

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for	)	DOCKET UT-063061
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	ORDER 16
QWEST CORPORATION	)	
	)	
and	)	ARBITRATOR’S REPORT AND
	)	DECISION
ESCHELON TELECOM, INC.	)	
	)	
Pursuant to 47 U.S.C. Section 252(b).	)	
	)	
	)	
.....	)	

1 **Synopsis.** *The Arbitrator recommends resolution of the 67 disputed issues as set forth in the attached Appendix A. Given the number of disputed issues, they will not be set forth in summary fashion in this synopsis. This Report and Decision does not address wire centers issues because they are the topic of a separate proceeding.<sup>1</sup>*

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<sup>1</sup> Docket UT-073035, *In the Matter of the Petition of Qwest Corporation For Investigation Concerning the Status of Competition and Impact of the FCC’s Triennial Review Remand Order On the Competitive Telecommunications Environment in Washington.*

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## I. BACKGROUND

### A. Procedural History.

- 2 The Washington Utilities and Transportation Commission (Commission) approved an initial interconnection agreement (ICA) between Qwest Corporation (Qwest) and Eschelon Telecom, Inc. (Eschelon) on February 24, 2000.<sup>2</sup> That agreement expired on July 24, 2000, but the parties continued to operate under that agreement while attempting to negotiate a new agreement.
- 3 On August 9, 2006, Qwest filed with the Commission a request for arbitration<sup>3</sup> of an interconnection agreement with Eschelon pursuant to 47 U.S.C. §252(b) of the Telecommunications Act of 1996 (Act).<sup>4</sup> Qwest asserted that it had spent more time negotiating with Eschelon than any other competitive local exchange carrier (CLEC) in recent years and that the number of disputed issues in this arbitration far exceeds the number of issues in other arbitrations in recent years. Qwest further asserted that the parties agreed to extend the timeframes in Section 252(b) of the Act including the formal negotiating period, the period for initiating arbitration, and the time in which a state commission must resolve open issues.
- 4 On August 30, 2006, the Commission entered Order 01 in this proceeding that, among other things, appointed Patricia Clark to serve as arbitrator and scheduled a prehearing conference.
- 5 The prehearing conference convened, as scheduled, on September 15, 2006. During the prehearing conference, the parties agreed to a procedural schedule including an arbitration hearing to be conducted on November 28, 2006.<sup>5</sup>
- 6 In Order 05 entered in this proceeding on October 11, 2006, the Commission granted the joint request to vacate the procedural schedule and adopt a new procedural

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<sup>2</sup> Docket No. UT-990385.

<sup>3</sup> A glossary of acronyms and terms is attached as Appendix B for the convenience of readers.

<sup>4</sup> 47 U.S.C. §151 *et. seq.*

<sup>5</sup> Order 02 entered September 21, 2006.

schedule. The parties waived the nine-month deadline for the Commission to enter the Arbitrator's Report and Order. The arbitration hearing was rescheduled to January 23, 2007.

7 On January 4, 2007, the Arbitrator held an informal conference with the parties to discuss rescheduling the hearing in light of the impending retirement of Judge C. Robert Wallis and the Commission's resulting resource constraints. On the same date, the parties filed a letter indicating that they were amenable to rescheduling the hearing. In Order 09 entered January 9, 2007, the Commission among other things, rescheduled the hearing to convene on May 7, 2007.<sup>6</sup>

8 The Commission conducted its arbitration hearing on May 8, 2007, before Administrative Law Judge Patricia Clark. During the hearing, Qwest presented the testimony of Renee Albersheim, William R. Easton, Robert J. Hubbard, Teresa K. Million, and Karen A. Stewart. Eschelon presented the testimony of Michael Starkey, Bonnie J. Johnson, and Douglas Denney. The parties filed briefs on July 20, 2007. The record in this arbitration includes 4,497 pages of exhibits and 292 pages of transcript. The updated disputed issue matrix consists of 134 pages.

### **B. Appearances.**

9 Lisa A. Anderl, Associate General Counsel, Seattle, Washington, and Jason Topp, Minneapolis, Minnesota, represent Qwest. Gregory J. Kopta, Seattle, Washington, and Gregory Merz, Minneapolis, Minnesota, represent Eschelon.

### **C. Unresolved Issues.**

10 Qwest and Eschelon continued to engage in negotiations toward an interconnection agreement throughout this arbitration. On August 23, 2007, the parties submitted an updated disputed issue matrix<sup>7</sup> which contains significantly fewer disputed issues than the original matrix of disputed issues. The Arbitrator commends the parties for their efforts toward agreement.

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<sup>6</sup> That date was subsequently moved to May 8, 2007, at the request of the parties.

<sup>7</sup> On September 17, 2007, Qwest filed replacement pages for a portion of the updated disputed issues matrix.

11 The issues that remain in dispute and the Arbitrator's proposed disposition of each issue are set forth in the matrix attached to this report and decision as Appendix A.

**D. Resolution of Disputes and Interconnection Agreement Language Issues.**

12 As a general matter, the Arbitrator's report is limited to the disputed issues presented for arbitration.<sup>8</sup> The parties presented proposed interconnection agreement language of all disputed issues to the extent possible. Interconnection agreement language adopted pursuant to arbitration remains subject to Commission approval.<sup>9</sup>

**II. MEMORANDUM**

**A. The Commission's Duty Under the Telecommunications Act of 1996.**

13 Two central goals of the Act are the nondiscriminatory treatment of carriers and promotion of competition. The Act contemplates that competitive entry into local exchange markets will be accomplished through interconnection agreements between incumbent local exchange carriers (ILECs) and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act.<sup>10</sup> Each interconnection agreement must be submitted to the Commission for approval, whether the agreement was negotiated or arbitrated, in whole or in part.<sup>11</sup>

**B. Standards for Arbitration.**

14 The Act provides that in arbitrating interconnection agreements, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Federal Communications Commission (FCC) under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.<sup>12</sup>

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<sup>8</sup> 47 U.S.C. §252(b)(4).

<sup>9</sup> 47 U.S.C. §252(e).

<sup>10</sup> 47 U.S.C. §251(c)(1).

<sup>11</sup> 47 U.S.C. §252(d).

<sup>12</sup> 47 U.S.C. §252(c).

**C. Issues, Discussion, and Decisions.**

**1. Interval Changes and Placement**

**Issues 1-1 and 1-1(a) – (e): Issue 1-1 - Interval Changes; Issue 1-1(a) - Intervals for the Provision of Interconnection Trunks; Issue 1-1(b) - Unbundled Dedicated Interoffice Transport (UDIT) Rearrangements; Issue 1-1(c) – Local Interconnection Service (LIS) Trunking; Issue 1-1(d) – Individual Case Basis (ICB) Provisioning Intervals; and Issue 1-1(e) - Intervals for Loop Mux Combinations (LMC)**

**a. The Dispute**

15 Whether the ICA or the Change Management Process (CMP) should govern changes in provisioning intervals.

**b. Position of the Parties**

16 Provisioning intervals determine the timing of service delivery to the end user customer and control the timing of activities a CLEC must perform for service provisioning.

17 Eschelon argues that these intervals should be embodied in the ICA and require negotiation and Commission approval for critical changes.<sup>13</sup> Eschelon contends that inclusion of the intervals in the ICA ensures an orderly and reliable provisioning process for end user customers and their providers.<sup>14</sup> Eschelon asserts that it is requesting the same provisioning intervals that Qwest currently provides.<sup>15</sup>

18 Eschelon presents two options to resolve this issue; (1) permit intervals to be shortened through the CMP but require all other changes to be handled in the ICA; or (2) require an amendment to the ICA for all interval changes.<sup>16</sup> Eschelon proposes that specific intervals be included in Exhibit C to the ICA.<sup>17</sup>

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<sup>13</sup> Starkey, Exh. No. 62 at 80-81.

<sup>14</sup> *Id.* at 81.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 82-83.

<sup>17</sup> *Id.* at 83-97.



19 Qwest opposes Eschelon's proposals and argues that the CMP process is the correct forum for interval changes.<sup>18</sup> Qwest argues that the CMP would be undermined if it was necessary to conduct ICA negotiations before changes could be implemented.<sup>19</sup> Qwest further claims that Eschelon's process would increase Qwest's administrative and system costs.<sup>20</sup> Qwest contends that the effect of Eschelon's proposed language is to give control of service interval management to Eschelon.<sup>21</sup> Qwest recommends that the ICA refer to the CMP for specific intervals.<sup>22</sup>

### c. Decision

20 For Issue 1-1, the Arbitrator recommends adoption of Eschelon's first proposal. Service provisioning intervals can have a significant impact on Eschelon's business success because they affect its ability to retain existing customers and attract new ones. Adopting Eschelon's first proposal, in essence, preserves the *status quo* and requires changes through a stable process unless the service provisioning intervals would be reduced, not lengthened. Provisioning intervals are important terms and conditions in the ICA. Therefore, parties must negotiate changes and request Commission approval as amendments to ICAs. This process may cause an increase in Qwest's administrative and system costs, but Qwest did not provide any evidence regarding the costs associated with this process to calculate a reasonable charge to assess Eschelon.

21 Having recommended approval of Issue 1-1 in Eschelon's favor, the sole proposals for specific services in the ICA are contained in Eschelon's proposal. Accordingly, the Arbitrator recommends approval of Eschelon's proposal for Issues 1-1(a) – (e).

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<sup>18</sup> Albersheim, Exh. No. 1 at 28.

<sup>19</sup> *Id.* at 30.

<sup>20</sup> *Id.* at 31.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 33 – 39.

## 2. Rate Application

### Issue 2-3: Application of Rates in Exhibit A

#### a. The Dispute

22 Whether there should be language in the ICA that establishes a default effective date for the rates in Exhibit A if a legally binding Commission decision does not specify a date.

#### b. Position of the Parties

23 Qwest proposes that the rates be applied on a prospective basis from the effective date of a legally binding Commission decision if the Commission does not order a different date.<sup>23</sup> Qwest argues that applying rates retroactively prevents businesses from making informed decisions regarding the products they will purchase and offer.<sup>24</sup>

24 Eschelon recommends that this section refer the parties to Section 22 of the ICA regarding the rates in Exhibit A and when they apply.<sup>25</sup> The parties agreed to the language in Section 22.4.1.2 which provides that such rates shall be effective as of the date of a legally binding Commission order.<sup>26</sup>

#### c. Decision

25 The Arbitrator recommends approval of Qwest's proposal. The language the parties agreed upon in Section 22 does not appear to address this issue. That is, a situation where the Commission does not specify an effective date. Qwest's proposed language serves only as a default but should provide clarity in an otherwise ambiguous situation.

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<sup>23</sup> Easton, Exh. No. 42 at 3.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> Denney, Exh. No. 130 at 6-7.

<sup>26</sup> *Id.* at 7.

### 3. Effective Date of Legally Binding Changes

#### Issue 2-4: Effective Date of Legally Binding Changes

##### a. The Dispute

26 What is the effective date of an amendment to the ICA required by a legally binding change if the decision decreeing the change does not specify an implementation date?

##### b. Position of the Parties

27 If a regulatory body or court issues a decision causing a change in law and that decision does not specify an implementation date, Qwest recommends that a party may provide notice of the change to the other party, within 30 days of the decision, and an amendment to the ICA would be effective on the effective date of the change.<sup>27</sup> If neither party provides notice within 30 days, the effective date of the change would be the effective date of the amendment to the ICA unless the parties agree to a different date.<sup>28</sup>

28 Eschelon asserts that language regarding a change of law should provide clear guidance to the parties as to when the change will take effect, eliminate the opportunity for a party to delay the effect of a change in law, and preserve the authority of the body issuing the change.<sup>29</sup> Eschelon proposes that any amendment shall be deemed effective on the effective date of the change of law, unless otherwise ordered.<sup>30</sup> In the alternative, Eschelon proposes language that imposes an obligation on a party seeking an implementation date other than the effective date of the decision to obtain a ruling to that effect.<sup>31</sup>

29 Qwest concurs with Eschelon's position regarding the goals a change of law provision should accomplish and contends that its language achieves all three goals.<sup>32</sup>

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<sup>27</sup> Easton, Exh. No. 42 at 5.

<sup>28</sup> *Id.*

<sup>29</sup> Denney, Exh. No. 130 at 9.

<sup>30</sup> *Id.*

<sup>31</sup> Denney, Exh. No. 45C at 23.

<sup>32</sup> Easton, Exh. No. 43C at 3.

**c. Decision**

30 The Arbitrator concurs with the parties that any change of law provision should provide clear guidance to the parties, eliminate the opportunity to delay implementation, and preserve the authority of the body issuing the decision. The Arbitrator recommends adoption of Qwest’s proposal because it appears to further those goals. It provides an incentive to the parties to be vigilant in monitoring changes and to expeditiously take action to implement a change in law. Both parties have demonstrated acuity in protecting their interests and should be able to accomplish this goal without difficulty. Qwest’s proposal eliminates the possibility that months, or even years, could expire before a party exerted its rights under a change in law. Delay in implementation of a change in law is problematic not only for parties, but for the Commission which must attempt to resolve any disputes with potentially stale or incomplete data. Qwest’s proposal preserves the authority of the body issuing the change in law because the “default” language does not take effect if the decision specifies an implementation date.

**4. Definition of “Commission Approved Wire Center List”**

*See Issue 9-37 (see ¶174)*

**5. Design Changes**

**Issue 4-5: “Design Change”**

31 In the process of providing circuits to CLECs, it is sometimes necessary to change facility assignments to the circuit on the day of installation requiring the circuit configuration (or design) to be reevaluated and reconfigured, if necessary, to ensure the circuit works properly. The parties concur that the following language should be included in Section 9.2.3.8 of the ICA: “design change rates for unbundled loops unless the need for such change is caused by Qwest, in which case the rate does not apply.”

**Issues 4-5(a) and (c): Issue 4-5(a) – Change Facility Assignment Charge and Issue 4-5(c) - Design Change Charge**

**a. The Dispute**

32 This dispute revolves around what charge(s) should apply to the CLEC when a Change Facility Assignment (CFA) is needed during a coordinated cutover of a loop and what charge should apply for loop design changes.

**b. Position of the Parties**

33 Qwest claims the Unbundled Dedicated Interoffice Transport (UDIT) design change charge is applicable to both CFA and loop design changes and proposes to charge the UDIT design change rate. Qwest believes design changes are not a service required under Section 251 of the Act and are provided for in the Statement of Generally Available Terms (SGAT) as UDIT design change charges.<sup>33</sup> Qwest argues that the UDIT design change charge is appropriate because the rate is contained in the “Miscellaneous Charges” section meaning the rate is applicable to all unbundled network elements (UNEs) in the ICA.<sup>34</sup> Qwest asserts that the cost study calculates the cost for all types of products under all circumstances. In addition, Qwest asserts that the design change charges established by the Commission apply to CFAs and loop design changes as well as UDITs.<sup>35</sup>

34 Eschelon claims that the UDIT design change charge does not apply to CFAs and loop design changes because UDIT charges involve different work processes. Eschelon asserts this is verified in Qwest’s cost study for the UDIT design change charge which demonstrates that different work processes are involved with transport design changes (ASRs) and loop design changes (LSRs).<sup>36</sup> In addition, Eschelon contends that Qwest did not provide any cost support for the assertion that the design change charge was developed for all design change products, and further that the cost study demonstrates the charge does not average costs for all design change products. For example, the probability for all but one activity is 100 percent. That would not be

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<sup>33</sup> Stewart, Exh. No. 59 at 3.

<sup>34</sup> Stewart, Exh. No. 57 at 7 and 10.

<sup>35</sup> Qwest’s Post-Hearing Brief at 7.

<sup>36</sup> Denney, Exh. No. 130 at 32-34.

the case if all products were averaged. Eschelon contends that there is no evidence that the study applies to CFA changes. Eschelon argues that the inclusion of UDITs in the “Miscellaneous Charges” section of the SGAT is not supported by the Commission order that established the charge, nor is any language included in the SGAT.<sup>37</sup>

35 Eschelon proposes a \$5.00 charge for CFAs and a \$30.00 charge for loop design changes. Eschelon contends that the Act requires Qwest to provide UNEs, as well as functions necessary to provision UNEs, in a nondiscriminatory manner at cost-based rates.<sup>38</sup> Therefore, Eschelon asserts that CFAs and loop design changes should be provided at total element long-run incremental cost (TELRIC) because they are necessary function to provision UNEs.<sup>39</sup>

### c. Decision

36 For issues 4-5(a) and (c), the Arbitrator recommends acceptance of Eschelon’s proposal. The evidence presented by the parties raises two issues. First, Qwest asserts that it is not required to provide CFA and loop design changes under Section 252(c) of the Act. However, Qwest’s testimony states that “[E]ngineering review of modifications to pending orders is . . . an essential activity in Qwest’s provisioning process . . .”<sup>40</sup> and that engineering review is required for both loop design changes and CFAs.<sup>41</sup> Therefore, the evidence demonstrates that CFAs and design change functions appear to be necessary functions of the provisioning process which Qwest is obligated to provide under Section 251(d)(2)(B) of the Act. This section of the Act states that, in determining which network elements should be made available, consideration shall be given as to whether the failure to provide such access to the elements would impair the ability of the carrier seeking access to provide the service it seeks to offer. Qwest is the only entity that can provide these functions. If Eschelon does not have access to these functions, it cannot provide service to its customers without unanticipated delay. Therefore, CFA and design changes should

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<sup>37</sup> Denney, Exh. No. 137 at 25-26.

<sup>38</sup> Denney, Exh. No. 130 at 30.

<sup>39</sup> *Id.* .

<sup>40</sup> Stewart, Exh. No. 57 at 9.

<sup>41</sup> *Id.* at 12.

be offered as functions equivalent to UNEs and thus be subject to the TELRIC cost standards.

- 37 The second issue is whether rates for CFAs and loop design changes should be based on cost. In examining the Qwest's cost study used to support the contention that UDIT design change charges apply to these services, there is no underlying cost data indicating that the study included costs for CFAs and loop design changes. Instead, as Eschelon argues, the charge is based on a 100 percent probability that a design change is necessary although Qwest acknowledges that loop design changes may not be required in all cases.
- 38 While Eschelon's proposed rates would not be acceptable for establishing a TELRIC rate, they are reasonable interim rates until such time as Qwest files for, and the Commission approves, permanent rates. Accordingly, the Arbitrator recommends approval of Eschelon's rates as interim rates for the CFA and loop design change rate elements.

## **6. Discontinuation of Order Processing**

### **Issue 5-6: Discontinuation of Order Processing**

#### **a. The Dispute**

- 39 Whether discontinuing to process orders for relevant services for failure to make full payment of the billed amount within 30 days of the payment due date requires Commission approval.

#### **b. Position of the Parties**

- 40 Qwest asserts that it is entitled to timely payment for services rendered and to take remedial action if the risk of non-payment is apparent.<sup>42</sup> Under Qwest's proposal, it would be permitted to discontinue service if the billed amount is not paid within 30

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<sup>42</sup> Easton, Exh. No. 42 at 9.

days.<sup>43</sup> Qwest opposes Eschelon's two proposals because it believes they put Qwest at risk of providing service to a CLEC without the assurance of being paid.<sup>44</sup>

41 Eschelon argues that Commission approval should be necessary for Qwest to discontinue processing orders.<sup>45</sup> Eschelon contends that if Qwest unilaterally discontinues processing orders, the effect on Eschelon would be devastating.<sup>46</sup> Eschelon asserts that it has had significant disputes with Qwest over the accuracy of bills and the timeliness of payments.<sup>47</sup> Eschelon offered two proposals that would either require Commission approval before Qwest discontinued order processing or would permit Qwest to discontinue order processing only if Eschelon did not seek Commission relief.<sup>48</sup>

### c. Decision

42 The Arbitrator recommends adoption of Qwest's proposed language. This language affords Eschelon a significant opportunity to pay *undisputed* billing amounts before service is discontinued. When Qwest bills Eschelon, payment is not due for 30 days.<sup>49</sup> Qwest's proposed language provides Eschelon with an additional 30 days following the payment due date before service may be discontinued. Qwest is required to provide Eschelon with 10 business days' notice of its intent to disconnect. The proposed language appears to ensure that Qwest will receive timely payment for services rendered while not requiring Eschelon to pay disputed amounts.

43 If Qwest misuses its ability to discontinue order processing, Eschelon has several remedies. The issue could be addressed in the CMP where the parties could attempt to collaboratively address this issue. The issue could be raised during the six-month review process. The ICA also includes a dispute resolution process.

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<sup>43</sup> *Id.*

<sup>44</sup> Easton, Exh. No. 45C at 11.

<sup>45</sup> Denney, Exh. No. 130 at 55.

<sup>46</sup> *Id.*

<sup>47</sup> Denney, Exh. No. 137 at 33.

<sup>48</sup> Denney, Exh. No. 130 at 51.

<sup>49</sup> Easton, Exh. No. 42 at 9.



**Issues 5-7 and 5-7(a): Issue 5-7 - Commission Approval for Disconnects and Issue 5-7(a) - Commission approval prior to disconnection**

**a. The Dispute**

44 Whether the Commission must receive notice of and approve disconnection of any and all relevant services for failure of the billed party to make full payment, less any disputed amount, within 60 days of the payment due date.

**b. Position of the Parties**

45 Qwest asserts that its proposed language is simply a reasonable business precaution to encourage timely payment or provide Qwest with the ability to limit its financial risk.<sup>50</sup> Qwest notes that disconnection is a very serious step, therefore its proposed language excludes disputed amounts, requires accounts to be more than 30 days past due, and requires at least 10 business days advance notice.<sup>51</sup>

46 Eschelon argues that Commission oversight is necessary to ensure that end user customers retain dial tone and access to 911 emergency services.<sup>52</sup>

**c. Decision**

47 This issue is similar to the dispute presented in 5-6, but involves disconnecting service rather than discontinuing order processing. Thus, the consequence for failure to pay billed amounts is greater for both the CLEC and its end user customers. The Arbitrator balances Qwest's interest in receiving timely payment for services rendered and its ability to abuse its power to disconnect services with Eschelon's need to ensure that service will not be improperly disconnected.

48 The Arbitrator recommends approving Qwest's proposed language. As with discontinuing order processing, it is important to note that this provision is only applicable to *undisputed* billed amounts. Qwest's language gives Eschelon adequate opportunity, 90 days, to make full payment of the undisputed billed amount. If

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<sup>50</sup> Easton, Exh. No. 43C at 7-8.

<sup>51</sup> *Id.* at 8.

<sup>52</sup> Denney, Exh. No. 130 at 56.

payment is not made within that time frame, Eschelon will receive 10 business days notice prior to disconnection. The notice provision gives Eschelon the opportunity to make payment without adversely affecting the interests of end user customers. There does not appear to be a significant risk that Qwest will improperly disconnect service because the provision only applies to undisputed amounts.

## 7. Deposits

### Issue 5-8: *De Minimis* Amount

#### a. The Dispute

49 This issue concerns whether payment of an undisputed “non-*de minimis*” amount more than 30 days after the payment due date constitutes “repeatedly delinquent” payment behavior triggering a deposit requirement.

#### b. Position of the Parties

50 Eschelon argues that deposit requirements should not be triggered for insignificant amounts of money.<sup>53</sup> Eschelon asserts that the term “*de minimis*” means “of trifling consequence or importance”; too insignificant to be worthy of concern.”<sup>54</sup>

51 Qwest contends that the term “*de minimis*” is vague and invites dispute about the meaning of the term.<sup>55</sup>

#### c. Decision

52 The Arbitrator recommends adoption of Qwest’s proposal. While the term “*de minimis*” is well-defined, its meaning is driven by the factual circumstances surrounding its use requiring analysis on a case-by-case basis. Thus, it invites dispute rather than resolving it.

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<sup>53</sup> Denny, Exh. No. 130 at 64.

<sup>54</sup> Denney, Exh. No. 130 at 64 quoting Webster’s online dictionary at <http://www.webster-dictionary.net/definition/Minimis>.

<sup>55</sup> Easton, Exh. No. 42 at 17.

### **Issue 5-9: Definition of Repeatedly Delinquent**

#### **a. The Dispute**

53 The time period of delinquent account behavior that constitutes “repeatedly delinquent.”

#### **b. Position of the Parties**

54 Qwest proposes that payment of undisputed amounts more than 30 days after the payment date for three or more times in a 12 month period would constitute “repeatedly delinquent.”<sup>56</sup> Eschelon proposes that payment of undisputed amounts more than 30 days after the payment date for three consecutive months<sup>57</sup> or, alternatively, three or more times in a six month period, would constitute “repeatedly delinquent.”<sup>58</sup> Eschelon argues that the latter proposal is consistent with Qwest’s ICAs with other carriers.<sup>59</sup>

#### **c. Decision**

55 The Arbitrator recommends approval of Eschelon’s second proposal. Qwest failed to demonstrate that Eschelon’s proposal is insufficient to protect its interests. The language is consistent with the language in ICAs with other CLECs.

### **Issue 5-11: Disputes Before Commission**

#### **a. The Dispute**

56 This dispute involves two issues: (1) whether Eschelon must pay a deposit within 30 days if Eschelon challenges the merits of the deposit requirement before the Commission; and (2) when the deposit requirement is triggered pending Commission action on the dispute.

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<sup>56</sup> *Id.* at 17-18.

<sup>57</sup> Denney, Exh. No. 130 at 66.

<sup>58</sup> Denney, Exh. No. 152 at 61.

<sup>59</sup> *Id.*

**b. Position of the Parties**

57 Eschelon proposes that the requirement that a deposit be paid within 30 days not be implemented if there is a dispute before the Commission regarding the deposit.<sup>60</sup> Eschelon argues that, under these circumstances, the date a deposit is due would be determined by the Commission.<sup>61</sup>

58 Qwest opposes the additional language and argues that it is not necessary because Eschelon has a right to dispute Qwest's billing.<sup>62</sup> Qwest argues that this language gives Eschelon a second opportunity, which is unnecessary and inequitable, to dispute billings.<sup>63</sup>

**c. Decision**

59 The Arbitrator recommends that Qwest's proposal be adopted. Under agreed-upon language in Section 5.4 of the ICA, Eschelon has the right to dispute Qwest's billing. In addition, Eschelon can contest the deposit requirement through the CMP or a Qwest six-month review proceeding. The current options should be sufficient to address any concerns with deposit requirements.

**Issue 5-12: Deposit Requirement**

60 This issue addresses alternative language if the Arbitrator does not recommend language for Issues 5-8, 5-9, and 5-11. Having recommended language for each of the foregoing issues, it is unnecessary to discuss this issue.

**Issue 5-13: Review of Credit Standing**

**a. The Dispute**

61 Whether Qwest is permitted to review the other party's credit standing and increase the amount of a deposit.

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<sup>60</sup> Denney, Exh. No. 130 at 68.

<sup>61</sup> *Id.* at 69.

<sup>62</sup> Easton, Exh. No. 42 at 19.

**b. Position of the Parties**

62 Qwest recommends inserting language that would permit it to review Eschelon's credit standing and increase the amount of deposit within the limitations of Section 5.4.5 of the ICA based on the credit standing.<sup>64</sup> Qwest asserts that this is a reasonable and customary business practice a billing party uses to protect itself from credit risk.<sup>65</sup>

63 Eschelon recommends either deleting the new language or requiring Commission approval to increase the amount of deposit.<sup>66</sup> Eschelon argues that Qwest's language gives it unilateral control to increase deposit amounts without any standards.<sup>67</sup>

**c. Decision**

64 The Arbitrator recommends adoption of Eschelon's first proposal; deleting the section for review of credit standing. Qwest has a legitimate business reason to ensure that it does not undertake significant credit risk and obtains timely payment for services rendered. Qwest has that assurance in the protections set forth in the agreed-upon deposit criteria set forth in Section 5.4.5 of the ICA. In addition, Qwest has the protections provided under Issues 5-6 and 5-7 regarding discontinuation of order processing and disconnection of service to adequately protect its interests.

**Issue 5-16: Non-disclosure Agreement**

**a. The Dispute**

65 Eschelon provides forecasts and forecasting information, which it has designated as confidential, to Qwest. Qwest employees who receive the confidential information must sign a non-disclosure agreement. The issue is whether Qwest should be required to provide Eschelon with a signed copy of each non-disclosure agreement within 10 days of its execution.

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<sup>63</sup> *Id.*

<sup>64</sup> Easton, Exh. No. 42 at 22.

<sup>65</sup> *Id.*

<sup>66</sup> Denney, Exh. No. 130 at 71-72.

<sup>67</sup> *Id.* at 72.

**b. Position of the Parties**

66 Undisputed language in the proposed ICA allows Qwest to provide limited access to confidential information to employees who might need that information in the context of their employment provided the employee(s) sign a non-disclosure agreement.<sup>68</sup> Eschelon proposes including a requirement that Qwest provide copies of those non-disclosure agreements within 10 days of their execution.<sup>69</sup> Eschelon asserts that it should know which Qwest employees are viewing its information because misuse of the information could place it at a competitive disadvantage.<sup>70</sup>

67 Qwest opposes inclusion of this requirement and asserts that it bears the burden of ensuring the confidential information is handled properly and securely.<sup>71</sup> Qwest contends that the additional requirement places an unnecessary administrative burden on Qwest.<sup>72</sup> Qwest notes that employees change jobs and new employees take their place and Qwest is obligated to update the non-disclosure agreements.<sup>73</sup> Qwest asserts that Eschelon has further protection and recourse under Section 18.3.1 of the ICA if it believes information has been misused because it can request an audit.<sup>74</sup>

**c. Decision**

68 The Arbitrator recommends adoption of Eschelon's proposed language. To resolve this issue, the Arbitrator balances Eschelon's interest in knowing the individuals within a competitor's organization who have access to its confidential information with the burden placed on Qwest if it must provide copies of non-disclosure agreements to Eschelon. Eschelon has a significant interest in ensuring that individuals with retail marketing, sales, or strategic planning duties do not receive confidential information. The harm from disclosure, even inadvertent, to individuals with these duties is significant and could place Eschelon at a competitive disadvantage. On the other hand, the administrative burden on Qwest appears

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<sup>68</sup> Easton, Exh. No. 42 at 23 and Denney, Exh. No. 130 at 77.

<sup>69</sup> Denney, Exh. No. 130 at 77.

<sup>70</sup> Denney, Exh. No. 130 at 76-77.

<sup>71</sup> Easton, Exh. No. 42 at 24.

<sup>72</sup> *Id.*.

<sup>73</sup> Easton, Exh. No. 43C at 18.

<sup>74</sup> *Id.* at 25.

minimal. Balancing the interest affected and the burden imposed favors Eschelon's position and the Arbitrator recommends adoption of Eschelon's language.

## **8. Transit Record Charge and Bill Validation**

### **Issues 7-18 and 7-19: Issue 7-18 - Application of Transit Record Charge and Issue 7-19 - Transit Record Bill Validation Detail**

#### **a. The Dispute**

69 Whether Qwest should be required to provide Eschelon with billing records of transit traffic, without charge, for the purpose of allowing Eschelon to verify traffic charges assessed by Qwest. If so, what data should be included for bill verification?

#### **b. Position of the Parties**

70 Qwest provides transit traffic and bills Eschelon for originated calls. The current bills do not include call record data.

71 Eschelon requests call records for bill verification without charge. Eschelon contends that it should not have to pay additional charges to verify Qwest invoices. While Qwest already provides billing data for terminating traffic, the data does not contain the information Eschelon requests to validate transit traffic.<sup>75</sup> Eschelon argues that significant additional programming should not be necessary because the data must exist in order for Qwest to generate the bill.<sup>76</sup>

72 Qwest asserts that the originating switch records are the best source of information to validate billing. Qwest argues that it should not be required to provide Eschelon with information it already has.<sup>77</sup> Qwest contends that it would have to undertake significant additional programming to produce the requested records.<sup>78</sup>

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<sup>75</sup> Denney, Exh. No. 130 at 80-82.

<sup>76</sup> Denney, Exh. No. 152 at 72-73.

<sup>77</sup> Easton, Exh. No. 42 at 26-27.

**c. Decision**

73 The Arbitrator recommends approval of Eschelon’s proposal. Qwest needs to provide Eschelon with sufficient information to allow it to understand and confirm the basis for Qwest charges. The best information to verify Qwest billings is Qwest’s call record detail, not extrapolation based on third party data. Absent such data, Eschelon would be unable to dispute Qwest’s transit charge billings under Section 21.8.4.3 of the ICA.

74 It should not be unduly burdensome for Qwest to provide the call record detail. Eschelon proposes to limit requests for the data to once every six months, provided the billings are accurate. Moreover, Qwest is already obligated to undertake the programming task of producing the requested records because the Minnesota Public Utilities Commission adopted Eschelon’s proposal in the Eschelon/Qwest arbitration in that state.<sup>79</sup>

**9. Non-discriminatory Access to UNEs**

**Issue 9-31: Non-discriminatory access to UNEs**

**a. The Dispute**

75 Whether some of the routine modifications to UNEs should be subject to cost-based rates.

**b. Position of the Parties**

76 Eschelon proposes two alternatives for language to address this issue. Eschelon’s proposed language would provide that “access to” UNEs includes moves, add, repairs, and changes to UNEs.<sup>80</sup> In the alternative, Eschelon proposes that “access to” UNEs specifically provides that access will be provided at TELRIC rates. Eschelon argues that it is critical that it have nondiscriminatory access to UNEs at cost-based

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<sup>78</sup> Easton, Exh. No. 42 at 19.

<sup>79</sup> Denney, Exh. No. 158 at 20-21 and *In the Matter of the Petition of Eschelon Telecom, Inc., for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b) of the Federal Telecommunications Act of 1996*, MPUC No. P-5340,421/IC-06-768.

<sup>80</sup> Starkey, Exh. No. 62 at 135.



rates or it will not have a meaningful opportunity to compete.<sup>81</sup> Eschelon contends that it has an expectation, as supported by governing rules and orders, that it will continue to have access to the “same maintenance and repair procedures and level of quality available to Qwest’s other customers . . . under terms and conditions that are nondiscriminatory.”<sup>82</sup>

77 Qwest agrees that it is required to provide nondiscriminatory access to UNEs.<sup>83</sup> Qwest’s concern with Eschelon’s language is that it is vague, may require Qwest to build new facilities, and may allow Eschelon to obtain modifications to UNEs without paying for them or obtain TELRIC rates for services to which TELRIC rates do not apply.<sup>84</sup>

### c. Decision

78 The Arbitrator recommends adoption of Eschelon’s second proposal. There is no dispute that the Act requires nondiscriminatory access to UNEs. Eschelon’s proposal is designed to ensure that Qwest provides access at cost-based rates. There is no evidence to support Qwest’s contention that Eschelon would be allowed to obtain modifications to UNEs without paying for these services.

## 10. Network Maintenance and Modernization

### Issue 9-33: Network Maintenance and Modernization Activities – Affect on End User Customers

#### a. The Dispute

79 Whether the ICA should include language providing assurance that network modernization and upgrade activities will not adversely affect service to any end user customer.

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<sup>81</sup> *Id.* at 139.

<sup>82</sup> *Id.* at 139-140.

<sup>83</sup> Stewart, Exh. No. 57 at 18.

**b. Position of the Parties**

80 In the normal course of business, Qwest makes changes to modernize and upgrade its network. The parties have agreed that Qwest will ensure that its network modernization and maintenance activities result in transmission parameters that are within the transmission limits of the UNEs Eschelon orders.<sup>85</sup>

81 Qwest opposes including the term “adverse affect” because the term is vague and undefined, and if adopted, would have a chilling effect on Qwest’s modernization and maintenance of its network.<sup>86</sup> Qwest asserts that it would face substantial risk whenever it made network changes because there are undefined consequences.<sup>87</sup>

82 Eschelon argues that minor changes to transmission facilities should not result in service disruptions to its customers.<sup>88</sup> Eschelon presents two options to resolve this issue: (1) changes to transmission parameters will not adversely affect service to end user customers; or (2) if such changes result in end user customers experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes.

**c. Decision**

83 The Arbitrator recommends adoption of Eschelon’s second proposal. This proposal balances Qwest’s need to be able to modernize and maintain its network while maintaining acceptable transmission quality for Eschelon’s end user customers. While Qwest should have the discretion to modernize and maintain its own network, it should be apparent that “modernization” and “maintenance” efforts should enhance or maintain, not diminish, transmission quality. Adoption of Eschelon’s second proposal requires Qwest to assume responsibility and take corrective action to restore network quality only if the transmission quality was reduced as a result of network changes.

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<sup>84</sup> *Id.* at 20-21.

<sup>85</sup> Section 9.1.9 of the ICA.

<sup>86</sup> Stewart, Exh. No. 57 at 27.

<sup>87</sup> Stewart, Exh. No. 61 at 28.

<sup>88</sup> Webber, Exh. No. 172 at 12.

**Issue 9-34: Network Maintenance and Modernization Activities – Location at Which Changes Occur**

**a. The Dispute**

84 What information Qwest should provide to Eschelon in notices of network changes.

**b. Position of the Parties**

85 Qwest proposes to provide notices that meet the requirements of the FCC's notice rule set forth in 47 C.F.R. §51.327 and will include notice information indicating the location at which changes will occur.<sup>89</sup>

86 Eschelon requests more specific information and proposes two alternative language choices. First, Eschelon proposes that location information include, if the changes are specific to a CLEC end user customer, the circuit identification (ID) and CLEC end user address information. Alternatively, Eschelon proposes the language adopted in the Minnesota arbitration as follows:

Such notices will contain the location(s) at which the changes will occur, including, if the changes are specific to a CLEC End User Customer, circuit identification, if readily available, and any other information required by applicable FCC rules.<sup>90</sup>

Qwest opposes the proposed language because the information is not required by FCC rules, it is not practical in the context of all network modifications anticipated in Section 9.1.9 of the ICA, and it would be overly burdensome to Qwest to identify each Eschelon customer circuit ID and address before making a network change.<sup>91</sup>

87 Eschelon contends that the proposed language applies to the limited scenario when changes are specific to an end user customer and not to a geographic area or many

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<sup>89</sup> Stewart, Exh. No. 57 at 31-33.

<sup>90</sup> Denney, Exh. No. 158 at 35-37 and Updated Disputed Issue Matrix at 46-47.

<sup>91</sup> Stewart, Exh. No. 57 at 32-33.

customers.<sup>92</sup> Eschelon states that Qwest provided an “[I]mpacted CLEC Circuits Form” showing circuit ID and customer address information for impacted circuits<sup>93</sup> which demonstrates that Qwest possesses and processes the information on impacted network circuits.<sup>94</sup> On cross-examination, Eschelon stated that it did not know if Qwest had electronic access to CLEC sorted customer ID information.<sup>95</sup>

### c. Decision

88 The Arbitrator concurs with Qwest that it is not required to provide customer specific circuit ID and address information under CFR 47.51.327. However, the FCC’s notice rules are minimum notice requirements. It should not be impractical or unduly burdensome for Qwest to provide circuit ID information, if readily available, if changes are specific to an end user customer. In fact, if those changes are specific to an end user customer, Qwest must use that information to implement the network change. Accordingly, the Arbitrator recommends adopting the alternative language proposed by Eschelon and adopted by the Minnesota Public Utilities Commission.<sup>96</sup>

**Issues 9-43, 9-44, and 9-44(a) –(c): Issue 9-43 - Conversions – Circuit ID; Issue 9-44 - Manner of Conversion; Issue 9-44 (a) - Manner of Conversion – Use of Adder or Surcharge; Issue 9-44(b) - Manner of Conversion – Use of Universal Service Order Codes (USOC); and Issue 9-44(c) - Manner of Conversion Same USOC<sup>97</sup>**

### a. The Dispute

89 How conversions from UNEs to Non-UNEs will be processed and charged.

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<sup>92</sup> Webber, Exh. No. 176 at 5 and 23.

<sup>93</sup> Webber, Exh. No. 177.

<sup>94</sup> Webber, Exh. No. 176 at 24-25.

<sup>95</sup> Starkey, TR 235:19.

<sup>96</sup> See n. 38.

<sup>97</sup> These issues remain on the Revised Disputed Issue Matrix filed August 23, 2007. On January 9, 2008, the Arbitrator contacted the parties and requested confirmation of the issues deferred to Docket No. UT-073035 because Qwest’s post-hearing brief refers to filings in Docket No. UT-073035. Eschelon

### **b. Position of the Parties**

90 Eschelon proposes specific language to address each type of conversion and argues that these changes do not require a change in circuit identification (circuit ID).<sup>98</sup> Qwest opposes the language, but does not offer alternative language for conversions. Qwest argues that circuit ID changes are necessary to convert private line services and that it is entitled to recover the costs of these conversions.<sup>99</sup> In any event, Qwest contends that these issues would be better addressed in a separate proceeding.<sup>100</sup> Qwest confirms that Qwest and the Joint CLECs agreed to a \$25 conversion charge in Docket UT-073035.<sup>101</sup>

### **c. Decision**

91 The Arbitrator recommends adoption of Eschelon's proposed language for the foregoing conversion-related issues. Qwest did not provide alternative language to consider and did not address this issue in the CMP where Qwest and CLECs can jointly develop solutions. Eschelon's proposed language ensures that the conversion from UNEs to non-UNEs does not cause disruption for its business operations and potential harm to its end user customers. Qwest is compensated for conversion-related activities.

## **11. Phase Out – Subloops**

### **Issue 9-53: Phase out; UCCRE**<sup>102</sup>

#### **a. The Dispute**

92 Whether Qwest can discontinue or phase out a UNE without Commission approval if it is no longer obligated to provide that UNE but other CLECs have them in their ICAs.

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confirmed on January 10, 2008, that these issues were not deferred. Qwest did not respond to the Arbitrator's email.

<sup>98</sup> Starkey, Exh. No. 62 at 142 – 167.

<sup>99</sup> Million, Exh. No. 51 at 9.

<sup>100</sup> *Id.*

<sup>101</sup> Qwest Post-hearing Brief at 24; and *see* n. 88.

<sup>102</sup> In this case, the service at issue is called “Unbundled Customer Controlled Rearrangement Element” (UCCRE).

### **b. Position of the Parties**

93 Eschelon contends that this topic addresses the issue of discrimination.<sup>103</sup> Eschelon argues that Qwest currently offers UCCRE to other CLECs and charges the Commission-approved rate for the service provided.<sup>104</sup> Eschelon argues that Qwest cannot, consistent with its obligation to not discriminate, offer such a UNE term to other CLECs in their ICAs and refuse to offer it to Eschelon.<sup>105</sup> Eschelon offers three language proposals to address this issue.

94 Qwest recommends that the language be deleted from the ICA.<sup>106</sup> Qwest dismisses the discrimination argument posed by Eschelon because no CLEC has ever ordered this service.<sup>107</sup>

### **c. Decision**

95 The Arbitrator recommends approval of Eschelon's second language proposal. This language appears to balance the interests of both parties. The language does not require Qwest to offer a particular element, service, or functionality, but rather, requires Qwest to treat all CLECs in a nondiscriminatory manner. UCCRE currently exists both in Qwest's SGAT and in other ICAs and Qwest is compensated for providing this product. As a practical matter, Qwest can hardly incur harm if its assertion is true that no CLEC has ever ordered this product.

## **12. Different UNE Combinations**

### **Issue 9-54: UNE Combination Availability**

96 This issue is addressed in the discussion of Issue 9-61, at ¶¶129-135 below.

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<sup>103</sup> Denney, Exh. No. 130 at 115.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 116.

<sup>106</sup> Stewart, Exh. No. 57 at 52.

<sup>107</sup> *Id.* at 54.

### 13. Loop Transport Combinations

#### Issue 9-55: Enhanced Extended Links (EELs), Commingled EELs, and High Capacity EELs

##### a. The Dispute

97 Whether a commingled extended enhanced loop (EEL) should be defined as a loop transport combination.

##### b. Position of the Parties

98 A commingled arrangement consists of an UNE connected to a tariffed service.

99 Eschelon offers two proposals which include a definition of loop-transport combinations and language to ensure that the UNE component of this combination is governed by the ICA.<sup>108</sup>

100 Qwest opposes the inclusion of loop-transport combinations in this section.<sup>109</sup> Qwest asserts that there are important distinctions between UNE combinations and commingled arrangements.<sup>110</sup> Qwest's proposed language explains that when a UNE circuit is commingled with a non-UNE circuit, the rates, terms, and conditions of the ICA govern the UNE circuit and the appropriate tariff governs the rates, terms, and conditions of the non-UNE circuit.<sup>111</sup>

##### c. Decision

101 The Arbitrator recommends adoption of Qwest's proposed language. Use of the term "loop-transport combination" in reference to the three EEL products in this section may cause unnecessary dispute regarding which rates, terms, and conditions apply. Qwest's language clearly describes which circuits are governed by the ICA and which circuits are governed by the appropriate tariff.

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<sup>108</sup> Starkey, Exh. No. 62 at 170-171.

<sup>109</sup> Stewart, Exh. No. 57 at 66.

<sup>110</sup> *Id.* at 66-72.

<sup>111</sup> Stewart, Exh. No. 59 at 39.

#### 14. Service Eligibility Criteria – Audits

##### Issues 9-56 and 9-56(a): Issue 9-56 -Service Eligibility Criteria – Audits – Concern; and Issue 9-56(a) - Service Eligibility Criteria – Audits – Notice

###### a. The Dispute

102 The circumstances under which Qwest is entitled to conduct a service eligibility audit.

###### b. Position of the Parties

103 The FCC determined that ILECs have certain rights to conduct audits to determine if CLECs are complying with the service eligibility requirements applicable to high capacity EELs.<sup>112</sup>

104 Echelon argues that the FCC requires Qwest to have cause before conducting an audit regarding Eschelon's compliance with service eligibility requirements.<sup>113</sup> Eschelon further argues that because these audits impose a burden and cost on Eschelon, it should have notice of the rationale supporting the request for audit.<sup>114</sup>

105 Qwest contends that the FCC did not condition ILEC audit rights on a demonstration of cause.<sup>115</sup> Qwest argues that a CLEC does not incur costs unless the independent auditor determines the CLEC is not in compliance.<sup>116</sup> If the CLEC is in compliance, the ILEC must reimburse the CLEC for the costs associated with the audit.<sup>117</sup>

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<sup>112</sup> *Triennial Review Order (TRO)*. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of the Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (FCC rel. Aug. 21, 2003), *vacated in part, remanded in part, U.S., Telecom Ass'n v. FCC*, 359 F3d 554 (D.C. Cir), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

<sup>113</sup> Denney, Exh. No. 130 at 129.

<sup>114</sup> *Id.*

<sup>115</sup> Stewart, Exh. No. 59 at 45.

<sup>116</sup> *Id.* at 45-46.

<sup>117</sup> *Id.* at 46.



**c. Decision**

106 The Arbitrator recommends adoption of Qwest's proposed language. This issue involves interpretation and application of the FCC's rulings in the *TRO*. Qwest accurately summarized the rights and obligations afforded by the FCC regarding service eligibility audits.

**15. Commingled EELs/Arrangements**

**Ordering, Billing, and Circuit ID for Commingled Arrangements**

**Issue 9-58: Ordering**

**a. The Dispute**

107 Whether commingled EELs can be ordered using a single Local Service Request (LSR).

**a. Position of the Parties**

108 Eschelon argues that commingled EELs should be useful and meaningful offerings to the UNE EEL product they replace.<sup>118</sup> Eschelon argues that ordering and billing should be organized in a manner similar to a UNE EEL.<sup>119</sup>

109 Qwest opposes modifying its systems and processes so that commingled EELs are provisioned and processed as though they are a single UNE element instead of a combination of circuits.<sup>120</sup> Qwest notes that Eschelon's proposal does not include any compensation for the costs associated with such a change.<sup>121</sup>

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<sup>118</sup> Denney, Exh. No. 130 at 133.

<sup>119</sup> *Id.*

<sup>120</sup> Stewart, Exh. No. 59 at 49.

<sup>121</sup> *Id.*

**b. Decision**

110 The Arbitrator recommends adoption of Qwest’s language for Issue 9-58. Eschelon’s proposal for this issue includes the term “Loop-Transport Combinations.” As discussed in Issue 9-55, use of this language was rejected.

**Issue 9-58(a) - Circuit ID**

**a. The Dispute**

111 Whether a single circuit ID should be assigned to a commingled EEL.

**b. Position of the Parties**

112 Eschelon proposes the use of a single LSR, single circuit ID, and single bill for Point-to-Point Commingled EELs.<sup>122</sup> Eschelon argues that in many cases, a commingled EEL is nothing more than a change in name and price from the UNE EEL it is replacing.<sup>123</sup> Eschelon contends that there is no functional difference between a UNE EEL and a commingled EEL.<sup>124</sup> Eschelon asserts that it is not requesting a change from Qwest’s current process which uses a single LSR, single circuit ID, and single bill for Eschelon’s point-to-point EELs and is requesting Qwest to treat EELs in the same manner.<sup>125</sup>

113 Qwest argues that it should use a separate identification for the UNE and non-UNE circuits in a commingled arrangement.<sup>126</sup> Qwest notes that circuit IDs often include product-specific information that Qwest relies on for proper processing, monitoring, and billing of products.<sup>127</sup> Qwest also argues that there is no legal requirement for Qwest to change its systems for this purpose and it would be costly to do so.<sup>128</sup>

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<sup>122</sup> Denney, Exh. No. 130 at 142.

<sup>123</sup> *Id.* at 142-143.

<sup>124</sup> *Id.* at 143.

<sup>125</sup> *Id.* at 147.

<sup>126</sup> Stewart, Exh. No. 57 at 90.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

**c. Decision**

114 For Issue 9-58(a), the Arbitrator recommends adoption of Eschelon’s alternate proposal in Issue 9-59. This language balances the interests of both Eschelon and Qwest. It allows Eschelon to submit a single trouble report for the different circuit IDs associated with the commingled EEL, but does not require the use of a single circuit ID for commingled arrangements. It also permits Qwest to charge a single maintenance of service or trouble isolation charge for the commingled arrangement. The latter charge appears consistent with Qwest’s current practice and the change in “label” of the service provided should not result in additional charges.

**Issues 9-58(b) and (c): Issue 9-58(b) – Billing; and Issue 9-58(c) - Alternate Proposal re: Billing**

**a. The Dispute**

115 Whether Qwest should include the UNE and non-UNE elements of a commingled EEL in a single bill.

**b. Position of the Parties**

116 Eschelon argues that when Qwest bills it for a UNE EEL, Qwest bills the UNE EEL as a single facility on one billing account number (BAN).<sup>129</sup> Eschelon opposes the proposal to bill the two components of a commingled EEL separately arguing that it will be difficult to conduct bill review and reconciliation.<sup>130</sup> Eschelon argues that billing the UNE and non-UNE segments on a single bill will allow Eschelon to track these segments in tandem.<sup>131</sup> In the alternative, Eschelon proposes that Qwest’s billings for commingled EELs relate its UNE and non-UNE segments.<sup>132</sup>

117 Qwest asserts that BANs contain essential product-specific information that affect the proper billing for products, such as whether the product is billed at a UNE-based rate or a tariffed rate.<sup>133</sup> Absent separate BANs for the distinct products, billing errors

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<sup>129</sup> Denney, Exh. No. 130 at 152.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 153.

<sup>132</sup> *Id.* at 154.

<sup>133</sup> Stewart, Exh. No. 57 at 94-95.

would occur.<sup>134</sup> Qwest also opposes Eschelon's alternative proposal arguing that this process would also require modification of its billing processes.<sup>135</sup>

**c. Decision**

118 For Issue 9-58(b), the Arbitrator recommends adoption of Eschelon's alternate proposal which is set forth as Issue 9-58(c). This proposal does not require Qwest to report the commingled EELs on a single BAN, but requires Qwest to identify and relate the components of the commingled EELs on the bills and customer service records. Qwest has an interest in ensuring that UNE-based elements are billed at the appropriate rate and that non-UNE elements are billed at the tariffed rate. Likewise, Eschelon has an interest in ensuring that it is properly billed for each commingled element. Absent some information on the bill separately identifying these components, it will be onerous for Eschelon to track and verify the elements.

**Issue 9-58(d): Other Arrangements**

**a. The Dispute**

119 Whether commingled arrangements, other than EELS, permits the use of a single LSR, circuit ID and BAN.

**b. Position of the Parties**

120 Eschelon argues that the same problems that will occur with commingled EELs will occur with other arrangements unless there is a single LSR, single circuit ID, and single bill.<sup>136</sup> Eschelon argues that this section creates a default to single LSRs, circuit IDs, and bills unless the parties agree otherwise or doing so is not technically feasible.<sup>137</sup>

121 Qwest argues that Eschelon is referring to terms that would be applicable to commingled arrangements other than commingled EELs, or specifically, "Loop

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<sup>134</sup> *Id.* at 95.

<sup>135</sup> *Id.* at 96-97.

<sup>136</sup> Denney, Exh. No. 130 at 155.

<sup>137</sup> *Id.*

Transport Combinations.”<sup>138</sup> Qwest argues that these are non-existent products and it is improper for Eschelon to propose terms and conditions for products that do not exist.<sup>139</sup>

**c. Decision**

122 For Issue 9-58(d), the Arbitrator recommends adoption of Eschelon’s proposal. In this subsection, there is no specific reference to the “Loop Transport Combinations” the Arbitrator rejected in Issue 9-55. However, the processes for ordering, billing, and repair of other commingled arrangements are consistent with the approach adopted in Issue 9-58(c), if technically feasible and the parties do not agree otherwise.

**Issue 9-58(e) – Interval for Commingled Arrangements**

**a. The Dispute**

123 Whether the service interval for commingled facilities should not exceed the longer interval of the two facilities.

**b. Position of the Parties**

124 Eschelon argues that separate and distinct provisioning intervals that apply to the UNE and non-UNE components of commingled EELs should be eliminated.<sup>140</sup> Eschelon proposes that the Commission impose one interval that is the longer of the two intervals for either component.<sup>141</sup>

125 Qwest argues that the tariffed component and the UNE component of commingled arrangements must be installed separately and the service order for each component must be complete before installation, therefore the provisioning intervals must be provisioned consecutively.<sup>142</sup> This does have the effect of lengthening the overall interval for installing commingled EELs.<sup>143</sup>

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<sup>138</sup> Stewart, Exh. No. 57 at 99.

<sup>139</sup> *Id.* at 99-100.

<sup>140</sup> Denney, Exh. No. 130 at 101.

<sup>141</sup> *Id.*

<sup>142</sup> Stewart, Exh. No. 57 at 102.

<sup>143</sup> *Id.*

**c. Decision**

- 126 For Issue 9-58(e), the Arbitrator recommends rejection of both Qwest's and Eschelon's proposals and refers the parties back to the decision in Issue 1-1.
- 127 Eschelon's proposal again includes the Loop-Transport Combination language rejected in Issue 9-55. Accordingly, its proposal cannot be adopted. Qwest's proposal is also problematic because it allows factors outside the ICA to change the operation of the UNE components if they are commingled with non-UNE elements.<sup>144</sup>
- 128 The parties do not seek to change the current intervals. Instead, they dispute when such changes occur and the appropriate forum in which to address these issues. In Issue 1-1, the Arbitrator concluded that interval changes must be embodied in the ICA.

**16. Multiplexing (Loop MUX Combinations)**

**Issues 9-61; 9-61(a)-(c): Issue 9-61 - Placement; Issue 9-61(a) - LMC Loop versus LMC; Issue 9-61(b)– Intervals; and Issue 9-61(c) - LMC Multiplexing**

**a. The Dispute**

- 129 Whether the loop-mux combinations (LMC) should be placed in Section 9 (UNEs) or Section 24 (Commingling) of the ICA. Whether Qwest must provide unbundled access to multiplexing at TELRIC rates.

**b. Position of the Parties**

- 130 A LMC is comprised of an unbundled loop combined with a DS1 or DS3 multiplexed facility (with no interoffice transport).

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<sup>144</sup> *Id.*

- 131 Eschelon proposes to place the terms, conditions, and rates for LMC in the UNE section of the ICA<sup>145</sup> arguing that it belongs in this section because the UNE loop is a component of the LMC.<sup>146</sup>
- 132 Qwest proposed to place the terms, conditions, and rates in the Commingling section of the ICA arguing that a LMC is not a UNE combination.<sup>147</sup> Qwest asserts that because it is a combination of a UNE and a tariffed multiplexing service, it falls within the FCC's definition of commingling.<sup>148</sup>
- 133 Eschelon argues that Qwest should continue to provide access to multiplexers at TELRIC rates<sup>149</sup> Eschelon asserts that Qwest routinely deploys or reconfigures multiplexers for its own retail customers, so it must provide the same access to CLECs.<sup>150</sup> Eschelon requests multiplexing at UNE rates when loops and/or transport to which the multiplexer is connected are UNEs.<sup>151</sup>
- 134 Qwest argues that it is not required to provide multiplexing at UNE rates; Eschelon is required to pay the full tariffed rate.<sup>152</sup>

### c. Decision

- 135 The Arbitrator recommends adoption of Eschelon's proposed language. Qwest currently offers this product at TELRIC-based and Commission approved rates. Therefore, the Arbitrator recommends retaining the status quo. If Qwest wishes to modify this offering or modify the pricing for this offering, it should request Commission approval to modify all ICAs with UNE pricing.

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<sup>145</sup> Starkey, Exh. No. 61 at 183.

<sup>146</sup> *Id.* at 188.

<sup>147</sup> Stewart, Exh. No. 57 at 114.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 191.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 192

<sup>152</sup> Stewart, Exh. No. 59 at 81-82.

## 17. Root Cause Analysis and Acknowledgement of Mistakes

### Issues 12-64 and 12-64(b): Issue 12-64 - Root Cause Analysis and Acknowledgement of Mistakes and Issue 12-64(b) - Acknowledgement of Mistakes – Confidentiality

#### a. The Dispute

136 Whether Qwest should implement procedures for promptly acknowledging and taking responsibility for mistakes and, if so, should acknowledgement be in a form that allows Eschelon to share this information with the end user customer?

#### b. Position of the Parties

137 As a wholesale service provider, Qwest performs activities such as installing and repairing unbundled loops on Eschelon's behalf.<sup>153</sup> If Qwest makes an error that impacts an end user customer, the customer usually attributes the mistake to Eschelon.<sup>154</sup> Eschelon contends that it is important that Qwest acknowledge its mistake in a form that can be shared with the customer so that Eschelon does not lose customers or suffer harm to its marketplace reputation.<sup>155</sup> Eschelon presents two options to address these issues including the language adopted by the Minnesota Public Utilities Commission.<sup>156</sup>

138 Qwest opposes including this topic in the ICA.<sup>157</sup> Qwest asserts it is inappropriate and unnecessary to include this topic because Eschelon receives monthly reports of Qwest's performance via the Performance Indicator Definitions (PIDs).<sup>158</sup>

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<sup>153</sup> Webber, Exh. No. 172 at 23.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 24.

<sup>156</sup> Order Finding Service Inadequate and Requiring Compliance Filing, *In the Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, MN PUC Docket No. P-421/C-03-616, July 30, 2003.

<sup>157</sup> Albersheim, Exh. No. 1 at 40.

<sup>158</sup> *Id.* at 47.



**c. Decision**

139 The Arbitrator recommends approval of the language in Eschelon's first proposal for Issue 12-64 and acceptance of Eschelon's language for 12-64(b). The ICA would be clearer if it establishes procedures for acknowledging mistakes that allow Eschelon to communicate with its customers, place responsibility for errors on the correct company, and aid Eschelon in maintaining its business reputation. The examples cited in the testimony of Qwest mistakes impacting end user customers occurred in other jurisdictions. However, the risk of the same problems occurring in the state of Washington is just as great.

**18. Expedite Orders**

**Issues 12-67 and 12-67(a) - (g): Issue 12-67 - Expedited Orders; Issue 12-67(a) - Expedited Orders – Emergencies; Issue 12-67(b) - Expedited Orders – Changes in Exhibit A; Issue 12-67(c) - Expedited Orders – NRC; Issue 12-67(d) - Expedited Orders – UNEs; Issue 12-67(e) - Expedited Orders – Combinations; Issue 12-67(f) - Expedited Orders – Trunk Orders; and Issue 12-67(g) - Expedite Charge**

**a. The Dispute**

140 Although there is a dispute regarding the location of this topic in the ICA, the primary dispute is over the charges that apply to expedite orders.

**b. Position of the Parties**

141 Expedite orders are those for which Qwest provides service more quickly than under the normal provisioning interval.

142 Eschelon argues that Section 12 of the ICA, referring to Access to Operating Support Systems (OSS), should include provisions regarding expedited orders because these requests are associated with provisioning a CLEC order.<sup>159</sup> Eschelon contends that its proposed language reflects Qwest's current practices regarding expedited orders in Washington.<sup>160</sup>

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<sup>159</sup> Webber, Exh. No. 172 at 64.

<sup>160</sup> *Id.* at 67.

- 143 Qwest proposes that language regarding certain expedited orders be included in Sections 7 and 9 of the ICA distinguishing between expedites that require designed and non-designed services.<sup>161</sup>
- 144 Eschelon proposes that expedited orders regarding emergencies refer to extraordinary situations, such as a flood, in which the end user customer has a need for quick service provisioning.<sup>162</sup> Eschelon's proposal for expedited service in an emergency situation is generally consistent with Qwest's past practice in Washington and includes expedited service at no fee.<sup>163</sup> For non-emergency situations, Eschelon's proposal includes language for fee-based expedited orders.<sup>164</sup>
- 145 Qwest established a procedure through the CMP to provide expedites to CLECs through one of two options.<sup>165</sup> The first option requires language in the ICA supporting expedited requests with a "per day" expedite rate.<sup>166</sup> The language Qwest proposes for this ICA is for designed services and fees apply.<sup>167</sup> The second option is for non-designed services, referred to as "expedites requiring approval", for which expedite charges do not apply.<sup>168</sup> Qwest argued that this process is better handled through the CMP-approved expedite process than in an ICA.

### c. Decision

- 146 The Arbitrator recommends adoption of Eschelon's proposal. This topic should be addressed in Section 12 of the ICA because it relates to processing a CLEC order, albeit on a shorter interval than would otherwise be required.
- 147 For those expedites involving emergency situations (Issue 12-67(a)), the Arbitrator recommends adopting Eschelon's first language option because it clearly specifies the events that qualify for treatment under this section and because it appears to most

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<sup>161</sup> Albersheim, Exh. No. 1 at 57.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 70.

<sup>164</sup> *Id.* at 74 – 92.

<sup>165</sup> Albersheim, Exh. No. 1 at 55.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

closely approximate the manner in which Qwest currently treats these events in Washington. This is of particular importance because these are the types of events for which Qwest is not entitled to impose expedite charges. For the remainder of the expedite charges (Issues 12-67(b) – (g), the Arbitrator recommends adopting Eschelon’s proposal because the pricing is cost-based. Eschelon’s rates should be used as interim rates until the Commission establishes permanent rates in a generic cost docket.

## **19. Jeopardies**

### **Issues 12-71 to 12-73: Issue 12-71 – Jeopardy; Issue 12-72 - Jeopardy Classification; and Issue 12-73: Jeopardy Correction**

#### **a. The Dispute**

148 Whether the ICA should include language regarding jeopardy-related issues.

#### **b. Position of the Parties**

149 When circumstances exist that make it likely that the due date for service delivery will not be met, the due date is in “jeopardy.” Consequences flow from being the company that causes the jeopardy.

150 Qwest proposes that procedures for addressing jeopardies be available on Qwest’s website, rather than the ICA.<sup>169</sup>

151 Eschelon provides specific language to address jeopardizes that are caused by Qwest or a CLEC and the consequences of either classification.<sup>170</sup>

#### **c. Decision**

152 The Arbitrator recommends adoption of Eschelon’s proposal because it provides clarity and stability regarding jeopardies. If Qwest’s proposal is adopted, Qwest could unilaterally alter the procedures published on its website. Given the

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<sup>169</sup> Albersheim, Exh. No. 1 at 67.

<sup>170</sup> Webber, Exh. No. 172 at 112.

consequences for assignment of jeopardizes, it is preferable to have stability regarding this topic.<sup>171</sup> Eschelon's language reflects terms developed through the CMP but these terms have more stability in the ICA than on the website.

## 20. Controlled Production

### Issue 12-87: Controlled Production

#### a. The Dispute

153 Qwest's Operational Support System (OSS) uses various electronic interface systems that exchange information with CLECs and must be tested when Qwest updates existing versions or implements new systems.

154 This issue involves whether controlled production testing is required for recertification as well as new system implementation.

#### b. Position of the Parties

155 Qwest proposes that production testing be mandatory when and if Qwest determines testing is necessary to ensure proper interface.<sup>172</sup> As the designer of the interface systems, Qwest asserts it is the only entity that can determine when and how CLECs must test their use of these systems.<sup>173</sup> While Qwest agrees that Eschelon's proposal accurately reflects the current practice regarding recertification, it notes that it may not be accurate in the future.<sup>174</sup> More importantly, Qwest asserts that both of Eschelon's proposals give Eschelon the right to determine whether or not it will participate in controlled production testing and Qwest asserts that Eschelon should not have an option.<sup>175</sup>

156 Eschelon presents two alternatives for controlled production testing. Eschelon argues that recertifying should require less rigorous testing than implementing new

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<sup>171</sup> Webber, Exh. No. 172 at 118 – 125.

<sup>172</sup> Albersheim, Exh. No. 1 at 97.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 98.

<sup>175</sup> Albersheim, Exh. No. 29 at 39.

systems.<sup>176</sup> For recertification, Eschelon proposes that controlled production testing be optional unless the parties agree otherwise.<sup>177</sup> Eschelon argues that this language reflects Qwest's current practice.<sup>178</sup> In the alternative, Eschelon proposes to require controlled production testing for new implementations and as otherwise mutually agreed to by the parties.<sup>179</sup>

### c. Decision

157 The Arbitrator recommends that Eschelon's first proposal be adopted. Recertification should involve less complicated testing processes than new implementations. However, as a practical matter, the only entity that could be harmed by adopting Eschelon's language is Eschelon. Controlled production testing involves the controlled submission of a CLEC's real product orders to verify that the data exchange between Qwest and the CLEC is performed in accordance with industry standards.<sup>180</sup> Qwest still retains control of whether CLECs have access to particular functionalities. If Eschelon elects to not participate in controlled production testing, it may not have access to certain functionalities. Eschelon appears to be cognizant of this fact and expresses concern only that it not expend resources on functionalities that it does not intend to use.

## 21. Rates for Services

### Issues: 22-88 and 22-88(a): Rates in Exhibit A

#### a. The Dispute

158 The issue is whether the rates in Exhibit A control the rates for all services under the ICA or only the rates for services provided by Qwest.

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<sup>176</sup> Webber, Exh. No. 172 at 195.

<sup>177</sup> *Id.* at 196.

<sup>178</sup> *Id.* at 197-198.

<sup>179</sup> Webber, Exh. No. 176 at 108.

<sup>180</sup> *Id.* at 106-107.

**b. Position of the Parties**

159 Eschelon argues that the ICA should provide clarity regarding these charges because there is already agreed-upon language in the ICA regarding the assessment of mutual compensation for the exchange of intraLATA<sup>181</sup> toll traffic.<sup>182</sup> Eschelon contends that Qwest's proposed language creates ambiguity because while the ICA provides that a CLEC charges Qwest for intraLATA toll, Qwest's proposed language would refer to Exhibit A meaning that the rates are to be found in Qwest's access tariff requiring a CLEC to charge Qwest's rates rather than its own.<sup>183</sup> Eschelon proposes language that requires the parties to resort to their respective Washington access tariffs for the application of intraLATA toll rates rather than excluding Eschelon's rates from Exhibit A.<sup>184</sup>

160 Qwest argues that Eschelon is attempting to make the rates in Exhibit A reciprocal. Qwest asserts that Exhibit A sets forth the rates for services Qwest provides to Eschelon while Section 7.2.2.3.3.1 of the ICA specifies when CLEC access rates apply.<sup>185</sup> Qwest states that the language in the ICA is clear. There is no confusion or ambiguity.<sup>186</sup>

**c. Decision**

161 This issue appears to address potential future charges and the appropriate method to handle those charges. Accepting Eschelon's proposal would allow it to argue that Qwest's rates in Exhibit A are reciprocal. Accepting Qwest's language would allow Qwest to argue for using a different rate for those services. The ICA should provide finality on as many issues as possible and not leave open the potential for future disputes. Qwest's proposal invites future controversy. Assuming that Qwest's rates to CLECs are reasonable,<sup>187</sup> it is equitable for Qwest to be assessed the same rate. Accordingly, the Arbitrator recommends adopting Eschelon's proposal because it provides for finality, clarity, and equity regarding the rates for these services.

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<sup>181</sup> Local Access and Transport Area or LATA.

<sup>182</sup> Denney, Exh. No. 130 at 176.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Easton, Exh. No. 42 at 28.

<sup>186</sup> Easton, Exh. No. 45C at 32.

<sup>187</sup> These rates are not in dispute in this arbitration.

**Issue 22-89: Request for Cost Proceeding<sup>188</sup>**

**a. The Dispute**

162 Whether the ICA should include a provision that specifically allows either party to  
request a Commission cost proceeding to establish a Commission-approved rate to  
replace an interim rate.

**b. Position of the Parties**

163 Qwest proposes that this section intentionally be left blank because it is  
unnecessary.<sup>189</sup>

164 Eschelon proposes that language be inserted that nothing in the ICA waives a party's  
right to seek Commission approval of rates that would replace interim rates.<sup>190</sup>  
Eschelon argues that this provision helps ensure that interim rates not remain in effect  
indefinitely if either party disagrees with them.<sup>191</sup>

**c. Decision**

165 The Arbitrator recommends approval of Qwest's proposal to leave this provision  
blank. While no foreseeable harm could come from adopting Eschelon's proposal, it  
is not necessary to preserve either party's right to seek Commission approval of  
permanent rates.

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<sup>188</sup> Issue 22-89 appears to address the substance of Issue 22-88(b). The Arbitrator was unable to locate any evidence in support of Issue 22-89. Therefore, the Arbitrator used the evidence and arguments presented in Issue 22-88(b) to resolve this disputed issue.

<sup>189</sup> Easton, Exh. No. 42 at 29.

<sup>190</sup> Denney, Exh. No. 130 at 169.

<sup>191</sup> *Id.* at 178.

## 22. Unapproved Rates

### Issue 22-90: Unapproved Rates

#### a. The Dispute

166 Whether Qwest can charge for UNEs or processes that have previously been provided without charge and whether Qwest should provide cost support to Echelon at the time it files with the Commission for UNE rates.

#### b. Position of the Parties

167 Eschelon recommends Qwest obtain Commission approval before it charges for a UNE or process previously offered without charge or for new Section 251 UNEs. Eschelon proposes that Qwest file with the Commission a request for approval of proposed rates together with cost support within 60 days. If the parties are unable to negotiate a rate or the Commission does not establish an interim rate, the Section 251 UNE would be priced at Qwest's proposed rate until the Commission approves a rate.<sup>192</sup>

168 Qwest opposes Eschelon's language because the proposal applies to products beyond Section 251 UNEs and would obligate Qwest to provide services or processes without compensation. Qwest opposes providing notice and cost support to CLECs because the rate would not apply to carriers with existing ICAs and because the Commission would notify CLECs if it opens a cost docket.<sup>193</sup>

#### c. Decision

169 The Arbitrator recommends adopting Eschelon's proposed language. Qwest does not dispute that the services at issue are UNEs. Qwest has an obligation to provide access to the elements at issue and to seek Commission approval for new UNEs or UNEs previously offered without charge. Qwest has failed to do so or these issues would not be presented in arbitration. Adoption of Eschelon's language helps ensure that Qwest will seek Commission approval of TELRIC rates for UNEs in a timely manner.

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<sup>192</sup> Denney, Exh. No. 130 at 180-181.

<sup>193</sup> Easton, Exh. No. 43C at 22-23.



Moreover, providing notice and cost studies to Eschelon should provide both parties with sufficient information to expedite an attempt to negotiate a rate for these services. If that effort fails, the disclosure should expedite the Commission's cost proceeding.

**Issues 22-90(a) – (f): Issue 22-90(a) – Interconnection Distribution Frame (ICDF) and Augment Quote Preparation Fee; Issue 22-90(b) -ICDF Collocation – DS3 Circuit, per Two Legs; Issue 22-90(c) - Exhibit A Sections 8.15.2.1; 8.15.2.2, 10.7.10; 10.7.12.1; 12.3; Issue 22-90(d) - Exhibit A Sections 9.2.8; 9.23.6.5; 9.23.7.6; Issue 22-90(e) – Exhibit A Sections 9.6.12; 9.23.6.8.1; 9.23.6.8.2; 9.23.7.7.1; 9.23.7.7.2; and Issue 22-90(f) - Exhibit A Sections 8.13.1.1; 8.13.1.2.1; 8.13.1.2.2; 8.13.1.2.3; 8.13.1.3; 8.13.1.4; 8.13.2.1**

**a. The Dispute**

170 The issue is which rates should be used as interim rates pending Commission approval of UNE rates.

**b. Position of the Parties**

171 Eschelon proposes interim rates “that are closer to the cost based, just, reasonable and non-discriminatory standard than the rates proposed by Qwest.”<sup>194</sup> For Issues 22-90(a)(d) and (f), where Qwest provided a cost study, Eschelon adjusts the study inputs based on prior Commission orders. For Issues 22-90(b), (c) and (f), Eschelon develops rates based on various methods.<sup>195</sup> Eschelon provides its specific adjustment for each rate for which Qwest provided a cost study; if no cost study was provided, the rate was halved.<sup>196</sup>

172 Qwest opposes Eschelon's interim rates and criticizes Eschelon's cost estimate because it averaged rates for three Qwest states instead of all states where a rate was available.<sup>197</sup>

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<sup>194</sup> Denney, Exh. No. 130 at 182.

<sup>195</sup> Denney, Exh. No. 130 at 189.

<sup>196</sup> Denney, Exh. No. 136.

<sup>197</sup> Million, Exh. No. 52 at 19-20.

**c. Decision**

173 While both proposals for interim rates are problematic, the Arbitrator recommends accepting Eschelon’s proposed rates for two reasons. First, Qwest did not provide cost studies for a number of elements at issue in this arbitration despite the explicit requirement that it do so. Second, in those instances where Qwest provided a cost study, it “updated” certain cost factors in the study. When Qwest calculates costs for new elements subsequent to a cost docket, it is not obligated to rigidly follow the inputs in that docket. However, for the purpose of establishing interim rates, rather than new permanent rates, the most recently approved cost factors should be used to develop the cost proposal. Qwest should submit modifications for previously-required inputs and cost updates for Commission approval in a cost proceeding rather than using them to develop interim rates in an arbitration.

**23. Wire Center Issues Stayed Pending Resolution of Docket No. UT-073035**

Order 12 entered June 21, 2007, granted the joint motion for a single compliance filing after the wire center issues in Docket UT-073035 are resolved.<sup>198</sup>

174 Accordingly the following issues will not be addressed in this Report and Decision:

- **Issue 9-37: Definition of “Commission-Approved Wire Center List” and “Wire Center Docket” – Wire Center List**
- **Issue 9-37(a): Wire Center List – Additional Non-impaired Wire Centers**
- **Issue 9-38: Processing of High Capacity Loop and Transport Requests**
- **Issue 9-39: Review of Wire Center list**
- **Issue 9-40: NRCs for Conversions**

- **Issue 9-41: Length of time period**
- **Issue 9-42: Rate During Time Period**

#### **D. Implementation Schedule**

175 Pursuant to 47 U.S.C. §252(c)(3), the Arbitrator is to “provide a schedule for implementation of the terms and conditions by the parties to the agreement.” This matter will be addressed after the parties submit a complete compliance filing. In preparing an agreement for submission to the Commission for approval, the parties may include an implementation schedule.

#### **E. Conclusion**

176 The Arbitrator’s resolution of the disputed issues into this matter meets the requirements of 47 U.S.C. §252(c). By Order 12 entered in this proceeding on June 21, 2007, the Arbitrator granted the joint motion for a single compliance filing to address all disputed issues in this arbitration and the wire center issues presented in Docket UT-073035. Accordingly, the Arbitrator will establish processes for Commission review of the Arbitrator’s Report and Order, responses to petitions for review, requests for approval, and processes for filing a signed interconnection agreement by subsequent order.

Dated at Olympia, Washington, and effective January 18, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK  
Arbitrator

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<sup>198</sup> *In the Matter of the Petition of Qwest Corporation for Investigation Concerning the Status of Competition and Impact of the FCC’s Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State.*

**APPENDIX A  
RECOMMENDED DISPOSITION MATRIX<sup>199</sup>**

ISSUE	RESOLUTION
Issue 1-1 – Interval Changes	Eschelon’s First Proposal – pp. 1-2
Issues 1-1(a) – (e) - Specific Interval Changes	Eschelon’s Proposal – pp. 3-5
Issue 2-3 – Application of Rates in Exhibit A	Qwest’s Proposal – pp. 6-9
Issue 2-4 – Effective Date of Legally Binding Changes	Qwest’s Proposal – p. 12
Issues 4-5(a) and (c) – Design Changes	Eschelon’s Proposal – pp. 15-16
Issue 5-6 – Discontinuation of Order Processing	Qwest’s Proposal – pp. 18-19
Issues 5-7 and Issue 5-7(a) – Disconnects	Qwest’s Proposal – pp. 20-23
Issue 5-8 – Deposits – <i>De Minimis</i> Amount	Qwest’s Proposal – pp 23-25
Issue 5-9 – Deposits – Repeatedly Delinquent	Eschelon’s Second Proposal – p. 26
Issue 5-11 – Disputes Before Commission	Qwest’s Proposal - p. 27
Issue 5-12 (Alternative Proposal) – Deposit Requirement	Not addressed
Issue 5-13 – Credit Standing Review	Eschelon’s First Proposal – p. 30
Issue 5-16 – Non-disclosure Agreement	Eschelon’s Proposal - pp. 31-32
Issues 7-18 and 7-19 – Transit Record Charges and Bill Validation	Eschelon’s Proposal – pp. 33-34

<sup>199</sup> All references are to the Updated Disputed Issues Matrix dated August 23, 2007.

Issue 9-31 – Non-discriminatory Access to UNEs	Eschelon’s Second Proposal – pp. 38-40
Issue 9-33 – Network Maintenance & Modernization	Eschelon’s Second Proposal – pp. 43-46
Issue 9-34 – Network Maintenance & Modernization – Change Location	Eschelon’s Second Proposal – pp. 46-47
Issues 9-43, 9-44, and 9-44(a) – (c) – Conversions	Eschelon’s Proposal – pp. 50-51
Issue 9-53 – Phase-out of UCCRE	Eschelon’s Second Proposal – pp. 53-54
Issue 9-54 – Different UNE Combinations	<i>See</i> Issue 9-61
Issue 9-55 – Loop Transport Combinations	Qwest’s Proposal – pp. 64-67
Issue 9-56 and 9-56(a) – Service Eligibility Audits	Qwest’s Proposal - pp. 68-69
Issue 9-58 – Commingled EELs/Arrangements - Ordering	Qwest’s Proposal – pp. 70-71
Issue 9-58(a) – Commingled Arrangements – Circuit ID	<i>See</i> Issue 9-59 – pp. 76-78
Issue 9-58(b) – Commingled Arrangements - Billing	<i>See</i> Issue 9-58(c)
Issue 9-58(c) – Commingled Arrangements – Billing	Eschelon’s Alternate Proposal – pp. 72-72
Issue 9-58(d) – Other Arrangements	Eschelon’s Proposal – pp. 74-75
Issue 9-58(e) – Interval for Commingled Arrangements	<i>See</i> Issue 1-1
Issue 9-59	Eschelon’s Alternate Proposal to Issue 9-58(a) - pp. 76-78
Issue 9-61; 9-61(a); 9-61(b); and 9-61(c) - Multiplexing	Eschelon’s Proposal - pp. 79-88
Issue 12-64 – Root Cause Analysis	Eschelon’s First Proposal – pp. 88-89
Issue 12-64(b) – Acknowledgement of Mistakes – Confidentiality	Eschelon’s Proposal – pp. 91-92

Issue 12-67 – Expedited Orders	Eschelon’s Proposal - p. 92
Issue 12-67(a) – Expedited Orders – Emergencies	Eschelon’s First Proposal – pp. 93-94
Issues 12-67(b) – (g) – Expedited Orders (Other Circumstances)	Eschelon’s Proposal – pp. 97-99
Issues 12-71, 12-72, and 12-73 – Jeopardies	Eschelon’s Second Proposal – pp. 101-102
Issue 12-87 – Controlled Production	Eschelon’s First Proposal – pp. 104-105
Issues 22-88 and 22-88(a) – Rate for Services	Eschelon’s Proposal – p. 107
Issue 22-89 – Request for Cost Proceeding	Qwest’s Proposal - p. 108
Issue 22-90 – Unapproved Rates	Eschelon’s Proposal – pp. 108-110
Issues 22-90(a) – (f) – Interim Rates	Eschelon’s Proposal – pp. 111-114
<b>WIRE CENTER ISSUES</b>	
Issues 9-37, 9-37(a), 9-37(b), 9-38, 9-39, 9-40, 9-41, and 9-42	These issues are stayed pending resolution of Docket No. UT-073035

**APPENDIX B  
GLOSSARY**

TERM	DESCRIPTION
Act	The Telecommunications Act of 1996, 47 U.S.C. §251, <i>et. seq.</i>
ASR	Access Service Request. Request to ILEC to provision circuit to switch.
BAN	Billing Account Number
CDR	Call Detail Records. Computer link between carriers that exchanges call data.
Central Office	A building where the local loops are connected to switches to allow connection to other customers; also referred to as a wire center where there are several switches functioning as a switch exchange. ( <i>From Newton's, at page 157.</i> )
CFA Assignment	"Connecting Facility Assignment." A change to the location on a frame in a central office where a CLEC will access a UNE.
CIC	Carrier Identification Code. Built into Feature Group D trunk to allow ILEC to assess access charges.
CLEC	Competitive local exchange company. Not an ILEC, and generally subject to very limited regulation.
Design Change	Any change to an order that requires engineering review.
DS1	The initial level of multiplexing in the time division hierarchy of the telephone network; a 1.544 megabytes per second (Mbps) signal that provides the equivalent of <b>24 64 kbps DSO channels</b> . The same as a T1 facility. ( <i>TRO, n. 634</i> )
DS3	A digital local loop having a total digital signal speed of 44.736 Mbps provided over various transmission media, including, but not limited to fiber optics, coaxial cable, or radio. DS3 loops can be channelized into <b>28 DS1 channels</b> , or unchannelized to provide a continuous bit stream for data. ( <i>TRO, n. 634</i> )
EEL	Enhanced Extended Links
FCC	Federal Communications Commission
ICB	Individual Case Basis
ICDF	Interconnection Distribution Frame
ID	Identification
ILEC	Incumbent local exchange company; a company in operation at the time the Act was enacted (August 1996).

TERM	DESCRIPTION
Interconnection	Connection between facilities or equipment of a telecommunications carrier with a local exchange carrier's network under Section 251(c)(2).
Interconnection Agreement or ICA	An agreement between an ILEC and requesting telecommunications carrier (which may be a CLEC) addressing terms, conditions and prices for interconnection, services or network elements pursuant to Section 251.
IXC	Interexchange carrier, i.e., a long-distance carrier.
LATA	Local Access and Transport Area. A service area for Bell Operating Companies.
LIS	Local Interconnection Service
Loop	The local loop - The copper wire, fiber, or cable serving a particular customer, generally running from a central office to a residence or building.
LSR	Local Service Request
Network Element	A facility or equipment used in providing telecommunications services.
Section 251(c)(3)	The section of the Act that requires ILECs to provide unbundled access to network elements, or UNEs.
Section 271	The portion of the Act under which Bell Operating Companies, or BOCs, could obtain authority from the FCC to provide long distance service in addition to service within their in-state service areas.
SGAT	Statement of Generally Available Terms
TELRIC	Total Element Long Run Incremental Cost – A method of determining the cost, and thus, prices for network elements using a forward-looking process, rather than the existing network of a carrier.
TRO	The FCC's Triennial Review Order. An August 2003 Order addressing UNEs and the impairment standard for UNEs, vacated in part and remanded in part by the D.C. Circuit Court of Appeals in <i>USTA II v. FCC</i> .
TRO Remand Order	FCC decision entered in response to D.C. Circuit's USTA II decision: Eliminates local switching as a UNE as of March 11, 2006, and limits unbundling of high-capacity transport and loops. (High-capacity refers to the ability of the facility to handle an amount of information at a single time, e.g., DS1, DS3, Ocn capacity.)
Trunk	A communication line between two switching systems. A single trunk, capable of carrying a single conversation, is referred to DS0.,
UDIT	Unbundled Dedicated Interoffice Transport



TERM	DESCRIPTION
Unbundled	A network element that is provided by itself, not in connection with or “bundled” with another network element. A means for a carrier to request particular services from an ILEC to customize the service it provides, and to avoid an ILEC from offering certain services as a package that the carrier must take as an all or nothing option.
UNE	Unbundled network element. Generally a network element an ILEC must make available under Section 251(c)(3).
USOC	Universal Service Order Codes
Wholesale	Services provided by one carrier to another pursuant to Section 251 of the Act and generally through TELRIC pricing.