**ATTACHMENT 2 TO ESCHELON POST-HEARING BRIEF**
EVIDENCE IN THE RECORD SUPPORTING ESCHELON'S JEOPARDY PROPOSALS – ISSUES 12-71, 12-72 & 12-73

| ESCHELON LANGUAGE[1] | EVIDENCE SUPPORTING ESCHELON LANGUAGE – INCLUDING QWEST DOCUMENTS & ADMISSIONS | QWEST EVIDENCE THAT THE PIDs/PAP PROVIDE SOMETHING DIFFERENT |
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| 12.2.7.2.4.4  A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR). | Qwest testified that: "We don't disagree with the notion that a CNR jeopardy should be assigned appropriately."[2]<br><br>"Q.  Eschelon's proposal there is a jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as customer not ready(CNR).  Is that right?<br>A.  Yes.<br>Q.  That's Qwest's process; correct?<br>A.  I believe that is.<br>Q.  And can you imagine any circumstances under which a CLEC might want something different than that?<br>A.  No."[3]<br><br>Qwest testified this Eschelon language is consistent with Qwest's current process;[4] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | None –<br><br>Qwest did not cite a single provision of the PIDs or PAP allowing Qwest to classify a Qwest-caused jeopardy as an Eschelon-caused jeopardy (CNR).  Nor did Qwest provide any evidence that it would be logical or in the public interest to do so. |

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[1] In response to all of these provisions, Qwest's proposed language, in its entirety, provides:  "12.2.7.2.4.4  Specific procedures are contained in Qwest's documentation, available on Qwest's wholesale web site."  In Minnesota, the commission adopted the following ALJs' finding regarding Qwest PCAT changes in CMP:  "Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection."  Exh. No. 158, at ¶22,  Exh. No. 171 22: ¶1.

[2] Albersheim, Exh. No. 73,  MN TR. Vol. 1, 94:5-6.

[3] Albersheim, Exh. No. 178,  AZ TR. Vol. 1, 64:5-14.

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| **ESCHELON LANGUAGE[1]** | **EVIDENCE SUPPORTING ESCHELON LANGUAGE – INCLUDING QWEST DOCUMENTS & ADMISSIONS** | **QWEST EVIDENCE THAT THE PIDs/PAP PROVIDE SOMETHING DIFFERENT** |
| 12.2.7.2.4.4 . . .Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Appendices A and B to Exhibit K of this Agreement. | Exhibit B and Appendices A and B to Exhibit K of the Agreement.<br>    Exhibit B = PIDs<br>    Exhibit K = PAP<br><br>Qwest testified that the PIDs currently require Qwest "to differentiate between Qwest caused and CLEC/customer caused delays."[5] | None |
| 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or service order is not accepted by the CLEC (when Qwest | Qwest Exhibit RA-14 (Hearing Exh. No. 14) (entitled "Jeopardy Data") lists the different types of jeopardies by code.[6] The two types of potential customer (CNR) jeopardies described in Section 12.2.7.2.4.4.1 are coded in Exhibit RA-14 (Hearing Exh. No. 14) as CO1 and CO2, and Eschelon's ICA language mirrors Qwest's PCAT "User Friendly Jeopardy Description" of these two jeopardies.[7] | None |

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[4]Albersheim, Exh. No. 1, 68:32, 69:1, (referring to all of Eschelon's proposal, without the phrase "the day before," as Qwest's "current PCAT process"); Albersheim, Exh. No. 18C, 57:20-23(indicating only that "the day before" is allegedly not part of the Qwest process); Albersheim, Exh. No. 73, MN TR. Vol. 1, 37:16-23.. Qwest claims that Eschelon's proposed phrase "at least the day before" is not part of Qwest's current process. *See id*. p. 37: 11-19; *see also* Albersheim, Exh. No. 180, CO TR. Vol. 1, 72:1-8. Other than that phrase, however, Qwest admits that the remainder of Eschelon's proposed language reflects Qwest's current process. Albersheim, Exh. No. 73, MN TR Vol. 1, 34:16-23 [quoted at Starkey, Exh. No. 71, 224:note 734; *see id*. pp. 222-224].

[5] Albersheim, Exh. No. 1, 70:18-19.

[6] Exh. No. 14, *See also* footnotes 5 and 6 to Exh. No. 80 regarding the different types of jeopardies and discussion of "K" jeopardies (Qwest-caused jeopardies) and providing the applicable Qwest URLs.

[7] Exh. No. 14, pp. 1-2.

[8] Albersheim, Exh. No. 180, CO TR. Vol. I, 71:13-15.

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|---|---|---|
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| has tested the service to meet all testing requirements.); and (2) End User Customer access was not provided. | A Qwest-caused jeopardy is called a "Qwest jeopardy,"[8] and Qwest identifies them in Qwest Exhibit RA-14.(Hearing Exhibit 14) [9] Qwest's PCAT language shows Qwest differentiates jeopardy notices and tells CLECs to plan to prepare to accept the circuit (*i.e.*, disregard the jeopardy notice) even if the CLEC is not advised of a new due date for one category of jeopardy types (Critical Date jeopardies) and not to prepare to accept the circuit (*i.e.*, do not disregard the jeopardy notice) unless Qwest advises CLEC of a new due date for the other  (DD jeopardies).[10]  Qwest facility jeopardies ("K" jeopardies) are Due Date ("DD") jeopardies.[11] Qwest testified this Eschelon language is Qwest's current | |

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[9] Exh. No. 14.

[10] *See* Exh. No. 11, (Qwest's Provisioning and Installation Overview PCAT), p. 11, stating: "Qwest differentiates between DD jeopardies and Critical Date jeopardies. DD jeopardies indicate that your due date is in jeopardy; however, Critical Date jeopardies indicate that a critical date prior to the DD is in jeopardy. *Critical Date jeopardies can be ignored by you*. Critical Date jeopardies are identified in the Jeopardy Data document (see download in the following paragraph) in the column labeled "Is Due Date in Jeopardy?" *If the DD is not in jeopardy, this column will contain "No" and you can disregard the jeopardy notice* sent for this condition and continue your provisioning process with the scheduled DD. *If the column contains "Yes" and Qwest has the responsibility to resolve the jeopardy condition, we will advise you of the new DD when the jeopardy condition has been resolved.* This is usually within 72 hours." (emphasis added).  *See also* footnotes 5 and 6 to Exh. No. 50 regarding the different types of jeopardies and discussion of "K" jeopardies (Qwest-caused jeopardies) and providing the applicable Qwest URLs.

[11] *See* Exh. No. 14, pp. 1-2 (showing the column contains "Yes" for these jeopardies).  *See also* footnote 6 to Exh. No. 50.

[12] Albersheim, Exh. No. 1, 68:32, 69:1; Albersheim, Exh. No. 73, MN TR., Vol. 1, 37:16-23..  [cited at Starkey, Exh. No. 71, p. 224].

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| | process;[12] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | |
| 12.2.7.2.4.4.1 . . . For these two types of jeopardies, . . . | Qwest Exhibit RA-14 (Hearing Exhibit 14) describes other types of customer ("C") jeopardies,[13] which are not impacted by Eschelon's language.[14]<br><br>Qwest testified this Eschelon language is Qwest's current process;[15] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | None |
| 12.2.7.2.4.4.1 . . . For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, | Qwest's witness admitted that, if the CLEC does not have adequate notice that the circuit is being delivered (with the agreed upon process for adequate notice consisting of an FOC), then it is ***"not appropriate"*** for Qwest to assign a CLEC-caused (CNR) jeopardy.[16]<br><br>Qwest's witness admitted the reason Qwest is required to send | None |

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[13] Exh. No. 14.

[14] For example, it does not apply to customer jeopardy CO3 ("Subscriber Change in Requirements") [Exh. No. 14, p.2], because the failure to deliver the FOC does not affect the customer (CLEC) opportunity to be ready; the CLEC's change in requirements does. In contrast, for CO2, which is subject to the language, Eschelon needs the FOC to have a reasonable opportunity to contact its customer to gain access to the premises needed to accept delivery of the circuit. This shows Eschelon's language is narrowly tailored to the business need.

[15] Albersheim, Exh. No. 1, 68:32; 69-1. ; Albersheim, Exh. No. 73, MN TR. Vol. 1, 37:16-23. . [cited at Starkey, Exh. No. 71, p. 224. ].

[16] Albersheim, Exh. 73, MN TR. Vol. 1, 94:4-11(emphasis added).

| ATTACHMENT 2 TO ESCHELON POST-HEARING BRIEF<br>EVIDENCE IN THE RECORD SUPPORTING ESCHELON'S JEOPARDY PROPOSALS – ISSUES 12-71, 12-72 & 12-73 | | |
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| and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs but at least the day before Qwest attempts to deliver the service. | an FOC after a Qwest facility jeopardy has been cleared is to let the CLEC know that it should be expecting to receive the circuit so that the CLEC will have sufficient notice to make personnel available and perhaps make arrangements with the customer to have access to the premises available.[17]<br><br>Qwest CMP minutes state that Qwest confirmed "Qwest cannot expect the CLEC to be ready for the service if we haven't notified you."[18]<br><br>Excluding the phrase "at least the day before" (see below): Qwest testified this Eschelon language is Qwest's current process;[19] therefore, this Eschelon language (excluding, per Qwest, the phrase "at least the day before") cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | |
| 12.2.7.2.4.4.1 . . .sent an FOC | Qwest testified: | None |

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[17] Albersheim, Exh. No. 73, MN TR. Vol. 1, 37:24-38:6 cited at Starkey, Exh. No. 71, p. 224.

[18] Exh. No. 23, p. 5.

[19] Albersheim, Exh. No. 1, 68:32; 69:1; Albersheim, Exh. No. 73, MN TR. Vol. 1, 37:16-23; cited at Starkey, Exh. No. 71, 224:Note 734; *see id*. pp. 222-224.

[20] In making this response, Ms. Albersheim ignores that other language in the proposed contract, which is closed and agreed upon, requires the FOC. See Section 9.2.4.4.1 (quoted below).

[21] Albersheim, Exh. No. 178, AZ TR. 70:13-18.

[22] Albersheim, Exh. No.73, MN TR. 38:17-19; cited at Starkey, Exh. No. 71, p. 231. *See also Albersheim,* Exh. No. 180, CO TR. Vol. I, 71:20-25 ("formal notice").

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|---|---|---|
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| notice . . . | "Q. The contract requires the FOC; correct?<br>A. The PCAT requires the FOC. Your contract proposal requires the FOC.[20]<br>Q. And Qwest's current process is to provide the FOC?<br>A. That is the process."[21]<br><br>"Q The FOC is the agreed upon process by which Qwest informs Eschelon of the due date for a circuit?<br>A Yes."[22]<br>. . .<br> "Q And you would agree that that's not proper, if the CLEC hasn't received an FOC in adequate time to be able to act on it; correct?<br>A According to procedure, yes.<br>Q That's Qwest's procedure?<br>A Yes."[23]<br><br>Closed language in the ICA (like the SGAT) states (with | |

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[23] Albersheim, Exh. No.73, MN TR. Vol. 1, 95:19-24; cited Johnson ,Exh. No. 114, 24:note 44.

[24] Footnote 4 to Exh. No. 50 : "**ICA Section 9.2.4.4.1**: ". . . If Qwest must make changes to the commitment date, Qwest will promptly issue a Qwest Jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also ***submit a new Firm Order Confirmation*** that will clearly identify the new Due Date." (emphasis added). This language appears in the SGAT and Qwest's negotiations template. *See also* the PCAT provisions (cited in footnote 5) for "DD Jeopardies" that indicate Qwest's process is to send an FOC after the facility jeopardy notice if the condition is resolved so that the CLEC should expect delivery." *See also* Exh . 71, pp. 216-217.

[25] Albersheim, Exh. No. 1, 68:32, 69:1. Albersheim, Exh. No. 73, MN TR, Vol. 1, 37:16-23. [cited at Starkey, Exh. No. 71, p. 234. ].

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|  | emphasis added) in Section 9.2.4.4.1: ". . . If Qwest must make changes to the commitment date, Qwest will promptly issue a Qwest Jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also **submit a new Firm Order Confirmation** that will clearly identify the new Due Date."[24]<br><br>Qwest testified this Eschelon language is Qwest's current process;[25] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. |  |
| 12.2.7.2.4.4.1 . . .at least the day before . . . . | Qwest CMP minutes state: "Bonnie [Eschelon] confirmed that the CLEC should **always** receive the FOC **before the due date**. Phyllis [Qwest] agreed . . ."[26]<br><br>Qwest made the following documented commitment in CMP |  |

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[26] Exh. No. 23 p. 5; *see also* Exh. No. 79, p. 4.

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| | in response to an example provided by Eschelon: "Action #1: As you can see receiving the FOC releasing the order on the day the order is due does not provide sufficient time for | |

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[27] Exh. No. 116, (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added). *See* Albersheim, Exh. No. 180, CO TR. Vol. I, 76:9-22. (Qwest prepared these materials, which are part of the CMP record)

[28] Exh. No. 23, p. 3 ("Qwest would like to close this CR. Bonnie Johnson – Eschelon advised she is having a problem with compliance to this process. . . . Jill Martain – Qwest asked if this is a compliance issue or a process problem. Bonnie said it is hard to determine at times, but she is willing to close this CR and handle the compliance issue with the Service Manager. The CLECs agreed to close the CR."), *quoted in* Johnson, Exh. No. 114, 27:footnote 52; *see also* Johnson, Exh. No. 114, 27:5-6.

[29] *See e.g.*, Exh. No. 111 pp. 3-4. (Qwest service manager email dated Aug. 25, 2004); *see also* Exh. No. 79 , (July 21, 2004 – March of 2005).

[30] Exh. No. 111 pp. 3-4. (Qwest service manager email dated Aug. 25, 2004) (emphasis added); *id*. p. 3 ("Five of the LSRs in the spreadsheet are where a **FOC was not sent timely prior to the due date** . . . . Qwest will continue to monitor this") (emphasis added); *id*. p. 3 ("5 were due to the issue described above with resolving the facility really late in the process; 5 of those will be addressed through coaching"). Qwest's use of "timely" before "prior to" the due date, shows that Qwest also understood that a "timely" FOC is one delivered "prior to" the due date. *See id*. p. 3. Qwest's service manager said that the Qwest non-compliance (which she referred to as a "breakdown") in these five examples was not in the delayed order process itself (*e.g.*, a jeopardy was cleared but a timely FOC was not sent) but the failure to send a timely FOC was caused by Qwest "resolving the facility issue late in the process and still attempting to meet the customers due date." *See id*. p. 3. In other words, Qwest admitted that the problem occurred as a result of Qwest conduct (Qwest failure to clear the jeopardy in a timely manner so that a timely FOC could be sent) that lead to insufficient notice to Eschelon. Therefore, the jeopardy should not be attributed to Eschelon (by coding it as Customer Not Ready ("CNR")). Regardless of the reason for Qwest failing to send a timely FOC prior to the due date (*e.g.*, either because the facility cleared but Qwest failed to send a timely FOC or because Qwest cleared it too late to send a timely FOC), if Qwest does not send a timely FOC, Eschelon does not receive proper notice before attempted delivery to indicate that Eschelon should prepare to accept service delivery.

[31] Johnson, Exh. No. 114, 27:footnote 50; *see also* Exh. No. 23 (Change Request PC081403-1, referring on page 1 to Bonnie Johnson as being the originator of the jeopardy Change Request and referring to Ms. Johnson throughout the Change Request's history).

[32] Albersheim, Exh. No. 180, CO TR. Vol. I, 77: 1-6 ("You were not involved in preparing the materials for the March 4th ad hoc meeting, were you? A No. Q. And you did not participate in the March 4th ad hoc meeting. Isn't that right? A That's correct."). *See also* Johnson, Exh. No. 114, 27:footnote 50 ; *see also* Exh. No. 180, Albersheim CO TR. Vol. I, pp. 99-100; *see*, *e.g. id*. p. 98, lines 10-11 ("I'm not a part of the change management team itself."); *see also* Exh. No. 23 (Change Request PC081403-1 - no reference to Ms. Albersheim in the entire Change Request history).

[33] Johnson, Exh. No. 74, 9:7-8.

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|---|---|---|
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| | Eschelon to accept the circuit. Is this a compliance issue, ***shouldn't we have received the releasing FOC the day before the order is due***? In this example, should we have received the releasing FOC on 1-27-04? [Qwest] Response *#1 **This example is non-compliance to a documented process. Yes an FOC should have been sent prior to the Due Date**.*" [27] <br><br> The CMP Change Request closed with the above mutual understanding of the documented process and a confirmation by Qwest that conduct contrary to the process would be treated as non-compliance with the process that could be brought to Qwest service management.[28] After the Change Request closed subject to compliance issues, Qwest continued to recognize that Qwest's process was to send an FOC before the due date (*i.e.*, a "timely" FOC) and treated Qwest failure to do so in particular cases as non-compliance with its process.[29] <br><br> For example, Qwest told Eschelon at that time that, in five examples "where a FOC was not sent ***timely prior*** to the due date," Qwest provided coaching to the non-compliant Qwest employee(s) and indicated Qwest would continue to monitor compliance with the process.[30] <br><br> Ms. Bonnie Johnson of Eschelon personally participated in these CMP events and dealt directly with Qwest service | |

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| | management on these issues;[31] Ms. Renee Albersheim of Qwest did not.[32] Ms. Johnson prepared the jeopardies Chronology (pages 1-17 of Eschelon Exhibit BJJ-5) based on Ms. Johnson's personal knowledge of the facts.[33] | |
| 12.2.7.2.4.4.1 . . . CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day | Johnson Exh. No. 117 contains more than one hundred examples of orders for which Qwest did not send any FOC after a Qwest facility jeopardy, and for which Eschelon nevertheless not only used best efforts to accept the circuit but also succeeded in doing so.[34]<br><br>Qwest admitted, if Qwest classifies a delay as Eschelon-caused (CNR), this pushes out the due date for loop orders at least three days.[35] In other words, the Parties cannot "set a new appointment time on the same day" if Qwest erroneously classifies a jeopardy as CNR because Qwest then requires CLEC to request a due date three days later. | None |

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[34] Exh. No.117. *See* Starkey, Exh.No. 71, pp. 219-222. Eschelon seeks no delay. Eschelon commits in the ICA to use its best efforts to accept service at the time of attempted delivery or on the same day, even when Qwest sends no FOC (see 12.2.7.2.4.4.1 – "nonetheless"), and Eschelon provided evidence in Exh. No. 117 that Eschelon does accept service when it is able to do so despite Qwest's failure to provide an FOC.

[35] Starkey Exh. No. 71 223:2-8. When a jeopardy is classified as a CLEC-caused (CNR) jeopardy for unbundled loop orders, the CLEC is required to supplement its order by requesting a new due date that is at least ***three days after*** the date of the supplemental order. Albersheim, Exh. No. 73, Vol. 1, 36:20 – 37:2. A jeopardy properly classified as caused by Qwest does not require the CLEC to supplement the due date and does not build in this three day delay. Starkey, Exh. No. 71, p. 223:6-8.

[36] Albersheim, Exh. No. 73, MN TR Vol. 1, 34:16-23 [quoted at Starkey, Exh. No. 71, 224:note 734; *see id*. pp. 222-224].

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| | Qwest testified this Eschelon language is Qwest's current process;[36] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | |
| 12.2.7.2.4.4.1 . . . and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date. | The ICA provides: ". . . If Qwest must make changes to the commitment date, Qwest will **promptly issue a Qwest Jeopardy notification** to CLEC that will clearly state the reason for the change in commitment date. Qwest will also **submit a new Firm Order Confirmation** that will **clearly identify the new Due Date**."[37]<br><br>Qwest testified this Eschelon language is Qwest's current process;[38] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | None |
| 12.2.7.2.4.4.2  If CLEC establishes to Qwest that a jeopardy was not caused by | Qwest's witness testified that: "We don't disagree with the notion that a CNR jeopardy should be assigned appropriately."[39] | None |

[37] ICA Section 9.2.4.4.1 (closed language).

[38] Albersheim, Exh. No. 1, 68:32-69:1; Albersheim, Exh. No. 73, MN Vol. 1, 37:16-23. [cited at Starkey, Exh. No. 67, 224:Footnote 734; *see id*. pp. 222-224].

[39] Albersheim, Exh. No. 178, MN TR.  Vol. 1, 94:5-6.

[40] Albersheim, Exh. No. 178, AZ TR.  Vol. 1, 64:19-65:3.

[41] Albersheim, Exh. No. 1, 68:32-69:1; Albersheim, Exh. No. 73, MN Vol. 1, 37:16-23.  [cited at Starkey, Exh. No. 67, 224:Footnote 734; *see id*. pp. 222-224].

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| CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy. | "Q. Eschelon's proposal there is if CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy. Do you see that?<br>A. Yes.<br>Q. That's Qwest's process as well; correct?<br>A. Yes.<br>Q. And can you imagine a circumstance under which a CLEC might not want to have that?<br>A. No."[40]<br><br>Qwest testified this Eschelon language is Qwest's current process;[41] therefore, this Eschelon language cannot be inconsistent with the existing PIDs/PAP and thus requires no modification of them. | |