
 20 Q Now, the judge asked you some questions about
 21 the dispute on Issue 2-3. And if we need to pull the
 22 matrix, we can do so. But there was a lot of discussion
 23 about the language in the nature that -- isn't it also
 24 true that there's an issue related to placement of the
 25 rate language?

1 A Well, Qwest has its language in Section 2.
 2 Eschelon has proposed adding its language. They've got
 3 some clarifying language in Section 2 but want to add
 4 some additional language to Section 22.
 5 Q So that is also a part of that dispute?
 6 A That's correct.
 7 Q We also talked about nondisclosure
 8 agreements. You were asked some questions associated
 9 with that and its relationship to audit rights. And
 10 I've tried to come up with a situation where maybe
 11 Eschelon would have cause to consider an audit, such as
 12 a bunch of Qwest retail marketing activity targeted at
 13 areas where Eschelon has forecasted growth.
 14 Theoretically, that could happen.
 15 Are nondisclosure agreements going to impact
 16 Eschelon's ability to establish good cause or not?
 17 A No.
 18 Q Now, moving to the issue of transit records,
 19 which is Issue 7-18 and 19. You were asked some
 20 questions about what information Qwest is able to
 21 provide or what is contained in transit records.
 22 Is that the -- beyond the information
 23 contained in the records, does Qwest also have other
 24 significant concerns associated with providing those
 25 records?

1 A Well, again, as I mentioned, the transit
 2 records today are provided to terminating carriers.
 3 This is -- so that they know who they can bill, the
 4 originating party. They are not designed to be provided
 5 to originating carriers such as Eschelon. And so it's
 6 an entirely different product we're talking about than
 7 what Qwest has. It would involve programming changes to
 8 drive the information in the appropriate way.

9 Q So the problem is not only with the
 10 information, but the ability to create the record
 11 itself?

12 A That's correct.

13 Q All right. Moving to some of the collection
 14 questions, and generally, those topics include the
 15 ability to disconnect customers, the ability to
 16 discontinue order processing, the ability to demand
 17 deposits, and I might be missing one. But with respect
 18 to the rights that Qwest is proposing in its contract,
 19 are those -- is Qwest proposing anything beyond rights
 20 it currently has with CLECs in Colorado?

21 A No. And in fact, this language is language
 22 that was developed during the 2-71 process. And it's
 23 language that seeks to balance the rights and needs of
 24 both parties.

25 Q And much of the testimony in this case from

1 To the extent that Qwest is forced to
 2 continue to provide service with the possibility that
 3 they're never going to recover the revenues associated
 4 with those services, every week's delay is worth roughly
 5 a million dollars.

6 Q And typically, when Qwest has invoked these
 7 rights under its various interconnection agreements with
 8 CLECs, has Qwest invoked those rights in situations
 9 where there's a dispute regarding the obligation to pay?

10 A No.

11 Q In fact -- and in fact, does Qwest have some
 12 experience with the types of requirements that Eschelon
 13 is proposing in other states?

14 A Yes. As I noted in my testimony, there --
 15 there is one state, and that's the state of Minnesota,
 16 that requires Commission approval before Qwest can
 17 disconnect service. And there was a company back there
 18 that was struggling financially, and the ILEC -- I can't
 19 remember the name of the particular company -- went
 20 before the Commission and got balled up in the fact that
 21 the company was now under bankruptcy.

22 There was a question whether the Commission
 23 had any jurisdiction in that case. And to make a long
 24 story short, any kind of recovery was delayed by several
 25 months. In the meantime, this company was forced to

1 Eschelon has focused on situations where there is a
 2 dispute about the amount that they pay or a dispute
 3 about our right to collect.

4 Is that -- when there's a disputed amount
 5 that needs -- when there's a dispute about whether an
 6 amount should be paid, does Qwest have the right to
 7 invoke these collection activities?

8 A No.

9 Q Now, with respect to undisputed amounts, does
 10 Qwest typically engage in some informal communication
 11 with the CLEC before it starts invoking the processes
 12 discussed here?

13 A Certainly, as I mentioned, there's a long
 14 buildup with much discussion at different levels of
 15 management, ultimately the involvement of legal before
 16 any of these remedies would be invoked.

17 Q And in the situation where a CLEC is unable
 18 to pay because its financial condition is deteriorating,
 19 what would the impact of Eschelon's proposals be on
 20 Qwest?

21 A Well, we're talking about Eschelon, and I
 22 believe Mr. Denney has -- has stated annual billings
 23 from Qwest are somewhere in the neighborhood of
 24 \$55 million a year. So we're talking, you know,
 25 something over a million dollars a week.

1 continue providing service to a company that was never,
 2 ever going to be able to repay them.

3 Q And that delay associated with Commission
 4 approval, would you consider that one of the primary
 5 concerns Qwest has with Eschelon's proposals?

6 A That is a significant concern, yes.

7 Q Now, turning to the filing process for rates
 8 you had some questions on.

9 Isn't it also true that there is an
 10 opportunity for CLECs to object beyond just staff
 11 objecting to a rate proposal filed by Qwest?

12 A That is certainly true, yes.

13 Q And also is it not true that Qwest has a
 14 number of interconnection agreements in place right now
 15 with rates that have not gone through any sort of
 16 approval process with the Colorado Commission?

17 A That is correct, yes.

18 Q Other than approving the agreement?

19 A Yes.

20 MR. TOPP: No further questions.

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

22 FURTHER EXAMINATION

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

24 Q Actually, Mr. Easton, I have a couple of
 25 questions based on responses to Mr. Topp, and the first

1 is the annual billings to Eschelon from Qwest.
 2 Although you did acknowledge Mr. Denney's
 3 testimony, and if you don't know, I'll ask him, do you
 4 know what the amount is in Colorado on an annual basis?
 5 A No, I don't.
 6 Q I assume -- the basis of my question is, the
 7 55 million is a territory-wide number?
 8 A That's correct.
 9 Q And the second area, just for clarification,
 10 the experience that you relate with respect to
 11 Minnesota, that did or did not involve Qwest?
 12 A That did not involve Qwest.
 13 A.L.J. JENNINGS-FADER: Thank you, sir.
 14 Anything further, sir?
 15 MR. MERZ: No, Your Honor.
 16 A.L.J. JENNINGS-FADER: Anything further?
 17 MR. TOPP: No, Your Honor.
 18 A.L.J. JENNINGS-FADER: Mr. Easton, thank you
 19 very much for your written testimony and for the effort
 20 to appear today. Your testimony has been extremely
 21 helpful. Thank you, sir. You're excused.
 22 Sir?
 23 MR. TOPP: Your Honor, at this time it looks
 24 like we have presented all of our testimony.
 25 A.L.J. JENNINGS-FADER: Thank you very much.

1 MR. TOPP: Thank you.
 2 A.L.J. JENNINGS-FADER: Mr. Merz, are you
 3 prepared to proceed?
 4 MR. MERZ: Yes, we are, Your Honor.
 5 We call Michael Starkey to the stand.
 6 A.L.J. JENNINGS-FADER: Thank you.
 7 THE WITNESS: These are the official?
 8 A.L.J. JENNINGS-FADER: Yes, they are, and I
 9 need them all back.
 10 Counsel, Mr. Topp, excuse me, would you like
 11 your document back? I believe this is what you loaned
 12 to your witness.
 13 MR. TOPP: Thank you.
 14 A.L.J. JENNINGS-FADER: Mr. Merz, before we
 15 proceed, does the court reporter have the official copy
 16 of Mr. Starkey's testimony?
 17 MR. MERZ: They are right here.
 18 A.L.J. JENNINGS-FADER: Thank you. Could you
 19 provide them to him, please.
 20 MR. MERZ: Sure.
 21 A.L.J. JENNINGS-FADER: Thank you.
 22 Also, all counsel, all of the exhibits that
 23 have been admitted are here in numerical order, so if
 24 you need to refer to them, to provide copies to the
 25 witnesses, please grab them off of here and provide them

1 to the witness. Thank you.
 2 Mr. Starkey.
 3 MICHAEL STARKEY,
 4 being first duly sworn in the above cause, was examined
 5 and testified as follows:
 6 A.L.J. JENNINGS-FADER: Thank you, sir.
 7 Please state your name, spell your last name for the
 8 record.
 9 THE WITNESS: My name's Michael Starkey. The
 10 last name is spelled S-t-a-r-k-e-y.
 11 A.L.J. JENNINGS-FADER: Thank you very much.
 12 Mr. Merz.
 13 MR. MERZ: Thank you, Your Honor.
 14 DIRECT EXAMINATION
 15 BY MR. MERTZ:
 16 Q Good morning, Mr. Starkey.
 17 A Good morning.
 18 Q You have prepared testimony that has been
 19 filed in this case, correct?
 20 A Yes.
 21 Q And what has been marked as Exhibit 18 is
 22 your direct testimony, correct?
 23 A Yes.
 24 Q And in addition to your own direct testimony,
 25 you're also adopting, except for the background section

1 and the expedite section, the direct testimony of James
 2 Webber. Is that right --
 3 A That's correct.
 4 Q -- that's been marked as Exhibit 19?
 5 A Right.
 6 Q Is Exhibit 20 your rebuttal testimony?
 7 A Yes.
 8 Q And is Exhibit 21 your surrebuttal testimony?
 9 A Yes.
 10 Q And is the information contained in the
 11 testimony that we've just described true and accurate,
 12 to the best of your knowledge?
 13 A It is. I have one correction that I just
 14 found yesterday, that I'd like to make because it's
 15 substantive. It's in my surrebuttal. It's at Page 128
 16 of my surrebuttal.
 17 A.L.J. JENNINGS-FADER: You're going to need
 18 to take -- let me get there.
 19 THE WITNESS: Okay.
 20 A.L.J. JENNINGS-FADER: Thank you. We're
 21 referring to Hearing Exhibit No. 21. Is that correct,
 22 sir?
 23 THE WITNESS: Yes.
 24 A.L.J. JENNINGS-FADER: Thank you.
 25 And Mr. Starkey, as you make your correction

1 or after you've explained it, I'd appreciate it if you
2 would make it in the official copy, initial and date the
3 correction. Thank you, sir.

4 THE WITNESS: I will. It is at Line 16 of
5 Page 128. The sentence currently reads near the end,
6 "Qwest argues that they are required to be cost based."
7 It's actually, "Qwest requires that they are not
8 required to be cost based." Is today the 18th?

9 A.L.J. JENNINGS-FADER: Is today the 19th?

10 MR. MERZ: The 18th.

11 A.L.J. JENNINGS-FADER: If it were the 19th,
12 we'd be almost through.

13 Q (By Mr. Merz) Mr. Starkey, with that
14 correction, is the information contained in Exhibits 18,
15 19, 20 and 21 true and accurate, to the best of your
16 knowledge?

17 A Yes, it is.

18 MR. MERZ: Your Honor, Eschelon offers
19 Hearing Exhibits 18, 19, 20 and 21.

20 A.L.J. JENNINGS-FADER: Hearing Exhibit
21 No. 18 has been offered. Voir dire or objection?

22 MR. DEVANEY: No objection, Your Honor.

23 A.L.J. JENNINGS-FADER: Exhibit No. 18 is
24 admitted.

25 (Exhibit 18 admitted.)

1 A.L.J. JENNINGS-FADER: Hearing Exhibit
2 No. 19 has been offered. Voir dire or objection?

3 MR. DEVANEY: Neither, Your Honor.

4 A.L.J. JENNINGS-FADER: Hearing Exhibit 19 is
5 admitted.

6 (Exhibit 19 admitted.)

7 A.L.J. JENNINGS-FADER: Hearing Exhibit 20
8 has been offered. Voir dire or objection?

9 MR. DEVANEY: Again, no objection.

10 A.L.J. JENNINGS-FADER: The exhibit is
11 admitted.

12 (Exhibit 20 admitted.)

13 A.L.J. JENNINGS-FADER: Hearing Exhibit
14 No. 21 has been offered. Voir dire or objection?

15 MR. DEVANEY: None.

16 A.L.J. JENNINGS-FADER: Hearing Exhibit
17 No. 21 is admitted.

18 (Exhibit 21 admitted.)

19 MR. MERZ: With that, Your Honor, Mr. Starkey
20 is available for cross-examination.

21 A.L.J. JENNINGS-FADER: Thank you very much.
22 Counsel?

23 MR. DEVANEY: Thank you, Your Honor.

24
25

1 CROSS-EXAMINATION

2 BY MR. DEVANEY:

3 Q Good morning, Mr. Starkey.

4 A Good morning, Mr. Devaney.

5 Q I have three or four subject areas addressed
6 in your testimony I meant to ask you about, and I'd like
7 to begin with Issue 9-31, access to UNEs, and I'm going
8 to ask you to refer to Page 135 of your direct
9 testimony, which is Exhibit 19.

10 A.L.J. JENNINGS-FADER: I'm sorry. His
11 direct?

12 MR. DEVANEY: Yes. His direct.

13 A.L.J. JENNINGS-FADER: 18?

14 MR. DEVANEY: Oh, I'm sorry. I mismarked it.
15 Exhibit 18.

16 A I'm there.

17 Q (By Mr. Devaney) And the reason I'm
18 referring you to this page is that it sets out both
19 parties' competing language proposals with respect to
20 this issue, so I'm asking you to keep it in front of you
21 for reference purposes.

22 A.L.J. JENNINGS-FADER: Counsel, my
23 apologies. Page number?

24 MR. DEVANEY: Page 135.

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

1 Q (By Mr. Devaney) Mr. Starkey, the language
2 used in Eschelon's proposal and, actually, also in
3 Qwest's proposal "moving, adding to, repairing and
4 changing," those terms are not defined in the
5 interconnection agreement with the exception of the e.g.
6 that happens in the language. Is that correct?

7 A That's correct.

8 Q And so the only examples of what's
9 encompassed by those terms are the examples set forth in
10 parens with the e.g., correct?

11 A I'm sorry. Was your question, Are the only
12 examples those that we've listed here?

13 Q Are the only examples that are included in
14 the interconnection agreement those that are listed
15 there?

16 A Yes, I believe so.

17 Q Now, I know you've testified in the past that
18 it's Eschelon's view that this language is necessary to
19 be included in the interconnection agreement to ensure
20 nondiscriminatory access to UNEs.

21 And I understand that's your position, but my
22 question specifically for contract implementation
23 purposes is, what activities does Eschelon believe are
24 encompassed by the terms "moving, adding to, repairing
25 and changing." I'd like specific activities other than

1 those that are listed in "e.g."

2 A I understand. And you and I have had this
3 conversation before. I know you remember.

4 What I've said, I think, time and again, is
5 that the reason that we put in things like moving,
6 adding to or repairing and then give examples is because
7 we're not putting a specific list of only those things
8 that would be included. As I suggested, the FCC, when
9 in the network modernization scenario, Verizon requested
10 that they list everything that the Commission determined
11 to be --

12 Q Mr. --

13 A I'm sorry.

14 Q All I'm asking you is -- I'm not asking you
15 for what the FCC said. I'm not asking you for what
16 other carriers might think.

17 I'm asking you to state what activities is
18 Eschelon representing are encompassed by these terms?
19 Do you have any activities you can cite other than the
20 examples?

21 A And I guess what I'm telling you is that the
22 reason this is written the way it is written is to be
23 inclusive and not exclusive. It's meant to encompass
24 things that fall into a general rubric of moving, adding
25 to or repairing.

1 I don't think Eschelon intends to list every
2 potential activity that might take place in that
3 respect. It's intending to encompass the notion that if
4 Qwest does it for itself, then nondiscrimination would
5 require that it do it for Eschelon as well.

6 Q So you don't have a specific list of
7 activities, and you would ask the Commission to
8 interpret those terms as broadly as possible.

9 Is that a fair statement?

10 A I don't know if it's "broadly as possible."
11 I think that's one of the reasons that we give a number
12 of examples that are specifically included in the
13 interconnection agreement and defined there, is to give
14 the Commission and Qwest and the parties a sense of what
15 we are talking about.

16 But, as I think you well know, when you get
17 out into the network and you're moving, adding to or
18 repairing, there are literally thousands of individual
19 activities that might take place in a given scenario,
20 and the exercise of trying to list them all to be
21 inclusive, if you will, is impossible to ask.

22 Q Is it your position those thousands of
23 activities are included in the monthly recurring rate
24 for UNEs?

25 A No. When I heard -- I think it was

1 Ms. Stewart who was discussing it. No, it's not my
2 position, nor do I believe it's Eschelon's position.

3 The point, and I think it gets to the heart
4 of this language, the dispute, when it comes down to
5 this language is, what rates do we have to pay. And our
6 understanding and what Eschelon is trying to defend
7 against here is the notion that these activities which
8 provided access to UNEs would somehow be charged at
9 other than cost-based rates.

10 Q So what I take it from that answer is that
11 Eschelon is open to paying non-recurring charges
12 separate from recurring monthly rates for these
13 activities or some of these activities. Is that
14 correct?

15 A Yes. And I think that should be clear given
16 some of the non-recurring rates that Mr. Denney has
17 included in his testimony is appropriate in this case.

18 Q Okay. So with that in mind, would Eschelon
19 be willing to add a sentence that says "applicable" --
20 or something to the effect of non-recurring charges for
21 these activities may apply?

22 A Well, again, you know, I'm always loath to
23 sort of negotiate from the stand, but --

24 Q And I'm not asking for precise language. I'm
25 really pursuing that concept, because Qwest's concern

1 here is that we're going to be asked to perform all
2 these activities, Eschelon will say, We don't have to
3 pay for those because they're included cost factors in
4 recurring rates, and we're not going to pay for them.
5 That's our concern.

6 And so I think I'm hearing from your
7 testimony that we actually have some conceptual
8 agreement here that there could be circumstances where
9 Eschelon should pay non-recurring rates for these
10 activities.

11 And I'm asking, conceptually, would Eschelon
12 agree to contract language to that effect?

13 A I guess what I would say since I can't bind
14 Eschelon in that respect is that it would make sense to
15 me for Qwest to offer, if it sounds like we have
16 conceptual agreement, language to the effect that said
17 "which may include recurring or non-recurring rates."

18 Q Okay. Thanks. Changing to another issue,
19 network modernization and maintenance, Issue 9-33.

20 A Okay.

21 Q And I'm going to ask you to take a look at
22 your rebuttal, and in particular, Page 105.

23 A.L.J. JENNINGS-FADER: Counsel, I'd
24 appreciate -- because I get confused about answer and
25 rebuttal, if you could just give the exhibit number.

1 MR. TOPP: I'm afraid to tell you the exhibit
2 number because I'm not sure I've marked it. I think
3 it's Exhibit 20.

4 THE WITNESS: It is.

5 MR. DEVANEY: It is.

6 A.L.J. JENNINGS-FADER: Sorry about that.

7 MR. DEVANEY: My apologies. I think I just
8 wrote down the wrong numbers.

9 A.L.J. JENNINGS-FADER: Sorry. And again?

10 MR. DEVANEY: It's Page 105 of Exhibit 20.

11 Q (By Mr. Devaney) And, Mr. Starkey, this
12 discussion will also ring a bell, since we've been in a
13 couple of other states together, but nonetheless, we
14 need to create the record here.

15 And the reason I've asked you to refer to
16 Page 105 is because Eschelon's different options for
17 Issue 9-33 are set forth on that page. And this has
18 already been discussed yesterday.

19 Option 1 and much of the dispute surrounding
20 Option 1 concerns Eschelon's proposal that network
21 changes shall not adversely affect services to end-user
22 customers. Is that a fair statement?

23 A Yes.

24 Q And I think you would agree that the term
25 "adverse effect" is not defined anywhere in the

1 interconnection agreement. Is that correct?

2 A I don't believe it is.

3 Q And is it also true that the language
4 Eschelon is proposing doesn't specify who would
5 determine whether there's been an adverse effect from a
6 network change?

7 A I think the way I would describe that is it
8 doesn't limit who might raise the issue of an adverse
9 effect.

10 Q Who's the ultimate determiner other than a
11 Commission in a complaint proceeding about whether
12 there's been an adverse effect? Is it Eschelon's
13 customer, is it Eschelon, or is it Qwest?

14 A Well, hopefully, in the way that this
15 interconnection agreement will be managed in the future,
16 it's possible that it could be the resolution and the
17 agreement of both Qwest and Eschelon that an adverse
18 effect has taken place.

19 The real point of the language at issue in
20 9-33 is that without an obligation to not cause an
21 adverse effect, the question arises, does Eschelon even
22 have the authority to raise the issue with Qwest.

23 If one of these network modernization happens
24 and an adverse effect takes place, can Eschelon even
25 legitimately go to Qwest and say, Hey, an adverse effect

1 has taken place, can we fix it, or could Qwest simply
2 say, We have no such obligation.

3 Q I'm going to ask you to try to limit your
4 answers, if you would, to my question.

5 My question specifically was, who would be
6 the decision-maker under this proposal you're making as
7 to whether there's been an adverse effect? Would it be
8 Eschelon's customer that will be determinative of that?
9 Would it be Eschelon?

10 A I think your question was, would there be
11 anyone other than the Commission who would make that
12 decision. What I was suggesting to you is that in the
13 way this contract would be managed, it could be
14 Eschelon, it could be Qwest, it could be the two of them
15 together. And if they then disagree, then dispute
16 resolution could ultimately bring it to the Commission.

17 Q But that's not specified in the language
18 proposed version 9-33, is it?

19 A I don't think I understand your question. Is
20 what specified?

21 Q In other words, an adverse effect is
22 prohibited under that language. And my point is, the
23 language doesn't say who will determine whether there's
24 been an adverse effect, does it?

25 A I don't believe it does, but let me look at

1 it a little more thoroughly, because I'm going to
2 Pages 134 and 135 of my Exhibit 21, which provides a
3 little bit more detail on the entire section.

4 I don't think it does specify. I don't think
5 it needs to. I mean, I think what the language is
6 intended to do is provide an obligation not to have an
7 adverse effect. I think the way it would work is,
8 Eschelon, if it saw an adverse effect, would raise the
9 issue with Qwest, and they'd agree or not.

10 Q And further, the language that Eschelon's
11 proposing doesn't specify what criteria to apply to
12 determine where there has been an adverse effect. Isn't
13 that true?

14 A It doesn't. It uses the term "adverse
15 effect" much like those terms are used elsewhere in the
16 agreement, to sort of place an obligation.

17 I think we all know what "adverse" means, I
18 don't think in those parameters specifically. But the
19 intention, again, is to put the obligations so the two
20 can either agree or not; if they can't, they come to the
21 Commission.

22 Q And the language Eschelon's proposing also
23 doesn't specify what consequences would flow from an
24 adverse effect, correct?

25 A It doesn't specifically, no, no.

1 A.L.J. JENNINGS-FADER: Pardon me, Counsel,
2 but I need to understand that exchange a little bit, so
3 excuse me for interrupting. But what did you understand
4 consequences of the adverse effect to mean in that
5 question?

6 THE WITNESS: Well, and I was trying to just
7 be specific to his question. I understood it to mean,
8 is there a penalty associated to Qwest or something
9 along that line. I think what the language means --

10 A.L.J. JENNINGS-FADER: No. I'm sorry. I
11 needed to know what you understood his question to mean.
12 I have that answer. Thank you.

13 Thank you, Mr. Devaney.

14 MR. DEVANEY: I appreciate that
15 clarification, and I'll follow up and ask.

16 Q (By Mr. Devaney) For example, the language
17 doesn't say that Qwest will be assessed with fines and
18 penalties if there's an adverse effect. Is that true?

19 A That is true. And I don't think that's the
20 intention. That's why it doesn't say that.

21 Q Just contemplating that last answer, you say
22 that you don't think that's the intention.

23 Well, when it comes down to contract
24 implementation, where do we go to find out that that's
25 not indeed the intention?

1 A My understanding is the interconnection
2 agreement places obligations on the parties and defines
3 those obligations.

4 To the extent we suggest here that there
5 won't be an adverse effect, that places an obligation on
6 Qwest not to have an adverse effect. To the extent
7 Eschelon raises a situation where a network
8 modernization activity has caused an adverse effect and
9 then, two, can fix it such that the adverse effect no
10 longer exists, then Qwest has met its obligation.

11 I mean, the idea here is to get away from --
12 to do away with the adverse effect. I don't think the
13 intention -- if the intention was for Qwest to be
14 obligated to pay penalties associated with this, then I
15 think the language should say that, and it doesn't, so I
16 don't believe that's the intention.

17 Q So would Eschelon be willing to add language
18 that says under no circumstances will Qwest be assessed
19 fines, penalties or other monetary consequences for an
20 adverse effect?

21 A Again, Mr. Devaney, my understanding is that
22 this language has been being negotiated for several
23 years. I don't believe that offer's ever been made to
24 Eschelon. If it were, they probably have to -- they'd
25 probably have to respond to it.

1 Q Wouldn't my suggestion be consistent with
2 what you just said Eschelon's intent is?

3 A Yes.

4 Q Looking at Eschelon's Proposal No. 3,
5 Option 3, and I think you've provided -- I'm sorry.
6 Bear with me one second. I need to put my glasses on
7 here.

8 Option 3 refers to a CLEC experiencing,
9 quote, unacceptable changes in the transmission of voice
10 or data. And I think that the proposal would --

11 Well, let me just back up and ask you again,
12 "unacceptable changes" isn't defined anywhere. Is that
13 right?

14 A I don't believe it is.

15 Q And I don't want to beat this into the
16 ground, but much like adverse effect, there's no
17 specification of what criteria to apply as to whether a
18 change is unacceptable, correct?

19 A There's not. I just -- I feel compelled to
20 point out that these types of terms are used throughout
21 the agreement in accepted language. So the notion that
22 each time it's used it must be specifically defined I
23 think is negated by that fact.

24 Q And is there -- this proposal refers both to
25 unacceptable changes and then to restoring service to an

1 acceptable level. And, again, I'm paraphrasing, but I
2 want to focus on "unacceptable changes" and "acceptable
3 level."

4 There are no criteria or metrics set forth in
5 Eschelon's proposal as to what is, one, unacceptable
6 change or, two, returning service to an acceptable
7 level. Is that correct?

8 A There's not specificity here. I'm glad you
9 pointed me to Option 3, because I believe it is the
10 proposal, the sort of self-effectuating result of an
11 adverse effect on the transmission that we talked about
12 earlier, in that -- and it's consistent with what I
13 said, which is -- the notion here is that you would fix
14 it, not that you would necessarily pay penalties.

15 Specifically to the parameters of what is
16 acceptable or not, I'm trying to remember. This
17 language has been -- Eschelon has a number of options
18 out, attempting to accommodate each of these various
19 concerns that Qwest has raised. And I thought --

20 Well, let me just say I don't believe there's
21 specificity there. I believe if it was acceptable
22 before the adverse effect, the same level would likely
23 be acceptable after the adverse effect if it was
24 restored to that condition. It seems to be a reasonable
25 read.

1 Q Okay. But just to clarify, there are no
2 metrics to apply in the proposed language. Is that
3 correct?

4 A No. And I think one of the reasons for that
5 is because until you know what effect has taken place,
6 there are different ways to sort of adversely affect the
7 transmission quality and -- probably many different
8 ways. And if you wanted specificity about how to --
9 you'd have to put specificity regarding each one of
10 those potential ways to adversely affect. I don't think
11 it would be a manageable situation.

12 Q And with respect to restoring service to an
13 acceptable level, who under your proposal would
14 determine whether the service is an acceptable level?
15 Would it be Eschelon's customer who would make that
16 determination?

17 A I think I'd give you the same answer I gave
18 you a while ago, which is, I think Eschelon would in the
19 initial matter. If they found it acceptable, they
20 wouldn't complain further. If they didn't, they'd
21 probably complain to Qwest, and the two would either
22 agree or not that additional work needed to be done.
23 And if they couldn't agree, then the Commission would
24 finally -- would probably be the final arbiter.

25 Q Let's talk about Issue 9-34, notices of

1 network changes.

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

3 MR. DEVANEY: Yes.

4 A.L.J. JENNINGS-FADER: I perceive a good
5 point for a morning break.

6 MR. DEVANEY: Very well.

7 A.L.J. JENNINGS-FADER: We will be back on
8 the record at a quarter of 11:00.

9 (Recess from 10:32 a.m. to 10:45 a.m.)

10 A.L.J. JENNINGS-FADER: Mr. Devaney, are you
11 ready to proceed?

12 I guess I should officially say, we'll be
13 back on the record.

14 Q (By Mr. Devaney) Mr. Starkey, I wanted to go
15 back and just ask one final question or two on
16 Issue 9-33.

17 I think you testified both with respect to
18 "adverse effect" and the term "unacceptable change",
19 that it would be Eschelon's hope that the parties could
20 reach agreement on whether something was an adverse
21 effect or an unacceptable change.

22 Did I hear you correctly?

23 A Yes. On sort of a case-by-case basis, yes.

24 Q And with that in mind, and again, I'm not
25 asking you to agree to specific language, but do you

1 agree it would be reasonable to include the concept in
2 Eschelon's proposal that Eschelon and its customers will
3 not be the sole determiners of whether there's an
4 adverse effect or an unacceptable change and that Qwest
5 would have a role in determining that as well?

6 A I guess what I would say is because we're
7 talking about -- I mean, this case is about contract
8 language, that certainly is not inconsistent with what I
9 said, but the language itself is going to be the key to
10 whether I think Eschelon would agree to that or not. So
11 I mean, you've got to put these things on paper and make
12 an offer before I think I -- certainly I, but I think
13 even Eschelon could respond.

14 Q Understood. But conceptually, do you agree
15 with that?

16 A It's certainly consistent with what I just
17 said, what I thought would be the practical result of
18 this obligation on Qwest.

19 Q And my final question on this subject is,
20 would you agree with me that if Qwest were facing
21 contract language where the term "adverse effect" isn't
22 defined, the term "unacceptable change" is not defined
23 and the consequences for having an adverse effect or an
24 unacceptable change are not spelled out, that that could
25 create some concern on Qwest's part and perhaps some

1 disincentive to engage in network modernization and
2 maintenance activities?

3 A No, I don't think so, because -- the reason I
4 say that is because these are the exact same types of
5 terms the FCC uses when it discusses your
6 responsibilities under that network modernization. So
7 the fact that it's in a Qwest or in an Eschelon ICA
8 doesn't really put an additional obligation on you that
9 you don't have with the FCC rules.

10 Q Now, the FCC's rules are quite different from
11 contract language, aren't they?

12 A They are different but --

13 Q In fact, they're broader than contract
14 language. Isn't that true?

15 A They're broader than contract language.

16 Q Turning to Issue 9-34, notices of network
17 changes, and for reference purposes, I think the
18 language that Eschelon's proposing is at Page 106 of
19 Exhibit 20, which is titled your rebuttal testimony.

20 A Okay. I'm there.

21 Q And there were some questions about this
22 yesterday.

23 But Eschelon's proposal for Option 1 with
24 respect to Issue 9-34 states that if the changes are
25 specific to an end-user customer, the circuit ID and

1 end-user customer address information, and I'm
2 paraphrasing now, will be included in the notices. And
3 you state, I guess --

4 I'm sorry. Let me back up. Am I correct in
5 understanding that Eschelon has access to its own
6 customers' circuit IDs, customer addresses?

7 A I'm sure it does.

8 Q And it has electronic database access to that
9 information. Is that correct?

10 A I think -- I just can't state factually that
11 that's the case. It wouldn't surprise me, but
12 Ms. Johnson could probably tell you.

13 Q If you turn to Page 119 of your rebuttal
14 testimony, Exhibit 20, Lines 5 through 9. I'll just
15 read this into the record.

16 The question is, "Please elaborate on what is
17 an end-user-customer specific change." And you answer,
18 "A change that's specific to an end-user customer is a
19 change that is made to the service of a customer at an
20 address and not a change made that affects a geographic
21 area or many customers."

22 And if you go back to Eschelon's proposal at
23 Page 106, while the proposal does refer to changes
24 specific to an end-user customer, it's correct that
25 Eschelon doesn't go on to say "specific to an end user

1 options provided for this particular language, trying to
2 respond to every one of the issues that Qwest has
3 raised. I'm not aware that Qwest has offered language
4 to try and settle this issue. So perhaps we'd find that
5 acceptable. We'd have to see it on paper.

6 Q My only point is this: Your testimony says
7 that all Eschelon wants is circuit ID and customer
8 address for changes that are specific to a customer
9 address.

10 And my point is, that's not set forth in your
11 language anywhere. Am I correct?

12 A I think it is, in that we talk about the
13 individual CLEC end user and the customer address. If
14 your point is that it needs to be more finely tuned,
15 proposing language would be the way to get to that.

16 Q Okay. Eschelon's Option No. 2 for this
17 issue, also on Page 106 of your -- of Exhibit 20, states
18 that Qwest will provide circuit ID of Eschelon's
19 customer if readily available.

20 Do you see that?

21 A I do.

22 Q If Qwest is required to conduct a manual
23 search of its records to find an Eschelon customer's
24 circuit ID, would you agree that wouldn't meet the
25 "readily available" definition?

1 customer at that customer's address." Is that correct?

2 A Well, again, I'm referring back to Pages 134
3 and 135 of Exhibit 21, because there have been
4 additional options with respect to this particular issue
5 put forward by Eschelon.

6 One of the additional options, and it's at
7 Page 134 of my surrebuttal, Exhibit 21, is that we've
8 defined further the term "end user" because of concerns
9 Qwest has had in the past that that might refer to a
10 Qwest end user. So we put -- we added the option to
11 include CLEC end user into that -- into that definition
12 or into that proposal.

13 It then goes on to suggest that the circuit
14 identification and the CLEC end-user customer address
15 information will be provided, so we are talking about a
16 CLEC end-user customer address, a particular address,
17 and not a geographic area.

18 Q Okay. So again, wouldn't it be more
19 accurate, then, in your language to say, "If the change
20 is specific to an end user at an end-user specific
21 customer address or premise, then the notice shall
22 contain the following"?

23 A I guess, Mr. Devaney -- and I guess the
24 reason I struggle with this is you can tell from my
25 testimony now that we have at least three to four

1 A The reason I hesitate is, I'm not sure manual
2 versus electronic gets to the issue of "readily." If
3 it's sitting on your desk and the manual search consists
4 of picking it up and faxing it, it may still meet the
5 definition.

6 I think "readily available" was added here in
7 response to recommendations, I believe, from the
8 Department of Commerce in Minnesota and the A.L.J.'s
9 recommendations to suggest that what we're really after
10 here is, if it's readily available to Qwest when it
11 makes these types of changes that impact its own
12 customer, that it likewise be readily available to
13 Eschelon in the same way. So it's a standard, again, of
14 nondiscrimination more so than manual versus electronic.

15 Q Okay. So you don't take a position, then, as
16 to whether this would exempt Qwest from having to
17 provide circuit ID if a manual search is required?

18 And let's put aside the paper on somebody's
19 desk. If Qwest has to comb through files for hours and
20 hours to find a circuit ID, does that meet the "readily
21 available" proposal that Eschelon's putting forth?

22 A I can give you my personal opinion on that.

23 Q Please do.

24 A If Qwest had to go through hours and hours of
25 search for this and they wouldn't do that for their own

1 customers such that the issue of nondiscrimination is
2 still in play, then I might not find that personally to
3 be readily available.

4 Q Okay. The last issue that I want to talk
5 about is loop/transport combinations, Issue 9-55.

6 A Okay.

7 Q Let's just see if I can summarize the
8 dispute, and you can correct me if I'm wrong.

9 The dispute, I believe, involves Eschelon's
10 proposed use of the term loop/transport combination as a
11 sort of defined term in the agreement. That's found in
12 Section 9.23.4 and subparts.

13 And by the way, this is discussed at
14 Mr. Starkey's direct testimony at Page 169, and that is
15 Exhibit No. 19.

16 A 18.

17 Q 18. Page 169 is where this is laid out. And
18 just to establish, I think, a few points of agreement,
19 one is that as Eschelon's proposal reflects, Qwest does
20 not have a product called loop/transport combination,
21 correct?

22 A We understand that at this time, Qwest does
23 not have a product called loop/transport combination.

24 Q And Eschelon's proposal for use of this term
25 is intended to encompass EELs -- that's E-E-L, all

1 caps -- commingled EELs and high-capacity EELs. Is that
2 correct?

3 A Yes.

4 Q And do you agree that those are the only
5 products Qwest has today that are combinations of loops
6 and transport?

7 A Yes. If you look at proposed language at
8 9.23.49.23.4, it says, "At least as of the effective
9 date of this agreement, loop/transport combination is
10 not the name of a particular Qwest product.

11 Loop/transport combination includes enhanced extended
12 lengths, commingled EELs and high-capacity EELs."

13 Q Okay. And isn't it true that different
14 pricing and provisioning requirements apply to EELs, for
15 example, which are comprised of all UNEs, versus
16 commingled EELs, which are a combination of a UNE with a
17 non-UNE?

18 A I think that's generally true. Mr. Denney
19 would probably be able to give you more specificity on
20 the provisioning of the arrangements regarding
21 commingling, because he really deals with those issues.

22 But with respect to the unbundled network
23 elements that are a component of those particular
24 combinations, those are meant to be governed by this
25 particular Section 9 of the agreement.

1 Q But for a commingled EEL, for example, the
2 terms and conditions of a commingle -- of the non-UNE
3 part of the commingled EEL are not covered by this
4 interconnection agreement, correct?

5 A I believe that is correct. Mr. Denney will
6 be able to tell you more specifically, but I believe
7 that's correct, the commingled -- the non-EEL -- I'm
8 sorry -- the non-UNE component of the commingled
9 arrangement.

10 Q And the reason it's not covered by this
11 interconnection agreement is because different pricing,
12 provisioning and billing requirements apply to something
13 that's not covered by Section 2-51 of the act. Isn't
14 that right?

15 A As a general matter, that's true.

16 Q And so even though different prices,
17 provisioning and billing apply to a commingled EEL than
18 apply to an EEL, Eschelon's proposing to use the same
19 term for those two products. Isn't that correct?

20 A Well, I think there's an assumption in your
21 question that gets to the heart of the matter, which is
22 that a commingled arrangement is a combination of a UNE
23 and a non-UNE. The entire purpose of this particular
24 proposal is to recognize that the UNE component of that
25 EEL will be governed by the ICA and specifically

1 Section 9 of the ICA.

2 Q But my specific question was, even though
3 different terms and conditions govern EELs versus
4 commingled EELs, Eschelon's proposing to use the same
5 product term for both of them, that is loop/transport
6 combinations. Is that correct?

7 A You call it a product term and I don't think
8 we've ever described it as a product term.

9 Q Let's remove the word "product." Let's call
10 it a term.

11 A We simply use it as a heading in the
12 agreement to describe any combination that is a loop and
13 transport.

14 Q And you use it in substantive provisions of
15 the agreement, not just in headings. Isn't that
16 correct?

17 A Substantive only to the extent that it
18 defines what the loop/transport combination is and then
19 makes clear that the UNE component of such a combination
20 would be governed by the ICA.

21 Q And would you agree that the Minnesota
22 Commission rejected the use of this term as being
23 potentially confusing?

24 A I believe they did.

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

1 A.L.J. JENNINGS-FADER: Mr. Merz?
 2 MR. MERZ: Sorry, Your Honor.
 3 REDIRECT EXAMINATION
 4 BY MR. MERZ:
 5 Q You had some questions from Mr. Devaney
 6 regarding the Issue 9-31, access to UNEs.
 7 A Okay.
 8 Q And I believe that one of the things that you
 9 said was that the issue here is what Eschelon has to pay
 10 for access to UNEs.
 11 A Yeah. I think that's the overriding issue.
 12 Q How do you believe that the language proposed
 13 by Eschelon addresses that concern?
 14 A Give me one second. I'm just going to get to
 15 that proposed language real quick.
 16 A.L.J. JENNINGS-FADER: And when you do, can
 17 you give me the reference?
 18 THE WITNESS: Yeah, I will.
 19 A.L.J. JENNINGS-FADER: Thank you, sir.
 20 Q (By Mr. Merz) And just to help you out, I'm
 21 looking at Hearing Exhibit 18, which is your direct
 22 testimony, at Page 135.
 23 A That does help. Thank you.
 24 A.L.J. JENNINGS-FADER: Thank you, sir.
 25 A And, I'm sorry, could you ask your question

1 again?
 2 Q (By Mr. Merz) Certainly. The question is,
 3 how does Eschelon's proposed language address the
 4 concern that you described about what Eschelon has to
 5 pay for these various activities that are set out in
 6 this section?
 7 A Well, it ensures that by using the term
 8 "access to unbundled" -- "access to unbundled network
 9 elements" -- and I would point out, if you go to the
 10 full contract language of that particular section, which
 11 is 9.1.2, and if you read the first full sentence of
 12 that particular paragraph, basically just the top of the
 13 sentence, it says, "Qwest shall provide
 14 nondiscriminatory access to unbundle network elements."
 15 And that's agreed-upon language that we're describing in
 16 this paragraph, the access to unbundled network
 17 elements.
 18 What Eschelon's language does is it ensures
 19 that that access to unbundled network elements and,
 20 hence, the obligation for TELRIC-based rates, applies
 21 not only to the loop itself, but also the activities
 22 associated with accessing the loop, things like moving,
 23 adding to, repairing and then the other examples that we
 24 provide here.
 25 So the intention of this language is that it

1 would ensure that these particular functions of
 2 providing access to the loop fall under the rubric of
 3 the TELRIC-based rates.
 4 Q Has Qwest committed to perform activities
 5 associated with moving, adding to, repairing and
 6 changing UNEs at TELRIC-based rates?
 7 A No. The -- the important point, I think,
 8 here is that they -- they have agreed to doing these
 9 things because this is closed language. The remainder
 10 of the dispute really comes to, under what rates.
 11 Qwest has specifically put in "at applicable
 12 rates" to reserve the opportunity to charge a tariffed
 13 rate in some circumstances that wouldn't be cost based.
 14 The intention of -- and Eschelon -- that's
 15 the dispute. Eschelon does not agree with that.
 16 Because these are access to UNEs, they should be at the
 17 TELRIC-based rate.
 18 Q I want to talk with you now about the issue
 19 of network modernization and maintenance, which is
 20 Issue 9-33 and at Section 9.1.9. And it -- just if you
 21 want to refer to it, the actual language is set out in
 22 Hearing Exhibit 21, which is your surrebuttal testimony
 23 at Pages 134 and 135.
 24 My question is, Mr. Devaney had asked you a
 25 question this morning about whether penalties might ever

1 be appropriate if Qwest were to undertake network
 2 modernization and maintenance activities that have the
 3 effect of adversely affecting a customer's service.
 4 Just to give an extreme example, if Qwest
 5 were to take actions to intentionally have an adverse
 6 impact on the service of one of Eschelon's customers, is
 7 it your testimony that you don't believe that penalties
 8 would ever be appropriate in those circumstances?
 9 A No. I think what I was responding to
 10 Mr. Devaney about is the intent of this language is to
 11 fix the problem. His suggestion about whether penalties
 12 would apply or not I think would be governed by other
 13 components of the agreement or FCC rules that might come
 14 into play.
 15 I don't want to say that there's never a
 16 circumstance where penalties might not apply in such a
 17 circumstance, because there may be, but the intention of
 18 this language is to fix the problem.
 19 Q And Mr. Devaney also asked you some questions
 20 about consequences if there is an activity that has an
 21 adverse effect on a customer or results in unacceptable
 22 changes to the customer's service. And I believe he
 23 said something to the effect of, Eschelon's proposals
 24 don't provide any consequence.
 25 Do you recall that?

1 A Yes.

2 Q And does Eschelon's Proposal No. 2 provide a
3 consequence? Does it -- does it say what happens if
4 there is an unacceptable change in the transmission
5 parameters for the customer's service?

6 A Sorry. Let me catch up.

7 Q Again, it's at Page 135, is where you'll
8 find -- 135 of Hearing Exhibit 21 is where you'll find
9 Eschelon's Proposal No. 2.

10 A Yes, it does. And it's what I pointed, I
11 think, out to Mr. Devaney earlier, that it's sort of a
12 self-effectuating proposal, in that it will take the
13 necessary corrective action to restore the transmission
14 quality to an acceptable level if it was caused by a
15 network change.

16 Q And Qwest is to undertake that activity to
17 restore the service?

18 A That's correct.

19 MR. MERZ: I have no further questions.
20 Thank you, sir.

21 EXAMINATION

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

23 Q Mr. Starkey, were you present yesterday
24 during the hearing?

25 A I was.

1 Q Then it will probably come as no surprise to
2 you that I have a few questions for you relating to your
3 testimony. But I'd like to start with a more general
4 discussion with you about your background and an
5 interesting comment which you made during the testimony
6 this morning.

7 At one point in response to Mr. Devaney's
8 questioning, you indicated that you -- and I think the
9 quote goes something like "because I can't bind
10 Eschelon," then you said you felt freer, if you will, to
11 provide a response to his question.

12 And I -- actually, I think you made that kind
13 of reference a couple of times, one time particularly
14 when you were discussing Issue 9-34, information to be
15 provided. And you said, "I can give you my personal
16 opinion," and you were quite specific with respect to
17 that.

18 First of all, I understand from your
19 testimony you are not an employee of Eschelon. Is that
20 correct?

21 A That is correct.

22 Q And given that you have been careful in your
23 testimony to distinguish your personal opinion from what
24 I presume would be the, quote, official, unquote,
25 position of Eschelon or response of Eschelon, and given

1 that you have been very careful to point out that you
2 can't bind Eschelon in your statements, my question is,
3 what position or what of your testimony can the
4 Commission rely on as being Eschelon's, quote, official,
5 unquote, position?

6 And I ask that in the sense that when I
7 talked to Qwest witnesses yesterday, they are employees
8 of Qwest, and I think the Commission can take away from
9 that some sense that when they make statements, they
10 make statements on behalf of Qwest, binding on Qwest.

11 For the reasons I've stated, I have not quite
12 the same assurance when I hear your testimony this
13 morning, and I read your testimony now in light of your
14 statements this morning. So could you help me to
15 understand that.

16 A Yes. I think the one thing that I can't do
17 from the witness stand because I'm not an employee of
18 Eschelon is negotiate from the stand in terms of what
19 would be acceptable versus what's not other than what
20 the parties have already talked about and what -- the
21 positions Eschelon has taken on paper. I think anything
22 that is in my testimony you can rely on as Eschelon's
23 position.

24 Q You testified. You mean --

25 A The written -- the written pretrial

1 testimony, I'm sorry, and my verbal testimony unless I
2 qualify it differently, as I've -- as you pointed out,
3 I've been trying to be careful to do. And I do find it
4 difficult to try and kind of negotiate back and forth on
5 language with Mr. Devaney on those areas because I -- I
6 personally feel the proper way to do that is present
7 those proposals to Eschelon and let Eschelon consider
8 them rather than trying to do it from the stand.

9 Q And I believe that you made that clear in
10 your presentation, but I wanted to be sure that the
11 Commission understood what it could rely on in terms of
12 the positions of Eschelon as stated in your testimony.

13 A I think just to be concise, I think what I
14 would say is I will try and be careful, whereas if I'm
15 just giving my personal opinion, to say as much. And I
16 think everything else is the position of Eschelon and
17 could be relied upon in that respect.

18 Q Thank you. Now, you testified at some length
19 on -- with respect to various matters having to do with
20 the operation of the change management process.

21 A Yes.

22 Q And the interrelationship of the change
23 management process with the -- appropriate or not of --
24 with the contract terms.

25 A Yes.

1 Q And you also testified, I believe, with
 2 respect to -- on the same kind of level, the product
 3 cat -- product catalog and -- that's a "yes"?
 4 A Yes.
 5 Q And the service interval guides?
 6 A Yes.
 7 Q Now, were you here yesterday when I had my
 8 discussion with Ms. Albersheim from Qwest?
 9 A I was.
 10 Q And do you recall my questions to her about
 11 her operational involvement with the -- with the change
 12 management process?
 13 A Yes.
 14 Q If you were asked the same questions, that is
 15 to say, what is your level of personal involvement in
 16 the operation of the change management process on behalf
 17 of Eschelon, obviously, not from Qwest's perspective,
 18 what's your answer?
 19 A From an operational perspective on behalf of
 20 Eschelon, I am not directly involved in that way. I
 21 don't know if you want me to tell you the ways I am
 22 involved.
 23 Q Well, are you involved -- are you involved --
 24 in laying out -- in preparing your testimony, did you
 25 rely on personal-experience involvement with this --

1 with the change management process on a document review,
 2 on discussions with others, all of those?
 3 A A little bit of each. And let me kind of
 4 give you --
 5 Q Please do.
 6 A -- the extent of each.
 7 My own personal involvement is somewhat
 8 limited. I do, and have in the past -- obviously, we
 9 represent a number of clients, and the CMP, because it
 10 does affect processes and procedures, comes to light in
 11 a number of the projects we do for clients. So I
 12 certainly am familiar with it. I certainly have looked
 13 at the record of the CMP in other cases other than this
 14 one and understand what its intentions are and what it
 15 really does in the real-world scenario.
 16 I do get all of the notices that come out of
 17 the -- out of the Qwest CMP and then also all of Qwest
 18 notices generally, even the non-CMPs, and I review those
 19 on a regular basis, even though it's a landslide of
 20 information many times. So I have some familiarity
 21 there; again, no direct operational responsibility on
 22 behalf of Eschelon or really any other carrier.
 23 My testimony in the primary basis was, QSI
 24 was brought in by Eschelon really to sort of tackle the
 25 mountain of data that was going to be necessary to sort

1 of put forward this case. A part of that process were
 2 sort of in-depth interviews we did with folks like
 3 Ms. Johnson, Ms. Isaacs, whose name we heard earlier,
 4 folks at Eschelon who do participate on a daily basis,
 5 understand where in the CMP record these various
 6 assertions could or could not be supported and then sort
 7 of compile that into -- compile that with my knowledge
 8 of how ICAs work, what their intentions are, to sort of
 9 put forward for the Commission why it was we thought ICA
 10 language was superior to CMP in many of these
 11 circumstances.
 12 So it -- it encompasses all three of the
 13 things you said, some personal knowledge, though not an
 14 enormous amount, interviews, a good bit of interviewing
 15 with the folks at Eschelon who do the operational
 16 procedures for CMP, and then a whole bunch of document
 17 review.
 18 Q And is your answer basically the same to the
 19 extent you discussed the product catalog -- excuse me --
 20 product catalog?
 21 A Yes.
 22 Q And also with respect to service interval
 23 guide?
 24 A Yes.
 25 Q Thank you. In your responses just now as

1 well as in your testimony at various points, you
 2 distinguish between CMP notices and non-CMP notices.
 3 What is -- what is the difference when you
 4 use those -- well, CMP notices presumably are notices
 5 issued pursuant to the process laid out in the CMP
 6 document.
 7 Would that be accurate?
 8 A Yes.
 9 Q And non-CMP notices, what are those?
 10 A Other notices of Qwest. I mean, many times
 11 you'll get a notice from Qwest that says it's going to
 12 do the following things. And you go to the top to see
 13 if it's a CMP-related notice or not. And sometimes it
 14 is and sometimes it isn't.
 15 I think the point of the testimony is, there
 16 oftentimes is not a clear line that Qwest takes as to
 17 what should be in CMP or what there isn't or what
 18 shouldn't be in CMP.
 19 I think the other point in the testimony is
 20 that --
 21 Q From the standpoint of testimony, I need to
 22 know what you mean when you use the term "non-CMP
 23 notice."
 24 A It would be a notice that is not designated
 25 as being pursuant to the requirements of the CMP

1 documentation --

2 Q Okay. Thank you.

3 A -- and process.

4 Q If the Commission accepts Qwest's position
5 that these matter -- the matters -- first of all, let me
6 start -- let me start again. Do you agree with Qwest
7 that there is no definition of "process" in the CMP
8 document?

9 A I've been unable to find one.

10 Q What is Eschelon's operational definition,
11 for purposes of your testimony, of "process"?

12 A And I had a conversation with Ms. Johnson
13 about this yesterday. My preference would be to sort of
14 let her tell you that. I mean, I could give you the
15 recount of that.

16 Q Well, but for purposes of your testimony, I
17 mean, you talk extensively in your testimony about
18 process.

19 When you were discussing that, what had you
20 in mind?

21 A And it comes down to what Ms. Johnson
22 yesterday -- it really comes down to functionally, there
23 are changes that impact systems, and those are fairly
24 easy many times to define because it's going to impact a
25 particular system in a particular way. And then there's

1 everything else.

2 And I think everything else is the sort of
3 product, slash, process; or process, slash, product
4 changes. They're varied. They cover a number of
5 different sort of areas and topics. But I think a
6 working definition is, if it doesn't impact a system
7 directly, then it's a process or product change.

8 I would just add a little bit, that the CMP
9 document does talk about separate sort of meetings that
10 happen for systems versus product or process.

11 Ms. Johnson informs me that they're often done at the
12 same time. But I think functionally, the folks who work
13 at CMP have this understanding of which is which and
14 have to sort of deal with the different ways in which
15 they're both handled in the document.

16 Q Broadly stated, I believe Eschelon's
17 principal concern discussed in your testimony with
18 respect to referring matters to other processes rather
19 than including them within the contract itself is the
20 lack of certainty from Eschelon's perspective.

21 A Yes. I think that's fair.

22 Q Is there -- that's wrong. Is the issue for
23 Eschelon the degree to which, from Eschelon's
24 perspective, Qwest controls the process to which the
25 issues would be referred as opposed to the issue being

1 the fact that it is another process to which Eschelon
2 would have to look to determine the contract terms?

3 A It's the first of those.

4 Q Short of a -- short of the Commission's
5 writing a provision that said something to the effect
6 that we're -- these issues in dispute having to do with
7 process, the contractual certainty issues, as you refer
8 to them, short of a decision that says those contractual
9 certainty issues are referred to the CMP but no CMP
10 or -- or service interval guide or product category
11 change will be effective unless agreed to by Eschelon,
12 short of language to that degree, is there something
13 that will -- would Eschelon find acceptable some -- a
14 Commission decision which accepts Qwest's proposals?
15 Personal opinion or not.

16 A I think the way I'm going to answer that is
17 that -- let me just take the scenario you described,
18 which is, assume the Commission has issued an order that
19 said, these things get kicked to CMP but can't be
20 changed unless Eschelon agrees.

21 I don't think that would be acceptable to
22 Eschelon for, I think, at least two reasons. One, I
23 think the intention of Eschelon in this entire section
24 of the case is that it's entitled to under Section 2-51
25 a contract that spells out the relationship between it

1 and Qwest, an enforceable contract under Sections 2-51
2 and 2-52 of the act that it can point to and that it can
3 further negotiate with Qwest if Qwest wants to make
4 changes.

5 CMP -- and -- and I think I say that in the
6 testimony. CMP is a good mechanism by which information
7 can be exchanged between the parties and can be a good
8 mechanism when agreement is reached by all the parties.
9 But it has serious flaws, not only in terms of requiring
10 Eschelon's agreement, but also in terms of -- of the
11 notice process, how Qwest can implement things quickly
12 over Eschelon's objections or not, those kinds of
13 shortcomings when you deal with ICA language between the
14 two companies.

15 So I do not think Eschelon would find it
16 acceptable to kick things to CMP even if they had to
17 agree, because what they're really trying to do is
18 effectuate their rights under Section 2-51 for an ICA
19 that's meaningful and complete and a four-corners
20 document.

21 Q And just so we kind of tie that into access
22 to UNEs and that discussion, I think, and -- actually,
23 no. And so Qwest's position is that one need not have
24 that detail in the interconnection agreement because the
25 interconnection agreement is not for the purpose of nits

1 and gnats. It is for the purpose of describing the
 2 products, services and the rates that will apply to
 3 those products and services?
 4 A And --
 5 Q I mean, am I right so far?
 6 A Yes.
 7 Q I'm sorry. You said "and."
 8 A Yes.
 9 Q Sorry. No. That's okay. "And"?
 10 A Oh, "and." You gave me an opportunity, and I
 11 didn't even take it.
 12 Q "And"?
 13 A And I think -- now I forgot the question.
 14 Now I remember. And I think the other thing
 15 to keep in mind is that -- let me just take issue with
 16 two things that were said here.
 17 I disagree with Qwest's position that the
 18 contract isn't the proper way to spell these things out
 19 because they are too specific, and I know Eschelon
 20 disagrees too.
 21 Q I think the testimony is clear on that point.
 22 A Excellent. Secondly, I guess, it's the
 23 nits-and-gnats issue that I sort of would take issue
 24 with, and I know that's paraphrasing, but I think it
 25 gets to the point that these -- and the point Eschelon

1 states, correct?
 2 A Yes.
 3 Q And Eschelon has a number of interconnection
 4 agreements with a number of -- or does it -- with a
 5 number of different incumbent location change carriers?
 6 A That's a question I actually do not know the
 7 answer to. Ms. Johnson certainly would, but I don't.
 8 And Mr. Denney would also.
 9 Q Let's assume they do, because what I'm trying
 10 to get to is -- the point I'm trying to explore with
 11 you, a question with respect to business decisions and
 12 how interconnection agreements affect the costs of
 13 companies.
 14 A Okay.
 15 Q And I understand Qwest's point to be that the
 16 more interconnection agreements it has, which have
 17 company- or even company- and state-specific meaning,
 18 like not only an Eschelon requirement but an Eschelon
 19 Minnesota specific requirement, that the more of those
 20 it has, Qwest has, the more costly its business becomes
 21 to operate. That's my understanding of Qwest's concern,
 22 in essence.
 23 A I also see that concern from them, yes.
 24 Q So I was trying to figure out if Eschelon
 25 would face that same kind of thing, but let's discuss

1 makes in it its testimony, that these are
 2 business-impacting things. These aren't small minutia.
 3 These are the day-to-day activities that really
 4 determine whether Eschelon's going to be able to compete
 5 or not.
 6 And I think Ms. Johnson could regale you with
 7 the day-to-day struggles sometimes she goes through with
 8 these very types of process-related issues that, having
 9 them in an interconnection agreement, where the
 10 obligations are clear, would make it far -- would make
 11 Eschelon's ability to compete effectively far more --
 12 far more available to them.
 13 So it's -- it's the process of having it in a
 14 four-corners document, having it enforceable, and having
 15 it at a level of detail is an important component,
 16 having it at a level of detail that's actually
 17 meaningful.
 18 Q Eschelon, I believe, has -- as a responsible
 19 business has a -- has a system that it employs for
 20 handling, processing orders -- taking orders, processing
 21 orders, provisioning service, billing, correct?
 22 Would you assume so?
 23 A Yes, I do. I think I know so as well.
 24 Q All right. Good. To the extent that
 25 Eschelon -- and Eschelon offers it in a number of

1 Qwest.
 2 If the Commission accepts -- I was trying to
 3 figure out how in Qwest's perspective this would work,
 4 Eschelon's proposals would work. And I kind of came to
 5 this.
 6 Let's assume that you have something that's
 7 on a flow-through kind of a -- meaning an electronic
 8 interface --
 9 A Okay.
 10 Q -- kind of deal. And Qwest or Eschelon wants
 11 to order something. So from Qwest's perspective, would
 12 it be, the screen would come up, they'd punch
 13 "Eschelon," Eschelon's name would come up, they'd punch
 14 something else with a drop-down that said all the
 15 states, and they'd pick Colorado, and -- and then it
 16 would -- a screen would pop up that would allow Qwest's
 17 intake person to do whatever that person needed to do.
 18 From Qwest's perspective, I see that that
 19 becomes increasingly complex and potentially expensive,
 20 to the extent it needs to modify systems, venture. That
 21 seems not to be -- and I think that's something that
 22 this Commission probably needs to look at. I
 23 understand -- so help me to -- to consider that
 24 question --
 25 A Okay.

1 Q -- from Eschelon's perspective.
 2 A I think I'd say two things. First, I
 3 wouldn't disagree with anything you said, that the more
 4 complexity, the more variance, costs could go up.
 5 What I would point out about Eschelon's
 6 proposal and the way it's approached this ICA is, first
 7 of all -- and I think I say this in the direct -- the
 8 vast majority of the issues that Eschelon is raising
 9 here with respect to these process issues, they directly
 10 take the language from Qwest's current practices.
 11 Take the service interval guide for an
 12 example. They're simply codifying, if you will, in the
 13 ICA the current practice so Qwest then can't change it
 14 in CMP, perhaps over their objection, and then force
 15 Eschelon to make that change. They'd have to come to
 16 Eschelon and negotiate it.
 17 Q And I guess that's exactly the point. The
 18 more Eschelon has Eschelon-specific point -- points in a
 19 process, the more expensive it becomes for Qwest to
 20 provide that service to Eschelon, I mean, unless I'm
 21 missing something.
 22 A No, you're not. You're not. I mean, the --
 23 I guess the point I was making there is that Eschelon
 24 has done everything it can not to employ separate or
 25 distinct products and practices. What it's done is

1 simply taken what's available, codify it such that it
 2 than has rights and obligations associated with those
 3 within the ICA.
 4 The other thing I would point out, though --
 5 and I guess the other thing is, in situations where the
 6 Commission feels that a particular issue would cause
 7 undue cost on Qwest -- and I think -- personally, I
 8 think Qwest has an obligation to show those undue costs.
 9 But where Qwest -- where the Commission feels that Qwest
 10 does have an undue cost, then I think on an
 11 issue-by-issue basis, it is a fair decision of the
 12 Commission to say, In that particular issue, we think
 13 the costs outweigh the advantages for the public
 14 interest associated with codifying these specific
 15 responsibilities to effectuate Eschelon's 2-51 rights.
 16 So the whole point here is that -- from
 17 Eschelon is, don't just blindly kick all these to CMP,
 18 because it doesn't solve the problem. This is an
 19 arbitration where each issue raised by the parties
 20 should be looked at on its own merit. And if part of
 21 that merit is the Commission believes the cost of
 22 implementing it separately would be too much, then
 23 that's the finding the Commission should make.
 24 It's this sort of gross kicking of all these
 25 issues to CMP that's really the problem. I'd point out

1 that I don't think there are any issues in here that
 2 Eschelon has put forward that reached that standard of
 3 imposing those costs because they've largely adopted
 4 what's currently in place or minor tweaks that they
 5 don't think are largely systems impacting or anything
 6 like that.
 7 Q Over time, however, the -- it could develop
 8 if the Commission accepts Eschelon's language that
 9 there -- that dichotomy begins and then the dichotomy
 10 widens over time.
 11 A I agree. And I think I would say two things
 12 to that. One is, remember, and I know you do, the
 13 opt-in provisions that are available that if the
 14 Commission reaches, you know, a reasoned decision on the
 15 ICA, then it's likely that if it's advantageous to
 16 various CLECs, that they will opt into it when
 17 available. So there is that sort of built-in, you know,
 18 sort of bringing everybody back together in the
 19 Section 2-51 and 2-52 paradigm that we see work in the
 20 real world all the time.
 21 The second thing I would say about that is --
 22 and perhaps it's argumentative, but it's -- you know,
 23 sometimes you get what you ask for. And we have to
 24 remember here that it was -- Qwest advocated strongly
 25 against the pick-and-choose rule, saying that it was in

1 favor of interconnection agreements specific to the
 2 needs of individual CLECs.
 3 And now they're being held to that standard,
 4 and I think fairly so, with folks like Eschelon, who are
 5 saying, we want to effectuate our 2-51 rights and put an
 6 interconnection agreement together that works for our
 7 business.
 8 Q Just so the record is clear, when you're
 9 talking about opting in, you're not talking about pick
 10 and choose opting in. You're talking about opting into
 11 the whole enchilada or not.
 12 A That's correct. Under the current standard.
 13 Q I'd like to talk to you about the issue of
 14 access to UNEs, Issue 9-31.
 15 A Okay.
 16 Q Let me ask you first, is it Eschelon's
 17 position that the language -- let me see if I can find
 18 it here. Let's take Exhibit 19, which is your direct
 19 testimony.
 20 MR. MERZ: 18 is the direct.
 21 A.L.J. JENNINGS-FADER: I'm sorry. Did I do
 22 this again? Yeah 18. Thank you. Thank you, Counsel.
 23 Q (By A.L.J. Jennings-Fader) 18 at 135,
 24 because it's convenient and we discussed it before.
 25 First of all, unbundled access is a --

1 unbundled access to unbundled network elements is a
 2 defined term. Is that correct? I mean, I noticed it in
 3 caps here.
 4 A Yes.
 5 Q And that is defined in Section 4 or somewhere
 6 else --
 7 A I'm going to look right now.
 8 Q -- of the interconnection agreement?
 9 A Actually, what I'm thinking -- let me look
 10 here. Actually, I think that is a typo in my -- at
 11 Page 135. If you go to the actual contract language,
 12 the "U" in -- before -- actually, I don't think -- I
 13 think the "unbundled access," those two words, should be
 14 removed, because it's meant to read "access to unbundled
 15 network elements." That's the way it reads in the
 16 contract language.
 17 Q Okay. So would you mind making that
 18 correction on your testimony?
 19 A That's a good point. Yes, I will.
 20 Q So in -- when you finish, will you just read
 21 the correction?
 22 A Okay.
 23 Q Thank you.
 24 A I'm embarrassed to say I forgot the date
 25 again. Is it the 18th or 19th?

1 Q 18th.
 2 A 18th? Thank you. Okay. I made that
 3 correction.
 4 Q So, now -- and actually, I didn't mean to go
 5 there, but I just noticed it.
 6 So what we're talking about here is only
 7 access to unbundled network elements. We're not talking
 8 about any features or anything having to do with the
 9 unbundled network elements themselves.
 10 Do you understand what I'm asking you?
 11 A I don't think so.
 12 Q Okay. Unbundled network elements are defined
 13 by the Federal Communications Commission, an evolving
 14 definition, correct?
 15 A Yes.
 16 Q So when we're discussing this issue here,
 17 we're not -- there's no dispute about what are or are
 18 not unbundled network elements. Is that correct?
 19 A I believe that's correct. For example, if we
 20 consider unbundled switching, used to be an unbundled
 21 network element and no longer is, this language would
 22 not, again, make it an unbundled network element.
 23 Q So the focus of this language is on what
 24 activity -- from Eschelon's perspective, it is what?
 25 The focus of the language is on what?

1 A It's -- it really, truly is -- I mean,
 2 "access to" is about the best way to say it. It's
 3 access to -- how you gain access to those unbundled
 4 network elements.
 5 I'll be very brief, but some history is kind
 6 of important, I think. And a lot of this history comes
 7 from outside the Qwest region, but given the FCC's
 8 orders, I know similar things went on in the Qwest
 9 region and also perhaps with the CRUDIC (phonetic)
 10 example in my direct testimony.
 11 Q I'd really rather not talk about stuff that
 12 happened elsewhere unless it's directly pertaining to
 13 Qwest.
 14 A I can, pertaining to Qwest, because I think
 15 to answer your question, the issue is really, what do we
 16 mean by "access to." Is that really the question?
 17 Q Right. But this is language -- is this
 18 language on 135 agreed-upon language to the extent
 19 through the -- through the parenthetical, the end of the
 20 parenthetical?
 21 A Except for the words "access to." Qwest has
 22 proposed "activities available for," and we're proposing
 23 instead "access to."
 24 Q Oh, I'm sorry. Okay. Thank you. Yes.
 25 But to the extent -- putting aside the

1 disputed language, there is no dispute on the language
 2 "access to unbundled network elements includes moving,
 3 adding to, repairing and changing the UNE," paren,
 4 "through, e.g., design changes, maintenance of service,
 5 trouble isolation, additional dispatches and
 6 cancellation of orders," close paren?
 7 A Everything you read with the exception of
 8 "access to" is agreed-upon language.
 9 Q See, now, this is why I'm confused about the
 10 language.
 11 A Okay.
 12 Q I understood from your testimony that
 13 Qwest -- excuse me -- Eschelon proposed the language
 14 which is on the same page, 135, at Lines 3 to 7.
 15 A Yes.
 16 Q And then Lines 14 to 20 -- or 19 of this same
 17 page, "Qwest has since modified its proposal as
 18 follows."
 19 A Yes.
 20 Q And the only thing that looks to be in
 21 dispute is, quote, activities available for, unquote,
 22 and, quote, at the applicable rates, unquote.
 23 A Yes.
 24 Q I thought everything else was okay.
 25 A I believe it is. Qwest has proposed

1 "activities available for" in lieu of the term "access
2 to."

3 Q I'm sorry. Then should in your testimony the
4 word "access" in Line 15 be underlined as well as the
5 word "to"?

6 A It's marked out because it references the
7 fact that Qwest doesn't agree. And if you'll notice on
8 Line 3, it is underlined, meaning that's Eschelon's
9 proposal, and we mark out what we don't agree with with
10 respect to Qwest's language.

11 A.L.J. JENNINGS-FADER: Sorry about that.
12 I'm sorry, Mr. Devaney. Can you help me out here? And
13 I apologize, Mr. Starkey. Qwest's final language is in
14 the -- on this issue is in the -- the issues matrix?

15 MR. DEVANEY: Actually, our final language is
16 right here on Page 135. May I approach?

17 A.L.J. JENNINGS-FADER: Yes, sir. I'm sorry,
18 and I apologize to counsel and to Mr. Starkey for my
19 confusion. If you can help me out. Mr. Starkey, if you
20 like, you can listen in to this too.

21 MR. DEVANEY: Correct me if I'm wrong, but
22 Mr. Starkey's testimony -- Mr. Starkey's direct
23 testimony, Exhibit 18 on Page 135, sets forth what I
24 understand to be part of this latest and last proposals
25 with respect to Issue 9-31. So the language from the

1 top of the page, Lines 2 through 8 -- actually, Lines 3
2 through 7 -- reflect Eschelon's latest proposal. And
3 then on that same page, Lines 15 through 19 reflect
4 Qwest's latest proposal.

5 MR. MERZ: And the change that he had made on
6 the stand was in Qwest's proposal to strike out the
7 words "unbundled access to" because that is a part of
8 Qwest's proposal.

9 A.L.J. JENNINGS-FADER: And this is where I'm
10 still confused. My question is, does -- has -- is Qwest
11 agreeing that the language should read "access" --
12 "access to unbundled network elements," da, da, da, da,
13 da, "at the applicable rates"? That's my confusion.

14 MR. MERZ: The correct --

15 A.L.J. JENNINGS-FADER: And I apologize for
16 this.

17 MR. DEVANEY: Qwest's proposal is "activities
18 available for unbundled network elements." That's how
19 its proposal begins. By contrast, Eschelon's proposal
20 begins "access to unbundled network elements," correct?

21 MR. MERZ: Yes. We're disagreeing about what
22 to call these things, either access to UNEs or
23 activities available for UNEs. Our position is, all of
24 these things constitute access to UNEs.

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

1 gentlemen, both.

2 MR. DEVANEY: And then, finally, of course,
3 "at the applicable rates."

4 A.L.J. JENNINGS-FADER: "At the applicable
5 rates." I don't think there's any question about that.
6 I was confused about the language.

7 Thank you very much, gentlemen. I appreciate
8 it. And I apologize again, Mr. Starkey.

9 Q (By A.L.J. Jennings-Fader) Now that I'm
10 clearer thanks to the assistance of counsel as to the
11 language differences in the proposals on Issue 9-31,
12 is -- and this is, I think, just a yes or no question, I
13 hope.

14 Mr. Starkey, is Eschelon's concern about
15 Qwest's language the fact that it might result in the
16 activities listed here changing -- I'm sorry -- that --
17 that -- the Eschelon concern -- and I wish you not to
18 repeat your testimony. I'm trying to get through this
19 so that I can go forward here a little bit.

20 Eschelon's concern about Qwest's proposed
21 language as shown at 135, 15 to 19, is what, not at
22 applicable rates, but the other concern about the
23 difference between "access to" and "activities available
24 for"?

25 A I don't believe there is disagreement with

1 respect to the fact that Qwest must provide those
2 things. I don't believe that is in disagreement.

3 I believe the disagreement related to whether
4 it should be "activities available for" or "access to"
5 is directly related to the rate issue covered by "at
6 applicable rates," because the FCC describes access to
7 unbundled network elements and then provides
8 responsibilities associated with them, we believe
9 requiring them to be at cost-based rates, TELRIC-based
10 rates. So I think the two are related. They're not
11 distinct.

12 Q I gather from your discussion with
13 Mr. Devaney with respect to his request that Eschelon
14 list with specificity those activities which are related
15 to moving, adding to, repairing and changing a UNE, that
16 those activities may -- well, might -- are those
17 activities set in stone, or will they -- do they change
18 over time?

19 A They may change over time. They may change
20 over time.

21 Q The concern that Eschelon has expressed about
22 lack of specificity in the contract does not extend to
23 this provision given that you -- you're asking for a
24 great deal of specificity in other areas, not so much
25 here. You're offering examples but not a specific or

1 definitive list.

2 A I think that's fair, and I think there is a
3 good reason for that.

4 Q There very well may be, and I believe you
5 actually gave that reason to Mr. Devaney, but I just
6 wanted to be sure that I understood that the -- the --
7 if, as you said earlier, the parties, in your -- I think
8 you said you think the parties pretty much understand
9 what these -- what the activities are.

10 What, then, is the harm in listing along with
11 the specificity objective of the contract those
12 activities here as opposed to leaving it with simply a
13 list of examples?

14 A I think there are two reasons. The first is,
15 there literally would be thousands of them. I mean, it
16 literally could be as -- as easy as changing an
17 interconnection tie pair in an FDI from one block to
18 another. It could be as much as repairing a bad pair,
19 doing a transfer to a new pair. There are just
20 literally hundreds, potentially thousands, of these
21 individual activities that happen on a day-to-day basis
22 to provide a working facility that Qwest does for its
23 retail customers that it also should do for Eschelon.

24 So, one, it's just not probably very
25 efficient to list them here, but more importantly, I

1 for itself, for its affiliates or for any customer,
2 whether that be a retail or wholesale customer. It
3 doesn't limit discrimination to just among CLECs, for
4 example. It includes the activities Qwest does for its
5 own retail customers.

6 Q Right. And I appreciate that. I was trying
7 to figure out what -- for itself. I mean, I understand
8 that's a term of art. I wanted to be sure I understood
9 what you were talking about.

10 If you know, Mr. Starkey, is the language for
11 Issue 9-31 drawn from any source; meaning, is it part
12 of -- or was it part of the original statement of
13 generally acceptable terms and conditions? Is it
14 something that's developed over time from other
15 interconnection agreements?

16 A Do you mean the entirety of the language,
17 including the agreed-upon section?

18 Q I'm talking about all the agreed-upon
19 language, the agreed-upon language, the e.g. language,
20 moving, adding to, repairing language.

21 A I don't know the answer to that question. I
22 don't know where it was taken from.

23 I can tell you that "moves, adds, changes" is
24 a term of art in the industry. It's something that
25 engineers understand as the necessity of going out to

1 think, if you listed 100 and you forgot the 101st, that
2 shouldn't remove Qwest from the obligation just because
3 you weren't able to list all 175 or 200, or however many
4 of these there were.

5 That's really the point the FCC makes in the
6 TRO at about -- starting at about Paragraph 632, when it
7 talks about network modifications, because Verizon
8 pushed it to say, List all the activities that we have
9 to do, and the FCC said, No, that's not the right way to
10 do this, because the standard is nondiscrimination. And
11 it's necessary to understand what you do for your retail
12 in these various circumstances to understand what you
13 have to do for the CLEC.

14 Q And actually, that leads me to another point.

15 In your testimony with respect to this issue,
16 in discussion with Mr. Devaney, you talked about if
17 Qwest does X activity for itself, then it would be
18 included in this list for -- it would be considered
19 included, and that's a non -- because of the
20 nondiscrimination --

21 A Yes.

22 Q -- as you just testified. With respect to
23 "for itself," you mean for its retail customers?

24 A I mean for its retail customers, also for its
25 affiliates. I think the FCC really gives a three-prong

1 the network to rearrange it to provide service. MAC,
2 M-A-C, moves, adds and changes, is a generally used
3 term.

4 Q If that's true, sir, then what's the
5 necessity of the parenthetical language?

6 A I believe that was specifically put in
7 there -- and Mr. Denney may be able to give you more
8 insight into this. But I believe that was specifically
9 put in there because of the concerns of Eschelon that
10 they had gotten notice that Qwest was going to start
11 charging tariffed rates for certain of these particular
12 activities which Eschelon believed to be encompassed
13 within access to UNEs.

14 And so they wanted to make sure that one of
15 the issues debated in this proceeding was the extent to
16 which those were access to UNEs that would likewise be
17 applied via TELRIC-based rates.

18 I note that Qwest's counterproposal before
19 this was -- well, let me take that back. Qwest's
20 counterproposal "at applicable rates" indicates that
21 they'll charge potentially tariffed rates for these
22 things. So Eschelon wanted to be very specific that
23 these particular things that they had understood would
24 be charged tariffed rates were included in here to be
25 debated rather than ignored and then later Qwest file a

1 tariff and say they apply.

2 Q So the Commission -- so notwithstanding
3 moves, adds and changes, as you testified is a generally
4 accepted and understood industry term, if the Commission
5 were to remove that parenthetical language, that would
6 not address Eschelon's concerns. Is that correct?

7 A I think that's right. First, it's
8 agreed-upon language, so I don't know what Qwest would
9 feel about that either.

10 Q That's true. Good point. Thank you.

11 With respect to Issue No. 12-64 on cause
12 analysis and acknowledgment of mistakes, what -- as I
13 understand it, one of Qwest's concerns is -- is besides
14 the fact that it is the same problem about the process,
15 the same process issue, I also got some sense that there
16 was a concern about the -- well, at present is
17 Eschelon's proposal open-ended in the sense that it
18 could request a root-cause analysis, if its language
19 were accepted, that it could request a root-cause
20 analysis as many times as it wished to do so within,
21 say, a 12-month period?

22 A I don't believe there's a limitation on the
23 number of requests they can make for root-cause
24 analysis.

25 Q Is there a limitation on the reasons Eschelon

1 could request a root-cause analysis?

2 A Yes. You'll see it at 12.1.4.1, where it
3 says, "Mistakes in processing wholesale orders,
4 including pre-order ordering and provisioning,
5 maintenance and repair and billing. I think there's
6 also another option that says for the products -- let me
7 just look it up so I won't paraphrase.

8 Well, generally, it would be with the
9 products and processes pursuant to this agreement, so it
10 certainly does limit it to just those things.

11 Q I'm sorry?

12 A It does limit it to those things that I just
13 described.

14 Q Right. I'm sorry. And by -- so it's a limit
15 to the items that are covered in the -- in the
16 interconnection agreement?

17 A And in fact, the -- I'm sorry -- this is one
18 of those issues that has changed over time, primarily
19 pursuant to the Minnesota case.

20 MR. MERZ: Your Honor, could I give
21 Mr. Starkey just a copy of the issues matrix to see if
22 that might help him?

23 A.L.J. JENNINGS-FADER: Sure. And if you
24 could refer me to a page as well, I'd appreciate it.

25 MR. MERZ: Page 94.

1 A.L.J. JENNINGS-FADER: We should probably
2 index this.

3 A Okay. Thank you very much, Mr. Merz. That
4 does help.

5 The first proposal would have limited it to
6 root-cause analysis or acknowledgment of mistake related
7 to product and services under this agreement.
8 Eschelon's second proposal would limit it a little bit
9 more to root-cause analysis and mistakes in processing
10 wholesale orders, including pre-order ordering,
11 provisioning, maintenance and repair and billing, to be
12 more specific.

13 Q (By A.L.J. Jennings-Fader) But no -- no
14 limitation on the number of times that Eschelon might
15 avail itself of this remedy under either proposal?

16 A No, and for a good reason.

17 Q Sure. Let me get there.

18 And the second question is, is there -- is
19 there a limitation as to severity of impact or any --
20 any -- whether someone was or wasn't, in words of
21 another issue, adversely affected by -- by the error
22 sought to be analyzed?

23 A I don't believe there is sort of a threshold,
24 if you will, raising an issue to root-cause analysis
25 other than the practical threshold of the resources

1 Eschelon has to sort of commit to the process. But the
2 language itself, the language itself, I don't see a
3 threshold.

4 Q As between Eschelon --

5 A Do you mind if I supplement that?

6 Q You certainly may.

7 A I would note that at the end of 12.1.4.1 --

8 Q I'm sorry. Which version?

9 A Good question. I believe it may be the same
10 way. Let's do Proposal No. 2. 12.1.4.1, the last
11 sentence, says, "It is expected that CLEC has followed
12 usual procedures to correct a service-impacting
13 condition." So there is an obligation that they don't
14 just go immediately and ask for a root-cause analysis.
15 They must first try to determine on their own through
16 the usual procedures what the service-impacting
17 condition is to correct it if they can.

18 So there is -- in some respect, that
19 limitation, that obligation rests on them before they
20 attempt root-cause analysis with their service manager.

21 Q And as between Eschelon and Qwest, for which
22 party is a root-cause analysis more expensive? I mean,
23 if you can give some assessment.

24 A I don't know. You know, Ms. Johnson could
25 probably tell you that, but I'm thinking it probably

1 varies by what the problem is, whether it's one of those
2 that Eschelon has to do an enormous amount of research
3 on to even understand to bring it to Qwest for
4 root-cause analysis. I don't know. Ms. Johnson can
5 probably tell you that in some detail.

6 Q And finally, Mr. Starkey, with respect to
7 Issue No. 12-87, having to do with controlled production
8 testing --

9 A Okay.

10 Q -- there is -- am I correct there is no
11 dispute about production testing for a new roll-out, a
12 new implementation?

13 A That's correct.

14 Q Could you help me to understand, then -- but
15 Eschelon does object to recertification testing,
16 meaning, if I understand correctly, testing which is
17 undertaken after -- when a -- when a change is made to
18 an existing computer-to-computer interface but doesn't
19 rise to the level of being an entirely new
20 implementation. Is that correct?

21 A Sort of. I think I would describe it maybe
22 differently. I think what I would say is Eschelon
23 objects to going through --

24 Q I'm sorry. I want to know what
25 recertification testing is.

1 Qwest will continue to be the party which, at least
2 initially, determines whether testing is necessary --
3 recertification testing is necessary. That's not going
4 to change, is it?

5 A I'm trying to understand your question. To
6 the extent that Qwest determines that recertification
7 testing is necessary --

8 Q Let me start again.

9 A Okay.

10 Q Right now, Qwest determines and issues
11 notices, let's say. "We're doing a change. We have
12 determined that you, Eschelon, need to do
13 recertification testing. Our IT people have made that
14 determination," correct?

15 A That's my understanding, yes.

16 Q That will not change even if Eschelon's
17 language is accepted. Is that correct?

18 A I believe that's right. My understanding is
19 that Eschelon's language would then allow Eschelon to
20 suggest that it doesn't need new testing for the
21 recertification of certain things and that they couldn't
22 be forced to do it absent their agreement.

23 Q Correct. So no matter what, Qwest makes the
24 initial determination?

25 A I believe that's correct. I'm going to

1 A Right. And I guess what I'm saying, the
2 recertification testing, as I understand it, is the
3 process whereby Eschelon has in the past used a product
4 and certified it with respect to being able to use it,
5 that that particular component did not change in the new
6 release but other things did, having to do the
7 root-cause analysis to recertify what they've already
8 been certified to use, or at least being required to do
9 so without their agreement.

10 Q How is -- and Eschelon's proposal is that in
11 the case of a recertification, that -- I'm sorry. Let
12 me start again. And Eschelon has (sic) at present, nor
13 would it have under the proposal, any -- any part in
14 determining what is or is not identified by Qwest as
15 needing testing for recertification. Is that correct?

16 A I believe so. And I'm going to just be frank
17 with you, that Ms. Johnson is probably going to be able
18 to get that level of detail better than I can. She'll
19 probably be able to give you examples, for example,
20 wherein something was previously certified that might
21 not need the recertification.

22 Q That is not my question.

23 A I'm sorry.

24 Q My question is under -- Eschelon's proposal
25 does nothing to address the fact that no matter what,

1 preface this with, Ms. Johnson can correct me if I'm
2 wrong, but I believe that's correct.

3 Q Then the question becomes, on what basis, if
4 you know -- or perhaps Ms. Johnson is the one who will
5 be happy to tell me this. On what basis would
6 Eschelon -- what basis would Eschelon have to question
7 the judgment of Qwest's information technology people
8 that Eschelon needs to recertify in order to make sure
9 that Qwest -- that Eschelon's orders flow appropriately
10 and that Qwest's systems will not be affected?

11 A And I am going to kick that to Ms. Johnson,
12 because I think it is a factual question. I think
13 she'll be able to give you an example that will make it
14 more lucid where this might come into play and why it
15 might be an issue. And I apologize. I think she's just
16 going to be able to give you a better answer.

17 Q That's okay.

18 To your knowledge, does Eschelon have any
19 role in designing Qwest's operational support systems?

20 A Other than through their participation in the
21 CMP, and the extent to which they can impact that
22 process through CMP, I don't know of any.

23 Q So they've -- but that impact is only at the
24 macro level of you -- "Please make this change." They
25 don't -- they have no impact at the micro level of how

1 the change is made by the IT people.
2 A Well, and I would point back to my testimony
3 where I believe Eschelon was a member of -- and just to
4 be specific, let me get back to -- I believe it's
5 Mr. Webber's direct testimony. I believe Eschelon has
6 had more involvement than what the question would just
7 allude to.

8 Let me just find where it's in the record.
9 And I'm looking at Exhibit 19 again. I hate to sound
10 like a broken record, but I think Ms. Johnson can
11 probably do this better than I, especially since I'm
12 supposed to buy her a Coke each time I kick a question
13 to her. It's starting to rack up, but ...

14 Q Perhaps you could bargain that this is only
15 just one question with a lot of subparts. Just a
16 thought.

17 A I think your thought will help me in that
18 negotiation.

19 Q If she's the person who more appropriately
20 could discuss ...

21 A I apologize. I know that they participated
22 more -- I think they participated more and definitely
23 that she would be able to give you a better answer to
24 that.

25 A.L.J. JENNINGS-FADER: With that, thank you,

1 sir, and lunch break until 1:30.
2 We're in recess.
3 (The proceedings recessed at 12:18 p.m., to
4 be reconvened at 1:30 p.m.)
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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 Counsel, before we -- I have a couple more
5 questions for Mr. Starkey, but before that, have the
6 parties ordered a transcript?

7 MR. MCGANN: I don't think we have.

8 MR. MERZ: And we haven't either but need to.

9 A.L.J. JENNINGS-FADER: And you'll recall
10 from my order that the transcript cost is to be split as
11 between the parties. So would you all please make the
12 arrangements with the court reporter.

13 MR. MCGANN: Yes.

14 A.L.J. JENNINGS-FADER: Thank you very much.

15 FURTHER EXAMINATION

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

17 Q Mr. Starkey, I have some questions about
18 Issue 12-67 raised by Mr. Webber's testimony.

19 A Okay.

20 Q I believe you've adopted that testimony, that
21 portion of his testimony as yours. Is that correct?

22 A 12-67 being expedited dated orders?

23 Q Yes.

24 A Mr. Denney has adopted the majority of that.

25 I only in my testimony, my surrebuttal, mention it

1 because I had expedited-orders example when I talked
2 about the CMP.

3 Q In that event, you're off the hook for that.
4 I'll address that with Mr. Denney. Thanks.

5 I'd like to refer you -- I'm sorry,
6 Mr. Starkey. I'd like to refer you to your direct
7 testimony, Exhibit No. 18. And this is just one
8 example, but it's at Page 91, during a discussion of
9 Issue 1-1.

10 And this is, as I said, just one example of a
11 point at which you assert that the Commission needs to
12 make decisions in this arbitration proceeding because it
13 is the only proceeding in which it will be in a position
14 to make certain decisions.

15 Do you recall that?

16 A Generally, though I don't know that I said it
17 that distinctly, but I understand your point.

18 Q And in fact, you say, quote, at 17-18, The
19 Commission would have no opportunity to make these
20 determinations if Qwest has its way, unquote.

21 A For this issue, yes.

22 Q But I believe this is a -- this is a
23 statement which you make with respect to many issues in
24 this proceeding.

25 A Certainly a number of them, yes.

1 Q Are you aware that the Commission has a
2 complaint proceeding process in which a party to an
3 interconnection agreement can seek Commission redress
4 with respect to issues pertaining to implementation of
5 the interconnection agreement?

6 A I was aware that there was a complaint
7 process. I was educated further with some questions you
8 asked yesterday of one of the Qwest witnesses, but I
9 have a general understanding, yes.

10 Q And if you'd like, I happen to have -- it's
11 Hearing Exhibit No. 28, which, in a general way, if you
12 look at, I think it's Provision D, as in David, talks
13 about formal complaints.

14 A Okay.

15 Q And not in any detail, but simply indicates
16 that the Commission is available for the resolution of
17 disputes having to do with interconnection duties and
18 obligations and formal complaints having to do with
19 service quality.

20 A Okay.

21 Q Is the availability of that complaint process
22 a factor which ameliorates or -- your stated concern in
23 your testimony about the Commission's having only this
24 one opportunity to address issues?

25 A Not really. Sort of. Let me say it that

1 way. I think the issue here is that the parties are in
2 this -- in this proceeding. They've spent, what we've
3 already heard, is years negotiating these particular
4 items. And Eschelon has gone to the time and expense of
5 sort of putting all the evidence on the table with
6 respect to its proposals. And I think this is the
7 proper venue for the Commission to hear these things.

8 To the extent the Commission declines that
9 opportunity in this case and a complaint procedure was
10 available outside of that, I -- it seems to me the
11 process would be, Qwest would do something, i.e., extend
12 an interval, and then it would be incumbent upon
13 Eschelon to complain.

14 One of the things I talk about in my
15 testimony is that that always puts the burden on
16 Eschelon, that Eschelon is always sort of defending
17 itself against these -- these potential changes wherein
18 its attempt through this ICA is to put itself on equal
19 footing, where both parties have certain obligations.
20 And if Qwest wants to change one of these intervals, it
21 must petition the Commission to do so if it can't agree
22 with Qwest -- with Eschelon. So it's an issue not only
23 of which proceeding you use, but also where the burden
24 of sort of pursuing the issue falls.

25 Q Also kind of along the same vein, not in this

1 testimony particularly where I've referred you just now,
2 but generally, I believe your testimony is that certain
3 of Eschelon's proposals are a way for the Commission
4 to -- I believe you refer to it as assert its regulatory
5 oversight or perform its regulatory oversight functions.

6 A That's a fair characterization, yes.

7 Q Now, with respect to those issues, you raise
8 that as a point, as a basis for the Commission's
9 accepting Eschelon's position.

10 Is the availability of the complaint process
11 yet another way that the Commission can assert that
12 regulatory oversight function?

13 A I think my answer would be much the same that
14 I just provided. I think it does provide an avenue.
15 Again, it sometimes shifts the burden, we think, to --
16 in a way that isn't an appropriate way.

17 An example would be this issue we talked
18 about with respect to access to UNEs. The reason that
19 Eschelon is proposing the language, is proposing that
20 section, is because it's been informed that Qwest
21 intends to charge tariffed charges for some of these
22 things. So Eschelon has put this language in there to
23 raise the debate here as to whether Qwest should be able
24 to do that or not.

25 Qwest largely had wanted to leave it silent.

1 And I think you heard Ms. Stewart say that they didn't
2 intend to charge, for example, for design changes a
3 non-cost-based rate in this proceeding, meaning we fully
4 think that they will come in at some point and start to
5 charge tariffed rates for those.

6 So Eschelon has raised it here because the
7 issue is ripe. Could it also be raised elsewhere? I
8 think so, but that doesn't negate the fact, at least in
9 our mind, that the issue is ripe here.

10 Q And lastly, with respect to Issue --
11 Issue 9-43 having to do with conversions, particularly
12 circuit-ID-change questions.

13 A Yes.

14 Q And your testimony at Page 154 talks about --
15 beginning at 154, Line 17 and continuing through 155,
16 Line 7 in your direct testimony --

17 A Thank you.

18 Q -- sorry, Exhibit 18 --

19 A Yes.

20 Q -- you talk about the burden on Eschelon
21 imposed on -- that would be imposed on Eschelon were
22 Qwest not to provide the circuit ID numbers.

23 A Yes.

24 Q We've heard yesterday, and I believe you were
25 in the room when Ms. Stewart testified on behalf of

1 Qwest, and also in her direct -- in her written
2 testimony, that Eschelon's proposal imposes burdens on
3 Qwest as well, cost -- record keeping, all the similar
4 kind of parallel concerns that you raise in your
5 testimony. She says, Well, us too. We, too, also have
6 these same issues.

7 A Right.

8 Q From the Commission's perspective, is this
9 issue really a question of which party bears the costs?

10 A I think only at the smallest level. I think
11 this issue -- and the reason this issue is somewhat
12 unique, though not completely unique, is that Eschelon
13 is proposing a process by which conversions would take
14 place with its language, and it's putting in particular
15 detail.

16 Qwest's proposal is to have no language at
17 all with respect to that issue, instead to put it off to
18 the PCAT or to some other documentation for their
19 internal -- their internal processes.

20 Eschelon's primary position with respect to
21 this data -- with this particular issue is, we need to
22 know what the process is. It needs to be either agreed
23 upon or decided on by the Commission, because we're
24 going to be doing conversions, so kicking it off to
25 another proceeding or kicking it off to PCAT where Qwest

1 really controls it is really not an option from
2 Eschelon's position. Now, is this issue of who bears
3 the cost an issue? Yeah, it is.

4 Q Actually, let me -- I'm sorry. Let me be
5 more precise in my question. Is the issue of cost is
6 to -- is not broad enough, I don't think. Is the issue
7 really here the dispute -- aside from the contractual
8 certainty issue which runs through many of your
9 concerns, is it -- is the secondary dispute here or
10 concern of the parties here really whose systems are
11 affected, whose processes will have to change?

12 A That is part of the process -- I mean that is
13 part of the dispute, yes, because you see us pointing to
14 the FCC's orders and saying the FCC says it should just
15 be a billing change.

16 So we're sort of arguing to you that our
17 systems could be -- both systems may be impacted, but
18 the FCC had a specific way it wanted this done, and it
19 supports our position.

20 So yes, the burden of that is at issue here.
21 I just -- I feel compelled to also describe that I don't
22 think it's necessarily the primary issue.

23 Q And I do understand.

24 A Okay. Fine.

25 Q Thank you.

1 A.L.J. JENNINGS-FADER: Thank you very much,
2 sir.

3 Mr. Devaney, questions based on what I asked?

4 MR. DEVANEY: We do have a few, Your Honor.
5 And if you wouldn't mind, since some of the subject area
6 has crossed to areas that Mr. Topp was addressing, if we
7 could both ask Mr. Starkey questions, not at the same
8 time, but --

9 A.L.J. JENNINGS-FADER: Well, that's good,
10 because tag-team questioning and tag-team answering is
11 not a good idea. As long as it's one attorney at a
12 time, I'm okay.

13 MR. DEVANEY: Thank you.

14 RECROSS-EXAMINATION

15 BY MR. DEVANEY:

16 Q Mr. Starkey, I believe that you said in
17 response to one of the judge's questions that in this
18 proceeding, Eschelon is not seeking to impose new
19 processes on Qwest but, rather, I think you said it's
20 seeking to have existing processes codified.

21 Do you recall saying that?

22 A I do remember that discussion, yes.

23 Q You have testified with respect to
24 loop/transport combinations, for example. And one of
25 Eschelon's proposals for loop/transport combinations is

1 that Qwest would have -- excuse me -- that Qwest would
2 accept a single order from Eschelon rather than two
3 orders for the UNE piece and the non-UNE piece of a
4 commingled EEL. Is that correct?

5 A I believe that's correct. That's not my
6 issue, but I believe that's correct.

7 Q That's not Qwest's current process, is it?

8 A Well, when you describe Qwest's current
9 process, I guess that brings up the larger issue, which
10 is, are you talking about the process that's described
11 in the PCAT or a process that was developed through CMP
12 related to CLEC -- CLECs also having the ability to sort
13 of impact that. I'm not sure which one you're
14 describing.

15 Q What I'm talking about now is the way CLECs
16 order commingled EELS from Qwest is that they submit two
17 orders, one for the UNE piece and one for the non-UNE
18 piece. Isn't that correct?

19 A I'm not sure.

20 Q Would you agree with me that if that were the
21 case and Eschelon is seeking to change that by having
22 just one order submitted, that that's not codification
23 of an existing process but, rather, it is an attempt to
24 impose a new process?

25 A Perhaps. And let me be maybe more specific

1 to my previous statement when I talk about existing
2 processes. I think it's important to define the
3 difference between a process that Qwest has sort of put
4 together on its own and suggested "this is our process"
5 or a process that went through CMP to some extent and
6 there was involvement by the CLECs to say, We don't like
7 that component of the process or not.

8 It certainly is the case, and I think the
9 TRRO PCATs is one issue where Qwest has put forward
10 something and says, This is the current process, and if
11 you change it, there are costs involved. And our
12 response is, We weren't involved in helping you design
13 that process, so to the extent there are costs involved
14 to changing it, you should have known that going in
15 before you solicited our input. That's part of the
16 issue.

17 Q Well, let me ask this, focusing still on
18 commingled EELs, Qwest -- Eschelon, rather, is seeking
19 to have just one bill instead of two bills for each
20 component of the commingled EEL. Eschelon is also
21 seeking to have just one circuit ID instead of a circuit
22 ID for each component of a commingled EEL.

23 Again, those are not Qwest's current
24 processes. Is that correct?

25 A Well, again, I think Mr. Denney would be able

1 A I don't know for sure. As I said earlier,
2 I'm thinking that's the case, but I don't know.
3 Mr. Denney would probably know better.

4 Q With respect to Issue 9-34, notice of network
5 changes, Eschelon is asking that notices include circuit
6 IDs and customer addresses, correct?

7 A Correct.

8 Q And that is not Qwest's current process,
9 either for CLEC or for its own customers. Isn't that
10 right?

11 A Well, I don't know about for Qwest's own
12 customers. You'll recall that Mr. Webber attached as
13 Exhibit 2 to his testimony a list of circuit IDs that
14 Qwest had provided to Eschelon in a particular
15 circumstance wherein these kinds of changes were going
16 to take place, so --

17 But to be fair to your question, that is an
18 area where we're asking for a report, perhaps, that may
19 not currently exist. And that's the one where the
20 Commission -- but we've tempered that with If it's
21 readily available, for example. That's another issue
22 where the Commission would have to weigh, is this such a
23 change that if the cost outweighs the benefit, and as I
24 think I suggested to the judge earlier, you can't base
25 those kinds of decisions on this sort of notion that

1 to describe the current process better than I could.
2 Those are his issues, not mine.

3 But assuming that you're correct, that those
4 are what Qwest currently requires CLECs to do, what
5 we're suggesting here is that that isn't the proper
6 process. And I think as part of that -- and I think I'm
7 right here in saying that that process didn't
8 necessarily go through CMP and our input wasn't
9 solicited.

10 Q So it seems to me that you are somewhat
11 taking a different position, in that you are asking
12 Qwest to change processes; you're not simply asking
13 Qwest to codify current processes.

14 A Well, I think what I said originally -- no, I
15 don't think I'm changing my position. I think what I
16 said earlier is, for the most part, what we're asking
17 for is codification of the existing processes.

18 I don't disagree that there may be one or two
19 scenarios where the process that Qwest currently uses
20 may need to be modified by these proposals. If I'm not
21 mistaken, I think in each of those circumstances, those
22 are processes that Qwest erected, full, without the
23 solicitation of the CLEC input.

24 Q Do you know if that's true with respect to
25 commingled EELs?

1 costs exist if there's no evidence in the record to
2 describe what those costs are.

3 Q Well, my question, then, is -- well, let me
4 back up.

5 Are you aware at all of how many
6 interconnection agreements Qwest has in Colorado with
7 other CLECs?

8 A No.

9 Q Would it surprise you to learn it's somewhere
10 in excess of a hundred?

11 A No.

12 Q And do you recognize the need for Qwest to
13 have some consistency of process across CLECs? Do you
14 recognize that's a legitimate concern on our part?

15 A Yes. I think some uniformity makes sense.
16 And as I think I described earlier, the Section 2-51 and
17 2-52 process has built in the notion of allowing CLECs
18 to sort of opt into these agreements. I mean, I guess
19 if the Eschelon agreement provides certain advantages
20 that don't currently exist from Qwest, I would think
21 CLECs might very well opt into it in order to receive
22 those advantages or the -- "advantage" is not a good
23 word as much as sort of additional detail.

24 Q Well, let's say that this Commission were to
25 accept some of Eschelon's proposals that change Qwest's

1 current processes. Let's say, for example, despite our
2 strong objection to this, that the Commission said, you
3 know, With commingled EELs, we do want you to change
4 your systems and have one circuit ID and not two.

5 And let's assume that that costs us at least
6 several hundred thousand dollars and maybe millions of
7 dollars to implement, but we only did it for Eschelon
8 because nobody else wants it.

9 Do you think you ought to pay us for that?

10 A I think I'd say two things in response to
11 that question. The first one is, I assume your hundreds
12 of millions of dollars or even thousands --

13 Q I didn't say hundreds of millions. If I did,
14 I didn't mean to say that, but certainly millions of
15 dollars.

16 A I'm assuming that's a hypothetical.

17 Q For purposes of my question to you for now,
18 yes, it is, but we have testimony in the record about
19 what that would cost.

20 A Okay. And the other thing that's assumed in
21 your question is that nobody else wants it, which, as I
22 think I mentioned earlier, we represent a number of
23 CLECs besides Eschelon in these types of proceedings and
24 others, and to the extent a CLEC could get a single
25 circuit ID for a commingled EEL, I don't know of any of

1 activities.

2 To the extent that there are costs incurred
3 by Qwest to initiate changes regarding how they'll
4 provision UNEs, the development of unbundled network
5 element rates is perfectly suited to capture those costs
6 in cost studies that are filed by Qwest.

7 Q Let's focus on --

8 A And we'd be willing to pay those. Sorry
9 to --

10 Q Let's focus on commingled EELs for a moment.
11 That includes a non-UNE component, doesn't it?

12 A Yes.

13 Q And would Eschelon be willing to agree to
14 language in the contract -- and I know we had the
15 discussion about your personal views in binding
16 Eschelon, but I'm going to ask you this question anyway.

17 Would Eschelon be willing to agree to
18 language in the contract that says, We will compensate
19 Qwest for a single-circuit ID, for a single order, for a
20 single bill, for commingled EELs, which include both a
21 UNE and a non-UNE component?

22 A I have to say I don't know. It hasn't been
23 offered to them, so I don't know.

24 Q Don't you think personally, then, that would
25 be a fair thing and consistent with Qwest's right of

1 my clients who wouldn't want that opportunity.

2 Q Do you know if in Colorado Qwest has received
3 demands or complaints from other CLECs about processes
4 for commingled EELs? Are you aware if that's taken
5 place?

6 A I don't know, but I am aware of CLECs who are
7 watching closely these Eschelon arbitrations to
8 understand what the underlying agreement ultimately
9 comes out of these is going to be.

10 Q But getting back to my question, if this
11 Commission were to require Qwest to change some of the
12 processes that you and I just discussed at Eschelon's
13 request. And Qwest incurs costs. Whatever the
14 magnitude of the cost is, we can leave that issue aside.

15 Do you recognize that Qwest ought to be
16 compensated for the costs it incurs to comply with those
17 changes to its processes?

18 A I'm going to say yes, and I'm going to
19 expound, because I don't think "yes" says enough.

20 What we're really talking about with all of
21 these processes -- and I'm trying to make sure that that
22 statement is accurate; let's say the majority of these
23 processes -- is how we access UNEs or how we access --
24 largely how we access UNEs through the ordering,
25 pre-ordering, provisioning, repair, maintenance

1 cost recovery under the act?

2 A I guess the first thing I'd say is, I don't
3 know that the interconnection agreement doesn't already
4 require it. To the extent we've agreed to pay
5 TELRIC-based rates for accessing unbundled network
6 elements and the services that we purchased from Qwest,
7 I think that agreement is probably already in place.

8 Q Can you point to me some language that says
9 that?

10 A Says what, exactly?

11 Q That Eschelon would compensate Qwest, for
12 example, for changing commingled -- or circuit IDs and
13 order processing and billing processing for commingled
14 EELs.

15 A I can't, because I don't think that language
16 is in there. What I have said is that I think the
17 interconnection agreement is pretty clear that we will
18 pay you TELRIC-based rates for the unbundled network
19 elements that we order, and those include costs
20 associated with provisioning, pre-provisioning, repair
21 and maintenance.

22 Q That's a nice segue into Issue No. 9-31,
23 access to UNEs.

24 A Okay.

25 Q And in your discussion both with me and with

1 the judge relating to that particular issue, we focused
2 on the language that says "moving, changing, repairing,
3 adding to."

4 Do you know what I'm referring to?

5 A I do.

6 Q And the judge asked you, Well, isn't there
7 somewhat of a contradiction here in that -- and the
8 judge didn't use that word, but I'm inferring -- that
9 you're not being specific about what activities are
10 encompassed by those terms, while you do say the
11 contract ought to be specific?

12 And your response -- and I wrote it down.
13 You said something to the effect of, Well, the
14 activities that could be included within these terms
15 could number into the thousands.

16 Do you recall saying that?

17 A Yes.

18 Q And then you were also asked, Are these
19 activities going to be the same today, in the future, or
20 could they change? And I think you said the activities
21 could actually change, there could be different
22 activities encompassed by the terms.

23 Do you recall saying that?

24 A I said they may change.

25 Q They may change. So what I'm getting to here

1 is, one of our disputes in Issue 9-31 is the language
2 that Qwest last proposed, "at the applicable rate."

3 And by contrast, Eschelon's position is that
4 all the activities encompassed by those terms ought to
5 be cost-based TELRIC rates.

6 Here's my point: If, potentially, those
7 terms include thousands of activities that we can't even
8 list because there's so many and because they might even
9 change in the future, you can't sit here today and tell
10 me that all those rates are legally governed by TELRIC
11 and within Section 2-51, can you?

12 A Mr. Devaney, the FCC has already addressed
13 this very point in the TRO, and I think starting at
14 Paragraph 632, when it talked about network
15 modifications and the modifications that would be
16 required at TELRIC-based rates consistent with its
17 rules. And it put forward a standard and refused to be
18 more specific about individual activities that might be
19 included. And the standard it put forward was the
20 standard of nondiscrimination. If you do it for your
21 customers, any customers, retail, wholesale or
22 otherwise, then you're required to do it for the CLEC.

23 So I can tell you that the FCC has already
24 addressed this issue, and the way they've addressed it
25 is they've said, If you do it for yourself, you must do

1 it for them and you must do it at TELRIC-based rates.

2 Q I then have to ask you, tell me where the FCC
3 says that all activities encompassed by moving,
4 changing, repairing are governed by TELRIC. Where is it
5 stated?

6 A I don't have a copy of the TRO. If you could
7 hand it to me, I think I could find it for you.

8 Q I don't have it with me, but you think
9 there's a statement there that says all the activities
10 encompassed by the terms Eschelon has proposed shall be
11 provided at TELRIC rates?

12 A I don't know that the FCC uses these specific
13 terms. I just don't know. It may.

14 I guess what I'm saying is that this language
15 is not being debated in this proceeding in a vacuum.
16 This very issue has been at issue for many years. And
17 the FCC finally decided it in the TRO, and specifically
18 decided it using its nondiscrimination standard. And it
19 was very specific about what that nondiscrimination
20 standard meant.

21 It did the same type of e.g. in its analysis
22 and said, What we're generally talking about are these
23 things but not these things. And one of the things it
24 specifically excluded was trenching a new cable, for
25 example, but it said, We refuse to list every activity

1 that might be encompassed by this requirement.

2 So what I'm telling you is that the FCC has
3 decided this issue and has decided it in a way that is
4 consistent with this language.

5 Q Well, if -- if we sit here today and we say
6 that there are thousands, potentially, activities
7 included within this language and there could be more
8 and different activities in the future that we don't
9 know about today, isn't there some prudence in saying
10 that while, sure, many of these activities could be
11 governed by TELRIC, at least leaving the door open to
12 maybe there might be a few activities that aren't
13 governed by TELRIC, which is what Qwest accomplishes
14 with its at-the-applicable-rate language?

15 A No, I don't think so. And the reason that
16 Eschelon -- and I can tell you specifically, because
17 I've had this discussion with them many times.

18 The reason that Eschelon cannot live with the
19 at-the-applicable-rates language is because it gives
20 Qwest too much flexibility to simply say the applicable
21 rate is a tariffed charge for an item, a work item, that
22 may very well be access to UNEs.

23 So putting "at applicable rates" -- I mean, I
24 guess -- what I think I've heard Eschelon say is if you
25 put the term "at applicable rates" in there, we'd rather

1 not have any of the language in there because it kicks
2 the entire debate into Qwest's court. It kicks the
3 entire debate out of the Commission's court, because if
4 the Commission adopts "at applicable rates," it's made
5 no finding as to what if these things are access to UNEs
6 or not.

7 Q Now, the approach Eschelon has taken, then,
8 is, let's just bar any possibility of a non-TELRIC-rate
9 and isn't that the effect of the language that you've
10 proposed?

11 A No. Because as I've said earlier, the
12 standard here is nondiscriminatory access. That's the
13 standard the FCC has put forward.

14 If you identify an activity that you do not
15 do for yourself, then you're under no obligation to
16 provide it as access to a UNE. In that circumstance, if
17 you provide it at a tariffed rate, then we might debate
18 it, we might fight about it, but at the end of the day,
19 the Commission may very well decide it was not truly
20 access to a UNE and the nondiscriminatory standard
21 didn't apply.

22 Q A final question on this: Then it sounds to
23 me like Eschelon should agree, then, to a sentence to
24 the effect of, If Qwest performs an activity that's
25 moving, adding, changing, repairing that it doesn't

1 perform for its own customers, then TELRIC rates shall
2 not apply.

3 Do you agree with that?

4 A I'm recalcitrant (sic) to say the same thing
5 to you I said a while ago, Mr. Devaney, which is, I
6 don't know. If you have language like that, put it in
7 front of them and see what they say.

8 Q Conceptually, do you personally agree with
9 that?

10 A Can you read it to me again? I'm sorry.

11 Q It was, if Qwest performs an activity that is
12 encompassed by moving, adding, changing, repairing that
13 it doesn't perform for its own customers, then TELRIC
14 rates shall not apply.

15 Do you agree with that concept, not
16 necessarily my precise language, but the concept?

17 A I might personally add in there "or otherwise
18 constitute access to UNE as defined by the FCC." But
19 again, that just raises the point that the specific
20 language is important and the negotiation between the
21 two parties as to the specific language to get to that
22 point is what really needs to happen.

23 Q Other than your change, you don't disagree
24 with my concept?

25 A I think my change does change your concept,

1 but with my change, that would be how I would read the
2 FCC's current rules.

3 MR. DEVANEY: Your Honor, I was just handed a
4 note saying that the Webcast was not turned on after
5 lunch.

6 A.L.J. JENNINGS-FADER: It was. It continues
7 to be. I don't get what's going on. But okay. And I
8 checked it. Thank you, note carrier.

9 MR. DEVANEY: It's interesting to know
10 there's a demand to listen.

11 A.L.J. JENNINGS-FADER: Actually, I put that
12 more in the spooky category.

13 Q (By Mr. Devaney) I just have a couple more
14 questions.

15 On Issue 9-34, notice of network changes,
16 again, this gets back to your parity discussion,
17 Mr. Starkey. In the end, Eschelon's position, I take it
18 from your testimony, is that Qwest ought to give to
19 Eschelon whatever notice of network changes it gives to
20 its own customer. Is that a fair statement?

21 A I just might add to it that it would make
22 available to Eschelon the same types of information that
23 are available to itself in these circumstances.

24 Q Well, let's focus -- let's get specific.

25 We're talking about a written notice. And is it

1 Eschelon's position that as long as Qwest gives the same
2 notice that it gives to its retail customers, that
3 that's sufficient for Eschelon?

4 A I'm hesitant to define it just to a notice.
5 I mean, the only reason it's referenced as a notice in
6 the contract language is because it's got to get from
7 Qwest in some way to Eschelon.

8 If that information is available in some
9 other way other than a notice inside of Qwest, which
10 makes sense because it wouldn't necessarily notice
11 itself, then it's the availability of the information
12 that establishes the nondiscriminatory standard, not the
13 notice.

14 Q Let's say it a different way: Is it
15 Eschelon's position that whatever information Qwest
16 gives to its own customers regarding network changes,
17 that that's what Eschelon is entitled to?

18 A Or is available to itself in providing
19 services to those customers. That's the distinction I
20 might also make.

21 If Qwest engineers have information available
22 to them when they're providing services to a customer,
23 Eschelon should have that same availability of
24 information when it's trying to ascertain if there's
25 going to be complications associated with service it

1 provides to its customer. It's the information
2 available that's important.

3 Q Now, what I'm really just trying to focus on
4 is Issue 9-34 and it's -- what are the contents of a
5 notice sent to Eschelon of a network change. Qwest
6 sends notices to its own customers of network changes.

7 All I'm asking you is, if we give you the
8 same information that we give to our own customers in
9 that notice, is that sufficient, or do you want more?

10 A Well, I think -- I think the language perhaps
11 perceives more. I think generally yes, with one -- with
12 one qualification I would add to that.

13 If -- and the circuit ID is a good example.
14 If Qwest's internal -- internal provision or internal
15 repair folks realize there's going to be
16 network-modernization activities in a given area or
17 given location -- let's use that as an example -- and
18 they have available to them the circuit IDs of their
19 customers who may be impacted, even though they may not
20 notice their customers, they have that information
21 available so that they can -- they can sort of test or
22 otherwise understand an impact on those customers'
23 service by that activity.

24 That's what Eschelon is after, is this notion
25 of, we'd like to know who may be impacted and which

1 circuits may be impacted so we can understand if there's
2 an adverse impact. So you might not notice your own
3 customers. You might just use the information to make
4 sure they're not impacted. Eschelon would like that
5 same ability.

6 MR. DEVANEY: May I have one moment, Your
7 Honor?

8 A.L.J. JENNINGS-FADER: You certainly may.

9 MR. DEVANEY: Thank you, Mr. Starkey.
10 Mr. Topp now will ask some questions.

11 FURTHER RE-CROSS-EXAMINATION
12 BY MR. TOPP:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Mr. Starkey, I wanted to explore some more of
16 this concept that you brought up in your discussions
17 with the judge about Eschelon's proposals codifying
18 existing Qwest processes.

19 One of the topics that you've testified on
20 relates to jeopardy notices. Is that correct?

21 A Yes.

22 Q And in that jeopardy notice and debate,
23 Eschelon's proposal is that -- that certain -- in
24 certain situations, Qwest classify missed order -- or
25 classify jeopardies in a different fashion than what it

1 does right now. Is that correct?

2 A No, I don't think so. I think the way I
3 would say that is Qwest -- or Eschelon's proposal is to
4 more accurately use the qual -- the manner by which
5 Qwest has said it will classify certain jeopardies to do
6 it more effectively, not to change those
7 classifications, but to make them more accurate.

8 Q Right now, in certain situations, Qwest
9 classifies jeopardies as customer not ready, and
10 Eschelon wants to change that to a Qwest jeopardy. Is
11 that correct?

12 A And the situation -- yes. The situation
13 you're describing is when Qwest fails to send a FOC
14 prior to the attempt to deliver the circuit. We think
15 that is not an appropriate classification of customer
16 not ready. We think that's a -- should be a
17 Qwest-initiated jeopardy because it's Qwest's actions
18 which have caused the jeopardy.

19 Q I certainly understand that there have been
20 arguments one way or another on that point. But my
21 question is, and I think that you've answered it, that
22 you're asking Qwest to do something different in that
23 situation.

24 A Yes. We're asking them to more accurately
25 classify their jeopardies.

1 Q That's a process change. Do you agree?

2 A I'm not sure necessarily what you mean by
3 "process change" there, because we're not asking them to
4 change their classifications. They're still a
5 Qwest-initiated jeopardy or a customer-not-ready
6 jeopardy. We're just asking them to apply the facts
7 more consistently with what's intended by the current
8 process, so I don't think it's a process change.

9 Q So under your definition of process change,
10 that's not a process change?

11 A I don't know that I have a definition of
12 process change, or at least I don't know that I've
13 stated one.

14 I guess what I'm responding to is, I don't
15 believe what we're asking with respect to jeopardies is
16 that Qwest make process changes. What we're asking is
17 that they apply the current process more accurately.

18 Q Let's move to expedites. Expedites -- you're
19 asking Qwest to expedite without charge in certain
20 circumstances where it does not do so now, correct?

21 A That's generally true. I'm just going to
22 preface this with, I'm not as familiar with the expedite
23 issue as Mr. Denney will be, but to that point, I'd have
24 to agree with your --

25 Q Would you agree with me that that is a

1 process change under your definition?
 2 A I know there's a long history with respect to
 3 expedites and what the actual process is or what the
 4 process should be given its history and CMP, so frankly,
 5 I'm going to kick that issue to Mr. Denney, because he
 6 may very well be able to explain to you that he doesn't
 7 think it is a process change. I just don't feel
 8 comfortable doing it.

9 Q Are you comfortable in saying whether or not
 10 what Eschelon is proposing right now codifies existing
 11 process?

12 A No, I don't think so. I think I'd have to
 13 leave that to Mr. Denney.

14 Q You don't know one way or the other?

15 A I think I don't. And I would just add, in
 16 response to the judge's question, I said for the most
 17 part, this is codifying. There may very well be
 18 changes. And that's why I described it on those
 19 instance-by-instance basis that the Commission has to
 20 decide the benefit versus the cost.

21 Q We're exploring what's meant by "for the most
 22 part," because we've got more examples here. Transit
 23 records: Eschelon's asking Qwest to create transit
 24 records in situations where they do not do so now. And
 25 they've they said they cannot do so.

1 Is that a process change?

2 A I don't know. I mean, again, the reason I
 3 don't know is because I'm just not familiar with those
 4 particular issues. I know there is an Eschelon witness
 5 who will be and will be better suited to answer that
 6 question.

7 Q So when you testified that what Eschelon is
 8 seeking to do is codify existing processes, you simply
 9 didn't know one way or the other with respect to this
 10 issue?

11 A Transit?

12 Q Correct.

13 A No. That's correct.

14 Q Controlled production testing: Eschelon is
 15 seeking to have the ability to or require Qwest to
 16 obtain agreement from Eschelon before it requires
 17 controlled production testing in certain circumstances.
 18 Is that correct?

19 A In circumstances where certification has
 20 already been accomplished and recertification has been
 21 accomplished as well, yes.

22 Q And would you agree with me that that in fact
 23 is a process change also?

24 A No. I wouldn't -- I don't think so. I mean,
 25 in -- in -- I think it's my surrebuttal testimony -- it

1 may be the rebuttal -- I describe the extent to which
 2 Eschelon believes it's just codifying the current
 3 process which it need not do controlled production for
 4 recertification process. It believes that is the
 5 current process. I know there's debate about that, but
 6 Eschelon believes that's the current process.

7 Q And you would agree with me that Qwest
 8 disagrees that that in fact codifies the current
 9 process?

10 A That's my understanding.

11 Q I went through the issues on which you
 12 testified and tried to find examples of situations where
 13 Eschelon is seeking to codify existing processes and
 14 where issues have been where Qwest's position is that an
 15 issue should be handled in the CMP. The only one I
 16 could come up with potentially is intervals.

17 Do you have another example beyond that?

18 A Let me be clear, the example you're looking
 19 for. An example of where, what?

20 Q An example of where Eschelon is seeking to
 21 codify in contract language Qwest's existing processes
 22 and Qwest's position is that the terms and conditions
 23 should be handled in the CMP.

24 A I think intervals is certainly one of those.

25 Let me go through the issues here. I

1 think -- as I described before, I think controlled
 2 production is one of those where we think we're just
 3 taking the existing process and putting it into place.

4 I actually think root-cause analysis and
 5 acknowledgment of mistakes is, with the potential
 6 exception of the acknowledgement of mistakes, root-cause
 7 analysis, and I think it's described in BJJ 35, is
 8 already a responsibility that Qwest associates to its
 9 service -- to its customer service manager under a
 10 number of circumstances, so I think that certainly
 11 codifies the root-cause analysis process.

12 Q Doesn't broaden it at all?

13 A I don't think so, no.

14 Q Doesn't apply it in any situations where it
 15 doesn't apply right now?

16 A Not that I'm aware of. If we take a look at
 17 BJJ 35 -- maybe I should do that.

18 THE WITNESS: Do you have a copy?
 19 (Mr. Merz handed the witness a document.)

20 THE WITNESS: Thank you.

21 A And I don't know if you have BJJ 35 open in
 22 front of you. There are two pages of responsibilities
 23 and areas wherein my understanding of this document, and
 24 I think Ms. Johnson has corroborated, that these are the
 25 service manager responsibilities with respect to

1 root-cause analysis.

2 It includes request for information, systems
3 problems, service order problems, billing problems,
4 compliance issues, network repair problems, product
5 information, chronic performance issues and isolated
6 personnel performance issues. I don't know that
7 we're -- that our proposed language expands anything
8 beyond that.

9 Q (By Mr. Topp) Your proposed language -- is
10 there any potential issue under your proposed language
11 there that -- that would not -- under your proposed
12 language on that issue regarding the scope of the
13 obligation to do root-cause analysis, is there anything
14 that's not covered?

15 A Well, our language on root-cause analysis
16 requires that we only ask for root-cause analysis if
17 it's customer impacting. As I look at these nine broad
18 categories already required of this product service
19 manager or the client service manager, nothing comes
20 immediately to mind that wouldn't fall into those nine.

21 Q Other examples of --

22 A I'm only relying on the ones in my testimony
23 where I have the most knowledge about it.

24 Q Sure.

25 A And just to recap, we've done interval

1 changes, we've done root-cause analysis, we've done
2 controlled production. And as I said earlier, I believe
3 jeopardies also would fall under, not a change to
4 process, but simply a more accurate way of handling
5 current process.

6 Q So four out of the list of topics that you've
7 addressed Qwest disputes, whether it's a change or not
8 to its current process on two of those, correct?

9 A I believe that's correct.

10 MR. TOPP: Nothing further from me.

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

12 MR. MERZ: I don't have any questions, Your
13 Honor.

14 A.L.J. JENNINGS-FADER: Thank you, Mr. Merz.

15 Mr. Starkey, thank you so much for your
16 testimony, oral and written.

17 THE WITNESS: Thank you.

18 A.L.J. JENNINGS-FADER: I forgot to say, but
19 I mean it's been very helpful. Thank you.

20 THE WITNESS: I appreciate that.

21 MR. MERZ: Your Honor, can Mr. Starkey be
22 excused? He has another meeting.

23 A.L.J. JENNINGS-FADER: I thought I just said
24 that. You're excused, sir.

25 MR. MERZ: Thank you.

1 A.L.J. JENNINGS-FADER: This will be off the
2 record for a moment.

3 (Discussion off the record.)

4 A.L.J. JENNINGS-FADER: Mr. Merz, call your
5 next witness.

6 MR. MERZ: Thank you, Your Honor.

7 Eschelon calls Bonnie Johnson.

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

9 Ms. Johnson.

10 BONNIE JEAN JOHNSON,

11 being first duly sworn in the above cause, was examined
12 and testified as follows:

13 A.L.J. JENNINGS-FADER: Please state your
14 name, spell your last name for the record.

15 THE WITNESS: My name is Bonnie Jean Johnson.

16 The last name is spelled J-o-h-n-s-o-n.

17 A.L.J. JENNINGS-FADER: And given that Bonnie
18 may be spelled more than one way, how do you spell your
19 first name?

20 THE WITNESS: It's B-o-n-n-i-e.

21 A.L.J. JENNINGS-FADER: Thank you so much,
22 ma'am.

23 Mr. Merz.

24

25

1 DIRECT EXAMINATION

2 BY MR. MERZ:

3 Q Good afternoon, Ms. Johnson.

4 A Good afternoon.

5 Q You have prepared testimony in this case. Is
6 that right?

7 A Yes, I have.

8 Q Your direct testimony has been marked as
9 Hearing Exhibit 22. Is that correct?

10 A Yes.

11 Q And your rebuttal testimony has been marked
12 as Hearing Exhibit 23?

13 A Correct.

14 Q And your surrebuttal testimony has been
15 marked as Hearing Exhibit 24. Is that correct?

16 A Yes.

17 MR. MERZ: And, Your Honor, I would just note
18 for the record that the exhibit list that was filed last
19 Friday actually transposes the description of
20 Ms. Johnson's rebuttal and surrebuttal. It puts the
21 surrebuttal before the rebuttal. So we've actually made
22 that change to the list.

23 Q (By Mr. Merz) Ms. Johnson, with respect to
24 the testimony that you've just identified, is the
25 information contained in that testimony true and

1 accurate to the best of your knowledge?
 2 A Yes.
 3 MR. MERZ: Your Honor, Eschelon offers
 4 Hearing Exhibits 22, 23 and 24.
 5 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 6 Exhibit 22 is offered. Voir dire or objection?
 7 MR. DEVANEY: No objection.
 8 A.L.J. JENNINGS-FADER: Exhibit 23 is
 9 offered. Voir dire or objection?
 10 MR. DEVANEY: No objection.
 11 A.L.J. JENNINGS-FADER: Exhibit 23 is
 12 offered. Voir dire or objection?
 13 MR. DEVANEY: No objection.
 14 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 15 Exhibits 22, 23 and 24 are admitted.
 16 MR. MERZ: Your Honor, Ms. Johnson's
 17 available for cross-examination.
 18 A.L.J. JENNINGS-FADER: Thank you, sir.
 19 CROSS-EXAMINATION
 20 BY MR. DEVANEY:
 21 Q Hello, Ms. Johnson.
 22 A Good afternoon.
 23 Q I actually just have one question for you.
 24 When I was cross-examining Mr. Starkey, he asked you a
 25 question about whether Eschelon has access to its

1 customers' circuit IDs and addresses, and he volunteered
 2 you for that answer, I think. And he said he thought
 3 that Eschelon did, and I want to ask you that question.
 4 Does Eschelon have access to its customer IDs
 5 and addresses?
 6 A We have that information in our systems.
 7 What I don't know is what specific electronic reporting
 8 capabilities we have, but we do have access to it.
 9 Q And that would be circuit ID and customer
 10 addresses in your --
 11 A That is correct.
 12 Q And that information is in some electronic
 13 database?
 14 A That is correct.
 15 Q And it can be retrieved in one form or
 16 another. You're just not sure how you would go about
 17 retrieving it. Is that correct?
 18 A That is correct.
 19 Q And I take it you've not had occasion to do
 20 that yourself, then?
 21 A That is correct.
 22 MR. DEVANEY: Okay. That's all I have.
 23 Thank you.
 24 A.L.J. JENNINGS-FADER: Thank you.
 25 Ms. Johnson -- let me ask first, Mr. Merz, do

1 you have any cross-examination based on that -- redirect
 2 excuse me -- based on that?
 3 MR. MERZ: I do not.
 4 EXAMINATION
 5 BY A.L.J. JENNINGS-FADER:
 6 Q Ms. Johnson, were you here during
 7 Mr. Starkey's testimony this morning and this afternoon?
 8 A I was.
 9 Q And then you're aware that, a couple of
 10 things he said, perhaps you'll be able to give me more
 11 information?
 12 A Yes.
 13 Q Let me start with what I think may be the
 14 easier of the two, and that has to do with Issue 12-64,
 15 which is root-cause analysis and acknowledgment of
 16 mistakes.
 17 And I asked him whether he had any sense of
 18 the relative expense, Qwest's and Eschelon's, for --
 19 first he said that Eschelon would have some expense
 20 associated with the root-cause analysis. Do you recall
 21 that?
 22 A Yes, I do.
 23 Q And is that accurate?
 24 A That is -- is accurate, time spent to
 25 root-cause it ourself and make certain that the -- the

1 issue or the problem lies with Qwest.
 2 Q And then Qwest will have some expense with
 3 respect to its investigation. Is that correct?
 4 A I would assume that Qwest would have some
 5 expense.
 6 Q Some time?
 7 A Some time or expense. The language does read
 8 that we agreed that it was a Qwest issue, so it's our
 9 belief that Qwest should incur the cost for their error,
 10 and then they also reap the benefits, you know, to any
 11 changes that they may make to help prevent that in the
 12 future as well.
 13 Q And do you agree with Mr. Starkey that the
 14 expense borne by Eschelon and also the expense by Qwest
 15 will vary based on the circumstances of the situation?
 16 A I would agree with that.
 17 Q I asked -- now, with respect to Issue 12-87,
 18 having to do with controlled production testing, I was
 19 going through some questions with Mr. Starkey with
 20 respect to current practice with respect to whether
 21 Qwest at present has control over determining when
 22 recertification is done and by whom it is done, meaning
 23 by -- is it all CLECs? Is it only a particular subset?
 24 Do you recall that?
 25 A I do recall that.

1 Q And I asked him whether the current practice
2 was that Qwest has that control. And he said he didn't
3 actually know, but he thought you might.

4 So do you know whether Qwest at present has
5 that control to make those determinations?

6 A I -- I just want to, first, before I answer
7 that, be clear that your conversation was in
8 relationship to not just recertification, but the
9 controlled production having to do with
10 recertification --

11 Q Okay.

12 A -- and -- because the recertification is
13 closed language in the ICA. And the open issue is
14 related to whether or not we're required to do
15 controlled production after -- at the point in time that
16 we recertify.

17 Q Yes, ma'am. I'm sorry if I was --

18 A Thank you.

19 Q If I was misstating that, my apologies.

20 A Okay. And Qwest -- Qwest has -- has control
21 about whether or not they identify the activity as being
22 new or that it's already been certified and you have to
23 recertify. So they're in control of that. And we both
24 agree that if it's new, that both certification and
25 controlled production are required.

1 So what our language would do is to make
2 certain that if it's not new implementation, that we
3 would not -- we do all the other testing that's related
4 to recertification, but we do not have to do controlled
5 production, which is something Qwest currently does not
6 require us to do.

7 Q On recertification?

8 A On recertification.

9 Q So from Eschelon's perspective, this is a
10 change -- this would be a change -- Qwest's proposal
11 would be a change from the current process?

12 A Qwest's proposal would allow Qwest to make
13 that determination in the future, whereas our language
14 is the current process, which is, Qwest currently, for
15 recertification, does not require controlled production
16 unless the parties agree otherwise.

17 Q Perhaps I need to be clear about what you
18 mean by its "current process."

19 Do you mean the process that was in effect
20 for the issuances predating the 2. -- 20.0 issuance?

21 A 20.0 --

22 Q I'm sorry. I just want to know what you mean
23 by "current procedure." Do you mean everything
24 before -- let's start again.

25 Am I correct that every time Qwest does a new

1 version, either an entire new version or changes
2 something in its computer-to-computer processing, that
3 it is -- it determines whether or not there needs to be
4 either a completely new certification or
5 recertification?

6 A Correct.

7 Q When you talk about Qwest's current process
8 with respect to recertification, I need to know a couple
9 of things. Is that based on language under an
10 interconnection agreement, or is that based on language
11 based on Qwest's publication when it announced the new
12 version of the computer-to-computer?

13 Do you understand my question?

14 A I understand your question. I do believe
15 that the current process currently resides, if I'm not
16 mistaken, in the EDI implementation guidelines. The
17 unique situation is that the implementation for 20.0
18 moves to a completely different platform. So it's a
19 little bit different than it's been up to that point,
20 which is business as usual.

21 And every release may contain both new
22 implementations and then recertification or changes to
23 something that has already been implemented, and a CLEC
24 would have gone through the new implementation and the
25 controlled production. So something may currently exist

1 and maybe a CLEC hasn't used it before.

2 It may be that Qwest is implementing a whole
3 new product and anybody that was going to use that, so
4 the situation can actually vary depending on the CLEC
5 and what Qwest happens to be implementing in that
6 release and, you know, perhaps what the CLEC has done in
7 the past.

8 Q So when you say "Qwest's current process,"
9 are you sort of incorporating all of those variables
10 that you just talked about?

11 A Yes.

12 Q And with respect to that current process and
13 those variables, at present, is it Qwest that decides
14 whether to require recert -- recert -- excuse me --
15 controlled production for recertification?

16 A Yes. By means of -- of identifying if it's
17 new or recertification --

18 Q Well --

19 A -- they, in a sense, control that. The rule
20 in the current process is that Qwest doesn't currently
21 require a CLEC to do, they do all the other
22 recertification testing, but they don't require the
23 controlled production part of it. And we're just trying
24 to get that in our contract so that -- that doesn't
25 change in the future, because it's costly. It requires

1 a lot of resources to do that.

2 Q And would it be fair to say that in the
3 course of doing that, that Qwest -- excuse me -- in the
4 course of doing controlled production, that Qwest also
5 incurs expense?

6 A Yes.

7 Q And would you agree with me that the
8 systems -- and its Qwest's position, I think -- I think
9 everyone can pretty much agree that it's important --
10 because Qwest's systems are used not only to process
11 Qwest's materials but also to process the orders and the
12 repairs and all the other things that are connected with
13 UNEs and resale for all competitive local change
14 carriers, that it's important that those systems work
15 and that everyone's orders flow through, the repair
16 requests flow through, that there's no glitch.

17 Would you agree with that?

18 A I would agree with that.

19 Q And that's important, to protect the system
20 for everybody's benefit?

21 A Correct.

22 Q If Qwest were to say to Eschelon or were to
23 have in a recertification -- or, excuse me -- in a
24 release that it would require recertification and --
25 excuse me -- controlled production for recertification,

1 and that particular product, for example, was something
2 Eschelon purchased and had already been certified to use
3 a system, okay, under Eschelon's language, Eschelon
4 would say, Oh, no, we don't think so; we -- we've looked
5 at it, we don't think it's really necessary, and so we
6 will not do the controlled production for
7 recertification.

8 Would that be the effect of Eschelon's
9 language?

10 A Well, unless parties agree otherwise. I
11 think that the likelihood that if Qwest presented the
12 need and the support for having to do it, that we would
13 do it.

14 If -- if we -- I -- I don't believe that --
15 that the people that work the systems, that these
16 releases within our respective companies would probably
17 disagree on that because they usually always agree.

18 Q Then why given what you've said about the
19 fact that the IT fellows when they speak to each other
20 understand one another and generally agree, what --
21 what's the purpose of the language that Eschelon is
22 asking for?

23 A To ensure throughout the term of the contract
24 that that remains the same, that that -- that doesn't
25 change and that Qwest just -- you know, would possibly

1 make the decision to do controlled production in every
2 case for reasons we don't support.

3 Q Do you know whether -- just based on your
4 experience in this area, or understanding, do you know
5 whether there have been many or even -- have there been
6 any instances where Eschelon felt that Qwest was
7 overreaching in its determination that there needed to
8 be controlled production in a recertification
9 circumstance?

10 A Not that I'm aware.

11 A.L.J. JENNINGS-FADER: Okay. Thank you.
12 Mr. Devaney, any questions?

13 MR. DEVANEY: No.

14 A.L.J. JENNINGS-FADER: How about Mr. Topp?
15 Questions? Sorry about that.

16 MR. TOPP: No.

17 A.L.J. JENNINGS-FADER: Mr. Merz?

18 MR. MERZ: No, Your Honor.

19 A.L.J. JENNINGS-FADER: Ms. Johnson, thank
20 you very much, and I very much appreciate your written
21 and your oral testimony, and thank you for helping me
22 understand the situation.

23 THE WITNESS: Certainly.

24 A.L.J. JENNINGS-FADER: You're excused.

25 Thank you.

1 MR. MERZ: And, Your Honor, I was wondering
2 if before we present our next and last witness, we could
3 take just a very short break.

4 A.L.J. JENNINGS-FADER: Absolutely.
5 Absolutely. I would say until about 3:00 o'clock,
6 really.

7 (Recess from 2:39 p.m. to 3:00 p.m.)

8 (Exhibits 1 and 2 marked for identification.)

9 A.L.J. JENNINGS-FADER: Mr. Merz, you may
10 call your next witness.

11 MR. MERZ: Eschelon calls Doug Denney.

12 DOUGLAS DENNEY,
13 being first duly sworn in the above cause, was examined
14 and testified as follows:

15 A.L.J. JENNINGS-FADER: Thank you, sir.
16 Please have a seat. And please state your name and
17 spell it for the record.

18 THE WITNESS: My name is Douglas Denney.
19 It's D-e-n-n-e-y.

20 A.L.J. JENNINGS-FADER: Thank you, sir.
21 Mr. Merz.

22 MR. MERZ: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. MERZ:

25 Q Mr. Denney, you have prepared testimony in

1 this case. Is that right?
 2 A Yes.
 3 Q And your direct testimony has been marked as
 4 Hearing Exhibit 25. Is that correct?
 5 A Yes.
 6 Q There are confidential exhibits to your
 7 direct testimony that have been marked as Hearing
 8 Exhibit 25A. Is that correct?
 9 A Yes.
 10 Q Your rebuttal testimony has been marked as
 11 Hearing Exhibit 26. Is that correct?
 12 A Yes.
 13 Q And your surrebuttal testimony has been
 14 marked as Hearing Exhibit 27. Is that right?
 15 A Yes.
 16 Q And your -- the confidential exhibits to your
 17 surrebuttal testimony have been marked as Exhibit 27A.
 18 Is that right?
 19 A Yes.
 20 Q And you are also adopting the testimony of --
 21 the direct testimony of Mr. Webber with regard to
 22 expedites. Is that correct?
 23 A Yes.
 24 Q And that testimony has already been admitted
 25 as Hearing Exhibit 19. Is that correct?

1 A Yes.
 2 Q Now, is the information contained in your
 3 testimony that we've just discussed true and accurate,
 4 to the best of your knowledge and belief?
 5 A Yes.
 6 MR. MERZ: Your Honor, Eschelon offers
 7 Hearing Exhibits 25, 25A, 26, 27, and 27A.
 8 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 9 Exhibit No. 25 and 25A has been offered.
 10 Objection or voir dire?
 11 MR. DEVANEY: No objection.
 12 A.L.J. JENNINGS-FADER: Exhibit 26 has been
 13 offered. Objection or voir dire?
 14 MR. DEVANEY: No objection.
 15 A.L.J. JENNINGS-FADER: Exhibits 27 and 27A
 16 have been offered. Objection or voir dire?
 17 MR. DEVANEY: No objection.
 18 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 19 Those Exhibits 25, 25A, 26, 27 and 27A are admitted.
 20 MR. MERZ: Thank you, Your Honor. Mr. Denney
 21 is available for cross-examination.
 22 A.L.J. JENNINGS-FADER: Thank you, sir.
 23 MR. DEVANEY: May I ask, can we just go over
 24 which exhibit number is which piece of testimony? I'm
 25 sorry.

1 A.L.J. JENNINGS-FADER: Sure. That's no
 2 problem. 25 -- 25 is the direct, 25A the confidential
 3 piece of his direct, 26 is rebuttal, 27 surrebuttal, 27A
 4 the confidential portion of the surrebuttal.
 5 MR. DEVANEY: Thanks very much.
 6 CROSS-EXAMINATION
 7 BY MR. TOPP:
 8 Q Hello, Mr. Denney.
 9 A Good afternoon.
 10 Q I just have a few questions, and Mr. Devaney
 11 will have quite a few more.
 12 If you could turn to Exhibit 27, your
 13 surrebuttal testimony, Page 53.
 14 A.L.J. JENNINGS-FADER: I'm sorry, Counsel.
 15 Again, sir?
 16 MR. TOPP: Exhibit 27, surrebuttal testimony,
 17 Page 53.
 18 A.L.J. JENNINGS-FADER: 53?
 19 MR. TOPP: Yes.
 20 THE WITNESS: Mine only goes up to 25.
 21 MR. MERZ: Your surrebuttal testimony has
 22 been marked as Exhibit -- you're referring to the
 23 surrebuttal testimony, correct?
 24 THE WITNESS: Yes. I'm sorry.
 25 A.L.J. JENNINGS-FADER: I'm sorry, but you

1 wanted Exhibit 27?
 2 MR. TOPP: That's what I have written.
 3 MR. MERZ: Hearing Exhibit 27.
 4 A.L.J. JENNINGS-FADER: Oh, because he also
 5 has Exhibit 27.
 6 MR. TOPP: I apologize.
 7 THE WITNESS: My confusion.
 8 A.L.J. JENNINGS-FADER: Thank you. I'm glad
 9 to know. Thank you. So Page 27 of the testimony -- 53
 10 of the testimony?
 11 MR. TOPP: Yes.
 12 A.L.J. JENNINGS-FADER: Okay. Thank you.
 13 Sorry.
 14 Q (By Mr. Topp) At the -- at the question --
 15 at the top of that, you have a question about whether
 16 this -- Eschelon's proposal provides protection for
 17 Qwest in the event of concern about Eschelon's future
 18 ability to pay, and in your answer, you started out by
 19 saying "No. Eschelon's proposal provides for the same
 20 protections as Qwest's proposal, the difference being
 21 that Eschelon's proposal is designed to ensure that
 22 these remedies are invoked with Commission approval."
 23 Do you see where I'm referring?
 24 A Yes.
 25 Q Would you agree with me that the step of

1 obtaining Commission approval before asking for a
2 deposit, before stopping order processing or before
3 discontinuance in Colorado would be a process change
4 from what takes place today?

5 A I'm -- I do not know that to be the case.

6 There -- I believe -- and it's been a little
7 while since I've looked at Eschelon's current contract
8 with Qwest, which is what we operate under here today.
9 I don't believe there's direct references in that
10 contract to deposits at all. So the fact -- I mean,
11 implementing a deposit, I guess, would be a change to
12 that process.

13 The time frames that are set up in that
14 current contract with respect to disconnecting orders
15 are -- I believe are actually longer than the time
16 frames that may be set out here. And I don't have that
17 contract -- didn't bring that contract here with me. So
18 any -- I mean, any language at all here is different
19 than what is in Eschelon's current contract, which is
20 the current process that Eschelon -- Eschelon operates
21 under with Qwest with respect to payment and deposits.

22 Q But you would agree with me, would you not,
23 that under current process, there is not a requirement
24 for obtaining Commission approval before taking one of
25 these steps?

1 A I would have to review for -- I would have to
2 review the contract to determine whether that is -- that
3 is the case. The language in the current contract is
4 fairly vague. There's nowhere near the detail that is
5 set out here in the contract set here.

6 So whether -- whether Qwest could
7 unilaterally invoke those provisions without first going
8 to the Commission, I would have to review our current
9 contract to determine whether that's the case. But the
10 language that's set forth here is much expansive (sic)
11 in terms of -- you know, in terms of what is in our
12 current contract. And that's why I answered that it
13 does offer Qwest the protections they are seeking,
14 because it's a significant change from the process that
15 is currently in our current interconnection agreement
16 with Qwest.

17 Q Would you agree with me that obtaining
18 Commission approval before taking any of these steps
19 involves delay in completing that step?

20 A I would agree that's a possibility.

21 Q Isn't it a likelihood that it's going to
22 delay Qwest's ability to take one of those steps if they
23 have to get Commission approval first?

24 A I mean, you need to look at the language
25 proposals that we have, and we have some alternatives on

1 that. One of them says you know, if parties -- if
2 parties disagree, then the Commission -- so if there's
3 standards that are set out in terms of how -- you know,
4 how these provisions need to be met, if -- if the
5 standards are clear and there isn't a disagreement, then
6 Commission approval's not going to be -- isn't really
7 going to be the issue.

8 The Commission approval protection there is
9 for the cases where there is a disagreement regarding
10 interpretation of whether Eschelon has paid its -- paid
11 its bills in a timely manner or followed the other
12 provisions in the contract, so ...

13 Q In the situation where Eschelon is in
14 financial trouble and is having difficulty paying its
15 bills, wouldn't you expect Eschelon to take any
16 procedural steps it might be able to to try and keep
17 going forward as a going concern?

18 A I would -- yeah. I would expect Eschelon to
19 take prudent business precautions to stay in business.
20 And, yeah, I would agree -- I would agree with that
21 concept. I mean, any -- any prudent business would do
22 that.

23 That doesn't mean that Eschelon's going to
24 violate its contract, which has provisions that are
25 spelled out in terms of when -- you know, when

1 payment -- I mean, when deposits are required and when
2 Qwest can disconnect orders (sic) and when Qwest can
3 discontinue order processing.

4 So I don't agree that we would violate our
5 contract under those scenarios, but I mean, I agree if
6 we -- you know, if we felt it legitimate to come to the
7 Commission and we had an argument to make on why these
8 would not be appropriate and we had the appropriate --
9 the -- you know, we thought we had the evidence to show
10 that we were within -- you know, within our contract
11 right, then I would fully expect Eschelon to do that.

12 Q You've testified that Eschelon pays 50 --
13 about 55.9 million per year to Qwest.

14 A Yes. And I think I did that number -- it was
15 a little while ago, so I suspect -- it was last year,
16 maybe, when I collected that. So I haven't checked with
17 the current -- current number for Qwest for region-wide
18 is.

19 For Colorado, I believe it was -- it's a --
20 \$7.3 million is the current annual number for what we
21 pay Qwest. And I believe that includes -- that
22 includes -- because the contract is involved in the 2-51
23 items that we purchased, so that 7.3 million includes
24 other items, such as, you know, the QPP, other types
25 of -- other types of charges that we would pay to Qwest,

1 just to be clear what that number represents.
 2 MR. TOPP: No more questions from me.
 3 FURTHER CROSS-EXAMINATION
 4 BY MR. DEVANEY:
 5 Q Good afternoon, Mr. Denney.
 6 A Good afternoon.
 7 Q I have three or four issues to go through
 8 with you and would like to begin with Issue 4-5, design
 9 changes.
 10 A Okay.
 11 Q Part of the dispute, of course, with design
 12 changes concerns the rates that will apply to design
 13 changes. Are you familiar with that?
 14 A That's correct.
 15 Q And as I understand it, the design-change
 16 charge is a onetime, non-recurring charge as opposed to
 17 a recurring charge.
 18 Would you agree with that?
 19 A That's -- that's correct.
 20 Q And Eschelon's position in this case is that
 21 design-change charge ought to be TELRIC based, correct?
 22 A Yes.
 23 MR. DEVANEY: For the record, TELRIC is total
 24 element long-run incremental cost.
 25 Q (By Mr. Devaney) And we had this discussion

1 in Arizona a few weeks ago, but just to review the
 2 methodology for establishing recurring charges, would
 3 you agree with me that to develop the costs and the
 4 prices for non-recurring activity, it's logical to begin
 5 by asking what activities Qwest has to perform to carry
 6 out or perform something?
 7 A In the context -- we're talking total
 8 element, which basically refers to the total -- total
 9 demand. Long-run refers to kind of a time period where
 10 all inputs are, you know, variable. And incremental
 11 cost is really an economic-cost concept when we're
 12 talking about efficient providers, you know, carriers
 13 acting in an efficient manner. So within that context,
 14 that is -- then you would do the activities that you
 15 say.
 16 Q Agreed. No dispute. Within the TELRIC
 17 concept of using currently available forward-looking
 18 technologies, assuming efficient practices, that within
 19 that construct for developing non-recurring costs and
 20 charges, one should begin by asking, okay, what
 21 activities have to be performed.
 22 Would you agree with that?
 23 A I -- I would agree with that generally, but
 24 just the caveat is, I mean, you need to ask, are these
 25 rates being recovered somewhere else? You know, have

1 we -- and the reason I put that out there is because
 2 sometimes for some things, we don't set up specific
 3 tasks like a lot of maintenance on a loop. We don't set
 4 out these separate specific rates and try to identify
 5 activities.
 6 Q You're moving to the exception. I don't
 7 think this is very controversial.
 8 A I just want to make sure I get all my caveats
 9 in there when I agree with you, Mr. Devaney.
 10 Q I didn't hear that last line.
 11 A I said I want to get all my caveats in when
 12 you get me to agree with you, make sure we're clear what
 13 we're agreeing to here.
 14 Q Maybe I should just ask you, do you want to
 15 throw in all your caveats now?
 16 A I assume you'll be cross-examining me in the
 17 cause case, so ...
 18 Q Well, again, to develop a non-recurring cost
 19 and price, you do have to analyze what activities go
 20 into the particular activity in question, correct?
 21 A Yes.
 22 Q And you also need to estimate times that are
 23 required, how long it takes to perform the activity. Is
 24 that correct?
 25 A Yes. That's generally correct.

1 Q And generally, you apply a labor rate to the
 2 time needed for the activity. Is that correct?
 3 A That's correct.
 4 Q And as we said before, you do that within the
 5 TELRIC construct, correct?
 6 A Correct.
 7 Q And would you agree that when a Commission
 8 adopts a non-recurring charge, that it ought to be
 9 supported by a cost study or some verifiable cost data
 10 underlying the charge?
 11 A I mean, I think that's especially -- I mean,
 12 especially true, yes, for when the Commission is
 13 establishing permanent rates, that is -- I mean, that is
 14 the case. I do -- I mean, that's clearly not going to
 15 be the case on certain interim rates as Qwest hasn't
 16 provided Eschelon cost studies for certain interim
 17 rates. So to say we're going to establish some rate
 18 there, there's no cost study at all to do that by.
 19 Q You're sort of jumping to the caveat.
 20 A Yeah. I need those.
 21 Q As a general proposition, would you agree
 22 that rates adopted by this Commission -- and let's focus
 23 on permanent rates.
 24 A Okay. Permanent rates. I agree.
 25 Q Permanent rates adopted by this Commission

1 ought to be supported by cost studies that are open and
2 verifiable?

3 A Yes. I agree with that.

4 Q And interim rates, do you think the standard
5 is different, that a commission can adopt an interim
6 rate that is not supported by a cost study?

7 A I think the commissions have more -- more
8 leeways in setting interim rates. There are clearly
9 interim rates in Qwest -- you mentioned that Qwest had a
10 hundred contracts out there that are interim rates, and
11 probably a majority of those contracts which the
12 Commission has never reviewed but they've approved those
13 rates. So I think there is more leeway in terms of
14 interim rates in terms of the standard.

15 I think -- I mean, the standard still
16 applies. I believe the TELRIC standard is still there.
17 But you have a little more flexibility because I believe
18 the general understanding with interim rates is that at
19 some point, we are going to set permanent rates to
20 replace those.

21 Q Would you agree, though, that interim rates
22 ought to attempt to comply with TELRIC?

23 A Yes.

24 Q And ought to therefore reflect the costs of
25 performing non-recurring activities to the best extent

1 the \$30 loop-design change charge that you've proposed
2 is not supported by any cost study presented in this
3 case. Is that correct?

4 A Well, I don't know that I would go that -- I
5 mean, there isn't a specific cost study that produces
6 those rates. I agree with that. But I don't agree that
7 it's not supported. I have a lot of testimony on
8 where -- kind of how we came to those rates and we
9 prepared -- like the \$30 rate compared to the loop
10 installation rate. But -- so while there's not an Excel
11 file that produces those rates, I'm not sure -- I think
12 those rates are -- do incorporate the TELRIC principles.
13 They've been described in term of how they're -- how
14 they're developed, and they are appropriate interim
15 rates.

16 Q Let's focus on the \$5 CFA charge. We just
17 talked about how one ought to develop non-recurring
18 charges.

19 What activities did you assume Qwest would
20 perform in developing the \$5 CFA charge?

21 A Well, there's going to be some -- there's
22 going to be some technician time to do the -- kind of do
23 the lift and lay -- I mean not lift and lay, but the --
24 changing that connection facility assignment and then
25 some additional time. And then there's going to be the

1 possible?

2 A Yes.

3 Q And I know from your prior answer, you know
4 where I'm headed, and that is, in this case, Eschelon
5 has proposed for design change two rates. One is a \$30
6 rate for unbundled loop design change and one is a \$5
7 rate for CFAs, or connection facility assignments.

8 Is that correct? And actually, a third rate,
9 which is the Commission ordered \$73, I believe it is,
10 for UDIT.

11 A For UDIT design changes.

12 Q Right.

13 A So there's a Commission ordered rate for the
14 UDIT design changes. There are interim rate proposals
15 which is really, I mean, a compromise position on
16 Eschelon's part because we believe that the Commission
17 has not ordered rates for those rate elements, so we are
18 agreeing to a set of interim rates where we actually
19 think -- I mean, the Commission would be within its
20 right to say those rates are zero until Qwest comes
21 before the Commission and has a rate approved.

22 Q And Mr. Denney, I am going to ask you to
23 listen to my question and just respond to the question
24 I've asked, if you could.

25 The \$5 CFA charge that you've proposed and

1 record update. And that's -- that's talking to
2 Eschelon's engineers or -- I'm not sure that's the right
3 title, but the people who are involved in those types of
4 things on Eschelon's side. I mean they -- the times
5 involved in that are very short -- that's my
6 testimony -- maybe five minutes. And so we thought \$5
7 is an appropriate interim charge for that.

8 Q What labor rate did you use?

9 A If it's five minutes, \$5, that would be \$60
10 an hour, which is quite a bit higher than the Qwest
11 rate, but I didn't specifically use a labor rate for
12 that.

13 Q You didn't use a labor rate. Is there
14 anywhere we can find in your testimony how much time you
15 assumed for a task to be performed?

16 A I think the testimony is clear that we think
17 this task shouldn't take more than five minutes.

18 Q And so all CFA change activities, including
19 back system operation processes, any technician time, is
20 there something set forth in your testimony anywhere
21 that says these are the specific activities that have to
22 be performed, these are the times that are required to
23 perform them, and these are the labor rates that should
24 be applied? Can you point me to anywhere in your
25 testimony where that's set forth?

1 A There is a discussion of the activities that
2 need to be performed that is in the testimony. There is
3 not -- as I've said, there's not a specific labor rate.
4 There's not an Excel file that does that calculation.
5 That's -- I mean, that's not the case for this rate.
6 That's not the case for any rate that Qwest is proposing
7 with regard to this.

8 Q Is there anything other than just your
9 testimony; in other words, there's no cost data? It's
10 really a narrative and your testimony that supports this
11 rate. It's not really cost data. It's not really a
12 calculation, is it?

13 A Well, it's a calculation. It's not a -- it's
14 not -- it's not a -- an Excel sheet calculation if
15 that's what you mean by "cost data." There is a
16 description of how we came up with that interim rate,
17 but there's not a cost calculation.

18 Q And it's a description that's in your
19 narrative testimony. It's not -- it's not supported by
20 backup data that's an exhibit to your testimony. Is
21 that correct?

22 A That's correct. It's in my testimony.

23 Q And I don't want to go through the same thing
24 with the unbundled loop \$30 charge, but would your
25 answers be the same for that?

1 A I took a different approach to getting that
2 \$30 charge so, I mean, the details that are behind
3 coming up with that \$30 charge are different.

4 Q Well, let me ask it this way: Again, you
5 didn't submit a cost study for the \$30 charge. Is that
6 correct?

7 A That's correct.

8 Q And there are no cost data attached to your
9 testimony that were used to develop that charge. Is
10 that correct?

11 A There's no cost data attached to my
12 testimony. There's discussion in my testimony that
13 supports the \$30 charge.

14 Q And that's what you would rely on, is the
15 discussion in your testimony, not anything else. Is
16 that correct?

17 A That's correct.

18 Q And did you make any assumptions in coming up
19 with these charges about what technologies would be
20 used, any specific assumptions about -- currently
21 available for working technologies that would use
22 specific assumptions?

23 A For CFA changes, I mean, it's pretty -- it's
24 pretty simple, of taking a wire and kind of plugging it
25 from one spot to another spot, so I didn't --

1 Q But it also involves operation support
2 systems, doesn't it, for CFA changes?

3 A To update the record?

4 Q Right.

5 A Yes.

6 Q And so what did you assume, if anything,
7 about what OSS system would be used?

8 A I assumed there would be some time to do
9 that. I didn't make an explicit assumption on what OSS
10 system.

11 Q And you've described the rates of \$5 and \$30
12 that Eschelon's proposing as interim?

13 A That's correct.

14 Q And by that, do you mean that those rates
15 would remain in effect until some future date when this
16 Commission might set new design-change rates and then
17 the interim rates would no longer be in effect? Is that
18 what you have in mind?

19 A That's the way the interim process works,
20 correct, or parties could negotiate a separate rate.
21 We've been trying to get Qwest to negotiate rates for
22 these, but so far they've been unwilling to do that.
23 That's another possibility.

24 Q And Mr. Denney, the -- under your use of the
25 term "interim," when -- if this Commission were to

1 establish a rate in the future for design change,
2 different from the one that's already established, would
3 you -- is it your understanding that that rate would be
4 applied retroactively and there would be a true-up from
5 the \$5 and \$30 rates that you're proposing in this case?

6 A I mean, it's our -- it's our position that
7 parties reserve the right to ask the Commission for
8 true-ups for interim rates. That's proposed language
9 that Qwest has objected to in our -- in our Section --
10 you know, Section 22-6. So I think Qwest could ask the
11 Commission for that at the time we have that cost case.

12 Q I'm asking you what Eschelon's proposal is
13 today as you sit here.

14 Are you proposing that your \$5 and \$30 rates
15 would be subject to true-up at some later point in time?

16 A My proposal today, I think, is clear, that
17 our belief is that Qwest has the right to ask the
18 Commission for a true-up of interim rates.

19 Q That's not my question. My question is
20 specifically, as you sit here today, is Eschelon taking
21 the position that these rates of \$5 and \$30 will be
22 true-up if the Commission establishes another rate in
23 the future? Can you answer that question?

24 A No, I can't. Eschelon does not take a
25 position on that issue.

1 Q Okay. Now, if Eschelon takes the position
2 that there is no true-up, aren't these rates permanent
3 until the Commission sets a different rate?
4 A But we didn't take the position there is
5 no ...
6 Q You've taken no position, though?
7 A We've taken -- we've taken no position as to
8 whether or not the Commission will rule in the future
9 whether these rates are subject to true-up. We've taken
10 the position that any party can petition the Commission
11 to have rates be subject to true-up. The Commission
12 will make that determination.
13 Q Okay.
14 A It's not our position that these rates cannot
15 be subject to true-up or that Qwest cannot ask the
16 Commission to have those be subject to true-up.
17 Q But it's also not your position that the
18 rates should be trued up. Is that correct?
19 A I'm not saying the rates should not be trued
20 up. I'm saying that -- I don't know if that's not
21 clear, but the process that works is when you go to the
22 Commission, you say here's the set of interim rates,
23 these have been in place, we'd like to have these --
24 these should be subject to true-up or not. And parties
25 can make that argument.

1 I'm not arguing today that Qwest cannot ask
2 that. I'm not even saying that Eschelon will disagree
3 with that today. We haven't made -- done that analysis
4 or decision. There's nothing in this proposal that
5 would prohibit that.
6 Q Well, let me ask a hypothetical, then. Let's --
7 say that Eschelon takes the position that these rates
8 aren't subject to true-up.
9 Isn't it true that these rates would in fact
10 be permanent for the period from their adoption until
11 the Commission adopted new rates?
12 A I -- no, I don't -- I don't agree with that.
13 In practice, that may be the application of that, but
14 there are definitions and explanations of what are
15 interim and what are permanent rates, and the fact that
16 whether a party asks for a true-up or not does not
17 change the status of whether a rate was an interim rate
18 or a permanent rate.
19 So I guess I disagree with the way we've been
20 using those terms, but I agree, if nobody asks, if the
21 rate is not changed, then what you pay is what you pay,
22 if that's what you're asking. That would be the case
23 under that scenario.
24 Q That is exactly what I'm asking. And just to
25 be clear, Eschelon's not willing today to say that these

1 rates are subject to true-up. Is that correct?
2 A I haven't -- I haven't considered that, that
3 possibility. There's a whole lot of interim rates in
4 this contract, and we haven't --
5 Q I'm asking you just about design changes.
6 A I'm not -- I don't have a position on that
7 today. Qwest has never asked us that question before.
8 Q Have you ever performed a CFA change?
9 A No, I haven't.
10 Q Have you ever observed one being performed?
11 A I have had a -- I have not observed one being
12 performed. I've had a technician walk me through the
13 processes that were -- that would be done in one of
14 Qwest's central offices, but they were not being
15 performed at the time that he walked me through that.
16 Q And have you ever observed a loop or
17 transport design change being performed?
18 A No, I haven't.
19 Q I'm referring to your rebuttal testimony now,
20 which is Exhibit 26. I think I've made a mistake.
21 Well, actually, we don't need to refer to
22 your testimony. You can -- if you'd like to, of course,
23 you can. It's probably Page 29 and 30 of your
24 surrebuttal, but the question I'm asking is this: You
25 talk in your testimony about your view that the FCC

1 requirement for parties to file cost studies in support
2 of rates applies only to the ILECs and not the CLECs.
3 That's what I want to ask you about.
4 Do you recall that testimony?
5 A I think it's the obligation to provide the --
6 that cost support is incumbent upon the ILEC.
7 Q Is it your view that commissions are free to
8 adopt either interim or permanent rates proposed by
9 CLECs that aren't supported by cost studies?
10 A I'd like to take the two questions
11 separately.
12 I mean, for permanent rates, I'm thinking of
13 what -- I believe there's times commissions have done --
14 have set rates without -- you know, without cost
15 studies, study support. They may have -- they may have
16 averaged rates from different places. They may have --
17 I mean, generally for permanent rates, there's cost
18 study support backing up those permanent rates.
19 For interim rates, I think the -- it's a
20 little more wide, you know, a little greater ability of
21 the Commission to determine appropriate interim rates.
22 They've taken a variety of tasks. Commissions often
23 have not looked at interim rates. Like many of Qwest's
24 interim rates are just out there, take-it-or-leave-it
25 proposals.

1 Q Please limit, if you could --

2 A I'm telling you how Commissions have set
3 interim rates, and I thought that's what you asked,
4 whether there's cost study support or not, and I'm
5 saying sometimes there's not, and sometimes there's
6 specific cost study support for that.

7 Q Let me ask you this. There's, as you alluded
8 to, a new phase in the cost docket, Phase 3, I believe,
9 in Colorado, two coming up in the near future.

10 And is it your position that in that cost
11 proceeding, that Qwest must file cost studies in support
12 of its rates, but CLECs can propose rates without
13 support of cost studies because the FCC doesn't require
14 that?

15 Is that your position?

16 A It's my position CLECs are not required to
17 file cost studies in a -- in a cost docket. Yeah.
18 That's -- but is that what you asked me? Are CLECs
19 required to?

20 Q If a CLEC proposes a rate, must it be
21 supported by a cost study? That's my question.

22 A I don't think there -- I don't think there
23 necessarily has to be an explicit cost study for a rate.
24 I can imagine a scenario where a CLEC says, Let's look
25 at these rates that have been established in, you know,

1 jurisdictions across the country. And that may be their
2 support for, Here's a reasonable rate that's been -- you
3 know, that's been determined, and that may be the CLEC
4 proposal for that -- for that rate.

5 I don't know that that CLEC has to have a
6 specific cost study. I think typically what happens in
7 these cases is that the CLECs looks -- reviews the
8 studies that are available in the case and makes --
9 looks at that study to see if it can be supported and
10 comes up with a proposal.

11 I think the CLEC needs to justify its cost
12 support. It needs to be able to justify the rates that
13 it's proposing.

14 Q Through cost data of some kind?

15 A I would agree with cost data of some kind,
16 yes.

17 Q If you could please look at Page 25 of your
18 surrebuttal testimony, Lines 6 and 7, and that's
19 Exhibit 27.

20 You state there, "As I explained, cost and
21 maintenance factors were applied to Qwest's existing
22 recurring rates to recover costs related to network
23 operations, doing repairs, maintaining the network and
24 moving circuits."

25 Do you see that?

1 A Yes, I do.

2 Q I have a couple of questions for you about
3 that. My first question is in the context of CFAs.

4 Is it your testimony that when the Colorado
5 Commission set rates for unbundled network elements,
6 that CFA design-change costs were included in the
7 recurring rates for unbundled network elements?

8 A I mean, I believe that they -- I believe that
9 they were, and this is --

10 Q And just it's a yes or no question.

11 A Yes.

12 Q And is it your -- CFA changes result from a
13 CFA that's defective in one way or another. Is that
14 right?

15 A That's not always the case. Sometimes there
16 are CFA changes due to Qwest-caused activities.

17 Q Is it your testimony that in Colorado, a cost
18 proceeding back in 2001, that the factors used to
19 develop recurring rates assumed that CLECs would submit
20 defective CFAs?

21 A First, the word "CFA" I don't believe
22 appeared in the record anywhere in that Colorado case.
23 But what the cost -- what it assumes is that when we set
24 rates, when we set recurring rates, activities that
25 occur that are occurring -- when we set the cost

1 studies, activities that are occurring at that time
2 period when we set those studies, they're either
3 explicitly recovered through rates or they're implicitly
4 recovered through the factors that apply to the rates.

5 So to the effect that a CLEC has a defective
6 CFA at that time period, that that was part of the
7 course of business during that time period which it
8 would be -- I don't think anything's changed with
9 that -- that is the case -- that is the case that those
10 would necessarily have to be in the recurring -- in the
11 recurring rates.

12 Q For example, there's nothing in the HAI model
13 that was used in 2001 that talks about CFA or the costs
14 associated with defective CFAs. Is that correct?

15 A There are factors --

16 Q Can you answer that question?

17 A I need to clarify what's in there. There's
18 no term CFA in the HAI model. There are factors that
19 cover normal activities that -- that are occurring
20 during the course of business at the time costs were
21 set. And if these costs were recovered somewhere else,
22 then they were removed out of those factors from the HAI
23 model and explicit charges were established.

24 Q In this case, this arbitration, have you
25 presented anything in terms of cost data, including, for

1 example, the HAI model that was presented back in the
2 2001 cost proceeding to show what costs were included,
3 what expenses were included in factors?

4 A No. I did not put the HAI model in the
5 record here in this case.

6 Q Could you -- this is just a general question.
7 The \$5 CFA charge you're proposing -- I'm just asking
8 for clarification -- when would that charge apply, under
9 what circumstance, is my only question.

10 A All right. I mean, there's -- there is some
11 language that -- you know, that does clarify that, so
12 let me turn there, but ...

13 Q Would that be Section 9.2.3.9?

14 A Yes, yes. That is correct.

15 Q All I'm looking for is your narrative
16 description so I can understand. When would that \$5
17 charge apply?

18 A Right. And it's actually pretty limited in
19 circumstance, because it's for a -- it's for two-,
20 four-wire loop and it's for cut-overs during -- let me
21 make sure I say it right, but it's coordinated
22 cut-overs, and coordinated -- the coordinated
23 installation, to use the terms in the contract.

24 So there's many types of installation options
25 that you can order with the loops. This one

1 specifically, this would apply specifically to the case
2 where there's two-wire, four-wire loop during the
3 coordinated installation option.

4 Q And this charge, the \$5 charge didn't apply,
5 and it was a loop, then the \$30 charge would apply under
6 your proposal?

7 A That's correct.

8 Q Okay. And if it's transport, of course, the
9 \$73 Commission-ordered charge would apply under your
10 proposal, correct?

11 A That's correct.

12 Q And of course, there's a dispute that's
13 played out in your testimony and Ms. Million's testimony
14 about whether that \$73 charge includes transport only,
15 as you say, or transport, loops and CFAs, as Ms. Million
16 says, correct?

17 A That is a dispute, that is correct.

18 Q Changing the subject to Issue 9-53, which is
19 called UCCRE, U-C-C-R-E, all caps.

20 Am I correct that Eschelon has never ordered
21 UCCRE from Qwest?

22 A That is my understanding.

23 Q And are you aware of any CLEC that has ever
24 ordered UCCRE from Qwest?

25 A There's Qwest testimony that that has not

1 occurred.

2 Q In connection with your -- Eschelon's
3 proposals relating to UCCRE, your proposed Section
4 1.7.3, which I believe is set forth in your rebuttal
5 testimony at Page 73, and that's Exhibit 26.

6 A Yes.

7 Q Your Proposal No. 2 has what I'm referring to
8 as product phase-out approval process.

9 And my question for you is this: If the FCC
10 removes a network element, a product or a service from
11 Section 2-51 of the act, would Qwest still have to go
12 through, under your proposal, this product phase-out
13 process?

14 A There are -- there are a few different
15 options of phase-out processes that we've -- that we've
16 laid out here, so you're just referring to the second
17 phase-out, the second proposal, because there are -- I
18 believe there are three different ways we tried to
19 get -- to get at this.

20 Q For now, let's focus on the second proposal.

21 A So the second proposal has the -- has the
22 provision that, you know, if there's -- if there's
23 agreement, you know, for the CLECs in Colorado specific
24 to a case where the FCC had order the removal, I mean,
25 then you do not have to go through that process. I

1 mean, you could remove it from the -- from the contract.
2 It's not the case -- I believe that's not the -- that is
3 different from the Proposals 3 and 4.

4 Q Okay. I guess my question in general, then,
5 is, and this would apply to all of your proposals for
6 this particular issue, if the FCC removes something from
7 Section 2-51, as it did in the TRO and the TRRO, and if
8 the FCC doesn't specify a phase-out process in its
9 order, is it Eschelon's position that Qwest would have
10 to get approval from this Commission to stop offering
11 the product?

12 A Let me try to answer. There's not a simple
13 yes or no answer because there are differences in the
14 different proposals.

15 So Proposal 2 came from the Department of
16 Commerce in Minnesota. And that -- that phase-out
17 proposal would require -- I mean, requires Qwest to go
18 through that phase-out proposal with the exception that
19 I just mentioned whether it was from an FCC order or
20 not.

21 Q Okay.

22 A Proposals 3 and 4 from Eschelon, which are --
23 which are, in my -- in my direct testimony, I believe,
24 both of -- of those proposals have exceptions for cases
25 where the FCC removed -- had removed something. And

1 that's in my direct testimony, which is Exhibit 25.
 2 These are on -- sorry -- on Page -- they're
 3 covered -- they're covered starting about Page one
 4 hundred -- 127. It's -- Proposal 3 is actually listed
 5 on Page 129.

6 Q And so it's your understanding that under
 7 Proposals 3 and 4, that if the FCC removes something
 8 from 2-51, Qwest would not have to seek FCC -- I'm
 9 sorry -- this Commission's approval to stop offering the
 10 product, whereas with Option 2, unless the -- if the FCC
 11 doesn't express a phase-out process, then Qwest would
 12 have to come to this Commission to obtain approval. Is
 13 that right?

14 A Let me just -- I know you don't like the
 15 caveats, but let me throw one in on that.

16 I -- I do believe that Qwest needs to amend
 17 Eschelon's contract in any case before it can -- before
 18 it can stop offering a product. Even if the FCC issues
 19 an order, then there are processes in which parties
 20 would negotiate changes to their contract.

21 Under Proposals 3 and 4, if it's an FCC
 22 order, then that -- those changes would follow through
 23 under the contract provision, change-of-law contract
 24 provisions.

25 Q Are you aware of the fact -- I'm glad you

1 the parties shall enter into an amendment to that effect
 2 within 30 days of the order?

3 A No. I would -- I agree with the concept that
 4 we should amend -- that the contract would need to be
 5 amended. I don't -- I mean, I don't know the point of
 6 putting that -- putting that specific time reference on
 7 it there only because, I mean, we -- often, contract --
 8 getting specific contract languages isn't always that
 9 simple. Sometimes it takes Qwest 30 days to respond to
 10 an Eschelon contract language.

11 So to say that it would have to be done
 12 within 30 days is problematic. But I agree that the
 13 contract -- we would agree that the contract should be
 14 amended to reflect -- to reflect that. And that's
 15 already in the contract under the change-of-law
 16 provisions.

17 Q But with respect to your phase-out process,
 18 if not 30 days, would Eschelon be willing to agree to
 19 some fixed period of time by which an amendment to the
 20 interconnection agreement implementing the Commission's
 21 order would have to be executed?

22 A I'm reluctant to agree to a fixed period of
 23 time. I'm sure -- I mean, Qwest could make a proposal
 24 and Eschelon would review it. It is certainly our
 25 intent to have our contract amended before Qwest would

1 said that, because I wanted to ask you something about
 2 that. Are you aware of the fact that following the TRO
 3 and the TRRO, that Qwest has had difficulty having CLECs
 4 sign amendments to the contracts to remove elements that
 5 the FCC has removed from 2-51? Are you all familiar
 6 with that?

7 A Am I familiar that Qwest has had difficulty?

8 Q Getting CLECs to negotiate contracts and
 9 amendments to contracts and expeditiously implement TRO
 10 and TRRO.

11 A I am not -- I am not involved in any contract
 12 negotiations other than between Eschelon and Qwest. So
 13 I don't -- I don't know that your story would be
 14 accurate or inaccurate or that CLECs may have a
 15 different point of view, but ...

16 Q The reason I'm asking you the question is,
 17 your Section 1.7.3 under your various proposals has this
 18 product phase-out process, where in some circumstances,
 19 Qwest would have to obtain an order from this Commission
 20 to stop offering the product.

21 And my question for you is, if -- if this
 22 Commission were to adopt that, would Eschelon view -- or
 23 would you view as reasonable a requirement in your
 24 contract language that said if the Commission issues
 25 such an order allowing cessation of offering a product,

1 remove any products from that.

2 Q But you would not agree to any period of time
 3 by which that would take place. Is that correct?

4 A I don't know what that means, when you say
 5 "fixed period of time," or what, then? Qwest
 6 automatically gets the language it's proposing? That's
 7 what -- I'm having problems with the negotiation
 8 process. To say it's going to happen within this
 9 finite, fixed period of time does not -- it hasn't
 10 happened that way and --

11 Q Well, doesn't the act include a time
 12 limitation on negotiations within Section 2-15?

13 A That's correct. The parties have extended --
 14 for these negotiations parties have extended -- one
 15 party -- you know, Qwest may have asked for an extension
 16 on negotiating those.

17 Q But couldn't -- in this case, couldn't the
 18 parties agree to a similar provision that's in the act,
 19 that there will be a fixed time period to conclude
 20 negotiations of amendments to product phase-outs?

21 A I mean, I -- we certainly -- I agree with the
 22 concept, but the contract would need to be amended for
 23 changes of law. There's already provisions in there for
 24 that.

25 If Qwest has specific proposals, I'm --

1 certainly, we could review that and get you a response
2 expeditiously, so -- but setting -- for me to set a
3 specific period of time here, I'm not willing to do
4 that.

5 Q In your various proposals for 1.7.3, am I
6 correct in understanding that your proposals don't spell
7 out any criteria the Commission should apply in deciding
8 whether Qwest should be permitted to stop offering a
9 product?

10 A Any criteria?

11 Q Right.

12 A I think Proposal 3, the beginning, for
13 example, says, if Qwest desires to phase out or
14 otherwise cease offering product on a wholesale basis.
15 So I don't know what -- you want a criteria that says
16 Qwest can only do this "if"?

17 Q No. You're proposing a proceeding before
18 this Commission where this Commission will decide
19 whether a product will be phased out. Is that correct?

20 A That's correct.

21 Q And my question for you is, your language
22 doesn't include anything about what criteria the
23 Commission should apply in determining whether a
24 phase-out should be permitted. Is that right?

25 A There's a lot of language here, so -- so, I

1 mean, to say there's no criteria I don't think is
2 accurate, because there are -- there's language that
3 spells out when this would apply and when this wouldn't
4 apply, when Qwest would do this. But if you're asking a
5 criteria such as if there's evaluating demand or
6 something like that, that's not spelled -- we're not
7 trying to limit Qwest's ability in that respect.

8 Q Let me just ask you, then, if this Commission
9 were to adopt your proposal and hold a proceeding to
10 determine whether a product phase-out was permissible,
11 under your language, what criteria would the Commission
12 apply?

13 A Well, I would expect the Commission would
14 take -- would take comments. It may -- CLECs would say,
15 We have no interest in that product, and that would
16 be -- that would be their basis for that. They may --
17 CLECs may say, That is something that we're not ordering
18 today but is valuable to us to have that option, and
19 that would be what the Commission would evaluate.

20 Q And I guess my point is, that criteria you
21 just articulated is not in your contract proposal. Is
22 that right?

23 A Right. It -- the contract proposal does not
24 dictate what the Commission should evaluate in making
25 that determination.

1 Q Okay. I'm going back up. There's this one
2 question I wanted to ask you about moving, adding,
3 changing as part of Issue 9-31. I'll be here just
4 briefly.

5 You testified earlier that you think that
6 recurring cost factors include moves, adds and changes,
7 I think.

8 A I mean, I -- I somewhat disagree with -- they
9 do -- they do include some of those. I never meant to
10 say that they are exclusive. I think you heard
11 testimony of Mr. Starkey saying like design changes is
12 included in that list. There are explicit rates set out
13 for that. So I mean, it's true that some of these
14 activities are included in the recurring cost factors.
15 Some of them are covered in non-recurring cost
16 factors -- or not -- non-recurring costs. Sorry.

17 Q One hypothetical I wanted to ask you in that
18 context is, if Eschelon came to Qwest and said, We have
19 a loop that goes to a customer on Elm Street and the
20 customer's moving two blocks over to Maple Street, is
21 Qwest required to move that over to the new location
22 without being able to charge something other than the
23 recurring rate?

24 A In that scenario you described, I mean, the
25 move in that case would be a -- you know, new install of

1 a loop at a different location. Qwest -- there are
2 rates set out for that, for installation of the loop.
3 So I believe that would apply -- that would apply under
4 that scenario.

5 Q So that's not encompassed by any recurring
6 rate. Is that correct?

7 A There's an explicit non-recurring charge in
8 the contract spelled out for that activity.

9 Q And is it fair to say based on that response
10 that if there's a non-recurring charge spelled out in
11 this Commission's orders, that that establishes that the
12 activity is not encompassed in the recurring rate?

13 A Right. That's -- yeah. That's the way the
14 non-recurring works. It's either -- there's either
15 explicit non-recurring charges for items or there are
16 implicit charges in the recurring -- recurring rates,
17 except the whole new-product issue, which is a
18 different -- a different scenario.

19 Q I'd like to ask you now a few questions about
20 commingled arrangements, which is Issue No. 9-58, and
21 I'm referring to your surrebuttal testimony at Page 95.
22 And that's Exhibit 27.

23 A.L.J. JENNINGS-FADER: The page reference
24 again, please?

25 MR. DEVANEY: It's Page 95.

1 A.L.J. JENNINGS-FADER: Thank you.
 2 Q (By Mr. Devaney) Lines 18 through 20, you
 3 say there, "Eschelon's proposal does not seek to alter
 4 the terms and conditions of the non-UNE component of the
 5 commingled EEL."

6 Do you see that?

7 A Yes.

8 Q Would you agree with me that today unbundled
 9 loops are ordered through Qwest by the use of so-called
 10 LSR, local service requests?

11 A Yes.

12 Q And that access services are ordered through
 13 ASR, access service requests?

14 A That's correct, for the most part. There are
 15 some -- for loops, that's the case.

16 Q And am I correct in understanding that under
 17 Eschelon's proposal, if any component of your proposed
 18 loop/transport combination isn't UNE, that Eschelon
 19 would use the remarks section of the LSR to order
 20 special access service?

21 A Well, I mean, the testimony clarifies that.
 22 I mean, we're not wedded to the LSR or the ASR in that
 23 respect.

24 We would want to use a single -- a single
 25 order, is the key. And I think that's spelled out in --

1 I believe that's in my rebuttal testimony that that's
 2 spelled out. So it's not -- the LSR isn't the issue
 3 here. It's the single -- the ability to place a single
 4 order.

5 Q So the change that would be required is
 6 either the loop would have to be the -- Qwest would have
 7 to change its process to permit the loop to be ordered
 8 through ASR, or alternatively, to permit access to the
 9 order through an LSR. Isn't that right?

10 A The only thing I'm having a struggle with is
 11 the change of process, because, I mean, to me, these are
 12 new -- these are completely new items. So I don't
 13 believe there's a current process for -- for those. But
 14 I agree with you with respect to what you said before.
 15 Loops are ordered on an LSR for unbundled loops, channel
 16 terminations, what's used for loops, and access is
 17 ordered on an ASR. And we are requesting a single order
 18 for that, so one of the two would need to change to be
 19 able to do that.

20 Q And have you studied what would be required
 21 to -- for Qwest to make that change technically, what it
 22 would have to do?

23 A I mean -- I mean, unbundled EELs are ordered
 24 on a single -- on a single LSR, I believe, today. Qwest
 25 has that ability to do that.

1 Q Right and -- go ahead.

2 A We've gone -- I know we've gone through this,
 3 but -- so I don't believe -- we view this as a
 4 billing -- as a billing change, and we do not -- we do
 5 not believe there are, you know, extensive activities
 6 Qwest would need to undertake to be able to do that.
 7 They process EELs that way today and commingled EELs.
 8 It's the same facilities, with a different term attached
 9 to one of the components.

10 Q And we've had this discussion before, but
 11 EELs are two UNEs, by definition, correct?

12 A That's correct.

13 Q Commingled EEL, by contrast, is a UNE
 14 combined with a non-UNE, usually a special access
 15 service, correct?

16 A Correct.

17 Q Qwest has different billing provisioning and
 18 ordering processes for UNEs, on the one hand, and access
 19 services on the other, correct?

20 A That is -- that is correct, and --

21 Q And I think before you said that Qwest would
 22 have to implement some new process if it were to move to
 23 just one order for this commingled EEL. Is that
 24 correct?

25 A Under that proposal, that's -- that's

1 correct. Eschelon does have alternative proposals here
 2 in this provision that would allow Qwest to just say,
 3 Would you, you know, relate these on the bill if you're
 4 not going to do it this way, or make sure that they're
 5 repaired in a timely manner, so ...

6 Q And my question for you is, if Qwest -- have
 7 you studied what would be required to move to this
 8 proposal that you have of using just one order to order
 9 simultaneous a UNE and an access service? Do you know
 10 what would be involved in making that happen?

11 A I think what I've said is that in our view
 12 what's involved is repricing one of the -- one of the
 13 components.

14 Q I just want to know if you've studied it.

15 A That's my study of it. I mean, the
 16 testimony, the description of what we believe is
 17 involved in doing this process, that is -- that is the
 18 extent to -- so I haven't taken a class on it, if that's
 19 what you're asking.

20 Q Of course, I'm not asking you to take a
 21 class. We're too old to take a class.

22 My question, though, is, have you studied OSS
 23 systems, for example, to understand what would be
 24 required to do this?

25 A I haven't studied OSS systems. We do not

1 believe that -- we believe this is really a billing
2 change, in effect, and we know Qwest can do billing
3 changes.

4 Q If costs are -- if the Commission were to
5 adopt your proposal for a single order for a single
6 circuit ID, for a single bill for commingled EELs, and
7 Qwest incurred costs to comply with that order, is
8 Eschelon willing to compensate Qwest for those costs?
9 Yes or no.

10 A There's a -- there's already a provision in
11 the contract, Section 5.1.6, which allows Qwest to seek
12 recovery of those -- of those costs and process setup to
13 do for (sic), and we would abide by Section 5.1.6 of the
14 contract.

15 Q And I think the key word in your response was
16 "seek," something, allows Qwest to seek to recover the
17 costs. My question is, is Eschelon willing to agree to
18 compensate Qwest for those costs?

19 A Because there's a disagreement in terms of
20 what those costs are. I mean, if Qwest shows to the
21 Commission that there are legitimate costs its incurred,
22 5.1.6 allows them to recover those costs.

23 Q My question for you today, though, is if this
24 Commission were to adopt the changes you're proposing,
25 would Eschelon be willing to commit to contract language

1 that says, If these changes result in cost to Qwest,
2 setting aside the magnitude of them, we will compensate
3 Qwest for the cost?

4 A It's already in the contract. That's my
5 response. It's in 5.1.6, and if you needed a
6 cross-reference in the commingled EEL section to 5.1.6,
7 that's something Eschelon would be willing to do.

8 Q But again, as you said, all that section does
9 is it allows Qwest to seek to recover its costs. Isn't
10 that right?

11 A It says, "Nothing in this agreement shall
12 prevent either party from seeking to recover the costs
13 and expenses, if any" -- "if any, they may incur." Then
14 it says complying, implementing those too.

15 So there is a disagreement in terms of what
16 the extent of those costs are, so I'm not going to agree
17 that Qwest incurs costs where I don't think that they
18 do, but I do agree that we would abide by the contract,
19 and we do pay Commission-ordered rates, and that's
20 something Eschelon is committed -- already committed to
21 in closed language in the contract.

22 Q So you're committed to allow Qwest to seek to
23 recover its costs, correct?

24 A That's closed language in the contract.

25 Q And my final area of questioning for you is

1 related to unbundled dark fiber. And it's Issue 9-51.
2 (Brief interruption by the reporter.)

3 Q (By Mr. Devaney) Mr. Denney, with respect to
4 this unbundled dark fiber issue, I think the question in
5 dispute is Qwest's compensation or what compensation
6 Eschelon should pay for terminations related to
7 unbundled dark fiber. Is that a fair statement?

8 A I mean, the dispute is about the language
9 that describes that rate.

10 Q That's probably a better description of it.

11 A Okay.

12 Q Do you agree that with dark fiber, the number
13 of terminations Qwest must perform can depend upon the
14 configuration of a central office?

15 A I agree with that.

16 Q For example, if there's a central office that
17 has multiple floors, multiple terminations could be
18 required in that central office?

19 A Yes.

20 Q And you also agree, I think, that Qwest ought
21 to be compensated for whatever number of terminations is
22 required. Is that correct?

23 A It's a bit -- right. The -- I agree that --

24 I mean, assuming, you know, that there's a reasonable
25 number, you know, all those that the -- I agree that

1 Qwest should be compensated.

2 I think the question was what was in that
3 cost study that set those rates in the first place.
4 Qwest has attempted here to change the language
5 regard -- that refer to that cost study. And they
6 refuse -- they refuse to give Eschelon that cost study
7 to verify that. We said we would close this --

8 Q Mr. Denney, I know that you have your
9 position on this. I'm asking you to answer my specific
10 question, and your counsel will have plenty of
11 opportunity to redirect you on this if he desires.

12 A So the question is, I agree -- I agree that
13 Qwest should be compensated when there's multiple
14 terminations. What I do not agree with, what we do not
15 know, is what was in that initial cost study.

16 Q Okay. But what I'm trying to establish is,
17 there's no disagreement -- I recognize there's a
18 disagreement about what you think is in the cost study.
19 What I'm trying to establish is hopefully the common
20 principle that both parties agree Qwest ought to be
21 compensated for whatever engineering-wise --

22 That's a bad question. Let me strike that,
23 start again. There's agreement that Qwest should be
24 compensated for whatever is a reasonable number of
25 terminations within a central office. Is that correct?

1 A That -- yeah. That's -- for this -- all
 2 right. For this rate element here --
 3 Q Yes.
 4 A -- the UDF-IOF termination. Yes.
 5 MR. DEVANEY: And that may be all I have.
 6 May I have one moment, Your Honor?
 7 (Discussion off the record.)
 8 MR. DEVANEY: Thank you, Mr. Denney.
 9 THE WITNESS: Thank you.
 10 MR. MERZ: I have just a couple of really
 11 brief areas.

REDIRECT EXAMINATION

BY MR. MERZ:

14 Q Mr. Denney, Mr. Devaney had asked you some
 15 questions about whether Eschelon would commit to some
 16 particular amount of time to amend its ICA if there was
 17 a change in law that removed a particular UNE.

18 Do you recall that testimony?

19 A Yes.

20 Q Would you refer to your direct testimony,
 21 which is Hearing Exhibit 25, I believe, and I'm looking
 22 specifically at Page 20.

23 And there's some language there at the bottom
 24 of the page that carries over to the next page that is
 25 proposed by Eschelon to be included as part of the

1 change-of-law provision. Is that right?

2 A Yes.

3 Q What does that language provide for?

4 A That each party has the -- an obligation to
 5 ensure that the agreement is amended accordingly.

6 Q Is that language that Qwest has agreed to?

7 A No, Qwest has not.

8 Q And what's -- can you explain the basis of
 9 your reluctance to commit to some specific amount of
 10 time to amend the agreement?

11 A Well, just in -- I mean, Qwest in proposing
 12 and agreeing to contract language, getting responses
 13 sometimes from Qwest takes a long amount of time.
 14 They're -- I understand this language needs to get
 15 reviewed, but -- so the time that it takes to do these,
 16 to say it's going to be done within certain dates, I
 17 don't control how quickly Qwest is going to respond to
 18 contract proposed language and implement that. I only
 19 have control over the side of -- Eschelon's side of
 20 that. So that is why I can't commit. That's why I'm
 21 reluctant to commit to a fixed time.

22 Q Now, turning to the issue that we were just
 23 discussing, the dark fiber terminations, you made the
 24 statement that you don't know what was in the initial
 25 cost study.

1 A Yes.

2 Q What initial cost study are you referring to?

3 A Well, there's a cost study, and I believe it
 4 was in the 99A-577-T docket for this -- for this rate
 5 element. In this cost study, there had -- this cost
 6 study that basically determines this rate -- this rate.
 7 And so the question, then, is, Qwest changed the
 8 language that regards the way -- kind of the rate
 9 application language.

10 What we'd asked Qwest is to say, can you
 11 provide us a copy of that cost study, because I believe
 12 it was proprietary to that docket. And I don't have
 13 that, and if I did have it, I wouldn't -- I mean, you're
 14 not allowed to use something in another docket. If we
 15 verify the way you're saying this rate applies is the
 16 way it was actually in the cost study, we would agree to
 17 amend that language. Qwest refused to provide that cost
 18 study, so we have no basis by which to agree to a change
 19 in the language.

20 One of our -- our second proposal is just to
 21 use the existing SGAT language that described that --
 22 the way that rate is applied, so this would -- this is
 23 probably the most frustrating issue, because we would be
 24 willing to close this if Qwest would just show the cost
 25 study, and we could verify that the way Qwest says the

1 study was developed was accurate. But they're unwilling
 2 to provide that study.

3 Q And has the fact that Qwest hasn't provided
 4 the study caused you to be more concerned about
 5 accepting the language that Qwest has proposed?

6 A Certainly -- it certainly raises suspicions.

7 I mean, you can't help but be -- if parties are willing
 8 to close something, if they just showed you evidence
 9 that they say that they have, yeah. I would like to
 10 look at that. So it does cause me concern that they're
 11 unwilling to provide that for that purpose.

12 MR. MERZ: Nothing further. Thank you,
 13 Mr. Denney.

14 A.L.J. JENNINGS-FADER: Mr. Denney, I do have
 15 some questions.

EXAMINATION

BY A.L.J. JENNINGS-FADER:

18 Q In your discussion with Mr. Devaney with
 19 respect to Issue 4-5, the design change and the rates,
 20 you and he had a discussion with respect to what is or
 21 isn't required for -- by way of cost support for interim
 22 rates.

23 A Yes.

24 Q And clearly, in the situation in which the
 25 parties have agreed, then the Commission really, I

1 think, can feel pretty comfortable saying, Okay, the
2 parties have agreed that on an interim basis, we'll
3 allow these rates to go forward.

4 But in cases such as the one that we're
5 presented with, the Commission's presented with here,
6 where the parties don't agree, do you believe that the
7 Commission needs some basis beyond a general discussion
8 of what a party did in developing the proposed rate, a
9 proposed interim rate?

10 A Well, and for this -- you mean for this
11 particular issue, so --

12 Q This is actually -- it's really more cosmic
13 than that, because there are a lot of interim rates in
14 this case, but you happen to have been discussing one in
15 particular, but there are a number that are in dispute.
16 So I really -- I would like to back it up to a more
17 general discussion.

18 A At a high level, I think, I mean, the
19 Commission -- the Commission needs to weigh the evidence
20 presented by both parties where there's dispute and
21 establish, you know, an appropriate interim rate based
22 on the evidence that's before it.

23 Q Whereas for permanent rates, there will be,
24 one presumes, elaborate cost studies presented and
25 perhaps a great deal of examination of the various

1 Q I appreciate that you're talking about what
2 you did. I'm talking about more generically, still.

3 What -- what amount of evidence or
4 information do you think this Commission needs or should
5 have before it in order to be able to determine the
6 interim rates? It's something between "because I said
7 so" and a full-blown cost study, but kind of where in
8 that rather large spectrum do you think is a reasonable
9 point?

10 A Right. And I mean, I -- I mean, this
11 probably isn't going to help you, but I believe that the
12 evidence that we put forth is the evidence the
13 Commission needs to establish interim -- interim rates
14 so that they have information before them to make
15 that -- that that's the type of information they would
16 need to establish a set of interim rates.

17 And we took -- we took all that we had
18 available to -- to do that, to put forth our evidence.
19 We clearly felt that was enough for the Commission to
20 make that determination.

21 Q You'll agree with me, full-blown cost studies
22 aren't -- aren't necessary for -- I'm sorry -- for
23 interim rates?

24 A I'm hesitating. I'm thinking of -- you know,
25 of going -- we have a going forward proposal that will

1 activities and weighting and the estimation, time
2 estimations, I mean all the things that you discussed
3 with Mr. Devaney. Those fact -- those concerns, issues
4 will be examined almost in minute detail in a normal
5 rate case, setting permanent rates.

6 But in this kind of a situation, in an
7 arbitration, I'm assuming the Commission accepts the
8 idea that we need to set these interim rates, something,
9 somehow in this -- in this arbitration proceeding.

10 What quantum of evidence, I mean, something
11 less than a full-blown cost study, but more than because
12 "I said so"? I mean --

13 A I think --

14 Q Where do you think is it reasonable to draw
15 those lines?

16 A I think there's more than -- I mean, there is
17 more than "because I said so" here, because I believe --
18 we didn't -- I mean, we didn't go out and propose kind
19 of what we think what the permanent rate would be in
20 this docket.

21 Really what I did was where Qwest gave me
22 cost studies, I looked at what did the Commission
23 previously order, and for an interim basis, it seemed
24 reasonable to me that you would at least adopt the
25 Commission's prior decisions into those.

1 try to remedy this problem, right, which has kind of not
2 worked.

3 Q Thank you. That -- was it 22.6.1? Is that
4 the point you're talking about?

5 A Right.

6 Q Does that process envision that within 60
7 days of the triggering event, Qwest will file a
8 full-blown cost study to support its interim rate
9 proposal?

10 A And I'm only uncertain what you mean by "full
11 blown."

12 Q I'm talking about what you talked about with
13 Mr. Devaney, I mean, where you do the activity, you list
14 all the activities, you list all the estimated time, you
15 determine factors or whatever else you need to do, labor
16 rates, I mean, all that stuff, you know, productivity
17 offsets, I mean, the whole deal, and provide it, run it
18 through the HAI model and come up with an answer.

19 A Yes. That is what we envision there. And
20 just to be clear, that's what Qwest says they have when
21 they established interim rates before this. So Qwest
22 says they have these studies when they're proposing
23 interim rates. They usually have a footnote that says
24 this is a TELRIC estimation, so they have these TELRIC
25 estimates already. And that's what we are asking them

1 to file in this proposal.

2 Q We're talking about the 60 days after the
3 triggering event happens, Qwest has filed with the
4 Commission its interim rate and supporting cost
5 information?

6 A That's correct.

7 Q Thank you. But now, back to my original
8 question. I'm sorry. That was down the rabbit hole
9 there, but now let's get back to this proceeding and
10 what the Commission has in front of it now.

11 A Right.

12 Q So now, we've got to define sort of a more
13 defined idea of what a full-blown cost study is. You're
14 not concerned about having those -- to set interim rates
15 in this arbitration?

16 A Right. I mean, that would have been ideal.
17 We did ask for those, but we're in a less-than-perfect
18 world right now.

19 Q Yes, we are.

20 A So this is -- so I think -- right. I think
21 that the evidence that's put forth here is sufficient
22 for the Commission to make that determination.

23 Q And the same thing is true of the Qwest
24 information; to the extent that it's there, it's kind of
25 the same level of information that you put forward, yes?

1 And by which I mean only that it's not supported by cost
2 studies, so it's -- it's testimonial information.

3 A And the only -- the only part I kind of take
4 exception with is "the same level," because I think they
5 didn't really address a lot of the issues.

6 Q I can accept that.

7 A Right.

8 Q Okay. You also discussed with Mr. Devaney
9 another issue I wanted to discuss with you from your
10 testimony. And that has to do with when a competitive
11 local exchange carrier proposes rates.

12 And he asked you whether in that circumstance
13 the competitive local exchange carrier ought to
14 propose -- let me back up.

15 In a rate proceeding, I guess sometimes
16 referred to as generic cost proceedings, generally
17 speaking, the incumbent local exchange carrier comes in
18 with cost studies, proposed rates, TELRIC-based cost
19 studies which it is -- which it supports, and then
20 competitive local exchange carriers or other interested
21 parties come in and examine those cost studies. And
22 there may or may not be dispute, and the Commission
23 hears the evidence and makes a decision.

24 Is that basically it?

25 A That's correct.

1 Q If a competitive local exchange carrier were
2 to propose a rate in that proceeding, say, Oh, Qwest's
3 cost study is -- is so flawed we can't use it and the
4 rate is bad and we've done our own cost study, here it
5 is, in that circumstance would the competitive local
6 exchange carrier have to defend its cost -- I'm sorry --
7 its proposed rate by way of a cost study? I'm sorry.

8 A You mean in the case where they had -- I
9 mean, where they had a cost study to propose a rate?

10 Q They come in with a proposed rate, would they
11 need to support the rate for the cost study?

12 A Just, the only part I hesitate on the cost is
13 like what do we actually mean by "cost study." I think
14 they have to support that rate. They've got to -- if
15 you have an alternative to that, then you need to put
16 evidence on the record that supports that alternative
17 and gives it to the Commission.

18 I can envision perhaps that's something a
19 CLEC does for itself, they don't have that traditional
20 Excel file, but maybe they've said, Look, we have X
21 people doing this and this amount of time and it cost us
22 this, so here's on average what it would cost.

23 That's not the traditional way you think of
24 cost study, but that's a cost support that a CLEC could
25 put forth via testimony to say this would be an

1 alternative rate. They may say, We do business in these
2 jurisdictions and here's what all the Commissions across
3 the area that said this rate is; it would be reasonable
4 to set the rate, you know, around this.

5 We have this view of like range of
6 reasonableness around TELRIC. So I think that would be
7 a reasonable support for a CLEC to come in, and
8 especially in a case, you know, where the incumbent
9 costs were so flawed that they couldn't -- they couldn't
10 use it.

11 Q The CLEC couldn't use it?

12 A Right, right.

13 Q Be clear here.

14 A So I think there are other avenues other than
15 just this -- this traditional thought of the cost study,
16 the Excel file cost study, but I agree with the
17 principle that you need to be able to support the rates
18 that you're -- that you're proposing.

19 Q Thank you. With respect to Issues 5-6, 5-7,
20 and 5-7-A, which have to do with the discontinuance of
21 various kinds for nonpayment and including -- well,
22 let's just talk about that first, and then we'll talk
23 about 5-8, which has to do with deposits, correct?

24 Do I have the numbers right? I think 5-6,
25 5-5 and 5-7 have to do with discontinuance of taking

1 orders, discontinuance of service for nonpayment, and
 2 5-8 has to do with the concept of deposits, correct?
 3 A 5-8 and 5-9 and, I believe, 5-12, or is it --
 4 Q That's okay. Let's just talk about 5 -- the
 5 numbers are --
 6 A All right.
 7 Q -- 5-6 and 5-7, I understand that you want
 8 protections because you are afraid, in part -- wrong --
 9 concerned in part that you will not be able -- absent
 10 specific language in the interconnection agreement, will
 11 not be able due to timing constraints to get to the
 12 Commission to stop a proposed action, say,
 13 discontinuance of service order processing. You
 14 don't -- you feel you don't have a way to protect
 15 yourself fast enough. Is that right?
 16 A Right. And our customer, really, is the key,
 17 I think, to these.
 18 Q Correct, correct.
 19 A I agree with you.
 20 Q But that's really it?
 21 A Right. Yes.
 22 Q Are you aware -- and I haven't had any
 23 indication or not -- Exhibit 28 is the Commission's
 24 complaint procedures, formal complaint procedures,
 25 Rule 4, Code of Colorado Regulations 723-1-1302. And

1 there is a specific provision, Subparagraph D, as in
 2 David, which allows for accelerated complaints in the
 3 event that there is -- a complaint is brought to enforce
 4 a telecommunication provider their interconnection
 5 duties or obligations, or formal complaints regarding
 6 interconnection service-quality matters.
 7 Would that process which allows you to come
 8 quickly to the Commission, is also procedure for the
 9 Commission to stop whatever the proposed action is
 10 during the pendency of the complaint proceeding, does
 11 that allay or ameliorate in any way your concerns, the
 12 availability of that process here in Colorado?
 13 A I mean, certainly, I wasn't -- I wasn't aware
 14 of this provision in Colorado, and it's been discussed
 15 here. And I -- I mean, I would like -- I would -- I
 16 would really like our attorneys to look at that, because
 17 I'm not -- I'm not an attorney. But the key really is
 18 being able to -- being able to not to have this action
 19 taken unilaterally and before it's customer impacting,
 20 to allow that opportunity to have the Commission
 21 determine that. So this type -- I mean, the way you
 22 described this process is -- is something -- I mean,
 23 it's the type of -- that is the type of protection that
 24 we are -- that we are seeking. And I'm certain that we
 25 will look -- we will look at that to see -- to see how

1 that fits.
 2 Q With respect to Issue 5-8, which is the
 3 question of non de minimis as a parameter for security
 4 deposits, for deposits, I have a question first, which
 5 is, is it Eschelon's position that once a customer has
 6 started to -- excuse me -- once Eschelon has started to
 7 receive service from Qwest, that Qwest may not
 8 thereafter impose a security deposit? It's either do it
 9 when you first enter into the agreement arrangement or
 10 you never can?
 11 A No. That's not -- that's not our position.
 12 I believe what's here is that, what these sections spell
 13 out is if certain provisions kick in, such as -- you
 14 know, such as if we fail to make payments in a timely
 15 manner and there's dispute over, you know, whether that
 16 should be three consecutive months or three out of a
 17 six-month time period or, you know, there's different --
 18 there's a dispute about when that would happen, but if
 19 we don't make payments in a timely manner, then Qwest
 20 has the ability to impose a security deposit.
 21 Q So I just want to be sure. I want to be sure
 22 what's not the position.
 23 A Right, right.
 24 Q You do agree that if certain conditions are
 25 met, then it's -- and conditions are stated in the

1 interconnection agreement, that it's all right for Qwest
 2 to impose deposit -- security deposit obligations?
 3 A That's right. I mean, the contract lays
 4 those out. And the fact that they can require a deposit
 5 under certain circumstances, that part isn't really
 6 disputed.
 7 Q Now, with respect -- and I had the wrong
 8 issue, but let's get back to 5-8, which is the non de
 9 minimis issue, since there seems to be a fair amount of
 10 confusion or concern as to what a non -- what
 11 constitutes non de minimis, right?
 12 Can you give me some idea of what you were
 13 thinking when you wrote the testimony as to what would
 14 be non de minimis? Or I think you also say
 15 "inconsequential," or you use a lot of words, but I need
 16 a little sense of what you're talking about.
 17 A And I mean, we were talking about small
 18 amounts. You know, there may be -- you know, Mr. Easton
 19 testified about the number of bills and the complexity
 20 of billing that Eschelon receives and the different bill
 21 dates.
 22 So if there was a bill that was missed in the
 23 process and it was just a small amount or the pay amount
 24 was off by a small amount -- and, I believe, actually,
 25 that small amount was the words that Mr. Easton said

1 Qwest wouldn't do this for a small amount. That's what
2 we were trying to get into our contract here, that this
3 wouldn't take place for a small amount, non de minimis
4 amount.

5 Q Well, given that Eschelon has -- is striving
6 as an overall theme of what you're looking for in the
7 contract, is striving for specificity and a way to
8 reduce disputes by having everything very clearly laid
9 out in the contract language so that everyone knows
10 going in what -- what is -- what the agreements are,
11 what amount of money is non de minimis?

12 A So there's -- there is two -- I don't think
13 it's a set dollar amount, you know, but I -- and you
14 kind of have two questions within the one, like if terms
15 of -- I mean, I do believe this adds specificity in
16 terms of reducing disputes, because we're -- what we're
17 saying is we are not going to be coming to the
18 Commission over a small amount, you know, as Mr. Easton
19 called it.

20 So we would only be coming here for something
21 that wasn't -- the parties -- that Qwest believed was
22 not a small amount. You know, that would be when they
23 would do this, and -- but I do think there are standards
24 kind of out there, too, that you would look to to try to
25 argue whether this was significant or not.

1 Like we have billing accuracy measurements
2 that are out there, what are the standards in terms of
3 how accurate the bills have to be. There's statistical
4 tests in terms of what would be significant in terms of
5 a significant amount. So there are some standards that
6 could be applied if we got to that level of dispute.

7 But this language is really put there to try
8 to avoid having the dispute over, you know, using this
9 payment deposit in a sense of an amount that really
10 didn't -- that didn't really matter. That wasn't the
11 intent of this -- the intent of this language, because
12 the intent of this language was to protect Qwest in a --
13 in a sense where there was a risk of non -- you know,
14 future nonpayment. So that's really what we were trying
15 to get at with that.

16 Q I also need to be clear that what we're
17 talking about when we're talking about this, these
18 monies are disputes -- well, are amounts of money which
19 are not -- not in dispute. Is that correct?

20 A That's correct. And there's -- we have --
21 that makes us a little bit -- there's a little bit of
22 nerve -- nervousness on our side around that because
23 both parties have used that term, but we don't always
24 agree with each other about what's -- what's in dispute,
25 so that --

1 Q You may certainly explain this, because --

2 A So what -- I mean, when Eschelon -- when
3 Eschelon gets its bill, reviews its bills and we dispute
4 an amount, we make -- we make a filing. We -- not a
5 filing, but we send to Qwest the amount that we're
6 disputing on those bills.

7 Qwest doesn't always book -- count those
8 amounts as disputed amounts for some reason or another.
9 And I've listed some of have them in my contract. Like
10 they may miss -- sometimes they just misplace the fact
11 that this dispute had taken place.

12 There's cases, you know, under -- Qwest
13 believes under its billing provisions from CMP that it
14 can -- if it determines a dispute is resolved in Qwest's
15 mind, then that's no longer under dispute. Well, it's
16 still -- that doesn't -- it's still a disputed amount.

17 Qwest may resolve it in its own -- just
18 determines it's resolved in its own favor. It doesn't
19 mean Eschelon agrees that this amount is not in dispute.

20 So there is -- that's kind of where there's
21 some nervousness there, because we do -- this shouldn't
22 apply to the amounts that are undisputed, but sometimes
23 even those amounts -- what's undisputed is in dispute.
24 And that's part of the reason for having -- you know,
25 having that Commission, you know, interaction in that

1 case, because if that was -- if that was what the fight
2 was about, then you could put in evidence to demonstrate
3 that these amounts -- you know, what that nondisputed
4 amount was.

5 Q If an amount is -- is unequivocally
6 undisputed, why does it matter whether the amount is non
7 de minimis?

8 A To make sure I understand the question you're
9 asking, so for -- suppose --

10 Q I'm looking at the language of 5.4.5, Page 21
11 of the disputed issues list, under Issue 5.8 -- or 5-8.
12 And Eschelon's proposed language is, quote, Repeatedly
13 delinquent means payment of any undisputed non de
14 minimis amount received more than 30 days after the
15 payment due date, unquote. And the dispute is "non de
16 minimus." Everybody agrees with the rest of the
17 language.

18 A That's correct.

19 Q If the amount is undisputed, why do you --
20 why does one need to qualify for non de minimis?

21 A I mean, it may be a case where -- I mean, it
22 probably doesn't work quite like this, but maybe say the
23 bill was \$96 and I sent a check for \$69. You know, you
24 just -- there was some error in the -- you know, it
25 wasn't that you weren't paying your bills and it wasn't

1 a question that you weren't paying your bills, but
 2 somehow when the check got written or the check got sent
 3 or the funds got transferred or the wrong amount got
 4 keystroked in to somebody and it was really just a
 5 small, non de minimis amount of -- amount of money that
 6 was there, so it wasn't an issue of whether it was
 7 disputed or not. We knew we owed -- we knew we owed
 8 that money but that some mistake occurred in the paying
 9 of that money that was just a small -- a small amount
 10 that didn't have -- that didn't go to what these
 11 provisions were really intended to do in terms of
 12 protecting Qwest in terms of risk of default. That's --
 13 that's where this was intended to -- to apply.

14 Q Then, Mr. Denney, I understand you are the
 15 person who is handling the questions of expedites and
 16 also have adopted Mr. Easton's testimony on that issue.

17 A Mr. Webber.

18 Q I mean, Mr. Webber's testimony on that issue.

19 A Yes.

20 Q Thank you. If you adopted Mr. Easton's
 21 testimony, we wouldn't be here, right?

22 Do you happen to have Mr. Webber's testimony
 23 in front of you, sir?

24 MR. MERZ: I think it's probably over --

25 A I do have -- I -- I have the section on

1 from the Qwest PCAT.

2 Q And one difference is Condition F, as in
 3 Frank, correct?

4 A That's correct.

5 Q As I read Condition F, there's no
 6 requirement -- as I read this entire -- this entire
 7 section, there's no requirement that I -- that --
 8 there's no determination or no fault, is that correct;
 9 that is to say that these emergencies have occurred and
 10 it doesn't matter, really, whether it's Eschelon or
 11 Qwest that caused it? I'm putting aside fire and flood
 12 and acts of God.

13 A That's what came to my mind.

14 Q But situations where the end-user customer is
 15 completely out of service. There's no -- there's no
 16 differentiation between circumstances in which Qwest is
 17 at fault or Eschelon is at fault for that customer being
 18 out of service. Is that correct?

19 A That's somewhat correct, but let me -- I
 20 think in some -- the way you phrased the question made
 21 me think that you may -- some of the situations you may
 22 be thinking of fall under -- would fall under a repair
 23 scenario.

24 Q No. I'm talking about -- this is emergency
 25 conditions that require expedited service to return a

1 expedites, so --

2 Q (By A.L.J. Jennings-Fader) Okay. That will
 3 work, because I'm -- I hope we're all looking at the
 4 same version here. And this is -- I'm referring to
 5 Hearing Exhibit No. 19, and I want to ask you a question
 6 having to do with emergency conditions discussed on
 7 Page 76 of that testimony.

8 A Okay.

9 Q If am I correct that under Eschelon's
 10 proposal -- and the language is found at Pages -- I
 11 believe at Pages 69 and 70 of Mr. Webber's testimony,
 12 that under Eschelon's proposal, in an emergency
 13 situation, that there will be no expedite charges for --
 14 in the case of the conditions that are set out,
 15 Conditions A through K.

16 A That's correct. And just so it's clear,
 17 there is an alternative proposal for that, okay.

18 Q I want to talk about this proposal.

19 A Yes, that's correct.

20 Q And Mr. Webber represents on Page 76 of his
 21 testimony that those emergency conditions listed in
 22 Eschelon's proposal are the same as the conditions under
 23 which Qwest grants expedites at no additional charge
 24 with one exception. Is that correct?

25 A Yes. That is his testimony, that this came

1 customer to service. Am I correct?

2 A That's correct.

3 Q Okay. And E, for example, doesn't talk about
 4 conditions caused by Eschelon -- excuse me -- caused by
 5 Qwest which result in an end-use customer being
 6 completely out of service, correct? There's no
 7 differentiation as to the -- as to the causer of the
 8 out-of-service condition.

9 A That's correct there. And I think that the
 10 caveat that -- since I like those -- that I was trying
 11 to use is that in -- where -- what may be -- what may be
 12 a differentiating factor is whether this is treated as a
 13 an expedite scenario or a repair type scenario, so
 14 Eschelon --

15 Q I'm sorry. We're talking about expedites
 16 under emergency conditions and whether or not charges
 17 for expedited handling apply. Isn't that what we're
 18 talking about?

19 A That's right. Just in some cases when a
 20 customer is out of service, it could be considered a
 21 repair. It wouldn't get to this expedite.

22 Q I'm only talking about --

23 A That's why -- I just wanted to make sure.

24 Q -- circumstances in which this precise
 25 language applies, okay? Right?

1 A And I agree with you, then, that there isn't
 2 a -- there isn't a caveat there in terms of cause.
 3 Q Is the same thing also true in F, as in
 4 Frank, that is to say, the language reads, quote,
 5 Disconnect in error when one of the other conditions on
 6 the list is present or is caused by the disconnect in
 7 error, unquote.
 8 A That's correct.
 9 Q So there's, again, no cost causer -- excuse
 10 me -- no dis -- no error causer identified here.
 11 A For the expedite, right.
 12 Q For the expedite.
 13 A Yes.
 14 Q Does that mean, then, that in situations in
 15 which Eschelon disconnects its own customer in error,
 16 that Eschelon will receive expedited reconnection or
 17 expedited treatment of the reconnect with no -- with no
 18 charge for the expedited handling of the order?
 19 A So -- and so to make sure we're talking -- I
 20 agree there would be no expedite charge. There would be
 21 a charge to connect the circuits.
 22 Q Absolutely.
 23 A But I agree in that situation there would be
 24 no additional charge for the -- to expedite that
 25 situation.

1 Q Okay. Now, Mr. Denney, I'd like you to refer
 2 to your own direct testimony, sir, which is Hearing
 3 Exhibit No. 25. And if you'd turn to Page -- the
 4 discussion beginning on Page 58, Line 14 and continuing
 5 through the top of Line -- excuse me -- of Page 59, I
 6 was struck by the language at the very bottom of 58,
 7 continuing over, in which you talk about Qwest being
 8 able to invoke its remedies of discontinuance of service
 9 order, of service processing and also discontinuance of
 10 service based on information with which Eschelon
 11 disagrees, even when Eschelon believes that it is
 12 current in its payments of undisputed amounts to Qwest,
 13 okay?
 14 A Yes.
 15 Q Now, is that the situation you described to
 16 me earlier?
 17 A Yes, it is, where there's a -- potentially a
 18 dispute over what's -- what's undisputed.
 19 Q So this -- this discussion was not intended
 20 to convey that Eschelon believes Qwest thinks -- would
 21 discontinue processing orders or discontinue service
 22 based on disputes -- disputed amounts. Is that correct?
 23 I mean, I got that sense from reading it, so I wanted to
 24 be sure.
 25 A I think -- I mean -- and I was really trying

1 to convey that there could be cases where there's a
 2 dispute over what's undisputed and Qwest could read that
 3 as saying you didn't pay -- here's the amount we think
 4 is undisputed, and you didn't pay that and we will
 5 invoke these provisions.
 6 Q All right. Thank you. I ask you to turn to
 7 Page 70 of your direct testimony, sir, Line 42, and this
 8 is just a term I do not understand. The sentence reads,
 9 quote, This causes Qwest's aging to be inaccurate and a
 10 discrepancy between what Eschelon shows as disputed and
 11 what Qwest shows as disputed, period unquote.
 12 What is aging?
 13 A In its -- I think because we're talking about
 14 past amounts that are past due, and so I think we're --
 15 what I was trying to get here is how they applied -- the
 16 way they're applying these amounts to -- to a past
 17 due -- what they consider a past due account.
 18 Q I'm sorry. Just briefly, would that be, you
 19 make a payment and they apply it to the oldest --
 20 oldest -- oldest shown amount due? Is that what you're
 21 talking about?
 22 A Right. And I mean, what's happened in a case
 23 where -- I mean, I think maybe in this particular
 24 example where Qwest -- you know, Qwest owed a refund,
 25 they -- typically they're providing credits to your

1 account. They'd pick the account to which it applied.
 2 And they may have applied it to an account where we --
 3 and this is a case, again, where we may have disputed
 4 that we owe that account, but Qwest didn't recognize
 5 that dispute. So then Qwest cleaned an account off its
 6 books that was actually -- in our mind, was under -- at
 7 least part of an account that was under dispute. And so
 8 that -- that's the type of scenario that we're --
 9 Q So when you refer to aging -- you use it,
 10 actually, a couple of more times in your testimony --
 11 that's the concept that you're talking about?
 12 A Yes.
 13 Q Okay. Thank you. On Page -- excuse me -- 74
 14 of your testimony, Line 17 to 20 -- I'm sorry -- I'm --
 15 Line 16 and 17 where you're talking about what Qwest
 16 wants -- I mean what Eschelon wants, it's your view here
 17 that once Eschelon disputes an amount, that it somehow
 18 becomes Qwest's responsibility to escalate the dispute?
 19 That's what you say there.
 20 A Yeah.
 21 Q What do -- escalate how? Escalate in the
 22 intracompany-issue escalation process?
 23 A Right. I mean, there's methods by which
 24 parties may try to work out that dispute, right, and if
 25 there's still disagreement, then there are escalation

1 provisions in terms of dispute resolutions in the
2 contract and how those would go.

3 Q Okay. If Eschelon disputes an amount, isn't
4 Eschelon the one that has the information to explain the
5 dispute?

6 A And when we dispute the amount, we provide
7 the reason to Qwest for -- for that dispute on why this
8 amount is disputed, so we --

9 Q So I understand, you do provide information
10 and you give -- you -- what you have, I presume, to
11 Qwest.

12 A Yes.

13 Q Why -- if Eschelon has the information, why
14 is it Qwest's obligation to escalate -- in your view,
15 why is it Qwest's obligation to escalate the issue? Why
16 wouldn't Eschelon be responsible for doing that?

17 A Well, if the amount's disputed, I mean,
18 Eschelon hasn't paid that amount to Qwest. If Qwest
19 believes that Eschelon's dispute is in error, then I
20 think -- and they've tried -- and the parties were
21 unable to work -- work it out, which most of them are
22 actually worked out, then -- you know, then I think that
23 in a sense -- in a sense that -- I guess the reason that
24 it's Qwest -- it's Qwest's obligation then to -- to
25 escalate that up further, in a sense, because

1 Eschelon -- I mean they're seeking to collect money from
2 Eschelon. Eschelon is not seeking to collect money from
3 Qwest. If somebody owed me money, I wouldn't expect
4 them to go --

5 Q Then how would -- how would that process
6 work? You -- Eschelon -- Qwest would say to the
7 Commission, Eschelon owes us money and won't pay, for
8 example. And then Eschelon comes in and says, We
9 dispute the amount, and here's why.

10 Is that how that works, in your view?

11 A Not -- not exactly, because some of the --
12 Qwest has more -- would have a lot more information when
13 it got to that point because they know why Eschelon is
14 disputing the amount before it ever got there. And
15 that's why most of these are resolved, because parties
16 are -- so by the time you get to the Commission, what
17 Qwest is going to be arguing is that Eschelon's dispute
18 is inaccurate, and Eschelon would be presenting evidence
19 to the Commission, if it got that far, as to why we
20 believe the dispute is a legitimate dispute.

21 Q And finally, Mr. -- close to finally,
22 Mr. Denney, on Page 103 of your direct testimony -- this
23 is on Issue 7-18 -- you note on Lines 8 to 10 -- 8 to 9
24 that Eschelon's language contains some protections in
25 the sense that it limits requests for records to once

1 every six months, correct?

2 A That's correct.

3 Q And I take it you view that as a limitation,
4 as a protection for -- to prevent overuse?

5 A Well, I mean, I think it was really a -- it
6 was a compromise on our part for exactly that reason, to
7 try to tell Qwest this is -- the purpose -- we only want
8 these for billing accuracy. We do review our bills on
9 occasion, and this isn't -- we're not trying to abuse
10 this process or do -- create work, in a sense, for
11 Qwest.

12 Q But the proviso is from that, and I quote,
13 provided Qwest's billing is accurate, unquote. If
14 Qwest's billing is not accurate, then Eschelon's
15 language would permit it to do more than one request
16 every six -- six months?

17 A Right. And I think the scenario in mind is,
18 we did -- we did the request, and suppose we found a lot
19 of errors within that request. You know, let's assume
20 in the ideal world then Qwest fixed those errors. We
21 may want to check the next month to see whether those
22 were actually fixed and request those records the next
23 month to do that verification.

24 So that would be why we didn't just limit it
25 to once every six months, because you would like to

1 check to see whether the problems that you found -- and
2 this is a case where people kind of agree where there
3 were problems -- were fixed.

4 A.L.J. JENNINGS-FADER: Thank you, sir.

5 Questions, anyone, starting with Qwest?

6 MR. TOPP: My foot's asleep.

7 A.L.J. JENNINGS-FADER: Well, at least you're
8 not asleep.

9 RECROSS-EXAMINATION

10 BY MR. TOPP:

11 Q Mr. Denney, you got a number of questions
12 about collection rights and the issue of whether a bill
13 is disputed or undisputed. And I'd like to ask just a
14 couple of clarifying questions on that front.

15 Imagine a scenario where there is a Qwest
16 bill for \$10, Eschelon believes that it has disputed \$4
17 of that \$10 bill. So in Eschelon's mind, the undisputed
18 amount is six bucks. Qwest thinks that Eschelon -- for
19 whatever reason, thinks that Eschelon only disputed \$2
20 of that amount, and so in Qwest's mind, the undisputed
21 amount of that bill is \$8.

22 Do you follow each of those pieces of that?

23 A Yes.

24 Q And as I understand Eschelon's fear, or a lot
25 of discussion about you don't know how much is

1 undisputed has to do with the difference between that \$6
2 and the \$8 amount, that there is a fear that Qwest would
3 invoke these remedies in a situation where Eschelon's
4 paid the \$6 because that's what it thinks it owes, but
5 Qwest thinks it should have paid some higher amount. Is
6 that correct?

7 A That's correct. That's -- I mean, that's
8 part of our concerns here, yes.

9 Q Now, that sort of -- now, you would agree
10 with me, would you not, that all of the contract
11 provisions we are talking about relate to undisputed
12 amounts?

13 A Yes. I agree with that.

14 Q And that that ultimately -- I mean, the
15 definite -- what that means, the contract
16 interpretation, I mean, that's not something that Qwest
17 can independently override the meaning of that word
18 based on its actions?

19 A And that's the concern, because in Qwest's
20 billing process that they have set out on CMP, Qwest
21 declared disputes resolved even if a carrier doesn't
22 agree with Qwest. That's the concern, then, that in
23 Qwest's mind, they're seen undisputed as the way they've
24 determined it. That's -- that's the problem -- the
25 problem here.

1 Q And I certainly understand that. But what
2 we're talking about is contract language that would be
3 interpreted by this Commission or interpreted by a court
4 or whoever the appropriate authority might be, and it
5 would be their job to decide whether or not the
6 undisputed amount is six bucks or is eight bucks,
7 correct?

8 A That's why we have provisions, to have the
9 Commission look at that before these are implemented.

10 Q And I can represent to you here today, and we
11 have testimony to that effect, that it's Qwest's
12 position that in order for an amount to be undisputed,
13 both parties have to agree that the billing's
14 appropriate. And I can represent to you that it's
15 Qwest's position that the \$6 represents the undisputed
16 amount.

17 Now, if in fact that were the case, that
18 would take care of at least that concern that Eschelon
19 has with this proposed language, would it not?

20 A That would take care of that concern. I
21 have -- what I've read, Qwest's testimony is just
22 referring to undisputed amount. It has never responded
23 to the issue I brought up about Qwest considering these
24 amounts resolved, you know, through their -- through
25 their billing dispute process. And so that's -- that is

1 why this has remained a concern to us. I haven't seen
2 that addressed until you've said this. Now, I mean,
3 there are other -- there are other issues about billing.

4 Q Understood. Understood.

5 A That issue there, that is the issue there.

6 MR. DEVANEY: Thank you.

7 A.L.J. JENNINGS-FADER: Thank you very much.

8 Mr. Merz.

9 MR. MERZ: I just have, actually, one area
10 for redirect.

11 REDIRECT EXAMINATION

12 BY MR. MERZ:

13 Q And Mr. Denney, this concerns the issue of
14 discontinuance of service and discontinuance of order
15 processing, and the judge had some questions regarding
16 the Commission's procedure for expedited complaints.

17 I don't know if you have Hearing Exhibit 28
18 there.

19 A I still do.

20 Q Do you recall that closed language in the ICA
21 requires that Qwest can discontinue service or order
22 processing on 10 days' notice following some -- the
23 triggering event?

24 A Yes. That is correct. That is closed
25 language.

1 Q And then if you look to Hearing Exhibit 28,
2 this Paragraph Sub D or Subparagraph D, Roman numeral I.
3 Do you see that there?

4 A Yes, I do.

5 Q And do you see that the formal complaint
6 procedure requires that the party seeking expedited
7 treatment provide notice of its intent to file a request
8 for accelerated treatment at least 10 days prior to
9 filing the complaint?

10 A Sorry. Where were you?

11 Q I'm looking at Subparagraph I under letter D,
12 and maybe you can just read that to yourself.

13 A Subparagraph I, under D?

14 Q Yeah.

15 A It says "nothing said offered during."

16 Q No. I'm looking at -- actually, it's Page 29
17 at the top of the page.

18 A Under 13-0 -- under 13-02 you're looking,
19 then?

20 A.L.J. JENNINGS-FADER: Yes.

21 Q (By Mr. Merz) Yes. That's correct.

22 A Then yes, I do see what you're referring --
23 language you're referring to.

24 Q Now, I mean, given that language and given
25 the 10-day-notice provision in the ICA, do you believe

1 that there would be a hurdle in seeking expedited
2 treatment under this provision?
3 A Yes, yes. I would agree.
4 (Discussion off the record.)
5 A.L.J. JENNINGS-FADER: 13-02. He's right.
6 That's the correct reference.
7 MR. MERZ: I've got the right reference?
8 A.L.J. JENNINGS-FADER: Counsel?
9 MR. MERZ: Yes.
10 A.L.J. JENNINGS-FADER: Just, I don't -- that
11 provision would only apply, if you look at the language,
12 if the party filing the complaint was seeking
13 accelerated treatment.
14 MR. MERZ: I see. Right.
15 I don't have anything further.
16 A.L.J. JENNINGS-FADER: It's not a
17 prerequisite to filing the complaint.
18 Mr. --
19 THE WITNESS: Denney. That's okay.
20 A.L.J. JENNINGS-FADER: Oh, yes. I'm sorry.
21 Mr. Denney.
22 THE WITNESS: I know I'm the only one here,
23 so you know I'll respond.
24 A.L.J. JENNINGS-FADER: Thank you, sir, very
25 much for your written testimony, for taking the time to

1 testify and for answering our questions today. It's
2 been very helpful, and we thank you very much.
3 You're excused, sir.
4 And I appreciate that. I just didn't want to
5 leave the impression that that's a prerequisite to
6 filing the complaint.
7 MR. MERZ: Understood.
8 A.L.J. JENNINGS-FADER: Thank you,
9 Mr. Denney, and I remembered your name this time.
10 Please leave all of the official exhibits here. I
11 appreciate that.
12 With that, has Eschelon anything further?
13 MR. MERZ: No, Your Honor. Mr. Denney is our
14 last witness, and Eschelon rests its case.
15 A.L.J. JENNINGS-FADER: Thank you.
16 Anything further from Qwest?
17 MR. McGANN: Yes. Hopefully --
18 A.L.J. JENNINGS-FADER: No.
19 MR. McGANN: I'm sorry.
20 A.L.J. JENNINGS-FADER: With respect to the
21 evidentiary portion of the hearing.
22 MR. McGANN: I apologize.
23 MR. TOPP: No, Your Honor.
24 A.L.J. JENNINGS-FADER: Before I close the
25 evidentiary record, I just want to review with the

1 parties that my -- well, we're going to need the
2 Exhibits 1 and 2 before I can close the record.
3 MR. McGANN: That is what I'd like do, is
4 I've had the court reporter mark as Exhibit 1 for
5 identification the parties' interconnection agreement
6 with its draft language, and I have had the court
7 reporter mark as Exhibit 2 for identification the
8 parties' joint issues matrix, and I would move for the
9 admission of these two exhibits.
10 A.L.J. JENNINGS-FADER: Just to be sure that
11 does -- the Exhibit No. 1 does include all pertinent
12 exhibits referenced in the testimony and so the
13 commissioners have that information?
14 MR. McGANN: That is correct.
15 A.L.J. JENNINGS-FADER: And also, the joint
16 issues matrix is the joint issues matrix filed with the
17 commission on the 13th of April 2007?
18 MR. McGANN: That's correct.
19 A.L.J. JENNINGS-FADER: Excellent.
20 Exhibits 1 and 2 are admitted.
21 Now with that, I will review that exhibits
22 through and including -- 1 through and including 32 have
23 been admitted. Is there anything else by way of
24 evidence for any party?
25 MR. McGANN: No.

1 MR. MERZ: No, Your Honor.
2 A.L.J. JENNINGS-FADER: Excellent.
3 The evidentiary record is closed, and we'll
4 go off the record for a few minutes to talk about what
5 you all -- whether you want hearing statements of
6 position, whether you want to do responses, when you
7 want to file those, if you want to file them.
8 (Discussion off the record.)
9 A.L.J. JENNINGS-FADER: Off the record we've
10 discussed statement of position filing dates. The
11 parties suggest May 22, 2007 for simultaneous filings of
12 statement of position, no response to be filed. That's
13 acceptable.
14 With respect to the transcript, I understand
15 the parties either have or are willing to order a
16 transcript but have a question.
17 MR. McGANN: Yes. The question was, in terms
18 of the transcript that will be required by the
19 Commission, we were simply wondering what form the
20 Commission would like that in. I was assuming the
21 Commission would want a hard copy for the record and
22 then didn't know if the Commission would also want an
23 electronic copy as well.
24 A.L.J. JENNINGS-FADER: Yes. That would be
25 very helpful, if you could arrange to have that

1 provided, but definitely the hard copy.
 2 Just so everyone knows, this is required
 3 because since the Commission will be issuing an initial
 4 decision here, the Commission will need to read the
 5 record in order to render its decision. So that is the
 6 need for the record. And I appreciate the parties
 7 providing it. Thank you for that.
 8 Anything further from Qwest?
 9 MR. TOPP: No, Your Honor.
 10 A.L.J. JENNINGS-FADER: Anything further from
 11 Eschelon?
 12 MR. MERZ: One issue that I think we need to
 13 determine is an end point. Right now the nine-month
 14 window would be the beginning of June, which obviously
 15 isn't going to be a date that works. We're having a
 16 number of these cases stipulated for additional time but
 17 just need to know how -- you know, when there's going to
 18 be a determination.
 19 A.L.J. JENNINGS-FADER: I wish I could tell
 20 you. In large part, it's because one of the issues that
 21 I believe Eschelon has raised is the possibility of
 22 leaving this record open pending the determine -- the
 23 resolution of a case that -- it was yesterday, and I've
 24 already forgotten it, but there is --
 25 MR. MERZ: The wire center case.

1 the time that I know that it took to prepare this case
 2 and thank you for the preparation of your witnesses and
 3 for your own preparation. It was a very nice
 4 proceeding.
 5 Thank you very much, and we are adjourned.
 6 (The proceedings concluded at 5:08 p.m.,
 7 April 18, 2007.)

1 A.L.J. JENNINGS-FADER: Yes. But there is
 2 that suggestion, so the result of that is that I can't
 3 give you an estimate, so ...
 4 MR. MERZ: Understood.
 5 A.L.J. JENNINGS-FADER: And while we're on
 6 the subject of the ever-popular nine months for -- under
 7 the federal statute, what -- I understood that the
 8 parties had agreed to waive that entirely and not to
 9 raise that as an issue. Is my understanding incorrect?
 10 MR. MERZ: In other cases I know that we've
 11 had actually an outside date, but we'd be willing to
 12 waive that here.
 13 A.L.J. JENNINGS-FADER: Qwest?
 14 MR. TOPP: We're willing to do that as well.
 15 A.L.J. JENNINGS-FADER: Will you do that?
 16 MR. DEVANEY: As opposed to willing?
 17 A.L.J. JENNINGS-FADER: As opposed to
 18 willing.
 19 MR. TOPP: Yes, we do.
 20 A.L.J. JENNINGS-FADER: Eschelon?
 21 MR. MERZ: Yes.
 22 A.L.J. JENNINGS-FADER: Thank you, Counsel.
 23 I appreciate that very much, as does the Commission.
 24 Thank you for that clarification.
 25 Everybody, I want to thank each of you for

1 STATE OF COLORADO)
 2) ss. REPORTER'S CERTIFICATE
 3 COUNTY OF DENVER)
 4 I, Robin M. McGee, do hereby certify that I
 5 am a Registered Professional Reporter and Notary Public
 6 within the State of Colorado.
 7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, that it was thereafter reduced to
 10 typewritten form, and that the foregoing constitutes a
 11 true and correct transcript.
 12 I further certify that I am not related to,
 13 employed by, nor of counsel for any of the parties or
 14 attorneys herein, nor otherwise interested in the result
 15 of the within action.
 16 In witness thereof, I have affixed my
 17 signature and seal this 30th day of April, 2007.
 18 My commission expires July 31, 2009.
 19
 20
 21 _____
 22 Robin M. McGee, RPR
 23 216 - 16th Street, Suite 650
 24 Denver, Colorado 80202
 25

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