

0084

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 In the Matter of the Petition)
4 for Arbitration of an) DOCKET NO. UT-063061
5 Interconnection Agreement)
6 between) Volume V
7) Pages 84 to 292
8 QWEST CORPORATION)
9 and)
10)
11 ESCHELON TELECOM, INC.)
12)
13 Pursuant to 47 U.S.C.)
14 Section 252(b).)
15 _____)

11 A hearing in the above matter was held on
12 May 8, 2007, from 9:30 a.m to 3:40 p.m., at 1300
13 South Evergreen Park Drive Southwest, Room 206, Olympia,
14 Washington, before Administrative Law Judge PATRICIA
15 CLARK.

16 The parties were present as follows:

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21 QWEST CORPORATION, by JOHN M. DEVANEY,
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23 Northwest, Washington, D.C. 20005, Telephone (202)
24 434-1624, Fax (202) 434-1690, E-Mail
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24 Joan E. Kinn, CCR, RPR
25 Court Reporter

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1 ESCHELON TELECOM INC., By GREGORY MERZ,
2 Attorney at Law, GRAY PLANT MOOTY, 80 South Eighth
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1 EXHIBIT LIST

2 BENCH REQUESTS:

3 182 Response to Bench Request No. 1

4 183 Partial Response to Bench Request No. 2

5

6 PARTY: QWEST

7 WITNESS: RENEE ALBERSHEIM

8 1 Prefiled Direct Testimony of Renee Albersheim
9 (101 pp. including cover and table of
10 contents) RA-1T

11 2 Qwest Wholesale Change Management Process
12 Document - 01-30-06 History Log (135 pp.) RA-2

13 3 Section 12.0 - Access to Operational Support
14 Systems (OSS) (29 pp.) RA-3

15 4 Section 12.0 - Business Processes (67 pp.)
16 RA-4

17 5 Minnesota Public Utilities Commission decision
18 dated 5/19/04 in Docket No. P-421/C-03-616
19 (2 pp.) RA-5

20 6 Qwest Compliance Filing Dated 12/15/03 in
21 Docket No. P-421/C-03-616 (10 pp.) RA-6

22 7 Qwest Compliance Filing Dated 2/13/04 in
23 Docket No. P-421/C-03-616 (12 pp.) RA-7

24 8 Open Product/Process CR Detail (9 pp.) RA-8

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1 9 Expedites and Escalations Overview - V41.0
2 (10 pp.) RA-9
3 10 PSON (4 pp.) RA-10
4 11 Provisioning and Installation Overview - V89.0
5 (27 pp.) RA-11
6 12 Open System Change Requests - Detail (2 pp.)
7 RA-12
8 13 Ordering Overview - V122.0 (41 pp.) RA-13
9 14 Jeopardy Data (10 pp.) RA-14
10 15 Service performance Indicator Definitions
11 (PID) 14-State 271 PID Version 8.1 (125 pp.
12 including cover and table of contents) RA-15
13 16 Wholesale Local Business Procedures (10 pp.)
14 RA-16
15 17 Qwest Products 7 Services - Maintenance and
16 Repair Overview (21 pp.) RA-17
17 18C CONFIDENTIAL Prefiled Responsive Testimony of
18 Renee Albersheim (73 pp. including cover,
19 table of contents, and list of exhibits)
20 RA-18RT
21 19 VCI Dispute (1 p.) RA-19RT
22 20 Oversight Committee Meeting Minutes (3 pp.)
23 RA-20RT
24 21 CR PC030603-1 Documentation CR Process
25 (12 pp.) RA-21RT

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1 22 Eschelon CR PC072303-1 (6 pp.) RA-22RT
2 23 Eschelon CR PC081403-1 (12 pp.) RA-23RT
3 24 Qwest CR PC102704-1ES TRRO PCAT (18 pp.)
4 RA-24-RT
5 25 CR PC081903-1 SIG Increase - Withdrawn (1 p.)
6 RA-25RT
7 26 CR PC020205-1 DD Increase on 911 (2 pp.)
8 RA-26RT
9 27 Account Manager PCAT (7 pp.) RA-27RT
10 28 Qwest Review of Exhibit BJJ-6 (2 pp.) RA-28RT
11 29 Prefiled Rebuttal Testimony of Renee
12 Albersheim (48 pp. including table of
13 contents) RA-29RBT
14 30 Notice of Jeopardy Documentation Changes
15 (2 pp.) RA-30
16 31 Redlines to Jeopardy PCAT (20 pp.) RA-31
17 32 Redlines to List of Jeopardy Codes (9 pp.)
18 RA-32
19 33 Eschelon AZ Exhibit BJJ-19 (4 pp.) RA-33
20 CROSS-EXAMINATION EXHIBITS
21 34 Qwest notice dated April 27, 2007, regarding
22 Negotiations Template and Wireless Agreements
23 (10 pp.)
24 35 Qwest negotiations template (excerpts -
25 Section 1.71 and Exhibits L and M) (5 pp.)

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1 36 Qwest Washington SGAT dated June 25, 2002
2 (excerpts - 1.7.1 and Exhibits L and M)
3 (4 pp.)
4 37 Qwest notice dated November 15, 2006,
5 regarding CMP - Getting started as a CLEC V21
6 (2 pp.)
7 38 E-mails dated May 16, June 1, and June 3,
8 2005, between Kimberly Issacs and Qwest CMP
9 (4 pp.)
10 39 In the matter of a request by Eschelon Telecom
11 for an investigation regarding customer
12 conversions by Qwest and regulatory
13 procedures, Minnesota Public Utilities Docket
14 No. P-421/C-03-616 (compliance filing of Qwest
15 Corporation) (6 pp.)
16 40 Qwest response to Eschelon Telecom of Arizona,
17 Inc.'s Interrogatory No. 15 in Arizona
18 Corporation Commission Docket Nos.
19 T-03406A-06-0257 and T-01051B-06-257 (1 p.)
20 41 Document dated February 25, 2004, prepared by
21 Qwest in connection with CMP ad hoc call
22 scheduled for March 4, 2004, regarding CMP
23 PC081403-1 jeopardy notification process
24 changes (15 pp.)
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1 WITNESS: WILLIAM R. EASTON
2 42 Prefiled Direct Testimony of William R. Easton
3 (33 pp. including cover and table of contents)
4 WRE-1T
5 43C CONFIDENTIAL Prefiled Responsive Testimony of
6 William R. Easton (27 pp. including cover and
7 table of contents.) WRE-2RT
8 44 Invoice dated 3/5/05 (2 pp.) WRE-3
9 45C CONFIDENTIAL Prefiled Rebuttal Testimony of
10 William R. Easton (35 pp. including table of
11 contents) WRE-4RBT
12 46C CONFIDENTIAL Oregon Telecom (1 p.) WRE-5
13 WITNESS: ROBERT J. HUBBARD
14 47 Prefiled Direct Testimony of Robert J. Hubbard
15 (51 pp. including cover and table of contents)
16 48 Prefiled Responsive Testimony of Robert J.
17 Hubbard (16 pp. including cover and table of
18 contents) RJH-2RT
19 49 Qwest Price Quote (1 p.) RJH-3
20 50 Prefiled Rebuttal Testimony of Robert J.
21 Hubbard (6 pp.) RJH-4RBT
22 WITNESS: TERESA K. MILLION
23 51 Prefiled Direct Testimony of Teresa K. Million
24 (24 pp. including cover and table of contents)
25 TKM-1T

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1 52 Prefiled Responsive testimony of Teresa K.
2 Million (32 pp. including cover and table of
3 contents) TKM-2RT

4 53 Prefiled Rebuttal Testimony of Teresa K.
5 Million (29 pp. including table of contents)
6 TKM-3RBT

7 CROSS-EXAMINATION EXHIBITS:

8 54 Qwest filing letter dated May 4, 2006,
9 regarding Amendment 4 to the interconnection
10 agreement between AT&T Communications of the
11 Pacific Northwest, Inc. and Qwest Corporation
12 for the state of Washington (5 pp.)

13 55 Qwest Washington SGAT, dated June 25, 2002,
14 (excerpts - Section 9.7.5.2.1) (3 pp.)

15 56 Qwest Negotiation Template Exhibit A (19 pp.)

16 WITNESS: KAREN A. STEWART

17 57 Prefiled Direct Testimony of Karen Stewart
18 (125 pp. including cover and table of
19 contents) KAS-1T

20 58 Comingling (4 pp.) KAS-2

21 59 Prefiled Responsive Testimony of Karen Stewart
22 (87 pp. including cover and table of contents)
23 KAS-3RT

24 60 Unbundled Loop (2 pp.) KAS-4

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1 61 Prefiled Rebuttal Testimony of Karen Stewart
2 (44 pp. including table of contents) KAS-5RBT
3 PARTY: ESCHELON
4 WITNESS: MICHAEL STARKEY
5 62 Prefiled Direct Testimony of Michael Starkey
6 (198 pp. including cover and table of
7 contents)
8 63 Educational Background and Relevant Work
9 Experience (20 pp.) MS-1
10 64 Qwest Response to Document in Review (7 pp.)
11 MS-2
12 65 DC Power Measuring Amendment to the
13 Interconnection Agreement between Qwest
14 corporation and __ for the State of __ (4 pp.)
15 MS-3
16 66 Collocation application Form
17 New/Change/Augment - Version 20 (15 pp) MS-4
18 67 Prefiled Rebuttal Testimony of Michael Starkey
19 (129 pp. including cover and table of
20 contents)
21 68 Issues by Subject Matter - Washington (12 pp.)
22 MS-5
23 69 List of Eschelon Direct & Rebuttal Exhibits
24 (5 pp.) MS-6
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1 70 Eschelon/Qwest letter exchange on Qwest's
2 "policy decision" to take Issue 9-58 to CMP
3 within two months (5 pp.) MS-7
4 71 Prefiled Surrebuttal Testimony of Michael
5 Starkey (250 pp. including table of contents)
6 72 Minnesota Public Utilities Commission Orders
7 dated July 30, 2003, and November 12, 2003
8 (14 pp.) MS-8
9 73 Transcript of Minnesota Public Utilities
10 Commission hearing (50 pp.) MS-9
11 WITNESS: BONNIE J. JOHNSON
12 74 Prefiled Direct Testimony of Bonnie J. Johnson
13 (13 pp.)
14 75 Qwest Wholesale Change Management Process
15 Document - 01-30-06 History Log (12 pp.)
16 BJJ-1
17 76 No Build Held Order Chronology (8 pp.) BJJ-2
18 77 CHRONOLOGY OF Qwest CMP Changes Related to
19 Expedites (30 pp.) BJJ-3
20 78 Documented Facts (13 pp.) BJJ-4
21 79 Jeopardy Classification and Firm Order
22 Confirmations (16 pp.) BJJ-5
23 80 Jeopardy Classification and Firm Order
24 Confirmation: Examples of Qwest's Failure to
25 Provide a Timely FOC (1 p.) BJJ-6

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1 81 Secret TRRO PCAT (15 pp.) BJJ-7
2 82 Summary of Examples For Issues 12-64, 12-65
3 and 12-66 (36 pp.) BJJ-8
4 83 DSI CRUNEC Chronology (5 pp.) BJJ-9
5 84 Qwest Process Notification for CRUNEC dated
6 4/30/03 (2 pp.) BJJ-10
7 85 E-mail Messages re: DS1 Facility Response
8 (16 pp.) BJJ-11
9 86 Qwest Order Confirmation dated 8/10/06 (1 p.)
10 BJJ-12
11 87 Qwest-Eschelon Email Exchange Re: to BJJ-12
12 (9 pp.) BJJ-13
13 88 Qwest Process Notification for CMP - Local
14 Service Ordering Guidelines (LSOG) and Product
15 Catalogs (PCATs) Updates Associated with IMA
16 20.0 System Release (8 pp.) BJJ-14
17 89 Qwest Notification dated 9/15/06 Re: IMA XML
18 Implementations Guidelines (2 pp.) BJJ-15
19 90 Prefiled Rebuttal Testimony of Bonnie J.
20 Johnson (22 pp.)
21 91 Qwest Negotiations Template Input
22 - Qwest/Eschelon Exchange (2 pp.) BJJ-16
23 92 Multiple CLEC Negotiations - Qwest-Eschelon
24 Exchange (8 pp.) BJJ-17
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5 95 Excerpt from CMP Redesign Meeting Minutes
6 10/2/01 (4 pp.) BJJ-20
7 96 Draft Eschelon Section 12 (March 18, 2004),
8 Annotated (69 pp.) BJJ-21
9 97 Jeopardy Change Requests Information from
10 Qwest's Archives (3 pp.) BJJ-22
11 98 Loss and Completions Report in Qwest's Product
12 and Process and Systems Change Request
13 Archives (2 pp.) BJJ-23
14 99 CMP Documentation, Qwest CR# PC100101-5
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17 (APOT), Qwest/Eschelon Exchanges (9 pp)
18 BJJ-25
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21 Version 30 Announcement and Qwest Response to
22 CLEC Comments; and 9/21/01 Product
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1 103 List of Qwest non-CMP TRRO PCAT URLs (2 pp.)
2 BJJ-28
3 104 CMP Redesign Action Item Log for #143 & CMP
4 Gap Analysis for #142 Regarding EDI
5 Implementation Guidelines and Scope of
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7 105 Summary and excerpts from supporting
8 documentation showing that contract language
9 was discussed in prior CLEC Forum meetings &
10 list of Forums from Qwest wholesale calendar
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12 106 PSON Change Requests Information from Qwest's
13 Archives (4 pp.) BJJ-31
14 107 Change Request Related to Fatal Reject Notices
15 in Qwest's Product and Process, and Systems
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19 Related Time Period, if any (24 pp.) BJJ-34
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22 Provide an FOC or a Timely FOC (10 pp.) BJJ-35
23 111 Jeopardies/FOCs/Delayed Order compliance:
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7 Johnson (33 pp.)
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10 116 2/26/04 Notice for 3/4/04 CMP Jeopardy
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14 yet Eschelon Accepts Circuit (3pp.) BJJ-41
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17 (2 pp.) BJJ-42
18 119 Qwest Service Center and Manager Roles in
19 Relation to CMP (2 pp.) BJJ-43
20 120 InfoBuddy and RPD: Qwest 6/27/01 Email Re:
21 InfoBuddy; 3/29/06 CMP Notice of RPD
22 retirement; Eschelon objection and Qwest
23 response (4pp.) BJJ-44
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25 Emails Re: Eschelon objection to CR

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1 completion; Emails Re: March CMP meeting
2 minutes; and Updated TRRO PCAT URLs reflecting
3 recent versions (updated by BJJ-28 in rebuttal
4 testimony.) (48 pp.) BJJ-45

5 122 Documentation relating to Qwest PCAT Expedites
6 & Escalations Overview Versions 6, 27, 30, and
7 44, as well as the CMP status history/detail
8 for Covad's Change Request entitled
9 "Enhancement to the existing Expedite Process
10 for Provisioning." (53 pp,) BJJ-46

11 123 Expedites: Annotated pages from Qwest Process
12 Notifications for Versions 11, 22, 27, and 30
13 of the Qwest Expedites and Escalations
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15 Versions 11 and 22 were associated with the
16 Covad change request and Versions 27 and 30
17 were not associated with the Covad or any
18 change request) (4 pp.) BJJ-47

19 124 Maintenance and Repair and Dispatch PCAT
20 changes: CMP Ad Hoc Meeting Minutes (Oct. 10,
21 2006); Level 3 Notification (Dec. 1, 2006);
22 Echelon's Comments (Dec. 15, 2006); Level 3
23 Notifications (Dec. 19, 2006); Eschelon-Qwest
24 Email Exchange (Jan. 2007); excerpt from
25 Monthly CMP Meeting Minutes (Feb. 21, 2007);

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5 (Revised) (2 pp. including key) BJJ-49
6 126 Jeopardies: Jeopardies Classification and Firm
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10 RA-28RT) (23 pp. including key) BJJ-50
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12 Meeting Request: Meeting Minutes (9 pp.)
13 BJJ-51
14 128 Two separate Qwest Regulatory TRRO CRs (SCR
15 102704-1RG and SCR 083005-01), both which
16 Qwest withdrew; CMP Oversight meeting minutes
17 from 1/4/05 and 1/10/05 (13 pp.) BJJ-52
18 129 Examples of Qwest position that it will not
19 provide requested documentation (pp.) BJJ-53
20 WITNESS: DOUGLAS DENNEY
21 130 Prefiled Direct Testimony of Douglas Denney
22 (205 pp. including cover and table of
23 contents)

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1 131 Qwest Process Notification dated 9/1/05 re:
2 Billing for design changes on Unbundled Loop
3 (2 pp.) DD-1
4 132 Email Messages (3 pp.) DD-2
5 133C CONFIDENTIAL Exhibit re: Payment and Deposit -
6 Section 5.4 (27 pp.) DD-3
7 134 Petition of McLeodUSA Telecommunications
8 Services, Inc. Before IPUC (26 pp.) DD-4
9 135 Collocation Space Option Reservation (2 pp.)
10 DD-5
11 136 Description of Eschelon Rate Proposals and
12 Cost Model Changes Washington (7 pp.) DD-6
13 137 Prefiled Rebuttal testimony of Douglas Denney
14 (124 pp. including cover and table of
15 contents)
16 138C CONFIDENTIAL Email exchanges (13 pp.) DD-7
17 139 Email Exchanges (4 pp.) DD-8
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19 141C CONFIDENTIAL Email exchanges (10 pp.) DD-10
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22 144 Qwest Website Printouts (7 pp.) DD-13
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1 146C CONFIDENTIAL Calculation of the discrepancies
2 between Qwest and Eschelon in the amount of
3 disputed payments (10 pp.) DD-15
4 147C Process Notification reg; Amendments -
5 Commercial Agreements - SGATs dated 8/31/2006
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7 149 Comparison of Washington SGAT with Covad ICA
8 Payment and Deposit Provisions (4 pp.) DD-18
9 150 Billing Notification re: Collocation -
10 Available Inventory Augment QPF Error 2 pp.)
11 DD-19
12 151 Excerpt of Transcript of Proceeding before the
13 Arizona Corporation Commission (3 pp.) DD-20
14 152 Prefiled Surrebuttal Testimony of Douglas
15 Denney (189 pp. including table of contents)
16 153 CFA Change Chronology for Limit of One
17 (Updated) (34 pp.) DD-17
18 154 Eschelon Email sent on May 4, 2006 explaining
19 its position on design changes and cost
20 recovery (1 p.) DD-21
21 155 Copy of the public version of Qwest's Design
22 Change cost study in Washington (4 pp.) DD-22
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1 156C CONFIDENTIAL Dun and Bradstreet Reports for
2 Qwest and Eschelon. These reports show that,
3 unlike Qwest, Eschelon poses no significant
4 risk of default on its payments (37 pp.) DD-23

5 157 A motion by Cox Arizona Telecom requesting
6 permanent rates be set for cross-connect/wire
7 work demonstrating a demand for this product.
8 This exhibit also includes the relevant page
9 from the Arizona SGAT Exhibit A, referenced in
10 the Cox petition (6 pp.) DD-24

11 158 Recommended decision of the Minnesota ALJ's in
12 the recent Eschelon/Qwest arbitration.
13 Adopted in large part by the Minnesota
14 Commission by a 4-0 vote at its March 6, 2007
15 meeting (67 pp.) DD-25

16 159 Section 9.3.3.8.3 from the 11/28/05 Multistate
17 ICA draft (2 pp.) DD-26

18 160 A copy of what is available on Qwest's
19 collocation available inventory website. See
20 also <http://www.quest.com/wholesale>
21 [collocation space.html](http://www.quest.com/wholesale) (8 pp.) DD-27

22 161 Excerpts from Direct Testimony of Robert F.
23 Kenney, Qwest Corporation in Docket No.
24 UT-003013, Part D, November 7, 2001 on
25 expedite charges (7 pp.) DD-28

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1 162 Current and historical tariff pages from
2 Qwest's tariff FCC #1 regarding expedites (FCC
3 tariff documents includes Qwest's transmittal
4 to the FCC explaining its change in the
5 expedite rate). (19 pp.) DD-29
6 163 Executive Summary from the Direct Testimony of
7 Pamela Genung (2 pp.) DD-30
8 164 A chart regarding expedite capability for
9 unbundled loops (1 p.) DD-31
10 165 Documentation regarding Qwest's refusal to
11 provide certain requested cost support
12 (10 pp.) DD-32
13 166 Commission-approved Qwest-Eschelon "Bridge
14 Agreement Until New Interconnection Agreements
15 are Approved." (4 pp.) DD-33
16 167 Washington Commission Order 06 in docket
17 UT-053025 (38 pp.) DD-34
18 168 Utah Commission Orders dated November 3, 2006,
19 and September 11, 2006 in docket 06-049-40
20 (48 pp.) DD-35
21 169 Oregon Commission Order dated March 20, 2007
22 in docket UM 1251. (21 pp.) DD-36
23 170 Eschelon dispute resolution letters regarding
24 expedited orders (10 pp.) DD-37
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1 171 Final Order Resolving Arbitration Issues
2 issued by the Minnesota Public Utilities
3 Commission (24 pp.) DD-38
4 WITNESS: JAMES WEBBER
5 172 Prefiled Direct Testimony of James Webber
6 (203 pp. including cover and table of
7 contents)
8 173 Educational Background and Relevant Work
9 Experience (7 pp.) JW-1
10 174 Email Messages (6 pp.) JW-2
11 175 Qwest Private Line Transport Services
12 Washington (5 pp.) JW-3
13 176 Prefiled Rebuttal Testimony of James Webber
14 (121 pp. including cover and table of
15 contents)
16 177 Impacted CLEC circuits Form showing Circuit ID
17 and customer address information of impacted
18 circuits (3 pp.) JW-4
19 JOINTLY-SPONSORED EXHIBITS FOR PURPOSE OF BRIEFING:
20 178 Eschelon/Qwest Arizona Arbitration Hearing
21 Transcript, Vol. 1 (61 pp)
22 179 Eschelon/Qwest Arizona Arbitration Hearing
23 Transcript, Vol. 2 (85 pp.)
24 180 Eschelon/Qwest Colorado Arbitration Hearing
25 Transcript, Vol. 1 (86 pp.)

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1 181 Eschelon/Qwest Colorado Arbitration Hearing

2 Transcript, Vol. 2 (94 pp.)

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0115

1 PROCEEDINGS

2 JUDGE CLARK: Good morning, it's
3 approximately 9:30 a.m., May 8th, 2007, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for an arbitration hearing
6 in the matter of the Petition for Arbitration of an
7 Interconnection Agreement Between Qwest Corporation and
8 Eschelon Telecom Incorporated pursuant to 47 U.S.C.
9 Section 252(b), given Docket Number UT-063061, Patricia
10 Clark Administrative Law Judge for the Commission
11 presiding.

12 Notice of this hearing was established by a
13 Notice of Hearing and Prehearing Conference issued on
14 January 12th, 2007. The purpose of this morning's
15 hearing is to take evidence and examination on the
16 petition for arbitration and the response thereto.

17 I will take appearances on behalf of the
18 parties. Appearing on behalf of Qwest.

19 MR. TOPP: This is Jason Topp from Qwest.

20 JUDGE CLARK: Thank you.

21 Any other appearances?

22 MR. DEVANEY: Good morning, Your Honor, John
23 Devaney also on behalf of Qwest.

24 JUDGE CLARK: Thank you. Mr. Devaney, could
25 you spell your last name for us, please.

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1 MR. DEVANEY: D-E-V as in Victor A-N-E-Y.

2 JUDGE CLARK: Thank you.

3 And appearing on behalf of Eschelon.

4 MR. MERZ: Good morning, Your Honor, Greg
5 Merz representing Eschelon.

6 JUDGE CLARK: Thank you. And is your
7 microphone on, Mr. Merz?

8 MR. MERZ: It is, just have to be a little
9 closer.

10 JUDGE CLARK: All right.

11 One of the first matters we need to address,
12 we'll get all the housekeeping done first, I sent an
13 E-mail message to the parties advising you that having
14 granted the request for additional direct testimony on
15 the issue of wire centers and having granted the parties
16 deadlines for the filing of that testimony and
17 establishing a tentative hearing date should one be
18 required that we need to modify some of the other
19 deadlines in the procedural schedule, and I requested
20 the parties to try to work together to see if they could
21 come up with a revised schedule which they both can
22 agree with, and hopefully that's been done and it will
23 be a simple matter of letting me know what that might
24 be.

25 MR. MERZ: Your Honor, we did have a chance

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1 to talk before the hearing, and we actually have a
2 couple of alternatives. One is if there is no hearing
3 and one if there is a hearing, and we really focused on
4 the date by which the parties would submit simultaneous
5 briefs, and then the other dates could just remain in
6 the same intervals that we have in our existing
7 schedule, but that the hearing that the parties would
8 propose, or I'm sorry, the date for briefing that the
9 parties would propose if there is no hearing is July
10 20th, and if it's necessary to have a hearing the date
11 that we would propose for briefing is August 17th.

12 JUDGE CLARK: All right.

13 MR. MERZ: And then I believe that under the
14 existing schedule there are four months between the
15 submissions of the parties' briefs and the arbitrator's
16 report and order, and so I think if you use that same
17 kind of timeline, the arbitrator's report and order
18 would be due approximately November 20th if there's no
19 hearing and December 17th if there is a hearing.

20 JUDGE CLARK: Thank you. And that, of
21 course, would bump back petitions for review.

22 MR. MERZ: Yes.

23 JUDGE CLARK: To?

24 MR. MERZ: It looks like there's a little
25 more than a month, approximately five weeks, so if

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1 that's the case, if there's no hearing, let's see, oh,
2 no, I'm sorry, it's just a month between the order and
3 petitions for review, so it would be December 20th if
4 there's no hearing and January 17th if there is a
5 hearing.

6 JUDGE CLARK: All right. And the proposed
7 interconnection agreement?

8 MR. MERZ: Five weeks after that would be
9 approximately January 30th if there's no hearing, and if
10 there is a hearing approximately February 28th.

11 JUDGE CLARK: All right, thank you.

12 And does Qwest concur with those deadlines,
13 Mr. Topp?

14 MR. TOPP: We do.

15 JUDGE CLARK: All right, thank you, I
16 appreciate you doing that in advance of this morning's
17 hearing, that's very helpful.

18 In advance of the hearing, the parties agreed
19 to the admission of all exhibits except the responses to
20 the Bench Requests. Is there any objection to the
21 receipt of the responses to the Bench Requests?

22 MR. MERZ: No objection, Your Honor.

23 MR. TOPP: No objection.

24 JUDGE CLARK: All right, then an electronic
25 version of the exhibit list will be provided to the

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1 court reporter, and it will be said upon the record as
2 if read.

3 Are there any other preliminary matters that
4 we need to address this morning?

5 MR. MERZ: Your Honor, two other matters.
6 First of all, we had talked about and numbered as
7 exhibits the transcripts from the hearings that were
8 held in Colorado and Arizona, I have one logistical
9 question, I have both full size and condensed versions
10 of those transcripts and would just ask which you would
11 prefer to be entered into the record, if it matters.

12 JUDGE CLARK: It doesn't matter. Thank you
13 for bringing those this morning, I appreciate that.

14 MR. MERZ: And then the second question I
15 have is, and I think this must be the case, but in your
16 order you made the point that those transcripts would
17 not be available for cross-examination but rather just
18 for briefing, which we understand, but I assume that the
19 testimony in those transcripts does come into the record
20 as substantive evidence, it is prior sworn testimony of
21 the parties.

22 JUDGE CLARK: Well, it depends on the use,
23 and we'll just have to take that matter up as it comes
24 along. And the reason for only granting the request to
25 allow the transcripts for the use for briefing is that

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1 was the parties' request.

2 MR. MERZ: Yes. No, I understand that, all
3 right, thank you.

4 JUDGE CLARK: All right, so the record is
5 clear.

6 Are there any other preliminary matters,
7 Mr. Topp?

8 MR. TOPP: No.

9 JUDGE CLARK: All right.

10 Just a reminder, if you could please either
11 mute or turn off your cell phones I would appreciate
12 that, and I think we're ready for Qwest to call the
13 first witness.

14 MR. TOPP: Qwest calls Renee Albersheim.

15 JUDGE CLARK: Thank you.

16 (Witness RENEE ALBERSHEIM was sworn.)

17 JUDGE CLARK: Thank you, please be seated,
18 and you're going to want to make sure that microphone in
19 front of you is pulled a little bit closer and that it's
20 on.

21 All right, Mr. Topp.

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25 Whereupon,

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1 RENEE ALBERSHEIM,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4

5 D I R E C T E X A M I N A T I O N

6 BY MR. TOPP:

7 Q. Good morning, Ms. Albersheim.

8 A. Good morning.

9 Q. You have prepared prefiled testimony in this
10 case, have you not?

11 A. Yes, I have.

12 Q. And that testimony has been marked and
13 admitted into evidence already; is that true?

14 A. That's my understanding.

15 Q. Okay. And I've got marked as Exhibit 1 your
16 prefiled direct testimony with Exhibits 2 through 17 as
17 your exhibits to that testimony, Exhibit 18C is your
18 prefiled responsive testimony with Exhibits 19 through
19 28 as exhibits to that testimony, Exhibit 29 as your
20 prefiled rebuttal testimony with Exhibits 30 through 33
21 marked as exhibits to that testimony; have I relayed
22 that correctly?

23 A. Yes.

24 Q. Do you sitting here today, I guess first of
25 all prior to the hearing you made and the Court accepted

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1 a modification to page 60 of your direct testimony; is
2 that correct?

3 A. That's correct.

4 Q. And that's reflected in the Exhibit 1 --

5 A. Yes.

6 Q. -- that's on file?

7 A. Yes.

8 Q. And sitting here today have you noticed any
9 other errors in your testimony?

10 A. Yes, I found one error in my responsive
11 testimony, Exhibit 18C, this is on page 39, line 23, on
12 that line there's a reference to an exhibit, Exhibit
13 RA-28RT, it should say RA-27RT.

14 Q. Is that the extent of the errors that you
15 have found?

16 A. Yes.

17 MR. TOPP: I guess I don't need to offer the
18 exhibits, so Ms. Albersheim is available for
19 cross-examination.

20 JUDGE CLARK: Thank you, Mr. Topp.

21 Mr. Merz.

22 MR. MERZ: Thank you, Your Honor.

23

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25 C R O S S - E X A M I N A T I O N

0123

1 BY MR. MERZ:

2 Q. Good morning, Ms. Albersheim.

3 A. Good morning.

4 Q. I would like to begin with your rebuttal
5 testimony which we have marked as Hearing Exhibit 29,
6 and I'm referring specifically to page 5 of that
7 testimony, so if you could turn to that, please.

8 A. I'm there.

9 Q. And I'm looking in particular at line 25 and
10 carrying over to the next page where you say:

11 Eschelon's proposals for service
12 intervals (Issue 1-1), acknowledgement
13 of mistakes (Issue 12-64), expedited
14 orders (Issue 12-67), jeopardies (Issue
15 12-71), and controlled production
16 testing (Issue 12-86), do not reflect
17 Qwest's current operating procedures.

18 Do you see that?

19 A. Yes, I do.

20 Q. You are aware and in fact testified in the
21 Minnesota arbitration proceedings between Eschelon and
22 Qwest; is that correct?

23 A. I did testify, yes.

24 Q. Okay. And you are aware that the Minnesota
25 Commission has adopted Eschelon's proposed

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1 interconnection agreement language with respect to
2 intervals?

3 A. Yes.

4 Q. And you're aware that the Minnesota
5 Commission has adopted Eschelon's proposed
6 interconnection agreement language with respect to
7 acknowledgment of mistakes?

8 A. Yes.

9 Q. You're aware as well that the Minnesota
10 Commission has adopted Eschelon's proposed
11 interconnection agreement language with respect to
12 jeopardies?

13 A. Yes, I think that's right, yes.

14 Q. Now you go on to say in your testimony at the
15 next page of Hearing Exhibit 29, page 6:

16 If these proposals are accepted, Qwest
17 will be forced to treat Eschelon
18 differently than it treats all other
19 CLECs, or Qwest will be forced to change
20 its operations to be consistent with
21 Eschelon's contract thereby affecting
22 the operations of other CLECs.

23 Do you see that?

24 A. Yes, I do.

25 Q. Now in Minnesota where the Minnesota

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1 Commission has adopted Eschelon's language with respect
2 to intervals, acknowledgement of mistakes, and
3 jeopardies, has Qwest decided to either treat Eschelon
4 differently or to change its processes with respect to
5 those issues?

6 A. Those decisions are still being made. Part
7 of the evaluation will depend on what happens in other
8 states.

9 Q. And how will it depend on that?

10 A. Well, it will depend on what Qwest has to do
11 to operationalize those decisions and whether or not it
12 is cost effective for Qwest to have the one-off
13 procedures for Eschelon or if it is necessary for Qwest
14 to change its procedures for all CLECs. That decision
15 is still to be made.

16 Q. How will Qwest go about determining whether
17 it's cost effective to change its procedures as opposed
18 to having a specific process for Eschelon?

19 A. Well, that's a complicated process. I mean
20 they have to determine what has to change, what
21 documentation, if there are any systems changes that
22 need to be made, if any training needs to be changed,
23 and whether or not it would be more cost effective to
24 implement those changes across the board and whether or
25 not our performance will suffer if we don't. That's

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1 part of the evaluation.

2 Q. Now you used the phrase just a moment ago
3 one-off, correct?

4 A. Yes.

5 Q. And by that you refer to your criticism that
6 Eschelon's proposals require Qwest to implement
7 processes that are specific to Eschelon; is that right?

8 A. That's correct.

9 MR. MERZ: Your Honor, I have Hearing Exhibit
10 34, which I would like to hand to the witness, or I
11 don't know, maybe you have it.

12 JUDGE CLARK: Do you have a copy of that?

13 THE WITNESS: No, I don't.

14 JUDGE CLARK: Mr. Topp, if you could, you can
15 take the exhibit from Mr. Merz and just hand it to your
16 witness, that's fine.

17 MR. TOPP: Sure.

18 BY MR. MERZ:

19 Q. Ms. Albersheim, do you have in front of you
20 there what we have marked as Hearing Exhibit 34, do you
21 recognize Hearing Exhibit 34 as a Qwest notice?

22 A. I do.

23 Q. And it's a notice relating to a it says
24 process notification, that's a notification of a change
25 in Qwest's process; is that right?

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1 A. Yes.

2 Q. It's a notice that went out to CLECs,
3 correct?

4 A. Yes.

5 Q. And the date of the notice is April 27, 2007?

6 A. Actually, I want to amend my last response,
7 it went to CLECs, resalers, wireless, and paging
8 customers.

9 Q. Fair enough, so it went to CLECs and some
10 other folks?

11 A. Yes, basically it's a distribution through
12 the CMP.

13 Q. CMP is C-M-P --

14 A. Yes.

15 Q. -- the change management process?

16 A. That's correct.

17 Q. The notice is dated April 27th of 2007 so
18 just less than a week or so ago, is that right?

19 A. Yes.

20 Q. And this refers to changes that Qwest is
21 making in its negotiations template; is that right?

22 A. Yes.

23 Q. Qwest's negotiations template is a document
24 that Qwest prepared that it holds out as a starting
25 point for negotiations with CLECs, correct?

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1 A. For interconnection agreements, yes.

2 Q. Now one of the changes as I understand it
3 that's being described in this notice refers to Section
4 1.7.1 and Exhibits L and M of the negotiations template;
5 do you see that at the bottom of the first page of
6 Hearing Exhibit 34?

7 A. I do.

8 Q. And so just to understand, the negotiations
9 template has been changed to remove Section 1.7.1 and
10 Exhibits L and M; is that correct?

11 A. Yes, that's correct.

12 MR. MERZ: And, Your Honor, I would like to
13 provide the witness with a copy of Hearing Exhibit 35.

14 JUDGE CLARK: All right.

15 Thank you.

16 BY MR. MERZ:

17 Q. You have it in front of you there now a
18 document we have marked as Hearing Exhibit 35; is that
19 right?

20 A. Yes.

21 Q. Do you recognize Hearing Exhibit 35 as
22 excerpts from Qwest's negotiations template, correct?

23 A. Yes.

24 Q. And if you refer to page 2 of Hearing Exhibit
25 35, you see there Section 1.7.1, correct?

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1 A. Yes.

2 Q. And that is the section that is being removed
3 pursuant to the notice that we were just looking at,
4 Hearing Exhibit 34?

5 A. Yes, these excerpts are taken from the
6 February version of this interconnection agreement
7 template.

8 Q. And Section 1.7.1 describes a process by
9 which CLECs can add new products to their
10 interconnection agreement by signing something called an
11 advice adoption letter; is that right?

12 A. Yes, this was intended to streamline their
13 ability to take advantage of new products, but according
14 to the notice no CLEC has used it.

15 Q. And if you look at page 4 of Hearing Exhibit
16 35, Exhibit L is an advice adoption letter, correct?

17 A. Yes.

18 Q. And Exhibit M is an interim advice adoption
19 letter?

20 A. Yes.

21 Q. And both of those exhibits are being removed
22 pursuant to the notice that we have marked as Hearing
23 Exhibit 34, correct?

24 A. Yes.

25 MR. MERZ: Your Honor, I would like to

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1 provide the witness with a copy of Hearing Exhibit 36.

2 MR. TOPP: 36 or 35?

3 JUDGE CLARK: We already did 35.

4 MR. MERZ: This is 36.

5 BY MR. MERZ:

6 Q. Ms. Albersheim, do you recognize Exhibit 36
7 as excerpts from Qwest's SGAT, S-G-A-T, for the State of
8 Washington?

9 A. Yes, dated June 25th, 2002.

10 Q. And if you look at page 2 of Exhibit 36, you
11 see there 1.7.1, which is the same section we were just
12 talking about in connection with Hearing Exhibit 35,
13 correct?

14 A. Yes.

15 Q. And this refers to the same process by which
16 CLECs can add new products to their contracts; is that
17 right?

18 A. Yes.

19 Q. Now you are familiar as well with the
20 interconnection agreement in this case, correct?

21 A. Yes.

22 MR. MERZ: And, Mr. Topp, I don't know, could
23 you supply Ms. Albersheim with a copy of the contract.
24 If you don't have one, I have it here.

25 MR. TOPP: I do not.

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1 MR. MERZ: And, Your Honor, just for the
2 record, what we have provided to Ms. Albersheim is a
3 copy of the contract that was filed with Eschelon's
4 response to the petition. There have been some changes,
5 but I'm going to be talking about language that hasn't
6 changed since then, so that should be just fine.

7 BY MR. MERZ:

8 Q. And, Ms. Albersheim, I would like you to
9 refer in that document to Section 1.7.1.

10 A. I'm there.

11 Q. 1.7.1 is closed language; is that right?

12 A. Yes.

13 Q. That's language that the parties have agreed
14 will be included in their interconnection agreement,
15 correct?

16 A. Yes.

17 Q. 1.7.1 is identical to Section 1.7.1 that we
18 were just looking at in Hearing Exhibits 36 and 35; is
19 that right?

20 A. That's correct.

21 Q. The fact that Qwest is changing its
22 negotiations template doesn't change the parties'
23 contract, does it?

24 A. No, nor does it change all the prior
25 contracts that Qwest has negotiated with other CLECs.

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1 Q. Now until the change that we looked at from
2 the notice dated April 27, the closed language in
3 Eschelon's contract at 1.7.1 reflected Qwest's process;
4 is that right?

5 A. That's correct.

6 Q. And so by changing its existing process,
7 isn't it the case that Qwest has itself created a
8 one-off, a process that is specific to Eschelon in the
9 parties' contract?

10 A. I wouldn't say that's true just yet. We have
11 changed our negotiations template, so it will change
12 going forward, but we have existing interconnection
13 agreements that use that process. I imagine the intent
14 is to phase that piece of it out.

15 Q. Leaving Eschelon's contract as one remaining
16 that has that process Section 1.7.1 for adding new
17 products to the parties' contract, correct?

18 A. Yes.

19 Q. And if the --

20 A. Though I would mention again that it's
21 apparent that we're phasing this out because no one has
22 used it.

23 Q. I want to talk with you now about how Qwest
24 goes about documenting its processes. The documentation
25 that is available to CLECs regarding Qwest's processes

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1 is the documentation that's contained in the PCAT, the
2 product catalog; is that right?

3 A. That's one source, yes.

4 Q. What other sources are there?

5 A. There are various pieces of systems and
6 technical documentation also available on the Qwest
7 website. The product catalog is just one set of
8 documents.

9 Q. What other sets of documents are there?

10 A. Well, for example, the IMA implementation
11 documents, there are quite a few documents related to
12 use of the systems, IMA, XML, the GUI, also the systems
13 for ASRs, there are technical documents published for
14 network specifications, all of these things are
15 available through our wholesale website.

16 Q. Now you would agree with me, would you not,
17 that all of Qwest's processes are not contained in
18 documentation that is available to CLECs?

19 A. I'm not sure I would agree with that. How do
20 you mean?

21 Q. Well, Qwest has internal documentation of its
22 processes that is not available to CLECs, correct?

23 A. Yes. Usually what that will be is
24 documentation that gives specific instructions to Qwest
25 employees how to implement those processes.

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1 Q. For example, Qwest has an internal or it had
2 an internal documentation, set of documentation, that it
3 referred to as the InfoBuddy; are you familiar with
4 that?

5 A. Yes.

6 Q. Eschelon at one point requested access to the
7 InfoBuddy; do you recall that?

8 A. I don't know.

9 Q. You don't recall seeing that in Ms. Johnson's
10 testimony?

11 A. Oh, well, it was my understanding that the
12 CLECs were given partial access to the InfoBuddy.

13 Q. It's the case that what Qwest agreed to
14 provide CLECs was something called the resale product
15 database, the RPD; is that right?

16 A. At one time, I believe that's true.

17 Q. And Qwest retired the RPD in April of 2006;
18 you're aware of that?

19 A. Yes, because it wasn't being used.

20 Q. You are aware that Eschelon objected to
21 Qwest's retiring of the RPD?

22 A. I'm aware of that.

23 Q. Okay. But Qwest did it anyway, correct?

24 A. Yes, ultimately they did.

25 Q. And just to be clear, you would agree that

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1 Qwest does not document all of its processes in
2 documentation that is accessible to CLECs, correct?

3 A. I believe what Qwest provides is the
4 documentation the CLECs need from Qwest. I don't
5 believe the CLECs need the documents that are intended
6 for Qwest employees for them to function in their jobs.

7 MR. MERZ: And, Your Honor, I would like to
8 provide the witness with what we have marked as Hearing
9 Exhibit 38.

10 BY MR. MERZ:

11 Q. You see that Hearing Exhibit 38 is a series
12 of E-mails between Kim Issacs and something called Qwest
13 CMP comments?

14 A. Yes.

15 Q. And what is Qwest CMP comments?

16 A. It's a process through the CMP that allows
17 CLECs to comment on changes being introduced through the
18 CMP.

19 Q. And Ms. Issacs you're aware is an employee of
20 Eschelon, correct?

21 A. Yes.

22 Q. Do you see at the second page of Exhibit 38
23 that Ms. Issacs is requesting that Qwest document
24 certain processes relating to a DSL service?

25 A. More specifically, you said --

0136

1 Q. I'm looking at the very top of page 2 of
2 Exhibit 38.

3 JUDGE CLARK: Second line.

4 A. You mean --

5 Q. I'm looking where it says, the second line,
6 page 2 of Exhibit 38:

7 Eschelon requests that Qwest document
8 that if in the event the DSL technical
9 support center determines that DSL speed
10 needs to be permanently lowered, the IMA
11 loop qualification result will match the
12 speed that the Qwest DSL technician
13 support center states we need to submit
14 an LSR to change it to.

15 A. Okay, I see that, yes.

16 Q. And so you understand from that that
17 Ms. Issacs is making a request to Qwest for
18 documentation of certain Qwest processes relating to
19 DSL?

20 A. I see that, yes.

21 Q. And do you see at the top of the first page
22 that the response is that Qwest is not going to honor
23 Ms. Issacs' request for documentation?

24 A. Yes.

25 MR. MERZ: Your Honor, I would like to

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1 provide the witness with what we have marked as Hearing
2 Exhibit 37.

3 BY MR. MERZ:

4 Q. Ms. Albersheim, you have in front of you
5 there what we have marked as Hearing Exhibit 37; is that
6 right?

7 A. Yes.

8 Q. Do you recognize this as a Qwest notice dated
9 November 15th of 2006?

10 A. Yes.

11 Q. It is a CMP notice; is that right?

12 A. Yes.

13 Q. And it's a notice of a process change that is
14 being implemented through CMP, correct?

15 A. Yes.

16 Q. The specific process change that's being
17 implemented is that the SGATs are no longer going to be
18 available for opt in, and they're being replaced by the
19 Qwest negotiations template; is that right?

20 A. Yes.

21 Q. Do you know whether the Qwest negotiations
22 template has been approved by any state commission?

23 A. No.

24 Q. I'm sorry, it was a bad question.

25 Has Qwest's negotiations template been

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1 approved by any state commission?

2 A. Not that I am aware of.

3 Q. Has Qwest asked for approval from any state
4 commission?

5 A. Not that I'm aware of.

6 Q. Has any state commission approved Qwest's
7 decision to withdraw its SGAT as being available for opt
8 in?

9 A. No.

10 Q. Has Qwest requested approval from any state
11 commission to do that?

12 A. Not yet that I am aware of.

13 Q. Now you refer in your testimony to a
14 compliance filing made by Qwest in response to an order
15 by the Minnesota Commission in connection with a
16 complaint brought by Eschelon in 2003.

17 A. I believe there were three compliance
18 filings.

19 Q. The specific case that we're talking about is
20 sometimes referred to as the Minnesota 616 case; you're
21 aware of that?

22 A. Yes.

23 Q. 616 which is the name of the Minnesota
24 docket; is that right?

25 A. The number, yes.

0139

1 Q. The case concerned an error that was made by
2 Qwest in transferring a customer to Eschelon; is that
3 right?

4 A. Yes.

5 Q. As a result of that error, Eschelon's
6 customer unexpectedly lost service; you're aware of that
7 as well?

8 A. Yes.

9 Q. The Minnesota Commission found that Qwest's
10 service was inadequate and ordered it to make certain
11 changes with respect to its process; is that right?

12 A. Yes.

13 Q. Those changes included adopting procedures
14 for promptly acknowledging and taking responsibility for
15 mistakes, correct?

16 A. Yes.

17 Q. And it also involved changes to procedures
18 for reducing errors; is that right?

19 A. Yes.

20 MR. MERZ: Your Honor, I would like to
21 provide the witness with what we have marked as Hearing
22 Exhibit 39.

23 BY MR. MERZ:

24 Q. Do you have in front of you what we have
25 marked as Hearing Exhibit 39, Ms. Albersheim?

0140

1 A. Yes.

2 Q. And you mentioned the fact that there were
3 three compliance filings made by Qwest in the Minnesota
4 616 case; is that right?

5 A. Yes.

6 Q. The reason there were three was that the
7 first two were rejected by the Minnesota Commission?

8 A. They were listed -- deemed inadequate, more
9 was needed, yes.

10 Q. And you recognize Exhibit 39 as the
11 compliance filing that was accepted; is that right?

12 A. I don't think this was the latest compliance
13 filing. I thought there was one after this, but I would
14 have to check the dates.

15 Q. Well, you are familiar I take it with the
16 substantive contents of the compliance filing?

17 A. Yes.

18 Q. If you just refer quickly to the third page
19 of Hearing Exhibit 39, Paragraph F.

20 A. Yes.

21 Q. And my question just generally is whether you
22 understand that what's described under Paragraph F
23 reflects procedures adopted by Qwest in connection with
24 the Commission's order in the Minnesota 616 case?

25 A. Yes.

0141

1 Q. And then the same question with respect to G
2 on the next page, does the description there generally
3 describe the processes that were adopted by Qwest in
4 response to the commission's order in the Minnesota 616
5 case?

6 A. Yes.

7 Q. The changes that Qwest implemented pursuant
8 to its compliance filing relating to acknowledgment of
9 mistakes are not reflected in Qwest's PCAT, are they?

10 A. I don't know.

11 Q. Do you know whether they're reflected in any
12 documentation that's available to CLECs?

13 A. I think some of this is in the -- in some of
14 the PCATs I have seen language reflecting these
15 procedures. I don't know if the changes to those PCATs
16 were directly resulting from this or not.

17 Q. And I'm referring, just so we're clear,
18 specifically to the procedures relating to
19 acknowledgment of mistakes.

20 A. Well, there -- yes, because there are
21 procedures in the account manager PCAT, so I just -- I'm
22 not certain I can answer that these are or are not
23 reflected in the PCATs.

24 Q. Do you know whether these procedures are
25 reflected in Qwest's internal documentation?

0142

1 A. I expect they are.

2 Q. Why do you expect that?

3 A. Well, because we were ordered to do these
4 procedures, and so in good faith Qwest would have had to
5 inform its employees of these procedures.

6 Q. I'm referring to your responsive testimony
7 which has been marked as Hearing Exhibit 18C, if you
8 could refer to that, and I'm looking specifically at
9 page 38.

10 A. I'm there.

11 Q. Okay. And I'm looking at the very bottom of
12 the page, line 23, where the question begins:

13 Mr. Webber argues on page 50 of his
14 testimony that Qwest should have
15 submitted the acknowledgment of mistakes
16 issue in the Minnesota docket to the
17 CMP, do you agree?

18 And your answer is:

19 No, the result of the docket, which was
20 the Minnesota Commission order that I
21 referred to above, do not rise to the
22 level of regulatory change request as
23 Mr. Webber claims.

24 Do you see that?

25 A. Yes.

0143

1 Q. Now what I interpreted that to mean was that
2 the changes that Qwest implemented pursuant to the
3 Minnesota Commission's order, those changes were not
4 reflected in Qwest's PCAT because it didn't go through
5 CMP; am I misinterpreting your testimony there?

6 A. No, I think most of the changes would have
7 been to our internal processes, as I said just a moment
8 ago. We would have had to since our employees were
9 under obligation from the Minnesota Commission to comply
10 with the orders. I don't know if subsequent changes
11 were also made to the PCATs through CMP or not.

12 Q. If there was a change to the PCAT relating to
13 acknowledgement of mistakes, that is a change that would
14 have to go through CMP, correct?

15 A. Yes.

16 Q. And if no such change went through CMP, we
17 can safely assume that there's no documentation in the
18 PCAT relating to acknowledgment of mistakes; is that
19 right?

20 A. If none went through specifically as a result
21 of this, I would say yes.

22 Q. I want to talk with you now about a little
23 bit different issue, and it concerns expedites, which is
24 Issue 12-67 and its subparts. An expedite is when Qwest
25 provides Eschelon with service more quickly than it

0144

1 otherwise would; is that right?

2 A. More quickly than the standard interval
3 required by Qwest, yes.

4 Q. The parties disagree in this case about
5 whether the ICA should set forth specific terms and
6 conditions describing when a request for an expedite
7 will be granted; is that right?

8 A. Sort of. Eschelon has changed the terms for
9 expedites in a way that does not reflect Qwest's current
10 process for expedites.

11 Q. The language that Qwest wants to include in
12 the interconnection agreement relating to expedites
13 would refer to Qwest's PCAT for the terms and conditions
14 under which expedites would be granted; is that right?

15 A. Yes, the PCATs are specific as to when
16 expedites will be granted, yes.

17 Q. And in Qwest's view, the PCATs -- I'm sorry.

18 In Qwest's view, the interconnection
19 agreement shouldn't include any language that says when
20 Qwest will grant an expedite; is that right?

21 A. No, the language says that Qwest will grant
22 expedites if resources are available, but the specific
23 requirements of expedites are listed in the PCATs.

24 Q. In your testimony you talk about changes that
25 Qwest made to its expedite process through CMP; is that

0145

1 right?

2 A. Yes.

3 Q. You were not involved in those changes that
4 you talked about in your testimony; is that right?

5 A. That's correct.

6 Q. And you don't have any firsthand knowledge of
7 the reasons behind those changes or how they were made?

8 A. No, I wouldn't say that's true. I understand
9 why those changes were made. I was not a process
10 manager implementing those changes.

11 Q. You know about why the changes were made
12 based on something that somebody told you; is that
13 correct?

14 A. That's correct, and based on the record in
15 the CMP.

16 MR. MERZ: I would like to show the witness
17 what we marked as Hearing Exhibit 40.

18 BY MR. MERZ:

19 Q. Do you have Hearing Exhibit 40 there?

20 A. Yes, I do.

21 Q. Now you are also a witness in a complaint
22 case that's been brought by Eschelon in Arizona; is that
23 right?

24 A. Yes.

25 Q. And that complaint case concerns the

0146

1 expedites issue under Eschelon's current ICA; is that
2 right?

3 A. Yes.

4 Q. And you see here in this, this is a response
5 to an interrogatory by Qwest in that Arizona complaint
6 case, correct?

7 A. Yes.

8 Q. And you see here that Qwest has listed
9 individuals who participated in any way in CMP or in the
10 development or implementation of processes, policies,
11 ICA terms, charges, and documentation on behalf of Qwest
12 regarding expedites?

13 A. I see that. I should point out that this is
14 not the most current response to this data request.
15 More names were added in a supplemental response.

16 Q. Okay, so there's 18 names on this list?

17 A. I will take your word for it, I didn't count.

18 Q. And you think that the list ought to actually
19 be longer?

20 A. It is longer, it was supplemented. This was
21 supplied, oh, I don't see the date on here, I believe
22 this was supplied in early June, and at the end of June
23 a supplement was added with some more names.

24 Q. Do you know how many more names?

25 A. I'm guessing 4 or 5.

0147

1 Q. You're not anywhere on the list that we have
2 in front of us here on Hearing Exhibit 40, correct?

3 A. No, I do not implement process changes. I
4 have been involved in an advisory capacity in the CMP,
5 but I do not implement CMP change requests.

6 Q. Well, if I'm understanding the response, this
7 involves persons not just involved in implementing but
8 also developing processes, policies, et cetera, relating
9 to expedites; isn't that right?

10 A. Yes.

11 Q. And you weren't involved in that either?

12 A. No.

13 Q. And that would be true with respect to this
14 more expanded list with the 20 some names on it as well,
15 correct?

16 A. That's correct.

17 Q. The expedite process that Qwest follows today
18 in Washington does not distinguish between design and
19 non-design services; is that right?

20 A. No, that's not really correct. We do have a
21 distinction. The difference is in Washington we haven't
22 implemented the design service expedite process that we
23 have in other states.

24 Q. How does Qwest's expedite process in
25 Washington distinguish between design and non-design

0148

1 services?

2 A. Well, if you look at our PCAT, it still makes
3 the distinction between design and non-design. The
4 difference is that design service expedites are only
5 offered in emergencies at no charge in Washington. In
6 all of our other states, we offer design service
7 expedites in all circumstances at \$200 per day.

8 Q. In Washington expedites are available under
9 the same terms and conditions for both design and
10 non-design services, correct?

11 A. I think the emergency conditions are the same
12 for both today. The intent is to offer design service
13 expedites under all circumstances, but we must change
14 our retail tariff first.

15 Q. If you would refer to your rebuttal
16 testimony, which is Hearing Exhibit 29, and I'm looking
17 at page 22; do you have that there?

18 A. Yes.

19 Q. Looking specifically at line 13, the question
20 is:

21 Does Qwest offer design service
22 expedites in Washington the same way it
23 does in all other states?

24 And your answer is:

25 No, not yet, Qwest is diligent about

0149

1 ensuring that it does not discriminate
2 against its customers.

3 Do you see that?

4 A. Yes.

5 Q. Is the fact that Qwest hasn't changed its
6 expedite process for Washington related in some way to
7 Qwest's diligence about not discriminating?

8 A. Okay, I'm confused by your question.

9 Q. Let me see if I can back up a little bit. As
10 I understand it, Washington is different than all of the
11 other Qwest states with respect to the availability of
12 expedites.

13 A. That's correct.

14 Q. You have plans to change the process in
15 Washington, but that just hasn't happened yet.

16 A. That's correct.

17 Q. And in your testimony when you make the point
18 that you do it differently in Washington than you do in
19 all the other states, you then go on to say Qwest is
20 diligent about ensuring that it not discriminate against
21 its customers. And my question is, what's the
22 relationship between those two things, the fact that
23 Qwest does it differently in Washington and its
24 diligence about not discriminating?

25 A. Well, the point is we are required to offer

0150

1 the same services to the CLECs that we offer to
2 ourselves and our own customers. We do not offer design
3 service expedites in all conditions to our retail
4 customers, so we can't offer that to the CLECs until we
5 offer it to both. We're trying not to discriminate, so
6 we're trying to offer the same expedite process in both
7 cases, to CLECs and to all our other customers.

8 Q. What is it about the state of Washington that
9 makes it different in that regard?

10 A. That we don't have a retail tariff that
11 allows us to offer the design service expedites to our
12 retail customers.

13 Q. You go on in your testimony on this same page
14 but at line 21, the end of that line:

15 Qwest intends to change its retail
16 tariff in Washington to be consistent
17 with the expedite process in other
18 states.

19 When does Qwest intend to do that?

20 A. I don't know.

21 Q. Why hasn't Qwest done it yet?

22 A. I don't really know.

23 Q. Do you know whether this will be a change
24 that Qwest brings through CMP?

25 A. Oh, yes, it will, because once we are able to

0151

1 offer design service expedites in all situations, we
2 will need to change our PCAT to reflect that. Right now
3 the PCAT indicates that design service expedites are
4 only available in emergencies.

5 Q. Do you know when Qwest made its change in
6 other states to its expedite process?

7 A. No, I don't know the timeline.

8 Q. Do you know what year, was it 2004, 2005?

9 A. Well, there have been several changes, I
10 don't really know.

11 Q. Do you know why that change wasn't made in
12 Washington, why didn't Qwest change its retail tariff if
13 it believed that was necessary to make this change to
14 the expedite process?

15 A. I don't know.

16 Q. In your rebuttal testimony, again Hearing
17 Exhibit 29, at page 26, I'm looking at line 15 where you
18 say:

19 Qwest's language reflects Qwest's
20 current process and language is
21 consistent with expedites as they are
22 offered to all of Qwest's customers,
23 retail and CLEC alike.

24 Do you see that?

25 A. Yes.

0152

1 Q. That is not a true statement with respect to
2 Washington, correct?

3 A. No, it is true with respect to Washington.
4 We offer expedites in the same way to our retail and
5 CLEC customers in Washington today.

6 Q. Does Qwest's language that it's proposing in
7 this arbitration with respect to expedites reflect
8 Qwest's current expedite process?

9 A. Yes. It does so by referring to the PCAT
10 where the current expedite process is spelled out.

11 Q. And the PCAT distinguishes Washington as a
12 place where there's a different process?

13 A. Yes, it does.

14 Q. Now I would like to focus on jeopardies,
15 which is Issues 12-71, 12-72, and 12-73. In your
16 testimony you discuss two change requests that were
17 addressed in CMP relating to jeopardies?

18 A. Yes.

19 Q. Now you were not involved in either of those
20 change requests; is that right?

21 A. That's correct, I don't do process changes.

22 Q. What you know about those change requests you
23 know from reviewing the relevant documents?

24 A. And from speaking to the participants in the
25 CMP.

0153

1 Q. I would like you to refer to your rebuttal
2 testimony, Hearing Exhibit 29, at page 30.

3 A. Yes.

4 Q. Looking at line 16 you say:

5 In the second change request, Eschelon
6 asked to "Change the jeopardy
7 notification process to reduce
8 unnecessary jeopardy notices being sent
9 to the CLEC when the due date is not in
10 jeopardy and to improve the overall
11 jeopardy notification process."

12 Do see that?

13 A. Yes.

14 Q. And then you refer as the source for that
15 statement to your Exhibit RA-23; is that correct?

16 A. Yes.

17 Q. And that's Hearing Exhibit 23, if you could
18 turn to that, please.

19 A. Yes, I'm there.

20 Q. Hearing Exhibit 23 is Qwest CMP documentation
21 relating to a change request CR PC081403-1; is that
22 right?

23 A. Yes.

24 Q. That is the second change request that you
25 referred to in your testimony; is that right?

0154

1 A. Let me verify that, yes.

2 Q. I'm looking at the middle of the page where
3 it says description of change, and it says there:

4 Change the description of this CR as a
5 result of synergies with PC072303-1.

6 Do you see that?

7 A. Yes.

8 Q. Who changed the description of the CR?

9 A. The CMP.

10 Q. I'm sorry?

11 A. This was changed through the CMP.

12 Q. Who initiated the change?

13 A. Likely Qwest did, because Qwest noticed the
14 synergies between this CR and the prior CR.

15 Q. Then you see a line of stars, and then
16 underneath there is some language, that's language that
17 was prepared by Qwest, is that right, all the way down
18 to the next line of stars on the second page?

19 A. That's correct.

20 Q. It says there in the third line of the first
21 page of Hearing Exhibit 23:

22 Qwest is proposing that only specific
23 jeopardy conditions be sent to the CLECs
24 on the critical date of DVA and PTD.

25 Do you see that?

0155

1 A. Yes.

2 Q. That was a change that Qwest proposed in this
3 change request; is that right?

4 A. Yes, as a solution to part of the issue that
5 Eschelon was experiencing with jeopardies.

6 Q. So when you refer in your testimony to
7 Eschelon's change request and cite this provision as
8 describing Eschelon's request, that's not accurate, is
9 it?

10 A. The original change request is Eschelon's
11 change request. This was Qwest's proposed solution to
12 this change request based on the synergies between this
13 change request and the prior one.

14 Q. If you look at the next page at the top of
15 the page, it says expected deliverable just above the
16 line of stars.

17 A. Yes.

18 Q. And that's the language that you quote in
19 your testimony about --

20 A. That's correct.

21 Q. -- what this change request was supposed to
22 do, correct?

23 A. Yes.

24 Q. That language under expected deliverables
25 above the line of stars is language that was prepared by

0156

1 Qwest, correct?

2 A. Yes, and agreed to by Eschelon.

3 Q. And Eschelon agreed to that language on the
4 condition that the original change request description
5 was retained as part of the documentation, correct?

6 A. Yes, and it was.

7 Q. And if you look down under the line of stars,
8 you see what it was that Eschelon was asking Qwest to
9 do, correct?

10 A. Yes, the original change request. But as I
11 noted, this change request was changed --

12 Q. By Qwest?

13 A. -- based on the synergies with Eschelon's
14 agreement so that the expected deliverable changed as
15 well.

16 Q. And Eschelon's agreement was Qwest could make
17 the change so long as it also addressed the issues that
18 Eschelon had initially raised when it brought this
19 change request to CMP, correct?

20 A. Yes, and Qwest presented its changes as
21 Qwest's assessment that these would address Eschelon's
22 issues.

23 Q. And what Eschelon was asking Qwest to do is
24 under expected deliverables in the middle of the page of
25 the second page of Hearing Exhibit 23; is that right?

0157

1 A. That was the original deliverable, yes.

2 Q. And the original deliverable was:

3 Qwest will modify, document, and train a
4 process that requires Qwest to send an
5 updated FOC and allow a CLEC a
6 reasonable amount of time from the time
7 the updated FOC is sent to prepare for
8 testing before Qwest contacts the CLEC
9 to test and accept the circuit. Qwest
10 should cease applying the jeopardy
11 status of CNR to delayed orders that are
12 released and the CLEC has not been
13 provided a reasonable amount of time to
14 prepare to test/accept the circuit.

15 Do you see that?

16 A. Yes.

17 Q. That's what Eschelon was asking Qwest to do?

18 A. Originally, yes.

19 Q. Then if you look at the next page, there's a
20 date of 10/10/03 at the very top of the page.

21 A. Yes.

22 Q. It says there:

23 Sent E-mail to Bonnie to request change
24 of status to withdraw due to synergies
25 with other CR.

0158

1 A. Yes.

2 Q. That E-mail was an E-mail sent by Qwest?

3 A. Yes.

4 Q. Eschelon did not agree to withdraw its
5 previous change request?

6 A. That's correct.

7 Q. And you see that that fact is documented just
8 a couple lines down with the date of 10/30/03; is that
9 right?

10 A. Well, I believe that it's the statement on
11 10/13/03 where Bonnie, who received the E-mail, advised
12 she would like to keep it open and referenced the other
13 change request.

14 MR. MERZ: Your Honor, I would like to
15 provide Ms. Albersheim with what we have marked as
16 Hearing Exhibit 54.

17 MR. TOPP: Is that attached to somebody's
18 testimony?

19 MR. MERZ: You know, I think it's part of
20 Bonnie's as well.

21 JUDGE CLARK: I have 54 as a
22 cross-examination exhibit.

23 MR. MERZ: Yes.

24 BY MR. MERZ:

25 Q. You have in front of you there what we have

0159

1 marked as Hearing Exhibit 54; is that right?

2 A. Yes.

3 Q. And you're familiar with this document,
4 correct?

5 A. Yes.

6 Q. This was a document that was prepared by
7 Qwest in connection with change request PC081403-1; is
8 that right?

9 A. Yes, for use in an ad hoc call to discuss the
10 change request.

11 Q. That's the change request that we were just
12 talking about relating to expedites; is that right?

13 A. That's correct.

14 Q. And if you go to the second page of that
15 document, do you see just a little way down the page
16 where it says E-mail dated 1/30/04?

17 JUDGE CLARK: Page 2 of that document is a
18 certificate of service.

19 MR. MERZ: You know, I might have the wrong
20 -- have used the wrong number here.

21 THE WITNESS: Well, I found what you were
22 referencing.

23 MR. MERZ: Yeah, because I handed you the
24 right one, but I think I'm referring to the wrong
25 number.

0160

1 JUDGE CLARK: This will create confusion.

2 MR. MERZ: Yes, it definitely will. We
3 should be referring to Exhibit 41 actually.

4 JUDGE CLARK: Exhibit 41.

5 THE WITNESS: Exhibit 41 of whose testimony?

6 MR. TOPP: Exhibit 41 in the case.

7 MR. MERZ: So I will just start this whole
8 thing again.

9 JUDGE CLARK: That would be a grand idea.

10 BY MR. MERZ:

11 Q. You have in front of you there a document
12 marked as Exhibit 41, correct?

13 A. No, I have an Exhibit 54.

14 Q. What you have in front of you there is a
15 document prepared by Qwest dated February 25th of 2004;
16 is that right?

17 A. Yes.

18 Q. And it says re CMP PC081403-1 jeopardy
19 notification process changes?

20 A. Yes.

21 Q. This document concerns the same jeopardy
22 change request that we were just looking at in Hearing
23 Exhibit 23, correct?

24 A. Yes.

25 Q. This is a document that was prepared by

0161

1 Qwest?

2 A. Yes.

3 Q. Then if you go to the second page of the
4 document.

5 A. I'm there.

6 Q. And do you see the E-mail where it says
7 E-mail dated 1/30/04?

8 A. Yes.

9 Q. And it has an example under there; do you see
10 that?

11 A. Yes.

12 Q. You understand that was an example that was
13 provided by Eschelon regarding some problems that they
14 were having with jeopardies?

15 A. Yes, there were several different examples
16 listed, and Qwest prepared responses to each of those.

17 Q. And action 1, this is what Eschelon was
18 writing to Qwest:

19 As you can see, receiving the FOC
20 releasing the order on the day the order
21 is due does not provide sufficient time
22 for Eschelon to accept the circuit. Is
23 this a compliance issue? Shouldn't we
24 have received the FOC the day before the
25 order is due? In this example we have

0162

1 received the releasing FOC on 1/27/04.

2 A. Yes.

3 Q. That's what Eschelon was asking Qwest about
4 in its E-mail?

5 A. Yes.

6 Q. And Qwest's response was, this example is
7 noncompliance to a documented process; do you see that?

8 A. Yes, and what Phyllis was speaking of there
9 was a documented internal process. In this example as
10 it turns out the jeopardy cleared two days earlier. It
11 is the internal process of Qwest to send the FOC as soon
12 as the jeopardy clears. That was not done in this case,
13 so it was a violation of our internal documented
14 process.

15 Q. And it goes on to say, yes, an FOC should
16 have been sent prior to the due date; do you see that?

17 A. Yes, because the jeopardy cleared prior to
18 the due date.

19 Q. And that was an internal Qwest documented
20 process?

21 A. Yes.

22 MR. MERZ: I don't have anything further,
23 thank you, Ms. Albersheim.

24 JUDGE CLARK: All right, thank you.

25 Redirect, Mr. Topp.

0163

1 MR. TOPP: Thank you.

2

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. TOPP:

5 Q. Ms. Albersheim, if you could just stay with
6 the exhibit, and I got confused, Exhibit 41 I believe,
7 the cross-examination exhibit, and Mr. Merz just asked
8 you about a Qwest internal documented process. Is
9 Qwest's internal documented process something that CLECs
10 should rely upon regarding how they, you know, what they
11 can rely on from Qwest?

12 A. No, this is the -- this is our operations
13 document, this is how our employees know what they are
14 supposed to do with all of the systems involved. For
15 example in this jeopardy process, the document explains
16 what service delivery coordinators are supposed to do
17 with delayed orders. It lays out the screens they use,
18 the systems they use, and processes they are to follow.
19 That is for our employees' use. These are not the same
20 systems or processes that CLECs will follow.

21 Q. So if a CLEC wants to have a jeopardy within
22 a typical time frame, what documents should they look at
23 to give them comfort as to what Qwest is committing to?

24 A. The PCAT in our -- our provisioning PCAT lays
25 out the process for jeopardies and what Qwest will do in

0164

1 jeopardy situations.

2 Q. Now Mr. Merz asked you about Eschelon's
3 request in this particular jeopardy example, and let me
4 find a reference for you.

5 While I'm searching for that, did you
6 understand Eschelon's request with respect to jeopardies
7 to ask for a change in the PCAT with respect to
8 jeopardies?

9 A. Generally that will be the result of a change
10 request if our processes are to change, so I would say
11 yes.

12 Q. And at the conclusion of -- at the point that
13 that request was closed, were any changes made
14 consistent with this day before notion that Eschelon is
15 now claiming?

16 A. No, there were no changes to the PCAT that
17 required an FOC at least a day before.

18 Q. Mr. Merz asked you about a series of
19 questions related to Exhibits L and M to prior
20 interconnection agreements which relate to adding new
21 products.

22 A. Yes.

23 Q. And that is a process by which CLECs can
24 request new products without a modification of the
25 interconnection agreement?

0165

1 A. Yes, it was intended to streamline the
2 process for having access to new products without
3 requiring an amendment to the interconnection agreement.

4 Q. Now the terms and conditions associated with
5 those offerings, would those have been different for the
6 company that might have taken advantage of that option
7 than they would have been for other companies?

8 A. No, they should have been consistent.

9 Q. Is use of that process analogous or identical
10 to use of a similar adoption process for changing
11 intervals?

12 A. No. With changing intervals, that changes
13 the procedures, that changes installation times for
14 products. The advice adoption letters were originally
15 intended to adopt new products without changes to
16 procedures. This requires changes to intervals. That
17 makes Eschelon different from all other companies. That
18 is not our current process today. Intervals are changed
19 through the CMP.

20 Q. And regardless, for the Exhibit L and M
21 process, is it your understanding -- what's your
22 understanding with respect to CLEC interest in using
23 that process?

24 A. The process apparently has not been used, and
25 so there has been no interest in it.

0166

1 Q. And similarly with respect to the
2 acknowledgement of mistakes issue, Issue 12-64, are you
3 aware of CLEC requests for an acknowledgment of mistakes
4 consistent with all of the language contained in that
5 proposal?

6 A. No.

7 Q. Turning to expedites, on that issue Mr. Merz
8 asked a number of questions regarding the distinction
9 between design and non-design services in Washington.

10 A. Yes.

11 Q. Now if Eschelon were able, you know, given
12 the current status of the way our retail tariffs read,
13 if Eschelon were able to obtain expedites for design
14 services for a fee from Qwest, would that be equivalent
15 or not equivalent to what Qwest offers its retail
16 customers?

17 A. That would not be the same as what Qwest
18 offers to its retail customers today.

19 Q. Would it be fair to characterize it as a
20 superior service to what Qwest offers its retail
21 customers?

22 A. That would be since we do not offer expedites
23 for non-design services except in emergencies.

24 Q. Now imagine in the future Qwest does make the
25 retail tariff filing and it is approved, under

0167

1 Eschelon's -- imagine that the PCAT governs the terms
2 and conditions for expedites, how would modifications be
3 made to allow Eschelon to take advantage of that offer?

4 A. Well, if -- are you asking me if Eschelon's
5 language were accepted in this case?

6 Q. Yes, if Eschelon's language were accepted.

7 A. Okay, well, that would be different from what
8 we would offer to all of our other CLEC and retail
9 customers in that circumstance. Their language would
10 still not match up to the expedite process that we
11 intend to offer to all customers in Washington.

12 Q. And if Qwest's language were adopted and
13 reference to the PCAT controlled, if Qwest were to
14 expand the availability of expedites to CLECs, how would
15 that modification be made?

16 A. That would be made through the CMP with a
17 change request changing the PCAT removing the
18 restriction on Washington that is there today.

19 MR. TOPP: I have no other questions at this
20 time.

21 JUDGE CLARK: All right, thank you.

22 Thank you for your testimony, Ms. Albersheim.

23 I think this is an appropriate time for us to
24 take a brief recess to allow for the changing of the
25 guard so to speak. And during the recess, the next

0168

1 witness for Qwest can go ahead and get their documents
2 on the stand. Just to expedite the hearing a little
3 bit, if you want to give all of the cross-examination
4 exhibits to Mr. Topp for a quick review before they are
5 given to the witness, the witness can have all those on
6 the stand.

7 And we will be at recess for approximately 15
8 to 20 minutes.

9 (Recess taken.)

10 JUDGE CLARK: Would Qwest call its next
11 witness, please.

12 MR. TOPP: Qwest calls Ms. Terry Million.

13 JUDGE CLARK: Thank you.

14 (Witness TERESA K. MILLION was sworn.)

15 JUDGE CLARK: Mr. Topp.

16

17 Whereupon,

18 TERESA K. MILLION,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21

22 D I R E C T E X A M I N A T I O N

23 BY MR. TOPP:

24 Q. Ms. Million, you prepared testimony for this
25 hearing today?

0169

1 A. Yes, I did.

2 Q. And I have marked as Exhibit 51 your prefiled
3 direct testimony, Exhibit 52 prefiled responsive
4 testimony, and Exhibit 53 your prefiled rebuttal
5 testimony; is that correct?

6 A. Yes.

7 Q. Do you have any changes to that testimony as
8 you sit here today?

9 A. No, I do not.

10 MR. TOPP: And I guess Qwest makes
11 Ms. Million available for cross-examination.

12 JUDGE CLARK: Thank you.

13 Mr. Merz, has the witness already been
14 provided with copies of Exhibits 54 through 56?

15 MR. MERZ: We're actually not going to use
16 56, but she has been provided with 54 and 55.

17 JUDGE CLARK: Thank you.

18 MR. MERZ: And before I start with my
19 cross-examination, just a point of clarification, and I
20 should have been a little quicker on the draw, it's my
21 understanding that recross-examination is not going to
22 be permitted?

23 JUDGE CLARK: Well, generally speaking
24 recross is disfavored. However, if you believe that a
25 new topic of examination has been pursued during the

0170

1 course of redirect, I will allow limited inquiry
2 exclusively limited to that, and then for lack of a
3 better term I will then allow the proponent of that
4 witness reredirect.

5 MR. MERZ: Appreciate that clarification,
6 thank you, Your Honor.

7

8 C R O S S - E X A M I N A T I O N

9 BY MR. MERZ:

10 Q. Good morning, Ms. Million.

11 A. Good morning.

12 Q. I want to talk with you first about UDF IOF
13 termination charges, that's Issue 9-51. The dispute in
14 this issue concerns contract language that describes how
15 this rate will be applied; is that correct?

16 A. That's my understanding.

17 Q. And it's Eschelon's position that the rate
18 should be applied per pair; is that right?

19 A. I believe so.

20 Q. And it's Qwest's position that the rate
21 should be applied per cross-connect; is that right?

22 A. Well, that's not the issue that I testified
23 on. What I testified on was what the rate was or what
24 the cost was on a per termination basis.

25 Q. And maybe it would be better to say the Qwest

0171

1 position is that the rate should be applied per
2 termination rather than per cross-connect; would that be
3 fair to say?

4 A. Yes, that would be correct.

5 Q. And I believe Mr. Topp has provided you with
6 a copy of the disputed issues matrix that was most
7 recently filed by Qwest on April 27th of this year; do
8 you have that there?

9 A. Yes, I do.

10 Q. And if you refer to page 61 and 62 I think,
11 I'm not completely confident of my page numbers, but you
12 find there the language that Qwest and Eschelon have
13 respectively proposed for Issue 9-51.

14 A. I see that.

15 Q. Now if you can refer to Hearing Exhibit 55,
16 do you have that in front of you?

17 A. Yes, I do.

18 Q. Do you recognize Hearing Exhibit 55 as
19 excerpts from Qwest's Washington SGAT?

20 A. Yes, I do.

21 Q. If you look at Section 9.7.5.2.1(a), which is
22 at the top of page 3, that is the rate element that
23 we're talking about; is that right?

24 A. Yes, it is.

25 Q. And you see there that Qwest's Washington

0172

1 SGAT provides that two terminations apply per pair?

2 A. That's the first sentence of the description,
3 yes.

4 Q. Isn't it actually the second sentence?

5 A. Oh, excuse me, it's -- well, I was saying the
6 first sentence of where the terminations apply, two per
7 pair plus termination charges at the intermediate
8 offices on the route.

9 Q. Do you understand why based on this language
10 Eschelon might believe that the rate should be applied
11 per pair?

12 A. Yes, I do understand why they believe that.

13 Q. You agree with me that there is an
14 interrelationship between a rate and how that rate is
15 applied, correct?

16 A. I agree that the rate should be applied on
17 the basis of which the costs were developed, yes.

18 Q. And so you can't change the application of a
19 rate without also reviewing how that rate was
20 constructed; isn't that the case?

21 A. Well, I think you need to understand what the
22 basis is for the rate when you apply it, and I believe
23 that, as I have testified, Qwest has applied that rate
24 consistently with the way that the rate was constructed
25 since that rate has been in effect.

0173

1 Q. Would you agree with me that if you're
2 challenging the application of a rate, you're really
3 challenging the rate itself; is that right?

4 A. Yes, I believe that's true.

5 Q. And the point I want to make is that there's
6 a relationship that can't be pulled apart between the
7 rate and how that rate is applied?

8 A. I would agree.

9 Q. Now Eschelon as I think we have seen has two
10 separate proposals for 9-51; is that right? You can
11 certainly feel free to refer back to the issues matrix
12 if you would like to do that.

13 A. Yes, it appears to me as though there are two
14 proposals.

15 Q. And if you compare Eschelon's second
16 proposal, that proposal is identical to the rate
17 application as set forth in Qwest's Washington SGAT at
18 page 3 of Hearing Exhibit 55; is that right?

19 A. Yes, Eschelon's second proposal is the same
20 as what's in Qwest's SGAT, and Qwest's position is that
21 what's in the SGAT is not reflective of the way that
22 that rate is applied, and Qwest would like to change
23 that language going forward so that the application of
24 the rate matches the language.

25 Q. In your rebuttal testimony, Hearing Exhibit

0174

1 53, I'm referring specifically to page 21, lines 4
2 through 6.

3 A. I have that.

4 Q. And do you see there where you testify that:
5 Qwest's recurring costs for UDF IOF
6 terminations were developed on a per
7 termination basis assuming the average
8 cost to terminate a fiber at a fiber
9 distribution panel.

10 A. Yes.

11 Q. Now did you review Qwest's UDF IOF cost study
12 to confirm that that was the case?

13 A. Yes, I did.

14 Q. That cost study has not been filed in this
15 case; is that right?

16 A. No, it has not, because that's an approved
17 rate in the state of Washington.

18 Q. Qwest has not filed any cost studies in this
19 case, correct?

20 A. That's correct.

21 Q. Mr. Denney has asked to see the cost study
22 that was used to develop the UDF IOF termination rate;
23 is that right?

24 A. I understand that he has.

25 Q. And you understand that the reason why he

0175

1 asked for that was to determine whether Qwest's
2 statement about how the rate was developed is accurate,
3 correct?

4 A. Yes, I understand that.

5 Q. And that's a reasonable request for
6 Mr. Denney to make; would you agree with me?

7 A. Not necessarily. Qwest's position is that
8 for approved rates that have already been the subject of
9 a litigated proceeding that there's no reason to provide
10 the cost studies so that Eschelon could challenge those
11 cost studies or the results in this proceeding because
12 those have already been litigated in approved rates.

13 Q. Well, isn't it the case that Mr. Denney
14 offered to settle this issue if he could just confirm
15 that the cost study in fact supported Qwest's claims
16 about how that rate was developed?

17 A. I do understand that, and while I might
18 personally believe that that's a reasonable request,
19 it's the position of the company not to provide cost
20 studies for approved rates that have already been the
21 subject of a litigation.

22 Q. And if the roles were reversed and Eschelon
23 had a cost study and described that cost study to you,
24 you would want to see the cost study with your own two
25 eyes to confirm that the description you were being

0176

1 provided was accurate, correct?

2 A. I guess it would depend on who was providing
3 that cost study to me and what they were representing.
4 I believe I have represented under oath exactly what
5 that cost study represents, and I have told you here
6 today that I have looked at that cost study and that I
7 have represented it correctly in my testimony. So if
8 Mr. Denney were to say the same thing, I would probably
9 take his word for it.

10 Q. I want to talk with you now about the
11 unapproved rate issues. Mr. Denney has identified six
12 elements for which he says that Qwest did not provide
13 cost studies; is that right?

14 A. I believe so.

15 Q. And those include the ICDF collocation rate,
16 the special site assessment fee, the network systems
17 assessment fee, the transfer responsibility right of way
18 charge, the microduct occupancy fee, and the daily usage
19 file or DUF; is that your recollection as well?

20 A. I will take your word for it.

21 Q. You are aware that Mr. Denney in his direct
22 testimony filed on September 29th said that he had not
23 been provided with cost studies for any of those
24 elements?

25 A. I believe that's what he said.

0177

1 Q. Now one thing that Qwest could have done in
2 response to that testimony by Mr. Denney is to provide
3 the cost studies that Mr. Denney said hadn't been
4 previously provided, correct?

5 A. It would depend on whether Qwest had the cost
6 studies to support those rates or not.

7 Q. If it had them, certainly Qwest could have
8 provided them?

9 A. I believe that Qwest provided everything that
10 it had available to Eschelon, to Mr. Denney, and I -- my
11 recollection was that there were some of the items that
12 he said he didn't receive that he requested that I
13 either found we had provided or they weren't requested,
14 and I can't remember exactly which ones those were, I
15 believe that it's in my testimony though to the extent
16 that that's the case.

17 Q. You were not yourself personally involved in
18 providing cost studies in response to Eschelon's
19 request; is that right?

20 A. No, I was not.

21 Q. Your testimony regarding whether cost studies
22 were in fact provided is based on your research of the
23 written record; is that correct?

24 A. It's based on my research of the written
25 record as well as discussions with the person in the

0178

1 Qwest cost organization that was responsible for
2 providing those. I went back to him and asked what had
3 been provided, and he sent me a list of those, and I
4 talked to him about what he was able to find and
5 provide.

6 Q. Now based on your review of the written
7 record, and just to be clear the written record consists
8 of E-mails, correspondence between the parties about
9 these cost studies; is that right?

10 A. Yes.

11 Q. And based on your review of that record, you
12 are aware that Eschelon requested cost studies for any
13 rate with which Qwest disagreed; isn't that right?

14 A. It requested cost studies for any rate, and
15 then it provided an attachment that it specifically
16 identified within that attachment which studies it
17 meant. In other words, it marked in that attachment
18 that it wanted a specific set of studies. And my
19 recollection is that, and I don't remember if this is
20 Washington, we have been in so many states now, but my
21 recollection is that in at least one instance the
22 particular study that Mr. Denney pointed out in his
23 testimony that had not been provided was not marked in
24 that exhibit as one that they were requesting a cost
25 study for. And I apologize, I would have to go through

0179

1 my testimony and find it again to remember specifically
2 which one it was. And then there were some that were
3 requested that we didn't provide possibly because we
4 didn't have -- we have a study for that element, but we
5 didn't have a study that we could find that matched the
6 rate that was in this proceeding because perhaps it was
7 an old rate and we have updated the study since then and
8 the old study doesn't exist any longer.

9 Q. Did Qwest propose rates in this case without
10 having cost studies to support those rates?

11 A. There are certain rates that are old rates
12 for which Qwest does not have those cost studies any
13 longer. It's moved on for that element and has a newer
14 cost study. But those rates were the rates that were
15 out there for those elements at the point in time when
16 we initially proposed rates in this proceeding.

17 Q. And I'm not sure if I understand your answer.
18 Qwest has proposed rates for a number of elements for
19 which there is no Commission approved rate, correct?

20 A. That's correct.

21 Q. For each of the rates that Qwest has proposed
22 in this case, does Qwest have cost studies supporting
23 those rates?

24 A. Qwest has cost studies supporting all of the
25 elements. Some of the cost studies that we have

0180

1 currently do not match the rates because the rates are
2 older rates. This proceeding has been going on for some
3 time now, and the rates that were initially proposed may
4 not be the same as the state of the rates or the state
5 of the cost study as it exists today. In other words,
6 over time it's changed and those rates are not what was
7 in the initial proposal to Eschelon.

8 Q. And so are you able to tell me which rates
9 that Qwest has proposed that it doesn't have cost
10 studies that support the rate?

11 A. Those are the cost studies for which we or
12 those are the rates for which we have not provided cost
13 studies if they were requested.

14 Q. And just to be clear, we talked about the six
15 elements for which Mr. Denney says Qwest has not
16 provided cost studies, all of those elements are rates
17 that there is no Commission approved rate, correct?

18 A. That's correct.

19 Q. You talked about your review of the written
20 record that showed that certain cost studies had been
21 provided, you haven't produced any documentation showing
22 that those cost studies were previously provided, have
23 you?

24 A. No, I have not.

25 Q. And again getting back to the request that

0181

1 Eschelon made, you are aware that separate and aside
2 from this attachment Eschelon made a specific request in
3 an E-mail that Qwest provide any cost study for any rate
4 with which Qwest disagreed; you're aware of that?

5 A. Yes, they made the request in the E-mail, and
6 then they referred in that same E-mail to the attachment
7 which they told Qwest to look at for the specific cost
8 studies that they were requesting, and those were marked
9 very clearly in that request. And that's where I said
10 in the one instance, one of the studies that Mr. Denney
11 said that he was requesting was not marked on that
12 attachment, it was not a part of what they specifically
13 referred us to.

14 Q. Had you been the one to respond to that
15 request, you wouldn't have relied solely on the
16 attachment I take it, you would have looked at the
17 E-mail that said please provide us with all the cost
18 studies, and you would have provided all the cost
19 studies, wouldn't you?

20 A. That's not necessarily true. I would have
21 referred to -- if I got an E-mail that said, please
22 provide us with all of the cost studies and here's an
23 attachment that lays all of those out for you and marks
24 specifically which ones they are that we want, those are
25 the ones that I would have provided.

0182

1 Q. Regardless of what was or wasn't requested
2 before this case was started, you were aware that
3 Mr. Denney said in his direct testimony that was filed
4 months ago that those cost studies hadn't been provided?

5 A. Yes.

6 Q. I want to talk with you now about overhead
7 factors, and you talk in your testimony, actually your
8 responsive testimony here in Exhibit 52 at pages 21 and
9 22, about certain adjustments that Mr. Denney made to
10 Qwest's cost studies that were provided to make those
11 cost studies consistent with inputs ordered by the
12 Washington Commission; are you familiar generally with
13 that issue?

14 A. Yes.

15 Q. And one of the inputs that Mr. Denney
16 adjusted was the overhead factor; is that right?

17 A. Are you pointing me to someplace in either
18 his testimony or mine?

19 Q. Well, I'm referring generally to your
20 testimony at page 21.

21 A. I see --

22 Q. Actually it's not 21, it's your responsive
23 testimony. Is that what I said before?

24 JUDGE CLARK: Right.

25 Q. Your responsive testimony, Hearing Exhibit

0183

1 52, page 21.

2 A. Yes, and I see testimony here about changing
3 times by 30%. I don't see anything about overheads.

4 JUDGE CLARK: You might look to 22.

5 THE WITNESS: Thank you.

6 BY MR. MERZ:

7 Q. And so this testimony is talking about
8 adjustments that Mr. Denney made to the overhead factor;
9 is that right?

10 A. Yes, I see that.

11 Q. For the rates that Qwest proposed, Qwest did
12 not use the Commission ordered overhead factor in its
13 cost studies; is that right?

14 A. That's correct, and I explained here in my
15 testimony that the CLECs had actually complained about
16 the use of those overhead factors in the last phase of
17 the cost docket, and so the Commission had ordered in
18 the next docket that we were to readdress factors, and
19 so Qwest's proposed rates rely on the overheads that it
20 intended or would have supplied in the following docket.

21 Q. The CLEC complaint about the overhead factors
22 was that those factors were too high, not that they were
23 too low, correct?

24 A. No, the CLEC complaint about those factors
25 was that they were too old, that they had been

0184

1 determined in the '99 time frame and that they didn't
2 think that they were appropriate any longer and that
3 they needed to be readdressed. And Qwest argued, and I
4 don't recall what position Staff took on this at the
5 time, but Qwest argued that we should stay with the
6 factors that were determined in the 1999 time frame
7 because that's what we had used for all of the elements
8 that were proposed through those several phases of that
9 cost docket, and that if we needed to readdress factors
10 we should do that in the next cost docket, which was
11 scheduled and we proposed rates in. And then that
12 docket was settled, and the issues that were remaining
13 in it were suspended or were never pursued. We settled
14 on one small piece of that cost docket, but the factors
15 never did get addressed in that following docket.

16 Q. When the Washington Commission said that it
17 was going to look at factors, overhead factors, in a
18 later docket, it was doing that in response to concerns
19 raised by CLECs; is that right?

20 A. Concerns that the factors that we were
21 relying on were too old, and as well in that time frame
22 we had a decision out of the FCC who had conducted the
23 cost docket in Virginia because that commission had
24 decided that it didn't have the authority to conduct the
25 cost docket, and the FCC had decided that the factors

0185

1 that should be used by the -- as well as the cost of
2 money that should be used by the parties to determine
3 TELRIC rates should be adjusted for risk, something that
4 we had not been doing. We had been using whatever the
5 Commission's prescribed factors were up to that point,
6 and part of the intention was to look at whether we
7 needed to adjust those factors going forward on the
8 basis of the risk, competitive risk, faced by the ILEC,
9 by Qwest.

10 Q. And you don't mention in your testimony
11 anything about the FCC addressing this issue, as I
12 recall; did you talk about that in your testimony?

13 A. No, I don't recall mentioning that. I just
14 recall bringing up that the Commission had determined
15 that it was going to address those factors in the next
16 proceeding.

17 Q. And you recall that the Commission made that
18 determination in response to concerns raised by CLECs,
19 correct; that's what you say in your testimony, is it
20 not?

21 A. I don't say in my testimony, no, that it was
22 in response to the CLECs. I simply said that the
23 Commission determined to use the previously ordered
24 factors for Part D and indicated that the issue of
25 overhead factors would be readdressed in a subsequent

0186

1 docket. I do not state in there that that was in
2 response to CLECs or Qwest or the FCC or what. I simply
3 state that they intend to address those overhead factors
4 in the next docket. And I used -- I talk about that in
5 support of my position that it was not unreasonable then
6 for Qwest to use a different set of overhead factors
7 when it calculated costs going forward.

8 Q. And just to go back I think to where I
9 started, the concern that was raised by the CLECs was
10 that the factors were too high, they certainly weren't
11 asking the Commission to review factors so that they
12 could be paying even higher rates, were they?

13 MR. TOPP: Objection, asked and answered.

14 JUDGE CLARK: Response, Mr. Merz.

15 MR. MERZ: I don't know that I ever did get
16 an answer to that question, Your Honor.

17 JUDGE CLARK: Sustained.

18 BY MR. MERZ:

19 Q. Are the factors that Qwest has used in its
20 cost studies higher than those that were previously
21 ordered by the Commission?

22 A. I don't know, I would have to go back and
23 look at those individual studies to see.

24 Q. Okay. You said that, in your testimony, you
25 said that in 2003 Qwest filed new factors, but that

0187

1 docket never really progressed; is that right?

2 A. That's correct.

3 Q. Do you know whether those factors that were
4 filed in 2003 were higher than the factors that the
5 CLECs had challenged in the previous docket?

6 A. I don't recall overall. Factors go up and
7 down, there are a dozen categories of factors that are
8 part of a cost study, so which ones went up and which
9 ones went down specifically I don't know without looking
10 at the studies. Overall I just don't know.

11 Q. Focusing specifically on the overhead factor,
12 do you know whether the overhead factor that Qwest
13 proposed in 2003 was higher or lower than the overhead
14 factor that the CLECs had challenged in the prior
15 docket?

16 A. If by the overhead factor you're referring to
17 the common factor?

18 Q. Yeah.

19 A. I don't know.

20 Q. Do you know whether the factors that Qwest,
21 the overhead factor that Qwest has proposed, that it
22 used in developing the proposed rates for this case is
23 higher or lower than the overhead factor that it
24 proposed in 2003?

25 A. I would have to go back to a study and look,

0188

1 I don't know off the top of my head.

2 Q. I want to change gears here now and talk with
3 you about power reduction rates, which is issue
4 22-90(f). Do you have in front of you there a document
5 that has been marked as Exhibit 54?

6 A. Yes, I do.

7 Q. And do you recognize Exhibit 54 as a
8 submission to the Washington Commission of an amendment
9 to the interconnection agreement between AT&T
10 Communications of the Pacific Northwest and Qwest
11 Corporation?

12 A. Yes, I do.

13 Q. And that amendment includes some rates; is
14 that right?

15 A. Yes, it does.

16 Q. And if you look at the very last page, those
17 are the rates that are to be adopted as part of this
18 amendment?

19 A. Yes.

20 Q. Those rates for power reduction are the same
21 elements that are at issue in 22-90(f); is that right?

22 A. Yes, they are.

23 Q. The rates that you see here in Exhibit A,
24 that's the last page of Hearing Exhibit 54, are the
25 rates that are the contracted rates today in Washington

0189

1 between AT&T and Qwest; is that right?

2 A. I don't know that. I would assume so based
3 on what you have provided me, but I don't know that.

4 MR. MERZ: I don't have anything further,
5 thank you.

6 JUDGE CLARK: All right.

7 Redirect, Mr. Topp.

8 MR. TOPP: No redirect from Qwest.

9 JUDGE CLARK: Thank you for your testimony.

10 THE WITNESS: Thank you.

11 JUDGE CLARK: We will take a moment off
12 record.

13 (Discussion off the record.)

14 JUDGE CLARK: Mr. Topp.

15 MR. TOPP: Your Honor, Mr. Devaney will be
16 calling Ms. Karen Stewart to the stand.

17 JUDGE CLARK: Thank you.

18 (Witness KAREN A. STEWART was sworn.)

19 JUDGE CLARK: Mr. Devaney.

20 MR. DEVANEY: Thank you, Your Honor.

21

22

23

24

25 Whereupon,

0190

1 KAREN A. STEWART,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4

5 D I R E C T E X A M I N A T I O N

6 BY MR. DEVANEY:

7 Q. Good morning, Ms. Stewart.

8 A. Good morning.

9 Q. For the record, you had filed direct,
10 responsive, and rebuttal testimony; is that correct?

11 A. Yes.

12 Q. And your direct has been marked as Exhibit
13 57, the exhibit attached to it is Exhibit 58, your
14 responsive testimony has been marked as Exhibit 59, and
15 the exhibit attached to it is Exhibit 60, and your
16 rebuttal testimony is Exhibit 61. Do you have any
17 corrections you would like to make to any of your
18 testimony?

19 A. No, I do not.

20 Q. And I believe you have one clarifying
21 statement with respect to an issue that has settled,
22 Issue 9-50, as it relates to your testimony; is that
23 correct?

24 A. Yes, I do. Issue 9-50 has been settled
25 between the parties, however both Issue 9-50 and 9-53

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1 discuss a proposal by Eschelon to put in language about
2 a phaseout process when things are to be phased out of
3 the interconnection agreement or out of offerings by
4 Qwest, and when I reviewed my testimony I realized I
5 believe both parties discussed the phaseout in 9-50, and
6 so instead of being repetitive in 9-53, 9-53 refers back
7 into 9-50 for the general discussion about phasing out
8 of offerings. So while 9-50 any issues to do
9 specifically with subloop have been resolved between the
10 parties, I just would bring to the hearing officer's
11 attention that when you go to 9-53 it does refer back
12 into 9-50 for the discussion about phaseout of elements.

13 Q. So stated another way, even though Issue 9-50
14 is settled, testimony that's included within Issue 9-50
15 is still relevant to Issue 9-53?

16 A. Yes.

17 MR. DEVANEY: Thank you, Ms. Stewart.

18 Ms. Stewart is available for cross.

19 JUDGE CLARK: Thank you.

20 Mr. Merz.

21 MR. MERZ: Thank you, Your Honor.

22

23

24

25

C R O S S - E X A M I N A T I O N

0192

1 BY MR. MERZ:

2 Q. Good morning, Ms. Stewart.

3 A. Good morning.

4 Q. I want to start out talking with you about
5 access to UNEs, which is Issue 9-31. And if you look at
6 your rebuttal testimony, which is Hearing Exhibit 61, at
7 page 13, you see there beginning at line 16 and carrying
8 through to line 21 the language that Qwest has proposed
9 for Section 9.1.2; is that right?

10 A. Yes.

11 Q. And what Qwest has proposed is that that
12 section provide that:

13 Additional activities available for
14 unbundled network elements includes
15 moving, adding to, repairing and
16 changing the UNE (through, e.g., design
17 changes, maintenance of service
18 including trouble isolation, additional
19 dispatches, and cancellation of orders)
20 at the applicable rate.

21 Is that right?

22 A. Yes.

23 Q. And Eschelon's opposing language is to use
24 the phrase, instead of additional activities available
25 for unbundled network elements, to use the phrase,

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1 access to unbundled network elements; is that right?

2 A. Yes.

3 Q. And Eschelon would omit the phrase at the end
4 of that section, at the applicable rate, correct?

5 A. Yes.

6 Q. And your concern, or at least one of your
7 concerns as I understand it, is that Eschelon's proposed
8 language would require Qwest to provide services or
9 elements without charge; is that right?

10 A. Yes.

11 Q. And looking at your rebuttal again, Hearing
12 Exhibit 61, at page 16, lines 13 through 15, you say,
13 nor does he, referring to Mr. Starkey; is that right?

14 A. Yes.

15 Q. (Reading.)

16 Nor does he show Eschelon's language
17 would permit Qwest to charge TELRIC
18 rates for these activities separate and
19 apart from the monthly recurring rate
20 for UNEs.

21 Do you see that?

22 A. Yes, I do.

23 Q. To recover a separate rate for an activity,
24 Qwest must show that the cost of performing that
25 activity is not already recovered in an existing rate;

0194

1 is that right?

2 A. I would say generally that's correct.

3 Q. You are not aware of Eschelon ever taking the
4 position that it would not pay Commission approved
5 rates, are you?

6 A. Well, when we were in a previous hearing, I
7 believe it was Mr. Denney said that he believed many, if
8 not all, of the nonrecurring actions here were included
9 in the recurring rate when indeed, and I think the one
10 example that I remembered is that for UDIT it did have a
11 separate charge very specifically for rearrangements and
12 obviously moves. Because if you were to move a UDIT
13 from one physical location to another, that would take a
14 service order and subsequent installation. But he
15 seemed to imply that he felt all of those were included
16 in the recurring rate.

17 Q. My question is different, my question is are
18 you aware of Eschelon ever taking the position that it
19 would not pay a rate that's been approved by the
20 Commission?

21 A. I'm not aware that Eschelon has ever point
22 blank said, if a rate was approved by a commission, we
23 will not pay it, so no, I'm not aware that that's the
24 case.

25 Q. In this case, Eschelon has proposed interim

0195

1 rates for elements for which there is no Commission
2 approved rate, correct?

3 A. Yes.

4 Q. Eschelon hasn't taken a position with respect
5 to those elements that it should receive those elements
6 without charge?

7 A. For those specific elements, no.

8 Q. You would agree with me that Qwest's language
9 for Section 9.1.2 does not require Qwest to charge a
10 TELRIC rate for those activities?

11 A. It specifically identifies whatever the
12 appropriate rate would be. So, for example, if adding
13 to the UNE was a comingled arrangement and it was a
14 tariffed service, then for that type of a commingling
15 arrangement a tariffed service may be required or
16 tariffed rate may be required.

17 Q. What activities available for unbundled
18 network elements does Qwest believe are not subject to
19 cost based rates?

20 A. Once again, I made the example of if there
21 was a comingled arrangement and you were doing an add of
22 a comingled arrangement, I believe, and I'm not the
23 witness in this area, but I understand the expedites
24 Qwest has referred and believe that the appropriate rate
25 is the tariffed rates for expedites, so those would be

0196

1 examples.

2 Q. Now comingled arrangements are dealt with in
3 another portion of the contract; is that right?

4 A. Yes.

5 Q. And that portion of the contract describes
6 how the non-UNE portion of a comingled arrangement will
7 be dealt with with respect to rates, correct?

8 A. Yes, except for there could be potentially
9 some crossover because of this language being so
10 general. And once again, as I clarified in my
11 testimony, it's really the words access to that are
12 particularly troubling. Because typically access to
13 means paying of a recurring rate to be able to use a
14 UNE. So correct, Qwest is very concerned that general
15 language that access to could include all of these
16 activities including, e.g., undefined activities at no
17 possible rate recovery.

18 Q. And really what I'm trying to do I guess is
19 get my arms around exactly the scope of Qwest's concern.
20 You have mentioned comingled arrangements and you have
21 mentioned expedites as two activities available for UNEs
22 for which Qwest does not believe cost based rate would
23 apply, correct?

24 A. Whether you were saying TELRIC rates versus
25 tariffed rates, I gave examples, yes, of tariffed rates.

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1 Q. Are there any other activities available for
2 UNEs that Qwest believes are not subject to cost based
3 rates?

4 A. Once again there is an e.g. here, so it's
5 unknown what list of -- an unknown, an undefined list of
6 activities that potentially Eschelon is asking that the
7 interconnection agreement recognize are included with
8 access. And so once again, without a completely defined
9 list, I'm not able to respond item by item whether we
10 would agree they would be TELRIC or not.

11 Q. And that's not my question. My question is,
12 are there activities available for UNEs as Qwest uses
13 that phrase in this Section 9.1.2 that Qwest believes
14 are not subject to cost based rates? You have mentioned
15 comingled arrangements, you have mentioned expedites, I
16 just want to know are there any others that you can
17 think of?

18 A. Not that we are proposing in this
19 interconnection agreement that I can think of as I sit
20 here now.

21 Q. Are there any others that Qwest intends in
22 the future to propose non-cost based rates, activities
23 known for UNEs for which Qwest intends in the future to
24 propose non-cost based rates?

25 A. Not that I know of.

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1 Q. I want to talk with you now about network
2 modernization and maintenance, which is Issue 9-33.
3 Section 9.1.9 contains terms relating to network
4 modernization and maintenance activities performed by
5 Qwest; is that right?

6 A. Yes.

7 Q. The parties have agreed on language that
8 provides that Qwest's network and modernization
9 activities may result in minor changes to transmission
10 parameters; is that correct?

11 A. Yes.

12 Q. And the issue here is that Eschelon has
13 proposed language that would define changes as not minor
14 changes in transmission parameters, correct?

15 A. Yes.

16 Q. Eschelon has in this regard made a couple of
17 alternative proposals. One says that changes to
18 transmission parameters resulting from Qwest's network
19 modernization and maintenance activities will not
20 adversely affect Eschelon's customers, correct?

21 A. Yes.

22 Q. And another proposal that Eschelon has made
23 is that if a change results in an Eschelon customer
24 experiencing unacceptable changes in transmission of
25 voice or data, Qwest and Eschelon will work together to

0199

1 determine the cause and take corrective action?

2 A. Yes.

3 Q. Qwest objects to both of those proposals on
4 the grounds that the phrases adversely affect and
5 unacceptable changes aren't defined; is that right?

6 A. That is part of our concern, yes.

7 Q. Do you still have in front of you there the
8 interconnection agreement?

9 A. I don't have -- the issues matrix is here.

10 Q. Do you have the interconnection agreement?

11 A. Yes, I do.

12 Q. And I would like you to refer specifically to
13 Section 5.1.3.

14 A. Okay.

15 Q. Do you have that?

16 A. Yes, I do.

17 Q. Section 5.1.3 and its subparts are all closed
18 language; is that correct?

19 A. Apparently. At least the document I'm
20 looking at doesn't have them identified as in dispute.

21 Q. And do you see that Section 5.1.3 provides
22 that:

23 Neither party shall use any service
24 related to or use any of the services
25 provided in this agreement in any manner

0200

1 that interferes with the other persons
2 in the use of their service, prevents
3 other persons from using their service,
4 or otherwise impairs the quality of
5 service to other carriers or to either
6 party's end user customers.

7 Do you see that?

8 A. Yes, I do.

9 Q. The term interfere as used in that provision
10 is not a defined term; is that right?

11 A. It's not capitalized, so I believe that means
12 it is not defined in the agreement.

13 Q. The phrase impairs the quality of service is
14 not defined in that section, is it?

15 A. Again it's not capitalized, so unless it's
16 defined later within the section, since I have not read
17 it in its entirety.

18 Q. If you look at Section 5.1.3.1, which is the
19 next subsection, that provision applies to impairment
20 that is material and poses an immediate threat to the
21 safety of employees or customers or the public.

22 A. Yes.

23 Q. The phrase, the word material is not defined
24 as used in that provision?

25 A. Again it's not a capitalized term, so not

0201

1 formally defined. I don't know if I had an opportunity
2 to read the whole section whether it is clarified
3 additionally or not.

4 Q. And you should take whatever time you need to
5 be comfortable with your answer.

6 A. Would you like me to read the whole section
7 if you're going to be asking additional questions?

8 Q. Please feel free to do that.

9 A. Thank you, could I take a few moments.

10 JUDGE CLARK: Yes, why don't we take a few
11 moments off record.

12 (Discussion off the record.)

13 JUDGE CLARK: During the recess have you had
14 an adequate opportunity to review the remainder of that
15 section?

16 THE WITNESS: Yes, I have.

17 JUDGE CLARK: Thank you.

18 Please proceed.

19 MR. MERZ: Thank you, Your Honor.

20 BY MR. MERZ:

21 Q. And where I left off I think related to
22 Section 5.1.3, and my question is whether the term
23 impairment, I'm sorry, material as used in that section
24 is a defined term?

25 A. And no, it is not capitalized, so it is not a

0202

1 formally defined term within the ICA.

2 Q. And you don't see any other definition in
3 Section 5.1.3 of that term?

4 A. No, I do not.

5 Q. Similarly the phrase immediate threat to the
6 safety is not a defined phrase?

7 A. No, I did not find a definition for that
8 phrase.

9 Q. Nor is the phrase immediate threat of service
10 interruption?

11 A. No, I did not find a definition.

12 Q. In Section 5.1.3.2, that section applies if
13 an impairment is service impacting but does not meet the
14 parameters of 5.1.3.1; is that right?

15 A. Yes.

16 Q. The phrase service impacting is not defined
17 there?

18 A. No, it is not.

19 Q. And then finally 5.1.3.3 applies to
20 non-service impacting impairments; is that right?

21 A. Yes.

22 Q. And the phrase non-service impacting
23 impairment is not a defined phrase?

24 A. No, it is not.

25 Q. Shifting gears now to UCCRE, that's Issue

0203

1 9-53, and it's an acronym, U-C-C-R-E; is that right?

2 A. Yes.

3 Q. And that stands for unbundled customer
4 controlled rearrangement element, correct?

5 A. I believe so, yes.

6 Q. You are familiar with Qwest's proposed TRO
7 TRRO amendment?

8 A. Yes, I am.

9 Q. Do you know whether Qwest's TRO TRRO
10 amendment removes UCCRE as an available UNE?

11 A. My understanding it does.

12 Q. And do you know when that became true, when
13 that amendment was provided by Qwest?

14 A. I believe when Qwest had filed the notice to
15 indicate that these are the changes from the, I can't
16 remember if it was the initial TRO or TRRO announcement
17 that went out to the CLECs via CMP, and it listed the
18 services no longer available, and I believe UCCRE was on
19 that original list.

20 Q. I want to talk with you now about design
21 changes, which is Issue 4-5, and at least one of the
22 issues here is what rate should apply to design changes
23 for loops and CFA changes; is that right?

24 A. Yes.

25 Q. And you understand that it's Eschelon's

0204

1 position that the Commission approved rate applies only
2 to unbundled transport UDIT, correct?

3 A. Yes.

4 Q. Eschelon's existing ICA and Qwest's SGAT both
5 include language that says that Qwest will charge a
6 design change charge for UDIT; is that right?

7 A. Well, the existing SGAT has design change in
8 the miscellaneous section of the ICA, and so therefore
9 it can apply to multiple UNEs besides UDIT.

10 Q. And I'm really focusing now on the -- let me
11 take a step back.

12 What you just referred to relates to Exhibit
13 A to the SGAT, correct?

14 A. Yes.

15 Q. And I'm focusing on the body of the contract
16 that comes before Exhibit A; do you have that in mind?

17 A. Yes, I do.

18 Q. And you would agree with me that the SGAT,
19 the body of the SGAT, includes language that says that
20 Qwest will charge a design change charge for UDIT,
21 correct?

22 A. Yes, I believe 9.6 contains that statement.

23 Q. And you would also agree with me that there
24 is no similar language in the body of the SGAT that says
25 that the design change charge will be applied to loops,

0205

1 correct?

2 A. It is not listed specifically. But again,
3 because the rates and charges for miscellaneous services
4 can be more than one UNE, therefore the design change
5 charge very appropriately, and as I have said in my
6 testimony and as Ms. Million has clarified in hers, that
7 the design change charge is to be used for a variety of
8 UNEs, not simply transport.

9 Q. And you have kind of jumped ahead of me a
10 little bit, but it's Qwest's position that the approved
11 Commission rate for design changes applies to both loops
12 and UDIT?

13 A. Yes.

14 Q. And the basis for that claim is the inclusion
15 of design change charges among the miscellaneous charges
16 in Exhibit A; is that right?

17 A. And in addition that the cost study
18 identified that it was for elements of transport and
19 elements of loop.

20 MR. MERZ: And, Your Honor, I would like to
21 provide the witness with Exhibit A to the ICA that was
22 filed with the parties' petition.

23 JUDGE CLARK: Thank you.

24 BY MR. MERZ:

25 Q. And I'm looking specifically at Section 8.16,

0206

1 8.16 of Exhibit A.

2 A. The collocation decommissioning?

3 Q. Yeah.

4 A. I never have testified on collocation, so I
5 hope we're not going to go too deep here.

6 Q. We're not, and really I just want to talk a
7 little bit about this idea that miscellaneous charges
8 apply to a variety of elements, which I understand is
9 your testimony regarding design changes, correct?

10 A. Correct, but it's for the UNE Section 9 of
11 the ICA. This is Section 8 of the ICA, which is the
12 collocation section, which to be totally honest I am not
13 familiar with.

14 Q. And if your answer to any of my questions is
15 I don't know, you should certainly feel free to say --

16 A. I will do so.

17 Q. Exhibit A, 8.16, refers specifically to
18 miscellaneous charges 9.20, right?

19 A. I show, maybe I'm not on the right spot, it
20 shows 8.16 collocation decommissioning, additional
21 labor, other basic, so okay, I just didn't see the word
22 miscellaneous.

23 Q. Well, it says, use --

24 A. Oh, I'm sorry, use rates from 9.20, thank
25 you.

0207

1 Q. And 9.20 is the miscellaneous charges
2 section?

3 A. Correct.

4 Q. If you would go to then the ICA.

5 A. Yes.

6 Q. Rather than Exhibit A but the ICA which I
7 think you still have there, and I'm looking at Section
8 8.2.1.22.

9 A. Excuse me, 8?

10 Q. 8.2.1.22.

11 A. I'm there.

12 Q. And those are the general terms relating to
13 collocation decommissioning, correct?

14 A. Yes.

15 Q. And if you go to 8.2.1.22.3 on the next page,
16 you see there set out the rate elements; is that right?

17 A. 8.2.1.22.2.3, is that --

18 Q. No, sorry, 8.2.1.22.3.

19 A. .3, it looks like it might be more than 1
20 page, there, 2 pages, I have it, thank you.

21 Q. That section sets out the rate elements that
22 apply to collocation decommissioning, correct?

23 A. It says rate elements, it doesn't actually
24 say collocation decommissioning, but I'm going to take
25 your word for it.

0208

1 Q. Well, since it's a subsection of 8.2.1.2,
2 which --

3 A. It's reasonable to assume.

4 Q. And then if you look at under the rate
5 element Section 8.2.1.22.3.1.1.

6 A. Yes.

7 Q. It refers to miscellaneous labor hourly
8 charges as defined in the attached Exhibit A will apply?

9 A. Yes.

10 Q. And those are miscellaneous labor hourly
11 charges that are found in Section 9.20, 9.20 of Exhibit
12 A; is that right?

13 A. Again I'm not familiar enough for this
14 section whether it's referring to the 8.16 or whether
15 it's referring to the miscellaneous in Exhibit A.

16 Q. Just don't know?

17 A. Don't know, because there might be another
18 set of miscellaneous charges inside of collocation that
19 I'm not aware of.

20 Q. All right. If there isn't another set of
21 miscellaneous charges in the collocation section, would
22 you understand this to be referring to miscellaneous
23 charges that are set out in 9.20?

24 A. Yes. And as we indicated earlier, because
25 the Section 9 is selfcontaining for UNEs, you would need

0209

1 the crossreference as it does on 8.16 to get to 9.20,
2 where all the UNEs that are already in Section 9, then
3 the rates in charges in Section 9 including
4 miscellaneous charges do apply.

5 Q. And then the very next Section,
6 8.2.1.22.3.1.2 refers to additional dispatch charges,
7 correct?

8 A. Yes.

9 Q. And additional dispatch charges are also a
10 charge that are set out in 9.20; is that right?

11 A. Yes, but again I don't know if there's
12 additional charges within the collocation section.

13 MR. MERZ: Nothing further, thank you.

14 JUDGE CLARK: Thank you.

15 How much redirect do you have, Mr. Devaney?

16 MR. DEVANEY: None.

17 JUDGE CLARK: All right.

18 Thank you for your testimony.

19 And I think this would be an appropriate time
20 for a lunch recess, we will be at lunch recess until
21 1:30.

22 (Luncheon recess taken at 12:00 p.m.)

23

24

25 A F T E R N O O N S E S S I O N

0210

1 (1:25 p.m.)

2 JUDGE CLARK: Mr. Topp or Mr. Devaney.

3 MR. TOPP: Mr. Devaney will be handling.

4 MR. DEVANEY: Well, actually I guess at this
5 point Qwest is concluding its direct case. We have
6 presented all our witnesses and all of our testimony,
7 and I think it's now over to Eschelon.

8 JUDGE CLARK: That's what I was hoping, that
9 you were going to conclude the presentation of your
10 case. You may have noticed that I did not excuse any of
11 the witnesses, the only reason for that is because I do
12 not know which witnesses you will be prefiling testimony
13 for for the next phase of this proceeding.

14 MR. DEVANEY: Thank you.

15 JUDGE CLARK: All right, is Eschelon prepared
16 to call its first witness?

17 MR. MERZ: We are, Your Honor, Eschelon will
18 call Michael Starkey.

19 JUDGE CLARK: Thank you.

20 (Witness MICHAEL STARKEY was sworn.)

21 JUDGE CLARK: Mr. Merz.

22 MR. MERZ: Thank you, Your Honor.

23

24

25 Whereupon,

0211

1 MICHAEL STARKEY,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4

5 D I R E C T E X A M I N A T I O N

6 BY MR. MERZ:

7 Q. Good afternoon, Mr. Starkey.

8 A. Good afternoon.

9 Q. Did you file in this case direct, rebuttal,
10 and surrebuttal testimony?

11 A. I did.

12 MR. MERZ: And for the record, Your Honor, I
13 would note that Mr. Starkey's direct testimony has been
14 marked as Hearing Exhibit 62, that the exhibits to his
15 direct testimony have been marked as Hearing Exhibits 63
16 through 65, that Mr. Starkey's rebuttal testimony has
17 been marked as Hearing Exhibit 67, the exhibits to that
18 testimony have been marked as Hearing Exhibits 68
19 through 70, that Mr. Starkey's surrebuttal testimony has
20 been marked as Exhibit 71, and the exhibits to that
21 testimony have been marked as 72 and 73.

22 BY MR. MERZ:

23 Q. Mr. Starkey, are you also adopting the
24 testimony of Mr. Webber in this case?

25 A. I am.

0212

1 Q. And the portion of that testimony you're
2 adopting includes everything but for his personal
3 background and then the sections relating to expedites;
4 is that right?

5 A. That's correct.

6 MR. MERZ: And, Your Honor, for the record I
7 would note that Mr. Webber's direct testimony has been
8 marked as Hearing Exhibit 172, that the exhibits to that
9 testimony have been marked as Hearing Exhibits 173
10 through 175, that Mr. Webber's rebuttal testimony has
11 been marked as Hearing Exhibit 176, and that the exhibit
12 to that testimony has been marked as Hearing Exhibit
13 177.

14 And with that, Mr. Starkey is available for
15 cross-examination.

16 JUDGE CLARK: All right, thank you.

17 Mr. Devaney.

18 MR. DEVANEY: Thank you, Your Honor.

19

20 C R O S S - E X A M I N A T I O N

21 BY MR. DEVANEY:

22 Q. Good afternoon, Mr. Starkey.

23 A. Good afternoon, Mr. Devaney.

24 Q. Mr. Starkey, I would like to begin by asking
25 you some questions about Issue 9-31, access to UNEs, and

0213

1 I'm going to ask you to refer to your direct testimony,
2 which is Exhibit 62, at pages 134 and 135.

3 A. Okay.

4 Q. And I'm only asking you to keep those pages
5 in front of you because they set forth the parties'
6 competing ICA proposals for this particular issue, so it
7 may be useful to refer to that language as we go through
8 this line of questions. As the language shows, both
9 parties, Eschelon and Qwest, have used language that
10 would require Qwest to provide moving, adding,
11 repairing, and changing with respect to UNEs; is that
12 correct?

13 A. Yes.

14 Q. And a key difference between the parties'
15 proposals is, as Ms. Stewart discussed this morning,
16 Eschelon's proposing the use of access to unbundled
17 network elements includes these various activities; is
18 that one key difference?

19 A. Yes.

20 Q. And a second key difference between the
21 parties' positions is that Qwest is proposing as shown
22 on page 135 of Exhibit 62 that those activities will be
23 performed "at the applicable rate"; is that correct?

24 A. Yes.

25 Q. And as I understand it from our recent case

0214

1 in Colorado, it's your view that the terms moving,
2 adding, repairing, and changing potentially involve
3 thousands of activities; is that correct?

4 A. Yes, I think I probably did say that. I
5 think what I said was that -- I think what I actually
6 said was that it could encompass even thousands of
7 activities depending upon because the network is dynamic
8 and complicated, and as you repair or maintain, it was
9 difficult to provide a single list of all activities
10 that it might encompass.

11 Q. And it's also your view, is it not, that
12 those terms include activities that aren't known today
13 and that could be changed in the future?

14 A. Yes, I think that is true, though I think
15 those would be limited.

16 Q. And it's Eschelon's position that these
17 thousands of activities and activities that we don't
18 know about today but could emerge in the future, all of
19 them should be provided at cost based TELRIC rates; is
20 that correct?

21 A. I think it is correct, though I might take
22 issue with the way you asked your question. The
23 underlying principle here is, as I did describe in
24 Colorado, is the notion of non-discrimination, that
25 these issues, while perhaps many, are defined by the way

0215

1 in which Qwest provides these same activities for itself
2 and its retail customers such that what -- and the title
3 of this particular issue is nondiscriminatory access to
4 UNEs. So yes, it may encompass many different types of
5 activities, but again they're refined and defined by the
6 activities that Qwest similarly undertakes for itself.

7 Q. And just to be clear about the difference
8 between the parties' positions, under Eschelon's
9 proposal these thousands of activities regardless of
10 what they are would be governed by cost based TELRIC
11 rates, and by contrast under Qwest's use of the term at
12 the applicable rate the door is left open for a tariff
13 rate in some circumstances and not always cost based
14 rates; is that correct?

15 A. Yes, that is the crux of the issue. The
16 purpose of Eschelon's language is to raise this issue
17 before the Commission so the Commission can decide
18 whether accessing unbundled network elements includes
19 more than just getting the loop, whether it includes
20 things like repairing the loop, adding to the loop, in
21 the same manner that Qwest would do for itself.

22 Q. And in taking the position that all of these
23 activities should be performed at cost based rates, you
24 would agree with me it's not possible to even list all
25 the activities since there are thousands of them and

0216

1 they might change in the future; is that correct?

2 A. I hate to say it's not possible, I don't
3 think it's very practical. As I have described to you
4 in other states, the FCC took the same approach when it
5 described this issue in the TRO wherein Verizon wanted
6 it to list every activity that might be encompassed by
7 this non-discrimination standard, and the FCC refused to
8 do so saying simply the standard is if you do it for
9 yourself, then you do it for the CLEC, and that's what
10 we're trying to capture here.

11 Q. Okay, but just to answer my question though,
12 I think you would agree that you can't, it's not
13 possible even to identify all of the activities, and yet
14 it's Eschelon's position that whatever those
15 unidentified activities are, a tariff rate can not
16 possibly apply to them, correct?

17 A. I think that is correct for the reason that
18 it's limited by Eschelon's language referring to access
19 to unbundled network elements. If these activities are
20 performed in accessing the unbundled network element,
21 which is the technology the FCC uses, then cost based
22 rates would apply. That's the same standard that
23 applies today to unbundled network elements.

24 Q. And you do understand that the FCC with its
25 various orders such as the triennial review order, the

0217

1 triennial review remand order changes the law with
2 respect to access to unbundled network elements on a
3 periodic basis, doesn't it?

4 A. Yes, it changes what that term means, yes.

5 Q. And it changes the ILEC's obligation,
6 sometimes the obligations are covered by cost based
7 rates, and with an FCC order that might change and the
8 obligation is no longer covered by a cost based rate,
9 correct?

10 A. I don't think I would disagree -- I don't
11 think I would agree with that in this context, because
12 what we're talking about is accessing unbundled network
13 elements. I'm not aware of a situation where the FCC
14 has in the past nor would I anticipate in the future
15 where they would say this particular or this group of
16 activities is necessary to access an unbundled network
17 element yet something other than a cost based rate
18 should apply. So the FCC defines cost based rates or
19 access to UNEs as being set at cost based rates. I
20 don't think that is going to change with an FCC order.

21 Q. So you don't think that FCC orders change the
22 nature of access to UNEs and the rates that apply to
23 them?

24 A. They certainly change the obligations that
25 ILECs have with respect to UNEs and the access to those

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1 UNEs. I guess what I'm saying is but they have always
2 and I don't see any -- actually I don't -- I certainly
3 don't foresee in the future where they would suggest
4 that access to UNEs should be set at anything other than
5 cost based rates unless they went back and changed their
6 interpretation of Section 251.

7 Q. You testified earlier I think that Eschelon's
8 intent here is to ensure that Eschelon is treated the
9 same as Qwest's own customers; did I read you correctly?

10 A. I think the way I said it was
11 nondiscriminatory treatment with respect to the way
12 Qwest treats itself and its customers.

13 Q. Okay. If Qwest charges its customers a
14 tariffed rate for any of the activities that are
15 identified in this language, would Eschelon concur that
16 it too should be paying a tariffed rate?

17 A. No, and that distinction exists today under
18 the rule of unbundled network elements. A loop that's
19 provided to Eschelon for example is the same facility
20 that's provided to a Qwest retail customer, but the FCC
21 based on Section 251 of The Act has suggested that
22 different rates should be applied to competitors, i.e.
23 Eschelon, than to the retail customers. That same
24 concept would apply here.

25 Q. So your point then was that the access should

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1 be the same, not necessarily the rates; is that correct?

2 A. Yes, at that point you were asking me which
3 activities are encompassed here, and I was trying to
4 suggest those activities are encompassed by what you do
5 for your own retail customers and yourself.

6 Q. Well, then just to follow up on that, would
7 you agree with me under your theory that if Qwest does
8 not provide an activity encompassed by these terms we're
9 discussing to its retail customers that it would not
10 have to provide the activity to Eschelon?

11 A. You keep limiting your question to retail
12 customers, and I think I have --

13 Q. Or to itself.

14 A. Okay, I was going to say I was hoping you
15 weren't making that distinction.

16 Now I'm trying to remember your question, I
17 apologize.

18 Q. Yeah, the question was on this issue of
19 nondiscrimination that you have alluded to in your
20 testimony and this afternoon, you I think said that if
21 Qwest provides an activity encompassed by changing,
22 moving, adding, the language we're debating, if it
23 provides that type of activity to its retail customer or
24 to itself that it must provide the same activity to
25 Eschelon. And I'm asking the converse, if Qwest doesn't

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1 provide an activity encompassed by those terms to its
2 retail customers or to itself, do you agree it has no
3 obligation to provide it to Eschelon?

4 A. Not necessarily, because there are really two
5 standards that the FCC has put forward. One is the
6 standard of nondiscrimination we have been discussing,
7 and then there's another standard of meaningful
8 opportunity to compete, which is espoused in relation to
9 many of the 271 applications. The notion there is that
10 even in some circumstances if Qwest doesn't provide
11 certain activities to its end user customers, i.e. if
12 there's not a retail analog, Qwest may still be required
13 to do it because it's required to give Eschelon a
14 meaningful opportunity to compete under Section 251.

15 Q. Well, let me ask you a Washington specific
16 question about these activities we're focusing on. Is
17 it your understanding or do you have a position with
18 respect to whether UNE rates recurring rates in
19 Washington encompass the activities or the thousands of
20 activities that are included by the terms or encompassed
21 by the terms moving, adding, changing, repairing?

22 A. I don't have an informed opinion, because I
23 just am not that familiar with the cost studies. I
24 think Mr. Denney could probably give you a better sense
25 of that. Though I don't disagree given my cost study

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1 analysis elsewhere in the country that in some
2 circumstances recurring rates do recover the sort of
3 day-to-day maintenance and repair activities in some
4 circumstances. In some circumstances they don't.
5 Eschelon's language here is not meant to limit cost
6 recovery to just recurring charges, but nonrecurring
7 charges might be applicable at cost based levels in some
8 circumstances as well.

9 Q. So it is Eschelon's acknowledgement and
10 agreement that in Washington nonrecurring charges may
11 apply to some of the activities we're talking about?

12 A. I think I'm going to have to say I just don't
13 know enough about the Washington cost studies to be able
14 to say yes or no to that. It wouldn't surprise me that
15 some might be captured by recurring charges while others
16 might be captured by nonrecurring. Mr. Denney might be
17 able to give you a better sense of that.

18 Q. If recurring charges don't encompass all the
19 costs that Qwest incurs to perform these activities,
20 would you agree for clarification purposes it would be
21 helpful to add language stating that nonrecurring
22 charges may apply to these activities?

23 A. It might be helpful, but I guess my response
24 would be that it's not necessary. I mean if you look at
25 Section 5.1.6 of the contract that's agreed upon

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1 language, it's a long paragraph that already describes
2 the notion that nothing in this agreement is meant to
3 prevent either party from seeking proper cost recovery.
4 So we have already agreed on language that says you're
5 allowed to recover your costs. All we are talking about
6 in Section 9.1.2 is that when you do these types of
7 activities, because they're activities related to
8 accessing UNEs, they will be at cost based rates, not at
9 tariffed rates.

10 Q. But the Section 5 language you cited says the
11 parties may seek to recover their costs, and I'm looking
12 for some greater assurance than that. Will Eschelon
13 acknowledge that some of these activities will result in
14 nonrecurring costs that Qwest is entitled to recover?

15 A. Well, I think I said if you're talking about
16 Washington specific that Mr. Denney would have to give
17 you that assurance, because I'm just not familiar enough
18 with the cost studies.

19 Q. Okay.

20 A. In concept we're not via this language trying
21 to preclude recovery via nonrecurring charges.

22 Q. Okay, well, I then need to ask you one more
23 question. If that's the concept that you are endorsing
24 here, would Eschelon agree to language that says if the
25 costs of these activities are not included in recurring

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1 rates, Eschelon will pay Qwest nonrecurring charges
2 specific to the state of Washington?

3 A. As you know, Mr. Devaney, and we have had
4 this conversation before, that I don't feel overly
5 comfortable negotiating from the stand as to Eschelon's
6 position on the language. This is an issue that you and
7 I have talked about at least now in three states, and I
8 am not aware that Qwest has ever offered that language
9 to Eschelon. If it did, Eschelon would look at it. I
10 don't think it would be inconsistent with this concept,
11 and if the wording was appropriate, they may very well
12 accept it.

13 Q. Okay.

14 A. But the first step in that process is to
15 offer it.

16 Q. Okay. And either party could offer that,
17 correct?

18 A. Well, I think we have offered language here,
19 and we have tried to change it in a number of
20 circumstances, not particularly this language but
21 others, to accommodate Qwest's concerns. The problem is
22 we don't get language back from Qwest saying this is
23 what we would accept.

24 Q. So what I'm hearing is the door is open to
25 some agreement perhaps where Eschelon would agree that

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1 nonrecurring charges could apply to these activities; is
2 that a fair statement?

3 A. I think if we saw language in that regard, it
4 certainly would be something we would look at with
5 interest.

6 Q. Let's turn to Issue 9-33, network maintenance
7 and modernization, and I will ask you please to turn to
8 Exhibit 71, which is your surrebuttal testimony, at
9 pages 139 and 40.

10 A. Okay.

11 Q. And again, I'm asking you to refer to these
12 pages only because Eschelon's proposals for this issue
13 are set forth here.

14 A. Okay.

15 Q. And it actually carries over to page 141 of
16 Exhibit 71 beginning on page 139.

17 A. All right.

18 Q. As we heard this morning in the discussion
19 with Ms. Stewart, option 1 or proposal 1 that Eschelon
20 is putting forth with respect to Issue 9-33, and I'm
21 paraphrasing, says in effect that network changes Qwest
22 makes in connection with modernization and maintenance
23 shall not adversely affect services to end user
24 customers; is that a fair statement?

25 A. It is.

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1 Q. And I think you agree with me that Eschelon's
2 use of the term adverse effect is not defined anywhere
3 in its proposed language; is that correct?

4 A. It's not defined, it's not a defined term.
5 As I think Ms. Stewart referenced this morning, it's not
6 capitalized, so it's not a defined term within the
7 contract itself. In the next option, which I think is
8 probably where you're headed, in the next option there's
9 more information about what is an unacceptable or an
10 adverse impact that we wouldn't find to be acceptable.

11 Q. Okay, but right now I'm focusing on proposal
12 number 1, and am I correct also in understanding that
13 the proposal doesn't set forth any criteria or metrics
14 by which a party could determine whether there's a
15 prohibitive adverse effect?

16 A. Again focusing on proposal 1, there is not a
17 more defined sense of exactly what adverse effect means,
18 though I think as was pointed out in Ms. Stewart's
19 discussion this morning, that that's not uncommon
20 throughout this agreement. When we talk about impaired
21 or adverse effects, they're generally not -- they're
22 generally not defined more precisely. What they're
23 meant to do is place an obligation such that it starts
24 the process of if we have an adverse effect, we call
25 Qwest, we say we have an adverse effect, and then we

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1 discuss the extent to which it's actually an adverse
2 effect that falls under this particular piece of the
3 language or not.

4 Q. And also under proposal number 1, nothing in
5 Eschelon's proposed language states what are the
6 consequences for Qwest if it engages in an activity that
7 has an adverse effect; is that correct?

8 A. That is correct, but I'm afraid just by
9 focusing on proposal 1, proposal 2 is meant to address
10 those three very things you just suggested.

11 Q. We can talk about proposal 2 --

12 A. Okay, I'm sorry.

13 Q. -- but right now --

14 A. I'm just -- we had this conversation in
15 Minnesota, we have made modifications to address your
16 concerns, and I just want to make sure that it's --
17 proposal 2 addresses all three of those concerns,
18 proposal 1 doesn't.

19 Q. Okay, but just focus on proposal 1 for a
20 second.

21 A. Okay.

22 Q. If you're the owner and operator of a
23 telephone network and you have contract language that
24 says you can't make any changes that have an adverse
25 effect, you're not allowed to do that, and if you do,

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1 we're not going to tell you what the consequences are,
2 so you're sort of doing this at your own risk, can't you
3 see that that creates some disincentive to making
4 network changes?

5 A. I don't think that's what proposal 1 says at
6 all. Proposal 1 says it limits the adverse effect to
7 transmission parameters, so we're talking about adverse
8 effects of transmission parameters. And then it also
9 provides an out, if you will, where it suggests that
10 it's not talking about reasonably anticipated temporary
11 service interruptions, nor is it talking about the
12 retirement of copper. So what we're doing is we're
13 saying there's an adverse effect in a transmission
14 parameter and if -- well, let me restart that.

15 What we're talking about is a situation where
16 Qwest has undertaken network maintenance or
17 modernization and it's resulted in an adverse effect in
18 the transmission parameters of one of our clients, this
19 provides an obligation to where Qwest must remedy that
20 situation such that whenever we come to Qwest as
21 Eschelon and say this modernization activity put one of
22 our customers to where their transmission parameters are
23 no longer the same as they were, there is an adverse
24 effect, their service doesn't work as well, then Qwest
25 can't simply say not our problem, not something we have

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1 to worry about because we don't have an obligation to
2 limit adverse effect associated with this kind of
3 activity. What we're trying to do is say yes you do
4 have an obligation, now let's talk about how we fix it.

5 Q. Okay, but the focus on proposal number 1, if
6 there is an adverse effect, there's no discussion in
7 Eschelon's proposal as to what the consequences are for
8 Qwest, whether it faces fines, penalties, or whether it
9 simply has to remedy the situation, that's not set
10 forth, is it?

11 A. In proposal 1 it's not as clear as it is in
12 proposal 2.

13 Q. Okay, let's talk about proposal 2, and that's
14 on page 140 of Exhibit 71, your surrebuttal. As was
15 discussed with Ms. Stewart this morning, that testimony
16 refers to a CLEC experiencing unacceptable changes in
17 the transmission of voice data; is that correct?

18 A. Yes.

19 Q. And again, unacceptable changes is not
20 defined; is that correct?

21 A. That is correct.

22 Q. And there are no criteria or metrics by which
23 one could determine whether a change is "unacceptable"
24 under Eschelon's proposal; is that correct?

25 A. Well, actually I think there is. Again it

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1 comes down to the fact that something happens. I mean
2 you have to think of sort of the realistic way in which
3 this section of the contract would be implemented.

4 Q. Would you say it would be language with
5 metric certain criteria as you --

6 A. I will finish this answer, and then I will
7 answer that one.

8 Q. Okay.

9 A. You have to worry about how -- you have to
10 think about how this contract language would be
11 implemented. Again, Qwest undertakes a network
12 modernization activity, our CLEC customer, the CLEC
13 customer, our customer experiences a change in the
14 transmission of voice or data that's unacceptable
15 consistent with this particular clause. What's going to
16 happen is they're going to call Eschelon, they're going
17 to say something happened, my service isn't working or
18 my service isn't working as well. Eschelon is going to
19 call Qwest if they figure out what the problem is, that
20 it happened because of this network modernization
21 activity, they're going to say we had a change in this
22 customer's service parameters that are unacceptable, can
23 you fix it. And here there is a specific remedy
24 associated with this particular activity, and it's that
25 Qwest will fix it to the level that existed prior to the

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1 change in the network.

2 So to answer your second question, there's no
3 criteria here as to what is acceptable or not in terms
4 of listing all of the particular transmission changes
5 that might occur, because there's going to be several
6 that might be possible in this type of scenario. What
7 we're doing is placing an obligation on Qwest to respond
8 to Eschelon's concerns about changes in transmission
9 parameters, and the two will get together, and if there
10 is a disagreement about what's acceptable or what is not
11 consistent with this particular contract language, then
12 like in all those other scenarios that Ms. Stewart
13 pointed to this morning, dispute resolution in the
14 contract will get to the bottom of finding out if the
15 two carriers can ultimately agree. If they can't, then
16 the Commission gets involved.

17 Q. Going back to my question, it was there are
18 no metrics or criteria set forth in your proposal as to
19 what is unacceptable and what that term means; am I
20 correct?

21 A. That's correct, just like in those other
22 sections of the contract we looked at this morning, none
23 exist there either.

24 Q. And likewise, this provision requires Qwest
25 to restore service to "an acceptable level", is it your

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1 view that there are criteria here defining what an
2 acceptable level means?

3 A. I think it's -- I think you're instructed by
4 the phrase, action to restore the transmission quality,
5 restore meaning in my mind at least to the level that
6 existed prior to where there was a complaint, but that's
7 the only thing I can tell you that tempers that
8 particular piece of the language.

9 Q. Okay. And is it your view in proposing
10 option 2 that whether a change is unacceptable is
11 something that will be determined by the Eschelon
12 customer experiencing the service?

13 A. I think that's certainly going to be the
14 first line of defense is the customer will notice
15 something that tweaks his or her interest, and they're
16 likely to call Eschelon. I think you have -- in reality
17 you will have Eschelon saying either that is an
18 acceptable under our contract or not. In some cases
19 they may not think that the problem the customer raises
20 rises to the level necessary to contact Qwest for a
21 restoral of service.

22 Q. And what criteria would Eschelon apply when
23 it hears that from its customer?

24 A. Well, I think it's going to apply a reality
25 test, is this something we want to bring up in front of

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1 Qwest as a real problem, understanding that we have to
2 deal with these people on a daily basis.

3 Q. Sort of a if you see it you know it test?

4 A. I think I would say it's a reasonable test, a
5 rational test if you will. You have to remember that
6 these particular clauses of the contract have to be
7 implemented in real life, and I'm describing to you I
8 think what's going to happen in a real world scenario
9 where a customer sees a problem with the service, comes
10 to Eschelon, Eschelon determines whether it's worthwhile
11 enough to approach Qwest about, the two confer, either
12 agree or don't, and if they don't then we have this
13 dispute resolution process that's in the contract. The
14 purpose of the language is such that the process doesn't
15 stop when Eschelon comes to Qwest because Qwest simply
16 says we've got no obligation, we've got no obligation to
17 deal with that problem.

18 Q. Just a couple more questions on this subject
19 and we'll move on to the next issue, but with respect to
20 your statement just now that Qwest may state it has no
21 obligation, are you aware that the parties have agreed
22 language in Section 9.1.9 with respect to the
23 transmission parameters of UNEs that Qwest will provide
24 to Eschelon? For example, Section 9.1.9 provides that:

25 Network maintenance modernization

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1 activities will result in UNE
2 transmission parameters that are within
3 transmission limits of a UNE ordered by
4 Eschelon.

5 A. I am aware of that, and as I described in I
6 think both my direct and rebuttal testimony, the problem
7 there is that the parameters that are described don't --
8 aren't necessarily precise enough I guess, if you will,
9 to account for fact -- for situations wherein Eschelon's
10 service might -- customer service might stop working,
11 yet the transmission parameters are still within this
12 range, if you will, of acceptable parameters. What the
13 language that we have been discussing at 9.1.2 is meant
14 to suggest is that there's a baseline here, which is if
15 it worked before, it should work after, even if it's
16 still within this range of parameters that might meet
17 overall generic transmission requirements.

18 Q. And are you also aware that the parties have
19 agreed to language stating that changes resulting from
20 modernization and maintenance shall result in only minor
21 changes in transmission parameters?

22 A. I am aware that we have agreed to that and
23 that we haven't defined minor in that respect, and that
24 hasn't been a problem for either carrier as far as I
25 know.

0234

1 Q. Let's talk about Issue 9-34, which relates to
2 this issue, notices of network changes.

3 A. Okay.

4 Q. And please refer to Exhibit 71, your
5 surrebuttal testimony, again.

6 A. Okay.

7 Q. And in particular again we will be focusing
8 on pages 139 to 141.

9 A. Okay.

10 Q. This issue, just so we have the right
11 context, involves the notice of network changes that
12 Qwest will provide to Eschelon; is that correct?

13 A. Yes.

14 Q. And specifically in connection with
15 maintenance and modernization activities?

16 A. Yes.

17 Q. Under Eschelon's proposal number 1 set forth
18 on page 139 of your surrebuttal testimony, Exhibit 71,
19 Eschelon proposes that if a change is specific to an
20 Eschelon end user customer, Qwest must provide in the
21 notice the address of the Eschelon customer and the
22 circuit ID number of the network facility used to serve
23 the customer; is that correct?

24 A. Yes.

25 Q. And in contrast, Qwest's proposal says that

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1 it will comply with the FCC's notice requirements,
2 correct?

3 A. Yes.

4 Q. With respect to customer addresses and
5 circuit IDs, Eschelon does have electronic access to its
6 own customers' addresses and circuit IDs; is that right?

7 A. Yes, my understanding is that it does have
8 electronic access to those circuit IDs, but you have to
9 remember that the Eschelon circuit IDs are the Qwest
10 circuit IDs that Qwest gave to them, so in terms of what
11 those circuit IDs represent in the Qwest network when
12 we're talking about the location of a particular change,
13 that may not be meaningful to Eschelon without knowing
14 more.

15 Q. Are you aware of whether Qwest has electronic
16 access on a CLEC sorted basis to customer IDs?

17 A. I think that's the first time you have asked
18 me on a CLEC sorted basis whether I know that. I don't
19 know, I think -- I don't know. What I would suggest is
20 that in option number 2 we have tempered option number 1
21 by saying that you would provide us this information
22 when it's readily available consistent with the way the
23 Minnesota Commission ultimately arrived at its
24 conclusion on this issue. And I know in Mr. Webber's
25 testimony we have provided examples where you have in

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1 the past provided us circuit ID information relative to
2 Eschelon customers in this type of circumstance. So I
3 guess my bottom line answer is I don't know, but I have
4 information that would suggest that you must have some
5 way of finding it.

6 Q. If Qwest provides in a notice to Eschelon the
7 distribution area where a network change is going to
8 take place, would you agree with me that Eschelon can
9 access its own electronic database and pull up circuit
10 IDs and customer addresses within that distribution
11 area?

12 A. It's my understanding, and I think
13 Ms. Johnson can probably give you a more factual answer
14 than this, but it's my understanding in talking with
15 Ms. Johnson that that's not necessarily the case, that
16 just identifying the distribution area doesn't
17 necessarily give us the information necessary to match
18 circuit IDs in our database with that particular
19 location so we know who's going to be impacted.

20 Q. And that's something that Ms. Johnson has
21 more knowledge of than you?

22 A. I believe so.

23 Q. Have you ever used Eschelon's databases?

24 A. I have not.

25 Q. Could you turn to Exhibit 176, your rebuttal

0237

1 testimony, page 23.

2 A. Okay.

3 Q. I'm sorry, I meant to say Mr. Webber's
4 rebuttal testimony.

5 A. Oh, and you know what, I apologize, that's
6 the one thing I didn't stick in here.

7 THE WITNESS: Does somebody have a copy of
8 that?

9 Thank you, Mr. Merz.

10 JUDGE CLARK: And now that I'm thoroughly
11 confused, I need that page reference again.

12 MR. DEVANEY: Page 23.

13 JUDGE CLARK: Thank you.

14 BY MR. DEVANEY:

15 Q. You state at lines 1 through 5, the question
16 is:

17 Please elaborate on what an end user
18 customer specific change is.

19 And again, this relates to the notice issue
20 we have been discussing. You respond:

21 A change that's specific to an end user
22 customer is a change that is made to the
23 service of a customer at an address and
24 not a change made that affects a
25 geographic area or many customers.

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1 As I read that, what you're saying is Qwest
2 should be required to provide circuit ID and customer
3 address only when a network change is specifically at a
4 customer's address or stated another way at a customer's
5 premise; am I interpreting your statement correctly?

6 A. Yes, I think you are. We're not talking
7 about changes that are of broad impact to many
8 customers. We're trying to really define this language
9 such that when you're making a change that's going to
10 impact a given location, our customer is going to be
11 impacted, then we would like to know.

12 Q. So it's specific to one customer; is that
13 right?

14 A. It is. The reason I sort of hesitate is
15 there is, as you well know, some of our customers share
16 a given location with many other customers, so it might
17 not be just that it impacts one customer but that it
18 impacts one location.

19 Q. Understood. Would you agree with me though
20 that your proposed language related to notice doesn't
21 limit the circuit ID and customer address obligation to
22 an address or to a customer, single customer premise?

23 A. Let me just put the language back in front of
24 me here real quick, because I believe it does by
25 limiting it to situations for a CLEC end user customer,

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1 singular not plural, but let me just get to the language
2 real quick.

3 In option number 1 on page 139 of my
4 surrebuttal testimony, which is Exhibit 71, the language
5 says:

6 If the changes are specific to a CLEC
7 end user customer, the circuit ID
8 information and CLEC end user customer
9 address information will be provided.

10 So I think it does limit it to a CLEC end
11 user customer singular.

12 Q. And it would be a lot clearer, wouldn't it,
13 if it said a CLEC end user customer's premise or
14 specific location?

15 A. The reason I hesitate is because I think what
16 we're after here is if you're going to be making a
17 change that's going to impact a location where our CLEC
18 end user customer is, and I guess that could be clearer,
19 again the notion is I guess if you have that kind of
20 language to put in front of Eschelon, I'm sure they
21 would look at it. I think this is clear in that it uses
22 the term customer singular, but they may very well be
23 willing to agree to that type of change.

24 Q. Okay.

25 Just one or two more questions on this issue,

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1 and then we'll move on. But with respect to your
2 proposal number 2 in the notice requirement, as you
3 alluded to earlier, and this is language that appears on
4 page 141 of your surrebuttal testimony, that proposal
5 says that if the change is specific to an end user
6 customer, circuit identification "if readily available",
7 and readily available is not defined in your proposal;
8 is that correct?

9 A. It's not. Readily available was actually
10 included because the Minnesota Commission thought it
11 better met with the nondiscriminatory standard we were
12 seeking here, which is if Qwest had it readily available
13 to itself, then all it had to do was establish a process
14 to make it readily available to Eschelon. So it's not
15 defined, it's not defined in the Minnesota agreement
16 that was approved by the commission, but I think it's
17 fairly self explanatory.

18 Q. And as you're aware from past proceedings,
19 Qwest's concern in providing, being obligated to provide
20 circuit IDs or customer addresses of Eschelon customers
21 is that it has to conduct manual searches to retrieve
22 that information. And my question for you is, if a
23 manual search has to be conducted by Qwest to provide
24 circuit ID or customer address, would you agree with me
25 that from your language that would not be readily

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1 available?

2 A. I think I'm going to have to give you the
3 same answer I gave you in Colorado, which is if by
4 manual search you mean someone has to pick it up off
5 their desk and fax it or something like that, then I may
6 still consider that to be readily available. The notion
7 here again is if it's readily available for your folks
8 to look at, then it should be easy enough to make it
9 readily available for us to look at.

10 Q. But if it's something that's not on someone's
11 desk or requires a few hours of manually searching
12 records, would you agree that's not readily available
13 under your proposal?

14 A. I think I would agree if you've got to send
15 someone out to search records for multiple hours, that
16 would not, at least in my opinion, fall under readily
17 available.

18 Q. Okay.

19 Next and last issue is Issue 9-55, loop
20 transport combinations.

21 A. Okay.

22 Q. And I will ask you to refer to Exhibit 62,
23 your direct testimony, at page 170, again because that's
24 where your language is set forth.

25 A. Okay.

0242

1 Q. And just to provide context for this issue,
2 this issue arises as I understand it because Eschelon is
3 proposing to use the term loop transport combinations as
4 a defined term in the agreement; is that correct?

5 A. Yes.

6 Q. And it would appear in Sections 9.23.4 and
7 subparts, correct?

8 A. Yes.

9 Q. And Qwest's position I think you would agree
10 is that the products covered by that term, loop
11 transport combinations, are distinct from one another
12 and are governed by different terms and conditions and
13 that it's therefore confusing to use one umbrella term
14 for all three products; is that a fair statement of
15 Qwest's position as you understand it?

16 A. That's fair.

17 Q. And you will agree with me that Qwest does
18 not have a product called loop transport combination,
19 correct?

20 A. That is correct.

21 Q. And under Eschelon's proposal, the term would
22 encompass EELs, extended enhanced links, comingled EELs,
23 and high capacity EELs; is that right?

24 A. Yes.

25 Q. And those are the only products you're aware

0243

1 of that Qwest has today that consist of combinations of
2 loops and transport?

3 A. That would be meant to be yes captured by
4 this term, those three are included in the proposed
5 language at 9.23.4.

6 Q. And would you agree with me that different
7 pricing and provisioning requirements apply to for
8 example EELs, which are combinations of UNEs, versus
9 comingled EELs, which are combinations of UNEs and
10 tariffed services?

11 A. I think what I would say is that different
12 rates, terms, and conditions apply to UNEs than apply to
13 non-UNEs even when they may be comingled together, and
14 that's really the point of this language is to suggest
15 that just because a comingled arrangement includes a
16 component that's not a UNE, it also includes a component
17 that is a UNE, and the terms and conditions that bear on
18 that UNE should be found in Section 9 of the agreement
19 that deals with UNEs.

20 Q. But just to be clear, I want to make sure I
21 understood your answer, you do agree with me that an
22 EEL, which is a combination of two UNE's, is governed by
23 different terms, rates, and conditions than a comingled
24 EEL that has at least for one component of it tariffed
25 terms and conditions that apply, correct?

0244

1 A. Yes, there may be differences.

2 Q. And even though there may be differences, in
3 fact are differences, Eschelon's proposing to use the
4 same product name for those two products; isn't that
5 correct?

6 A. Yes. I mean there are also differences
7 between -- there are differences between all three of
8 the arrangements described as loop transport
9 combinations at 9.23.4. It's not meant to suggest that
10 they will all be handled the same way, because they're
11 not, they're different. The language describes that the
12 extent -- what it's trying to accomplish is to suggest
13 that when a UNE is used in a loop transport combination,
14 then the terms and conditions of Section 9 apply to that
15 piece of the arrangement.

16 Q. And the one state commission that has ruled
17 on this issue, the Minnesota Commission, found that
18 using the same term for multiple different products was
19 confusing and rejected use of the term, correct?

20 A. I know it didn't agree with our position, I
21 would have to go back and look to see this if they used
22 the word confusing, I don't know.

23 MR. DEVANEY: Okay, thank you, that's all I
24 have.

25 JUDGE CLARK: Redirect?

0245

1 MR. MERZ: Thank you, Your Honor.

2

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. MERZ:

5 Q. Mr. Devaney had asked you some questions
6 about changes that are end user customer specific, and I
7 heard him to ask you a question about whether that would
8 be limited to changes at a particular customer's
9 premises; do you recall that?

10 A. Yes.

11 Q. I mean could it be the case that changes made
12 other than at the customer premises might affect the
13 service at a particular customer premise, for example a
14 change in the CO?

15 A. Yes, and I guess that's sort of the point,
16 what you're really trying to do is define the impact on
17 the customer, is there an impact that just impacts one
18 customer, not necessarily where that impact occurs
19 within the network.

20 Q. So the Eschelon language is intended to
21 capture a change that might take place at the CO or
22 somewhere out in the field if it impacts a particular
23 customer premise or location?

24 A. That's right, and that's why I guess I
25 suggested that the fact that we use a change that

0246

1 impacts a customer singular is sufficient to ensure that
2 what we're really talking about is an impact on a single
3 customer. Mr. Devaney suggested could we add in there
4 at the customer's premise or a single customer, I guess
5 you could, but it's all going to come down to how you
6 craft the language to capture the concept, and that's
7 what I guess I keep saying is give us the language,
8 we'll look at it, maybe it will work, maybe it won't.

9 Q. Mr. Devaney had also asked you some questions
10 about the phrase readily available and what kind of
11 search that might require Qwest to perform. How does
12 the term readily available relate to what Qwest might do
13 for itself for its own business purposes?

14 A. Well, again, that's the concept we're trying
15 to capture is if Qwest makes these things available for
16 itself in servicing its customers, then
17 non-discrimination will require that they provide us the
18 same information in the same manner. So I guess even if
19 someone had to go for multiple hours and look in a room
20 for a circuit ID information, which I doubt is the case,
21 then if Qwest is willing to do that to service its
22 customers, the non-discrimination would require that
23 they do the same for us. I think we have tempered this
24 language sort of at the direction of the Minnesota
25 Commission to try to make it reasonable to say if you

0247

1 have it readily available, if you have it such that you
2 use it on a readily available basis, then provide it to
3 us in the same manner.

4 Q. And then finally turning to the loop
5 transport combination issue, I have really just one
6 question about that, is Eschelon proposing to use loop
7 transport combination as a product name?

8 A. No, and that's why I guess this issue is more
9 difficult to understand than some of the others in that
10 what we're really trying to capture is sort of
11 contractual construction I guess, if you will, for lack
12 of a better term. We're trying to ensure by using the
13 term loop transport combination that if there are UNE
14 components to these combinations that there's a place in
15 Section 9, at this point we're suggesting 9.23.4, that
16 makes clear that the UNE components of that combination
17 are governed by Section 9 and the rates, terms, and
18 conditions that are found there rather than simply
19 saying because it's a combination that might include
20 something like comingling, then everything is handled in
21 the comingling section or handled via the terms and
22 conditions of the non-UNE component, we're just trying
23 to make sure that is clear, it's really a contractual
24 construction issue.

25 MR. MERZ: Nothing else, Your Honor, thank

0248

1 you.

2 JUDGE CLARK: Thank you.

3 Thank you for your testimony, Mr. Starkey.

4 Well take a moment off record.

5 (Discussion off the record.)

6 JUDGE CLARK: Would Eschelon call its next
7 witness, please.

8 MR. MERZ: Thank you, Your Honor, Eschelon
9 calls Bonnie Johnson.

10 JUDGE CLARK: Thank you.

11 (Witness BONNIE J. JOHNSON was sworn.)

12 JUDGE CLARK: Thank you, please be seated.

13 Mr. Merz.

14 MR. MERZ: Thank you.

15

16 Whereupon,

17 BONNIE J. JOHNSON,

18 having been first duly sworn, was called as a witness

19 herein and was examined and testified as follows:

20

21 D I R E C T E X A M I N A T I O N

22 BY MR. MERZ:

23 Q. Good afternoon, Ms. Johnson.

24 A. Good afternoon.

25 Q. You have filed direct, rebuttal, and

0249

1 surrebuttal testimony in this matter; is that correct?

2 A. That's correct.

3 MR. MERZ: And for the record I would note
4 that Ms. Johnson's direct testimony has been marked as
5 Hearing Exhibit 74, the exhibits to that testimony have
6 been marked as Exhibits 75 through 89, that
7 Ms. Johnson's rebuttal testimony has been marked as
8 Hearing Exhibit 91, and the exhibits to that testimony
9 have been marked as Hearing Exhibits 91 through 113, I'm
10 sorry, Ms. Johnson's rebuttal testimony has been marked
11 as Exhibit 90, and the exhibits to her testimony have
12 been marked as Exhibits 91 through 113, and her
13 surrebuttal testimony has been marked as Exhibit 114,
14 and the exhibits to that testimony have been marked as
15 Hearing Exhibits 115 through 129.

16 And with that, Your Honor, Ms. Johnson is
17 available for cross-examination.

18 JUDGE CLARK: Thank you.

19 And you will be doing the examination,
20 Mr. Topp?

21 MR. TOPP: I will.

22

23

24

25 C R O S S - E X A M I N A T I O N

0250

1 BY MR. TOPP:

2 Q. Good afternoon, Ms. Johnson.

3 A. Good afternoon.

4 Q. I would like to talk to you a little bit
5 about the jeopardies issue, which has been identified as
6 12-71 through 12-73.

7 A. Okay.

8 Q. And just to ground us all, the basic
9 situation that is at issue with respect to jeopardies is
10 a situation where Eschelon places an order with Qwest,
11 Qwest notifies Eschelon that the order is in jeopardy,
12 Qwest fixes the jeopardy, and then Qwest attempts to
13 deliver service. Does that sort of basically outline
14 the factual situation that we're talking about?

15 A. Well, not exactly. I would add that the
16 language is specific, is a facility jeopardy, the issue
17 and the concern is that Qwest notifies Eschelon of a
18 facility jeopardy and that Qwest attempts to deliver the
19 service without notifying Eschelon that it's been
20 released from a facility jeopardy.

21 Q. Well, let's see if I can capture what you're
22 saying accurately.

23 A. Okay.

24 Q. So listen to me. So Eschelon places an order
25 with Qwest, Qwest provides a facility jeopardy

0251

1 indicating there's something wrong with the facilities
2 that may impact the due date, Qwest fixes that jeopardy,
3 and then Qwest attempts to deliver service potentially
4 without ever providing an FOC or firm order
5 confirmation; would that accurately describe the
6 situation?

7 A. Well, it would, and then to add on to that, I
8 apologize, is what is at issue is then when Qwest
9 attempts to deliver it, because we haven't been provided
10 notification that Qwest is going to attempt to deliver
11 it, Qwest places that order in a customer not ready
12 jeopardy for two types of customer not ready jeopardy,
13 which requires us to supplement the order for three days
14 out.

15 Q. So Eschelon's concern is that absent
16 receiving that FOC, there are certain circumstances in
17 which Qwest assigns a customer not ready jeopardy, and
18 Eschelon views that as unfair, correct?

19 A. Correct.

20 Q. Now looking back at the issues matrix, I see
21 that there's actually two issues associated with
22 jeopardies, the first issue is whether your contract
23 language will exist addressing the issue at all or
24 whether the issue would be addressed in product
25 catalogs; would you agree with me on that?

0252

1 A. I would agree.

2 Q. And then there's a second issue, which is
3 whether Qwest's current processes at least as Qwest
4 describes them should be altered consistent with what
5 Eschelon believes that they should be and Eschelon
6 believes that Qwest has represented that it is; would
7 you agree with that?

8 A. Eschelon believes it is the current process
9 and Qwest does not; is that what you said?

10 Q. That's what I meant to say.

11 A. Okay.

12 Q. And I knew you would have that objection if I
13 said changing Qwest's current process, so I was
14 attempting to accommodate that.

15 A. Okay.

16 Q. Now am I correct to understand that
17 Eschelon's primary concern is its view that it's not
18 fair to list something as customer not ready if Eschelon
19 has not received an FOC beforehand?

20 A. Well, it's if, you know, when you send a
21 facility jeopardy, Qwest has told us that, you know, the
22 due date is in jeopardy and unless you send us an FOC
23 not to expect it to deliver. And when you place a
24 customer not ready jeopardy on the order, it delays
25 service to the customer. So we don't think it's

0253

1 appropriate to delay the customer's service when Qwest
2 hasn't notified us that they're going to deliver the
3 service and we haven't appropriately either provided
4 arrangements for access or staff to be able to accept
5 the circuit, we don't have the opportunity to prepare to
6 accept the circuit.

7 Q. Okay. Now with your testimony then in the
8 record in this proceeding, there are sort of two sets of
9 order data that show examples of these situations; would
10 you agree with me on that?

11 A. I would agree.

12 Q. And one of which is Exhibit BJJ-60, which has
13 been marked in this proceeding as Exhibit 126.

14 A. Did you say 60?

15 Q. Oh, 50, excuse me.

16 A. Oh, okay, yes.

17 Q. And just to clarify for the record, and
18 please confirm me if I am incorrect with this, but this
19 document reflects sort of a series of exhibits that have
20 gone back and forth between the companies regarding
21 these service order examples; do you agree?

22 A. I would agree with that, and I do explain
23 that in my testimony.

24 Q. And my understanding is originally it was
25 attached to your direct testimony as Exhibit BJJ-6,

0254

1 which is marked as Exhibit 80 in this proceeding?

2 A. Yes.

3 Q. Then it was marked as BJJ --

4 A. 35.

5 Q. -- 35, which I have written down as Exhibit

6 17 but I have a feeling is 117, let me double check.

7 110 is what it looks like from my list. And

8 then also Ms. Albersheim on behalf of Qwest has included

9 a description of these orders, which is attached as

10 Exhibit 28RT and marked as Exhibit 28 in this

11 proceeding. Does that fit with your recollection, that

12 there are four exhibits that describe this same set of

13 data?

14 A. That fits with the recollection. A couple of

15 things, I think didn't she correct it to 27, didn't

16 Ms. Albersheim correct the RA-28 to RA-27, and I just

17 wanted to clarify that.

18 Q. I think that was referring to something else.

19 A. Oh, it was, okay, I wasn't certain about

20 that.

21 And BJJ-50 is actually all of that, it's a

22 combination of all of that.

23 Q. Right. And just to clarify for the record,

24 this is the extent or these are the examples on the

25 record of situations in which Eschelon was unable to

0255

1 complete a service order because it had not received a
2 prior FOC from Qwest; is that correct?

3 A. Unable to accept the circuit.

4 Q. Unable to accept the circuit. And these 4
5 examples are all examples of the same data set, which
6 are 25 orders, correct?

7 A. I believe it's 22.

8 Q. That's right, at the end it wound up being
9 22.

10 A. Okay.

11 Q. And by my --

12 A. It was 23 at one point but never 25.

13 Q. Okay. And you have in your exhibit 50, which
14 has been marked as Exhibit 126, broken those orders down
15 into 3 categories, the third of which is labeled C, and
16 those are ones where Qwest agrees that the
17 classification was incorrect. The first category marked
18 A are 12 orders in which you have described as there
19 being no FOC after the most recent jeopardy or the
20 pertinent jeopardy I guess is what you have put down.
21 And then there are 8 examples of where you have said
22 that Eschelon has been unable to receive a circuit
23 because of an untimely FOC. And I take it from untimely
24 what you mean is not the day before; would that be
25 correct?

0256

1 A. That would be correct.

2 Q. In looking --

3 A. It may have been the same day.

4 Q. In looking through the examples on Exhibit
5 50, I note it appears when you look at the PON category,
6 the first 2 letters of those PONs, do those reflect the
7 state in which the order was placed?

8 A. That would be correct.

9 Q. So like for number 1 it's Oregon, that's
10 Oregon?

11 A. Correct.

12 Q. Now based on my review, and feel free to
13 check, I saw 4 examples of Washington orders on this
14 exhibit.

15 A. If you could just give me a moment, I will
16 verify.

17 Q. I will give you what numbers I have, and then
18 you can check to see if I have --

19 A. Okay.

20 Q. -- missed something, number 5, number 8,
21 number 10, and number 18.

22 A. One moment.

23 That's what I have as well.

24 Q. Now turning to Exhibit BJJ-41 to your
25 testimony, which has been marked as Exhibit 117 in this

0257

1 proceeding.

2 A. I'm there.

3 Q. Okay, now this document shows examples of
4 situations in which Eschelon has been able to accept a
5 circuit despite not receiving an FOC; is that correct?

6 A. That is correct.

7 MR. TOPP: And I have no further questions.

8 THE WITNESS: Okay.

9 JUDGE CLARK: Redirect, Mr. Merz?

10 MR. MERZ: I don't have any further questions
11 either.

12 JUDGE CLARK: Thank you for your testimony,
13 Ms. Johnson.

14 THE WITNESS: Thank you.

15 JUDGE CLARK: Let's take a moment off record.

16 (Recess taken.)

17 JUDGE CLARK: Mr. Merz, would you call your
18 final witness, please.

19 MR. MERZ: Thank you, Your Honor, Eschelon
20 calls Douglas Denney.

21 (Witness DOUGLAS DENNEY was sworn.)

22 JUDGE CLARK: Thank you, please be seated.

23 Mr. Merz.

24 MR. MERZ: Thank you, Your Honor.

25 Whereupon,

0258

1 DOUGLAS DENNEY,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4

5 D I R E C T E X A M I N A T I O N

6 BY MR. MERZ:

7 Q. Good afternoon, Mr. Denney.

8 A. Good afternoon.

9 Q. You have filed direct, rebuttal, and
10 surrebuttal testimony in this case; is that right?

11 A. Yes.

12 Q. And you're also adopting the expedite portion
13 of Mr. Webber's direct and rebuttal testimony; is that
14 also correct?

15 A. That's correct.

16 MR. MERZ: And for the record I will note
17 that Mr. Denney's direct testimony has been marked as
18 Hearing Exhibit 130, the exhibits to that direct
19 testimony have been marked as Hearing Exhibits 131
20 through 136, Mr. Denney's rebuttal testimony has been
21 marked as Hearing Exhibit 137, that the exhibits to that
22 testimony have been marked as 138C through 151, that
23 Mr. Denney's surrebuttal testimony has been marked as
24 Exhibit 152, and that the exhibits to that testimony
25 have been marked as Exhibits 153 through 171.

0259

1 And with that, Mr. Denney is available for
2 cross-examination.

3 JUDGE CLARK: Thank you.

4 And who will inquire?

5 Mr. Devaney, please.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. DEVANEY:

9 Q. Good afternoon, Mr. Denney.

10 A. Good afternoon.

11 Q. I would like to begin by asking you about
12 Issue 4-5, design changes, and my understanding of a
13 design change is that it generally relates to a
14 situation where a CLEC submits an order and then changes
15 that order for some reason which requires Qwest to take
16 steps in response to the change to the order; is that a
17 fair understanding?

18 A. It's a high level understanding, yes.

19 Q. And a central dispute between the parties
20 related to this issue is what charges will apply to
21 different design changes, correct?

22 A. That's correct.

23 Q. And the three design changes at issue are
24 design changes relating to transport, which is also
25 referred to as UDIT, the acronym, unbundled loops, and

0260

1 so-called connection facility assignments or CFAs; is
2 that correct?

3 A. Yes.

4 Q. And Eschelon's position in this case is that
5 all three of those design changes should be governed by
6 a so-called TELRIC cost based rate, correct?

7 A. That's correct.

8 Q. And when we speak of TELRIC, total element
9 long run incremental cost, we mean that a TELRIC charge
10 ought to be based on the cost of performing an activity.
11 And I realize there are different ways of defining cost,
12 but at a high level do you agree with that?

13 A. I mean it's another way is like a forward
14 looking economic cost of performing that activity, you
15 know. So, you know, an example, you know, like a kind
16 of a simple example to distinguish if you were going to
17 copy something, you could copy it by hand or you could
18 use, you know, the copy machine. TELRIC would really
19 say use the -- you're using the copy machine when you do
20 the cost, we're not trying to calculate the cost by some
21 inefficient or more arcane methods even though those
22 still may be used, but we're trying to get to those what
23 we call the forward looking economic costs.

24 Q. Okay.

25 A. To do those.

0261

1 Q. And then we have recurring versus
2 nonrecurring costs and charges, there's a distinction
3 between those, correct?

4 A. Right, there's a distinction, the design --
5 the design change charge is a nonrecurring charge as
6 it's set up right now.

7 Q. Okay. And we have had this discussion
8 before, but when we talk about estimating the costs and
9 developing charges for nonrecurring activities, do you
10 agree that the general methodology is, one, to identify
11 the activities that go into a nonrecurring event, two,
12 the time it takes to perform those activities, and
13 three, a labor rate that would apply to the people
14 performing the activities?

15 A. I'm going to say basically that's correct. I
16 would put kind of before step one would be first you
17 would kind of -- you would determine the efficient
18 methodology that would take place so the efficient way
19 in which that activity should be performed. Then you
20 would determine, assuming that your systems, your OSS
21 systems, your activities are done in an efficient
22 manner. Then you would go through the rest of those
23 steps.

24 Q. Okay. And then in an ideal scenario, one
25 would set forth those activities, those labor rates,

0262

1 those assumptions about efficiencies in some sort of
2 cost study or cost model; is that correct?

3 A. In the scenario you gave, I mean it's pretty
4 basic, so you've got kind of time and labor and
5 activities, so yes, certainly, I mean there's cost
6 studies that would multiply those things together.

7 Q. Okay. And the benefit of having a cost study
8 or a cost model is you can look in and see what the
9 assumptions are, what the calculations are, and you can
10 determine whether you agree with them or whether there
11 are areas where you don't agree with them and whether
12 calculations have been done accurately, correct?

13 A. I mean that's certainly the ideal. I mean
14 cost studies don't always work that way, sometimes
15 they're just a flat set amount of time with very little
16 description, so to make those determinations -- just
17 because you have a cost study doesn't necessarily make
18 that determination as you described it easy to -- easy
19 to undertake any more than it would be if you had a
20 verbal description. But ideally the cost study should
21 be detailed and explain out those activities that are
22 taking place.

23 Q. And I know you know where I'm headed with
24 this, Eschelon has proposed two nonrecurring rates in
25 this case for design change, a \$5 rate for connection

0263

1 facility assignment design changes and a \$30 rate for
2 unbundled loop design changes, correct?

3 A. And to be clear, we have proposed interim
4 rates where we believe the rates currently I mean do not
5 exist today, so we have -- but you're right, we proposed
6 interim rates for design change for loops and design
7 change -- I mean for CFA change for loops in a limited
8 scenario.

9 Q. And just so the record is clear, the rate
10 you're proposing for CFAs is \$5 and the rate for loops
11 is \$30; is that correct?

12 A. That's correct.

13 Q. And I'm also correct that Eschelon did not
14 submit a cost study in support of either of those rates;
15 is that right?

16 A. There is no cost study, but there is -- I
17 mean there's a description of why, the reasonableness of
18 those rates, comparing it to loop installation charges
19 for example, the types of activities that would take
20 place in a description, so I think for an interim basis
21 I mean they are fully supported, those rates.

22 Q. You say there are descriptions, what you're
23 referring to are simply the questions and answers in
24 your testimony that describe the \$30 and \$5 rates being
25 proposed by Eschelon; isn't that right?

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1 A. Yeah, those are the descriptions I'm
2 referring to in my testimony.

3 Q. But there is no backup cost data, there's no
4 cost study that lists assumptions or performs
5 calculations; is that correct?

6 A. That's correct.

7 Q. And I'm also correct that in coming up with
8 those rates you did not assume a labor rate, did you?

9 A. Did not assume a specific labor rate, no.

10 Q. And am I also correct that you have not
11 personally observed anyone ever perform a design change
12 for either a CFA or an unbundled loop?

13 A. I have not seen a live design change. I had
14 a technician at Eschelon walk me through, you know, the
15 steps that it would take in a Qwest central office,
16 showing me what would happen when a design change is
17 done and kind of describe to me that process and what
18 would be involved.

19 Q. But you didn't observe one --

20 A. There were none taking place that day that I
21 went to the office.

22 Q. Okay. And I take it since you're not an
23 engineer you haven't performed a design change yourself;
24 is that correct?

25 A. That's correct.

0265

1 Q. And you described just a minute ago the rates
2 that Eschelon is proposing as being interim, and in
3 connection with that my understanding is that Eschelon
4 is not proposing a trueup for the \$5 and \$30 rates it
5 has set forth here; am I correct?

6 A. Well, I mean to be clear Eschelon hasn't
7 proposed -- hasn't ruled out a trueup, we haven't
8 proposed a trueup. We said that that's something that
9 Qwest could ask for from the Commission at the time that
10 you would do so in a cost docket, but we have not --
11 there is nothing explicitly that says these rates will
12 be trued up or they will not be trued up.

13 Q. Okay. And the reason I'm asking that is when
14 you use the word interim, that can have different
15 meanings, and if there is no trueup at some future date
16 of the \$5 and \$30 rates that you're proposing, those
17 rates would really be permanent for the period that they
18 were in effect; isn't that right?

19 A. I mean I -- I don't really agree with that
20 characterization, because we use permanent rates in a
21 specific manner really to mean rates that have been
22 reviewed and approved by the Commission. Even permanent
23 rates aren't permanent because the Commission changes
24 them from time to time.

25 Q. Well, put it this way, those are the rates

0266

1 that would be in effect for the period that they exist
2 without any alteration?

3 A. And that -- I mean that's going to be true of
4 any interim rate that does not, where a trueup is not
5 ruled on, that interim rate and those interim rates are
6 the rates that you end up paying; is that what you're
7 asking me?

8 Q. Yeah, I think we're agreeing with each other.

9 A. Okay.

10 Q. Are you familiar with the cost models that
11 this Commission has relied upon to set the existing
12 rates for unbundled network elements?

13 A. Am I familiar with them?

14 Q. Well, do you know which models this
15 Commission relied upon?

16 A. I'm thinking now I was involved -- I was
17 involved in the I think it was the 96069 docket if
18 that's the correct number, I was involved in the docket
19 after that, the 2003 docket. I mean I have looked at
20 all of those studies that are out there at one point or
21 another, so, you know, I have reviewed them, I was
22 probably involved in the compliance filings, I worked at
23 AT&T at that time, you know, every compliance filing
24 that went through, I, you know, I was involved with.

25 Q. Okay.

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1 A. So I'm familiar in that sense.

2 Q. I guess do you remember which cost model the
3 Commission relied upon to set rates for loops and
4 transport, for example?

5 A. Let's see, I believe for loops the Commission
6 did an average of cost models from I think it was
7 Hatfield 3.1 and BCPM and also the loop model that Qwest
8 -- whatever it was called at the time. There was a --
9 GTE was in the case too, but I don't think that involved
10 a Qwest rate. And the only thing I'm not certain is if
11 that was the latter case or the prior case, but I know
12 the Commission certainly did that at one time.

13 Q. The reason I'm asking that question is you
14 refer in various places in your testimony to expense
15 factors and cost factors used to set recurring rates.

16 A. Okay.

17 Q. Am I correct that there's no evidence in this
18 record as to what's in the cost factors and expense
19 factors that this Commission used to set UNE rates for
20 loops and transport?

21 A. Is there no evidence in this record?

22 Q. Yes.

23 A. Well, I think I have put -- I mean I have put
24 the source for the factors that I used. I mean they're
25 certainly -- I mean they're sourced and cited from where

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1 they came from in this record. The records that set
2 those cost case themselves, there's a whole phase of a
3 proceeding that took maybe a year to develop those
4 expense factors.

5 Q. Right, but the factors from the models this
6 Commission used to set UNE recurring rates aren't part
7 of this record, and there's not a description in this
8 record of what's in those factors; is that correct?

9 A. That would be part of the record that set
10 those factors.

11 Q. Okay.

12 And with respect to the HAI model, there's no
13 mention in that model in connection with factors or any
14 other costs or expenses of connection facility
15 assignments or CFAs; isn't that right?

16 A. Well, the place where we have to be careful
17 there, there's no explicit line item in any model that I
18 have ever seen filed including a Qwest design change
19 model that says anything about connecting facility
20 assignments. But these costs, when we go through the
21 cost studies when costs are incurred by Qwest, we kind
22 of create this lump sum bucket of expenses that are
23 going to apply to models via factors or via actual
24 dollar amounts. And we take that bucket and some things
25 we pull out and we make very explicit charges for, you

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1 know, things like nonrecurring costs for installing the
2 loop that kind of get taken out of that bucket. The
3 rest of that bucket then is what's in those factors that
4 go to the model. And everything that's in that bucket
5 is all of the activities that Qwest is doing at the
6 time, you know, that it was doing on a regular basis at
7 the time those costs were established.

8 Q. So just to be clear then, and it's important
9 both for design change and for Issue 9-31, access to
10 UNEs, if a rate has been established for a nonrecurring
11 activity by this Commission, by definition that means
12 that the costs associated with that rate are not part of
13 the costs of a recurring UNE rate; would you agree with
14 that?

15 A. I mean the only part I would disagree kind of
16 is by definition. I would say certainly that is the
17 intent when those rates are set. I mean often parties
18 may dispute whether those were calculated right,
19 sometimes things are missed, but that is certainly the
20 intent that if you set up a separate non-recurring
21 charge for an activity then that is not also being
22 recovered in the recurring rates.

23 Q. Thank you.

24 Changing the subject then to issue 9-53,
25 UCCRE, U-C-C-R-E, I just want to confirm what I think is

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1 undisputed, and that is that Eschelon has never ordered
2 these UCCRE rearrangements from Qwest; is that correct?

3 A. That is correct.

4 Q. And I take it you're not aware of any CLEC
5 that has ever ordered UCCRE from Qwest; is that correct?

6 A. That's Qwest's testimony that no one has ever
7 ordered that, so I'm not aware of anything that
8 contradicts that.

9 Q. Okay. And one of Eschelon's proposals in
10 connection with this issue is that although no CLEC has
11 ever ordered UCCRE from Qwest, Qwest would have to go
12 through a proceeding before this Commission to obtain
13 approval to stop offering that product; isn't that
14 right?

15 A. Right, and I think what really the broader
16 concern that arose out of this issue is that Qwest has
17 UCCRE out there available to other carriers, it's in
18 other carriers' contracts, and Qwest is attempting to
19 take that away from Eschelon. And so there is some
20 process that's set up out of that that lays out
21 proposals that one option by Qwest could do that is to
22 go through a process by which not just would apply to
23 UCCRE but would apply to other products which Qwest
24 would want to remove from the carrier's interconnection
25 agreements, and the key for us is to make sure that as

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1 Qwest is offering these products to other CLECs, they
2 would also be available to Eschelon as well.

3 Q. Well, just to be clear about that,
4 Mr. Denney, isn't it true that Qwest made a decision to
5 stop offering UCCRE because no one was ordering it, and
6 for all CLECs who are entering into amendments or new
7 agreements Qwest is no longer providing that, but there
8 are some agreements still out there that have that
9 element in it, but when those agreements expire the
10 UCCRE service will no longer be available to those
11 CLECs?

12 A. Well, I mean first I don't -- I don't know
13 Qwest's -- what Qwest's agreements are with new
14 agreements with other CLECs. You know, I do know what
15 -- I have seen current agreements that are in place that
16 do have UCCRE in them. Qwest hasn't as far as I know
17 gone to those carriers and said we would like to remove
18 this product from your interconnection agreement. Some
19 of these interconnection agreements may remain in place
20 for multiple years past their, you know, past the dates
21 they were originally set to expire, so a carrier could
22 have access to UCCRE. We may find that UCCRE would be
23 useful in a type of situation, you know, going forward
24 that you would like to have, and some set of carriers
25 out there would be able to exercise their right to that

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1 service, and Eschelon wouldn't be able to because it was
2 out of our agreement, out of the agreement here.

3 Q. But from Qwest's perspective, do you
4 understand that there are costs associated with
5 maintaining a product that no one ever orders and that
6 if there is no demand that efficiency suggests one
7 should have the right to stop offering the product?

8 A. Well, first, I mean I can't imagine what
9 costs there are for the -- of maintaining that product
10 if no one is ordering. You have your documentation is
11 written, your systems are set up, there's -- I don't see
12 why Qwest would have to do anything if nobody continued
13 to order it.

14 And what was the second part of your
15 question?

16 Q. Well, can you see why a carrier would have an
17 interest in ceasing to offer a product for which no one
18 has placed an order in five years?

19 A. And I do see that, and I think that's where
20 Eschelon came up with in part, you know, in the response
21 to the Department of Commerce in Minnesota with this
22 phased out proposal that gave Qwest the ability to
23 actually, you know, go to the commission and seek to
24 have a product like that to be removed. But just
25 because a product hasn't been used doesn't mean that

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1 there's not carriers out there who, you know, who would
2 desire to use that product.

3 Q. Well, let's talk a little bit more
4 specifically about your phase-out proposal, and if you
5 would please refer to Exhibit 152, which is your
6 surrebuttal, and I will ask you to look at page 86.

7 A. Okay.

8 Q. On page 86 is Eschelon's proposal number 2,
9 which I think is your first proposal that has this
10 phase-out proposal in it; am I correct in understanding
11 that proposal number 1 doesn't have the phase-out
12 process in it?

13 A. Right, I think proposal number 1 said
14 something to the effect that if Qwest is offering it to
15 other carriers, then they would make it available to
16 Eschelon to amend the agreement to get this product, I
17 believe that was the first proposal.

18 Q. Is that still your first choice, your
19 proposal number 1?

20 A. I mean certainly we're -- I don't know if I
21 have always thought of the order of proposals. I guess
22 in some cases they are the desire of the choice. I
23 think that was certainly the first proposal that's out
24 there that we haven't removed. I haven't done a ranking
25 I guess in terms of desire. Certainly the phase-out

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1 proposal would solve this type of issue that -- where
2 Qwest wants to, you know, remove something that's in
3 agreements, it would take care of this issue going
4 forward. The other proposal just deals with the very
5 specific issue of UCCRE so that, you know, there would
6 be -- we would have the same fight the next time the
7 issue arose.

8 Q. Okay. Looking at proposal number 2 on page
9 86, correct me if I'm wrong, and maybe I am, but as I
10 read the proposal, if the FCC has eliminated an ILEC's
11 obligation to provide an element or a service but hasn't
12 described a phase-out process in its order for that
13 element or service, Qwest would have to come before this
14 Commission to obtain approval to stop ordering the
15 service or element; am I correct?

16 A. I'm just reading through there, there are
17 three different phase-out proposals, and so I'm
18 freshening my memory. One I know came from -- was
19 language that was proposed by the Department of Commerce
20 in Minnesota.

21 So ask me your question again.

22 Q. As I read proposal number 2, Eschelon is
23 suggesting that Qwest would have to come before this
24 Commission to obtain approval to stop offering a service
25 or element that the FCC has said ILECs no longer need

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1 offer; am I correct?

2 A. I don't think that's correct. I mean what it
3 says is that the conditions by which you would not have
4 to go through phase-out proposal would be, one, if Qwest
5 promptly phased out the element, your service within a
6 three month time period when the FCC has ordered, or
7 two, you follow a phase-out process ordered by the FCC.
8 So if the FCC has eliminated that element, then this
9 would not apply in those situations.

10 Q. Okay, then maybe I misread it. So the
11 proposal is that Qwest would not have to come before
12 this Commission to obtain approval if the FCC has said
13 you no longer need to offer an element or service; is
14 that right?

15 A. I want to make sure we're not talking around
16 each other, but it's really -- I think it's the second
17 sentence in that proposal is what I'm looking at that
18 says:

19 Obtaining such an order will not be
20 necessary if Qwest, one, promptly phases
21 out the element, service, or
22 functionality from the agreements of all
23 CLECs in Washington within a three month
24 time period when the FCC has ordered
25 that element, service, or functionality

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1 does not have to be ordered, or two,
2 follows a phase-out process ordered by
3 the FCC.

4 Q. Okay. If neither of those apply and Qwest
5 has to come before the Commission to obtain a phase-out
6 order, am I correct that Eschelon is not proposing any
7 criteria for the Commission to apply in determining
8 whether Qwest should be permitted to phase out a
9 product?

10 A. That's correct, I think the merits of the
11 argument for the particular proposal would be, you know,
12 what should be weighed by the Commission, so we don't
13 have a specific set of criteria here.

14 Q. Okay. On the issue of comingled
15 arrangements, Issue 9-58, just to provide context would
16 you agree that this issue involves the processes that
17 Qwest would follow for ordering, provisioning, and
18 billing so-called comingled arrangements?

19 A. I mean, right, it deals -- it -- if I can
20 just say in my own words, I mean this issue deals with
21 the manner in which, you know, comingled arrangements,
22 which are UNE and non-UNE combinations, would be
23 ordered, billed, provisioned, you know, repaired, yes.

24 Q. Okay.

25 A. So I think that's --

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1 Q. And Eschelon is proposing several changes to
2 Qwest's current ordering, provisioning, and billing
3 processes for comingled arrangements; isn't that right?

4 A. Well, I mean I -- I disagree with that
5 because there is no -- I mean our view there is no
6 current process, this is a new -- this is a new product
7 that's out there. Qwest has never -- has never put
8 forth, you know, Qwest may have invented some internal
9 process, but it's never come to Eschelon and negotiated
10 or any other CLEC that I'm aware of and said here's the
11 way we would like to see these work, here's the way --
12 so there is no existing process. This is a new
13 combination, comingling.

14 Q. Well, Qwest has been providing comingled
15 arrangements for several years now, hasn't it?

16 A. I believe Qwest just unilaterally implemented
17 the way that it felt it should be done, but I don't
18 agree that that's some kind of existing process. Qwest
19 dictated what was done in the past and refused to deal
20 with it then, and now you're telling me I'm stuck by
21 what you've done there, so I disagree.

22 Q. Well, you can characterize it how you would
23 like, but the fact is that for several years Qwest has
24 been provisioning comingled arrangements to CLECs in
25 Washington and throughout its territory pursuant to

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1 ordering, billing, and provisioning processes that Qwest
2 has followed to carry that out; isn't that right?

3 A. I would say Qwest -- I would say it as Qwest
4 unilaterally implemented a process without any CLEC
5 review or input in order of how these things would be
6 ordered and billed and did not deal with it at the time
7 either through CMP or non-CMP processes.

8 Q. Let's take a look at Exhibit 130, your direct
9 testimony, please. At page 146, line 10, actually
10 beginning at line 8, the question is:

11 Will Eschelon's proposal cause Qwest to
12 incur significant costs?

13 And you answer:

14 No, Eschelon is not asking Qwest to
15 modify systems and incur costs.

16 So what I want to ask you in connection with
17 that statement is, if any of Eschelon's proposals would
18 actually require Qwest to change its systems, its
19 operation support systems, and incur costs in doing so,
20 are you saying that that's something Qwest would not be
21 required to do under your proposal?

22 A. So your question is under our proposal, would
23 our --

24 Q. Well -- I'm sorry, go ahead.

25 A. So you're asking if under our proposal would

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1 Qwest have to modify its systems?

2 Q. No, let me state it another way.

3 You have proposals here, and I will summarize
4 them. One is that orders for comingled arrangements
5 instead of being submitted on a local service request
6 for the UNE piece and an ASR for the tariff piece be
7 submitted on one order. You also have a proposal that
8 for comingled EELs there would be one bill instead of
9 two, one for the UNE piece and one for the tariff piece.
10 You also have a proposal instead of two circuit IDs, one
11 for the UNE piece and one for the tariff piece, Qwest
12 start using one circuit ID. My question for you is,
13 given this statement that Eschelon is not asking Qwest
14 to modify systems and incur cost, would you agree with
15 me that Qwest shouldn't be required to do any of the
16 things I just named if they require system changes and
17 costs?

18 A. No, I wouldn't agree with that, and I -- in
19 the context of this negotiation, this issue is what's
20 important. When we started these discussions after the
21 TRO came out, we tried to have conversations with Qwest
22 on how --

23 Q. Mr. Denney, I'm going to ask you to limit
24 your answer to my question.

25 A. This is answering your question, because to

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1 say no needs to be put in the proper context. It says
2 that when these issues were negotiated, I mean when
3 these were set out, there was nothing that exists from
4 Qwest. Qwest on the side went ahead and implemented
5 something knowing full well that there was disagreement
6 as to how that should be implemented. So to say that
7 Eschelon should have to pay for Qwest to fix something
8 that it probably shouldn't have done in the first place
9 is why I'm answering no to that question.

10 Q. Okay, so you're not disagreeing that the
11 changes that you're proposing that I just summarized
12 would cause Qwest to have to modify its systems and
13 processes and incur costs, correct?

14 A. Well, I don't know that that's the case
15 either way. You asked me if Qwest did have to do these
16 things, what was my answer.

17 Q. Okay.

18 A. It's not clear to me that Qwest would have to
19 do that. You currently, you know, you currently bill
20 EELs on a single bill, you currently place a single
21 order for EELs. Comingled arrangements are just EELs
22 with one component priced, you know, as a non-UNE and
23 another comprised as a UNE.

24 Q. The comingled EELs also involve a tariff
25 component that's provisioned out of different

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1 inventories and through different ordering processes
2 than UNEs; isn't that right?

3 A. They involve tariffed components, that's
4 correct.

5 Q. Okay. And have you analyzed from an OSS
6 perspective what Qwest would have to do to begin
7 accepting orders for comingled EELs through one order,
8 provision them through one inventory system, and use one
9 circuit ID for them, have you analyzed if any changes
10 would be required, and if so, what costs would be
11 incurred?

12 A. I have not done that analysis because Qwest
13 does these things today for EELs, and this is a -- it's
14 a change in a rate of one of the components.

15 Q. Okay. And so where you're falling back is
16 that there's no distinction between an EEL and a
17 comingled EEL?

18 A. They're the same facility.

19 Q. And I do think you would agree with me that
20 under The Act, Qwest has a right to recover costs it
21 incurs to provide access to UNEs and interconnection
22 services; is that correct?

23 A. Yes, that's correct, and I think Mr. Starkey
24 referred to 5.1.6 of our, you know, of our contract that
25 talks about the process by which Qwest could go out and

0282

1 seek recovery of reasonable costs, so that's agreed-to
2 language in the contract.

3 Q. And my question for you in connection with
4 this particular issue is if this Commission were to
5 require Qwest to make the changes that you have asked
6 for, that is one order, one circuit ID, one bill, would
7 Eschelon agree to language in which it says it will
8 compensate Qwest for the reasonable costs incurred to
9 make those changes?

10 A. I would not agree here today to separate
11 language that says that. There's already set out
12 through the agreement methods by which Qwest can go to
13 seek recovery of reasonable costs. We already know
14 there's some disagreement over what is reasonable in
15 that, so I wouldn't put in some explicit language here
16 that made someone to think that we meant something
17 special for this part of the contract than we mean for
18 the rest of the contract. Qwest has its right under the
19 contract to recover reasonably incurred costs, and
20 that's the provision by which Qwest could seek recovery
21 of those costs.

22 Q. I don't want to beat this into the ground,
23 but there's one fine distinction, you said that the
24 agreed language allows Qwest to seek to recover its
25 costs, and I'm asking a different question, and that is,

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1 if this Commission adopts the very costly proposals that
2 Eschelon has made here, will Eschelon agree not to just
3 allow Qwest to seek its costs but to agree to reimburse
4 for some reasonable costs?

5 A. You're throwing two things, you're talking
6 about significant cost and reasonable cost as though
7 they're the same thing, and we already know that there's
8 a disagreement there. All of the rates that are, you
9 know, in Exhibit A Qwest is supposed to seek approval to
10 the Commission to charge those rates to Eschelon or
11 there's some negotiation that would take place for those
12 rates, so I don't see it as being a distinction that
13 Qwest would need to get Commission approval before it
14 could charge rates.

15 Q. Last question on this, is it your position or
16 Eschelon's position that Qwest should be required to
17 make all of these changes without recovering any costs
18 from Eschelon?

19 A. That is not our position.

20 Q. Okay.

21 Last issue I would like to discuss with you
22 is Issue 9-51, unbundled dark fiber, and I think that
23 this issue was fairly well defined this morning, and as
24 I understand it, and see if you agree, the issue
25 involves whether the Commission approved rate for dark

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1 fiber terminations is for just one termination or it
2 includes the costs of multiple terminations; is that a
3 fair description?

4 A. I think that's the outcome of the discussion,
5 but the discussion is really about the terms in the
6 contract regarding the description of the rate
7 application. It's not really about the cost study
8 itself, but it's about how is that described in the
9 contract.

10 Q. And I --

11 A. I understand the link, there's a link between
12 the two of those things, one depends on the other.

13 Q. I know from our discussions in other states
14 that you recognize with unbundled dark fiber Qwest may
15 be required to perform multiple terminations, correct?

16 A. That's correct.

17 Q. And I think you also recognize and Eschelon
18 recognizes that Qwest should be compensated for each
19 termination reasonably required for unbundled dark
20 fiber; is that correct?

21 A. I agree with that. And just to make clear
22 that it's how that rate element recovers that is the
23 question. So whether or not Qwest is compensated is a
24 different question as to whether Qwest should be
25 compensated.

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1 Q. Okay, and that goes to the rate the
2 Commission ordered, correct, and whether it's sort of an
3 average multiple terminations or whether it just
4 reflects one termination?

5 A. That's correct, and if we could just look in
6 that cost study, then we would be able to make that
7 determination.

8 Q. And I'm glad you said that, because if we
9 give you that cost study and you see that this study is
10 just for a single termination, I take it from your
11 testimony you would agree to resolve this issue?

12 A. That's been our position for over a year now
13 in negotiations, and going forward if we could verify
14 through the cost study the way this was supposed to
15 apply that we could close this issue.

16 Q. I'm happy to tell you that we're going to
17 accommodate that request.

18 MR. DEVANEY: That's all I have, thank you.

19 JUDGE CLARK: Redirect, Mr. Merz?

20 MR. MERZ: Thank you, Your Honor.

21

22 R E D I R E C T E X A M I N A T I O N

23 BY MR. MERZ:

24 Q. Mr. Denney, Mr. Devaney had some questions
25 for you about the rates that, the interim rates that

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1 Eschelon had proposed for design changes for loops and
2 CFA; do you recall that questioning?

3 A. Yes.

4 Q. And he asked you what -- whether there was a
5 cost study supporting those proposed rates, what are the
6 rates that Eschelon has proposed based on?

7 A. Well, the rates are -- I mean the rates are
8 based on a review of the types of activities that would
9 be involved, that there's differences in the costs
10 between performing design changes for transport and
11 versus those doing it for loops, the fact that the
12 current studies were really designed around transport
13 and ASR studies, you know, we looked at. Because we
14 know a design change is a change to the installation
15 process, you can use as a benchmark the cost of
16 installation to the cost of design change, so you
17 wouldn't expect the design change for loop costs to be
18 greater than the installation costs.

19 For CFA changes, those costs are really based
20 on there's a -- what happens during a CFA is you're
21 getting ready to turn up the circuit, our proposal is
22 really limited to a coordinated installation situation,
23 Qwest and the CLEC are often on the phone during that
24 time, they go to plug it in and something happens during
25 the coordination, there's no dial tone, and it's

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1 determined that perhaps it's a bad CFA, you don't always
2 know that, so you assign a different CFA. Qwest calls
3 in, types in the new CFA, makes sure it's available,
4 plugs the -- kind of plugs these wires back into the
5 different slots of the new CFA to take the -- it takes a
6 few minutes to do this, they update the records when
7 everything works. So the CFA change is a -- it's a
8 small charge, it happens in a limited -- it's limited,
9 our language, the situation of coordinated cutovers for
10 two or four wire loops, nothing complex, on the day of
11 cut.

12 Q. I want to change issues now and talk for just
13 a moment about UCCRE, and you had some questions about
14 who had ordered UCCRE in the past. Do you know whether
15 Qwest's TRO TRRO amendment removed UCCRE from the
16 contracts of the CLECs that signed that amendment?

17 A. Right, I mean I read the TRO amendment, in
18 the very beginning of that amendment it lists out the
19 things that are being removed from people's contracts,
20 UCCRE is not on that list of any TRRO TRO amendment that
21 I have reviewed.

22 Q. Where did you review that document?

23 A. Well, they have -- Qwest has had different
24 versions of it available on their website. I have also
25 seen numerous other CLECs that -- the TRRO TRO

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1 amendments that they have signed, we have reviewed some
2 of these as part of the wire center dockets, and so
3 these have not -- I have seen numerous CLECs' versions
4 of this, and it was not removed through that agreement.
5 Recently I was looking in Oregon, Qwest has a contract
6 with Qwest, its own CLEC affiliate, I looked through
7 that contract when the Qwest, I forget which one is
8 Qwest Corporation and which one is Qwest Incorporated,
9 but Qwest the CLEC signed a TRO amendment for its
10 agreement, it did not remove UCCRE in that TRO
11 amendment.

12 Q. Shifting gears again to comingled
13 arrangements, Mr. Devaney had asked you some questions
14 about Eschelon's proposal relating to a single circuit
15 ID, a single order, single bill for comingled
16 arrangements; do you recall that?

17 A. Yes.

18 Q. Does Eschelon have an alternative proposal to
19 the single circuit ID, single order, single bill
20 proposal?

21 A. Right, Eschelon does have an alternative
22 proposal which is kind of a meager proposal and, you
23 know, in the alternate says if you can't do this on a
24 single bill, provide the information really or allow the
25 process so we can at least relate the two separate bills

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1 so we know that the two separates bills are separate
2 pieces of the circuit we're getting actually belong
3 together.

4 Q. Why is that important?

5 A. Well, I mean for bill verification for --
6 this is a circuit that's really an end to end -- I mean
7 it's a circuit that goes from a CLEC customer back to an
8 Eschelon, you know, an Eschelon collocation, so knowing
9 that you have -- being able to track that whole circuit
10 through for billing purposes is important in terms of if
11 that customer disconnected and you didn't know the
12 transport piece was related to the loop piece, what
13 happens sometimes you end up with these transport
14 circuits that you're still being billed for but you're
15 never -- you're potentially never using, so it just
16 makes bill verification a nightmare when you can't sync
17 up what the customer is actually using.

18 Another alternative proposal that we have
19 there is for repairs, it just says, you know, for repair
20 if you're not going to do a single circuit ID, can you
21 allow us so that when we call in a repair on the circuit
22 you repair the whole circuit from the customer -- you
23 look at the whole circuit from the customer location to
24 the CLEC collocation, look at that entire circuit at a
25 time to determine where the error is. Under Qwest's

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1 process, they have you looking at one portion of the
2 circuit first and then another portion of the circuit
3 second, that delays the repairs, and really just getting
4 that -- I mean getting that customer repaired is a top
5 priority in that type of situation, so those are two
6 alternatives that are -- it would seem that it should be
7 fairly easy for Qwest to implement and, you know, go
8 forward as to those alternative proposals to the first
9 proposal that we have.

10 MR. MERZ: I don't have anything further,
11 thank you, Mr. Denney.

12 JUDGE CLARK: Thank you.

13 Thank you, Mr. Denney.

14 THE WITNESS: Thank you.

15 JUDGE CLARK: All right, anything further to
16 be considered on this afternoon's docket?

17 MR. MERZ: That is Eschelon's last witness,
18 so that concludes our case.

19 JUDGE CLARK: Mr. Topp.

20 MR. TOPP: Yeah, if I could clarify on one
21 issue, we have a briefing deadline is my understanding
22 from talking to Ms. Anderl that under Washington rules
23 there's a page limit for briefing of 60 pages.

24 JUDGE CLARK: Yes.

25 MR. TOPP: And just wanted to confirm that

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1 that's going to apply in this case, not seeking an
2 exception.

3 JUDGE CLARK: Yes, it will apply.

4 Anything further that should be considered
5 this afternoon?

6 MR. DEVANEY: Not for Qwest.

7 MR. MERZ: On the issue of the page limits,
8 Your Honor, we're only filing one brief, we're not
9 filing any rebuttal round, and I'm wondering if you
10 would consider an extension of that page limit.

11 JUDGE CLARK: Well, not very likely honestly.
12 Without meaning anything negative, there is a
13 significant amount of paper already submitted in this
14 docket that I think very adequately describes each
15 party's position in this particular arbitration hearing,
16 and I don't think it's necessary unless there's some,
17 you know, reason that you can put forth why it's
18 absolutely necessary to extend the briefing page limit.
19 If you can come up with that, with a motion, then file
20 it with the Commission, I will certainly consider that,
21 but the record does seem to be very adequate at this
22 juncture on all the issues.

23 MR. MERZ: Thank you, Your Honor.

24 JUDGE CLARK: With the exception of the
25 testimony that has yet to be filed, of course.

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1 MR. MERZ: With that, we don't have anything
2 further.

3 JUDGE CLARK: All right, if there is nothing
4 further, we are adjourned.

5 (Hearing adjourned at 3:40 p.m.)

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