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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION,

Complainant,

vs.

ADVANCED TELECOM GROUP, INC.; et al.,

Respondents.

)  
)  
)  
)  
) Docket No.  
) UT-033011  
)  
)  
)

DEPOSITION OF THOMAS L. WILSON, VOLUME 2  
July 22, 2004  
Olympia, Washington

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1 EXAMINATION INDEX  
2  
3 EXAMINATION BY: PAGE NO.  
4 MR. NAZARIAN 5  
5  
6 EXHIBIT INDEX  
7  
8  
9 EXHIBIT NO. DESCRIPTION PAGE NO.  
10 G 6-page citation, 47 USCA, 8  
11 ss 252, Procedures for  
12 Negotiation, Arbitration, and  
13 Approval of Agreements  
14 H 6-page citation, 47 USCA 9  
15 ss 251, Interconnection  
16 I 6-page Confidential Purchase 103  
17 Agreement between Eschelon and  
18 Qwest, dated 11/15/00  
19 J 10-page Eschelon Telecom, 131  
20 Inc.'s Response to RUCO's  
21 Tenth Set of Data Requests,  
22 dated 8/22/02  
23  
24  
25

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1 BE IT REMEMBERED that on Thursday,  
2 July 22, 2004, at 1400 Evergreen Park Drive SW, Olympia,  
3 Washington, at 9:08 a.m., before, CHRISTY SHEPPARD, CCR,  
4 Notary Public in and for the State of Washington,  
5 appeared THOMAS L. WILSON, the witness herein;  
6 WHEREUPON, the following proceedings  
7 were continued, to wit:  
8  
9 <<<<<< >>>>>>  
10  
11 THOMAS L. WILSON, having been previously sworn  
12 by the Notary, deposed and  
13 testified as follows:  
14  
15  
16 EXAMINATION  
17 BY MR. NAZARIAN:  
18 Q When we were talking at the end of the day yesterday, Mr.  
19 Wilson, about some of the penalty issues, I believe you  
20 testified that in your view the penalty that should be  
21 imposed for the failure to file agreements should be the  
22 same across all of the Exhibit A agreements because the  
23 harm caused by those was equally severe.  
24 Is that a fair statement?  
25 A Yes.

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1 Q Is it your view, sir, that it is equally clear across all  
2 the Exhibit A agreements that each qualified as an  
3 interconnection agreement at the time they were entered  
4 into?  
5 A Yes, with the exception of the ELI agreement that was  
6 dismissed.  
7 Q That one was dismissed because it was between ELI and a  
8 nonregulated Qwest subsidiary, right?  
9 A Right.  
10 Q But as to those agreements in Exhibit A between a CLEC  
11 and a regulated Qwest entity, it is your testimony that  
12 it was equally clear that each and every one of those  
13 agreements qualified, at the time it was entered into, as  
14 an interconnection agreement for purposes of Section 252?  
15 A Yes.  
16 Q Now Ms. Endejan showed you yesterday, and what we marked  
17 as Exhibit E to your deposition, the FCC's Memorandum and  
18 Opinion of Order of October 4th, 2002. Do you remember  
19 that?  
20 A Yes, I do.  
21 Q Do you have that order in front of you?  
22 A Yes, I do.  
23 Q Prior to October 4th of 2002, are you aware of any court  
24 or commission in the United States that had defined the  
25 term interconnection agreement for purposes of the 252

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1 filing requirement?  
2 A In my opinion, this Commission has undertaken description  
3 of the filing requirement in its own policy and  
4 interpretive statement in Docket 96-0269 shortly after  
5 the passage of the Act.  
6 Q Is that the document that was marked yesterday as Exhibit  
7 B?  
8 A I think so, yeah. I didn't write it down but that sounds  
9 correct. I have it.  
10 Q Will you take a look in there and show me where you  
11 believe the Washington Commission defined the term  
12 interconnection agreement for purposes of the Section 252  
13 filing requirement, please.  
14 A First of all, in the introduction in the second sentence  
15 the policy statement says that its general purpose is to  
16 interpret the Telecom Act of 1996, which I read to  
17 include Section 251, so it's obvious that the Commission  
18 is interpreting the Telecom Act, including Section 251  
19 and 252.  
20 Q Okay.  
21 A In my opinion, that means that they have incorporated  
22 that language in their work. And in my opinion, the Act  
23 itself is sufficiently clear as to what the obligation is  
24 and what is an interconnection agreement.  
25 I'm not finding the exact language that you and I

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1 are looking for here. I don't think it does exist in the  
2 interpretive statement itself, so I will agree with you  
3 about that.  
4 Q You will agree with me that Exhibit B, the interpretive  
5 statement of the Washington Commission doesn't define the  
6 term interconnection agreement for purposes of the  
7 Section 252 filing agreement?  
8 A No, it doesn't.  
9 MR. NAZARIAN: Let's mark that one.  
10 We are up to Exhibit G, I think.  
11 (Exhibit No. G marked  
12 for identification.)  
13  
14 Q Mr. Wilson, I've asked the reporter to mark as Exhibit G  
15 to your deposition a printout of 47 U.S.C.A., Section 252  
16 which I am now going to walk around and bring to you. I  
17 see you have also got your own copy of the  
18 Telecommunications Act; is that right?  
19 A That's right. It's the first committee print.  
20 Q I'm not picky about which one you look at.  
21 A I think they are all the same.  
22 Q I hope they are too. I printed this one off of Westlaw,  
23 but you are welcome to check if you like and make  
24 yourself comfortable with whatever version.  
25 A I have lived with my own hand copy so long, and you can

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1 see how well it's worn.  
2 Q Fair enough.  
3 MR. SWANSON: May I interrupt. I  
4 handed the copy you handed to me to Tom, and I wondered  
5 if you could hand it back to me so I can follow along.  
6 MR. NAZARIAN: We have lots if you  
7 need another one.  
8 MR. SWANSON: That's okay. Thank  
9 you.  
10 Q (By Mr. Nazarian) Same exercise, Mr. Wilson, could you  
11 take a look at Exhibit G in the printout of Section 252  
12 and tell me, if you could, where you believe this section  
13 defines the term interconnection agreement for purposes  
14 of the filing requirement?  
15 A I would --  
16 MR. SWANSON: Objection to the extent  
17 it calls for a legal conclusion.  
18 THE WITNESS: In my experience, I  
19 would rely on 252(a)(1) where right off the bat it says  
20 that this is for dealing with interconnections pursuant  
21 to Section 251, and I think it's in Section 251 where an  
22 interconnection agreement is defined and not in 252.  
23 Q All right. Let's mark this as Exhibit H then.  
24 (Exhibit No. H marked  
25 for identification.)

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1 about quantifying harm. I will say that --  
2 MR. SWANSON: Objection to the extent  
3 that it calls for attorney work product.  
4 THE WITNESS: In our opinion, if it  
5 were possible to quantify the harm and show it to the  
6 Commission, that would be icing on the cake. But we have  
7 already got evidence to believe -- that we believe to  
8 support our allegation that a violation occurred, and  
9 that there are numerous reasons we set forth for why we  
10 believe that that is harmful to the market and to  
11 competition.  
12 Q (By Mr. Nazarian) Right. But the part I'm driving at is  
13 the part about that we discussed at the end of the day  
14 yesterday, about how your opinion is that what the Staff  
15 views as the maximum allowable legal penalty should be  
16 imposed for each and every day of each and every  
17 agreement.  
18 And if that's your opinion, why is it -- what is  
19 the purpose of attempting to define the benefits that was  
20 derived by anybody from any of these agreements, if you  
21 have already decided to penalize the max?  
22 A Just to build a stronger case. It's strong, and we  
23 wanted to make it stronger. We attempted to find out  
24 information about harm from the parties and we couldn't  
25 get anything from them; very little information came out.

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1 And so we didn't go and place the burden on all of  
2 the competitors who have already been disadvantaged to  
3 participate with trade secret information and so on, and  
4 we decided that that was the case right there.  
5 We felt we had a strong case and that would just be  
6 additional strengthening and we would have liked to do  
7 that, but we don't think that it is a fatal flaw in our  
8 case whatsoever.  
9 Q It wouldn't have changed your view then about what the  
10 appropriate penalty should be to obtain that information,  
11 would it?  
12 A No, absolutely not. The opportunity was to opt in to  
13 these agreements which was derived from the other CLECs  
14 and the harm that that may have caused is inestimable.  
15 Q Let's get back a little bit, Mr. Wilson, to the  
16 definition of an interconnection agreement. And again I  
17 use that term in its 251, 252 meaning.  
18 I know there are agreements out in the world that  
19 have the title, Interconnection Agreement, but one of the  
20 reasons we are all here today is that state commissions  
21 and various agencies and others have taken the view that  
22 the 252 version of that term goes beyond agreements that  
23 have the title, Interconnection Agreement, at the top; is  
24 that right?  
25 A I'm not sure I follow you about a different definition.

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1 Q It's not any big deal. When I first started learning  
2 about telecom I learned that when a carrier enters the  
3 market it enters usually with an ILEC that is big and  
4 enter what is called an interconnection agreement, and  
5 that's the sort of soup to nuts definition of how they  
6 are going to do business, right?  
7 A If you want to call it a local interconnection agreement,  
8 I think that is a good shorthand term. We are not  
9 talking about interconnection of electric power  
10 utilities, for example.  
11 Q I don't even know what that is. We can leave that alone?  
12 A It's not the same thing as what we do here.  
13 Q Don't confuse me anymore. But the point is, there is  
14 under 252, particularly (e) through (i), a concept of  
15 interconnection agreements that brings us all together,  
16 right?  
17 A Yes.  
18 Q And I thought we had agreed, but tell me if I'm wrong,  
19 that prior to October 4th of 2002 there had been no court  
20 or commission that had defined the term "interconnection  
21 agreement" for purposes of the 252 filing requirement up  
22 to that point?  
23 A And I think I quibbled slightly with that statement, and  
24 I said that I think that this Commission in its work of  
25 approving interconnection agreements has done a lot of

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1 definition work already.  
2 Q And we talked about that. Beyond what you see in the  
3 decisions of this Commission, can you point to any  
4 commission ruling in any state or any court that defined  
5 interconnection agreement for purposes of 252?  
6 A No, I haven't looked for one.  
7 Q Okay. And if you take a look at Exhibit E to your  
8 deposition, which is the FCC October 4th, 2002 Order, do  
9 you see in Paragraph 8 of that Order which begins on Page  
10 4, the operative definition of what is an interconnection  
11 agreement for purposes of 252, right?  
12 A Right.  
13 Q And the sentence that crystallizes it more than any is  
14 the one that begins at the very tail end of Page 4,  
15 "Based on these statutory provisions," and now on Page 5,  
16 "we find that an agreement that creates an ongoing"  
17 italics in the original, "obligation pertaining to  
18 resale, number portability, dialing parity, access to  
19 rights-of-way, reciprocal compensation, interconnection,  
20 unbundled network elements, or collocation is an  
21 interconnection agreement that must be filed pursuant to  
22 Section 252(a)(1)." Do you see that?  
23 A Yes.  
24 Q And there is a footnote at the end of that sentence that  
25 says, "We therefore disagree with the parties who

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1 to use as a guideline in interpreting their obligations  
 2 under the Act. And it's obvious that the term "creating  
 3 an ongoing obligation pertaining to," is something which  
 4 on a case-by-case basis state commissions are the most  
 5 experienced local trier of that fact.  
 6 And we have seen the operation of the Act function  
 7 this way many times in the past where the FCC offers  
 8 guidelines and then the states interpret them in their  
 9 own specific circumstances, and that's been working very  
 10 well.  
 11 Q So it's your testimony, sir, that an agreement creates an  
 12 ongoing obligation pertaining to Section 251(b) or (c)  
 13 services if it actually or potentially has any bottom  
 14 line impact to a CLEC on those issues?  
 15 A Pertaining to those elements that are offered under the  
 16 Act, yes.  
 17 Q Okay.  
 18 A It affects the value of that transaction, which is always  
 19 described in an interconnection agreement, and needs to  
 20 be made available for opt in to make that effective tool  
 21 for competition to work.  
 22 Q And your testimony is once an agreement has that actual  
 23 or potential bottom line impact, and it is not filed,  
 24 there should be a maximum penalty?  
 25 A Yes.

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1 Q Regardless of what scope of 253(b) or (c) services are  
 2 involved?  
 3 A Yes.  
 4 Q Regardless of whether any CLEC or how many CLECs could  
 5 opt in to that agreement in reality?  
 6 A Yes. Just like you have been turning the knife on me, I  
 7 will turn it back. The FCC didn't say anything about  
 8 that in its Order either, did it? But I think that  
 9 that's true.  
 10 Q All right. We have been going for almost an hour and a  
 11 half. I think it would be a good time to take a break.  
 12 MS. ENDEJAN: Sure.  
 13 MR. SWANSON: That's fine.  
 14 (Recess.)  
 15  
 16 Q Mr. Wilson, I want to finish up this discussion about  
 17 interconnection agreement standards with just a couple of  
 18 final follow-up questions, and I swear we will move on  
 19 even though I'm not under oath today.  
 20 A Lawyers can't lie anyway.  
 21 Q Some would say if our lips are moving we are lying, but  
 22 we will let somebody else judge that.  
 23 Mr. Wilson, do you consider it a material criterion  
 24 in your analysis of whether an agreement is an  
 25 interconnection agreement, is it material to you whether

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1 the agreement has a bottom line impact to CLECs relating  
 2 to one of the 251(b) or (c) issues?  
 3 A Yes.  
 4 Q Is it material to you for your consideration whether an  
 5 agreement is an interconnection agreement, whether not  
 6 having opt in access would impair a CLEC's ability to  
 7 compete? Is that material to you?  
 8 A Oh, yes.  
 9 Q Is it material to you that the issues addressed in the  
 10 agreement are necessary to the CLEC's business?  
 11 A If they are necessary to the CLEC's local business, yes.  
 12 Q Fair enough.  
 13 A And also material to the CLEC's access to any other  
 14 network services or features that have to go through the  
 15 local bottleneck.  
 16 Q Is the fact of some impact on a CLEC's ongoing business  
 17 relationship with an ILEC, is that a material criterion  
 18 for you as to whether an agreement is an interconnection?  
 19 A I apologize. Would you mind repeating the question, sir.  
 20 MR. NAZARIAN: Madam Reporter, would  
 21 can you read it back.  
 22 (Question on Page 48, Lines  
 23 16 through 18, read by  
 24 the reporter.)  
 25

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1 THE WITNESS: Could you explain what  
 2 you mean by impact on CLECs.  
 3 Q (By Mr. Nazarian) Well, I believe in some of your  
 4 testimony yesterday, particularly in some of the Eschelon  
 5 agreements that took the form of letters rather than  
 6 documents that had the word "agreement" on top of them  
 7 and two signatures, you gave some testimony yesterday  
 8 about how you thought -- and I'm paraphrasing -- but you  
 9 thought that those certain kinds of agreements or  
 10 documents could qualify as interconnection agreements for  
 11 filing purposes because they affected the CLEC's ongoing  
 12 business relationship with the ILEC.  
 13 And I distinguished that from the bottom line  
 14 question because I understood you to be saying that the  
 15 impact could be something other than purely financial.  
 16 And so I guess to work with that explanation, I  
 17 guess the question I will ask you is: Is it a material  
 18 criterion to you that an agreement or a document might  
 19 affect or have some impact on the CLEC's business  
 20 relationship with the ILEC when you think about whether  
 21 it qualifies as an interconnection agreement?  
 22 A Yes, it is. I think to me what you were describing was  
 23 in effect an amendment. And so, yes, that is material.  
 24 Q Okay. Now is it your view that if any of those four or  
 25 so criterion we just ticked off after the break: the

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1 impact on the bottom line, impairment of the ability to  
 2 compete, the necessity to the CLEC's business, or the  
 3 impact on the ongoing business relationship, does the  
 4 presence of any one of those features in an agreement or  
 5 document independently make it an interconnection  
 6 agreement in your view, sir?

7 A We have bottom line impairment, ability to compete, and  
 8 was the third one necessary?

9 Q Necessity to the CLEC's business or impact on the ongoing  
 10 business relationship. If any one of those four is  
 11 present, does that make it an interconnection agreement  
 12 in your view?

13 A Without seeing a specific -- which I would prefer to do,  
 14 yes.

15 Q All right. Take a look, Mr. Wilson, please, at your  
 16 testimony, Exhibit A to your deposition, and specifically  
 17 at Page 6. There are a couple of things in this  
 18 discussion that I want to ask you about.

19 A Oh, my, I was hoping we were further along than 6, but  
 20 I'm turning there.

21 Q If it makes you feel any better, we have covered some  
 22 things after that.

23 A I'm on Page 6?

24 Q Yes, sir. Page 6 in its entirety, as well as Page 5  
 25 before that, is your response to a question that starts

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1 on the bottom of Page 4 when you are asked to discuss the  
 2 underlying regulatory framework on which you base your  
 3 testimony.

4 A Yes.

5 Q I'm not going to ask you to redo all of that because we  
 6 have covered a lot of it, but there are a couple of  
 7 particular things I want to go over.

8 On Page 6, Line 14 there's a sentence that says,  
 9 "There are several reasons that the filing requirement is  
 10 important. Perhaps the most important reason is that one  
 11 of the fundamental characteristics of a theoretically  
 12 competitive market is perfect information about price."  
 13 Do you see that?

14 A Yes.

15 Q I understand, I think, what you mean by perfect  
 16 information about price in the context we are talking  
 17 about here. But outside of regulated context, so let's  
 18 just say widgets, because the minute we pick a particular  
 19 industry there will be some gloss on it we will have to  
 20 deal with and that will make this more complicated than I  
 21 want it to be.

22 If I made and was in the process of buying and  
 23 selling widgets, I would have the ability to set  
 24 different prices for different customers, right?

25 A Yes.

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1 Q And I would not be obliged to share pricing information  
 2 between -- the price that I had agreed to with one  
 3 customer with another customer, right?

4 A Yes. You didn't say so, but I'm assuming you are talking  
 5 about widgets aren't regulated?

6 Q I thought we were assuming that. Widgets aren't  
 7 regulations. Maybe I have a widget store and everybody  
 8 knows what the price in my retail store is. But if I  
 9 have wholesale widget customers too, I can sell widgets  
 10 at whatever price I can negotiate, and I don't have to  
 11 share that pricing information with other customers,  
 12 right?

13 A That's right. If I can just briefly expound or let you  
 14 ask me the next question.

15 Q Let me ask you this, and then you can expound.  
 16 In a nonregulated environment, competitors don't  
 17 have perfect information about pricing, do they?

18 A In the real world, not always.

19 Q In fact, they don't have any mechanism by which to  
 20 enforce the availability of perfect pricing information,  
 21 do they?

22 MR. SWANSON: Objection to the extent  
 23 it calls for a legal conclusion.

24 THE WITNESS: Again, in the real  
 25 world I think that's true. I should point out that the

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1 reference to my testimony did encompass my statement as  
 2 an economist of what's theoretically true. And so I was  
 3 simply relying upon Econ 101 what are the four  
 4 characteristics of a perfectly competitive market, and  
 5 perfect information about price is one of those critical  
 6 factors.

7 In the real world it gets bent. In the real world  
 8 in competitive markets suppliers do discriminate. It's  
 9 not unlawful. They do keep price arrangements secret  
 10 sometimes for unregulated, real-world products, and  
 11 that's not unlawful all the time.

12 Q That's fair. It's your testimony then that in this  
 13 environment, the telecom environment, that the Act is  
 14 designed to bring about a version of a competitive market  
 15 that does permit perfect information sharing about  
 16 prices?

17 A Yes, I think that's a very good description of what the  
 18 Act is intended to do.

19 Q I think you said in your testimony that the  
 20 Telecommunications Act was designed among other things to  
 21 try to bring about a competitive market structure in what  
 22 had been previously a fully regulated environment.

23 And I can look for the statement in your testimony  
 24 to that effect, but does that sound like something you  
 25 said?

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1 usage files had to be generated manually which was less  
 2 accurate.  
 3 And so my answer to your clarifying question, to  
 4 turn the tables a little bit, is that the reseller who  
 5 opts into standard UNE-P with features would get the  
 6 mechanized daily usage files?  
 7 A Would they be accurate?  
 8 Q Well, I'm not the witness. But let me ask it this way  
 9 maybe to try and --  
 10 A I wasn't trying to ask you questions as a witness. I was  
 11 asking a clarification.  
 12 Q Our position is there is no allegation that the  
 13 mechanized daily usage files were inaccurate. Nobody was  
 14 complaining about that.  
 15 I am going to ask you to adopt that, or Mr. Swanson  
 16 can argue what he wants when the hearing comes, but let's  
 17 assume that there is no allegation that the mechanized  
 18 daily usage files are inaccurate, okay? And the reason  
 19 Eschelon's are, is they are in a manual process.  
 20 A Right.  
 21 Q Assuming, for the purposes of these questions, what I  
 22 have just told you about the difference in the daily  
 23 usage file generation processes, does it change your  
 24 answer to say that standard UNE-P CLECs should be able to  
 25 opt in to the credits that are addressed in your Exhibit

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1 8 or otherwise known as Agreement 5A?  
 2 A I can go along with that hypothetical description because  
 3 I think that what you are doing is describing essentially  
 4 that CLECs can't opt in to something unless they are  
 5 willing to take the related terms and conditions, and I  
 6 have already agreed to that.  
 7 But where I was still having some trouble is the  
 8 notion that you put forth that CLECs couldn't opt in to  
 9 any of the other Eschelon agreements. Escalation  
 10 procedures is another example. I think a CLEC could opt  
 11 in to the escalation procedures without buying UNE-P or  
 12 UNE-Star as you called it.  
 13 And so I just wanted to not agree that for some  
 14 reason buying UNE-E makes you invulnerable to opt ins  
 15 forever for many things; it doesn't.  
 16 Q Let's parse through that a little bit because I  
 17 understand I think the distinction you are making, but I  
 18 want to make sure I have it and that we get it on the  
 19 record.  
 20 Stepping back to the more basic question I asked  
 21 you was, whether you would agree with me that in order  
 22 for a CLEC to opt in to any of these Eschelon agreements  
 23 they would first have to opt in to UNE-E.  
 24 I understand your clarification after this colloquy  
 25 we had about this daily usage files. Your answer is, it

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1 may -- for some features of these agreements yes, and for  
 2 some features of these agreements, no?  
 3 A Yes.  
 4 Q Okay. Let's walk through the Eschelon agreements then  
 5 and sort out which is which. I guess let's start with  
 6 1A, which is Wilson 4.  
 7 A Okay.  
 8 Q What is your opinion about whether a CLEC would have to  
 9 first opt in to UNE-E in order to opt in to the  
 10 provisions under the heading, Interconnection Agreement  
 11 Implementation and Enforcement?  
 12 A You are asking me which of the interconnection elements I  
 13 have identified --  
 14 Q Actually, I would like to withdraw the question if I  
 15 could because I need to ask a better one.  
 16 MR. SWANSON: Are we still under the  
 17 hypothetical? I'm not clear. I'm sorry to interrupt.  
 18 Are we still operating under the hypothetical?  
 19 MR. NAZARIAN: It's not really a  
 20 hypothetical, but it's an assumption I asked him to make.  
 21 MR. SWANSON: But we are still  
 22 operating under that?  
 23 MR. NAZARIAN: Yes. And we are only  
 24 doing that because he hasn't had an opportunity to learn  
 25 what the facts are and you may disagree, but rather than

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1 going through the tedious process of trying to teach him  
 2 something, which is not really what depositions are about  
 3 anyhow, I thought we should do it that way.  
 4 And if you want to react after you have had a  
 5 chance to look at the facts, then we will deal with that.  
 6 Q (By Mr. Nazarian) Let's look instead at the agreement  
 7 that's attached as Wilson Exhibit No. 6, which is  
 8 Agreement 3A. This one is at the right point in time  
 9 now.  
 10 A Okay.  
 11 Q The first heading on the first page of this agreement,  
 12 3A, Wilson 6, it says, "Implementation Plan." Do you see  
 13 that?  
 14 A Yes.  
 15 Q If you assume the truth of the facts I have asked you to  
 16 assume about the UNE-E product, is it your testimony,  
 17 your opinion that other CLECs could opt in to the  
 18 implementation plan without first opting in to UNE-E?  
 19 A No, that isn't my testimony in light of the hypothetical  
 20 or set of facts you have been telling me about. But  
 21 agreement 3A is, in my opinion, an interconnection  
 22 agreement just because it contains the escalation  
 23 procedures, and I'm not focused on the implementation  
 24 plan.  
 25 I don't think that other CLECs have to buy UNE-E or

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1 states of the Telecom Staff, had stated that the filing  
 2 obligation was not certain, that they had found some  
 3 uncertainty as to the extent of filing obligations as to  
 4 a certain agreement?  
 5 A No.  
 6 Q Would it be, in your view, a factor that could mitigate  
 7 the amount of a penalty if your counterparts in other  
 8 states had not identified a particular agreement or type  
 9 of agreement as previously falling -- or as falling  
 10 within the filing obligations under 252?  
 11 A No. And, again, I just want to point out I don't have  
 12 any testimony about that.  
 13 Q I understand. Would it be, in your view, a factor that  
 14 could mitigate a penalty if facts were to come out  
 15 demonstrating that Qwest had taken steps to insure  
 16 compliance in the future with Section 252 filing  
 17 obligations?  
 18 A No.  
 19 Q Would it be, in your view, a factor that could mitigate  
 20 the amount of penalty if the facts were to come out that  
 21 demonstrated that Qwest had established a formal process  
 22 for insuring compliance with Section 252, and made that  
 23 process open to inspection by commissions or other state  
 24 telecom regulations?  
 25 MR. SWANSON: I guess I'm going to

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1 object to the extent this is duplicative.  
 2 I do believe that you asked a general proposition  
 3 about Staff's position. Staff answered the proposition,  
 4 and now you are detailing each specific reference to that  
 5 general proposition. And I think we are going over the  
 6 same territory.  
 7 THE WITNESS: May I please have the  
 8 question repeated?  
 9 MR. NAZARIAN: Madam Reporter, would  
 10 you please read the question back.  
 11 (Question on Page 98, Lines  
 12 19 through 24 read  
 13 by the reporter.)  
 14  
 15 THE WITNESS: No. I might note that  
 16 it's my understanding Qwest has done that, so my answer  
 17 isn't hypothetical.  
 18 Q (By Mr. Nazarian) Would it be, in your view, Mr. Wilson,  
 19 a factor that could mitigate the amount of penalty if it  
 20 were to -- let me start again.  
 21 Would consistent treatment among the different  
 22 carriers that are defendants in this case be a factor  
 23 that in your view would mitigate the amount of a penalty?  
 24 A Only if the consistent treatment were in the form of  
 25 filing the interconnection agreement for approval, and

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1 making it available for public inspection and opt in.  
 2 And I would also like to add to my last answer  
 3 about Qwest having adopted a formal policy that it's my  
 4 understanding they described to the FCC and other  
 5 commissions, having a group of people who decide policy,  
 6 and they have tried to put more structure to what they do  
 7 in that area.  
 8 And I'm not saying that that's a formal policy or  
 9 practice that we have reviewed and blessed, but I do know  
 10 that that's been done and it doesn't change our opinion.  
 11 Thank you.  
 12 Q Let me make sure I understand your answer to my most  
 13 recent question.  
 14 A Yes.  
 15 Q Is it your opinion that there need not be consistency in  
 16 the penalty assessed to the different carriers that are  
 17 respondents in this case?  
 18 Should they all be penalized the same, or does that  
 19 not matter in your view?  
 20 MR. SWANSON: I guess, objection to  
 21 the form of the question. I'm not clear what you mean by  
 22 the same.  
 23 Q (By Mr. Nazarian) Do you think the same formula, the  
 24 same penalty formula should apply across the board to all  
 25 defendants, or could there be variations in the formula

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1 that depends on facts and circumstances?  
 2 A Now you are asking me about -- the way I understand that  
 3 is that would a CLEC receive a different -- less than  
 4 \$1,000-a-day penalty compared to Qwest. There's a  
 5 CLEC/ILEC type of disparity --  
 6 Q I asked more broadly than that and was going to drill  
 7 down to that.  
 8 A I'm thinking about that right now, and to me the question  
 9 is, is a violation of 252(e) something that needs to be  
 10 the same penalty assessment for a CLEC as for an ILEC.  
 11 And generally speaking, I believe Staff considers the  
 12 correct response to be that it's the same violation.  
 13 Q And so they should be penalized equally?  
 14 A (Witness nods head affirmatively.)  
 15 MR. LUNDY: Do we have an answer?  
 16 THE WITNESS: Yes. My answer is yes.  
 17 MR. NAZARIAN: I will look over the  
 18 reporter's shoulder for a second.  
 19 THE WITNESS: I apologize. I might  
 20 have nodded at first. I should have offered an audible  
 21 response.  
 22 Q (By Mr. Nazarian) No, it's okay. We are both working at  
 23 not talking over each other, and I know the reporter is  
 24 getting everything, but sometimes in the cross talk  
 25 things get lost and I wanted to make sure that we got it.



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1 Do you think, Mr. Wilson, that if a carrier  
2 provided agreements to a state commission and said we are  
3 making these available to you to review, and if you think  
4 they are interconnection agreements, please consider them  
5 filed, that if a company did that, that that should  
6 mitigate the amount of penalty or could be a factor that  
7 could mitigate the amount of the penalty?  
8 A Yes, I do. And Staff has implemented that view with the  
9 recommendation I'm presenting. I stopped counting  
10 penalty days for the Exhibit A agreements that were filed  
11 late, perhaps a lot of them, around August 22nd, 2002.  
12 And quoting an abundance of caution, the Commission  
13 received those filings and issued orders approving them  
14 all, and so I stopped counting penalty days with regard  
15 to those filings on August 22nd, 2002.  
16 There were some other variations on that kind of a  
17 thing happening, but sure, the filers said well, we don't  
18 know if they are interconnection agreements or not, but  
19 the Commission answered them with its order so that was  
20 done.  
21 Q In your view, Mr. Wilson, if -- let me ask it this way.  
22 I gather from your answer to my question a few minutes  
23 ago about penalties, that you view ILECs and CLECs as  
24 having equal responsibility to file interconnection  
25 agreements; is that correct?

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1 A Yes.  
2 Q If one of the two parties to an agreement files it, does  
3 that relieve the other of the obligation to file, in your  
4 view?  
5 MR. SWANSON: Objection to the extent  
6 it calls for a legal conclusion.  
7 THE WITNESS: I think that the  
8 obligation to file has been met in that circumstance.  
9 Q (By Mr. Nazarian) On behalf of both parties?  
10 A Yes, the agreement got filed.  
11 Q All right. Let's go ahead and go back to these  
12 agreements. And I think the two that I pointed you to  
13 before the lunch break were Wilson 7, which is 4A, and  
14 Wilson 20, which is 21A.  
15 Before we get talking about these, at least the  
16 copy of your testimony in exhibits that made their way to  
17 me, which may be a number of generations downstream in  
18 terms of copying from what you filed, I was missing a  
19 page out of Wilson 20, and so I have taken the liberty of  
20 copying the whole agreement and will have this marked.  
21 (Exhibit No. I marked  
22 for identification.)  
23  
24 Q And you will see in a minute why it's good to have Page  
25 3. Take a look at 21A, Mr. Wilson.

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1 A Okay.  
2 Q This agreement is called a Confidential Purchase  
3 Agreement, correct?  
4 A Yes, that's what it is labeled on the front page.  
5 Q Tell me why you believe that this agreement qualifies as  
6 an interconnection agreement, please.  
7 A Because it is Staff's theory that the purchase agreement  
8 has the effect of determining the overall rate paid for  
9 services over the period of time in which the ongoing  
10 relationship exists.  
11 Q And how does it accomplish that, sir, in your view?  
12 A Well, to put it very simply, Eschelon is operating a till  
13 and has to put money into it to pay it -- to take money  
14 out to pay its bills.  
15 Qwest is giving it money, or rather is giving it  
16 purchase agreements that derive how much is going to be  
17 spent and how much is going to be -- how much the prices  
18 will be. And that affects that bottom line, the economic  
19 value of the interconnection agreement between the two.  
20 It also provides the parties with a certain amount  
21 of certainty on what will be happening between the two of  
22 them going forward, and probably influences their overall  
23 arrangement that's ongoing.  
24 So we think that this is something that when you  
25 look at it as I displayed it in its context in my exhibit

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1 showing all of the properly filed and secret agreements  
2 put together, that this impacted that relationship.  
3 Q Does this agreement anywhere by itself affect pricing of  
4 services Qwest is selling to Eschelon?  
5 A Not directly, but it affects the amount of revenue that  
6 is realized and that affects profits.  
7 Q It affects the revenue realized because in this agreement  
8 Eschelon commits to buy certain volumes of services from  
9 Qwest over the term of the agreement, is that what you  
10 mean?  
11 A Yes. And a lot like you were describing earlier when we  
12 were talking about a CLEC trying to opt in to something  
13 and taking the related terms and conditions, we think  
14 that these are related terms and conditions that mandates  
15 the ongoing obligation.  
16 Q Do you think, Mr. Wilson, that the \$150 million purchase  
17 agreement contained in this 21A is related to the terms  
18 of the other agreements?  
19 A Yes.  
20 Q And so somebody wanting to opt in to the other agreements  
21 would also have to agree to make the \$150 million  
22 purchase commitment, right?  
23 A Yes. I think that's one reason why perhaps Qwest may not  
24 have made it publicly available because they didn't want  
25 to make that special term available to others.

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1 et cetera.

2 Nevertheless, as long as I have been a Staff

3 member, and I have always believed that as regulated

4 utilities, when the Staff issues a data request that we

5 expect that we get an honest answer. So as a general

6 matter of what I assume, I assume it's the truth. But I

7 have worked sometimes with the attitude that I'm from

8 Missouri, show me.

9 So the answer is, yes, I assume they are telling

10 truth with the understanding that I tried to tell you I'm

11 not a fool.

12 Q I don't mean to suggest you are a fool.

13 A No, I know.

14 Q And it sounds from what you just said, and correct me if

15 I'm wrong, you recognize there is a difference in these

16 responses between when a carrier provides you with

17 factual information and when a carrier explains its view

18 of the world?

19 It's one thing to say, here's what the facts are

20 and it's entirely another to say here's what we think,

21 right?

22 A Yes.

23 Q And those would be accorded the weight that they

24 demonstrated to you that they deserve?

25 A Right.

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1 Q I want to go back for a minute and talk for a second

2 about dedicated -- let's do this first.

3 Wilson 8, which is Agreement 5A, will you take a

4 look at that, please.

5 A Okay.

6 Q Is it fair to say, sir, that this letter with respect to

7 switched access credit really just updates Paragraph 3 of

8 4A, Wilson 7?

9 A Right. We went from \$13 to \$16 a line. And another --

10 for the interim amount to account for lost access, and

11 there was also another \$2 credit.

12 Q So to the extent that a CLEC wanted to opt in to the \$16

13 credit and the \$2 intralata toll credit that are

14 addressed in this letter, they would need to have been

15 able in the first instance to opt in to Paragraph 3 of

16 Exhibit 4A, Wilson 7, right?

17 A Could I have just a second to look through this agreement

18 briefly?

19 Q Yes.

20 A According to the letter that seems to be true.

21 Q Okay. Let's talk for a minute about on-site provision.

22 I know you talked a bit with Ms. Endejan about this, so

23 we don't need to dwell on it.

24 Let's get out there as a concept that in Exhibit

25 75, the filed and approved fourth amendment to the

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1 Qwest/Eschelon interconnection agreement, there is in

2 Paragraph 2.10 a statement, and I will read it.

3 "For at least a one-year period, Eschelon agrees to

4 pay Qwest for the services of a Qwest dedicated

5 provisioning team to work on Eschelon's premises," right?

6 A Right.

7 Q So at the very least, a CLEC who reviewed this agreement

8 upon approval by the Commission, would have the ability

9 to go to Qwest and say we would like to agree to pay

10 Qwest for at least a one-year period for the services of

11 a Qwest dedicated provisioning team on our premises,

12 right?

13 A Yes.

14 Q And whatever the date this was approved on, that ability

15 was there and available to CLECs in Washington to opt in

16 to, correct?

17 A Yes, it was, but let's remember that all of the detail

18 about that was not.

19 Q Right. We are getting there.

20 A Okay.

21 Q So let's now take a look at the agreements that contained

22 the detail. And let's start with 1A, which is Wilson 4.

23 Now the filed interconnection agreement amendment

24 comes after this Exhibit 1A, but let me ask you this.

25 If Exhibit 1A had been filed and approved and

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1 available for opt in, what is it about the details

2 contained in Paragraphs 11 and 12 that a CLEC could have

3 opted in to that provide anything different than the one

4 sentence contained in the filed and approved

5 interconnection agreement in Exhibit 75.

6 A Paragraph 11 provides greater specificity than in --

7 Agreement 1A provides greater specificity than Paragraph

8 2.10 because it defines what the dedicated provisioning

9 team is, what it's characteristics will be, who -- it

10 tells you how many people will be involved on the team.

11 It tells exactly -- well, with greater specificity what

12 exactly it is that they will do.

13 And absent that clarity, an opt-in CLEC who just

14 got Paragraph 2.10 would not be assured or have any

15 certainty that they would be receiving the same.

16 Q Wouldn't the precise details of what an on-site

17 provisioning team would do, or should do to be helpful,

18 would vary CLEC by CLEC?

19 A Somewhat, yes, that's true. And somewhat -- but also I

20 think it's very likely that there would be a lot of

21 similarity, perhaps more so than variation.

22 Q Okay. But let's just look at Paragraph 11 for a second.

23 Paragraph 11 starts by saying that "US West," now Qwest,

24 "agrees to dedicate Amy Croatt as a coach and locate her

25 at ATT's offices at 511 11th Avenue South in Minneapolis

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1 with that.

2 Q (By Mr. Nazarian) All right. Take a look, Mr. Wilson,

3 if you would please at 17A, which is your Exhibit 16.

4 A Thank you.

5 Q I recall your testimony yesterday about this letter.

6 Your position is that it constitutes an interconnection

7 agreement because it discusses the issues below it in the

8 middle, cutover and conversion activity quality on down?

9 A Right.

10 Q Now is it your position that every piece of

11 correspondence between an ILEC and a CLEC that all

12 relates to these issues must be filed as an

13 interconnection agreement?

14 A Yes, if it amends the existing interconnection agreement.

15 Q What if Qwest's marketing people sent a letter that said,

16 "Dear Mr. Smith, we know you are annoyed about the way

17 it's been going with cutover and conversion activity

18 quality. We propose to address that by doing these two

19 things, A, B, C. Sincerely, your Qwest Team."

20 Eschelon responds to that by saying, "No, not good

21 enough. We want something else, X, Y and Z. Sincerely,

22 Eschelon."

23 Do those two letters need to be filed so that CLECs

24 can opt in to the proposal that Qwest made Eschelon that

25 was rejected?

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1 A It doesn't sound like they entered into an agreement.

2 Q So is it fair to say then that before there can be an

3 interconnection agreement that needs to be filed under

4 252, there has to actually be an agreement, a meeting of

5 the minds of some sort?

6 MR. SWANSON: Objection to the extent

7 it calls for a legal conclusion.

8 THE WITNESS: Yes.

9 Q (By Mr. Nazarian) Tell me, Mr. Wilson, how you find that

10 agreement to have come into being in No. 17A, Wilson 16.

11 A I just looked at it in its overall context with the

12 others in the ongoing relationship that they were

13 developing together, and see this as an amendment to what

14 they were agreeing to.

15 Q When you say you see it in the context of the overall

16 relationship, is it because this letter was sent on the

17 same day the other agreements were signed?

18 A Yes, and it's related to the same issues that the other

19 agreements deal with. And what it does is it says that

20 Qwest will strive to do better, and perhaps other CLECs

21 would like to have Qwest say that to them too and do so.

22 Q So the harm -- let me ask you this.

23 Since this was signed on the same day as all the

24 other agreements relating to UNE-E, would it be fair then

25 to say that in order to opt in to this letter a CLEC

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1 would first have to opt in to UNE-E?

2 A That's quite possible, yes.

3 Q If those prerequisites were met and a CLEC said we want

4 to opt in to this, you are saying they have missed out by

5 the not filing -- I mean, of the opportunity of being

6 told by Qwest that Qwest will try harder on these issues?

7 A Yes.

8 Q And how are CLECs, who could have had the opportunity to

9 opt in to this, harmed by the denied opportunity to hear

10 Qwest say we will try harder?

11 A I'm imagining the other CLECs being pretty frustrated and

12 unable to get their business done quickly. And I'm

13 imagining Eschelon being told we are going to take care

14 of it for you. And I'm imagining the other CLECs saying

15 I wish we could opt in to an, "we are going to take care

16 of it for you also."

17 And I believe that as the incumbent monopolist,

18 that Qwest is in a very secure position to put into play

19 exactly this type of preferential treatment by keeping it

20 secret. And that should not have been kept a secret; it

21 should have been made available to everyone.

22 Q And your position is the harm stemming from the lost

23 opportunity to get this reassurance from Qwest is

24 equivalent to the harm to be suffered by a lack of access

25 to a pricing term?

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1 A Yes.

2 Q And therefore in your view merits the maximum penalty?

3 A Yes.

4 Q Well, let's say a CLEC customer calls its account team

5 and says we are really frustrated with the quality of

6 service we have been getting on -- pick one of these

7 issues on the list in 17A.

8 And let's say that the Qwest account person who

9 sits in the equivalent position to Ms. Rixe says, "You

10 know what, we hear you. We feel your pain. We are going

11 to do our best to take care of it." And that all happens

12 on the telephone, okay?

13 Is Qwest now obliged in some fashion, or the CLEC

14 for that matter, to memorialize the fact of that

15 telephone conversation and file it with the Commission?

16 A No.

17 Q Why not?

18 A Because what you just described, for one thing, was a

19 willingness to go forward that the other CLEC got. And

20 what I'm telling you is, I'm imagining the CLEC called up

21 Ms. Rixe and got voice mail and never got a call back.

22 Whereas the Eschelon, they did get a call back and

23 they got a letter that gave them comfort about the way

24 things were going to go forward.

25 And I'm imagining in the meantime the other CLEC is